

"Annotated documents on the making of the
Commonwealth of Australia."

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PREFACE

This thesis is divided into two parts. The first section is concerned with the arguments for federation that were put forward by Australians. There has been no attempt to list every argument used - Parkes, for example, once mentioned the important benefits in the treatment of Broken Hill lunatics that federation would occasion. Rather have I emphasized what appeared to be the most important questions to Nineteenth Century Australians. Some of the arguments may not appear so convincing today. We must doubt, for example, whether federation was necessary to keep coloureds out of the country, but the important thing for this work is that it appeared necessary to many Australians, and thus they used it to support the case for union.

Having thus outlined the important reasons for federation, the second section is concerned to show how the attitudes and aspirations of Australians were translated into a document of government - the Australian Constitution.

Much of the final document was of a non-controversial nature - the provisions regarding the internal administration of the Federal Houses of Parliament form such a section - and no time has been spent in discussing these. Attention has been focussed upon the clauses which caused most controversy, the clauses upon which rested the success or failure of the whole venture. Some, like the clause dealing with the siting of the Federal Capital hardly seem important to us today, but if we look at them in the context of the nineties, we see that they were often regarded as crucial.

There is no constructive attempt to outline the opposition to federation except in so far as it affected the details of the final document. The aim has not been to simply give a chronological picture of Australian federation. Rather has it been an attempt to study the forces which shaped the Constitution, and much of the opposition had little effect in this way. This aim had an obvious influence upon the choice of sources; thus the Sydney Morning Herald and the Melbourne Argus are quoted more than the Sydney Daily Telegraph or the Hobart Mercury, simply because much of the criticism of the latter newspapers were often obstructionist rather than constructive.

There is little detail concerning the referenda clashes over the acceptance of the Constitution. Here again the criterion has been relevance to the detail of the document, and the referenda campaigns caused little change. What effect there was has been described.

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ABBREVIATIONS

| | |
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| C.O. | Colonial Office Records. |
| <u>C.P.D.</u> | <u>Commonwealth Parliamentary Debates.</u> |
| <u>Federal Council Debates</u> | <u>Official Record of the Debates of the Federal Council of Australasia.</u> |
| <u>G.B.P.P.</u> | <u>Great Britain Parliamentary Papers.</u> |
| <u>N.S.W.P.D.</u> | <u>New South Wales Parliamentary Debates.</u> |
| <u>Q.P.D.</u> | <u>Queensland Parliamentary Debates.</u> |
| Quick and Garran | Quick, John, and Garran, Robert Randolph, <u>The Annotated Constitution of the Australian Commonwealth</u> , Sydney, 1901. |
| <u>S.A.P.D.</u> | <u>South Australian Parliamentary Debates.</u> |
| <u>S.A.P.P.</u> | <u>South Australian Parliamentary Papers.</u> |
| <u>S.M.H.</u> | <u>Sydney Morning Herald.</u> |
| <u>V. & P.L.A.N.S.W.</u> | <u>Votes and Proceedings of the Legislative Assembly of New South Wales.</u> |
| <u>V. & P.L.A.Q.</u> | <u>Votes and Proceedings of the Legislative Assembly of Queensland.</u> |
| <u>V. & P.L.A.V.</u> | <u>Votes and Proceedings of the Legislative Assembly of Victoria.</u> |
| <u>V.P.D.</u> | <u>Victorian Parliamentary Debates.</u> |
| <u>V.P.P.</u> | <u>Victorian Parliamentary Papers.</u> |
| <u>W.A.P.P.</u> | <u>Western Australian Parliamentary Papers.</u> |

The references to the 1890 Conference, the 1891 and 1897-1898 Conventions and the 1899 Premiers' Conference were abbreviated thus:-

Conference Debates, Melbourne, 1890.

Convention Debates, Sydney, 1891.

Convention Debates, Adelaide, 1897.

Convention Debates, Sydney, 1897.

Convention Debates, Melbourne, 1898.

Premiers' Conference, 1899.

SECTION A

Reasons for Federation

I - INTRODUCTION

The 1890's saw a rapid development of the idea that the Australian colonies should unite for their mutual benefit. The idea was not new, however, as people periodically called for such a union for at least the forty years preceeding, but for most of the period 1850-1890 such advocates had little following among the population as a whole. People were generally quite pleased with the self-government won for their own colony in the middle of the century, and were not prepared to give up the independence so recently achieved. It was only as this view weakened that federation became a possibility, and the first section of this thesis investigates the main reasons for the break-down of colonial opposition.

II - THE TARIFF

In the second half of the nineteenth century, one of the major problems dividing Australian politicians, and thus helping to keep the colonies separated, was the tariff question - whether "free trade" or "protection" was the best economic policy for colonial governments to follow:

....The dispute on the tariff was the main dividing line between political groups until 1880, and, although the social question gradually replaced it over the next twenty years, the tariff question remained the nominal dividing line until January 1901 when the question was moved from a colonial to a national level for the first election of a Commonwealth Parliament....(1)

Despite the fact that this controversy was still of importance in the first decade of the twentieth century, it had subsided sufficiently by the nineties to cease blocking the federal cause, and it was this change in particular which made Federation possible.

Although there was some colonial feeling, after self-government, in favour of free trade between the colonies, this was rebuffed by both

(1) C.M.H. Clark, Select Documents in Australian History 1851-1900, Sydney, 1955, p. 259.

the British Government and general colonial opinion. In 1842 the New South Wales Legislative Council had passed an Act to permit New Zealand and Van Diemen's Land trade to enter New South Wales free of duty, but this was disallowed on the grounds that it was a matter that could only be decided in London. The British Government was concerned with the question of imperial preference, and when the colonies began to interest themselves with tariffs, they were told that discrimination against particular customers was forbidden, and therefore such matters were out of their power. On the one hand the British feared that intercolonial free trade could discriminate against outside (including British) goods,⁽²⁾ while on the other there was also concern about the divisive effects that intercolonial tariffs could have upon life and conditions in Australia as a whole, as the Privy Council Committee on Trade and Plantations reflected prophetically in 1849:

....if, when Victoria shall have been separated from New South Wales, each province shall be authorized to impose duties according to its own wants, it is scarcely possible but that in process of time differences should arise between the rates of duty imposed upon the same articles in the one and in the other of them.... great indeed would be the evil, and...the obstruction of the inter-colonial trade, and...the check to the resources of each of these colonies,

(2) Quick and Garran, pp. 79-80.

that it seems to us necessary that
there should be one tariff common
to them all....(3)

Despite this concern, in 1850 the Australian Colonies
Government Act was passed, S. xxvii of which acknowledged the wishes
of most colonists who wanted their own colony to have the right of
levying tariffs⁽⁴⁾ - they were not permitted to discriminate against
British goods, however. Very few at this time seemed to be concerned
with maintaining intercolonial free trade, because there did not appear
to be any feeling of being part of a common community. Self-government
had only just been won, and the "tyranny of distance" very effectively
kept them isolated and introverted. Few, indeed, were the men in
agreement with Mr Blyth, speaking in the South Australian Parliament:

....when he was told that an assimilation
of the tariffs could never be effected,
he must express his dissent. He believed
the time would come when we should, by
means of a federal union, obtain not only
that, but an Appeal Court also....he
believed that if they had a tariff for
the Murray, it must, sooner or later,
become the tariff of the whole....(5)

On the questions of tariff assimilation, a federal union and an appeal
court, Mr Blyth was many years ahead of his time.

(3) Quoted in ibid, pp. 83-84.

(4) An Act for the better Government of Her Majesty's Australian
Colonies. 13 and 14 Vict. C.59. 5th August 1850; see C.M.H.
Clark, Select Documents in Australian History 1788-1850, Sydney,
1950, p. 382.

(5) S.A.P.D., 1857-58, p. 180.

There was some attempt to secure tariff unity after self-government. Victoria tried to bring the tariffs of New South Wales and South Australia into line with her own, but was rejected by the other colonies enjoying their recent success in securing their virtual independence. The right of fiscal independence was regarded as being too valuable to surrender, especially as the colonies had to make their revenues as secure as possible to survive; most of the early tariffs were levied for this purpose. In South Australia, for example, the economic effect of the new Victorian gold fields was felt, and the government was obliged to levy tariffs on intercolonial trade to protect South Australian interests.⁽⁶⁾

With the development of colonial industry, the emphasis swung away from merely a desire to protect the revenues of a colony, which had not produced much in the way of tariff restrictions, to a desire to protect the industries of the colony concerned.⁽⁷⁾ The governments came under pressure from local organizations like the Victorian Association for the Protection of Native Industry, which called upon them to protect the home product because of the economic benefits this would give the colony:

(6) Cephas Daniel Allin, A History of the Tariff Relations of the Australian Colonies, Minneapolis, 1918, p. 39.

(7) Ibid, p. 106.

....To sum up: protection to native industry by a wise and careful alteration of our present fiscal laws could have the following beneficial effects:-

1. A legitimate opening for capital.
2. Employment of labour.
3. Development of the resources of Victoria.
4. A more perfect settlement of the country.
5. General contentment consequent upon general prosperity....(8)

Victoria became the leader in protecting native industry, probably because of the desire to maintain the living standards established by the gold boom of the 1850's. The rushes had brought much labour and wealth into the colony, and it was feared that once the boom was past then the newcomers would leave the colony as quickly as they came - many men left for the New Zealand fields, for example - and "somehow, capital and labour had to be retained in Victoria".⁽⁹⁾ It was felt that if new industries could be encouraged and protected, then the large numbers of miners left unemployed by changes in mining methods, could be found occupations and thus be retained by the colony:

(8) Graham Berry, letter to the Age (Melbourne), 7 June 1859, in Clark, Select Documents 1851-1900, p. 262.

(9) Brian Fitzpatrick, The British Empire in Australia. An Economic History 1834-1939, Melbourne, 1941, p. 183. For similar views see T.A. Coghlan, Labour and Industry in Australia. From the First Settlement in 1788 to the Establishment of the Commonwealth in 1901, London, 1918, Vol. II, pp. 1140, 1153; I.D. McNaughtan, "Colonial Liberalism, 1851-92", in Gordon Greenwood (ed.), Australia. A Social and Political History, Sydney, 1955, p. 173.

....Undoubtedly the problem of putting ex-miners to work, which was more onerous in suddenly populous Victoria than in New South Wales, was largely responsible for the protective system....(10)

For this reason, the "protectionists" were supported by the town and country labouring class who saw protection as a means of easing their unemployment worries. (11)

In the rival colony of New South Wales the economy had not been affected by the gold fields quite as much as the Victorian, and, unlike the other colonies', was healthy enough to avoid the later economic troubles. As a consequence the New South Wales Governments, which generally favoured a tariff policy of free trade, were able to implement a policy quite different from the Victorian. Unfortunately this difference in tariff philosophy was allowed to become a part of the Sydney - Melbourne rivalry, and the years after 1866, when Victoria passed her first protectionist budget, saw a continuous slanging-match develop between the advocates of each system - especially if they lived on opposite sides of the Murray:

(10) Fitzpatrick, op.cit., p. 172.

(11) Coghlan, op.cit., Vol. II, p. 1140; see also speech of C. Gavan Duffy at Castlemaine, 20 March 1872, in Argus (Melbourne), 21 March 1872.

....Protection is a cheat and an imposter. It loudly promises benefits to all but to the great majority it turns a deaf ear, and the most needy of all it treats with unrelenting cruelty....(12)

This controversy continued to divide men, both intra- and interstate, for many years, and while it raised such animosity, federation was an impossibility.

Further deepening the gulf between colonies, and between New South Wales and Victoria, in particular, was the question of the border areas' trade. Both Sydney and Melbourne were determined that they should be the port for the Riverina, for example, and no effort was spared to secure this end. The most notorious method was the imposition of differential railway rates, so devised that all trade within a colony would be forced through the capital city.⁽¹³⁾ There was no attempt to recognize factors of geography, and the border areas had to bear the burdens of high costs and the inconvenience caused. Examples abounded. A saddler of Echuca, for example, found it necessary to open a shop in

(12) Edward Pulsford, Protection: Its Inconsistency; Absurdity and Injustice, Versus Free Trade: Its Simplicity, Truth and Power, Sydney, n.d., p. 9.

(13) For examples of such rates see Robert Thomson, Australian Nationalism: An Earnest Appeal to the Sons of Australia in Favour of the Federation and Independence of the States of our Country, Burwood, 1888, pp. 10-14. For an indignant letter complaining of the unfairness of such rates, see S.M.H., 25 February 1891.

Moama to serve those of his customers who lived across the Murray.⁽¹⁴⁾
Thus Sydney was closed to the Riverina by Nature, and Melbourne was
closed to the region by taxation.⁽¹⁵⁾

Gradually people came to view this division of the colonies
as unjust, and to believe it unnatural to separate men by

.....the barriers Greed has builded high,
Dividing them who brothers were
before.....⁽¹⁶⁾

Not only was it unnatural, but the inconvenience of the arrangements
gradually made itself apparent to city-dwellers - especially those who
had to travel from one colony to another:

.....It is a monstrous thing when
crossing into Victoria or Queensland
one is treated the same as if he were
entering a foreign country. His
luggage and private effects are
rigorously searched by Custom-house
officials, and nothing is left private

(14) First Report of the Board Appointed ... to Inquire into the
Effect of the Fiscal System of Victoria upon Industry and
Production..., V.P.P., 1894, Vol. II, No. 37, p. 29.

(15) Thomson, op.cit., p. 24.

(16) William Gay, "Australia 1894", Sonnets, Bendigo, 1896. See also
the letter from the Governor of Queensland, Baron Lamington,
to the President of the Bathurst Federal League, Proceedings
[of the] People's Federation Convention, Bathurst, November,
1896, Sydney, 1897, p. 112.

from the keen and scrutinizing glance of these officers. This should not be....(17)

If it was unnatural and inconvenient for brothers to be divided in this way, then surely the obvious remedy was to unite them in one nation? As this view developed, it was seen clearly that it would be futile to unite while still maintaining tariff barriers:

....Are we to enter into political unity with people from whom we seek commercial separation?...(18)

The bitterness caused by the tariffs would only serve to destroy any new federation if they were maintained after its creation - if ever it could be achieved under such conditions.

Despite the view of at least one writer that intercolonial free trade could be achieved without having to federate,⁽¹⁹⁾ it was apparent that a federation could not be successfully established without the parallel introduction of intercolonial free trade, that a customs union was a "sine qua non" of federal union.⁽²⁰⁾ To many, this problem of the tariff, both present and future, was the main bar to the

(17) B.B. Nicoll, President of the Board of Directors, Australian Natives' Association of New South Wales, in The Commonwealth, Vol. I, No. 12, 7 September 1895, p. 2.

(18) Pulsford, op.cit., p. 16.

(19) Australasian Insurance and Banking Record, Vol. XXII, No. 1, 19 January 1898, p. 3.

(20) Mr Deakin (Vic.), Convention Debates, Sydney, 1891, p. 72.

final union of the Australian colonies, and if this was overcome then federation would be relatively easy to achieve.⁽²¹⁾ [1]

The problem of removing border duties was not an easy one to solve. For all the colonies, the money raised by customs and excise duties formed an important part of the total colonial revenue. An average of 31.45% of the total gross revenue came from this source.⁽²²⁾ People feared that the loss of this revenue would mean a serious decline in the ability of the State governments to survive, and they doubted the worth of risking such a future. The Sydney Daily Telegraph warned that, "NO COLONY CAN AFFORD TO ENTER INTO FEDERATION UNLESS ITS SOLVENCY IS SECURED."⁽²³⁾ This attitude was held especially in Western Australia, where the Government feared that the loss of tariff powers would mean the collapse of newly-developed industries, as well as the decrease in many essential public services. [2] This was echoed by the Victorian, Deakin, who, although believing that a customs union was

(21) Sir R.C. Baker, Federation, Adelaide, 1897, p. 7.

(22) Percentage Customs and Excise Duties to Total Gross Revenue:

| | |
|------------|-------|
| N.S.W. | 16.62 |
| Victoria | 30.27 |
| Queensland | 36.66 |
| S.A. | 23.05 |
| W.A. | 35.00 |
| Tasmania | 47.12 |

Source: R.M. Johnston, The Federal Finance Problem. Further Observations, Hobart, 1900, Appendix C.

(23) Daily Telegraph, The Attainment of Federation. What was lacking in the Convention Bill, Sydney, 1898, p. 10.

necessary for a true federation, felt that there should be a short period after union, when the colonies would be able, if they wished, to reduce their tariffs gradually.⁽²⁴⁾

To further complicate matters, many were prepared to accept federation only on condition that the lost State revenue be handed back to the States by the Commonwealth. R.M. Johnston, the Tasmanian Government Statistician, pointed out that under the new federation as finally proposed, the Commonwealth would be responsible only for services which would cost about 13.05% of the total government expenditure in the country, whereas the States would probably be responsible for about 88.07%.⁽²⁵⁾ If there was not adequate redistribution of the surplus finance to the States, then they would become insolvent because the federal transfer involved giving up as much as 34.49% of existing colonial revenues, while only being relieved of about 11.93% of their existing expenditure.⁽²⁶⁾ Despite some views that a take-over of State debts, and possibly even the railways, by the Commonwealth, was the solution to the problem,⁽²⁷⁾ there was fairly wide agreement that some type of redistribution of funds should occur, and it was only when this

(24) Convention Debates, Sydney, 1891, pp. 72-73.

(25) About 1.12% would be for "New Federal Expenditure".

(26) Johnston, op.cit., pp. 12-13.

(27) See e.g. Mr Wilkinson, N.S.W.P.D., Session 1890, Vol. XLIV, p. 427.

was written into Chapter IV of the eventual Constitution that the "lion in the path" was finally removed. (28)

Associated with the question of Commonwealth surplus, was that of future Commonwealth tariff policy. The general assumption was that the internal tariffs would have to disappear, but what of the policy towards external trade? Most men were content to leave this matter to the future Federal Parliament:

....I take the position that the fiscal question must be relegated to the Australian Parliament for settlement....(29)

Others, however, were jealous of the rights of their own regions, and they insisted that the external tariff question had to be settled before federation. (30) These men were concerned primarily with blocking federation, because they could see little reason for seeking such an end. They could see the possibility of their own colony suffering in some way due to the machinations of the others; Victoria and Queensland, for example,

(28) See below Chapter B VII.

(29) Edmund Barton to Alfred Deakin, 8 June 1898, Deakin Papers, 1540/422, National Library, Canberra. See also Sir Samuel Griffith to Deakin, 25 May 1897, Deakin Papers, 1540/2136.

(30) Mr Dibbs (N.S.W.), Convention Debates, Sydney, 1891, pp. 179-182.

....who led the attempt to overbear all the rest [of the Colonies] by their precious federation law, or more properly law to denude New South Wales of her railways, her lands, and her position....(31)

These were the people who were not prepared to see their colony surrendering any of its powers to a central government, for they feared that after federation the other States would "gang up" on their own to force it into paths inimical to it. The power of levying customs and excise duties was one of the most important powers held by the colonies, and it was unthinkable that this power should be lost:

....Intercolonial Free Trade is the last benefit offered us. We might, no doubt, profit in some measure by it, but certainly not enough to sacrifice our home rule for. And it is to be remembered that we should not have the shaping of the tariff ourselves, but the majority would shape it. For instance, Victoria, Tasmania, and South Australia would be very unlikely to protect our northern sugar growers. And another point is that our behaviour to Queensland, our friendly neighbour, would be dictated to us by others who were not her neighbours....(32)

(31) Sir John Robertson in [Sir Alfred Stephen and Sir John Robertson], The Colony of Australia. Views of Sir Alfred Stephen and Sir John Robertson, [Sydney, 1897], p. 2.

(32) L.F. Heydon, Prudence in Federation, [Sydney, 1897], pp. 12-13. See also R.M. Johnston speaking before the Royal Society, Hobart, in Federal Finance Troubles and Some Suggested Remedies. Discussion before the Royal Society, Hobart on 22nd October, 1900..., Hobart, 1900, p. 13.

Fortunately, perhaps, different counsel prevailed, and the only restrictions placed upon the future Federal Parliament were Ss. 90 and 92, which guaranteed the freedom of trade within the Commonwealth. On the question of future external tariff policies, the Constitution was to be silent.

