

"MAY BE ONE" ROOTS IN BIBLICAL & CONSTITUTIONAL HISTORY

Contents

THE BIBLE	1
US DECLARATION OF INDEPENDENCE	2
INTRODUCTION -	2
PREAMBLE	2
CONCLUSION	2
DECLARATION POINTS THAT RELATE TO THE "MAY BE ONE" PHRASE	3
US CONSTITUTION (including the Bill of Rights - Amendment Articles 1-10)	3
PREAMBLE	3
ARTICLE OF AMENDMENT 1	3
ARTICLE OF AMENDMENT 2	4
AUSTRALIAN CONSTITUTION	4
PREAMBLE	4
HISTORY AND STATUS OF THE PREAMBLE	4

THE BIBLE

John 17:20-26 (KJV)

(John 17:20) Neither pray I for these alone, but for them also which shall believe on me through their word;

(John 17:21) That they all **may be one**; as thou, Father, [*art*] in me, and I in thee, that they also **may be one** in us: that the world may believe that thou hast sent me.

(John 17:22) And the glory which thou gavest me I have given them; that they **may be one**, even as we are one:

(John 17:23) I in them, and thou in me, that they may be made perfect in one; and that the world may know that thou hast sent me, and hast loved them, as thou hast loved me.

The idea of unity in the Godhead and the need for unity between Man and God is expressed widely throughout the Bible. The words of Jesus here are clear intentions by the Lord for building His church and witnessing to others.

US DECLARATION OF INDEPENDENCE

INTRODUCTION -

"When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." [83]

PREAMBLE

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,--That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security." "them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

CONCLUSION

"We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these united Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor."

DECLARATION POINTS THAT RELATE TO THE "MAY BE ONE" PHRASE

- By implication "one people" are connected and assume equal station under entitlements by the Laws of Nature and of Nature's God
- One in truth and whose truths are self-evident
- One in created equality
- One in rights/entitlements
- One in power over government
- One in pursuit of founding principles
- One in resistance to tyranny
- One in appealing to the Supreme Judge of the world
- One in authority - where authority is of the people
- One in the right to be free and independent
- One in firm reliance on the protection of divine Providence
- One in agreement - "we mutually pledge"

US CONSTITUTION (including the Bill of Rights - Amendment Articles 1-10)

PREAMBLE

- serves as an introductory statement of the document's fundamental purposes and guiding principles.
- it doesn't assign powers or place restrictions on the federal government
- it sets out the origin, scope and purpose of the Constitution.
- its origin and authority is in "We, the people of the United States".
- this statement echoes the Declaration of Independence.
- "One people" to sever connections with Britain and assume power as a sovereign nation-state.
- Why?
 - "to form a more perfect Union" than the "perpetual Union" of the Articles of Confederation.
 - to "secure the blessings of liberty", for themselves and those coming afterwards ("our posterity")

ARTICLE OF AMENDMENT 1

- **one in freedom of religion** - its Free Exercise Clause guarantees a person's right to hold whatever religious beliefs he or she wants, and to freely exercise that belief, and its Establishment Clause prevents the federal government from creating an official national church or favoring one set of religious beliefs over another.
- **one in freedom of speech** - the amendment guarantees an individual's right to express and to be exposed to a wide range of opinions and views. It was intended to ensure a free exchange of ideas, even unpopular ones
- one in enjoyment of **freedom of the press** - similar reasons to the above
- one in **freedom of assembly** - it also guarantees an individual's right to physically gather or associate with others in groups for economic, political or religious purposes.
- one in the **right to petition** - it guarantees an individual's right to petition the government for a redress of grievances

ARTICLE OF AMENDMENT 2

The Second Amendment (1791) protects the **right of individuals to keep and bear arms**. Although the Supreme Court has ruled that this right applies to individuals, not merely to collective militias, it has also held that the government may regulate or place some limits on the manufacture, ownership and sale of firearms or other weapons. Requested by several states during the Constitutional ratification debates, the amendment reflected the lingering resentment over the widespread efforts of the British to confiscate the colonists' firearms at the outbreak of the Revolutionary War. Patrick Henry had rhetorically asked, shall we be stronger, "when we are totally disarmed, and when a British Guard shall be stationed in every house?"

AUSTRALIAN CONSTITUTION

PREAMBLE

*Commonwealth of Australia
Constitution Act.*

[CH. 12.]

CHAPTER 12.

