

# THE HISTORICAL ROOTS OF THE AUSTRALIAN CONSTITUTION



by

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Even before the arrival of the Australoids (alias the 'Blackfellows'), several waves of migrants had already come to the World's Southernmost Continent inhabitable by man. One such group was the Negritos, or Mimi people. Traces of their earlier occupancy of Mainland Australia can still be found in the Northern Territory, and near Cairns in Queensland.

Thereafter, various tribes of Australoids (today often called 'Aboriginals'), arrived at different times from the north or from the northwest. They displaced not only one another, but also finally drove off the Mimi Negritos from the Mainland and into Tasmania — where the last full-bloods finally died out about a century and a half ago.

Today, there are at least 4000 living mixed-blood descendants<sup>1</sup> of the Black Tasmanian Negrito or Mimi people. Their ancestors were altogether quite distinct in culture, language and race<sup>2</sup> from those of the present Black Australoids who displaced them.

Already in 1898, Prof. Dr. Alan Carroll (M.A., D.Litt., Ph.D., D.Sc., &c.) — one of the World's greatest ethnologists — published a paper in the *Journal of the Royal Anthropological Society of Australasia*. Dr. Carroll stated: "The present black people [*viz.* the Mainland Black Australians] belong to the neolithic...stone-age and culture.... Previous and older blacks [the ancestors of the Black Tasmanians]...were in Australia in the palaeolithic age and culture.... They...were...very different in all ways to the Australian Blacks" alias those today often called Aborigines. The latter then killed the

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<sup>1</sup> P. Hoffman: *The Tasmanian Paradox* (in *Discover*, March 1993, p. 4).

<sup>2</sup> See the art. *Aborigines* in the *Australian Encyclopaedia* (Grolier, Sydney, 1977, I p. 25): "The Tasmanian language group is probably unrelated to the [mainland] Australian languages."

Compare too UCLA Physiology Professor J. Diamond's art. *Ten Thousand Years of Solitude*, (in *Discover*, March 1993, pp. 50f cf. P. 4): "Tasmanians differed from the Mainlanders..., having woolly rather than straight or wavy hair... Their hair and skin were very dark. They had deep-set eyes overhung by brow ridges; their nose was broad and separated from their brow by a deep groove. Their mouth was wide, the lips full; their cheekbones were prominent.... Our information about their languages is fragmentary, but they spoke five or more languages or dialects with no obvious relationship to Aboriginal Australian languages or to any other languages in the world.... If you ask any anthropologist to summarize in one phrase what was most distinctive about the Tasmanians, the answer will surely be 'the most primitive people still alive in recent centuries'.... Most Tasmanians lived on the coast and yet ate no fish." Here and hereinafter, all emphases are my own — F.N. Lee.

Also see too the art. *Aborigines (Australian)* in *The Concise Encyclopedia of Australia and New Zealand*, Horwitz Graeme, Cammeray NSW, 1982 ed., I pp. 136f (hereinafter referred to as *CEANZ*), which mentions some theories that the Black Tasmanians were negritos or pygmies, and which itself claims that "their arts and crafts were not as varied and well-developed as those of the mainland people. The Tasmanians did not possess the boomerang, spearthrower, ground-edged axe or the dingo, and they abandoned the eating of fish some several thousand years ago.... Tasmanian languages differed from the Australian." However, unlike the very black-skinned and woollyhaired Black Tasmanians, the Mainland Aborigines have a "skin colour [which] varies from light to chocolate-brown; hair from brown to black, and from straight to curly; [while] in Central Australia blonde hair is common among children up to puberty, when it darkens."

men and appropriated the womenfolk of the former.<sup>3</sup>

### **The Marxist Prof. Manning Clark on the Mainland Australoids' oppression of the Negritos**

For years, Professor Dr. Manning Clark was gaining a reputation and being built up as Australia's greatest Historian. In 1962, Clark insisted<sup>4</sup> with some degree of objectivity at the very beginning of his multi-volume work titled *A History of Australia*: "Civilization did not begin in Australia until the last quarter of the eighteenth century.... The early inhabitants of the Continent created cultures, but **not** civilizations.

"The first of these were the Negrito people — short, dark-skinned, curly-haired and broad-nosed — who were **forced** to migrate...by the movement into those areas of people of a higher material culture....

"Later, another people arrived — the Murrayians, who were related to the Ainu in Japan and either **destroyed** the Negritos or **drove** them into the valleys behind Cairns and south into what is now Tasmania. Then in turn the Murrayians were challenged and displaced by the Carpentarians — a people probably related to the Vedda of Ceylon....

"This account is based on [the South Australian Ethnologist] N. Tindale and J. Birdsell's *Results of the Harvard-Adelaide Universities' Anthropological Expedition 1938-39: [re] Tasmanian Tribes in North Queensland* (in *Records of the South Australian Museum*),<sup>5</sup> and H.A. Lindsay's [article] *The First Australians*.<sup>6</sup> Neither the Negritos nor the Murrayians, nor indeed the Carpentarians, made the advance from barbarism to civilization.... The failure of the aborigines to emerge from a state of barbarism deprived them of the material resources with which to resist an invader, and left them without the physical strength to protect their culture." Thus **Manning Clark**.

Even in 1963, Prof. Clark was still reminding people that it was the Negritos who came here first — forced south by "a superior material culture" (namely those from whom Australia's present tribal peoples have descended). Significantly, however — with the changing whims of left-wing political hacks and their academic hangers-on, the 'politically-correct' Clark's 1986 "revised...edition" omits this material — and betrays subsequent concessions to the by-then world-wide and still-rising tide of Third-World Anti-Colonialism. Indeed, only much later would his deepening Marxist biases and Communist sympathies be brought to light.

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<sup>3</sup> Dr. A. Carroll: *Ethnology of the Blacks*, paper in *Journal of the Royal Anthropological Society of Australasia*, April 1898. Cited and discussed in T. Dare's *Australians Making a Great Nation*, Western Plains Pubs., Sydney, 1985, pp. 20f.

<sup>4</sup> C.M.H. Clark: *op. cit.*, University Press, Melbourne, 1962, I pp. 3f.

<sup>5</sup> Vol. 7, Adelaide, 1941-43.

<sup>6</sup> In *Science News*, 43, London, 1957, pp. 54-61. See too N.B. Tindale and H.A. Lindsay's 1954 book *The First Walkabout* (Longmans Green & Co., London, 1954, p. xi & *sqq.*), where they show that the Negrito pygmy natives or Mimi people occupied Australia before the arrival of the later black "tall hunting men" from the north and "were **forced to move**" by them.

Earlier, however, Clark's writings were free from such overt leftist bias. Here, for example, is the relevant section from his original 1963 book *A Short History of Australia* — the section expurgated in subsequent editions thereof from 1969 onward:

"So far there have been four migrations of people to Australia.... The first...were the Negritos, who were **forced** to move south...by people with a superior material culture. They were followed by the Murrayians, a people related to the Ainu in Japan. They in turn were pushed further south in Australia by the Carpentarians, who were related to the Vedda in Ceylon....

"The Negritos became the aborigines of Tasmania; the Murrayians were driven to the east and west coasts of the mainland...; the Carpentarians remained in the tropical fringes of the northern coast.... The fourth [migration]...brought the Europeans."<sup>7</sup> (All emphases mine — F.N. Lee.)

