

**The Making of Australian Federation:
An Analysis of
The Australasian Convention Debates, 1891, 1897-1898**

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I

The English constitution played a pivotal role in the shaping of the Australian constitution. This paper seeks to demonstrate the validity of this claim through an analysis of the debates in the Australian colonies of 1891-1898 and through emphasizing *inter alia* the role played by one of the delegates Alfred Deakin. The 1890 Australasian Conference, held in Melbourne, had been instigated by a conference in England in 1887 where all the colonies of Britain met. The 1890 conference represented the British colonies in the region of Southeast Asia. Seven delegates from each of the seven colonies in the region met, and forced the question of unification of the colonies. Independence from Britain was not on their mind, only uniting to have one common voice and an equal stake within the Commonwealth of the United Kingdom. At the conference, the delegates initiated a discussion for the path to unification that would continue until 1901. The colonies had written a constitution in 1891, and debates took place in 1891, 1897, and 1898 with the lapse in debate due to an economic depression. By 1901 the colonies had agreed on a constitution and it was ratified by an act of Parliament in Britain, which allowed the five colonies on Australia and Tasmania to unify. Essentially, the debate centered on the distribution and balance of power among the states. Specifically, issues like the uniform tariff, the rule of the majority, and how to resolve deadlocks in the two-house legislature were main points of the debate. Delegates like Alfred Deakin (1856-1919), William Lyne (1844-1913) and Josiah Symon (1846-1934) fought on both sides of key issues, forming a unique constitution. This *fin-de-siecle* Constitutional debate in Australia demonstrates the abiding influence of British liberal Constitutional thought on the colonies.

British liberal Constitutional thought is the result of the evolution of the English constitution. G. B. Adams¹ argues how feudalism made the greatest and most lasting impact on the English Constitution by shaping its foundation. Many other factors were involved but the greatest contributor to England's limited monarchy came from feudalism. Essentially feudalism was the system of government in place in England and other European countries for many centuries. Australia's constitution developed from the English one, which was based heavily on the Magna Carta, and received Parliament's, and therefore England's consent. Without a proper understanding of the English constitution there is little chance of understanding the constitution that came as a result of the freedoms the English constitution allowed.

The English Constitution grew out of a period of feudal monarchies. Many of the institutions like the parliament, judgeships, trials by jury, etc. were all in place before they became part of an official constitution. The will of the king was perceived to need gelding. The nobility in England thought the monarch's power should not be absolute, especially after the tyrannical King John's rule. Resulting from John's rule was "the constitutional monarchy of the Lancastrian age"², meaning the John's tyranny brought a shift in power in favor of Parliament. Constitutional Monarchy of England had led to the rule of Parliament and the political parties. The laws of the kingdom were above reproach, if the king violated the law, the people had the right to make him accountable. However, the monarchy still held Royal prerogative, and the parliament could never under the power of the constitution use that power. The parliament enlarged the laws under which the King needed to obey. Specifically, Parliament brought all

¹G. B. Adams "The Origin of the English Constitution", *The American Historical Review* Vol. 13, Number 2 (January 1908).

²*Ibid.*, 232.

forms of taxation under their purview “except those of the feudal suzerain and indeed encroached most seriously on these in the matter of tallage.”³ Feudal Suzerain were essentially part of the monarch’s prerogatives as he/she was the highest feudal lord and held sway over the others lords in the country. Tallage was a means of the king of procuring grants of money based on the fact that, as king or queen, the monarch in England ruled over the land.⁴ The assertion of power to make new laws specifically concerning taxation proved to be a revolutionary break from traditional feudalism and the power of the king, but the king yielded to the will of the Parliament. By the end of the 14th Century “the two lines of development which had been going on really apart, the natural development of Parliament and the line of experimenting in methods of coercing the king, really coalesce into one, and henceforward the natural development of Parliament and its powers is at the same time the natural development of the limited monarchy.”⁵

The concept of feudalism comes down to a contract between all levels of society. The lowest of society are bound to the highest through military and financial service to the elite. The king is bound by that contract, and when the king violates that contract, that “law” he would be held accountable. The parliament in exerting control was merely exercising its rights contained within the feudal contract, explicitly exerting control in the face of abuses by kings like John. Law, as provided for initially by the feudal contract, became an integral part of the shaping of the English Constitution much the same as the Australian Constitution. Many of the delegates to

³Ibid., 234.