An Act to constitute the Commonwealth of Australia. A.D. 1900
[9th July 1900]

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Commonwealth of Australia Constitution Act. Short title.
2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom. Act to extend to the Queen's successors.
3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the Proclamation of Commonwealth.

HISTORY AND STATUS OF THE PREAMBLE

The following comments relate to the preamble - mostly to the highlighted section above.

They help validate the phrase "may be one" historically and as a foundation for the nation(s) going forward and particularly to deal with anti-God, anti-democracy inroads and revolutions.

The source is Sir Robert Garran QC who wrote a mammoth (1137 pages) commentary on the Constitution in 1902, one year after the Constitution was adopted - and whose work cites the approach in the USA and other countries on such matters as "the people", "humbly relying on the blessing of Almighty God, "agreed to unite", "in one".

All the words following are from that source - highlighted where appropriate.

To get a free copy, Google "commentary on the constitution of the commonwealth of australia" and click on the link for adc.library.usyd.edu.au

Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God⁴, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

DECLARATION OF AMERICAN INDEPENDENCE.—We therefore the representatives of the United States of America in general Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do in the name and by the authority of the good people of these colonies solemnly publish and declare that these united colonies are and of right ought to be free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is and ought to be totally dissolved . . . and for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honour. (4th July, 1776.)

ARTICLES OF CONFEDERATION.—And whereas it hath pleased the great **Governor of the World** to incline the hearts of the Legislatures we respectively represent in Congress, to approve of and to authorize us to ratify the said articles of confederation and perpetual union, know ye, that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents in the name and in behalf of our respective constituents fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual union and all and singular the matters and things therein contained. (9th July, 1778; ratified, 1781.)

UNITED STATES CONSTITUTION.—**We the people** of the United States, **in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity**, do ordain and establish this constitution for the United States of America. (Preamble, went into operation 4th March 1789.)

BRITISH NORTH AMERICA ACT.—Whereas the Provinces of Canada, Nova

Scotia, and New Brunswick, have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom. And whereas such a union would conduce to the welfare of the Provinces and promote the interests of the British Empire. And whereas on the establishment of the union by authority of Parliament it is expedient not only that the Constitution of the Legislative authority in the Dominion be provided for, but also that the nature of the Executive Government therein be declared. And whereas it is expedient that provision be made for the eventual admission into the union of other parts of British North America. (Preamble, 29th March, 1867.)

CONSTITUTION OF THE GERMAN EMPIRE.—The Imperial Constitution for the protection of the territory of the Confederation and of the laws of the same as well as for the promotion of the welfare of the German people. (Preamble, 18th January, 1871.)

CONSTITUTION OF SWITZERLAND.—In the name of Almighty God. The Swiss Confederation, desiring to confirm the alliance of the Confederates, to maintain and to promote the unity, strength and honour of the Swiss nation . . . The purpose of the Confederation is to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberty and the rights of the Confederates and to foster their common welfare. (Preamble and Art. 2, 29th May, 1874.)

HISTORICAL NOTE.—The preamble of the Commonwealth Bill of 1891 was as follows:—

“Whereas the Australasian colonies of [here name the colonies which have adopted the Constitution] have by [here describe the mode by which the assent of the colonies has been expressed] agreed to unite in one Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to make provision for the admission into the Commonwealth of other Australasian colonies and possessions of Her Majesty.”

Under the Enabling Acts by which the Convention of 1897–8 was constituted, the mode by which the assent of the colonies was to be expressed—namely, by the vote of the people—was already determined; and accordingly the first recital in the preamble as drawn at Adelaide was as follows:—

“Whereas the people of [here name the colonies which have adopted the Constitution] have agreed to form one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:”

In Committee, at Mr. Deakin's suggestion, the word “form” was omitted and “unite in” substituted. Several largely-signed petitions had been received praying that there should be some recognition of God in the Constitution; and Mr. Glynn moved to insert the words “invoking Divine Providence.” The Convention, however, felt some doubt as to the propriety of introducing at that stage any religious formula into the Constitution, and the amendment was negatived by 17 votes to 11. (Conv. Deb., Adel., pp. 1183–9.) During the statutory adjournment, all the Legislative Chambers, with one exception, suggested the insertion of some recognition of a Divine Being. The Legislatures of New South Wales and South Australia, and the Legislative Council of Western Australia, suggested the words

“acknowledging Almighty God as the Supreme Ruler of the Universe.” The Legislature of Victoria suggested “in reliance upon the blessing of Almighty God.” The House of Assembly of Tasmania suggested “duly acknowledging Almighty God as the Supreme Ruler of the Universe and the source of all true Government” The Legislative Assembly of Western Australia suggested “grateful to Almighty God for their freedom, and in order to secure and perpetuate its blessings.” Numerous petitions were received to a similar effect; and at the Melbourne session a proposal by Mr. Glynn to insert the words “humbly relying on the blessing of Almighty God” was agreed to. (Conv. Deb., Melb., 1732–41.)

