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Colony

Strange Origins of One of the Earliest Modern Democracies

Reg Hamilton is the direct descendant of Richard Hamilton, an old colonist who arrived in South Australia from Dover in 1837. The Honourable Reg Hamilton, a barrister and solicitor, is a Deputy President of Fair Work Australia, the national industrial tribunal, and is married with one son.

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Reg Hamilton

Wakefield
Press

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On a personal note, this book could not have been written without my wife, Liz, and my son Robbie, who shared with me for a short time the life of an exile in England.

Preface

While reading a history of the early days of my wine-making family in South Australia, I realised I knew nothing of the Blue Coat School in London attended by my great-great-grandfather, Henry Hamilton, a man the family was most proud of. His father Richard was a Freeman of Dover in England, as was his father, also Richard, before him. I knew little about the 'Freemen of Dover'. I wondered what it would be like to have a conversation with Henry or Richard over their early Australian wine. What would their views on current affairs be, their attitudes to life? These were, after all, the people who helped to develop modern democracy in South Australia, built the first roads and farms, the first houses and villages, and gave them names, and much else besides. No doubt we would hear about the district, the crops, the weather, the shed, the problems with the roads, the dead bullock, scandalous private conduct – but not only that.

Such a conversation can, in any event, never occur, but we can recover something of the world of Dover of the early nineteenth century, and of the remote colony of South Australia to which Richard and his family emigrated in 1837. The colony was less than a year old and little more than a collection of tents and huts. This account is one way of walking down the streets of towns that are now gone and hearing the people who lived there discuss the state of the world and their lives.

Richard and his family lived during the transition from the old world of tradition and custom to the beginning of the modern world of democratic institutions, justified by popular support and arguments about usefulness. They also lived through the building of the remote British colony of South Australia, from bushland to a British artefact of roads, farms, villages and pastoral grazing lands.

We simply assume freedom of speech, democracy, freedom of religion, and other basic rights. Only 150 years ago those things had supporters and opponents. We also assume a first world economy. Shortly after the colony of South Australia began, it seemed marginal at best, and might not survive.

In 1856 South Australia had the secret ballot, votes for all adult men, and religious freedom, and in 1857 self-government by an elected parliament. No other significant British colony of the time had all of that and in few did ordinary people have such prosperity and a future. How did South Australia become so modern, so early?

Reg Hamilton
Melbourne, 2010

Introduction

This is a story of one of the great migrations of history. Asia, the Americas, Europe and Africa have a prehistory or history of sometimes vast migrations of people. One of the earliest, perhaps about 60,000 years ago, was that of the first Aboriginal people out of Africa who eventually reached the continent of Australia.[1] Probably more came later. In historical times the British had emigrated to their North American colonies to find trading opportunities, new lands and a better life, and then later to Australia, where the first colony was a prison colony, established in 1788. Eventually transportation of convicts ended, and there were also many free settlers.

One of the colonies, established in December 1836, was the vast and dry territory of South Australia. In January 1837 it was a wilderness of gum trees, kangaroo grass, grass trees (blackboys), scrub, and native animals. A small figure could be discerned through the intense heat of an Australian summer. It was Colonel Light, the surveyor, with his helpers, pegging on to the wilderness the imaginary lines of what was to become the new city of Adelaide. Tormented by flies during the day, he woke up one morning in his tent next to a ten-centimetre centipede.

Yet in October 1840, only three years later, a polling booth was set up in the middle of the new town, and the ratepayers came to vote to elect the Corporation of Adelaide, with the councillors later electing the mayor. This was the first democratic election ever held on the continent of Australia, held in the most middle class of the Australian colonies, a colony of free settlers, as no convicts

were ever transported to South Australia. The small polling booth, 'gaily decorated with banners', at the junction of two dusty and unpaved roads, so quiet that a booth in the centre of the crossroads was possible, was the beginning of one of the longest periods of continuous democratic rule in the world. Only North America, the Netherlands, Switzerland and a few other places are comparable. Representative local government could not now be refused to Sydney and Melbourne, and by the end of 1842 those towns too had elected town councils.