Throughout the period from self-government to 1901, the view that federation and the abolition of border duties would have a beneficial economic effect upon Australia was fostered spasmodically by different interests. At the official level there were many attempts to secure some federal action upon the question of intercolonial trade - even action by two or three colonies was seen as better than nothing, especially if the colonies were New South Wales and Victoria:

....if two such colonies such as Victoria and New South Wales were to agree to terms like these [i.e. internal free trade and exclusive control over customs duties to be given to a federal parliament], they would form the nucleus of a federation into which the other colonies in the future would be bound to come....(33)

As early as 1855 a Murray River Convention was signed by South Australia, New South Wales and Victoria, under which any customs taken on the Murray were to be shared equally between these three

(33) Sir Thomas McIlwraith, Convention Debates, Sydney, 1891, p. 60.

colonies. This Convention did not survive for long, primarily because of squabbling between Victoria and South Australia,⁽³⁴⁾ but also because of inequalities suffered by New South Wales and Victoria under its provisions.⁽³⁵⁾ The main concern of the three colonies under the Murray River Convention was the regularization of trade upon the Murray rather than a customs union. The emphasis later changed, however, and between 1863 and 1889 a number of intercolonial conferences met which usually recommended that a uniform tariff be adopted by all the colonies. At the 1873 Intercolonial Conference in Sydney, two motions dealt with the question of trade, one calling for "a Common Tariff, based on the principles of Free Trade", and the other for limiting "the imposition of Taxes to Revenue purposes only". Both were passed, but only by a vote of 7-6, the one delegate from Western Australia supplying the majority in an even vote between the six delegates from New South Wales, Tasmania and South Australia on the one side, and the six from Victoria, Queensland and New Zealand on the other.⁽³⁶⁾ Nothing was done in the colonial parliaments.

Of more importance was the official action taken in the 1890's, which helped provide valuable ammunition for the proponents of

(34) Allin, op.cit., Chapter VI.

(35) Ibid, p. 69.

(36) Report and Minutes of Proceedings of the Intercolonial Conference held at Sydney ... 1873 ..., V.P.P., 1873, Vol. III, No. 18, p. 42.

federation. On 23rd July 1890, a Free Trade Commission was established in South Australia to investigate the question of free trade for the colonies. The Commission not only reached the conclusion that it was essential, but also saw it as linked inextricably with the federation of the colonies. In Victoria, long regarded as the main protectionist colony, the Government was another which came to the view that inter-colonial free trade was a necessity. This was supported by the findings of a Board appointed to investigate the Victorian fiscal system. Like the South Australian Royal Commission, its findings produced the conclusion that intercolonial free trade was necessary and was desired by the people of the colony. The Board also saw the tariff question as being closely connected with federation:

...Hitherto the efforts made for the complete federation of the colonies have not produced any result, but we believe that if an attempt were made simply to enter into commercial relations with such of the colonies as are willing to join us a substantial advance might be made. With this object in view, we recommend that an invitation should be given to each colony to join us in a Customs Union... (37) [3]

Activity was not restricted to the official level, however, and many came in time to espouse the benefits of intercolonial free trade under a federal union. Manufacturing and commercial interests

(37) First Report of the Board Appointed ... to Inquire into the Effect of the Fiscal System of Victoria upon Industry and Production..., p. 29.

believed that an abolition of internal tariffs would assist their activities by providing them with larger markets.⁽³⁸⁾ With expanded markets, industries which were unable to develop because of a limited population too small to provide a sufficient demand for their products, could possibly be established on a successful basis.⁽³⁹⁾ The German Empire and Canada were cited as countries which enjoyed an enormous growth of internal trade with the abolition of inter-State duties - the same was promised for Australia.⁽⁴⁰⁾ [4]

The border areas, in particular, were hostile to internal tariffs, and in these districts there developed a strong feeling in favour of federation. Gradually people came to the conclusion that such a step was the only solution to the border duties problem. Even a customs union without complete federation would be preferable to the existing situation.⁽⁴¹⁾ Federation, "the cause so dear to the hearts of us all along the Murray",⁽⁴²⁾ loomed large upon the minds of these people, and it is significant that the Australian Federation League was formed from an amalgamation of two federation organizations which had

(38) Thomson, op.cit., pp. 27-28.

(39) Report of the New South Wales Chamber of Manufactures, 1896, pp. 12-13. See also Helen Hughes, The Australian Iron and Steel Industry 1848-1962, Melbourne, 1964, p. 30.

(40) J.T. Walker, The Federation of British Australasia: Sketch from a Political and Economic Point of View, Sydney, 1898, p. 9.

(41) S.M.H., 13 November 1880.

(42) Secretary of the Cobram Progress Association to Edmund Barton, 5 July 1893, Australasian Federation League Papers, Series 1, C 1890-1898, Folder 5, 47/376, National Library, Canberra.

begun independently in the border towns of Corowa and Albury.⁽⁴³⁾ So widespread was the federal feeling on the borders, that prior to the 1899 referendum, the Hon. Secretary of the Tocumwal Federation League was able to report:

....There is hardly any need of pro Federal literature in this District - I have not yet heard of a single anti Federalist....⁽⁴⁴⁾

Such attitudes were crucial to the success of the federal cause. [5]

In the 1880's the feeling that federation might be necessary was helped by the defence worries as the concern over Germany and New Guinea helped demonstrate the weakness of the individual colonies.⁽⁴⁵⁾ A realization of the dampening effects of the tariff differences upon union also became apparent.⁽⁴⁶⁾ It was not until tariff advocates were prepared to submerge their quarrels and concentrate upon the federal question, that there really appeared much chance of eventual success. Gradually men realized that their tariff views were harmful to

(43) Official Report of the Federation Conference held in the Court-House, Corowa ... 1893, Corowa, 1893, p. 3.

(44) Percy Meillon to Atlee Hunt, 22 May 1899, Australasian Federation League Papers, Series 1, M 1899-1907, Folder 19, 47/1607, National Library, Canberra. For similar border views see: Albury Banner and Wodonga Express, 3 December 1897, p. 22; Deniliquin Chronicle and Riverine Gazette, 2 June 1898. For a similar view from a "border" region that also saw definite advantages in being able to trade with another colony, see North-West Post (Devonport), 31 May 1898.

(45) See below Chapter A IV.

(46) Sydney Mail, 16 October 1880, p. 753.

the larger question of federation. Provided they were prepared to leave the tariff to the Commonwealth Parliament, it meant that Protectionists and Free Traders could unite under a common flag to push for federation.⁽⁴⁷⁾ Of crucial importance to the movement was that eventually both Free Traders and Protectionists saw federation as the means of securing their own ends. The Free Traders would achieve the old aim of free trade within Australia, while the Protectionists were certain that the future national policy would have to be one of protection against the outside world.⁽⁴⁸⁾ [6a, 6b]

The final struggle was still to be a difficult one as the framers of the constitution soon found. Western Australia, for example, would need the inducement of S. 95 to help drag her into the Commonwealth as an Original State, while the "Braddon Blot",⁽⁴⁹⁾ guaranteeing the return of surplus customs revenue to the States was merely an uneasy compromise over which much dissension arose. Despite these problems, the target of federation was gained, and a basic part of the achievement was this establishment of a common ground between the Free Traders and the Protectionists. Without it, the Australian Commonwealth - if it ever could have been born - would have been a weak and puny creature.

(47) Sir Henry Parkes to Alfred Deakin, 26 May 1892, Deakin Papers, 1540/4135, National Library, Canberra.

(48) Letter written by Sir Henry Parkes, but unaddressed and apparently unsend, 4 August 1894, Parkes Correspondence, Vol. 46, p. 265, Parkes Papers, Mitchell Library, Sydney.

(49) S. 87.

[1] THE TARIFF SEEN AS THE MAIN BLOCK TO FEDERATION

(James Service, Victorian Premier, speaking at a banquet in honour of the members of the Federation Conference held in Melbourne, 1890. Papers relating to the Federation Conference in Australia, Commons Papers, Vol. XLIX, 1890, C. 6025, p. 10.)

....Probably the first question, and the most difficult, which the [1890] conference will have to decide, is that referring to a common tariff, or the question of a common fiscal policy. (Hear, hear.) Now, I have no hesitation whatever in saying, that this is to me the lion in the way; and I go further and say, that the conference must either kill the lion or the lion will kill it. (Laughter and cheers.) I think a national constitution for Australasia, without providing for a uniform fiscal policy, would be a downright absurdity. (Cheers.) Whoever heard of a nationality without a common fiscal policy? Take the German Zollverein, for instance. I never yet heard of a national Government without a universal fiscal policy. (Cheers.) And I say not only that, but these hundred Custom-houses that we have in our midst must perish. (Cheers.) They are not only the symbols, but the realities, of separation, and we can have nothing of the kind in a Dominion constitution. We ought to be able to travel to the north and to the south, to the east and the west, and over the length and breadth of Australia without let or hindrance. Nothing less than that would be of any service to us. (Hear, hear.) I would go further than that, as my object is not to discourage the conference, but to urge it on. I will go the length of saying that unless this difficulty is got over, I for one would regard a complete, a full, and perfect union as not within the limits of possibility. I see no other insurmountable difficulty in the way if that can be got over....

[2] WESTERN AUSTRALIA AND THE TARIFF

(J.W. Hackett to Alfred Deakin, 27 June 1899, Deakin Papers, 1540/2268-2270, National Library, Canberra.)

....It is probably no secret to you that Sir John Forrest is full of misgivings as to the effect Federation will have on the finances of the colony [Western Australia]. There is no doubt that a few of our services on which we spend money and receive nothing in return will be taken by the Commonwealth. This, however, we find on examination will not give us any serious advantage. On the other hand we stand to lose

certainly some £300,000 annually, irrespective of our contribution to the special cost of the Federal government. This arises mostly from the loss of the intercolonial duties. On this point a serious error appears to have been made. The Bill provides that on the establishment of uniform duties all other duties shall determine [sic]. That is, all duties are absolutely repealed, including of course those produce duties involved in your proposal of the five years' sliding scale, especially granted to Western Australia. We are allowed to reimpose these taxes after the imposition of uniform duties, but it would be impossible to enact them. We might retain them with our Upper House if they were in force. The influence of the goldfields and timber mills would alone be sufficient to prevent their being adopted afresh. Add to this that this extra contribution required from our consumers through the Customs would press severely on the people owing to the very greatly augmented tariff, which the Federal government must impose, and which would tax a number of articles now admitted free, or at a nominal rate of duty. Further, out of these duties to be imposed on intercolonial produce, (an additional burden on the W.A. taxpayer,) we should have to pay twenty five per cent to the Federal government, a Commonwealth tax over and above those levied by the Eastern colonies, a feature which of itself would prevent the reimposition of any duties of the kind. I can assure you that both Forrest and myself are desirous of coming into line with the other colonies from the beginning, but when I call to your mind our huge undeveloped territory of a million square miles, our scattered settlements, the fact that the means of civilization - schools, hospitals, police, courts of law, have to be supplied everywhere, not to speak of provision for roads, bridges, tanks, and a number of Public Works absolutely essential if the colony is to advance, you will see that our present income, some two and a half million, is all too small even for the most pressing of our wants. When I mention that this last year we were only able to spend something like £50,000 on education, you will understand how hard pressed we are. This means that not being able to give the children of our miners and others the same educational facilities which they possess in the other colonies, not only shall we suffer from the men not bringing over their wives and families, but the children who live here unavoidably suffer in the comparison with those trained in the East, and throw us still further back in the race. Yet, we are asked to give up a sum which will prevent our supplying this deficiency among many others, while it will simply put a stop to further Public Works. It is worth noticing that practically we have no such resources as a land tax, income tax or a property tax before us, owing to our present circumstances. We may get a little from a tax on dividends, but this practically exhausts our present powers of taxation. The Treasurer must depend on his Customs in the future, for some time at all events, as he has done in the past....

[3] AN OFFICIAL VIEW OF THE TARIFF BARRIERS BETWEEN THE COLONIES

(Report of the Royal Commission on Intercolonial Free Trade [1890] ..., S.A.P.P., 1891, Vol. IV, No. 153, pp. v-vi.)

....The bulk of the evidence taken by your Commissioners is in favor of intercolonial free trade upon the basis of a uniform tariff, and it may be stated that no witness examined expressed himself as hostile to the principle for all time. There is a consensus of opinion favorable to the interchange of natural products without delay. Leading representatives of our agricultural and pastoral interests and of the salt and wine industries are at one in advocating the early removal of all restrictions upon their products, which they allege have outgrown the requirements of a limited market. The evidence of manufacturers is in the same direction, but subject to some important features of dissent, chiefly coming from the clothing, boot and shoe, tanning, furniture, coachbuilding, tobacco, and tinware industries, and some few whose manufactures are the result of the tariff of 1887. Agricultural implement makers, machinists, and others declare themselves as equal to any competition, and look forward to intercolonial free trade as opening up wider fields for enterprise and providing extended markets. Few witnesses give testimony of a direct character how, and to what extent, their industry would be injured by the operation of intercolonial free trade. They allege that Melbourne, with her well-established manufactories, would swamp South Australia with her surplus goods; wages would go down to the level obtaining in New South Wales; our industrial population would migrate to more populous centres; a large portion of South-Eastern trade would go to Victoria; and other lesser evils would result.

There is no question but that increased manufacturing industry has resulted from the adoption of protection in South Australia. Industries have been so strengthened that they are now in a position to successfully cope with any competition within or without the colony. Certain long established might suffer, at first, from intercolonial free trade, and some smaller industries called into being by the tariff would be seriously imperilled. But as some time must necessarily elapse before intercolonial free trade can be inaugurated, such of them as are worth preserving will have further opportunity to become firmly established. In order to be more fully prepared for intercolonial free trade at an early date, it might be well to assimilate our tariff to that existing in Victoria.

Much valuable evidence taken on the operation of stock tax shows a general agreement that the continued imposition of the tax curtails in an appreciable degree the operations of meat-preserving companies, tanners, fellmongers, and soap and candle manufacturers. Your Commissioners, having carefully considered the evidence obtained

from the representatives of several of the industries which are said to be materially affected by the tax, have concluded that the production of live stock cannot be placed in the category of those industries which depend upon the tariff for existence or encouragement....

Your Commissioners are firmly convinced that the welfare of Australia will be promoted by the abandonment of all restrictions upon intercolonial trade. By adopting such a policy the one object will be throughout Australia to render industry productive by leaving it to follow natural channels of employment, and by affording every possible facility to commerce to early realise rapid progress in wealth and prosperity by developing in each colony the industry for which nature has best fitted it, without wasteful rivalry.

The conclusions which you Commissioners have formed upon the subject of their investigation are as follows:-

We recommend the adoption of intercolonial free trade, on the basis of a uniform tariff, and regard it as the corollary of federation of the Australian colonies. We recognize the many difficulties which have to be overcome before federation can be accomplished, and are of opinion that, in the meantime, practically the whole of existing reasons for postponement will have passed away. The benefits arising from intercolonial free trade will far outweigh any disadvantages which may result.

F.W. HOLDER, Chairman.
DAVID MURRAY.
JOHN DARLING.
WM. GILBERT.
J. HANCOCK.
B. GOULD.
J.G. JENKINS.
JOHN MOULE.
HY. ALLERDALE GRAINGER.
THEO. HACK.
A. McDONALD.

Dec. 23rd, 1890.

[4] THE MERCHANTS AND FEDERATION

(B. Cowderoy, President of the Melbourne Chamber of Commerce, to E. Wilson, 2 August 1893, Australasian Federation League Papers, Series 1, C 1890-1898, Folder 5, 47/381, National Library, Canberra.)

E. Wilson Esq.

Dear Sir

Before leaving Corowa allow me to thank you on behalf of the Melbourne Chamber of Commerce for your invitation to them to send representatives to the Federal Conference.

I regret however that I shall have to convey to the Council of our Chamber a report of yesterday's proceedings which cannot prove gratifying. For the past six months, as I explained to the Conference, we have been labouring in cooperation with other Bodies to bring about a Customs Union which would put an end to the present intolerable trade restrictions which all the Border Towns are enduring, and we are confident in the belief that such a Commercial Union could be obtained several years before complete Federation while it would help forward that great consummation. Instead however of recognizing us as Cooperators in the objects of your League the Conference preferred to adopt a resolution ignoring the Customs Union Movement in Victoria and - so far as this part of the federation question is concerned - accepting the very partial and, I may say, impotent, instalment of an interchange of natural products only. I am sorry that I did not hear those words "colonial products" or I should have endeavoured to show the Conference that a Customs Union with uniform tariffs are not required for a mere interchange of our natural productions and that the terms of the resolution are therefore confusing and contradictory. Moreover that any treaty for such a purpose between these two Colonies would not diminish but rather increase the irritations and obstructions to trade along the [New South Wales - Victoria] Border.

If however such a conclusion as this is deemed satisfactory to the branches of the Federation League at the Border Towns I can only say that our Chamber will regret that their aims are so manifestly short of their needs....

[5] THE EFFECTS OF TARIFF BARRIERS UPON BORDER AREAS

(First Report of the Board Appointed ... to Inquire into the Effect of the Fiscal System of Victoria upon Industry and Production..., V.P.P., 1894, Vol. II, No. 37, pp. 28-29.)

....We heard at almost every place we visited, and from representatives of the most diverse interests, instances of the evil effects of the Border duties, some of which may be quoted as examples

of the manner in which these duties adversely affect all kinds of industry.

In the Wimmera district the farmers pointed out that some descriptions of agricultural implements could be obtained cheaper in South Australia than in Victoria, but that they were debarred from taking advantage of the lower price by the Border duty. Settlers who crossed from the South Australian side to the Victorian side of the border complained that they had been compelled to pay duty on all their farming implements which had previously been in use.

The special rates on the Victorian railways, designed to compel the Wimmera farmers to send their produce to Melbourne instead of to South Australia, and also to obtain their supplies by the Victorian railways, are peculiarly unjust to the class affected. The subject is treated elsewhere, but is mentioned here as one of the evils arising out of the fiscal barrier erected about the 141st degree of longitude.

On the New South Wales border the instances of mischief done to all concerned by the Border duties are still more numerous, and the outcry for relief still stronger. There we were told that the imposition of the stock tax, which is a Border duty, had injured the trade of Echuca and all border towns, and had alienated our New South Wales neighbours. Curious instances of the friction on the border were brought before us. Storekeepers complained that they were unable to take advantage of the Victorian drawback regulations framed specially to conserve intercolonial free-trade. The precautions the Customs Department found it necessary to take in regard to small parcels of goods, when bulk had been broken, made the difficulty of obtaining a drawback so great that it was not worth while to make any claim. We were informed by the Customs Department that no relaxation of the regulations on this subject could be made without danger to the revenue. The primage duties were also mentioned as a source of irritation, and it was said that the imposition of this rate necessitated the passing of two sets of entries, as the return of account sales from Melbourne was necessary before finally settling the transaction.

We were credibly informed, and indeed the statistics of the Customs Department show, that there has been a decrease in the business done by Victorian merchants in the Riverina. Cases were brought before us of a Melbourne merchant having to open a branch in Sydney to conserve his Riverina trade, and of a saddler in Echuca having to open a shop in Moama to serve his New South Wales customers.

It should be particularly noted that the residents in the Riverina are in many cases more deeply injured by the Border duties than those of Victoria. The former are cut off from the Sydney market by distance, and alienated from Victoria by fiscal difficulties. Evidence was given that cloth worth £100 on the Melbourne wharf would cost £174 at Moama before New South Wales duty was paid. Whether this

be correct or not, there is no doubt that the Riverina settlers frequently cannot take advantage of the regulations under which goods are allowed to pass through Victoria in bond, or to be subject to drawback, and that they pay dearly for many articles. On the other hand, we had evidence that drapery, boots, &c., were dearer at Wodonga than at Albury.

The settlers on both sides of the border are also subjected to the injury done to them by the shutting of each other's markets against their produce. This injury is incalculable. The Border duties are a direct blow to them, which might be expected from an unfriendly foreign power, but which we think cannot be justified from a friendly colony of the same nationality and under the same flag.

In the north-eastern district representatives of the large Rutherglen vine-growing and wine-making interests joined in the general demand in order that their market might be enlarged. The tradesmen and the townsmen of all classes, regretted the loss of business which the Border duties involved....

[6a] A FREE TRADE VIEW OF FEDERATION

(S.M.H., 7 October 1892.)

....it is obvious that federal union is the way to establish better relations between the colonies; in fact the only way to stifle and destroy the feeling of hostility which, as a natural result of alternate action and reaction, is growing up between them. By the establishment of a federal union we should secure intercolonial free-trade; and to oppose federation is to reject the large measure of freetrade which it would place within our reach. To secure that would be to make a great advance from our present position, and to obtain measurable relief from the bonds by which the activity and progress of our people are now cramped and weakened. Is it necessary for the most pronounced freetrader to make light of this, and to set his face against a movement which would certainly bring with it freetrade where protection is not only a hindrance to healthy development, but is stimulating the growth of ill-will between the colonies, and threatening them with positive danger?

[6b] A PROTECTIONIST'S VIEW OF FEDERATION

(W. Robson to Edmund Barton, 11 November 1889, Barton Papers, 51/60, National Library, Canberra.)

...Whatever Sir H. Parkes' motives in raising the [Federation] question just now it would be a calamity to the Protectionist party to put itself in opposition to the movement.... I trust nothing will be done by our political leaders to put us out of line with the federation movement. Nothing would delight Freetraders more, as witness the leader in today's D[aily] Tel[egraph]. Apart from considerations of patriotism, on commercial and industrial grounds, I think, we shall never have less to lose and more to gain from federation than now. If we can win Protection before Federation, well - if not, Federation unmistakably [sic.] means Protection....

