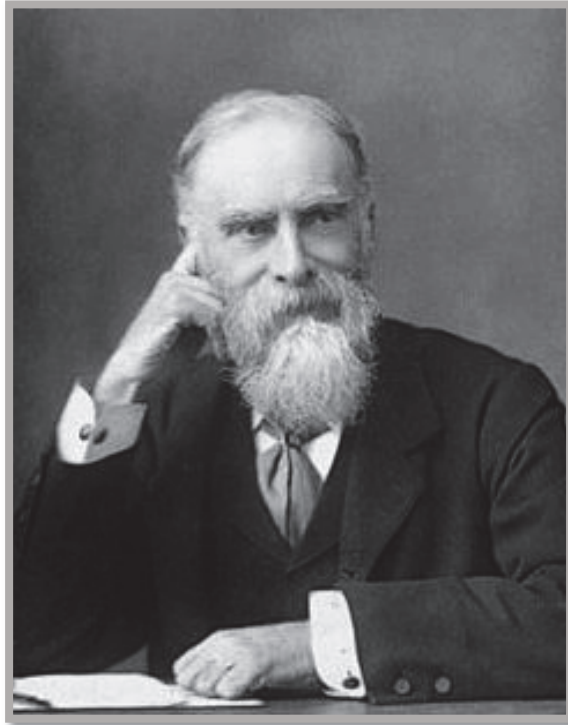


**OKLAHOMA IN JAMES BRYCE'S
*THE AMERICAN COMMONWEALTH***

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Editor's Note: *Oklahoma Politics* will occasionally publish a paper that has appeared in another publication. We do so only when a submission meets a high standard of scholarship, is relevant to the political history or current political environment in Oklahoma, and when we believe our readers will benefit by the insights and information contained in the paper. We believe this submission meets those standards. The paper by Dr. Taylor was originally published in the Summer 2014 edition of *Oklahoma Chronicles* (vol. 92 no. 2).

Of all the eminent Victorians, none had a closer intimacy or greater bond with America than the jurist, historian, and politician James Bryce (1838–1922). Bryce was also the first author to produce a classic work on American politics that included a discussion of Oklahoma. Born to Scottish parents in Ulster, Ireland, he attended the University of Glasgow before accepting a scholarship to Oxford in 1857, where he distinguished himself as a student and joined the ranks of the advanced liberals who



James Bryce 1893

sought to carry out significant reforms in Britain. While his refusal to embrace the Thirty-Nine Articles of the Church of England prevented him from proceeding beyond the bachelor of arts, he did obtain a fellowship that allowed him to study abroad and later train for the bar in London. In 1863 he won a prize for his book *The Holy Roman Empire*, a critical success that made his reputation as a scholar. Called to the bar in 1867, he began contributing to liberal periodicals on a variety of topics while lecturing in law at Manchester. Bryce was particularly interested in educational reform and actively lobbied to open all university positions to non-Anglicans, a goal achieved with the repeal of the Test Acts in 1871. On the basis of his scholarly and political credentials, Bryce was appointed Regis Professor of Civil Law by William Gladstone, the future “Grand Old Man” who would dominate British reform politics in the latter part of the century.

None of his many academic appointments kept Bryce from frequent travel and an active literary life. Shortly after receiving the Regis chair in 1870, he was off to the United States with A. C. Dicey, his friend and a famed legal scholar. Welcomed into the best society, Bryce met with the elite of Harvard and such literary lions as Emerson, Longfellow, and Lowell. He also became acquainted with E. L. Godkin, the Irish émigré and editor of the reform-minded *The Nation*, who engaged Bryce to contribute weekly articles on British politics. Upon his return to England, Bryce began writing on American politics as well, including a lecture on “Flexible and Rigid Constitutions,” a comparison of written (American) and unwritten (English) constitutions that would later become a classic of comparative government.

For the next decade Bryce divided his time between teaching, travel, writing, and politics. In 1880 he was elected to Parliament where he would sit for the next twenty-six years, initially as a protégé of Gladstone, the new Liberal prime minister. Between his election to the House of Commons and his appointment as undersecretary of state in 1886, Bryce made two more trips to America, one in 1881 that took him as far as California, and a second in 1883 that included a stay in Hawaii. It was during this second trip that he began collecting materials for a book on the United States, an idea urged by Gladstone in the interest of improved Anglo-American relations. Since the appearance of Alexis de Tocqueville’s *Democracy in America* a half-century earlier, no foreign observer (or, for that matter, no American) had attempted to provide a comprehensive survey of the political and social institutions of the world’s only extensive republic. An avid compiler with

an inquisitive mind, Bryce was aided in his efforts by a vast network of American acquaintances who honored his many requests for materials and information. He also personally spoke with hundreds of individuals—from the highly placed to the man in the street—and corresponded with many others. Bryce later claimed that five-sixths of the raw material for his book was derived from such conversations. With his vast notes and literary cargo, Bryce sailed for England and began the arduous task of imposing order on the amorphous body of materials. The result was an epic in three volumes entitled *The American Commonwealth*, published in December 1888.¹

Bryce's book was both a popular and critical success in England and especially in the United States. Reviewers attempted to outdo each other in praising its author as the volumes flew off the shelves and a second printing was required. Woodrow Wilson, then a professor of political science at Wesleyan University, called it a "a noble work possessing in high perfection almost every element that should make students of comparative politics esteem it invaluable."² Others were hardly less effusive.³ Gladstone, himself a classical scholar, called it "an event in the history of the United States, and perhaps in the relations of the two countries."⁴ Looking back a half-century after its publication, a noted American scholar echoed what had become a commonplace, observing that the "appearance [of *The American Commonwealth*] was without question an epoch in the development of political science."⁵ Two decades later it was still being hailed as a classic, and in the opinion of Columbia Professor Louis Hacker, "the greatest book written about this country."⁶

Naturally, it was compared to Tocqueville's *Democracy in America*, for in subject and scope it was an obvious successor to the Frenchman's peerless study. It was generally agreed that Bryce had given a more accurate and detailed, if less theoretically robust, picture of America than his predecessor. The historian Lord Acton, who was not uncritical of the work, believed that Bryce had "made a far deeper study of real life" in America than the stylistically superior Tocqueville.⁷ In fact, Bryce consciously distinguished his inductive, empirical approach from Tocqueville's deductive, theoretical approach, a distinction rooted in the

“scientific” methods that were reshaping the social sciences in the late nineteenth century. This is not to say that *The American Commonwealth* is devoid of generalizations and judgments—these can be found on nearly every page. Bryce was not, however, guided by the theoretical concerns that preoccupied the author of *Democracy in America*.