Writing in *New Life*,<sup>8</sup> the eminent Australian archaeologist Dr. Clifford Wilson drew attention to "details of rock art in Kakadu National Park where the oldest known art predates the rise of the sea level some 6000 years ago.... Most images are drawings of highly active people.... Aborigines say the art belongs to an earlier group they call the Mimi people.... This could have an important bearing on the vexed question of Aboriginal land rights."

In 1993, Scott Plowman in the *Sydney Morning Herald* cited the Australian ethnologists N.B. Tindale and H.A. Lindsay — whom Prof. Manning Clark himself had formerly referred to with approval<sup>9</sup> — as regards the ancestors of Australia's Black Mainlanders encountered by Captain Cook in 1770. Of those Black Mainlanders, Plowman then wrote:<sup>10</sup>

"These intruders migrated from Asia and Indonesia...hopping from island to island.... They became the current Australian Aborigines. The little people, who were here first, were harassed and **killed** and continually driven south.... The tall men...left the [Negrito] pygmies isolated...in Tasmania.... It is not sustainable that our current Aborigines can claim first-use land rights.... Did the current original [*viz.* Mainland Black] Australians pay as much respect and compassion to the pygmies' sacred sites, as they [today's Black Mainlanders] demand from the rest of us?" No way!

### **The Europeans were the first to bring civilization to Australia**

Even according to the leftist Manning Clark, civilization arrived in Australia only with the arrival of the Europeans. The entire Continent of Australia was colonized from 1788 onward chiefly by the Anglo-Celts from England, Ireland and Scotland. They were Japhethites — the Caucasian seed or descendants of Japheth, the blessed son of Noah. For Noah had predicted: "God shall enlarge Japheth, and he shall dwell in the tents of Shem" by way of which Jesus Christ the Messiah and His Gospel would come into the World. Genesis 9:27 to 10:5 *cf.* Acts 1:6-8 & 10:1 to 11:19*f* with Isa.

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<sup>7</sup> C.M.H Clark's *Short History of Australia*, Mentor, New York, 1st ed., Sept. 1963.

<sup>8</sup> 6th May 1993.

<sup>9</sup> See nn. 4-6 above.

<sup>10</sup> *Sydney Morning Herald*, June 10th 1993, p. 16.

## THE HISTORICAL ROOTS OF THE AUSTRALIAN CONSTITUTION

41:1-6 & 42:1-12 & 49:1-22f & 60:3-5 & 66:12-19f. Those Japhethitic Anglo-Celts embraced Christianity; later went forth from the British Isles, and finally settled in the large and spacious "Deepest South" — way "Down Under" in the "Southland" of Australia, under the starry southern sky and its "Southern Cross."

First, they established the mother colony of New South Wales in 1788. After expansion westward — Tasmania was colonized, in 1825. Next, Western Australia was established, in 1829; then South Australia, in 1836. Victoria came into being in 1851; and then Queensland, in 1859.

The Commonwealth of Australia and its Federal Government were constituted by the people of those six States in 1900 and thereafter. The Northern Territory itself was constituted from South Australia already in 1863; later placed under federal jurisdiction in 1911; and soon expects to become the seventh State on the Continent of Australia.

Other Australian territories are found near Asia in the North — and right down to the polar regions in the South. Too, various Australian island dependencies are located all the way from the Indian Ocean in the West — to the South Pacific in the East.

All of the dependencies, states, and territories together comprise the Commonwealth of Australia. After Russia, it is by far the biggest country on our planet. Consisting of the entire Continent of Australia and half of the Continent of Antarctica as well as many off-coast islands — Australia is a (con)federation, and today the largest English-speaking country in the World.

Now the Triune God made the World and all things in it, seeing He is the Lord of Heaven and Earth. From one blood, He made all nations of men — in order that they may dwell on all the face of the Earth. He determined the appointed times and boundaries of their habitation, so that they should seek the Lord. He now commands all men everywhere to repent, for He has appointed a day in which He will judge the World in righteousness by the Second Adam. God assured us of this final judgment, by raising up that Second Adam (Jesus Christ) from the dead. Acts 17:24-31.

God created the first Adam hardly earlier than 4000 B.C. All men who have ever lived, descend from that Adam and also from his wife Eve whom God placed in a garden in Eden near four rivers in Mesopotamia, with God's Law written on his heart (Eccl. 7:29 *cf.* Rom. 3:14f). So the theories that Black Australians are '(ab-)origin-al' to Australia, or that they have lived in that Continent for at least 25 000 to 40 000 years, is radically false. Genesis 2:7 to 11:9f.

When the Most High God divided to the nations their inheritance and separated the sons of Adam, He set the boundaries of the people according to the number of the children of Israel — His very Own covenant people. Also the Israelites were tainted by sin. However, in their case they also received God's special revelation and His statutes in Holy Scripture to guide and to preserve them. Deuteronomy 7:15f & 32:8.

By His grace, the Almighty permitted especially Gomer and his descendants, as the first-mentioned sons of the blessed Japheth, to dwell in the tents of the Lord God of the Shemites as the covenant people. So, God's revelation in general — and

## THE HISTORICAL ROOTS OF THE AUSTRALIAN CONSTITUTION

Christianity as its fulfilment and completion — was to be preserved particularly among Gomer's descendants the Britons and their Common Law (of which latter, God's revelation and Christianity are part and parcel). Genesis 9:27 to 10:2f.

God has not left Himself without witness to His Law — even among the heathen. For whenever pagans who do not have the Law, by nature do the things contained in the Law — they are a law unto themselves. Indeed, they still show the work of the Law as having been written in their hearts — their conscience also bearing witness and their thoughts meanwhile accusing or else excusing one another in the day when God shall judge the secrets of men by Christ according to the Gospel. Romans 1:18 to 2:16.

So there are indeed some few elements of righteousness also in pagan customs (including those of all the various diverse and uncivilized tribal peoples of Australia also prior to its colonization from the British Isles in 1788 A.D. However, there are far more elements of righteousness in British Common Law — because of its massive exposure to God's special revelation and Christianity for many centuries especially prior to 1788 A.D. On this, see Lord Chief Justice Sir Edward Coke —and Law Professor and Solicitor-General Sir William Blackstone.

This certainly means that whatever God regards as generally acceptable in the customs of the tribal peoples of Australia, must be respected and protected by all men of good will. Yet whatsoever therein is not good, should be neither ethically respected nor legally protected — but rather simply abandoned to the judgment of time.

So too, whatsoever God regards as evil in Western civilization — should be abandoned for certain extinction. However, the bulk of Western civilization before 1788 was good. British Common Law was, and is, its covenantal crown. As such, it should be respected and protected — and is destined for certain expansion.

Captain James Cook brought Blackstone's Common Law to Australia, and it took root in that Continent from the time of the 1788 Settlement. As much of it as is appropriate to Australia, is the law of the land. Since 1788, it has grown further within its Australian environment — also absorbing just as much from the native customs of this Continent as Australian Common Law itself considers to be useful. Modern humanistic United Nations' Conventions, however, as the brainchild of that organization and of the French Revolution of 1789 and of the Anti-Christian *Verlichtung* which sired them both — are by and large irreconcilable with Australian Common Law and should not be heeded whenever they clash therewith.