III - THE NEED FOR FINANCIAL ORDERLINESS

The 1880's were a period of boom in Australia. Money was plentiful, housing flourished, colonial governments spent much of their budgets on increased public works (especially railways), and the country had a generally prosperous air. This prosperity was based, however, on a vulnerable foundation, and between 1891 and 1893 the colonies were all affected to some degree by a severe economic collapse. Federation had been in many minds at the end of the decade, culminating in the 1891 Draft Constitution Bill, but the economic troubles helped push such matters out of the limelight. Despite this, it was the depression itself which eventually proved to be another important argument for some type of colonial unity.

Overseas capital poured into the colonies for both private and public purposes in the period 1882-1891. Government borrowing was highly competitive with all colonies vying for loans on the London money market. During most of this decade, Australian government security issues were highly regarded on the London Stock Exchange, and the governments were able to exploit this as well as the declining English interest rates to secure money on very reasonable terms.⁽¹⁾

(1) N.G. Butlin, Investment in Australian Economic Development 1860 - 1900, Cambridge, 1964, p. 350.

The atmosphere was an heady one and the ease of procuring money had a "demoralizing" effect upon the colonial governments as they borrowed extravagantly with little thought of where the boom would end.⁽²⁾

The money gained in this way by the governments was used primarily in the financing of colonial public works, with communications development taking the lion's share of the funds. In the years 1860 - 1900 the construction of new assets in communications was 75% of all new government capital formation. Of this capital, the amount used on railway development was the largest with 35.5% of the total amount.⁽³⁾ Generally the expenditure was not wisely administered, particularly in Victoria, where the inflow of cash helped in the rapid construction of duplicate railway lines, a multiplication of termini on the Murray, and a large number of lines built to serve a small area in a politician's electorate.⁽⁴⁾ With so much being spend on "cockspurs", the Victorian government, in particular, was helping establish a crisis situation, because although the amount of development was increasing,⁽⁵⁾ the net receipts were negligible:

(2) T.A. Coghlan, Labour and Industry in Australia. From the First Settlement in 1788 to the Establishment of the Commonwealth in 1901, London, 1918, Vol. III, p. 1412.

(3) Butlin, op.cit., Table 64, p. 294.

(4) Ibid, p. 351. See also Michael Cannon, The Land Boomers, Melbourne, 1966, Chapter 6, passim.

(5) Butlin, op.cit., Table 69, p. 322.

....even with interest rates as low as 3%, no Victorian government of the day could persist indefinitely with a marginal return of zero, in the light of private economic activity in 1889-90....(6)

The private sector was just as short-sighted and as prodigal with its funds. The main culprits were the banks, building societies and finance companies, with the main focus of their speculation upon land.⁽⁷⁾ The banks secured much of their finance by offering British investors interest rates higher than the normal British rates,⁽⁸⁾ while the building societies offered higher rates again.⁽⁹⁾ British investors eagerly accepted such tantalising offers, and whereas the ratio of British to Australian deposits held in Australian banks was only 10% in 1873-74, by 1891 it had risen to 37%.⁽¹⁰⁾ In 1880, 7.3 million pounds were borrowed from overseas sources, of which the private sector accounted for only .27 million pounds, while in the peak

(6) Ibid, p. 351. Throughout the 1890's the average loss in running the railways in Victoria was £1,000 per day. By the turn of the century the total deficiency had reached £9m., Cannon, op.cit., p. 43.

(7) Between 1 January 1887 and 30 June 1893, but for the most part in 1888, 1154 companies with a paid-up capital of £28,436,500 (subscribed capital £54,300,000) were registered in Victoria alone. Of the 433 companies which registered in 1888, 247 were financial, chiefly concerned with real estate. Of the original 1154, at least 397 with a paid-up capital of £9,469,000 (subscribed capital £19,526,000) had become defunct by the end of 1893: "Australian Financial Crisis...", Victorian Year-Book, 1893, Vol. II, Appendix B, pp. 457, 461.

(8) Butlin, op.cit., pp. 161-162.

(9) Ibid, p. 256, Fig. 18; p. 263.

(10) Ibid, p. 162.

year of 1888, the respective figures were 22.8 million and 13.51 million. [7]

Perhaps the most spectacular feature of the boom was the development in real estate. There was much frenzied buying and selling of land, often with huge profits being made on each transaction—particularly on city blocks. Early in the boom, James Mirams astonished all by his purchase of a block on the corner of Elizabeth and Collins Streets, Melbourne, for £700 a foot. The same block was sold later during the height of the frenzy for £2,300 a foot.⁽¹¹⁾ In the outer city areas land was subdivided and free lunches were provided at Saturday afternoon auctions, often with free champagne to give the patrons "courage to bid"⁽¹²⁾:

....it is a pardonable exaggeration to say that the whole community appeared to be buying or selling land, or else engaged in both operations....⁽¹³⁾

To keep pace with this frenzy, in the 1880's building for contract was replaced by building ahead of demand, and small, specialised tradesman were replaced by building contractors, many of them operating on a large scale. This "speculative" building was greatly affected by the great inflow of British finance,⁽¹⁴⁾ which was generously handed on to the builders by the

(11) Edward Shann, An Economic History of Australia, Cambridge, 1930, p. 310.

(12) Coghlan, op.cit., Vol. III, p. 1693; see the cartoon in the Bulletin, 15 December 1888, p. 8.

(13) Coghlan, op.cit., Vol. III, p. 1414.

(14) Butlin, op.cit., p. 273.

land-banks who usually lent up to the full "estimated value" of their buildings and land.⁽¹⁵⁾ The building societies secured much of their money by means of high interest rates offered on money deposited with them. So successful was this, that by 1887 more money was deposited with Victorian building societies than with Victorian savings banks.⁽¹⁶⁾

Unfortunately the colonies and their governments appeared to be lulled into a false sense of security,⁽¹⁷⁾ and did not heed the danger signs that were evident in the late eighties and early nineties. Australia's position varied considerably on the London capital market, and in 1890 there was a sudden depreciation in Australian stocks in Great Britain.⁽¹⁸⁾ Also at the turn of the decade there was a marked slowing-down of Australian public spending because of the vagaries of fund sources. In 1889 construction on Melbourne tramways and public utilities ceased, and in 1890-91 all Victorian public works were halted.⁽¹⁹⁾ In addition, as the economy began to turn down, the interest due on loans severely hurt the public sector, which began to have difficulty in

(15) Shann, op.cit., p. 312.

(16) Butlin, op.cit., Table 54, p. 256. See also Table 55, p. 257 for the sources of funds of Victorian building societies.

(17) Australasian Pastoralists' Review, Vol. II, No. 12, 15 February 1893, pp. 1059-1060.

(18) Coghlan, op.cit., Vol. III, pp. 1412-1413.

(19) E.O.G. Shann, The Boom of 1890 - And Now, Sydney (2nd ed.), 1927, pp. 21-22.

meeting interest payments due abroad.⁽²⁰⁾

To aggravate the situation further, Australian exports fell well below imports and the selling price of Australian produce slumped, making it more difficult for farmers to meet payments on the loans that had been necessary to tide them over bad seasons. In 1894, the lowest point in the prices for agricultural produce, the average price fell 32% below the 1886-89 figure, and 47% below the figure for 1873-77.⁽²¹⁾ This fall was particularly noticeable in the wool market where the average price fell from 15.5d per pound in 1872 to 7.75d per pound in 1894, despite an overall rise in the gross wool proceeds.⁽²²⁾ These low prices forced many off their properties which were then often taken over by the banks.⁽²³⁾

Between 1890 and 1892 the bottom fell out of the money market. In 1889 the flow of British investment to Australia had totalled 22 million pounds - by 1892 it was only 5.6 million pounds, and in 1893

(20) Butlin, op.cit., p. 442. In 1881 the amount of government and municipal interest due overseas was 2.99 million pounds; ten years later the figure was 5.87 million pounds and it continued to rise; see Butlin, Australian Domestic Product, Investment and Foreign Borrowing 1861-1938/39, Cambridge, 1962, Table 249, p. 416.

(21) Coghlan, op.cit., Vol. III, p. 1608.

(22) Butlin, Australian Domestic Product, Table 22, p. 59.

(23) Shann, The Boom of 1890, pp. 18-19.

more money left the country than came in: "The golden well was now dry."⁽²⁴⁾ Between July 1891 and August 1892, 21 land and finance companies with liabilities of £13,500,000 collapsed in Melbourne,⁽²⁵⁾ and a number of minor banks were forced to close their doors to be either wound up or absorbed by larger banks.⁽²⁶⁾ These caused scarcely a ripple by comparison with the suspension of payments of twelve banks - most of them of major importance - that occurred between 5 April and 17 May 1893. The suspended assets in these twelve banks totalled over 103 million pounds.⁽²⁷⁾ The colonies had seen nothing quite like this before, and panic was upon the land. In many of the banks the suspension was only temporary, the National, for example, had closed at the beginning of May, but was reopened within two months, but this did not markedly alter the panicky state of the country, and the effects of the crash of 1893 were felt for many years and in all levels of society:

The convulsion in all Australian financial affairs which has occurred since the Easter holidays is unexampled for completeness, for the magnitude of the sum involved, and for the enormous proportion

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- (24) Coghlan, op.cit., Vol. III, p. 1647. For the figures quoted see [7].
- (25) Shann, The Boom of 1890, pp. 20-21.
- (26) E.g. The Bank of Van Diemen's Land collapsed in August 1891, and the Mercantile Bank of Victoria was amalgamated with the Commercial Bank of Australia in March 1892.
- (27) Australasian Insurance and Banking Record, Vol. XVII, No. 5, 19 May 1893, p. 291.

of the population which it affects, both as regards their accumulations and their current earnings from industry....(28)

Federation had been in the air since the late eighties, and interest in it had been heightened by the 1890 Conference and 1891 Convention, at the latter of which a draft Constitution had been prepared. Interest waned after this burst of activity, and, as Fredman has pointed out, one reason for its temporary demise was the depression of 1893. Colonial politicians were far more concerned with restoring some stability into their economies, and federation was pushed to one side.⁽²⁹⁾ Despite this understandable reaction, the depression can be seen as an important spur to federation. There was wide disagreement on the causes of the slump,⁽³⁰⁾ but many came to the opinion that a united Australia would be less likely to suffer another

(28) Ibid.

(29) L.E. Fredman, "Quick. The Role of a Founding Father", thesis presented for the degree of Master of Arts in History, University of Melbourne, 1956, Chapter III, passim.

(30) See e.g. W.H. Eldred, "The Financial Crisis", Journal of the Institute of Bankers of New South Wales, Vol. 2, No. 7, 18 July 1893, pp. 225-235; Australasian Insurance and Banking Record, Vol. XVII, No. 9, 19 September 1893, p. 849. For a labour view see an article in The Worker (Brisbane), 20 March 1893, p. 3, in C.M.H. Clark, Select Documents in Australian History 1851-1900, Sydney, 1955, pp. 305-310.

depression than a group of independent colonies.

Despite the troubles that overseas investment in Australia had brought the colonies, men still believed that such investment was necessary for Australian development. The investment should be controlled, however, and a strong central government would be able to do this.⁽³¹⁾ If the colonies federated, credit would presumably be easier to gain on the London market because investors would have more confidence in a strong, united colony:

....shall we not present a firmer front
to the commercial world of England when
we are a united Australasia?...(32)

An end to the wastage of the credit gained was needed, and federation was a way to achieve this:

....In our present separate condition
we are extravagant of our credit....(33)

A Federal government could also help secure the consolidation of Australian government stocks on the London market, and possibly even place them on an equal footing with British Imperial stock, with the

(31) Australasian Pastoralists' Review, Vol. III, No. 3, 15 May 1893, pp. 97-98.

(32) Mr McMillan (N.S.W.), Conference Debates, Melbourne, 1890, p. 155. See also Barton Lodge, "A Review of 1892", Journal of the Institute of Bankers of New South Wales, Vol. 2, No. 1, 16 January 1893, p. 7.

(33) Australasian Pastoralists' Review, Vol. III, No. 4, 15 June 1893, p. 148.

resultant raising of Australian financial prestige. [8] The rash way in which banks helped foster the boom was recognized, and a Premiers' Conference of May 1893, held in Melbourne, recommended that even if federation were not immediately possible at least concerted action to control the activities of all types of banks should be attempted. The fact that nothing was attempted only emphasised more clearly the need for federation. [9]

Federation would not only make money easier to borrow, it would also make it cheaper. This would be achieved by the lowering of interest rates charged on overseas loans, once the present colonial loans were converted and unified in one Australian public debt under the guarantee of the Commonwealth. This assumption of colonial debts (with possibly assets such as the railways being handed to the Commonwealth as security) would help ensure that there was no wastage in the diversion of loan money to public works, and less hardship to the States. (34) The gain from such a unification of the public debt was said to more than outweigh for the States the loss of customs revenue, a problem that worried many. [10]

With a central government controlling the economy of the country, further stability could be added by the creation of a central bank. This body could transact the official business of the country, as well as bear the responsibility for the issue and control of the

(34) Australasian Insurance and Banking Record, Vol. XXII, No. 1, 19 January 1898, p. 4; Arthur Killworth, The Federation of Australasia, Sydney, 1892, p. 35.

currency.⁽³⁵⁾ The idea of such a body was suggested by some as a means of solving the separate colonies' economic problems, but realists could see the confusion that this would cause, and used this as an argument for federation. [11]

Most of these financial arguments probably had little effect upon the man in the street, but they did concern the parliamentarians, the men in whose hands the federation movement rested. They realized the dangers of a repeat of the crash of 1893, and, to many there was a definite need to give stability to the system, and federation was the way in which this could be achieved.⁽³⁶⁾

(35) Sir Henry Parkes, N.S.W.P.D., Session 1894-95, Vol. LXXVII, p. 6132.

(36) Mr Hancock, V.P.D., Session 1896, Vol. LXXXIII, pp. 3185-3186.

177 BRITISH INVESTMENT IN AUSTRALIA

(W.G. Butlin, Australian Domestic Product, Investment and Foreign Borrowing 1861 - 1938/39, Cambridge, 1962, Table 251, p. 424.)

[Butlin's Table is the result of the compilation and comparison of official records of the time, as well as later works upon these. In addition, he used the records of private firms to fill gaps in his information. His work is therefore the most convenient way of displaying the relevant figures. One important omission was direct investment by individual residents of Britain.]

DIRRECT ESTIMATE OF BRITISH INVESTMENT IN AUSTRALIA,
1861 - 1900 (£m.)

(Minus equals net outflow.)

| | Banks | Pastoral finance | Other finance | Direct U.K. insurance mortgages | Mines | Miscellaneous | Total private institutions | Government borrowing including municipal | Immigrants' funds | Total overseas borrowing |
|------|-------|------------------|---------------|---------------------------------|-------|---------------|----------------------------|--|-------------------|--------------------------|
| 1861 | 0.15 | — | — | — | ? | ? | 0.15* | 1.4 | -0.2 | 1.4* |
| 1862 | 0.10 | — | — | — | ? | ? | 0.10* | 2.1 | 0.2 | 2.4* |
| 1863 | 0.10 | — | — | — | ? | ? | 0.10* | 1.4 | 0.5 | 2.0* |
| 1864 | — | 0.11 | — | — | ? | ? | 0.11* | 1.2 | 0.8 | 2.1* |
| 1865 | 0.27 | 0.16 | — | — | ? | ? | 0.43* | 0.3 | 0.7 | 1.4* |
| 1866 | 0.07 | 0.21 | 0.07 | — | ? | ? | 0.35* | 2.8 | 0.6 | 3.8* |
| 1867 | 0.03 | 0.19 | 0.07 | — | ? | ? | 0.29* | 0.6 | 0.2 | 1.1* |
| 1868 | -0.43 | 0.10 | 0.07 | — | ? | ? | -0.26* | 1.8 | 0.4 | 1.9* |
| 1869 | 0.30 | 0.06 | 0.05 | — | ? | ? | 0.41* | 1.7 | 0.4 | 2.5* |
| 1870 | 1.62 | 0.05 | 0.05 | — | 0.01 | — | 1.73 | 2.7 | 0.4 | 4.8 |
| 1871 | -0.42 | 0.04 | 0.09 | — | 0.01 | 0.01 | -0.27 | 1.3 | 0.3 | 1.3 |
| 1872 | -0.19 | 0.04 | 0.02 | — | 0.08 | 0.26 | 0.21 | 0.7 | 0.1 | 1.0 |
| 1873 | -0.32 | 0.01 | 0.11 | — | 0.19 | 0.26 | 0.25 | 0.4 | 0.3 | 1.0 |
| 1874 | -0.06 | 0.37 | 0.08 | — | 0.24 | 0.40 | 1.03 | 4.2 | 0.4 | 5.6 |
| 1875 | 1.29 | 0.41 | 0.10 | — | 0.19 | 0.14 | 2.13 | 2.6 | 0.5 | 5.2 |
| 1876 | 0.94 | 0.59 | 0.06 | — | 0.08 | 0.14 | 1.81 | 4.2 | 0.6 | 6.6 |
| 1877 | 0.09 | 0.55 | — | — | 0.04 | — | 0.68 | 1.7 | 0.9 | 3.3 |
| 1878 | 2.60 | 0.62 | 0.15 | — | 0.02 | — | 3.39 | 2.7 | 0.5 | 6.6 |
| 1879 | 0.82 | 1.63 | 0.01 | 0.16 | 0.02 | 0.05 | 2.69 | 10.8 | 0.6 | 14.1 |
| 1880 | -1.04 | 1.16 | 0.02 | 0.14 | 0.01 | 0.16 | 0.45 | 6.2 | 0.6 | 7.3 |
| 1881 | -1.41 | 0.81 | 0.25 | 0.20 | 0.18 | 0.24 | 0.27 | 4.7 | 0.7 | 5.7 |
| 1882 | 2.99 | 1.56 | 0.24 | 0.01 | 0.28 | 0.28 | 5.36 | 5.9 | 0.9 | 12.2 |
| 1883 | 4.49 | 0.31 | 1.06 | 0.17 | 0.32 | 0.21 | 6.56 | 14.1 | 1.7 | 22.4 |
| 1884 | 3.26 | 2.72 | 0.05 | 0.33 | 0.23 | 0.21 | 6.80 | 12.8 | 1.2 | 20.8 |
| 1885 | 3.04 | 1.97 | 0.30 | 0.61 | 0.16 | 0.13 | 6.21 | 13.3 | 0.9 | 20.4 |
| 1886 | 1.30 | 2.01 | 0.14 | 1.27 | 0.78 | 0.21 | 5.71 | 11.2 | 1.0 | 17.9 |
| 1887 | 2.17 | 0.86 | 0.90 | 1.33 | 1.61 | 0.37 | 7.24 | 7.2 | 0.8 | 15.2 |
| 1888 | 4.50 | 1.89 | 3.67 | 1.15 | 1.88 | 0.42 | 13.51 | 8.3 | 1.0 | 22.8 |
| 1889 | 4.96 | 1.13 | 2.02 | 1.33 | 1.35 | 0.80 | 11.59 | 0.8 | 0.6 | 24.0 |
| 1890 | 4.06 | -0.59 | 2.07 | 1.15 | 0.62 | 0.96 | 8.27 | 6.7 | 0.6 | 15.6 |
| 1891 | 4.78 | 0.05 | -4.38 | 0.74 | 0.42 | 0.91 | 2.52 | 9.4 | 0.7 | 12.6 |
| 1892 | 0.54 | -0.60 | — | 0.59 | 0.44 | 0.47 | 1.44 | 4.2 | — | 5.6 |
| 1893 | -8.84 | -0.48 | — | 0.66 | 0.26 | 0.22 | -8.18 | 7.4 | -0.2 | -1.0 |
| 1894 | -2.90 | -0.14 | — | 1.00 | 1.20 | 0.47 | -0.37 | 1.4 | 0.1 | 1.1 |
| 1895 | -2.43 | 0.90 | — | -1.00 | 3.63 | 0.63 | 1.73 | 6.5 | 0.1 | 8.3 |
| 1896 | -5.10 | 0.09 | — | -1.00 | 6.41 | 0.62 | 1.02 | 0.8 | 0.2 | 2.0 |
| 1897 | -2.01 | -2.06 | — | -1.00 | 6.26 | 0.94 | 2.13 | 3.7 | 0.2 | 6.0 |
| 1898 | 0.46 | -0.15 | — | — | 4.04 | 1.54 | 5.89 | 1.2 | — | 7.1 |
| 1899 | 0.04 | -0.11 | — | — | 1.60 | 1.94 | 3.47 | 2.5 | — | 6.0 |
| 1900 | -1.04 | -0.13 | — | — | 1.94 | 1.54 | 2.31 | 3.7 | -0.2 | 3.8 |

* Incomplete.

[8] FEDERATION, CONSOLIDATION OF GOVERNMENT STOCKS, AND IMPERIAL
GUARANTEE ON COLONIAL LOAN ISSUES

(J.C. Rounding, letter to the Journal of the Institute of Bankers of N.S.W., Vol. 2, part 3, 16 March 1893, pp. 84-87.)