Bryce was most original in his analysis of political parties and the state governments.⁸ The former, including the notorious city machines of the Gilded Age, had hardly been touched by scholars and the era of muckraking journalism was just over the horizon. The latter had also been neglected and Tocqueville had said almost nothing about state politics. And so when he turned from the federal government to the states, Bryce found himself in “a primeval forest, where the vegetation is rank, and through which scarcely a trail has yet been cut.”⁹ Determined to carve out a path, he collected all the state constitutions and gathered as much information as he could on the thirty-eight states that formed the Union at that time. In his section on the states, one of six that make up the book, he included a chapter on the territories. In 1888 Oklahoma was neither state nor territory and went unmentioned, as did the semi-autonomous Indian Territory. But Bryce was not finished. For the next thirty years he would revise, update, and expand his *magnum opus* as the Western territories were transformed into states.

A substantially revised second edition of *The American Commonwealth* appeared in 1893. By this time Washington, Wyoming, Idaho, Montana, and the Dakotas had become states and Oklahoma had become a territory. Bryce revised his chapter on the territories to record these developments. Between his comments on Utah and New Mexico, he inserted the bare demographic and physical facts about Oklahoma, this “new Territory” created by act of Congress in 1890. There are two things of interest in this otherwise plain description. First, Bryce notes in passing that “part of this [Territory] is claimed by Texas,” a reference to the dispute over Greer County, located between a fork in the Red River, and organized by Texas in 1886.¹⁰ When the county was included as part of Oklahoma Territory in the Enabling Act, Texas officials challenged the decision, claiming an uncontested right of occupation since 1860. The US Supreme Court, on the basis of the Adams-Onís Treaty (1819), determined otherwise and awarded the disputed area to Oklahoma, a decision confirmed by Congress when it established Mangum as the seat of Greer County, Oklahoma Territory, in

1896.¹¹ That Bryce was aware of this obscure dispute years before it was adjudicated is indicative of his appreciation for *la petit fait*.

Bryce also noted the “considerable influx of negroes” into Oklahoma following the creation of the territory, “apparently with the idea of establishing an influence strong enough to enable them to hold their own against the whites better than they have been able to do in the Southern states.”¹² The absence of a discussion of Reconstruction and the plight of blacks in the South had been the most glaring oversight in the first edition of *The American Commonwealth*. Bryce sought to remedy the omission by including chapters on each subject in the second edition. While Oklahoma is not referenced by name, Bryce does chronicle the hardships and horrors faced by blacks in the South and the desire of many to migrate. Perhaps he was aware that even before the creation of Oklahoma Territory, blacks from both the South and Kansas had been slipping into Indian Territory, while others participated in the 1889 Land Run. Encouraged by boosters such as W. L. Eagleson and E. P. McCabe, thousands were lured by the promise of cheap land and greater security, as Bryce suggests. While blacks were never more than seven percent of the total population in the Twin Territories, many did establish themselves as independent farmers, and in other capacities, in all-black communities and elsewhere.¹³ The adoption of Jim Crow legislation and the “grandfather clause” following statehood in 1907 proved a bitter disappointment for these settlers and their descendants.

In the years between the first and second editions, Bryce not only retained his seat in Parliament, but found time to get married, travel again to America, and serve in the cabinet of Gladstone’s second government. He would return to the United States in 1897 and 1901 to refresh old acquaintances and observe first-hand the ongoing development of American society. Back in England he was active in educational reform, scholarship, and the cause of the persecuted Armenians. In 1905 he was made chief secretary for Ireland, but accomplished little for that troubled country during his brief tenure. His final political appointment—one that he was uniquely qualified to fill—began in 1907 when he was made Britain’s ambassador to the United States. It was in the spring of that year that Bryce visited Oklahoma for the first time, which was just then debating the merits of a newly drafted, but as yet unratified constitution. According to his

biographer, Bryce was greatly annoyed to learn that an Oklahoma paper had reported that the new British ambassador had expressed approval for the Oklahoma Constitution, a story that was reprinted in the larger American papers and ultimately in the British press. A fondness for Bryce in America kept this “indiscretion” from working much mischief, but in Britain his opponents viewed the *faux pas* as a lesson on the dangers of appointing scholastic politicians to high office. It must have given his countrymen pause when it was learned that Bryce had never made the remark—the comments were fabricated by an Oklahoma journalist who later admitted that he had never been within fifty miles of the ambassador!¹⁴

Word that Bryce had “endorsed” the Oklahoma Constitution could not have pleased President Theodore Roosevelt, who was strongly opposed to the document. (Roosevelt had been among those insiders whom Bryce had consulted for his book.) Roosevelt had visited Oklahoma in 1900 for a Rough Riders’ reunion and spoke in favor of statehood. As president he returned in 1905 for a hunting expedition and reiterated his support, specifically for a union of the Twin Territories into a single state.¹⁵ He had appointed the territorial governor and other Republican officials and hoped to keep Oklahoma in the GOP column. His hopes would be dashed when voters in the territories elected one hundred Democrats and only twelve Republicans to the state constitutional convention in 1906. The document crafted by the Democratic majority was too “radical” for the president, particularly in its populist and anticorporate aspects. He had his attorney general, Charles J. Bonaparte, draft a set of objections that were submitted to the leadership of the convention then in recess. Besides a few changes in wording, the reassembled delegates would make but one substantive alteration, deleting a provision for suspension of corporate charters in the case of appeals to the federal courts.¹⁶