Only 16 years later, in 1856–58, the three largest Australian colonies were self-governed by Legislative Assemblies elected by resident adult males, while in Britain no more than one in 10 men had the vote. The English and Scots in the Australian colonies ruled themselves 11 years before they did in Britain, or for rural voters 30 years before, while the Irish colonists had home rule 70 years before they had it in Ireland.[2] In South Australia women were not to have the vote until 1894, although they voted in local government elections as early as 1861, while Aboriginal men were never specifically mentioned, and therefore always had the vote. Of all the Australian colonies, South Australia was the most modern. In 1857 its colonists had votes for all adult resident men, the secret ballot, and religious freedom. Other Australian colonies had some of these things; Victoria in particular had all but religious freedom, but none had them all, nor did any other colony or country.

How did South Australia become so modern, so early and where did democracy come from? The colonists had their own explanations. At a formal reception held after the 1840 election in Adelaide's new Government House, the new Mayor, James Hurtle Fisher, told the governor that representative government was 'one of the most invaluable privileges of British subjects'. Most of the early colonial leaders, from Henry Parkes to William Wentworth, said something similar, sometimes even in poetry. In 1843 Henry Parkes published his 'Thanksgiving of Workmen for British Liberty', 'At the red forge, the loom, or in the field, What'er the demagogue's, the despot's scheme'.[3]

The British Empire often gave its colonies elected assemblies based on the British Parliament. Colonists in the Ottoman, Spanish, French, German or other empires, which had no dominant tradition

of representative government, sometimes had something similar but rarely to the same extent. The earliest British colonies, in North America and elsewhere, had miniature British constitutions, with elected assemblies, the common law, and newspapers, although the governor still ruled. It was not invariably the case, as the colony might have few British colonists, or it might be a prison colony. New South Wales was a prison colony established in 1788 and was at first ruled along military lines, only gradually becoming more liberal, and had no elections until 1842. The free colony of South Australia, however, was promised representative local government in its founding Act of 1834, and the first recorded Colonial Office memorandum about it in 1831 included a discussion by the British Prime Minister of when representative government would be allowed.

The colonists of South Australia were nearly all British subjects. In 1846–56 most colonists had been born in England, and a tenth each in Germany, Scotland and Ireland, and if not born British subjects, most quickly swore allegiance to the Crown to demonstrate their loyalty. New South Wales had as a percentage closer to double this number of Irish settlers, but still a majority who were otherwise British, and the English were the largest single group.[4] The Australian colonies were different from the British colonies of North America, which had large founding populations from European nations other than Britain.

Another influence was British radicalism, which again came with British colonists. The People's Petition or Great Charter drawn up in 1838 by working-class radicals called for the secret ballot, votes for all adult men, yearly parliaments, payment for members of parliament, equal electorates and the right of all men to stand for parliament without property qualifications.[5] The first two planks of Chartist democracy had been introduced into three of Britain's Australian colonies by 1856–58, but not in Britain itself until decades later. Some of the early democracy agitators in the Australian colonies had been radicals in Britain. Henry Parkes was a Chartist, while William Giles in South Australia proudly declared his radical history during the first elections held in South Australia in 1851. Behind British radicalism there was the American Revolution of 1776, the French Revolution of 1789, and the European revolutions

of 1830 and 1848; radical ideas and events were usually seen as a seditious threat, but also occasionally an inspiration.

Surprisingly, Chartist radicalism entered the Australian colonies through 'respectable' means: elections run by the Colonial Office, newspapers, and then through free discussion at partly elected assemblies.

The People's Petition was not implemented by the storming of the Bastille, or attacks on public buildings in Dublin, where, said William Butler Yeats, a 'terrible beauty was born', that of the Irish national cause. Democracy was achieved peacefully through elections in the Australian colonies by men and women with pale, pinched, badly nourished faces, born in places such as Birmingham, Manchester, London, Glasgow, Dublin, Dover, usually patriotic and loyal, with families of eight or more children, many of whom died from tuberculosis, dysentery, or other fevers, or the mothers in childbirth.

