Essays in Australian Federation, edited by A. W. MARTIN, Professor of History, La Trobe University. (Melbourne University Press, 1969), pp. i-xi, 1-206. $6.30.

This is the third title in the series "Studies in Australian Federation". It comprises six essays on disparate topics relating to the Australian Federation movement with a preface contributed by the editor. Geoffrey Serle gives an account of the Victorian Government's campaign for federation from 1883 to 1889. He describes the steps taken by various Victorian Ministers of State to cajole and coerce the other colonies into forming some sort of federation or confederation which would enable them more readily to act in concert and more effectively to formulate and present their views to the Imperial Government, especially on questions relating to the Pacific area. J. A. La Nauze's essay is entitled "A Little Bit of Lawyer's Language: The History of 'Absolutely Free', 1890-1900". In this essay he enquires into the authorship and history of the phrase "absolutely free" and, as the title shows, attributes authorship to lawyers rather than laymen. B. K. de Garis writes on the Colonial Office's attitudes and actions in respect of the Commonwealth Constitution Bill. Janet Pettman looks at the role of the Australian Natives Association in the federation movement in South Australia. R. Norris gives a persuasive account of the influence regional economic considerations had upon the 1898 federation referendum in South Australia. Lastly, Patricia Hewett comments upon aspects of the referenda campaigns of 1898 and 1899 in south-eastern New South Wales.

Each of the essays will be of some interest to the constitutional historian but from the constitutional lawyer's point of view the most interesting will surely be that written by J. A. La Nauze. It is wittily written and in few words conveys very human pictures of the principal delegates who concerned themselves with the clause of the draft Commonwealth Constitution providing for freedom of interstate trade. The history of the clause itself is told in a detailed and very readable fashion.

Professor Martin claims in his preface that Professor La Nauze brings to his study of the clause "the historian's methods and attention to documents, dispelling thereby some long-standing illusions". Just what these "long-standing illusions" are and who is alleged to hold them is not made explicit. The first illusion would seem to be that the words "absolutely free" were the product of a layman's efforts, namely, Sir Henry Parkes.

Professor La Nauze shows convincingly that the words were not those of Parkes or at least that they were not his alone. He implicates Inglis Clark of Tasmania, Griffith of Queensland and possibly Kingston of South Australia; all lawyers. It does seem most likely as he suggests that the words, as used in the Convention Resolutions, came

from Sir Samuel Griffith. Something is thus proved, but is any illusion disproved or dispelled? Professor La Nauze proceeds as if it was generally accepted that a layman or combination of laymen were responsible for the words but he does not refer to any particular persons who have expressed this view. He does quote George Reid's reference in the Convention of 1897-1898 to the clause as "a little bit of laymen's language" and also Edmund Barton's interjection: "It is the language of three lawyers." He does not mention that Isaac Isaacs added to that, "And one of the lawyers who helped to frame the clause now finds fault with it", in a reference presumably to Sir Samuel Griffith who by 1897 had become critical of the width of the expression.

But did George Reid mean that a layman was responsible for the words or did he mean simply that the words, used without qualification as they were, smacked more of the layman than the lawyer? Surely it was the latter. Was this not the essence of the criticism levelled at the clause by Isaacs and George Turner in the 1897-1898 Convention and Sir Samuel Griffith in his "Notes"? They argued that the clause ought to say only as much as the Convention delegates intended it to say and no more.

Professor La Nauze appears to take as the second illusion that it is believed that it was the laymen at the Conventions who preserved the words against the lawyers' objections. It cannot be denied that Isaacs, Turner and Griffith took up their argument against the width of the expression late in the piece and that they received little support, and indeed, met with opposition from other lawyers amongst the delegates. Professor La Nauze notes that "absolutely free" was absolutely free of criticism in open Convention in 1891. This is not so surprising as the delegates were there debating Resolutions as statements of broad principle. Indeed, it was agreed that detailed amendments of accepted principles should not be pressed in the Committee of the Whole. However, it is surprising that "absolutely free" should have emerged unscathed from the discussions of the Constitutional Committee which was entrusted with the task of preparing a draft bill.

Nevertheless it did and its putative father Griffith, in subsequent addresses on federation, used it frequently without offering any criticism until June 1897. We do not know why he changed his mind but Professor La Nauze's explanation that Griffith had since the Adelaide session of the Convention given some attention to the criticisms voiced by Isaacs and Turner is a likely one. Both had argued that the words were dangerous because they could be given a wider interpretation than that which was originally intended. Isaacs warned that while the delegates knew what was intended the clause would be subject to judicial interpretation.

Why were Isaacs and Turner opposed by other lawyers? Again, Professor La Nauze has a plausible answer. Barton and Richard O'Connor did in fact express doubts about the clause in Sydney in 1897 and had foreshadowed amendments. However, Barton claimed that he could not see Isaacs' point at the last session in 1898. Professor La Nauze in an interesting account of the Adelaide and Melbourne proceedings shows how issues of personality and parochialism served to cloud discussion of the clause and to prevent the point made by Turner and Isaacs from being taken up. Barton and O'Connor, both lawyers, and, along with Isaacs, both later to be judges of the very High Court to which interpretation of the Constitution was entrusted, stung by Isaacs' attack upon the clause, despite their own earlier criticism and doubts sprang to its defence in a manner consistent with their being barristers accustomed to acting in adversary proceedings. No doubt, the exclusion of Isaacs from the Drafting Committee played some part in this.

Part of the problem was, perhaps, that it was generally agreed that some general financial peroration establishing a doctrine of intercolonial free trade was needed and Isaacs' attacks were taken as attacks upon the notion of intercolonial free trade when in fact, as Isaacs pointed out, they were not.