Undeterred Roosevelt initiated an investigation into charges of gerrymandering by the Democrat-dominated convention. When no major discrepancies were found (although a new census was subsequently ordered), he approved the scheduling of the ratification vote, which would also elect the state’s first legislature, governor, and other officials. Still hoping to prevent adoption, he dispatched Secretary of War William Howard Taft to Oklahoma Territory to rally the opposition. On August 24, Taft addressed a group of dignitaries and citizens in Oklahoma City, where in a long harangue he excoriated the constitution as “a code of by-law” and “no Constitution at all,” repeating many of the objections voiced by

Roosevelt. Taft went on to malign the document as a species of “Bourbonism and despotism, flavored with Socialism.”¹⁷

The Democrats in Oklahoma responded to this unprecedented act of presidential meddling by inviting William Jennings Bryan to speak on behalf of the constitution. Bryan, a Nebraska senator and two-time presidential candidate famous for his impassioned oratory, was the guiding spirit behind the document and had taken a direct interest in its drafting and adoption. In a whirlwind tour of the Twin Territories, he gave no fewer than seven major speeches over the course of a week in early September. True to form, Bryan praised the document for the very qualities that Taft found most obnoxious and described it as “the best constitution in the United States today.”¹⁸ Apparently, the Oklahoma voters agreed with the “Great Commoner,” for on September 17 they approved it by a margin of more than two to one. Though Roosevelt considered the constitution “not fit for publication,” he signed the proclamation of statehood two months later making Oklahoma the forty-sixth state.¹⁹

The adoption of the Oklahoma Constitution occasioned a considerable amount of comment, both popular and learned.²⁰ A majority of the latter, penned by jurists and historians like Bryce, tended to disparage the document for many of the same reasons given earlier by Taft. As the British ambassador, Bryce was in no position to comment on domestic American politics, a fact he understood well before his “indiscretion” during the Oklahoma ratification contest. Yet in the revised third edition of *The American Commonwealth* published in 1910, he did make a number of general observations on Oklahoma’s new constitution which were used to illustrate the notable features of American state constitutions generally and the more recent Western constitutions in particular.²¹

The first substantive reference to the Oklahoma Constitution occurs in Bryce’s discussion of state bills of rights, “historically the most interesting part of these constitutions.” Bryce calls them “the legitimate child and representative of Magna Charta [1215], and of those other documents and enactments, down to the Bill of Rights [1689] . . . by which the liberties of Englishmen have been secured.”²² The notion that the American bills of rights were the lineal offspring of Magna Charta and its English

successors reflects one of the most distinctive traits of *The American Commonwealth* and Bryce's interpretation of the American political system. For Bryce, Americans were latter-day Englishmen, in spirit if not always in origin, and American political institutions were inspired by, if not strictly patterned on, English models. As one student of Bryce observes, "Deeply embedded in *The American Commonwealth* lie two crucial assumptions . . . : the first is the explicit concept of Anglo-American racial unity, and the second is the implicit understanding of the American as essentially an Englishman writ large on a new frontier."²³ Another maintains that "Bryce represented federal institutions as essentially English institutions adapted to American circumstances."²⁴ A third has declared that "Bryce had an ulterior motive to the objective description of America. . . . [The] adulation of England, and its lessons to the world, was his true intention."²⁵

While recent scholars may have exaggerated Bryce's Anglocentrism, he did view the federal and state constitutions and bills of rights as extensions of English tradition. Yet in commenting on the latter, he expresses some surprise that contemporary Americans should consider a bill of rights necessary so long after "the exercise of despotic power" by an executive had vanished.²⁶ His explanation reveals a true understanding of why the enumeration of individual liberties in a state constitution should have outlived its origins in the reaction to British tyranny. What is notable for our purposes, however, is that Bryce illustrates this point with reference to the Oklahoma Constitution, a sizable portion of which he appended to the 1910 edition of *The American Commonwealth*. (This replaced the California Constitution [1879] appended to the two earlier editions).

The bill of rights in the Oklahoma Constitution appears in Article II and contains thirty-three sections. Interestingly, Bryce incorrectly numbers most of the sections he excerpts and includes other provisions that appear elsewhere in the document (e.g., the prohibition of intoxicating liquors in the former Indian Territory, which appears in Article I). This aside, his discussion of state bills of rights proceeds to list "a few curious provisions" found in some of these, including three in Oklahoma's. In observing that many states guarantee a right to bear arms, "a provision which might be expected to prove inconvenient where it is desired to check the habit of carrying revolvers," he notes that Oklahoma is among those states that permit the legislature to "forbid the carrying of concealed weapons."²⁷

Bryce was not quite correct here. The relevant provision, Article II, section 8, merely empowers the legislature to “regulat[e] the carrying of weapons”—the words “forbid” and “concealed” do not appear. A footnote suggests that Oklahoma had attempted to do so, but “daily experience shows that the measures taken have not hitherto proved successful.”²⁸ One may gather that Bryce was an early advocate of more stringent gun control. He does accurately cite Article II, section 19, the provision requiring jurors to write and sign the verdict in cases where less than a majority reach a verdict in a civil or criminal (misdemeanor) trial.²⁹ Why Bryce found such a provision curious was probably owing to his background as an English jurist. Finally, he simply cites without comment Article II, section 31, the provision granting “the right of the State to engage in any occupation or business for public purposes” except agriculture.³⁰ As a devotee of *laissez faire* economics, Bryce could hardly have approved of this open-ended endorsement of state-run enterprises.