....The subjects I wish to bring before your Institute and readers for their opinions, thought and study, which must ultimately, sooner or later, have an important bearing on our future progress and prosperity, is Federation, Consolidation of Government Stocks and Imperial Government Guarantee on all future Colonial loan issues.

While our Legislators are wrangling and wasting valuable time over petty provincial questions, the colony is gradually drifting towards financial depression which will surely bring about, during the coming winter, privation and distress to an alarming extent. Some two years ago the important subject of "Australian Federation" occupied the attention of the various leading politicians of Australasia, and after a great deal of discussion at the [1891] Conference [sic] the whole matter was indefinitely adjourned. Since then what has occurred throughout New South Wales, Queensland and Victoria? Heavy depreciation in Government Stocks, loss of Government financial credit on the London and local markets, continued waste and extravagance in the expenditure of public funds, barriers of restriction erected at every colony's boundary, and divided against each other in a commercial warfare of rising customs tariffs. These should certainly show to the people they are living in a fool's paradise, guided and run by political wire-pullers, whose sole interest lies in themselves and their lucrative vocation as professional politicians. Are we to continue this wild and rash career? Has the time not arrived to carry out the great question of Australian Federation and a national unity of British Empire for all time? What would it mean and bring to us as far as Government finance is concerned?, for that is the very backbone and foundation in the building up of a nation. With a fair, just and equitable Federation of Australia and the Empire, no matter under what title, consolidation of our stocks and the establishment of a sinking fund, worked on pure economical business principles, would place these colonies in a far different and better position than they stand at the present time, or ever likely to under the present system and form of Governments. Federation and consolidation of stocks would probably be the means of securing Imperial Government guarantee on all loans issued by the Federal Government of Australia, securing an immense saving of money, and placing our stocks on an equality to British Imperial stock, thereby raising the prestige of united Australia to the equal, if not superior, to any nation on earth. Are these subjects not worthy of deep thought and study by men who have the interest and welfare of this country at heart? No doubt these views may not meet with the approval of the wild-cat cut-painter party, but as a small combination

they must certainly see that their wild bombastic views and expressions will not produce good legislation, laws, money, works, and food for the people. The heavy accumulation of Government loans and liabilities while the colonies are practically undeveloped, coupled with extravagance, is causing a loss of confidence with investors, and high, tempting rates are consequently offered on the issue of the loans. This virtually means increased taxation and burdens on the people, and depreciation in value of private enterprise and energy.

The following extract from W. Westgarth & Co.'s letter, London, January 27th, showing the feeling of investors on colonial stocks and Imperial guarantee, may be of interest:-

"The public here are not inclined to go for anything but first-class Government guaranteed investments. For instance, the Mauritius loan for £600,000 guaranteed by the Imperial Government was applied for up to £5,000,000. We are waiting the result of the Queensland loan to see whether the British public will tender for it on Monday next or leave it in the hands of the underwriters."

This movement now on foot in the London market (Imperial guarantee) plainly shows the position these colonies have been brought to. A Federal Australian Government consolidation of stocks, with a supreme head financial department for the management and issue of all Government loans and finances, would be able to have far greater stern spirit of action, and less liable from political influences, &c., than the present system of conducting Australian Government financial departments. I trust the voice of the press and people, not only of this colony, but Queensland, Victoria and South Australia, will demand that this great and important national question, Federation and consolidation of stocks, shall be brought to a fair and equitable issue without delay, - producing benefits to the people, the want of which they have long and patiently suffered. We are paying dearly for Civil Servant legislators, sapping the life's blood out of the country and its people, many of whom whose principles of democracy are self-interests, devoid of political economy.

I need not here enumerate a system of consolidation. A conference could be formed of leading financial gentlemen clear of political influence, that could ably settle the matter to the satisfaction of each colony and the dominion. Dispose of the railways and tramways to private enterprise, thereby relieving the national debt of at least 70 per cent., besides doing away with a considerable amount of political influence which is not conducive to good management or prosperity in any enterprise. The Federal Government of Australia would then breathe freely of pure non-political air, and the people would be inspired to self-reliance, energy, and independent spirit of action, which is simply impossible under the present form and system of paternal Governments who from past and present evidence are continually seeking to gain favor and votes by extravagant expenditure

of public moneys. The colonies are suffering from centralisation and the want of population, and unless we rise to the occasion as a Federated nation and empire in the equality of laws, trade, commerce and finance, little hope can be raised that brighter prospects are yet at hand. If my feeble efforts in placing these subjects before your Institute and valuable members of our financial world should lead to thoughtful consideration, I shall feel I am but doing a duty as a citizen to this my adopted country.

I remain, Sir,

Yours truly,

J.C. ROUNDING.

Sydney, N.S.W., March 8th, 1893.

[9] THE NEED FOR UNIFORM BANKING LEGISLATION

(Resolutions of the Premiers' Conference, Melbourne, 27 May 1893, in "Australian Financial Crisis...", Victorian Year-Book, 1893, Vol. II, Appendix B, pp. 467-468.)

That recent events prove that laws require to be enacted with respect to banking in all the colonies, and that the legislation should be uniform.

That State national banks as properly understood are not required; but that banks of issue should be subject to conditions and restrictions somewhat similar to those imposed on national banks in the United States of America.

These conditions should require deposit of the bonds of the colony, or of coin in the Treasury, as against note issue, which the Government should guarantee, and also returns to and inspection by the Government of the general business of the banks.

Deposits not bearing interest should be a first charge upon the assets of a bank, and the Government should have authority to interpose in the event of a panic.

It was agreed that savings banks should be under the control and direction of the Governments which should be responsible in respect of deposits.

....

The Premiers recognise the advantage of united action on the part of all the colonies in the event of emergencies affecting either the whole or any portion of Australia.

[10] FEDERATION AS A MEANS OF SECURING CHEAPER MONEY

(B.S. Bird (Tasmania), Conference Debates, Melbourne, 1890, pp. 170-171.)

....There is one item of peculiar advantage which has not yet been definitely remarked upon....I refer to the probable saving to be effected in the annual payments of interest upon the public debts of all the colonies, if, with Federation, the Federal Government takes over the loans of all the colonies. There is no doubt that with a splendid credit as the Federal Government could command in the money market, we could secure loans consolidating all existing loans at something like three per cent. Canada has already borrowed at three per cent., through we know she did not obtain anything like par; but I believe that a Federated Australasia will be able to go into the money market and borrow on terms almost as favourable as the British Government. That would represent a saving, on a very moderate calculation, of £1,000,000 per annum in the matter of interest alone in our present state of indebtedness. That would tend to remove some of the difficulties which some members of the Conference, such as Sir J. Lee Steere [Western Australia], feel in regard to giving up so much of the revenue of their colonies as must be involved in the establishment of the Customs Union....

[11] FEDERATION AND BANKING

(The Australasian Insurance and Banking Record, Vol. XVII, No. 7,
19 July 1893, p. 668.)

A Central Bank

The question of a Central bank, to transact the official business of the colony and issue notes on an authorised basis, has, since the banking crisis, been discussed. No doubt such a measure would, if conducted on the basis on which the Bank of England, as regards Government and other transactions, is managed, be of advantage to banking concerns particularly. In London, the banks in the Clearing-house settle by cheque on the Bank of England, and the notes of this bank are alone current within a certain distance of London. The Bank of England - a private concern - transacts the business of the British Government on an agreed basis, and, under fixed regulations its transactions are controlled. No central bank in the separate Australian colonies could ever succeed in the transaction of business on the basis of the Bank of England as matters now stand. To have a separate bank for each colony, with perhaps, as is now the case, a different currency in Queensland, New South Wales, and Victoria, would cause endless derangement and confusion. The only possible successful issue of the central bank idea would be a result of the federation of the colonies under one central government. At present the conflicting interests of the various colonies, having, as is now the case, banks with branches in all of them, precludes the scheme being carried in its individuality into effect. The federation of the colonies would consolidate them financially, and the matter of a central bank with branches and an uniform note issue might then be practically discussed.

IV - DEFENCE FEARS

....in the development of dominion nationalism, in the emergence of some of the dominions from the shadow of imperial tutelage, the arguments and dissensions over the sharing of naval defense honed and sharpened dominion self-consciousness....(1)

As a result of the Battle of Trafalgar in 1805, the Royal Navy was the recognized ruler of the sea, and this hegemony was still unbroken by the end of the century. The power of the navy was extremely important as far as the development of new British colonies was concerned. Because of the safety it provided, these new areas had a chance to forget any possible invaders, and to concentrate upon the development of their territories. As far as the Australian area was concerned, Great Britain and her navy was:

....the solid basis on which the defence policy of Australia may safely rest....(2)

It was a very comfortable feeling to be able to rely upon such a powerful

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- (1) Donald C. Gordon, The Dominion Partnership in Imperial Defense, 1870-1914, Baltimore, 1965, p. xiv.
 - (2) Report and Summary of Proceedings ... of the Federal Military Conference ... Sydney ... to consider a General Scheme of Military Defence Applicable to The Australian Colonies and Tasmania ... 1894, Sydney, 1894, Appendix A, p. 5.

protector, and for the British colonies in the South Pacific, it meant that the area became regarded as a British preserve - a view that became

....an instinctive article of faith
amongst Australians of all classes....(3)

The Australian view of the importance of the Navy was extended a step further than this, for they believed that the British Government had a duty to protect them, and that this should be a continuing part of the tie between the colonies and the Mother Country. This meant, of course, that the British Government should also bear the costs of the provision of such a defence.

In the second half of the century, these colonial opinions clashed more and more with the policy of successive British Governments. While continuing to control the foreign affairs of the colonies, the British believed that in matters of colonial defence the colonies must be prepared to assist quite substantially. The British were quite prepared to provide officers and other trained personnel to administer the colonial forces, but the colonies had to provide much of the overall defence system. This difference of governmental opinion was a continuing problem, and it was the gradual realization of the futility of such a divided administration, which created a climate of opinion favouring a national and an Australian organization of defence.

(3) Richard Jebb, Studies in Colonial Nationalism, London, 1905, p. 66.

The first important British move in the direction of ensuring colonial participation in the provision of defence was embodied in a Resolution passed by the House of Commons in 1862:

....Colonies exercising the rights of self-government ought to undertake the main responsibility of providing for their own internal order and security, and ought to assist in their external defence.(4)

As a result of this resolution, the land forces were to be organized on a local and a volunteer basis, and the last of the British troops were to be withdrawn, much to the consternation of colonials:

....The British Colonies from which Imperial troops have been wholly withdrawn present the unprecedented phenomenon of responsibility without either corresponding authority or adequate protection. They are as liable to all the hazards of war as the United Kingdom; but they can influence the commencement or continuance of war no more than they can control the movements of the solar system....(5)

Naval administration was covered by the Colonial Naval Defence Act of 1865, which enabled colonies to provide for naval defence, in the form of ships and men, for territorial waters. The waters outside these limits were to remain the preserve of the Royal Navy.

(4) G.B.P.D., Third Series, Vol. CLXV, 1862, p. 1059.

(5) First Report of the Royal Commission on Federal Union, V.P.P., 1870, Second Session, Vol. II, No. 10, p. 7.

The result of these provisions was that the defence of Australia operated on two levels, the naval and the military. For a long time Victoria was the only colony to avail itself of the provisions of the 1865 Act, with the purchase of the Turret ship, the Cerberus, in 1870. During the eighties the other colonies followed suit, and all established Naval Brigades "of greater or less strength".⁽⁶⁾ The bulwark of the system was still the Royal Navy, however, with a squadron stationed in Australian waters. The military forces had no British support, except for a few officers, some of whom were regulars, but the great majority were part-timers. They were of little importance in the general scheme of defence except where they manned harbour fortifications guarding the main ports.⁽⁷⁾

The most serious difference of opinion between the colonies and Britain over defence was caused by the question of who was to pay for colonial naval defence outside territorial waters.

For a time after 1865, the Royal Navy's Australian squadron

(6) Colonel F.J.G. Foxton, "The Evolution and Development of an Australian Naval Policy", The Commonwealth Military Journal, Vol. I, November 1911, p. 655.

(7) An example of a colonial force was the South Australian. In 1890 this consisted of:

Permanent Force: 11 staff officers
43 garrison artillerymen

Militia Force: 1,570 partially paid volunteers
1,480 unpaid mounted riflemen and infantry men

Source: A.P. Haydon, "South Australia's First War", Historical Studies Australia and New Zealand, Vol. 11, No. 42, April 1964, p. 223.

had been wholly maintained by Britain, but gradually the British view swung to come in line with the 1862 House of Commons Resolution. The Australian colonies should begin to pay for the defence of their shores. The colonial reaction to this was quite hostile, and at an Intercolonial Conference held at Sydney in 1881, the question was discussed at length, where it was resolved by the delegates that the Imperial Government should be solely responsible for the upkeep of the Australian squadron.⁽⁸⁾ The debate reached a climax in London at the 1887 Imperial Conference, when the colonies debated the issue head-on with the British Government and the Admiralty. The colonies presented three reasons why the British should be wholly responsible for the naval defence of their lands: it was their duty to do so, the colonies could ill-afford the expense, and the protection was necessary for the defence of trade which was of much greater concern to Imperial than to Colonial interests.⁽⁹⁾ The colonies were not successful, for the British refused to consider acceding to their demands, and under the 1887 Naval Agreement, the colonies had to agree to contribute on a population basis to an annual payment of not more than £126,000 to assist in maintaining an increased squadron. Despite this failure of the colonies, the 1887 Agreement was notable, as it was the first important occasion upon which there had been some common action among the colonies in this matter of defence. It marked the

(8) Minutes of the Proceedings of the Intercolonial Conference Held at Sydney January 1881, V.P.P., 1880-1881, Vol. IV, No. 62, p. 7.

(9) Mr Douglas (Tas.), Proceedings of the Colonial Conference, 1887, Commons Papers, Vol. LVI, 1887, Vol. I, C.5091, p. 38.

....practical beginning of Australian naval defence, which hitherto had been confined to the maintenance of forts commanding the chief seaports....(10) [12]

Gradually, defects in the system of defence for the colonies came to the notice of colonial politicians. Perhaps the most spectacular examples were the periodic defence scares that shook one or a number of colonies. A foreigner, "said to be a Russian", sketching strategic positions near the entrance to Sydney Harbour, or a Russian warship fishing off the coast of South Australia were enough to send a colony into a state of panic,⁽¹¹⁾ often at a time when Britain was experiencing a similar type of reaction to international tensions:

....There was a rhythm in the colonial response to international crises - a pattern of panic and confidence, of anxiety and nonchalance with the passing of each war scare....(12)

The ease with which foreign ships could approach the coast unobserved, and then could enter the major harbours, worried people, and they began to realize how easily a hostile fleet could capture an Australian city.

[13]

(10) Jebb, op.cit., p. 69 (emphasis added).

(11) S.M.H., 6 April 1880; George Cathcart Craig, The Federal Defence of Australasia, Sydney, 1897, pp. 7-8.

(12) L.D. Atkinson, "Australian Defence Policy. A Study of Empire and Nation (1897-1910)", thesis submitted for the Degree of Doctor of Philosophy in the Australian National University, 1964, p. 6. Craig, op.cit., p. 7, pinpointed particular years of such scares in Australia: 1854, 1857, 1860, 1870, 1871, 1879 and 1885, (see also Edward Jenks, The Government of Victoria (Australia), London, 1891, p. 373).

Such scares resulted in determined colonial attempts to improve military defences, attempts which usually followed tours of inspection by British military officers. Lieutenant-Colonel Sir Peter Scratchley, for example, toured the colonies in 1878 with Lieutenant-General Sir W.F.D. Jervois, and then remained to help with the erection of the harbour fortifications which he had recommended. Such improvements were on an individual colonial basis only, although there were some who, quite early, saw a need for some type of unified action. Jervois was one who, while still favouring separate forces, did believe there was a need for some "general defence of all".⁽¹³⁾ Perhaps the most important of these tours was that of Major-General Sir J. Bevan Edwards, who carried out an extensive study of all the colonial defences in 1889. Edwards was critical of the wastage that existed in having defences organized on a colonial basis,⁽¹⁴⁾ and the crucial recommendation in his Report was for a federation of all Australian colonial forces. He pointed out how economical this would be compared with the current system, and he believed that the effectiveness of such a force would be a decided improvement. [14]

Although nothing was achieved immediately by Edwards' Report,⁽¹⁵⁾ the reaction to its recommendations gave some impetus to the

(13) Major-General W.F.D. Jervois, Defences of Great Britain and Her Dependencies..., Adelaide, 1880, p. 25.

(14) Echoing a point made in 1885, by Admiral Sir George Tryon, Naval Defences. Correspondence Respecting Naval Defences of Australasia, V.P.P., 1886, Vol. III, No. 81, p. 5.

(15) The Age (Melbourne), 7 February 1890, believed that it "must be proceeded with at once".

federation movement. Sir Henry Parkes seized upon it, and the message of the Report formed the basis of a speech that he gave at Tenterfield, New South Wales, in late 1889. The importance of the "Tenterfield Address" is a moot point, and one that can never be accurately established,⁽¹⁶⁾ but it does seem to have had some effect upon people's attitudes regarding federation - if only because a number referred to it - and it is likely that the fact of it dealing primarily with defence helped in its reception. [15]

The Australian people probably were quite well-prepared for the message of the Tenterfield Address, for, not only had they suffered from defence scares in the past, but they believed that they had very definite enemies to fear in the future. Perhaps the most concern was held for Germany, but France, Russia and Japan were also mentioned from time to time.⁽¹⁷⁾

As the major European powers began to show an increased interest in the acquisition of colonies, Australians began to worry that the German desire to protect her commercial interests was likely

(16) For conflicting views see L.E. Fredman, "The Tenterfield Oration: Legend and Reality", The Australian Quarterly, Vol. XXXV, No. 3, September 1963, pp. 59-65, and W.G. McMinn, "Sir Henry Parkes As a Federalist", Historical Studies Australia and New Zealand, Vol. 12, No. 47, October 1966, pp. 405-416.

(17) Although Japan was only mentioned after its defeat of China in 1894 and, even then, did not figure prominently in Australians' thoughts; see D.C.S. Sissons, "Attitudes to Japan and Defence 1890-1923", [M.A. Thesis, Melbourne University, 1956], Chapter 1.

to take Bismarck as far afield as the Pacific region. In particular, many began to fear the existence of German designs upon New Guinea. [16] Defence concerns were not the only worry, for Australian commercial interests were active in New Guinea, as were missionaries, but the matter of defence and the safety of the colonies seems to have been the primary concern. Queensland had long been worried about her long and undefended coastline, and the fear of a German presence so close to the colony raised many fears for her safety. As a tentative step to discourage outsiders, the Queensland Government had established permanent representatives at Thursday Island and Port Moresby, and in 1879 had expanded her territory into all islands up to sixty miles off her shores.⁽¹⁸⁾ In the years prior to 1883, Queensland called upon the British Government to annex New Guinea, without success, although there had been a sympathetic hearing from the Disraeli Government in 1875. The main obstacle to annexation was the expense involved:

....One thing which it will be desirable to say very distinctly ... is that if the Australian colonies desire such a step as the annexation of New Guinea it will be for them to provide the funds.⁽¹⁹⁾

As far as the Colonial Office was concerned, there was no danger to Queensland, or any other colony, for Germany had no interests in the area, and the Australian colonies, only, would benefit from such an

(18) Queensland Coast Islands Bill.

(19) Minute by R.W.G. Herbert, Permanent Under-Secretary of the Colonial Office, dated 11 August 1875, C.O.201/579.

annexation, not the Empire as a whole.⁽²⁰⁾ The German threat was a myth.

Germany had, indeed, become concerned with the race for colonies and New Guinea seems to have formed a definite part of her plans.⁽²¹⁾ There were German financial and commercial interests in the New Guinea region, and these formed a vocal pressure group upon Bismarck and the German Government. This pressure was intensified as Australians heightened their call for annexation.⁽²²⁾ Despite soothing noises made by the Colonial Office, Australians believed their fears justified with the publication in December 1882 of an article in Allgemeine Zeitung in which it was stated that the island of New Guinea could form a basis for a future German colonial empire.⁽²³⁾

Finally, the McIlwraith Government decided to act upon its own authority,⁽²⁴⁾ and thus force the British Government's hand.

(20) Carnarvon to Robertson, 8 December 1875, The Annexation of New Guinea. (Despatch Respecting), V.&P.L.A.Q., 1876, Vol. III, pp. 15-16.

(21) Marjorie G. Jacobs, "Bismarck and the Annexation of New Guinea", Historical Studies Australia and New Zealand, Vol. 5, No. 17, November 1951, p. 14.

(22) Ibid, p. 15.

(23) The Annexation of New Guinea. (Correspondence Respecting), V.&P.L.A.Q., 1883, pp. 775-776.

