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 voluntaryists, 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; Dixson 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 researches.[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 nay 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.

ABBREVIATIONS

A.A.O.	Australian Archives Office
A.N.L.	Australian National Library, Canberra
Con. Deb. Adel. 1897	Convention *Debates*, Adelaide, 1897
Con. Deb. Melb. 1898	Convention *Debates*, Melbourne, 1898
Con. Deb. Syd. 1897	Convention *Debates*, Sydney, 1897
C.P.D.	*Commonwealth Parliamentary Debates*
D.T.	*Daily Telegraph*
La T.L.	La Trobe Library, Melbourne
M.L.	Mitchell Library, Sydney
n.s.	new series
N.S.W.	New South Wales
P.D.	*Parliamentary Debates*
P.P.	*Parliamentary Papers*
S.A.	South Australia
S.A.A.	South Australian Archives
S.M.H.	*Sydney Morning Herald*
T.A.	Tasmanian Archives
Tas.	Tasmania
Vic.	Victoria
W.A.	Western Australia
W.S.L.	State Library of Western Australia

REFERENCES

Introduction

[1]Clark's Draft Bill is reprinted in John Reynolds, 'A. I. Clark's American sympathies and his influence on Australian federation', *Australian Law Journal,* vol. 32 (1958), pp. 62-74.
[2]The records are at present being classified by officers of the Australian Archives. La Nauze in *The Making of the Australian Constitution,* pp. 45-71, has reconstructed the story of the machinery committee's activities from other sources.
[3]*Con. Deb. Melb. 1898,* vol. 1, p. 661

1 *Churchmen at the Bathurst Convention*

[1]Some recent studies that discuss the political array of Australian colonial churches in the 1890s are: Bollen, *Protestantism and Social Reform in New South Wales 1890-1910*; Davis, 'Christian Socialism in Tasmania 1890-1920', *Journal of Religious History,* vol. 7, no. 1 (1972), pp. 51-68; Dickey, 'Charity in New South Wales 1850-1914', *Journal of the Royal Australian Historical Society*, vol. 52, pt 1 (1966), pp. 9-32; Ford, *Cardinal Moran and the A.L.P.*; Lawson, 'The Political Influence of the Churches in Brisbane in the 1890s', *Journal of Religious History,* vol. 7, no. 2 (1972), pp. 144-62; Mahon, 'Cardinal Moran's Candidature', *Manna,* no. 6 (1963), pp. 63-71; O'Farrell, *The Catholic Church in Australia,* ch. 4; 'The History of the New South Wales Labour Movement 1880-1910', *Journal of Religious History,* vol. 2, no. 2 (1962), pp. 131-51
[2]*God's Greater Britain,* pp. 165-6.
[3]*S.M.H.,* 22 July 1892.
[4]Bollen, op, cit., pp. 43-4; Norman, *The Conscience of the State in North America*, pp. 16-19; Philip Wogaman, 'The changing role of government and the myth of separation', *Journal of Church and State,* vol. 5, no. 1 (1963).
[5]*God's Greater Britain.*
[6]Byrne, Camidge and probably Webb, it may also be noted, were members of the Bathurst Federation League (confidential memo by W. Astley (typescript), Astley Papers, M.L.). Nine of the 56 members of the general committee of the Convention were clerics (*Sydney Mail*, 28 Nov. 1896).
[7]*Bathurst Times*, 16 Nov. 1896.
[8]Pike (ed.), *Australian Dictionary of Biography*, vol. 4, pp. 274-5.
[9]*Bathurst Times*, 16 Nov. 1896.
[10]Cited in Murtagh, *Cathologics and the Commonwealth*, p. 20.
[11]*Bathurst Times*, 16 Nov. 1896.
[12]On the links between the Protestant interest in religious federation, and in the political federation, see French, Churches and Society in South Australia 1890-1900 (M.A. thesis), p. 90-9, 407-19. Respecting the middle-classness of Protestantism, Bollen, op. cit., pp. 4-5, has concluded that 'The strongholds of Protestantism were the suburbs of Sydney and the larger country towns. The absence of working-men from worship caused increasing concern in the eighties, but all the efforts of the Churches over the following decades failed to reverse a general decline of inner-city parishes. Protestant ministries can barely have touched the greater part of Sydney's teeming labour force.' There were some 'acceptable' Methodist congregations in 'predominantly working-class localities', but these Bollen regards as exceptional.
[13]Perhaps the most telling evidence for this sweeping 'tendency' claim lies in the geographic distribution and incidence of viable Catholic and Anglican congregations.

Viable Catholic congregations *tended* to be found in inner-city and 'poorer' areas. Viable Anglican congregations tended to be located in all types of area *except* working-class. Bollen (op. cit., p. 114) points up the irony of the fact that those Anglicans, often associated with the Christian Social Union, who displayed the greatest concern to involve their church in the life and problems of the industrial poor mostly ministered in rural dioceses, where such problems scarcely arose. Camidge was a case in point (ibid.). Anglican congregations certainly were a significant and sometimes dominant element in suburban religious life. However, the New South Wales Anglican church as a whole – the 'evangelical' Sydney diocese being a partial exception – the suburban segment was far from predominant. Hans Mol in *Religion in Australia: a sociological investigation* (Melbourne, 1971), chs 12 & 16, has suggested that it is not correct, for this period, to speak of Catholics as typically working-class, of Protestants as typically middle class, and of Anglicans as typicall upper class, or perhaps as typically upper-and-lower-but-not-middle class. His evidence essentially is the fact that, at the turn of the century, the occupational profiles of 'census' Catholic, Methodist, Presbyterian, and Catholic churches did not differ greatly from each other. Mol's argument, which is interesting but implausible, rests on two extremely risky assumptions. The first is that 'objective' class affiliation corresponds closely to 'subjective' affiliation; the second that the ratio of religious nominalism to religious seriousness is approximately the same across comparable categories in the respective churches.

[14]La Nauze, *The Making of the Australian Constitution*, app. 5.
[15]28 Nov. 1896.
[16]Murtagh, op. cit., p.30.
[17]*Sydney Mail,* 28 Nov. 1896
[18]*Methodist,* 29 May, 1897.
[19]*S.M.H.,* 18 Nov. 1896.
[20]Memorandum from Gosman to Convention organizers, Astley Papers, M.L.
[21]*Bathurst Times*, 17 Nov. 1896; *Sydney Mail*, 28 Nov. 1896
[22]*Bathurst Times,* 18 Nov. 1896; *Sydney Mail*, 28 Nov. 1896; *S.M.S.*, 18 Nov. 1896
[23]18 Nov. 1896. The 28 Nov. *Sydney Mail* had a similar perspective: 'The agenda sheet submitted by the Procedure Committee contained motions on every sort of thing that could possibly be dragged into Federation, including one… acknowledging the existence of Divine Providence.' The *Sydney Mail*, a weekly, was produced by the same publishers as the *S.M.H.*
[24]Cormack, *Australian Federation*: *a lecture,* pp. 27-30.
[25]*Australian Christian World,* 22 Jan. 1897.
[26]*Bathurst Times,* 23 Nov. 1896.
[27]Fielding's motion was one of a large batch which were rushed through at the close, with scarcely any discussion. *S.M.S.,* 23 Nov. 1896; Bathurst Times, 23 Nov. 1896; Minute Book, People's Federal Convention, L.L.
[28]Newspaper cuttings of Bathurst Convention, pp. 46-7; Quick Papers, MS. 53, A.M.L.

2 *The Cardinal Steps Out*

[1]*Freeman's Journal*, 20 Feb. 1897.
[2]Encyclical letter *Libertas Praestantissimum,* 1888, cited in Wynne (ed.), *The Great Encyclical Letters of Pope Leo XIII*, p. 161
[3]*S.M.H.,* 6 Feb. 1897.
[4]O'Farrell, *The Catholic church in Australia,* p. 180.

[5]A number of historians (O'Farrell, op. cit., p. 177; Ford, *Cardinal Moran and the A.L.P.,* pp. 204-6; Mahon, 'Cardinal Moran's candidature', *Manna,* No. 6 (1963), pp. 65-6) have suggested that one of Moran's principle motives for standing was the hope that thereby he might influence the electorate against returning 'socialist' candidates. Some Labour leaders at the time suggested this too (*D.T.*, 9 Mar. 1897; Workman, 20 Mar. 1897). It must be conceded that Moran was personally strongly anti-socialist and saw federation as, among other things, providing some security against socialist 'extremism', but that does not in itself establish anti-socialism as a principle motive for his candidature. Had it really been so, he either would not have stood, but chosen rather to speak our simply as a cardinal, or he would have stood and run a boots-and-all campaign. As it was, he did stand and then scarcely mentioned the socialist issue. The likelihood is rather than Moran quite realistically recognized that on an issue like federation, in which social issues did not often arise, the 'socialists' had no show; and that he therefore felt free to launch himself into the mainstream of Australian social and religious life.

[6]Encyclical letter *Immortale Dei*, 1885, cited in Wynne (ed.), op. cit., p. 132. An article, 'The Cardinal and Leo XIII', which appeared in the *Catholic Press* for 13 Feb, 1897, stated that Moran was 'thoroughly in accord with the religious, social and political views of Pope Leo. In the wide realms of Catholicity the great Pontiff has none more competent and more willing to aid him in his designs for the regeneration of society than the illustrious Cardinal-Archbishop of Sydney.' The article concluded with the hope that soon the Australian church would be 'the brightest jewel in the tiara of Leo XIII'. The *Catholic Press* was virtually the official organ of the archdiocese.

[7]*S.M.H.*, 17 Feb. 1897.

[8]Op cit., pp. 172-6.

[9]*Methodist,* 29 May 1897. The writer, Rev. J. Waddell, would no doubt have been even more horrified had he known tha ton 16 Janary Webb had written to Moran warmly congratulating him on his decision to stand (Webb to Moran, Moran Papers, Federation Folder, St Mary's Archive).

[10]*S.M.H.,* 31 Mar. 1897. Rev. G. McInnis, chairman of the United Protestant Meeting, naturally saw it that way (see *S.M.H.*., 3 Mar. 1897). The *Bulletin*, 23 Jan. 1897, saw Moran's Bathurst speech as 'the Cardinal's little feeler: should a complaisant public make no objection to him there, he could try a bigger coup.' Moran himself, in an interview with a *Herald* reporter (*S.M.H.*, 14 Jan. 1897) stated, 'It was thought that my position barred me from attending the Bathurst Convention. It does not do so any more now than then.'

[11]The Loyal Orange Institution chose a 'bunch' containing no Catholics at all (*D.T.,* 16 Feb. 1897). However, in the daily press at any rate, their campaign was greatly overshadowed by that of the UPM.

[12]See for instance reports in *Argus*, 5 Mar. 1897; *D.T.*, 17, 19, 23 Feb. 1897; *Tasmanian Mail, 27 Feb. 1897.* The press sometimes called the group the 'United Protestant Conference': However, McInness, the chairman, called it the United Protestant Movement, and I have followed that usage.

[13]T. Walton to T. Slattery, 11 Feb. 1897, Moran Papers, Federation Folder, St Mary's Archive.

[14]A proposal that Moran and Smith stand for election was publicly proposed as early as 13 November 1895, by the Protectionist politician Henry Copeland, a nominal Protestant but politically associated with Catholics (*D.T.*, 19 Jan. 1897). However, Smith had already, in reply to a previous telegraphed inquiry by the editor of the (Sydney) *Sunday Times*, advised, 'Surprised receive wire on such subject. I answer no.' Later he declined the

invitation of a formal delegation. Copeland had also publicly called for nomination by leading non-Anglican Protestants, but these also, when formally approached, declined to stand. However, it is of some interest to note that one of the non-Anglican Protestants referred to by Copeland, the Congregationalist Dr Bevan of Victoria, publicly declared that he would have liked to stand had his personal circumstances and the law of the colony of Victoria allowed (*S.M.H.*, 20 Jan. 1897). Evidently Moran's backers were not altogether astray in their calculations. For those interested in following through the story of the various delegations, of which the Catholic politician T. Slattery seems to have been the main organizer, the following references convey the gist: *S.M.H.,* 8, 9 Feb 1897; *Age*, 10. Feb. 1897; *Australian Star*, 8, 9, 10, 18 Feb. 1897; *Sunday Times,* 17, 24 Jan. 1897; *Evening News* (Sydney), 6 Feb. 1897; *Freeman's Journal*, 23 Jan. 1897; *Worker*, 23 Jan. 1897; *Australian Workman*, 20 Mar. 1897. Of special interest also, as giving a brief inside picture of one of these delegations, is S. Bradley to B. R. wise, Wise Papers, M.L.

[15]23 Jan. 1897.

[16]18 Feb. 1897.

[17]*D.T.*, 19 Feb. 1897. The issue contained similar letters from Rev. W. W. Rutledge and from J. Auld.

[18]*D.T.*, 18 Feb. 1897.

[19]*Freeman's Journal*, 27 Feb. 1897; *Catholic Press*, 27 Feb. 1897. An editorial in the A*ustralian Christian World*, friendly to Moran's candidature, was also reprinted in the *Catholic Press* of that date.

[20]*Argus*, 5 Mar. 1897; *D.T.*, 11 Feb. 1897.

[21]Bollen, *Protestantism and Social Reform in New South Wales*, 1890-1910, chs 5 & 6

[22]13 Feb. 1897.

[23]*S.M.H.*, 18 Feb. 1897; *D.T.*, 6 Feb. 1897. The *Herald* viewpoint it was appropriate for clerics to preach general political principles but not to take sides between political parties (see editorial, 23 Jan. 1897). Moran described the *Herald* as 'the organ of the extreme Congregationalists' (*D.T.*, 18 Feb. 1897).

[24]See also *Freeman's Journal*, 13 Mar. 1897; *Catholic Press*, 13 Mar. 1897; *Truth,* 14 Mar. 1897.

[25]*S.M.H.*, 4 Mar. 1897.

3 *Campaign and Counter-campaign*

[1]*D.T.*, 3 Mar. 1897.

[2]*Age,* 12 Feb. 1897; *D.T.*, 3 Mar. 1897.

[3]*S.M.H.*, 22 Feb 1897.

[4]Bollen, *Protestantism and Social Reform in New South Wales, 1890-1910,* ch. 6.

[5]13 Mar. 1897.

[6]18 Nov. 1896.

[7]For example *Bulletin,* 10, 24 Apr. 1897; *Truth*, 18 July 1897; 1 Aug. 1897.

[8]The Victorian Council of Churches however slightly changed the test of its petition. Substantially, it omitted reference to a chaplain, and amended 'the Governor-General has power to…' to 'the Governor-General in Council has power to…' (*Argus*, 12 Mar. 1897).

[9]*Proceedings*(Adelaide, 1897), pp. vii-viii.

[10]*Southern Sentinel*, vol. 3, no. 2 (1897), p. 32.

[11]Suttor, *Hierarchy and Democracy in Australia 1788-1870*, p. 12.

[12] An account of the 'vision' is provided in the *Seventh Day Adventist Encyclopaedia*, vol. 10, p. 1410. The 'vision' was referred to in some detail by S. H. Haskell in an address to

the 1899 Australasian Union Conference. Haskell had been the leader of the first (1885) Seventh Day Adventist mission to Australia and New Zealand. Mrs White was present during the address and, when she later spoke, in no way rebutted or amended what Haskell said. One may conclude both that the 'vision' story was known to the Adventists and that its circulation was endorsed by MrsWhite (*Union Conference Record,* 28 July 1899).
[13]*Seventh Day Adventist Encyclopedia*, vol. 10, p. 326.
[14]*Union Conference Record,* Jan., Feb. 1898, pp. 13, 23.
[15]*Seventh Day Adventist Encyclopedia,* vol. 10, p. 1411.
[16]*Age*, 8 May 1894; *Sydney Evening News*, 9, 13 Aug. 1894; *S.M.H.*, 10 Aug. 1894; *Argus*, 14 Aug. 1894.
[17]Krause, The Seventh Day Adventist Church in Australia 1885-1900 (M.A. thesis), pp. 156-79.
[18]McAllister, *The National Reform Movement,* p. 16.
[19]*Proposed Amendments to the Constitution 1889-1928*, 70th Congress, 2nd Session, House Document No. 551 (1929), pp. 184-5.
[20]*Seventh Day Adventist Encyclopedia,* vol. 10. p, 1030.
[21]Krause, op. cit., p 242.
[22]Such as J.O. Corliss, W. A. Colcord and Mrs E. M. White. In 1889 Corliss had a watchdog brief on Sunday Observance issues (see *Seventh Day Adventist Encyclopedia*, vol. 10, p. 1029). In 1897 Corliss was the editor of the *Bible Echo* and also general field secretary of the Department of Religious Liberty (see *Union Conference Record*, Jan.-Feb. 1898, p. 23).
[23]*Australian Sentinel and Herald of Liberty*, vol. 1, no. 2 (1894), pp. 62-3. Here are printed extracts from twenty-six of these reviews. Interestingly, among them is a favourable notice from the *Freeman's Journal*.
[24]*Gleaner* (from 1898 the *Union Conference Record*), 1896-7, p. 56.
[25]*Gleaner*, 1896, 1897, and the *Union Conference Record*, 1898, contain numerous reports from and about these sales agents. They appear to fall into two categories. All members of congregations or of 'unorganised companies' distributed the *Bible Echo*, while full-time canvassers (that is, members who made a living from the commission received) sold more specialized and expensive Adventist literature.
[26]For locations of Adventist congregations, see any issue of the *Gleaner* or the *Union Conference Record* for these years. Locations of petition signers are usually indicated in the *Proceedings* of the Federal Convention, and the *Parliamentary Papers* of the various colonial legislatures.

4 *The Recognition Issue at Adelaide*

[1]*The Federal Story*, p. 75. An analysis of the religious views of the individual members of the Convention is provided in Ely, God, the Churches, and the Making of the Australian Commonwealth (Ph.D. thesis), ch. 13.
[2]Rough Diary, 21 Mar. 1897, MS. 2001, ser. 3, A.H.L.
[3]'Records', G.R.G./72, ser. 4/9, A.A.O.
[4]'Records', G.R.G/72, ser. 8/13, A.A.O.
[5]*S.M.H.*, July 1897.
[6]For instance in the *Age,* 9 Apr. 1897; *Argus*, 9 Apr. 1897. It was not mentioned in the *S.M.H.*
[7]23 Apr. 1897.
[8]17 Apr. 1897.

[9]*Proceedings* (Adelaide, 1897), p. viii.
[10]This seems a reasonable inference from Sir William Zeal's statement, *Con. Deb. Adel. 1897*, p. 1189.
[11]*P.D.* (Vic.), 1897, vol. 86, p. 1485
[12]*Con. Deb. Adel. 18997,* pp. 1184-6
[13]Ibid., p. 1186
[14]*Adelaide Advertiser*, 23 Apr. 1897
[15]*Con. Deb. Adel. 1897*, pp. 1186-8
[16]Ibid., p. 1188. Interestingly, Walker was the seconder of Fielding's proposal. Minute Book, People's Federal Convention, M.L.
[17]Ibid., pp. 1188-9.
[18]Ibid.

5 *The Protestants Fight Back*

[1]May 1897.
[2]*Presbyterian Monthly*, June 1897; *Argus*, 7 May 1897.
[3]Secular and church periodicals and newspapers commented frequently on the issue. But see more especially *Argus*, 30 June; *S.M.H.*, 3, 6, 29 July, 2, 3, 4, 5 Aug; *Launceston Examiner*, 20 July; *Mercury*, 17 July; *South Australian Register*, 13 July; *Bible Echo*, generally; *Catholic Press*, 14 Aug; *Freeman's Journal*, 10 July; *Methodist*, 1, 8 May, 31 July; *Southern Cross*, 2 July. Public petitions were circulated in New South Wales, Victoria and Tasmania but not in South Australia or Western Australia. In Western Australia the 'recognition' campaign was confined to delegations to the government by the Women's Christian Temperance Union and ad hoc groups of clerics (*West Australian*, 5, 6, 12 Aug. 1897).
[4]*S.M.H.*, 6 July 1897.
[5]Ibid.
[6]See for instance sermon by Rev. J. Nancarrow, *Australian Christian World*, 30 July 1897.
[7]*Southern Cross*, 26 Mar. 1897.
[8]p. 20.
[9]*Southern Cross*, 22 Apr. 1898.
[10]21 May 1897.
[11]*Southern Cross*, 27 May 1898.
[12]*Australia without God*, pp. 20-1.
[13]Ibid., p. 16.
[14]Press cuttings, Glynn Papers, MS. 1653, ser. 15, items 114, 116, A.N.L.
[15]Texts of the petitions set out in *Proceedings* (Sydney, 1897), pp. 81-2.

6 *The Adventists Persevere*

[1]Australasian Union Conference, Minutes of Executive Committee, 20 May, Avondale.
[2]On Colcord, Corliss and Mrs White see chapter 3.
[3]The pamphlet is reprinted in the *Bible Echo*, 12 July 1897. It is unsigned, but in the file copy of the *Bible Echo* in the Adventist Library at Warburton, 'W.A.C.' is handwritten at the foot of the reprinted pamphlet.
[4]*P.P.* (N.S.W., Vic., Tas., S.A.). One of the canvassers, S. Pretyman, recalled fifty-eight years later, 'Pastor Daniels visited Hobart and clearly set forth the issue; and our members responded well in soliciting signatures, and thus was performed the first task assigned me in our work…' (*Australasian Record*, 3 October 1955).

[5]See for instance *S.M.H.*, 14 July, 3 Aug. 1897.
[6]*Union Conference Record*, Jan.-Feb. 1898, p. 13.
[7]*P.D.*, (W.A.), 1897, vol. 10 (n.s.), p. 299.
[8]See note 3. The other pamphlet was also printed in the 12 July *Bible Echo*. At the foot is handwritten 'A.G.D.'
[9]*Gleaner*, 1897, p. 1.
[10]*Union Conference Record*, Jan.-Feb. 1898, p. 13.
[11]Ibid.
[12]*P.P.* (S.A.), 1897, vol. 1; *P.P.* (N.S.W. L.C.), 1897, vol. 56, pt 1; *P.P.* (Tas) 1897, vol. 36. The number of signatories in Victoria is not given in the *Parliamentary Papers*. The petitions themselves are in the parliamentary archives.
[13]The councils of churches organized public petitions in Victoria and Tasmania. In Victoria the Council obtained about 25 000 signatories. (*Bible Echo*, 16 Aug. 1897). In Tasmania they obtained about 1500 signatories (*P.P.* (Tas.) 1897, vol. 36). The Adventists obtained about 13 000 signatories in these colonies.
[14]The Hobart *Mercury* was mildly opposed to 'recognition', 29 July 1897.

7 *The Debates in the Colonial Legislatures*

[1]*Methodist*, 3 July 1897.
[2]*P.D.* (Vic.), 1897, vol. 86, pp. 522, 1697. On Longmore see Thomson and Serle, *A Biographical Register of the Victorian Legislature 1851-1900*, p. 119.
[3]*P.D.* (Vic.), 1897, vol. 86, p. 1474; vol. 87, p. 170.
[4]*P.D.* (N.S.W.), 1897, vol. 89, pp. 2599-600; *S.M.H.*, 3, 27 July 1897.
[5]*P.D.* (N.S.W.), 1897, vol. 89, pp. 2599-600.
[6]Ibid., vol. 90, p. 3470.
[7]*P.D.* (S.A.), 1897, p. 201.
[8]Ibid., p. 336. Each house, it was decided, should initiate its own discussion of the Adelaide draft.
[9]Ibid., p. 174.
[10]Ibid., pp. 521-2.
[11]*P.D.* (W.A.), 1897, vol. 10 (n.s.), p. 65.
[12]Ibid., pp. 299-301.
[13]On Inglis Clark and his circle see Ely, 'Andrew Inglis Clark and Church-State separation', *Journal of Religious History*, vol. 8, no. 3 (1975), pp. 279-80; and H. Reynolds, The Island Colony, Tasmania: society and politics 1880-1900 (M.A. thesis, University of Tasmania, 1964).
[14]All spoke, or at any rate voted, against 'recognition' in the debate.
[15]Parliament of Tasmania, *Debate on the Draft Commonwealth Bill*, 1897, pp. 266-8 (copy held by Library of the Parliament of Tasmania).
[16]The Tasmanian legislature had decided procedurally to treat the Adelaide draft as an ordinary bill. It was considered first by the House of Assembly, and then, as amended, by the Council.
[17]Ibid., pp. 288-90.
[18]*P.D.* (S.A.), 1897, p. 497.
[19]Ibid.
[20]Ibid., p. 498.
[21]Parliament of Tasmania, *Debate on the Draft Commonwealth Bill*, 1897, p. 257.
[22]'Records', G.R.G./72, ser. 12/9, A.A.O.

[23]Parliament of Tasmania, *Debate on the Draft Commonwealth Bill*, 1897. pp. 278, 290.
[24]This was confirmed at the Sydney Convention. *Con. Deb. Syd. 1897*, pp. 31-2.

8 *The Lines Are Drawn*

[1]4th Quarter, 1897.
[2]Palmer, *Henry Bournes Higgins*, pp. 49-83. On Higgins's religious views see Ely, God, the Churches, and the Making of the Australian Commonwealth (Ph.D. thesis), p. 189; Grant, Henry Bournes Higgins: a Victorian radical in politics (M.A. thesis), pp. 18-20.
[3]*P.D.* (Vic.), 1897, vol. 85, p. 232.
[4]*Con. Deb. Melb. 1898*, vol. 1, pp. 656, 661.
[5]Six petitions for 'recognition' were received at the Sydney session, one from thirty-seven 'citizens', three from religious bodies, and two from the Australasian National League. Three petitions were received at the Melbourne session, each from a Christian Endeavour group (*Proceedings* (Sydney, 1897); *Proceedings* (Melbourne, 1898)).
[6]*P.D.* (Vic.), 1893, vol. 69, pp. 123-5, 282-92.
[7]*P.D.* (Vic.), 1897, vol. 87, pp. 250-1.
[8]Ibid., p. 238.
[9]*P.D.* (Vic.), 1897, vol. 87, pp. 250-1.
[8]Ibid., p. 238.
[9]*P.D.* (Vic.), 1893, vol. 87, pp. 238-9.
[10]Speech of Robert Harper (brother of Professor Andrew Harper) (*Argus*, 28 Sept. 1897). Harper said that the present proposal of the League was fairly ineffective, but would 'break the extreme secularity of the system'. Over-arching moral governance of a Protestant hue exercised through state agencies was the broad idea: 'We of the League seek to remove one principle hindrance to the State doing its proper work – caring for the morals of the community, work which cannot be accomplished without the aid of religion' (statement by annual meeting of National Scripture Education League, 1896 cited in *Presbyterian Monthly*, Jan. 1897). 'Religion' here would of course tend to mean Protestant religion. Andrew Harper's *Presbyterian Monthly* of Sept. 1897 was a lot more explicit. The State must teach morals, it asserted, and morals 'can be inculcated only on a scriptural basis'. One of the main keys to understanding the Protestant frenzy over the 'Bible in states schools' issue was clerical anxiety over the effect on the quality of Protestantism of the increasing ratio of native born to British born among the laity. 'The generation who enjoyed a home training is fast dying out,' declared the Rev. J. Steele in his moderator's address to the Victorian General Assembly in November 1897, 'and from this time forth the burden of upholding the church must fall on their children born and brought up in the colony… But our children are badly handicapped by the exclusion of the Bible from our State Schools. The element of reverence is, thereby, stunted and minimized…' (*Presbyterian Monthly*, Dec. 1897).
[11]*Southern Cross*, 16 July, 1897.
[12]*Age*, 29 Sept. 1897.
[13]*Geelong Advertiser*, 9 Oct. 1897.
[14]*Geelong Times,* 2 Oct. 1897.
[15]Ibid.
[16]Ibid. It is relevant to note that in one of his speeches seeking election to the Federal Convention Higgins concluded by citing the words of the Bendigo poet William Gay: 'Let us rise, united, penitent,/ And be one people – mighty, serving God' (*Age*, 10 Feb. 1897). Prudential piety, perhaps, but it indicates a certain consistency.

9 *Disaster for Higgins*

[1]The temperature, which on 8 February rose above the century, may also be relevant (*D.T.*, 9 Feb. 1898).
[2]The letter from Higgins to Colcord, in which Higgins said this, cannot be traced. However, on 23 March 1898 Colcord wrote to Higgins, 'Your letter of some days ago was duly received… While, as you suggest, it would have been desirable to have included the States as well as the Commonwealth in the provision…' (Higgins Papers, MS. 1047, A.N.L.)
[3]The debates are summarized and discussed in La Nauze, *The Making of the Australian Constitution*, pp. 206-11.
[4]9 Feb. 1898.
[5]*Con. Deb. Melb. 1898*, vol. 1, pp. 655-7.
[6]Ibid., p. 657.
[7]Ibid., p. 658.
[8]Ibid.
[9]Higgins Papers, MS. 1047, A.N.L.
[10]*Con. Deb. Melb. 1898*, vol. 1, pp. 658-9.
[11]Ibid., p. 660.
[12]Ibid.
[13]Higgins, *The Convention Bill of 1898*, in *Essays and Addresses on the Australian Commonwealth Bill*, pp. 12-13.
[14]*Con. Deb. Melb. 1898*, vol. 1, pp. 660-1.
[15]Ibid., p. 662.
[16]Ibid.
[17]Ibid., pp. 662-4.
[18]*Australian Sentinel*, 1st Quarter, 1895, pp. 114-5; *Southern Sentinel*, Jan. 1898, pp. 5-6. Commenting on Sir Joseph Abbott's speech, a *Southern Sentinel* commentator remarked in the June 1898 issue, 'But what right have men to "set aside" and command their fellow men to observe as a day of rest a day which God has never ordained to be thus observed? Moreover, why has not everyone a perfect right to work on a day concerning which and the other five laboring days of the week God has said: "Six days shalt thou labour and do all thy work"? Plainly the conflict here is not between Sir Joseph Abbott and the Seventh Day Adventists, or between the State and Seventh Day observers, but between the laws of men and the law of God.'
[19]*Con. Deb. Melb. 1898*, vol. 1, p. 664.
[20]9 Feb. 1898.
[21]*Con. Deb. Melb. 1898*, vol. 1, p. 664.
[22]Mar. 1898.

10 *Glynn's Triumph*

[1]Diary, 2 Mar. 1898, Glynn Papers, MS. 558, A.N.L.
[2]La Nauze, *The Making of the Australian Constitution*, pp. 102-3; O'Collins, *Patrick McMahon Glynn*, ch. 14.
[3]Glynn Papers, MS. 558, A.N.L.
[4]Diary, 12 June 1898, ibid.
[5]*Con. Deb. Melb. 1898*, vol. 2, pp. 1732-3.
[6]Ibid., pp. 1734-6.

[7]Ibid., pp. 1736-7.
[8]Ibid., pp. 1737-8.
[9]Ibid., pp. 1738-9.
[10]Ibid., pp. 1739-40.
[11]Ibid., p. 1740.
[12]Ibid., pp. 1740-1.
[13]Ibid., p. 1741.
[14]Apr. 1898.
[15]3 Mar. 1898.
[16]Diary, 2 Mar. 1898, Glynn Papers, MS. 558, A.N.L.
[17]12 Mar. 1898.
[18]Apr. 1898.

11 *'The Commonwealth Shall Not…'*

[1]*Con. Deb. Melb. 1898*, vol. 2, pp. 1741-2.
[2]Ibid., p. 1769.
[3]Garran Papers, MS. 2001, ser. 8, A.N.L.
[4]Higgins Papers, MS. 1047, A.N.L.
[5]See Australasian Union Conference, Minutes of Executive Committee 1 Dec. 1897.
[6]*Bible Echo*, 7 Mar. 1898.
[7]*Con. Deb. Melb. 1898*, vol. 2., p. 1779.
[8]Ibid., pp. 1769-70.
[9]Ibid., p. 1770.
[10]Ibid., pp. 1770-2.
[11]Ibid., p. 1772.
[12]Ibid., pp. 1773-4.
[13]Ibid., pp. 1774-5.
[14]Ibid., p. 1775.
[15]Ibid., pp. 1775-6.
[16]Ibid., pp. 1776-7.
[17]Ibid., p. 1777.
[18]Ibid., pp. 1777-8.
[19]Ibid., p. 1778.
[20]Ibid., pp. 1778-9.
[21]Ibid., p. 1779.
[22]Ibid. Higgins was wrong both times. 7807 citizens signed the 'anti-recognition' petitions to the Adelaide Convention (see above, p. 24). Counting S.A. and Tas. Together with N.S.W. and Vic., about 22 300 signed the 'anti-recognition' petitions to the colonial legislatures (see above, p. 138, n. 13). No doubt there was considerable overlap, and the overall total may not have exceeded 25 000. The source of Higgins's error possibly can be traced. On p. 13 of the Jan.–Feb. 1898 *Union Conference Record* the signatories for the country as a whole are listed in an incorrect and misleading way so as to yield a total a little below 38 000. Probably Higgins got the wrong number form the Adventists, first applied it to the Victorians, realized this could not be right, and then hopefully applied it to the whole country!
[23]Ibid.
[24]Ibid., pp. 1779-80.
[25]2 Mar. 1898, Glynn Papers, MS. 558, A.N.L.

[26]See ch. 7.
[27]Glynn Papers, MS. 558, ser. 4 item 28, A.N.L.

