

## **Bryce's Bible: Why Did It Impress the Australian Founders?\***

*Harry Evans*

When the framers of the Australian Constitution convened in 1897–98 to compose the instrument under which the country is still governed, they were under the sway of one book above all others. Widely read as they were, and multifarious as were the sources of their quotations, one source was referred to more than any other. According to the clerk of the convention it lay on the table during their deliberations for ease of consultation, and has been referred to as their bible.<sup>1</sup> It therefore had a great influence on the shape of the Constitution. The book was *The American Commonwealth* by James Bryce, a law academic who was also a member of the British Parliament.

The centenary of the Constitution is an appropriate time to consider again why this book had such an influence. In order to frame a fresh answer to that question, it is desirable to re-examine the book in the light of what we have learned up to 2001. Copies of the work which had such significance for the birth of the nation are now not easily found, although some prints of the various editions are appropriately held by the National Library. Resort was had to an American secondhand bookseller to obtain

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<sup>1</sup> Letter from the clerk, Edwin Blackmore, to Bryce, cited by J.A. La Nauze, *The Making of the Australian Constitution*. Carlton South, Vic., Melbourne University Press, 1972, p. 273. La Nauze uses the Bible analogy.

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a copy of the 1891 print of the second edition, which probably was the version most readily available to the founders.<sup>2</sup>

What was it about this book, then, which fixed their attention?

Bryce's work was a very detailed, lively and colourful account of American society and politics at the end of the 19th century. He knew the country intimately, and was able to convey a great deal of that first-hand knowledge to his readers.

He painted a compelling picture of a new society, a settler society, with no political or social aristocracy, with virtually unlimited upward social mobility, a great deal of economic freedom and no limitation on the opportunity of anybody to participate in the general prosperity. This society presented a distinct contrast to those of the older nations of Europe, including the United Kingdom, where there were established aristocracies, more or less open to new recruits, depending on the country, but still excluding the masses and holding on to social prestige and political power. That hold was, however, obviously breaking down. While not endorsing the apprehensions about the spread of democracy of that earlier commentator on American society, Alexis de Tocqueville, Bryce left no doubt that the society across the Atlantic represented the future, in that European societies would probably come to resemble it by a process of social and political evolution.<sup>3</sup> The question was, therefore, how was such a society successfully governed, and how could it best be governed?

This question was important for Australian readers, because they recognised that, as a settler society, with a great deal of political evolution behind it, Australia had already reached the future to a greater extent than Britain, and the model for the future was of great significance to the process of drawing up a legal instrument of government.

Bryce showed how the kind of society he depicted was ruled by public opinion, which was ultimately shaped by the views and feelings of the masses, through a class of politicians who were not in any sense an aristocracy and who did not have aristocratic views and values different from those of the rest of society. Politics was a profession, not a part-time playing field for the nobility, their relations and adherents. This had some disadvantages for the quality of government, but the institutions of government had to adapt to it, to fill the gap left by the absence of an aristocratic code, and to counteract those disadvantages. Although he readily acknowledged the evils of

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<sup>2</sup> The first edition was in 1888, and there were three subsequent editions up to 1910, with various revisions and reprints. It is apparently not recorded which version lay on the table at the convention. In most cases it is not possible to tell which version was referred to by the framers in their debates, although Patrick Glynn's quotation allows us to identify it as coming from the third edition, 1895 (*Official Report of the National Australasian Convention Debates*, Adelaide, 20 April 1897, p. 963), while Josiah Symon quoted the first edition (*Official Record of the Debates of the Australasian Federal Convention*, Melbourne, 31 January 1898, p. 344). The work was referred to as early as February 1890, by Alfred Deakin, at the Melbourne Conference on federation (*Official Record of the Proceedings and Debates of the Australasian Federation Conference*, pp. 25, 95–6), and cited by Andrew Inglis Clark in a memorandum dated 6 February 1891 (see F.M. and L.J. Neasey, *Andrew Inglis Clark*. Hobart, University of Tasmania Law Press, 2001, p. 257).

<sup>3</sup> J.B. Bryce, *The American Commonwealth*. 2nd edn, Toronto, Copp, Clark, 1891, vol. II, p. 488: 'She [America] is walking before them [European nations] along a path which they may probably follow'.