⁴Feudal Suzerain and Tallage are encompassed under Prerogatives which are essentially the king’s powers, the suzerain deals specifically with the king’s status as the highest feudal lord to whom tribute must be paid and tallage was a form of taxation where the king got grants of money based on land.

⁵Ibid., 236.

the Convention debates had been born in England, and had become educated in England's constitutional tradition and accustomed to the rule of law.

II

The delegates to the Australasian Convention debates demanded free markets, responsible individual freedoms, and above all, the rule of law within the federation. The debate raged over how far the laws would go and who would enforce them. More specifically, it raged over how far the free market and state economies could be regulated and which bodies of the federal government would do the regulating. The rule of law in the political economy of Australia based in English Liberalism was seen as necessary for equality of the citizenry and to limit government intervention on individual liberties. Hence, English Liberalism through the rule of law, based in the English Constitution, had substantially invaded the mind-set of Australians. The English economy and constitution was run by the Free Market, and a laissez-faire government that would only promote business and trade without regulation of industry. Free trade or protectionism had been the two opposing ideologies of the debates, highlighted by the rivalry between Victoria (protectionist) and New South Wales (Free Trade). Eventually a compromise between the two was led by Alfred Deakin, a protectionist who saw federation of the colonies as more important than colonial interests.

Alfred Deakin took on many issues, like the need for the senate being elected by the people, and what to do with the uniform tariff. Alfred Deakin was born on August 3, 1856, to William and Sarah in Fitzroy, Melbourne. He was born in Australia while his parents had just immigrated to Australia six years earlier. Throughout his childhood Deakin loved to read, and that love for books would allow him to achieve little in his early schooling. However, under

mentor J. H. Thompson, Deakin flourished in school, and in 1871 began law school. By 1877 he had been accepted to the bar. Once again Deakin's flighty nature got the better of him and his law career suffered, as he had never truly been interested in the law. Befriending David Syme the owner of two newspapers, Deakin began writing for him, and through that friendship Deakin was turned "from a free trader to a protectionist."⁶ Deakin had always leaned toward liberalism but through his writing for the newspaper Deakin became engrossed with politics. Liberals in Australia would have been considered radicals in Britain for their support of the working class and call for the break-up of the big estates. Deakin himself represented the most liberal of politicians on some issues, such as labor reform. By 1878 Deakin had been elected to his first office and by 1886 he was the leader of the Liberal party. However, his longest tenure in a fashion was as a promoter of federation from 1887 to 1900. When Australia's constitution was approved by the British parliament Deakin served as the country's first Attorney-General and leader of the House of Representatives under Prime Minister Edmund Barton. Eventually, Deakin was elected Prime Minister and his liberal tendencies showed through in his government's policies.

In a speech titled "For the Federal Convention" Deakin outlined how Australia needed a Constitution in front of 150 delegates at the Australian Natives' Association meeting in March 1898. He wanted unification of the colonies right then, 1898, describing the goal not as "a Victorian, but always an Australian Association."⁷ The states of Australia, in his mind, were losing tremendous amounts of prestige and money by remaining separate, that even as no one

⁶"Alfred Deakin: Biography" Alfred Deakin Prime Ministerial Library, <http://www.deakin.edu.au/alfreddeakin/alfred/biography.htm>, Accessed, May 2, 2007.

⁷A. L. Mcleod *Australia Speaks: an Anthology of Australian Speeches*. (Sydney, Australia:

was perfectly happy with the Constitution, it still needed to be passed. Deakin recounted that, “to frame a constitution is a great task for any body of men. Yet I venture to submit that among all the federal constitutions of the world you will look in vain for one as broad in its popular base, as liberal in its working principles, as generous in its aim, as this measure.”⁸ Deakin himself represents the abiding influence of British Liberal thought on the colonies through his speeches. Deakin often found himself advocating labor reform and women’s rights in a century very hostile to those things. Deakin spoke with the goal of consensus and action in mind. He knew the Constitution represented a compromise between the colonies, both of ideals and practical concerns, but he also saw the need for it. Alone, each colony was subject to each other’s unfair taxation and the influence of the English crown. United, the colonies would be able to take hold of their own destiny and policies to a large extent, and represent themselves with one united body in the greater Commonwealth. The speech Deakin gave before the 150 delegates at this conference was meant to spur them to action. What took place next was a vote among four of the colonies, New South Wales, Victoria, South Australia, and Tasmania to create a federation but it failed. New South Wales failed to get the requisite number of votes,⁹ so again Federation had to wait, until 1901.

