

# AUSTRALIAN FEDERATION



SIR JOHN A.  
COCKBURN  
K.C.M.G., M.D.



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WITH PREFACE BY  
THE RIGHT HON.  
SIR CHARLES W. DILKE, BART., M.P.

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SIR JOHN A. COCKBURN, K.C.M.G., M.D.

WITH A PREFACE

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Dedicated to  
SIR LANGDON BONYTHON  
MEMBER OF  
THE FEDERAL PARLIAMENT

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## PREFACE

SIR JOHN COCKBURN has been good enough to ask me to write a few words of Preface to his volume, in which he has collected various expressions of his views upon the Federal movement in Australia.

On the happy accomplishment of the end of that long and interesting course of modern history, in the proclamation of the Commonwealth, and opening of its first Parliament, no one is personally to be congratulated more warmly than the former Prime Minister and present Agent-General of South Australia.

Sir John Cockburn is not, like the great Victorian federalist, Mr Deakin, and many of the other Federal leaders, "native-born," and he settled in Australia only after having been a gold medallist of London University. No man, however, of home birth has more completely identified himself with Australia, both in his own colony, which has led the way in many Liberal movements, and in Australia as a whole. As he himself, I think, has written, the colony of South Australia has played a great part, if not a leading part, in the Federal movement. Sir

John Cockburn and his colony were supporters of the Federal Council movement which contained the legislative germs of union. Adelaide was the scene of the chief sitting of the Federal Convention; and its admirable Clerk of Parliaments<sup>1</sup> was the Clerk of the Convention who was privileged to communicate to the world what was in fact the Commonwealth Constitution, almost exactly as it now stands. The Referendum, which pronounced popular approval of that Constitution, was first taken in South Australia, and the legislature of that colony was the first to pass the Address to the Queen praying for the Act of Parliament.

In Sir John Cockburn's book we have a sketch of the Federal movement of Australia from the first. The growth of the Federal Council is described, as well as the difficulties which were placed in its way. We then come to the merger of Federal Council feeling in favour of the Commonwealth feeling, and lastly to the success of the Commonwealth movement itself. Sir John Cockburn was a staunch and uncompromising supporter of the Federal Council, and, like Mr Deakin and others, long believed that it might have been made efficacious for bringing about what at the time would have been a sufficient union. Sir John Cockburn naturally found it difficult at first to weaken his allegiance to the Federal Council and

<sup>1</sup> E. G. Blackmore, C.M.G., now Clerk of the Senate and Federal Parliament.

to sever himself from it. The Federal Council offered a reasonable hope of a safe evolution, gradually bringing union to Australia, as in New Zealand the Provinces, and in Switzerland the Cantons had gradually become virtually united into a nation. Sir Henry Parkes, who had been the real author of the Federal Council movement, stood aloof from it for many years and crushed it. Some of us thought that his action had retarded the cause of Federation in Australia. We may now, in looking back, admit that Sir Henry Parkes' conception of a grander movement, more rapidly attaining to maturity, has been justified by the event.

In regard to the proceedings of the Convention some democrats may doubt whether Sir John Cockburn should be supported by advanced Radicals in the stand that he made on behalf of the Senate in the new Constitution. But the Senate of the Australian Commonwealth is a highly democratic body, and even an opponent of the bicameral system may admit that no prejudices which are based upon knowledge of other Upper Houses, or on the precedents of other countries or of the colonies themselves, are applicable to a Senate elected by vast constituencies with the same franchise as that prevailing for the House of Representatives. The Labour party indeed have at the first election obtained a larger proportional representation in the Senate than in the other House; a fact which was anticipated by observers in the mother-country, though not

expected at the time of the Referendum by the Labour leaders of the colonies themselves. Sir John Cockburn moved the resolution in favour of one-man-one-vote, as regarded the Federal franchise, and that for a direct Referendum on the Constitution, and, although at first badly beaten, has been successful in both these causes. His personal course and the course of his colony in respect to the Federal movement have been honourable and consistent, and we may hope that the South Australian Members of the Senate and House of Representatives of the Commonwealth will continue to play that leading part which their past would lead us to expect.

In the recent speeches of Lord Rosebery and other statesmen we may detect a certain vein of pessimism as to the future of the British Empire, which we may also discover, treated from another point of view, in the recent writings of Mr J. R. Macdonald and other democrats. There is, perhaps, too marked a tendency to contrast the mother-country as she stands with the United States; and there is no better antidote to that bane—national depression of mind—than to consider the development of such colonies as South Australia and New Zealand, of which New Zealand (separated from the Australian Continent by a geographical distance too great to make her able to join the Commonwealth as a mere province) has in the past learned much from South Australian example. Let us hope that the spirit of South Australia, and her wise and bold course of ex-

perimental legislation, will affect the Commonwealth as they undoubtedly have affected the history of New Zealand. The Commonwealth Constitution has taken much from the South Australian Constitution. The mode of settling disputes between the two Houses, for example, was suggested by South Australian provisions. In one respect the South Australian Constitution stands so far as I know alone:—it is the only Constitution with which I am acquainted which has ventured on a definition or explanation of that useful word “unconstitutional.” The spirit of rapid advance by legislative effort, combined with prudence and good sense, which has distinguished South Australia, may well become, we may hope, the dominant distinction of the Commonwealth Legislation.

CHARLES W. DILKE.

## INTRODUCTION

AS a member of the Australasian Federal Conferences which have resulted in Australian union, it has fallen to my lot frequently to write and speak on the subject of the Commonwealth. This little volume contains several of the articles written in London during the past year, together with speeches delivered in the South Australian Parliament, at the successive Conventions, and on public platforms, at various stages of the negotiations. No attempt has been made at a systematic treatise on a federal form of government, nor are the recorded utterances worthy to be brought into comparison with the masterpieces of eloquence delivered by many of the members of the Conventions; but a life sketch is presented of the movement in its progressive phases, dating from the proposal to establish the temporary structure known as the Federal Council up to the time when that body was superseded by the completely equipped Commonwealth.

The ponderous machinery of the Commonwealth is working into its bearings in a manner which gives promise of the efficient exercise of the important

powers entrusted to the administration. The departments which are to be surrendered by the States are being rapidly taken over by the Federal Authority. On the 1st January the Customs Officers became transformed into Federal functionaries. At noon on March 1st the Post-Office clocks chimed themselves out of existence as State institutions. On the same date the defence forces passed under the control of the Commonwealth. On March 29th the elections for Senators and Members of the House of Representatives took place in New South Wales, Victoria, Western Australia and Tasmania, and on March 30th in Queensland and South Australia. The now fully equipped Parliament, which consists of King, Senate and House of Representatives, was opened on May 9th in Melbourne by the heir to the throne. The Federal Tariff has to be brought into existence before the 1st January 1903, and in spite of the theoretical divergence of the views of protectionist and free traders, a common ground of practical action will readily be disclosed when the formal debate on the abstract question has spent its force.

As one of the earliest fruits of union, the Formation of an Australian public opinion has already begun to make itself apparent. Ninety-five per cent. of the citizens of the Commonwealth are of British descent; and the desire to keep free from adulteration with coloured races has rapidly developed into an imperative national instinct which



should surely challenge the sympathy of all those in the mother-country who desire to see Australia fulfil her manifest destiny by becoming, in the international arena of the Pacific, a stronghold of the most exalted traditions of the British race.

J. A. C.

## THE FEDERAL FAMILY

*(From the Imperial and Colonial Magazine)*

THE Australian Federal Family consists of the five colonies of the Continent and the island of Tasmania. A rough idea of the topography of the federal area may be formed by picturing Australia as divided by two vertical lines into three parts—west, middle, and east. The west is occupied by Western Australia, the middle strip by South Australia, while the eastern segment, again divided into three by two horizontal lines, contains Queensland to the north, Victoria to the south, and the parent colony of New South Wales lying between them. About 150 miles to the south of Victoria, and separated therefrom by Bass's Straits, is situated Tasmania.

On the wall of the Mansion House there has recently been displayed a Royal Proclamation declaring that on and after the first day of January 1901, the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia shall be united together under the name of "The Commonwealth of Australia."

The advent of the new century will therefore

signify more than the passing of a mere chronological meridian: it will herald an epoch-making event which will mark an important line of departure in the history of the Empire.

The six component parts of the Commonwealth recited in the proclamation are to be known in future as States: a few weeks hence, therefore, the term "Australian Colonies" will become an anachronism. This does not, however, imply that the individuality of the several States is to be absorbed by the Commonwealth. On the contrary, the whole trend of the federal constitution is towards the maintenance of their distinct identities. A federation is an ingenious device for combining the privileges of autonomy with the efficiency which results from collective action. It is a stage midway between separation and unity: a balance between the forces which tend towards disruption and those that make for centralisation. The resultant of the centrifugal and centripetal forces which hold the spheres in their orbits furnishes an analogy to that which determines the federal position. In order to secure the harmonious adjustment of the central and local powers in a federation, it is essential that there should be a clear and unambiguous definition of the spheres of federal and state activity. This has been effected by an explicit enumeration of the powers which are to be exercised by the federal authority. All unenumerated powers are retained in the hands of the States. In this respect the Commonwealth

follows the example of the constitution of the United States, which is precisely the reverse of that of Canada, wherein the unenumerated powers are reserved to the Dominion and only specified powers are entrusted to the Provinces. This fundamental difference is due to the fact that in the case of the United States, the States were the pre-existing factors, and from them the central body derived its authority; whereas in the case of Upper and Lower Canada, the local parliaments were the new creations; for previous to the formation of the Dominion, Ontario and Quebec had but one parliament between them. In both cases the powers assigned to the new formation were explicitly enumerated, and this course has also been followed in Australia.

The ruling principle on which the allocation of powers has been conducted is to vest in the central authority those functions only which are incapable of individual exercise, and for whose efficient performance joint action is necessary. External relations are regarded as essentially of federal concern; so that though there may be many voices as between the States, the pronouncement of the Commonwealth shall be definite and coherent. The chief federal powers are naval and military defence, quarantine, lighthouses, naturalisation, immigration, postal, telegraphic and telephonic services, currency and coinage, insolvency, patents, copyrights, and marriage.

Absolute freedom of trade between the States is secured by the inclusion of trade and commerce. This is the goal towards which the federal efforts of the past ten years have been chiefly directed. Strong as have been the enticements of the sentiment of union, the dominant motive has been the promptings of utility towards the removal of the border customs houses, and the desire to attain that commercial and industrial expansion which must ensue from the removal of artificial limitations. Most of the Colonies have in the past framed protective tariffs which have operated not only against the world at large, but also against their own immediate neighbours, each being so intensely occupied with the problem of the development of its own resources as to have little time for the advocacy of reciprocity in trade. So long as the means of overland communication were comparatively scanty, little annoyance at the border duties was experienced; but as the construction of railways brought the capitals closer together, so in the same ratio the feeling of estrangement and irritation engendered by rival tariffs was intensified. Consequently there arose a demand for inter-colonial free trade, and as a fiscal union was practically impossible without a federal scheme, the desire for a uniform tariff became one of the main factors in the advocacy of the Commonwealth Act. It must not, however, be concluded that in promoting inter-colonial free trade protectionists

admit any dissatisfaction with the general results of their policy : the substitution of the ring fence of a uniform tariff for the division lines of the border duties is regarded by them as the fulfilment, rather than as the destruction, of the principles on which their system is founded.

Under the provisions of the Constitution it is obligatory on the Parliament, within two years of the establishment of the Commonwealth, to frame a uniform tariff, which will greatly simplify the relations of the commercial world with the Commonwealth.

The Federal Authority is empowered, concurrently with the States, to borrow money and levy taxation ; it may also provide for invalid and old-age pensions and for arbitration in the settlement of industrial disputes beyond the limits of any one State. The acquisition of the railways, and the taking over of public debts are optional. All such subjects as the control of lands, mining, agriculture and industry, local government, police, education, and generally all branches of internal policy, not being enumerated among the federal powers, are retained by the States.

In order more securely to maintain the federal balance between commonwealth and states, a form of bicameral legislature familiar to students of the federal idea, and which has stood the test of experience in the United States and Switzerland, has been adopted. The two Houses are respectively

called the House of Representatives and the Senate. In the former the representation is to be in proportion to population, the minimum number for any State being five. In a House composed of seventy-five members, New South Wales will have twenty-six members ; Victoria, twenty-three members ; Queensland, nine members ; South Australia, seven members ; Western Australia, five members ; Tasmania, five members.

As the essence of a federation consists in the preservation of the individuality of its component parts, the preponderating power thus given to the larger populations is counteracted by the provision that in the Senate the several States are to have equal representation irrespective of population. Consequently, in a Senate of thirty-six, colonies possessing populations of between one and two millions are to have but six senators, while colonies having populations under 200,000 are to have an equal number.

The powers of the Houses are co-ordinate, but the House of Representatives is to have the chief control of the purse. The duration of the House of Representatives is not to exceed three years. Members of both Houses are to be elected on a franchise which is practically that of "one man, one vote," and are to be paid £400 a year. In South Australia and Western Australia women will also be admitted to the poll. The possibility of dead-locks between the Houses is obviated by the fact that

under certain circumstances both Houses are subject to dissolution and, if necessary, to a joint meeting.

In a federal form of government, which is essentially a compact between several States, it is necessary that there should be some readily accessible authority which can act as umpire when any dispute arises between the parties to the agreement. With this object in view, provision has been made for a high court of justice which shall pronounce judgment as to the validity of any of the acts of the Federal or State Parliaments when they are called in question.

It is difficult for those whose experience has been solely under a unitarian form of government to realise that in a federation there can be no paramount power. Under the British Constitution, Parliament is supreme; there is practically no limit to the scope of its actions either as regards legislation or in the direction of an alteration of the Constitution. On the other hand, under a federal instrument of government (which of necessity is a written compact), none of the legislatures can exceed the precise powers allotted to them, nor can any alteration of the Constitution be effected without a stipulated form of consent on the part of those concerned. Moreover, however carefully an agreement may be drawn, the unforeseen conditions of the future must always disclose real or fancied obscurities which require to be brought into light by some competent and unbiassed tribunal thoroughly possessed



of the spirit in which the Constitution was framed and conversant with its working.

In course of time the interpretations incorporated into the Constitution by the accumulated judgments of such an arbiter assume an importance almost equal to that of the document itself, and give to the written framework its living form. The question as to whether the umpires should be separated from the field by the world's diameter, or the decisions should be given by judges who were on the spot and thoroughly conversant with the intricacies of the complex federal machinery, formed the ground of the controversy which was so vigorously waged over the wording of the famous Clause 74 of the Commonwealth Bill.

Among those who from the outset had taken a prominent part in the framing of the Bill at succeeding conventions, there was but one opinion on the subject, and that was to the effect that the decision of Mr Chamberlain was an act of wisdom which restored to the Federal scheme an organ essential to its healthy existence and, at the same time, obviated what must have proved a constant source of irritation between Australia and the Mother Country. Nor would the Lords of the Privy Council have found a constant interference in Australian domestic affairs to be anything but an invidious task and one from which, ere long, they would have been glad to be relieved.

The executive power of the Commonwealth is

vested in the Queen, and will be exercised by the Governor-General as Her Majesty's representative. The Governor-General will act with the advice and consent of a Council composed of seven Ministers of State who must be members of the Federal Legislature. The selection of Lord Hopetoun for the important and historical office of first Governor-General has met with unqualified approval on both sides of the world. On him will devolve the responsible duty of appointing the first Premier; and there will be no Parliament, as will be the case in all future similar appointments, to determine the selection. It was meet, therefore, that the choice should fall on one who, like Lord Hopetoun, had gained personal experience of Australian statecraft, and whose record of tactful, able, and faithful administration in one Colony had fully justified his promotion to be a ruler over many.

On January 1st the Ministry will be appointed, and their first task will be to make the necessary arrangements for the Parliamentary Election which, involving an area of electorate approaching in extent the continent of Europe, will necessarily occupy a period which will appear protracted to those accustomed to the rapidity of similar events in these islands. Parliament is, however, to be duly constituted and regularly assembled in time to be opened in Melbourne, its temporary meeting-place, by the Duke of York during his approaching long-hoped-for visit to Australia.

The period occupied in the gestation of the Commonwealth has been eleven years. Towards the close of 1889, the Australian Premiers, at the instance of Sir Henry Parkes, arranged for a conference to be held in Melbourne in February 1890: this was attended by two representatives from each of five Australian colonies and New Zealand, and one from Western Australia. Mr Duncan Gillies was elected President, and a resolution was unanimously carried to the effect that, in the opinion of the Conference, the best interests and the present and future prosperity of the Australian colonies would be promoted by an early union under the Crown; and that the members of the Conference should take steps to induce the respective legislatures to appoint, during that year, delegates (not exceeding seven in number from each colony) empowered to consider and report upon an adequate scheme for a federal constitution.

Accordingly, in March 1891, a convention, consisting of seven representatives from each of the Australian colonies and three from New Zealand, assembled in Sydney under the Presidency of Sir Henry Parkes; and after many weeks of critical deliberation, there was drafted a complete Federal Bill which has formed the basis of all subsequent constructive work on the federal edifice. The time, however, was not ripe for fulfilment, and, after perfunctory discussions in the Parliaments, the matter gradually dropped out of notice.

In 1895, at the instance of the Right Hon. G. H. Reid, a conference of Premiers took place in Hobart, and arrangements were made for a convention of delegates elected as far as possible by the popular vote. The necessary Enabling Bills were passed by the Legislatures, and in March 1897, ten delegates from each of five of the Australian colonies assembled in Adelaide—Queensland and New Zealand being unrepresented.

The Right Hon. C. C. Kingston was on this occasion elected President, and the Hon. Edmund Barton, Leader of the Convention. A draft Bill, based on that of 1891, was prepared and submitted for criticism to the respective Parliaments—the Convention reassembling in Sydney to consider suggested amendments; and the Bill was finally adopted at an adjourned meeting held in Melbourne in March 1898.

The Bill, somewhat modified as to deadlocks, and with a provision that the permanent capital should be in New South Wales, but not within 100 miles of Sydney, was through the referendum accepted by overwhelming majorities in the first place by South Australia, then by New South Wales, Victoria, Tasmania, and Queensland. In Western Australia, however, protracted delays occurred, and it was only after the Bill had passed through all its stages in the Imperial Parliament, and had received the Royal assent, that an eagerly accepted opportunity was afforded to the people of Western Australia to come under its provisions.

The Australian concert is now happily complete, and United Australia, at once an island and a continent, will have no inland frontier, but will have as its only boundary that mighty moat which, as its best defence, was placed around it at the dawn of Creation.

The visit of the Australian Delegates, who, at the desire of Mr Chamberlain, were appointed to facilitate the passage of the Bill, is a matter so recent as to be in the memory of all; and a perpetual gratitude should enshrine the remembrance of the stout hearts with which they successfully resisted the attempts, here and in Australia, to upset the basis of agreement which had been so overwhelmingly ratified by the popular verdict.

The genesis of the federal history of Australia is now assured. The omens for union are auspicious. The clouds of the past few years of depression have rolled away. Trade in all the Australian colonies is rapidly expanding. The increased revenue returns indicate an advancing tide of good fortune; and the twentieth century will bring to the cradle of the Commonwealth the natal gift of a new era of prosperity and opulence.

## THE NATIVITY OF THE COMMONWEALTH

*(From the British Empire Review)*

THE first day of the twentieth century will witness a Pan-Britannic celebration of unparalleled magnificence. Enchanting as is the charm of Sydney in every-day garb, the queen city of the sea will in her gala attire dazzle and bewitch the eyes of the assembled multitude. Among all the brilliant and varied pageants arranged for the occasion, the chief interest will centre in the ceremonies attending the assumption of office by the Governor-General in Centennial Park, where History stands with open page eager to record the nativity of a nation ; statesmen and soldiers gathered from every part of the Queen's dominions amid the salvos of artillery will bring to the cradle of the Commonwealth the auspicious benediction of peace and goodwill. And as the sun in zenith splendour wends his way westward, every British fort and every grey-walled battleship will thunder forth applause in a continuous *feu de joie* as noontide puts a girdle round the world-wide possessions of the sons of Britain.

Next morning Australia will awaken to a new

world of attachment and obligation. The citizen will move in a higher sphere of relationship; his State allegiance will receive its crown and complement in the dignity of membership of the Commonwealth. Henceforth his already wide liberty of franchise will be extended to include a vote for each House of the Federal Parliament. He will no longer be known as a Colonial or a Colonist, but will bear throughout the world the title of an Australian.

The consummation of Australian union has been attained only after long years of patient toil and vicissitude. The first practical outcome of the Federal sentiment was the creation in 1885 of a Federal Council. This body had the misfortune to be actively assailed from two opposite directions; it went too far for some, and did not go far enough for others. On the one hand it fell under the ban of those who were opposed to any form of union, and who in accordance with universal custom directed their antagonism not so much against the principle of Federation as against the details of any scheme which happened to be proposed. On the other hand, although the Council was always regarded as a mere stepping-stone to more effective union, it was denounced as worthless by some Federalists to whose imagination its small beginnings did not sufficiently appeal. Chief among these was Sir Henry Parkes, who raised in rivalry the standard of a scheme for complete national union, which, Athene-like, was to spring fully armed into existence, in scorn of the



less impressive, but highly convenient method of infant growth provided for by the Federal Council.

Many attempts were made to induce Sir Henry Parkes to fall into line with the Federal Council ; and in 1890 he and Mr MacMillan attended a meeting of its members in Melbourne as delegates from New South Wales, on which occasion it was officially stated that a large majority of the people of New South Wales were opposed to joining the Council. As the adhesion of the Mother Colony was indispensable to the success of any scheme, the Conference addressed itself to the task of arranging for a larger Convention, to consist of seven Parliamentary delegates, appointed by the respective Legislatures. This Convention met in Sydney, and drafted a Bill which formed the framework of the Commonwealth Act. The measure was discussed in a desultory fashion in the respective Legislatures, and finally dropped out of notice.

In 1895, Mr Reid donned, to more effective purpose, the fallen mantle of Sir Henry Parkes, and suggested a Convention which should be elected by the popular vote, and thus secure that interest and sympathy on the part of the public which had hitherto been withheld. This scheme bore fruit. The resulting Convention sat successively in Adelaide, Sydney, and Melbourne, and thus diffused over a wide area the interest awakened in its proceedings, with the result that the Commonwealth Bill received an impetus which was sufficiently strong to carry it



successfully through the referendum, and to launch it with the strong imprimatur of the Australian people on its triumphant course through the Imperial Parliament.

The Commonwealth Act is the embodiment neither of the ambitious ideas of those architects who aimed at the complete unification of Australia, nor of the evolutionists who planted and tended the germ of the Federal Council. It partakes of the nature of each, but closely resembles neither; and, inasmuch as it is not the handiwork of any one individual or party, it may justly, and in a very special sense, be said to be the production of all, for the people themselves appointed the agents whom they commissioned to prepare the measure, and afterwards, by their direct voices, approved and adopted the finished work. The Alpha and Omega of their instrument of government may therefore be said to have emanated from those who are to live under the Constitution.

The Commonwealth has also the distinction of being the first instance of a union of States as the result of the forces of cohesion, without the application of any external compulsion, and this internal attraction has been reinforced and enhanced in the most unexpected manner during the last twelve months, by the presence in the South African veldt of an Australian brigade. There is no bond like that of blood poured out from kindred veins in common cause, and the terrible rite of war has placed

an eternal seal on the proclamation of Australian brotherhood.

As may be inferred from its origin, Australian Federation is neither a complete national union nor is it a mere Federal League. It is a compromise between the two, and, although a written Constitution must always be somewhat rigid, as far as possible provision has been made for that elasticity which is so necessary an element in organic growth. A balance has been struck between the forces that make for centralisation, and those that tend towards segregation, and there is room in the Constitution for the play of both these tendencies. On the one hand, many of the powers of the Commonwealth are optional, and will doubtless be undertaken by the central authority, or continue to be exercised by the States in accordance with the trend of public opinion. On the other hand, should the resultant be in the direction of a closer union, there is provision for the extension of the power of the Federal Parliament, by reference to it of any subject at the will of any State or States. The amendment of the Constitution is also much more easy of accomplishment than is the case in the United States, approval by an absolute majority of the Houses instead of a two-thirds majority, and ratification by more than half instead of by three-quarters of the States, being sufficient.

The change of Government is, in some respects, deep and organic. A Federation differs fundamen-

tally from a system of Parliamentary Sovereignty such as that which obtains under the British Constitution. Being in its essence a compact between States and a balance between the central and local governments, no unlimited authority can be placed either in the Commonwealth or the State Parliaments. Each is sovereign in its own sphere, but its acts become invalid the moment they transgress beyond the line which bounds the area of prescribed operation. Co-ordination rather than subordination of function is recognised to be the characteristic of Federation. The Federal authority will be built up partly of powers ceded by the Imperial Government, and not at present possessed by any of the Colonies, and partly of enumerated powers surrendered by the States; but all the powers retained by the States will be exercised just as freely and independently as before. The Commonwealth has no veto or right of interference over the State Parliaments, and the importance of the functions still to be discharged by these Legislatures may be gathered from the fact that of the average of Acts passed by them in the past a very small proportion will come under the scope of the Commonwealth Parliament. The State Governors will continue to be appointed direct by the Crown, and will in no way be subject to the Governor-General. They in their positions will be as independent as the latter in his more exalted sphere.

All Commonwealth and State laws will be equally subject to the arbitrament of the High Court, which

as umpire will decide whether the parties are within their respective grounds; and the decision of the High Court as to the limits of the constitutional powers of the Commonwealth or of the States will be final unless the Court itself desires an appeal. That is to say, the Commonwealth Act is to be interpreted in the spirit of its framers, and none other than Australians themselves are to lay hands on the ark of their covenant. With the exception that an appeal will lie to the High Court, the Supreme Courts of the States have no limit set to their jurisdiction.

Some of the powers of the Commonwealth are exclusive, such as Customs, Defence, Posts, Telegraphs and Telephones, Lighthouses and Quarantine; when these are once assumed by the Commonwealth all action in respect of them is forbidden to the States. The collection of Customs Duties will be taken over on the 1st January, and the Customs Officers will on that day become Federal Officers. The respective tariffs of the several States will continue in force until a uniform tariff is framed. This must take place within the limit of two years. The other exclusive powers will be taken over on dates to be proclaimed.

Most of the powers of the Commonwealth are, however, not exclusive but concurrent, and are capable of exercise both by the Commonwealth and the States, the laws of the latter becoming invalid wherever they come into conflict with those of the

former. In the undertaking of these concurrent powers, the Commonwealth will probably avail itself of some latitude, and will wisely feel its way into the exercise of its full authority. The subject of unifying the Marriage and Divorce Laws will, for example, involve some discussion. Two of the States have Divorce Acts framed on lines in advance of the others, and the location of the line of assimilation will afford ground for controversy. In this and in many other directions the Commonwealth will in any action it may take have the benefit of the formation of an Australian public opinion which is sure to result from the union.

The taking over of the railways is an optional matter which can be undertaken with the consent of the States concerned, but this question will need to be considered in conjunction with that of taking over the public debts, which is also an optional power. The Federal authority may also construct railways with the consent of a State, and advantage of this power may be taken to construct a railway from Adelaide to Perth, and thus complete the chain of railway communication between all the capitals. The Commonwealth Parliament may accept the government of any territory surrendered by a State, and new States may be formed by subdivision of existing States. Probably these provisions will result in the formation of new States out of the northern portions of Western Australia, South Australia and Queensland.

The relative importance which the Senate and the House of Representatives will assume is a matter of much interest. Both are to be elected by the same popular franchise, and the members of each are to receive the payment of £400 a year. Neither can therefore be regarded as likely to assume a conservative character, although each will act as a chamber of revision to the proposals of the other. Although there is no strict analogy between the Senate and the ordinary type of upper chamber, some widening of the franchise of the legislative councils in the States may be expected to result from the election of both Commonwealth Houses by the popular vote. Most of the States will be divided into districts for the purpose of election of the members of the House of Representatives, but in all the States the Senate will be elected by the State voting as one constituency.

Penny postage and a complete Federal currency may be looked for as early outcomes of Commonwealth activity, and Federal defence forces will quickly be organised.

The area of the Federal capital is not to be less than 100 square miles, and the territory on which it is situated is to be acquired by the Commonwealth. Probably the Federal lands will not be permanently alienated, but a constant public revenue will be formed by the establishment of a system of leasing, which will be beneficial alike to occupier and to public owner. The selection of the site for the

Federal capital lies solely in the power of the Federal Parliament, and there are at present no data upon which an opinion can be formed as to the locality other than that it is to be somewhere in New South Wales, beyond a radius of 100 miles from Sydney.

Meanwhile Parliament is to meet in Melbourne, probably within the capacious exhibition building in that city. The headquarters of Lord Hopetoun will be Government House in Sydney, but his presence will be required in Melbourne during the session, and he will probably visit in rotation the other capitals. The Federal authority has power to levy taxes and borrow money, but as it is empowered to retain one-fourth of the total Customs duties no recourse may be expected to direct taxation. Owing to the community and indivisibility of interests engendered by the union the individual credit of the States will stand at the highest possible level.

Judging by analogy, political parties, with all their advantages and drawbacks, will be formed in the Commonwealth as elsewhere. Probably, as in the case of America, and in accordance with the history of the movement, the parties will be formed of those in favour of unification, as against the advocates of what are known as States rights. The first great Federal fight will be over the framing of the tariff. Free traders and protectionists are already rallying their forces for this trial of strength. The result is likely to be the imposition of a protectionist



tariff, with a preference in favour of goods of British manufacture. The Federal ministers, who are to be seven in number, will enter upon their duties on the 1st of January. These duties will be arduous and responsible, and will tax to the utmost even the great capacities of those whose names are mentioned in the forecasts that have been made. Upon these statesmen the eyes of the world will be fixed, and their good fortune may well be envied by all their contemporaries, for since time began it has fallen to the lot of but a favoured few to have the privilege of directing, under such well-omened auspices, the national lines of so imposing a superstructure as the Commonwealth of Australia.



## THE FEDERAL FORECAST

*(From the Imperial and Colonial Magazine)*

WHILE the newspapers arriving by the Australian mails are still full of anticipations of the nativity of the Commonwealth, the cables nearly four weeks ago flashed across to us the details of that auspicious event, and day by day announce the satisfactory headway that the young nation is already making. The Federal Ministers are all men in the prime of life, with the experience of a generation actively spent in the highest offices of State; and the zeal, tempered with prudence, which the Government has already displayed, gives warrant of progress both sound and rapid. The chief interest at present centres in the steps taken to complete the Legislative equipment of the Commonwealth. The Parliament is to consist of the King, the Senate, and the House of Representatives, and a novel and interesting course has been adopted in incorporating the British tradition of responsibility of Ministers to Parliament with the Federal feature of two Houses which are almost co-ordinate in their functions, and derive their origin from the same electoral franchise. Prior to the

assembling of Parliament, which, under the Act, must take place within six months of the establishment of the Commonwealth, the Ministers are masters of the situation, and many were under the impression that the election campaign would not commence until March. Mr Barton has, however, taken time by the forelock, and on January 17th made a pronouncement of Ministerial policy, prefacing his remarks with the statement that the Federal Elections would be held at the earliest possible date that the State machinery and statutes permitted. In thus accelerating the creation of the Legislature, on which their own existence will, in turn, depend, Ministers resemble self-reliant directors who, conscious of their capacity, are eager to summon a meeting of shareholders in order to give an account of their stewardship.