Had Bryce combed more diligently through Oklahoma’s fundamental law he could have found a number of provisions far more curious than the three he listed. He might, for example, have noted the prohibition on charging more than two cents per mile on passenger trains for a first class fare, or the specifications required for the “flash test” and “specific gravity” of kerosene—odd provisions for a constitution to contain. He might also have paused at the prohibition on aliens and noncitizens owning land in Oklahoma or the racial designations of “negro” and “colored” for “all persons of African descent” and “white race” for all others, including American Indians. Bryce was sympathetic to the plight of blacks, but shared many of the prejudices of his time, and he all but ignored the status of the tribes. In spite of his concern with facts and figures, he was—like all compilers of data—necessarily selective.

Turning to their development, Bryce divides state constitutions into three types: “the old colonial type,” “the Southern or slave state type,” and “the new or Western type.”³¹ The hallmark of the last of these, including Oklahoma, is “the tendency to strengthen the executive and judicial branches as against the legislature.”³² Indeed, “the most notable change of all has been the narrowing of the competence of the legislature, and the fettering of its action by complicated restrictions.”³³ The chief consequence

of this development was to significantly augment the length of state constitutions. Bryce documents this trend with a number of examples, culminating in the Oklahoma Constitution that “exceeded thirty-three thousand words.”³⁴ The precise length of the original Oklahoma Constitution—something easily enough determined—is subject to differing reports. Most accounts place it at 50,000 words, others at 100,000, and one at 250,000.³⁵

While Bryce supported the trend to strengthen the executive and especially the judiciary in relation to the legislature, he was not enthusiastic about the increasing length of state constitutions and the statutory nature of many of their provisions. The Oklahoma Constitution created a decentralized, elective executive branch. The governor was given a four-year term and the veto, but few appointment or removal powers. Unlike a number of other Western states, however, the governor was not subject to popular recall. As for the judiciary, Oklahoma’s popularly-elected bench was held up as “a fair indication of Western tendencies,” for all the states admitted since 1889 had adopted this method of selecting judges. Yet in limiting the term of its highest judges to six years, Oklahoma was on the crest of the era’s democratic wave. “In this point,” Bryce writes, “the tide of democracy which went on rising for so many years, seems, if it has not risen further, yet not to have receded.”³⁶

Bryce attributes the excessive length of the new state constitutions to modern economic conditions and a distrust of legislative power. He also suggests their length is a function of a federal system in which all powers not delegated to the national government (or denied the states) are reserved to the states, making “the powers of a state legislature . . . prima facie unlimited.”³⁷ As such, constitution-makers found it necessary to enumerate a long list of provisions that were beyond the competence of the legislature. Bryce includes Oklahoma among those states whose constitutions contain “the most complete” lists of prohibited subjects of legislation.³⁸ As a remedy for the tendency of a constitution that “grows ever ampler,” Bryce suggested that the states should emulate the doctrine of delegated powers found in the federal constitution. “The time might almost seem to have come for prescribing that, like Congress, they should be entitled to legislate on certain enumerated subjects only, and be always required to establish affirmatively their competence to deal with any give topic.”³⁹ As a lawyer who admired order and clarity, one can understand why this formula would

appeal to Bryce, yet it was wholly inconsistent with the role of the states as the repository of reserved powers, particularly in an age of popular reform. He did recognize that, while the states did not own or operate mines, railroads, forests, or telegraphs, there was in the new constitutions “a strong tendency to extend the scope of public administrative activity” as expressed in the demand for greater regulation.⁴⁰ The Oklahoma Constitution’s provisions for a commissioner of labor, an insurance commissioner, a chief inspector of mines, and a board of agriculture reflected this tendency among Western states.⁴¹

Bryce was also impressed by the appearance of measures he assigns to a “spirit of humanity and tenderness for suffering” exhibited by the American people.⁴² Almost all the examples he provides appear in the Oklahoma Constitution, such as restrictions on child labor, an eight-hour day for government workers, and a prohibition on convict labor. Oklahoma went farther than most states, however, by establishing a commissioner of charities and corrections to oversee philanthropic, penal, and reformatory institutions. Moreover, it was the only statewide public office open to women. Along with restricting the sale of liquor, prohibiting gambling, and suppressing “indecent and otherwise demoralizing literature,” Bryce hails such measures as “threads of gold and silver woven across a warp of dirty sacking”—the latter being the “folly and jobbery” that marked many of the Western legislatures.⁴³ The Oklahoma Constitution banned alcohol in former Indian Territory for twenty-one years and its first amendment—adopted along with ratification—spread prohibition to the entire state.⁴⁴ Measures against gambling, indecency, and other “vices” were subsequently passed by the legislature.

The constitution also provided for free public education, including facilities for the “care and education of the deaf, dumb, and blind of the State.” The requirement that “white and colored children” attend separate schools was but the harbinger of a series of Jim Crow statutes passed by the first legislature. It is doubtful that Bryce would have included such measures as partaking of that “spirit of humanity and tenderness” he associated with “rural” America.

The form of direct democracy known as the initiative and referendum was

of particular interest to Bryce, who identifies Oklahoma as “the state which has gone farthest in this path.”⁴⁵ What Bryce calls the “Swiss initiative” and “Swiss referendum” (based on the Swiss Constitution of 1874) was the method by which the people could bypass the government and legislate directly through popular majorities. Oklahoma adopted both the initiative and the referendum, and applied them to cover standard legislation as well as constitutional amendments. Only a few states provided some form of initiative or referendum prior to 1907, but Oklahoma was the first to incorporate the device into its original constitution.⁴⁶ Bryce also notes that the provision was extended to the local level in Oklahoma, which “applies it to every county and district, and to every municipality.”⁴⁷

One would not expect a member of the English bar to give direct democracy his warm approval, and Bryce was predictably skeptical of “what may prove a momentous new departure” in popular government.⁴⁸ He traces the movement itself to the decline in the quality of state legislatures and the practice of padding constitutions with ordinary laws. And while the people’s distrust of their legislature is reasonable enough, the risks and dangers of direct democracy are considerable: it further reduces the authority and respectability of the legislature, places major decisions in the hands of an ignorant and apathetic populace, and may contribute to the mutability of laws. On the other hand, the average voter is not much inferior to the average legislator in intelligence and is less susceptible to untoward influences in deciding an issue. In some cases, “the referendum may . . . be rather a bit and bridle than a spur,” although in the Western states Bryce believes it would be used more for its expediency than as a “conservative force.”⁴⁹ And while he believed “The risk of careless and even reckless measures is undeniable,” Bryce ultimately took a “wait and watch” approach to “the working of these new expedients.”⁵⁰ He could have hardly foreseen that the revolution in federal civil rights jurisprudence in the 1950s and 1960s would severely limit state action even when sanctioned by the direct expression of the people.