III

The move for Federation of the colonies actually began many years before the 1890’s, but it seems the event that galvanized many people of the colonies was the Colonial Conference held in England in 1887. The people of the colonies were still British citizens and still wanted to be, any notion of independence was frowned upon. English law had been governing the colonies and many felt it should continue, some even wanted the High Court of Australia to be superseded by

⁸Ibid., 88.

⁹They needed 80,000 and ended up 8,405 votes short.

the ability to appeal to the Privy Council and Queen herself. Many of the colonies had successfully petitioned the British government for the ability to draw up their own constitutions. However, colonies that had been established later like Western Australia had only gained self-government by 1890. The polity of the colonies felt the need for an overarching government powerful enough to regulate inter-colonial trade and act as the one Australian voice when speaking to Britain. The conference itself was comprised of delegates from every British colony and representatives of the British government.

Many delegates involved in the debates will be discussed throughout this paper, Alfred Deakin being central among them. Many other representatives of the colonies attended the debates, however, key figures like Deakin, Bernhard Wise (1858-1916) and William Lyne targeted keystone issues like the uniform tariff and whether to have the rule of the majority. Sir Henry Parkes took a leading role in the initial Australasian Conference of 1890, while at the same conference, James Service targeted more specific concerns like that of a need for a uniform financial policy. Josiah Symon debated with William Lyne the issue of allowing a referendum into the constitution where the two houses could be overridden by a vote of the people. William Trenwith (1846-1925) emerged taking the issue of referendum by the horns, outlining the need for referendum if the two houses ever deadlock, and without it the will of the people would not be heard. William Zeal (1830-1912) took on the issue of Free Trade among the states of the new Australian state, and examined the issue of uniform taxation from the standpoint of its effect on the rest of the colonies.

The Australasian Conference in 1890 was led by Sir Henry Parkes (1815-1896), who suggested that a convention was needed to federate the colonies. However, Parkes had for most of the decade of the 1880's been changing his political stance, especially surrounding a precursor to the constitution, the Federal Council system. The Federal Council system was founded in 1883 and was promoted by Parkes after visits to North America in 1883 and 1884. The system itself was limited in the role it could play within the colony, there would be no executive and much power would be left to the state or former colonial governments. Parkes had at one time been exulting the Federal Council and Federation movement, and the next moment was decrying it. Using a report in which "the Imperial government commissioned Major-General Sir

J. Bevan Edwards (1834-1922) to inspect and report upon the state of defences of the Australian colonies”¹⁰ Parkes attempted to manipulate the colonies into federation. Parkes changed sides and stances on the federation issue many times. Eventually he settled on the idea of federation as the production of the country continually increased, and he flung himself full into the conference of 1890.

Parkes was not the only star of the 1890 conference. Alfred Deakin emerged as the key figure in getting the debates that would take place later going. Deakin attempted to get a formal motion passed which would have bound the colonies to form delegations in pursuance of debating and writing a formal Constitution. The measure proposed by Deakin was eventually withdrawn. The financial crisis that hit Australia from 1893 through 1895 postponed any debate over federation as many of the colonies had to tend to themselves. The resonance of English liberal Constitutional thought can be seen in the compilation of the debates of the Australasian Federal Conventions that took place in 1891, 1897, and 1898. Specifically, Alfred Deakin’s role in the debates and later speeches highlight influences of English liberal Constitutional thought.

IV

¹⁰*Convention Debates 1891-1898, The. Commentaries Indices and Guide.* (Sydney: Legal Books Party Limited, 1986), 50.