12 *Quick and Garran's Account*

[1]pp. 287-90, 951-3.
[2]p. 287.
[3]p. 951.
[4]*Con. Deb. Melb. 1898*, vol. 2, p. 658.
[5]p. 290.
[6]*Congressional Record, Senate, 1892*, vol. 23, no. 6, pp. 5993-6004, 6042-56, 6099. In conducting this research, the present writer unexpectedly came across, in the State Library of Victoria, a curious fragment of the 1890s events here being investigated. This library happened to hold the *Congressional Records* for the 1890s. It was these volumes which I consulted in checking the accuracy of Quick and Garran's claims. It was soon evident that someone had been examining the Congressional debates with a similar question in mind. Many of those sections of the debate in which references were made to 'religious aspects' were separated with little slips of paper, and furthermore someone had been busily underlining many of those portions in which the religion of Church and State was being discussed by the Congressmen. Who had been doing so, and when? Surprisingly it is possible to suggest a fairly conclusive answer, because the slips of paper used to make off these places were parts of an envelope, and about half of the postmark remained. 'FIT……TH VIC' and 'JA…..20…98' is fairly clearly 'Fitzroy North, Victoria, January 20, 1898'. 251 St Georges Road, North Fitzroy, was at this time the address of the Australasian Tract Society and the Echo Publishing Company. It was also the Victorian headquarters of the Adventists. Therefore one reasonably can surmise that the letter to the reader of the *Congressional Records* came *from* the Adventists. We know that around this time Colcord, the Adventist's religious liberty secretary, was corresponding with Higgins. We know that at this time Higgins lived in the suburb of Malvern, *not* Fitzroy (Sands & McDougall's Melbourne and suburban directories, 1897, 1898). We know from what Higgins said on 7 and 8 February, and 2 March, that he was closely familiar with the events relating to the closing of the 1892 Chicago Exposition on Sunday. The probability therefore is that the vigorously underlining reader was none other than Higgins himself and that he was conducting some personal research preparatory to the debate on Clause 109. The point has special interest in suggesting considerable care on Higgin's part in preparing for the debate. The envelope fragments are now in my possession.
[7]14 July 1892.
[8]Cited in *Australian Sentinal and Herald of Liberty*, August 1894.
[9]*The Annotated Constitution of the Australian Commonwealth*, p. 952.
[10]Ibid.
[11]Ibid., p. 953.
[12]*The Making of the Australian Constitution*, p. 228
[13]Op. cit., p. 952.
[14]Ibid., pp. 951-3.
[15]p. 25.
[16]*The Annotated Constitution of the Australian Commonwealth*, p. 953.
[17]See for example Cooley, *The General Principles of Constitutional Law*, p. 260; H. Rottschaefer, *Handbook of American Constitutional Law* (St Paul, Minnesota, 1939), pp.

726-8; L. Pfeffer, *This Honourable Court* (Boston, 1965), pp. 346-7; W. Willoughby, *The Constitutional Law of the United States* (2nd ed., New York, 1929), pp. 1185-6.
[18]98 U.S. 145 (1878); 133 U.S. 333 (1890). In discussing these and other American cases, I have found Pfeffer's *Church, State and Freedom* useful.
[19]98 U.S. (1878), pp. 249-50.
[20]'Records', G.R.G./72, ser. 12/9, A.A.O.
[21]*Con. Deb. Melb. 1898*, vol. 2, p. 1738.
[22]*The Annotated Constitution of the Australian Commonwealth*, p. 951.
[23]98 U.S. (1878), p. 249.
[24]175 U.S. 291, pp. 178-80.
[25]29 Stat. 411.
[26]210 U.S. 50 (1908).
[27]9 Cranch 43 (1815); 1 How. 127 (1844).
[28]pp. 592-4.
[29]2 How. 127 (1844).
[30]*The Supreme Court and Religion*, pp. 39-40.
[31]3rd ed. (1898) pp. 224-5.
[32]p. 19.
[33]pp. 468-9.
[34]La Nauze, *The Making of the Australian Constitution*, p. 135.
[35]pp. 172-3. Many years later Garran expressed hearty endorsement of the recognition proposal (*Church of England Messenger*, 9 Apr. 1925, p. 172. Cutting in Garran Papers, MS. 2001, ser. 6, A.N.L.) Garran in retirement became chancellor of the Anglican Diocese of Goulburn (later Canberra-Goulburn).
[36]By C. Daley, *Sir John Quick: a distinguished Australian*, p. 16; Fredman (ed.), *Sir John Quick's Notebook*. In the latter, pp. 8-12, Quick describes with retrospective approval his youthful induction to the Bible and Protestant Christianity.
[37]p. 18.

13 *To the Referenda*

[1]*Con. Deb. Melb. 1898*, vol. 2, pp. 2439-44, 2474.
[2]Ibid., p. 2474.
[3]Higgins, '*The Convention Bill of 1898*', in *Essays and Addresses on the Australian Commonwealth Bill*, pp. 12-13.
[4]Perhaps the fullest report was that of *S.M.H.*, 3 Mar. 1898.
[5]*Presbyterian Monthly*, Apr. 1898; *Australian Christian World*, 18 Mar. 1898.
[6]*Australian Christian World*, 29 Apr. 1898.
[7]12 May 1898.
[8]*Adelaide Advertiser*, 20 Apr. 1897.
[9]*South Australian Register*, 16 May 1898. In an editorial comment this interpretation was described as 'positively inconceivable'.
[10]*S.M.H.*, 13 June 1898; *Age*, 13 June 1898. The ministers in question came from Milton, New South Wales.
[11]*Age*, 15 June 1898; *S.M.H.*, 16 June 1898.
[12]*S.M.H.*, 20 Apr. 1898. Generally, however, Barton avoided religious references in his campaign speeches. Perhaps that was because on this occasion he was rather tellingly accused of inconsistency. *D.T.*, 21 Apr. 1898.
[13]*Southern Cross*, 20 May 1898.

[14]17 June 1898. See also 22 July 1898.
[15]*S.M.H.*, 13 May 1898.
[16]*S.M.H.*, 13 May 1898.
[17]Extensively reported in *S.M.H.*
[18]Autobiogrpahy, Higgins Papers, MS. 1057, ser. 3, A.N.L. Bennett, *Federation*, pp. 15-16, offers a brief but useful discussion of the part played by churchmen in the irst federation referendum.
[19]*D.T.*, 12 Apr. 1898.
[20]Wise Papers, M.H.
[21]26 June 1899.
[22]24 June 1899. Moran's contribution, and that of the Catholics, is briefly noted by Mansfield, *Australian Democrat*, p. 142.
[23]*D.T.*, 21 June 1899.
[24]Ibid.
[25]Higgins Papers, MS. 1057, ser. 1, A.N.L.
[26]*D.T.*, 21 June 1889.

14 *Piety and Precedence*

[1]*P.D.* (N.S.W.), vol. 99, p. 742.
[2]*Australian Christian World*, 2 Nov., 7 Dec. 1900.
[3]Ibid., 7 Dec. 1900.
[4]Ibid.; *S.M.H.*, 2 Nov. 1900.
[5]*Australian Christian World*, 7 Dec. 1900.
[6]Ibid., 30 Nov. 1900.
[7]Ely, God, the Churches, and the Making of the Australian Commonwealth (Ph.D. thesis), pp. 232-3.
[8]*Australian Star*, 14 Jan. 1901.
[9]*S.M.H.*, 3 Dec. 1901.
[10]*Australian Star*, 14 Jan. 1901.
[11]Ibid.
[12]*S.M.H.*, 15 Dec. 1901.
[13]*Australian Star*, 14 Jan. 1901.
[14]CRS A6, item 01/1800, A.A.O.
[15]IAustralian Star*, 14 Jan. 1901.*
[16]Ibid.; *Argus*, 10 Jan. 1901.
[17]E. R. Norman, *The Catholic Church and Ireland in the Age of Rebellion 1859-1873* (London, 1965), pp. 29-30.
[18]McDonald to Lyne, 28 Dec. 1900, CRS A1, item 08/2687, A.A.O. This letter and the one of 29 Dec. from McDonald and Tait to Lyne, were addressed to Lyne as New South Wales premier.
[19]McDonald and Tait to Lyne, 29 Dec. 1900, ibid.
[20]Ibid.
[21]*S.M.H.*, 1 Jan. 1901; *Age*, 9 Jan. 1901.
[22]*Age*, 9 Jan. 1901; Tait to Lyne, 31 Jan. 1901, CRS A1, item 08/2687, A.A.O.
[23]*S.M.H.*, 1 Jan. 1900.
[24]*Argus*, 7 Jan. 1901 (letter from 'Oriel'); *Argus*, 10 Jan 1901.
[25]*Australian Star*, 14 Jan. 1901.
[26]Ibid.

[27]Ibid.
[28]Ibid.
[29]*S.M.H.*, 2 Jan. 1901; *D.T.*, 2 Jan. 1901.
[30]4 Jan. 1901.
[31]*Age*, 9 Jan. 1901 (letter from Tait); *S.M.H.*, 12 Jan. 1901 (letter from J. E. Carruthers).
[32]*Southern Cross*, 29 Mar. 1901.
[33]12, 19 Jan. 1901.
[34]4 Jan. 1901.
[35]Ibid., 11 Jan. 1901. The writer was A. Black.
[36]*Australian Star*, 15 Jan. 1901.
[37]10 Jan. 1901.
[38]17 Jan. 1901.
[39]CRS A6, item 01/614, A.A.O.
[40]Ibid.
[41]*Protestant Banner*, 9 Mar. 1901.
[42]10 May 1901.
[43]CRS A6, item 01/614, A.A.O.
[40]Ibid.
[41]*Protestant Banner*, 9 Mar. 1901.
[42]10 May 1901.
[43]CRS A6, item 01/614, A.A.O.
[44]Ibid.
[45]Ibid.
[46]Ibid. The course of cabinet discussion was reconstructed from handwritten minutes on correspondence received on the prayer question. Barton's long interview with Hopetoun was noted in *D.T.*, 18 Apr. 1901.
[47]'Lord Hopetoun… is loyal Presbyterian, well versed in the history of his church, having acted on several occasions as Her Majesty's Lord High Commissioner to the General Assembly of the Established Church of Scotland.' (*Australian Christian World*, 14 Sept. 1900).
[48]See religious profiles of individual 1897-8 Convention delegates, Ely, God, the Churches, and the Making of the Australian Commonwealth (Ph.D. thesis), ch. 13.
[49]*Bulletin*, 18 June 1901; *Protestant Banner*, 15 June 1901.
[50]10 May 1901.
[51]E. G. White, *Fundamentals of Christian Education* (Nashville, Tennessee, 1923), pp. 475-84. This change in Mrs White's thinking is discussed in detail in Krause, The Seventh Day Adventist Church in Australia 1885-1900 (M.A. thesis), chs 4, 7.
[52]*Union Conference Record*, 17, 31 July 1901.
[53]*C.P.D.*, vol. 1, pp. 815, 1136.
[54]Ibid., p. 815.
[55]CRS A6, item 01/617, A.A.O.
[56]*C.P.D.*, vol. 1, pp. 815-21.
[57]Ibid., pp. 819-20.
[58]Ibid., p. 1077.
[59]Ibid., pp. 1136-40.
[60]Ibid., pp. 1137-8.
[61]Ibid., pp. 1138-9.
[62]Ibid., pp. 1139-40.

[63]14 June 1901.
[64]29 June 1901.
[65]14 June 1901.
[66]*Advocate*, 15, 22 June 1901; *Argus*, 15 June 1901.
[67]The British attitude, in detail and in general, is conveyed in CRS A6, item 01/1800, A.A.O. The federal government's view was succinctly stated by Barton on 16 July 1903, in reply to a question in the House of Representatives (*C.P.D.*, vol. 14, p. 2223). The varying rules regarding precedence in Australian colonies are set out in Todd, *Parliamentary Government in the British Colonies*, pp. 316-31.
[68]See particularly Chamberlain to Hopetoun, 30 Nov. 1900, 14 Mar. 1901, CRS A6, item 01/1800, A.A.O.
[69]Ibid.
[70]Ibid. The general Table is set out in Ely, God, the Churches, and the Australian Commonwealth (Ph.D. thesis), p. 281.
[71]*D.T.*, 12 Jan. 1901; *S.M.H.*, 16 Jan. 1901; Smith to Barton, 3 Sept. 1903, clearly conveys the diversity of Anglican thinking (CRS A1, item 08/2687, A.A.O.).
[72]In 1903 Smith told Barton, 'To me personally the matter of "precedence" is not a matter of much moment, but I hold an official position which lays me under an obligation to consider it, and to claim that I deem to be both just and expedient.' Smith to Barton, 3 Sept. 1903 (CRS A1, item 08/2687, A.A.O.).
[73]CRS A1, item 08/2687, A.A.O. *S.M.H.*, 16 Jan., 17 Apr. 1901; *Australian Christian World*, 8 Mar. 1901. CRS A6, item 01/617, A.A.O.
[74]CRS A1, item 08/2687, A.A.O.
[75]CRS A6, item 01/1800, A.A.O.
[76]Ibid.
[77]CRS A8, item 01/304/3, A.A.O.
[78]This seems a reasonable inference from the report in the *Argus*.
[79]Barton Papers, MS. 51/951, A.N.L.
[80]Barton to W. E. Morris, Barton to A. Hardie, 5 June 1903, CRS A1, item 08/2687, A.A.O.
[81]Ibid.
[82]14 June 1903, ibid.
[83]*Commonwealth Gazette*, 6 Jan. 1906.
[84]*S.M.H.*, 12 Jan. 1906.
[85]28 Feb. 1906.

15 *Retrospect*

[1]Ely, God, the Churches, and the Making of the Australian Commonwealth (Ph.D. thesis), p. 168.

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Tasmania
Launceston Examiner
Mercury (Hobart)
Tasmanian Mail

United States
New York Times

Religious

New South Wales
Australian Christian World
Australian Churchman
Baptist
Catholic Press
Church Commonwealth (incorporating *Churchman* and *Bathurst Church News*)
Churchman
Freeman's Journal
Messenger of the Presbyterian Church of New South Wales (incorporating *Presbyterian and Australian Witness*)
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Presbyterian and Australian Witness (incorporating *Presbyterian Messenger*)
Protestant Banner
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Victoria
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Chapter 1
Churchmen at the Bathurst Convention

Why did the religious issue revive at this time, and from such a different standpoint? The answer relates partly to socio-economic and political changes that had been taking place over the past few years; partly to certain changes of clerical outlook occasioned by these socio-economic and political changes; and partly to the policy of the organizers of the Bathurst Convention to encourage church leaders to become participators in and promoters of the federal cause.

Economically and in certain respects ideologically the short period of the early and middle nineties was one of the watersheds in Australian life. A sharp contraction of the British and European demand for Australian wool, poor seasons, and increased difficulty in raising or renewing overseas loans had created severe stress within the colonial economy, and in the social structures which hitherto that economy had supported.

Depending on differences of value, of institutional attachment, of social class, of material interest, of presupposition as to how social and human reality was to be conceived, the problems and opportunities presented by the economic crisis were variously diagnosed. However, there remained a consensus that the remedy for society's ills lay not in the violent overthrow of the established order but in orderly structural reform.

Yet the sheer scale of the hardship and dislocation produced by the depression gave to many of the remedies proposed an intensely moral dimension. That largely was where the churches came in.[1] 'They feel that they are too cloistered', said John Clifford, an English Baptist, who visited the colonies in 1897, 'and ought to come forth and determine the direction of the whole of the surrounding life. They are ashamed and lament because they are discovering…their failure to exert their full influence on the social and political life of men…'[2]

Traditionally churches had assumed responsibility for ameliorating the kind of hardship and distress that the depression had produced. Hitherto they had worked either through specifically denominational charitable agencies, such as the Sydney Central Methodist Mission and the Society of St Vincent de Paul, or through voluntary philanthropic associations such as the Benevolent Society of New South Wales. But in this case, the scale of the economic and social breakdown placed this task well beyond the scope – and often the imagination – of such agencies. Some churchmen, looking to the past, appealed for increased government subsidies, but there now was widespread doubt in government circles as to the efficiency of traditional agencies. Another solution, which generally was more popular among Methodists, Catholics and high Anglicans than among Presbyterians and low Anglicans, was for the State itself, acting within guidelines drawn by the churches, to direct and finance welfare and work.

However, prevention is better than cure. Many clerics and concerned laymen, seeing economic and social breakdown as products in part of moral breakdown, and linking moral breakdown with sabbath desecration and alcoholic intemperance, formed societies publicly to denounce such evils and to persuade or induce legislatures to enforce salutary controls. 'Moral suasion is undoubtedly the highest method of turning a sinner from the error of his ways,' William Saumarez Smith, the Anglican bishop of Sydney, told the Vigilance Association in 1892, '… but the *salus respublica* demands the interposition of legal requirements and legal penalties to facilitate the practice of righteousness.'[3]

Behind these developments often lay compassionate and theological concern, provoked by the magnitude of the social problems now seen to be generated by commercial and industrial expansion. A similar response, occasioned by similar commercial and industrial development, was manifested at this time among many churchmen in England and a little later in the United States.[4] The Baptist globe-trotter Clifford, discussing the British Empire as a whole, described the phenomenon in the following way:

Retaining all the *old* emphasis on the inward and spiritual…, on the living energy of redeemed men and women, on the all-sufficiency of Jesus Himself, and recognizing that the supreme business of the Church is to save men…, it is clear the churches of Greater Britain have received from God the gift of a more vivid sense of their responsibility for surprising the evils around them, for ejecting evil powers and persons from the control and direction of our civic life, for initiating and sustaining movements calculated to reach the roots of human misery.' [5]

The older ecclesiastical tradition of charitable paternalism, operating now indirectly rather than directly, was returning to overlay the newer conceptions of laissez-faire and self-help. Yet more was involved than theological atavism. There was also the matter of public standing.

Religion is the key to morality, and morality the key to social happiness and material prosperity. However, the churches held the key to religion. It followed that the churches generally, and the clergy in particular, were not merely useful, but *necessary* functionaries in any society. Yet most of the solutions advanced in the early nineties for society's economic and social problems – varieties of socialism and liberalism, single taxism,, protectionism – saw little need for God, and less for his ministers. Hitherto, despite the cessation of state aid to religion, relative prosperity had enabled the churches to maintain, in the corners of public life, a similitude of the role of community conscience. Now even that was at stake. It was not simply compassion and piety, but also in some measure anxiety over public status, over their public role and rank in a future rendered uncertain by partial economic breakdown, which lay behind the resurgent Protestant and Catholic political initiatives of the nineties.[*]

By 1896 many politically minded clerics not only were deeply involved in colonial politics, but were responding with increasing enthusiasm to the surging currents of national feeling in the community. Some of the more nationalistically minded clerics became involved as organizers or delegates in the People's Federal Convention. Naturally they stressed the religious aspect of federation, an aspect which they considered the colonies could not ignore at their peril. The particular ideas they expressed at Bathurst, and the tacts they employed, may usefully be examined in detail. In many ways they foreshadowed the intense campaign that soon developed.

Because the Convention essentially was a bid to publicize the idea of federation on a popular level, the presence and assistance of prominent churchmen was welcome to the body organizing it – the Bathurst branch of the Australasian Federation League. The Catholic and Anglican bishops of Bathurst, J. Byrne and C. E. Camidge, were among the vice-presidents of the Convention, and a prominent local Wesleyan minister, A. J. Webb, was secretary to the Convention.[6] Furthermore Cardinal Patrick Francis Moran, a long-standing advocate of federation, had specially been invited to address the Convention.

The Convention was preceded by the observance of Federation Sunday in the churches of Bathurst. The sermons and addresses given were amply reported, and show the way many churchmen were thinking about federation. Were he able to 'read the signs of the times', declared the Reverend Professor Gosman at the Congregational Church, God was 'calling us as a nation and empire' to the civilizing mission to which He had committed the 'British people'. Only a federation regulated by the principles of righteousness, he considered, could prosper. Later in the day, as a guest speaker at the Wesleyan Pleasant Sunday Afternoon, Gosman asserted that government should be conducted by Christians: it 'should not be allowed to be manipulated' by those who were without faith in God.[7] Gosman was a theologically liberal Victorian Congregationalist who often involved himself in social reform

[*] The concept of status motivation, while central to some parts of this study, has occasionally proved difficult to handle with satisfying precision. The concept, as used, has a double aspect. Mostly it refers to clerical desire for formal recognition, by the community at large, of the validity of those religious roles (prophetic, didactic, intercessory, etc.) undertaken by clerics on the community's behalf. Less often, it refers to the clerical desire to be accorded, as clerics, public rank or precedence. Taken overall, the evidence examined shows that, in relation to the federation movement, clerics persistently sought status in one or other, and sometimes both, of these senses. Yet the direct evidence has not in every case proved compelled: clerics in the heat of battle did not always analyse or refer to their own motives. In such cases the 'a priori imagination', as discussed by R. G. Collingwood, has perforce supervened.

issues. In 1896, in fact, he became chairman of the Victorian shirt (wages) board.[8] Webb, at the morning service in the Wesleyan Church, preached on the 'Federal Lord'. Federation, proclaimed, 'was a mighty fact in God's universe'. Afterwards, at the Pleasant Sunday Afternoon, he turned politics. Federal questions, he said, "should not be left to a few professional politicians and nobodies; but they wanted men of character and religion to go into them, and carry them on in a noble spirit'.[9] At the Roman Catholic cathedral J. O'Dowd cited as an exemplar of the union that was needed the Roman Catholic church itself, uniting as it did some 260 million persons of all nations, castes, conditions and stations of life.[10] Bishop Camidge, a high Anglican, sounded a note cooler and more remote than Gosman or Webb, and less triumphalist than O'Dowd. 'Let them remember', he declared, that there was one Federation to which they belonged as members of the mystical body of Christ. While they worked as Australians today, and while they took their place as citizens of no mean city, let them remember their wider and truer citizenship to which God was drawing them all in the fulness of time. The citizenship of the City of God.[11]

In many respects the treatment of the federal question in these sermons and addresses typified both points of similarity and also points of difference between the Anglican, Catholic and Protestant approach to federation. On the one hand, most churchmen assumed that they were specially knowledgeable as to the divinely ordained principles of social order, and that their advice ought specially to be sought by political leaders; on the other hand, closer inspection shows differences of approach and concept. The Protestant clergy, partly because of the contemporary popularity among Protestants of the ideas of inter- and intra-denominational federation, and partly because such clergy ministered to those sections of society (largely middle-class) most materially interested in Australian federation, were often ready to conceive of federation *itself* in religious terms.[12] The Catholic and Anglican clergy, who were linked rather with sections of society - labouring classes in the case of the Catholics; pastoral and upper-middle urban classes in the case of the Anglicans[13] – by whom federation, while often regarded as useful, was not hoped for with the same urgency, were less inclined to see the federal movement itself in religious terms. It was characteristic that, for O'Dowd, federation in the religious sense meant the Catholci church. For Camidge, the high churchman, it signified the *Vicitias Dei*, while for the Protestants Webb and Gosman it meant, rather, a brotherly and British association of sovereign communities.

In the nature of the situation, one may add, clerical interest in federation was bound to relate far more to considerations of status than of power. Under the 1891 draft Constitution, which the People's Convention took as the basis for its deliberations, the division of powers between the federal and state legislatures left to the states nearly all the 'morally' interesting powers such as health, education, liquor licensing, and public welfare.[14] Later it will emerge that for some clerics the 'recognition' of deity was seen, in one of its aspects, as a de4vice that would enable the Commonwealth constitutionally to legislate for such matters as national Sunday observance, for the setting aside of special days for religious purposes, and perhaps for certain aspects of temperance reform. However, this latter group probably was not numerous.

Two distinct strategems were employed by the clerical delegates in order to represent themselves to the Convention as necessary and desirable partners in the federation enterprise, and to have God 'recognized'. First, there was the device of the clerical untied front. Second, there was an effort to stage-manage the presentation of religious resolution in such a way as to make criticism appear petty or extremist.

It was the fact that the interest of churchmen in the federation movement related much more to their anxieties over status, than to their hopes in the field of social policy, which made the united-front approach practicable. Since about 1890 councils of churches in the various colonies had promoted what they regarded as the Christian view in relation to public issues. These councils, which usually met monthly, were composed of leaders of the major non-Anglican Protestant churches, and sometimes (as with the New South Wales Council of Churches) of the Anglican church as well. However Catholics, who usually cook a less stringent view of temperance an Sunday observance issues, who usually were more suspicious of economic individualism than their Protestant brethren, and who were in any

event enjoined by Rome to stand apart from inter-denominational organizations, remained aloof. But when what was at stake was the religious view of society as such, and when divisive social issues were not involved, co-operation on an informal basis was possible. That is what happened at Bathurst.

The press noted with approval the willingness of clerical delegates to cross bridges in brotherhood. Here, declared the *Sydney Mail*, 'were two bishops of Bathurst, Anglican and Roman Catholic clergymen, and clergymen of the non-conforming churches, all working together admirably for the common cause.'[15] Cardinal Moran's irenic and patriotic advice to 'Catholic people', in his Convention address, was 'God hand-in-hand with your Protestant fellow-citizens in any measure that may have for its purpose to advance the interest, to develop the resources, or promote the welfare of Australia.[16] The Anglican dean of Bathurst, J. T. Marriott, moving a vote of thanks to the cardinal, described his address as one that 'breathed a spirit of wide Catholicity and true Patriotism'.[17] The Wesleyan, Webb, also busy in an ecumenical way, accepted an invitation to attend a *conversazione* at St Stanislaus's College, at which Moran was to be present.[18]

A 'recognition' proposal was planned. It was to be put by Gosman. The text was as follows:

> That this Convention of the people, acknowledging the existence of a wide-spread belief in the government of the world by Divine Providence, desires to commend the cause of Australian Federation to the wisdom and piety of the people; that the Supreme Ruler may be invoked to further, if it please Him, the Federal Movement, and so to guide and direct the course of events that Australian unity may rest upon an enlightened public opinion and on a solid foundation of righteousness, the only guarantee for the creation and continuance of national prosperity and peace.[19]

The issue could be expected to be touchy; and Gosman, before the start of the Convention, had attempted to arrange with the organizers for it to be brought forward in such a way that possible critics would be embarrassed into silence. His plan was that 'it should be ready by the *chairman* – approval to be indicated by standing, either before or immediately after the National Anthem. It would be better to be divested of any *personal* aspect.'[20] Better indeed! In one step, critics would utterly be disarmed by not wishing to appear unpatriotic, while the 'recognition' proposal would at once acquire a patriotic and national aura. The religious perspective would in one stroke become one of the norms of the federation movement, and the clerics – expositors *par excellence* of this perspective – would thereby obtain modest but secure standing in the movement.

In the event, the organizers insisted that Gosman take personal responsibility for moving his resolution. Whether they did not wish to take sides, or simply did not think Gosman's strategem would succeed, is not clear. However, if they anticipated trouble, their judgement was vindicated.

Gosman may have been encouraged by the approval, at a public meeting held on the evening of the first day, of the following resolution moved by himself and seconded by Webb:

> That, as the influence of the ideal upon the national character cannot be otherwise than strengthening and beneficial, the pursuit of that ideal by the people of Australasia should be encouraged by the political, religious and intellectual leaders of the community.[21]

However, when he attempted on the second day of the Convention to obtain leave to introduce his 'recognition' proposal, he met a storm of protest. One speaker declared that they might as well be called on to express a belief in the solar system. Another stated that, 'while a firm believer himself', he thought that such questions should be left to the clerics, 'who might as a preliminary federate the churches'. More generally, it was suggested that the religious question ought not to be raised, that all discussion should bear directly on federal legislation, and that Gosman'' resolution was out of order. A leading federationist, Dr John Quick – one of the main organizers of the 1893 Corowa Conference, author of the influential *Digest of Federal Constitutions,* and shortly to be elected as one of the Victorian delegates to the coming Federal Convention – offered it as his personal view that Gosman's motion was perfectly in order. But Gosman, understandably in the circumstances, did withdraw.[22]

So neither backroom manoeuvring nor clerical solidarity carried the day. The secularist *Sydney Morning Herald* dismissively referred to 'recognition' as a 'debating society' question.[23] The position of the churches and the clerics in the coming Commonwealth was still uncertain. Despite ready acceptance of clerical contributions to other aspects of the Convention's work, the hostility evidence in the response to Gosman's motion showed that the separationist sentiments expressed in Inglis Clark's 1891 draft Constitution were well entrenched at the popular level.

A devout lay delegate, Donald Cormack, who saw Church and State ideally as parterns in government, the former ruling by love and the latter by force, who believed that 'it is to the Church that the State must look for conserving the virtues', and who held that 'a recognition of this truth should be expected of the framers of our Federal Constitution', had planned to table at the Convention a motion calling on the churches to unite in a biblically based 'Federal Church of Australia'. Its relation to the State was to be defined. It was to organize parochial systems of education and poor relief, and it was to model its government on the Hebrew sanhedrin. While Cormack's proposal certainly would have been congenial to some, it bristled with controversial political and religious implications. Not surprisingly, in view of the hostile response to Gosman's theologically much milder resolution, Cormack did not persevere with his proposal.[24]

Then on its closing day, perhaps partly as a result of the good impression made by Cardinal Moran's speech the day before, perhaps partly because only about a quarter of the delegates remained (it was the Saturday), and perhaps partly because of some lay resentment at the rough treatment of Gosman's resolution,[25] the Convention resolved, on the motion of the Rev. J. Fielding, 'That this Convention, acknowledging the Government of the World by Divine Providence, commends the cause of Federation to all who desire, not only the material, but also the moral and social advancement of the people of Australia.[26]

This resolution, which was treated as formal and approved *nem con*, was largely a simplified version of Gosman's.[27] The most substantial point of difference between it and Gosman's proposal, and perhaps a major reason for its acceptance now by such separationists as remained, was that Gosman's reference to 'invoking God' had been deleted. The point may have been that while 'invoking' God clearly was a religious *act,* 'acknowledging' Him implied merely a religious state of mind. The modification plausibly can be read as a concession to the separationists.

So in a certain sense God, and 'the right of religious ideals, though not of religious sects, to a place in politics', were eventually 'recognized' by the tail end of the People's Convention.[28]

There was, furthermore, another solution prize for some of the more political clerics. Enhanced possibilities for future political leverage were opened up by the amicable and often enthusiastic Catholic-Protestant partnership at Bathurst. However, as Moran was soon to discover, these possibilities could easily be overestimated.

CHAPTER 2
The Cardinal Steps Out

The election of delegates to the Federal Convention, in the colonies in which delegates were to be popularly elected, was to be held on 5 March 1897. Each colony was to send ten delegates. In New South Wales, one of the candidates was 'Moran, Patrick Francis; of Manly; occupation: Cardinal Archbishop of Sydney'. Naturally there was a religious side to his platform: 'I would wish to see inserted in the preamble to the Constitution', he said in his 'Address to Electors', 'some such clause' as the following:

> Religion is the basis of our Australian Commonwealth and of its laws; and in accordance with the spirit of religion, genuine liberty of conscience is the birthright of every Australian citizen, and full and free exercise of religious worship, so far as may be consistent with public order and public morality, shall be accorded to all.[1]

This proposal, whose meaning and scope was not completely clear, apparently involved extending Inglis Clark's 'free exercise' provision to the Commonwealth legislature, widening it to include some sort of guarantee of 'genuine liberty of conscience', but subordinating this guarantee to a 'consistency with public order and public morality' requirement. Perhaps, in adding this rider, and also in requiring that 'liberty of conscience' be 'genuine', Moran was seeking to square his proposal with Leo XIII's 1888 directive that

> It is quite unlawful to demand, to defend, or to grant unconditional freedom of thought, of speech, of writing, or of worship, as if they were so many rights given by nature to man.[2]

However the intention of his proposal, taken as a whole, clearly was to secure for religion, and perhaps also for its spokesmen, some sort of fundamental status in the Commonwealth.

Moran's proposal accorded closely with the standpoint taken by the ecclesiastical united front at Bathurst. Probably he was hoping that the elevated ecumenical experience at Bathurst, and the general Protestant and Anglican approval of the patriotic and ecumenical tenor of his address, would induce the leaders of the non-Catholic churches to accept him as a *Christian*, rather than simply Catholic, spokesman at the coming Federal Convention. The composition of the delegation to Moran which requested him to stand, containing as it did a sprinkling of prominent lay Protestants, and bearing a warm message from a local rabbi, A. B. Davis,[3] conveyed to the public – as one can expect it was meant to – the impression that Moran represented the broadly theistic, rather than the specifically Catholic viewpoint. 'It is time', said the *Catholic Press* on 13 February,

> that a Christian community should rise and assert its principles and cast [confusion] and despair among the handful of arrogant atheists who sneer at what nine tenths of the populace hold most sacred… His Eminence will be a representative not only of the Catholic Church, but of Christianity; and every man who detests infidelity and wishes to see the Constitution of the Commonwealth founded on religion and liberty will not fail to… cast a vote for Cardinal Moran.

With hindsight, one can suggest that over and above its implications for Catholic-Protestant relations, and for the place of religion in the coming Commonwealth, Moran's candidature was one of the most ambitious political initiatives taken by a Catholic prelate in Australia during the nineteenth or indeed this present century. P.J. O'Farrell, in a thoughtful study of Moran's candidature, has suggested that Moran was hoping that the 'Australian electors would demonstrate their acceptance of him as a symbol of their willingness to banish the past and welcome Catholics into the central area of national endeavour.'[4] One might go a little further and propose that Moran was seeking nothing less than to gain a central and reputable place in Australian political life.[5] So far, the participation of Catholic prelates in Australian politics had never been *both* central and respectable. But Moran now wanted both.

Behind Moran, deriving mainly from his church's organizational and ideological center in Rome, lay distrust of many features of liberal and democratic institutions, and an imperative

command to convert these institutions from within to conformity to Catholic social and political principles. In 1885, Leo XIII had directed that

> it is the duty of all Catholics… to make use of popular institutions, so far as can honestly done, for the advancement of truth and righteousness; to strive that liberty of action shall not transgress the bounds marked out by nature and the law of God; to endeavour to bring back all civil society to the pattern and form of [Catholic] Christianity.[6]

The trenchancy of this command should not be misunderstood. Its implications for political action were less drastic than might at first appear. One can also accept, as not inconsistent with Pope Leo's directive and as offered in good faith, the declaration of Monsignor D. O'Haran, Moran's spokesman, that 'We give allegiance to the powers that be for conscience sake…'[7] Convention civic loyalty was not inconsistent with or a repudiation of an ultimately subversive or revolutionary intention. For the 'Leo XIII' Catholic, there simply were self-imposed ethical limitations ('so far as can honestly be done') as to the means that legitimately could be employed to advance 'the pattern and form' of Catholic Christianity.