In the Bill as introduced in the Imperial Parliament, the names of the five colonies which had accepted the Bill were inserted in the blank left for that purpose. The words “under the Constitution hereby established” were omitted, owing to the contention of the Delegates that the alterations then proposed by the Imperial Government would make this recital inaccurate; but in Committee they were afterwards restored (see Historical Introduction, pp. 230, 238, 242, 249, supra).

¶ 2. “Whereas.”

The proper function of a preamble is to explain and recite certain facts which are necessary to be explained and recited, before the enactments contained in an Act of Parliament can be understood. A preamble may be used for other reasons: to limit the scope of certain expressions or to explain facts or introduce definitions. (Lord Thring, Practical Legislation, p. 36.) The preamble has been said to be a good means to find out the intention of a statute, and, as it were, a key to the understanding of it. It usually states, or professes to state, the general object and meaning of the Legislature in passing the measure. Hence it may be legitimately consulted for the purpose of solving an ambiguity or fixing the connotation of words which may possibly have more than one meaning, or determining the scope or limiting the effect of the Act, whenever the enacting parts are, in any of these respects, open to doubt. But the preamble cannot either restrict or extend the legislative words, when the language is plain and not open to doubt, either as to its meaning or its scope. (Maxwell on the Interpretation of Statutes [1875], pp. 35–45.)

In the case of *Overseers of West Ham v. Iles* (1883), 8 App. Cas. p. 388, Lord Blackburn said: “My Lords, in this case the whole question turns upon the construction of sect. 19 of 59 Geo. III. c. 12. I quite agree with the argument which has been addressed to your Lordships, that in construing an Act of Parliament, where the intention of the Legislature is declared by the preamble, we are to give effect to that preamble to this extent, namely, that it shows us what the Legislature are intending; and if the words of enactment have a meaning which does not go beyond that preamble, or which may come up to the preamble, in either case we prefer that meaning to one showing an intention of the Legislature which would not answer the purposes of the preamble, or which would go beyond them. To that extent only is the preamble material.”

Although the enacting words of a statute are not necessarily to be limited or controlled by the words of the preamble, but in many instances go beyond it, yet, on a sound construction of every Act of Parliament, the words in the enacting part must be confined to that which is the plain object and general intention of the Legislature in passing the Act; and the

preamble affords a good clue to discover what that object was. (Per Lord Tenterden, C.J., in *Halton v. Cove*, 1 B. and Ad. 538; *Salkeld v. Johnson*, 2 Exch. 283; per Kelly, C.B., in *Winn v. Mossman*, L.R. 4 Ex. 300; cited, *Broom's Legal Maxims*, 5th ed. p. 572.) "The only rule for the construction

of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound the words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the lawgiver.

But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to Chief Justice Dyer (Plowd. 369) is a key to open the minds of the makers of the Act and the mischiefs which they intended to redress." (Per Tindal, C.J., delivering the opinion of the Judges in the *Sussex Peerage Case*, 11 Cl. and Fin. 143; per Buller, J., in *R. v. Robinson*, 2 East P.C. 1113; cited *R. v. Johnson*, 29 St. Tr. 303; *Broom's Legal Maxims*, 5th ed. 573.

It is a general rule, in the construction of statutes, that the preamble may extend, but cannot restrain, the effect of an enacting clause. (*Kearns v. Cordwainers' Co.*, 28 L.J. C.P. 285; D.E.C.L. xiii. p. 1882.)

We ought not to restrict a section in an Act of Parliament by the preamble or general purview of the Act where the section is not inconsistent with the spirit of the Act. (*Sutton v. Sutton*, 22 Ch. D. 521. Id.)

The preamble of an Act of Parliament is proper to explain the general body of it. (*Copeman v. Gallant*, 1 P. Wms. 317. Id.)