Nor is the verdict of Parliament likely to prove other than favourable. Parliament, presumably, will be the mirror of public opinion, and had the Federal Ministry been elected by the people themselves, it would not greatly vary from the present *personnel*. Three out of the four statesmen who headed the poll in their respective Colonies on the occasion of the Convention election are included in the Cabinet. The choice of United Australia, coincident with that of New South Wales, would have placed Mr Barton at the head of the Administration. Mr Deakin is the idol of young Australia; Mr Kingston is the tried and trusted leader of democracy; and Sir

William Lyne, Sir George Turner, and Sir John Forrest, as the Premiers of their respective Colonies, have the complete confidence of the people. There is every reason, therefore, to believe that the policy enunciated by the Premier will be endorsed by both people and Parliament. The first election will be held under the Electoral Acts and franchise at present in force in the several states, but plural voting, which still, in some corners, lingers as a relic, will not be permissible. The Federal Authority will issue the writs for the House of Representatives, which, being constituted on the basis of population, will represent Australia as a nation. On the other hand, each State Government will issue the writs for the election of its own senators, who collectively are to represent State entities.

Mr Barton courageously tackled the capital question of the Capital site, which was one of the bombshells thrown by Sir George Dibbs into the Convention of 1891, and on several other occasions it has threatened to break up the Federal consentaneity. Mr Barton takes his stand on the firmest Federal ground, when he declares his belief that Parliament cannot be satisfactorily carried on in the Capital of one of the more powerful states. The Federal Authority, in the discharge of its duty, cannot expect always to be able to satisfy the demands of each state, and may at any time find itself in uncomfortable opposition to local opinion. The Commonwealth is entitled to the fee simple of

its own house and offices. The methods of the hermit crab are compatible neither with Federal dignity nor efficiency. The Federal territory in which the Capital is to be situated is to be not less than one hundred square miles. Speculation is rife as to the locality, but at present there are no data on which even a surmise can be hazarded. There is a strong feeling that both public and private advantage will ensue from a system of leasing instead of alienating the Federal lands. Australia has experienced some of the disadvantages of land booms, and is not eager for a recurrence of burnt fingers. The prospect of a constant public revenue from the building sites in the Federal streets is alluring to the national owner, and a reasonable rent instead of a profit-devouring freehold would be equally satisfactory to settlers.

The chief Public Departments to be administered by the Commonwealth are Customs, Defence, and Posts. Customs and Excise were transferred to the Commonwealth on January 1st, and on that day all Customs officials became Federal officers. Posts, Telegraphs, and Telephones, are to be taken over as soon as possible. A conference of officials was lately held to arrange the details of amalgamation. Federal postage stamps will be substituted for those used by the Colonies. It is probable that an Imperial penny rate will, at no distant date, follow the institution of an Inter-State penny postage.

A complete Federal coinage may also be expected

as an early token of union. In the Dominion of Canada the modern custom of decimal coinage has been adopted. It is to be hoped that similar good counsels will prevail in Australia. The Commonwealth Act stipulates that Departments of Defence are also to be transferred on a date to be proclaimed, but as the raising or maintaining of a Naval or Military force is among the powers forbidden to the states, the existing forces may be said to be already subject to Federal control.

The fiscal policy of the Commonwealth forms a subject of engrossing interest to the commercial world. Mr Barton's statement was free from all ambiguity. The tariff would be protective, not prohibitive, and considerate of existing industries. This is precisely the announcement which, under the circumstances, was to be expected. Mr Reid, the Free Trade leader, at a great Chamber of Commerce banquet, recently threw down the gauntlet and announced his determination to conduct a prolonged and determined Free Trade campaign against the Government. There is no one more competent than Mr Reid to take the lead in such a trial of strength. He has the rare endowment of combining with unsurpassed platform oratory an equal excellence, both in general Parliamentary debate and in the close detail of committee work, but he is heavily handicapped by the position. Quite apart from the question whether a majority in Australia favours a system of Protection without which no country has

risen to greatness, a protective policy is predicated by the necessity of raising about £8,000,000 from Customs duties. The task of fitting the Federal machinery demands the co-operation of the ablest men who are available in each State, and despite the fascination of a great Federal fight on a paramount fiscal issue, Free Traders and Protectionists will in many cases be found casting their votes and influence for those candidates who, apart from this question, appear to be the best fitted to render good service to their State and the Commonwealth. The fiscal problem was the second famous bombshell in the Convention of 1891, as it had previously been the "lion in the path" in 1890, but prudence in giving a wide berth to a problem involving such dangerous similitudes has resulted in its sinking into insignificance when confronted by men who have a practical appreciation of the necessities of the position.

Mr Barton also alluded to the probability of early acquisition of the railways by the Commonwealth. This is one of the optional powers which can be exercised with the consent of the states concerned. A transcontinental railway was also mentioned, the construction of railways in any State with the consent of the State being also a Federal power. At present all the capitals are connected by railway, with the exception of Perth, which is four days by sea from Adelaide. The construction of an overland communication is a necessity, both from the point of view of internal development and common defence.

The completion of the line at present constructed nearly half-way across the continent to Port Darwin comes under the same category. The undertaking of such lines by the Commonwealth would push into prominence the question of the acquirement of existing trunk lines, and as the exercise of one power leads to another, so does this question bring into view the problem of taking over the State debts which are represented by the railways.

The passing of a uniform Federal franchise will probably engage the attention of the second or third Parliamentary Session, and this will result in sweeping away the last vestiges of restriction on Manhood Suffrage. Mr Barton is also in favour of Women's Franchise, and in his Cabinet are Mr Kingston and Sir John Forrest, who were Premiers respectively of South Australia and Western Australia when the franchise was conceded to women. The Legislative Assembly in Victoria has also repeatedly passed a Bill for this purpose, and similar action was recently taken in New South Wales, so that there is every prospect of the second Federal Election being conducted on the lines of Adult Franchise.

The introduction of a Bill for conciliation and arbitration, for the prevention and settlement of industrial disputes extending beyond the limits of any one State, is a fitting feature of the policy of a Cabinet in which Mr Kingston is Minister of Trade and Customs. Mr Kingston was the pioneer of this form of Legislation, which gives promise of



far-reaching benefit in removing the possibility of internecine industrial strife. The declaration as to the exclusion of Asiatics was to be expected, and will give profound satisfaction. It has sometimes been assumed that this was simply a Labour question; but that is a mistaken view. A profound instinct against racial admixture pervades all classes and has led to the firm determination to preserve Australia as a white man's country. The task of erecting and setting in motion the ponderous machinery of the Commonwealth demands the adoption of reasonable and common-sense measures and of these the *personnel* and pronouncement of the Commonwealth Cabinet afford a substantial guarantee.



## THE COMMONWEALTH OF AUSTRALIA

*(Read at the Society of Arts)*

WHEN discussing in the Convention at Adelaide the form in which the federal instrument of Government should be cast, and how far the provisions of existing Federations should be adopted, the Leader of the Convention, the Right Hon. Edmund Barton, now first Premier of the Commonwealth, remarked —“ I, for one, as I do not wish my boots made in Germany, do not want my Constitution made in Switzerland,” to which Sir Richard Baker retorted that he wanted his boots made where they would fit him best.

As the work proceeded it became evident that many ready-made provisions such as that to which Mr Barton referred were not at present applicable to Australian conditions. The members of the Convention turned more and more away from the facile method of proposing clauses from the Constitutions of the United States, Switzerland, and Canada. Scissors and paste were laid entirely aside; even the voice of eminent federal authorities, so potent in the early stages, grew feeble in their ears.

In one respect alone did the tendency to follow a preconceived idea persist. On entering the unfamiliar federal territory, there was a general desire to depart no more than was necessary from British traditions. Putting aside all precedents to the contrary, the Convention determined to incorporate the principle of responsibility of Ministers to Parliament with the bicameral arrangement peculiar to federation. In spite, therefore, of the family likeness which the Commonwealth bears to other federal systems, the possession of this one essential feature of the British Constitution indubitably proclaims its parentage.

Although in their constructive work the Constitution-builders took counsel of their own necessities and blindly followed no precedent, the patterns presented by the great modern federations afforded in the early stages of deliberation much valuable assistance. The first impulse was to follow the model of the Constitution of Canada, but a closer investigation demonstrated that the plan of the Dominion, though admirably adapted for its own purposes, would not adequately meet the requirements of Australia.

The dependence of the Lieut.-Governors upon the Dominion Executive, the nomination of the Senate by the Central Government, the inequality of the representation of the Provinces in the Senate, and the federal veto on provincial legislation, together with the possession of the unenumerated

powers by the federal authority, did not appear to be compatible with the practically unrestricted autonomy hitherto enjoyed by the Australian colonies. Nor is this to be wondered at. The movement which led to the origin of the Dominion was in some respects diametrically opposed to the forces which formed the Commonwealth. Prior to 1867 Ontario and Quebec were united under one Parliament. A higher degree of consolidation was, therefore, permissible in Canada than would have been acceptable to Australia, where each colony has always had its own legislature. In each case the unenumerated powers were retained by the original bodies, and only specified powers conceded to the new formations.

From the closely-knit Dominion attention was then turned to the United States, where the genesis of the union as a product of the States was analogous to the process of evolution in Australia. Fortunately the monumental work of the Right Hon. James Bryce on the American Commonwealth appeared just before the debates on the framing of our Constitution commenced. Thus were we opportunely furnished with an inexhaustible mine of federal lore; and thus was rendered familiar to us the happy inspiration of the name of our union—"The Commonwealth"—the title which of all others holds aloft, before Prince, Parliament, and People, the object which should be the aim of every true form of Government.

The close analogy between the requirements of the American and the Australian States in delegating to a newly-constituted central authority a portion of their previously enjoyed autonomy furnished some striking coincidences in the proceedings of the conventions which, with an interval of more than a century between them, succeeded in framing constitutions acceptable to the people.

In each case the difficulty which chiefly confronted the convention was that of reconciling the claims of the large and small states, and this was overcome in both cases by providing for representation in proportion to population in one House, and for equal representation in the Senate of each state irrespective of area and population. Unlike the United States, however, the Commonwealth provides that Ministers shall have seats in Parliament, and that senators shall be elected by the popular vote instead of by the state legislatures. Unlike the United States, the Commonwealth provides for the solution of deadlocks by double dissolution, and by joint meeting of both Houses ; and excessive rigidity is avoided by requiring only majorities of the Parliament, of the states, and of the people for an amendment of the Constitution, instead of two-thirds of the Congress and three-fourths of the States.

The word "indissoluble," which, by some strange accident or design was omitted from the instrument of 1787, and was afterwards, at the cost of a million

lives, inscribed in characters of blood, was, by a dip of the pen, incorporated in the Commonwealth.

Switzerland, that faithful repository and treasure-house for the preservation of the ancient method of ratification of laws, furnished the example of the direct referendum for constitutional amendment.

In the brief space of time at my disposal, it would be as impracticable as it is superfluous to enter at length into a general disquisition on the nature of a federal form of Government. Suffice it to say that federation is a compromise between centralisation and separation, and provides an ingenious device for combining the vigour in administration and the high grade of individual citizenship enjoyed by a small state, with the powers of defence and facilities of commerce which are the prerogative of a great nation. The affairs of men, in common with those of the whole universe, are subject to a rhythm of alternate systole and diastole, and an ever-varying balance in accordance with the tendency of the time has to be struck at some portion of the orbit between the centrifugal and centripetal forces. At present the tendency is towards aggregation. The day of small independent nations is passing away; stagnant states are doomed to disappear, existing empires are destined to grow still larger; all must expand or submit to absorption. In federation lies the safe middle course between dangerous isolation and unwieldy empire. Federation consigns the precious jewel of autonomy into joint safe keep-

ing. It secures immunity from the danger of a crushing conglomeration which may at any time fall to pieces by its own weight and, Babel-like, involve its disintegrated elements in greater confusion and division than if the stupendous task of unification had never been attempted.

The alternatives which present themselves to adjacent, distinct communities such as were the Australian colonies, are to remain separate, subject to all the weakness and business inconvenience consequent on that condition, or to become amalgamated in one mass, or, while still retaining their individuality, to form a federal union for mutual purposes. The objections to unification in the case of Australia were both obvious and insuperable. The area of the Island Continent is almost equal to that of Europe. Texas, the largest of the United States, is not nearly half the size of Queensland. South Australia is more than four times the size of France, and Western Australia is larger still. Experience has given proof already of many mistakes in Australian legislation, due to an insufficient knowledge of the conditions obtaining in localities far removed from existing capitals. Such errors would be gravely intensified if the attempt were made to govern Australia from one centre. It would be impracticable to solve with satisfaction the ever-varying problems of a young country at a distance of from 2000 to 3000 miles from the source of authority. The genius of the British

race for managing its own affairs would brook the application of no such length and rigidity of official levers as would be necessitated under such circumstances.

On the other hand, a sentiment in favour of union as against continued separation had been forming for years, and was nurtured and promulgated by the enthusiasm of native-born Australians, who conceived a passion for nationhood and chafed at the artificial barriers between their respective colonies. These aspirations were shared to the full by many who had become devoted to Australia as the land of their adoption. In this, as in many other cases, sentiment proved to be the precursor of utility—the vague shadow cast to-day by the not yet consciously-defined requirements of to-morrow. The approximation of the capitals by means of railway communication intensified the estrangement and ill-feeling caused by border custom-houses and cut-throat railway tariffs, and these promptings of utility were still further reinforced by a contemplation of the incalculable impetus which would be given to industry and commerce by the achievement of inter-colonial free trade, and of the sense of security which would be experienced under a system of federal defence.

It was always felt that the destiny of Australia lay in federation, and that the spirit of union was only awaiting the fulness of time to express itself in material form. In 1850 Earl Grey submitted



to Parliament proposals for an Australian General Assembly, to consist of a Governor-General and a House of Delegates, composed of two members from each colony, with one additional member for every 15,000 of its population, the General Assembly to have control of customs, posts, intercolonial roads, waterways and railways, lighthouses, weights and measures, and such other matters as might be referred to the Assembly by all the colonies. There was also to be an Australian Supreme Court. Appropriations for these objects were to be made by an equal percentage of the revenue received in all the colonies. These proposals, wise in themselves, were, however, eventually abandoned as premature. Doubtless, the scheme would, if carried out at that time, have interfered with the growth of the sturdy independence so necessary for the successful development of the then scattered and disconnected settlements.

During the succeeding decade the question received much attention, both in colonial legislatures and in select committees to which the matter was referred. It appears clear that at that time there existed a party, small in number but persistent in action, who advocated federation as a step toward separation, and the fear of some consequent modification in the relations with the Mother Country may perhaps in part account for the slender measure of success which attended many well-meant efforts.

The matter continued to be intermittently dis-



cussed at intercolonial conferences for another twenty years without any result. In 1881, at one of these gatherings, a Bill on lines similar to those on which the Federal Council was afterwards constituted was submitted by Sir Henry Parkes, and at a succeeding conference in 1883 Sir Samuel Griffith framed the Bill which brought that body into being in 1885. Owing, however, to the nonconformity of New South Wales and the merely temporary adhesion of South Australia, the Federal Council never acquired the prestige necessary for its effective existence, and in spite of an enlargement of its membership the opposition to it became crystallized and intractable. Sir Henry Parkes was in every respect a great man, and he had the defect of his quality; he appeared to greater advantage as a leader than in any other capacity. Repeated attempts were made to induce him to return to the views of 1881, but the charge of the offspring of his first proposals having passed into other hands, the contemplation of its infant growth no longer appealed to his parental affection. His active imagination became fired with a more ambitious scheme. The opportunity was presented by the report of General Sir Bevan Edwards on the necessity for federal defence. Sir Henry Parkes opened communication with the other Premiers, Messrs Gillies, Morehead, Cockburn, and Fysh, and eventually he and Mr Macmillan, together with two representatives from New Zealand, consented to attend a meeting of the members of the federal

council held in Melbourne, in 1890, under the presidency of the Hon. Duncan Gillies. At this meeting Sir Henry Parkes proposed a series of resolutions in favour of complete federation, and it was resolved that steps should be taken by the legislatures to appoint a National Convention. Sir Henry Parkes was the president, and Sir Samuel Griffith the vice-president of this Convention, which met in Sydney in 1891. Seven delegates attended from each of the six Australian colonies, together with three from New Zealand, including Sir George Grey. A complete Federal Bill was framed, which was discussed in a desultory manner by the legislatures, which, however, were paralysed by want of interest on the part of the public in their proceedings, and the measure dropped out of notice.

Although the statesmen's movement thus proved abortive, the Australian Natives' Associations did not suffer the matter to remain long in abeyance. Sir John Quick started a movement for a properly elected convention; and at the instance of the Right Hon. G. H. Reid, a meeting of Premiers was held in Hobart in 1895, with the result that Acts were passed in most of the legislatures authorising General Elections for the purpose of constituting a convention on the broadest electoral basis. An unofficial convention was held at Bathurst towards the close of 1896, which greatly stimulated the interest in the convention elections, which took place early in 1897.

The convention thus constituted consisted of ten

representatives from each of the colonies of New South Wales, Victoria, South Australia, Western Australia, and Tasmania, and held its first meeting in Adelaide on the 22nd March 1897, under the presidency of the Right Hon. C. C. Kingston. The Right Hon. Edmund Barton was elected leader, and submitted general resolutions, which were referred to three select committees appointed to deal respectively with the constitutional, judicial, and financial departments. A Bill embodying the work of these committees was drafted by Mr Barton, Sir J. W. Downer, and Mr O'Connor. This, after amendment by the Convention, was submitted to the respective legislatures for suggestions; and in order to consider these the convention reassembled in Sydney on September 2nd. The Bill was finally adopted on March 17th, 1898, at a meeting in Melbourne.

It is instructive to note the ever-widening basis on which these succeeding conventions were founded. The delegates of the first convention were nominated by the Governments, those of the second convention were elected by the Houses of Parliament, while the members of the final convention were elected by the direct votes of the people. The result of furnishing this broad basis was the awakening of public interest in the work of the convention, which was sufficient to carry the movement through all its stages to a successful issue. The proceedings of the convention were transacted in the full light of publicity, and

were sustained at a high level whether judged by the standard of eloquence, forensic skill, or constructive ability. Although conducted with much mutual forbearance, spirited debates took place on many questions such as the powers of the Senate, the use of the rivers for navigation and irrigation, differential rates on railways, and the right of appeal. Several times the convention appeared on the point of breaking up, but good feeling and mutual consideration always ultimately triumphed.

The Bill had now to run the gauntlet of the referendum. That which took place in June 1898 failed, owing to the lack of the statutory number of affirmative votes in New South Wales. A slight modification was then made in the dead-lock provisions to the effect that an absolute majority instead of a two-thirds majority at a joint meeting of the two Houses after double dissolution should suffice, and it was also stipulated that the federal capital should, when selected, be somewhere in New South Wales, but not within 100 miles of Sydney. A second referendum, which on this occasion included Queensland as well as New South Wales, Victoria, South Australia, and Tasmania, resulted in large majorities.

The necessary addresses praying for the seal of Imperial assent were passed by the Parliaments and forwarded to Mr Chamberlain. Up to this time it had been taken for granted that the Bill, as ratified by the Australian people, would be accepted at St

Stephen's. The first alarm was sounded by a despatch from the Secretary of State for the Colonies to the Australian Governments, on the subject of appointing delegates to assist in the passage of the Bill. Messrs Barton, Deakin, Kingston, Dickson, and Sir Philip Fysh were appointed to act in that capacity. Sir Andrew Clarke, at a later stage, took the place of Mr Deakin. After several conferences, the points at issue were disposed of with the exception of the famous Clause 74, which provided that there should be no appeal to the Privy Council on Australian questions involving the interpretation of the constitution. Those of the delegates who had been members of the conventions stoutly fought for the clause as it stood ; but, in spite of their efforts, the Bill was introduced into the House of Commons with an alteration providing for an unrestricted appeal. Feeling ran high on the subject both in this country and in Australia. Acrimonious correspondence appeared in the newspapers. Even Agent-Generals were let loose from the chain of political neutrality, and I was constrained to communicate a letter to the Press, of which the following is an extract :—

“I cannot but think that the question of what authority is to interpret the Constitution, as far as matters purely Australian are concerned, is fraught with issues of vital moment both to the welfare of Australia and the solidarity of the Empire. The written words of the Commonwealth Bill are but the

framework or skeleton to which the living form will be imparted by the interpretations placed upon it from time to time by the decisions of the High Court. That this will be the case may be inferred from the history of the American Constitution, to which, as far as regards the balance between the central and the State powers, the Commonwealth bears a close resemblance. It is notorious that by means of a long series of decisions—wise in themselves and saturated with a thorough comprehension of the genius of the American people—Chief Justice Marshall moulded the Constitution into its working form. The ultimate Court of Appeal will frequently be called upon to pronounce a decision on questions of purely domestic concern. Not long ago the Supreme Court of the United States had to decide whether or not an income tax could be levied by the federal authority. Would not all lovers of harmony earnestly deprecate the settlement of such local matters being vested in the hands of an Imperial authority? Has not the wisdom of British statesmanship consisted in a rigid refusal to interfere in such questions? The introduction of outside influence in a domestic dispute often results in the combatants losing sight of the cause of contention in a mutual resentment against the intruder. The establishment of a claim to interpret the spirit of the Commonwealth from either dingy Court or stately palace in Downing Street may prove, not a link which unites, but a handcuff which chafes, and may endanger the

continuance of those cordial relations which it is the devout desire of every son of the Empire to see maintained in ever-increasing virtue and strength.

“A message just to hand shows that the solid and well matured public opinion of Australia is at last awakening to the imminent danger by which its dearest desire is threatened, and this view is confirmed by the telegram received by the Hon. Alfred Deakin from the Australian Natives' Association, an organisation of patriotic Australians, which wields an enormous influence in every colony.

“The present *régime* of the Colonial Office has been the chief factor in bringing about the recent enthusiastic approachment between the mighty mother and her children. Is it too much to hope that the same active intelligence which has achieved such great results may yet be able to devise means to avert any occurrence which threatens to disturb this devoutly-desired consummation?”

The delegates took the opportunity of public banquets given in their honour to reach the public ear. It must be admitted that a triumvirate, like Messrs Barton, Deakin, and Kingston, presented a powerful combination. The special gift of each was complementary to those of the others. Powerful reason, golden speech, and indomitable will constituted a totality that was almost irresistible.

Had the cup of federal expectation been dashed from the lips of Australia, no one could have foretold the consequences. The position was critical,



but the alertness and resource of the Colonial Secretary were equal to the occasion. At the second reading Mr Chamberlain was able to announce that a compromise had been arrived at, to the effect that special leave to appeal to the Privy Council might be granted in all cases except those involving the limits of the constitutional powers of the Commonwealth and the states, on which questions an appeal was to be permitted only if the High Court itself requested it.

The Bill thus approximated to its original form had a triumphant passage through Commons and Lords. Both the great parties vied with each other in applauding the measure and speeding its stages. Royal assent was given on July 9th. The table, pen, and inkstand used by Her Majesty on this occasion will ever be treasured as Australian heir-looms. Under the Commonwealth Act an opportunity was afforded to Western Australia to join the union as an original state. The presence of the Australian contingents fighting shoulder to shoulder on the South African veldt, pouring out their kindred blood in common cause, left no room for dissidence. The referendum to the people of Western Australia revealed the existence of an overwhelming majority in favour of union. The circle of the sister States is now happily complete. United Australia will have no frontier save that formed by ocean's mighty moat.

The appointment of Lord Hopetoun as Governor-



General gave unbounded satisfaction, and the grave and never again recurring responsibility which devolved upon him of selecting the first Premier in the absence of parliamentary guidance has fortunately resulted in the formation of a strong Government. The spark of executive authority thus communicated to the Commonwealth by the Queen's representative has kindled into a steady and self-sustaining flame which will spread to many branches of administrative activity. Surrounded by his Cabinet the Governor-General will exercise his powers in a constitutional manner, and will act with the advice and consent of the executive council.

One of the first tasks to which Ministers will address themselves is to take the necessary steps for the election of the members of the Senate and of the House of Representatives. The former is to consist of six senators from each state, thirty-six in all, elected for six years, half to retire every three years. The House of Representatives is to be triennial but subject to dissolution, and will consist of seventy-five members, twenty-six from New South Wales, twenty-three from Victoria, nine from Queensland, seven from South Australia, five from Western Australia and five from Tasmania. The electors for both Houses will be identical, and will include women in South Australia and Western Australia. Each state will vote as one district for senators, but will in most cases be divided into districts for the election of representatives. No plural voting

is permitted. The members of both Houses are to be paid £400 per year. Under these circumstances neither House can be expected to play the *rôle* of a conservative chamber, though each will revise the acts of the other. Members of both Houses must be twenty-one years of age, and at least three years resident in the Commonwealth, and subjects of the Queen, either native born or naturalised for five years. The disqualifications are foreign allegiance or citizenship, undischarged bankruptcy, an office of profit under the Crown except that of a Minister of State, and a direct or indirect pecuniary interest in any agreement with the public service otherwise than as a member of an incorporated company of twenty-five persons. Absence without leave for two consecutive months renders a seat vacant in either House.

The House of Representatives being elected in proportion to population will represent Australia as a nation, and just as it may be said to be constituted on the basis of one man one vote, so the Senate, owing to the equality of representation of all states within its walls, may be regarded as the embodiment of the principle of one state one vote. To it will be entrusted the dignity of representing the states as distinct entities, and the senators from the smaller states will have an opportunity of redressing any inequalities to which these may be subject in the other House. Appropriation Bills and Bills imposing taxation must originate in the House of

Representatives. These the Senate may reject but cannot amend, although it may return such Bills at any stage with suggestions for amendment. This arrangement confers the chief power of the purse on the House of Representatives ; otherwise the powers of the two Houses are practically co-ordinate.

The relative importance which the Houses will assume is a matter of much interest, and the future of the Senate depends largely on the conduct and calibre of the first senators. A much debated method of settling deadlocks between the Houses has been adopted. If the Senate rejects or fails to pass a Bill passed twice, with an interval of three months, by the House of Representatives, the Governor-General may dissolve both Houses simultaneously ; and if, after dissolution, the House of Representatives again passes the Bill, and the Senate again rejects or fails to pass it, the Governor-General may convene a joint sitting of both Houses, and at this sitting an absolute majority of the total number of members can carry the Bill.

As a preliminary step towards securing Inter-State Free Trade, which is the chief object of federation, the departments of Customs and Excise, together with all their officers, were taken over by the Commonwealth at its establishment. A uniform tariff must be framed within two years. The *personnel* of the Cabinet is protectionist, and a protective tariff is predicated by the necessity of raising about £8,000,000 from Customs duties. It is

greatly to the interest of each state to return the ablest men available, irrespective of their fiscal opinions; in view, however, of the fundamentally opposed fiscal systems of New South Wales and the other states the elections must to some extent turn on the question of Free Trade and Protection.

Under these circumstances, it is not difficult to forecast the result of the elections, but owing to the immense amount of work involved in starting the federal machinery the framing of the tariff may not be so speedily accomplished as was at one time expected. Goods imported previous to the date of the imposition of uniform duties are, on transfer to any other state within two years of that date, liable to the balance of the federal duty. As a check on federal expenditure, and to prevent any embarrassment to the states, it is provided that for a period of at least ten years three-fourths of the net revenue from customs and excise shall be paid to the states, or applied towards the payment of interest on state debts taken over by the Commonwealth.

The federal Parliament may regulate navigation and shipping, and may forbid any preferential or discriminating railway rate which is adjudged to be prejudicial to any state by an Inter-State Commission, which is to be appointed by the federal authority for the purpose of securing absolute freedom of inter-colonial trade.

An enlargement of the sphere of Australian autonomy will take place under the Common-

wealth, for some of its powers were not previously under the control of the Governments of any of the colonies—such as the relations of the Commonwealth with the islands of the Pacific, and fisheries in Australian waters beyond territorial limits. The Commonwealth laws are also to have force on British ships whose first port of clearance and whose port of destination are in the Commonwealth.

External relations will be matters of federal concern ; so that to casual observers, as seen from the outside, Australia will appear to be under one Government. On the other hand, the State Governments being nearer to the people will concern them more closely than the more remote federal authority ; just as it is the walls of a house which are visible to those without, while the apartments are to the inmates the more prominent features. Such departments of the exterior as immigration, naturalisation, aliens, and foreign corporations are placed under the Commonwealth control.

The departments of posts, telegraphs and telephones, naval and military defence, lighthouses, lightships, beacons and buoys, and quarantine are to be taken over by the Commonwealth on dates to be proclaimed ; but as the raising and maintaining of any naval or military force are among the powers forbidden to the states, the defences practically fell under federal control at the outset.

Among the Commonwealth powers are also in-

cluded subjects in which uniformity is desirable—such as census and statistics, astronomical and meteorological observations, weights and measures, bills of exchange, bankruptcy, copyright, marriage and divorce ; together with coinage and legal tender, these two latter being also among the powers forbidden to the states.

The federal Parliament is empowered to borrow money and impose taxation, and may take over from the states the whole or a proportion of the public debts. The Commonwealth is empowered to acquire with the consent of the states the railways, which are in Australia the property of the states.

The Commonwealth may also accept the government of any territory surrendered by a state, and new states may be formed by sub-division of existing states. Probably these provisions will result in the formation of new states out of the northern portions of Western Australia, South Australia, and Queensland. There is nothing which tends more to strengthen a federation than the formation of new states, which from their birth have no allegiance save that towards the Central Government. The Dominion has benefited in this manner, and of the United States, all but the original thirteen have been “born of the Union.”

The tendency of the times towards the extension of the sphere of Government activity has led to the enumeration of such federal powers as conciliation and arbitration for the prevention and settlement of

industrial disputes extending beyond the limits of any one state ; also for invalid and old-age pensions, and banking and insurance.