Regarding tribal title, after sixty years' continual possession of land or goods by a non-owner, the unchallenging owner of that land or those goods forfeits his ownership rights. The continual possessor becomes the new owner. Too, the 1607f case of Robert Calvin determined: "If a Christian king should conquer a kingdom of an infidel..., *ipso facto* the laws of the infidel are abrogated. For they be not only against Christianity; but against the Law of God and of nature contained in the Decalogue."<sup>11</sup>

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<sup>11</sup> See Sir Edward Coke's *English Reports* (77 King's Bench VI); and Sir William Blackstone's 1765 *Commentaries on the Laws of England* (University of Chicago Press, 1979 ed., I, Introd., Section 4; and II chapter 13).

Throughout the ongoing growth process of Australian Common Law, continuing tribal customs should be subject to it — but never *vice-versa*. But Australian Common Law itself is to remain subject to the Law of God and to the Christian Religion. For the Decalogue and Christianity are part and parcel — of Australian **Common Law**.

"Let us hear the conclusion of the whole matter . **Fear God, and keep His Commandments; for this is the whole duty of man.** For God shall bring every work into judgment, with every secret thing — whether it be good, or whether it be evil." Ecclesiastes 12:13f.

## The Christian Roots of the Australian Constitution

Now at its outset, the *Australian Constitution* states it was fashioned "humbly relying on the blessing of Almighty God" — on "9th July 1900" A.D. It thus goes back to the time of Christ's incarnation, and even earlier.

Professor F.L.W. Wood, author of *The Constitutional Development of Australia*, notes<sup>12</sup> how Pre-Christian Greeks presumed there was a great Southern Continent. He even suggests that some of Adam's descendants might well have travelled there.

The Bible agrees. God created Adam and all his descendants, telling them to **rule** over the **Earth** by way of His **Ten Commandments** written in **every heart**. Gen. 1:26f; 2:15f; Eccl. 7:29; Ex. 20:1-17; Rom. 1:19f & 2:14f.

Lord Chief Justice Sir Edward Coke<sup>13</sup> held in 1613 that "God is the Fountain and Founder of all good laws and constitutions.... The law itself is a light. Proverbs 6:23. See Romans 2:14.... The 'light of nature'...Solomon called 'the candle' of Almighty God. Proverbs 20:27."

Sir Owen Dixon seemed to agree. He was Chief Justice of Australia from 1952 till 1964. Then recognized as perhaps the finest living Jurist in the English-speaking World,<sup>14</sup> he referred to the Common Law (and its Rule of Law) as the "ultimate constitutional foundation."<sup>15</sup>

## Constitutional Law among the Ancient Iro-Scots

Now after man's fall into sin, the Lord said to Noah and his sons and hence to all mankind: "Surely your blood of your lives will I requite.... Whosoever sheds man's blood — **by man** shall his blood be shed. For God made man in His image." Genesis 9:5-6. Here one finds the first germ of all governmental sanctions.

Now God favoured Noah's son Japheth, and his descendants. Such included Gomer

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<sup>12</sup> F.L.W. Wood: *Concise History of Australia*, Dymock's Book Arcade, Sydney, 1936, pp. 1-5.

<sup>13</sup> In his *Preface to the Reader* of the Third Part of his *Reports*, Butterworth, London, 1826, II, pp. iv & xiv-xix; and *Proeme* to 3rd Part, p. ii: "*Deo*" & "*Patriae*."

<sup>14</sup> Art. *Dixon, Sir Owen*, in *CEANZ*, I p. 340. Cf. too Dixon's *Jesting Pilate* pp. 203f (cited in R.D. Lumb's *Australian Constitutionalism*, Butterworths, Brisbane, 1983, pp. 3 & 101 & 108n.).

<sup>15</sup> Cited in H.M. Morgan's *Australia and its High Court*, Bond University, Queensland, 27th July 1993, pp. 5f & 8.

and Magog, the ancestors of the Cymro-British Celts<sup>16</sup> and the Iro-Scottish Scythians.<sup>17</sup> They would "dwell in the tents of Shem"<sup>18</sup> — also **before** Moses wrote down the *Constitution of Ancient Israel*.<sup>19</sup>

Perhaps through Ancient-Phoenician ships (with Israelitic crew-members) hauling gold from Ire-land and tin from Cornwall,<sup>20</sup> also the Mosaic legislation could well have reached the British Isles not long after the exodus. This would have impacted on those Western Isles as new legislation — such as that of the Irish King Ollamh Fodhla around B.C. 1383.

Ollamh gave a Parliament to the Iro-Scots.<sup>21</sup> The early druidic judges (who upheld the pristine concepts of the Trinity and immortality and legality), here played a prominent role. Triennial meetings took place at Tara — where sub-kings and delegates from all over Ireland enacted laws.

The Scots in Ireland had a constitution — over the *Ard-Ri* or High-King and the sub-kings alias Provincial Governors. This was not a unitary government — but one still reflecting the primordial revelation of the con-federate Tri-une God Himself.

This constituted the first bicameral Parliament in Europe.<sup>22</sup> The King was never a law unto him-self, but **always subject to the rule of law**.<sup>23</sup> There was a 'separation of powers' — in which the King was concerned primarily with the tribe's military business and intertribal diplomacy.

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<sup>16</sup> See: Herodotus's *Histories* 4:1-214 & 7:1-165; Diodorus Siculus's *Historical Library* 3:5:3; F. Delitzsch's *Die Genesis Ausgelegt* [*Genesis Expounded*], Doerffling u. Francke, Leipzig, 1853, pp. 284f; J.H. Kurtz's *History of the Old Covenant*, Clark, Edinburgh, 1870, I pp. 107 & 115f; C.F. Keil's *Commentary on Genesis* (in Keil & Delitzsch's *Biblical Commentary on the Old Testament — The Pentateuch*), Clark, Edinburgh, 1885, I pp. 159f; J.B. Lightfoot's *St. Paul's Epistle to the Galatians*, Macmillan, London, 1887, pp. 1f & at the end of his 'Dissertation I'; J. Parsons's *Remains of Japhet, Being Historical Enquiries into the Affinity and Origin of the European Languages* [1767], Scolar Press, Menston York, 1968 rep., pp. 114f & 139f; H.C. Leupold's *Exposition of Genesis*, Baker, Grand Rapids, I pp. 352f & 359-362; and B.F.C. Atkinson's *Genesis*, Walter, London, 1954, I p. 99 & II pp. 101f.