If the enacting part of a statute will bear only one interpretation, the preamble shall not confine it; but if it is doubtful, the preamble may be applied to throw light upon it. (*Mason v. Armitage*, 13 Ves. 36. Id.)

In construing an Act of Parliament, or any other instrument, the court is at liberty to regard the state of the law at the time, and the facts which the preamble or recitals of the Act of instrument prove to have been the existing circumstances at the time of its preparation. (*Attorney-General v. Powis*, 2 Eq. R. 566. Id. 1883.)

The preamble of an Act of Parliament, though it may assist ambiguous words, cannot control a clear and express enactment. (*Lees v. Summersgill*, 17 Ves. 508. Id.)

But it may serve to give a definite and qualified meaning to indefinite and general terms. (*Emanuel v. Constable*, 3 Russ. 436, overruling *Lees v. Summersgill*. Id.)

In construing Acts, the court must take into consideration not only the language of the preamble, or any particular clause, but of the whole Act; and if, in some of the enacting clauses, expressions are to be found of more extensive import than in others, or than in the preamble, the Court will give effect to those more extensive expressions, if, upon a view of the whole Act, it appears to have been the intention of the Legislature that they should have effect. (*Doe d. Bywater v. Brandling*, 6 L.J. (o.s.) K.B. 162. Id.)

The effect of the preamble of a repealed Act was considered in *Harding v. Williams*, 1880, 14 Ch. Div. 197. The effect of a preamble to a particular section of an Act was considered in *ex parte Gorely, re Barker*, 34 L.J. (B.)

1.

¶ 3. "The People."

The opening words of the preamble proclaim that the Constitution of the Commonwealth of Australia is founded on the will of the people whom it is designed to unite and govern. Although it proceeds from the people, it is clothed with the form of law by an Act of the Imperial Parliament of Great Britain and Ireland, the Supreme Sovereign Legislature of the British Empire. The legislative supremacy of the British Parliament is, according to Dicey and all other modern jurists, the keystone of the law of the British Constitution. John Austin holds (*Jurisprudence*, vol. I. pp. 251–255) that the sovereign power is vested in the King, the House of Lords, and the House of Commons or electors. Referring to Austin's definition, Dicey points out that the word "sovereignty" is sometimes employed in a political rather than in a strictly legal sense. That body is politically sovereign or supreme in a State, the will of which is ultimately obeyed by the citizens of the State. In this sense of the word the electors of Great Britain may be said to be, together with the Crown and the Lords, or perhaps in strict accuracy, independently of the King and the Peers, to be the body in which the political sovereignty is vested. (Dicey, *Law of the Constitution*, p. 67.)

SOVEREIGNTY OF THE PEOPLE.—In the United States the political as well as the legal sovereignty of the people has been generally recognized ever since the Declaration of Independence. John Wilson, one of the framers of the American Constitution, in addressing the Pennsylvania State Convention in exposition and defence of that instrument said:—

"When I had the honour of speaking formerly on the subject I stated in as concise a manner as possible the leading ideas that occurred to me to ascertain where the supreme and sovereign power resides. It has not been, nor I presume will be denied that somewhere there is, and of necessity must be, a supreme absolute and uncontrollable authority. This I believe may justly be termed the sovereign power; for, from that gentleman's (Mr. Findlay's) account of the matter it cannot be sovereign unless it is supreme; for, says he, a subordinate sovereignty is no sovereignty at all. I had the honour of observing that if the question was asked where the supreme power resided, different answers would be given by different writers. I mentioned that Blackstone would tell you that in Britain it is lodged in the British Parliament; and I believe there is no writer on this subject on the other side of the Atlantic but supposed it to be vested in that body. I stated further that if the question was asked of some politician who had not considered the subject with sufficient accuracy, where the supreme power resided in our Government, he would answer that it was vested in the State Constitutions. This opinion approaches near the truth, but does not reach it, for the truth is the supreme absolute and uncontrollable authority remains with the people. I mentioned also that the practical recognition of this truth was reserved for the honour of this country. I recollect no Constitution founded on this principle; but we have witnessed the improvement and enjoy the happiness of seeing it carried into practice. The great and penetrating mind of Locke seems to be the only one that pointed towards even the theory of this great truth." (Elliot's *Debates on the Federal Constitution*, vol. ii., pp. 455, 456.) Cited, Roger Foster's *Comment. on the Const.* (1895), I., p. 107.