Some of the above-enumerated powers, such as customs, defence, posts, telegraphs, lighthouses, and quarantine, constitute what are known as exclusive powers ; when these are assumed by the Commonwealth, all legislative action concerning them is forbidden to the states. Many of the powers are, however, concurrent, and are capable of exercise both by the Commonwealth and the states, the laws of the latter becoming invalid whenever they come into conflict with the former. In the exercise of these optional powers, a considerable amount of latitude exists for the play of the centrifugal and centripetal forces ; the formation of an Australian public opinion will result from the union, and the Commonwealth will have the benefit of this in feeling its way into the exercise of its full authority. Should the tendency be in the direction of a closer union, there is a provision for the extension of the power of the federal Parliament by the reference to it of any subject at the will of any state or states. An element of flexibility is thus introduced which materially modifies the degree of rigidity usually inseparable from a written instrument of Government. Constitutions, tough yet tractable, give the best promise of long and healthy life ; the most deadly foe to organic growth is the atheroma which cannot yield without rupture.



The change of Government is, in some respects, fundamental. A federation differs essentially from a system of parliamentary sovereignty, such as that which obtains under the British Constitution. Being in the position of parties to the compact, no unlimited authority can be placed either in the Commonwealth or the State Parliaments. Each is sovereign in its own sphere, but its acts become invalid the moment they transgress beyond the boundary line. Co-ordination, rather than subordination, of function is recognised to be the characteristic of federation. The federal authority is built up partly of powers ceded by the Imperial Government, and not heretofore possessed by any of the Colonies, and partly of enumerated powers surrendered by the states ; but all the powers retained by the states will be exercised just as freely and independently as before. The Commonwealth has no veto or right of interference over the State Parliaments, which will be relieved of but a small proportion of their previous duties, and will still continue to deal exclusively with such subjects as lands, agriculture, mining, local government, police, education, and generally all matters of internal government.

The State Governors will receive their appointments as previously direct from the Crown, and it was decided in the Convention without a division that they should continue also to be the direct channels of communication between the states and



the Imperial Government. They, in their positions, will be as independent as the Governor-General in his more exalted sphere.

The Commonwealth and State laws will be equally subject to the arbitrament of the High Court, which, as umpire, will decide whether the parties are within their respective grounds. The High Court is to consist of a Chief Justice, and not less than two other Justices. The right to trial by jury is incorporated in the Constitution. The jurisdiction of the Supreme Courts of the states will continue to exist as at present, but an appeal will lie to the High Court from their decisions.

Any Bill for the alteration of the Constitution must be passed by an absolute majority of each House, or by one House twice, with an interval of three months; and must be referred for approval to the electors. And if in a majority of the states there is a majority of affirmative votes, and if these constitute a majority of all the electors voting the Bill is to be presented to the Governor-General for the Royal assent.

The nativity of the Commonwealth, on January 1st, was celebrated in Sydney with a splendour of pageantry and intensity of enthusiasm which have never been surpassed. The auspices under which the history of the Australian nation has been inaugurated are unprecedented in their favourable aspect. Watched over and protected by the

greatest and most powerful Empire the world has ever seen, the union of the Australian states has been dictated and hastened by no external dangers such as those which encompassed and compelled other federal formations.

There yet remains another brilliant festival before the citizens settle down into the ways of the workaday world. The heir to the British throne is to be present in Melbourne to open the Commonwealth Parliament in May, and neither money nor pains will be spared to make the event worthy of the occasion. The spacious exhibition building is being prepared for the event. The Commonwealth Parliament is to be located in Melbourne until suitable accommodation is provided at the federal capital.

The federal capital is to be situated within territory which is to be acquired by the Commonwealth. This area is to be not less than 100 square miles, and there is a strong public feeling against its permanent alienation, and in favour of the formation of a constant revenue by the establishment of a system of leasing, which will be beneficial alike to occupier and to public owner. The selection of the seat of Government lies solely in the power of the federal Parliament, and although several localities have been suggested, nothing is known beyond the fact that the site is to be somewhere in New South Wales beyond a radius of 100 miles from Sydney.

Huge events pregnant with vast issues of Empire

were crowded into the closing year of the nineteenth century. Large as some of these appear to loom at present, they are destined with the lapse of time to dwindle into distance. No such perspective will, however, diminish the significance of Australian Union. By a happy coincidence the *ab urbe condita* of the Australian Commonwealth has been synchronised with the calendar, and the new nation will grow with the era, and pass from strength to strength with its epochs—her chief ambition to be deemed a not unworthy scion of a mighty race, and proud to be a pioneer in that federal path which appears not only to open a way for the organisation of the Empire, but to present unbounded possibilities for the future of the English-speaking world.

“The Charter’s read ; the rites are o’er ;  
 The trumpet’s blare and cannon’s roar  
 Are silent, and the flags are furled ;  
 But so not ends the task to build  
 Into the fabric of the world  
 The substance of our hope fulfilled.

\*            \*            \*            \*            \*            \*

“O People of the onward will,  
 Unit of Union greater still  
 Than that to-day hath made you great,  
 Your true Fulfilment waiteth there,  
 Embraced within the larger fate  
 Of Empire ye are born to share—  
 No vassal progeny of subject brood  
 No satellite shed from Britain’s plenitude,  
 But orb’d with *her* in one wide sphere of good ! ’

## FEDERAL FESTIVALS

*(From the Commonwealth Pictorial)*

THOSE who are acquainted with the magic scenery of Sydney are able, with the aid of photographs and newspaper descriptions, vividly to picture to themselves the splendour of the pageantry with which, on the first day of the century, the nativity of the Commonwealth was celebrated.

From the Promontory of Government Domain, with its sea-girt wealth of verdure, the five-mile route of procession blazed with all the colours of a carnival. Venetian masts, garlanded and festooned with foliage, outlined the roadway; Union Jacks, Australian flags, Stars and Stripes, and banners of all nations flashed in and veiled the sunshine; the public offices and prominent buildings were brilliant with device and drapery; Queen Victoria's statue, as the symbol of Imperial Unity, was, to the height of 60 feet, canopied with flowers and encircled with colonnades and international trophies. At intervals triumphal arches spanned the streets; the United States, Germany and France erected noble structures in honour of the new-born nation; there were arches symbolic of Empire and of Progress, and fairest and

most imposing of all towered the arch of the Commonwealth. Here among allegorical reliefs were recorded the names of the framers of the Constitution, and, together with sentiments expressed by leading Federalists, were inscribed Sir Henry Parkes' famous phrase of "The Crimson Thread of Kinship," and Mr Barton's happy apposition of "A Nation for a Continent and a Continent for a Nation." The statue of Sir Henry Parkes as the Father of Federation was appropriately decorated, and bore his motto, "One People one Destiny." Nor, amid this display were the foundations of material wealth forgotten; the staple industries of New South Wales being represented by massive arches of coal, wool and wheat.

The procession, when completely marshalled, extended about two miles in length, and occupied an hour in passing any given point. With its Civil, Military and Industrial elements, it furnished an epitome of the Arts of Peace and War. The various trades bore the emblems of their crafts, and the Friendly Societies marched in their regalia; these, however, formed a pageant to which the onlookers were accustomed. It was the military display which gained the plaudits of the beholders. Never before in Australia had anything approaching to such a spectacle been witnessed; never even in the heart of the Empire has it been surpassed. The flower of the Household troops in scarlet and steel, Blue-jackets from Her Majesty's ships, dusky Indian

cavalry, stalwart Maori warriors interspersed with the khaki-clad centaurs of the Australian contingents crowned with their newly-won South African laurels, formed an array of varied splendour such as no other Empire in the world's history could have presented.

As the procession wended its way to Centennial Park, the multitude, to the number of a quarter of a million, converged towards the grassy amphitheatre where, in a position visible from all sides, stood the pavilion in which the natal ceremonies were to take place. In order that this locality might be marked by a memorial more enduring than any superstructure, the rites were performed on a platform consisting of a huge block of granite, six-sided, to represent the number of original States, and embedded in the earth to within a few inches of its surface, so that it might remain as a perpetual witness to indicate to future generations the exact spot on which the Commonwealth came into being.

The ceremony was solemnised by the recital of the prayer composed for the occasion by Lord Tennyson, the Governor of South Australia. A chorus of 10,000 children voiced the hopes of the future in "Federated Australia," and the choirs and bands filled the air with hymns such as "O God, our help in ages past," the Te Deum, the Hallelujah Chorus, and other songs of praise in which has become enshrined the steadfast faith of our fathers.

Another brilliant ceremony awaits the landing of the Duke of Cornwall in Melbourne for the

purpose of opening the Commonwealth Parliament on May 9th. Although, owing to the period of national mourning, the occasion will be shorn of much of its festivity, still the Imperial and Australian significance of the visit of the Heir to the British Throne will be emphasised with the pomp and circumstance worthy of such an historical occasion.

Between these two pageants past and future, an event has just occurred which though less spectacular in its character will exercise a paramount influence on the welfare of the Commonwealth. Ere this number is issued the result of the elections for the Senate and the House of Representatives, which took place in New South Wales, Victoria, Western Australia, and Tasmania on March 29th, and in South Australia and Queensland on March 30th, will have been ascertained. The circumstances attending these elections are unique. Never before have the two Houses of a Legislature been erected on so liberal a franchise. Nomineeism, property qualification, and plurality of votes have been swept away. In South Australia and Western Australia the elections have been conducted on the principle of one adult one vote, and in the other States on that of one man one vote. Both Houses may therefore be regarded as the embodiment of the popular will, and every elector having had an equal voice in the selection of the representatives of the Nation and of the States will feel a corresponding



interest in the conduct of public affairs. Never before has the instrument of government of a nation been so entirely the handiwork of the people themselves. The Constitution was framed by delegates selected from the Federating States by the popular vote. The measure when formulated was submitted by the delegates as agents to their principals the electors for ratification. The Commonwealth Act therefore owes both its origin and its confirmation to the direct voice of the Australian people. The Members of the Commonwealth Parliament are but the temporary trustees of the Constitution. The people of the Commonwealth and of the States reserve to themselves the right of assenting to or disapproving of any alteration in their charter. No change in the Constitution can take place without the approval of a majority of the States and of the people. For the first time in the British Empire, the time-honoured and wholesome custom of the referendum has been established. The Commonwealth contains several old English customs blended with many up-to-date devices. In some instances it constitutes a reform of the truest description—short parliaments, payment of members, the ascendancy of election over nomination, and the system of leasing instead of absolute alienation of Federal lands—co-exist with a novel method of settling deadlocks by a joint meeting of both Houses and the principle of responsibility of Ministers to two popularly elected Houses possessing powers in many respects co-ordinate.

The result of the labours of the Conventions has received the commendation of many well-known authorities, including the Right Hon. James Bryce and the Right Hon. Sir Charles Dilke. Apart from its merits, however, the surest guarantee of its success consists in the knowledge that the practical working of the Act lies in the hands of a people who are saturated with the British genius for self-government. Even a less perfect measure would under such circumstances prove to be eminently practical. Moreover, success is doubly assured by the fact that it was wisely conceded by the Imperial Parliament that the interpretation of the Constitution should be left in the hands of Australians themselves, so that the plastic power of adaptation for which the offshoots of the British race are so famous might be conserved for the making good in working of any imperfections in construction.

Under the administration of the Barton Cabinet the elaborate machinery of the Commonwealth is being brought into gear in an orderly and effective fashion. On the last day of the Nineteenth Century the sole functionary of the Commonwealth was Lord Hopetoun, the highly popular and universally esteemed representative of the Crown. At the stroke of midnight the whole of the Customs Staff in all the States became transformed into Federal Officers, and are now under the authority of the Right Hon. C. C. Kingston, the Minister for Trade and Customs. On January 1st the members of the Federal Executive took the Oath of Allegiance. On March 1st the

Posts, Telegraphs and Telephones became by proclamation Federal services, and the numerous employés of these Departments passed from State to Federal control under the Hon. J. G. Drake, the Federal Postmaster-General. On the same date the Defence Forces were taken over by the Right Hon. Sir John Forrest, so that not only the Permanent Forces with the Militia and Volunteers of each State, but also the Contingents serving in South Africa, are now forces of the Commonwealth.

The Parliament, now fully equipped, will shortly be occupied in establishing the Supreme Court, and in assimilating the laws relating to the Postal, Quarantine, Immigration, Defence and other Federal Departments. The great task towards which the whole energies of the legislators will be directed is the passing of the Federal tariff. Opinions in Australia are much divided as to the proportion of the time available for this task which will be requisite for its performance. The natural desire of those engaged in Commerce and Industry for the removal of the present state of uncertainty, and the activity of importation into New South Wales while it stills remains a free State, are considerations which press for the earliest possible settlement; while on the other hand the enormous amount of detail which confronts the Minister for Customs will demand all the resources and huge capacity for work which characterise Mr Kingston. The return to both Houses of a large proportion of advocates of a low

tariff may lead to the thrashing out on the floor of both Houses the much vexed question of the abstract advantages of Free Trade and Protection. But here as elsewhere the result will be arrived at by no blind adhesion to any abstract principle, but mainly by utilitarian considerations, with the result that a tariff will be adopted which will raise the requisite revenue, and at the same time tend towards the conservation and promotion of Australian industries; two objects which practical experience has over and over again demonstrated to be simultaneously attainable, although some theorists still persist in denouncing them as incompatible and mutually destructive. The prosperity of Sydney under a régime of Free Trade is often advanced as a practical illustration of the benefits of that system; on the other hand it is pointed out that special advantages as a distributing centre must accrue to any port which, situated amid a group of ports, maintains an open door. Although a late closing shop gets additional custom it does not follow that if all the other shops in the vicinity were open the same relative advantage would be maintained.

Until the tariff is settled there is not likely to be any regular formation of parties; but eventually it appears probable that, as in the case of the United States, the cleavage will be between those who favour the continuance of the present allocation of powers between the Commonwealth and the States and those who aim at a more complete unification. The object

of the founders of the Constitution was to maintain as far as possible, consistently with joint action, the integrity of the State units ; and in order to prevent any tendency towards the obliteration of the States it was decided at the Convention, without a division, that the State Governors should still continue to be the channels of communication between the State Governments and the Colonial Office. In the United States the tendency towards more complete union has been reinforced by the fact that all the States, with the exception of the thirteen original States, have been born of the Union, and have never experienced complete autonomy. The Civil War too had results in the direction of consolidation. Nevertheless, in spite of these amalgamating influences, public opinion is still strongly on the side of the maintenance of the inviolability of the State entity. Just as harmony is on a higher plane than unison, so does it appear that the loyal co-operation of the Federated States gives promise of a more efficient combination than would be likely to result from merging in one mass their respective individualities. By the preservation of Autonomy a Federal form of Government effects a reconciliation between the apparently inconsistent ideas of Empire and Liberty, and an important advance towards the Co-ordination of Greater Britain has been effected by the achievement of the heart's desire of Australian Patriots. The goal is, however, but the commencement of the course, and the Commonwealth is with well

ordered zeal bending to the task of firmly establishing in the Empire-making theatre of the Pacific, a nation devoted to the upholding and perpetuating under Southern skies of the choicest traditions of the British race.

## AUSTRALIA'S FIRST FEDERAL PARLIAMENT

*From the "Empire Review"*

ALTHOUGH the idols of free trade and protection are rapidly losing their hold on the public mind in Australia, still, as was anticipated, these waning fiscal forces formed the poles of attraction round which party votes chiefly clustered at the Commonwealth Election. The main body of voters, however, occupied a position midway between the partizans on either flank, and placing patriotism above dogma, gave their suffrage to those statesmen whose character and ability are indispensable to the welfare of the Commonwealth at this juncture.

Many of the voting papers presented a record of divided allegiance to the dethroned deities. Each State voted for the senators as one electorate, but in no case did the result disclose a uniform fiscal ticket. In new South Wales and in Western Australia free trade was the dominant tint; in Queensland protection prevailed, but in the other States the numbers were three to three; this equal balance affords an excellent object lesson of



mutual toleration at the polls which gives good promise of harmonious co-operation in the Senate, but is dispiriting to the expectation of those who had entered on the propaganda of an exterminating fiscal crusade. The position was practically predicated by the necessity of raising about eight and a half millions by customs duties, and the House of Representatives, in which the tariff must originate, presents a preponderance of members who are in favour of obtaining this revenue in such a manner as will conduce towards the maintenance and extension of national industries; Mr Barton's dictum of revenue, without destruction, is therefore in a fair way towards realisation.

In both Houses the Government has, irrespective of the tariff issue, the command of a good majority, so that the first pronouncement of the Federal ballot boxes is in favour of the retention in office of the Barton Administration. Conflicting opinions have, however, been expressed as to the date on which the Federal tariff will be announced. The great desire of the commercial and industrial community is for the early termination of the present state of uncertainty; and the energetic character of Mr Kingston, Minister of Trade and Customs, points toward a speedy settlement. Presumably the duties will be collected from the time when the tariff is laid on the table of the House.

The return, especially for the Senate, of a number of so-called advocates of a low tariff may involve

a full-dress debate on the general question of free trade and protection. The whole realm of the abstract may be ransacked with idolatrous solicitude for arguments in favour of each particular fetich, but when this dogmatic tournament has spent its force, and members are confronted with the practical issue, the vast majority, laying theory aside, will, while arranging the details of the tariff, come to the conclusion that there is nothing sinful in giving effect to the promptings of natural affection, and will regard the industries of their fellow-citizens with somewhat more favour than those of the inhabitants of Europe, Asia, Africa, and America.

As a natural outcome of the recent approachment between the mother-country and the colonies, the current of feeling towards reciprocity with Great Britain is daily becoming stronger. It appears that many, even of the free trade party, are in favour of a preference being given to British manufactures. Any Imperial overture in the direction of reciprocity—for example, a recognition of the not unorthodox claim for a small set-off against bounty-fed sugar, or a concession in support of Empire-grown wine—would meet with an immediate response. Theoretically, the orderly progression towards the far-off goal of universal free trade would appear to lie through reciprocity: in accordance with Lowell's well-known couplet:—

“From lower to the higher next,  
Not to the top, is Nature's text.”

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And there are many who are tending towards the conviction that in the channels of trade, if anywhere, is to be found the influence which will make for Imperial Federation.

The united front of Australia in regard to external affairs is indicated in the correspondence passing between the Premier and the Colonial Office on the delicate question of the New Hebrides; and the rapid ripening of the national instinct against the introduction of coloured races is revealed by the claim of both sides of the House to the copyright of the phrase, "A White Australia."

The Federal departments are in business-like manner being assumed by the Commonwealth. The customs passed under Federal control on January 1st, and at noon on March 1st, the bells of the General Post-Offices chimed themselves out of existence as State institutions. As, however, the revenue accounts for each State are to be kept separate for a period of five years, philatelists will have some time to wait before Commonwealth designs can be added to their collections. The defence forces were also taken over on March 1st, and Mr Barton has announced that an Imperial officer of high standing will, when the necessary Act is passed, be appointed to the command. This unification of the forces should not, however, be accepted as evidence of the growth of a military spirit in Australia. The Commonwealth will be fortified, not so much by the enlistment of a standing

army as by the large proportion of its citizens who, from their childhood up, are at home with horse and rifle. The Australian youth is saddle-bred. No climate is better adapted to the horse than that of Central Australia. Stables are unnecessary, disease is unknown, natural grasses abundant, and therefore the cost of upkeep trivial. The establishment of Imperial breeding depôts, whence an unfailing supply of remounts could be shipped on smooth seas to any point in the Pacific or Indian Oceans, would vastly add to British efficiency in the international arena of the future.

Mr Alfred Deakin, Federal Attorney-General, has in hand the preparation of the Act to constitute the High Court of Appeal, and the wisdom of the decision to entrust the interpretation of the Constitution to Australian Judges will before long receive abundant vindication. The Government is taking steps preparatory to the selection at the earliest possible date of the site for the Federal capital. Public opinion appears to favour the acquisition of a Federal territory for this purpose greatly in excess of the statutory minimum of one hundred square miles. The decision to lease, instead of alienating, the Federal lands is not only economically sound, but will present an unparalleled opportunity of rearing a city abounding in beautiful and suitable architecture.

It is now definitely settled that Australia's first Federal Parliament will meet not in the Exhibition

building but in the Chambers previously occupied by the Victorian Legislature. The premises will be familiar to many members of both Houses, for it was in the hall of the Legislative Assembly of Victoria that the Convention which passed the Commonwealth Act held its final session. And the high level of eloquence, forensic skill, and constructive ability which characterised the proceedings of that Convention, will be amply upheld, for half its members have secured seats in either the Senate or the House of Representatives.

As a token of the high esteem in which the Labour Party is justly held, more than one-fifth of the seats in each House of the Federal Legislature are occupied by Labour members. Their record in the Colonial Parliaments justifies the confident prediction that they will prove equally able, industrious, and useful in the higher plane of Federal statesmanship.

The presence of the heir-apparent will draw all thoughts to Australia on May 9th, and the speech from the throne will be scanned with intense interest on both sides of the world. The great and responsible task of nation-building which awaits the Commonwealth Parliament could not have been entered upon under more favourable auspices. And nothing is more certain than that devotion to the homeland and loyalty to the Empire will be the keynote of every Act.

## SPEECHES

*Extract from a speech in moving the address in reply in  
the South Australian House of Assembly on June  
10th, 1884.*

THERE was no doubt that the federation of the colonies must come. We could no more expect to see adjoining colonies peopled by men of the same language, religion, and race, and governed by similar laws, remain separate than we could expect to see drops of water touch without coalescing. The only question therefore with regard to federation was whether we should enter upon it now at our leisure, or wait till the pressure of some emergency compelled us to do so for our mutual protection. It was to be hoped that the wise precaution of taking timely action would be adopted without waiting till we were driven to it by the urgent necessity with which some day we would be confronted. The objections raised to the Federal Council Bill of last session appeared to be against a small body, only indirectly representative, having superior functions to the larger Parliamentary bodies, which were directly elected by the people. No doubt this objection existed but we should not suffer very much from it, because the pro-

posed Federal Council would only have such power as was given to it by the Parliaments. If we were to wait for a complete bond of union in the shape of a Parliament for the colonies, we should have to wait a long time, and in all probability till the lives of most hon. members were over, unless some emergency occurred which compelled us to action. Although there would not be complete union under the Federal Council Bill, still such a provision for the periodical meeting of our representatives for the discussion of common interests would form a tie which did not now exist. If it did not bring us together, it would at least keep us from drifting further asunder, would prevent misunderstandings before they could arise, and would be in many ways for the benefit of the colonies. If we waited longer we should find that the common ground which was said to be so small would grow smaller as the individuality of the provinces of Australia became more pronounced. We should be more likely to form lasting bonds if we grew up together as children than if we were forced together as adults by the pressure of outside circumstances. In this matter the eyes of the world were upon us, and if we did not adopt this Bill it would be said we were insincere in our professed objects, and our apathy might be urged as a justification of such a charge as had been made in an English paper, that the joint agitation in these colonies in regard to the deportation of French



criminals to the Pacific was spurious. We should demonstrate to the nations of the world that our sentiments were sincere and genuine, and hon. members could do so in this matter of federation.

*Extract from a speech in the South Australian House of Assembly, September 24, 1889, on moving a resolution for an Address to the Queen, praying for an increase from two to five in the number of Representatives of South Australia for the Federal Council.*

IT would be in the memory of hon. members that when the Federal Council Bill was before the House last session, the chief objection that was raised was on account of the limited number of the members of the Council. This objection was recognised to a great extent by the Government of the day—so much so that they opened communications with the other colonies who were represented upon the Council to ask if they would be willing to entertain a proposal to increase the number of representatives on the Council. Satisfactory replies having been received, South Australia joined the Council on the distinct understanding that our representatives should endeavour to obtain an increase in the number of members. The House no doubt was aware that our representatives attended the meeting of the Council, and that the then Premier (the Hon. T. Playford<sup>1</sup>) was elected President, and that on the

<sup>1</sup> Now a Senator.

second day of meeting the then Attorney-General (the Hon. C. C. Kingston<sup>1</sup>) took the opportunity of redeeming his promise to the House and brought forward a resolution in favour of increasing the number of the members of the Council. The motion was: "That a select Committee consisting of the representatives of Queensland, South Australia Tasmania, Victoria, and Western Australia, be appointed to consider and report upon the question of the expediency of amending the constitution of the Council." The next motion, also by Mr Kingston, was: "That in the opinion of this Council it is desirable that after the constitution of the Council shall have been amended by the increase of the number of its members the Council shall on behalf of the Colonies represented consider the question of Australasian Parliamentary Federation with a view to making recommendations to the local legislatures." This was, on the motion of the representatives from Victoria, amended to the following form:—"That in recommending that the constitution of the Council shall be amended by the increase of the number of its members this Council contemplates the early consideration of the question of Australasian Parliamentary Federation by the enlarged Council." Thus hon. members would see that the representatives kept clearly before them in this alteration the fact that the Federal Council was no final measure but merely a step towards the complete federation of

<sup>1</sup> The Right Hon. C. C. Kingston now Minister for Trade and Customs.

the Colonies. It only remained for this House to fulfil its part by the adoption of this address to Her Majesty. The paragraph relating to the increase in the number of members of the Council was as follows:—"The increase of the numbers of the members of the Council should be limited to the cases of colonies other than Crown Colonies, and should proceed on the basis of population as follows:—(1) Every colony having a population of not more than 100,000 should be entitled to two representatives. (2) Every colony having a population of more than 100,000 and not more than 300,000 should be entitled to four representatives. (3) Every colony having a population of more than 300,000 and not more than 700,000 should be entitled to five representatives. (4) Every colony having a population of more than 700,000 should be entitled to six representatives." Of course at present it was only Victoria which would have six representatives, but it was to be hoped that before long New South Wales would become an adherent to the Council. The Premier of New South Wales had shown a distinct interest in the Federal Council of late. It was generally felt there was one question which could only be dealt with by the Federal Council, and that was the question of defence (Mr Kingston "and Murray Waters"). All eyes were now turned upon the statesman presiding over the destinies of New South Wales, and from Sir Henry Parkes they might expect a scheme of Federal Defence, the result of which would very

likely be the adhesion of the Mother Colony to the Federal Council. South Australia would be a distinct gainer by the new arrangement. At present there were ten members in the Federal Council, and of these South Australia had two, or one-fifth of the whole. Under the proposed arrangement there would be twenty-two members, and of these South Australia would have five, which was a larger proportion than one-fifth, although not quite one-quarter. In virtue of our population of 300,000, we would have five representatives, while Victoria, with 800,000 more people would have but one more representative than we. If the representation had been equal, then Western Australia, on gaining autonomy, would have the same voice as South Australia, although her population is only 42,000; whereas under the proposed arrangement she would only have two members. Some hon. members had objected to the Crown Colonies having any voice at all in the Council, and under the new system their influence would be much lessened because their representation remained as before, while that of all the other Colonies was increased. Fiji and Western Australia had now one-fifth of the whole representation, whereas in future they would only have one-eleventh. In Tasmania the address to the Queen had been carried by both branches of the Legislature, and a similar course had been taken by Queensland. The Premier of Victoria had telegraphed to say that he was giving notice of motion this week.

The goal to keep steadily in view was complete Parliamentary Federation, and some hon. members would try to reach that summit of ambition in one stupendous flight. Less favoured mortals—ordinary practical politicians—having no wings, had to have recourse to much humbler modes of progression. They were content to go forward step by step, and in taking this step they would secure an advance towards that ideal of all true patriots—the consummation of complete Australian Union.

## MELBOURNE FEDERATION CONFERENCE

FEBRUARY 1890

*Speech in support of the motion by Sir Henry Parkes :—*

“ That, in the opinion of this Conference, the best interests and the present and future prosperity of the Australasian Colonies will be promoted by an early union under the Crown, and, while fully recognising the valuable services of the members of the Convention of 1883 in founding the Federal Council, it declares its opinion that the seven years which have since elapsed have developed the national life of Australasia in population, in wealth, in the discovery of resources, and in the self-governing capacity, to an extent which justifies the higher act, at all times contemplated, of the union of these Colonies, under one legislative and executive Government, on principles just to the several Colonies.”

A very great point has been gained to-day. A large number of speeches have been addressed to the Conference from the practical point of view. I should like to say a word or two in reference to the excellent address which Mr Clark<sup>1</sup> delivered. I think

<sup>1</sup> Hon. A. Inglis Clark now Judge of the Supreme Court of Tasmania.



that among all the advocates for federation who are here to-day, there are none stronger or more enthusiastic than the representatives of Tasmania. But I should be sorry if this eagerness should lead to any undue haste, and I do not think that the particular form of union which Mr Clark mentioned as something within immediate reach would be at all desirable. Mr Clark intimated that, pending the adjustment of differences between all the colonies, it would be a step in advance if the eastern colonies forthwith formed a union. I do not think that this would assist the cause of federation, or that it would be a good way to further unite Australia by dividing the Continent into two. It has been said that Canada had this partial form of union in the first instance, but the cases are not parallel. Previous to Nova Scotia and New Brunswick joining with Upper and Lower Canada there was no form of Federal Government whatever in Canada. In our case things are different. We have already by means of the Federal Council taken some steps towards union, and have adopted a form of federation, and to drop this substance for a shadow, infinitely greater but more remote, would be an act which could only bring about disastrous consequences. Mr Clark's suggestion would divide the map of Australia in half by a line from north to south, and I am afraid that a long time would elapse before the severed parts became cemented again. And I am quite sure that it would be much better first to adjust the differences all round, even

though that should take a few years to accomplish, than to embark immediately on a one-sided union.

Mr Clark also says, that in the United States there was a complete parallel for our present condition, insomuch that the reason for the formation of the union which now obtains between the United States was the existence of a commercial difficulty. That is no doubt one aspect of the case, but I may say that my reading of the history of America leads me to the conclusion that the causes which drove the different States of America together were of an altogether more pressing nature than any commercial needs. Throughout the papers which were written by those who are rightly called the fathers of the Constitution—Hamilton, Madison, and others—and published in the form of *The Federalist*, much stress is laid upon the fact that a further union of the United States was necessary, because the confederation which had previously existed was not equal to the demands made upon it by a prolonged war. Congress might levy for soldiers from the different States, but it had no means of securing their presence on the field of battle; Congress might levy contributions, but it had no means of ensuring the payment of those contributions by the States, and it was the desire to put the country, in a time of peace, in such a position that it should never more be endangered by war, which led to that strong union being formed. The United States were not actually

at war at the time, but they were surrounded by enemies, north and south, and the navigation of their rivers was impeded by foreign interference. Their necessities were imperative, and their case was, therefore, altogether different from that which now presents itself to us.

Mr Clark alluded to the question of a Customs Union as affecting South Australia, and he seemed to indicate that if the present Customs revenue was raised all that was necessary would have been accomplished. Now, I may say at once that our customs duties were not imposed for the purposes of revenue but in order to formulate a protective tariff, the mere fact of revenue being thereby raised was altogether a secondary consideration, and the attitude of South Australia, in considering whether the time is ripe for a Customs Union or not, has no reference to the financial question. Our manufacturing industries are still in their infancy, and under a Customs Union they would at once be brought into direct competition with the long-established industries of the neighbouring Colonies. In saying this, I do not wish to convey the impression that South Australia desires always to maintain a tariff against the rest of Australia; she does not look forward to hostile custom-houses continually harassing those who wish to cross her borders, but from the protectionist point of view she asks that some little time should be allowed to her industries before they have to face a competition which was too severe to

permit their establishment in the past; some little time for those manufacturers who have lately embarked their capital under the inducement of a protective tariff to place their business on a firm footing. However, as I have said on other occasions, I do not think it will take long to overcome this difficulty. I think that South Australia will say, on looking at the question all round, that she has quite as much to gain in some directions as she has to lose in others by intercolonial free trade. Standing as she does in the midst of all the colonies, holding out a hand to each of them, I think that her position indicates that, after the mere temporary difficulties have been overcome, she of all the colonies would have least to lose by reciprocity and free trade among them all.