<sup>17</sup> See: n. 16; Strabo's *Geography* I:2,27; Porphyry's A.D. 267 interchanging of "Scythicae" and "Scotticae" (thus in T. M'Laughlan's *The Early Scottish Church*, Edinburgh, 1865, p. 22); Gildas's A.D. 520f *Ruin of Britain*, which calls the Irish Sea "Vallem Scythicam"; Nenni(us)'s A.D. 805 *History of the Britons* 25-31, equating "the Scythians" with "the Scots"; and King Alfred's A.D. 875f Anglo-Saxon translation of Orosius's *History*, where Alfred calls the Scots *Scyt-than* (as cited in J. Ussher's *Philosophical Survey of Ireland*, pp. 72f). See too: H. Doyle's *Illustrated History of Ireland from the Earliest Period*, Kenmore Convent, Kerry, 1868, p. 68; Dr. G. Keating's 1590f *Elements of the History of Ireland*, Irish Texts, Society, 1902f, citing the Ancient-Irish *Leabhar Gabhala*; A. MacGoeghegan & J. Mitchel's *History of Ireland Ancient and Modern*, Sadler, New York, 1868, pp. 39-43; (Ed.) J. Hastings' *Encyclopaedia of Religion and Ethics*, Clarke, Edinburgh, 1907 & 1920, art. *Picts*; and N.K. Chadwick's *The Celts*, Penguin, Harmondsworth, 1985 ed., pp. 84 & 134f.

<sup>18</sup> Gen. 9:18-27 & 10:1-5 cf. Dt. 32:8f.

<sup>19</sup> Ex. ch. 19 to Dt. ch. 28f.

<sup>20</sup> Gen. 49:13; Dt. 33:18f; Judg. 5:17; II Chr. 2:3-16; 8:18; 9:20f; Jonah 1:3 and Ezek. 27:6-9; 27:12-19,25-29 cf. Rufus Festus Avienus's *Fragmenta Ora Maritima* V:98-100. See too N. Lee's *Roots and Fruits of the Common Law*, unpub. D.C.L. diss., 1994, ch. 5 at nn. 122-24 and ch. 6 at nn. 95-103 and ch. 7 at nn. 36f & 54f & 61f and ch. 8 at nn. 75-81.

<sup>21</sup> T. Wright's *The History of Ireland from the Earliest Period of the Irish Annals to the Present Time*, I pp. iii, 9.

<sup>22</sup> T.W. Rolleston's *Myths and Legends of the Celtic Race*, Constable, London, 1984, p. 149.

<sup>23</sup> A.S. Green: *Irish Nationality*, Williams & Norgate, London, n.d., pp. 17f,8f,14.



From the tribal groupings, a division into districts emerged. Each of the provinces — Ulster, Leinster, Munster and Connacht — had its own harbours. All met in the newly-created province of Meath. There the King held Parliament, as Chief-Lord in the one Confederation of the many States.

Ancient Ireland maintained her *Constitution* as the law of the people. They never lost their trust in it, nor exalted a central authority. The administration was divided into the widest possible range of self-governing communities, which were bound into a voluntary [Con]federation.

Prof. R.A.S. Macalister of Dublin University explained<sup>24</sup> that the Ancient-Irish *Ard-Ri* presided over the Constitutional Assembly and performed the functions of King, Judge and General. Besides the Representative Assembly of Freemen (or *Oinach*), there was also a regional Senate (or *Aireacht*) — resembling Numbers 10:1-4, and anticipating the later House of Commons and the House of Lords. Each *Tuath* or 'State' was self-governing, where freemen were citizens in their own areas (cf. Exodus 18:12-22f).

In his book on Ancient Irish Law, Middle Temple Barrister Ginnell regards<sup>25</sup> it as the most ancient legal system in Western Europe. Respecting *Cai-in Law* or Parliamentary Legislation, some of the commentaries attribute its origin to the influence of Cai. That person, explains Ginnell, is stated to have been a contemporary of Moses who learned the Mosaic Law **before** coming from the Near East to Ancient Ireland.

Also according to the famous English Jurist Sir Henry Maine,<sup>26</sup> Scottish Highland and Brehon Irish Law is an authentic monument to a very ancient group of Japhethitic institutions among the oldest Western-European portion of the human race. The Ancient Iro-Scots, he added, had great legal expertise — especially as regards equity, property rights, and family law.

### Constitutional Law among the Ancient Britons

Dr. J.A. Giles was a Doctor of Common Law, and a Late Fellow of Corpus Christi College in Oxford. He observed<sup>27</sup> how the historical *Welsh Triads* record that the first colonists of Britain were 'Cymri' who originally came from the Summer-Land of the Tauric Chersonesus — from *Defrobani Gwlad Yr Hav*, say the ancient *Welsh Triads*.

Lord Chief Justice Sir Edward Coke stated<sup>28</sup> of Britain that "Brutus...died...before the incarnation of Christ 1103 years — Samuel then being Judge of Israel.... Brutus, the first king of this land — as soon as he had settled himself in his kingdom — for

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<sup>24</sup> See in *Encyclopaedia Britannica*, Britannica, New York, 14th ed., 1929, 12:xiv.

<sup>25</sup> L. Ginnell: *The Brehon Laws (A Legal Handbook)*, Unwin, London, 1894, pp. i & 3.

<sup>26</sup> H. Maine: *Lectures on the Early History of Institutions*, Murray, London, 1905, pp. 5f & 18-32f & 41f & 191f.

<sup>27</sup> See his edition of *Six Old English Chronicles*, Bell & Daldy, London, n.d., p. 423 n. 4 and p. 425 nn. 1 & 2.

<sup>28</sup> *Preface* to Vol. II of his *op. cit.*; in W.P. Goard's *The Law of the Lord or the Common Law, Covenant*, London, 1943, pp. 113f.

the safe and peaceable government of his people, wrote a book in the Greek tongue, calling it *The Law of the Britons*."

Britain's ancient documents<sup>29</sup> show that parliamentary sessions existed already since time immemorial. There is 'the *Gorsedd* of the Country and Commonwealth' and the '*Gorsedd* of [Con]federate Support.' Their purpose was to improve the laws of a confederated country by a federal convention of chiefs-of-kindreds, wise-men, and a sovereign ruler.

States Coke:<sup>30</sup> "Our chronologers...say that 441 years before the incarnation of Christ, Mulmutius...did write two books on the laws of the Britons..., the Statute Law and the Common Law." Mulmutius preserved the Common Law. He stressed equality of rights, and of taxation; freedom of movement; the right to bear arms; the right to vote; and the rights to life, liberty, and the pursuit of happiness. He also required the worship of God, military service, and jury duty.

As the A.D.1138f Geoffrey Arthur of Monmouth stated in his translation of the A.D. 675f Breton *History of the Kings of Britain*<sup>31</sup> (itself in turn derived from even earlier very ancient sources): "Mulmutius arose.... He ordained the temples of God and the cities to enjoy such privilege as that...any runaway...should take refuge therein [cf. Numbers chapter 35].... In his days the knife of the cut-throat was blunted, and the cruelties of the robber ceased in the land. For nowhere was anyone that dared do violence unto another.... After his death, his son Belin...confirmed the laws which his father had ordained, and commanded that even and steadfast justice should be done throughout the realm.... He proclaimed it as his **Common Law** that condign punishment should be inflicted on any that do violence." All that, in fifth- and sixth-century B.C. Ancient Britain!

Since those reigns, there came yet further constitutional development. Observed Coke: "356 years before the birth of Christ, Martia Prova...wrote a book on the laws of England — in the British language."<sup>30</sup>

Wrote the Elizabethan chronicler Raphael Holinshed<sup>32</sup> of that Ancient-Brythonic Queen: "Martia was a woman expert and skilful in several sciences.... She devised and established profitable and convenient laws...afterwards...called 'Martian laws'.... Alfred...[the A.D. 880f] King of England translated them out of the British [or Celto-Brythonic] tongue into the English Saxon speech."