The Constitution of the United States was not ordained and established by the States, but, as the preamble declares, by “the people of the United States.” It was competent for the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers, according to their own good pleasure, and to give them a paramount and supreme authority. (*Martin v. Hunter's Lessee*, 1 Wheat. 304–324; *Chisholm v. Georgia*, 2 Dall. 419; *Brown v. Maryland*, 12 Wheat. 455. Noted in *Baker*, Annot. Const. (1891), p. 1.)

The Government of the American Union is a Government of the people. In form and in substance it emanates from them. Its powers are granted by them and are to be exercised on them and for their benefit. (Per Marshall, C.J., *McCulloch v. Maryland*, 4 Wheat. 316. Id.)

The expressions “the people of the United States” and “citizens” are synonymous and mean the same thing. They both describe the political body which according to American institutions, forms the sovereignty, holds the power and conducts the Government through its representatives. The members of that body are called the “sovereign people,” and every citizen is one of this people and a constituent member of the sovereignty. (*Dred Scott v. Sandford*, 19 How. 393. Id.)

AFFIRMATIONS OF THE PREAMBLE.—It will be noticed that the preamble to this Constitution contains no less than eight separate and distinct affirmations or declarations.

(i.) The agreement of the people of Australia.

(ii.) Their reliance on the blessing of Almighty God.

(iii.) The purpose to unite.

(iv.) The character of the Union—indissoluble.

(v.) The form of the Union—a Federal Commonwealth.

(vi.) The dependence of the Union—under the Crown.

(vii.) The government of the Union—under the Constitution.

(viii.) The expediency of provision for admission of other Colonies as States.

Of the above eight declaratory parts of the preamble only four, viz., the third, fifth, seventh, and eighth, find legislative expression in identifiable clauses to be found in the body of the Act. The remaining four have, therefore, to be regarded as promulgating principles, ideas, or sentiments operating, at the time of the formation of the instrument, in the minds of its framers, and by them imparted to and approved by the people to whom it was submitted. These principles may hereafter become of supreme interest and importance in guiding the development of the Constitution under the influence of Federal Statesmen and Federal Electors. They may also be of valuable service and potent effect in the Courts of the Commonwealth, aiding in the interpretation of words and phrases which may now appear comparatively clear, but which, in time to come, may be obscured by the raising of unexpected issues and by the conflict of newly evolved opinions. It may be asked, why are four at least of these momentous declarations to be found only in the preamble, and why have they no corresponding counterparts in the corpus of the Act? The answer is obvious. First as to the agreement of the people; that is the recital of a historical fact, and it could not therefore be reduced to the form in which a section of an Act of Parliament is generally cast, viz., that of a command coupled with a sanction. Then, again, their reliance on the Divine blessing is another recital of fact, incidental to the primary affirmation, and introduced in a

participial sentence for the purpose of avoiding the suspicion of ostentation and irreverence; there would, indeed, have been not only a technical difficulty, but an absolute impropriety in attempting to frame a clause designed to give legislative recognition of the Deity. The indissolubility of the Federal Commonwealth is affirmed as a principle: the effect of that affirmation will be discussed at a later stage. The declaration that the Union is under the Crown is appropriate and fundamental; this also will be discussed at a later stage.

¶ 4. "Humbly Relying on the Blessing of Almighty God."

This appeal to the Deity was inserted in the Constitution at the suggestion of most of the Colonial Legislative Chambers, and in response to numerous and largely signed petitions received from the people of every colony represented in the Federal Convention. When the expression was first formulated, towards the close of the session held in Adelaide, it was thought advisable to postpone the final determination of a proposition so delicate and significant until a later stage, in order to give time and opportunity for further consideration and for the additional manifestation of public opinion and sentiment. In the interval between the Adelaide and Sydney sessions of the Convention, the Legislative Councils and Legislative Assemblies of New South Wales, Victoria, South Australia, and Western Australia, and the House of Assembly of Tasmania, resolved to recommend to the Convention the insertion in the preamble of appropriate words acknowledging and invoking the blessing of the Supreme Being. During the session held in Sydney, as well as in the last session held in Melbourne, supplementary petitions were received in favour of insertion of words of the foregoing import. A few petitions were also received in opposition to the proposal. Finally the words were inserted in the preamble without a division, but not without protest from several members of the Convention. In justification of the insertion of the words stress was laid on the great demonstration of public opinion in their favour, as expressed in the recommendations of the Legislative bodies and in the petitions presented. It was also pointed out that such an allusion was not without precedent in other notable instruments of Government, such as the American Declaration of Independence, the Articles of Confederation, and the Swiss Constitution. The views for and against are fully expressed in the following extracts:—