In South Australia we owe much to Gradgrinds such as William Giles of Adelaide, a fierce Congregationalist, who hated the sins of drinking and the theatre, whose life was devoted to thrift, hard work, his family, and God. He led the early radicals in the first election in South Australia, in 1851, and said that his calls for the secret ballot arose directly from his Protestant principles. The roguish figure of James Hurtle Fisher, popular, devoted to good living and his many legally borderline business ventures, is perhaps more comforting. He was a patriotic opponent of anything other than a limited democracy, but also of the governor and Colonial Office.

Another great democratic influence is often considered to be the Victorian goldfields. The goldmining districts were later a stronghold for the radicals of early Melbourne seeking self-government, and in 1854 the miners of Ballarat rebelled, established the Eureka Stockade, and raised the Southern Cross flag of liberty, until the stockade was stormed by British troopers. Some old drawings show, however, that the Union Jack was flown next to the Southern Cross. The troopers were local, mainly paid for by local taxes, and this was mainly a revolt of small businessmen against the taxes they had to pay for licences. Troops going through the Ballarat diggings and 'licence-hunting' – picking up and gaoling

those diggers without a licence – caused great anger, particularly given that they were led by scented aristocrats. It was an affront to ordinary rights and liberties, as was the tax. The miners resolved on 30 November 1854[6]:

1. To demand the immediate release of those diggers who had been dragged to the lock-up, for want of the licence;
2. To demand from Commissioner Rede a pledge not to come out any more for licence-hunting.

Nevertheless, the Eureka Stockade was the most dramatic and violent difference of opinion between the governor and colonists in the Australian colonies during the crucial period leading up to self-government. It is a reminder that the self-government the colonies enjoyed was not achieved through a civil war.

The British Constitution was important to democracy in each colony, although each had a different history, different leaders, somewhat different problems and composition of colonists. British colonists expected their ordinary rights as Englishmen, unless they were convicts. They expected to settle their affairs in much the same way as they settled them in the small towns and villages of England, or elsewhere in Britain. There was vigorous if not entirely free speech at meetings and in pamphlets, petitions, local newspapers, and there was litigation, brawling and the occasional riot. The colonists also expected representative assemblies. While some were rogues and villains, all were constrained by law and custom, as was the governor of the colony.

If the British had not won supremacy on the seas by defeating Napoleon at the Battle of Trafalgar in 1805, the French might have broken the thin chain of communication, as the small wooden ships slowly crossed the vast distances between the ports of England and Australia, bringing with them supplies, food, news from home, and orders from the Colonial Office. The British however won that battle, and many before and after, making it difficult for the French to found and maintain a colony in Australia, or to prevent British colonies from flourishing.

Unlike the US Constitution, or the Code Napoleon, a forward-looking and detailed set of laws which Napoleon imposed on most of Europe and which still applies there and in Quebec, there was no central document to describe the curious customs and laws which

were brought to British colonies. The colonists described them as the British Constitution, or British liberties, or the privileges of British subjects, although they were often heavily adapted for local conditions. They were a relic of a long historical process, which could not be easily understood except by living in the small towns and villages of England. One of those small towns was Dover, the home of one of the early colonists, Richard Hamilton. He arrived in the colony of South Australia in 1837, with his wife Ann, his children, and a pig, after purchasing a right to 80 acres of farming land that he had never seen, and had not yet been allocated. The story of his life begins in Dover, and with the liberties and curious preoccupations of that town.

We begin with the Dover beadles, churchwardens, petty officials, the mayor, the aldermen, their polling booths, riots, newspapers, local members of parliament, and others, going about their business, and exercising British privileges and liberties. There are divided views robustly expressed, and there is divided authority, as well as constant jostling for position. This is not the Ottoman Empire, or another absolutist system of government. England of the time was provincial, not centralised, and its story was often a local story, not one of 'Great Men'. Most history, in any event, is experienced by smaller men waiting in the antechambers of petty officials, and splashed by the mud of the passing carriages of Great Men while they walk home.