Moran was, from the viewpoint of his masters in Rome, seeking the active assistance of heretics, in order to strengthen the Catholic social position and Catholic political standing in a liberal, democratic and largely non-Catholic country. The surprising thing is that in the circumstances he thought he had any chance of success, even taking into account his personal triumph at Bathurst. He failed to realize that one swallow does not make a summer. Possibly his judgement was adversely affected y the heady prospect of personally, and as a Catholic leader, achieving honour and fame as one of the founding fathers of a new nation. O'Farrell's study as made it clear that there is no reason to doubt either the strength of Moran's vanity, or the sincerity of his patriotic and pious commitment to federation.[8] It is likely that he was impelled to disaster by powerful although mixed motives.

Although Moran, who attended the People's Convention only for a short time, may not himself have realized it, there were rifts even in the ecumenical lute at Bathurst. Webb's attendance at the *conversazione* at St Stanislaus's College, in order to gree Moran, had caused grave concern to some of his Methodist brethren: 'The Romish Delilah in Bathurst', warned on, 'is plainly trying her fascinations on the Protestant Samson.'[9] A number of the non-Catholic churchmen who were associated with the Convention, noting the great prominence accorded to Moran's visit, came to suspect that at least some of the Roman Catholics among the organizers deliberately had been using the Convention to achieve precisely that result. Whether or not these suspicions were justified is not, here, the central point, although it may be noted that one of the vice-presidents of the Convention, Camidge, gave them some credence.[10] The crucial point is the fact that such suspicions existed at all. If Moran's motives even at Bathurst were a little suspect, what chance was there that his credibility as a Christian rather than Catholic spokesman at the coming Federal Convention would pass muster?

And what a storm there was! Protestant reaction was prompt and determined. By mid-February a large number of clerics had come together under the aegis of the United Protestant Meeting, an ad hoc organization formed for the specific purpose of defeating Moran. The core ofi ts strategy was to canvass vigorously for the election of ten strong candidates *other* than Moran, and to stimulate in the community the latent fear of Romish aggression. In an attempt to ward off the allegation that they were moved by a 'sectarian' spirit, they included one Roman Catholic, R. E. O'Connor, in their 'bunch'.[11] They extensively circularized electors, organized protest meetings and called for special prayers in the churches.[12] Letters of protest were written to whatever sections of the press would accept them. Both the *Sydney Morning Herald* and the *Daily Telegraph*, while not supporting the Protestants as such, were sufficiently opposed to Moran to give extensive coverage to material emanating from the UPM.

Moran's counter-strategy was dictated by the nature of one of his main objectives in standing. Because his hope was to attend the Federal Convention as an informally acknowledged representative of all the churches, he had to accept two consequences.

First, he could not afford to conduct an energetic *personal* campaign. Not only would this be a possibly damaging admission that he might *not* be elected; but it could readily produce situations in which his dignity would be jeopardized, and he would be hard put to convince the electorate that he represented more than simply the Roman Catholic church. Even a suggestion from some of Moran's campaign organizers that a public meeting be held at this time in connection with his coming episcopal silver jubilee was ruled out as 'sure to be misrepresented'.[13] Second, he *did* need to convince the electors that the UPM was an 'extremist' or 'fringe' organization, that it did not represent 'true' Protestant thought at all.

In his development of this latter strategy Moran was unsuccessful. He, or rather his supporters, employed two methods. One was a version of the unity ticket. The Anglican primate, William Saumarez Smith, was approached to stand for election. The Presbyterian moderator, and a number of other church leaders were also invited to stand. Naturally Smith, who by policy and disposition was friendly the Protestants, declined. So did the moderator and the others.[14] The whole proposal was then quickly dropped. It was quite unrealistic. As a correspondent to the *Worker* pointed out, the implication was that these clerical leaders should be candidates because of their position as ecclesiastics rather than their qualification as citizens.[15] In the circumstances, that was political dynamite. Furthermore, in the unlikely event of any other clerical candidates being elected, this clearly would only have been by favour of the (to them) distasteful electoral patronage of Moran.

Even some of Moran's supporters saw the idea as ludicrous. The *Australian Star*, a Sydney daily with Catholic leanings, initially supported the clerical ticket proposal. Its argument was that, while churchmen should not descend to the arena of 'common politics', the making of United Australia was not politics in the ordinary sense. However, by 16 February the editor, who revealed *inter alia* that he had some separationist sympathies, could not constrain himself from observing that if the primate, or the moderator, or the president of the Wesleyan Conference, or even the grand master of the Loyal Orange lodge, had offered himself for election, 'there would have been no protest or objection', but a 'ripple of amusement might have been universal'.

The other method might perhaps be called the 'divide-and-neutralize strategem'. In an interview with a *Daily Telegraph* reporter, Moran, commenting on a press report of a recent meeting of the UPM, remarked disparagingly that 'In the long list of gentlemen present at the meeting I see very few respectable names…'[16] The point presumably, as with most denials of 'respectability', was to draw an unstated but understood distinction between the acceptable and the unacceptable on a certain criterion, without actually saying what that criterion was. In this case, Moran clearly was indicating, without spelling out what he himself thought 'true' Protestantism was, that from the Protestant viewpoint there was something defective and undesirable about the Protestantism of the UPM.

That certainly was how E. T. Dunstan, the fiery Welsh chairman of the Congregational Union and a prominent member of the UPM, interpreted Moran's aspersive comment. In a near riposte, he represented Moran as meddling in Protestant affairs:

> The cardinal would scarcely be recognised by Protestants generally as a judge of respectability of those who took part in the meeting… Certainly, for my own part, I have no wish to seek a testimonial from his Eminence as to my own respectability.[17]

Moran gave the UPM another useful stick to stir up latent anti-Catholic feeling when he expressed the hope that his candidature would 'crush… anti-Catholic bigotry'.[18] Probably all he meant was that he hoped a sufficiently large number of non-Catholics would support him to discourage those Protestants who might wish to criticize him simply because he was Catholic. Yet his words lent themselves easily to a more sinister interpretation.

In fact the non-Catholic churches were divided in their response to Moran's candidature, although Moran received little benefit from this. The non-Anglican Protestant churches (Methodist, Presbyterian, Baptist, Congregationalist, Salvationist, etc.) – perhaps Moran's most vital target – were with few exceptions solidly opposed to him. Indeed, so overwhelming was their solidarity, that when a Presbyterian minister, George Hay, called for

a combined Protestant-Catholic campaign to ensure that the federal Constitutional be based on religion, he suddenly became a hero to the *Catholic Press* and the *Freeman's Journal*![19] The Church of England, under Bishop Smith's lead, did indeed refuse to join the UPM's 'Stop Moran' campaign,[20] but their neutrality cut both ways: it did not mean simply refusal to oppose Moran, but also refusal to support him. So there was small comfort for Moran here. The fact that among Protestants and Anglicans the main polarization lay between the opponents of Moran and the neutralists, rather than between his opponents and supporters, conclusively makes the point that Moran had failed to persuade the non-Catholic churches to accept him as a spokesman for the 'Christian' view of federation.

Yet while Moran badly mishandled the strategy which, in the circumstances, his aim of election as a 'Christian' spokesman virtually forced upon him, there was more to Moran's defeat that simply bad tactics. The situation was loaded against him from the start.

In the fist place, in recent years the non-conformist churches had come to act and to see themselves as a 'moral' power bloc in the colony's politics.[21] Their solidarity and political sophistication were proof against the blandishments of any cardinal. Furthermore, they had a strong and fundamental feeling that Australia was essentially, and should remain, British and Protestant. Given the strong anti-Catholicism that lay not far beneath the surface of much colonial Protestantism, Moran's candidature was bound to attract vigorous and fairly unified Protestant opposition; and that in turn would certainly stir anti-Protestant feeling among Catholics. In a short while, correctly prophesied a writer in the militantly secular *Bulletin*, the 'yellow pup of sectarianism may be expected to howl… and the Holy Roman and the vicious Orangemen to reach for each other's hair in the sacred cause of unity.'[22] It was unrealistic for Moran to expect otherwise.

Secondly, the secularist conception that it was mutually beneficial for Church and State to operate in separate spheres was widely diffused through the community. The antipathy of this section of the community to Moran's candidature, if that candidature was considered in itself and not in terms of the sectarian conflict it would generate, would mostly express itself in little more than firmly declining to vote for Moran, and hoping that he would fail to be elected. Often this sort of secularism consisted more of an unreflective aversion to mixing religious and secular affairs than a positive determination immediately to stop such mixing when it occurred. In some circumstances, then, this secularist group was a negligible political force. However in one type of situation secularist aversion quickly would become outright hostility; namely when Protestants and Catholics introduced their quarrels into the political domain. A cardinal at the Convention, provided there was no Protestant back-lash, could easily enough be ridiculed, ignored and generally contained. He would in the secularist viewpoint be out of his 'proper place', but no great threat to anybody or anything. But the introduction of sectarian conflicts in the political arena was regarded not simply as 'out of place', but as positively dangerous. Religious conflict, it was widely felt, generated passions and a loss of perspective fully capable of destroying those networks of social and religious tolerance on which economic prosperity and the security of life and property ultimately depended. 'The giant of religious sectarianism has awoken from his slumber', warned the *Sydney Morning Herald*:

> [His exclusion, hitherto,] has been secured rather by the strong distaste of the secular world for religious controversies and animosities, than by self restraint or the conversion to milder ways of feeling of the sectarian spirit itself. It was held in check by being shut out of the arena of public life… [The only way of preventing sectarianism] from imparting to our public life its own rancour and disunion is by forbidding its intrusion into the field upon any pretext whatsoever.

The *Daily Telegraph* expressed a similar view:

> The place for Cardinal Moran and every other ecclesiastic to use his influence for making religion the basis of our Commonwealth is in the Church… There can be no guarantee of liberty of conscience so effectual as that of the state keeping aloof from the religious question altogether…[23]

It was remarkable that Moran did not foresee that, in the circumstances, his candidature would arouse strong secularist antagonism, precisely because it was bound to trigger off that Protestant-Catholic public wrangling that so alarmed many secularists.

So in sum, it was not simply Moran's tactics or timing that were at fault. The time itself was wrong. The predictable opposition of the Protestants to Moran meant that if he were elected, it would simply be as a Catholic rather than a Christian spokesman, while the predictable strengthening of secularist antagonism to Moran, once Protestants and Catholics began to lay into one another, meant that he was unlikely even to be elected.

In the poll on 5 March, Moran finished only fourteenth. Since it can safely be assumed that not many Protestants voted for him, the conclusion must be that quite a few of his own people – tinged by secularism perhaps or frightened of the consequences of sectarian conflict – failed to support him. The *Australian Star* on 6 March suggested that the general feeling of Catholics was that it was 'a wrong step for His Eminence to take'.[24]

Moran failed to understand, or perhaps in a surge of patriotic or pious ambition simply forget, that in the Australian colonies in his day a Catholic prelate had to choose between a modest potion of secular power and a modest portion of secular standing. A Protestant correspondent to the *Sydney Morning Herald*, writing on the eve of the election and making reference to Moran's predecessor but one, Archbishop Polding, pointed the moral. Polding, he said, had been a 'gentleman'.

> [He] recognised the privilege of freedom [and] though never afraid to champion his church, so did it as not to offend others. Pity 'tis, that the unwritten law which these men made… was not observed at the present time. It would have preserved us from the sectarian fight forced upon us by the Cardinal.[25]

Moran, after the rebuff he had received, retired from the 'recognition' campaign. If the issue was to be carried forward, it would be by hands other than his own.

CHAPTER 3
Campaign and Counter-Campaign

By early March it was clear that other hands were more than willing to carry forward the 'recognition of God' campaign. At a special meeting on 1 March the New South Wales Council of Churches, which represented the major Protestant churches and the Church of England, resolved to embark upon a campaign to obtain signatures for the following petition to the coming Federal Convention:

1. That in the preamble of the Constitution of the Australian Commonwealth it be recognised that God is the Supreme Ruler of the world, and the ultimate source of all law and authority in nations.
2. That there also be embodied in the said Constitution, or in the standing orders of the Federal Parliament, a provision that each daily session of the Upper and Lower Houses of the Federal Parliament be opened with a prayer by the President and Speaker, or by a chaplain.
3. That the Governor-General be empowered to appoint days of national thanksgiving and humiliation.

Petition blanks were to be sent to ministers of religion throughout New South Wales. These forms were to be accompanied by circulars from the heads of various denominations, inviting the help of clergy and others in obtaining signatures. The heads of churches in other colonies were to be invited to co-operate by promoting similar petitions.[1]

The Council of Churches' campaign had taken shape during precisely that time in which all its members, except the Church of England, were busy trying to prevent Moran's election to the Convention. It had indeed been at the Council's January meeting that the question of mounting some sort of 'recognition' campaign was first considered. At a special 10 February meeting of the Council, the matter was further discussed and it was resolved:

That this Council considers it of utmost importance that in the Constitution for federated Australia there should be a recognition of God as the Supreme Ruler, and that provision be made for such acts of common worship as should be deemed suitable for a legislative body.

A subcommittee was also formed to inquire into the practice in the United States and Canada and to suggest an appropriate course of action. This subcommittee presumably composed the text of the petition cited above, and formulated the proposal to send the petition blanks to ministers of religion, and to heads of denominations in other colonies.[2]

In organizational terms, the Council of Churches' plan of campaign was in one way fairly effective. It took advantage of the fact that the point at which the minister of religion would in practice mainly be forced to solicit signatures, namely during or at the close of religious worship, was precisely the point at which the most likely potential signatories, namely the members of his church, would be least inclined to demur at signing. However the weakness of such a plan lay paradoxically in the very feature that gave it strength, for the fact that it was a system of signature collecting which depended on a mild but real form of situational duress weakened its validity as an indicator of electoral feeling. While such a system could and did produce tens of thousands of signatories, for instance in Victoria on the question of scripture in state schools, its political effectiveness was likely to vary inversely with the awareness of politicians as to how it actually worked. Such numerically massive petitions would always carry some sort of political weight, and at times would reflect a genuine consensus. The point however is rather that, in general, their political persuasiveness would not be as great as their sheer numerical strength would suggest.

In certain respects, the earlier campaign to 'keep out the Cardinal' was now of assistance to the Council of Churches. It had considerably heightened both lay and clerical awareness of and interest in the federal question. It obviously strengthened the political morale of many Protestant clergy. The Convention elections, triumphantly declared a writer in the *Presbyterian and Australian Witness* on 26 March, had given a much needed lesson to the newspapers. The result had shown that the Protestant churches were 'not effete and

destitute of influence'. However, in certain respects the anti-Moran campaign now was a source of considerable embarrassment. Moran, after all, had himself been a strong supporter of 'recognition'. It was all very well to say, as did E. T. Dunstan, that 'If a Constitution was to be built up, it should be free from priestly control on the one hand, and a God dishonouring secularism on the other.'[3] Yet such a distinction, while in itself coherent, was bound in the hurly-burly of colonial politics to appear to many as artificial. In any event, energetic Protestant clerical involvement in and since the 1894 New South Wales election, especially over the local option issue,[4] would certainly had made Dunstan's avowal appear to many secularists, and to many Catholics, as less than honest. 'The combined Protestant churches', mocked a writer in the *Catholic Press*, 'are now, without the slightest sense of humour, working to have the Creator recognised in the Federal Constitution as the source of all authority and all law.' The *Bulletin*, he added with satisfaction, 'will scarcely help them in this with the same enthusiasm and zeal with which it supported their crusade against the Cardinal.'[5]

Nor indeed were all non-Catholic churchmen convinced of the propriety of the 'recognition' campaign. Some, such as the Unitarian George Walters, spoke strongly in support of strict Church-State separation: 'The majority of so-called Protestant churchmen', he wrote to the *Daily Telegraph* on 17 March,

> are exultant because they have 'kept out the Cardinal' from the Federal Convention; but they are themselves playing the very game to which they have made such loud and effective objection… There is a movement on foot to secure what is called 'the recognition of God' by some formal words in the new Constitution. What is this but the intrusion of theology into the domain of politics?

The Seventh Day Adventist *Bible Echo* was even more trenchant. 'The friends of religious legislation', it declared on 29 March, 'are showing great activity at the present time. A new nation is to be formed, and they desire to capture, and, we are sorry to say, corrupt and misdirect it at the outset.' By and large however, non-Catholic church leaders willingly fell in with the Council's campaign.

Ironically, the problem facing the New South Wales Council of Churches was structurally similar to Moran's. Having displaced Moran as a central figure in the 'recognition' campaign it had now itself, hopefully in partnership with councils of churches in the other colonies, to secure for the colonial churches, and more broadly for the theistic perspective, a central and reputable place in the new Commonwealth. These councils however would face great obstacles. The *Sydney Morning Herald* earlier had described the 'recognition' proposal at Bathurst as a 'debating society' question;[6] and clerical intervention in politics normally was regarded by politicians as an intrusion, which for practical reasons might need to be suffered, but only rarely was welcome. Federation was practical business, which at a certain level tended also to be patriotism. However, except where participation in the federation movement was an expression of personal piety, it was not a religious matter. Religious remnants in the colonies from the days of establishment, such as proclamations by Governors of days of prayer for rain, were tolerated without discomfort by practical politicians. Although such remnants often were subject to mockery,[7] practical politicians ignored them: such survivals pleased some, and caused no serious inconvenience. Yet while these vestiges might be tolerated, it would be out of place in their 'enlightened' age to seek actually to *introduce* them. This undoctrinaire but deeply ingrained secularism was the main obstacle which the councils needed to overcome, or circumvent. Nor were all churchmen, at this point, optimistic. 'We confess', said the *Southern Cross* on 19 March, 'that we are not too sanguine that the new Australian Commonwealth will in any way acknowledge religion. The secular idea has temporarily captured the public mind.' They perhaps would receive a more sympathetic reception from the Convention delegates (such as the New South Wales Presbyterian banker, J. T. Walker) who were not themselves professional politicians, than they would from those who were. Yet in the final analysis it was obvious that if the churches were to have any hope of securing for themselves in the coming federation something like the public status and position they desired, they would need to operate with threats and promises rather than prayer and persuasion.

The councils of churches in Victoria and South Australia responded with enthusiasm to the invitation from the New South Wales Council to participate in the petitioning campaign.[8] In the early days of the first session of the Federal Convention, which was held in Adelaide, 'recognition' petitions poured in. About 14100 signatories came from New South Wales, 16700 from Victoria, and 7000 from South Australia. Two small petitions came from Tasmania, and the Catholic bishop of Adelaide signed a petition on behalf of Roman Catholics in South Australia and the Northern Territory.[9] Even allowing for the situational duress no doubt often present in the way signatures were collected, it was an impressive performance.

However, the recognitionists did not, somewhat to their surprise, have it all their own way in the petitioning field. About 7800 persons signed the following counter-petition:

> We, the undersigned adult residents… believing that Religion and the State should be kept entirely separate, that Religious Legislation is subversive of Good Government, contrary to the principles of Sound Religion, and can result only in Religious Persecution, hereby humbly but most earnestly petition your Honourable Body not to insert any Religious Clause or Measure in the Constitution of the Australian Commonwealth which might be taken as a basis for legislation, but that a Declaration be made in the Constituion stating that neither the *Federal Government nor any State Parliament shall make any law respecting religion or prohibiting the free exercise thereof.*[10]

No doubt the recognitionists expected opposition, but the *form* it took was unexpected. T. L. Suttor, writing about the Australian colonies of the 1860s and 1870s, has perceptively remarked that secular liberalism, while pervasive, was hard to pin down: 'not Prometheus, but a reputation, a rumour, a breath of wind'.[11] In the 1890s, secularism was clearly evident in many aspects of colonial life. Yet characteristically it was always both more and less than those persons, parties, journals and institutions which manifested it. It was present not so much as a distinct entity with a specific and in principle quantifiable causal weight, but rather as an extensively ramified but harmoniously converging network of impulses, conceptions, tolerances and aversions. However, and this was the surprising point, the opposition to the 'recognition' campaign was in many ways *not* like this. The counter-petitions bore that reliable hallmark of disciplined organization – an identical text.

The group responsible for circulating the counter-petitions, while not specially shrouding its identity, made little effort to draw attention to itself. The counter-organizers were one of the colony's fringe Protestants denominations.

An amusing but perhaps not typical exemplar of emerging Protestant consciousness of the opposition organization was the Victorian Protestant journal the *Southern Cross*. On 26 March it noted,

> Somebody in Melbourne, who wisely shrouds his personality in mystery, is, it seems, getting up a secular petition against any recognition of God in public affairs. The petition emerged into light in Maryborough, and the correspondent of the *Age* in that town sent it down for insertion in the columns of the great organ of secularism in Melbourne.

By 9 April the *Southern Cross* had discovered the culprit:

> It is curious to learn that this petition, that God and religion may be 'ignored', is largely signed by Seventh Day Adventists. This is a new proof that this remarkable body is made up of cranks; and in the case of cranks – religious or other – nobody can be quite sure at what point, or how suddenly, reason may lapse into bankruptcy.

To their astonishment, recognitionists became aware that the main villain was one of their own kind. The active association of a small fringe religious group with militant Church-State and Religion-State separationism was unusual, although the association of Unitarianism (which generally postulated a sharp distinction between the religious and the political) and separationism does provide a parallel. Yet why did the Adventists take this particular line? What in their eyes was the rationale for their energetic campaign? To answer, it is necessary to say something of the background and character of Australian Seventh Day Adventism.

On the afternoon of 3 January 1875 in Battle Creek, Michigan, U.S.A., a Mrs Ellen Gould White received what she considered to be a divinely inspired vision. Mrs White's writings

then occupied, and still do, a special position in the Seventh Day Adventist movement. In the Adventist view Mrs White, while not quite of the standing of the biblical prophets, stood especially close to God; and to her had been revealed God's plan for mankind during the latter days. The 3 January vision was however in one respect a bother to her. In it she had, she believed, been shown places to which God's word was next to be carried. But when she came to record the vision, she hardly was able to remember any of the places revealed to her. However, there was one that she could recall without difficulty – Australia.[12]

The first Adventist missionaries came to Australasia in 1885. Shortly after, to lead the mission, came A. G. Daniels, the son of a Unionist surgeon who had been killed in the Civil War. He was a convert, who for some years had been personal secretary to Mrs White.[13] In 1897 the Adventists in Australia were little more than a thousand strong. The president of the Australasian Union Conference in that year was the same A. G. Daniels.[14] Mrs White had been living in Australia since 1891.[15] The Adventists' dietary views, and their belief in God, at some broadly identified time, although probably not in the near future, would wind up human history, troubled few people. The former, because of its essential privacy, hurt nobody; the latter was a view often held by Catholics and Protestants. However the Adventists viewpoint on Sunday observance caused much trouble. The main difficulty was not that, like the Jews, they believed in worshipping God on the Saturday. It was rather that, in contrast to the generally quietist colonial Jewry, they were firm believers *also* in freedom to work on Sunday. This latter practice was to a certain kind of Protestant provocative and offensive. Indeed, in both the United States and Australia, 'sabbath desecrating' Adventists had been prosecuted in the civil courts on charges of sacrilege. In Sydney in 1894 some Adventists had been sentenced to a spell in the stocks under a 1677 statue of Charles II.[16]

The Adventists, while broadly identifying with the 'middle class', tended to be low-income earners.[17] Many were craftsmen, teachers, printers, farmers or ran small businesses. The basis for their intransigence on the Sunday question may partly have been economic. In the economically depressed conditions of the 1890s, perhaps two days of 'rest' was more than many thought they comfortably could afford.

By 1897 the Australian Adventists had come seriously to fear that the 'recognition' of God in the federal Constitution would enable the federal parliament to exercise an implied power to legislate for nation-wide Sunday observance. This fear derived partly from their Australian experience, but stemmed more fundamentally from certain experiences of the parent church in the United States. There, arising in part from legal and political difficulties created by Protestants who were scandalized by the Adventist position on Sunday observance, the adventists had become enthusiastic and dedicated proponents of liberty of conscience, and of the strict separation of Church and State.

By the late 1880s in the United States, many church and church-related groups (including, prominently, the National Reform Association, which since its formation in 1863 had agitated vigorously for the insertion of a religious amendment in the Constitution of the United States)[18] were placing considerable pressure on Congress to legislate on such issues as temperance, Sunday observance, and the 'recognition of God' in the United States Constitution. On the temperance issue, petitions to Congress from church-related groups, such as the Women's Christian Temperance Union, were prolific. In 1892 Sunday observance interests harried Congress into tying a Sunday closure provision to its $5 million grant to the Chicago World Fair. Congress on that occasion had been besieged by petitions from religious groups. In 1894 (twice), 1895 and 1896, 'recognition of God' amendments to the Constitution were introduced in Congress.[19] The Adventists, at first somewhat dismayed, had developed by 1890 what was for a small group an effective counter-strategy. Under the auspices of the National Religious Liberty Association, an organization they set up in 1889,[20] they produced numerous separationist pamphlets, lobbied energetically, and collected a large number of signatures to counter-petitions. In 1890 they secured a quarter of a million signatures to one of their petitions to Congress.[21] Thereafter they remained enthusiastic pamphleteers, lobbyists, and petitioners.

In the Australian setting, similar moves from Women's Christian Temperance Unions, Lord's Day Observance societies, and the councils of churches in the various colonies, evoked among Adventists not only the same fear but eventually the same resort to petitioning, pamphleteering and lobbying. The similarity should not surprise. A number of Australian Adventist leaders, who mostly at this stage were Americans, had participated in the massive 1890 counter-petitioning campaign.[22]

By 1897 the Australian Adventists were effectively placed to organize a vigorous counter-campaign. The ground for such a campaign had, over the previous four years especially, been well prepared. In May 1894, arising out of concern that they would increasingly become subject to legal prosecution for Sunday violation, the Adventists launched a quarterly journal entitled the *Australia* (from 1895 the *Southern*) *Sentinel and Herald of Liberty*. They followed American precedent. Since 1886 the American Adventists, moved by a similar concern, had published a 'religious liberty' journal entitled the *American Sentinel*. The Australian counterpart, according to its title page, was 'set for the defence of Liberty of Conscience, and therefore uncompromisingly opposed to a union of Church and State, either in name or in fact'. The editorial in the first issue declared, with a terseness and conciseness (in a sense an Americanness) that always was one of its characteristics, that

> The *Sentinel* is set for the defence of the rights of men. As its name indicates, it is to be a Sentinel guarding these sacred rights, and a Herald of True Liberty. We refer especially to civil liberty and to religious freedom. By 'liberty' we do not mean license; not do we by 'freedom' mean lawlessness.
> We advocate that liberty which guarantees to every man the enjoyment and free exercise of his natural rights. We plead for the freedom to worship God, or not to worship him, according to the dictates of conscience.
> We are not of those who would detract from the importance of religion or the utility of civil government. We believe that the Church and civil government are both of divine origin. We believe that the Church was established by God for man's spiritual welfare; and that civil government was ordained by the same authority to protect men in the exercise of their rights.
> But while we believe that both the Church and the State are ordained of God for the good of man, we also hold that they are ordained for entirely separate lines of work; that each has its particular sphere and that the realm of one is in no sense the realm of the other.
> Believing this, we are decidedly opposed to the union of Church and State. We do not mean that we are opposed simply to the union of some particular church with the State. We are opposed to the union of *any* church or *any* combination of churches with the State. And more, we are opposed to anything and everything tending towards a union of religion and the civil power.
> We see dangerous movements in this direction. From every quarter we hear appeals from the Church to the State for help. Monster petitions are being sent to the governments of every country for religious legislation. Powerful combinations are formed to speak for the church with authority. And such has been the progress in this line that in some instances the Church has ceased to petition, and now *demands*! Under these powerful influences the State is beginning to 'bend', and thus the liberties of men are endangered.
> Against this whole line of work the *Sentinel* raises the note of warning. With men it has no controversy; but to all principles and measures which imperil the civil and religious liberties of men, it stands uncompromisingly opposed.

The *Sentinel* mostly confined itself to these themes and rarely promoted the more distinctive dietary or eschatological Adventist views. Since 1888 the Adventists had produced another journal, a monthly entitled the *Bible Echo*, for that specifically denominational purpose. The first issue of the *Australian Sentinel* was widely and favourably noticed in the colonial press.[23] By 1897 its quarterly circulation had reached 4000.[24] Two things are evident from this circulation figure and the generally friendly reception by the secular press. First, a sizeable portion of the community must have been in sympathy with the Adventists' position on Church and State. Second, and this is the point more especially to note, the Adventists had established some sort of contact with many of these people.

How could such contacts be turned to good effect? How was the reservoir of community antagonism to clerical political involvement effectively to be tapped? It was precisely at this point that the Adventists were well placed. The normal method whereby Adventists evangelized and distributed much of their literature was by systematic door-to-door visitation. Adventist members each month personally delivered the *Bible Echo* and other Adventist literature to subscribers and to other possibly interested persons.[25] Many copies of the *Sentinel* were also distributed in this way: each quarter, there simply was a further piece of literature for the door-to-door canvassers to deliver.

This means that by 1897 the Adventists not only possessed an extensive network of addresses of persons likely to be in sympathy with them on the Church-State and Religion-State issue, but often had personal contact with such people. The way thus was open for conducting a speedy, extensive and *personal* circulation of counter-petitions. A survey of the areas from which the counter-petitions emanated confirms this view, since these nearly always were areas where the Adventists had congregations, or companies of sabbath-keepers.[26]

The Adventists were limited however by the fact that, owing to the sheer smallness of their organization, large areas of the community remained in which they lacked the necessary pre-existing network of personal contacts. Nevertheless, for the alert politician, that very organizational weakness embodied a message. If such extensive support for the counter-petititons could be raised in a relatively restricted set of areas, what must be the feeling on the issue in the community generally?

CHAPTER 4
The Recognition Issue at Adelaide

As a result of pressure from the smaller colonies – Western Australia, Tasmania and South Australia – the first session of the Federal Convention was held in Adelaide. This displeased the governments of the two larger colonies. '[G]reat was the wrath in the [Victorian] Turner Cabinet', wrote Alfred Deakin, 'and indeed among the New South Wales representatives also. A stay in Melbourne was looked forward to with pleasurable anticipation but in Adelaide, the City of Churches, it was quite another matter.'[1] There is perhaps an echo of this irritation in the diary of Robert Randolph Garran, the young Sydney lawyer who came to Adelaide as assistant to George Reid, the New South Wales premier: 'Adelaide at nine fifteen a.m. on Sunday, where we disappointed the press by preferring cleanliness to godliness, and not going to church.'[2]

The city's sober and decorous tone was perhaps of some assistance to the recognitionists, and early in the piece they received encouragement from a possibly unexpected source. On 25 March the Convention received a telegram from Chamberlain, the British secretary of state for colonies, advising that Her Majesty desired him 'to acquaint the Federal Convention that she takes special interest in their proceedings and hopes that under Divine Guidance their labours will result in practical benefit to Australia.'[3]

In order to expedite the construction of a working draft, the Convention initially formed itself into three committees: a constitutional, a finance and a judiciary committee. It was during a meeting of the constitutional committee on 8 April that the 'recognition' issue was first raised. Quick, one of the supporters of Gosman's resolution at Bathurst, moved that the preamble be amended to declare that the people of the colony, in agreeing to form an indissoluble Commonwealth, were 'invoking Divine Providence'. The minutes, the only official record, simply recorded the words of Quick's amendment and stated that it was negatived.[4]

However, some months later, one of the New South Wales members of this committee, J. H. Carruthers, speaking to a Christian Endeavour delegation, offered an account of the viewpoints expressed in the debate on Quick's amendment. The credibility of this account is subject to some doubt, not simply because Carruthers may have been tempted to tell the delegation what it wanted to hear, but more substantially because he seriously misdescribed the words of Quick's amendment. Carruthers told the Endeavourers that the words were 'by the Grace of God'.

According to Carruthers, 'the question was exhaustively dealt with' by the constitutional committee. Some members had wondered whether the recognition of deity would yield any practical benefit. Some were worried that if they associated the name of God with the Constitution, and the Constitution broke down, they would be guilty of irreverence. Some doubted whether they should load the deity with their necessarily imperfect Constitution. Finally, some considered that inserting a religious clause in the preamble meant putting a religious affirmation into the mouth of the British parliament, and that this might lead to irreverence and make the name of God empty.[5]

So perhaps partly for these pious reasons, but almost certainly for other more secular ones, Quick's proposal was rejected. The other items in the recognitionist petitions, those relating to prayers by the Commonwealth parliament and to the setting side of special national days for religious purposes, were not formally raised or discussed in either this or subsequent sessions of the Convention. The evidence does not indicate why, but probably the main reason was that such proposals could not meaningfully be canvassed in the Convention until 'recognition' itself was accepted.

The constitutional committee's rejection of Quick's amendment was briefly reported in the press,[6] and provoked an immediate response. Some expressed satisfaction. 'Better a Christian atmosphere', declared the *Argus*, than any formal clause carried by strife.'[7] A

Bulletin columnist jeered, 'If some arrangement could be made for God recognizing the Convention, it would be a great deal more to the point.'[8]

However, the strongest reaction naturally came from the losers. The Victorian recognitionists moved first. On 17 April the Victorian Council of Churches forwarded a petition to the Convention asking, 'before finally disposing of the matter, to grant that at least the first and chief prayer… as to the national recognition of God… should be granted, so that God's name might be glorified and the conscientious conventions of thousands of Christian people Australia may not be wounded.'[9] Additionally, personal representations were made by the Council to some – perhaps all – members of the Victorian delegation.[10]

From about this time, one may note, the initiative in organizing the 'recognition' campaign shifted from New South Wales to Victoria. Such a shift hardly was surprising. Protestant-Catholic-secularist tensions mostly were sharper in Victoria than in New South Wales and, as a rule, Victorian Protestants were more militant than their New South Wales counterparts. Probably only the unusual circumstance of Moran's candidature, and his initial enthusiasm for the 'recognition' cause, had placed the New South Wales Council of Churches for a time at the head of the campaign.

This renewed Victorian Protestant agitation achieved one result almost immediately. On 22 April the 'recognition' question was raised once more, this time in full Convention. However, the matter was no longer in Quick's hands. With a view to making 'recognition' appear ecumenical rather than simply Protestant, the Victorian Protestant Simon Fraser had invited the South Australian Roman Catholic, Patrick McMahon Glynn, to raise the issue.[11] Glynn was agreeable, and on 22 April in a carefully prepared and literary speech reintroduced Quick's 'recognition' proposal.