There was a change in the roles and make-up of the delegations at the debates from 1891 to 1897 and 1898. New Zealand had determined that they would not participate in the debates after only sending three delegates to the 1891 convention debates. Also, there was continuity between the 1897 and 1898 debates in terms of delegates, while some delegates died and lost power in between 1891 and 1897, like Henry Parkes. The 1891 debates took place to analyze an initial constitution written by Samuel Griffith, and it failed to pass the Legislative Assemblies. The colonies were being hampered by the beginnings of an economic depression. Therefore, the debates had stalled and failed to achieve a passable constitution halting further conventions for six years. The economic depression and the phrase “absolutely free”¹¹ in the preliminary constitution led to a greater debate of economic measures like the uniform tariff, free trade versus protectionism and other fiscal policies.¹²

The debates of 1897 represent the two most pivotal sessions of the constitutional debate in Australia. The first session, taking place from March through April show the new convention taking the original drafted constitution from 1891 and beginning the amending process. The goal was to build a constitution that would eventually be passed through the British Parliament. The second session saw even greater debate as issues that had only been broached in the first session but were not resolved were dealt with. Specifically, issues like the power of the individual, how to solve deadlocks between the two house legislature, and the power of the new government with regards to taxation were solved. The final session of the convention debates was in 1898, and it saw the conclusion of the amending process, and the submission of the constitution for ratification by popular referendum among the individual colonies. The constitution passed in all

¹¹Referring to trade among the colonies, within the federation.

but one of the colonies it was proposed in, and therefore failed to unite the colonies. The referendum failed in New South Wales because they fell short of the requisite number of positive votes (80,000) by 8, 405 votes. The failure represented a setback, but the momentum for federation had been established. The debate over the three final sessions built consensus among the delegates and the colonial governments

Much of the debate in 1897 and 1898 centered on specific wording of the constitution. The debates in 1891 were characterized by the initial crafting of the constitution while trying to maintain much of the individual colonies' autonomy. The debates reveal an emphasis on the details of state versus state power and the federal government's control over regulatory commissions. The emphasis on power among the states is a central part of this paper and is reaffirmed by the heated debate among the delegates at the different convention sessions. The debate over the power of the states translates into the liberal ideology that had permeated the societies of the colonies. The open society that many in the colonies wanted was hotly debated under the guise of issues like state power. Great concern was expressed about the control of railroads and whether government agencies or commissions would set standard prices over the privatization of railroads through state control. A question gleaned from the debates, *How much individual/state freedom could be permitted?* describes an interesting view of English liberal Constitutional thought as the citizen's rights needed protecting and so did the economies of each colony. The dilemma of the rights of the citizen and the eventual financial settlement show how

¹²The compilation of the debates of the *Australasian Federal Conventions* of 1891, 1897 and 1898 are a word for word transcription of the speeches, arguments and discussions of the Australian colony's top thinkers.

some advocated uniform policies to both strengthen the constitution and allow for the citizen or states to have a voice.

V

The financial settlement of the debates, as described by Cheryl Saunders,¹³ outline a fight among the colonies over whether states could tax each other's goods. Also, the conclusions of Saunders reinforce the impact that English liberal Constitutional thought had on the debates. Key aspects of the discourse are shown throughout the different sessions and years of the debates. The question of the power of the colonies versus that of the federal government brought fierce argument and in 1891 those advocating maintenance of the majority of colonial power held sway. By the three sessions of 1897 and 1898 the delegates had realized they could not handicap the constitution by limiting its fiscal policies, like taxation, and regulation of trade from the start. Also, it was shown that the government would have a surplus because of its control over trade, if it was given, so what was to be done with the surplus? The constitution's definition of free trade also needed to be clarified, in regards to specific sections and commodities. Accordingly, the need for money and centralized control of government was seen as plausible especially after the 1893 economic collapse of the colonies. The conclusion of Saunders outlines a secondary source critique of what took place during that pivotal decade in Australian history. Also, the conclusions of Saunders reinforce the impact that English liberal Constitutional thought had on the colonies' unification. Free trade versus protectionism and how the individual and state could or would be taxed and where the money would go from those taxes were issues discussed within the debates fiercely.

The common/uniform tariff among the colonies particularly shows the influence of the debates that took place at the conventions of 1891, 1897-98 and of British Liberalism. The tariff would control a large portion of the money that would be flowing into the main body of the government. Individual colonies were acting as the large landowners in England had when they seized control of the parliament to limit the power of oppressive monarchs. The colonies had railroads and economies all their own, and they wanted to reap the benefits of both sides, yet, a compromise was worked out. They got a strong, yet restrained government that rewarded its states for the contributions they would be making to

¹³The hardbound volumes of the debates are supplemented by a guide that includes an index and some commentaries. The guide begins by describing what a resource that the debates represent for law students, about what the nuts and bolts of the constitution are.

the finances of the federated colonies. Also, the new government would limit the ability of the states to tax each other's goods and services. The inter-state commission was created to limit the states' ability to tax, but initially did not have any powers. Eventually, the commission developed into a key regulatory agency for the government.