"The foundations of our national edifice are being laid in times of peace; the invisible hand of Providence is in the tracing of our plans. Should we not, at the very inception of our great work, give some outward recognition of the Divine guidance that we feel? This spirit of reverence for the Unseen pervades all the relations of our civil life. It is felt in the forms in our Courts of Justice, in the language of our statutes, in the oath that binds the Sovereign to the observance of our liberties, in the recognition of the Sabbath; in the rubrics of our guilds and social orders, in the anthem, through which on every public occasion we invoke a blessing on our executive head; in our domestic observances, in the offices of courtesy at our meetings and partings, and in the time-honoured motto of the nation. Says Burke: 'We know, and, what is better, we feel inwardly that religion is the basis of civil society.' The ancients, who in the edifices of the mind and marble have left us such noble exemplars for our guidance, invoked.

under a sense of its all-pervading power, the direction of the Divine mind. Pagans though they were, and as yet but seeing dimly, they felt that the breath of a Divine Being, 'that pure breath of life, that spirit of man,' which God inspired—as Milton says—was the life of their establishments. It is of this that Cicero speaks when he writes of that great elemental law at the back of all human ordinances, that eternal principle which governs the entire universe, wisely commanding what is right and prohibiting what is wrong, and which he calls the mind of God. Right through the ages we find this universal sense of Divine inspiration—this feeling, that a wisdom beyond that of man shapes the destiny of states; that the institutions of men are but the imperfect instruments of a Divine and beneficent energy, helping their higher aims. Should not we, sir, grant the prayer of the many petitions that have been presented to us, by recognizing at the opening of our great future our dependence upon God? Should we not fix in our Constitution the elements of reverence and strength, by expressing our share of the universal sense that a Divine idea animates all our higher objects, and that the guiding hand of Providence leads our wanderings towards the dawn? In doing so we will be but acting on what a great statesman called 'the uniformly considered sense of mankind.' It was from a consciousness of the moral anarchy of the world's unguided course that all races of man saw in their various gradations of light the vision of an eternal Justice behind the veil of things whose intimations kept down the rebellious hearts of earth's children. It was this that made them consecrate their national purposes to God; that their hands might grow strong and their minds be illuminated by the grace of that power Divine through which alone, as Plato says, the poet sings—

'We give like children, and the Almighty plan Controls the forward children of weak man.'

Under a sense of this great truth, expressed some thousand years ago, I ask you to grant the prayer of these petitions: to grant it in a hope that the Justice we wish to execute may be rendered certain, in our work, and our union abiding and fruitful by the blessing of the Supreme Being."—Mr. P. M. Glynn, Conv. Deb., Adel., 1897, p. 1185–6.

"I say frankly that I should have no objection to the insertion of words of this kind in the preamble, if I felt that in the Constitution we had a sufficient safeguard against the passing of religious laws by the Commonwealth. I shall, I hope, afterwards have an opportunity, upon the reconsideration of the measure, to bring before the Convention a clause modified to meet some criticisms which have been made on this point, and if I succeed in getting this clause passed it will provide this safeguard. I shall have an opportunity then of explaining how exceedingly important it is to have some such safeguard. There is no time for me now to go into an elaborate history of this question so far as the United States of America are concerned. I have investigated it with a great deal of care, and I can give the result of my investigations to honourable members, who, I hope, will not believe that I would mislead them if I could help doing so with regard to the effect of what has taken place there. Because they had no words in the preamble of the Constitution of the United States to the effect of those which the honourable member (Mr. Glynn) wishes to insert, Congress was unable to pass certain legislation in the direction of enforcing religion.