There was, Glynn said, a widespread desire in the community that God be recognized. Such a consensus had force because it *was* a consensus; and it also strengthened rather than weakened the security of 'liberty of thought'. He referred to the

> spirit of reverence for the Unseen [which] pervades al the relations of our civil life. It is felt in the forms of our courts of justice, in the language of our Statutes, in the oath that binds the Sovereign to the observance of our liberties, in the recognition of the Sabbaths, in the rubrics of our guilds and social orders…

Then, after citing evidence as to the antiquity of the idea of a 'Divine Mind' guiding the destiny of States, he concluded by asking the Convention

> to grant the prayer of [the 'recognition'] petitions; to grant it in a hope, that the justice we wish to execute may be rendered certain our work, and our union abiding and fruitful by the blessing of the Supreme Being.[12]

The short debate that followed encapsulated most viewpoints on the 'recognition' issue. The next speaker was the octogenarian Tasmanian, Adye Douglas, who caustically chided Glynn for giving the Convention 'a sermon' that would have been interesting if 'given in another place'. Invoking the divine blessing, Douglas suggested, was 'not the proper way of carrying out the religious idea at all'. It had not been done in the constitutions of the United States or Canada. 'Nothing can make religion more ridiculous that to have the form without the substance.'[13]

Barton then spoke. To the accompaniment of cheers from some members of the Convention,[14] he expressed the hope that Glynn would withdraw his amendment. The invocation of God, he suggested, offering a theological pendant to Glynn's partially libertarian argument for 'recognition', was 'more reverently left out than made'. Moving from reverence to ridicule, he stressed the difficulty of either predicting in advance, or discovering after the event, whether or not, when citizens came to vote on the Federation Bill, they actually were 'invoking Divine Providence'. He carefully sketched his own view of the relationship of the sacred to the secular:

> The whole mode of government, the whole province of the State, is secular. The whole business that is transacted by any community – however deeply Christian, unless it has an established church, unless religion is interwoven expressly and professedly with all its actions – is secular business as distinguished from religious

business. The whole duty is to render unto Caesar the things that are Caesar's, and unto God the things that are God's.

He concluded:

> The best plan which can be adopted as to a proposal of this kind, which is so likely to create dissension foreign to the objects of any church, or any Christian community, is that secular expressions should be left to secular matters while prayer should be left to its proper place.[15]

Barton was followed by the devout New South Wales Presbyterian, J. T. Walker, who supported Glynn. He in effected suggested that since the churches were aiding the federation movement, the Convention might properly by way of return agree to Glynn's amendment. He also reminded the Convention of the reference to deity in the telegram from Chamberlain, and of the 'unanimous' acceptance at the Bathurst Convention of the Rev. J. Fielding's 'recognition' motion.[16]

At this point, judging that he did not have the numbers, Glynn sought to withdraw his amendment. But Sir George Turner and Sir William Zeal, for reasons that do not clearly emerge but which probably reflected pressure from clerical constituents, strongly urged Glynn nevertheless to persevere.[17] He did so, but his amendment was negatived by 17 votes to 11.[18]

CHAPTER 5
The Protestants Fight Back

'You can break up a setting hen', declared a writer in the Adventist *Bible Echo* on 10 May, 'but you cannot convince a worldly church that it ought not to unite itself to worldly power.' Pleased though they were at the secularist victory at Adelaide, the Adventists held no illusions that the clerical interest would simply accept this rebuff. Those who sought to unite religion and State, the *Bible Echo* writer predicted, would continue to pray, petition, and besiege legislators at every turn, until they got what they wanted: 'A fallen worldly church is bound to unite itself with worldly power, come what will.'

The Victorian *Presbyterian Monthly*, of which the enthusiastic 'recognitionist', the Rev. Professor Andrew Harper, was editor, was especially vexed by the editorial opinion of the *Argus*, cited, in chapter 4, that 'a Christian atmosphere' was better than 'any formal clause carried by strife'. Scenting in the *Argus's* viewpoint an essential irreligion, the *Presbyterian Monthly* countered, '[In] vain is the snare spread in the sight of any bird,… the Christian communities will assert themselves notwithstanding the new doctrine of Christian peace.'[1] This forecast proved substantially right, provided one reads 'Christian communities' in a fairly ecclesiastical way – that is, as covering only the clergy and those members of the laity closely associated with the liturgical and organizational life of the colonial churches.

The Adelaide session of the Convention had concluded on 23 April, and the draft it had constructed was now, in accordance with the provisions of the Enabling Acts, to be examined and commented on in the various participating colonial parliaments – those of Victoria, New South Wales, South Australia, Western Australia and Tasmania. These legislatures could propose any amendments they saw fit. However, even before the rejection of Glynn's amendment on 22 April, there were indications of a virtually nation-wide revival of the 'recognition' campaign. When, earlier, it became known that the constitutional committee had rejected Quick's 'recognition' proposal, letters or statements began to appear in the press suggesting or hinting in various ways that no Christian could in conscience vote for a Federation Bill that did not 'recognize' God. For instance the *Sydney Morning Herald* reported on 14 April a statement by Rev. W. Matheson at the Congregational Union Conference that, if God were not 'recognized', he 'trusted the people of the colonies would decline to accept such a Constitution'; while in the *Adelaide Advertiser* of 20 April appeared a letter from a C. H. Goldsmith in which, after complaining tersely about the Convention's failure to 'recognize' God, and also about intercolonial railway sabbath violations, he threatened that 'If no further steps are taken, the loyal servants of God will know what to do when the referendum takes place.' As early as 13 April, it had been suggested in a letter to the *Argus*, from J. Walsford, that a new campaign be organized on an intercolonial basis by the various councils of churches.

After the full Convention's refusal on April 22 to 'recognize' God, this campaign rapidly took shape. On 26 April, in a letter to the *Age*, the fiery Presbyterian, J. Lawrence Rentoul, a colleague of Harper's at Ormond College, declared, 'The Convention, by their refusal, have simply forced upon us, needlessly, the labour and expense of having this good thing effected through the respective colonial Legislatures.' The New South Wales Council of Churches in late April resolved to present a petition to the New South Wales parliament, signed by its chairman on its behalf, urging that legislature to refuse to adopt the Federation Bill, unless that Bill 'recognized' God. However, the Victorians envisaged now a much more forceful campaign. They would not give in to 'a little squad of Seventh Day Adventists'. 'Let the Churches unite to see that this great blunder is not perpetuated.' Rentoul told the commission of the Victorian Presbyterian Assembly on 6 May, 'Let them bombard Parliament.' Nor were the fathers and brethren thinking solely of circulating petitions and arranging delegations to leading politicians. They also resolved

> That in view of the coming general elections, ministers be instructed to press upon the people the imperative duty of supporting only such candidates as… promise to maintain the recognition of God in the Constitution of the proposed Commonwealth.

The public questions committee, of which Rentoul was joint convener, was also instructed to communicate 'with the various churches of the respective colonies' in order to formulate and set in motion an intercolonial 'recognition' campaign.[2] By the end of May the councils of churches in New South Wales, Victoria, Tasmania and South Australia had committed themselves to an energetic campaign, which mostly consisted of collecting signatures to petitions, writing to the press, holding public protest meetings, canvassing members of the parliament, and sending delegations to leading government ministers.[3] The organizational initiative remained broadly Protestant and Anglican, although a few Catholic bishops sent petitions to the colonial parliaments on behalf of their flocks, and a few prominent Catholic laymen such as Sir W. P. Manning lent their names to public meetings of protest.[4] In Sydney, Rabbi Davis participated at the public meeting level'[5] while in Victoria Isaac Isaacs, one of the Convention's two Jewish members, who was acting premier while Turner was overseas at Queen Victoria's diamond jubilee, was actually the one to introduce the 'recognition' amendment in the Legislative Assembly. So the campaign, while at its core broadly Protestant, had something of an interdenominational, and indeed at times merely theistic, character.

Why had colonial Protestantism become so intensely involved in this campaign? More specifically, what was the basis of that imperative quality which the campaign held for many Protestant leaders, especially those in the non-conformist tradition? Considerations of public status, of being regarded in the community at large as performing some essential public function, clearly had something – and perhaps at times a great deal – to do with it. While each of the separate colonies, declared the *Presbyterian Monthly* on 1 May, betraying this anxiety, 'has a history which runs back always to some point at which the supremacy of God was acknowledged in some way… [the Commonwealth] will have absolutely no traditions of this kind.' If some 'explicit reference to God in the Constitution was not insisted on,' it warned, 'the omission will in the future be made the ground for asserting that our new Constitution was deliberately founded on the negation of God.' Yet there was more involved than the need to 'belong'.

When in the days of multiple establishment the State recruited non-conformist clergy into its ranks as moral policemen, it necessarily gave them wider scope to exercise themselves on one of the perennially recurring themes of biblically oriented Christianity, namely the total reach of the salvation offered in and through Christ. Salvation, it was natural to say, pertained to the whole of man – of all men, and of every aspect of man, social, economic, political, etc. This overarching concern survived the termination of state aid. 'How', asked a writer in the *Southern Cross* on 4 May, 'can human life be divided into two air-tight compartments… one of which is labelled "religious" and the other "secular"?' To Protestants such as Gosman, Rentoul and Dunstan, what was at stake in the 'recognition' campaign was, on a certain level, public status and political power. The Adventists were right about that. But what the Adventists either failed to notice, or underestimated, was that behind the recurring political involvements of Protestantism was a dream – a dream, nurtured by the entry of the middle classes into the main stream of political life, of the total power of God and the total reach of His salvation, which they would not now willingly give up.[6]

This social concern, as one might expect in such an individualist religious tradition, was often rationalized in terms of a conception of the State as 'an aggregate of individuals, all of them moral, or immoral…'[7] But it was nevertheless fundamentally a concern for society envisaged as a kind of morally responsible *unit*. The State had a conscience, and they, the Protestants, were or ought to be the chief interpreters of the dictates of that conscience. The vote, said Andrew Harper, in *Australia without God*,

> as the symbol of political and social duty, ought to be prized and exercised as a great trust, of which we must give an account to God. The Puritan demand for a State worked in accordance with the divine law of righteousness needs to be renewed.[8]

Sometimes, although not typically, this concern was linked to a kind of racial mysticism, a conception of racial destiny. 'We are one great community,' declared a Protestant commentator on the draft Federation Bill in 1898, 'Christian in faith and British in blood, set

in the Southern Hemisphere… We are, by mere force of our geography, a sort of great missionary outpost… The Pacific is to be our Mediterranean.'[9] 'We do not ask for an elaborate creed', declared the *Australian Christian World*, 'we simply ask the Commonwealth formally to say that God is the great Governor-General.'[10]

Many of the Protestants who were so deeply and passionately involved in the 'recognition' campaign were, in a sense, locked into this commitment by the contrarieties of their recent history. The anguish which conscientious commitment to this extended conception of salvation was bound sometimes to bring to a sensitive Protestant mind is conveyed vividly by the following:

> No wise man… desires to see the Christian pupit turned into a political sounding board, or to have the great themes of Christianity – themes which have the spaciousness of eternity and the seriousness of life and death – thrust aside for the wrangles of secular politics. But if Christianity has no law that is applicable to politics, and no message to men on their national concerns, then it disappears utterly from the great chamber of human life.[11]

The Christian was bound in *conscience* to watch over and care for the *total* welfare of the community. He was, as a Christian, responsible not simply to his fellows but ultimately to God for the material and moral welfare of the community. 'For the condition of this community,' said Harper,

> for its readiness to forget God, for its greed, its vices, its sins, for every unrighteous law, for every unnecessary burden on the poor, for the war of classes, for the evil social conditions which everywhere are marring human lives, for our collective pride, for the base elements in our politics, for all the darker features in the character of this community, we shall have to give an account at the judgement-seat of Christ.[12]

While the Protestant's commitment was at times deeply and painfully felt, and while, given their values and outlook, it was perhaps necessitated by the situation in which they were placed, it remained in certain respects deficient in moral seriousness. Whether through a lack of specificity in the overall vision, or a lack of nerve, or too great care not to jeopardize beyond a certain point the worldly standing they still retained, they steadily sacrificed, at least to outward seeming, the substance of 'recognition' for the mere form. Formalism might have a certain justification. Harper for instance argued that 'while the formalisms of our best moods may lead us into hypocrisy, they yet remain an incitement to aspiration, and an encouragement to us in our sincere moments to aim at an ideal in our conduct.'[13] But more deeply, formalism represented a failure of nerve, or a clouding of vision, or a love of high places in the market-place.

A move in the direction of form and away from substance was evident in the proposed prayers in the 'recognitionist' petitions. There was now, largely perhaps in responses to Barton's criticisms,[14] no reference to Quick's or Glynn's 'invoking' of Divine Providence, nor indeed to any sort of invoking at all. The 'recognition' proposals now being canvassed did not any longer convey or imply that the Australian people, in electorally accepting federation, were in the process performing an act both political and religious. The New South Wales and South Australian petitioners wanted 'acknowledging Almighty God as the Supreme Ruler of the universe'; the Victorian petitions wanted 'in reliance on the blessing of Almighty God'; the Tasmanian petitioners wanted 'Duly acknowledging Almighty God as the Supreme Ruler of the Universe, and the source of all true Government'.[15] Conceptually the change was fundamental. To depend on, to acknowledge, to be grateful to God was to be a religious condition or state, but since such a condition or state was not in itself an *act*, there was no longer an implicit denial of, or retreat from, the secularist viewpoint that religious and secular activity belonged in different although related spheres.

CHAPTER 6
The Adventists Persevere

How did the Adventists respond to the challenge of the revived 'recognition' campaign? Admitting that their task would be even more difficult, they applied themselves nevertheless with resolution and enthusiasm. On the surface their morale was excellent. When the first petitioning campaign was at its height, perhaps foreseeing that their struggle would be a long one, the Adventist central executive telegraphed to A. T. Jones, who had very successfully directed this sort of campaign for the Adventists in the United States, requesting that he come to Australia to assist in 'the present religious liberty crisis'.[1] Jones didn't come, but the suggestion that he should was an indication of the seriousness with which the Adventists regarded their situation. However, a number of Adventist leaders in the Australian field had had considerable experience in the Untied States in the kind of work involved. These included W. A. Colcord, the Religious Liberty secretary, J. O. Corliss, Mrs White, and her son W. C. White.[2]

No less than with the recognitionists, there was an imperative quality about the Adventist campaign. Just as to the councils of churches there seemed a fundamental rightness in any civil constitution 'recognizing' God, so to the Adventists there was in this an equally basic wrongness. Furthermore, to each, the position of the other was not merely incorrect; it was, in some basic sense, odd or contrary.

Separating religion and the State, a columnist in the *Southern Cross* had written on 26 March, with reference to the first petition campaign,

> is a divorce which it passes the wit of man to make. Religion, in a word, is interwoven with human life at every point… society is built on it, and is only possible by virtue of it.

Colcord, in sharp contrast, writing in one of the pamphlets which the Adventists distributed in July and August, saw the matter in this way:

> Civility – or the duty to recognise and respect the natural rights of men as men – belongs to Caesar. Religion – or the duties which men owe to God as Creator and Redeemer – belongs to God, and is to be rendered to Him and to Him only. 'Thou shalt worship the Lord thy God, and Him *only* shalt thou serve.' Religion is not to be rendered to civil government. This being so, with the *subject* of religion civil governments can of right have nothing to do.[3]

The advertises very often did not so much talk to, as through, each other. When this happens, it usually indicates that the disagreement is not solely, or mainly, about the facts or even about value preferences in relation to those facts, but stems rather from different conceptions – differing presuppositions – by reference to which those facts are described or evaluated. Largely that was the case in the continuing conflict between the Adventists and the councils of churches. They never could agree because their *conceptions* of what religion basically was, and of what the State basically was, were in many respects sharply different. The recognitionists, through the mediating concept of morality, typically saw man's relations to man, and man's relations to God, as serially linked within what was to the eye of faith a single ensemble. The Adventists saw man's relations to man, and to God, as constituting two irreducibly distinct ensembles of relations. The two ensembles were related in that God made both, but they were related *as* ensembles, not *within* an ensemble.

The tacts the Adventists relied on basically were an extension of those they already had employed. As before, a counter-petition was circulated, although, since the petitions now were to be forwarded to the colonial parliaments, and since to the Adventists the Adelaide decision constituted a favourable precedent, the text differed in a number of respects. The Adventist petition now asked the colonial parliaments

> *not to pass any Measure or Amendment for the insertion of any Religious clause or Declaration of Religious Belief in the Constitution* of the Australian Commonwealth which might be taken as a basis for such legislation, but that in this respect it be *allowed to remain as framed and adopted* by the delegates to the Adelaide Federal Convention.[4]

Like the recognitionists, although on a smaller scale, they organized public meetings.[5] They sent numerous letters to the colonial press and interviewed such parliamentarians and government ministers as would receive them.[6] A great quantity of pamphlet material was distributed to every member or each colonial parliament. 'Every Hon. Member', remarked a speaker in the Western Australian Legislative Assembly, 'has been deluged by papers from the Australasian Tract Society.'[7] The Adventists were now more open in their approach and it became more widely known that they were the organizers of the counter-petitions. On 31 July a *Bulletin* columnist gave the following vivid but overdrawn portrayal of the Adventist canvassers:

A petition *against* [the 'recognition' proposal] is being pushed around Melbourne, not by Jos. SYMES, or the Anarchist Club, or any disreputable, Unbelieving body, but by – the Australian Tract Society: The Non-Conformist conscience is, in this matter, astoundingly common-sensical, and its arguments are briefly set forth in a tractlet:

The recognition of God is an act of faith
A statement of that recognition is a declaration of faith.
To incorporate in the Constitution of a civil government a recognition of God, or a declaration of faith, is to insert a religious clause.

And so on. A religious clause necessarily tends towards interference with Man's secular right to believe, or disbelieve, anything he chooses, therefore let us keep GOD'S name out of the blessed Constitution, says the Tract Society. It is quite interesting to find citizens of ordinarily modern snufflebustious aspect walking apologetically into city offices for the purpose of explaining that State recognition of GOD is inconsistent with original Christianity. Fat merchants, trading as pillars of their particular churches, stare at the petition mongers with scorn…

On 21 August the *Bulletin* remarked with obvious, if oblique, approval that 'the S.D.A. people [were] evidently "mad only no-no-west"'.

The tractlet referred to was one of two circulated by the Adventists. One had been written by Colcord, the other by Daniels.[8] One hundred thousand were printed and circulated during May, July and August.[9] Furthermore a special ten-thousand edition of the *Southern Sentinel* was printed in July.[10] 'In addition to the circulation given to [The *Southern Sentinel*] by our members', noted the *Union Conference Record*, a journal which circulated only among Adventist members, it was 'supplied to all the members of Parliament in Australia and Tasmania and to about six hundred leading newspapers in the colonies.'[11] There was about the Adventist campaign a professionalism, an efficient adjustment of small means to large ends, which the recognitionist effort mostly lacked. For a church that so rigorously and with such determination believed in the separation of Church and State, the Adventists played politics very well.

However professionalism, or perhaps inspired amateurism, was not now enough to win the day for the Adventists. Although in their petitions to the various legislatures the Adventists obtained the support of about 22300 distinct signatores,[12] the councils of churches, in those colonies in which they organized public petitions – Victoria and Tasmania – obtained about two signatories for every one by the Adventists.[13] Even before the colonial parliaments met, some but not all of the leading secular newspapers[14] and many leading politicians had declared their support for the insertion of some sort of 'recognition' clause in the preamble. Politicians needed to have their ear to the ground. Hence one safely can accept that while the explicit and doctrinaire secularism expressed in the Adventist petitions was electorally popular, the religious formalism lying behind the 'recognition' petitions was even more so.

So it was clear in advance that the churchmen would obtain the backing of most of the colonial legislatures. Yet is was also plain that while their victory was in one way sweeping, it was also a limited one. Their victory would secure for religion some sort of 'place' or special status in the coming Commonwealth. However, those politicians and newspapers who announced their support for 'recognition' usually made it clear that they regarded it as purely formal, and devoid of political implications. These were the terms, and the recognitionists had to accept them, for the size of the counter-petitions made it clear that they had no hope of winning better ones.

The editorial of the *Sydney Morning Herald* for 10 July, in which it announced its support for 'recognition', typified the swing on this question. 'The case appears to be', declared the editorial, 'that a large portion of the people have had their feelings touched.' Since this was so, and since the reference to God was so unspecific that any theist could accept it, there was no danger that its insertion could be employed to stir up 'sectarian controversy'. In other words, 'recognition' offered nothing specific, and threatened nothing specific, so therefore safely could be allowed. Yet the clerics clearly were successful on one point. They had succeeded in carrying a theistic perspective right to the centre of the federation movement. They had had that perspective, and themselves as its especial bearers, accepted as part of that movement. In this respect they had succeeded where Moran failed. Federation was still secular business, but now its tone had slightly changed. At the time of the Bathurst Convention the *Sydney Morning Herald* could afford airily to dismiss the 'recognition' issue as a 'debating society' question. It could no longer do so. 'If the demand [for 'recognition] comes accredited with the support of a large and representative portion of our people,' concluded the 10 July editorialist, with an astonishing turnabout, 'we cannot think that the Convention would be so influenced by the pedantry of secularism as to refuse to give effect to the proposal.'

Nevertheless, there were limits to the conversion of the secular dailies. The editorial columns of the *Age* and the *Argus* simply ignored the 'recognition' issue. However, the following sardonic report on the presentation of 'recognition' petitions to the Victorian legislature, from the news columns of the 30 June *Argus*, captures the flavour of their 'neutrality':

> Honourable members extracted a considerable amount of amusement from the presentation of petitions. Nearly every member of the House had a petition to present from some congregation; several had two, and some even three or more. There was keen competition for turns, and when at least half the members rose to their feet at the same moment each with a long document dangling in front of him, the effect was striking, and a laugh was raised, which was renewed from time to time, until the spirit of frivolity pervaded what should from the nature of the case have been, at least, a grave proceeding.

It was not only the parliamentarians who were being mocked.

Once many of the colonial political leaders had made their peace with the recognitionists, the Adventist view of the situation darkened, although their energy remained undiminished. 'Satan has ever been at work to restrict religious liberty', stated the *Bible Echo* on 9 August, 'and to bring into the religious world a species of human slavery.' And there were, throughout the colonies, humorous other intransigents. To 'claim the authority of God, by the insertion of His name in the preamble', declared an editorial of the *Australian Workman* on 10 July, 'for a Constitution which is, above all things, imperfect, and likely to be subversive of human liberty, is simply to blaspheme. Religion has need of deliverance from its friends.' A fortnight later (one may presume this was one of the journals on the receiving end of the Adventists' distribution of literature) it noted with approval Colcord's statement that 'a religious basis to the Constitution and the laws of the nation would practically disfranchise every logically consistent unbeliever.' The *Hillgrove Guardian* on 17 July warned,

> Grant this recognition of God in our new Constitution, and it is only the thin edge of the wedge towards perpetuating religious strife, and the next step will be in the direction of an established religion with State Aid.

A *Bulletin* cartoonist had similar thoughts. A cartoon of 10 July pictured a group of parsons, portrayed as scruffy and unshaven pirates, driving an enormous wedge into the crack of a door marked 'Parliamentary Government'. Along the thin edge was written 'Recognition of Deity'. On the large end of the wedge, which was about to he struck by a huge ass's jawbone entitled 'Church Militant', was written 'sectarianism'. However, these commentators had become voices in the wilderness. It was quite clear that the next round would be won by the churchmen.

CHAPTER 7
The Debates in the Colonial Legislatures

Although the Adelaide Convention rebuffed the churches on 'recognition', it did agree to include (as Clause 109) Inglis Clark's 1891 provision that 'A State shall not prohibit the free exercise of any religion'. This received little notice in the legislatures. In the House of Assembly of South Australia it was the subject of a short but lively debate, and the House of Assembly of Tasmania proposed an addition to it. However, 'recognition' was discussed in all the participating legislatures, sometimes with acrimony.

In general, the larger the colony, the less the disturbance. In New South Wales and Victoria, perhaps because of their relatively well disciplined party structure, the 'recognition' amendment went through quickly and with almost no debate.

In Victoria the government had pledged its support in advance.[1] Isaacs introduced the amendment in the Assembly in the vaguest of terms, his only substantial point being that in the governor's speech there always was some reference to 'a Higher Power'. Only the irascible and aged radical Francis Longmore created any difficulty. Even so, he did not precisely oppose the amendment. 'I think', he said, 'if we prayed to the devil, we would be more in unison with what we are doing.' He added,

> 'Ye are of your father, the devil', said One who knew. It is just and right on the part of this House to acknowledge the Creator, but it is also just and right for this House to put themselves at one with the Creator by making righteous laws. We do not honour God when we blaspheme his name.

The amendment was carried on the voices.[2] In the upper house, the government leader, Sir Henry Cuthbert, simply noted that 'recognition' had received wide public support and that the Queen's regal power had certain religious aspects. The amendment was accepted without further discussion.[3]

In New South Wales a bipartisan approach was adopted. William Lyne, the leader of the opposition, introduced the 'recognition' amendment in the Assembly.[4] He stressed the political inexpediency of rejecting it, adding that there was no danger in the amendment because it did not apply to any particular religion. When he concluded, a number of members rose to speak, presumably to oppose. But the speaker resolutely decided not to 'see' them, although the Hansard makes clear that he heard them. The amendment was accepted by 62 votes to 7.[5] There was no trouble in the upper house.[6]

In South Australia the debate was livelier. In the 15 July Assembly debate on going into committee, Robert Caldwell, having indicated that he personally supported 'recognition', launched a sarcastic attack on the spiritual bona fides of the churchmen who had organized the petitions and deputations. It seemed, he declared,

> unaccountably strange why all at once such an outburst of religious fervour should glow and burn in the breasts of so many at the same time. But he supposed that if a Jubilee bonfire was lit on the tops of the mountains of New South Wales, the hills of all the other colonies must respond.[7]

Perhaps anticipating difficulties, the government on 15 July deferred the debate on 'recognition' in the lower and upper house.[8] Later in the Council, 'recognition' was accepted without difficulty as having 'no denominational significance'.[9] However in the Assembly it had a stormy passage. One speaker suggested that 'they should keep the State and religion clear from each other'. Another argued that they 'would show the great amount of respect by not placing the words in the Bill'. Supporters couched their appeal, as had Lyne, on purely non-religious considerations. The most interesting speech certainly was that of Sir John Downer, one of the Convention delegates, who on 22 April had voted against Glynn's 'recognition' amendment. Downer declared that he personally was against 'recognizing' God in the Constitution. It was not usual, and while some 'expressed their reverence in words, others simply felt it in their hearts'. However, he respected the opinions of his fellows and would not now opposed 'recognition'. The amendment was agreed to on the voices.[10]

In Western Australia the Forrest government was sympathetic to 'recognition', but did not commit itself. Interestingly, the Council debated inserting the rather unspecific 'acknowledging Almighty God as the Supreme Ruler of the Universe', while the Assembly debated the obliquely separationist 'grateful to Almighty God for their freedom, and in order to secure and perpetuate its blessings'.

The Council discussed the question on 24 August. Richard Septimus Haynes, a strong anti-federationist, declared gruffly that 'recognition' was 'the only portion of the Bill he heartily approved of', and that those who opposed 'recognition' were 'a small and undesirable section'. The only other speaker, George Randell, defended the Adventists, describing them as 'a society of persons' moved by 'some conscientious principle'. However, he dismissed their fear that the federal parliament would be able to pass religious laws if 'recognition' were accepted. The amendment was approved on the voices.[11]

In the Assembly the 'recognition' proposal was introduced by Walter James, one of the Convention delegates, on 24 August. James was apologetic. He was sure opponents of 'recognition' were as reverent as supporters, and he would not propose it if he thought it could be 'a lever of future discord'. However, 'Section 109 was a sufficient guarantee against that.' He added that had the question not been raised, 'perhaps it would be better not to raise it now'. Yet since it had, they should support it so as to avoid the imputation of atheism. Some speakers opposed 'recognition', the most articulate being F. C. B. Vosper. Clerics in politics, he declared, were a danger to liberty. 'Recognition' was 'only the beginning' and by no means the end, so we 'should put our foot down on it at the first'. In a division, 'recognition' was approved by 17 votes to 6.[12]

In Tasmania, the smallest of the colonies, the recognitionists met the strongest and most articulate resistance. Disregarding the West Coast mining areas, Tasmania was more socially conservative and economically static than any of the mainland colonies. Yet there had emerged in the 1880s, chiefly in Hobart, a politically influential network of doctrinaire separationists. Inglis Clark, at this time attorney-general in the Braddon government, probably was its dominant figure.[13] While not numerically large, the group spanned many occupations and classes. In the nineties it was well represented both in the Assembly and the Council. Members of the Assembly who belonged to this group included, part from Inglis Clark, J. B. W. Woollnough, an atypical Anglican minister; B. S. Bird, an atypical Congregational one; John Henry, a former cabinet minister; Neil Lewis, the leader of the opposition; and Nicholas Brown, a former cabinet minister. Members of the Council connected with this circle were Adye Douglas, a former premier, and F. W. Piesse.[14]

On 18 August, in the Assembly, F. Archer briefly moved that before the word 'have' in the preamble there be inserted the words 'duly acknowledging Almighty God as the Supreme Ruler of the Universe, and the source of all true Government'. He hoped the amendment would be accepted without discussion. Sir Philip Fysh, the first speaker, had voted at Adelaide against Glynn's amendment; and in an interview with the Adventists had congratulated them on their work and wished them well. Now, however, he felt he should change his vote 'out of respect to the opinions and conscientious scruples of a large number of his fellow subjects… who were entitled to respect on account of their age, their value, and their opinions, which commended them to all right thinking men.' Inglis Clark strongly opposed the amendment. He pointed out that a large number of signatories of the class to which Fysh had referred had petitioned *against* recognition. He might have agreed with Fysh if the feeling for 'recognition' had been universal, but many were opposed and he did not wish to offend *their* susceptibilities. Indeed those who were opposed and those who were indifferent were a majority. The Roman Catholic E. Mulcahy supported 'recognition' as non-sectarian. It could be acknowledged by the Turk, the Jew, and the Christian. Lewis was opposed. He remarked that the Confederate States had recognized God, and also slavery. Public lip-service was not necessary for acknowledging God. This should be left to men's consciences. The final speaker, Woollnough, stated that they were in parliament

to legislate in order that the lives and properties of the people in Tasmania might be cared for; but… they were not there to legislate in any direction whatever as regards their spiritual welfare. [E]very man's conscience was

free; he had a perfect right to believe what he would. They had no right to compel him to believe anything… the world had suffered quite enough by compulsion. This was merely a small amtter, but it involved a very important principle.

However the recognitionists had the numbers, and Archer's amendment was carried by 17 votes to 3.[15]

In the Council, however, the recognitionists received their soul setback.[16] William Moore introduced the 'recognition' amendment on 19 August. Since 'God presided over their destiny', it was 'the right thin' to acknowledge Him in the preamble. As a concession, however, he would not object to striking out the words 'and the source of all true Government'. Moore was followed by Douglas, Glynn's acerbic critic at Adelaide. Douglas still was strongly opposed. The Adelaide decision had been misunderstood, he said. The omission of God's name sometimes was more reverent than its inclusion. Douglas then continued bitingly, 'Some people had the name of God constantly on their lips, and they were not the best people. His own belief was first in the love of God, and then of one's neighbour. That was enough.' W. Crosby, in support, referred briefly to the enthusiastic praise of God at the recent Record Reign celebrations. Piesse was opposed. 'Recognition' would not help religion, and no one should interfere between a man and his belief. Furthermore the statement that everyone was anxious to recognize God in the desired manner simply was false. Charles H. Grant also was opposed. He alleged that the bona fides of the 'recognition' petitions were dubious. Many had been signed 'by women and children who had done so through persuasion'. More reputable were the signatories of the counter-petitions, who 'were capable of judging for themselves, and had a distinct opinion on the matter'. Finally John Watchorn claimed, correctly but irrelevantly, that 'There was a great preponderance of the petitions in favour of invoking the assistance of God, if not in the number of signatories.' The 'recognition' amendment then was negatived by 5 votes to 4.[17]

Clause 109 met trouble only in South Australia. The main South Australian critics were Glynn and E. L. Batchelor. 'The draftsmen had looked through the American Constitution', Glynn sarcastically remarked, smarting perhaps over his defeat on 22 April, 'to see what they could stick in the Bill, and had picked out a sentence from the first article. Thank you for nothing…' Yet he was not opposed to the idea expressed by the clause 'There were evolutions of public opinion from which the public could not go back. To say otherwise would be to deny permanent civilization.'[18] Batchelor, expressing a viewpoint that eventually would find many supporters, declared the clause 'an insult to the states'. Downer and King O'Malley, however, strongly defended it.[19] They needed, Downer said, a 'guarantee' against reversion to a religious intolerance. Clause 109 was agreed to by the Assembly on the voices.[20]

The Tasmanian legislature was urged by Inglis Clark on 18 August to add to Clause 109 the words 'nor appropriate any portion of its revenue or property for the propagation or support of any religion'. In the brief debate Clarke explained, with unusual evasiveness, that 'The clause as it stood in the Bill, dealt with one state of things, but it did not meet that provided by his amendment.'[21] What he had in mind he later made clear in a memorandum which he forwarded in the Sydney Convention:

> In its present form Section 109 secures religious equality for all the citizens of a State, so far as it prevents the State from placing the adherents of any form of religion under any disadvantage or restriction in the exercise of it in comparison with adherents of other forms of religion; but it does not secure perfect religious equality to all the citizens so far as the granting of any special privileges or favours of endowments to particular forms of religion is concerned. And the object of the proposed amendment is to secure perfect religious equality in bot directions, by preventing any particular benefit or support being given by the State to any form of religion.[22]

The Assembly on 18 August accepted Clark's amendment on the voices. However on 20 August the Council, in a curious pendant to its 18 August rejection of 'recognition', rejected Clark's amendment as well.[23] Yet just this once the Council did not have the last word. The Sydney session of the Convention on 3 September agreed to give consideration to amendments suggested by only one house. So in the end, despite the Council, both Clark's and Archer's amendment qualified for consideration by the Convention.[24]

Overall the treatment of ‘recognition’ in the colonial legislatures was fairly uniform. Those who supported it were, on the face of it, moved by considerations of political convenience rather than intellectual or religious conviction. The idea that God would be dishonoured, or would punish their impiety, was not advanced. They spoke rather of the popularity of ‘recognition’ as evidenced by the petitions, of its harmlessness, of its survival in the trappings of Queen Victoria’s reign, and of its continued embodiment in public documents and ceremonies. Those who opposed it nearly all argued, although with varying degrees of precision, that religion was private and personal, and that religious formalities were out of place in public business. Whereas the parliamentary supporters of ‘recognition’ produced often painfully ad hoc arguments, the critics manifestly shared a *position*. It is hard to doubt that, beneath often clumsy argumentation, the supporters of ‘recognition’ often shared that position too. The strong backing that Inglis Clark received, for his proposal to prevent a State paying money to any church, from a house decidedly in favour of ‘recognition’, scarcely allows any other conclusion.