American society and politics, Bryce also showed how the institutions were basically well adapted to this society of the future. Moreover, he did not lament the likely passing of the old societies, but keenly appreciated the advantages of the new democratic model.<sup>4</sup> He therefore perceived more clearly that the old institutions of Britain were not well adapted for the future. His influence was to steer Australians away from any attempt to recreate the institutions of the old country in the Antipodes, even if that were possible, and even if their history and experience had not already indicated to them that it was not. Bryce was a cure for excessive Anglophilia.

With this understanding, Bryce was able to overcome the usual British prejudice against a written, 'rigid' constitution. He could see that, in the society of the future, such a constitution had definite advantages. It compensated for the loss of an aristocracy as a barrier between the masses and unbridled political power, by dividing and imposing restraints on that power. It inculcated the notion that power is limited and it taught habits of restraint. The older the constitution and the greater the reverence with which it was regarded, the greater its value in taming political power which might otherwise wreck the state in the wrong hands.<sup>5</sup>

In particular, Bryce could see the value of federalism, which British people have also been slow to understand. He fairly presented the problems it creates of delay, duplication, uncertainty and conflict, but he also saw that it has overwhelming advantages in the new society. He anticipated all of the arguments for federalism which have been employed in the extensive literature from the 1970s onwards in the revival of federalist thought which we have witnessed. Above all, he saw the advantage of federalism as a safeguard, as a restraint on power, but he also presented its other values: its adaption to a geographically large and diverse country which might otherwise be ungovernable and fragment under any centralised authority; the adaption of local policies to local circumstances; the ability of states to conduct experiments and innovations in policy without involving the whole country; the confinement of problems to particular states when they would otherwise affect the whole country; a healthy competition between states for the best policies; more opportunities for citizens to participate in decision-making, to be educated in government and to gain experience by holding public office. In any event, he pointed out, federalism had, in effect, already been adopted by the British Empire, by granting internal self-government to the dominions.<sup>6</sup>

In analysing the details of the federal system, Bryce could also see the real advantages of the Senate, the upper house of the legislature representing the people of the separate states equally regardless of their population. He could go beyond the facile and fatuous argument, still current in Australia, that because the Senate had become a house of political parties it could not be a 'states' house'. He appreciated the value of the Senate in providing a geographical spreading of the legislative majority and in

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<sup>4</sup> *ibid.*, vol. II, ch. XCV, 'The strength of American democracy', ch. CXI, 'The pleasantness of American life'.

<sup>5</sup> *ibid.*, vol. I, pp. 396–7.

<sup>6</sup> *ibid.*, 1891, vol. I, ch. XXX, 'The merits of the federal system'; the observation about the British Empire being a federal arrangement is at p. 346. He also points out that the former system of government of the English universities had all the essential features of federalism: vol. I, pp. 652–3.

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giving one house a larger representational base than local constituencies. He could see that, in the new society, with government by professional party politicians of generally middling quality, it was all the more important to have the safeguard of bicameralism in the legislature. The representational base of the Senate, linked to the federal nature of the country, provided a viable basis for such a safeguard, when Europeans were having difficulty finding some alternative to an hereditary nobility. He referred to the moves to have the Senate directly elected by the people rather than indirectly elected by the state legislatures, but he noted that, in the practical workings of politics, the senators already directly represented the people of the states in fact.<sup>7</sup> This analysis probably smoothed the way for the Australian framers to anticipate the 1913 amendment of the American constitution by having their senators directly elected from the start.

Bryce was therefore an authoritative correction to the usual negative British view of federalism, and particularly to that other great British constitutional authority, Walter Bagehot. In his earlier work, *The English Constitution*, Bagehot scathingly dismissed federalism and constitutional checks and balances as creating merely a muddle, and extolled the simplicity and efficiency of the British cabinet system, whereby the all-powerful House of Commons appointed the executive government, the ministry.<sup>8</sup> While Bagehot noted the deficiencies of the British constitution, such as the inability of the hereditary House of Lords to perform a real legislative role, and thought that the monarchy relied on a sort of ‘magic’ which was necessary to conceal the actual operation of the system from the uneducated masses, Bryce could see the real problem of the British system in the very simplicity and efficiency which Bagehot applauded: it lacked the safeguards which would be sorely needed as the new society evolved. Bryce quoted a very perceptive passage by a gentleman whom he described as a publicist and ex-Mayor of Brooklyn, who wrote that, as Britain evolved into a democracy, the unlimited power of Parliament would prove to be a menace, and constitutional safeguards would have to be devised to remove the danger.<sup>9</sup> British reformers are still struggling with that problem. It is significant that Bagehot, unlike Bryce, was seldom quoted at the constitutional conventions. The inadequacy of his message to Australia and to the future was apparent by the 1890s.