The Story

The story of the life of Richard Hamilton and his relations in Dover and in Adelaide is a local story, beginning with the strange and peculiar world of traditional local government in England, before democracy. Richard's brother John was a solicitor and sat on the ancient corporation as a nominated council member. The council had operated since 'time immemorial', probably before the Norman conquest of 1066, performing its ancient role as a local representative body, engaging in ceremonial meetings with visiting kings and emperors, appointing cape bearers to accompany the king at his coronation, and local officials, keeping the register of apprenticeships and freemen, and comprising the local magistracy, who were responsible for enforcing peculiar local laws.

By the late eighteenth century those local arrangements were not working well. Dover, like many towns of the day, was dirty, without sewerage or piped water, with poor roads, badly lit, and dangerous. Something had to be done. The ancient and traditional corporation could not do it. Ruling by tradition, it was unable to impose any new taxes to pay for repairs. New Paving Commissions were established all over England, town by town, to do what was required. They became increasingly democratic, perhaps because only representatives elected by the people could impose taxes to pay for the new work required. Taxation required representation, according to the ancient British principle and the changing mood of the times. Finally, the reformist Whigs introduced democratic elections to local councils in 1835. This democratic revolution eventually reached British colonies in Asia and Australia – in Australia, first to the colony of South Australia in October 1840. Later elections saw local government spread across South Australia. Richard Hamilton's son Henry was Mayor and then clerk of the Brighton District Council from the 1860s, providing representation in order to tax the local British subjects to pay for their own roads and bridges.

The ancient British mechanism of a public poll was also brought to Britain's Australian colonies by the British Empire. These polls often included a robust exchange of free speech, perhaps a shouting match, pushing and shoving, which might develop into a riot and violence, parades with the colours and flags of each candidate and even a band and some popular songs, followed by a public poll opened and presided over by public officials. The local voters lined up and publicly declared their vote for all to hear, which was recorded in a small notebook, the poll book.

The local aristocracy sometimes took a keen interest in ensuring that their tenants voted appropriately. In Dover the local grandee was the Lord Warden of the Cinque Ports, who controlled the votes of many of the local pilots and others through jobs, money and free beer. One family under the influence of the Lord Warden may have been that of Richard Hamilton, his brother John, and father Richard, all of whom are recorded in the poll books as consistently voting Tory, not for the more reformist Whigs. These were the old king and church Tories, concerned with loyalty to the Crown,

the church, and public order. This did not necessarily require any particular religiosity, and the threat of revolution was at the time occasionally very real. France had erupted in revolution, and all of Europe did later in 1830 and 1848, but England precariously preserved order, despite repression and occasional rioting.

In South Australia local polls were held in 1851 and 1855 to a two-thirds elected, one-third appointed Legislative Council which determined the colony's future. In 1851, after the occasional involvement of the soldiery to contain the passions of the debate, the voters, most of the adult males of South Australia, voted for candidates opposed to any state aid to religion and generally for those who supported democracy.

The new colony rejected the old tradition of a national church, the first in the British Empire to do so. The first significant debate in the new elected Assembly after 1851 led to the end of all subsidies to churches and the Church of England became just one among many. The colony had many more Protestant Dissenters than did England, and a number of Roman Catholics, and when given the chance to express their views, they did so. The Church of England was never more than one church amongst many, the only debate being whether all churches should be financially supported by taxes or none. None was the choice; such was the feeling against an established church.

In 1855 the colony voted again, and again for candidates who supported democracy. Henry Hamilton's father had supported the Tories in Dover, but he supported the liberal William Peacock in the farming seat of Noarlunga. Peacock opposed any state aid for religion, and his favourite story on the hustings was about the terrible day when church authorities in London seized his furniture for unpaid church rates. The newly elected Legislative Council determined that the new colony would be one in which all adult resident males could vote, and vote by secret ballot. No longer would votes be known, and no longer could votes be influenced by free beer or money, or threats. The ancient British poll was adopted and developed into something approaching modern democracy. The upper house was also to be elected, but only property owners or those with leaseholds of £20 could vote, not a particularly stringent limitation.