CHAPTER 8
The Lines Are Drawn

'It is a very significant fact', declared the *Southern Sentinel*,

> …that while many members of Parliament look upon the demand made by the Council of Churches, as a ridiculous, if not positively dangerous experiment, yet they have yielded to their demand in order to avoid their displeasure, and administer a 'soothing balm' to that section of their constituency.[1]

The Adventists wondered how far the politicians would be willing to go.

Since it could not reasonably be doubted that the Convention now would agree to insert a reference to deity into the preamble, the Adventists' only practical resort lay in a revival of something like the suggestion they made in their petition to the Adelaide Convention – that is, that a clause be inserted in the Constitution to ensure that neither the federal parliament nor any state parliament could make any law respecting religion or prohibiting the free exercise thereof.

The Adventists, as early as July, had discovered a powerful secularist ally – the Victorian barrister, Henry Bournes Higgins. Higgins was a senior member of the Victorian equity bar, one of the Victorian delegates to the Federal Convention, a radical democrat, and an influential and respected secularist leader. He had voted against Glynn's amendment at Adelaide, although he did not speak on that occasion. The son of an Irish Methodist minister, Higgins was by now merely a theist. In early life he adhered to conventional Christian views, but was converted from orthodox Christianity through reading George Grote's *History of Greece*. At first a school teacher, he had turned to the study of law, in which he proved very successful.[2] In 1897 he was one of the two members for Geelong in the Victorian Legislative Assembly. He first publicly became associated with the Adventist campaign in connection with a 7 July attempt in the Assembly to prevent him presenting an anti-recognitionist petition. The prayer of the Adventist petition had been printed rather than, as was customary, hand-written. However, the standing orders of the Assembly (although not of the Council) directed that the text of all petitions be written by hand. The objection obviously was harassment by opportunist recognitionists, and Higgins was annoyed. On 14 July he moved, and by 41 votes to 25 the Assembly agreed, that the select committee on standing orders consider the advisability of receiving printed as well as written petitions.[3]

When, early in September, the Convention reconvened in Sydney, Higgins had in some measure become the agent and ally in the Convention of the Adventists' counter-campaign. It probably was at some point during the Sydney session, which was relatively short because the Victorian elections were to take place in mid-October, that Higgins placed on the notice paper a proposal to amend Clause 109.[4] The clause, as he proposed to alter it, would read,

> A State shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or imposing any religious test or observance.

The relevance of this amendment to Adventist fears of persecution on the Sunday issue was obvious, as was also its relevance to devotees of the 'Continental Sunday'.

Becoming clear at this stage was the structure of the controversy between the recognitionists and their opponents. Each side probably would need to concede something, while striving to minimize that concession. The decision of the Sydney session to postpone consideration of the preamble until after the other clauses of the draft had been debated should be seen partly in this light. Those whose first priority was the federation cause itself no doubt hoped that some mutually agreeable arrangement could be negotiated behind the scenes. Another factor in the postponement may have been the sheer variety of amendments proposed. That both parties expected now to proceed mainly by informal negotiation rather than by public confrontation is indicated by the greatly reduced tempo of public activity on the issue. There was, at both the Sydney and Melbourne sessions, little

'recognition' petitioning[5] and no counter-petitioning at all. Each side essentially had made its political point.

However, Higgin's personal involvement with other aspects of religio-political controversy in this period was far from diminishing. No sooner had he returned to Victoria to conduct his re-election campaign, than he became acrimoniously involved in a dispute with the National Scripture Education League. A study of what took place will throw light on two crucial issues. The first is the question of what Higgins thought some clerics really were up to in the 'recognition' campaign, and the second is his broad conception of what should be the proper relation between the churches and the State or, more broadly, between religion and government.

In order to understand the conflict between Higgins and the Scripture Education League, one must say something about the previous activities of the League, and also about the political situation during the 1897 election campaign. Victorian state schools legally had been 'secularized' by the 1872 Act. By the eighties this secularization had proceeded so far that the official school reader excluded every religious reference, even the name of Christ. However by 1893, by a resolution of parliament, 'the name of our Lord and Saviour' was brought back into the reader.[6] In 1895, Alexander Peacock, the minister of public instruction, introduced the *School Paper*, which combined 'moral improvement' with undenominational Christian elements.[7] In July 1896, George Graham, acting on the League's behalf, introduced in the Assembly a Bill authorizing a plebiscite on the issue of whether the explicitly Christian Irish National Scripture Lesson Books should be used in the state schools. The League claimed to have received forty written and twenty verbal pledges of support from members of the Assembly.[8] Graham found however that 'a very grave misunderstanding existed among honourable members and, in fact, the community at large, as to the object of the Bill and as to the books referred to in the Bill.' He could obtain scarcely any parliamentary support. Many members who had given pledges declared that the books they had undertaken to support were the religiously innocuous Irish National Readers, rather than the Irish National Scripture Lesson Books.[9] Also the overwhelming defeat of a similar proposal in a recent South Australian referendum had since become known, and it was clear that the League's case was likely to be a loser. There for a while the matter rested. However, by mid-1897 the League had set in motion a new campaign. This time they did not seek a plebiscite, but simply that parliament authorize the use of the Irish National Scripture Lesson Books during school hours in state schools. The eventual objective probably was to Protestantize the state schools.[10]

The focal point of the campaign was the October election, and the League's strategy was to obtain 'signed pledges' from voters *not* to vote for any candidate who would not undertake to support the League's request in parliament. The test of the pledge was:

> I approve of the introduction of scripture lessons into the State school course, in the form of extracts known as the Irish National Scripture Lessons Books (with a conscience clause as in New South Wales), and I pledge myself to vote for no candidate at the forthcoming general election who will not support this platform in Parliament.[11]

League pledge gatherers were active in many constituencies; however many candidates, including the premier, Sir George Turner,[12] refused to give the required undertaking. In political terms this was not necessarily foolhardy, since in place of the Protestant votes such candidates would lose they stood to gain both the Roman Catholic and the secularist vote. In Higgins's own electorate the League was particularly active. According to Higgins it obtained about fifteen hundred pledges.[13]

Higgins, as an outspoken secularist and one of the more trenchant critics of the 'Bible in state schools' movement, was a special target of the League. He did not, he told the Geelong electors on 1 October, 'want the people of Victoria to forget the difficulty they had to getting free, secular, and compulsory education.' He was willing to allow, as a concession, that accredited clerics or lay religious instructors be permitted to enter the school in school hours to offer doctrinal instruction to the children of their particular denomination. But he would tolerate no substantive nexus between the state school, as

such, and any religious viewpoint. 'They should', he told the electors, 'open the windows to all denominations, but on no account should they endeavour to put in any particular kind of air or light through those windows.' They were, he further asserted, now faced with a clerical conspiracy:

It was not a time to flinch the subject. They would have to be frank and out with their objection. (Cheers.) There was more in the proposal than they thought in regard to the teaching of the scripture lessons. It was the thin edge of the wedge. That was shown by Mr. Robert Harper, brother of Professor Harper, when he acknowledged that the modicum of religious instruction was small, and failed to meet the objective intended, and added that it was meant to break the extreme secularity of the education system.

Provocatively he also told the electors that he

remembered a passage in one of the gospels where Jesus Christ addressed one of his disciples 'Simon, son of Jonas, lovest thou me?' and Simon said 'Yea, Lord, thou knowest I do.' And Jesus said 'Feed my lambs.' What did they think of the alteration at the present time when those who professed to be his disciples, said 'Let Caesar teach the lambs'? (Cheers.) What would those proud men of the theological halls say to that?[14]

The picture that emerges is one of considerable and personalized hostility between Higgins and the League or ultimately, since the League was virtually a subcommittee of the Council of Churches, between Higgins and the Victorian Council of Churches. Higgins believed that a group of militant and resolute Protestant churchmen were engaged in a long-term campaign to protestantize the state schools. One can see Higgin's point: there was, or appeared to be, a pattern to Protestant political activity. First, in 1893, the names of God and Christ had been brought back into the schools. Then, in 1896-7, citing the need for greater 'recognition' of God in state schools, the League vigorously demanded that the scriptures themselves become part of the state school syllabus. The 'logical' next step was Protestantization.

How does the foregoing 'pattern' assist an understanding of Higgin's thinking on the 'recognition' issue? Higgins told the Geelong electors that

a few men had taken up the [recognition question] with a defined object, and he would have preferred them to have had more candour. Their object was not to have respect or reverence to the Almighty… the object… was to bring about religious oppression…[15]

What did he mean? The above analysis gives the clue. What, in Higgin's view really was happening was that, just as 'recognition' in the colonial sphere had been the initial 'wedge' in a Protestant plan to desecularize the state schools, so too in the federal sphere, would it be the 'wedge' for achieving desecularization there. In the former case the clerics' ultimate aim was the linking of religion and the State in the state schools; in the latter their ultimate aim was the linking of Church with Commonwealth, largely through the institution of some form of nation-wide Sunday observance.

Yet Higgins was not opposed to 'recognition' as such. As in the 'Bible in state schools' controversy, he was willing to make small concessions. Higgins told the Geelong electors that with 'proper safeguards' he had no objection to pleasing those people who wanted some reference to the Almighty in the preamble.[16] However, the key words are 'proper safeguards'. What did he have in mind?

To find out how Higgins planned to 'open the windows to all denominations', while not putting 'any particular kind of air or light' through those windows, one must look elsewhere. Specifically, one must look to the Melbourne Convention debates on 7 and 8 February and 2 March 1898.

CHAPTER 9
Disaster for Higgins

Clause 109, which provided that 'A State shall not make any law prohibiting the free exercise of any religion', came up for further consideration on 7 February 1898. It had been recommended by the constitutional committee at Adelaide, and so far had attracted little comment or criticism. At Adelaide the Convention had simply accepted the recommendation, while in the colonial legislatures it was criticized but once. The only positive recommendation was the proposal made by the Tasmanian House of Assembly, but rejected by the Legislative Council, that there be added the words 'nor appropriate any portion of its revenue or property for the propagation or support of any religion'.

On 7 February however, the picture startlingly changed. Higgins, as noted, had proposed to extend the reach of Clause 109 to the Commonwealth, and to strengthen its terms by making it also prevent either the Commonwealth, or a state, from imposing any religious observance or test. However, at about this time he evidently became dissatisfied with this proposal too. It emerged, by 8 February, that he wished for the moment to drop the reference to religious tests, perhaps to introduce it later. He also wished to add a further prohibition, binding on states and Commonwealth, which would prevent the establishment of any religion. The Tasmanian, Sir Edward Braddon, had an amendment too. He wished to add to Clause 109 'some such words' as 'but shall prevent the performance of any such religious rites as are of a cruel or demoralizing character or contrary to the law of the Commonwealth'. Finally, Josiah Symon from South Australia wished to scrap Clause 109 altogether and to replace it with 'No religious test shall be imposed as a qualification for any public office of trust in the Commonwealth or in a state.'

Higgins, perhaps because his initial amendment had been on the notice paper longest, introduced the debate. What followed was, for the participants, rather confusing. Partly this can be explained by the sheer variety of the ideas that had emerged a to what the Convention should do about the clause, partly by certain tensions relating to the 'states rights' issue which had arisen during the days immediately preceding, and partly by the imprecise and confusing way in which Higgins introduced his own amendment.[1]

Higgins began by claiming that Clause 109 did not go 'far enough'. '[T]he matter' needed to be dealt with 'because a strong effort has been made to have a reference to the Almighty inserted n the preamble'. While to some the notion of prohibiting the establishment of a religion was 'idle at this time of day', it was 'not idle in the eyes of a number of people whose votes we would like to secure for the Constitution'. If God were 'recognized', a large number of good people would need to be reassured that 'their rights with respect to religion [would] not be interfered with'. The South Australian John Gordon here interjected, asking Higgins what his amendment was and Higgins surprisingly, since a moment earlier he had referred to the need for a 'no establishment' provision, replied by citing without any explanation his *original* amendment – the one which contained no reference whatever to establishment.

Higgins then alleged, '[T]he recognition of God was not proposed merely out of reverence; it was proposed for distinct political purposes under the influence of debates which have taken place in the United States of America.' N 1892 the United States Supreme Court had

declared that country 'a Christian country', and this declaration had given rise to an intense political campaign to 'impose… a compulsory Sabbath all through, in, and upon every state, and a lifting of the banner of those who opposed that movement'. He would have preferred to rest on the fact that the powers of the federal parliament were limited, and that parliament had no power to do anything except that which was expressly permitted or, by implication, necessary. Yet experience showed that the presence of a declaration of a religious character in the preamble might form the basis for attempts to pass legislation 'of a character which I do not think we intend to give the Federal Commonwealth power to pass'.

Higgins thereupon made a statement, whose motivation and sincerity is difficult to gauge. 'I think', he said, that 'whatever is done in this matter, if anything is done, ought to be done by the states. I do not think that we ought to interfere with the right of the states to do anything they choose, if they think fit to do anything.' On the surface no difficulty exists. Higgins was saying that it only was the Commonwealth, and not the states, which he really was concerned to prevent from passing laws to prohibit the free exercise of religion, or to establish any religion, or to impose any religious observance. It is a point which Higgins was to make several times in this debate and also in the 2 March debates. The difficulty however is that Higgins, in a letter to the Adventist W. A. Colcord a few weeks later, suggested that it w*ould* have been desirable had the clause (by then accepted by the Convention) which prevented the Commonwealth from legislating in relation to religion, also prevented the states from doing so.[2] The problem is, did Higgins, despite frequent Convention statements to the contrary, really wish to prohibit only the Commonwealth from legislating in respect to religion? Possibly Higgins was seeking to mislead Colcord, although it is hard to see why. However, if one assumes for argument's sake that Higgins *did* wish to apply his amendment to the states as well as the Commonwealth, and if one asks whether any particular circumstance on 7 and 8 February might have discouraged him from pushing the application to the states, light perhaps dawns. During the preceding few days, specifically in the debates concerning conciliation and arbitration in relation to interstate commerce, and the 'rights' of New South Wales and Victoria to the Murray River waters, a distinct anxiety had emerged among many delegates over endangering states rights.[3] On 7 and 8 February, Clause 109, a clause placing a prohibition on the states, would have been likely to provoke 'states rights' fears. The *Age* indeed remarked that there was at this point a 'general hostility' to attempts to limit the existing rights of the colonial governments.[4] So perhaps Higgins, by indicating willingness to allow the application to the states to slide, had thereby been hoping to save the prohibition on the Commonwealth.

To return to Higgin's speech, moving from his effort to conciliate the 'states rights' element, Higgins made a friendly overture to the recognitionists. He reiterated the offer made a few months earlier in Geelong, that if proper safeguards were included, he was himself willing to vote for 'recognition'. He then suggested that 'in these days' there was a tendency for governments more and more, and in all sorts of directions, to interfere with a man's actions. '[I]t is not at all clear', he added, 'where the line will be drawn.' 'If we interfere with a man's action in his economical relations, it will be hard to draw the line and say that he is not bound to act in a certain way with regard to religious observances.' Therefore, to reassure those who objected to 'recognition', let the Convention draw that line now. He concluded by suggesting that his original amendment would need to be

qualified in some way because the prohibition on 'any religious test' was in one respect defective: it would voice the imposition of the ordinary oaths in the courts and elsewhere.[5]

The day's discussion was now drawing to a close and, in the few minutes remaining, Braddon announced that he had a Tasmanian amendment, Inglis Clark's, and also one of his own – the one he had foreshadowed at the beginning of the debate.[6] Braddon was concerned at the possibility, on his reading of the 'free exercise' provision, that 'it might make lawful practices which would otherwise be strictly prohibited'. He cited as examples the 'suttee' and the 'churuck' of the 'Hindoos', 'one meaning simply murder, and the other barbarous cruelty to the devotees who offer themselves for the sacrifice'. Braddon may genuinely have been concerned. But when one notes that he later in the debate made no attempt whatever to support Clark's amendment, that the original 'free exercise' clause had also been Clark's, that in October of the previous year Clark had resigned from Braddon's cabinet, alleging among other things improper conduct by Braddon, and that shortly afterwards Clark became leader of the opposition, it is possible to wonder whether Braddon was also moved by personal considerations.

The next day Higgins produced no modification to solve the difficulty over the 'religious test' provision. He brought forward instead a substantially altered amendment containing no reference to religious tests, but to which a 'no establishment' provision had been added. These alterations made the proposed clause read,

A State shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or for the establishment of any religion, or imposing any religious observance.

This chopping about could scarcely have helped Higgins. After the tiring days recently spent by the Convention on the rivers question, Higgin's rambling approach may well have caused irritation.

As soon as Higgins announced his new amendment, Richard O'Connor, the New South Wales Roman Catholic delegate, introduced in an interjection what soon became one of the main criticisms of Higgin's proposal. O'Connor indirectly suggested that the application of the clause to the Commonwealth was unnecessary, since the Commonwealth lacked any power to make laws relating to religion anyway.[7] Higgins in reply said it was not uncommon in the United State for 'inferential powers' to be deduced very largely from 'single expression', and suggested that a 'recognition' declaration might be used in the same way in Australia. Then planning to put his amendment part by part, he formally moved 'That the words, "nor shall the Commonwealth" be inserted after the word 'not".[8]

Now the attack began in earnest. As Colcord, who may have been a spectator, wrote to Higgins a couple of days later, '[It] seemed you stood almost if not quite along.'[9] The first critic was the South Australian, Gordon. 'So long as the prohibition only extends to the mere mental exercise of faith', he said, 'I am with Mr Higgins.' But then, developing Braddon's criticism, he suggested that some exercises of faith were objectionable from a sociological point of view. He cited the case of certain faith-healers in Wales who, properly in his view, had been punished by a United Kingdom court for acting on the belief that the cure of the sick should be made, not a matter of medical advice and medicine, but a matter of faith and prayer.[10]

Symnon, the next speaker, another South Australian, agreed with Gordon and developed Further criticisms. More precise than Gordon, he pointed out that, strictly speaking, Gordon's fears would only be realized if the prohibition applied *both* to the Commonwealth and the states. But in neither case, he considered, as a prohibitory clause desirable. With respect to the states, the clause was objectionable in that it was 'an interference with the legislative authority of the state itself'. As regards the Commonwealth,

> We are living in a very advanced age, not in medieval times, and there is no necessity for a prohibition of this kind, but if there be a prohibition there should also be a provision stating what is meant by religion, what is meant by free exercise.

It would, he said, be better to do away with this clause altogether and limit the prohibition to the prohibition of any religious test. Higgins, thinking no doubt of the Adventists, then asked Symon if he would support a prohibition on imposing any religious observance. Symon, without explanation but possibly because he considered that they were not living in 'medieval times', replied that this went 'too far'. He concluded by affirming that his own amendment effectively committed the Commonwealth to the principle that

> [R]eligion or no religion is not to be a bar in any way to the full rights of citizenship, and that everybody is to be free to profess and hold any faith he likes; but the Commonwealth must be the judges of when it is proper to interfere with its open exercise.[11]

Symon was followed by a third South Australian, Dr John Cockburn, who regarded the 'whole clause as an anachronism' and argued that the states, under the Commonwealth, should have 'the same rights of self preservation' as the colonies then had. There was 'no atrocity which the human mind can devise which has not at some time or another been perpetrated under the name of religion'. He then in effect claimed that if the prohibition on the states in regard to religious observance were inserted in the Constitution, 'it would prevent a state from making laws against Sunday trading'. Higgins replied, 'No; it would only prevent the making lf laws for a religious reason'. Cockburn then wondered how the state's intentions could be discovered, and suggested that the amendment 'would simply prohibit the enactment of these laws'. Higgins, presumably seeking to cut his losses, replied that it was his 'desire' to 'prevent the Federal Parliament from dictating to the state in these matters'.[12]

Edmund Barton, the leader of the Convention, spoke next, and he spoke strongly against both the original clause and Higgin's proposed amendments. It can be inferred from Barton's speech, especially from his reference to a handbook Higgins had loaned him, that Higgins before the debate had sought and failed to obtain Barton's support. It can also be suspected, on the basis of some remarks of Higgins in an address to the electors of Geelong a couple of months later, that it was in fact Barton, who in his way was quite as resolute a separationist as Higgins, who was chiefly responsible for Higgin's defeat in this debate. Higgins two months later told the Geelong electors,

> I even succeeded in carrying, on my own motions, clauses which I am amused to find Mr Barton now referring to as inducements to accept the Constitution. But he spoke against them, and he voted against them. I refer, for instance, to the power given to the Federal Parliament to legislate for conciliation and arbitration in labour disputes extending beyond the limits of any one State. I was beaten in Adelaide, but I succeeded in Melbourne, in the face of Mr Barton's opposition; and I now find Mr Barton referring to the clause as a valuable and attractive provision. I may also refer to the clause which prohibits the Federal

Parliament from imposing religious observances or interfering with religious liberty. Mr Barton did all that he could against it, and he could do a great deal as Leader of the Convention.[13]

Higgins here is referring not to the debates on 7 and 8 February but to the 2 March debate on the clause (then 109A) which now stands as Section 116. But if that was Barton's attitude on 2 March, it certainly would have been his attitude on 7 and 8 February and during the days immediately preceding. Part of the basis of Barton's antagonism may have been Higgin's increasingly evident hostility towards the Bill.

Barton declared that it scarcely was conceivable that the insertion of a provision in the preamble acknowledging the existence of the power of the deity 'could ever induce the High Court or the Court of Appeal' to hold that that imported a power to do anything. He added that 'under a Constitution like this, the withholding of a power from the Commonwealth is a prohibition against the exercise of such a power'. Then, puzzlingly, he stated in reply to a question that if Higgin's amendment were accepted, the clause would read, 'A State shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or imposing any religious test or observance',[14] which makes one wonder whether the Hansard reporter was dreaming, or whether Barton came late to the session that morning!

However nothing was said, and Barton returned to the prohibition on the states. Here he saw no unfortunate consequences although he warned that 'humanity has a habit of throwing back to its old practices'. He then pointed out, but not altogether clearly, a difficulty involved in any attempt to guarantee the free exercise of religion:

[T]rouble arises when you try to insert a proviso modifying this prohibition. For instance, if it were desired to prevent the application of the clause to any fiendish or demoralizing rite, that might be done by inserting the words 'so long as these observances are [not?] inconsistent with the criminal laws of the state,' because if there were no criminal law in existence at the time with which these observances were inconsistent, it would be impossible for the State to pass such a law, and so, to use a common expression, euchre the whole business.

'I think, however,' he concluded, 'that we can do remarkably well without the clause at all.'[15]

Sir John Downer broadly followed the lines of Barton's argument. The main interest of his speech was that he provoked Higgins categorically to say that he was 'willing that the prohibition should extend only to the Commonwealth'. Braddon then briefly spoke, declaring that, even with the qualifications he earlier suggested, some deplorable religious excess might 'make us regret that the clause was ever put in the Bill'. He preferred to see it struck out.[16]

Higgins again addressed the Convention. All he sought now was the prohibition on the Commonwealth: '[The] importance of preserving to the state the residuary power is overwhelming.' He repeated his former arguments and added a brief analysis of how the terms 'promote the general welfare' in the preamble of the United State Constitution, coupled with certain statutory powers, 'have extended the power of the [American] Commonwealth hugely'. In conclusion he stated that the prohibition on religious observances would not prevent the imposition of a day of rest. It would 'simply prevent the imposing of a day of rest for religious reasons'.[17]

That perhaps seemed straightforward. The trouble was, from a debating viewpoint, that it was not the view the Adventists themselves took. In their view it was beyond the *province* of the State to direct a person not to work on the Sunday.[18]

The right to work, they believed, like the right to life, liberty, and the pursuit of happiness, was God-given. Human governments were instituted solely to protect people in the enjoyment of their rights. A person might *choose* to rest on that day, or any other, but the State had no business penalizing him if he didn't. Unfortunately for Higgins, the last speaker, Sir Joseph Abbott, was aware of the Adventists' by now well publicized views on this matter. 'I believe they are earnest, good people,' he said, 'but, in defiance of our laws, they persist in working on the day we set aside and call Sunday.' With effective brevity he represented the Adventists as having set at defiance both the sovereignty of parliament, and also those concerned to preserve the 'sanctity' of the Sabbath.[19] The *Sydney Morning Herald* correspondent claimed that this speech 'sealed [the] fate' of the amendment.[20]

Higgin's amendment was put, and negatived on the voices. The Tasmanian amendment (Clark's) – such perhaps was the strength of 'states rights' feeling – found not a single supporter among the Tasmanian delegates. It also was negatived on the voices. Braddon and Symon declined to put the amendments they had foreshadowed on the previous day. Finally Clause 109 itself was put and was rejected on the voices.[21]

So Higgins failed totally. Partly this must have been the effect of a 'states rights' backlash, partly, one must suspect, a result of Barton's manoeuvring behind the scenes, and partly a consequence of Higgins's ineffective management of his own amendment. Except in Abbott's speech, there was almost no suggestion of clerically inspired opposition to Higgin's proposal to prohibit the Commonwealth, and perhaps originally the states, from imposing any religious observance, or establishing any religion. One can assume that this opposition was in some degree present and that it showed itself in the final vote. Yet why *should* it display itself when a powerful *anti*-recognitionist group was so vigorously opposed to Higgins? Among Higgin's critics, Barton, Braddon, Cockburn, Downer, Gordon, O'Conner, and Symon had all voted against 'recognition' in Adelaide. It was a prominent section of the federal-level *separationist* group which, perhaps inspired by Barton and differing from Higgins over means rather than ends, defeated Higgins.

The clerics of course were hardly displeased. The *Presbyterian Monthly*, commenting on the Convention's refusal constitutionally to prevent the imposition of religious observances, remarked (giving a clue to the thinking of some of the Convention 'recognitionists' who so discreetly and effectively kept silent on 7 and 8 February) that,

> It was felt that [the prohibition on imposing religious observances] might be used to prevent a State Parliament, or the Federal Parliament, from opening their meetings with prayer, or arranging on suitable occasions for acts of public worship. By the rejection of the clause a Christian nation is left free to given expression to its religious convictions as may from time to time seem best.

The *Presbyterian Monthly* went on to 'observe with pleasure' that Higgins declared himself in favour of inserting an acknowledgement of God in the Constitution. 'This', it purred, 'is all that is necessary.'[22]

CHAPTER 10
Glynn's Triumph

On the morning of 2 March, the preamble once more came up for consideration, and Glynn once more moved a 'recognition' amendment. His proposal, now more moderate than at Adelaide, was to amend the preamble to declare that the people of the various colonies 'humbly relying upon the blessing of Almighty God' agreed to unite in one indissoluble federal commonwealth. Glynn, in his diary entry for that evening, remarked that 'the words were settled after consultation with the drafting committee [which consisted of Barton, Downer and O'Connor] and reference to several other members of the Convention.[1] There may have been difficulty in agreeing upon a formula.

Glynn, a Roman Catholic, probably was put forward once more by the recognitionists because, as a Catholic, he gave the cause an interdenominational aura. He was by profession a barrister. Privately he sometimes had intellectual doubts about his faith. He had a taste for Shakespeare, and a sensitivity to the resonance of words and things.[2] He was also, as his private diary shows, a dry and amused observer of mankind. In the entry for Christmas Day 1897, for instance, he had reflected,

> One cannot moon life away – in actions being is man's scope and duty. Yet what is duty? Are there any obligations not transitory, ore relative to accidental phases of existence; any that relate to an external morality or righteousness, and which, apart from self regarding aims, call for personal sacrifice. The desirable, and best in the end, may come from each following his personal bent; for prudence enforces the exercise of altruistic impulses to an extent that renders healthy egoism workable. The world is largely governed and deceived by phrases.[3]

Or again, one Sunday evening in Adelaide a few months later, he wrote of the churches pouring out 'their contingents of festive and jaded respectabilities'.[4]

So now, on the morning of 2 March, he was trying again, and this time with very prospect of success. Some delegates, he knew, would still oppose him, but that would be only for honour and consistency's sake. He spoke more briefly than at Adelaide, and without classical allusions, but still ornately. The arguments were similar. The amendment was 'simple and unsectarian', and would recommend the Constitution to thousands to whom the rest of its provisions 'may forever be a sealed book'. It was consonant with our 'ceremonial life', and because it was so unspecifically theistic and therefore could be appropriated equally by adherents of many different creeds, it would become the 'pledge of religious toleration'. He asserted that 'the stamp of religion is fixed upon the front of our institutions', and that it is religion, and not 'the iron hand of… law, that is the bond of society'. Religion, he added, turns discord to harmony 'and evolves the law of moral progress out of the clashing purposes of life' (which was not, one may note, quite what he said to his diary on the previous Christmas Day). Then, momentarily drawing a veil from inner incertitude, he also reminded his fellow-delegates,

> Say what they will, there are moments, short though they may be, when the puzzle of life and destiny staggers the sense, when the shadow is cast and obscures the vision, and the best of us feel our weakness and loosening grip of the unseen. Then it is that the symbols of faith and reverence attest their power and efficacy, and brace the reeling spirit with a recovered sense of the breadth and continuity of man's consciousness of an inscrutable Power ruling our lives.

In conclusion, he hoped that in his proposal 'faith [would] find a recommendation, and doubt discover no offence'.[5]

The next speaker was Higgins. At Adelaide he had voted against 'recognition'. Here also he regretted he would have to do so. The wording was not now 'quite so objectionable' but since the Convention had declined to provide a sufficient safeguard against the passing of religious laws by the Commonwealth, he still was not able to support Glynn's amendment. He hoped he would afterwards be given an opportunity to explain to the Convention 'how exceedingly important' such a safeguard was, and to present a modified version of his earlier proposal. He then returned to a consideration of the American precedent which he had discussed on 7 and 8 February, and once more analyzed its implications as before, his argument was that, following the Supreme Court decision in 1892 that the United States was 'a Christian nation', even the *absence* of any recognition of deity in the preamble of the United States Constitution proved no bar to Congress passing a Sabbath law. On the face of it, Congress had no power to pass such a law. Yet it had done so. Higgins once more criticized the movies of the organizers, although not the rank and file, of the 'recognition' campaign. The main leaders had known of the course of the American struggle but had not 'told the people what the course of that struggle is, and what the motive for these words is'. All that he wanted now was a clause preventing the Commonwealth passing religious laws. 'I want to leave that as a reserve power to the state, as it is now.' Lyne interjected, asking where the danger was. Higgins in reply stressed his 'states rights' bona fides:

> The point is that we are not going to make the Commonwealth a kind of social and religious power over us. We are going into Federation for certain specific subjects. Each state at present has the power to impose religious laws. I want to leave that power with the state; I will not disturb that power. But I object to give the Federation of Australia a tyrannous and overriding power over the whole of the people of Australia as to what day they shall observe for religious reasons, and what day they shall not observe for that purpose.

He concluded with the essentially voluntaryist declaration that 'the Christian or religious observance is no good if it is enforced by law.'[6]

Quick, who unsuccessfully had sought to persuade the constitutional committee at Adelaide to accept the 'recognition' amendment, then spoke. He 'for one' disputed the realism of Higgin's warning. If Congress could pass a 'Sunday observance' law in the absence of a 'recognition' clause in the United States Constitution, 'what further danger will arise from inserting the words in our Constitution?' He did not see how, 'speaking in ordinary language' the words 'humbly relying on the blessing of Almighty God' could possibly lead to the interpretation that 'this is necessarily a Christian country'. It could be subscribed to 'even by Mahomedans'. Recognition of deity in the preamble, he continued, 'will not necessarily confer on the Federal Parliament power to legislate on any religious matter'. There 'may', he added, 'be reasonable grounds' for doubting the constitutionality of the congressional law in question. He concluded by challenging Higgins to name any 'clause' in the Bill that would authorize religious legislation. Altogether – with its 'possiblys' and 'mays' – an evasive contribution from the future co-author of the *Annotated Constitution of the Australian Commonwealth*.[7]

Barton followed with a careful speech. At Adelaide he had spoke strongly against 'recognition'. He began now by stating that the form of 'recognition' proposed by Glynn

was ‘the least objectionable which could be devised’. But he still opposed ‘recognition’. ‘I have all along thought’, he said, ‘that it is, to a certain extent, a danger to insert words of this kind in the preamble.’ Higgins, he declared, in something of a reversal of his position of 8 February, ‘has clearly put before us the difficulty which arose in the United States’. Quick’s counter-arguments did not, Barton believed, stand up. If there was a danger of religious laws even in the absence of the recognition of deity in the preamble, ‘that danger, by every consideration of experience or common sense would be increased by putting in [such] an express amendment’. However, he then criticized, as in itself untenable, the mode of argument employed by the United States Supreme Court in the case in question. He concluded by declaring that legislation in regard to religious matters should be left entirely to the states.[8]

Lyne then spoke. It will be recalled that he proposed the ‘recognition’ amendment during the New South Wales Legislative Assembly’s discussion of the Adelaide draft. He declared that for him the key question was whether ‘recognition’ would enable the Commonwealth to interfere with the states in religious matters. On the basis of American precedents, he thought it likely that even without ‘recognition’ the Commonwealth parliament could legislate as Congress had done in 1892. But ‘remembering that the Federal Parliament will represent the various states to a very great extent’, he considered Higgins’s fears untoward. ‘I suppose’, he concluded, ‘none of us pretend to be actuated on a question of this kind other than by sentiment – but I feel convinced that the insertion of this amendment in the preamble will influence a large number of votes in favour of this Federation Bill.’[9]

The Tasmanian Adye Douglas spoke next and was no less scathing than at Adelaide. Up to this point the tone of the debate had been restrained. Douglas now sharpened it. The words of the amendment would do not good; they would not make the people more religious. While ‘we all rely upon… God in our daily transactions, we do not talk about it.’ Doing so tended merely to make a mockery of religion. At one time they had used the Lord’s Prayer in the Tasmanian Legislative Council, but it had become ‘a matter of such indifference that the custom was given up’. He asked whether they had prayers in the parliament in Victoria. Alexander Peacock replied that in the Legislative Council the president read the Lord’s Prayer, and Deakin, apparently infected by Douglas’s tone, added, ‘And nearly all the members know it now.’ Douglas then affirmed that he was ‘ordinarily as religious as any member of this Convention’, but added, ‘I do not make a parade of it. I take my Sunday walks, but I do not do as the Quaker did, who said to his assistant – “John, if you have sanded the sugar and wetted the currants, you can now come in to prayers.”’ This at last provoked a response:

Mr. Walker – It was not a Quaker who said that.
Mr. Douglas – Well, it was somebody like the honourable member, then.
The Chairman – Order.[10]

Douglas then suggested that there were so many varieties of Christianity, not to mention other religions, that the words of the amendment could have no clear sense. ‘I want to be sincere’, he continued, ‘and I do not want to make the people believe by going into the street and saying – “I am a religious man”, that, therefore, I am a religious man.’ He concluded by asserting that the Convention, in considering Glynn’s amendment, was ‘travelling out of the range of the purpose for which we were sent here’.[11]

Douglas was followed by Downer. Since, he said, it was the law of England that the Australian colonists had brought with them, and since the Christian religion was obviously even more a part of the law of England than it was a part of American law, there was even *more* reason in Australia than in America specifically to prohibit the Commonwealth from making religious laws. Downer clearly had changed his mind since the 8 February debate. 'I would suggest to Mr. Higgins', he stated, no doubt considerably to Higgins's gratification, 'to seriously consider whether it will not be necessary to insert words distinctly limiting the Commonwealth's powers.' Indeed, Downer continued, even if the words of Glynn's amendment were not inserted, it still would be necessary expressly to limit the legislative power of the Commonwealth in regard to religion.[12]

Reid concluded the debate by briefly noting, perhaps in consideration of the fact that it always was a point with him to get on well with churchmen when it cost him nothing, that he wished to support Glynn's amendment.[13] Glynn's proposal then was agreed to on the voices.