American critics of the initiative/referendum had condemned it as an abandonment of the “republican form of government” that they viewed as synonymous with representative government since 1787. Bryce rejects this argument by observing that the earliest republics, Greece and Rome, were governed by popular as opposed to representative assemblies. He fails to note, however, that the critics of direct democracy in America also appealed

to the provision in Article IV, section 4 of the U.S. Constitution that guarantees each state a “Republican form of Government.” No court, however, has ever held that such popular provisions as the initiative, referendum, or recall violated the Guarantee Clause.

The second part of *The American Commonwealth* contains few references to Oklahoma, as might be expected for a state that had only been in the Union for three years. In passing, however, Bryce notes that the Oklahoma Constitution adopted “home-rule” for municipal government which allowed cities of more than two thousand residents to draft their own charters, as well as an advanced system of primary elections.⁵¹ In discussing public opinion in the different regions of the country, he refers to Oklahoma as “preeminently the land of sanguine radicalism and experimental legislation.”⁵² Yet if Oklahomans were hopefully radical and willing to experiment with public power, many were also prepared to use it for conservative, even reactionary ends. Bryce does not mention the restrictive measures in the Oklahoma Constitution (racial classifications, segregated schools, prohibition) or note the passage of Jim Crow statutes by the first legislature.⁵³ Nor does he relate the fact that the constitution denied women the vote (except in local educational matters) and classed them with felons, lunatics, and idiots as similarly ineligible.⁵⁴

In a chapter entitled “Further Reflections on the Negro Problem,” Bryce reported that Oklahoma had adopted the “grandfather clause” as a constitutional amendment in 1910. This measure had the effect of disenfranchising illiterate blacks without disqualifying illiterate whites, unless suspected to be Socialists. Bryce found this “remarkable because the Negroes are a small minority of the population.”⁵⁵ This, of course, had not prevented the legislature from segregating the railways as its first statutory enactment in December 1907.⁵⁶ The passage of a law shortly thereafter requiring hotel proprietors to supply bed sheets of a specified size to halt the crime of “short-sheeting” may have been more bizarre, but far less ominous. The “grandfather clause” amendment was designed to eliminate blacks from politics altogether, and along with Jim Crow legislation, insure white supremacy in Oklahoma. It is unclear, however, if a majority of white male voters supported the amendment. As Bryce notes, “It has been alleged,

with what truth I know not, that irregularities occurred in the taking of the popular vote on this question; and the result seemed to excite surprise.”⁵⁷ Whatever the irregularities in counting the votes may have been, the ballot itself was cleverly designed to encourage a vote in favor of the measure. Rather than voting “yes” or “no,” the proposal was followed by the words “for the amendment,” which had to be scratched out with a lead pencil to signify a “no” vote. The measure carried by nearly thirty thousand votes—“No sequel to this tactic is recorded in Oklahoma politics.”⁵⁸

A few months before the “grandfather clause” was adopted, a special election was held to determine the location of the state capital. Oklahoma City beat out Guthrie and Shawnee, and to the astonishment of everyone, Governor Charles Haskell moved the state seal to the chosen city the next day. The leading citizens of Guthrie cried foul, invoking the enabling legislation passed by Congress in 1906 that required Guthrie to remain the capital until 1913. Haskell and his allies contested the provision and set up shop at the Huckins Hotel in Oklahoma City. A number of state officials, as well as the Oklahoma Supreme Court, stayed behind for several months, but eventually the legislature regularized the transfer of the capital and the state’s high court upheld the decision. An appeal to the US Supreme Court argued that the restriction on moving the capital was binding; opposing counsel argued that once Oklahoma became a state it was free to move its capital—the Court agreed with the latter argument.⁵⁹

In his chapter on the territories, Bryce observed that Congress may “prescribe conditions to be fulfilled by the state constitution,” but was unsure if a state could subsequently repeal measures that Congress initially required. He notes that the six states admitted in 1889–90 were required to include certain “irrevocable” measures relating to religious freedom and nonsectarian public schools.⁶⁰ Could they repeal these after statehood? In *Coyle v. Smith* (1911), the Oklahoma capital removal case, the US Supreme Court ruled that a state is only bound by the requirements of federal law, treaties, and the Constitution. Bryce’s question had been answered in the affirmative, and Oklahoma had set a constitutional precedent.

The admission of New Mexico and Arizona in 1912 marked the passing of the territorial phase of continental US history. Bryce would record their entry into the Union in subsequent editions of *The American Commonwealth* (1914, 1920), but said almost nothing about their

constitutions or affinities with other Western states. Nor did he note anything further regarding Oklahoma, such as the *Coyle* and *Guinn* decisions. By this time he had stepped down as British ambassador, and

accepted the title of viscount, which he had rejected on two previous occasions. When not sitting in the House of Lords, he was engaged in journalism and scholarship, or indulging his passion for travel. While Macmillan would continue to publish *The American Commonwealth* as late as 1941, it was already out of date, a “dead classic.” Bryce had produced a snapshot of America that captured a time and place, but the picture rapidly faded as the years passed and the nation evolved. What he considered the great strength of his work—its concrete, fact-filled, non-theoretical approach—proved in time its great weakness, and accounts for its inferior status compared to Tocqueville’s *Democracy in America* and *The Federalist Papers* of “Publius.” It is now a work frequently cited by Gilded Age historians for whom Bryce remains an important original source.