## The christianization of the Ancient British Constitution

Tertullian and Hippolytus both insisted that Christianity had reached Britain before their own times (190-220f A.D.). Also Dorotheus and Eusebius, still before Nicaea, insisted that Britain had been evangelized already during the Apostolic Age. Even

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<sup>29</sup> L. Sion: *Barddas — A Collection of the Original Documents Illustrative of the Theology, Wisdom and Usages of the Bardo-Druidic System*, Welsh Translation Society, 1852. Cited in E.O. Gordon: *Prehistoric London*, Covenant, n.d., pp. 135f.

<sup>30</sup> *Op. cit.*, at his *Preface* to Vol. III (in Goard pp. 113-16).

<sup>31</sup> Slatkine, Geneva, 1977 ed., II:17 - III:5.

<sup>32</sup> *Chronicles of England, Scotland and Ireland* [1578] I:458, 1807 London ed.

according to Celtic Britain's earliest extant historian (the A.D. 540f Gildas), Christianity had reached that land by A.D. 37. Soon it had an impact also on its political life.<sup>33</sup>

Anglo-Saxon England's earliest historian, the A.D. 730f Venerable Bede, said that the Brythonic Celt "Lucius the King of the Britons" himself embraced Christianity "in 156" A.D. Thereafter "the Britons preserved the received faith, uncorrupted and entire, in peace and tranquillity,"<sup>34</sup> right down till the blessed days of Constantine at the end of the Pagan-Roman Diocletian Persecution.

Lord Chief Justice Sir Edward Coke expressed<sup>35</sup> his deep regret that "the books and treatises of the Common Law in...other kings' times — and specially in the time of the Ancient Britons (an inestimable loss) — are not to be found." This was largely the result of the deliberate destruction of those precious manuscripts by Anti-British invaders such as the Pagan Romans and Anglo-Saxons and the Heathen Vikings.<sup>36</sup>

Yet we know the druidic judges were learned. Through their extremely accurate **oral** tradition for which those druids of Ancient Britain were internationally famous,<sup>37</sup> the ongoing British Common Law itself was remarkably preserved.

Coke proved<sup>38</sup> this also from the extant writings of Roman and Greek authorities such as Caesar, Diodorus, Juvenal, Strabo, Pliny and Tacitus. He concluded: "I think this sufficiently proves that the laws of England are of much greater antiquity than they are reported to be — and than among the constitutions or imperial laws of Roman Emperors."

This can be seen also from Ireland. When christianized, it was still a confederation of states. In 432 A.D. the great British Christian Missionary Patrick, himself the son of a Christian British cleric and minor statesman, and the grandson of a Christian British Presbyterian, **approved** the vast bulk of druidic Irish Law and ordered it to be **preserved** — because in harmony with the Law of God both in Nature and also in Holy Scripture.<sup>39</sup>

Also long thereafter, Ireland still consisted of tribes connected by kinship and held together in a loose confederation. The *comarba* or covenant-officer led the *clann*, and

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<sup>33</sup> Tertullian's *Against the Jews* 7, cf. his *Apology* 37; Bauer's *Hippolytan Chronicle*; Dorotheus's *Synopsis of the Apostles* 9; Eusebius's *Demonstration of the Gospel* III:5:12; and Gildas's *op. cit.*, 1978 ed., Phillimore, London, sections 8f.

<sup>34</sup> *Ecclesiastical History of the English Nation* [731 A.D.], Everyman ed., 1954, I:2f.

<sup>35</sup> E. Coke's *Institutes of the Laws of England*, Brooke, London, 1797 ed., Part II:1, *Proeme*, pp. ix seqq.

<sup>36</sup> Suetonius's *Twelve Caesars* 5:10,17,21,25; Gildas's *op. cit.*, chs. 3:1-4 & 4:1-4 & 5:1-2 & 9:1 to 10:1 & 11:1-2 & 14:1 & 15:3 & 20:1-2 & 21:1-2 & 22:1-3 & 23:1-3 & 24:1 to 25:1; and also Asser's *Life of King Alfred*.

<sup>37</sup> J. Caesar's *Gallic Wars* 3:8f; 4:1f,20f; 5:12f; 6:13-23; and Diod. Siculus's *Hist. Lib.* 2:21f & 3:5:21f cf. 3:5:32,38.

<sup>38</sup> In his *Preface* to Vol. III of his *Pleadings*, Butterworth, London, 1826 ed., II, pp. iv & xiv-xix. Cf. too nn. 36-37; Juvenal's fifteenth *Satire*; Pliny's *Natural History*, 13:1; Strabo's *Geog.* book 4; and Tacitus's *Annals* 12:24f & 14:29-35, *Agricola* 11-32, and his *Germany* 6-16,25,37f.

<sup>39</sup> Thus the *Annals of the Four Masters*, as cited in Ginnell's *op. cit.*, pp. 31.

the druidic Common Law was preserved.<sup>40</sup>

As Oxford's Law Professor and England's Solicitor-General Sir William Blackstone stated<sup>41</sup> in 1765: "An academic expounder of the laws...should be engaged...in tracing out the originals.... These originals should be traced...to the customs of the Britons and Germans as recorded by Caesar [B.C. 58f] and Tacitus [A.D. 98f]; to the *Codes* of the northern nations on the Continent; and more especially to those of our own Saxon Princes [449f A.D.]....

"The British as well as the Gallic [and Iro-Scottish] druids committed all their laws...to memory; and it is said [also] of the Primitive Saxons here, as well as their brethren on the Continent.... Our anti-ent lawyers...insist with abundance of warmth that these customs are as old as the Primitive Britons, and continued down through the several mutations of governments and inhabitants to the present time unchanged and unadulterated....

"Antiquarians and first historians...all positively assure us that...in the time of Alfred...he found it expedient to compile his Dome-Book...for the general use of the whole kingdom.... It contained...the principal maxims of the Common Law.... The first ground and chief cornerstone of the laws of England...is general immemorial custom or Common Law."

A glance at this A.D. 887f *Dome-Book* or 'Book of Deemings' reveals that King Alfred extracted his laws for England from the Mosaic Pentateuch, the Sermon on the Mount, and the Acts of the Apostles. He also incorporated the codes of the Brythonic Queen Martia Prova; the Anglo-Jutish King Aethelbeht of Kent; and the Anglo-British Kings Offa of Mercia and Ina of Wessex.<sup>42</sup>

### **From the 1215 *Magna Carta* to the 1643-49 *Westminster Assembly***

The A.D 1215 *Magna Carta* did not create new law. After the end of the Norman Conquest of England, it merely revived the rights of Anglo-Britons already recognized long before the time of William the Conqueror.

Even the Anglo-Norman barons demanded the revitalization of the laws of the last Pre-Norman King of England, Edward the Confessor. This in turn had in large measure derived — namely *via* early-mediaeval Anglo-British Law — from Pre-Roman Celtic Common Law and Pre-Roman Germanic Common Law.

