

2005 Governor-General's Prize Programme

Instructions to Participants:

- Answer one question only
- Written answers should not exceed 2500 words including footnotes/endnotes
- The citation system used in the winning essays of 2004 as present on this website should be used to acknowledge all material consulted in preparing the written answer

Questions:

1. Federations have been analysed in terms of centripetal and centrifugal forces: those which tend to draw federations closer together and those which tend to break them apart. Thinking of one centripetal force and one centrifugal force, give an account of this dynamic tension at work in contemporary Australia.

Does Canada offer any useful comparison?

2. Sir Samuel Griffith asked in 1896:

“What would be, in practice, the relation of the two Houses of the Federal Legislature to one another and to the Ministers of State? And how would the system of what is called Responsible Government work under such a Constitution? Would each House insist upon exercising its powers of veto in order to compel the retirement or dismissal of Ministers of whom it did not approve? These are interesting questions which can only be answered by experience.”¹

How has Australian experience answered these questions at the Commonwealth level of government?

3. Geoffrey Marshall remarked that the principle of the separation of powers, “is infected with so much imprecision and inconsistency that it may be counted little more than a jumbled portmanteau of arguments for policies which ought to be supported or rejected on other grounds.”²

Do you agree?

Has Marshall's judgement been borne out by Australian experience at the Commonwealth level of government?

4. Should s. 51(xxvi) of the Commonwealth Constitution be interpreted as authorizing only legislation benefiting Aborigines?

Or Aborigines and Torres Strait Islanders?

Or “the peoples of any race”?

Why?

Should the question whether a law “benefits” such persons be justiciable?
If so, what criteria should be applied to determine it?

5. Charles Kingston wrote in 1897 that the “greater inertia of a large Federal Parliament, as compared with a small Provincial Assembly, will materially increase the difficulty of experimental legislation”.³

How would you assess Kingston’s prediction about the fate of experimental legislation in Australian Parliaments?

Does the United States offer any guidance and, if so, what?

Footnotes:

¹*Some Conditions of Australian Federation*, in M. White and A. Rahemtula (eds.), *Sir Samuel Griffith: The Law and the Constitution* (2002), 365.

² *Constitutional Theory* (1971), 124

³ *The Democratic Element in Australian Federation* (1897)