Perhaps Bryce’s greatest legacy is the impetus he gave to the study of political parties and state constitutions. As for the latter, there is now a large and ever-growing body of scholarship by political scientists, historians, and academic lawyers, as well as a Center for State Constitutional Studies at Rutgers University. Recently Oxford University Press began publishing a series of commentaries on all fifty state constitutions.⁶¹ The study of the Oklahoma Constitution, like most others, was largely dormant after it was debated and adopted. There are now a number of accounts of both the convention that drafted the constitution and the document itself. The main point of contention among modern scholars has been the relation of the Oklahoma Constitution to the broader political currents of the age. The responses that followed its adoption in 1907 tended to declare it “radical” and “novel” or “conservative” and “typical” for the times. Others observed that it partook of both “radical” and “conservative” elements or steered a sensible course between them. This would seem to have been the position of William “Alfalfa Bill” Murray, who advised the convention to “avoid the extremes of radical socialism on the one side and extreme conservatism on the other.” In the mind of Frederick Barde, a contemporary of Murray’s, the delegates had achieved this goal, for they were “the most sensibly conservative and safely radical of all men who ever wrote a constitution.”⁶²

Recent scholars have been more concerned with the question of the ideological provenance or “spirit” of the Oklahoma Constitution. Did it reflect the values of Populism or Progressivism or neither? Populism, the agrarian revolt that gained momentum in the late 1880s in the South and Midwest, aimed to remedy the economic and political inequities associated with the rise of industrial and corporate capitalism. Its political organ, the Populist (or People’s) party, peaked electorally in the mid-1890s both nationally and in Oklahoma, then fused with the Democrats in 1896 by nominating William Jennings Bryan for president. With Bryan’s second failed presidential bid in 1900, the party died out, and its members either returned to the Democratic fold or became Socialists.⁶³ Yet the spirit of Populism and important remnants of its platform were far from dead in Oklahoma.

Progressivism was in certain respects the successor of Populism. As the Kansas editor William Allen White wrote, Progressivism was just Populism that had “shaved its whiskers, washed its shirt, put on a derby, and moved into the middle class.” Yet Populists and Progressives were not drawn from the same demographic pool. Whereas Populism was a rural movement, dominated by simple farmers, Progressivism was based in the cities, and led by middle class, educated professionals. Moreover, Populists tended to be erstwhile Democrats, while Progressives were usually liberal Republicans. Neither group was monolithic, but they both shared a concern about the abuses of the times and were determined to combat corruption through a litany of political, economic, and social reforms.

On its face it would appear that the Oklahoma Constitution was a clear product of the spirit of Populism. The Populists were the first organized party in Oklahoma and experienced considerable electoral success during the territorial period. In the process they had moved the Democratic Party in the direction of reform. This was most visibly displayed in the Sequoyah Constitution of 1905, which included many provisions supported by the Populists; provisions that found their way into the Oklahoma Constitution two years later.⁶⁴

Moreover, the majority of the Democratic delegates elected to the constitutional convention were drawn from the populist wing of the party. According to two legal scholars, the composition of the convention reflected the quintessentially “populist” character of Oklahomans, and the Constitution itself “mirrored their thinking.”⁶⁵ Similarly, a historian of

“radicalism” in Oklahoma suggests that the ghost of Populism was very much present in Guthrie when the state constitution was drafted.⁶⁶

Other scholars, most notably Danney Goble, have preferred to characterize Oklahoma’s Constitution as “Progressive.”⁶⁷ On the basis of the description of Progressivism given above this label would appear misplaced. Indeed, Goble’s persistent use of the term has drawn criticism from other historians who consider it anachronistic at best.⁶⁸ Not only were Progressives urban, educated, and middle-class in their background, the term itself, as a label for a specific group of reformers, did not come into currency until after the Oklahoma Constitution was adopted. Moreover, the Progressive Party was not founded until 1912, and like the Populist Party, had limited electoral success and a brief tenure. Goble provided neither an explanation for his use of “Progressive” nor places the Oklahoma experience within the broader context of the Progressive movement. Conversely, the legacy of Populism as reflected in the constitution is conspicuously absent in his account. It would seem that by “Progressive” Goble simply meant “Reformist,” rendering the term of doubtful historical usefulness.

Can James Bryce shed any light on this dispute? His discussion of political parties was groundbreaking and covered the exact years between the rise of the Populist Party and the peak of Progressivism (1888–1912). Interestingly, Bryce says next to nothing about either. This in part was owing to his determination not to write a history of American politics, including political parties. He also tended to downplay the role of ideology in describing American political institutions, and on the whole had a low opinion of American political parties, particularly in relation to their British counterparts. As for the Populist Party, Bryce merely notes that it grew out of the Farmers’ Alliance, which itself shared a kinship with the Granger movement that had “secured drastic legislation against the railroad companies and other so-called monopolists” in some Western states.⁶⁹ Nowhere, however, does he identify Oklahoma’s “sanguine radicalism” with Populism, much less Progressivism. For Bryce third parties in American politics were insignificant and ephemeral, typically the creation of disaffected groups who did not understand the economic forces they blamed for their woes. In this Bryce betrayed his patrician background and

bias. He was, after all, an Oxford don whose American friends were almost all well-educated Republicans from the East. Insofar as he was himself a Progressive, as one scholar has suggested, he would not have used the term to describe the Oklahoma Constitution.⁷⁰ Had he been better informed on pre-statehood politics and the ideological origins of that constitution he likely would have recognized the handprints of Populism on many of its “radical” features.

ENDNOTES

¹ A current biographical profile of James Bryce appears in the *Oxford Dictionary of National Biography* and includes a bibliography of his principal writings. Additional details on Bryce's life and work may be found in H. A. L. Fisher, *James Bryce*, 2 vols. (New York: Macmillan, 1927). For a summary of the reception and influence of *The American Commonwealth* see Gary L. McDowell's introduction to the Liberty Fund Classics edition (1995). Much of the scholarly work on Bryce and *The American Commonwealth* is cited below.