Coke declared<sup>43</sup> that "there be four ends of this *Great Charter* — mentioned in the preface. *Viz.*: 1, the honour of Almighty God; 2, the safety of the king's soul; 3, the advancement of the holy Church; and 4, the amendment [*viz.* the improvement] of the realm."

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<sup>40</sup> *Historians' History of the World*, The Times, London, 1907. XXI pp. 331-42.

<sup>41</sup> *Commentary on the Laws of England* [1765], Univ. Chicago, 1979 rep., I pp. 35f, 63f & 73.

<sup>42</sup> King Alfred: *Dome-book* 49:8f.

<sup>43</sup> *Institutes*, W. Clarke, London, ed. 1817, II, *Proeme*.

Also Blackstone noted<sup>44</sup> the "*Great Charter* of liberties...contained very few new grants; but, as Sir Edward Coke observes, was for the most part declaratory of the principal grounds of the fundamental laws of England.... The *Great Charter* is directed to be allowed as the Common Law. All judgments contrary to it, are declared void....

"*Magna Carta*...confirmed many liberties...and redressed many grievances.... Care was also taken therein to protect the subject against other oppressions then frequently arising from unreasonable amercements, from illegal distresses...and from the tyrannical abuse of the prerogative of purveyance.... It established the testamentary power of the subject over his personal estate.... It laid down the law of dower.... It enjoined an uniformity of weights and measures....

"It fixed...the trial of issues home to the very doors of the freeholders.... It protected every individual of the nation in the free enjoyment of his life, his liberty, and his property — unless declared to be forfeited by the judgment of his peers or the law of the land."

The great lawyer Bracton declared<sup>45</sup> in 1268 that "the king himself ought...to be...subject to God and the Law. For the Law makes the king" — *Lex rex*. Two-and-a-half centuries later, that great Jurist John Calvin would clarify that not just both kingdoms and republics but also churches and societies are subject to and never above the Moral Law of God.<sup>46</sup> A hundred years thereafter, the famous *Westminster Assembly* Commissioner Samuel Rutherford would insist that no government is above the Law — because "the **Law** is king": *Lex rex!*<sup>47</sup>

Under the 1558-1603 Queen Elizabeth I, it was decided in the famous *Bonham's case*<sup>48</sup> that the Common Law could invalidate even Acts of Parliament. Indeed, the next monarch of Britain (the 1603-25 King James I) — was frequently resisted in the name of God and the Common Law by none other than Lord Chief Justice Coke himself.

Coke's contemporary Archbishop Ussher put it eloquently in his 1615 *Irish Articles*:<sup>49</sup> "The supreme government of all estates...doth of right appertain to the king's highness.... We give unto him...that prerogative **only** which we see to have been always given unto all godly **princes in Holy Scripture** by God Himself.... The laws of the realm may punish Christian men with death for heinous and grievous offences. It is lawful for Christian men, at the commandments of the magistrate, to bear arms and to serve in just wars."

Ussher was invited by Parliament to be a delegate at the Westminster Assembly itself. It is his *Irish Articles* that form the basis of the *Westminster Confession of Faith*

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<sup>44</sup> *Op. cit.*, I pp. 123f & IV pp. 416f.

<sup>45</sup> H. Bracton: *On the Laws and Customs of England* f 5b (as cited in E.S. Corwin's *The 'Higher Law' Background of American Constitutional Law*, 42 *Harvard Law Review*, 1928-29, pp. 149 & 265).

<sup>46</sup> See esp. Calvin's *Harmony of the Pentateuch* I-IV and his *Institutes of the Christian Religion* I-II. Eerdmans eds., 1948f.

<sup>47</sup> S. Rutherford's *Lex Rex* [1644], in *The Presbyterian Armoury*, 1843.

<sup>48</sup> 8 *Coke's Reports* 1070 118a, 77 ER 638 & 652.

<sup>49</sup> Arts. 54-80.

of 1643f. Significantly, the *Westminster Confession* itself upholds God's Moral Law for all mankind; condemns publishing opinions contrary to the light of nature or to the known principles of Christianity; bans public sabbath desecration; requires taking lawful oaths; approves of Christians becoming magistrates; admonishes such to encourage those who are good, and to punish evil-doers; defines lawful marriages; and condemns communism and the weakening of private property.<sup>50</sup>

By order of Parliament, the *Westminster Confession* was approved together with the *Solemn League and Covenant* as the basis for harmony between the three realms of England and Ireland and Scotland. The same was done at the 1707 *Acts of Settlement*, re-establishing joint rule over those lands. Indeed, as remarked in the 1984 South Australian case of *Grace Bible Church v. Reedman*<sup>51</sup> — Britain's 1707 Acts of Settlement are part of Australian Law.

### The Australian *Bill of Rights* of 1689

Over the last decade or so, non-conservative federal politicians in the Australian Labor Party and elsewhere have constantly agitated for the enactment of an Australian *Bill of Rights*, and also for a fresh *Preamble* for our 1901 *Constitution*. The lively debate over the *Preamble* question in the run-up to the recent referendum, gave Australians a good insight into the radicalism they were being asked to approve. Doubtless the issue of a fresh *Bill of Rights* will again re-emerge, so it is well to remind ourselves that we already have one — and, once again, doubtless far superior to any new one likely yet to be proposed to replace it.

Fully a century before Captain Cook and the First Fleet brought it along with our Common Law to Australia, our own *Bill of Rights* was finalized in 1689, confirming the *Declaration of Right* of the same year and including a *Settlement of the Crown*. The Opposition's banana republic, however, would replace it with a new 'Bill of Rights' — which many have predicted would actually rather be an old 'Bill of Wrongs.'

Our own Australian 1689 *Act for Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown* had many fine features. Here are some of its salient provisions.

"Whereas [1] the Lords Spiritual and Temporal and Commons assembled at Westminster, lawfully... representing all the estates of the people of this realm...in the year of our Lord 1689 present unto their majesties...William and Mary...of Orange...a certain declaration in writing made to the said Lords and Commons in the words following; *viz.*,

"Whereas [2] the last King, James II — by the assistance of divers evil counsellors, judges and ministers employed by him — did endeavour to **subvert and extirpate the Protestant Religion and the laws and liberties of this kingdom**" *etc.* Here note especially the words: "the Protestant Religion."

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<sup>50</sup> 19:1-5f; 20:2-4; 21:7f; 22:1f; 23:1f; 24:1f & 26:3.

<sup>51</sup> 36 SA SR 1984, 379f.

## THE HISTORICAL ROOTS OF THE AUSTRALIAN CONSTITUTION

The twelve clauses of the previous 1689 *Declaration of Right* are then set out in this new *Act*. They are stated in the latter immediately after, and to prove the claim made above in the second 'Whereas.'

Included among those twelve clauses, are also the following three accusations.

- (1) James had been "raising and keeping a standing army....without consent of Parliament, and...**contrary to law**."
- (2) He had been "causing several...Protestants to be disarmed at the same time when Papists were both armed and employed — **contrary to law**."
- (3) Excessive bail hath been required of persons committed in criminal cases, **to elude the benefit of the laws made for the liberty of the subjects**." The section then concludes with the significant statement: "All [of] which are utterly and directly **contrary to the known laws and statutes and freedom of this realm**."