(24) According to a statement he made over a year later, McIlwraith knew that he had no power to annex New Guinea, S.M.H., 31 July 1884.

Capitalizing upon a rumour that the German corvette Carola which had left Sydney on 20 March 1883, for the South Seas, was actually heading north to seize New Guinea,⁽²⁵⁾ the Government ordered the Thursday Island Police Commissioner to annex Eastern New Guinea. This was done on 4 April 1883. Unfortunately for McIlwraith, the Colonial Office still refused to believe in the warnings of German plans, and the annexation was disallowed on 2 June, and despite the bluster of the Premier, Queensland had to back down. It was, for Australians, an "humiliating snub".⁽²⁶⁾

This question might have blown over, with little relevance to the cause of federation, had not Bismarck reacted to the presence of a German colonial lobby, and on 19 December 1884, he annexed the Eastern part of the island for Germany. Australian reaction against the British Government was immediate,⁽²⁷⁾ and Lord Derby, Gladstone's Colonial Secretary, assumed forever the role of the British villain thwarting the desires of the honest colonies:

.....Lord Derby will never be forgiven
"for winking one eye" whilst friendly
Germany annexed part of New Guinea....⁽²⁸⁾

(25) The Annexation of New Guinea. (Correspondence Respecting), V.&P.L.A.Q., 1883, p. 788.

(26) General Henry R. MacIver, Rivals for Supremacy in the Pacific; A Book for Every British Subject. The Interest and Prosperity of Australasia in Danger, Sydney, 1885, p. 10.

(27) See e.g. Age (Melbourne), 22, 23, 24 December 1884; South Australian Advertiser (Adelaide), 24, 25 December 1884; Launceston Examiner, 6 January 1885.

(28) Craig, op.cit., p. 44; see also S.M.H., 25 December 1884.

This action by Germany highlighted for Australians what many had feared - their vulnerability, while dependent upon Britain, to attack by a major power. It also helped demonstrate how difficult it was for a government on the other side of the world to fully comprehend Australian conditions and attitudes. The dangers of being dependent members of the British Empire were thus quite clear,⁽²⁹⁾ and Australians began to seek a solution to the problem. An attitude developed that Australians had to achieve some type of united voice in matters so important to their future, and they should adopt as Australian a movement such as that to annex New Guinea.⁽³⁰⁾ [17] Simultaneous activity by the French in establishing convict settlements in the New Hebrides, recently gained from Great Britain, aggravated the situation, for there was not only a defence threat created thereby, but it was feared that the proximity of recidivistes would weaken colonial morality.⁽³¹⁾

Thus public opinion became aroused against these "intruders". As a direct result of concern over these activities of the Germans and the French, an intercolonial convention met in November-December 1883

(29) Henry Marshall, Depression and Superstition, Adelaide, 1886, p. 8; Boomerang (Brisbane), 21 January 1888.

(30) Argus (Melbourne), 29 December 1884.

(31) Annexation, Federation, and Foreign Convicts. Resolutions of Public Meetings, Municipal Bodies, etc., in support of the action taken by the Sydney Convention as to Annexation and Federation, and in Protest against the deportation of Foreign Convicts to Neighbouring Islands, V.P.P., 1883, Vol. II, No. 23, passim.

at the suggestion of McIlwraith,⁽³²⁾ to consider the subjects of the annexation of neighbouring islands, and the federation of Australasia. The convention discussed the general question of Australian defence as well as the proximity of French convicts. Opinion was united in fear of the military and moral threat of major powers entering the South Pacific area. Various resolutions were passed pointing out to the Colonial Office how the colonies felt, and praying that the British Government would step in and protect Australian interests.⁽³³⁾ Of greater importance was the suggestion by Samuel Griffith that a "Federal Australasian Council" be established for the purpose of dealing with - among other things -

- (1) The Marine Defences of Australasia beyond territorial limits.
- (2) Matters affecting the relations of Australasia with the islands of the Pacific.
- (3) The prevention of the influx of Criminals....⁽³⁴⁾

It was believed that the colonies were not yet ready for complete federation, but a "limited federation" could give practical effect to what the colonies desired in the way of protection against foreign

(32) Service to Stuart, 11 September 1883, Report of the Proceedings of the Convention... Sydney ... 1883 to Consider the Subjects of the Annexation of the Neighbouring Islands and the Federation of Australasia, V.P.P., 1884, Vol. II, No. 25, p. 48.

(33) Report of the Proceedings of the Convention 1883, pp. 14-15.

(34) Ibid, p. 6.

powers.⁽³⁵⁾ The Convention passed Griffith's resolution, and in 1885 the Federal Council was established. Defence was thus of major importance in helping create the conditions necessary for the creation of the first important federal organization in Australia.⁽³⁶⁾

The Federal Council achieved nothing in the way of strengthening the colonies,⁽³⁷⁾ and behind the scenes men continued to concern themselves with the problems of colonial defence. Most seemed to come to similar conclusions as had Major-General Edwards. Australia had to be defended against the outside world, and some type of unified defence force was essential if the colonies were to have any chance of defending themselves against outside attack. It was not to be a defence system that would ignore the strength of Britain, for the colonies were too weak to stand alone,⁽³⁸⁾ but it had to be one in which the colonies acted as one:

....The old, old simile of the bundle of sticks applies as well to-day as when the patriarch of the fabulist quoted it to his family.⁽³⁹⁾

Major-General, Sir Edward Hutton, Commanding Officer of the New South Wales Military Forces was a very vocal exponent of this view

(35) Service to Stuart, 24 October 1883, ibid, p. 53.

(36) Griffith, Federal Council Debates, Session 1886, p. 16; Mr Berry, V.P.D., Session 1885, Vol. XLVIII, p. 111.

(37) For more on the Federal Council, see Chapter A VI.

(38) Edmund Barton, speech at Manly, S.M.H., 3 March 1896; Craig, op.cit., p. 79.

(39) Ballarat Courier, 9 January 1898.

of colonial defence, and, during his period of office,⁽⁴⁰⁾ he attempted to interest the people and their leaders in this matter. Hutton had an awareness of the value of publicity, for, as well as recommendations favouring federal defence which he made in his annual reports to Parliament,⁽⁴¹⁾ he also made speeches and gave interviews in many parts of the country calling for federal action which invariably received a good press.⁽⁴²⁾ Hutton was a prominent member of two military conferences which met in 1894 and 1896, and which submitted specific recommendations for a federal defence system. The 1894 meeting, for example, strongly recommended the creation of a federal defence force for the protection of the colonies.⁽⁴³⁾ The idea was that the colonies should create their own forces which would be liable for service in any colony in time of war or national emergency.⁽⁴⁴⁾ Although perhaps not as important to the federal cause as Hutton later maintained,⁽⁴⁵⁾ this Conference did help by presenting concrete proposals to the colonies -

(40) 1893-1896.

(41) See e.g. Military Forces of the Colony. (Report for the Year 1895), V.&P.L.A.N.S.W., 1896, Vol. IV, pp. 960-961.

(42) See e.g. speeches at Bathurst, S.M.H., 25 January 1894; at Inverell, Inverell Times, 20 June 1894; at Wilcannia, Colonial Military Gazette (Sydney), 15 November 1895. For Hutton's view of the importance of such efforts, see Papers and speeches &c. by Colonel Hutton 1885-1898, XII, p. 25, held in National Library, Canberra.

(43) Report and Summary of Proceedings...of the Federal Military Conference...Sydney...1894, Appendix A, p. 7.

(44) Ibid, Appendix D, p. 16.

(45) Hutton Press Cuttings, Vol. 6, 1893-94, p. 110 (marginal note dated 23 July 1903), National Library, Canberra.

copies of its "Strictly Confidential" Report were sent to all governments.⁽⁴⁶⁾ [18] In January 1896 the work of this Conference was "supplemented"⁽⁴⁷⁾ by the work of the 1896 Intercolonial Military Committee, and it was reliably rumoured that these views formed the basis of an extended debate at the 1896 Conference of Colonial Ministers.⁽⁴⁸⁾ Whatever the truth of the matter, it was probably significant that the first recommendation of the Conference dealt with federation and defence:

That federation is essential to any complete scheme of Australasian Defence.⁽⁴⁹⁾

Twelve months later saw the first sitting of the 1897-8 Federation Convention, and the defence problem had played an important part in bringing together the delegates to this body.

(46) Military Forces of the Colony... p. 959.

(47) Ibid.

(48) S.M.H., 5 March 1896.

(49) Intercolonial Conference of Ministers, S.A.P.P., 1896, Vol. II, No. 38, p. 1.

[12] COLONIAL CONFERENCE, 1887

(Proceedings of the Colonial Conference 1887, Vol. II, Commons Papers, Vol. LVI, 1887, C.5091, pp. 260-261.)

AGREEMENT AS TO ADDITIONAL FORCE TO BE EMPLOYED FOR THE
PROTECTION OF THE FLOATING TRADE IN AUSTRALASIAN WATERS.

(Approved Draft.)

The Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, &c., and the Governments of Her Majesty's Colonies of New South Wales, Tasmania, South Australia, New Zealand, Victoria, Queensland, and Western Australia, having recognised the necessity of increasing the Naval Force for the protection of the floating trade in Australasian waters at their joint charge, have resolved to conclude for this purpose an Agreement as follows:-

Article I

There shall be established a force of sea-going ships of war, herein-after referred to as "these vessels," to be provided, equipped, manned, and maintained at the joint cost of Imperial and Colonial funds....

Article IV

These vessels shall be under the sole control and orders of the Naval Commander-in-Chief for the time being appointed to command Her Majesty's ships and vessels on the Australian Station....

Article VII

1. The first cost of these vessels shall be paid out of Imperial funds, and the vessels fully equipped, manned, and sent to Australia.

2. The Colonies shall pay the Imperial Government interest at 5 per cent. on the first and prime cost of these vessels, such payment not to exceed the annual sum of £35,000.

3. The Colonies shall, in addition, bear the actual charges for maintaining from year to year the three fast cruisers and one torpedo-gunboat which are to be kept in commission in time of peace, and also of the three other vessels which are to remain in reserve, including the liability on account of retired pay to officers, pensions to men, and the charge for relief of crews; provided always that the claim made by the Imperial Government under this head does not exceed the annual payment of £91,000....

[13] THE EASE WITH WHICH THE COLONIES COULD BE ATTACKED

(Rear-Admiral Tryon, Memorandum to Sir H.B. Loch, Governor of Victoria, 27 March 1885, Naval Defences. Correspondence Respecting Naval Defences of Australasia, V.P.P., 1886, Vol. III, No. 81, pp. 2-3.)

....Considerations of defence naturally involve an estimate of what they are to be prepared against.

History is apt to repeat itself; squadrons and fleets have escaped the most vigilant admirals, and the most skilful strategists failed in days of old so to order our fleets as to prevent this. Since those days, the composition of the navies of the world has greatly altered, and at this time it is far easier for an admiral to avoid notice and conceal distinction.

It is possible that an attack may be delivered by a small squadron of ironclads of a type that does not entitle them to a place in the first rank - they would be very formidable if employed to attack our Colonies. And still more possibly, a hostile squadron might contain vessels of the fast partially-armoured class that are now much in fashion, and the construction of them is on the increase. It is well to consider what such a squadron could do, supposing it had arrived off our coast, having avoided detection - the admiral in command, deceived by false reports, gone to New Zealand, with the telegraphs cut....

[14] MAJOR-GENERAL EDWARDS' REPORT ON THE MILITARY FORCES OF THE AUSTRALIAN COLONIES

(Military Forces of the Australian Colonies. (Report of Major-General Edwards, C.B., on proposed organisation of), V.&P.L.A.N.S.W., 1889, Second Session, Vol. I, pp. 167-172.)

PROPOSED ORGANISATION OF THE MILITARY FORCES
OF THE AUSTRALIAN COLONIES

Having made detailed reports on each of the forces of the Australian colonies, and brought to the notice of the different governments, various points in their military systems which seemed to me worthy of special remark; I now propose to deal with those general questions,

which are common to the whole of Australia, and to propose an organisation, which will not only enable the different colonies to combine for mutual defence, but lay the foundations of a sound military system.

Before the completion of the railways which unite Adelaide, Melbourne, Sydney, and Brisbane, it was impossible for the colonies to co-operate for defence; and this is not even now possible, on account of their different organisations, and because the colonies cannot employ their forces outside their own borders.

Combined action for defence would be more economical and far more effective than the present system of purely local defence. Suppose, for instance, an enemy captured Newcastle in New South Wales, the joint action of the colonies would at once supply a powerful force to retake it. The fact that 30,000 or 40,000 men could be rapidly concentrated to oppose an attack, upon any of the chief cities, would deter an enemy from attempting such an enterprise; and this can be accomplished by means of a common system or organisation, and without materially increasing the present strength of the forces. It would also prevent the unseemly scares which take place whenever the relations of the mother country with a foreign power are somewhat strained: the mere fracture of the cable between Darwin and Batavia, which recently took place; was sufficient to cause uneasiness throughout all the colonies, and in Victoria preparations were actually made to resist an attack.

ORGANISATION.

Every army before it can be efficient in war must be composed of certain definite units, each perfect and complete in itself. In the great European armies, these units are called Army Corps, each of which is a perfect little army in itself of 30,000 or 40,000 men; several of these Army Corps being brought together to form an army. The same principle holds good in determining the organisation of any army; and in order that the military forces of the different Australian colonies may be able to combine for mutual defence, they must also consist of definite units, each of which must be perfect and complete in every detail; although these units will of course be very small in comparison to the Army Corps of a European Army.

The unit which is most suitable under the present conditions of the colonial forces, is a brigade of all arms, of the following strength on the peace establishment:-

| | | | | | |
|---|-----|-----|-----|-----|-------|
| Infantry - 2 Regiments of 2 four company Battalions - each Battalion 300 strong | ... | ... | ... | ... | 1,200 |
| Mounted Rifles - 1 Regiment of 6 companies | ... | ... | ... | ... | 360 |
| Field Artillery - 2 Batteries of 6 guns each | ... | ... | ... | ... | 180 |
| Engineers - 1 Field Company | ... | ... | ... | ... | 60 |
| Commissariat, Medical Staff, &c. | ... | ... | ... | ... | 110 |
| Total | ... | ... | ... | ... | 1,910 |

When mobilised for war, this brigade could be quickly expanded to 3,000 men, and a reasonable time being allowed even to as much as 5,000 men of all arms. The forces of Queensland and South Australia can readily supply a brigade each; and, calculated on the basis of population, New South Wales and Victoria ought to supply three brigades each, which would give eight brigades among the colonies. To do this, however, New South Wales and Victoria would have to reorganise their infantry, and increase their partially-paid forces. If they do not feel inclined to do this at the present moment they can, in the first instance, organise their forces into two brigades, without additional expenditure, leaving the third brigade to be established at an early date.

These brigades, properly established and complete in every detail, and mobilised and expanded for war, readily adapt themselves to combined action. The Queensland Brigade united with the Northern Brigade of New South Wales under the Queensland Commandant, would form a division for the protection of the coast from Brisbane southwards. A second division would be formed out of the two remaining brigades of New South Wales, and under the command of its Commandant would cover Newcastle and Sydney. A third division from the Melbourne military forces under the Commandant in that colony would cover Melbourne; and a fourth division from the remaining brigade in Victoria and the South Australian Brigade, under the command of the Commandant of the latter, would cover Adelaide. Finally, these divisions could be assembled and formed into a considerable army of 30,000 men or 40,000, at any point of the coast, from the head of Spencer's Gulf, in South Australia, to Moreton Bay, in Queensland, and even as far as Rockhampton, when the railway is completed.

THE PERMANENT FORCES OF AUSTRALIA.

Permanent forces of Garrison Artillery and Submarine Miners are maintained in the different colonies, the strength of the different corps being as follows, viz.:-

| | | | | |
|-----------------|-----|-----|------------|---------------------------------|
| Queensland | ... | ... | 104 | Artillery and Submarine Miners. |
| New South Wales | ... | ... | 464 | ditto |
| Victoria | ... | ... | 287 | ditto |
| South Australia | ... | ... | 48 | Artillery |
| Tasmania | ... | ... | 24 | " and Submarine Miners. |
| Total | ... | ... | <u>927</u> | |

It is most essential that the Artillery and Submarine Mining services should be brought under one head, so that they may work together without friction; and this can be brought about by the amalgamation of these Permanent Forces into one corps, calling it the "Australian Fortress Corps," so as to distinguish it from the Field Artillery. It would then only be necessary to slightly increase it, to enable the men to be found to take charge of the defences proposed at King George's Sound and Thursday Island. A few of the officers should be sent to England to be put through courses of instruction in gunnery and submarine mining at Shoeburyness and Chatham; and they would then be able to become the instructors of the officers and men in the corps....

FEDERAL MILITARY COLLEGE.

Nothing is more necessary for the efficiency of an army than the proper education of its officers, but at present no means exists in Australia to meet this important want. Canada was formerly in the same difficulty before she was federated, and it was only overcome by the establishment of the Royal Military College at Kingston. Having had personal experience of the officers educated there, I can testify to the excellence of their instruction. In addition to the primary object of the College, the course affords a thoroughly practical, scientific, and sound training in all branches essential to a high and general modern education. The tendency of it has been, to cause the students to feel a greater pride in their country, and to look at it from the broad standpoint of Canadians, whose aspirations are not circumscribed by the limits of a municipality. A college such as this, would be eminently adapted for the education of the officers of the Australian forces.

RAILWAYS.

Railways are now such important factors in war that no combined operations are possible over a large area without them. The break of gauge which exists between the colonies would be fatal to celerity of movement; it would practically prevent Victoria and South Australia coming to the assistance of New South Wales or Queensland, nor for the same reason could the two latter colonies render effective

assistance to Victoria or South Australia. If, therefore, full benefit is to be derived from the railways, a uniform gauge must be established, at all events on the through lines.

WESTERN AUSTRALIA AND PORT DARWIN.

No general defence of Australia can be undertaken unless its distant parts are connected with the more populous colonies in the south and east of the continent. If an enemy was established in either Western Australia or at Port Darwin, you would be powerless to act against him. Their isolation is, therefore, a menace to the rest of Australia, and the loss of the latter would cut off all telegraphic communication with the rest of the world, the station at Roebuck Bay not being capable of defence. Standing as it does face to face with the teeming populations of Asia, and connecting Australia by means of its cable with Singapore, it has become a harbour of the first importance. In its present unprotected state, the telegraph station might easily be destroyed, and, although cables which have been cut by an enemy at sea may be repaired, the station and its valuable instruments could not be made good. The cable will certainly be interfered with whilst we are at war with a naval power; but if Port Darwin was protected by two or three guns and a small force, a fast steamer could shelter there, and be employed in keeping up communications through Singapore with the outside world. The interests of the whole continent, therefore, demand, that the railways to connect Port Darwin and Western Australia with the other colonies should be made as soon as possible.

TASMANIA.

If, however, the isolation of Western Australia and Port Darwin is a menace to Australia, the position of Tasmania is still more dangerous, situated as it is within 3 days steaming of Adelaide, 1 from Melbourne, $2\frac{1}{2}$ from Sydney, and 4 from New Zealand; and it might even become necessary to send troops from the other colonies, to protect it in time of war. No enemy could seriously threaten Australia, until he had established a convenient base near at hand, and such a base he would find in Tasmania with its numerous harbours and supply of coal.

FEDERATION OF THE FORCES.

A common system of defence can only be carried out by a federation of the military forces of the colonies, each State agreeing to organise its forces on the same system, although they may continue to pay and maintain them separately. An officer of the rank of Lieutenant-General should be appointed to inspect the forces in peace, and command the whole in war. If the colonies had had the advice and assistance of such an officer during the last few years, their forces would be more efficient than they now are, and they would have been saved much unnecessary expense. It is, therefore, strongly recommended that,

even if a federation of the forces does not immediately take place, that the colonies at once agree to the appointment of this officer, to advise them, inspect their forces, and to be ready to take command in time of war.

MILITARY EXPENDITURE.

Some additional expenditure will be required to carry out these proposals; but its amount is inconsiderable in comparison with the results which will be obtained. Comparing the present expenditure of the different colonies with that of the mother country, and even with the United States of America, it cannot be said that the burden of defence presses heavily upon the great resources of the Australian colonies. While England expends $\frac{1}{3}$ of her income on defence and the United States $\frac{1}{6}$, Australia expends $\frac{1}{40}$

If the Australian colonies had to rely at any time solely on their own resources, they would offer such a rich and tempting prize, that they would certainly be called upon to fight for their independence, and isolated as Australia would be, without a proper supply of arms and ammunition - with forces which cannot at present be considered efficient in comparison with any moderately trained army, and without any cohesion or power of combination for mutual defence among the different colonies - its position would be one of great danger. Looking to the state of affairs in Europe, and to the fact that it is the unforeseen which happens in war, the defence forces should at once be placed on a proper footing, but this is however quite impossible without a federation of the forces of the different colonies.