As, however, the question of a Customs Union has been so often raised, and as our arguments here are partaking very strongly of a free-trade character, I should like to ask whether it is the impression of any member of this Conference that when the federation of Australia is consummated it is to be a vindication of the principle of general free trade. I take it that when as a condition of that federation, the hostile custom-houses on the borders of the different colonies are removed, it will not be a vindication of the principle of free trade, but rather the institution of a more complete system of protection—the apotheosis of a protective policy. I think it is just as well that this should be under-

stood. The voice of South Australia has pronounced emphatically, and by a large majority, in favour of that protection without which the history of the world presents no example, as far as my reading has been able to show, of a nation which has risen into prosperity.

Mr Clark, I know, will excuse me if I take up another point. He delivered a speech so full of points, that it is quite impossible to continue the debate without devoting attention to them. Mr Clark expressed some regret that steps had not been taken by the Imperial authorities, when the constitutions of the colonies were first given to them, to prevent by legislation the occurrence of such difficulties as those which now exist. Now, I think it would have been a great mistake had such steps been taken by the Imperial Legislature. I think that the wisdom of the mother country, in dealing with her colonies, has always been shown by leaving them as free as possible to follow their own inclinations, and to work out their own destinies. Any dictation, even although it had been at the very commencement of our autonomy would not, I am afraid, have led to the end desired; and I think it would have been a mistake, from every point of view, had anything been done in the earlier stage of the history of these colonies to lessen the development of that individuality which, after all, goes to make the strength of a colony. I take it, that, consistent with union for those purposes on which union is necessary for the good of all, the least possible

sacrifice there is of individuality, the better it will be for each of the colonies and the better for the success of that union in which all the colonies are to be included. We want to see a union of strong colonies, each with its own traditions, each with its own local affections, each with its own distinctive features. I think that such a union, such a brotherhood of infinite diversity, would be much better than a consolidated unity.

I quite agree with Mr Clark in saying that we cannot copy the constitution of Canada. On the other hand, we should have considerable difficulty in following the example of the United States of America, because their Constitution is so far removed from anything which obtains under British rule. In the United States there is no such thing as responsibility of ministers to Parliament, and in this respect, I am sure, no member of this Conference would suggest that we should follow their example. (Mr Clark—I don't know about that.) Well, it would be so utterly different from any of those traditions which have enwrapped themselves around the growth of the British Constitution, that I do not think any dependency of the Crown—(Sir Henry Parkes—It would be another growth of that prized variety.) But I do not think that any colony or group of colonies under the British Crown could effect such a radical change—even supposing the change were desirable—which I think, most of us would agree, is not the case. (Mr Clark—Party government is

played out.) But party government obtains to the fullest extent in America. (Mr Deakin—Nowhere more so.)

What do we see in America? What is the counterpart in America of our popular Assemblies? Congress—which presents no analogy to our representative Assemblies save in the respect that representation in the House which is best known by that name is based on population. There are no Ministers responsible for the conduct of the business of Congress. The House of Representatives is split up into something like fifty committees, acting independently of each other, and the number of Bills submitted in the course of a session amounts to 7000. (Mr Clark—How many are passed?) A very small number of them. (Mr Clark—So much the better.) The chief characteristic of our British Constitution is that responsibility of Ministers to Parliament which has grown into it, and I think that the British Constitution being a gradual growth, and not a manufacture, is vastly superior to any Constitution drafted even as skilfully as was the American Constitution. The essence of the British Constitution is elasticity and development; whereas, the principle of the American Constitution is rigidity and finality. I think that in a young country like Australia any form of government should be as expansive as possible, so as to adapt itself to the constantly varying requirements of the future life of the colonies.

Any comparison of the American Constitution, as



a manufactured article, with the British Constitution as a gradual growth, leads one, I think irresistibly, to the conclusion, that in the formation of a constitution, growth is preferable to manufacture. The very points on which the framers of the American Constitution prided themselves, those forms which they themselves invented, are the very parts of their system of government which have proved to be of doubtful utility, while, on the contrary, those they adopted from England or from the constitutions of their individual states, have been found to be successful. And I think that our federation should be as far as possible a growth, and, as with all growths, anything like forcing is to be deprecated. As a rule, the slower the growth, the more gradual the development, the stronger is the product.

A good many members of the Conference, and a still larger section of the public, have complained of the very slow progress which has been made towards the consummation of Australian union. For my part, I have not been able to share in this view. I think that, considering all things, the colonies have been growing together very well indeed. It seems to me that the manner in which the colonies have been federating in detail augurs very well indeed for the success of their federation in general. Take for example the question of Postal Union. Some years ago I had the honour of being the Minister controlling the Postal Department of South Australia, when an arrangement was entered

into with the sister colonies for united action with regard to the transmission of mails by the great sea route to and from Europe. In this respect we have already federated in detail. And so it was with regard to legislation in reference to debtors absconding over the Border, in which respect also the colonies succeeded in co-operating. Then again, in reference to the exclusion of alien races whose presence would, we think, be detrimental to our development, a Conference has been held, and I hope that effect will be given to the conclusions of that Conference by all the colonies that took part in it. There is another matter in which we can, I think, without much difficulty, exhibit the federal spirit in detail. I allude to the question of the navigation and riparian rights of the Murray waters. I trust that the colony of New South Wales will very soon meet the wishes of South Australia by consenting to a Conference on the subject between the three colonies concerned. For these and other reasons we have nothing to complain of so far as the existence of a federal spirit between the colonies is concerned, but what we want to do is to give this federal spirit "a local habitation and a name." And in doing that we are brought face to face with the question of what form of union is best adapted to our requirements.

It is generally recognised that states may become united either by means of a federal or by means of a national union. In a pure confederation, the Central Government is not brought into immediate relation

with the individual citizen. Its mandates are enforced through the local administrations, and any funds requisite for the transaction of the business of the Central Government are levied through the local Legislatures. On the other hand, in a national union, the Central Government is brought into immediate relation with every citizen. The first Congress in America was an example of pure confederation, and it was the dissatisfaction caused by the fact that the confederation had no immediate influence on the individual citizen, but acted only through the medium of the Government of each state, which led to the establishment of the present Constitution of the United States. That is neither a pure confederation nor is it a pure national union. It is a compromise between the two. As far as one House of Congress is concerned, the individual citizen is represented, and the representation is proportional to population; but in the Senate representation obtains only through the medium of the state. Each state is equally represented as a unit in the Senate, irrespective of its population. And such an arrangement possesses this advantage over a pure confederation, that the Central Government is brought into immediate relation with every individual citizen of the United States, and Federal taxes are levied direct without the intervention of the local Legislatures. One of the great arguments in favour of the change of constitution was the impossibility of enforcing contributions towards the support of the Federal Army. It was

pointed out then that all the difference in the world lay between active resistance and non-compliance. When the states were joined merely by a confederation, all that a state had to do, if it did not wish to contribute, was not to actively resist but merely to neglect to comply with the demands of the central authority; but in the case of a national union disobedience demands active resistance, and it is so much easier for the Central Government to deal with a case of active resistance than to deal with a case of passive non-compliance.

Confederations of States, although they may be ample in time of peace, have uniformly proved to be utterly inadequate to the prosecution of a prolonged war. This was the cause that led to the breaking-up of the great Grecian Confederations; it was this which led to the failure of the American Confederation; but because this cause has been effective in preventing the success of confederations in the past, there is no reason why, under different conditions, a confederation should not be more successful in the future. I do not think there is any probability of a United Australia ever being engaged in a prolonged war — such a contingency is exceedingly remote — and, therefore, we must not necessarily conclude that the system of confederation will not be applicable to our requirements. I quite agree with Sir James Lee-Steere<sup>1</sup> that if the Federal Council—which is at present such a confederation

<sup>1</sup> Speaker of the Legislative Assembly in Western Australia.

as obtained in America before the present union—is to be superseded, it should be in the manner he advocates, namely, by development. I do not think we are likely to advance the cause of Union by breaking with the past. But for the Federal Council, I am sure this Conference could not have assembled with the prospects of success which I believe now await it. The Federal Council has done a great deal towards fostering the federal spirit, towards drawing the Colonies together, and I do trust, whatever the outcome of this Conference and of succeeding conventions may be, that in every respect the work of the Federal Council will be recognised, and that any union which may take its place will be as a development of and an improvement upon the Federal Council, and will not be in any way founded upon its ruins.

So much has been said on the subject of the Canadian Federation, that I feel it is hardly excusable for me to deal further with it, but there is one aspect which I should like to present to the Conference as regards the formation of what is known as the Dominion of Canada. What took place in Canada in 1867 has always been looked upon as a movement towards closer union, but I confess that, as far as I have read on the subject, it can not altogether bear such an interpretation. The action of Canada in 1867 was, in one respect, an act of disunion. The cause which led up to it was the dissatisfaction between Ontario and Quebec

—Upper and Lower Canada—with regard to the union which between the years 1841 and 1867 existed between them. In 1841, Upper and Lower Canada, which previously had enjoyed separate Parliaments, were united by an Imperial Act under one strong and coercive union. And the action of 1867, instead of drawing those two provinces into a closer union, was in reality an action of disruption. It was the union that chafed them; their complaint was not that of separation. They were already united in the closest possible bond, and it was this intimate union to which they objected, and from which they strove to free themselves. In 1867 two alternatives were proposed. One was for a general federation of the provinces of Canada, including Ontario and Quebec, together with Nova Scotia and New Brunswick, and such other colonies as chose to come into it. But there was an alternative scheme to the effect that, failing the adhesion of the other colonies to the federation, the separation of the previously United Canadas should be carried out at all hazards. During the very last year in which the United Parliament of Ontario and Quebec sat, an address was presented to the Queen, praying for what? A closer union? No! For centralisation? No! Praying for provincialism, praying for separate Governments, praying for a release from that bond of union which had chafed them and hindered their development.

I think nothing can be more foreign to our purpose



than the spirit which animated the Canadians between the years 1841 and 1867. They had found their union oppressive. The whole Government had become reduced to a deadlock. Between 1862 and 1864 there were no less than five changes of Ministries. The Government could not be continued. They wanted no closer union or more central Government, but provincial Legislatures to guard those local interests which they felt could not be properly dealt with by the central authority. Even in its present form the Dominion resembles a national union more than a federation and overshadows the Provinces to an extent which would not be acceptable to the people of these colonies. The case of Australasia, presents no parallel to Canada. In Canada the union was regarded as an absolute necessity, to assimilate the races and to counterbalance the continually increasing and preponderating influence of the United States. Here we have no such motives. Here we have no diverse populations speaking different languages. Here we desire to preserve the individuality of every province and every colony which at present forms the Australasian group. The coercion which was thought necessary in Canada in 1841 is here unnecessary. We have no fear of one another. We have no real jealousies, no racial distinctions. Therefore it is not necessary here where the community is homogeneous and adhesive, to resort to those bonds which, in Canada, were found necessary to counteract the thrust of divergent



elements. Fortunately for Canada, the minor scheme of 1867, which dealt only with the establishment of local Governments in Upper and Lower Canada, was not resorted to. By all manner of means the other provinces—Nova Scotia and New Brunswick, and eventually Prince Edward Island, and other provinces—were brought into the union. But it must be remembered that each of these provinces joined the union for some immediate and substantial benefit. Nova Scotia and New Brunswick were allowed the special advantage of levying duties on the export of wool and coal. They also had reason to believe they would be largely represented in the Senate of Canada. Twenty-four members were to be allowed to Quebec, twenty-four to Ontario, and twenty-four to the maritime provinces; but as a matter of fact Nova Scotia and New Brunswick now only possess a small amount of that representation. The other provinces joined the federation under strong dictates of self-interest. They had not all to surrender those individual and sovereign rights which the Colonies of Australia at present possess. As far as Prince Edward Island is concerned, she had no powers of autonomy at all. Her Executive consisted of a Governor whose Ministers were nominees. Prince Edward Island had everything to gain and nothing to lose by coming into federation. Instead of losing liberties, she gained some share of autonomy. In addition to that, a powerful reason existed for the entrance of the island into the confederation. A

difficulty had existed owing to the greater portion of the lands being in the hands of landlords, and settlers on the island found it difficult to make satisfactory terms with the owners. It was understood that under federation this difficulty was to be solved. Money was to be provided for the purchase of the land, and by this means the settlers were to be relieved from the difficulties under which they were labouring. Again, Canada had another strong reason for federation. She had long cast covetous eyes on the North-West province, and it was understood, if federation were effected, that that province would be handed over to her.

There are many features in connexion with Canada which it would be inexpedient for the Australasian Colonies to follow. Not only is there no equal representation of the states, as such, in either branch of the Dominion Parliament, but the Supreme Court in Canada is merely a superior court, and is subject itself to the higher powers of the Privy Council. So that, as has already been mentioned, the Supreme Court, instead of making justice final, as a matter of fact interposes another platform upon which the rich man can overcome the poor. Another objection to the system of Canada is that, although many of the local Legislatures have their franchise based on manhood—every man having the right to vote—no such rule obtains in the franchise for the Dominion Parliament. Again, the power of veto, exercised by the Central Government of Canada over Acts of the pro-

vincial Legislatures, has always been found to be irritating. Any Act passed by a provincial Legislature may be vetoed by the Central Government within the space of one year, and any Act passed by the Dominion of Canada is subject to veto by the Crown within two years. I do not think that when we have formed our Federation there ought to be so extensive a power of veto as that which obtains in the case of Canada. This power, if given at all, should be laid down within strict lines. In Canada, however, the veto extends over very debatable ground, and it is this latitude and uncertainty which render the exercise of the veto so obnoxious in its consequences. Where the lines are strict and well defined no one feels any hardship, but where doubt enters, at once difficulty and disaffection also appear. Then, in Canada, almost the whole of the revenues go to the Central Government, and have to be repaid in the form of subsidies to the local Legislatures. This, I think all will agree, is a most roundabout way of levying and disbursing the results of taxation.

A consideration of the federations which are recorded in history—of the federation, or compromise between the principles of confederation and national union in the United States, and the union which obtains in Canada under the name of federation—leads us to the conclusion that, in the framing of our Constitution, we can have no precedent to guide us. From the very first, we have presented to the world an unprecedented record and I think that, as our

past history has been without parallel, so our future history will be of a similar character. We must look to ourselves to draw out the lines upon which our great destiny is to be accomplished. We must take counsel of our own necessities, and not be blindly guided by any precedent, and I am sure that in this way only shall we arrive at the consummation of our desires. To blindly follow any pattern would be to court disaster; whereas to follow our own destiny, to trust that power which has hitherto led us to shape a successful course for us in the future, is no more than our past records justify us in doing. Above all things—whatever is the result of this Conference or of succeeding Conferences—I trust that nothing will be done to unduly sacrifice the individuality of the various colonies. Our individualities, our very limitations, are our strength. The attempt to impose uniformity would be disastrous. Our Australian concert is to be one not of unison, but of harmony, in which the diversities of the various parts blend together in forming the concord of the whole. Considering the federal spirit which has animated the colonies in the past, considering the strong public sentiment which is now springing up in favour of federation and its wonderful growth even within the last few weeks—viewing the progress we have already made toward union, bearing in mind the fact that all great forces tend towards union, I do not think we need have any misgiving of the result. We can securely look forward to the early consummation of Australian

union as a federation, not as a crushing consolidation. We have everything in our favour—the differences between us are small and temporary; the bonds of union are large and lasting—and, in common with other members of the Conference, I trust that this meeting will yield no barren fruit but will in future stand out as a preliminary step taken by the Australian Colonies towards bringing about the hope of their larger patriotism, a United Australia.

*Speech in the South Australian House of Assembly in moving for election of delegates to a National Australasian Convention.—June 26th 1890.*

THE Chief Secretary (Hon. Dr Cockburn), moved, amid cheers—"That this House concurs in the following resolutions adopted by the Australasian Federal Conference on February 13th last at Parliament House, Melbourne, and which have been laid before this Assembly, viz:—1. That in the opinion of this Conference the best interests and the present and future prosperity of the Australian Colonies will be promoted by an early union under the Crown; and, while fully recognising the valuable services of the members of the Convention of 1883 in founding the Federal Council, it declares its opinion that the seven years which have since elapsed have developed the national life of Australia in population, in wealth, in the discovery of resources, and in self-governing capacity to an extent which justifies the higher act, at all times contemplated, of the union of these colonies under one Legislative and Executive Government, on principles just to the several colonies. 2. That to the union of the Australian Colonies contemplated by the foregoing resolution the remoter

Australasian Colonies shall be entitled to admission at such times and on such conditions as may be hereafter agreed upon. 3. That the members of the Conference should take such steps as may be necessary to induce the Legislatures of their respective colonies to appoint, during the present year, delegates to a National Australasian Convention, empowered to consider and report upon an adequate scheme for a Federal Constitution. That five members be elected, by ballot, delegates to a National Australasian Convention, and be empowered to consider and report upon an adequate scheme for a Federal Constitution for the Australian Colonies, and that such members act with two members to be appointed by the Legislative Council. That the Constitution as adopted by the Convention, together with any documents relating to such Constitution, be submitted as soon as possible for the approval of the Parliament of this Province. That the foregoing resolutions be forwarded to the Legislative Council with a message desiring their concurrence therein, and requesting that the Legislative Council will appoint two of their members to represent this Province at the National Australasian Convention, to act with the members of this House who have been appointed to represent this Province at the said Convention."

Dr Cockburn said it was a great privilege at any time to be engaged in the service of one's country, but the privilege was enhanced when the country



was passing through any important change or crisis. A great responsibility rested on all members of Australasian Legislatures at present, because within the next few years, action would have been taken which would in a very great measure determine the future welfare of these colonies.

The history of the federation movement was coeval with the life of several of the colonies. The question was raised in New South Wales in 1853. A Conference on the subject was proposed by the Victorian Government in 1856. At various other times the question had engaged the attention of public men in the colonies. A special interest in the matter dated from the Conference of 1881, which was attended by the late Sir William Morgan and the late Hon. Charles Mann, as the representatives of South Australia. At that Conference and at the succeeding Conference held in 1883—attended by the then premier Sir J. C. Bray and the then Attorney-General Sir J. W. Downer<sup>1</sup>—resolutions were arrived at to the effect that the time had not come for the establishment of a Federal Constitution with an Australian Federal Parliament, but that the time had come when a number of matters of much concern to all the colonies might be dealt with more effectively by some federal authority than by the colonies separately. That was considered the utmost limit to which the colonies could then go.

As a result of the Conference of 1883 the Federal

<sup>1</sup> Now a Senator.

Council Act was framed. It was difficult to understand the action of some hon. members, who, although then agreed that federation was desirable, opposed that measure at the time and persisted in still opposing it. Doubtless they had conscientious grounds for their attitude, but he had never been able to understand their position, because it appeared to him that when it was desirable that an object should be attained it was well to make use of any means that would assist in attaining it, and not to take exception to those means because they did not at once provide all that was desired. He had always supported the Federal Council Bill whether in or out of the Government. He supported it the first time he appeared on the hustings as a candidate for Parliament, and any Government who brought forward the Bill always had his consistent support in respect to it. But the Federal Council never had a fair trial. The mother colony refused to join, and although South Australia did at last join she did so in a half-hearted and temporary fashion.

It would be well to recapitulate what the province of the Federal Council was, and with what subjects it had power to deal. The Federal Council Act gave to the colonies sovereign powers which were previously vested in the Imperial Government. The legislative powers of the Council included—the relations of Australasia to the islands of the Pacific; prevention of the influx of criminals; fisheries in Australasian waters beyond territorial limits; the

service of civil process of the Courts of any colony within Her Majesty's possessions in Australasia out of the jurisdiction of the colony in which it was issued ; the enforcement of judgment of Courts of Law of any colony beyond the limits of the colony ; and so on ; and such of the following matters as might be referred to the Federal Council by the Legislatures of any two or more colonies :—General defences, quarantine, patents of invention and discovery, copyright, bills of exchange and promissory-notes, uniformity of weights and measures, recognition in other colonies of any marriage or divorce duly solemnised or decreed in any colony, naturalisation of aliens, status of Corporations and Joint-stock Companies in other colonies than that in which they had been constituted, and any other matter of general Australasian interest with respect to which the Legislatures of the several colonies could legislate within their own limits, and as to which it was deemed desirable that there should be a law of general application ; provided that in such cases the Acts of the Council should extend only to the colonies by whose Legislatures the matter should have been so referred to it, and such other colonies as might afterwards adopt the same.

Those powers were of the greatest importance to the colonies, and he was surprised that the Council was not willingly and eagerly taken advantage of by the whole of Australasia. The Federal Council had no executive authority. It would have been better if it had had the power to

enforce its decisions. But it was never from the outset intended that the Federal Council should be a final stage, but a stepping-stone to further federation. This was evidenced at the meeting of the Council in 1889, when a resolution to increase the representation of the colonies in the Council was unanimously adopted. By that resolution the Federal Council showed that it was alive to the requirements of the colonies, and felt itself to be nothing more than a kind of half-way house to federation. Whether the Federal Council survived or not it had in its time served a useful purpose in paving the way for union. Without the Federal Council the colonies would not now occupy the vantage ground which they had attained in regard to the question of Australian federation.

So the matter stood until last year, when General Bevan Edwards reported on the defences of the colonies. General Edwards rose to the occasion. His visit might have been made to appear either a trivial or an important matter. The General was the man for the occasion, and forcibly pointed out the need of federation for purposes of defence. He came at an opportune time and grasped the skirts of happy chance. Since that time the question of federation had been more prominently before the colonies. Sir Henry Parkes took advantage of the opportunity which General Edwards' report afforded, and suggested a conference. That idea was taken up, and there was a general feeling that the members of the

Federal Council should constitute the Conference. That also was decided on, and the Conference which met in Melbourne early in the year consisted of the members of the Federal Council and two delegates from New South Wales and New Zealand. The resolutions agreed upon at that Conference were now before hon. members. Of course there was no question as to the attitude of the House. No voice would be raised in Parliament against the resolutions. They had already been carried in Victoria, but they were still before the Legislature of New South Wales, where a somewhat protracted debate was taking place.

The mere fact of adopting the resolutions would not pledge the House irrevocably. They only affirmed the general proposition that the time had arrived for a union of the Australasian Colonies under the Crown. The resolutions did not bind them to accept any form of constitution that might be proposed. The Convention to be held would have to submit the constitution it framed to the different branches of Legislature in all the colonies, and to the people. The endorsement of the Constitution by the electors might very well be invited in a direct manner. This should take place not through the usual method of a general election, a direct appeal quite apart from the personnel of the Parliament should be made to the electors of the country as to whether or not they were in favour of any constitution prepared for them. Something in the form of the referen-

dum should be provided on an occasion of such vital importance.

It was not advisable to go deeply into details. It would be a great mistake if delegates to the Conference should announce their opinions precisely. No one individual could expect to have his own way entirely, though each should call the attention of the Conference to what he thought was the right course to pursue. They must all be ready to give and take. On the other hand some degree of discussion was necessary, because, although public men might from time to time formulate their views on these matters, unless an intelligent public opinion existed, the actions of the leaders of public opinion would be in vain.

The colonies had already federated in some matters of detail. In postal matters they were united. Only the other day delegates from the colonies met in Adelaide in a most friendly spirit, and discussed federal action in reference to postal and telegraph matters, and joint action was agreed upon in regard to cable rates. Quite apart from their Governments, the people of the colonies had drawn together of late years. Every trades organisation was in effect an Association for the promotion of federation.

In regard to the general aspect of federation there were two forms of union to be considered—federal and legislative. They should carefully weigh what might be said for and against each form of union. In some Federal Unions the central authority was brought

into relation only with the local States, but in the case of a Legislative Union, on the other hand, that authority was at once brought to bear on the individual citizens. The first American Union exercised its influence only through the medium of the States, and had no authority whatever over the individual citizen. The present Australian Federal Council was a Federal Union of this nature. In the past such Federal Unions had always proved a failure, and always from the same cause, namely, that they had uniformly proved unequal to the requirements of a prolonged war. With regard to the legislative form of union, they had an example in the case of Great Britain and Ireland. Scotland and Ireland once had their own Parliaments, but owing to a tendency to centralisation these were abolished, and the whole legislative power was vested in a Central Legislature. Most cases of union had however been more or less of a mixed form, neither pure federal nor legislative, and it was from such constitutions that they would derive most valuable information in coming to a conclusion as to the best form to be adopted for Australia. In Canada and in the United States the form of government partook both of a federal and legislative character, but there was a marked difference between the constitutions existing in those two countries. The Constitution of the United States leaned towards a federal and that of Canada towards a legislative union. The powers of the Central Government in Canada were much more extensive than in the United States. Every



piece of local legislation in Canada was subject to the veto of the central authority, but no such power existed in the United States. The will of the Dominion Parliament in Canada was supreme. That was a distinction of the utmost importance, and one which should be borne in mind in deciding upon any action that was to be taken. ("Do you suggest the Canadian form?") Certainly not. He considered that for Australia such a form of union would be disastrous. They should not unnecessarily sacrifice the individuality of the colonies. A number of strong individual colonies, co-operating for the good of all, was a much stronger combination than a uniform Legislative Union. There was another example of a mixed form of federation to be found in the Swiss Confederation, and the distinguishing characteristic of the Switzerland Union was that there was no party Government there. ("There is in the United States.") Yes, the States were the home of party Government, party feeling ran higher there than anywhere else. There was nothing of the kind in Switzerland. The feature of the Swiss federation which destroyed the possibility of party Government was that the executive was elected by the members of both Houses, and every member of both Houses was able to vote for his own views without being guided by party considerations.

They could learn from the examples of federation in other countries that they could not blindly follow any precedent. Australia had her own problems to

work out, and the whole of the history of Australia was without a precedent. The Australian federation would differ from others in one most important respect. In all other cases in which a union had been entered into by adjoining States it had been a union under compulsion, some external circumstances had driven the States together. Here the conditions were different. The colonies were mutually attracted to each other. There was no outside pressure whatever. In the United States all sorts of forces drove the States together. They had just passed through a disastrous war; commerce was destroyed; navigation was impeded in the rivers, and enemies surrounded them. In Australia no such position had to be considered. The colonies were all branches of one great parent trunk, and they enjoyed under the Crown a solid bond of union which the States did not possess at the time when they federated. When Canada entered into federation she feared that England might be drawn into the war with the United States, in which she also would have become involved, and she almost heard the enemy at her door. In the case of Canada there was not that mutual attraction which existed here. In the Legislature of that country every Act had to be read in two languages, because there were two races occupying respectively Upper and Lower Canada. In 1841 the Provinces of Canada were bound together by a legislative union to such an extent that the people protested against it. It was

not centralization but autonomy they desired. The year before the federation of 1867 was accomplished a prayer was addressed to the Queen praying for provincial Governments, and the movement, so far as Upper and Lower Canada were concerned, was one of disruption rather than otherwise. The House of Commons in Canada was constituted on the basis of population, and the Provinces were unequally represented in the Senate.

In Canada, appeals were permitted from the Supreme Court to the Privy Council. ("Would you agree to that?") He saw no necessity for it whatever. There was no reason why a Supreme Court of Australia should not be supreme within the limits of the Continent. The right to appeal to a higher tribunal was irritating, and simply offered an inducement for appeals. The power of veto vested in the Central Government in Canada had also proved obnoxious. The Central Government could veto any provincial legislation within a year, and the Imperial Government could veto any Act of the Dominion Parliament within two years.

In Australia the circumstances were very different from those in other countries where federation was adopted. There were railways between the capitals of most of the colonies, whereas in Canada at the time of the federation there was no means of reaching some parts of North America at one portion of the year, except by going round Cape Horn. In Australia the people were of an homogeneous nature, speaking

one language, being of one race, and with easy and rapid means of communication between colony and colony. The type of federation would be of the mixed sort. In at least one branch of the Legislature the smallest colony would be placed on an equal footing with the largest. As far as possible, the powers of the local Legislatures should be retained. What was wanted was union, but not unity, and they would have to be very careful to hold the balance between the central power, and the local Governments. The genius of the British race did not at present lean towards centralization but towards autonomy.

He had mentioned that the movement for federation was coeval with the life of some of the colonies, the subject having been first mooted in 1853 by New South Wales, whereas Queensland was not separated from New South Wales until 1859. The fact appeared somewhat in the nature of a paradox, for it might be regarded as a contradiction for an agitation for union to be going on at the same time as an agitation for further subdivision. The coincidence of these movements afforded an example of the ordinary process of evolution, in which there were two apparently contrary tendencies constantly at work making respectively for integration and for separation. The nice adjustment of these forces constituted the whole problem of federation. As an illustration of this federal equilibrium, he would quote the following from Adams' Swiss Confederation.

“ Upon public occasions where all the cantons are represented, such as the Federal Rifle Meeting, the gala day of an Exhibition, or the inauguration of a public holiday, a stranger witnessing the unanimity of feeling, the cordial greetings, the affectionate manner in which each orator addresses his ‘dear friends’ and ‘dear confederates’ would be led to believe that no more united country than Switzerland could exist in the world. When, however, such festive gatherings as above are mentioned are over, when the confederates have drunk their last glass together, when they had bid adieu to each other, and have returned home each to his canton, the old jealousy breaks out, the interests of the particular canton become once more predominant, and the national sentiment of yesterday is no longer apparent. We do not, in these remarks, at all pretend to argue that the mutual jealousy of cantons is hurtful. On the contrary, it may be affirmed that the feeling infuses additional life and vigour into the component parts, and encourages a healthy emulation and rivalry amongst them, so that Switzerland is materially stronger as a Confederation of cantons than if she were a centralized State. Still, it seems clear that the tendency must be towards the latter, and as a matter of fact, federal laws are gradually passed, causing many anomalies to disappear in the various cantons, their separate laws being abolished in order to give place to uniform legislation for the whole of Switzerland. Never-

theless, it is a fact that each of the two feelings exists in a very remarkable degree. There is a sturdy sentiment of cantonal rights, engendered especially by a long period of self-government, and there is also, when occasion requires, as manifested in patriotic gatherings at home, and in a firm attitude towards the outer world, that aggregate sentiment of nationality without which the Confederation would separate into its several parts and cease to exist as a whole."