The *Act* then soon continues: "And whereas [3] the said last king, James II, having abdicated the government, and the throne being thereby vacant, his highness **the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power)**" did by advice of the Parliament "cause letters to be written to the Lords Spiritual and Temporal being Protestants...in order to such an establishment as that their religion, laws and liberties might not again be in danger of being subverted" *etc.* Here, note the words: "**being Protestants**"!

Referring back to the *Declaration of Right*, the *Act* then says that the Members of Parliament now "**for the vindicating and asserting of their ancient rights and liberties** declare:—

1. Suspending of law...by regal authority without consent of Parliament, is illegal.
2. Regal authority, as it hath been assumed and exercised of late, is illegal.
3. The...erecting...commissioners for ecclesiastical causes and all other commissions of like nature, are illegal and pernicious.
4. Levying money for...the use of the Crown...without grant of Parliament...is illegal.
5. It is the right of the subjects to petition the king....
6. Keeping a standing army... in time of peace unless...with consent of Parliament, is against the law.
7. The subjects which are Protestants may have arms for their defence...as allowed **by law**.
8. Election of Members of Parliament ought to be free.
9. The freedom of speech...in Parliament ought not to be impeached....
10. Excessive bail ought not to be required, nor excessive fines imposed, nor **cruel and unusual punishments** inflicted.
11. Jurors ought to be duly impanelled....
12. All...**fines...before conviction are illegal**....
13. For redress of all grievances.. and **preserving of the laws, Parliament ought to be held frequently**."

The Members of Parliament next claimed, demanded and insisted upon all and singular of the above premises, "**as their undoubted rights and liberties**. To which demand of their rights they are particularly encouraged, by the declaration of the Prince of Orange, and have an entire confidence that.. the Prince of Orange will

perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights...and from all other attempts upon their religion, rights and liberties."

In the next section, Section II, the succession of the House of Orange is set out — through William and Mary, and also through the latter's sister "Princess Anne of Denmark." Then, in Section III, the oaths of allegiance and supremacy are set out. To wit: "I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their majesties King William and Queen Mary: So help me God." And: "I, A.B., do swear that I do from my heart abhor, detest and abjure as impious and heretical, that damnable doctrine and position that princes excommunicated or deprived by the pope... may be deposed or murdered by their subjects.... I do declare that no foreign prince...or potentate hath or ought to have any jurisdiction...or authority ecclesiastical or spiritual within this realm: So help me God!" No U.N. Conventions or World Heritage Treaties!

Sections IV to VIII are not particularly relevant to our discussion. Section IX, however, then states "it hath been found by experience that it is inconsistent with the safety and welfare of **this Protestant kingdom** [note well: "this **Protestant** kingdom" as well as "this Protestant **kingdom**"!] to be governed by a **popish prince...or by any king or queen marrying a papist.**" Consequently, Parliament resolves "**that all and every person... [as shall] hold communion with the see or Church of Rome or shall profess the popish religion...shall be excluded and be for ever incapable to...inherit...the crown and government of this realm.**" Prince Charles — note well!

Section X before the last three Sections (XI to XII) which are not here relevant — then states "that every king and queen of this realm who at any time hereafter shall come to and succeed in the imperial crown of this kingdom shall on the first day of the meeting of the first parliament next" — make a **Protestant Profession of Faith** before the officer "who shall administer the coronation oath to him or her." Namely, the one to be crowned shall "make, subscribe and audibly repeat the declaration made in...*An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament.*"

J.H. Stephen observes in his famous *Commentaries on the Laws of England* that **all aspects** of the *Bill of Rights* antedated it. Indeed, they antedated even the 1215 *Magna Carta* itself. Our monarchs are required to uphold the long-standing Common Law of which the 1689 *Bill of Rights* is only a summary.

As Mayes's *Parliamentary Practice* insists — there was **nothing at all new** in the 1689 *Bill of Rights*. Indeed new, however, would be the Australian Socialist Opposition's proposed new Bill of Rights — alias their "Great Leap Forward"(?) into the great unknown.

## The establishment of the Common Law in Australia

University of Queensland Law Professor Lumb states in his book *Australian*



*Constitutionalism*<sup>52</sup> that the rights of *Magna Carta* were those also of the Britons who from the eighteenth-century onward would settle in Australia. Blackstone's outline of the *British Constitution* would influence profoundly also the Australian Colonies. Common Law would govern them in 1788<sup>f</sup> — and also at the establishment of the Commonwealth of Australia in 1900.

With the establishment in 1788 of the first British Colony in Australia — Governor Phillip upheld the **Bible's Decalogue** especially in **public life**. He granted full liberty of conscience, and also the free exercise of all religious worship not prohibited. Yet — even according to the radical Professor Manning Clark<sup>53</sup> — Phillip caused the laws against blasphemy, profaneness, adultery, fornication, polygamy, incest, profanation of the Lord's Day, swearing and drunkenness to be executed rigorously.

Phillip was succeeded by Governors Hunter,<sup>54</sup> Macquarie,<sup>55</sup> and Brisbane.<sup>56</sup> All of them were godly Christians — as too was Tasmania's first Lieutenant-Governor, Colonel Arthur.<sup>57</sup>

Blackstone had pointed out<sup>58</sup> that British settlers even in a previously-inhabited region with no proclaimed system of law, bring with them as much of the English Common Law as is applicable to the condition of the new colony. New South Wales and all the later colonies in Australasia were such regions. Thus the 1978<sup>f</sup> High Court of Australia case of *State Government Insurance Commission v. Trigwell*,<sup>59</sup> and even the 1990<sup>f</sup> *Mabo cases*.<sup>60</sup>

A Legislative Council was set up in 1823, and given power to make any laws (in harmony with Common Law) for New South Wales. The latter included what later became the separate States of Tasmania, Victoria, Queensland and much of South Australia and of the Northern Territory.

In that whole region, modified British Common Law alone then held sway — and still does. Too, with the setting up of the New South Wales Legislature in 1823, the dominant significance of the **Christian** religion within the Colony continued.<sup>61</sup> See the case of *Wylde v. Attorney-General*.<sup>62</sup> (1948). And since Britain in 1829 took possession also of Western Australia as such, the **whole** of the Australasian Continent has been under modified British Common Law — down until today.

Also the tremendous political influence in Australia of the famous evangelical<sup>63</sup>

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<sup>52</sup> Butterworths, Brisbane, 1983, pp. 24<sup>f</sup>.

<sup>53</sup> As cited by G. McLennan in his *Understanding our Christian Heritage*, Christian History Research Institute, Orange NSW, n.d., p. 9.

<sup>54</sup> Wood, pp. 54<sup>f</sup>.

<sup>55</sup> C.M.H. Clark: *A History of Australia*, University Press, Melbourne, I pp. 269 & 280<sup>f</sup>.

<sup>56</sup> *Ib.*, II pp. 21-23.

<sup>57</sup> *Ib.*, II p. 110.

<sup>58</sup> *Op. cit.*, I p. 107.

<sup>59</sup> 142 C.L.R. 617 & 623-25.

<sup>60</sup> N. Lee: *Australian Common Law and Tribal Title*, 5th revision, 1993, pp. 1-45.

<sup>61</sup> A.C. Castles: *An Australian Legal History*, 1982, pp. 46 & 67<sup>f</sup>.