[15] ONE RESPONSE TO EDWARDS' REPORT

(Sir Henry Parkes, speech at Tenterfield, 24 October 1889, The Federal Government of Australasia. Speeches delivered on various occasions (November, 1889 - May, 1890), by Sir Henry Parkes, G.C.M.G., Sydney, 1890, pp. 3-4.)

....The Imperial General [Edwards] who inspected the troops of the colony had recommended that the whole of the forces of Australia should be united into one army. It would be pleasing if they could rely on being safe without taking military precautions at all; but as this was impossible, they must take measures to defend themselves, and the knowledge of the fact that they were in this condition of security would be spread all over the world, and make them additionally secure. There

were two very important questions towards which their attention ought to be directed. They must have heard something of the Federal Council, in which New South Wales had not yet taken a place; but if they were to carry out the recommendations of General Edwards, it would be absolutely necessary for them to have something more than the Federal Council - one central executive authority, which could bring all the forces of the different colonies into one national army. Some colonial statesmen had said that this might be done by means of the Federal Council; but this Federal Council had no power to do anything of the sort, as it had no executive function; and, moreover, was not an elective body, but merely a body appointed by the Governments of the various colonies; and did not, therefore, carry with it the support of the people. It was constitutionally weak, and, under the Imperial Act which created it, no such tremendous power was given as that which the exigencies of Australia might demand. It had been suggested that the Imperial Parliament should be asked to pass a measure authorising the troops of the colonies to unite in one federal army; but still, even if this were done, there would be an absence of the necessary central executive government. The colonies would object to the army being under the control of the Imperial Government; and no one of the colonies could direct it. The great question which they had to consider was, whether the time had not now come for the creation on this Australian continent of an Australian Government, as distinct from the local Governments now in existence. (Applause.) In other words, to make himself as plain as possible, Australia had now a population of three and a half millions, and the American people numbered only between three and four millions when they formed the great commonwealth of the United States. The numbers were about the same, and surely what the Americans had done by war, the Australians could bring about in peace without breaking the ties that held them to the mother country. (Cheers.) Believing as he did that it was essential to preserve the security and integrity of these colonies that the whole of their forces should be amalgamated into one great federal army, whenever necessary, - feeling this, and seeing no other means of attaining the end, it seemed to him that the time was close at hand when they ought to set about creating this great national government for all Australia. This subject brought them face to face with another subject. They had now, from South Australia to Queensland, a stretch of about 2,000 miles of railway, and if the four colonies could only combine to adopt a uniform gauge, it would be an immense advantage in the movement of troops, as well as in the operations of commerce and the various pursuits of society. These were the two great national questions which he wished to lay before them....

[16] FEAR OF GERMANY

(General Henry R. MacIver, Rivals for Supremacy in the Pacific; A Book for Every British Subject. The Interest and Prosperity of Australasia in Danger, Sydney, 1885, pp. 15-16, 22.)

....Most Australasian politicians appear to be drowsily content to "cobble" only local questions, and ask with surprise what business they have to interfere with international politics. I tell such gentlemen that Australasian politics are getting mixed up very fast with international politics. The reason for this is not far to seek. The world is getting filled up. The desert places of the earth are becoming populated, the dark corners of the globe are becoming known. Savagedom is vanishing everywhere before advancing civilisation. Civilised Powers are eagerly grabbing all the empty places they can find. Australasia shares in all these changes. No longer are Australia and its islands "encompassed by an inviolate sea." In New Guinea British territory has now a land neighbour, and that neighbour is a gigantic and frowning military Power. The statesman who controls its destinies is fired with ambitious designs, complicated and Machiavellian in their character. It is to Australasia's interest - nay it is Australasia's duty - to closely study the projected programme of its new neighbour. We may gauge what Prince Bismarck, the statesman and arch-filibuster of the age, is likely to do in the Pacific, by noticing what he has already done in the colonising business in other parts of the world. It is the fashion for a certain set of English politicians to talk glibly about an Anglo-German alliance, and to declare that no two nations were ever in closer relations of amity; but actions testify more loudly than words, and it is more convincing to judge of German friendliness by German actions, than it can possibly be to rely upon mere empty statements. What has Bismarck done in various parts of the world, in matters that clash with British interests? He has ousted Australasia with contempt from the greater part of New Guinea and has annexed New Britain and New Ireland; he has thrust himself into Angra Pequena in a manner which England cannot help resenting; he has been the accomplice of Russia, and antagonistic to British interests in connection with Great Britain's Egyptian policy; he is the avowed patron of, and sympathiser with the Boers in the Transvaal; and he has forced matters with a high hand on the Congo. It is a delicious pastime to gabble about the friendship Germany cherishes for England; but sensible men want some more tangible security than a purely sentimental guarantee. It is true that the accidents of the past history of the two countries have hitherto kept them at peace with each other. But this has been due to purely fortuitous conditions - mostly geographical. The two countries have never been land neighbours, having as a boundary line between them a frontier of frowning military fortresses. Had they been land neighbours in any part of the world, history would have told a different tale.

Bismarck has been described as having colonies on the brain. It is certain that he has evolved a colonial policy of startling magnitude, and it is not difficult to discover the immediate reasons which prompted him to thus find a profitable outlet - profitable to the Fatherland I mean - for superfluous German enterprise and energy....

Australasia must awake to her responsibilities of self-defence. International politics make Germany's aspired-to supremacy in the Pacific the most important political question with which Australasia is confronted. All New Guinea and the islands adjacent to our shores are, geographically, the birthright of Australasia, and the encroachments of all countries thereon should be stubbornly resisted. It is the birthright of individual manhood to make one's peaceful existence secure - to environ oneself with conditions that will enable one to defend that which he has developed by his own enterprise and industry. That which applies to the individual applies equally to a nation. I call upon Australasians to agitate this question. Australasia is a part of the British Empire, and has a right to know what provision that Empire is going to make to protect it from the incursions and menaces of unfriendly neighbours, with whom Australasia, as a part of the British Empire, may be drawn into war, by no act of its own, but by Imperial blundering, or Imperial necessity....

[17] NEW GUINEA ANNEXATION AND FEDERATION

(T. McIlwraith, Premier of Queensland, Report of the Proceedings of the Convention...Sydney...1883 to Consider the Subjects of the Annexation of Neighbouring Islands and the Federation of Australasia, V.P.P., 1884, Vol. II, No. 25, Appendix B, p. 58.)

....But there can be no doubt that the refusal to annex New Guinea, together with the possible acquisition by Foreign Powers of some of the Pacific islands contiguous to Australia, does raise very serious questions intimately connected with the future interests of the Australasian Colonies. If Her Majesty's Government does not feel that the annexation of New Guinea, or of the islands adjacent to Australia, is of so much importance to the Empire at large as it is to the Australian Colonies, let some means be devised by which those islands may be held and governed for the benefit of the Australian people. The step taken by the Queensland Government, in causing a formal claim to be made over New Guinea, was done in the interests, not only of Queensland, but of all the Australian Colonies, and in the interests of the natives of New Guinea, who ought to be protected by some lawful

authority from contact with the lawless adventurers who are too often a law to themselves. That also which is for the advantage of this country is surely for the advantage of Great Britain. The Middle Island of New Zealand was won for Great Britain by a timely act of annexation. In the last century, similar timely acts of annexation won large portions of America for the Anglo-Saxon race. Why, then, should not Queensland be permitted, with the sanction of Her Majesty's Government, to assist in carrying out this national and beneficial policy? If, then, the real reason for the refusal to annex New Guinea be, not the expense, but the difficulty of providing for the government and protection of the native races, might not this be met by the sanction and authority of the united colonies? Some justification, it has been often said, is required for federation - may it not be found in this exigency?

I submit that a case has arisen which may be made use of to call into existence the higher forms of government required to give effect to this policy of annexation. The Australian Colonies are now united by sentiments of filial regard and devotion to the British Empire, though they are not represented in the British Legislature. The Imperial Parliament dominates the whole Empire, and the colonies are not represented in that Parliament, though their interests may be vitally affected by its decisions. It is not possible to give authoritative effect to the wishes of the people of Australia in anything beyond their own domestic interests, except through the intervention of Her Majesty's Government.

The circumstances of the present case seem to point to a necessity for combination among the Australian Colonies - a combination for both legislative and executive purposes. Australian interests are involved in securing the peaceful and progressive supremacy of Australian influences in the adjoining seas. In order to effect this it is necessary that there should not only be sentiments held in common, but that a form of government should be provided capable of giving expression to these sentiments. The federation of the Australian Colonies may thus be forwarded. Here is work for the united colonies to do, if they can be got to unite. I suggest that a convention of delegates should be held to discuss the basis upon which a Federal Government could be constituted.

This, I believe, was the form adopted in Canada previous to the constitution of the Dominion Parliament. May not this example be followed here? The Dominion Government has added largely to the influence and the national integrity of Canada. It seems probable that a similar form of government adapted to the special requirements of Australia would give life to national aspirations here, without repressing the autonomous Governments of the respective colonies. To it would properly belong the discussion of such measures as are necessary for the consolidation and security of Australian interests, as well as for the government of these outlying islands in the Pacific, which at present are not claimed by any civilized Power.

I think, therefore, that there ought, in the first place, to be representations from all the Australian Colonies, urging upon Her Majesty's Government a reconsideration of their decision as regards New Guinea; and, in the next place, Her Majesty's Government should be invited to move in the direction of providing for a form of Federal Government suitable for the Australian Colonies....

[18] THE NEED FOR A FEDERAL DEFENCE FORCE

(Report and Summary of Proceedings...of the Federal Military Conference... Sydney...1894, Sydney, 1894, Appendix A, pp. 6-7.)

....While on the one hand each Colony of Australia and Tasmania should be prepared to guarantee the "passive defence" of its own cities, towns, and harbours of commercial importance, on the other hand the whole of the Colonies should be so organised as to jointly guarantee the "active defence" of any portion of Australian or Tasmanian soil which may be menaced by an invader....

Especial care must be bestowed by each Colony in the organisation, equipment, and training of its contingent to the Federal Defence Force. This force must be so constituted and organised as to be ready at the shortest notice to conform to any orders for movement by sea or land which may be indicated to it by the Council of Australian Federal Defence...in times of national emergency. The existence of a Federal Force so constituted would not only promote a feeling of security throughout Australia, but it would constitute a guarantee for effective military operations being conducted against any hostile force which it might be possible for an enemy to land on the long undefended coast line of Australia or Tasmania....

V - THE DESIRE FOR RACIAL PURITY

During the latter decades of the nineteenth century a number of Intercolonial Conferences were called to discuss matters of common urgency or interest. One of the most frequent topics was that of the immigration into the colonies of coloured peoples, and the question of how they could be restricted. This recurrent problem was of eventual importance with regard to federation for two reasons. Firstly, it was a question that was not restricted to colonial boundaries - in fact, the borders between the colonies and the different laws within each only made the task of restricting coloured immigrants that much more difficult. Thus, at an early stage, it was instrumental in drawing people's attention to one weakness, at least, of division. Secondly, this realization meant that it was a matter which caused quite a deal of attempted federal action at a time when the colonies were rather proud of their independent status. We find, therefore, that the coloured immigration question played two important roles in relation to federation: one as a popular reason to be advanced for federation, and the other as a conditioner of public opinion - it helped people accept federal activity as being perhaps worthwhile and necessary:

....No motive power [than the desire to keep aliens out of Australia] operated more universally on this continent or in the beautiful island of Tasmania, and certainly no motive power operated more powerfully in dissolving the technical and arbitrary political divisions which previously separated us than the desire that we should be one people and remain one people without the admixture of other

racess...This was the motive power which swayed tens of thousands who take little interest in contemporary politics....(1)

In looking at this question of immigration restriction and federation, we are concerned first of all only with Australian reactions to the Chinese. In the latter decades of the century this expanded to include specifically the Kanakas from the South Seas and the Japanese, but by the nineties it included all coloured people, whatever their background. We must look briefly at the history of some of these people in Australia to understand fully the force of the issue upon Australian attitudes. We will find that the hostility to the alien peoples was a lasting and a bitter one, and that the fears it aroused helped greatly to break down their fear of each other. Many believed that Australians had to be confronted with a military danger from without before they were likely to federate,⁽²⁾ but it was also a fear of another type of "invasion" which did much to break down the intercolonial barriers.

After 1788, Australia became very quickly a white man's region.⁽³⁾ The colonies were founded by the British, and any leavening of the English, Scottish and Irish mass came generally from other white

(1) Mr Deakin, C.P.D., Session 1901-2, Vol. IV, p. 4804. See also cartoon, Melbourne Punch, 10 May 1888.

(2) For a comment on this view, see Edward Jenks, The Government of Victoria (Australia), London, 1891, p. 373.

(3) See e.g. population figures in Victorian Year-Book 1892, Vol. I, pp. 98-102.

nations - Germany, U.S.A., Italy and the Scandinavian countries all provided immigrants. These people, whatever their differences in background, were of the European civilization, at a time when coloureds were generally regarded as "pore benighted 'eathens". To most, the people of the Far East were included in this category.

....The observer of alien cultures has tended to be prejudiced in favor of his own culture, and to view the alien and unfamiliar as barbaric and inferior....(4)

This was the way in which European stock Australians regarded the Chinese who flocked to their shores during the gold rushes of the fifties, and later during the seventies and eighties. The Chinaman was an unknown and exotic figure who occasioned a fearful, instinctive response of opposition.⁽⁵⁾ This was the earliest common attitude towards the coloured man, and it was an attitude which was developed much further, as the century progressed, by important considerations other than just instinctive fear.

In the fifties the Chinese quickly made themselves unpopular on the gold fields. The European miner's main grievance was the Chinese skill at extracting gold, but he also complained about Chinese morals, habits and general mode of living, all of which appeared to him to be

(4) Ashley Montagu, Man's Most Dangerous Myth: The Fallacy of Race, Cleveland (4th ed.), 1964, pp. 36-37.

(5) Geoffrey Serle, The Golden Age. A History of the Colony of Victoria, 1851-1861, Melbourne, 1963, p. 328.

evil and corrupting.⁽⁶⁾ The miners (and the urban dwellers) did not want the Chinese, so they found all possible reasons for their exclusion - they did not understand the Chinaman, and they has little desire to try. As a result of agitation, perhaps the earliest official attempt to achieve some uniformity of action occurred in 1857, in the correspondence of the Governor of Victoria with the Colonial Office.⁽⁷⁾ This was not successful - it was probably not very necessary at this point - and the colonies worried by the Chinese presence were able to restrict the inflow quite effectively by themselves.

Chinese immigration was not a serious question after the late fifties until the seventies and eighties, and it was in this latter period that it assumed the great importance which was of direct relevance to the story of Australian union.

Perhaps the most important factor which emerges from a study of this question, is that by the 1870's, at least, there seems to have been a definite community of interest with regard to the type of society Australians wanted in the Antipodes. One prominent feature of this society was that it had to be white and, preferably, Anglo-Saxon. Many saw Australia as a model of Caucasian purity,⁽⁸⁾ and they were determined to keep it unsullied by inferior races. There was just no place for

(6) See Barkly to Labouchere, Governors' Despatches to the Colonial Office, No. 118 of 3 December 1857, C.O. 309/43.

(7) Ibid.

(8) See e.g. Hon.W. Campbell, V.P.D., Session 1881, Vol. XXXVIII, p. 1243.

coloured people, and especially the yellow man, in this view of the future Australia - the Chinese stereotype was grossly distorted, but distorted or not, it did not fit the Australian plan.⁽⁹⁾ Only by rigid opposition could Australia be enabled to fulfil her

....destiny as the last pure Caucasian Commonwealth, and as the Exemplar of Western Civilization....⁽¹⁰⁾

Others saw the dangers of a racial minority in their midst, and the United States' example was cited as a warning. [19]

This attitude towards the Chinese was partly caused by the fear held for what was referred to as this "alien race",⁽¹¹⁾ and partly because of the actions of the Chinese themselves. During the gold rushes, most Chinese came to Australia as indentured labour under bondage to businessmen in China. The money they earned was sent back to China, and as soon as they had served their time and saved enough money, most returned immediately to their homeland.⁽¹²⁾ In later years, when many

(9) Geoffrey A. Oddie, "The Chinese in Victoria, 1870-1890", thesis presented for the degree of Master of Arts in History, University of Melbourne, 1959, pp. 126-127.

(10) Hon. J. Langdon Parsons in W. Gay and M.E. Sampson (eds.), The Commonwealth and the Empire. Special Contributions and Communications on the Subject of Australasian Federation from Leading Colonial and Imperial Writers and Statesmen, Melbourne, 1895, p. 10.

(11) Age (Melbourne), 19 September 1887.

(12) Charles Daley, "The Chinese in Victoria", The Victorian Historical Magazine, Vol. XIV, No. 1, February 1931, p. 29.

more Chinese were to be found in the urban areas, the practice of sending money to China continued, although more became fixed residents of Australia. Throughout the whole of the second half of the nineteenth century, their general exclusiveness from the way of life of most Australians placed them in an awkward position in the community. Many did not wish to assimilate, but this caused much hostility, for it was felt that the Chinese had no case for their continued entry and presence while they made no attempt to become a part of the community.⁽¹³⁾ This feeling was widely held:

...They come here to take our gold; they do not contribute to our revenue; they do not settle down and become permanent colonists; they do not enter into arrangements with the inhabitants of our own race for the purpose of their labour being utilized in advancing the interests of our countrymen or the industries of the colony; they are here for their own ends solely, to make money; and they retire when they have made it, to spend what to them is a fortune, in their own country....⁽¹⁴⁾

This anti-Chinese intolerance found its loudest expression in racist arguments and abuse widely used by white colonials. This was not restricted to one type of Australian, and many such expressions came from a wide variety of quarters. The use of racism as a weapon for securing a united front against the Chinese was very important and

(13) Oddie, op.cit., pp. 106-109.

(14) Mr Mein, Q.P.D., Vol. XXII, 1877, p. 74.

very effective,⁽¹⁵⁾ and it was perhaps best expressed in the pages of many Australian journals. William Lane's Boomerang was one which featured anti-Chinese hysteria,⁽¹⁶⁾ while the Sydney Bulletin highlighted its fevered outpourings with particularly repulsive pictures of the Chinaman and all his vices.⁽¹⁷⁾ According to these journals the Chinaman had no place in Australia because of the danger of the moral corruption that he was steeped in, and which would corrupt young, pure Australians. The blood of the Coolie must not be allowed to mix with that of the Australian, for the former was

....fevered and debauched with the
hereditary distillations of centuries
of Oriental vice....⁽¹⁸⁾

Even members of the clergy had their anti-Chinese arguments:

....He would...be very sorry to see a
swarm of Chinese coming into the land.
A grand country had been given by God
for their children, and it ought to be
preserved for that purpose, and the
Chinese be prevented from swarming over
it. God had given the Chinese land
enough....⁽¹⁹⁾ [20]

(15) Werner Levi, Australia's Outlook on Asia, Sydney, 1958, pp. 14-15.

(16) See e.g. the serial "White or Yellow" (18 February 1888 to 5 May 1888), which pictured an Australia of the future that was within an ace of domination by the Chinese. For a similar type of tale see Kenneth Mackay, The Yellow Wave. A Romance of the Asiatic Invasion of Australia, London, 1895.

(17) See e.g. the issue for 24 March 1888, p. 5.

(18) Bulletin, 16 December 1882, p. 2.

(19) Rev.A.J. Webb (at a Wesleyan Conference), Age (Melbourne), 22 May 1888.

The Chinese were not the only coloured immigrants working the Victorian gold fields in the fifties, for others such as Negroes and Maoris were to be found. Why, then, were these others permitted to lead a quiet life while "John Chinaman" was continually persecuted? The basic reason was probably their numbers - the other racial groups did not present the same social and economic threat to the whites.⁽²⁰⁾ Once the Chinese grew too large and successful - like the Negroes in the U.S.A. today, or the coloureds in the United Kingdom - then the white population began to fear being swamped. Like the modern examples of the same problem, much of the anti-Chinese agitation came from the working-class section of the population. By 1859, the Chinese represented 8% of the Victorian population, and 20% of the Victorian male population.⁽²¹⁾ This fear of large numbers of Chinese inhabiting the country continued to be held long after the Victorian rushes, and, in fact, increased to the point where many Australians began to fear a Chinese "flood" that would inundate the white population.⁽²²⁾ The Chinese were regarded as

....essentially a migratory people, ready to swarm off in countless hordes to any country where they can obtain a footing....⁽²³⁾

In 1880, the U.S.A. had imposed restrictions upon Chinese entry into the American West Coast, and great was the Australian fear of a resulting

(20) Serle, op.cit., p. 333.

(21) Ibid, p. 320.

(22) Brisbane Courier, 12 January 1891.