It is very remarkable, but seldom remarked, that a country purely British in background should have adopted a set of foreign institutions, federalism, from a foreign republic. Reading Bryce helps us to understand why the Australian framers adopted a federal system (in the classic form, not as disguised centralism as in Canada), with two elected houses of the Parliament, one representing the states by population and one representing them equally. There could be little doubt that this was the appropriate model for Australia.

At the Australian constitutional conventions the ranks of the true federalists, those who wanted to follow the classic federal model of the United States as closely as possible, included conservatives like Richard Baker and radicals like John Cockburn.

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<sup>7</sup> *ibid.*, vol. I, ch. XII, ‘The Senate: its working and influence’; the observation about the Senate being in fact elected is at pp. 111–12; the reference to proposals for direct election is in ch. X at pp. 96–7.

<sup>8</sup> First published in 1867. ch. VI, ‘Its supposed checks and balances’.

<sup>9</sup> Bryce, *op. cit.*, vol. I, pp. 396, 657–8.

The most radical of them all, Andrew Inglis Clark, was the most devoted to classical federalism, and was largely responsible for the Constitution adopting so many features of the American prototype. Bryce's analysis helps to explain why this was so. The conservatives knew that, in the new society, federalism provided the only basis for constitutional safeguards against the misuse of political power by popular demagogues. The radicals knew that federalism preserved the right of local democracies to engage in advanced social reform which might not be supported over the whole country. Bryce provided both groups with ample supportive material.

The other major faction at the conventions consisted of the responsible government men, those who wanted to follow the British model as closely as possible, and who were particularly wedded to the cabinet system, whereby the executive government is a ministry supported by the majority of the lower house. Some, like Isaac Isaacs, were openly critical of the institutions of federalism, particularly the Senate.<sup>10</sup> It is also remarkable, but also seldom remarked, that the most they were able to achieve was to beat off an attack by Baker on the cabinet system and to avoid the adoption of a different plan for the executive government.<sup>11</sup> On most other questions the federalists had the better of it, and the basic structure of the Constitution is theirs. Bryce's frank presentation of the drawbacks of federalism and of checks and balances provided the responsible government men with seemingly favourable quotations. The underlying message of his book, however, was that, in the kind of society Australia was sure to be, the federal system and its divisions of power would provide the safeguards that would be needed.

*The American Commonwealth* is therefore an icon (to use the current jargon) of Australian history. It should have been displayed in all those centenary exhibitions on the Australian Constitution, if copies were available. Readers of it now may still feel the force with which it spoke to our founders. Something of that force may be felt in the following passages, which still convey a message worth hearing:

Nevertheless the rigid Constitution of the United States has rendered, and renders now, inestimable services. It opposes obstacles to rash and hasty change. It secures time for deliberation. It forces the people to think seriously before they alter it or pardon a transgression of it. It makes legislatures and statesmen slow to overpass their legal powers, slow even to propose measures which the Constitution seems to disapprove. It tends to render the inevitable process of modification gradual and tentative, the result of admitted and growing necessities rather than of restless impatience. It altogether prevents some changes which a temporary majority may clamour for, but which will have ceased to be demanded before the barriers interposed by the Constitution have been overcome.

It does still more than this. It forms the mind and temper of the people. It trains them to habits of legality. It strengthens their conservative instincts, their sense of the value of stability and permanence in political arrangements.

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<sup>10</sup> *Official Report of the National Australasian Convention Debates*, Adelaide, 13 April 1897, pp. 542–6. The convention debates are online at [www.aph.gov.au/senate/pubs/index.htm](http://www.aph.gov.au/senate/pubs/index.htm).

<sup>11</sup> *Official Record of Debates of the Australasian Federal Convention*, Sydney, 17 September 1897, pp. 782–9.

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It makes them feel that to comprehend their supreme instrument of government is a personal duty, incumbent on each one of them. It familiarises them with, it attaches them by ties of pride and reverence to, those fundamental truths on which the Constitution is based.

These are enormous services to render to any free country, but above all to one which, more than any other, is governed not by the men of rank or wealth or special wisdom, but by public opinion, that is to say, by the ideas and feelings of the people at large.<sup>12</sup>

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<sup>12</sup> Bryce, *op. cit.*, vol. I, pp. 396–7.