² Wilson's review of Bryce's *The American Commonwealth* was originally published in *Political Science Quarterly* 4 (1889). It has been republished as an appendix in the Liberty Classics edition of *The American Commonwealth*, 2 vols. (Indianapolis: Liberty Fund, 1995), 1571-84 (hereafter cited as Bryce, *The American Commonwealth*, LCE).

³ See Francis W. Coker, "How Bruce Gathered His Materials and What Contemporary Reviewers Thought of the Work," in *Bryce's American Commonwealth: Fiftieth Anniversary*, ed. Robert C. Brooks (New York: Macmillan, 1939), 155-68.

⁴ Quoted in Edmund Ions, *James Bryce and American Democracy, 1870-1922* (London: Macmillan, 1968), 129.

⁵ Charles G. Haines, "James Bryce and American Constitutional Federalism," in Brooks, *Bryce's American Commonwealth*, 1.

⁶ Louis M. Hacker, "Introduction," in James Bryce, *The American Commonwealth* (New York: G. P. Putman's, 1959), vii.

⁷ Acton's review originally appeared in the *English Historical Review* 4 (1889), and follows Wilson's in the Liberty Classics edition, 1585-96.

⁸ “With the possible exception of the account of party structure, the analysis of state governments represented the most original contribution of the whole *American Commonwealth*.” Frances L. Reinhold, “State and Local Governments in *The American Commonwealth*,” in Brooks, *Bryce’s American Commonwealth*, 26.

⁹ James Bryce, *The American Commonwealth*, 1st ed. (New York: Macmillan, 1888), 399-400.

¹⁰ James Bryce, *The American Commonwealth*, 2nd ed. (New York: Macmillan, 1893), 586.

¹¹ Dora Ann Stewart, *Government and Development of Oklahoma Territory* (Oklahoma City: Harlow Publishing Co., 1933), 87-91. The Supreme Court case was *United States v. Texas* (1896).

¹² Bryce, *The American Commonwealth*, 2nd ed., 586.

¹³ For a discussion of “The Negro in Territorial Oklahoma,” see Danney Goble, *Progressive Oklahoma: The Making of a New Kind of State* (Norman: University of Oklahoma Press, 1980), 115-44.

¹⁴ H. A. L. Fisher, *James Bryce*, vol. 2 (New York: Macmillan, 1927), 30-31. Fisher was a friend of Bryce’s and a fellow scholar at Oxford.

¹⁵ Brian Lee Smith, “Theodore Roosevelt Visits Oklahoma,” *The Chronicles of Oklahoma* 51, no. 3 (fall 1973): 263-79.

¹⁶ Goble, *Progressive Oklahoma*, 219-20.

¹⁷ Quoted in Robert D. Lewallen, “‘Let the People Rule’: William Jennings Bryan and the Oklahoma Constitution,” *The Chronicles of Oklahoma* 73, no. 3 (fall 1995): 290.

¹⁸ Lewallen, “‘Let the People Rule’,” 289.

¹⁹ James R. Scales and Danny Goble, *Oklahoma: A Political History* (Norman: University of Oklahoma Press, 1982), 35-36.

²⁰ For a summary of these responses see Aaron Bachhofer II, "Strange Bedfellows: Progressivism, Radicalism, and the Oklahoma Constitution in Historical Perspective," *The Chronicles of Oklahoma* 77, no. 3 (fall 1999): 244-71.

²¹ James Bryce, *The American Commonwealth*, 3rd ed. (New York: Macmillan, 1910).

²² Bryce, *The American Commonwealth*, LCE, 388.

²³ Hugh Tulloch, *James Bryce's American Commonwealth: The Anglo-American Background* (London: The Boydell Press, 1988), 44.

²⁴ John F. S. Wright, "Anglicizing the United States Constitution: James Bryce's Contribution to Australian Federalism," *Publius* 31, no. 1 (2001): 107.

²⁵ Graham Maddox, "James Bryce: Englishness and Federalism in America and Australia," *Publius* 34, no. 4 (2004): 55.

²⁶ Bryce, *The American Commonwealth*, LCE, 389.

²⁷ *Ibid.*, 391.

²⁸ *Ibid.*, 391n.

²⁹ *Ibid.*, 392n.

³⁰ *Ibid.*, 393.

³¹ *Ibid.*, 403.

³² *Ibid.*, 402.

³³ *Ibid.*, 402.

³⁴ *Ibid.*, 404.

³⁵ Scales and Goble claimed that “the final document . . . exceeded 50,000 words—easily the world’s longest constitution at that time.” *Oklahoma Politics*, 23. Elsewhere, however, Goble (and W. David Baird) described it as a “250,000-word document.” *Oklahoma: A History* (Norman: University of Oklahoma Press, 2008), 173. According to Bryce, only the Louisiana Constitution of 1896 was longer than Oklahoma’s. Bryce, *The American Commonwealth*, LCE, 404. The disparity is in part due to whether one includes the final section of the document that describes in great detail the boundaries and other features of Oklahoma’s seventy-seven counties. For a copy of the 1907 Oklahoma Constitution see W. B. Richards, comp., *The Oklahoma Red Book*, vol. 1 (Tulsa: Leader Publishing Co., 1912), 40-122.

³⁶ Bryce, *The American Commonwealth*, LCE, 458.

³⁷ *Ibid.*, 404.

³⁸ *Ibid.*, 439.

³⁹ *Ibid.*, 404.

⁴⁰ *Ibid.*, 408-09.

⁴¹ *Ibid.*, 409.

⁴² *Ibid.*, 409.

⁴³ *Ibid.*, 491.

⁴⁴ See Jimmie Lewis Franklin, *Born Sober: Prohibition in Oklahoma, 1907-1959* (Norman: University of Oklahoma Press, 1971), 17-19.

⁴⁵ Bryce, *The American Commonwealth*, LCE, 419.

⁴⁶ See Shad Satterthwaite, “The History and Use of Direct Democracy in Oklahoma,” *Oklahoma Politics* 16 (2007): 99-111.