These forces were not really antagonistic but complementary. They did not desire to stamp out the existing local patriotism. The attachment to a federated Australia must be of gradual growth. The man who felt no patriotism for the country he does know would have but little for a federated Australia, at present unknown. Professor Dicey, in "The Law of the Constitution," said:—

"A federal State requires for its formation two conditions. There must exist in the first place a body of countries, such as the cantons of Switzerland, the colonies of America, or the provinces of Canada, so closely connected by locality, by history, by race, or the like, as to be capable of bearing, in the eyes of their inhabitants, an impress of common nationality. It will, also, be generally found (if we appeal to experience) that lands which now form part of a federal State were at some state of their existence bound together by close alliance or by subjection to a common Sovereign. It were going further than facts

warrant to assert that this earlier connection is essential to the formation of a federal State. But it is certain where federation flourishes it is in general the slowly matured fruit of some earlier and looser connection. A second condition absolutely essential to the founding of a federal system is the existence of a very peculiar state of sentiment among the inhabitants of the countries which it is proposed to unite. They must desire union and must not desire unity."

Although a strong sentiment of union should exist, still on the other hand the question should not be approached from a sentimental but from a utilitarian point of view. A characteristic of the Anglo-Saxon was that he would not engage in any new departure unless he saw there was something to be gained by it, and any man having in his hands the interests and the fate of the country he represented would be a traitor to his trust if he were not animated to a large extent by utilitarian considerations. They would find that South Australia had much to gain by federation. Let them look at the geographical position. South Australia was bounded by two parallel lines running down the middle of the continent, and was in touch with every other colony. Running up between these lines there was the extensive water frontage of Spencer's Gulf. The natural gravitation of the trade of Central Australia would be towards the centre of the colony and towards the Gulf. In addition to the Barrier trade there was the Riverina trade, the Murray trade, and the trade from the south-western



portion of Queensland, which would find channels through South Australia.

He did not propose to deal at length with the question of a Customs Union, as that had been discussed at length on the previous day, and the House was looking for further information. They should be most careful and circumspect in what they were doing in that respect. They had by means of protection encouraged capitalists to invest in local manufactures, and should be careful not to break any covenant. But the more he looked at this question the more he inclined to the belief that although there might be here and there hardships, in the long run South Australia would be the greatest gainer by intercolonial free trade. In the matter of natural products, South Australia would be the granary and vineyard of Australia, but eventually the manufactures would gravitate towards the coal mines. In the long run both Victoria and South Australia would have to fear the competition of the manufactures of the mother colony of New South Wales on account of her rich deposits of coal.

Much stress had been laid upon the fact that Australia federated would have a voice among the nations of the earth. As far as defence was concerned, federation was a necessity. The silver sea in which Australia was set formed a strong wall of defence, and a great additional advantage would be derived from combining their Defence Forces. Under federation their foreign relations would be improved,

and a Federal Court of Appeal would be a great gain. As to such matters as coinage, quarantine, patents, and marriage laws, there could be no doubt of the benefit of union; but the public debts and railways would form debatable ground.

He would like to say one word with regard to the attitude of the Imperial Government. There was not a member of the house who would not be sorry to see federation lead to any lessening in our loyalty. They, however, could not shut their eyes to the fact that in one of the colonies at least a number of men were advocating federation on no other ground but that of separation. ("Very small number.") There was considerable feeling in that direction, and a certain section of the Press had taken the matter up. He thought the attitude of the mother country showed her disinterestedness, as she was willing to agree to any course that might be considered to the advantage of the colonies whatever the consequence might be. But in his opinion there was no room to fear that the existence of a Federal Government would be the means of in any way weakening the tie which at present existed with the old country. He thought the feeling of the house was, that when the colonies were federated they should constitute one of the brightest jewels in the British Crown.

The realisation of federation would mean a revolution in their present form of government. They were dealing with a stupendous problem. Apathy might mean delay, but misdirection meant disaster, and it

behoved them to devote themselves to their task in an earnest spirit of true patriotism. All party feeling and personal ambition would have to be laid aside—and they should endeavour in all humility to follow the footsteps of those men who in times past had with devoted patriotism laid down the lines of future national greatness. Of the future there need not be any fear—the power which had guided their destinies to their present state of prosperity would not forsake them, and above all they should remember that

“There’s a divinity that shapes our ends,  
Rough-hew them how we will.”

## CONVENTION IN SYDNEY

MARCH 1891

*Speech on the Motion of Sir Henry Parkes.*

THAT in order to establish and secure an enduring foundation for the structure of a federal government, the principles embodied in the resolutions following be agreed to :—

1. That the powers and privileges and territorial rights of the several existing colonies shall remain intact, except in respect to such surrenders as may be agreed upon as necessary and incidental to the power and authority of the National Federal Government.
2. That the trade and intercourse between the federated colonies, whether by means of land carriage or coastal navigation, shall be absolutely free.
3. That the power and authority to impose customs duties shall be exclusively lodged in the Federal Government and Parliament, subject to such disposal of the revenues thence derived as shall be agreed upon.
4. That the military and naval defence of Aus-

tralia shall be intrusted to federal forces, under one command.

Subject to these and other necessary provisions, this Convention approves of the framing of a federal constitution, which shall establish,—

1. A parliament, to consist of a senate and a house of representatives, the former consisting of an equal number of members from each province, to be elected by a system which shall provide for the retirement of one-third of the members every        years, so securing to the body itself a perpetual existence, combined with definite responsibility to the electors, the latter to be elected by the districts formed on a population basis, and to possess the sole power of originating and amending all bills appropriating revenue or imposing taxation.
2. A judiciary, consisting of a federal supreme court, which shall constitute a high court of appeal for Australia, under the direct authority of the Sovereign, whose decisions, as such, shall be final.
3. An executive, consisting of a governor-general and such persons as may from time to time be appointed as his advisers, such persons sitting in Parliament, and whose term of office shall depend upon their possessing the confidence of the house of representatives, expressed by the support of the majority.

I think we are all agreed upon one thing, and that is that the field of discussion is vast, and that every

inch of its ground is debatable. So far, hon. members who have spoken have, as Mr Dibbs<sup>1</sup> put it, been treading somewhat gingerly upon the fringe ; but I do not think we can justly say that the hon. member himself, or Sir James Lee-Steere, has abstained from going right into the heart of the territory. The Hon. Member, Mr Dibbs, certainly let some bomb-shells fall into this Convention, and I feel that it is rather to the disadvantage of those who follow him that they have to address a somewhat mutilated assembly. He fired three shells of the first magnitude in his speech. The first was that of the fiscal question ; the second, that of possible separation : and the third, the most dangerous of all, the question of the site of the capital of united Australia. It has been said that the first and third of these questions should not be dealt with by the Convention ; that they should be put aside altogether for the Federal Parliament to decide. There is a great deal to be said from that point of view ; but seeing that the Federal Parliament will have all its work cut out for it—a new body under new circumstances having to recommend its government to the whole of Australia—I think, as far as possible, we should make its path clear before it, and we should be prepared to take upon our shoulders some of its burdens, unless our motto is to be : “Once we are married the troubles begin.” As to the question whether or not this movement is going to lead to ultimate separation, I do not think we need

<sup>1</sup> Now the Hon. Sir George Dibbs, K.C.M.G.

occupy ourselves with that. We should trust to the great forces of evolution which have so far guided us. In spite of this question having been raised before, the authorities of the mother country have shown themselves anxious to assist any steps towards Australian union, no matter what the result may be. Even supposing that ultimately it may be found that the child can walk without the aid of the sheltering hand of the parent, that will in no way loosen our ties of loyalty and affection.

With regard to the capital question of the capital site, I do not think it is so much a question as to where the capital is to be as to where the capital is not to be. It is agreed on all sides by the authorities who have written on federation—and this, after all, is a matter in which we must trust to authorities to a great extent, because we have no experience of our own to guide us—that it is dangerous to have the capital of federated states in any city which is unduly powerful. I am inclined to think at present that the great capitals of the most populous colonies of Australia are rather out of the running on that account. There is also another aspect of the question to be considered. It has been found in the experience of America that it is necessary for the federal authority to have control of the territory in which the capital is situated, otherwise the federal government may be turned out of doors by a wave of popular feeling. I would therefore suggest to Mr Dibbs, that Sydney might very well become the capital, if he is



willing to give the federal authority a radius of ten miles from the head of Circular Quay. (Mr Dibbs—We will give you the Paramatta River!) However, I do think that, as far as possible, we ought to settle these matters, which are not only bomb-shells in this Convention, but are also matters which may seriously disturb the authority and influence of the Federal Parliament, which will require to have the goodwill of all at the commencement of its career.

It has been well said by Mr Thynne, Colonel Smith, and others, that we are not here to advocate the question of federation, that being regarded already as a settled subject. We are sent here simply to draft a constitution; and the desirableness of federation is our major premise. But the question of unification has been raised in more than one quarter. So that, although it is not necessary to argue in favour of federation as against continued separation, it may be necessary to argue for federation as against unification; because, between the two levels of separation and unification, there lies federation as an intermediate stage, which can be reached either by ascending from separation, as was the case in the United States, or by descending from unification as was the case in the Canadas; while in Switzerland we have had examples of both movements. In Switzerland there was a descent from unification, from the republic one and indivisible forced upon it by France, down to a loose confederation, and then an ascent again to a complete federation, at which point equilibrium has

been obtained. Although we have heard several able advocates and veteran statesmen urging unification, I do not think that view will recommend itself to the majority of the delegates.

Sir Samuel Griffith<sup>1</sup> very properly spoke in favour of that elasticity of constitution under which, although we may not notice a change from day to day, it is easy to recognise when we look back after a space of years that the constitution has undergone a change. Now, it is impossible, unfortunately, that this elasticity, which has so much to recommend it, and whose advantages were pointed out by Sir Samuel Griffith, can be retained to the fullest extent when we enter upon federation. (Sir Samuel Griffith—We can have elasticity in its working, although there may be rigidity in the powers!) The essence of federation is rigidity. (Sir Samuel Griffith—Only in certain respects.) There is rigidity as far as the constitution is concerned. (Sir Samuel Griffith—No, only so far as the powers are concerned!) It is a question of a written and rigid constitution as against an unwritten and elastic constitution. (Sir Samuel Griffith—No!) All our experience has been under an elastic constitution. Usage, no doubt, will to some extent modify even a written and rigid constitution; but I think Sir Samuel Griffith will agree with me that a written constitution is absolutely incompatible with that gradual change which takes place from day to

<sup>1</sup> The Right Hon. Sir Samuel Griffith, G.C.M.G., Chief Justice of Queensland.

day. (Sir Samuel Griffith—No; look at America!) America is the very case I have in view. America has had a rigid constitution which has practically remained unaltered for the last hundred years. (Mr Moore—There have been thirty-seven amendments!) There have been only four amendments in this century. Mr Inglis Clark is a good authority on America, and I am sure he will agree with me that out of sixteen amendments only four have been agreed to in this century. All the others may be said to be amendments which were embodied in the constitution at the outset. The very essence of federation is rigidity, and it is no use expecting that under a rigid and written constitution we can still preserve those advantages which we have reaped under an elastic constitution.

All our experience hitherto has been under the condition of parliamentary sovereignty. Parliament has been the supreme body. But when we embark on federation we throw parliamentary sovereignty overboard. Parliament is no longer supreme. Our parliaments at present are not only legislative, but constituent bodies. They have not only the power of legislation, but the power of amending their constitutions in any direction at will. That power must disappear on the abolition of parliamentary sovereignty. No parliament under a federation can be a constituent body. The legislatures in a federation are co-ordinate bodies—the sovereign power is split up, instead of being vested in one parliament.

In a Federation when parliamentary sovereignty

is dispensed with, it is necessary to bring into existence, in the place of the High Court of Parliament, a powerful judiciary which towers above all powers, legislative and executive, and becomes the sole arbiter and interpreter of the constitution. Therefore it is useless for us to hope that we can, at the same time, have the advantages of a federation and retain the advantages of that elasticity which has hitherto given birth to our greatest privileges. Even responsible government, which we have all learned to prize so much, has simply been a growth under the shelter of parliamentary sovereignty. We do not know that the responsibility of ministers to Parliament can exist under any other conditions. We have not seen it exist in the United States or in Switzerland, and we have no reason to suppose that it will be compatible with the conditions of federation here. I am inclined to think that it will not. I am inclined to think that our best course will be to follow, in this respect, the example of Switzerland, and have our ministers elected individually by parliament. I am all the more willing to recognise this because, quite apart from federation, this is a reform which for many years I have been in the habit of advocating even with our present parliaments.

The rigidity of a constitution leads to a strange result. When a constitution becomes, not theoretically, but practically immutable, it is apt also to become the object of a somewhat superstitious rever-

ence on the part of the people, which leads them to regard the constitution as something sacred in itself. From what Mr Deakin<sup>1</sup> said, I gathered that he regarded this as an advantage. He spoke of a government "strong as a fortress, and sacred as a shrine." I am not altogether able to agree with the hon. member there. I think that governments partake of the nature of utilitarian devices. As has been well put by an authority on constitutional law, constitutions are devices founded on expediency, and possess no intrinsic right of existence. So that, whatever the form of government may be—whether it is that of a separate state, or the intermediate stage of a federation, or whether it is on the highest level of all, that of unification—still I think we shall best serve the real object of government if we regard all these, not as ends in themselves, and therefore not entitled to idolatrous reverence but as strictly utilitarian institutions devised as a means towards the one object in view—that of good government, otherwise we may find that a rigid constitution will become one of the strongest engines of conservatism. One of our most difficult problems will be to reconcile that elasticity which is so necessary for the development of a constitution, with that rigidity which is recognised as being one of the characteristics of federation.

In your opening address, sir, you appealed to the members of this Convention to forget their local

<sup>1</sup> Now Attorney-General of the Commonwealth.

inclinations and to lose sight of the lines which divide them. While agreeing that to some extent this must be done, still, as federation is a compromise and essentially a bargain, between the rights of the State and the power of the Central Government, if we lose sight of those inclinations which form an element in the bargain, I am afraid we shall make rather a one-sided contract. It is not because we are dissatisfied with our past history, that we are seeking federation. On the contrary, it is because we are so proud of our progress, and love so much those colonies with which our progress has been associated, that we look to federation not to destroy, but to protect and shield, those institutions under which we have so far obtained our rights and privileges; and we look upon federation as a cover, a powerful cover, under which we can advance to a still greater development of our freedom. And, sir, we could see at once when the first crossing of swords took place between the two parties to the bargain—between the states-rights element and the element that makes for unification—we could see on which side the strength of the argument lay; and it will be here as it has been elsewhere. In America, the states-rights party won from the first all along the line; and even now, although in America several great factors have been making for unity, the states-rights party is predominant.

There are two causes in America which have had a great effect in cultivating among the Americans

an attachment to their central government. The first is the fact that there were only thirteen of the States of America that ever possessed sovereign powers; of the forty-two States of which the union is now composed, the vast majority never had any other attachment than to the central authority. They are the children of the union. They were, as it has been well said, born of the compact. The Civil War too had a great amalgamating influence. That party which, as the states rights party, had consistently been the exponents of liberty, found itself by a very strange irony of fate transferred into the position of upholders of slavery, and the centralising party, which, until then, had always been regarded as the party which tended to crush the liberties of the states, was enabled, through the condition of the country, to identify itself with the cause of freedom, and the discredit thus cast on the states-rights party contributed greatly towards the authority of the central power. But even now with all the advantages which the centralising power in America has enjoyed, the states-rights party is still the predominant party; and so it will be here.

Seeing that we are about to embark upon an altogether new experience, we must, above all things avoid carrying into our new territory any false analogies. As has been well pointed out by many speakers, there is no analogy whatever between the council of the states or Senate and an upper house. But although this has been well recognised, I cannot



altogether agree with some of the arguments which have been brought forward in support of the contention that the Senate should be given powers co-ordinate with those of the assembly which represents population. I quite agree this should be the case, but some of the arguments have, to my mind, been of a mistaken nature. It has been contended that the Senate should have authority co-ordinate with that of the popular assembly, in order to act as a sort of check against hasty legislation—something to stand in the way of the will of the people. In America no such view as this is held. Federation cannot exist, co-ordinate houses cannot exist and work together unless they both recognise and yield to the sovereignty of the people; and the attempt, either here or in any other free country, where the people have been accustomed to exercise their liberties, to set up a legislative chamber, by whatever name it is called, as something which is going to stand for any length of time, or even for a short time, in the way of the pronounced will of the people, cannot result in anything but in disaster.

There is no fear of disastrous bursts of popular opinion if popular opinion is allowed to flow easily and in broad channels, as should be the case in free communities. It is only if it is improperly resisted that the force of popular opinion becomes overwhelming, and sweeps away all before it. The underlying principle of the Constitution in America is, that both houses of congress must be equally subject

to properly expressed popular opinion, and that neither house should be surrounded by bulwarks for the purpose of enabling it to resist the deliberate will of the electors. For this reason, I think the Senate should be elected direct by the people, because there can be no question but that democracy has proved that the judgment of the whole is better than the judgment of any section of the people. I question very much whether it would be found possible to incorporate the practice of dissolving either house summarily with the principle of federation, and therefore I should like to see the House of Representatives also constructed on the same basis on which it is proposed to construct the Senate. Let both houses be renewed from time to time by the infusion every year, or every two years, of a certain proportion of new blood, for we recognise that the more often the electors are called upon to exercise their franchise, the more interest they will take in the machinery of government, and the better they will be able to make a wise choice of representatives.

With regard to the powers that are to be surrendered to the central authority, and the powers that are to be retained by the states, I do hope that no attempt will be made to define the latter, because we may be certain that the state will largely extend its sphere of operations. There is a constant and increasing tendency on the part of the state to undertake on behalf of the public all sorts of new duties, and we can hardly say

at present what branches of activity it may be necessary for the state governments to adopt. Many matters which are now entirely conducted by private enterprise, will, I believe, in accordance with the spirit of the time, before long be performed by state governments. Therefore, we must not attempt to define, because in our ignorance of what extension may take place in this direction by defining we shall limit.

An opinion has been generally expressed that the more uniform our laws are the better. This is only true to a certain extent. We have great problems to solve in this new country, and it is easier and safer to make an experiment on a small scale, than to undertake any reform at once on the large scale. Many have advocated that the criminal law for example should be uniform. (Mr Clark—I hope it will not!) I quite agree with my hon. friend, I also hope it will not; because I recognise that our criminal law is not by any means perfect, and that we have many improvements to make before we even lay hold of the rudimentary principles which should govern us in the treatment of criminals. (Mr Clark—Hear, hear!) At the present our prisons are reformatories in no sense of the word. In South Australia—I do not know what is the case elsewhere—we have a First Offenders Act, under which it is optional with the judge not to impose any sentence on an offender who for the first time comes before a court of justice. That, I think, is advisable, and that is an advance, an experimental advance, which can be made on a

small scale by an individual state; but it would be very difficult indeed to introduce a principle of that sort on a large scale in the first instance. I do not think that this is the place in which to air one's own particular views; but I look forward to further developments in this respect. I think that optional sentences are desirable. I mention this merely to show that it is very much to the advantage of evolution that as much ground as possible should be left available to the states in which to make experiments in legislation. In fact, we have in the colonies, through our several Governments, reaped many triumphs of individualism. Whatever may be the case with regard to persons or societies, the period of individualism with regard to states has not yet been passed, and under the competition and emulation which individuality in states will engender, we can look forward to laying up many stores of experience which eventually will be available for the whole of Australia, and ultimately for the whole of the human race.

I will not dwell upon the question of a standing army, because that has been already so excellently dealt with by Sir George Grey, Mr Dibbs, and others. I think that those speakers have convinced this Convention that we do not want to unduly foster the military spirit in these colonies.

I cannot avoid alluding to one sentence in your opening address, sir, in which you said that it was the experience of the world that confederations, as

distinguished from federations, had been disastrous. Now, as far as my reading of history has enabled me to form an opinion on the subject, I have come to the conclusion that the reason why confederations have been failures in the past, is because no confederation has been constructed on such lines as to be able to stand the test of a prolonged war. All the confederations of which we read in history—the Achaean League, that federation which shed a lustre upon the declining days of Greece, fell from no other cause; the first confederation in America fell from no other reason. (Mr Adye Douglas—The hon. member is wrong there!) It was in consequence of the war that it ceased to exist. (Mr Clark—It was because of the demands of trade and commerce!) No, it was because of the expenses incurred in the war. The congress of America had made itself liable in consequence of the war for an enormous amount of money. Its credit was at stake, and it tried to get money by levies upon the states; but it was not forthcoming. Its collapse was distinctly the result of the war.

I have always been a supporter of the first step taken towards Australian union. From the first, I gave allegiance to the Federal Council, which is a confederation, and I must confess that as time goes on I find it somewhat difficult to sever that allegiance. Of course we all recognise that the Federal Council did not go far enough. It is necessary to give it an executive, and to provide for the common

defence, and to have a supreme judiciary; but I cannot help thinking that if we take the elements which form the basis of the Federal Council, and if we add to them those powers which are needful we shall solve the problem which is at present facing us and which presents so much difficulty. We shall, by beginning low down on the few common points of agreement, be able gradually to build up a Federation under the power of reference which obtains in the Federal Council Bill, and shall thus be able to reconcile strength with elasticity. We shall in this manner obtain a solid foundation upon which we can commence to build a lasting fabric, because time is a necessity in all enduring structures. By proceeding thus we shall, I think, arrive at the union which we desire more surely than if we break altogether with the past. I am not now pleading for the Federal Council as it stands. It is inadequate in many respects. But if we give it an executive, the control of defence, and provide for a judiciary, and settle, at the same time, the fiscal question, and if we divide the chamber into two, and have a house of representatives as well as a council of states, we shall in the quickest and most direct manner accomplish our task and we can at the same time maintain that evolutionary principle which is distinctive of the Federal Council, under which it is enabled to grow in power by the gradual reference to it of matters agreed upon by the various legislatures.

We are all agreed on the question of union. There

is no obstacle whatever to the carrying out of our views. The only resistance which we shall encounter is that which may be due to our own momentum, and this resistance increases in proportion to the velocity with which we travel. If we build gradually and give time for endurance, we shall find nothing like the difficulties which will present themselves if we attempt at once to launch a definite, rigid constitution, which we expect to last for many years, practically without change, or with change in only small degrees.

All our paths converge towards union ; but at present our steps lie in diverse and varied territory. Our eyes are fixed on the same point, but at the same time we must give heed to the difficulties which lie in our path, otherwise we shall lose ourselves in the entanglements and the pitfalls at our feet. I think we shall do well if we can, at this last moment, recognise the work that has already been accomplished. The Constitution of the United States which we all admire so much, was not obtained by any sudden flight, although it was clearly seen that the powers of the congress were inadequate, still that body was not ignored. It had a voice in arranging the convention which framed the Constitution. The resolutions carried at the convention were submitted to the Congress, and the Congress took upon itself the duty of referring them to the States. America did not obtain her proud federal position by breaking with the past, and I think we should be careful in breaking with our past.



Does it not appear strange that we should seek for more complete federal powers when we have not yet fully utilised the powers which already form part of our constitution? Why should we not work the existing machinery up to its fullest capacity, and when we find it inadequate reinforce it by the addition of other machinery? I did not mean to refer to this point, but I have been led into stating my opinion on the Federal Council, because I feel that although confederations have not proved successful in the past, there is no reason why a modified confederation should not be successful in the future.

We are treading on altogether new ground; we have no experience to guide us. The conditions of older countries are no guide to the solution of those problems which will have to be solved on the young continent of Australia. As was pointed out by you, sir, Australia stands by itself. It is already defended, and defended in such a way that millions and millions of pounds might be expended without so good a result, by that mighty moat which was placed round it at the dawn of creation, and it has therefore nothing to fear from those causes which, in past history, have proved so fatal to confederations. I cannot help thinking that after this discussion, when we deal with details in Committee, we shall find that if we settle the fiscal question and give those additional powers which I have indicated to the Federal Council, we shall have solved as much of the problem as it is possible for us at present to solve.

The difference between the tone which pervades this Convention and that which pervaded the conference in Melbourne last year is apparent to all. Many subjects then brought forward as essential to federation have now been recognised as subjects with which the federal authority should not deal. Our common ground is becoming more and more limited, and we shall find, as it becomes limited, the advantage of not ignoring the foundation already laid, and we shall discover that by meeting round the table we can get over the difficulties and misunderstandings which attached to that earlier form of confederation. It has been said that federation will only take root in the soil when the ground here has been prepared by a looser bond. Now, sir, the ground has already been prepared by a looser bond. We have recognised the inadequacy of that bond. Let us recognise the present requirements; let us build upon a sure foundation; and, step by step, let us attempt to avoid, as far as possible, the rigidity which attaches itself to federations elsewhere and which is so fatal to evolution; and thus I think we may hope to see, without let, without obstacle, the gradual development and rearing of a structure which we shall contemplate with pride from the commencement, and which will prove itself to be of an enduring nature.

*Speech in moving the Amendment in favour of "One Man One Vote."*

I THINK there are many matters which ought to be left to the states. On the other hand, there are certain definite lines dealing with vital principles which should be laid down as part of the constitution. Therefore I move to add the words: "But no property qualification shall be necessary for electors of the house of representatives, and each elector shall have a vote for one electoral district only."

I think this necessarily follows the principle already affirmed that the house of representatives is to be chosen by the people of the several states. I imagine that "the people of the several states" means without any restriction as to class interests.

I cannot agree with those who contend that the proposal that manhood suffrage should find a place in this constitution is in advance of the times. I think that those who hold other views are behind the times, and should come up to the line upon which the colony of South Australia at present stands. It appears to me that we should make a great mistake if we allowed either the first election to the federal parliament, or any subsequent election, to take place upon any other basis. I take it that our Government is to be of the people, and that the house of representatives is to be of the people; and that being so, the house should be chosen by the people. To pro-

vide otherwise would be a contradiction in terms which would not be a credit to this Convention. The possessors of other constitutions have had to fight for their freedom. The freedom of the commonwealth of Australia should be simultaneous with its birth; it should be freeborn.

I think that the greatest diversity should be left to the state legislatures in everything except things essential. With the exception of the question of one man one vote I would leave all the remainder to the realm of diversities. I agree that it would be a mistake to cramp the individuality of the different states by passing a general law arranging the franchise in every detail.

Just one word with regard to the statement that any one who advocates that manhood suffrage and the one man one vote principle should find a place in this constitution is standing in the way of early federation. I maintain that the reverse is the case. Unless this principle is established, those colonies which already possess a liberal franchise will have to take very serious thought before they surrender their liberties and make a retrograde step. It is a well-known saying that in democracy there is no step backward.

The amendment signifies much in principle, and gives something in practice, and to ask those who for many years have enjoyed the principle of one man one vote to delegate any portion of the functions they now exercise to a body which is not founded on so

wide a basis, would be to ask them to make an unreasonable surrender. Instead of my proposal standing in the way of federation, I am inclined to think that the obstruction is in the other direction. These communities are progressive, and they readily advance ; but it is very difficult for them to go back, and I do not think they ought to be asked to go back. I should be sorry to see any colony which possessed these privileges surrender them in any respect whatever. On the other hand, I should be very glad to see the backward colonies step up and take their places in the rank of freedom, and this I believe they are prepared readily to do. I consider that those who are advocating the insertion of this fundamental principle of democracy in our constitution are smoothing the way to federation, and are by no means placing obstacles in the path.

It seems to me that the proper time to lay the foundation is before you erect the fabric, and no effort should be spared to make that foundation firm and secure. As for the statement that our only aim is to bring the federation into existence, I think our endeavour should also be to endow it with such a constitution as shall secure for it a healthy life.

*Speech on an amendment conferring on the Senate  
Power to amend money bills.*

I SUPPORT the amendment, to the effect that the Senate shall have equal powers as regards money

bills with the house of representatives. I think the framers of the clause as it stands find themselves in a dilemma. The clause as it stands either implies that the houses are not to have co-ordinate powers, that is to say, that the senate, from the first, is to be placed in a position of distinct inferiority to the house of representatives; or if, in an indirect manner it confers those powers to the senate which it appears to take away from it, it is a flimsy texture of words, and a mass of ambiguity, which can form no proper foundation for a lasting constitution.

If the important powers of veto in detail of money bills are taken away from the senate, then a blow is struck at the very root of the principle of federation, because the underlying principle of federation is that there should be two houses with co-ordinate powers—one to represent the population, and the other to represent the states.

We know that the tendency is always towards the centre, that the central authority constitutes a vortex which draws power to itself. Therefore, all the buttresses and all the ties should be the other way, to enable the states to withstand the destruction of their powers by such absorption. The whole history of federation in America, whether it be the United States or Canada, has proved that the tendency is towards centralization, and away from that local government which is inseparable from freedom.

I have heard it said that those who advocate state rights are taking a conservative view of the question.

I should like to know since what time have centralization and democracy been associated? Those who advocate state rights advocate local government, under whose shadow alone democracy can exist. There is nothing in common between centralization and democracy, and if you handicap the house which is specially erected to preserve state rights, what is there to prevent the establishment, in this huge island of Australia, of a strong central government which will be local only to one portion, and as far as the rest of the continent is concerned will be distant and central? I maintain that a centralized government is inseparably associated with tyranny, arising either from ignorance or design—frequently from ignorance—because a central and distant government can never properly appreciate the local conditions for which it is to legislate.

I am surprised that anyone in this Convention should for one moment say that to strengthen in every way the rights of the states—to protect in every way the local institutions—is the conservative mission. The whole history of federation has proved it is otherwise. It was in the name of state rights, when the question of the Constitution of America was being discussed, that the most fervent appeals to liberty that ever stirred the human breast were made, and those opposed to state rights were the conservatives, the monarchists of that time. The strongest upholders of state rights from time to time have been those in favour of government by the



people, and it is only when state rights are properly guarded and local government is secured, that it is possible to have government by the people.

Government at a central and distant point can never be government by the people, and may be just as crushing a tyranny under republican or commonwealth forms as under the most absolute monarchy. I do hope that hon. members will not allow themselves to be hoodwinked in this matter. It seems that the overwhelming majority in favour of those state rights that are essential to federation, which we had at the commencement of this discussion, has dwindled away. I maintain that unless the state rights are in every way maintained—unless buttresses are placed to enable them to stand up against the constant drawing towards centralization—no federation can ever take root in Australia. It will not be a federation at all. It will be from the very start a centralization, a unification, which, instead of being a guardian of the liberty of the people, will be its most distinct tyrant, and eventually will overcome it. I do hope that we shall find that those who took a clear view at the commencement of our meetings have not been seduced from the opinions they then held, and that, as at the commencement of the debate, there will be a majority to vote with the amendment proposed by Mr Baker.<sup>1</sup>

The hon. member who last spoke asked if I would trust such large powers to a senate not directly

<sup>1</sup> Now Sir Richard Baker, K.C.M.G., President of the Senate.

representative of the people. I repeat, in reply to that, the old argument which has been used over and over again—that there is no reason whatever why the senate should not be made just as representative of the people as the house of representatives. As against the flaw which the hon. gentleman has detected in the senate, I point out the flaw which exists in the house of representatives, and I would ask him, would he agree to intrust the guardianship of freedom to a house elected by plural votes? Is not that as fatal a flaw in regard to the house of representatives as is the other in regard to the senate? It is far worse.