So the churchmen, at least formally, had made their point. Now in return they were morally obliged to recommend to their people that, in the coming referendum, they vote for the Federation Bill. They were not however altogether happy about certain features of the debate. The *Presbyterian Monthly* gently chided Downer. It regretted his statement that 'the piety that is in us must be in our hearts and not on our lips'. It also noted with regret 'that Mr. Higgins was… among the opponents' of the clause: 'We expected better things of him'. Douglas was severely reprimanded.[14] However, it was not simply Downer, Douglas and Higgins who from the clerical viewpoint had behaved disappointingly. It was clear that the support of nearly all their political 'friends arose merely from considerations of expediency. As the *Argus* remarked, those who supported Glynn's amendment 'thought it safer to defer to the strong expression of public feeling in favour of [it]'.[15]

Glynn himself thought little differently:

> Today I succeeded in getting the words 'Humbly relying on the Blessing of Almighty God' inserted in the preamble. It was chiefly intended to secure greater support from a large number of voters who belie[ve] in the efficacy for good of this formal act of reverence and faith.[16]

Militant secularists naturally were scornful. The *Bulletin* especially had a field day. A poetic contributor remarked,

> The politicians grave, who nod,
> Assembled in convention,
> Have voted to the Most High God –
> An Honourable mention!

Another declared,

> The news was spread at night. Alone
> I lifted up my eager eyes,
> And saw the constellations blaze
> And heard a cheering round the throne.

One commentator even saw in Glynn's triumph the occasion for a sardonic reflection on the country's history:

> When Gov. Phillip founded the settlement of Botany Bay, he rejected overtures made by the Fleet parson to have the name of God associated with the establishment of the province. The chaplain of the day, writing about it, complains that he was officially ignored. The soldiers were drawn out, the flags run up, the proclamation read, and cheers and volleys of musketry followed, 'but all the time,' wrote the parson to the Secretary of State, 'I was left to stand under the shade of a tree, and was made to feel that neither God nor I was wanted at the foundation of the new nation.' One hundred and ten years later the parson, it seems, has been invited to come from under that tree.[17]

Religious voluntaryists would have considered that the Protestants, with friends such as they had found in the Convention, would have had no need for enemies. But Andrew Harper's *Presbyterian Monthly*, single-minded in its way, saw in the worldly tone of the Convention's eventual support of 'recognition' little more than an incitement to greater political vigilance. If the *Argus* was right, the *Presbyterian Monthly* declared, this showed 'the necessity for the utmost vigilance on the part of the Christian public in political matters, especially where these touch on the domain of religion and morals.'[18]

The 'proud men in their theological halls' forgot nothing; but some people would have argued that they had learned nothing.

CHAPTER 11
'The Commonwealth Shall not…'

Because the delegates were anxious to hasten the conclusion of the Convention, they decided at the close of the morning session on 2 March to revise a previous arrangement not to sit during that afternoon and evening.[1] Accordingly Higgins's proposed replacement for Clause 109b came on for discussion a little sooner than expected. Its text, which differed slightly from the present Section 116, was,

> The Commonwealth shall not make any law prohibiting the free exercise of any religion, or for the establishment of any religion, or imposing any religious observance, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.[2]

Higgins had placed the new amendment on the notice paper shortly after his defeat on 8 February,[3] and no doubt had spent some time canvassing support. The prospect of even partially reversing the Convention decision may have seemed bleak, even to someone as obstinate as Higgins often was about getting his way on matters of principle. As far as 'recognitionist' churchmen were concerned, the religious issue could reasonably be regarded as settled. 'If any group of "cranks" is to be allowed to set up its Sabbath', remarked the *Southern Cross* contentedly on 11 February,

> It is certain that the general Day of Rest will run some danger of vanishing. It is pleasant to note that when it was seen that under the proposed law it would be impossible to enforce the law against Sunday trading, the Convention promptly rejected Mr Higgins's entire amendment.

On the ecclesiastical front all seemed well. In its 18 February issue the *Southern Cross* reported that on the previous Sunday the Protestant churches of Victoria had prayed for rain to ease the drought and 'already the rain had come'.

The Adventists by contrast were appalled, and probably a little surprised. 'Heretofore', Colcord wrote to Higgins on 10 February,

> some of the Federal delegates have, in conversation with us, told us we need have no fears over a religious declaration of faith being inserted in the preamble; that there was a clause in the proposed Constitution, clause 109, which would prevent anything like religious legislation.[4]

This letter may have contributed to Higgins's resolve to persevere. In it, Colcord presented the Adventist reply to the main arguments urged on 7 and 8 February against Clause 109 and Higgins's amendment. On the actual letter, which was typewritten, appears some penciled underlining and sidelining. Presumably this was added by Higgins himself.

Colcord contested the argument that protecting the free exercise of religion prevented a State from legislating against barbarous and immoral acts committed in the name of religion. His reply was that governments

> have a perfect right, and it is their duty, to suppress any act of incivility or crime under *whatsoever cover or plea it may be committed*; but they do not need to enact *religious* laws to do this, even though the act involved had behind it the sanction or demand of some religion. They should deal with *everything with which they have a right to deal from the standpoint of civility*, and not *religion*. Everything which properly comes within the scope of this term they have a right to deal with; all else is beyond their proper limits.

['Religious', 'civility' and 'religion', were underlined in the typescript by Colcord. The other words emphasized were either underlined, or sidelined in pencil, presumably in each case by Higgins.]

Concerning the fear that prohibiting the imposition of religious observances might prevent the state and Commonwealth legislatures from making Sunday a day of rest, Colcord was more diffuse but less accommodating. God not only called upon man to rest on the seventh day, the Saturday, but He also enjoined man to labour on the other six. Christians could not in good conscience *not* work on the Sunday. Provided a man's conscientious Sunday labour was neither uncivil nor criminal, in the commonly accepted meaning of those terms, the State had no right whatever to prohibit such divinely sanctioned labour.

It was of course unlikely that the secularist Higgins would have been impressed by the latter argument. It was a view he explicitly rejected on 8 February. However, the former argument may have held some appeal. It may be, too, that Higgins was a little moved by the impassioned benediction Colcord bestowed upon him at the close:

I am glad and thankful to my God, whom I serve night and day, that there was even *one* man in the Convention who would stand up for principles. May God bless you, and the peace of Heaven rest rightly upon you.

This scarcely was the kind of letter Higgins received often.

In the *Bible Echo*, and in the *Southern Sentinel* (which since January, 1898, in view of the heightening of the 'religious liberty' crisis, had been changed from a quarterly to a monthly),[5] the Adventists sounded a loud and clear alarm. On 23 February Mrs White herself arrived in Melbourne, ostensibly to attend an Adventist Conference at Balaclava during the next month, but certainly also, one would think, because of the 'religious liberty' crisis.[6] However, precisely what communications passed between Higgins and the Adventists in these busy days is not clear.

Nor does direct evidence survive as to how Higgins in the period between 8 February and 2 March set about his persuasive task. Yet it was in general terms clear which delegates he needed to convince, and what argument he would have employed. His target was the secularist group which on 7 and 8 February, probably on Barton's inducement, had opposed him. Higgins no doubt pointed to the threat to the secularity of the Commonwealth which, in the light of American precedents, 'recognition' might pose. Probably he suggested that, if no neutralizing clause were placed in the Federation Bill, many electors would refuse to vote for it. He may have threatened – a point at which he hinted on 2 March[7] – that he personally would be unwilling to recommend a Federation Bill that lacked such a clause.

In his introductory speech Higgins spent some time stressing that what he wanted was to make it clear that, although the Constitution now 'recognised God' in a way which on some American precedents would involve 'certain inferential powers', there was no intention on the part of the Convention to confer, even indirectly, such powers on the federal parliament. Previously, 'according to the views of the members of the Convention,' he had gone too far in saying that 'neither a state nor the Commonwealth was to have this power.' He had however done this, he explained, because the existing Clause 109 referred only to a state.

He then read out the text of his proposed new clause, and stated that 'most of this clause, with regard to the making of laws, is already in the American Constitution, either in the original Constitution or by way of an amendment of the Constitution.' The only difficulty therefore was '[the] words about imposing religious observances'. These were 'rendered necessary' by the Convention's inclusion that morning of 'words which they have not got in the American Constitution'. He wished to make it clear, he concluded, 'that there [could not] be an overriding Commonwealth law' that would interfere with the power of the states to legislate regarding religion.[8]

As Higgins was closing his speech, Reid interjected, asking whether Higgins 'could point out in the Bill any subject allied with religion which would make it necessary to put a clause such as this in the Bill'. If Higgins could, Reid declared, '[he] would vote with him'. Higgins replied 'The preamble."[9]

Reid's question is of special interest, indicating as it does his understanding of the prohibitive scope of Higgins's clause. Evidently to Reid the prohibitive power of Higgins's clause was such that, if there *were* 'any subject allied to religion' with respect to which the Commonwealth could legislate, then Higgins's clause would prohibit the Commonwealth from using that power to legislate with respect to religion.

Barton then spoke at length. Clause 109, he said, had been struck out 'partly on the ground that we did not desire to interfere unnecessarily with the states'. But it was also struck out on the more 'solid ground' that

> there was no likelihood of any state ever prohibiting the free exercise of any religion – that there had been nothing of the kind in the past, and that there was not the slightest reason to expect the occurrence of any such thin in the future; that the more the institutions under which we live expanded, the less likelihood there was of any religious persecution of any kind.

However, if that was the view the Convention held on the states, why should they hold such a fear in regard to the Commonwealth?

At this point Bernhard Wise interjected, stating that they might say the same about the United States Congress. Barton in reply said that the Supreme Court decision that the United States was a 'Christian country' was probably an affirmation that the institutions of England at the time of the revolution were, under the common law, Christian institutions, 'which, so far as they are not interfered with by any written Constitution, belong to citizens of the United States'. If that was so, 'the same thing applies in some of these colonies'. But even if it is 'part of the common law of England that we shall be regarded as a Christian community', what danger would that present of their suffering any of the difficulties referred to in the amendment? 'I do not see any danger of the kind to be anticipated.' 'I think', he stated, with a play on the word 'Christian',

> that because we are a Christian community we ought to have advanced so much since the days of State aid and the days of making a law for the establishment of a religion, since the days of imposing religious observances or exacting a religious test as a qualification for any office of the State, as to render any such dangers practically impossible, and we will be going a little too far if we attempt to load this Constitution with a provision for dangers which are practically non-existent.

Higgins interjected, 'That is the question. Are those dangers non-existent?' Barton however saw no need for concern.

> The whole of the advancement in English speaking communities, under English laws and English institutions, has shown a less and less inclination to pass laws for imposing religious tests, or exacting religious observances, or to maintain any religion. We have not done that in Australia. We have abolished state religion in all these colonies; we have wiped out every religious test, and we propose now to establish a Government and a Parliament which will be at least as enlightened as the Governments and Parliaments which prevail in various states…

If there were 'any – the last – probability or possibility' of '… any of these various communities utterly and entirely retracing its steps', he 'might be with' Higgins. But he was confident that that would not happen. If, he said,

> As this progress goes on, the rights of citizenship are more respected; if the divorce between Church and State becomes more pronounced; if we have no fear of a recurrence of either the ideas or the methods of former days with respect to these colonies,

Then Higgins's fear would prove unfounded. Certainly this was a question begging argument, but it does at least show clearly what Barton saw as the prohibitive reach of Higgins's new clause.

Barton shifted to another tack. He thought that preventing the Commonwealth making any law prohibiting the free exercise of any religion gave rise to certain dangers. The Commonwealth under the Constitution could legislate with regard to immigration and emigration, to naturalization, and to special races other than the aboriginal race. In these areas it might be necessary for the Commonwealth to regulate religious practices, since sometimes these were of a kind abhorrent to any civilized community. However, the effect of the 'free exercise' provision would be to prevent this. Higgins, at this point, apparently agreeing with Barton that the 'free exercise' provision *would* prevent the Commonwealth from legislating against 'abhorrent' religious practices, interjected that he wished to leave such regulation to the states. Barton replied not so much with an argument but with the dictum that, when a power to make laws in regard to any subject is given to the Commonwealth, 'we should take care not to take away an incident of it which it may be necessary for the Commonwealth to use by wayof regulation.'

Barton then reiterated his claim that the establishment of any religion was 'entirely not to be expected'. Symon interjected, 'It is part of the unwritten law of the Constitution that a religion shall not be established', and Barton, echoing so to speak his own echo, declared, 'it is so foreign to the whole idea of the Constitution that we have no right to expect it'. He added that 'whatever may be the result of any American case', he doubted whether any member of the United States Congress would suggest that Congress had the power to establish any religion. He was sure that the United States Supreme Court would not say so. He concluded by saying that the only part of the clause on which he had any doubt was that prohibiting religious tests. On reflection, he had decided that such a test was not possible. Therefore he would vote against the whole clause.[10]

When Barton finished, Reid, evidently following up his question to Higgins as to whether there was any subject 'allied with religion' with respect to which Commonwealth could make laws, asked Barton, 'I suppose that money could not be paid to any church under this

Constitution?' Barton replied, 'No, you have only two powers of spending money, and a church could not receive the funds of the Commonwealth under either of them.'[11] This question, no less than Reid's previous one, is of considerable interest, since it clearly presupposes that one thing which *would* be prohibited to the Commonwealth by the proposed clause – presumably by the 'no establishment' provision – was the paying of money 'to any church'.

Wise spoke next. No subject, he asserted, was more fit for state control than that of religion observance. There should be no opening to doubt that the Commonwealth was excluded from this area. He wished he3 could share Barton's optimism as to the death of religious persecution, 'but we have seen in our own time a recrudescence of that evil demon, which, I fear, is only scotched and no killed.' He knew of a large body of New South Wales people, *not* represented by petitions, who were alarmed at the insertion of a 'recognition' clause in the preamble, and who feared that behind it lay an ulterior design by some people to give the Commonwealth power to interfere with religious observances. Higgins at this point interjected: 'We had 38,000 signatures to a petition from the people in Victoria against the inclusion of these words in the preamble.' Wise naturally enough said he was glad to hear it, and asked the Convention why they could not 'meet the scruples of these gentlemen as we met the scruples and feelings of another class in the community'. Furthermore, he suggested, Higgins's speech that morning had shown that the fears of those who opposed 'recognition' had legal substance. 'In a matter of religious feeling', he added, 'a minority are entitled to the utmost respect and should have their feelings guarded.'

Simon Fraser interjected, 'Is not the majority entitled to respect?' Wise replied, 'Certainly.' Fraser then declared, 'A very small minority might shock the great majority of people.' Wise retorted, 'Let everyone follow his own religious observances without shocking anybody, and do not let him impose his rule on anyone else.'

Wise then, after repeating that they should make clear in the Constitution that 'the Commonwealth shall not interfere in any way with the rights of the states to regulate religious matters', suggested that the observance of Sunday was largely a matter of climate, one rule tending to prevail in the tropics and another in the south. It should be made clear that people in one part of the Commonwealth could not impose on people in another in the matter of Sunday observance, or in any other religious matter.[12]

Wise was followed by Cockburn, who asked Higgins whether there was any other power whose exercise by the Commonwealth was forbidden. Higgins said he thought not. Cockburn then suggested that, while he was 'very much in sympathy' with Higgins, his proposal would open up any ambiguous area 'between the powers specially vested in the Commonwealth, and the powers forbidden'. Specifically it raised a doubt as to whether the Commonwealth might not have more powers than those vested in it.[13]

Fraser then spoke. He agreed with Barton that the clause was unnecessary, adding, 'We are a homogeneous people, and the safer plan is to leave us so.' Higgins interjected that that was what 'we want to do'. Fraser however was not sure. He asserted that if they agreed to Higgins's new clause, all sorts of practices might be resorted to which would shock the whole people. Wise, thinking perhaps of Fraser's recent interjections to his own speech,

interjected that if Higgins's new clause was *not* passed, the Commonwealth might be able to pass a law permitting Sunday newspapers in Victoria. He was presumably e3xtending the 1892 American precedent to non-religious Sunday observance. Isaacs, an astute lawyer, then came to Fraser's rescue, and a brief but sharp interchange between Isaacs, Wise and Fraser followed, in which Wise's knowledge of the United States Constitution was shown up as less than perfect. But then probably Wise at this point was more concerned to bait Fraser than to make a serious legal point. Fraser concluded, after a fierce denunciation of the public men of New South Wales for not 'putting down' that colony's Sunday newspapers, by repeating that the acceptance of Higgins's clause might lead to results that would 'offend the susceptibilities of a homogeneous people'.[14]

At this point Symon moved, by way of amendment, that all words down to 'and' be omitted, and that the clause as a whole read instead,

> Nothing in this Constitution shall be held to empower the Commonwealth to require any religious test as a qualification for any office of public trust under the Commonwealth.

On 8 February Symon had suggested that Clause 109 be replaced by a clause similar to this, but applying also to the states. Hence this clause, like Higgins's own, was substantially a carryover from that debate.

Symon began by saying that he had changed his mind, since the 7 and 8 February debate, on the question of the prohibitive scope of the 'free exercise' provision. Then he had thought it would protect inhumanities and cruelties committed in the name of religion. Now he was satisfied that, 'under the ordinary operation of the common law', either state or federal parliament could legislate to stop inhuman or cruel acts. He still opposed the 'free exercise' provision, but not on the same grounds. Essentially his argument now was not that the provisions he wished to remove were dangerous but that they were unnecessary. On the one hand, the Commonwealth would have no power to restrict the free exercise of religion, to impose religious observances or to establish any religion. On the other, he was satisfied that 'it is embodied in the Constitution as a part of the unwritten law that no church establishment shall prevail and that religious shall be observed.' However, he thought the 'recognition' clause in the preamble might enable the Commonwealth to impose a religious test in appointing its officers. His own amendment would prevent this and would make it clear that 'recognition' would not overspread the Constitution. It would also, being of the nature of a 'counterblast' to 'recognition', satisfy those whose worries had been expressed by Higgins. Fraser interjected that there was 'no necessity for it', but Symon disagreed.[15]

Kingston then spoke. He supported Higgins. Only the states, he believed, should be able to legislate in regard to religion. The new amendment to the preamble made necessary a declaration 'in the broadest possible terms'. His particular concern was that, now that God had been 'recognized', the Commonwealth would use its power to legislate with respect to the affairs of special races in order to pass laws relating to their religion. However, this was 'purely a domestic concern', with which the states were particularly qualified to deal. If they accepted Higgins's proposal, they would 'secure to the states the power which they at present possess', and 'prevent any unnecessary interference by the Federal Parliament'.[16]

Kingston was followed by Lyne, who had been impressed by what Higgins had said in the discussion of Glynn's amendment. Higgin's proposal would 'get rid of the possibility of danger'. 'Sunday observance', he thought, 'was to a very large extent a matter of climate', and it varied from colony to colony. The 'recognition' clause might allow the Commonwealth to decide how Sundaywas to be observed, and to prevent that taking place, Higgins's new clause should be inserted. Symon's proposal, by contrast, would in this respect be ineffective.[17]

Wise followed Lyne. He invited Symon to express his view as to whether, if the 'Commonwealth Supreme Court' accepted the arguments which prevailed in 1892 in the United States Supreme Court, 'the Commonwealth Authority would have an implied power to administer the common law in respect to the observances of Christianity'. Symon did not comment. Wise then appealed to Symon to withdraw his amendment.[18]

However, O'Connor, the next speaker, another who had voted against Glynn at Adelaide, said he hoped Symon would not withdraw his amendment since he intended to support it. Higgins's proposal, he considered, was more likely to run them into danger than avoid it. 'Upon the face of the Constitution', he said (making clear incidentally his conception of the scope of Higgins's clause), 'the Commonwealth has certainly no power whatever to deal with religion, either directly or indirectly.'[19]

Higgins here interjected, asking O'Connor to explain why the provisions in the first amendment were placed in the United States Constitution. O'Connor replied that they were inserted because the powers given to the United States Congress were less 'definite' than those which the Convention was allocating to the Federal Parliament. Higgins interjected again, pointing out that the United States Constitution contained no reference to deity. In reply, O'Connor maintained in effect that the powers allocated to the Federal Parliament were so definite that he could not imagine it dealing with religion 'in any way'. However then, replying to an interjection from Kingston, he qualified this by agreeing that, as the Constitution stood, the Commonwealth was able to make laws respecting the religion of 'special races'.

O'Connor then analysed the 'danger' he saw in Higgins's proposal. His main point was a development of one Cockburn already had made. By preventing the Commonwealth 'from making certain specified laws', O'Connor asserted, 'you create the implication that the Parliament has power to deal with in other respects with religious observances.' If they examined Higgins's proposal, they would find that

> It deals expressly with Sunday observance, with the exercise of religion, with the establishment of religion, and with the imposition of religious observances. But it might very well be argued that the closing of places of public amusement on Sundays does not rest upon any of these grounds; and if you inserted a provision of this kind in the Constitution, there would be the strongest possible implication that the Federal Parliament would have the power to legislate in regard to social questions which had a religious aspect other than those expressly excluded from its jurisdiction by this provision.

However he agreed with Symon that the Commonwealth might, under the present Constitution, 'impose any form of oath which it thought fit'.[20]

Frase then spoke briefly, asserting bleakly that

if we give the right to an infinitesimal minority to come here and indulge in extraordinary practices, under the pretence that this is a new religion, we may have all the theatres and all the music halls in Australia open on Sundays. If that is possible, we ought to do what we can to provide against it.[21]

The final speaker was Higgins. He first hinted that he might not be able to support the Federation Bill if his proposed clause was not carried. Then he briefly repeated or alluded to his previous arguments. However, there was one small but interesting change: he referred this time not to 38 000 signatures from Victoria alone, but simply to '38 000 distinct signatures'.[22]

The first question to be considered was whether Symon's clause should replace that of Higgins. By 22 votes to 19 the Convention decided that the clause on which it would vote would be that of Higgins. This really was the crucial vote. Braddon, Downer and Gordon, each of whom had spoken against Higgins on 7 and 8 February, now supported him. It is of more than passing interest to note that among other supporters of Higgins was Glynn.[23]

The next question put was whether Higgin's proposed new clause should be inserted. This time Higgins won comfortably by 25 votes to 16.[24] Moore from Tasmania, and Peacock and Isaacs from Victoria, changed sides. While they preferred Symon's clause to Higgins's, evidently they preferred Higgins's clause to nothing. Glynn once more supported Higgins, and that night in his diary explained why:

To prevent any doubt as to whether [the words of the 'recognition' amendment] authorized the imputation of Christianity as the law of the land, or religious intolerance in legislation, Higgins succeeded in getting in a Provision against any legislation either establishing or suppressing a Religion, or imposing a religious test.[25]

One probably can deduce from Glynn's sarcastic attack on Inglis Clark's 'free exercise' provision during the preceding August[26] that Glynn felt little enthusiasm for Higgins's clause as such. However, a handwritten note by Glynn, from the time of the Adelaide Convention, stating that 'Negative provisions in a Constitution are safe because they [?have] stood the test of historical experience', suggests that he saw little danger either.[27] So, by little more than a whisker, those who had wanted a constitutional guarantee of strict Church-State and Religion-State separation in the Commonwealth sphere, made their point against those, such as Barton, who considered such separation desirable but did not wish to achieve it that way; and also against those, such as Fraser, who did not think separation desirable at all.

Finally, an attempt will be made to draw together precisely what, on the basis of what was said in the debates, the Convention delegates thought Higgins's new clause actually prohibited. Clearly the clause as a whole was thought of as designed to keep the Commonwealth entirely out of the religious field. It was also – a point reiterated time and again – intended to secure to the states *alone* power to legislate regarding religion. There was, in the debates of 7 and 8 February, and 2 March, some doubt as to the extent to which the Commonwealth would be prevented by the 'free exercise' provision from interfering with 'abhorrent' religious practices. Symon at first doubted, but came later to accept, that the 'free exercise' provision would not prevent the Commonwealth from outlawing inhuman or cruel acts committed in the name of some religion. Higgins tended at one point to imply that the Commonwealth was in fact so prevented. However he did not develop the

point. As to the 'religious observance' provision, there can be no doubt that in the minds of most delegates the Commonwealth was prohibited from legislating with respect to the observance of Sunday. However Higgins on 8 February, and O'Connor on 2 March, took something close to the view that it only was those Sunday observance laws which embodied a religious intention which were prohibited. O'Connor, indeed, suggested that a prohibition on the Commonwealth imposing religious observances in itself carried a strong implication that the Commonwealth had power to legislate in regard to *non*-religious observances.

It was only with respect to the 'no establishment' provision and the prohibition of religious tests for Commonwealth trusts or offices, that one finds unanimity. However, the unanimity over the 'religious test' provision related to the fact that no one thought it worthy of explicit definition, while the unanimity over the 'no establishment' provision stemmed rather from the fact that those who *did* discuss its scope and meaning expressed or implied concordant views. Higgins indicated at the outset that his 'no establishment' provision duplicated the one in the first amendment of the United States Constitution; and, to the delegates, that would have meant – as argued in the next chapter – that it was to be understood as strictly separationist. Barton, in his speech, made it clear that the 'no establishment' provision prohibited the Commonwealth from recognising any religion of the State, and from giving financial support to any religion. Reid in his interjection made it clear that he believed that the 'no establishment' provision prevented the paying of money to any church. O'Connor assumed that it prevented 'indirect' (in an unspecified sense) as well as 'direct' dealing by the Commonwealth with religion. Quick, some time *later*, advanced a less strictly separationist interpretation. However, the view as to the scope and meaning of the 'no establishment' provision stated or assumed in the debate by Higgins, Barton, Reid and O'Connor must be accorded considerable weight in any attempt to assess the mind of the Convention on this point. Each was an able lawyer; each was a leading figure in the Convention proceedings. Barton, O'Connor and Higgins later became judges of the High Court of Australia. It is safe to assume that, where these men agreed over the meaning and scope of a Constitutional provision, that almost certainly would be what most of the other delegates thought, or wanted to think, too.

CHAPTER 12
Quick and Garran's Account

Anyone familiar with Quick and Garran's analysis of the meaning and scope of Section 116 in their *Annotated Constitution of the Australian Commonwealth*[1] will regard the conclusions reached in the preceding chapter with surprise. Overall, and in points of detail, there are clear differences. In this chapter an attempt is made to show that their analysis of Section 116 is seriously defective on both the factual and the interpretative side. An explanation of the presence of these defects is also offered.

As to the factualness, one may cite a number of more or less serious inaccuracies. Quick and Garran mistakenly drew a sharp contrast between the 'numerous and largely signed petitions' in favour of the recognition of deity in the preamble, and 'a few petitions… in opposition to the proposal'.[2] This was quite misleading in view of the numerous signatories of those (relatively) few counter-petitions.

They were also factually in error in regard not only to the amendment to Clause 109 which Higgins *wanted* to propose but also in regard to the amendment which he *actually* proposed. According to Quick and Garran, Higgins moved to amend Clause 109 to make it read,

> A State shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or imposing any religious test or observance.[3]

However, according to the Hansard of the debate,[4] Higgins had become dissatisfied with certain features of that amendment, and wished that the clause instead read,

> A State shall not, nor shall the Commonwealth, make any law prohibiting the free exercise of any religion, or for the establishment of any religion, or imposing any religious observance.

And in the end the only amendment Higgins *actually* moved was to add 'nor shall the Commonwealth' after 'A State shall not'.

However, perhaps their most serious factual error arose in their treatment of the American background. Higgins had claimed that the 1892 Congress decision to tie a Sunday closing condition to any offer of financial aid to the World Fair was religiously motivated, in that it was based on an earlier declaration by the Supreme Court that the United States was a 'Christian country'. However, according to Quick and Garran,

> In the debates which took place in Congress during the passage of the amending Bill, no reference appears to have been made to any religious aspect of the proposed closing of the Exposition on Sundays, or to the case of the Church of the Holy Trinity v. United States.[5]

This is not so. Not only was Congress, as the *Congressional Record* for 1890-2 shows, besieged by petitions – mostly from religious bodies – praying that the exposition be closed on Sunday, but the debate in the Senate on 11, 12 and 13 July 1892 (to look no further) included copious references to 'religious aspects'.[6] Many of these references moreover involved precisely the sort of analysis (the United States is a Christian nation, etc.) that was advanced shortly before by the Supreme Court in the Holy Trinity case. One should not perhaps attribute any particular piety to the members of the United States Senate in this. It may well have been, as the Washington reporter of the *New York Times* suggested, that 'the essence of the whole business' was the intention of some senators 'to gain the esteem of a good many people who had petitioned them to vote against Sunday opening'.[7] But even if the motives of these senators derived more

from political interest than religious sentiment, what they clearly enough were *doing* was seeking to make Congress, in this particular matter at least, a conduit for imposing on visitors to the World Fair the wishes of a religiously motived Sunday observance pressure group. The field secretary of the American Sabbath Union clearly thought so too:

> We are prepared to make Congress understand that this is a Christian Nation. We would be a set of fools to give up the battle now, after gaining victory over Congress in the World's Fair.[8]

There scarcely can be any doubt that the Sunday closure amendment, regardless of the secular nature of the power under which it was passed, was in essence a religious law.

Discussing the arguments in support of Section 116 which Higgins put before the Convention, Quick and Garran declared,

> The prohibition contained in the [United States] first amendment was one of the ten articles in the so-called 'American Bill of Rights' adopted after the establishment of the Union, in order to satisfy popular demands and sentiments. No logical or constitutional reasons have been stated why such a negation of power, which never had been granted and which, therefore, could never be legally exercised, was introduced into the instrument of Government. It does not appear that its necessity has ever been demonstrated. Still, that was one of the grounds on which Mr. H. B. Higgins asked the Convention of 1898 to adopt the section now under consideration.[9]

In stating that 'No logical or constitutional reasons have been stated why such a negation of power, which never had been granted and which, therefore, could never be legally exercised, was introduced into the instrument of Government', Quick and Garran have merely begged in advance what is fundamentally at issue between themselves and Higgins. When they further say, after having declared that 'It does not appear that its [the first amendment's] necessity has ever been demonstrated', that 'Still, that was one of the grounds on which Mr. H. B. Higgins asked the Convention of 1898 to adopt [Section 116]', their argument simply is mystifying. It is not at all clear what they regard this 'ground' of Higgins to be. Grammatically it would seem that the 'ground' which they attribute to Higgins, as one of his reasons for seeking to incorporate American first amendment provisions relating to religion into the Australian Constitution, was the 'necessity' of these provisions. But not only is this an odd reason, in the sense of question-begging; more fundamentally, it would seem that the 'ground' which they attribute to Higgin the debate.

At times Quick and Garran do not so much perpetrate a factual error as convey a misleading impression. After summarising Higgins's arguments in favour of including a provision that, as they somewhat inconsistently but accurately put it, 'clearly denied to the Federal Parliament' the 'power to deal with religion in any shape and form', Quick and Garran went on to say, but without further comment, that 'These arguments were allowed to prevail.'[10] Well of course they were. But the unargued hint is that really they should not have been.

A final piece of misleading writing may be noted. Referring to the guarantee of religious liberty, 'A State shall not make any law prohibiting the free exercise of any religion', which was include din the draft federal Constitution handed down by the 1891 Convention, Quick and Garran remarked,

How such a clause crept into the Bill of 1891 it is difficult to conjecture. It was rejected without hesitation by the Convention of 1898, which saw no reason or necessity for interfering with the States in the free and unfettered exercise of their power over religion.[11]

One may note the one-side rhetorical loading of such phrases as 'crept into', 'rejected without hesitation' and 'no reason or necessity'. With regard to the actual question of why the religious liberty provision 'crept into' the Draft, J. A. La Nauze remarks briefly but aptly that 'Inglis Clark could have told them'.[12]

The most pertinent feature of these errors and inexactitudes is not so much the carelessness they show – although that is food for thought – as the fact that they mislead, so to speak, in a single direction. The impression they collectively convey is that Higgins's new clause was accepted for inexact and defective arguments, that it did not reflect a wide base of public feeling, and that, constitutionally speaking, there was something a little improper about it.

