

Introduction

At the National Australasian Convention held in Sydney in 1891, Andrew Inglis Clark observed:

the full ideal of Federal Government ... in its highest and most elaborate development, is the most finished and the most artificial production of political ingenuity. It is hardly possible that federal government can attain its perfect form except in a highly refined age, and among a people whose political education has already stretched over many generations.^[1]

Inglis Clark was quoting Edward Augustus Freeman, Regius Professor of Modern History at Oxford University, whose *History of Federal Government in Greece and Italy*, first published in 1863, was the 'classic nineteenth century exposition' of the city-state leagues of ancient Greece, and is still cited today by specialists in the field.^[2]

Freeman, who succeeded William Stubbs to the Regius Chair, profoundly shaped nineteenth century conceptions of federalism, although studies of Australian federalism have tended to neglect his influence.^[3] While Freeman's reputation suffered in later years, his earlier career was celebrated and revered.^[4] Thus Inglis Clark spoke for many of the framers of the [Australian Constitution](#) when he described Freeman as the 'eminent historian' who had 'studied the most closely, and written the most exhaustively on federal government'.^[5] Many other leading framers, such as John Quick and Robert Garran, relied on Freeman extensively, as did Richard Baker and Thomas Just.^[6] In one of their characteristic exchanges, Edmund Barton and Isaac Isaacs traded scholarship derived from Freeman's *Growth of the English Constitution*.^[7] A survey of citations in the Federal Convention Debates of the 1890s suggests that on issues of federalism Freeman was second in importance only to James Bryce.^[8] Edward Freeman is one of the forgotten doctors of Australian federalism.

So, where did the Australians derive their understandings about federalism, and how did they assimilate these ideas for their own purposes when drafting the [Australian Constitution](#)? In answer to the first question, much attention has rightly been given to James Bryce's classic *The American Commonwealth*, and in answer to the second question, attention has correctly been given, for instance, to John Quick and Robert Garran's magisterial *Annotated Constitution of the Australian Commonwealth* and William Harrison Moore's *The Constitution of the Commonwealth of Australia*.^[9] However, Bryce was not the only source of federal ideas, and Moore, Quick and Garran were not his only Australian interpreters.^[10] In a separate paper, I have sought to draw attention to the range of authors and sources that influenced Australian conceptions of federalism.^[11] In this article, I seek to explain how works such as these were interpreted by the Australians and adapted to their own purposes.

This article therefore begins in Part I with a survey and summary of the key sources on which the Australians relied. It then turns in Part II to a number of leading Australian writings with a view to explaining how federalism had come to be understood in Australia at the end of the nineteenth century. A number of works that were written specifically for the edification of delegates to the federal conventions are closely examined, as well as a range of other important Australian publications. Part III concludes with some remarks about the different perspectives about the idea of a 'federal commonwealth' that shaped the positions taken and arguments advanced by the framers of the [Australian Constitution](#). It is hoped that this article will thereby illuminate our understanding of the convention debates and of the [Constitution](#) that emerged from that process.

I DOCTORS OF AUSTRALIAN FEDERATION

When towards the end of the nineteenth century Australians seriously addressed their minds to the problem of constructing a 'nation for a continent', there could be little doubt that a union of the several colonies would be specifically *federal* in form. The reasons for this were both practical and ideological.

In practical terms, colonial politicians and voters were concerned to maintain the rights of local self-government they had exercised since the 1850s.^[12] Samuel Griffith expressed the view of many when he observed, remarkably, that the Australian colonies had been 'accustomed for so long to self-government' that they had 'become practically almost sovereign states, a great deal more sovereign states, though not in name, than the separate states of America.'^[13] In this context, the creation of a unitary nation-state of Australia was both impossible and unthinkable. As Griffith later affirmed, the 'essential' and 'preliminary' condition of federation was that: the separate states are to continue as autonomous bodies, surrendering only so much of their powers as is necessary to the establishment of a general government to do for them collectively what they cannot do individually for themselves, and which they cannot do as a collective body for themselves.^[14]

Only a compromise, along fundamentally federal lines, would suffice to integrate the separate colonies. The federating process, focused in a series of inter-colonial conferences and conventions, provided ample opportunity for the meticulous negotiations that would be necessary.^[15]

The theories and scholarship of the day reinforced the practical considerations. In the late nineteenth century, 'federation' was widely considered to be the best means by which separate peoples inhabiting extended territories could be united by a lasting political bond. As Manning Clark pointed out, 'federations had the warm approval of important writers on political theory' and were 'the fashion for communities in the New World'.^[16] Baron de Montesquieu and Alexis de Tocqueville had long since argued that confederations enjoyed the strengths, and avoided the weaknesses, of small, independent republics and large, consolidated empires.^[17] Leading contemporary authors like Edward Freeman could write of 'the absolute perfection of the Federal ideal'.^[18] Indeed, most of the American luminaries continued to think that federalism had been the correct choice for their own country, despite the ravages of the Civil War.^[19] And even while Americans were passing through the difficult post-war era, the federal ideal remained sufficiently attractive for the Canadians to adopt a more or less federal solution to their own intractable problems of cultural diversity.^[20] Given that the several Australian colonies inhabited a vast continent similar to the North Americans, they also looked to federal models when considering how a 'nation for a continent' might be established.

The leading federal models of the day were thus the United States and Canada, as well as Switzerland. Illustrious political scientists and constitutional lawyers, such as James Bryce and Albert Venn Dicey, had undertaken extensive studies of these systems.^[21] Distinguished legal historians, such as Henry Maine, Edward Freeman and Otto von Gierke, also drew attention to other important models, such as the 'leagues' of the ancient Greek city-states and the Holy Roman Empire, the latter as interpreted by Johannes Althusius in the early seventeenth century.^[22] Althusius's own theory of the federative commonwealth—in which small political communities, at the scale of towns and cities, gradually covenant together to form progressively wider political communities at a regional, national and supra-national level—seems to have been forgotten for a time.^[23] But well-known luminaries as diverse as Thomas Jefferson, David Hume and Pierre-Joseph Proudhon had championed very similar,

federalistic ideals,^[24] and late in the nineteenth century Gierke, Bryce and Frederic Maitland were again drawing attention to Althusius's importance.^[25] Images and symbols such as these profoundly shaped late nineteenth century conceptions of federalism.

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The Commonwealth as a political society has been created by the union of the States and the people thereof. That the States are united is proved by the words in clause 6, which provide that the States are 'parts of the Commonwealth'; that they are welded into the very structure and essence of the Commonwealth ... This is a federal feature which peculiarly illustrates the original and primary meaning of the term, as importing a corporate union. ...

As the Commonwealth itself is partly federal and partly national in its structure, so also is its central legislative organ the Parliament. Each original State is equally represented in the Senate ... The Senate derives its power from the States, as political and co-ordinate societies, represented according to the rule of equality ... In this manner the States become interwoven and inwrought into the very essence and substance of the Commonwealth, constituting the corporate units of the partnership