I consider that the whole question was summed up at the conference at Melbourne last year by Sir John Hall when he said that democracy demands that the government should be conducted within sight and hearing of the people. Surely the hon. gentleman will not attempt to say—surely the English language was never meant to be so twisted as to imply that centralization can in any way be compatible with democracy or with the power of the people! (Mr Deakin—Gambetta!) Local freedom and government by the people are inseparable. (Mr Deakin—Hear, hear!) Surely the hon. member does not mean for a moment to assert to the contrary!

A very ingenious argument—an argument which I foresaw at an early stage of the debate and partly anticipated then—was raised by the hon. member in regard to the War of Secession. I was speaking

of the old parties—the party which was headed by centralizers such as Hamilton, and the party, led by Jefferson, for local government or state rights. After a time, as I mentioned in a former debate, the party questions got confused, and by nothing so much as the War of Secession, because then, very strangely, that party which had always made for liberty and state rights claimed, by a curious irony of fate, as a part of their right under the claim of state rights, to establish and maintain slavery. The whole issue has been traversed and destroyed by that miserable war in which for once the states rights men happened to be wrong; and, although they were the exponents of freedom from the very commencement of the Constitution, they set themselves against the very essence of freedom and personal liberty. (Mr Clark—That version will stand correction yet!) (Mr M'Millan<sup>1</sup>—There is another view!) (Mr Deakin—Quite another view!) Well, history appears to be capable of very different interpretations. However, I think nothing is clearer than that the parties destroyed themselves over that business, and nothing which has occurred since can be traced to the old parties.

There is no doubt that this confusion of thought in America, this destruction of the states rights party by allowing themselves to be besmirched with the infamy of slavery, has been fraught with very disastrous results

<sup>1</sup> Now Sir William M'Millan, K.C.M.G., Member of the House of Representatives.

to the Constitution of the United States as a government by the people. What with the constantly absorbing power of the central government taking away from their powers on the one side, and what with the growth of municipal powers on the other, the area of action for the states governments has become extremely limited—has become so limited that we can no longer look to America as the field in which the problems of the future are to be worked out. The state parliaments in America meet as a rule only once in two years. I maintain that the great function that Australia has to perform among nations is to work out the novel social and industrial problems with which we find ourselves face to face. That can only be done with all the prestige which a government can secure. It can only be done—and I know my hon. friend agrees with me in this, by means of local governments. It cannot be done by central authority, it can only be done in experimental plots. That is the reason why I tremble at the thought of the prestige of the state governments being sapped, because it is necessary that they should have all possible prestige in order that their authority may be adequate to the task of working out these problems. I am afraid if from the first you handicap states rights by removing those buttresses which are necessary to maintain them, there will be but one declivity from the present local governments down to centralization. I can see nothing to avert this tendency but states rights,

which, all those who believe in the government of the people by the people, should to the very utmost of their power uphold. (Sir Samuel Griffith—What are the buttresses?) You propose to take away co-ordinate powers of the Senate. (Sir Samuel Griffith—As to what?) As to money bills. Except as to the introduction of measures the two houses have co-ordinate powers in the two great federations of the world.

What is to be the position of the central government? It is, first of all, to have the collection of £8,000,000 of custom duties, and to have the right of imposing any other taxation. We all know that the tendency of all governments is to augment their own importance and to act up to the full extent of their authority. We give the federal parliament all the money and we give them powers which are stupendous. Under the heading of military and naval defence of the commonwealth, they can do almost everything. They can make roads; they can build railways; they can lay submarine cables; they can erect enormous public works. You give them the power under that one heading of spending nearly the whole of the money. (Sir Samuel Griffith—What about the buttresses?) Unless we give full power to the senate to veto appropriations in detail, and unless we give them that power without the slightest ambiguity, then we remove the only buttress which upholds state rights.

At the commencement of my remarks I said that

those who framed this clause were in a dilemma. In America the constitution was not based on ambiguity. The fathers there who earned for themselves credit for all time, saw distinctly what they were aiming at, and then expressed their thoughts in the most nervous English possible, without the slightest trace of ambiguity. This clause is, I repeat, ambiguously expressed, and has been interpreted by some as practically giving to the senate the power of veto in detail, and by others as depriving the senate of that power. In the latter case, it takes away the only safeguard which the states have to prevent this machinery, which is to be started under the name of federation, from becoming a unification of the whole of Australia; a government so central and so distant from many parts of Australia, that I maintain it will be inconsistent with the continuance of our local governments, and especially with the maintenance of our separate states as experimental plots in which we can work out the problems of the future, and by means of which the new world may have the opportunity of redressing the wrongs of the old. I do hope that the state rights party will not prove themselves to be of such a character that after a few days they can be seduced from the views which they so rightly held at the commencement of our proceedings, and which are strengthened by precedents gathered from every federation which has stood the test of time.

*Speech in favour of the Referendum for Amendment of  
the Constitution.*

I DO most heartily agree with what has been said with regard to conventions, which I think are altogether an error in theory, and useless in practice. They were proposed in America as a barrier against the results of popular opinion. Those who advocated and established conventions meant them to be a direct check on the popular will. On any question so vital as the amendment of the constitution the people have a right to be consulted directly, without the medium of any conventions. In the election of conventions the issue is obscured by personal considerations, and people pronounce a decision quite apart from that which is required of them. I suppose it is generally admitted—I should be surprised if any objection were taken to the proposal—that before this constitution becomes law it will be referred to the people themselves direct. I should like to know if any hon. member of the Convention holds a different opinion? (Mr Gillies—Certainly, dozens do!) (Sir Samuel Griffith—I do, for one; I think it is absolutely impossible!) I am surprised. This is such an alteration of the present constitutions that it amounts practically to a revolution, and surely in a case of this sort, where there is such a complete departure from the conditions under which the people are at present governed, they are entitled to speak directly, to ex-



press their will through their own votes, and not to have to delegate their power of voting to any one else.

I maintain that whatever the opinion of some hon. members may be now, they will find that when they propose this constitution in their parliaments and to their people, the people will insist on this right. I am inclined to think that, just as they will insist on this right in the establishment of the constitution, they will also do so in regard to any alteration of the constitution. What possible objection can there be to referring the issue directly to the people? There can be no objection unless we are afraid of the verdict of the people. (Sir Samuel Griffith—Why should the people not make laws direct?) (Mr Donaldson—What is the use of parliament at all?) In America the conventions were established as a check on the popular will, and democracy has ridden right over them. You cannot stop the current, and it is well not to attempt to divert it. By making the people, either in approving of the constitution at its initiation, or in approving of any alteration, pronounce their opinion through any mediator, you confuse the issue. It is better to go direct to the people and ask them to say aye or nay; that is true government by the people. The doctrine of the wise man elected to the convention and exercising his judgment cannot altogether be depended on. The people will take care, no doubt, in most instances to know how he is going to vote before they elect him. But even if they could

do so in every instance it would be better not to interfere with the course of public opinion by diverting its direction. Anything that stands in the way of the popular will I take to be a misfortune. It can only act as a check which causes the waters to accumulate, and what should be a gentle and continuous flow becomes converted into an unmanageable torrent.

*Speech delivered as a candidate for election to the  
National Federal Convention, February 18th,  
1897, reprinted from the "Advertiser."*

THE Hon. Dr Cockburn, who was received with great applause, said that the work of construction was always interesting, while the task of nation-building was attended with intense fascination. For many years past he had been engaged in the study of the question of federation, and in the practical steps that had been taken towards its accomplishment. He had the honour of being one of the representatives of South Australia at the Melbourne Convention of 1890, and to his lot it fell to move in the House of Assembly the resolutions which led to the historical gathering of Australasian statesmen in Sydney in 1891. It was a pleasure to call to mind the fact that on that occasion the South Australian contingent was held on all sides to be second to none in practical knowledge and grasp of the subject. In conjunction with Sir George Grey, Mr Kingston, Mr Gordon, and a few others, he had played an active part in seeking to liberalise the provisions of the draft Bill, and though badly beaten on almost every division

they had now the satisfaction of witnessing the planks of the liberal minority become incorporated in the platform of the vast majority. Those who were then regarded as the forlorn hope of democracy were now entrenched in the citadel of public opinion. He well remembered when he moved an amendment to the effect that the principle of "one man one vote" should be incorporated in the draft Bill as the uniform federal franchise that the proposal was denounced as a fad, and was defeated by twenty-eight votes to nine. He ventured to think that there was little risk of any such proposal being stigmatised as a fad in the coming convention. On the contrary, he thought a large majority of the delegates would rise to the even higher level of "one adult one vote." It was instructive also to note the growth of public opinion with regard to the referendum, and with special satisfaction he alluded to this, as it was from the Strathalbyn platform that, as far as he was aware, this question was first brought under the notice of the South Australian electors. His proposal to remit the question of any changes of the constitution direct to the electors was defeated by nineteen votes to nine, but so rapidly had public opinion ripened on the subject that he did not think one dissentient voice would now be raised to such a proposal. It seemed to him that after many failures the true source from which the stream of federation should flow had been discovered. It was now admitted that to the people themselves belonged the title-deeds

of the constitution under which all had to live—the statesmen of the day being mere temporary repositories—and that with the men and women electors of South Australia lay the right of both the initial and the final voice—the Alpha and the Omega—of so grave a constitutional change. Much ambiguity seemed to exist as to the real intent of federation. Some seemed to be under the impression that it necessarily implied the centralising of legislative authority and the depreciation of provincial Parliaments. If this were the case it would be worse than idle to advocate federation. The genius of the English-speaking people lay in their capacity for managing their own affairs. To the possession of this inborn talent for self-government was to be attributed the fact that a handful of Britons landed on any shore under heaven would establish a successful colony where regiments of other nations would fail. This unerring instinct of autonomy had reared the fabric of the British Empire, had incarnadined the map of the world, and had made the ocean itself nothing but the main thoroughfare of Greater Britain. To interfere unduly with the principle of local government would be to sap the springs of their national greatness. Local option, local government, autonomy, were the watchwords of the day, and the dearest pledges of their liberty. Ruthlessly torn from a nation's grasp these priceless boons might be, yielded sometimes perforce as the price of a bare existence; but the pages of history hitherto had no record of their wilful

abandonment, and the word of such surrender would never be spoken by an English tongue. Anything like an extensive centralisation of powers at present locally exercised was out of the question. The unit of government in the Australian colonies was already sufficiently large, larger than that of most European nations. Even now difficulties and mistakes frequently arose owing to distance from the seat of government and consequent want of an adequate knowledge of local conditions on the part of legislators. These difficulties would be enhanced tenfold by any attempt to govern in detail from a centre which would be 2,000 miles distant from some portions of the continent. A distant Government by ignorance or design always degenerated into a tyranny. Democracy demanded that government should be carried on within the sight and hearing of the people. Any form of union adopted must have as its object the safeguarding and not the supplanting of the right to local self-government. It must come not to destroy but to fulfil their autonomy. Fortunately this was just what federation was intended to effect; it was a device by which the individual existence of a State could be ensured without the surrender of sovereign powers of self-control. In its essence federation occupied a platform midway between separation and centralisation, and could be approached either by a step upwards from segregation, as in the case of the United States, or downwards from unity, as in the case of Upper

and Lower Canada. It was useless, however, to look to other countries to find precedents for them to follow. The case of Australia was unparalleled. They were already united under the British Crown, but they sought the establishment of an Australian authority to which they might look for the performance of certain actions which intimately concerned their common welfare, but were beyond the possibility of satisfactory performance by individual colonies. The only course was to take counsel of their own necessities and to be guided by their own requirements. They wanted in the first place to further perfect their provision for defence against invasion. Here they had a unique advantage. Canada had a frontier like a sieve. Australia was already defended beyond the dreams of any Treasurer's budget by that mighty moat placed around the continent at the dawn of creation. It still remained for them to arrange to place their naval and military lines under one command. They also should have inter-colonial free trade. Standing as they did in contact on one hand or the other with all the sister colonies, freedom of commerce to follow its natural channels must eventually prove a benefit. With the abolition of cut-throat railway tariffs the trade of Riverina, Broken Hill, and Queensland must by gravitation flow to the water-way of their central gulf. A final Federal Court of Appeal was required in order to remove that distant goal of judgment in pursuit of which the rich could always outstrip



and wear down the poor. A federal mint should be established for the coinage not only of gold but also of silver and baser metal. Nothing more surely would create a national sentiment than the jingle in the pocket of Australian coin. Above all, it was necessary to preserve their shores from contamination by alien races and to make provision for federal naturalisation. An authority should be erected with power to settle rival claims between colonies such as those of the disputed boundary and the riparian rights on the Murray. These were among the powers that could most effectively be exercised by Australia as a whole. Others might be enumerated if time permitted, or added to the list as occasion arose, always bearing in mind that a constitution should as far as possible be a growth and not a manufacture, and that the slower the growth the more durable the product; also that a federation, like any other form of evolution, would do well to follow the beneficial course of being born small and growing afterwards. He was one of those individuals who, from considerations such as these, had always supported the Federal Council, and he was still of opinion that it would be well to utilise that institution as a tabernacle wherein to lodge the federal spirit while the temple of completed federation was being built. There were certain safeguards to be observed as absolute necessities of federation. The Senate or Council of States, in which all the colonies, large or small, had

equal representation, must have powers co-ordinate with and in no way inferior to the House of Representatives in which the representation was based upon population. Doubtless majorities should and would rule, but there was every reason why a majority of the people in South Australia should not be overruled by a majority of the people in New South Wales or Victoria. A uniform federal franchise should be framed for both Houses of the Federal Parliament on the principle of one adult one vote. Both should be equally representative and based on the same liberal franchise. There was no analogy between "the Senate or Council of States" and the existing Upper Chambers of the various colonies. The Federal Parliament, to which would be delegated some of the functions now exercised by the Parliament of South Australia, should have an equally high sanction, and by no means should they mingle the clear crystal cup of their democratic franchise with the muddy pool of plural, proxy, or property votes. Payment of members for both Houses must be insisted upon. To the federal authority should be entrusted nothing but enumerated powers. The provincial Parliaments must hold themselves free to grapple with the problems presented by the unforeseen conditions of a new country, otherwise they might find themselves cut off in the future from beneficial though novel legislation similar in character to that which established the butter bonus, the produce depot, and the State

Bank. There should be no power of veto by the federal authority other than the federal judiciary on Acts or alterations of the constitution of the provincial legislatures. The constitution should be definite and liable to no ambiguity of construction. The Draft Bill as passed by the Convention of 1891 was open to this objection in at least three particulars, viz., the relative powers of the two federal houses as to Money Bills, the control of railway tariffs, and the functions of the Governor-General. Once they embarked upon federation all traditions as to parliamentary sovereignty would go by the board. There would be no longer the high court of Parliament. Even the federal houses would be dwarfed by the side of the federal judiciary, which would tower over all as the supreme arbiter. It was even open to doubt by the best authorities whether responsible government was compatible with federation and the Draft Bill on that account left unsettled the question whether or not ministers should be required to be members of Parliament. If the confidence of Parliament in ministers were not insisted upon it was necessary to scrutinise closely the powers of the Governor-General. That officer would be the nominee of the party in power at Westminster, and the federal ministers were to be nominated by him, so that the executive power of the commonwealth would be vested solely in the hands of the nominees of a nominee—an anachronism with a vengeance. It was necessary to take steps to

secure that either the Governor-General should have the confidence of the people, as was proposed by Sir George Grey, or that his advisers should be elected by the federal parliament, or better still both precautions should be adopted, as was the case in Switzerland. Some looked forward to federation as an engine of conservatism that would act as a check upon the growth of democracy. South Australia would have nothing to do with any scheme devised with such an object. Federation should be advocated, not because of fear of the people but out of fulness of trust in the people. The problem was stupendous ; they were dealing with elemental forces—apathy might mean delay, but misdirection spelt disaster. The task of selection of delegates involved grave responsibility. He trusted they would give their votes for his colleagues and himself. They would all have been candidates had they not been in the Government, and the fact that as a Government they enjoyed the confidence of the people should be placed to their credit. He earnestly appealed to the electors to vote for those alone who not only by their present addresses but by their past record had given proof of their adherence to the principle of government by the people. On this rock was founded the glorious free-born constitution of South Australia ; on a similar corner-stone must be erected the federal edifice. He entreated them not to entrust the rearing of the walls of the fabric to those who if they had

their will would undermine its foundations. Let them place the work in the hands of men sound in principle and skilful in execution, and then, and then only, might they boldly and without fear face the future.

NATIONAL AUSTRALIAN CONVENTION  
IN ADELAIDE, 1897

*Speech on propositions submitted by the Honourable  
Edmund Barton.*

IT affords me much surprise, and some degree of pain, to find that on the question as to what powers should be vested respectively in the two houses of the federal parliament, I am at variance with so many hon. members, with whom on almost every other political opinion I am in accord. I think our prosperity in the past has been due to one striking feature of our mode of government. We have prospered so far as individual colonies, and the total prosperity of Australia has been so great, because, up to the present, we have enjoyed the inestimable advantage of managing our own affairs ; we have the blessings of autonomy, and I am glad to see that Mr Barton,<sup>1</sup> in his resolutions, has emphasised this feature, and that our federal scheme is to enlarge the powers of self-government of the people of Australia, and to secure the rights which we at present enjoy by safeguarding us against all possible aggression. The point to be considered is

<sup>1</sup> Right Hon. Edmund Barton, Premier of the Commonwealth.

how are we best to secure the powers of self-government in a federation. How are we to guard against these powers being unduly encroached upon by the central authority. Because just so far as we give up powers out of our own hands to a federal authority, we abandon our autonomy and our control over those powers. What we want to guard against is giving up more than is necessary in the first instance, and against any subsequent encroachment by the federal authority upon our state governments ; and it is for this purpose only that I am among those who advocate that one house in the federal parliament should be specially charged with the duty of safeguarding state rights ; we want to protect local government against centralisation. Here there is real danger. I do not care how carefully we limit the enumeration of the powers we give to the federal authority, in the exercise of those powers there is a danger of encroachment, unless we take care from the outset to guard against it. Mr Reid<sup>1</sup> has said it is impossible to foresee the state interests of the future. What, then, is the wisest course to pursue? As among the unknown conditions of the future we cannot foresee what the state interests will be, the best plan to adopt is to erect in the constitution a sufficient guardian for the protection of those interests. There is danger in federation of encroachment upon state governments. May I be allowed in proof of this to quote a few sentences from a book written by an

<sup>1</sup> Right Hon. G. H. Reid, Member of the House of Representatives.



authority on the working of the powers under a federal government, Mr Watson of Canada, who was the librarian of the Ontario parliament. (Mr Deakin—A local parliament.) Yes, that is so, and therefore a man no doubt who understands the principles of local government. As we have no experience ourselves, we must be guided by authorities in these matters. This writer says:—

“It is the solemn duty of each of the British North American provinces keenly to watch and promptly repel any attempt, faint or forcible, which the federal government or a federal court might be disposed to make on the rights and privileges of the members of the confederation. The history of the federal idea on this continent is fraught with important warnings. Its great aim in the United States has been since the infancy of the constitution to become strong at the expense of the separate sovereignties which were the original sources of federal existence. The words federal authority and centralisation have become on the southern side of the frontier almost equivalent expressions. But states rights and provincial rights are the strongest bulwarks against despotism. In a federation diversity is freedom, uniformity is bondage.”

The danger consequently of possible federal encroachment is not a fanciful one; it is a real one. (Sir Edward Braddon<sup>1</sup>—Hear, hear). This author is

<sup>1</sup> Right Hon. Sir E. N. C. Braddon, K.C.M.G., Member of the House of Representatives.

a writer who has not only experience of Canada but of the whole Continent, as he is a neighbour of the great federation of the United States. (Mr Barton—Do these words not express the fears of a man who lives under a system in which there is no substantial power in the senate?) He had also the experience of the United States before him, which has two co-ordinate houses. And he deals with the possibility of the powers of the states being swallowed up in the central vortex. Power tends to beget power, and we have to be careful in giving power to know exactly what we are giving, and to see that those powers do not imply more than we intend. As we cannot foresee what the states interests are likely to be in the years to come, we need a permanent guardian of these states rights, in order that we may preserve our local self government, the richest prize we have inherited from our forefathers. We must have a strong house to guard against any possible federal encroachment on the rights of the States, because local government, self government, and government by the people are analogous terms. (Mr Isaacs<sup>1</sup>—You cannot have local government where the powers are confided to the federal government). States rights, home rule, and government by the people I look upon as synonymous. Centralisation is opposed to all three, and there can be no government by the people if the government is far distant from the people.

<sup>1</sup> Hon. I. A. Isaacs, Member of the House of Representatives.

This preservation of local government is the very spirit of federation as contrasted with unification, and what surprises me is this: That in so many speeches we have heard hon. members who hold similar views to those which I hold in general politics, speak in favour of unification and not of federation. I do not think we were ever sent here to consider unification; we were sent here to frame a federal form of government, and we want a federation that will preserve the rights of our local governments from start to finish. I learn with surprise that in this matter that I am at variance with those with whom I should like to be fighting shoulder to shoulder on the question of government by the people. The question of which are small states and which are large states should not be considered; small and large, rich and poor, in reference to the present condition of these states, are adjectives which should not be used. Our finances are those of the nursery compared with what those of the future will be, and our largest populations are only, as it were, a handful of people settled on our littoral.

I maintain that this question of state rights is a great principle, and I cannot think that we are to be driven apart by any pettifogging differences in regard to our present condition; but it is only in the nature of things that the representatives of the large colonies should not share the fear of the smaller colonies, because they are to have an overwhelming preponderance of representation in the

house of representatives. We must dispose of the relative terms "large" and "small," and think only of the great principle which is an essential, I think, to federation—that the two houses should have co-ordinate powers and should represent the people in two groups. One house should represent the people grouped as a whole, and the other should represent them as grouped in the states.

Of course majorities must rule, for there can otherwise be no sound government, but I do not think the majority in South Australia should be governed by the majority in Victoria, or in New South Wales. We find that even in America, where there is a powerful senate, the states may be gradually encroached upon and be reduced to comparative insignificance. The local parliaments have been so reduced in importance that the majority of them do not meet more frequently than once in two years. (Mr Deakin—Their constituents would not allow them. They put it in their constitution.) That means that they have been degraded. They are now looked down upon as shorn of their prestige. (Mr Higgins<sup>1</sup>—Owing to federal politics being brought into state politics.) I admit there is something in that. But that is not the whole question. There have been encroachments from time to time by the federal authority on the state parliaments. The fact that these encroachments may occur even in America, where there is a strong senate guarding

<sup>1</sup> Member of the House of Representatives.

the state rights, should be a warning to us to avoid any such possibility, because if anything occurred to sap the prestige and unduly diminish the importance of our state parliaments we should be irretrievable losers in the future; for I take it that it is to our local parliaments that we must look if we wish to perpetuate the rule by the majority and by the people. We want to provide against anything threatening the existence of the local parliaments.

Some of the speeches delivered by hon. gentlemen from the other colonies have struck me as being much more towards unification, and towards the abolition of local parliaments than I desired to hear. A good many have spoken as though they looked for the Union of Australia to be consummated by the destruction of the local parliaments, or at any rate by reducing them to comparative insignificance. Some of the arguments which were urged against state rights, against co-ordinate houses, against the power of the senate being co-equal to that of the house of representatives, struck me very forcibly as being arguments based altogether on a false principle. Mr Reid made use of a sentence to this effect: "Those from whom the taxation was raised should govern the expenditure." And Mr Carruthers said: "The proposal seems to me to be indisputable that those who pay the taxes and find the money should have the right to mould the finances of the country."

It seems to me that these statements are founded

upon a fallacy, and amount to nothing less than a heresy in regard to the rights of the people to take part in the government of the country. To lay down as a general proposition that those who pay the taxation should have the right to dictate the expenditure is tantamount to the abolition of the principle of one man one vote, and to the substitution for it of the proposition that there shall be plurality of votes in proportion to the taxation paid by the individual. (Mr Reid—Supposing the state does not contribute a single sixpence.) The people in the states contribute their taxation. (Mr Reid—Their powers are recognised.) And their local government should be recognised also.

To say that the people who contribute taxation should be those who have the chief voice in the expenditure of money strikes at the very root of that for which we have been contending for many years, and practically amounts to this, that we should abolish the citizens' roll altogether, and substitute for it the ratepayers' roll. (Mr Barton—Mr Reid's objection is that the states house had no right to interfere with matters of taxation, for this reason, that as the revenue of the federation was found by the taxpayers, who pay the federal taxes, they do not pay them over again for special purposes in such a way that the senate can represent that taxation in the federal parliament.) I do not quite follow the hon. member but it seems to me that once we consider the question of the origin whence the Government derives the

revenue as determining its expenditure we enter on an argument which will land us in a very different position from that which we anticipated.

In advocating states rights, which are nothing more nor less than a means of safeguarding state interests, we are simply advocating what those who believe in the rule of the people have at all times advocated and stood for. In the history of the Continent of America, state rights have throughout been associated with democracy, and the opponents of state rights were usually monarchists in disguise. (Mr Deakin—The states right people wanted slavery in disguise.) Of course they made a fatal mistake in that. It was unfortunate that the advocates of the liberty of the state should claim as a consequence of that liberty the right to enslave their fellow creatures. Still, after a century of national life, and in spite of that error, the states rights party is the predominant party in America ; and so I think it should always be in federation, seeing that federation is not a unification, but simply a device to ensure local government and to protect autonomy. Those examples of federation which are most worthy of imitation have recognised this principle to the full, and although it is quite true, as Mr Trenwith says, that in Switzerland there is a slight exception with regard to the representation of the states in the senate, still only three of the cantons are divided into half cantons with one representative as opposed to twenty-two which have equal representation.



In looking to models for guidance—and this is a matter in which we must look to others for guidance, seeing that nowhere under the British Crown has the principle of federation been established—we ought to take the best patterns for imitation, and these appear to me to be the United States and Switzerland. In both these countries co-ordinate houses and equal representation have been established from the first. (Mr Higgins—How about Canada and Germany? They have not equal representation.) The hon. member knows Canada is not a true federation, neither is Germany. (Mr Higgins—Why is Canada not a federation? Is it because it has not equal representation?) Yes; equal representation is the essence of federation. (Mr Higgins—Then you are arguing in a circle. You say no federation is without equal representation in the senate; and when I mention Canada, you say Canada is not a federation because it has not equal representation). (Mr Isaacs—You give the federal government power but you will not let them exercise it). We should see that the powers we confer are exercised in such a manner as we intended; and for that purpose we require to erect a barrier against that centralization which is the inevitable tendency on the part of large powers.

Mr Deakin said he did not see how the question of the Appropriation Bill could affect states rights; now, it seems to me, it is very easy to imagine such a case. In the Draft Bill of 1891 it was proposed to hand over ocean beacons and buoys and ocean light-

houses and lightships to the federal authority. There might be an Appropriation Bill which would give undue advantage in the way of lighting to one port at the expense of another. Another power proposed to be given over is river navigation for the common purposes of two or more states, and under that power you might have an Appropriation Bill in which the interests and rights of a state might be most seriously infringed by an expenditure of money on some rival port, or on some rival mode of communication. (Sir William Zeal<sup>1</sup>—That might tell either for or against your argument.) The interests of a state might be jeopardised in such a case if not adequately represented.

Mr Deakin also said he did not see how taxation could threaten state rights. I would mention the imposition of excise as a mode of taxation which might have a most disastrous effect upon the industry of any one colony; or again a protective tariff might be so framed as to infringe the interests of some particular state. (Mr Isaacs—How can you prevent it by your system?) I would do my utmost to prevent it. I do not say it would always be prevented. I would guard against such a contingency by placing the guardianship of state interests in a body which would be able to protect them, and not in a body merely established for the sake of appearances; we want to have a real not a sham states Council and this should be a senate which has not only the

<sup>1</sup> Senator Sir William Zeal, K.C.M.G.

appearance of equal representation, but which will not suffer by comparison with the house of representatives.

It seems to me a bad argument that the machinery should be framed first, and then powers surrendered so as to find something for the machinery to do. It has been said by some that if we do not give over such and such powers the machinery of federal government will not be fully employed. That seems to be the wrong way of going to work. We should first draw up a list of our requirements and then frame machinery sufficient to carry out our intentions. If we are going successfully to build for all time we must go to work from a business point of view, and decide first what we want, and then the way to give effect to our wishes.

I will not occupy the time of the Convention any longer with this very much vexed question of state rights. I can only express the hope that in debating this question we shall divest ourselves of selfish consideration, and take only into account the broad principle in which large and small states are equally interested, if a real federation is to be constructed. To show how temporary and evanescent may be the relative positions of states, one has only to call to mind that when the Constitution of America was being framed New York was one of the small states. Let us remember that just in so far as we are animated by a principle, we are entitled to fight for it, but in so far as we are only trying to make

better terms for our own particular colony we are mere hucksters. The views I have expressed are from an honest and long entertained conviction, that the best interests of all lie in guarding the sovereignty of the states which are a party to the federation ; and that it is to preserve, not to destroy, these, that the federation should come into existence. I take it that Australian prosperity is going to be the sum of the welfare of the component parts of Australia. I cannot help feeling that Australian patriotism should be founded on the patriotism we at present feel towards the states which we serve, and that we should not forget our allegiance towards those to whose service we are in honour bound.

Much as I desire to follow Mr Reid in his desire to make a parliament after the pattern of that of England, I do not think it can be done. The Government of England is carried on under a system of parliamentary sovereignty, which is absolutely opposed to the whole spirit of federation. In the very nature of things I fear it is impossible.

We should depart no more than is absolutely necessary from our old traditions though the departure must in many respects be a radical one. I think there has been a good deal of confusion with regard to responsible government under federation. I think we should draw a distinction between party government and responsible government. The hon. member, Mr Dobson,<sup>1</sup> declaimed against the evils

<sup>1</sup> Senator the Hon. H. Dobson.

of party government as inseparably connected with responsible government ; but I would ask hon. members to turn to America, where there is no responsible government, and yet party government has there developed greater evils than are known in England, where responsible government exists. We should not desire to have party government but at the same time we ought not to do away with responsible government ; although, on the other hand, we might have to do away with that system which makes ministers responsible to the Cabinet instead of to their real masters — Parliament. I suggest that we should take a leaf out of the book of Switzerland in this respect and establish the system of an executive elected by parliament.