Alfred Deakin debated the issue of an inter-state commission to regulate the railways and waterways of Australia. The power of the state within Australia is a keystone issue within the debates, but much of the debate also centered on money. The power of the states to tax each other and their own imports versus an overarching institution that would regulate taxation. The central issue that drove the debate at the many different times it was broached was competition among the states. Deakin argued, "I do not want to see any common mileage charge. Each state should have the full advantage of its circumstances."¹⁴ States, through competition, would attempt to draw traffic away from their neighbors in order to reap greater profits. Deakin used the argument from above to illustrate how badly the states could take advantage of and hurt each other. Deakin wanted free trade among the colonies, enforced through uniform rates and expressed his opinion in the First session debates in Adelaide, 1897.

Other delegates debated the issue broached by Deakin at Adelaide. Free trade was seen by some protectionist delegates as leading to the inevitable take over of railways and waterways by the government's inter-state commission. Some delegates saw, however, a threat to their own colony's well being. William Zeal, a delegate from Victoria, said, "They have larger aims, and propose to drive Victorian trade out of Riverina and prevent her carrying traffic on any lines in that territory."¹⁵ He really wanted deregulation; he saw railways cooperating, working together for profit, not against each other. The clause giving the interstate commission its powers was meant to prevent the competition among the states. Mr. Trenwith argued that "While it is quite

¹⁴*Official Record of the Debates of the Australasian Federal Convention*, Six vols. (Sydney: Legal Books Party Limited, 1986) 1080. Hereafter, *Official Records*.

¹⁵*Ibid.*, 1081

right that New South Wales should have all the advantages of exceptional natural circumstances, it would be extremely anti-federal and contrary to the spirit of this Constitution throughout if.....without this regulation, would certainly go to some other port.”¹⁶ Without uniform taxation rates the colonies could push rates up against certain goods or colonies to attract more business.

The question came down to the wording of the clause that gave the inter-state commission its power like so many of the other debated points of the Constitution. The commission as it was worded could only interfere in the states’ railroad rates and services when

¹⁶Ibid., 1084

there were “cases of rates or regulations preferential in effect and made and used for the purpose of drawing traffic to that railway from the railway of a neighboring state.”¹⁷ The clause as read could be interpreted to read for independent action without any consultation of the states by the commission. Depending on the sole interpretation by the interstate commission of what is, and what is not “preferential”. The money garnered from the railways through trade and taxation was of the utmost importance to every delegate and colony. The relation of this clause to English liberal Constitutional thought is how it codifies through law the ideals of the free market. The agency of the government would decide independently of the disputing colonies what the law meant, giving greater credence and power to the government from the start.

VI

The debate over the uniform tariff caused an even greater uproar among the delegates than even the issue of the inter-state commission and free trade had. Many delegates wanted to protect their state economies after the economic depression between 1893 and 1895. Alfred Deakin wanted the federal parliament to administer a uniform tariff taking over the state’s responsibilities. Also, he wanted the government to be given the power to administer the surplus that was perceived as occurring because of the tremendous growth taking place in the colonies, especially Western Australia. The surplus was being granted to the states because of the revenue they would be losing from the government takeover of taxes and excise. Deakin saw the parliament as representative of a united Australian people, not just allied colonies, and as such the surplus in later years would be fairly divided. The point Deakin was making was that the federal parliament should be given discretion about the distribution of the surplus from the tariff.

¹⁷Ibid., 1080

Deakin said, “By the means I suggest you cut the connection between state and federal finance, subject always to the power of the federal parliament.”¹⁸ The states would get money through the federal government not by levying their own taxes. Taxation was the means through which the Parliament asserted control over King John, and the future monarchs of England.

Furthermore, the federal government in Australia saw the historical use of taxation for control. Through uniform taxation policies controlled by the government it could both sustain itself and limit the oppression one state could lay on another.

