



BOOK REVIEWS

John Williams*

TO CONSTITUTE A NATION: A CULTURAL HISTORY OF AUSTRALIA'S CONSTITUTION

Helen Irving

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On the dust cover of the authoritative work *The Making of the Australian Constitution* appears a photograph of its author JA La Nauze.¹ The halting stare through thick-rimmed glasses gives the impression of an austere and difficult taskmaster. His work displays an acute eye for the ridiculous and the ability to tell a measured yarn. This, in addition to its encyclopaedic research, has made the *Making* nothing short of a classic in Australian constitutional history. Inevitably

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1 La Nauze, *The Making of the Australian Constitution* (Melbourne University Press, Melbourne 1972).

'discoveries' by young researchers in the area are tempered by wiser heads asking "what did La Nauze say about it?"

In the preface to his work La Nauze states that one of his purposes was "to provide such aid as I can to the future author of a much-needed general history of the 'federal movement' in the Australian colonies in the later nineteenth century".² Ironically, it was the comprehensive nature of his own account, coupled with the disfavour that federation studies fell into, that cautioned many against taking up his invitation.

The forthcoming centenary of Federation has prompted many of Australia's leading academics to revisit the federation story. One such account is Helen Irving's *To Constitute a Nation: A Cultural History of Australia's Constitution*. Irving's approach to the federation story, unlike La Nauze's more chronological account, adds a fresh perspective to the topic. Perhaps the most challenging aspect of the work is its unashamed 'big picture' undertone. The work, as the title suggests, is a 'cultural history' of the foundations of the Constitution. Central to the work is the argument that equally important to the construction of a nation or constitution is the somewhat intangible requirement that the nation or constitution have cultural significance. As Irving notes "[i]n the processes of being formed, the nation was imagined as a community".³ So too, the Constitution has to be imagined and as such must have cultural resonance within that community.

The strength of this initial framework which Irving develops is that it draws together both the process of Federation and the cultural development that were critical in the joining together of the disparate elements of society. The weakness, as Irving herself acknowledges, is the danger in talking of 'typical' Australian characteristics and responses to the complex events that Federation unfolded. Indeed for all the federation 'zealots' on both sides of the argument there would have been thousands for whom Federation was but a passing issue. This, it could be argued, is born out in the minority of eligible voters who turned out for the 1898 and 1899 referenda.⁴ While Irving has resisted (thankfully) the academic tendency to reduce research and conclusions to their atomic elements she has not made crude generalisations or overlooked dissent when

2 At pv.

3 Irving, *To Constitute a Nation: A Cultural History of Australia's Constitution* (Cambridge University Press, Cambridge 1997) p26.

4 At pp152-153.

constructing her "typical" ... Australian life at the end of the nineteenth century".⁵

The work draws on sources outside the usual federation collection and demonstrates a considerable amount of research. Writing in an engaging style, the author develops clear arguments while providing a rich narrative. As well as chapters on the "imaginary nation" and "imagined constitutions" Irving reflects on the division of State and Federal powers in the Constitution, the influence of race, the development of the "Australian natives", the people, citizens and the contribution of women.

Her research on the role of women's groups builds upon previous work⁶ and reclaims the importance that the federation movement had for women. Irving challenges the general assumption that as women did not have representation at the constitutional conventions and did not vote for the delegates (with the exception of South Australia) the Constitution remains solely a male concern. She argues that the 1880s marked the development of the "New Woman": a woman who availed herself of advantages that were not available to her mother. "She worked, cycled, smoked, wore 'rational' dress, had opinions, wrote, agitated for women's rights. She wanted the vote."⁷ Irving chronicles well the involvement of women and the important constitutional imprint that they left.

For many the events of 1975 have shaped their understanding of the Commonwealth Constitution. In the immediate aftermath, works like *Change the Rules!* provided a platform for authors to decry the constitutional vagaries that were exploited to bring down the Whitlam Government. In his article "The People and the Constitution" Manning Clark stated that framers

wanted a constitution that would make capitalist society hum, but in which the institutions of the state could not be used to achieve what sections of the labour movement were already looking to the state to achieve - the making and the unmaking of social conditions. The federal constitution was the work of bourgeois politicians. Just as we have been assured God made man in his own image, so the

5 At pix.

6 Irving (ed), *A Woman's Constitution? Gender and History in the Australian Commonwealth* (Hale & Iremonger, Sydney 1996).

7 Irving, *To Constitute a Nation* p172.

bourgeoisie made our federal constitution in their own image.⁸

While not directly taking issue with Manning Clark, Irving challenges the thesis that the Constitution was the work of a conservative elite attempting to reinforce their position. She does this through her emphasis on the broad role of the people in the Constitution's development. For instance, she responds to arguments by historian Stuart Macintyre that colonial parliamentarians made a "calculated appeal to popular prejudice"⁹ by suggesting that, far from being the puppets of the ruling elite, the people projected their own sovereignty. Irving concludes that:

The people had become the legitimating force behind Federation. Through the Corowa Plan and the concept captured at the Bathurst People's Federal Convention, through election of delegates and the referendum process for ratifying the Constitution, and now for amending it, the people were recognised, or deferred to as the sovereign agent. Acting through their representatives in parliament was not enough.¹⁰

The difficulty with the concept of 'the people', and its legitimising presence, is the inconsistent rhetorical deployment to which it is subject. In recent times the phrase "chosen by the people" in ss7 and 24 of the Constitution has been highlighted by the High Court as a foundation for a constitutional implication that protects political speech.¹¹ Yet we know that, even as late as 1975, s24 of the Constitution was viewed as little more than a procedural requirement and was "not an indirect reference to any particular theory of government".¹²

Clearly 'the people' were critical in the development of the Constitution that was inaugurated in Sydney on 1 January 1901. However, their actions cannot be divorced from the political process that was at the heart of the Constitution's authorship. What is significant is that the arguments that

8 Clark, "The People and the Constitution" in Encel, Horne & Thompson (eds) *Change the Rules! Towards a Democratic Constitution* (Penguin Books, Melbourne 1977) p18.

9 Macintyre, "Corowa and the Voice of the People" (1994) 33 *Canberra Historical Journal*, quoted in Irving, *To Constitute a Nation* p138.

10 At p152.

11 *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.

12 *Attorney-General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1 at 21 per Barwick CJ.

both Irving and Macintyre advance are as relevant to the understanding of Australia's constitutional democracy at 1901 as they are for 2001.

Helen Irving's *To Constitute a Nation*, like La Nauze's *The Making of the Australian Constitution*, will become an essential work in Australia's constitutional historiography. Moreover, her contribution will no doubt excite further debate and research as to the origins and operation of the Commonwealth of Australia.