The Premier, with a majority in the House of Assembly, replaced the governor and Colonial Office as the ruler of the small colony. South Australia was one of the first Australian colonies to become self-governing in a version of modern democracy which the colonists had chosen through the ancient British tradition of a public poll. The other Australian colonies were to follow, but in New South Wales and Queensland with an upper house that was not elected, but nominated by the governor.

The story of how public polls, with free speech, came into existence in England is integral to the beginning of democracy in Britain's colonies. If the future of the Australian colonies was determined in part by Britain's history, and the personal history of their colonists, it is interesting to speculate what might have happened had they been Spanish or French Australian colonies. Argentina, once part of a Spanish colony, has had about 20 revolutions since Napoleon removed the absolute Monarch of Spain in 1808, and other South American colonies have similar histories. One analysis of a hypothetical French colony of Tasmania records it as receiving a considerable degree of self-government in 1867 in the form of a chambre des députés, to coincide with the visit of Napoleon III and the Empress Eugenie[7], probably optimistic, given the centralisation of France.

However, the Australian colonies shared in part the traditions of the contradictory liberalism of Britain. In Britain the whole process was circular. Free speech in Parliament influenced the harangues at public meetings during elections, which influenced satirical and critical comment in newspapers, books and pamphlets, which influenced the discussions in taverns and workshops, which led juries to protect newspapers during libel prosecutions, which led the government to be wary about prosecuting, which led to a change to the laws and greater protections in the courts for defendants. It was a constitution of divided authority jostling for position and power, in which the most autocratic leader could not always prevail. This is the sort of circular process that came to operate in many of Britain's colonies, including those on the continent of Australia.

In South Australia the first edition of the *Register* was published in London, while subsequent editions published in Australia began bitter public battles with officials over allegations of corruption. One

of the first charges was that the South Australian Commissioner had allocated bullocks corruptly, which led to threats of libel actions, public meetings, and further scandal.

Finally, perhaps the most important of all the mechanisms of government exported to the Australian colonies was that of an independent judicial system. After the abolition of the King's Star Chamber in 1641, the property or liberty of a person could not be removed without the order of a court, but independent courts had not always existed in England. In Dover the old magistrates at first administered customary law, summarised in the ancient document called the *Customal*, which contained all the traditional brutality of the Middle Ages. The ears of cutpurses were nailed to the stocks, while thieves were thrown off one of the cliffs. By the nineteenth century something similar to the modern court system had come into being, with defence counsel and free argument, but the remedies for crime were extremely harsh, with hanging for theft of minor items sometimes only avoided by transportation to the brutal colonies of Australia. South Australia, however, was always a colony of free men. No one was ever transported to South Australia, and in fact by 1850 over 200 criminals had been sentenced by South Australian courts to transportation to the other Australian colonies.[8] The South Australian court system was as free as that in Britain.

South Australia's founding Act declared the land 'waste and unoccupied land', but the governor's instructions then specifically recognised the rights of Aboriginal people as existing occupiers, and the colonists were specifically instructed to enter land treaties with the local Aboriginal people. The governor emphasised that Aboriginal people had rights to land from 'time immemorial', but did not require treaties because he thought that Aboriginal people would be cheated. Instead he set aside some land for reservations, and from 1851 pastoral leases allowed Aboriginal people to hunt and fish, and live on the land under lease. A Protector of Aborigines was appointed, who did in fact protect to some extent, and conciliatory policies were adopted, something occasionally recognised in formal addresses from Aboriginal elders to the governor. Aboriginal society on the Adelaide plains was struck down by settlement, with the main problem being disease, just as it was often for other indigenous peoples in the Americas and elsewhere. Smallpox had swept