

UNTO GOD AND CAESAR

Religious Issues in the Emerging Commonwealth 1891-1906

Preface

This study began about four years ago as an inquiry into how the two religious clauses in the Australian Constitution – the ‘recognition’ of deity in the preamble, and the Section 116 – became part of the Constitution, and also into the meaning of these clauses in the minds of the Convention delegates. That remains its core, but the study has expanded its scope in two ways. It soon became evident that behind the events immediately associated with the inclusion of the two religious provisions lay a story of considerable interest; and that the natural terminal point for this story was not the close of the Convention in March 1898, or even the referenda in 1898 and 1899, but the early Commonwealth period.

It was only late in 1896 at the ‘People’s Convention’ at Bathurst that extensive Catholic and Protestant interest in the federation movement arose. From early 1897 the public efforts of the non-Catholic clerics, who operated largely under the aegis of councils of churches in the various colonies, chiefly were directed in two aims: to obtain the formal ‘recognition’ of deity in the preamble and to secure the saying of prayers in the federal parliament. On a less publicized level, many hoped to achieve some kind of official or semi-official standing in the emerging Commonwealth. Some hoped additionally to obtain a new source of politico-legal leverage for pet projects such as sabbath reform.

These Protestant and Anglican initiatives received in their publicized aspect wide public support. They also, in 1897-8, provoked spirited, well organized, and extensive public opposition. This came partly from secularists, such as Barton and Higgins, who were concerned to protect civil government from clericalism and involvement in religious quarrels; partly from religious voluntarists, notably the Seventh Day Adventists, who were concerned rather to protect the Church from the State. The Adventists, who had suffered legal persecution at the hands of ‘Sunday observance’ Protestants, provided the main organizational base for the counter-campaign.

Both groups achieved some success. By March 1898 Protestant-Anglican pressure had secured the incorporation of a ‘recognition’ clause in the Constitution. In June 1901 the two houses of the Commonwealth parliament, responding to similar pressure, agreed to commence their sessions with corporate prayer. However, their opponents, in March 1898, were able to persuade the Convention to include a clause (Section 116) totally prohibiting the clerics from achieving their less advertised political ambitions.

Catholic initiatives largely came from or remained closely associated with Cardinal Moran. He intervened on three occasions: once, to stand for election in the Federal Convention; once, to support the Federation Bill in the 1899 referendum; and once, to secure what he deemed his right of precedence at the 1 January ceremony at Centennial Park at which the Commonwealth was inaugurated. Each intervention was dramatic and controversial. Only one could be counted successful. Yet although many federationists were loath to admit it, the eventual success of the federation movement probably owed more to Moran than to any other church leader.

Assistance was given by officers of the following: Australia Archives; Australian Dictionary of Biography; Battye Library; Dixon Library; La Trobe Library; library of the Australasian Division of Seventh Day Adventist Church, Wahroonga, New South Wales; library of the Signs Publishing Co., Warburton, Victoria; Mitchell Library; National Library of Australia; Parliamentary Library, Tasmania; South Australia Archives; State Library of South Australia;

Tasmanian Archives; University of Tasmania Archives. Richard Davis, the late Malcolm McRae, and Michael Roe assisted at crucial stages by encouragement and criticism.

Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of the Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown...

Preamble to the Commonwealth
of Australia Constitution Act

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Section 116 of the Commonwealth
of Australia Constitution Act

...no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article 6.3, Constitution of
the United States

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

First amendment, Constitution
of the United States

Introduction

The first formal approach to the question of what should be the relation of religion, or of the churches, to the Commonwealth, was made by the Tasmanian Unitarian, Andrew Inglis Clark, at the 1891 Constitutional Convention at Sydney. In the draft of a federal Constitution which Clark presented to the Convention, one clause (Clause 46) declared,

The Federal Parliament shall not make any law for the establishment or support of any religion, or for the purpose of giving any preferential recognition to any religion, or for prohibiting the free exercise of any religion.

Another clause (Clause 81) declared,

No Province [that is, state] shall make any law prohibiting the free exercise of any religion.¹

The second of these proposed clauses, that relating to the states, was recommended to the Convention by its constitutional machinery committee, with a slight verbal change (replacing 'No Province shall' by 'A State shall not'), and was accepted by the Convention without discussion. The former clause was not recommended by the committee. The official records of the committee's deliberations have only recently come to light – their discovery a by-product of the recent flooding of the basement of the New South Wales parliament – and are yet available to researchers.² However Edmund Barton, a member of the committee, stated in 1898 that the committee had rejected this clause, because it regarded it as unnecessary. Religion, the committee considered, was not one of the designated subjects about which the Commonwealth parliament could legislate, and that lack of power, in itself, prevented the Commonwealth from making laws respecting religion.³

The 1891 draft was put aside for reasons relating mainly to the internal politics of New South Wales, now the wealthiest of the Australian colonies and without whose co-operation federation between the other colonies was impractical. Only in 1895-6 did the federation

movement recover momentum, and by then its character was somewhat changed. Whereas in 1891 the effective constituency of the 'federal interest' extended little beyond colonial business and political circles, by the mid-nineties this constituency was beginning to range in depth over many classes and sections of colonial society. By 1896 federation was becoming, in a sense in which it had not been in 1891, a popular cause.

By 1893 many committed federalists had come to feel that a grave weakness of the previous approach to federation was its piecemeal nature. The delicate process of consultation between, and deliberation within, the various colonial legislatures could effectively be broken off by any government at any point. At an Australasian Federation League conference held in Corowa in 1893, a plan was devised (the Corowa plan) which overcame this difficulty, while still recognizing the sovereignty, and the right to consultation at every point, of the various colonies. The idea was that each colony would bind itself, through passing an identical Enabling Act, to adhere to a certain consultative programme. According to this programme, the electors of each colony would elect ten delegates to a federal convention. This convention would meet and formulate an initial draft of a federal Constitution. The draft would at once be remitted by the convention to the parliament of each participating colony. Each parliament would discuss the draft and propose amendments it thought proper. The convention would meet once more, to consider these amendments, and to finalize its draft. This draft then would be submitted, for acceptance or rejection, to the electors of each participating colony.

By 1894 George Reid, the New South Wales premier, had announced his support for the plan. He called for a Premiers' Conference, which was held in January 1895 at Hobart. There the premiers of Victoria, New South Wales, Tasmania, South Australia and Queensland agreed to submit Enabling Bills to their respective parliaments. Only Forrest, the Western Australian premier, expressed reservations. By mid-1896, Victoria, New South Wales, Tasmania and South Australia had passed Enabling Acts on the lines proposed at the Hobart conference. In October 1896 Western Australia also came in, but with two reservations. The first was that the delegates from that colony were to be elected by the parliament rather than the people, and the second that, when a draft Constitution was finally agreed upon by the Federal Convention, the consent of the Western Australian legislature was required before it could be submitted to that colony's electors. The Queensland parliament declined to pass an Enabling Act of any sort, so did not participate in the Corowa plan at all.

Late in 1896, in an imaginative bid further to popularize the federal idea, the Bathurst branch of the Australasian Federation League organized a 'People's Convention'. It was at this convention, composed of invited delegates from municipalities, from other federation leagues and from various colonial parliaments, that the issue of the relationship of religion and the churches to the Commonwealth was first taken up on a popular level. The perspective of those who raised the religious issue at Bathurst was, however, different to that of Inglis Clark. Their problem was rather how to put God *into* the Constitution.