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## **Federation and the People: a Response to Stuart Macintyre**

*John Hirst*

Let's agree that we will not be conned by the claims of the 'popular movement' about federation's history. We will not believe that it can be divided into two parts: a politicians' movement until 1893; a people's movement thereafter. Stuart Macintyre is right: the politicians helped to create the popular movement and they remained key players in the achievement of federation.

But let us be thoroughly sceptical about the historiography peddled by the 'popular movement'. The other notion we need to reject is that the politicians were the sole players before 1893. If we are looking for a federal movement controlled by the politicians where the people were kept at arm's length, we will not find it in Australia. Something like this did occur in Canada. An examination of its federal movement throws light on the vexed issue of the role of the people in the Australian movement.

The delegates who deliberated on Canadian union were appointed by the parliaments of the various colonies. They did not draw up a constitution; they agreed on the principles of union, which were then carried to London to be put into legislative form. The delegates met in secret. The press was excluded. There were no briefings for the press and no leaks to the press. Even after the conferences were over, details of what had been agreed were slow to emerge.

Only in one colony were the proposals put to the people at election. Those in charge of the process were desperate to avoid any such scrutiny of their work. They worked in haste so that everything would be sewn up before the various parliaments had to be dissolved. The opponents of union demanded that the issue be put to the people, but they were easily rebuffed. To suggest that the people must be consulted was republican, the sort of demand which would be made in the United States, the enemy over the border.

The maritime colonies were very reluctant to join Canada. The British government wanted them to join and it instructed their governors to see that they did. They achieved this by much more than warning and advising ministries. Unpopular ministries were sustained so long as they would support union.<sup>1</sup>

One of the historians of Canadian union characterised the movement in these terms: confederation was imposed on British North America 'by ingenuity, luck, courage and sheer force'.<sup>2</sup> By contrast, the Australian movement from 1889 onwards was open, sought popular support and acknowledged that federation would not be achieved without it.

The movement to write a federal constitution began with an appeal to the people. When Parkes made his call for a constitutional convention late in 1889, he was told by the other premiers to arrange for New South Wales to join the Federal Council. It seemed sensible advice; the Council was federal machinery already in existence and with all the colonies as members it could expand its functions and achieve federation by degrees. Parkes wanted to achieve federation at a jump and was adamant that he would have nothing to do with the Federal Council. When the other premiers were equally adamant, Parkes told the governor of New South Wales that he would appeal from the politicians to the people.<sup>3</sup> He did this by a series of speeches and summoning to his support his wide network of supporters in other colonies and in England. The press carried his speeches and endorsement of his approach from a galaxy of worthies. The Victorian politicians were incensed at what their governor called Parkes's 'platforming' about the faults of the Federal Council.<sup>4</sup> But finally they could not resist it, and they agreed to meet Parkes to consider whether a convention should be summoned.

The delegates to the 1890 Australasian Federation Conference were aware that the press had been excluded from constitutional deliberations in both Canada and the United States. At previous intercolonial gatherings in Australia the press had been excluded. On this occasion the delegates deliberately chose the opposite course. They took their lead from Parkes, who argued that federation more directly interested the inhabitants of all the colonies than any other issue. So the thirteen delegates were surrounded by a press corps of over fifty, coming from every colony and including representatives of the overseas cable services. The telegraph operators at the Melbourne Post Office were sending out 50,000 words each day and 70,000 on the final day. The newspapers ran columns of reports on the debates. As the *Daily Telegraph* put it, the papers were the great sounding boards of the Conference, making the debates audible to the whole of Australia and giving a new spaciousness to Australian politics.<sup>5</sup>

When delegates met to draw up a constitution in 1891, they decided to let the press in, as they did again in 1897. There were arguments put against doing so. Delegates might oppose a particular measure in the Convention and then, having lost or compromised, they would still

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<sup>1</sup> Donald Creighton, *The Road to Confederation; The Emergence of Canada 1863–1867*, Macmillan, Toronto, 1964.

<sup>2</sup> P.B. Waite, *The Life and Times of Confederation 1864–1867*, University of Toronto Press, Toronto, 1962.

<sup>3</sup> 'Federation of Australia', Confidential Printed Paper, Colonial Secretary Special Bundle, NSW Archives 2/8095.3, p. 7.

<sup>4</sup> *ibid.*, p. 3.

<sup>5</sup> *Daily Telegraph*, (Sydney), 15, 17 February, 1890.

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want to advocate a 'Yes' vote for the Bill when it was before the electors. If their speeches in the Convention were public knowledge, this would give an easy handle to opponents. Barton faced this problem in urging a 'Yes' vote in New South Wales in 1898. He was forcibly reminded that he was supporting provisions he had opposed in the Convention. But this consideration could not prevail against the great educational advantage of publicity.

When the Convention of 1891 had finished its work, it resolved to send the Constitution to the parliaments for the approval of the people. How that was to be obtained was not defined. Sir George Grey's proposal for a referendum was defeated. Griffith in Queensland and Inglis Clark in Tasmania drew up bills to provide for ratification by popularly-elected conventions in the American manner, but neither was proceeded with while the outcome in New South Wales was awaited.

From 1893 it was a commonplace that the first Constitution failed because the people were not involved, but the constitution-makers had assumed that only the people could sanction their work. The trouble was that the parliaments wanted to make amendments before the people were consulted. In the New South Wales Parliament, George Reid, later champion of the popular cause, complained that the Convention had downgraded the parliaments in expecting that they were to be mere messengers, carrying the Constitution to the people.<sup>6</sup> Of course, it was in the New South Wales Parliament that the bill met such a hostile reception that the whole movement stalled.

The people were more directly involved from 1897. They elected the delegates to the Convention and voted in referendum on the Constitution it produced. Here I part company with Stuart Macintyre. There is a difference between invoking the people in a speech, that is rhetorically, and actually consulting them, with all the trouble and risk which this entails. To involve the people so directly in constitution-making was a complete departure from the norms of a British polity.

If the referendum began as a device, it quickly became an article of faith. When the Constitution had to be amended after failing to secure sufficient support in New South Wales, it had to be submitted to the electors of that colony again. But it was also submitted to the electors of the other colonies who had accepted the Constitution in the first referendum. It was not enough for premiers or even parliaments to make some minor adjustments; the people had to give their consent.

When the Australian delegates in London were told that the Colonial Office wanted to make some alterations to their Constitution, they were incredulous. Not a line, not a word could be altered because it all had the sanction of the people. The Office and its minister thought this a quaint notion. An acceptance of the Constitution could not be taken as an endorsement of all its parts. Certainly very crude appeals had been made to the people to secure their endorsement, but the Constitution in all its parts had been before them. Copies of the Constitution were mailed at public expense to every elector.

Historians have been preoccupied with how popular the federal movement was. The level of participation in the voting for delegates and at the referendums has been taken as one measure of this. They have been less concerned to explain why voting of this sort was taking place. From first to last it was accepted that only a popular vote could give authority to the

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<sup>6</sup> *New South Wales Parliamentary Debates*, 19 May 1891, p. 45.

Constitution. This was a polity very different from the one which had established the colonial constitutions in the 1850s; different too from Canada in the 1860s; different from the mother country of the 1890s. The sovereignty of the people was a living principle. In this sense the federal movement always had to be popular.