⁴⁷ Bryce, *The American Commonwealth*, LCE, 420.

⁴⁸ Ibid., 425.

⁴⁹ Ibid., 422, 423.

⁵⁰ Ibid., 425, 426.

⁵¹ Ibid., 592, 761.

⁵² Ibid., 966.

⁵³ See Philip Mellinger, "Discrimination and Statehood in Oklahoma," *The Chronicles of Oklahoma* 49, no. 3 (fall 1971): 340-78, and Murray R. Wickett, "The Fear of 'Negro Domination': The Rise of Segregation and Disenfranchisement in Oklahoma," *The Chronicles of Oklahoma* 78, no. 1 (spring 2000): 44-65.

⁵⁴ See James R. Wright, Jr., "The Assiduous Wedge: Woman Suffrage and the Oklahoma Constitution," *The Chronicles of Oklahoma* 51, no. 4 (winter 1973-74): 421-43, and Louise Boyd James, "The Woman Suffrage Issue in the Oklahoma Constitutional Convention," *The Chronicles of Oklahoma* 56, no. 4 (winter 1979-80): 379-92. Interestingly, the defeat of female suffrage at the convention was linked to the fear of empowering black women, who voted in far greater numbers than their white counterparts in territorial school board elections. On the day the amendment was being debated on the floor of the convention, such an election was held in Guthrie in which 758 black and only 7 white women voted. William "Alfalfa Bill" Murray, the president of the convention, used the incident to raise the specter of "black domination" and the amendment was tabled. Women received full voting rights by an amendment to the Oklahoma Constitution in 1918.

⁵⁵ Bryce, *The American Commonwealth*, LCE, 1173n.

⁵⁶ Even before statehood Democrats in the territorial legislature attempted to impose racial segregation in public accommodations but were largely unsuccessful. The knowledge that President Roosevelt would block statehood if the Oklahoma Constitution included such measures kept its framers from mandating anything beyond

segregated public schools. Additional Jim Crow legislation would be left to the first legislature. See R. Darcy, "Constructing Segregation: Race Politics in the Territorial Legislature, 1890-1907," *The Chronicles of Oklahoma* 86, no. 3 (fall 2008): 260-89.

⁵⁷ Bryce, *The American Commonwealth*, LCE, 1173n.

⁵⁸ Scales and Goble, *Oklahoma Politics*, 47. The "grandfather clause" would be struck down by the US Supreme Court in *Guinn v. United States* (1915), but other methods, legal and extralegal, were used to keep blacks from the polls in Oklahoma for several decades. Anne Million, "We the Sooner People: Oklahoma and the United States Constitution," *The Chronicles of Oklahoma* 65, no. 4 (winter 1987-88): 390.

⁵⁹ Scales and Goble, *Oklahoma Politics*, 48-50.

⁶⁰ Bryce, *The American Commonwealth*, LCE, 523.

⁶¹ See Danny M. Adkison and Lisa McNair Palmer, *The Oklahoma State Constitution* (Oxford: Oxford University Press, 2011).

⁶² Murray and Barde quoted in Rennard J. Strickland and James C. Thomas, "Most Sensibly Conservative and Safely Radical: Oklahoma's Constitutional Regulation of Economic Power, Land Ownership, and Corporate Monopoly," *Tulsa Law Journal* 9, no. 2 (fall 1973): 205, 167.

⁶³ See Worth Robert Miller, *Oklahoma Populism: A History of the People's Party in Oklahoma Territory* (Norman: University of Oklahoma Press, 1987). Unfortunately, Miller does not address the influence of Populism on the Oklahoma Constitution.

⁶⁴ As John Thompson writes, "The Indian Territory Populists' greatest success was the Sequoyah Convention of 1905." *Closing the Frontier: Radical Response in Oklahoma, 1889-1923* (Norman: University of Oklahoma Press, 1986), 77.

⁶⁵ “If ever there was a group which was populist by nature it was the people of Oklahoma at the time of statehood in 1907. Many people were populists without ever having heard the word or even knowing such a ‘movement’ existed.” Strickland and Thomas, “Most Sensibly Conservative.” The authors add that William Murray, the convention’s president, was “the most populist of the populists.”

⁶⁶ Thompson, *Closing the Frontier*, 78-80.

⁶⁷ Goble located the Oklahoma Constitution at the “high tide of state Progressivism. No other state combined so fully or so quickly the advanced notions of that reform era. Even if not a new kind of state, Oklahoma was an exemplar of a Progressive one.” Goble, *Progressive Oklahoma*, 202. In his subsequent *Oklahoma Politics* (with James R. Scales), Goble labeled the 1907 constitution “Progressive” in a chapter title, but used the term sparingly and in the lower case throughout. Political scientist Danny Adkinson, following Goble, falls even deeper into anachronism, calling the Populist-inspired Sequoyah Constitution a product of “the Progressive movement.” “The Oklahoma Constitution,” in *Oklahoma Politics and Policies: Governing the Sooner State*, ed. David R. Morgan, et al. (Lincoln: University of Nebraska Press, 1991), 67.

⁶⁸ Despite the title of his essay, Kenny L. Brown denies the usefulness of the label or even the existence of “Progressivism in Oklahoma, 1900-1913,” in *An Oklahoma I Had Never Seen Before: Alternative Views of Oklahoma History*, ed. Davis Joyce (Norman: University of Oklahoma Press, 1994), 27-61. See also Bachhofer, who concludes that “the Oklahoma constitution was not radical or a progressive exemplar, but rather conservative; delegates sought to reinforce existing social, political, and economic realities.” “Strange Bedfellows,” 261.

⁶⁹ Bryce, *The American Commonwealth*, LCE, 514.

⁷⁰ As Tulloch writes, Bryce “might be regarded as one of America’s first progressives, and *The American Commonwealth* as a seminal progressive tract.” Brooks, Bryce’s *American Commonwealth*, 10.