(23) Hon.W. Ross, V.P.D., Session 1881, Vol. XXXVIII, p. 1244.

diversion of the stream from the U.S.A. to the Australian colonies.⁽²⁴⁾
This attitude was stimulated further by an actual increase of the
Chinese population after the American restriction.⁽²⁵⁾ By the late
eighties the concern was such, that many regarded the real external
threat as being from the hordes of the East rather than from the guns
of the West.⁽²⁶⁾ [21]

This fear of "The Mongolian Millenium" - the Bulletin's
phrase⁽²⁷⁾ - was held particularly by the labouring classes. They were
worried continually about the possibility of a sudden, large influx of
Chinese workers, for if such a development occurred, then they would be
the first to suffer. On the goldfields the Chinese had reduced the
opportunities, and, thus, the earnings of European miners,⁽²⁸⁾ and
throughout the remainder of the century probably the strongest single
objection to Chinese immigration was fear of economic competition at the
workman's level:

We have no objection to educated Chinese
who may wish to live amongst us as
merchants, but we strongly oppose the
labouring class competing with our
workmen and artisans.⁽²⁹⁾

(24) Myra Willard, History of the White Australia Policy, Melbourne,
1923, p. 58.

(25) Ibid, p. 60.

(26) See e.g. J.G. Witton to A.I. Clark, 12 May 1888, Clark Papers,
D2b, University of Tasmania Archives.

(27) 23 April 1881, p. 13.

(28) Serle, op.cit., p. 327.

(29) Editorial, Mt Alexander Mail, 9 May 1888, quoted in Oddie, op.cit.,
pp. 28-29.

In fact, the threat was not a large one. In two occupations, only, was any damaging competition apparent, but they were sufficient for the anti-Chinese arguments. The Chinese undercut their opposition by working longer hours for less money, and by their preparedness to tolerate far worse working conditions than their white counterparts. These tactics worked well in the furniture industry, where 45% of those employed in the trade in Victoria in 1897 were Chinese,⁽³⁰⁾ and aboard the ships that plied their trade in Australian waters.⁽³¹⁾ Because the Chinese were prepared to work for less remuneration in these fields than were whites, Europeans usually offered reduced wages to Chinese labour,⁽³²⁾ thus endangering the working conditions of the whites.⁽³³⁾ The Seamen's Strike of 1878-1879, which was caused by the use of Chinese shiphands on board the Australian Steam Navigation Company's vessels, showed clearly how deeply rooted was the white workers' opposition to Asian labour.⁽³⁴⁾ To most Australians, an acceptance of poorer conditions of work and pay meant a sinking to the level of the Chinese,⁽³⁵⁾ and few were prepared to do this:

(30) Oddie, op.cit., p. 25.

(31) Hon.H.S. Anderson, V.P.D., Session 1881, Vol. XXXVIII, p. 935.

(32) Oddie, op.cit., p. 90.

(33) Age (Melbourne), 17 April 1888.

(34) Mother Pauline Kneipp, "The Seamen's Strike - 1878-1879: Its Relation to the White Australia Policy", A.N.U. Historical Journal, Vol. I, No. 2, 1965-66, p. 18.

(35) Bulletin, 1 May 1880, p. 1.

...the invasion of the Chinese might be compared to the rabbit plague. Wherever the rabbits came the sheep had to starve, and wherever the Chinese came the working white men and women would have to starve (Hear, hear.)....(36)

Because of this reaction, during the seventies and eighties trade unionism was important in the rise and development of the anti-Chinese movement. This was especially so on the minefields, but it was also important in the towns.⁽³⁷⁾ Many anti-Chinese associations were formed, and the trade unions gave the main impetus to their formation. The Victorian Anti-Chinese League formed in 1879, was entirely a union body;⁽³⁸⁾ The Anti Chinese League, founded in Melbourne in 1887-1888, was formed from trade union societies and, according to one source, can be described as a trade union organization.⁽³⁹⁾ Eventually anti-Chinese planks appeared in the platforms of the new Labor leagues.⁽⁴⁰⁾ The labor groups were not the only sections of society to oppose actively the Chinese, and the Australian Natives' Association was a very respectable group which set itself firmly against Chinese immigration.⁽⁴¹⁾

(36) Mr Laurens, M.L.A., speaking at an Anti-Chinese Meeting held at Hotham (Melbourne) Town Hall, 17 September 1887, in Age, 19 September 1887.

(37) Oddie, op.cit., p. 35.

(38) Age (Melbourne), 24 January 1879.

(39) Oddie, op.cit., pp. 58, 59.

(40) See e.g. Plank No. 15 in the Platform of the Labor Electoral Leagues in New South Wales, 1891, in William Guthrie Spence, Australia's Awakening. Thirty Years in the Life of An Australian Agitator, Sydney and Melbourne, 1909, p. 598.

(41) Witton to Clark, 12 May 1888, Clark Papers D2b, University of Tasmania Archives; Oddie, op.cit., Chapter III B.

The agitation against these groups helped reinforce an anti-Chinese attitude that apparently was held by most politicians,⁽⁴²⁾ and the activities of politicians in the eighties, in particular, over this question, were examples of colonial attempts to achieve some type of common action. During this decade there were intercolonial conferences in 1880-1881 and 1888, at which the matter of Chinese immigration was discussed. Unlike most other intercolonial problems, quite a deal of unity was achieved because of the large consensus of opinion over the issue. The view gradually evolved that the only way in which the Chinese could be blocked effectively was by united action, and that without unity in this, gaps in legislation in different colonies could allow the Chinese to slip into the country - as many had done in the past.⁽⁴³⁾ [22]

The 1880-1881 Conference achieved only the passage of a resolution recommending uniform legislation, and the submission of a protest to the Imperial Government over the Western Australian Government's encouragement of Chinese immigrants.⁽⁴⁴⁾ Nothing effective was achieved

(42) A.T. Yarwood, Asian Migration to Australia. The Background to Exclusion 1896-1923, Melbourne, 1964, p. 6.

(43) Age (Melbourne), 19 September 1887. Not all felt this way, see, for example, the policy speech of Mr W.H. Pigott at Petersham (Sydney), 7 October 1880, S.M.H., 8 October 1880.

(44) Minutes of Proceedings of the Intercolonial Conference Held at Sydney, January 1881, V.P.P., 1880-1881, Vol. IV, No. 62, pp. 9-10.

on a federal basis until the 1888 Conference. In the year preceding this gathering there were increasing fears of a "new" type of Chinese immigration, one that was aided directly by the Chinese Government.⁽⁴⁵⁾ These fears were heightened by the increased numbers entering the Northern Territory, as well as a visit of Chinese Commissioners to Australia in May, 1887. Despite the Commissioners' statement that they were only checking upon the conditions of the Chinese already in Australia, it was believed widely that they were really ascertaining the worth of the colonies as a field for immigration.⁽⁴⁶⁾ As a result of this apprehension the 1888 Intercolonial Conference was held, with the main object being a study of the whole question of Chinese immigration.

Apart from intercolonial differences, a possible serious hurdle to success was the objection of the British Government that such a question should be resolved by Britain alone, as it intruded into the field of foreign affairs - a possibility opposed strongly by colonial nationalists.⁽⁴⁷⁾ There was no attempt by the British authorities to interfere, however, and buttressed by the recent case of Ah Toy v. Musgrove, which said that the colonies did have this power to restrict

(45) See e.g. Sir Henry Parkes, N.S.W.P.D., Session 1887-8, Vol. XXXI, p. 3788.

(46) S.M.H., 15 October 1887.

(47) Bulletin, 26 June 1880, p. 1.

alien immigration,⁽⁴⁸⁾ the Conference had a smooth path, and was notable for what it achieved. A resolution was passed which stated that restriction of Chinese immigration could best be effected by diplomatic action by Britain and uniform legislation by the colonies. As a result, a draft Bill was distributed around the colonies for their acceptance, and eventually a fairly uniform situation prevailed, with all except Tasmania prepared to accept the draft Bill or a measure even more stringent in its provisions. The Tasmanian Government saw no reason for making its existing legislation (of 1887) more severe.

[23a, 23b]

During the nineties, the opposition to coloured immigration widened from a narrowly anti-Chinese form to include all coloured peoples. The Anglo-Japanese Commercial Treaty of 1894, and the Japanese defeat of China a year later, both helped develop, for example, an anti-Japanese attitude in Australia, as people worried about an influx of Japanese.⁽⁴⁹⁾ Of much greater importance, however, was the presence of a coloured minority in Queensland, and this presence helped greatly in the use of immigration restriction as a reason for federation.

(48) "...The right to exclude aliens is a right that must be considered to be inherent in the constituted Government of every independent State, and also, I think, in that of a quasi-independent State like Victoria....", Higinbotham, C.J., *Ah Toy v. Musgrove*, V.&P.L.A.V., 1888, C. 23, p. 142.

(49) See e.g. Mr Homburg, S.A.P.D., 1896, pp. 136-137.

Kanaka labourers had been a part of the Queensland sugar industry since 1863, when the first ship-load was brought from the South Sea Islands to work in the cane-fields. It was believed that the climate of Queensland was too harmful to the health of whites, and that the use of native labour was the only way in which the fields could be fully developed. This belief grew to the point where it was held that the Kanakas were essential for the survival of the sugar industry:

....We declare it to be our opinion that if all coloured labour be withdrawn from the plantations the extinction of the sugar industry must speedily follow....(50)

It was not their physical characteristics only that kept the Kanakas employed, for their wages were far less than those paid to the white man. Here, too, the Queensland defenders of the system maintained that they could not continue if they had to employ white men:

....We want cheap and reliable labour, and to be put on the same footing in that respect as other tropical countries. If we have to go into the open market for European labour and pay 200 or 300 per cent. more for it than coloured labour it simply means shutting us up....(51)

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- (50) Report of the Royal Commission appointed to Inquire into the general condition of the sugar industry in Queensland..., V.&P.L.A.Q., 1889, Vol. IV, No. C.A. 20, p. xxxvi.
- (51) Mr R.O. Jones, farmer and produce merchant of Port Douglas, evidence given before the Sugar Industry Commission, ibid, p. 101.

Whether it was a matter of health or money, or a combination of both, the Kanaka question became a serious problem. Unlike the virtually unanimous opposition to the Chinese, opinions in this matter were greatly divided. Internal Queensland hostility towards the Premier, Griffith, when he introduced a Bill to cease importation of Kanaka labour, was matched by the abuse hurled at the northern colony by the other colonies. There was no fear of Kanakas as there was of East Asians, but there was a worry that the purity of the Australian stock would suffer through contact with the natives. Queensland - "Leperland" as one labor journal called her⁽⁵²⁾ - had to realize that

....her best interests lie in jealously maintaining the Anglo-Saxon ascendancy and in helping to defend the extensive seaboard of the North and North-West....(53)

Others noted with alarm the apparent similarities between the Kanakas on Queensland cane farms, and the pre-Civil War Negroes on Southern United States cotton plantations. They warned of the dangers of both an aristocracy built upon servile labour, and the depressed force itself.⁽⁵⁴⁾ The whole problem really amounted to a refusal of the southern colonies to tolerate the Queensland labour system, and for a time it appeared as if the question might ruin the movement towards federation as the

(52) Clipper (Hobart), 24 April 1897.

(53) Donald Cormack, Australian Federation. A Lecture delivered at the Town Hall, Rockwood, N.S.W., on the 17th February, 1897, and published by request, Sydney, 1897, p. 12.

(54) J.G. Drake in Gay and Sampson, op.cit., pp. 34-35; Daily Telegraph (Launceston), 4 April 1891.

defenders and the opponents of the system clashed bitterly. Worried Queenslanders appealed to their fellows to bow to the outside wish to see Kanaka labour abolished as it was better that this occur than for federation to fail or be delayed. [24]

In fact, the controversy was not allowed to become too divisive, and although the traffic continued throughout the nineties, it was under stringent restrictions against any abuses. Federation was finally achieved - with the presence of Queensland - despite southern hostility to the northern area. All three parties contesting the first national elections included references to the achievement of a "White Australia",⁽⁵⁵⁾ and one of the earliest pieces of legislation passed in the new Commonwealth Parliament - No. 16 to 1901 - was the Pacific Island Labourers' Act, an important piece of White Australia legislation, the main principles of which were passed without division. [25]

(55) Yarwood, op.cit., p. 19.

[19] THE DANGERS OF A RACIAL MINORITY

(A.Inglis Clark, Tasmanian Attorney-General, Memorandum to the Premier, P.O. Fysh, Chinese Immigration. A Copy of all papers, including correspondence, legal opinions, reports of deputations, interviews, and minutes relating to the Chinese Immigration Question, and the action of the Government in connection therewith, since the last Session of Parliament, together with copies of the reports of the proceedings of the late Conference on the same question, the decisions arrived at, and all papers and documents submitted to the Conference, V.& P.L.A.V., 1888, Vol. I, C.20, pp. 31-32.)

....Both the virtues and the vices of the Chinese are bred in them by a civilization stretching back in an unparalleled fixedness of character and detail to an age more remote than any to which the beginnings of any European nation can be traced, and the experience of both America and Australasia prove that no length of residence amidst a population of European descent will cause the Chinese immigrants who remain unnaturalized to change the mode of life or relinquish the practices that they bring with them from their native country. It is consequently certain that if the unnaturalized Chinese should at any time become as numerous, or nearly as numerous, in any colony as the residents of European origin, the result would be either an attempt on the part of the Chinese to establish separate institutions of a character that would trench on the supremacy of the present legislative and administrative authorities, or a tacit acceptance by them of an inferior social and political position which, associated with the avocations that the majority of them would probably follow, would create a combined political and industrial division of society upon the basis of a racial distinction. This would inevitably produce in the majority of the remainder of the population a degraded estimate of manual labour similar to that which has always existed in those communities where African slavery has been permitted, and thereby call into existence a class similar in habit and character to the "mean whites" of the Southern States of the American Union before the Civil war. Societies so divided produce particular vices in exaggerated proportions, and are doomed to certain deterioration....

[20] A NATIVE'S SCORN FOR THE CHINAMAN - A DESCRIPTION OF A
CHINA TOWN

(Edward Dyson, "Mr. and Mrs. Sin Fat", Bulletin, 14 April 1888, p. 8.)

....Fifteen years ago the Chinese Camp at Ballarat East was a large and populous suburb. Thousands of prosperous, but unkempt and wasted, disciples of Confucius lodged in a nest of tottering, vermin-ravaged, smoke-begrimed hovels, of which no firmly constituted independent hog would accept a protracted tenure. From the main road to back beyond the old Llanberris was almost covered with the broken-backed tenements of squalid, immoral heathens, who followed various light and remunerative callings, peddling tea, gimcrack fancy-goods, and moon-struck fish; fossicking on the Yarrowee and Black Hill flats; or mooning round with a pair of debilitated baskets strung on a stick, collecting rags, bones and bottles, or any movable items of intrinsic value which could be reached through a crack in the fence when the proprietor's attention was otherwise engaged, and each and all supplementing their income by deeply-planned nocturnal raids on distant poultry-farms, fruit farms, wood-heaps, or sluice-boxes. A couple of serpentine streets of crazy domiciles inhabited by grimy pagans still remain, but the majority of the Chows have migrated to other diggings - some have returned to the homes of their childhood, and some have gone to heaven. The staggering shanties yet standing are a good sample of the sties which littered the flat in '73; decrepid dens reaching away in all directions for something to lean against, indented on one side, bulged on the other, compiled of logs, stones, palings, flattened tins and battered pans, and roofed with a sugar mat. The common Chinaman glories in these little snuggeries. When by some chance he becomes possessed of a home with a respectable exterior he straightway hews a hole in the roof, boards up the windows with gathered planks, and disfigures the front with scraps of tin and old battens; whether in accordance with a perverted taste or out of a guileful desire to mislead the tax-assessor is beyond human comprehension....

[21] THE FEAR OF A CHINESE "FLOOD"

(Illustrated Sydney News, 18 August 1877, p. 2.)

....Far be it from us to advocate a policy of oppression or injustice towards China; but we must protect ourselves. Some steps must be taken to prevent these colonies being overrun by the scum of Chinese

society - for this, with some few exceptions, is the true description of the immigrants who are making a descent upon Australia - as, when a cauldron that is full to overflowing, begins to boil, it is the impure matter that comes to the surface and first runs over, so, in the new-born agitation of a race numbering more than four hundred millions, it is sure to be the worst and vilest specimens of the race who trickle over the boundaries of their native territories and constitute a stream that diffuses an unsavoury odour and defiles wherever it runs. We cannot passively submit to have our adopted country inundated by hordes of men with whom we cannot possibly amalgamate, and whose presence is offensive, and who will not merely interfere with our industrial interests, but, in all probability, inflict upon us greater evils, by introducing moral elements more degrading, and physical ailments more distressing than those which normally afflict us. We do'nt profess to be an immaculate people. We have to confess to many public and private vices, but withal, as a race we are superior, both morally and physically, to the Mongolian intruders. We are determined to do our utmost to prevent this fair land being overrun by an alien race, desecrated by pagan idolatries and superstitions - and our posterity deteriorated by the bad moral influence of pagan example, or the dire physical effects of diseases almost unknown, but which at times are fearfully prevalent amongst European peoples, and would soon, by communication, become too well known amongst us....

[22] UNITED ACTION NEEDED TO BLOCK LOOPHOLES

(Mr Kingston (S.A.), Convention Debates, Sydney, 1891, p. 157.)

....It is idle for one state, unless it erects a hostile barrier on its intercolonial boundaries, to attempt to pass useful legislation prohibiting or restricting an influx of [aliens, Asiatics, criminals, pauper, and other undesirable classes]..., if there is no community of action on the part of the rest of the colonies; and when the doors of Australia are thrown open by the omission of one state to do its duty, the undesirable class which any colony wishes to guard against may come in, not at the front door, but at the back - not at her own seaports, but through the territory of her neighbours. It would be well, for this reason, to specify as one of the chief objects of the adoption of a federal constitution the uniformity of legislation in the direction to which I have referred....

[23a.] THE NEED FOR A COMMON BARRIER AGAINST ASIATICS

(Cablegram to Secretary of State, Conference on the Chinese Question. Proceedings of the [Intercolonial] Conference held in Sydney in June, 1888, Adelaide, 1888, p. 7.)

At the Australasian Conference, held in Sydney on the 12th, 13th, and 14th instant, at which the colonies of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia were represented, the question of Chinese immigration, and your cablegram to the Governor of South Australia in connection therewith, were fully considered.

The members of the Conference are sensible of the wish of Her Majesty's Government to meet the views of the colonies, and have specially deliberated upon the possibility of securing legislation which, while effective, should be of a character so far as possible in accordance with the feeling and views of the Chinese Government. They have not overlooked the political and commercial interests of the Empire, nor the commercial interests of the colonies.

In 1886 the total exports to China from New South Wales, Victoria, South Australia, Queensland, and Tasmania, were valued at £16,000, out of a total export trade amounting to £38,700,000. Our imports from China in the same year were valued at £846,000. While the custom of the colonies, therefore, is very valuable to China, that country offers no present outlet of importance for Australasian trade. There has never been any attempt on the part of any of the colonies to close their markets to the exports of the Chinese empire, although most, if not all of them, are now produced in great quantities in the British Empire of India.

The suggestion that any restrictions which are to be imposed should be of a general nature, so as to give power to exclude European or American immigrants, has been very carefully deliberated upon, but no scheme for giving effect to it has been found practicable.

As the length of time to be occupied in negotiations between the Imperial Government and the Government of China is uncertain, and as the colonies in the meantime have reason to dread a large influx from China, the several Governments feel impelled to legislate immediately to protect their citizens against an invasion which is dreaded because of its results, not only upon the labor market but upon the social and moral condition of the people.

At the same time the Conference is most anxious that Her Majesty's Government should enter into communication with the Government of China, with a view to obtaining, as soon as possible, a treaty under which all Chinese, except officials, travellers, merchants, students, and similar classes, should be entirely excluded from the

Australasian colonies. By way of assisting to bring about such an understanding, the Conference has recommended the abolition of the poll-tax now levied upon Chinese immigrants. While believing that the local legislation now proposed will accomplish its object, the colonies would prefer that the exclusion of the Chinese should be brought about by international agreement of a friendly nature, as in the case of the United States.

The Conference further desires that Her Majesty's Government should induce the Governments of the Crown colonies of Hongkong, Straits Settlements, and Labuan, to at once prohibit the emigration of all Chinese to the Australasian colonies unless they should belong to the classes above mentioned. The Chinese who may claim to be considered British subjects in those colonies are very numerous, and the certainty that their migration hither was prevented would give great and general satisfaction.

The resolutions arrived at by the Conference, and which have been embodied in a Draft Bill, are as follows:-

1. That in the opinion of this Conference the further restriction of Chinese immigration is essential to the welfare of the people of Australasia.
2. That this Conference is of opinion that the necessary restriction can best be secured through the diplomatic action of the Imperial Government, and by uniform Australasian legislation.
3. That this Conference resolves to consider a joint representation to the Imperial Government for the purpose of obtaining the desired diplomatic action.
4. That this Conference is of opinion that the desired Australasian legislation should contain the following provisions:-
 1. That it shall apply to all Chinese, with specified exceptions.
 2. That the restriction should be by limitation of the number of Chinese which any vessel may bring into any Australasian port to one passenger to every 500 tons of the ship's burthen.
 3. That the passage of Chinese from one colony to another, without consent of the colony which they enter, be made a misdemeanour.