It has been pointed out by R. L. Sharwood in another article which Professor La Nauze has apparently not noted that it was well realised in the 1897-1898 debates that the clause imposed more general restrictions than mere restrictions upon impositions in the nature of taxes or duties.[1] Though it should be remembered that Isaacs, and as we have seen, for a time, Barton, certainly wished to see the clause restricted to prohibiting such impositions, as this was what they thought to be the true intention of the Convention.

Geoffrey Serle's account of the Victorian Ministerial campaign for federation shows that there was strong official enthusiasm for federation in Victoria. It also shows that this enthusiasm was lacking in New South Wales. However, Dr Serle does put New South Wales' ambivalence in a better light than that in which it is normally placed. He shows that there were other reasons for the tardiness of New South Wales' politicians in taking up initiatives offered by the Victorians than the mere fact that they were offered by Victorians. Also Victoria is not presented as being at all times self-sacrificingly high-principled about federation in the face of New South Wales' truculence. The follies as well as the virtues of the Victorian Ministry are well brought out.

---

[1] R. L. Sharwood, "Section 92 in the Federal Conventions: A Fresh Appraisal" (1957-1958) 1 M.U.L.R. 331. Professor La Nauze admits to overlooking an earlier article by Professor F. Beasley in (1948-1950) 1 West. Aust. L.Rev., 97, 273, 433.

Dr Serle makes the point that it is easier to delineate than explain the "extensive differences in tone and temper between Victoria and New South Wales on national and imperial questions". He does suggest explanations of these differences but only briefly at the conclusion of his essay. Although he sets out to describe the campaign rather than explain the reasons for its strength it is the latter question which nags one while reading the essay. The explanations offered suggest that a detailed essay on the reasons for the unity of Victorian opinion and for the lack of enthusiasm for federation in New South Wales would be even more interesting than this description of the Victorian ministerial campaign.

It would appear that the "crimson thread of kinship" was not foremost in the minds of South Australians voting at the 1898 referendum on federation. R. Norris makes a convincing case to show that voting in South Australia was markedly motivated by regional economic considerations. While admitting that such considerations were not the sole reasons for the voting pattern, he demonstrates that issues such as defence and immigration control were not vote winners. He also argues against the suggestion made by Geoffrey Blainey that the support of the churches for federation was significant and that the migratory tendencies of outback miners and farmers tended to make them more "Australia-minded" and therefore inclined to favour federation.

He approaches his task by looking first at the campaigners and the campaign and, secondly, at some case studies of particular electorates and areas. He demonstrates that the campaigners both for and against federation were overwhelmingly preoccupied with economic issues and that these issues so cut across political allegiances that the strangest bedfellows resulted.

Mr Norris's analysis of attitudes and voting figures in a number of regions in South Australia supports his thesis. He does not report any evidence of confusion in the minds of electors as does Patricia Hewett in her essay. The impression he gives is that the electors saw clear cut issues and voted on them. The electors in south-eastern New South Wales apparently did not see things so clearly. An explanation of this may be that while the South Australians were concerned at the cost of Federation (Norris accounts for the dropping of the defence question as an argument in favour of federation on this ground) that State, being a less populated State, was unlikely to, and was not told that it would, bear a major portion of the cost of federation as was New South Wales, which was then given widely varying estimates of the cost.

Patricia Hewett also indicates that the nationalistic aspect of federation played quite a part in the campaigns in south-eastern New South Wales while Norris discounts its influence in South Australia.

B. K. de Garis tells a story of gentlemanly nineteenth century intrigue in which the Colonial Office sought by devious means to bring about "improvements" in the draft Commonwealth Constitution but failed to gain its objectives. Its failure seems clearly due to the oversecretive methods adopted to obtain those objectives. The delegates from this brash new country of the Empire were very likely to be touchy about criticism of their Draft Constitution of 1897. But should it not have been seen from the beginning that substantial amendment after many more months of discussion and after two referenda had been held would be practically out of the question? Dr de Garis reports that the leader of Her Majesty's Opposition in the House of Commons certainly thought so. The essay provides a revealing insight into the machinations of nineteenth century Imperial diplomacy.

Janet Pettman's survey of the activity or inactivity of the Australian Natives Association in South Australia during the federation campaign will, no doubt, prove useful to those assembling the jigsaw of federation history. It is, however, a rather dull story. The activity of the A.N.A. in South Australia after 1891 we are told was negligible even though all the right people belonged. Rather than the A.N.A. strengthening the federal movement in that state the federal movement strengthened the A.N.A.

One cannot expect a collection of essays by different authors to read like a unified work produced by a single author but these essays have so little connection apart from their concern with aspects of federation that the whole volume appears rather disjointed. It is suggested that Australian Federation is really too broad a heading under which to group a handful of essays which cannot hope to cover more than a fraction of the total field. Accordingly it might be better to base the future volumes of essays which A. W. Martin hopes to see on somewhat narrower themes, thus giving each of them a unity.

G. J. DAVIES*

Outlines of Modern Legal Logic, ILMAR TAMMELO, MAG. IUR. (Tartu), DR. IUR. (Marburg), M.A. (Melb.), LL.M. (Syd.), Reader in International Law and Jurisprudence, University of Sydney. (Franz Steiner Verlag, 1969), pp. i-xv, 1-167.

Although courses in logic are becoming increasingly common in American law schools, they are quite rare in Australia. The Law School of Sydney has offered a course in logic since 1960 and this book ranges over the scope of that course. The book is a revised

* B.A., LL.B., LL.M (A.N.U.); Lecturer in Law, School of General Studies, Australian National University.