When Mr Dobson was making his charge of extravagance against democracy he cited this chamber as an example. This chamber was not erected by a democracy. It was erected when South Australia was practically under an oligarchic rule. A democracy would not have built it. A democracy, instead of being extravagant, scans very closely every item of expenditure, and is far less likely to incur debts than any other form of government of which I am aware. I am surprised that such views with regard to a democracy should obtain. I believe it to be the best form of government possible, and not only the best because it is the safest, but the best because it is the highest and purest. I should like to read on this subject three or four lines from

an authority who is recognised as an expert in the matter of federation which we are considering ; they are from a lecture by Professor Freeman before no less an august assemblage than the University of Cambridge. After describing a democracy he says :

“Such is pure democracy, the government of the whole people and not of a part of it only, as carried out in its full perfection in a single city. It is a form of government which works up the faculties of man to a higher pitch than any other ; it is the form of government which gives the freest scope to the inborn genius of the whole community, and of every member of it.”

That is an ideal form of government, not a form lightly to be spoken of or easily to be destroyed. It is the highest form of government of which human nature is capable.

I wish to mention a matter which has not yet received attention in connection with the proposal, that the sole power to give bounties should be vested in the federal parliament. I look at the adjoining colony of Victoria and I ask what is the industry from which that colony at the present moment derives the most advantage, and which, during the last decade, has developed more than any other ? There is no doubt that it is the dairy industry, and its development is due to the wisdom of the Victorian Legislature in granting a bonus on butter exported to the markets of the world. (Mr Wise—

We started the export industry long before Victoria.) Then I am sorry that New South Wales has not been able to make better speed in her good work. The dominating position of Victoria in this connection is solely due to the bounty. I do not think it would be wise for the federal compact to prevent the possibility of any of the states adopting a measure of this sort for the development of its resources. We shall have to consider the question when we come into committee, and see whether some power to do this cannot be left in the hands of the states. If we confine the power to give such bounties to the federal parliament, we shall find that it will not be exercised. These measures are all more or less experimental, and it is only the individual states that will undertake them. If you wait for the public opinion of the whole of Australia to be educated up to the initiative on such questions you will wait for ever. The federal parliament will be exceedingly cautious and will require before embarking on any course to be shown that it has been successfully pursued elsewhere.

The question of the railways has been so ably dealt with that I shall say nothing more than that I do not see how they can possibly be handed over to the federal parliament. I would deprecate the railways being run on a strictly commercial basis, because it is necessary to develop the country, even if there should be a small loss in some cases. And then with regard to finance, on the question of the federal con-



tribution which has been so ably argued by some of my colleagues, I will say no more than that I agree with them. I think a levy affords the only firm footing for the federal revenue, and those who are lost in the weary waste of waters will sooner or later come to dry land and find a firm footing in that mode of meeting the difficulty which, although not free from objections, appears to me to present the least difficulty.

Several names have been mentioned with regret as having been present at the 1891 Convention and absent from these deliberations. One name has not yet been mentioned, and it is that of one of the noblest sons of Greater Britain—Sir George Grey—who, when the history of all comes to be written, will stand as one of the greatest men of Australasia; and although his name has not been mentioned, still allusions have been made to an amendment that he moved in the Convention of 1891, with a view that the Governor-General—(Mr Howe—Should be elected)—no, Sir George Grey held that view, but the amendment he moved was that the mode of the appointment should be left to the future. He proposed that the words “appointed by the Queen” be struck out, and the words “there shall be” a Governor-General inserted. I had the honour to vote with him, and I did so, not with the view that the Governor-General should necessarily be elected by the people, but that the question should be left over to the development of the future. I think the machinery of electing the

Governor-General direct by the people would be too huge when brought into comparison with the work to be done by the occupant of the office ; but I think some means should be contrived of taking Australasian opinion on the question as to who is to occupy this important position.

Far from such a course severing the tie with the mother country, it seems to me that in the possibility of the appointment of an unsuitable Governor-General lies a latent source of friction which more than anything else would be likely to cause ill-feeling where no ill-feeling should be engendered. To talk of this being the only tie binding us to the mother country when all our acts require the sanction of the Crown, and when the Imperial Parliament has the power to pass any act it chooses which will be binding upon Australia, is to use words without meaning. If we turn to America again, we find that while the American colonies were an integral part of the British Empire two at least of those states elected their own governors. There is no more loyal son of Great Britain than Sir George Grey, and he certainly would have been the last to make any proposal which would have the effect of weakening the tie binding us to that mother country which he loved so well, and for which he fought so long.

With regard to the federal franchise, I take it that we are practically bound by the conditions of our meeting to accept the principle of at least one man one vote and one adult one vote for South Australia,

or any of the other colonies which may choose to extend the franchise to women. It is of supreme importance that the first election of the federal parliament should take place on the basis of a liberal franchise, and South Australia has the right to look for help from the neighbouring colonies which have been striving so hard in the direction of woman's franchise. Mr Trenwith alluded to the matter, saying that endeavours had been made in the neighbouring colony for giving a vote to women. A Bill empowering that principle has been passed through the Legislative Assembly in Victoria. And therefore we look to those in the neighbouring colony whose sympathies are in this direction to assist us in extending the franchise to the women of federated Australia. In New South Wales also a resolution was carried embodying the principle, and to the representatives of that colony also I think we have a right to look for assistance.

The referendum also is embodied in the conditions under which we meet. Some hon. members of this Convention have said that the referendum is too intricate a machine for the people to understand. But I would point out that we are met under the condition that our work of framing this constitution—this most intricate Bill—will be referred to the referendum of the people of Australia for their confirmation. Therefore I think that the question of the widest possible franchise and the question of the referendum are questions which are really admitted

by our being assembled in conclave under the respective Acts which called us together.

I will not detain the Convention longer. No time has been lost in the debate which has taken place. We are about to erect an edifice which is to endure for all time. We must avoid undue haste. Each course must be laid duly and in order, and time must be given for the consolidation of the edifice as it is erected. Above all this we must avoid anything of the lath and plaster order of Constitution, and we must not allow any considerations with regard to personal convenience to interfere with our devotion to this, the greatest work on which any people could be engaged. In America the Convention which framed the Constitution sat for five months with closed doors, and if we succeed in completing our work in three or four weeks we ought to think that we have accomplished a wonder. We are performing a work which only once falls to the lot of a people to accomplish. We are framing a Constitution which will encompass, pervade and influence every community, every government, every institution, and every family in this our homeland of Australia, and it behoves us not only on account of the magnitude of the work in which we are engaged but also because we wish our memories to be held in esteem by those who will come after us, to bend ourselves with all devotion to our task. We shall not escape censure if we do not lay down the foundations broad and strong, and rear the edifice in such a manner that it will pro-

tect not only the national life as a whole, but also the welfare of all its component elements. If we unduly sacrifice any of those powers and privileges we at present enjoy without getting adequate recompense in return, then posterity will not hold us blameless. But I have no fear whatever of the result of this Convention. We are met here together in the best possible spirit, but at the same time, while we conciliate in matters of detail we must also stand fast to our principles, and we must remember that the object of federation is twofold. It is to develop a nation and to maintain its component parts, and a nice compromise and balance must be struck between these two requirements. A mistake on either hand will result in the defeat of the object we have in view. If, bearing in mind these objects, we patiently address ourselves to our task, then I think not only will our work endure, and our names be handed down with respect to the third and the fourth generations, but millions yet unborn will be taught to revere for all time the names of those who in this year 1897 were assembled in this National Convention.

ADJOURNED MEETING OF THE  
CONVENTION IN SYDNEY

SEPTEMBER 1897

*On an Amendment conferring on the Senate Power to  
Amend Bills imposing Taxation.*

I AM exceedingly anxious to get on with business, and I deplore the tendency to make long speeches. I do not think that I have so far taken up five minutes of the time of the Convention, for the very reason that I want to see business proceed. I do not say that I have anything to complain of those who have felt it necessary to enter into very long disquisitions of their views, but I protest that hon. gentlemen like Mr Higgins, who discourses as much as anybody in the Convention, and possibly more, should endeavour to taunt into speech those who, like myself, want to come to a vote as quickly as possible. The hon. member said he could not understand—looking most pointedly at me—how a liberal from South Australia could possibly vote with such conservative members as some of those who are going to be on the same side of the division as myself. I should like to know how he, who is always running a tilt against

the Legislative Council in Victoria, can justify the vote he is presently going to give alongside the embodiment and chief champion of that house, Sir William Zeal. Let him explain his attitude, and then I think he will have a right to ask me to explain mine.

I only desire to say one or two words. I do not intend to explain my vote at length, because I am going to vote the same way this time as I voted in 1891, the same way as I voted in 1897, and the same way as I shall always vote—in the interests of liberalism; because I regard the maintenance of the state entity as the safeguard of democracy. The hon. member talks about the senate as if it were going to be a rigidly conservative house. How can a house that is elected by manhood votes be a conservative house? The thing is too preposterous, and the hon. member must know it. There was an interjection from another hon. member from Victoria to the effect that because the number of votes of some of the states for the senate was to be greater than that of others, therefore it could not be representative of the popular will. I would ask how that argument would stand if applied to the case of the Legislative Assembly in Victoria, where I understand the number of votes in some districts varies from 4000 to over 20,000 in others. (The Hon. A. Deakin—Not the votes, but the number of residents!) The senate will be just as democratic a body as the house of representatives, and will be the special safeguard of



democracy, because it will be the house which will be specially elected for the protection of autonomy, home rule, and the government by the people in the affairs they understand best. (An Hon. Member —The hon. member is going to vote in the same way as Mr Dobson!) The hon. member is tempting me to make a speech, but I will disappoint him. I am going to say no more than that I shall give the same vote in the interest of democracy as I have given on so many occasions. I believe in the government of the people by the people; and I think those on the spot best understand the conditions which suit their requirements, and the senate will be a house, a democratic house, elected to protect the opinions of those on the spot best understanding their requirements, and believing in local government, home rule, and autonomy, I shall vote again as I did before.

*In favour of the double referendum as opposed to the mass referendum for settlement of deadlocks.*

We have listened to an exceedingly able and eloquent speech from the Premier of New South Wales. The effect which that right hon. gentleman produces on any assembly he addresses is very marked, whether it be in the Centennial Hall or in this Chamber. It takes some time before the effects of the magic of his eloquence can be dissipated; but when the whole of his speech is winnowed down, his contention comes simply to

this—and, to my mind, it involves somewhat of a contradiction in terms—that, in federal matters—matters under the authority of the federal parliament—there shall be unification. That is a contention which I never heard raised previous to this meeting. Certainly, during the elections which preceded the formation of this Convention, such a proposition was never considered in the colony of which I have the honour of being a representative. The proposition really comes down to this: that, you need only have one house in the federal parliament; that the senate is absolutely useless, because, sooner or later, the majority of the most populous colonies is to prevail.

We have certainly been treated with the utmost candour by the representatives of the larger colonies in this matter. Mr O'Connor<sup>1</sup> admitted that, in the last resort, unification was his intention, and it has been very properly argued, and with irrefutable logic, that if that is so in the last resort it may just as well be so in the first instance. Men will not struggle against anything when they know the result is inevitable. Reasonable men always yield when they know the greater force exists against them. If I offend against the standing orders of this Convention, and I am named by the President, and the Sergeant-at-Arms touches me on the shoulder, I walk out at once without any display of force, because I know I have to go. I know that in the last resort I have to go; therefore, it is just as well to go at once; and

<sup>1</sup> Hon. R. E. O'Connor, Member of the Federal Cabinet.

the senate will know that, in the last resort, it has to give way, and it may just as well give way without an idle struggle, of which the result is absolutely assured. So that we have it gravely proposed here, after all these years of debate about the functions of the senate, that, practically, the senate is a useless body in a federation.

The way in which this opinion has gradually come to be expressed with this frankness has been very insidious. When we met in 1891, you, Mr Chairman, remember that we had an overwhelming majority in favour of a senate, as a co-ordinate house, with equal powers to those of the house of representatives. I have not the *Hansard* of 1891 before me, but I am sure that was the deliberate opinion of two-thirds of the representatives when first they assembled here. Then committees were appointed, and by some means or other the majority dwindled down until we found ourselves in a minority. The senate was not to have co-ordinate powers; but it was to have what those who refused co-ordinate and co-equal powers maintained was practically the same thing. We were to have the power of suggesting amendments, which we were told was equal to the right of making amendment in money bills. So the matter closed at that stage. Then the question was raised of equal representation, and we had to fight that, after conceding the other point. Now it appears that point was yielded only in order to undermine us by a proposal which takes away the value of the right of suggestion, of equal repre-

sentation, and of everything else in connection with the senate. If we are to have an ultimate appeal to the mass vote, then those who somewhat grudgingly gave us the principle of equal representation in the senate might, without hesitation and without endangering their position in the slightest degree, have given the smaller colonies even a preponderance in the senate, because in the ultimate resort the larger colonies would be bound to have their way. (Mr Higgins—It is illogical; but have we not been told again and again that we are not to be logical?) We have to deal with practical questions. We have to consider what would be the cases in which the senate would dare to stand out against a majority in the house of representatives, or the popular majority in the whole of Australia. It would be only in cases where some injustice or coercion was threatened against one or more states, and these would be the very cases in which the deadlock provisions would be brought into play. The great remedy for deadlocks between the two houses must be reasonableness on the part of men, and on the part of colonies; but this reasonableness should be in view of no present or prospective compulsion.

There is however no objection to a reference to the people whenever any deadlock or difficulty arises, provided the reference is in accordance with the recognised federal principle. I have always been an advocate of the referendum. I think, in 1891, I was one of the

few advocates of it in this chamber. If I remember rightly it was I who proposed the referendum on that occasion. I believe no harm could ever be done in taking the views of the people; but I want to know who are the people whose views we are going to take? The voice of the people must of course rule, but we want to be sure of what we mean when we talk about the voice of the people. When the Premier of New South Wales talks about the voice of the people as being necessarily supreme, he means the voice of the people of the larger colonies, and to a great extent the voice of the people of his own colony. But I consider the voice of the democracy of South Australia has also a right to be considered. That is just as much the voice of the people, although the people are not so many; and there is no chance whatever of any principle of democracy being endangered by some consideration being given to the opinion of the people of such a state as South Australia. The voice of the people ought to prevail in the long run because the people understand best what is for their own interests. I would put my hands willingly into those of the men who advocate the right of the people to govern their own affairs, but not necessarily to administer the affairs of others. As has been said by one of the authorities—I think Freeman—the question of local bondage or local liberty does not at all depend upon the form of the central government. You can have local freedom under

the veriest autocracy which ever existed, and you can have local bondage under a representative government. The people can be trusted to manage their own affairs, because they know what their own interests are ; but the people cannot be trusted to manage the affairs of others without some restriction.

It has been suggested that we should take out of Clause 52 all those subdivisions which are purely matters of national interest. I notice that the Premier of New South Wales read through thirty of them, but he did not go as far as the 31st. (The Right Hon. G. H. Reid—I did not know what the 31st was.) It is only the question of the right of South Australia to have some voice in the management of the Murray waters within her own territory. (The Right Hon. G. H. Reid—I was afraid of wearying the Committee by reading them all!) Even in the thirty sub-clauses which the Premier of New South Wales read there are many which, although dealing with matters of national importance, also very seriously and vitally touch the interest of the states. I do not think it is possible to point to a single one of those sub-clauses which may not at some time or other become a question of vital interest to one or more states.

We had an eloquent speech from Mr Wise, in which he pointed out most conclusively that even a line in the tariff, although a national question,

might be of so much importance to one or more states as practically to threaten their deepest interests. We have only to consider this, and we shall see that the hon. gentleman was perfectly justified in what he said. We have all sorts and conditions of climate in Australia, and an industry may become of the most vital importance to one portion of Australia which may not form part of one of the larger colonies possessing the larger population. And is no adequate consideration to be given to the views of the representatives from that colony, whose interests are so deeply affected, as to what the tariff is to be? When we have federation the industries of Australia will become localised, and having intercolonial free trade, those industries will spring up to which the conditions of the localities are most favourable. We may have, I believe we shall have, in South Australia one or two industries which, if they are not absolutely confined to our boundaries, will, at least flourish there to their greatest extent. Yet the question of the maintenance or development of those industries may not be at all a vital question to the eastern colonies, who have large populations. We all know that, as regards the question of the tariff, there is an infinite difference of opinion. The interests of the consuming population may be opposed to the interests of the producing population. The tariff may favour the consumer, who wants the article free of duty, although the taking it out of the tariff



may have the most detrimental effect upon the producer who raises the particular article. Then we know that there are what are termed manufactured products which from another point of view are regarded as raw material. So one can quite foresee that upon questions affecting some of the industries of the colonies, not on the eastern coasts, but possibly in South Australia, possibly in the Northern Territory, possibly in Western Australia, possibly in Tasmania, there may be a complete difference of opinion as to the desirableness of this or that article being put within the pages of a protective tariff. This may be a matter of vital interest, and you cannot expect the smaller states to surrender practically all their voice in the matter, as they would if there were a mass referendum.

I think we may well be pardoned for having some little fear as to the conditions of the future. Still I do not think the panic as to the future comes from the smaller states, although from their unprotected condition they have most to fear. It seems to me that gentlemen from the larger states have been those who have been most fearsome as to what may occur. But they are men in armour; they have nothing to fear. (The Right Hon. G. H. Reid—Your side has been safe all through.) We have given up one after another of our props. (The Right Hon. G. H. Reid—Still you have a number left!) But the right hon. gentleman, if he had his way, would take them all from us. (The Right Hon. G. H. Reid—No, I would not; I would provide for

every State right in the Constitution!) It seems to me that we have given everything away until we have come to this prop, which is our all, and I think it behoves us, seeing that all the tendency is to put power into the hands of the large populations, to be a little timid. A little timidity on our part is not out of place, but it is not becoming for those who will have the great force of numbers with them to display in this matter such unreasoning fears as they do. I shall certainly support the principle of the referendum—not the mass referendum, but the double referendum so ably put forward on so many occasions by the Attorney-General of Victoria.

I would like to say again with regard to the proposition of the Right Hon. the Premier of New South Wales to differentiate in the sub-divisions of clause 52, and strike out all those questions which are of State interest, that it is not possible to make any such differentiation. Let me give a few more instances. Take the question of postal, telegraph, or telephone services. Are there no State interests connected with those services? At the present time we have the sole management of these affairs in our hands, and we know how it is possible so to administer the department as to assist the development of the colonies we represent. Is that continuance of good management within our own boundaries, in this respect, of no importance to us? When you are opening up a new country, it is of infinite importance— (The Hon.

I. A. Isaacs—That would be rather a matter of administration than legislation!) We know the importance of having some voice in legislative chambers, even in matters of administration. The opening up of a wheat market may depend upon whether you can get a line of telegraph constructed, in order that the producer and the buyer may be brought into intimate relations. Is not that a question in which the states, having enjoyed absolute autonomy in such matters, should be considered? Then take defences. Under the heading of defences you can do almost anything. With unlimited means to spend you can make roads, bridges—in fact, you can make or mar the destinies of a whole portion of Australia. (An Hon. Member—Leave that out!) You cannot leave it out, because it is one of the great national questions. The questions of defence and of tariff are national questions of supreme degree. (Mr Higgins—Why should they not be nationally treated?) Because we propose to federate. (An Hon. Member—You assume a certain narrow meaning for federation?) (The Right Hon. G. H. Reid—According to the hon. member “federation” means the rule by the minority of the majority!) No, it does not. All I urge is that a certain right of veto should be given to a majority of the states when their interests are threatened. The right hon. the Premier of New South Wales asked us to point out those matters which involved state interests. Take ocean beacons and buoys and lighthouses. (The Right Hon. G.

H. Reid—Are they subjects for a referendum?) No; but in the administration of those matters you may make one port and mar another. (The Right Hon. G. H. Reid—The government will not act in such a manner; it will live as quietly as it can!) A government will, knowing that it has the power, often go near to the undue exercise of it. A true federal government would not do so, because we should have an adequate restraint in a federal government. There is the senate in a federal government to be considered, and we did not pre-suppose that the senate was to be composed of men of straw, who have the right to their opinion only until the *clôture* is put on them. We should not have any rights at all. Where would be the rights of the senate if in the last resort it had to give way? Of course, even cases of the greatest injustice would not be called injustice, because we know that injustice is never perpetrated under that name; but a central authority very often errs through ignorance of local conditions. It does not want to do an injustice, but it does not fully appreciate the conditions of distant localities. One of the objects of a senate in which every colony would have adequate representation is to protect interests which might otherwise be invaded. If you adopted the mass referendum you would strike at the very root of the power of the senate. You would practically render its deliberations futile. The representation of the smaller states would become a negligible quantity in the commonwealth.

Take again the question of quarantine. That would appear to be a matter in which no question of local interest could arise. But in a continent so huge as this island of Australia, where there is every variety of climatic condition, even quarantine may become a question in which the very existence of a state is threatened. We have a tropical climate, we have a sub-tropical climate, and we have a temperate climate. The northern districts are tropical. A tropical disease may threaten Australia which we know cannot obtain any footing in the eastern, southern, or western provinces. Protection against this disease may be of insignificance to the larger populations, those living in the temperate climates to the south, but it may be a question of the most vital importance, a question of the very existence of the population which may ultimately gather on our northern seaboard. We hardly know these conditions yet, but I could enumerate half a dozen diseases—— (The Right Hon. G. H. Reid—We have a common interest in preventing disease from decimating Australia?) But it would not decimate Australia, because it could only affect a comparatively small portion of the northern parts of this continent. (The Right Hon. G. H. Reid—But it might travel!) I am speaking of diseases that would not travel; diseases that are strictly tropical. (The Right Hon. G. H. Reid—If they would not travel they ought not to come under a federal act!) The question might affect one or two small colonies—it might affect Queensland and

South Australia only, or perhaps also a portion of Western Australia. It might be a question of vital importance to those colonies, but of not the slightest importance to Tasmania, Victoria, or New South Wales. (The Right Hon. G. H. Reid—Surely the Government would do what was right!) The Government would do what was right if they had not the ultimate power to do what was wrong. (The Right Hon. G. H. Reid—The Government would not have any interest in doing what was wrong!) We all know that, in representative chambers, the view that usually prevails is in accordance with the relative representation in that chamber. If a district is fairly represented, it gets justice; if it is inadequately represented, and can be disregarded, it very often does not get justice. There is at present a Federal Council, in which each colony is represented equally. The smaller colonies have now admitted that in the Commonwealth there must be one house in which they are to have a very small representation; all the more do they desire to maintain an equal representation in the other house which would be adequate to protect their interests.

It was said very truly by Mr Deakin, and Mr Higgins, and many others representing the large populations, that in America the Congress is never divided on the question of state rights or state interests. But we must be very careful how we choose our analogies. (Mr Higgins—That is hardly the statement I made. I said that there was no

conflict of interest as between states as states and the commonwealth!) But politics in America are dominated by huge party machinery which deals with legislation, and, to a great extent with administration. Those parties would never allow any coercion to be applied to any state, or any of its rights to be interfered with, because, if they did, they would lose their influence in states on which the predominance of their party might depend. Mr Deakin says that we should have party government in Australia. So we should; but not to the same extent as they have it in America. Because in America, party government depends to a great extent on the election of the president that takes place every four years, and in regard to which the parties strive with their utmost force. It is that which keeps parties together in America; but we should have nothing of that kind here. (The Hon. A. Deakin—There will be an election every three years, at least!) But there would be no great parties watching each other with the keenest possible eyes in order to see that no injustice was done to any of the states with the smaller population. I do not believe in taking a leaf out of the book of any country in creation. (The Hon. A. Deakin—Look at your own parties in South Australia, and at the parties in Victoria!) They are altogether different from the parties in America. (The Hon. A. Deakin—It is quite sufficient for this purpose!) The parties in America have really lost sight of their original



intention. Goldwin Smith uses words to the effect that : "The casks that contained the party spirit no longer retain the odour of the liquor with which they were once filled."

I do not think that we should have party government, or party spirit, in this commonwealth, as we understand it in our parliaments now. How far are our present parties of any value to us? Do not I find myself voting here time after time with gentlemen from the other colonies whom we recognise as ultra conservatives? Does not the hon. member find himself voting time after time with gentlemen whom he must recognise as ultra conservatives? (The Hon. A. Deakin—No ; they are all liberals who vote with me!) Do we not see that party lines are so blurred that hon. members who are in principle opposed to the referendum have actually supported it, because they think that their State would lose nothing by having it. (The Hon. H. Dobson—Does the hon. member call me an ultra conservative?) No ; I was not thinking of the hon. member, nor of anyone from Tasmania. I am only too glad to hail under any circumstances those who are willing to vote for a referendum ; but I say that it shows how little you can carry the experience of our parties into new conditions if we may judge from what we see here, because we see so-called democratic measures advocated by so-called conservatives. That shows that original party lines have no value here. I myself have been regarded as a conservative for voting for

what I believed to be state rights. (Mr Higgins—The phrase “state rights” is used as a stalking-horse by reactionaries!) State rights or any other phrase is often used just as it suits those who are arguing, and I was much amused yesterday to hear some of those who are unwilling to give any more powers to the senate than they could help, on the ground that it might be conservative, admit that probably the senate would be the more liberal and democratic of the two houses. That shows how blurred our lines of party government have become.

I am not only willing, but glad, to support my hon. and learned friend, Mr Isaacs, in the matter of the double referendum. I think that the hon. and learned member, Mr Wise, in spite of his magnificent speech to-day, made a mistake when he said that in the past the referendum had been used as the weapon of despotism. (Mr Wise—Napoleon III. expressly justified it because it was the only way to escape from the bondage of parliamentary control!) What has not been used at some time or other for personal ends and ambitions? But—as was pointed out, by Mr Reid, last year, in the New South Wales Parliament, when he moved the adoption of the referendum, in a speech that was second to none ever delivered on the subject—it does not alter the fact that in the old days the referendum was the guardian of liberty, and that the greatest legislatures the world has ever seen

have been content to make all their proposals subject to the veto or the assent of the people.

The senate of Rome, the assembly of kings, as it has been called, could only frame their laws subject to the veto of the people. When, after all their labours, and after all their combined wisdom had been brought to bear on a question, they then had to go with the proposal in their hand to the people and say, "Do you or do you not accept this law as one under which you desire to live?" Instead of the referendum having been used to any great extent as the agent of despotism, it has really been the guardian of the liberties of the past. I will support my hon. friend, Mr Isaacs, in his proposal for the double referendum. But I need not say that I shall oppose with all my power the mass referendum, because it strikes at the existence of the senate, renders that body of no value whatever, and we might just as well start our federation with one chamber, and have no more trouble about it. I know it is the knowledge of this that brings my hon. friend, Mr Isaacs, and his right hon. chief, Sir George Turner,<sup>1</sup> into this position. They see that if we are going to have a mass referendum we might just as well have one house—and from some points of view I should like to see one house. I want to see no second chamber erected to stand in the way of the will of the people. I do not want to see any checks on the popular will. I simply want to see a chamber erected to protect the rights we

<sup>1</sup> Right Hon. Sir George Turner, K.C.M.G., Federal Treasurer.

have at present as autonomous states, and to see that they are not endangered. (Mr Higgins—On one side the hon. member is a radical, and on the other side a conservative!) Of course we are all conservatives in a sense. We prove many things, and we hold fast to that which is good. But, in the sense the hon. member means, I have not a conservative bone in my body. The hon. member knows that quite well, and everybody in this Convention knows it too. My struggles for the senate have simply been struggles for autonomy, for home rule, for local government. There is no sound autonomy in the world that can be founded on the destruction of state majorities.

The mass referendum of my hon. and learned friend is absolutely out of the question, not only from the point of view with which I have endeavoured to deal—that it would render the senate incapable—but also because you cannot have two forms of referendum in a federation. No one proposes that the referendum with regard to a change of the constitution should be other than the double referendum. We should endanger the double referendum in regard to a change of the constitution if we adopted the principle of the mass referendum in deadlocks. It would be an inconsistency to have two forms of referendum in one commonwealth, and, sooner or later, we should find, if the mass referendum were established for deadlocks, that there would be an attempt to introduce the same principle into the settlement of questions relating to amendments of the constitution. And,

logically, there would be no holding back from that position. If we adopted the mass referendum now, we might just as well wipe out the double referendum with regard to a change of the constitution, throw ourselves entirely into the hands of the majorities of the large colonies, and say that autonomy in Australia is a thing of the past, that we centralise and unify now and for ever. If we do that, we say goodbye to democracy. We say goodbye to the will of the people, goodbye to what we know as popular government, because sooner or later a central authority is bound to become a tyranny.

No truer words were ever uttered than those of Sir John Hall at the conference of 1890—"Democracy demands that the government should be conducted within the sight and the hearing of the people." The states are within the sight and hearing of the people. We must protect their privileges, otherwise we shall have the whole of Australia under one government, which, although it may be local to one state, will be infinitely distant to a great portion of the commonwealth—will be 2000 miles away, and the voice of liberty will not carry that distance. (The Hon. I. A. Isaacs—The referendum will protect their privileges!) I would not depart from the principle of the referendum. The principle of the referendum in a federation is recognised. But there is no referendum in any federation I ever heard of which is not a double referendum, and I think it would be extremely dangerous to depart in the slightest degree from that principle.

*On the proposal for a joint sitting in settlement of deadlocks.*

It must be a little disappointing to those who were so sanguine last night as to expect that this question would be decided without much further debate, to find to how great a length the discussion is likely to extend. It shows how difficult it is, in a few hours, to decide a question like this, which so closely touches our eternal federal salvation. I, last night, formed a decision adverse to the proposal for a joint sitting of the two houses, and my reflections since then have tended only to confirm that view. I will be as brief as I can, and I certainly will not perorate, or use any words that I can avoid. In the first place, I consider that to carry this proposal would be to place an intolerable strain against the retention of the proportion of membership between the Houses. My hon. and learned friend, Mr Gordon,<sup>1</sup> considers that he has a safeguard in the pledges of the right hon. the Premier of New South Wales and the hon. member, Mr Carruthers. I listened very carefully to what the latter hon. gentleman said, but I did not see that he tied himself up quite so closely in this matter as I should have liked. At the same time I am quite sure that anything those hon. gentlemen have said they will stand by; but, admitting that they will stand by it, even the power and influence of those

<sup>1</sup> Hon. J. H. Gordon, M.L.C., Attorney General of South Australia.

two hon. gentlemen will not, I think, be sufficient to stem the overwhelming demand which will be made that, if this joint sitting is to take place, the proportion of two to one as between the house of representatives and the senate should be overthrown.

But, even supposing that the proportion stands, we shall have a debate going on in a chamber in which there are two to one as debaters—two members of the house of representatives to each member of the senate. Probably under ordinary circumstances hon. members are right in saying that the members of each chamber would not all vote one way, but there would be a tendency to the formation of a corporate spirit in each house when a prolonged discussion had taken place, and I should not be at all surprised if, after there had been a double dissolution, and the senate had come back confirmed in their opinions, the members of each house voted practically almost solidly on the matter in dispute.