James Service (1823-1899), an elder statesman of Australia, commented on the need for a uniform tariff for federation to succeed as early as 1890. Service said, “A national constitution without a uniform fiscal policy is in my opinion downright absurdity.”¹⁹ Service gave his speech at the Federation Conference in 1890, in response to Henry Parkes speech for federation because it lacked specifics. Service was outlining how the country needed actual substantive policy, he wanted specific details where many delegates like Parkes had been willing to issue vague statements in support of federation. The rhetoric needed to include details and specifically, a plan of uniformity not rhetoric or ideals solely in favor of one colony, as with Victoria’s policy on tariffs Victorian delegates were suspected of only pushing for federation because it served their taxation goals. At this period Victoria was a protectionist economy, meaning their economy was based on promoting local industry and business by levying heavy taxes against imports. Most of the other colonies were not protectionist and promoted free trade, where import and export taxes along with local goods and industry would be treated the same to promote competition. Service saw the need for a uniform policy from the top down. He saw that, for the

¹⁸*Official Records* II 56.

¹⁹*Convention Debates: 53.*

majority of people to accept the constitution it must provide substantive benefits and preserve a compromise of ideals. That compromise should be based on liberal legal principles of fair competition between equal citizens, and their participation in the free market, guided lightly by uniform government policy

VII

The majority of those who promoted federation were lawyers by trade and many wholeheartedly agreed with the policy of fair and free competition. They represented a professional class, and many agreed on the principle of one man equaling one vote. English Liberal Constitutional thought's impact on Australian society and the debates and writing of the constitution in the 1890's was significant in this way. One aspect that emerged through the debate in the Second Session of 1897 in Sydney, was the call for majority rule within the constitution and among the states. Specifically, the argument targeted the use of a referendum to destroy smaller states' rights. One man equaling one vote could easily spell disaster for the small states if they ever opposed the larger states, and the referendum to solve deadlocks between the two houses was the means to that oppression. Josiah Symon spoke out against the use of referendum to bypass state constituencies by establishing a referendum on an issue after the houses had dissolved over that issue.

To dissolve the senate, under whatever conditions you establish it, is to send it back to its own constituents. That is a principle of dissolution we may understand; but, if you superadd to that the referendum, you are overawing the constituents of the senate by another body, another constituency, to which as state representatives they owe no allegiance. That is the position I take up. I say that the senator would be a man of no self-respect who would occupy a position of that kind. You would fetter and gag him in his representation of the state he comes from. You would tell him: "It is true you may consider this matter vital to the interests of your particular colony; you may support it by all the power you command; you may be prepared to face a dissolution of the senate and go to your own constituency on the subject. It does not matter two straws what you do. If, after that, you do not fall into line with the senators from the larger states, or with those whose decisions are in harmony with those of the executive of the government of the day, we will bring the referendum into operation, and we will smother your independence by a block vote

of the larger states of the commonwealth.”²⁰

The response of the delegation was that without the ability to call a referendum the independence of the people would be destroyed. Symon continued by describing the introduction of the “referendum is to introduce a principle alien to the federal system which we are creating.”²¹ The rule of the majority could be taken too far in Symon’s estimation, the senate was meant to have equal representation, which would be destroyed by a referendum.

Responsible government was thought by Symon to both listen to and limit the people’s will. “The federal system....is, no doubt, an artificial system; but artificial though it may be it is the product of a highly cultivated political intelligence.”²² The cultivated political intelligence that Symon was talking about could also be described as the evolved liberal party mind-set of many of the delegates. Symon continued by describing that the use of a referendum corrupts the polity of the country, and he felt the addition of a referendum would wholly set back the move for federation. The tension that had been pinpointed by Symon was how the smaller colonies would have all their power in government taken away. The addition of a referendum to be used in case of a deadlock followed by a dissolution of the senate would usurp any equality of representation guaranteed by the Constitution as it was written in 1891. The argument expressed by Symon correlates with the idea of the power of the minority states not only being represented but preventing ideas the majority of the country may want to be put in place by deadlocking the house and senate.

²⁰*Official Records* II, 592.

²¹*Ibid.*, 593.

²²*Ibid.*, 597.