What positive interpretation do Quick and Garran provide of the meaning and scope of Section 116? They offer little explicit commentary on the provision relating to religious observances. Concerning the 'religious test' provision, their most substantial point was that it was 'of practical use and value'.[13] With regard to the other two provisions, those relating respectively to the 'establishment', and to the 'free exercise' of religion, they made it clear that these provisions were based on, and were essentially reproductions of, the American first amendment.[14] That is, Quick and Garran did not deduce from the slight terminological difference of the Australian from the American version any sort of distinctive Australian interpretation. Indeed, in this connection it is of interest to note that when Quick himself, in his 1896 *Digest of Federal Constitutions,* translated the American first amendment into legal English of the 1890s, he used words strikingly similar to those of Section 116. Congress, Quick then wrote, could pass 'no law for establishing any religion', and 'no law prohibiting any religion'.[15]

How did Quick and Garran interpret the meaning and scope of the 'free exercise' provision? Briefly they took the view that it was only *opinions* and *beliefs* that strictly were made 'free', in the sense of being placed beyond the scope of Commonwealth legislation. Religious *actions* of an uncivil, inhuman or cruel nature could be regulated by the Commonwealth, if they were performed in connection with a subject about which the Commonwealth was empowered to legislate.[16]

Two crucial questions arise. Was this how the provision was understood by the United States Supreme Court? Was it the way it was understood by the Federal Convention? So far as the first question is concerned, there can be little doubt that Quick and Garran have accurately captured the Supreme Court's interpretation at that time. That interpretation, it is generally agreed,[17] was the one laid down in *Reynolds v United States* (1878) and *Davis v Beason* (1890).[18] Quick and Garran cite both judgments. The most succinct statement of this interpretation is perhaps the following, from the Reynolds judgment: 'Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.'[19]

However, the understanding of this provision by the Federal Convention was more complex. Symon, whose personal view was that belief should be free but that actions should not, had considered on 8 February that the 'free exercise' provision went beyond this, that it protected religious actions as well as religious opinions. However, by 2

March, perhaps having studied the American judgments, he became convinced that it protected only opinions. Barton, in both debates, although certainly aware of the American decisions, took the view that nevertheless the 'free exercise' provision might prevent any legislature from regulating religious *acts* of a cruel or inhuman nature. Higgins said little on this point but may have agreed with Barton as to the scope (although disagreeing with him as to the desirability) of the 'free exercise' provision. Inglis Clark, who was not a member of the 1897-8 Convention, was nevertheless in a certain sense part of this particular debate, for the actual words 'for prohibiting the free exercise of any religion' came originally from the draft Constitution he submitted to the 1891 Federal Convention. Furthermore, in an 1897 memorandum to the Convention, to accompany the amendments suggested by the Tasmanian legislature, Clark defined what *he* regarded as the meaning of this provision. In his view, equality was the key:

> In its present form Section 109 secures religious equality for all the citizens of a State, so far as it prevents the State from placing the adherents of any form of religion under any disadvantage or restriction in the exercise of it in comparison with adherents of other forms of religion…[20]

While Clark's 'equality of State-imposed disadvantages' interpretation was not actually cited in either the 7 or 8 February, or 2 March, debates, it may still have represented the position of some of the delegates, especially the Tasmanian ones.

Of course, it does not follow from the fact that such differences of interpretation existed among the delegates, that any of them thought that what they were advancing was anything other than what the American 'free exercise' provision *really* meant. Some may have, but in view of the general familiarity of many of the legally trained delegates with American judicial interpretation, it is more likely that some of them thought, as indeed the United States Supreme Court today thinks, that the interpretation of this provision in the *Reynolds v United States* and *Davis v Beason* judgments simply was wrong. One may note the familiarity verging on contempt with which Barton analysed the argument of the Supreme Court in *Church of the Holy Trinity v United States*.[21]

One can conclude that Quick and Garran's interpretation of the meaning and scope of the 'free exercise' clause, while skirting some of the complexities, was nevertheless broadly defensible. However, this is more than can be said about their interpretation of the meaning and scope of the 'no establishment' provision. Their interpretation of this provision is based on the following definition of the 'establishment' of religion:

> By [this] is meant the erection and recognition of a State Church, or the concession of special favours, titles, and advantages to one church which are denied to others. It is not intended to prohibit the Federal Government from recognising religion or religious worship. The Christian religion is, in most English speaking countries, recognised as a part of the common law.[22]

The same two questions arise as before. Firstly, was this the conception of establishment that, at the time, the Supreme Court of the United States understood to he prohibited by the 'no establishment' provision? Secondly, was this the conception of establishment that the members of the Federal Convention thought they were prohibiting?

Before considering these two questions, it will be useful to say something about the variety of senses the term 'establishment' could at that time carry in English-speaking courts. Three fairly distinct senses can be identified, which may conveniently be termed the 'strict separationist', the 'non-preferential' and the ';English'. Braodly, the different was as follows. In the 'strict separationist' sense of 'establish', a law could be

said to 'establish' religion if it did one or more of the following things: declared or assumed or prescribed adherence to any doctrine of any or every church; conferred public office as of right on any officer of any or every church; financed the charitable of educational institutions of any or every church; paid the salaries of the officers of any or every church; or subsidised the erection of any building of any or every church. To do any of these things was, in the 'strict separationist' sense, to 'establish' a religion. In the non-preferential sense, a law could be said to 'establish' religion if it produced any of the foregoing results with respect to some but *not* all churches. In the English sense, a law could be said to 'establish' religion, if it conferred on any church, in a substantial way, the kind of legal and financial privileges that the Church of England in the eighteenth and nineteenth century *did* enjoy, but that other English churches of that time did *not*.

What then, at about this time, did the United States Supreme Court deem to be prohibited by the 'no establishment' clause? In what sense, or senses, that is, did it understand the term 'establishment'? Quick and Garran clearly take the view that it was the 'no preference' view which prevailed in the United States Supreme Court. That is, Congress was permitted, if it wished, to assist religion in any way, so long as it did so non-preferentially. But was that really the Court's position? Three judgments are relevant. Two of them Quick and Garran could and did notice: *Reynolds v United States* (1878) and *Bradfield v Roberts* (1899). The third, *Quick Bear v Leupp* (1908), was handed down a few years after they wrote.

Quick and Garran noticed the relevance of *Reynolds v United States* for the interpretation of the 'free exercise' provision. However, they did not mention that this judgment was in the 1890s the *locus classicus* for the Supreme Court's interpretation of the 'no establishment' provision. In that judgment the Court accepted, 'almost as an authoritative declaration of the scope and effect' of the 'no establishment' provision, the following statement made by Thomas Jefferson, while president, to the Danbury Baptist Association:

> Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith and worship; that the legislative powers of the government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declares that their Legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof', thus building a wall of separation between Church and State.[23]

Plainly, in adopting Jefferson's 'wall of separation' doctrine, the Court here was opting for the strict separationist rather than the no-preference or English interpretation of the scope of the 'no establishment' provision.

The majority judgment in *Bradfield v Roberts* (1899) involved a more complex interpretation of the 'no establishment' provision. In 1897 Congress appropriated $30,000 for the erection of two buildings in the District of Columbia to be used for the benefit of poor patients. The commissioners of the district contracted to construct a building on the grounds of the Providence Hospital Corporation, a corporation chartered by Congress but consisting entirely of Catholic Sisters of Charity. This action by the federal government was challenged in the Supreme Court on the basis that it violated the 'no establishment' provision of the first amendment.

The court held that the district commissioners' contract with the Providence Hospital Corporation was not in violation of the first amendment. Although the hospital was

conducted under the auspices of the Roman Catholic church and was staffed by the Catholic Sisters of Charity, the charter of its incorporation was a purely secular one.

Assuming that the hospital is a private eleemosynary corporation, the fact that its members… are members of a monastic order or sisterhood of the Roman Catholic Church, and the further fact that the hospital is conducted under the auspices of said church, are wholly immaterial, as is also the allegation regarding the title to its property… The facts… do not in the least change the legal character of the hospital, or make a religious corporation out of a purely secular one as constituted by the law of its being. Whether the individuals who compose the corporation under its charter happen to be all Roman Catholics, or all Methodists, or Presbyterians, or Unitarians, or members of any other religious organisation, or of no organisation at all, is of not the slightest consequence with reference to the law of its incorporation, nor can the individual beliefs upon religious matters of the various incorporators be inquired into.

Nor is it material that the hospital may be conducted under the auspices of the Roman Catholic Church. To be conducted under the auspices is to be conducted under the influence or patronage of that church. The meaning of the allegation is that the church exercises great and perhaps controlling influence over the management of the hospital. It must, however, be managed pursuant to the law of its being. That the influence of any particular church may be powerful over the members of a nonsectarian and secular corporation, incorporated for a certain defined purpose and with clearly stated powers, is surely not sufficient to convert such a corporation into a religious or sectarian body. That fact does not alter the legal character of the corporation, which is incorporated under an act of Congress, and its powers, duties and character are to be solely measured by the charter under which it alone has any legal existence.

There is no allegation that its hospital work is confined to members of that church, or that in its management the hospital has been conducted so as to violate this charter in the smallest degree. It is simply the case of a secular corporation being managed by people who hold the doctrines of the Roman Catholic Church, but who nevertheless are managing the corporation according to the law under which it exists…[24]

Once more the court upheld a strict separationist viewpoint. Quick and Garran, citing this case, remarked only that 'An appropriation of money to a hospital conducted by a Roman Catholic sisterhood is not a law respecting an establishment of religion', thereby altogether overlooking the nuance of the actual judgment.

It is relevant, too, to note in passing that at this time Congress, no less than the Supreme Court, was committed to theoretically strict separationism. In 1897 Congress included in its Appropriation Act for the District of Columbia a statement declaring it

To be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining or aiding by payment for services, expense, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control.[25]

The third relevant Supreme Court judgment, *Quick Bear v Leupp* (1908), also related to an alleged breath of the 'no establishment' provision. Certain treaty funds, held by the federal government as trustee, had been paid to the Bureau of Catholic Indian Missions as the designation of the Indians to cover the cost of their tuition. The court held these payments to be constitutional, since they came strictly speaking from private and not public funds. However, had the payments come from public funds, it is clear the Court would have taken a different view:

But it is contended that the spirit of the Constitution requires that the declaration of policy that the government shall make no appropriation whatever for education in any sectarian schools should be treated as applicable on the grounds that the actions of the United States were always to be undenominational and that, therefore, the Government can never act in a sectarian capacity, either in the use of its own funds or in that of the funds of others, in respect of which it is the trustee; hence that

even the Sioux trust fund cannot be applied for education in Catholic schools, even though the owners of the fund so desire it. But we cannot concede the proposition that Indians cannot be allowed to use their own money to educate their children in the schools of their choice because the government is necessarily undenominational, as it cannot make any law respecting an establishment of religion or prohibiting the free exercise thereof.[26]

Again, it is the strict separationist viewpoint which was held by the Supreme Court.

From this brief survey it is clear that Quick and Garran were at variance with the facts in suggesting that the United States Supreme Court interpreted the 'no establishment' provision on 'no preference' lines. Before turning to the question of which interpretation one should attribute to the Federal Convention, it would be appropriate to say something about the source of Quick and Garran's error.

What happened was that Quick and Garran linked themselves completely, and without qualifications, to an earlier 'no preference' stream of interpretation in American jurisprudence. Mainly under the influence of Judge Story, the Supreme Court in the first half of the nineteenth century had moved some way, in *Terret v Taylor* (1815) and *Vidal v Girard's Executors* (1844),[27] towards adopting the 'no preference' interpretation of the first amendment. According to Story, in his 1833 *Commentaries on the Constitution*,

Every American colony, from its foundation down to the Revolution, with the exception of Rhode Island, if, indeed, that state be an exception, did openly, by the whole course of its laws and institutions, support and sustain in some form the Christian religion, and almost invariably gave a peculiar sanction to some of its fundamental doctrines. And this has continued to be the case in some of the States down to the present period without the slightest suspicion that it was against the principles of public law or republican liberty… Probably at the time of the adoption of the Constitution, and of the amendment to it now under consideration, the general if not the universal sentiment in America was, that Christianity ought to receive encouragement from the State so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of State policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation… The real object of the amendment was not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give to an hie5rarchy the exclusive patronage of the national government. It thus cuts off the means of religious persecution (the vice and pest of former ages), or the subversion of the rights of conscience in matters of religion, which had been trampled upon almost from the days of the Apostles to the present age.[28]

In *Vidal v Girard's Executors* he declared further that 'the Christian religion is part of the common law'.[29]

A recent historian, R. E. Morgan, himself a firm supporter of the *idea* of the 'no-preference' interpretation, found himself constrained to remark that 'the most interesting thing' about Story's viewpoint was 'its aberrational quality… [I]t never led anywhere.' He continued,

Could later accommodationists have marshalled sufficient support in courts or legislature for their plans of supportive co-operation between governments and the churches in America, it would have been perfectly possible to reach back to Story for historical support. This has not been done, however, and the Story approach sits high and dry, out of the mainstream of American constitutional law.[30]

Yet it never did sit completely high and dry. In the latter half of the nineteenth century it was vigorously advocated by Thomas Cooley, in his *Principles of Constitutional Law*. Cooley not only asserted that 'the Christian religion was always recognised in the

administration of the common law', but defined the 'establishment of religion' as 'the setting up or recognition of a State church, or at least the conferring upon one church of special favours and advantages which are denied to others.'[31] This, almost word for word, was the definition offered by Quick and Garran. So on can see *what* Quick and Garran have done, if not necessarily why. That question will be taken up later.

As to whether the members of the Federal Convention interpreted the 'no establishment' provision in Quick and Garran's 'no preference' way, it is clear that they did not. In the debate on 2 March, as the analysis of the preceding chapter makes clear, the 'no establishment' provision was uniformly regarded as securing the complete non-involvement of the Commonwealth in religious matters.

In gauging what the delegates thought, one can add to an analysis of the views they expressed a consideration of what they read. La Nauze, in *The Making of the Australian Constitution*, has stated in connection with James Bryce's *The American Commonwealth* (1888), that

> In the years ahead [of 1890] the cleverest and the dullest of the men of the Conventions would quote Bryce to add weight to their words. The Americans themselves regarded that book highly; it taught them a lot about themselves; but to them a federal system was 'natural'. Most Australians, for all the rhetoric about union, really knew little about the technicalities of federation and the mysteries of divided sovereignty. *The American Commonwealth* might have been deliberately written for their instruction. It is again Deakin who speaks, but nearly seven years later: 'An Authority, to whom we have often referred since 1890, an authority to whom our indebtedness is almost incalculable, is the Hon. Mr Bryce.'[32]

What, then, did Bryce say on Church-State and Religion-State issues in the United States? 'No voice', he wrote,

> has ever since been raised in favour of reverting – I will not say, to a State establishment of religion – but even to any State endowments, or State regulation of ecclesiastical bodies. It is accepted as an axiom by all Americans that the civil power ought to be not only neutral and impartial as between different forms of faith, but ought to leave these matters entirely on one side, regarding them no more than it regards the artistic or literary pursuits of the citizens. There seems to be no two opinions on the subject in the United States.[33]

Bryce of course was not referring only, or even mainly, to American jurisprudence. Nor obviously, in the last sentence, did he mean to be understood in a strictly literal way. But the implication is clearly that the legal consensus of the time was of the 'strict separationist' kind.

One must conclude that Quick and Garran's interpretation of the meaning and scope of the 'no establishment' provision, in both the United States Supreme Court of that time and the Federal Convention, is on the evidence indefensible. In respect to both, Quick and Garran have flown in the face of a massively consistent body of evidence.

But how could they have made such a mistake? Both were present during the Federal Convention – Quick as a Victorian delegate, and Garran initially as Reid's secretary and later as assistant to the drafting committee.[34] Each without doubt was in an excellent position to know what happened. Indeed that probably is the main reason why their rhetorically forceful analysis has stood virtually unchallenged for so long. It is true that each – but especially, or at any rate more evidently, Quick, - was at the time firmly opposed to the line Higgins took in proposing Section 116. Garran, in *The Coming Commonwealth*, published shortly before the Convention met at Adelaide in 1897,

expressed considerable doubt as to whether a religious liberty provision, such as that contained in the 1891 draft, was 'necessary'.[35] Quick voted against Higgins's new clause. Yet what is hard to understand is their hostility towards Higgins and towards the viewpoint he represented. Especially one should ask this of Quick, since patently the style and tone of the commentary on the 'recognition' amendment, and on Section 116, was Quick's rather than Garran's.

It probably is relevant that Quick was a 'loyal Methodist'[36] and that from an early stage he was associated with the 'recognition' movement. In his 1896 *Digest of Federal Constitutions* he reproduced a 'patriotic and stirring' poem written by 'Wm. Gay, the Bendigo poet', which began,

From all divisions let our land be free,
For God has made us one.

and which, after indicting Australians-in-general for their greed, pettiness, and dividedness, concluded,

O let us rise, united, penitent,
And be one people, - mighty, serving God.[37]

At the Bathurst Convention Quick had been one of the supporters of Gosman's 'recognition' motion. In the constitutional committee at Adelaide it was Quick who proposed a 'recognition' clause.

It is likely that Quick personally felt strongly about the religious side of federation. This strength of feeling may very well be a key not only to the distinct animosity shown to Higgins, but also to the *Annotated Constitution*'s advocacy of the 'no preference' interpretation. That, after the Melbourne Convention, Higgins became perhaps leading the leading Victorian campaigner against the Federation Bill, may be another key. A clear possibility, suggested by Quick's equivocal discussion on 2 March of Glynn's recognition proposal, is that Quick hoped that the insertion of a 'recognition' clause would enable the Commonwealth eventually to aid religion in a substantial although non-preferential way. Perhaps, having lost the debate, Quick in the *Annotated Constitution* was hoping still to win the interpretation. That is, in precisely the same way in which the National Scripture Education League was striving to interpret the 'secularity' provision of the 1872 Victorian Education Act to mean that state schools should be non-denominational, rather than exclude religion altogether, so Quick was striving to interpret the 'no establishment' provision to mean, not strict separation, but merely that preferential assistant to denominations was prohibited. Indeed the two moves were so similar conceptually and rhetorically, and the former, in church circles at any rate, so intellectually respectable, that it is not implausible to suggest that Quick knew quite well what he was doing, and thought it morally and intellectually defensible.

However this analysis of motives, while circumstantially plausible, remains speculative. What does nevertheless stand out, as beyond reasonable doubt, is that Quick and Garran's analysis of the scope and meaning of Section 116, especially of the 'no establishment' provision, is so often shot through with mis-statement and tendentious rhetoric that from the point of view of understanding the original meaning of this section of the Constitution it simply should be disregarded.

CHAPTER 13
To The Referenda

Before the Convention rose, the drafting committee slightly altered the wording and varied the order of the provisions of Higgins's new section.[1] It now appeared as Section 115 and read,

> 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.

Barton in his closing speech commended the new clause as 'important'; not presumably because he liked it ,but because it now was part and parcel of a Federation Bill that he earnestly hoped would prove acceptable to electors at the coming referendum. After noting that as a result of a 'large agitation' the Supreme Being was now recognized in the preamble, he declared,

> It was feared that some interpretation such as has been taken up in one or two cases in America might lead to this phrase being regarded as an action taken against religious liberty. The Convention has agreed to a clause which prevent any possibility of that kind as regards the Commonwealth…[2]

Higgins in his April address to the Geelong electors scoffed at Barton for this turnabout,[3] but Barton's reversal was of approximately the same order as his own on the question of states rights. The truth is that Barton and Higgins were in some measure moved by partisanship, Barton for the Federation Bill, and Higgins against.

The inclusion of Higgins's new clause received little or no attention in either the secular o ecclesiastical press, although for different reasons. Most of the secular dailies briefly noted the acceptance of Higgins's clause, and a few summarised the debate.[4] There was, however, little comment. The journalists and editors in question either did not see, or regarded as exaggerated, the dangers that had alarmed Higgins and Wise. The religious journals nearly all remarked at the success of Glynn's 'recognition' motion, some of the Protestant ones fulsomely.[5] Very few however even mentioned Higgins's clause. It is not hard to see why. On the one hand Higgins's clause gave to churchmen what most were confident they already securely possessed, namely religious liberty. On the other hand it nullified certain political possibilities, such as nation-wide sabbath observance and temperance laws, which some Protestant leaders had hoped for. However, it was not easy for clerics to criticise Higgins's clause without making it appear to militant separationists that Higgins's allegation of a clerical plot had substance. The councils of churches had built the 'recognition' campaign on the premise of its political harmlessness and now could oppose Higgins's clause only at the cost of admitting that hitherto they had deceived the public. On an organisational level, there was nothing good about Higgins's clause which more militant Protestants *wanted* to say, yet nothing bad they were *able* to say.

Of course, individual militants here and there did speak out forcefully against Section 115. On the 7 April in a sermon preached at All Souls, Leichhardt, the Rev. T. Holme asserted that the Commonwealth, through its rulers, 'must make a definite profession of the Christian religion, that is the religion of 99 out of 100 of the people; they must recognise our Lord Jesus Christ, King of Kings, and Lord of Lords as the head of it.' He was very specific as to what this would entail. The Senate and the House of Representatives would open their sessions with prayers in the name of Jesus Christ.

The Commonwealth would have power to set aside days of humiliation and thanksgiving. The Commonwealth would, further, need to deal with education, 'and in dealing with education it must recognise religion, for education without religion is a proved failure.' It also 'must deal with the observance of Sunday, because the established law of the land deals with it, and so must recognise religion.'[6]

Writing to the *South Australian Register*, the Rev. J. Owen declared that, in his estimate, the proposed Constitution was 'nakedly secular', and

> not a single real Christian can vote for the Bill in its present state. Clause 115 forbids them to do so. It would be to affirm the principle that all religion is just a matter of human opinion, and that a State under the Crown – a part after all of Christian England – can get along quite as well without the religion of Christ as with it.[7]

Back in April 1897 a South Australian C. H. Goldsmith had announced, with regard to the constitutional committee's rejection of Quick's 'recognition' amendment, that if no further steps were taken, 'the loyal servants of God will know what to do when the referendum takes place'.[8] Then he was prophetic, one of the first of many voices. Now once more he entered the journalistic fray. What, he asked, did the 'establishment' and 'religious observance' provisions really mean?

> Are they intended to imply the 'non-recognition' by the State of the Christian Sabbath, as a day of rest or worship, as at present? And that as far as the Commonwealth is concerned, shops and places of public amusement may be open or closed according to the will of the proprietors? The legal meaning of these clauses will greatly influence the votes of a considerable number of the electors, especially if there should be any infringement of our present religious privileges.[9]

Now, he was a voice almost alone.

On 13 June 1898 it was reported in the press that a delegation of three New South Wales ministers, the Revs Spear (Anglican), Sharkie (Wesleyan), and Herford (Congregational) waited on Reid, the New South Wales premier, seeking his support for the omission of the 'establishment' and 'religious observance' provisions.[10] However, a couple of days later it was further reported that Sharkie and Herford had 'emphatically' protested against

> the report as furnished by the Rev. Mr. Spear (Anglican). They say they were not present when the deputation was introduced, nor do they agree with the amendments proposed by the deputation, but are in perfect accord with every word contained in clause 115 in its original form.[11]

The Protestant clerical consensus was no longer on the side of the turbulent ones. Not only was the Section 115 issue now an embarrassing one, but, since God had been 'recognised', many clerics felt duty-bound to support federation. Indeed many obviously were enjoying their role as spiritual adjunct to the federation movement. Within the now more 'spiritualised' ranks of that movement, a new solidarity developed. Old antipathies were softened or glossed over. Barton declared on 19 April in the Sydney Town Hall that 'God means to give us this Federation.'[12] The Victorian Council of Churches announced in May, as one reason wy electors should vote for the Federation Bill, that it carefully guarded 'the civil and religious rights of every member of the Commonwealth'.[13] The *Australian Christian World* repudiated Owen's claim that the inclusion of Section 115 made it impossible for Christians to vote for the Bill: 'To ordinary minds', it declared, '[Section 115] declares for religious freedom, and surely that is not a reason why Christians should reject the Bill.'[14] A Federation Sunday

furthermore was observed shortly before the referendum in a large number of non-Catholic churches in Victoria, South Australia and Tasmania.

Yet there was, from the federal viewpoint, a crucial absentee from the clerical ranks – Cardinal Moran. Of the four colonies which, in accordance with the programme set out in the Enabling Acts, were submitting the Federation Bill to referendum, Victoria, South Australia and Tasmania could be regarded in advance as safe for the Bill. However New South Wales, which contained influential and vocal anti-Bill elements, was the vital colony. There the parliament had stipulated that for a referendum to be deemed to have endorsed the draft Bill, not only was a majority necessary but the affirmative vote had to reach 80 000. This meant that in New South Wales the 'Billites', as they came to be called, needed not simply to win but also to attract the votes of at least 30 per cent of the electorate – no mean feat on such a technical issue as federation. In practical political terms, the Billites needed to tap or generate strong popular feeling for federation; and this in turn meant that for the 'Anti-Billites' their best hope of defeating the Bill lay in stirring up or creating popular fears and anxieties. In consequence of the resultant populist character of the New South Wales contest, and also of the fact that the vote could well be a close one, the attitude of the New South Wales churches became vital. One way or the other their attitude could prove decisive.

In the event, Protestant churchmen in New South Wales mostly supported the Bill, although as a result of its controversial character they tended not to express their support organisationally. The New South Wales Council of Churches for instance, unlike the councils in Victoria, Tasmania, and South Australia, took no official stand; and at the New South Wales Presbyterian Assembly held in May 1898, a resolution affirming support for the Bill failed to pass.[15] It was, rather, as individuals that New South Wales Protestant clerics mostly expressed their support for the draft Bill. For instance, at the April meeting of the Central Federation league, Archdeacon F. Boyce was present, and the Reverend S. Tovey successfully moved that 'The ministers of religion… be further solicited to urge on all citizens prior to the referendum the great desirability of every elector e3xercising his voting right.'[16] In May 1898 the prominent Victorian Congregationalist, the Rev. Dr L. Began, an ardent federationist, conducted a well-publisised speaking tour of Sydney and its suburbs in favour of the Bill.[17] Higgins many years later ruefully recalled that 'churches and meeting places were open to the "Billites", and generally closed to the "Anti-Bilites"'.[18]

This largely Protestant ecclesiastical assistance gave to the Billites access in depth to the middle classes, but mostly not – and electorally this was important = to the working classes. With the working classes the Billites were clearly in trouble. The Labour Party was, on balance, distinctly cool about the merits of the draft bill, and a number of populist politicians such as H. Copeland, A. G. Meagher and T. Slattery were strongly opposed to it. That was why, from the Billite point of view, Moran's participation possibly was indispensable. The Roman Catholic church, of the major churches, enjoyed by far the most extensive and intimate contact with the working classes. But now, understandably in the light of his souring experience of the previous year, Moran was chary of becoming involved. On II April 1898 he loftily announced to the press that although many had sought his personal views on the Bill and

> although he had thrown his sympathies and heart into the Federation of the Churches, he did not intend to take any part in the question of material federation. [Since the political leaders of the colony were so fiercely divided] it would not be becoming to intrude his own opinions.[19]

Bernhard Wise, now one of the Billite leaders, anxiously sought to persuade Moran to abandon neutrality and to take a stand for the draft Bill. On 13 April, combining flattery with a slight hint of warning, he wrote to Moran,

> [In the] other colonies the Heads of other churches and denominations have combined to advocate the Bill, going even so far as to set apart a special Federation Sunday, upon which the duty of union may be preached from every pulpit. In New South Wales several Protestant organisations (for example, the Western Suburbs Association of Churches) and many individual ministers have already announced their intention to actively support the Bill. Would not the abstention of the Head of the Catholic Church, be, under those circumstances, open to dangerous misinterpretation… We politicians can do much to explain and interpret the Bill; but more remains which we cannot do unaided, viz: to awaken the hearts and stir the consciences of the people to a sense of their personal responsibility… We must look to the clergy – your Eminence will pardon my frankness – to teach the people to recognise that 'peace and goodwill among nations' is no idle phrase, but has a direct significance for themselves, when they are asked to give a vote… Would it not be possible to urge these lessons – as your Eminence did with such triumphant success at Bathurst – without trenching upon the controversial points in the Bill?

Moran's reply was cool, but revealing:

> I beg to thank you for your criticism of the position which I have taken in regard to the present Federation project. When I took some part in the Bathurst proceedings in 1896 I hoped that the Federation question might be lifted up from the mire of political intrigue to the higher plane of genuine patriotism. My anticipations in this respect have not been realised. Looking around me at present, and considering the manner in which the question is being set before the electors of New South Wales, I feel convinced that I have adopted the right course. It amuses me a good deal to find that the Morning Herald and some prominent champions of the cause at present are troubled in that I do not interfere, which twelve months ago they abused me in every mood and tense, in public and in private, for having intervened. I do not at all reckon you among these, but the fact of their being thus troubled makes me feel the more justified in the course on which I have resolved.[20]

Revenge was sweet; and perhaps even more so when, at the referendum on 3 June 1898, although the Billites obtained a majority – 71,595 to 66,228 against – they came nowhere near the statutory minimum of 80,000. Most post-mortem Billite opprobrium fell on the New South Wales premier, Reid for his equivocal and half-hearted advocacy of the draft Bill, but it is arguable that Moran was entitled to an equal share.

However, by the time of the second New South Wales referendum, which was held on 20 June 1899, to decide on a slightly revised draft Bill, Moran had linked himself with the Billites. Perhaps patriotism triumphed over pique. At any rate, his public intervention, at a comparatively late stage of the second campaign, arguably was electorally as significant as his non-intervention probably was in 1898. He proceeded as discreetly as the heated circumstances would allow. The *Catholic Press*, virtually the official organ of the archdiocese, published on 13 May 1899 an interview with Moran. He there stated that although personally in favour of the Bill he would not, since the matter had 'become a bitter party question', take 'an active part in the campaign'. However, commented the interviewer, 'the bogeys of the Anti-Billites are a great fund of amusement to the Cardinal. He is confident that only blessings can follow the acceptance of Federation on the present lines.' The publication of this interview may have been electorally innocuous, but Moran's next move was not. The *Catholic Press* for Saturday, 17 June, featured a large photo of Moran, under which appeared in bold type:

A Federalist Through Good Report and Ill
THE CARDINAL
His Eminence says; "only Blessings can
follow the Acceptance of Federation on

the Present Lines."

This could not have appeared without Moran's approval. Probably it was the basis of complaints, made just after the referendum, that many priests had advised their parishioners to vote for the Bill.

At the second New South Wales referendum the draft Bill was approved by 107,420 votes to 82,741 – a clear although less than overwhelming victory for the Billites. The winning margin of about 25,000 was sufficiently large to make implausible any claim that Moran's intervention by itself turned defeat into victory. However, as the Anti-Billite *Daily Telegraph* complained, the churches were 'all on the one side';[21] and there is more plausibility in the claim that, in the second referendum, the clerical intervention as a whole tipped the balance of popular opinion in favour of the Bill. There is much evidence of a qualitative, although not quantitative, kind that the electoral weight of the clerical consensus was considerable. The pro-Bill Catholic *Freeman's Journal* declared editorially that 'Speaking generally, religious people were on the side of the Bill, and most potent of all the Catholic denomination.'[22] Dr MacLaurin, a prominent Anti-Billite leader, referred in his analysis of their defeat to 'the influence of the dominant religious bodies'.[23] Slattery made the same claim but singled out Moran's intervention as having 'had an enormous effect'.[24] A. G. Meagher, in a letter to Higgins, asserted that the Anti-Billite defeat stemmed largely from two factors. One was the absence of a leader to counteract Reid, who now wholeheartedly supported the Bill, and the other was the 'sectarian vote'. Regarding the latter, he chiefly blamed the influence of the Anglican archbishop and 'the Cardinal'.[25]

The key to estimating clerical influence on the result of the second referendum probably lies in Slattery's diagnosis: that the people were 'perplexed', and that this gave great leverage to the clerics.[26] Clerical involvement *may* have been decisive; it *must* (although precision necessarily eludes) have been highly influential.

CHAPTER 14
Piety and Precedence

Despite an angry prophecy in August 1899 by a member of the New South Wales Legislative Council, [1] Section 115 (which now became Section 116) was not tampered with when the Imperial parliament debated the Federation Bill during May and June 1900. Once the Bill had passed, the task facing those recognitionists who hoped to link religion and the churches with the Commonwealth was to explore the positive practical implications of the 'recognition' of deity' in the preamble. But their scope for action was now somewhat restricted by Section 116.

Two doors had been shut. Section 116 clearly prohibited the Commonwealth parliament from passing Sunday observance laws; while its spirit, and perhaps its letter, barred the governor-general in council from appointing days of thanksgiving and humiliation. However two other long-standing projects – one stemming from the formal, the other from the informal, agenda of 1897-8 – remained open to the churches.

In that a standing order of parliament was, on the face of it, *not* a law, the 1897 proposal that 'the daily session of the Upper and Lower Houses of the Federal Parliament be opened with prayer by the President and Speaker, or by a chaplain' probably evaded Section 116. In that allocating precedence at public Commonwealth ceremonies was regarded as the prerogative of the monarch, and not parliament, the negative reach of Section 116 was evaded here too. So the clerical quest for public status might in this sphere legitimately seek gratification.

The leading churches campaigned vigorously on each issue – against the demon of secularism, and sometimes against each other. Clerical standpoints on both questions were firmly, indeed trenchantly, defined and displayed in connection with the 1 January 1901 ceremony at Centennial Park at which the Commonwealth formally was inaugurated. The prayer issue was settled by mid-1901. However, the precedence controversy was not resolved until 1905.