<sup>62</sup> *Wylde v. Attorney-General* (1948) 78 C.L.R. 224 & 257.

<sup>63</sup> R.S. Ward: *The Bush Still Burns — the Presbyterian and Reformed Faith in Australia*, Globe, Brunswick Vic., 1989, p. 34.

Presbyterian, Rev. Dr. John Dunmore Lang, should be noted. He arrived in Sydney during 1823, and secured immigrants in whom religion and industry would be displayed.<sup>64</sup>

He was instrumental in the enactment of a new *Constitution* for New South Wales in 1855, just four years after Victoria and still four years before Queensland separated from the First Colony. He thoroughly favoured local and decentralized government here. So too did Queen Victoria.

When Captain Cook claimed the South Pacific for Britain in the 1770s — his sovereign asserted control as a professedly Christian ruler. This was again seen at the coronation of Queen Victoria, during whose reign our *Australian Constitution* was enacted. Also at the coronation of the present Christian and Trinitarian Queen of Australia in 1953, the same historic oath was uttered:<sup>65</sup>

"Our gracious Queen, we present you with this Book, the most valuable thing that this world affords. Here is wisdom. This is the Royal Law.... With this sword — do justice; stop the growth of iniquity; protect the holy Church of God.... Receive this orb set under the cross, and remember that the whole World is subject to the power and empire of Christ our Redeemer!

"Almighty and everliving God..., save and defend all Christian kings, princes, and governors, and specially Thy servant...our queen: that under her, we may be godly and quietly governed [*cf.* First Timothy 2:1-2]; and grant unto her whole council, and to all that are put in authority under her, that they may truly and indifferently minister justice, to the **punishment** of wickedness and **vice**, and to the **maintenance** of Thy **true religion** and **virtue**!" Romans 13:4 & James 1:27 & 2:8-12.

The framework of this Coronation Oath has hardly changed for over a thousand years. That used for the Anglican Christian Queen Elizabeth II of Australia in 1953 devolves directly — *via* that used at the Coronation of the Presbyterian Christian King William III in 1689 — from that used at the Coronation of the Pre-Reformational Christian King Edgar at Bath in 973 A.D., and probably also even further back than that.

This Oath therefore bears not a denominational but a **Pan-Christian** character — also throughout the last millennium, right down to our twenty-first century. Its "**true religion**" is therefore "the **Christian** Faith." And this, Queen Victoria took pains to remind Queensland's Governor in 1859.

As quoted in the 1990 *Mabo case*,<sup>66</sup> Queen Victoria instructed the first Governor of Queensland: "Promote religion and education among the native inhabitants of our said Colony!... Protect them in their persons and in the free enjoyment of their possessions! ... Do by all lawful means prevent and restrain all violence and injustice which may in any manner be practised or attempted against them! ... Take such measures as may appear to you to be necessary for their conversion to the **Christian**

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<sup>64</sup> R. Bardon: *Centenary History of the Presbyterian Church of Queensland 1849 to 1949*, Smith & Paterson, Brisbane, 1949, p. 12.

<sup>65</sup> McLennan, pp. 42f.

<sup>66</sup> S.C. 90/409 (Q.S.C. 1990 Vol. 14 No. 409, II p. 5): emphases by N. Lee.

Faith, and for their advancement in civilization!"

### **Christian influences in Australia before and in her 1900 Constitution**

In Australia, there has been even judicial recognition that Christianity is part of the law of the land. Thus, for example, in the 1866 New South Wales case of *Regina v. Murphy*.<sup>67</sup>

Also in *ex parte Thackeray* (1874), it was stated that the Law of God is part of the law of the Colony of New South Wales. It was held:<sup>68</sup>

"We, the colonists of New South Wales, 'bring out with us' (to adopt the words of Blackstone) this first great Common Law maxim distinctly handed down by Coke and Blackstone and every other English judge long before any of our colonies were in legal existence or even thought of, that 'Christianity is part and parcel of our general laws'; and that all the revealed or divine law, so far as enacted by the Holy Scriptures to be of universal obligation, is part of our colonial law — as clearly explained by Blackstone, Vol. I, pp. 42-3; and Vol. IV., pp. 43-60.

"If any person educated in the Christian religion or professing the same shall by writing, printing, teaching or advised speaking deny any one of the Persons in the Holy Trinity to be God, or maintain that there are more Gods than one — he shall undergo...penalties and incapacities.... Blasphemy against the Almighty by denying His being or providence; or by contumelious reproaches of our Saviour Christ...[and] all profane scoffing at the Holy Scripture or exposing it to contempt and ridicule...are offences punishable at Common Law by fine and imprisonment or other infamous corporal punishment. For Christianity is part of the law."

In the vital 1884 New South Wales case of *Regina v. Darling & Others*, on appeal, Chief Justice Martin stated:<sup>69</sup> "An opinion has been expressed that the Christian religion in any of its forms is not recognised by the law of this country. **No greater mistake can be made**. It has been frequently and correctly stated both in England and here that Christianity is part of the Common Law.... Christianity is part of the Common Law...of this Colony."

From then onward, both France and Germany pursued an aggressive expansionistic imperialism in the South Pacific. To the Australian Colonies, especially after 1885, the common needs of their defence and trade became very pressing. Constitutional confederation was seen to be the right road ahead.

In 1885, the 'Father of the Federation' Sir Henry Parkes declared:<sup>70</sup> "We are a British people — are pre-eminently a Christian people.... Our laws, our whole system of jurisprudence, our *Constitution*...are based upon and interwoven with our Christian belief."

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<sup>67</sup> *R. v. Murphy*, Wilke Aust. Mag. 757 (cited in *R. v. Darling*, NSWLR 884 5 at 407-10).

<sup>68</sup> *Ex parte Thackeray*, 13 S.C.R. (N.S.W.) 1 & 61 per Hargrave J.

<sup>69</sup> *R. v. Darling* NSWLR 884 5, 405 & 411 (emphases by N. Lee).

<sup>70</sup> *Sydney Morning Herald*, 26th August 1885.

## THE HISTORICAL ROOTS OF THE AUSTRALIAN CONSTITUTION

Australia's *Constitution*<sup>71</sup> is certainly grounded in Christianity. According to its very Preamble, it was brought into being on "9th July, 1900" — 1900 *Anno Domino*, or in the year of our Lord (Jesus Christ). That Preamble at its very outset expresses how the people of the constituting Colonies, in then contemplating the setting up of the Commonwealth of Australia, were "humbly relying on the blessing of **Almighty God**" — alias the one and only Triune God (alongside of Whom there is no other). Indeed, even the closing Schedule of the original *Australian Constitution* contains an Oath — swearing to be faithful "according to law. So help me **God!**"

Very frankly, Australia does not need any *Declarations* formulated by the United Nations — consisting as the latter does of much more imperfect human beings than in fact wrote the *Australian Constitution*. For, as the Supreme Court of Victoria recognized in the very recent (1992) case of *Noontil v. Auty*<sup>72</sup> — Australia is "**a predominantly Christian country.**"

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<sup>71</sup> 63 & 64 Victoria, chapter 12.

<sup>72</sup> 1 V.R. 365.