We all know the power of debate, we all know what sort of debaters we shall have in this commonwealth parliament. We have seen a very fair sample of their quality in this Convention, and it is not easy for a minority to stand up against speakers, two to one, of such ponderous power of oratory as we shall be likely to have. I say in all seriousness that I have never listened to such able debates as we have had here. I do not believe that in any part of the world you could find a gathering in which more forcible, logical, and eloquent speeches are made, and I say



that it would be a difficult thing for a minority of one or two to stand against such influence. Besides, we should remember that this joint sitting will probably be surrounded by a press, which will take the view of the house of representatives. (The Hon. J. H. Howe—Will not the minority have able debaters too?) No doubt, but they will be only one to two, and we know the importance in debate, where great issues are impending—say in a no-confidence debate—of following up a powerful speaker on one side with a powerful speaker on the other side, and it would be a serious matter if we could put up only one powerful speaker against two powerful speakers. (The Hon. E. Barton—They will be equal!) They may all have equal speaking value, but there will be two to one against the senate. (The Hon. E. Barton—But the hon. member surely does not expect thirty-six speeches from members of the senate and seventy-two from members of the other house?) Judging from what we have seen, I think there will be a tendency that way. Then you will have the press present, and we all know and feel the power of the press. (Mr Walker<sup>1</sup>—This morning for instance!) Every morning during the last few weeks. It is very hard to stand up against a powerful press, and it would be additionally hard for the senate to stand up against a powerful press that was advocating the views of the house of representatives.

With all these influences against it, the senate will

<sup>1</sup> Senator J. T. Walker.

be placed at a great disadvantage, and I as one who has stood by the senate, and fought for the senate as the safeguard and guardian of democracy, I, for one, if this proposal is carried, will take a last loving look at the senate before it disappears into the interior of the chamber of representatives.

The senate is being gradually chipped into a completely subordinate position. It has already lost a great deal ; but I think this will be its little all. In 1891 there was practically no serious proposal for any machinery by which the senate, when it felt it was doing its duty in standing up against a majority of the population, should be compelled to give in. Even in 1897, a few months ago, in Adelaide, the proposal of the hon. and learned member, Mr Wise, for a dissolution of the senate, was practically scouted ; but now he has succeeded beyond his wildest dreams, and a considerable majority has affirmed the principle of dissolution. That is as far as we ought to go. This proposal will amount to annihilation, and it will amount to annihilation just at a time when the senate has returned from its constituents confirmed in its view and satisfied that it is doing nothing wrong in standing by the just rights of the people of the states.

As my right hon. friend, the Premier of South Australia, has pointed out, this machinery is only going to work in one way—that is, for the house of representatives and against the senate. The wheels will only revolve in one direction. It will remove deadlocks when they are caused by the senate ; but

no power on earth could make it move in the other direction to remove a deadlock caused by the house of representatives. This is simply a comprehensive and final means of insuring that the house of representatives, like a spoilt child, shall have its way in the last resort. We hear about the rule of the people. Are not the people of South Australia entitled to be heard? In every word I have said here I have been expressing, not only my own views, but also the opinions of the majority of the House of Assembly in South Australia. Those who talk about democracy and conservatism will do well to consider that if the views I am expressing are tory and conservative views, the House of Assembly in South Australia is a tory and conservative body, which is ridiculous. I do not believe there exists a more enlightened democracy in the world than the popular house in South Australia. (The Hon. F. W. Holder<sup>1</sup>—They passed a resolution in favour of the dual referendum!) Yes, and for that I have voted. We passed an amendment in favour of a dissolution, and I voted for that also to save the senate from the charge and penalty of being a conservative body. I have agreed to a dissolution of the senate, because I did not want that body to stand against popular opinion, and because I wanted to see it strong only in so far as it was reinforced by popular opinion. And rather than see the proposal before us carried I would see the term of office of the senate

<sup>1</sup> Speaker of the House of Representatives.

reduced to the term of office of the house of representatives. That I do not fear ; but I fear to see the senate prevented from acting, as it should act, as the bulwark of democracy.

As to the parties in the commonwealth being divided into conservative and liberal parties, from any thought and reading I have given to the matter it is the most arrant nonsense possible. America never has been, and is not at the present day, divided into parties of liberals and conservatives. I defy anyone to say which is the liberal and which is the conservative party in America to-day. Before the parties in America had become confused, and when they held fast to their original reasons for existence, the party of state rights was acknowledged to be the party of true democracy. The men who stood up for state rights and the protection of home rule and government were men like Thomas Jefferson, and their names have been handed down reverently from parent to child, as those of the guardians of liberty and democracy in America. The men who were called federalists, who upheld nationalism as against state rights, men like Hamilton, with all his genius and transcendent power—where are they now ? Their names are not household names in America, as are the names of Jefferson and those who worked with him. So it will be here. Unless we have some great civil war, which will confuse all the issues and blur all the party lines in Australia, and which I hope we shall never have, we shall have the same parties

here as existed from the first in America. Parties will be clearly defined : there will be those who wish to see local government, home rule, and state entity preserved ; and those who wish to see all these safeguards of the liberty of the people blurred, confused and obliterated in a central government, which will be situated at a place too far distant for the people of Australia ever to be able to ensure effect being given to their views. I thoroughly believe that this last proposal may be looked upon as, indeed, a proposal of finality. It is a proposal for the final extinction of the senate, of state rights, and of liberty.

*Against the Pigeon-Hole Veto*

We all know that in Canada the reservation of bills for the royal assent has practically fallen into disuse. The Governor's instructions no longer contain anything with reference to reserving bills. A bill receives either the royal assent or veto on presentation. The whole question of reservation for assent has become obsolete. I suggested in Adelaide that we might very well, in our federation, follow the practice which has sprung up in Canada, but at the same time I can see that the conditions are not altogether the same, Canada being much nearer the mother country than we are. The means of communication are, of course, much more rapid.

While not proposing that this clause should be struck out altogether, the House of Assembly of

South Australia proposes that the veto, if exercised, should be expressly exercised, and not simply brought into effect by silence. As the clause stands at present, a bill passed by both houses of the federal parliament and reserved for assent is disallowed by mere effluxion of time. The power of veto ought to be expressly exercised, if at all, and if nothing is said on the matter by Her Majesty's ministers—that is to say, the Queen in council—the bill should have force. (The Hon. I. A. Isaacs—Should become an act of parliament without the royal assent?) If silence can give consent, it can give consent in this matter as in any other. It will give rise to extreme suspense if the clause remains as it stands, with the power of veto by mere pigeon-holing. We pass an act, it is reserved for assent, we hear nothing about it for two years, and then all we know is that, no voice being given, the solemn act of both houses of the legislature has become null and void. It is most harassing that a veto should come into force by mere silence, and it will be a great improvement if this amendment is carried. The proposal is simply that silence should give the royal assent. If there is any reason why the bill should be vetoed, let Her Majesty's ministers inform the federal parliament through the governor-general of the fact, but if nothing is said, then let the bill have effect.

There is nothing very new or unconstitutional in the proposal. I think it will be found convenient to adopt it. There will not be the same amount of mis-

understanding, and it will be very much better to have definite reasons given for disallowance. Unless we hear within a definite time that the bill is disallowed, then the bill, which has probably been the result of a great deal of discussion, has taken a great deal of time, and which very often is thoroughly necessary to the good government of the community, should become law.

The first proposal which the amendment makes is that the veto shall be active instead of passive, and the second is that the period should be reduced from two years to one year. Suspense is worse than anything. It is far better to know exactly how we stand; and when we consider the rapidity of the means of communication as compared with many years ago, while two years might not have been too long then, one year can be said to be quite sufficient now. There are acts as to which it is very important that the Queen's pleasure should be known as soon as possible. A great deal of expense and irritation is caused by long delay in knowing what the fate of a measure is to be, and there is no reason why, if the veto is to be exercised at all, it should not be exercised within the space of one year. I hope the Committee will carry these amendments. I cannot see that anything can be said against them. There is a very great deal both with regard to convenience and celerity, and with regard to avoidance of irritation, to be said in favour of the view of the South Australian House of Assembly.



*Against Members of State Parliaments sitting also  
in the Commonwealth Parliament.*

Clauses similar to these were first embodied in the bill of 1891. I have always thought it was a great pity that they were struck out. I do not think that we need talk about duties clashing; but we all admit that in a federation there is a balance of power between the central authority and the local authority, and I do not think that any man should be in both pans of the scales at the same time. But, quite apart from that question, as a matter of convenience I think it is most objectionable that a member of the local legislature should also be a member of the federal parliament. We do not want to degrade the local legislatures more than we can help. We do not want their convenience to depend on the federal parliament; but that is bound to be the result if we allow a member to occupy the dual position. (The Hon. S. Fraser.<sup>1</sup>—The local parliaments would be mere shire councils then!) They would be bound to become so. A man elected to the federal parliament would be a prominent politician in his own state, and would have influence in his own parliament, and if members occupy dual positions the sittings of the local parliament will have to be made to depend on the meetings of the commonwealth parliament, and the local parliament will have to be adjourned because Mr So and So has to go to Sydney, Melbourne, or elsewhere

<sup>1</sup> Senator Hon. Simon Fraser.

to attend the meetings of the commonwealth parliament. You will degrade the position of the local parliaments altogether. Do we not see the inconvenience here of members of this Convention having parliamentary duties to attend to in their own Colonies? Do we not see that we have to get through our work by a certain time, because hon. members here are also members of the local legislatures, and the work must be got through or not done at all by a certain time in order to allow them to attend to those other duties? I say that the position, viewed from either side, is intolerable. The commonwealth parliament and the state parliaments must be distinct as far as their personnel is concerned, otherwise we shall constantly have the commonwealth parliament asked to adjourn in order that the members of the local parliament may go and attend to their duties in the local parliament, or, what would be just as bad, we shall have the local parliaments asked to adjourn their business in order that members may go and attend the sittings of the commonwealth parliament.

FINAL MEETING OF THE CONVENTION  
IN MELBOURNE, FEBRUARY 1898

*In favour of state bounties on Exports.*

I very gladly support the Premier of Victoria in this matter. I consider that he is taking a step which is absolutely necessary in the producing interests of Australia. Almost all the arguments of the honourable member Mr O'Connor will be met by the inhibitory power which it is proposed to place in the hands of the Commonwealth. That will be sufficient to prevent a state from doing anything which is derogatory to the principles of equality of trade among the different states. I would like to point out that even the opening of intercolonial markets for the producer will not suffice to solve the problem that faces him, because it is well known that with any limit to the market there is always a liability to such a glut as practically spoils the enterprise of the producer, and takes away all hope of a profitable return for his labour. And it is just such fears as that, and in order to regulate production and afford a guarantee to the producer that he will have a reward for his labour, that render it necessary to make provision for export of surplus produce to the markets

of the globe. And so with regard to our larger sphere of operations the same principle will obtain, and we shall have to make provision, not only for free interchange among ourselves, but also such provision as may be necessary to enable the producers jointly to exploit the world's markets. (Mr Henry—The Federal Parliament will do that.) The honourable member has spoken of the difficulty of getting the Federal Parliament to exercise its inhibitory power when the principle of equality of trade is threatened by a bounty. How much harder will it be to gain the ear of the Federal Parliament when an industry is in its initiatory stages, and when the difficulties of production in a particular industry are only known to a part of the Commonwealth? (Mr O'Connor—It will not be difficult, because every citizen will benefit by the enlarged trade.) We do not want to stifle the initiative of a state in reference to production. We want to have the full advantage of whatever the future has in store for us. We should say to every producer, "Exercise your power of initiative and we will not hinder the states in helping you." To say that the states are no longer to exercise their power of initiative in this matter, but that the Federal Parliament is to take the initiative, is to postpone assistance to the producer to a day when that assistance will never be realised.

Assistance to industries has to be given when they are commencing on a small scale. It is very difficult to get mother's milk for an infant industry just when

it is required. It is no use saying, "In six months if you live you will get it." It is only on a small scale that you are able to prove the advantages arising from a new industry. And how can you expect to get a huge body like the Federal Parliament to interest itself in a small industry in the corner of a colony? For instance, the first colony that came forward and foresaw the advantage of stimulating the butter industry was Victoria, and the result has been beneficial not only to Victoria but to all the other colonies. But if the butter producers of Victoria had in the beginning to prove their case to the Federal Parliament, the time for the stimulation of the industry by a bonus would probably not yet have come. It is only by one colony proving that an export of this kind is advantageous that a general consent can be obtained. The experiment must be tried and proved successful on a small scale at first before you can get a large body of public opinion to support it. (Mr Fraser—Has not the butter industry been established in Canada?) I admit that something has been done there in the way of butter export and the establishment of creameries. (Mr Fraser—More than we are doing.) I question that. But I should like to know what colony has been injured by the initiative taken in the establishment of the dairying industry by Victoria? Instead of any of us being injured by it we have all benefited. Victoria has pioneered the way in this industry. The pioneers of any industry

ought to receive some public recognition for their enterprise and expenditure, because the man who feels the way in the world's markets, and opens up a road into them, has a right to expect that you will give him some recompense for constructing a road on which all can travel with advantage. The difficulties in the way with regard to this matter will be got rid of by providing that the federal authority—I do not care whether it is the Federal Parliament or the Inter-State Commission—shall have power to inhibit any step taken by any of the states which may appear to be derogatory to freedom of trade. We want neither to do anything to stop the initiative of the states, nor to discount the great future of the Commonwealth with reference to freedom of trade between the states.

With regard to the proposal made by the Finance Committee that there should be some power retained by the states of granting bounties providing agreements are made to do so before the 30th June next, I do not see that anything is to be said in favour of that provision which cannot be said in favour of inserting a general power in favour of the initiative of the states. The provision suggested by the committee would mean that the states which were favourable to the granting of bounties would probably endeavour to crowd into the next six months agreements for every form of bounty they conceived could possibly be of value to them; and that would be more derogatory to the principle of freedom of trade

than the present proposal, because there would be no power on the part of the federal authority to inhibit them. If agreements are entered into before the 30th June next, no matter how hostile they may be to the principle of freedom of trade, they are to be sanctioned. (Mr O'Connor—They will be formed before the Constitution is established.) But why should they be sanctioned simply because they happen to be entered into before the 30th June next? (Mr O'Connor—Because you cannot interfere with the freedom of the states to make these agreements, except under the provisions of this Constitution.) You are offering a special inducement to the states to do what they can to institute bounties, although they may be hostile to the very principle of our federation. (Sir John Forrest—But the states will not do that.) But they will do it if this power be inserted; or, at all events, they may do it. (Sir Edward Braddon—That would show a very fine federal spirit!) Then do not place the states that want to retain the initiative in the development of the productive resources of Australia in such a position that they will be tempted to do such a thing. You say to the individual states, "No matter how anti-federal the agreements which you may enter into, we will allow them to be perpetuated if made before a certain date, but we forbid you in the future to do what may be legitimately necessary to develop your producing interests." I cannot see what objection there can be



to allowing the states to grant bounties subject to the conditions that have been mentioned. I think the proposal is an eminently reasonable one. (Sir John Forrest<sup>1</sup>—It would destroy intercolonial freedom of trade altogether.) Surely the right honourable gentleman can see that free-trade will not be destroyed if the Federal Parliament has power to intervene. The Federal Parliament will take care to maintain the principle of free-trade. (Mr Howe—It will lead to the states putting on protective bonuses to operate against each other.) No, that is a mistaken view. We want to have nothing inserted in this Constitution that would enable the states to exploit one another's markets. I was going to suggest to Sir George Turner that this provision should be limited solely to exports outside Australian boundaries, and should not authorise bounties for trade within the Commonwealth. A good deal of the objection has arisen from the fear of honourable members that the local markets of one state may be glutted by imports under bounties from another state. There is no such intention, I am sure, in the mind of Sir George Turner. The object of the amendment is to encourage the formation of channels of trade to the world's markets. No state can be injured by any action of another state which has this result. Each state that takes the initiative in such a matter is forming an additional road to the world's market, upon which

<sup>1</sup> Right Hon. Sir John Forrest, G.C.M.G., Minister for Defence.

the federal authority may eventually find it desirable to travel. If you take away this power from the states you will find that the Federal Parliament will be too large a body to take the initiative itself. If you destroy the power of building the model on the small scale, you prevent the possibility of any great public work ever being executed. There are parts of Australia that are fitted to be the birthplaces of particular industries. The states in which these favoured localities are situated should be left to take such steps as may be necessary for the encouragement of these industries, so long as they do nothing derogatory to free-trade. Other states will follow their example, and by-and-by the federal parliament will find it to its interests to move in the same direction. Strike out this power of initiative on the part of the states, and you take away one of those powers that will make for the future greatness of Australia. This is an elastic power of development that should be retained, and that can be retained without the slightest risk of the violation of any of our principles. Sir George Turner's amendment will serve the purpose more effectually than the amendment proposed by the Finance Committee. I hope that the amendment, modified in such a way as to provide that the bounties shall only be granted on products exported to places outside the Commonwealth, will be carried. From the first, and both in Adelaide and in Sydney, I raised my voice in favour of this system, and I did so as one who, from the

peculiar nature of the work he has to do as the Minister of Agriculture, recognised the necessity of it. I hope that the Convention, not with the idea of getting the vote of the producing interest—but with a view of permitting the states to grasp the opportunities of the future—will carry Sir George Turner's amendment.

*Speech on Australian Federation at the International  
Commercial Congress, Philadelphia, October 17th  
1899.*

FIRST of all, Sir Andrew Clarke,<sup>1</sup> allow me to thank you for the honour you have done me in taking the chair on this occasion. I regard it a great privilege to be able to address as chairman one who has been so long and so honourably associated with public life in our colonies.

Let me say also, ladies and gentlemen, that I feel it is an act of much temerity on my part to address you on the subject of Federal Union in this vicinity, in the neighbourhood of Independence Hall—that Mecca towards which all eyes are turned whenever the question of federation is discussed, in which the constitution of the United States was ultimately adopted.

I will not, in this utilitarian museum, where antiquities are out of place, where everything is dealt with in its present-day aspect, go into the history of federation; I will not discuss the archæological curiosities which obtained in remote ages; I will not even dwell upon that wonderful federation of mediæval times—a federation of one language, one government, one religion, which took place under the

<sup>1</sup> General Sir Andrew Clarke, R.E., G.C.M.G., Agent-General for Victoria.

Catholic Church. I will confine myself, as befits one who speaks in the shadow of Independence Hall, to the modern side of the question.

You all know that in the affairs of civilisation there are centrifugal and centripetal movements alternately prevalent; but there can be no question as to what is the characteristic tendency of our day. This International Congress is itself a manifestation of the desire on the part of all nations to draw closer together. It is the same centripetal movement which has brought Australian Federation to the verge of accomplishment.

The tendency towards a closer union of the Australian colonies has been in existence ever since their foundation. Sir Andrew Clarke has told you that in the early days the question of federation was often discussed. You all know that there is a certain tide in the affairs of communities, as well as of men, which, taken at the flood, leads on to fortune. The tide at that time was not sufficiently strong: if the subject had then been forced to a conclusion, the result would have been a greater antagonism than ever between the different colonies.

In one important respect our problem differs from that of other countries which have adopted a federal form of government. If you consider the circumstances that led to the United States Federation, the Canadian Federation, or the Swiss Federation, you will find that there were external causes which tended to bring the elements together. There is nothing

which effects a bond of union so readily as a common danger: a hostile environment causes the particles to assume a compact form, like globules of oil dropped into a glass of water. We have had none of these factors to drive us together. We have had no war, and have no unfriendly surroundings; we have been drawn together solely by the cohesive forces of internal attraction, and we have shown that it is possible to form a federation by a people acting of their own free will, without the necessity of any outside compulsion.

I hold here in my hand a parchment copy of our Federal Bill, signed by the President and the Clerk of the Convention. This will go down in my family as one of the most precious heirlooms. Let me show you the title: "Draft of a Bill to constitute the Commonwealth of Australia." We chose the name of commonwealth because we found that word, more than any other, served to describe the object of our union: to minister to the commonwealth—to supply the needs of the whole community. The chief gain we shall effect by means of the commonwealth is intercolonial free-trade. Many of the other parts of the bill are concessions made in order to obtain this great boon. Our people have been harassed by custom houses at the borders, and were determined to do away with them. We found it practically impossible to establish a general customs union without an instrument of federation. In order to attain this end we have surrendered some of our

powers of autonomy. The surrender, however, is not made to any external authority, it is merely a surrender from ourselves to ourselves. Some of those powers which each colony previously exercised have been transferred to a central authority for the benefit of all concerned.

In framing the measure we have taken lessons from the three great federations of the world—the United States, Canada, and the Swiss Federation. I can assure you, sir, that the United States constitution for the last ten years has been well thumbed and well read in the Australian colonies. Our problem has been throughout almost identical with yours. From our knowledge of your history we could foresee what was likely to happen in our debates. With us, as with you, the line of conflict lay between the large and small states.

At the Convention of 1890 there was a representative, Mr Macrossan, from Queensland—a man who was filled with a burning fire of patriotism, and a desire for union. He was one whose soul was so eager that it had almost worn out his bodily frame. I remember, although he took an active part in our deliberations that year, that, during the next Convention, in 1891, when the same questions were again the subject of discussion, we were reverently bending over his remains. At a time of hot contention between the representatives of the large and small colonies, when we began to feel hopeless of framing a measure acceptable to all, Mr Macrossan,



under the influence of deep emotion, repeated the memorable words of George Washington under similar circumstances: "Let us raise a standard to which the wise and the honest can repair. The event is in the hands of God."

It was an impressive scene. Mr Macrossan spoke with such burning earnestness as to arrest the attention of everyone present. You could have heard a pin drop in the hall for two minutes after he ceased. There were tears in his eyes, and everyone sat silent and motionless under the spell of those words of the mighty dead, which had come down through a hundred years to help us in Australia.

The present federal movement originated about ten years ago. At the Melbourne Convention of 1890, we passed a resolution that the time had come for union, and we appealed to the various parliaments to send delegates to a conference to be held the following year in Sydney. A bill was drawn up in 1891 which was referred to the parliaments for consideration, but the fruit was not yet ripe, and the measure drooped for some years. It was, however, resuscitated at a Convention held in Adelaide in 1897. On that occasion the Right Hon. C. C. Kingston, the Premier of South Australia, was President. A bill was submitted to the parliaments for suggested amendments: these were considered at another Convention in the same year at Sydney. The bill was finally adopted at a Convention held at Melbourne in 1898. One of the conditions of adoption was that

the measure should be referred to the people of each colony for their direct assent or rejection. Last year the referendum took place, and in each colony was carried by a majority; but, unfortunately, in New South Wales it was provided that there should be eighty thousand affirmative votes, and, although there was a majority in favour of the bill, it fell short by some five thousand votes of the required number. For a short space of time matters came to a standstill. The question, however, was pressed: suggestions were adopted in order to reconcile the people of New South Wales to the bill. The result was that early in this year a referendum was again taken by the colonies, and this time the requisite approval was obtained by greatly increased majorities.

The next step was for the various legislatures to forward addresses to the Queen, praying that an Imperial Act might be introduced giving effect to the bill. That is the position in which affairs are at present. These addresses have arrived in London, and are now in the hands of the Right Hon. Joseph Chamberlain. At the Imperial Parliament next year this Federal Bill will be passed by the British Parliament, will receive the Imperial sanction, and become the Constitution of Federated Australia.

In the fundamental characteristic of our constitution we have followed the example of the United States, and have placed only enumerated powers in the hands of the federal authority, reserving all

unenumerated powers to the states; whereas in Canada the reverse is the case.

All powers that could effectually be exercised by the states have been kept by us in the hands of the states. The greatest pride of the Anglo-Saxon race, and the treasure which they most dearly prize, is their autonomy. I think it is our genius for self-government that has made our colonisation so successful. Our cardinal condition is that only enumerated powers are placed in the hands of federal authority. We are constantly adding in Australia new powers to those undertaken by the government. These being not yet enumerated, will not come under the control of the federal authority, so that the benefit of pioneering under the unknown conditions of the future remains in the hands of the states.

I will now refer to some of the more important powers vested in the federal authority. The first includes duties of customs and excise. It is also provided that any federal taxation shall be uniform throughout the states. The federal authority is also to control defence; postal, telegraph and telephone services; also light-houses, quarantine, marriage and divorce; naturalisation, bankruptcy and copyright laws, and currency and coinage.

In New Zealand and South Australia we have laws providing for arbitration in cases of trade disputes. The federal authority has a similar power in cases where the dispute extends beyond the limit of any state into another state, it is also empowered

to deal with the question of Invalid and Old Age pensions.

The railways are in Australia the property of the states and may be acquired by the federation with the consent of the state.

We are to have two legislative houses as in the United States and Canada. We call our houses the Senate and the House of Representatives. As is the case in the United States each state is to enjoy equal inalienable rights of representation in the senate, no matter whether its population is large or small, and no matter whether its area is extensive or limited. On the other hand the House of Representatives is to be elected on a population basis. Both houses are to be elected by the direct vote of the people on the basis of a popular franchise. We think that in thus constituting the senate by direct election we have made an improvement on the United States model.

We are to have six senators for each of the original states, that is to say for the colonies that come in at the formation of the commonwealth. We have only five or six states, therefore we could not select, as you do, only two senators from each state. Such a number would not make a house of a size proportionate to the magnitude of the interests entrusted to its care. Thus far four colonies have given their adhesion, and the fifth, Queensland, has adopted the measure by popular vote, but has still to pass the necessary address to the Queen by its parliament. The senators

are to be elected for six years, half retiring periodically every three years.

The number of members of the House of Representatives is to be as nearly as possible double the number of the senate.

The representatives are chosen for three years, and the house is liable to be dissolved. The qualification for both houses is identical. A representative must be twenty-one years of age, and either a subject of the Queen or five years naturalized. The members of both houses are to receive a remuneration of £400 a year.

No executive powers are vested in the senate. The senate has no power to originate bills appropriating revenue or imposing taxation. Such bills must be first introduced in the House of Representatives. Each bill relating to taxation must contain only one subject. As a means of avoiding dead locks between the houses we have provided that in case a bill is twice passed by the House of Representatives and is twice rejected by the senate, the Governor-General may dissolve both houses, and if after the dissolution, the same bill is again passed by the House of Representatives, and again rejected by the Senate, a joint meeting of the two houses is to take place, and an absolute majority of the joint houses in session can carry the bill.

The executive power is vested in the Governor-General, under what is known as constitutional government. The administrative acts are in the

name of the Governor, but, of course, he acts on the advice of his ministers. It is therefore really the cabinet which decides the action of the Governor-General. As a precaution against any usurpation of authority, or any undue exercise of it by the executive power, it is provided that all appropriations of revenue must be made by law. Of course, that places the executive practically under the control of the parliament. The executive cannot carry on business without money, and money they cannot get without the Houses of Parliament voting it.

Then we have a provision which may seem strange to American ears. Each minister must be a member of the Senate or of the House of Representatives. We consider it best to have the ministers sitting in the legislature. We thus secure an administration in accordance with the popular will.

There is to be a High Court which will exercise its jurisdiction in cases of appeal, and will also have original jurisdiction in cases of interpretation of the constitution. In this respect the functions of our High Court are analogous to those of the Supreme Court of the United States. I must say that during the discussion of the federation question we have always entertained the highest respect for the judges of the Supreme Court of the United States. From Chief Justice Marshall downward we look upon them as men whose names have been placed on the roll of honour.

Then there is to be an interstate commission,

which is to decide all questions affecting trade and commerce. The members of the Interstate Commission are to be appointed for seven years.

The federal tariff is the crucial point that not only concerns the business men of the United States, but of the world. The moment the federation is formed the customs duties are to be collected by the federal authority, and within two years of the formation of the commonwealth a uniform customs tariff must be framed. This is the point to which the commercial world is looking. At present a merchant or manufacturer has to look over a number of tariffs in order to find under what conditions he can send goods to Australia. Federation will simplify all that. After two years there will be but one tariff for all the states included in the federal union. The only exception is regarding Western Australia. It is doubtful whether Western Australia will come into the commonwealth, just at present that colony does not look like joining.

The attitude of the commonwealth towards the neighbouring states will be most friendly. Queensland was not represented at the last convention. We were anxious to have Queensland in the commonwealth and glad she decided to be there: but had she remained out our relations would have continued to be friendly. The same is true as regards New Zealand. She sent representatives to the conventions in 1890 and 1891. I have not hitherto considered the question of New Zealand coming into the com-



monwealth as within the reach of practical politics, but if she comes in she will be hailed with acclamation; if she remains out our feelings will always be most friendly toward her.

The unification of our customs duty will be not only as a boon to the commercial world, but will also provide the means for a very great expansion of our own trade and production. What the whole commercial world longs for is some fixity. Once the federal tariff is fixed manufacturers and merchants know just where they are. What that tariff will be I will not venture to prophesy, but it will be safe to take it for granted that it will be somewhere between the highest and lowest of the Australian tariffs. You may make a fair estimate that it will be somewhat of a moderate tariff, a revenue-producing tariff, but at the same time, a fairly protective tariff.

May I claim your indulgence for a few minutes longer when I say to you that this movement of federation in Australia has been forming on an ever-broadening basis. We have found that it was necessary to bring the people into the movement in order to sustain the interest necessary to a successful solution. The earlier conventions failed, because they were not formed on a sufficiently broad basis. In 1890 the delegates to the convention were nominated by the various state governments. In 1891 they were sent with a higher mandate, on a wider basis. They were elected by the state parliaments. Still, even that did not bring the

people sufficiently into the movement and did not give it the popular interest which the proceedings of the last convention aroused, and which enabled that convention to bring the question to a successful conclusion. Delegates to the last convention were elected by the people themselves and the masses felt that they had a personal interest in the matter, with the result that a basis was formed upon which the federal structure could be successfully reared.

To effect a change in the constitution it is necessary in the first instance that the alteration should be passed by an absolute majority of both houses of the federal parliament, or by one house on two occasions if rejected by the other; the amendment has then to be referred to the people of the several states, and a double majority of states and of people is necessary for the alteration of the constitution to be ratified. I think we have thus provided for a stable constitution, and yet not an extremely rigid one. Anything so difficult to amend, as for example the United States constitution, would not have proved very suitable to the exceedingly democratic people of the Australasian colonies.

The measure is instinct with the democratic spirit. It breathes of trust in the people and faith in the future. Without fear or misgivings we are about to embark the precious freight of our national hopes in a vessel which has been framed with the utmost care and solicitude, and in the words

of your own great poet we can from our hearts  
exclaim,

“Thou too, sail on, O ship of state !  
Sail on, O Union, strong and great !  
Humanity with all its fears,  
With all the hopes of future years,  
Is hanging breathless on thy fate !

“Sail on, nor fear to breast the sea !  
Our hearts, our hopes, are all with thee ;  
Our hearts, our hopes, our prayers, our tears,  
Our faith triumphant o'er our fears,  
Are all with thee—are all with thee !”