William Lyne voiced an alternate opinion to that of Josiah Symon. Lyne was a delegate from New South Wales, the biggest and wealthiest colony. What Lyne described was that it was the greatest service to the people of Australia to give the referendum. The conclusion of Symon where the referendum would lead to the exact same members of the senate and house being reelected and given even more credence to proceed in the exact same manner was disputed. Lyne saw the senate gaining tremendous power from there being no safeguards against deadlocks. Lyne's motives are questionable because he comes from the biggest and most populous state of the colonies and therefore would garner the most benefit from a possible referendum. Equality of state representation is not something that he ever wanted or agreed with, but he saw the stipulation of a referendum as a workable compromise. The conclusion of this particular aspect of the constitution was that after two consecutive deadlocks the house and senate would come together and vote needing a three-fifths majority for the bill to pass.

VIII

The need for the rule of the majority to be contained within the most basic provisions of the Constitution was seen by some delegates as necessary for fair government. Bernhard Wise made a speech, through which Alfred Deakin saw the convention being prejudiced. The prejudice would inevitably result in, "a misapplication of that all important principle, that fundamental principle of the British Constitution, the rule of the majority."²³ The rule of the majority can only be taken so far, Bernhard Wise and others were pushing for catastrophe, through the eventual dissolution of both houses. The referendum would be the only means of legislation, direct democracy, controlled by the media outlets who would shape public opinion.

²³Ibid. 331.

The rule of the majority works in tandem with the executive and legislative branches of government. Deakin advocated the representative system as it enables discussion and revision while calls for referendums would nullify the houses that contain that debate. Argument raged over the possible liberalization of the senate.

Deakin called for the creation of the senate on equal representation because the delegations were represented equally. Both the smaller states and the more populous ones are sacrificing things to join the federation. The political face of Australia will broaden, the liberal/progressive parties of each state will merge as will conservative elements. “There is in every colony of the group a liberal party and a conservative party”²⁴ Parties of the colonies unite and form coalitions in Deakin’s view. Deakin saw the influence of parties on states as a defining influence. The parties would court opinion, and through equal representation within the senate the opinion of the states both large and small would be heard. Through his system, Deakin saw a true representation of the what he felt the majority ruling should be. Majority groups or parties would elect representatives and the number of representatives would be equal for all colonies. Deakin himself admits that equal representation is an imperfect system: “I do prefer some other system-to equal representation; but would I sacrifice federation, would I miss the union of these colonies, on this question of equal representation-much smaller as it is, I believe, than some of my honorable friends think it is? I would not dream of such a thing.”²⁵ Equal representation would form the basis of responsible government, through the will of the majority being adhered to. The power of the states and the possibility of referendums broached the idea that the common

²⁴Ibid. 335.

²⁵Ibid. 338.

man of Australia would be a citizen of two worlds. The man would be a citizen of the state, equally represented through the house and senate respectively, this would be his first world. The second world of the man would have him submit to unequal representation through the federation of colonies. William Trenwith outlined this argument by saying, “ but unless some other provision has been indicated is made, a citizen in one part of the commonwealth (Australian colonies) will exercise eight or nine times as much influence as a citizen in another part of the commonwealth.... the people of Australia will not submit to a form of government that perpetuates plural voting in that way.”²⁶ Liberals in places like South Australia who say they are in favor of equal rights for all citizens actually advocate for inequality. The smaller state representatives advocate for equality and by the same turn demand inequality. Therefore, a need for the referendum exists because of the agreed upon senate and house representative schemes.

Deadlocks have occurred where the will of the people must be paramount, the laws they truly desire made effect. William Trenwith argues for the will of the people, that without the referendum a deadlock among the two houses would prevent the people’s will from becoming law. The arguments between the delegates encompass not only state’s rights, but also control of the populace. Trenwith argues that the injury to the people would be terrible if never given an avenue of recourse when the two houses that claim to represent them do not. Individual liberty founded on one man containing one vote, and therefore, equality of both representation and voting rights through the state and the federation was paramount to passage of the Constitution.

IX

²⁶Ibid. 605.

Federation for Australians did not mean independence, most of the delegates at the Australasian conference were born in England and had never wished to break away. The delegates and most politicians in Australia wanted to assert independence within the greater British Commonwealth. Even Australian-born colonials like Alfred Deakin wanted to remain within the Commonwealth. Delegates from Victoria were particularly wary of any talk that would be misconstrued as emphasizing total independence from the Commonwealth. Alfred Deakin argued “that the barriers between them (the colonies) were barriers of their own creation, and they could surely be removed. Though it might be true that “all great reforms spring from the people”, they do so “when they are ripening for execution. It does not follow that the idea springs from the many, but rather it must of necessity take its birth in the mind of the one, or at all events in the mind of a few.”²⁷ Deakin was at the time of the conference time both the youngest member of the delegates and the leader of the Liberal party. Yet, Deakin’s argument also shows how there was very little popular support among the citizens of the colonies, and how the need for a constitution was more a need for those in power. However, when the time came for a vote on the constitution the citizens did respond, if not immediately, the constitution succeeded passage through popular referendums.