There was a struggle for about thirty years to have some words of religious import inserted in the preamble. That struggle failed; but in 1892 it was decided by the Supreme Court that the people of the United States were a Christian people. . . . That decision was given in March or February, and four months afterwards it was enacted by Congress that the Chicago Exhibition should be closed upon Sundays, simply upon the ground that Sunday was a Christian day. The argument was that among a Christian nation you should enforce Christian observances. . . . There is nothing in the Constitution of the United States of America, even indirectly, suggesting a law of this sort. No doubt the State of Illinois could have passed such a law, because it has all its rights reserved. But there was nothing in the Constitution enabling the Congress to pass a law for the closing of the Exhibition on Sunday. As soon as ever those parties who had been working for the purpose of getting Sunday legalized throughout the United States found that decision given in February, 1892, that 'this is a Christian nation,' they followed it up quickly, and within four months there was a law passed for the closing of the Exhibition on Sunday. . . . It has been in force for five and a half or six years, and it was struggled against, as my honourable friend will know. There was a strong monetary interest against it, but I will say frankly that I was not aware that it has been held to be constitutional. I understand though that there has been no dispute among the legal men in that country as to its being constitutional. Honourable members will hardly realize how far the inferential powers have been extended in America. I should have thought it obvious, and I think Mr. Wise will agree with me that the Congress had no power to pass a law of that sort. . . . I should have thought that it was not in the scope of Congress to pass a law, no matter how righteous, to close the Exhibition on Sunday, but I find, on looking to a number of decisions in the United States, that it has been held again and again that, because of certain expressions, words, and phrases used in the Constitution, inferential powers are conferred upon the Congress that go beyond any dreams we have at present. I know that a great many people have been got to sign petitions in favour of inserting such religious words in the preamble of this Bill by men who knew the course of the struggle in the United States, but who have not told the people what the course of that struggle is, and what the motive for these words is. I think the people of Australia ought to have been told frankly when they were asked to sign these petitions what the history in the United States has been on the subject, and the motive with which these words have been proposed. I think the people in Australia are as reverential as any people on the face of this earth, so I will make no opposition to the insertion of seemingly and suitable words, provided that it is made perfectly clear in the substantive part of the Constitution that we are not conferring on the Commonwealth a power to pass religious laws. I want to leave that as a reserved power to the State, as it is now. Let the States have the power. I will not interfere with the individual States in the power they have, but I want to make it clear that in inserting these religious words in the preamble of the Bill we are not by inference giving a power to impose on the Federation of Australia any religious laws."—Mr. H. B. Higgins, Conv. Deb., Melb., pp. 1734–5.

The case referred to by Mr. Higgins was *Church of the Holy Trinity v. United States*, 143 U.S., p. 457. It came before the Supreme Court of the

United States on error from a United States circuit court. The question involved was the construction and effect of the federal statute of 26th February, 1885, prohibiting the importation and migration of foreigners and aliens under agreement to perform labour in the United States. (23 Stat. 332 c. 164.) The Church of the Holy Trinity was duly incorporated as a religious society under the laws of the State of New York. E. Walpole Warren was, prior to September, 1887, an alien residing in England. In that month the Church made a contract with him, by which he was to remove to the city of New York and enter into its service as rector and pastor, which Warren accordingly did. It was claimed by the United States that this contract, on the part of the Church, was forbidden by the federal Act, and an action was commenced to recover the penalty prescribed by that Act. The Circuit Court held that the contract was within the prohibition of the statute, and rendered judgment accordingly. (36 Fed. Rep. 303.) The Church appealed to the Supreme Court of the United States, and the single question presented was, whether the Circuit Court had erred in giving that decision. The decision of the Court was delivered by Mr. Justice Brewer on 29th February, 1892. The Court was of opinion that the act of the Corporation was within the letter of the prohibition; for the relation of rector to his church was one of service, and implied labour on the one side with compensation on the other. Further, as noticed by the Circuit Judge in his opinion, the 5th section, which made specific exceptions, among them being professional actors, artists, lecturers, singers, and domestic servants, strengthened the idea that every other kind of labour and service was intended to be reached by the first section. While there was great force in that reasoning, the Court did not think that Congress intended to denounce, with penalties, a transaction like that in the present case. It was a familiar rule, that a thing might be within the letter of a statute, and yet not be within the statute, because not within the spirit, nor within the intention of its makers. The Court therefore found that the whole of the Act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress, the reports of the Committee of each House, all concurred in affirming that the intent of Congress was simply to stay the influx of cheap unskilled labour.

