

Chapter 25

The Gaining and Losing of National Independence*

Introduction

On 1 January 1901 the Commonwealth of Australia came into being. It did so because the Imperial Parliament at Westminster had passed the Commonwealth of Australia Constitution Act 1900, which contained our federal Constitution. At that time the Australian population was little more than one percent of that of the British Empire as a whole. The governments and characteristics of the Australian population differed from those of most of the other 400 million people. Like the United Kingdom itself, and like those other colonies which from 1907 were known as “Dominions”¹—Canada, Newfoundland and New Zealand, from 1910 the Union of South Africa and from 1922 the Irish Free State—Australia was governed by parliamentary democracy. Australia was not subject to direct Imperial rule, as in Africa, and parts of India. It was not subject to indirect rule through princes, nawabs and zamindars, as in India, or through sultans, sheikhs, chiefs or other aristocrats and elites elsewhere. Australia lacked the conflicting castes, communities, religions and interests of other parts of the Empire. It had no large hostile minorities like the Boers, against whom the Empire was fighting a war at that moment in South Africa, or the French Canadians, who still bitterly regretted Wolfe’s defeat of Montcalm on the Plains of Abraham in 1759. There was not in Australia any thin crust of white settlers ruling a much larger indigenous population.

In recent years there have been disputes about when Australia attained independence. On one view it was achieved on 1 January 1901. The late Lionel Murphy—Labor Senate leader for eight years, Attorney-General in the Whitlam Government, High Court Judge—said: “Australia’s independence and freedom from United Kingdom legislative authority should be taken as dating from 1901”²

He is the only significant Australian to have thought this. However, there are Englishmen whose language is superficially supportive of Murphy J’s point of view. Take the 15th Earl of Derby—son of the Victorian Prime Minister, Foreign Secretary under Disraeli in the 1870s and Colonial Secretary under Gladstone in the 1880s. On 20 March 1887, in his diary, he described the Australian colonies and Canada, which had united in 1867 in a similar way to Australia in 1901, as having “practical independence”.³ On 6 July 1914 Arthur James Balfour, former Prime Minister, one of the

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1 As a result of a resolution at the 1907 Colonial Conference.

2 *Bisticic v Rokov* (1976) 135 CLR 552 at 567; see also *China Ocean Shipping Co v South Australia* (1979) 145 CLR 172 at 236-239. Murphy J’s view was strongly criticised in the latter case by Stephen J at 207-215 (Barwick CJ at 183-184 concurring); see also Gibbs J at 194.

3 J Vincent, *The Diaries of Edward Henry Stanley, 15th Earl of Derby (1826-93) Between 1878 and 1893* (Leopard’s Head Press, 2004) p 840.

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