The speeches and discussions of the Federal Convention Debates shaped the relationships of power in the colonies. Those relationships are characterized by Australia’s role in the Commonwealth of Britain, the power of their own federal government versus that of the states, and the power of the lay-people. Other conventions and debates took place during the decade of the 1890's but these particular years represent the defining influence of British liberalism on the

²⁷Ibid., 57.

colonies. The final settlement included the ability to appeal to the Queen's Privy council but only in cases where the empire was involved. The debates that took place over the Uniform tariff and the rule of the majority left indelible marks upon the Australian Constitution. Furthermore, British liberalism's underpinnings cannot be valued enough in their impact on the Australian Constitution. British liberal Constitutional thought was an evolving concept even the first colony in Australia was established. Through the period of Chartism and others the people of Australia became well versed in what democracy and liberalism should be. The debates show a population not in turmoil but one wanting to take greater control of their own destiny. The government within Britain established the first and successive colonies with the major conflicts of their own history and government past. The polity of Australia was established with a more liberal society in mind, and it was built on the backs of convict labor who became free men with a stake in society upon release.

Historians have analyzed the development of Australia as a unified country. Such perspectives have influenced the writing of this paper, like Alastair Davidson's emphasis on the role of law within the development of the colonies. John Hirst targeted the influences and development of democratic thought in the colonies over Australia's entire history. A. L. Mcleod looked directly at speeches given by prominent Australians like Alfred Deakin and many of the speeches came from the 19th Century. G. B. Adams specifically addressed the origins of the English constitution without which the Australian constitution would have never been written. Coupled with the analysis of the convention debates that this paper has shown we can see the development of Australia from multiple angles and factors. The contribution of this paper is a focused examination of the writing of the Australian constitution and how British liberal

Constitutional thought affected that debate. Whether the British knew it or not they had created the basis and process by which the colonies of Australasia would become even more liberal than Britain could have imagined.

British Liberalism provided the motivation and modality for the Australian state to come into being. Joseph Chamberlain (1836-1914) a staunch liberal was the Prime Minister of England when the colonies applied for the passage of their constitution. Even he was taken aback by some of their proposals particularly the Australian High Court being the court of final appeal for cases in Australia. What British Liberalism produced was an even more Liberally minded colony, that had taken a long time and seen much debate to unify. All these disparate details, the convention of 1890, the presence of a man like Alfred Deakin as leader of the Liberal party in Australia, and the debates of 1891, 1897 and 1898, show the impact of British Liberalism. The impact was felt upon what the delegates were debating, represented by cornerstone issues like Free Trade, referendum, and taxation.

The influence of British liberal Constitutional thought can also be shown as a sequence of events beginning with the feudal contract as the basis for the English Constitution. The rule of law grew out of the feudal contract and justified a greater role for Parliamentary power in the constitution of England. The birth of the rule of the law in England led to protections and restrictions on the sovereign's or government's power. Australia was established after the turmoil of the clashes between monarchy and parliament had for the most part passed, and the English constitutional process was ingrained in the British colonists. Protection of rights which both the citizen and government were beholden to led to increased suffrage and calls for more rights, or increased liberalism in England and its colonies. The Free Market and beginnings of an

open society were liberal principles developing in England that deeply influenced the colonial debates. Those debates encompassed ideologies of free trade and burgeoning protectionism, where colonies fought over their rights in relation to each other and within the larger government. The result of the debates was a liberally minded political economy with restrictions on government and state power. The constitution was crafted by the professional class of lawyers who not only represented the path to unification of the colonies but also the separate and distinct colonies. Australia was born as a state of the people, created by lawyers educated in the English tradition but schooled in the politics and situation of a country on the cusp of a new Century. Economics specific to the colonies of Australia along with other internal factors played roles in the formation of the constitution. The colonial debates demonstrate the abiding influence of British Liberalism and the British Constitution on the formation of the federation of the Australian colonies.

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