Commonwealth Inauguration

In October 1900 the New South Wales Council of Churches began a campaign to win the Commonwealth for God, and God for the Commonwealth. Their first object was to secure a religious element in the 1st January ceremony. They also projected a longer-term campaign to secure prayers in the federal parliament-to-be.[2] The cooperation of member denominations was solicited, and also that of councils of churches in other colonies.[3] The response was encouraging, both within and beyond New South Wales. The heads of member churches, and also councils of churches in the other colonies, prepared formal requests to the New South Wales government that prayers be an integral part of the inauguration ceremony. These were forwarded to the New South Wales Council to be used at its discretion.[4] Early in November a council delegation, headed by the primate, Archbishop Smith, approached the New South Wales government which was arranging the inauguration ceremony.[5]

The New South Wales government, of which Lyne now was premier, had already shown a disposition to cooperate. Even before the council's formal approach, the government had invited churches of all denominations in New South Wales to hold special watch-night services at 11 p.m. on Monday 31 December. It had also declared

Sunday 6 January, 'Commonwealth Sunday'.[6] Lyne's response to the council was encouraging, but beforereaching a final decision he discussed the matter with Moran.

It was prudent, even necessary, for Lyne to do this. Moran, as the head of a church whose Australian membership approached one million and which was not linked in any way with the essentially Anglo-Protestant Council of Churches, had a clear *prima facie* right to be consulted about, and indeed invited to participate in, any religious ceremony at the inauguration. Furthermore, Protestant-Catholic relations in New South Wales, rarely amicable, were at this time at a specially law ebb.[7]

Moran however was reasonably helpful. He was, after all, an enthusiastic federationist. He declined to participate with the primate in the inaugural religious ceremony itself. However, he did offer to recite a prayer for the Commonwealth, either before or after the ceremony. This Lyne would not consider and Moran (according to Moran's later account) at this time 'made no complaint'.[8]

The government in late November formally acceded to the proposal from the council. The primate was invited to compose the prayer and to arrange the religious portion of the swearing-in ceremony. On 7 December the *Australian Christian World* declared with satisfaction that not only was 'the name of Almighty God… acknowledged in the preamble to the Federal Constitution' but 'the Commonwealth will be inaugurated by solemn acts of worship'.

Whether Moran at this point genuinely accepted exclusion from any independent role in the religious ceremonies is not clear. However, two occurrences now offered him not only firm provocation, but also a plausible pretext, to seek after all to play a separate, indeed dominant role in this ceremony. This first was the 'insult' offered to him by the 'order of precedence' list issued by the New South Wales government, early in December, for the landing on 15 December of the new Governor-General, Lord Hopetoun. This list grouped *all* heads of denominations together.[9] Moran, upon learning of this, 'of course' (as he put it) declined to attend.[10] In his view the current rules of colonial precedence placed him above other clerical leaders: the cardinal and primate ranked together above other church leaders, and (a point favouring Moran in this case) took precedence, as between each other, according to the date of episcopal ordination.[11] Indeed on the day before Hopeetoun landed, the government adjusted the order of ecclesiastical precedence. It bracketed the primate and the cardinal together, high on the list. Then, after a gap, came the moderator, immediately followed by the dean. Finally, after a further gap, came 'Clergymen of all denominations according to population'.[12] This revision may well have been acceptable to Moran, but came too late. 'The change was not intimated to me till the day of the landing of His Excellency', Moran laterstated. He was not then able to alter his plans.[13]

The second event was the intervention of the new governor-general himself. Hopetoun, using as a model the general 'Table of Precedence for the Commonwealth' approved by the Queen, issued a special 'List of Precedence' for the inauguration.[14] According to this, cardinal and archbishop were bracketed together, in that order, as number 6, quite close to the top, while (a point soon to become equally controversial) 'Heads of other denominations' were placed second last. When Moran came unofficially to hear of Hopetoun's special list is not clear, but officially he was told by Lyne himself in a personal interview shortly after Christmas. Moran's version was as follows:

A few days after Christmas I called on the Premier at the Treasury, when he intimated to me that the matter of precedence was definitely settled by the instructions from the Colonial Office conveyed through the Governor-General. The Premier read for me the official arrangement, which, he stated, he had just received from Government House; the due place was assigned to the Cardinal-Archbishop, and the Protestant Archbishop, and the Cardinal's precedence of the latter was officially sanctioned.[15]

The precedence list simply stated, 'The Cardinal and the Primate'. There is no annotation as to precedence *inter se*. l What probably occurred was that Moran, perhaps not unreasonably, based his claim on the fact that the cardinal was named before the primate. How Lyne himself (who of course in connection with Lord Hopetoun's 'blunder' had other troubles) interpreted the list is not evident. However, it is at least clear that he either was not aware of or did not concede Moran's claim. Probably, during the interview Moran simply interpreted the list in one way, and Lyne in another.

So now, if not before, Moran felt free to act. He at once sought permission from Government House to read a prayer of his own during the ceremony and *before* the primate's.[16] No doubt he recalled that time in 1868 when his uncle, Cardinal Cullen, had scored a notable and dramatic precedence triumph over the Anglican Archbishop of Dublin. In that year, as part of Great Britain's never-ending efforts to solve the 'Irish problem', the Prince and Princess of Wales had paid a formal goodwill visit to Ireland. A state banquet was arranged at Dublin castle, at which the Anglican archbishop initially was given precedence over Cullen. Cullen had protested, refusing to attend. This proved intensely embarrassing, since one of the main reasons for the royal visit was to create goodwill; and so Cullen's precedence, despite vigorous protests by the Anglican archbishop, had been conceded.[17]

Moran was not the only convert clerical negotiator in the interval between Christmas and 1 January. On 28 December Rev. J. McDonald, the New South Wales Presbyterian moderator, complained to Lyne that the 'recognised' position of the Presbyterians was *not* 'at the bottom' but 'next in order after the Heads of the Anglican and Catholic church'. He requested Lyne to remedy the situation.[18]

Lyne evaded the request by referring McDonald to the governor-general's secretary.[19] However, the secretary thrust the issue back on Lyne, claiming that the order of the procession was the responsibility of the local government. Thereupon McDonald, together with Rev. G. Tait, the Victorian moderator, appealed once more to Lyne;[20] but Lyne still refused to act.

The Presbyterians did not rest content after this rebuff, but changed their tack. They now became determined, in the name of religious equality, that in the procession there should be no differentiation whatever of ecclesiastical rank. Around mid-afternoon on 31 December a delegation of Wesleyan and Presbyterian leaders waited on Lyne. McDonald and Tait were among its members. The delegation declared itself shocked to learn that, in contrast to the position assigned to the Anglican and Catholic heads, the 'Heads of other denominations' had been 'grouped together far away at the other end'. Claiming that 'the singling out of two churches… [violated] the principle of religious equality', the delegation requested that Lyne rearrange the order of the procession so as to rank all church leaders together.[21] Lyne apparently expressed sympathy, but claimed that his government had no power to act. The 'order', he allegedly said, 'came from Downing street'.[22] The unsatisfied delegates held a meeting at once and decided that, as an act of protest, they would 'stand out of the Procession'.[23]

In the meantime Moran also was running into difficulty. During that same afternoon the New South Wales Council of Churches learned of Moran's confidential negotiations with Government House. At about 6 o'clock Lyne was faced by a second angry clerical delegation. This one, led by Archbishop Smith, insisted that Lyne prevent Moran reading a prayer before that of the archbishop.[24] The sources do not mention a threat by the archbishop to withdraw, but probably such a threat was made or implied. Lyne, faced now with the likelihood of an intensely embarrassing disruption of the swearing-in ceremony itself, could hardly fail to act. Probaly he at once consulted the organising committee.[25] At 9 o'clock, he sought an interview with a representative of Moran. At 9.30 Monsignor O'Haran, Moran's secretary, came to Lyne's office.[26] A cool, perhaps terse, interview followed.

According to Lyne, he at once asked O'Haran if it was true, as reported, that the cardinal was seeking to arrange with Government House to read his prayer before that of the primate. O'Haran said this was so, and showed Lyne a copy of the prayer. He added that he had sent two copies to the governor-general's secretary. Lyne then telephoned the secretary who said he had received a letter from O'Haran, but not the prayer. Lyne at once sent a copy of the prayer by messenger. The secretary, on receiving this, immediately rang back to say that at this point the prayer could not be included. Lyne then told this to O'Haran.[27]

Moran, when O'Haran reported back, decided that he too would stand down.[28] So now there were two embarrassing gaps in the procession, and the primate rode in his carriage in more solitary state than expected. However, neither the affronted Protestant leaders nor the angry cardinal withdrew completely. The dissenting Protestants still occupied their places at the Centennial Park ceremony. Moran didn't do this, but as a gesture of cordiality, much in the grand episcopal style, seated himself, on the morning of 1 January, outside St Mary's, facing the street along which the procession was to wend from the Domain to Centennial Park. He was surrounded by a welcoming choir of about 3500 Catholic children.[29]

The actual religious phase of the inauguration then proceeded without a hitch: 'Century and Commonwealth', rejoiced the Protestant *Southern Cross*, 'had their first moments richly baptised with prayer.'[30]

Yet what did the Council of Churches' victory really mean? From the point of view of interpreting the implications of the two religious clauses in the Constitution, it meant nothing. The Constitution, after all, came into effect only in consequence of the inauguration ceremony itself. Responsibility for arranging the ceremony, and its religious and clerical content, was divided – although not in a completely clear way – between the New South Wales government and the British government's representative, Lord Hopetoun. Technically, authority must finally have lain with the British government, but Hopetoun's relatively late arrival virtually forced the New South Wales government to assume responsibility for matters outside its ambit. What emerged was in no sense an interpretation of the Constitution, but an ad hoc mixture of what initially the local colonial government, and subsequently Lord Hopetoun and the British government, regarded as suitable religious and clerical trappings for the birth of the Commonwealth. This technical-legal point was not however always noticed. Some Protestants who objected to the cardinal's claim to precedence over the primate, and also to the cardinal and primate jointly having precedence over themselves, asserted that the official sanction of these precedence distinctions breached the egalitarian implications of Section 116.[31] Furthermore, it became a common rhetorical ploy during

the following months for clerics advocating prayers at the opening of parliament, and in the parliamentary sessions, to cite the religious element in the inauguration ceremony as a legally relevant precedent. 'The Commonwealth', declared one churchman the following March, 'has not changed its character since January, and what was done in Sydney may fitly be done in Melbourne.'[32] The legal complexity inherent in a federal system made such errors of interpretation not only convenient, but in some degree natural.

The 'Prayers in Parliament' Campaign

Nevertheless, from the point of view of the campaign to secure the saying of prayers in the federal parliament, the events of January had considerable practical import. Positively, they showed that associating religion with the new Commonwealth did not offend the community at large. Even the *Bulletin* showed little interest in the prayer issue, confining its derision mainly to the clerical quest for status and precedence.[33] The Adventists expressed no concern whatever.

Yet there was an obvious negative side. During the first three weeks in January the columns of Sydney and Melbourne daily newspapers, and of the religious journals, resounded with maledictions issued by Protestants and Catholics against each other, and sometimes against the organisers. The more anti-clerical segments of the public settled down, no doubt often with amusement, to enjoy the fireworks.

The sectarian row, which even the participants knew damaged them severely in the public eye, was probably unavoidable once Hopetoun issued his 'official' precedence list for the opening ceremony. The imperatives of Catholic and Protestant history thereupon gave the protagonists little choice. Moran *would* not take second place to the primate. The Mnethodists and Congregationalists, naturally egalitarian on this sort of issue, *would* not take second place to Moran and the primate. The Presbyterians, still with something of the smell of Establishment in their nostrils, would perhaps have preferred to concede undisputed ascendancy to the Catholics and Anglicans in return for sole tenure of third place. But denied that, they naturally resorted to the egalitarian plea.

Specifically, the sectarian row nullified whatever chance might otherwise have existed that not only religion but its clerical spokesmen would find an official place within the parliament of the Commonwealth. On the Church-State as distinct from the Religion-State issue a resolute and widespread secularist response quickly became evident. 'I have keen recollection'. R. T. Vale wrote to the *Sydney Morning Herald*, 'of the vigorous fight we had to destroy the connection between Church and State.' He entered a protest 'against our would-be rulers bringing into the arena of politics this vexed question.'[34] Another correspondent, a little later, asserted that '[I]n the Commonwealth there is no State Church. All religious communities are in law absolutely equal, and precedence here is but the ghost of ancient ghostly existences.'[35] A further correspondent cited as applicable to Australia the American principle of 'a fair field and no favour'.[36] The *Bulletin*, on 12 January, sneered: 'Bishop Smith should have no more pull in the secular Sate than Cardinal Moran or Pastor Howlman of the little Ebenezer. The State shouldn't know any one of them from a crow.' The *Age* of course rarely could resist the chance to deplore petty clerical 'squabbles' for 'trumpery' honours:

> An excellent divine once remarked that there was no reason why the devil should have all the best tunes. In the same way there is no reason why the laymen should have all the humour. Did the clergy possess a fair share of it, they would seeing that nothing could be better calculated to bring ridicule upon them than petty squabbles for the trumpery honour of ceremonial precedence.[37]

An interesting distinction emerged in the editorials of the *Age* and the *Sydney Morning Herald* between strong-line (Higgings-type) and soft-line (Quick and Garran-type) secularism. The hard-line approach was formulated by he *Age* thus:

> The Commonwealth has wisely enacted that there shall be no State religion, and the corollary of this is that ecclesiastics have really no status in official eyes. It was a matter for regret that this was not distinctly laid down in technical phraseology, in order to dispense with the unseemly clerical strife for merely worldly distinction…[38]

The soft-line approach (possibly based on Quick and Garran's *Annotated Constitution* which had been available since December 1900) was advanced by the *Sydney Morning Herald* in a carefully formulated 19 January editorial. From the fact of the inclusion of Section 116 in the Constitution it 'would seem to follow, as a matter of course, that the question of precedence *amongst* the churches is one with which the Commonwealth has nothing to do [emphasis added].' The conferring of differential precedence, the editorial concluded, as 'in direct opposition to the spirit of our Constitution, and… the wish of the vast majority of the citizens of the Commonwealth.' The primate and the cardinal should forgo 'their supposed claim to special recognition'.

In the face of anti-clerical feeling, and their own lack of unity, moves by clerics to acquire for themselves an official function in the soon-to-be-created parliamentary machinery of the infant Commonwealth were doomed from the start. Nevertheless feelers shortly would be extended in that direction. However this, one suspects, was more for form's sake than with genuine hope of success.

During the next few months the Anglicans and Protestants resolved most of their differences and applied themselves to the 'prayers in parliament' campaign. They could not expect, did not obtain, and probably did not want, assistant from Moran. However, later at a useful point they were pleased enough when the Catholic archbishop of Melbourne offered support.

There was need for haste. Soon federal elections must take place, and not long afterwards the federal parliament formally would be opened in Melbourne. Archbishop Smith, acting for the New South Wales Council of Churches, wrote on 17 January to Barton, now prime minister, earnestly seeking the cooperation of the federal ministry.[39] Early in March he sought interviews with Barton and the governor-general.[40] No doubt other political leaders were approached by the Council as well.

These things were done quietly. The essence of the Council's approach now was discreet negotiation, well out of the public eye. The prayer issue scarcely entered the March election campaign. The New South Wales Evangelical Council issued an 'Appeal to Electors', enjoining them to elect only candidates who favoured the 'recognition' of God at the opening of the daily sessions of parliament, and who endorsed the 'numerical' principle of precedence.[41] However this 'Appeal' was scarcely noticed, even by the religious journals. 'All the influence that the Council [of Churches] could bring to bear on public men has been used,' said the *Australian Christian World* in May, 'but of course it would not be proper for use to enter into such matters.'[42]

The Council's campaign fell naturally into two phases. The first issue was whether formal prayers would be offered at the 9 May ceremony at Melbourne in which the Duke of Cornwall and York was to declare the federal parliament open. Thereafter the

question became whether the two houses of federal parliament would allow the saying of formal prayers at the start of their sessions.

On 26 March Rev. G. Tait wrote to Barton, on behalf of the Victorian Presbyterian Church, urging 'the desirability of opening the Federal Parliament with prayer'. He suggested that the head of the Anglican church, as representing the church with the largest number of adherents, be asked to do this. The offering of prayers would give effect to the 'recognition' clause in the preamble, and would be 'in harmony with' the precedent set at the inauguration ceremony.[43] Shortly afterwards Rev. J. Meiklejohn, president of the Victorian Council of Churches, and Rev. H. Burgess, general president of the Australasian Wesleyan Conference, wrote to Barton on similar lines, except that they made no reference to the primate conducting the ceremony.[44]

The question of whether the House of Representatives and the Senate should open their sessions with prayer obviously was a question for those bodies themselves, although the cabinet might take a view. But the question of whether prayers should form a part of the ceremony for opening parliament, and who should offer them, was an issue squarely for cabinet and for the governor-general. It was likely to be a sticky one. In March, Barton had directed his staff to compile a survey of the practices followed respecting prayer in the various state legislatures, in the Canadian parliament, and in the British parliament.[45]

On 11 April the matter was considered for the first time by cabinet, which decided that Barton should consult with the governor-general. Cabinet considered the matter again on 14 April but deferred the issue, simply resolving that 'an official arrangement would shortly be made defining the procedure to be followed at the opening ceremony'. On 16 April the cabinet agreed that some form of prayer would be offered at the opening ceremony but not, apparently, who should offer such prayers or what they should consist of. On 17 April Barton had a long interview with Hopetoun about the opening ceremony. No doubt the prayer issue was one of the matters discussed. On 20 April the matter was discussed again by cabinet and deferred. The cabinet's final decision was made only on 26 April: there would be an act of worship, the prayers would be modelled on those used in the House of Commons, and Lord Hopetoun, not the primate or any other cleric, would offer the prayers.[46]

In the absence of direct evidence, one can only guess at the reasons for the difficulty the cabinet found in reaching a decision. Clearly there must have been disagreement, but whether this lay more between Hopetoun and the cabinet or within the cabinet is not clear. Hopetoun himself was a Presbyterian,[47] but in the light of his inauguration performance, that may not be relevant. He certainly would have wanted prayers and initially he may have wanted the primate too. In the cabinet Barton, Kingston, Lyne, Fysh and (probably) O'Connor, were federal-level Religion-State separationists, but one suspects something of a *Church*-State conflict between Hopetoun and the cabinet, and something approaching a *Religion*-State conflict within the cabinet.

The opening ceremony on 9 May in the Melbourne Exhibition Building, duly presided over by the Duke of Cornwall and York, proved conventionally splendid but otherwise unremarkable. The prayers Hopetoun read contained, as had the primate's prayers at the inauguration, christological references and a trinitarian benediction. They also included a segment composed by Lord Tennyson, the governor of South Australia.

Cardinal moran again absented himself. This time, however, his protest was of a different and, in the Australian context, more respectable kind. The royal Duke had declined to perform an opening ceremony at St Vincent's Hospital, Melbourne, on the ground that during his Australian visit he should play no part in any sectarian ceremony. Yet wen the Duke went to Brisbane, he laid the foundation stone of the Anglican cathedral.[49]

However for the Protestants the opening ceremony remained, on balance, a partial victory. The prayers offered at the opening of parliament, unlike those offered at the 1 January ceremony, provided a genuinely compelling precedent. Virtually, a principle already had been conceded.

Up to this point, while councils of churches in the other colonies had, as the *Australian Christian World* put it, given 'most loyal help', the 'initiation of the movement and the main direction and control of [the prayer campaign] belonged to the Sydney Council'.[50] Now, with parliament sitting in Melbourne, control necessarily passed to the Victorian Council. However, before examining further developments, a puzzling side issue briefly should be noted.

What had happened to the Adventists? In 1897 and 1898 they had strenuously fought 'recognition', yet in 1901 they appeared indifferent to the 'prayers in parliament' campaign. Their quietism partly may have derived from having the security of Section 116. Partly it may relate to the fact that the American parent church did not regard congressional prayers and the congressional chaplaincy as major aberrations. Yet more was involved.

By late 1898 Mrs White and some other Adventist leaders had become concerned over contaminating consequences of political involvement. The *Southern Sentinel* ceased publication late in 1898. In 1899 Mrs White expressed a firmly isolationist viewpoint in her 'special testimony relating to politics'.[51] By 1900 the Religion Liberty secretaryship in the Australasian Union Conference, which previously had functioned as a separate office, had become attached to the presidency. At the 1901 July Conference there was no Religious Liberty report as such.[52] Isolation rather than separation had become the Adventist watchword.

However, returning to the churches' campaign, the Victorian Council moved into the second phase with characteristic energy. The situation now was that the cabinet, which probably was in some measure internally divided, had declined to accept responsibility for including a reference to prayers in its preliminary draft of the standing orders. The Victorian Council of Churches therefore approached two sympathetic Presbyterian parliamentarians, W. Knox in the House of Representatives, and J. T. Walker in the Senate, requesting them to raise the matter in parliament.[53] Early in the first session Knox gave notice of motion in the House of Representatives that it begin each session with prayer. Walker did similarly in the Senate.

On 7 June, Knox raised the matter in the Representatives. Before that date, the Victorian Council had circulated formal declarations of support from the primate, from the moderator of the Presbyterian Church in Victoria, and from the president of the Victorian and Tasmanian Wesleyan Conference. Most strategically, the Council obtained a supporting statement from the Catholic archbishop of Melbourne, Dr T. Carr.[54] Concurrently, some leading religious bodies – the Australasian Wesleyan Conference, the Presbyterian Church of Victoria, and the General Synod of the Church

of England in Australia – on their own initiative issued and circulated statements of support.[55] However, no formal petitioning was undertaken, probably through fear that this would provoke a counter-campaign by hardline secularists.

Such caution, even at this stage, was not unreasonable, since practices regarding prayers in the colonial legislatures differed considerably. The New South Wales, Tasmanian and South Australian legislatures and the Victorian Legislative Assembly did not have prayers at all. The Victorian Legislative Council opened its sessions with the Lord's Prayer. The Queensland and Western Australian legislatures used prayers based on the Book of Common Prayer.

Knox moved 'that the standing orders should provide that, upon Mr. Speaker taking the chair, he shall read a prayer.' The debate was subdued.[56] It was clear that the majority were willing to allow prayers, provided these were read by the speaker rather than a chaplain, and provided they were 'entirely unsectarian in character'. Those who spoke fell into two groups. Some, such as Knox and Glynn, saw value in parliamentary prayers. Others – Barton and Sir William McMillan – doubted their propriety but said they would not oppose them. Since, Barton state, the 'large number' who doubted the 'propriety' of these ordinances would not be so offended if they were carried out, as would those who demanded them, if they 'were not complied with', he felt he should 'give way'.[57] Knox's motion was agreed to, and the standing orders committee, as directed, devised a prayer, which it submitted to the House on 13 June. The proposed prayer had two parts. The first, a portion of the prayer composed by Lord Tennyson for the opening of parliament, read,

ALMIGHTY GOD, we humbly beseech Thee at this time to vouchsafe They special blessing upon this Parliament, and that Thou wouldst be pleased to direct and prosper all our consultations to the advancement of They glory, and to the true welfare of the people of Australia.

The reference in Tennysons' original prayer to the triune nature of God was omitted. The second part of the proposed prayer was the 'authorised' translation of the longer-ending version of the Lord's Prayer. The standing orders committee's proposal was agreed to without debate.[58]

In the Senate the matter was brought forward on 14 June by Walker. The brief debate that ensued was similar to that in the Representatives, but sharper in tone.[59] Gregor McGregor, the Labour Senate leader, suggested that, strictly speaking, the prohibition of religious observances in Section 116 prevented parliament from including prayers in its proceedings:

What did the framers of the Constitution mean? Did they mean that Parliament was not to impose religious observances in the streets or in the schools? Did they mean that Parliament was not to impose religious observances anywhere else but here?[60]

To this however Sir Frederick Sargood responded concisely. Noting that Section 116 began, 'the Commonwealth shall not make any law…', he commented, 'A standing order is not a law.'[61] Walker's motion was agreed to on the voices.[62]

So the prayer question at last was settled. As the *Sydney Morning Herald* editorial of 8 June remarked, such prayers would provide a 'regular expression of the statement in the preamble to the Constitution Act that we as a people "humbly rely on the blessing of Almighty God".' However, as the debates themselves had made clear, the religion of

the federal parliament would be undogmatic, unsectarian and unsacredotal. A door had been opened, slightly, to religion, but not to the churches.

Responses to the parliamentary decision naturally varied. Protestants, the *Southern Cross* declared, now could look back on 'many years' of 'ignorant and bitter secularism' as some 'hateful nightmare'.[63] The high Anglican *Church Commonwealth* was pleased, but with reservations. It was a pity that 'Our Lord's name was not included'. Admittedly some Jews might be offended, but 'the first principle of Parliamentary Government is that the majority shall rule'.[64] Some dissatisfaction was expressed. The *Argus* did not comment editorially, but the tone of its report of the Senate debate conveys its disdain.[65] The *Age* also was obliquely critical. 'It is to be hoped', its parliamentary reporter remarked on 14 June, 'that the prayer will be recommitted and revised, for it is a weak piece of composition, and would be easily improved by an application of the blue pencil.' A surprising critic, in view of his earlier support, was Archbishop Carr. He did not consider Tennyson's prayer 'worthy of the occasion'; and he also had sharp words to say about the choice of the 'authorised' longer-ending version of the Lord's Prayer: the longer ending was 'distinctly Protestant', and the 'revised' version rather should have been used.[66] Overall, however, criticisms were isolated, or received little publicity.

The Precedence Question

The British government claimed, and the federal government conceded, the right finally to decide the order of precedence at formal Commonwealth functions.[67] However as J. Chamberlain, the British colonial secretary, made clear to Hopetoun on 30 November 1900, the general Table of Precedence which Hopetoun was to implement was only provision, and the federal government would be invited to express its views.[68] In this kind of consultative situation the wish of the local government was likely eventually to prevail, provided no substantial imperial interest was at stake, and provided the local government was resolute and unified. But negotiations might take some time. In the case of the Commonwealth Table, final agreement was not reached until 1905. Several issues caused difficulty,[69] although clerical precedence easily was the most vexatious.

The ecclesiastical ranking in the general Table differed in one noteworthy respect from that in Hopetoun's special inauguration list: while 'Heads of other denominations' enjoyed a place, albeit humble, in the special list, they were absent altogether from the general Table.[70]

In the months immediately following inauguration, the clerics, the federal cabinet and Hopetoun took up fairly well defined and clearly contrasting positions. Moran remained in the background but did not forgo his claim to precedence *inter se* over the primate. Probably he judged that his claim would not be advanced by controversy. Archbishop Smith was quiet too, but for different reasons. His claim to ascendancy was supported not only by most Anglicans but by many other Protestants. His difficulty was that many of his co-religionists supported his claim mainly or solely because he was *primate*, while many of his non-Anglican supports backed him rather because the Church of England was 'the most numerous' church.[71] Which of these potentially incompatible principles Smith personally adopted was not clear – perhaps, in the delicate circumstances, could not be clear.[72]

However the non-Anglican Protestants, unlike the Catholics and Anglicans, manifestly were 'have-nots' in the precedence struggle, and needed to be active. Over the next five months numerous Methodist, Presbyterian, Baptist and Congregational bodies in the

various states made forceful representations to the federal cabinet in support of the 'numerical principle'.[73] Some however hedged their bets. The committee on public questions of the Presbyterian Church of Victoria, writing to Lyne, firmly commended the 'numerical principle'. But then it declared that if any *other* principle but religious equality were adopted, 'it should be the standing in the Old Country of the Churches which the Churches in the Commonwealth represent'. This would

> rank the Anglican Church, the representative of the Established Church of England, and the Presbyterian Church, the representative of the Established Church of Scotland, together and group the Roman Catholic Church with the other Churches which represent Churches not established in any part of the Empire.[74]

The only alternative to the principle of equal public status to all, which might appeal to egalitarian Protestants, was the principle of no public status to any. However this would not satisfy those Protestants who longed for 'official' recognition. The *Southern Cross* on 10 May 1901 declared that questions of social precedence were 'irrelevant' and 'contemptible'. But this viewpoint received little support.

What view, as the Protestant campaign developed momentum, did Hopetoun and the cabinet take? On 18 April 1901 Hopetoun forwarded a suggested Table to Barton. 'I think', he declared hopefully, 'on the whole it works out very well.' He ranked 'the Cardinal and Primate' as number 7, and 'the Archbishop and Bishop' as number 8. Heads of other religious denominations did not appear.[75]

The only evidence of the cabinet's response is indirect, and consists of certain markings added to the typewritten sheet on which the proposed table was set out. Handwritten ticks and crosses were placed in the margin beside the listed dignitaries. Most items were ticked. One, 'Chief Justices of States', had beside it either a cross-stroke superimposed upon a tick, or a tick superimposed on a cross. Two, those relating to 'the Cardinal and Primate', and 'the Archbishop and Bishop', *simply* had crosses beside them.

The cabinet's initial response may well have been as critical as these marginal crosses suggest. On 20 July 1901 Hopetoun forwarded to Barton a revised Table in which 'The Cardinal, the Primate, the Bishop, and the Archbishop' were now ranked together, and relegated to the lower rank of 11. Heads of other denominations still appeared nowhere. 'You will see', Hopetoun uninformatively explained in a covering letter, 'that I have placed the Cardinal and the Primate, the Bishop and the Archbishop, after peers which appears to me to be a suitable position for these particular dignitaries in Australi.'[76] However this too proved unacceptable in the cabinet. Further negotiations followed, not now traceable, and by March of the following year cabinet had firmly declared its mind. On 26 March 1902 Barton sent to Hopetoun a 'Proposed Table of Precedence', approved by the cabinet, with the request that Hopetoun forward it to the King for approval.[77] Cabinet's proposal respecting ecclesiastics was simple: none of them ranked anywhere. Probably, recalling the marginal crosses, that had been the cabinet's intention all the time.

However, the issue of clerical precedence was not yet resolved. The Colonial Office still wished to negotiate on some issues although, by mid-1903, it at least had conceded on the ecclesiastical question.[78] Normally that might have settled the clerical issue. However in Barton's cabinet diary for 10 June 1903 a curious entry appears, which suggests that cabinet itself was having second thoughts. The entry stated,

The giving of any relative precedence to religious ecclesiastical dignitaries at functions which are in themselves secular does not and [gap here] No answer to deputation at present.[79]

The immediate background to this was that on the previous day Barton had received a Protestant-Anglican delegation still urging the 'numerical principle'.[80] However the more general background, and probably the main explanation for the cabinet's retreat, was the fact that the federal election shortly was due.

During the next few months the various interested churches forcefully renewed their claims. Protestants and Anglicans still pressed for the 'numerical' principle.[81] Moran, in a letter to Barton, canvassed, rather, the merits of the Colonial Office scheme still provisionally in force. He cursorily dismissed Protestant claims for parity:

There are some Protestant communities which do not pretend to any regularly ordained ministry and in fact repudiate all idea of ecclesiastical rank. The representatives of such communities can only lay claim to such precedence as in their lay position they may be entitled to, but assuredly any ecclesiastical precedence would be out of place in their regard.[82]

However, in the long haul the cabinet (for the next two years, of course, a series of different ones) stuck to its separationist guns. On 30 December 1905 a revised 'official' Commonwealth Table of Precedence was issued by the governor-general.[83] This assigned no place whatever to ecclesiastical heads.

By now, most clerical leaders had come to terms with their non-inclusion. The publication of the final Table produced, in contrast to the fuss of previous years, scarcely a ripple in either the secular or religious press. In the major secular dailies only the Methodist cleric W. Woolls Rutledge protested, and that simply was over the failure of the Table to make clear that Australia was a Protestant country.[84] Among the major religious journals only the *Church Commonwealth* commented at length and, on balance, interestingly, it was pleased:

Surely the empty show of State or Vice-Regal functions can do better without our [ecclesiastical] leaders… It would be more telling to hold aloof than to cling to the last shred of the old order of the Erastian Establishment at home.[85]

CHAPTER 15
Retrospect

From about the mid-nineties it became clear to many churchmen, who often were quite as sensitive as journalists and politicians to currents of feeling in the community, that federation was becoming a genuinely popular cause. The coming Commonwealth would be more than a political and economic fact; increasingly it would tend to become a *social* entity – an organic community. Responding to that perception, many church leaders hoped to become, and be recognised as, the moral and spiritual conscience of the New Commonwealth.

A central aim of the churches' campaign was the achievement of public status – in the sense of public recognition of a distinctive role and rank – within the emerging Commonwealth. At the People's Convention Gosman and Moran clearly regarded themselves, and hoped others would see them, as trustworthy guides to the moral and spiritual side of federation. Moran's Convention candidature was partly, and perhaps largely, motivated by the hope that, once elected, he could lay claim to the status of Christian spokesman in the Convention and the federation movement. When, during the 'recognition' campaign, Protestant clerics forcefully dilated on the perils of federating 'without God', they both assumed and invited public acceptance of the validity of their prophetic role. When Protestant leaders, and later Moran, campaigned for electoral acceptance of the Federation Bill, they tended to assume, and to wish the electorate to accept, that they were specially expert interpreters of God's will for the outcome with each other over who should offer the first prayer at the Commonwealth Inauguration ceremony, their conflict (possibly worldly vanities aside) essentially was over which would be, and publicly would be recognised as, the infant Commonwealth's principal interceder before the Throne of Grace. However the most compelling, if also the least dignified, demonstration of the strength of clerical status-ambition was the prolonged quarrel over ecclesiastical precedence at official Commonwealth ceremonies.

The churches achieved success in some small matters, but not in larger ones. Although the sovereignty of God finally was 'recognised' in the preamble to the Constitution, the federal parliament was totally prohibited by Section 116 from passing laws to help or hinder religion. Although in June 1901 the upper and lower houses of federal parliament agreed to open their daily sessions with prayer, that prayer was theistic merely, and not distinctively Christian. Moreover it was in each case to be read by a layman. Finally, under the Commonwealth, no clerical leader enjoyed, by right, any kind of official entitlement to place or precedence.

Resistance to the churches' hopes was not prompted by irreligion. The Adventist *church* had been the organisational pivot of the anti-'recognition' campaign. Of the seventeen Convention delegates who voted against Glynn's 'recognition' proposal, nine were religiously fairly serious, five were unclear, and only three (Barton, Wise and Kingston) could be called religious indifferent.[1]

Nor irreligion but fear was the key to separationist resistance. The Adventists, resolutely committed to working on Sundays, feared Protestant legal persecution. Federation supporters of secular outlook feared the destructive potential, in the federal domain, of sectarian conflict.

So ironically, or perhaps typically, out of fear came light.