"It was never suggested that we had in this country a surplus of brain toilers, and least of all, that the market for the services of Christian ministers was depressed by foreign competition. Those were matters to which the attention of Congress, or of the people, was not directed. So far, then, as the evil which was sought to be remedied interprets the statute, it also guides to an exclusion of this contract from the penalties of the Act. . . . But beyond all these matters, no purpose of action against religion can be imputed to any legislation, state or national; because, this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. The Commission to Christopher Columbus, prior to his sail westward, is from 'Ferdinand and Isabella, by the Grace of God, King and Queen of Castile, &c.,' and recites that it is hoped that by God's assistance some of the continents and islands in the ocean will be discovered, &c. . . . The first colonial grant, that made to Sir Walter Raleigh, in 1584, was from 'Elizabeth by the grace of God, of England, France, and Ireland, Queen, Defender of the Faith,' &c.; and the grant, authorizing him to enact statutes

for the government of the proposed colony, provides that 'they be not against the true Christian faith now professed in the Church of England.' Coming nearer to the present time, The Declaration of Independence recognizes the presence of the Divine in human affairs, in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.' 'We therefore, the Representatives of the United States of America in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by the authority of the Good People of these colonies solemnly publish and declare,' &c., 'and for the support of the Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honour.' On examination of the Constitutions of the various States we find in them a constant recognition of religious obligations. . . . It is the duty of the Court, under those circumstances, to say that, however broad the language of the statute may be, the Act, although within the letter, is not within the intention of the legislature, and cannot be within the statute." (Per Mr. Justice Brewer, *Church of the Holy Trinity v. United States*, 143 U.S. 457.)

On 25th April, 1890, Congress passed an Act to provide for celebrating the four hundredth anniversary of the discovery of America by Christopher Columbus, by holding in the city of Chicago, in the State of Illinois, an International Exposition of arts, industries, manufactures, and products of the soil, mine, and sea. A Commission was constituted for carrying out the enterprise, and preliminary arrangements were made. This Act was passed by Congress in the exercise of its power to regulate and promote inter-state and foreign commerce. On 5th August, 1892, Congress passed an Act (ch. 381, 1892) in furtherance of the first-mentioned Act. It recited that it was enacted "For the purpose of aiding in defraying the cost of completing in a suitable manner the work of preparation for inaugurating the World's Columbian Exposition." It then proceeded to provide that there should be coined, at the mints, five million half-dollar silver pieces, to be known as Columbian half-dollars. It next went on to make other provisions and arrangements for the holding of the Exposition. Then came section 4, as follows:—

"That it is hereby declared that all appropriations herein made for, or pertaining to, the World's Columbian Exposition are made upon the condition that the said Exposition shall not be opened to the public on the first day of the week, commonly called Sunday; and if the said appropriations be accepted by the corporation of the State of Illinois, known as the World's Columbian Exposition, upon that condition, it shall be, and is hereby, made the duty of the World's Columbian Commission, created by the Act of Congress of April twenty-fifth, eighteen hundred and ninety, to make such rules or modification of the rules of same corporation as shall require the closing of the Exposition on the said first day of the week commonly called Sunday."

The amending Act, like the principal Act, was passed by Congress in the exercise of its power over trade and commerce. In the debates which took place in Congress during the passage of the amending Bill no reference

appears to have been made to any religious aspect of the proposed closing of the Exposition on Sundays, or to the case of the Church of the Holy Trinity v. United States.

¶ 5. "Have Agreed."

These words make distinct and emphatic reference to the consensus of the people, arrived at through the procedure, in its various successive stages, prescribed by the substantially similar Enabling Acts adopted by the Legislatures of the concurring colonies. In four of the colonies Acts were passed enabling the people to take part in the framing and acceptance or rejection of a Federal Constitution for Australia. Through those Acts the people agreed, first, to send representatives to a Federal Convention charged with the duty of framing for Australia a Federal Constitution under the Crown in the form of a Bill for enactment by the Imperial Parliament; and, secondly, they agreed to pronounce their judgment upon the Constitution at a referendum, which in each colony was arranged to follow the Convention. In all the colonies the Constitution was eventually referred to the people. At this referendum each voter was enabled to vote by ballot "Yes" or "No" on the question asked in the ballot paper, "Are you in favour of the proposed Federal Constitution?" In this manner there was in four colonies a popular initiative and finally in all the colonies a popular ratification of the Constitution, which is thus legally the work, as it will be for all time the heritage, of the Australian people. This democratic method of establishing a new form of government may be contrasted with the circumstances and conditions under which other Federal Constitutions became law.

UNITED STATES.—"It was well said by John Quincy Adams that the Constitution was 'extorted from the grinding necessity of a reluctant nation.' It was accepted by a small majority as the only alternative to disruption and anarchy. Its ratification was the success of the men who were interested in the security of property, the maintenance of order, and the enforcement of obligations against those who desired communism, lawlessness, and repudiation.