The first and fourth resolutions were indorsed by all the colonies except Tasmania, who dissented, and Western Australia who did not vote, while the second and third were carried unanimously. As a

whole, therefore, they faithfully represent opinion of the Parliaments and peoples of Australia.

In conclusion, the Conference would call attention to the fact that the treatment of Chinese in the Australasian colonies has been invariably humane and considerate, and that in spite of the intensity of popular feeling, during the recent sudden influx, good order has been everywhere maintained. In so serious a crisis the Colonial Governments have felt called upon to take strong and decisive action to protect their peoples, but in so doing they have been studious of Imperial interests, of international obligations, and of their reputation as law-abiding communities. They now confidently rely upon the support and assistance of Her Majesty's Government in their endeavor to prevent their country from being overrun by an alien race who are incapable of assimilation in the body politic, strangers to our civilization, out of sympathy with our aspirations, and unfitted for our free institutions, to which their presence in any number would be a source of constant danger.

HENRY PARKES, President.

[23b] AN ATTEMPT AT UNITED ACTION

(Conference on the Chinese Question. Proceedings of the [Intercolonial] Conference held in Sydney in June, 1888, Adelaide, 1888, pp. 8-9.)

A BILL FOR THE RESTRICTION OF CHINESE IMMIGRATION.

Preamble.

Whereas at a meeting of representatives of Australasian Governments, held at Sydney in the month of June, one thousand eight hundred and eighty-eight, it was, amongst other things, resolved that it was desirable that uniform Australasian legislation should be adopted for the restriction of Chinese immigration: And whereas the provisions of this Act were approved by such representatives as the basis of such uniform legislation: And whereas it is desirable to legislate on such basis accordingly:- Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:-

Interpretation.

1. In the construction of this Act the following words shall have the following meanings:-

"Chinese" shall include every person of Chinese race, not exempted from the provisions of this Act.

"Vessel" shall include every ship, boat, or vessel.

"Master" shall include every person, other than a pilot, for the time being in command or charge of any vessel.

Exemptions.

2. This Act shall not apply-

- (I.) To any person duly accredited to any Australasian colony by any Government, as its representative, or on any special mission.
- (II.) To the crew of any vessel not being discharged therefrom in the colony, and not landing in the colony, except in the discharge of duties in connection with such vessel.
- (III.) To any persons, or any class of persons, who shall for the time being be exempted from the provisions hereof.

Power to declare exemptions.

3. It shall be lawful for the Governor in Council, from time to time, by proclamation to be published in the Government Gazette, to declare that the provisions of this Act shall not apply to any person or any class of persons to be mentioned in such proclamation, either generally or for any time to be fixed by such proclamation, and any such proclamation may be revoked by the Governor in Council by proclamation to be published in the Government Gazette.

Master, on arrival, to report Chinese on board.

4. The master of every vessel, upon arrival at any port or place in this colony from parts beyond the colony, and having any Chinese on board, shall forthwith, and before making any entry at the Customs, deliver to the collector or other principal officer of Customs at such port or place a statement specifying to the best of his knowledge and means of information, the number of Chinese on board such vessel, and the places of shipment and destination, and the name, calling, or occupation of each such Chinese. And for any default in the observance of this section such master shall, on conviction, be liable to a penalty of one hundred pounds.

No vessel to bring more than one Chinese passenger for every 500 tons burthen.

5. No vessel shall enter any port or place in the colony having on board a greater number of Chinese than in the proportion of one Chinese every five hundred tons of the tonnage of such vessel, such tonnage to be ascertained, if the vessel shall be British, by her certificate of registry, and if otherwise, or if such certificate shall not be produced, then according to the rules of measurement provided by the "Merchant Shipping Act, 1854." And if any vessel shall enter any port or place in the colony, having on board any Chinese in excess of such number, the owner, master, or charterer of such vessel shall, on conviction, be liable to a penalty of five hundred pounds for each Chinese in excess of such number.

Penalty on entry by land without permit.

6. Any Chinese who shall enter this colony by land, without first obtaining a permit in writing from some person to be appointed by the Governor in Council, shall be guilty of a misdemeanor, and shall be liable, on conviction, to imprisonment, with or without hard labor, for any term not exceeding six calendar months, and in addition or substitution for any such imprisonment shall be liable, pursuant to any warrant or order of the Magistrate or Justices by whom he shall be convicted, to be removed or deported to the colony from whence he shall have come.

Appropriation of penalties and payments under Act.

7. All penalties and all moneys ordered to be paid, or being the proceeds of any sale, made under the authority of this Act, shall be paid into the consolidated revenue.

Evidence of person being a Chinese.

8. For the purposes of all proceedings under this Act, the Stipendiary or Police Magistrate, or the Justices, may decide, upon his or their own view and judgment, whether any person produced before them is a Chinese within the meaning of this Act.

Provision against evading Act by transshipping Chinese into other vessels.

9. Any vessel on board which Chinese shall be transhipped from another vessel, and be brought to any port or place in this colony, shall be deemed to be a vessel bringing Chinese into the said colony, from parts beyond the said colony, and shall be subject to the provisions of this Act.

Power to make regulations.

10. The Governor, with the advice of the Executive Council, may make regulations for carrying out the provisions of this Act. A copy of such regulations shall, within fourteen days, be laid before both Houses of Parliament, if Parliament be then in Session, and if not then in Session, within fourteen days after the commencement of the next Session; and, if disapproval of such regulations is not expressed by resolution within fourteen days thereafter, they shall have the force of law.

Penalties how recovered.

11. All penalties and sums of money recoverable under this Act shall be recovered in a summary way at the suit of some officer of Customs authorized by the Colonial Treasurer, or of other officers appointed for such purpose, by like authority, before any Stipendiary or Police Magistrate or two or more Justices of the Peace, in accordance with the provisions of the Acts regulating proceedings on summary conviction. And it shall be lawful for the Colonial Treasurer, by writing under his hand, to authorize any officer to detain any vessel, the master whereof shall, in the opinion of the said Treasurer, have committed an offence, or be a defaulter under this Act. Such detention may be either at the port or place where such vessel is found, or at any port or place to which the said Treasurer may order such vessel to be brought. For the purposes of such detention the officer so authorized shall be entitled to obtain in the customary manner such writ of assistance or other aid and assistance in and about the detention of or other lawful dealing with such vessel as are by law provided under the Act or Acts regulating Customs with reference to seizure of vessels or goods. But such detention shall be for safe custody only and shall cease and be discontinued if a bond, with two sufficient sureties, be given by such master for the payment of the amount of such penalty and other sums as may be adjudged to be paid under the provisions of this Act: Provided that if default be made in payment of any such penalty incurred by such master in terms of any conviction adjudging the payment thereof it shall be lawful for such officer to seize such vessel and for him and any other officer or person duly authorized or empowered in that behalf to take all such proceedings for the purpose of procuring the condemnation and sale of such vessel as are provided by law in case of condemnation or forfeiture of a vessel for a breach of the Customs laws of the said colony: Provided that the proceeds of sale of any such vessel shall be paid into the consolidated revenue, and after payment of the amount of such penalty and of all costs incurred in and about such sale and the proceedings leading thereto, the balance shall be placed by the Colonial Treasurer to a trust account and be held in trust for the owners of or other persons lawfully entitled to the vessel so condemned and sold.

Abolition of poll-tax.

12. No poll-tax shall hereafter be taken or demanded from or

in respect of any Chinese.

Short Title.

13. This Act may be cited for all purposes as the "Chinese Immigration Restriction Act, 1888."

[24] THE KANAKA AND AUSTRALIAN FEDERATION

(W.H. Groom, Chairman of the Sugar Industry Commission, Minority Report to the Report of the Royal Commission appointed to Inquire into the general condition of the sugar industry in Queensland..., V.& P.L.A.Q., 1889, Vol. IV, No. C.A.20, p. xlviii.)

[After stating his belief that Kanaka labour was not wanted in Queensland]:

...Moreover, if Australia is to be a great federated dominion on the basis of the Dominion of Canada, with a dominion parliament and a dominion executive, and the federated colonies are still to retain their present governments and legislatures, then without question, the further admission into any colony of Asiatic or coloured races is definitely settled, because federation of the colonies means the exclusion of all Asiatic and coloured races from Australia, except to a very inappreciable extent. The public men of the larger colonies of Victoria and New South Wales have already intimated in their several addresses at the recent elections in those colonies their belief in federation, and their intention at the same time to keep Australia free from all Asiatic or coloured races. Hence it is clear that if Queensland is to join in a federated Australia - and the aspirations of all her public men are in that direction - the request of the planters for the extension of the terms of the 11th section of "The Pacific Island Labourers Act of 1880 Amendment Act of 1885" [limiting the granting of licences after 1890] is practically disposed of....

[25] IMMIGRATION RESTRICTION AND FEDERATION

(Senator Drake*, (Qld.), speaking to the Immigration Restriction Bill, C.P.D., Session 1901-2, Vol. VI, pp. 7335-7336.)

....To go back a little, what made the need of federation apparent to the people of Australia? Was it not that without some form of federation it was impossible to obtain that uniformity which was absolutely necessary in order to make their legislation effective? There is no subject, I think, upon which the necessity of uniformity of legislation on the part of the States is more apparent than that of the exclusion of of undesirable immigrants. It is absolutely useless to bar the front door if we leave the back gate open. In the past, while one colony was legislating to exclude undesirable persons another was allowing them to come in, and consequently legislation in this direction by one State was rendered nugatory by the want of action in the other. To overcome that difficulty, action has been taken in several forms. The Federal Council was created in 1886, in order that upon this and other matters of a similar kind uniformity of action should be taken throughout Australia. The Federal Council Act, as we know, did comparatively little good, for the obvious reason that the mother colony was never represented upon the Council, and that the representation of the other colonies, save in three instances, was not continuous. For those reasons the attempt to obtain uniformity of action through the Federal Council was a failure. Conferences were also held to secure uniform legislation. One of the efforts made in that direction was the celebrated conference of Premiers, held in England in 1897, to which frequent reference has been made. The representatives of all the colonies met there to discuss this very subject. They decided that the proper course to take was to introduce Bills in all the colonies on lines substantially the same as those contained in the Bill now before us. As usual, however, the agreement broke down. In five of the colonies, Bills almost identical were introduced. In two States the passage of the Bills through Parliament failed [Vic., S.A.], but in the other three cases [Tas., N.S.W., W.A.] they became law. [**] Now, as a federation, we are practically endeavouring to make the legislation of those three States effective by extending its operations to the whole Commonwealth. The action we are proposing to take is of purely a federal character. It would be distinctly unfederal if we neglected to endeavour to make thoroughly effective the legislation adopted by those three States....

[*Drake had been active in Queensland in opposing the use of Kanaka labour.

**Queensland adhered to the Anglo-Japanese Council Treaty (1894) with special protocol permitting her to regulate Japanese immigration if she desired to do so. (See V. & P.L.A.Q., 1899, Session 1, Parliamentary Paper A.5, p. 1303.)]

VI - OTHER PROBLEMS ASSOCIATED WITH SEPARATION

The tariff barriers between the colonies, restriction of alien immigration, the need to unite for defence against the Germans and other potential marauders - these were the questions which did most to bring the Australian people to a desire for federation. Of lesser importance, but still of significance, were the administrative and legal inconveniences caused by the existence of six separate colonial governments, each going its own way with little thought for the others. Unspectacular problems like health, copyright laws, even the rabbit plague, all aided in developing the necessary climate for unity. Such matters did not catch the headlines, but they do seem to have played a part in helping reinforce politicians' attitudes once the more dramatic arguments had won them to a belief in federation.

From the time of responsible government, voices were raised pointing out the worth to the Australian community of united action on various matters of common concern; the question of postal and telegraphic services gives a guide to how much was possible. The joint efforts of Victoria and South Australia secured the erection of a telegraph between Adelaide and Melbourne, ⁽¹⁾ but when, a few years later, it was suggested that united action was desirable in the whole field of posts and

(1) Correspondence relative to the Establishment of Electro-Telegraph Communication between the Australian Colonies, V.P.P., 1856-7, Vol. IV, No. 32, pp. 3-15 passim.

telegraphs, ⁽²⁾ this was too much for the colonies to accept, and little more of a united nature was achieved by 1901. This was, in fact, a common theme throughout the history of the colonies between responsible government and federation. Colonies were prepared occasionally to share costs on various projects affecting themselves, usually inessential services over which there were few grounds for squabbling, but generally this was as far as they were prepared to go. Thus a lighthouse was erected at Gabo Island with the costs shared equally by New South Wales and Victoria, ⁽³⁾ yet a suggestion for the creation of a General Board for the Australasian Colonies, similar to the Trinity Board of London, to have executive control over Australian lighthouses, was rejected. The time for creating such a body "had not yet arrived". ⁽⁴⁾

Despite this disinclination to give up any power, colonial politicians gradually came more and more to realize the advantages of some type of united action in regard to their many mutual problems. Conferences of Ministers and/or technical experts revealed clearly the

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- (2) Colonial Secretary's Office, Brisbane, to the Chief Secretary of Victoria, 31 July 1860, Federal Union, V.&.P.L.A.V., 1860-1, Vol. I, A9, p. 3.
- (3) Report of the Commissioners appointed by the Governments of New South Wales, Victoria, South Australia, and Tasmania, to confer upon the subject of lighthouses in the several Australian Colonies, V.P.P., 1856-7, Vol. IV, No. 31, p. xvii.
- (4) Report and Minutes of Proceedings of the Intercolonial Conference held at Sydney...1873..., V.P.P., 1873, Vol. III, No. 18, p. 6.

incongruities and inconveniences of a multiplicity of laws, few of which were recognized outside the originating colony. An alien naturalized in any one colony became a citizen of that colony only and continued an alien in all others.⁽⁵⁾ Patents granted and trade marks registered in one colony were only valid in that colony. An inventor or tradesman desiring recognition in all colonies had to take out six patents or register six trade marks, an expensive business when each patent cost about six or seven guineas.⁽⁶⁾ It was extremely difficult to enforce judgments recovered in the Supreme Court of one colony against the property of a judgment debtor in another.⁽⁷⁾ [26]

As well as this difficulty of a lack of recognition of one colony's laws throughout the other five, there was also the problem associated with differences amongst colonial laws which weakened each others' efforts. Meat exports, for example, were often not accepted in London because some colonies had inspectors, while others had not.⁽⁸⁾ The problems of disease and plagues were also matters of this type. Not only were there contradictions and loopholes in the various colonial laws, but the relative lack of funds to investigate and eradicate a

(5) Sir R.C. Baker, Federation, Adelaide, 1897, pp. 7-8.

(6) Minutes of the Proceedings of the Intercolonial Conference Held at Sydney January 1881, V.P.P., 1880-1881, Vol. IV, No. 62, p. 14; Baker, op.cit., p. 8.

(7) Report of the Proceedings of the Conference respecting the duplication of the telegraphic lines between Australasia and Europe... Melbourne... 1878, V.P.P., 1878, Vol. II, No. 14, p. vi.

(8) Alexander Wilson, The Commonwealth, Vol. I, No. 12, 7 September 1895, p. 6.

problem like the rabbit plague could be surmounted by federal funds and federal action. [27a, 27b] The need for keeping Australia free of diseases like small-pox was realized clearly, but cases of small-pox sufferers slipping past the colonial authorities' checks were common, and an urgent need was seen for such intruders to be screened effectively. Once again, federal action was seen as the only solution that would be effective, with the creation of a national quarantine service. [28]

One of the most unfortunate results of colonial separateness was the creation of different railway systems, all with their own gauges. Through a mixture of administrative bungling, and a desire for cheapness, colonial administrators developed their own railway networks with little regard for what was occurring in the other areas, so that there were eventually three gauges in use throughout the colonies. Such a development meant that transportation of goods was slow, the costs of rolling stock were much more than they should have been, and the movement of passengers was slow and tiresome. It was, indeed, "an expensive tribute to regional loyalties".⁽⁹⁾ Federation was thought to be the answer to this situation, because only under a federal government would amalgamation of the railways be certain,⁽¹⁰⁾ and if federation did

(9) Douglas Pike, Australia. The Quiet Continent, Cambridge, 1962, p. 115.

(10) Such a hope was soon to be shattered at the 1897-8 Convention, see below Chapter B VII.

not occur, then Australian progress would continue to be hindered sorely. [29]

Even the prohibitionists saw value in federation - especially if prohibition of the traffic in drink could be written into a federal constitution.⁽¹¹⁾

This widening of outlook resulted in the creation of the Federal Council of Australasia. At the 1880-1881 Intercolonial Conference a memorandum by Sir Henry Parkes was inserted into the record, which stated that the time was ripe for some type of federal body:

That the time is 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.⁽¹²⁾

The stimulus of German activity in the Pacific brought matters to a head,⁽¹³⁾ and at the instigation of the Victorian Premier, James Service, a Conference was held in 1883 which passed a resolution calling for the establishment of a Federal Council to deal with matters of common concern.⁽¹⁴⁾ The Conference also accepted a Draft Bill, and this (with

(11) Address to the 1891 Convention from the Women's Christian Temperance Union of Victoria, 5 March 1891, Convention Debates, Sydney, 1891, p. 174.

(12) Minutes of the Intercolonial Conference, 1881, p. 11.

(13) Quick and Garran, p. 110.

(14) Report of the Proceedings of the Convention...Sydney...1883 to Consider the Subjects of the Annexation of Neighbouring Islands and the Federation of Australasia, V.P.P., 1884, Vol. II, No. 25, p. 20.

amendments made in London) became the basis for the Federal Council which was established in 1885. The need for federal action in many fields was fully recognized, and the list of powers granted the Council illustrated this. Thus it had powers in such fields as quarantine, defence and the enforcement of criminal process beyond the limits of one colony. [30]

From the first meeting of the Federal Council in January 1886 at Hobart, attitudes towards it were strongly divided. Service, who was its first President, was more optimistic than most in his hopes for the Council's future. [31] Others were not so sure. Some maintained that it was not needed, and that the colonies could govern themselves quite adequately,⁽¹⁵⁾ while others saw that it was, in fact, a rather toothless creation that could achieve little, "a contemptible phantom", in Quick's view,⁽¹⁶⁾ "this shadow of federation", according to a newspaper editor.⁽¹⁷⁾ Some saw the Council as better than nothing, as being at least a reminder of the idea of a national government,⁽¹⁸⁾ others regarded it rather as a danger - while it was accepted, complete federation could be delayed indefinitely.⁽¹⁹⁾

(15) See e.g. Mr Mackay, V.P.D., Session 1884, Vol. XLV, p. 45.

(16) V.P.D., Session 1886, Vol. LI, p. 125.

(17) Daily Telegraph (Launceston), 23 January 1897.

(18) Robert Thomson, Australian Nationalism: An Earnest Appeal to the Sons of Australia in Favour of the Federation and Independence of the States of our Country, Burwood, 1888, p. 73.

(19) Quick, V.P.D., Session 1885, Vol. L, pp. 1562-1567; S.M.H., 23 November 1896.

Effectively, the Federal Council was a failure, despite the fact that it was still meeting as late as 1899. Its weaknesses were many. Like the American Articles of Confederation, the Act creating the Council established a forum and virtually nothing else - it had no money, no executive power, and no way of ensuring that all the colonies would abide by its decisions. The term Federal Council was a misnomer, for the union was rather a confederation, and it suffered all the weaknesses inherent in that type of government⁽²⁰⁾ - it was

....not unlike the Turkish Government in one respect: it has a lot of things referred to it, and it undertakes a great deal, but it never does anything.⁽²¹⁾

Another crippling blow was the failure of New South Wales - and for most of its existence, South Australia - to join the Council. It could achieve little without the adherence to its Acts of the large and important Mother Colony,⁽²²⁾ being rather like "the play of Hamlet without the Prince of Denmark".⁽²³⁾ [32]

Basically, the Federal Council failed because it was not wanted. Provincialists certainly did not want to give such a body any power, and many federalists could see that this was not the federation

(20) Edward Jenks, The Government of Victoria (Australia), London, 1891, p. 372n. .

(21) Daily Telegraph (Launceston), 26 January 1897.

(22) E.W. O'Sullivan, "From Colony to Commonwealth. Half a Century's Reminiscences", unpublished MS, n.d., p. 254, Mitchell Library, Sydney.

(23) Viscount Bury, The Times, 24 April 1885.

they wanted and that it could be an hindrance to them. It was not until the nineties when general interest in federation quickened, that the legal and administrative arguments had any important effect upon the federation movement, and even then this seems to have been to reinforce what men regarded as the main reasons for union - matters such as defence and trade between the colonies. (24)

(24) A.G. Thomson, "The Bulletin and Australian Nationalism", thesis presented for the degree of Master of Arts, Canberra University College, 1953, p. 23.

[26] LEGAL PROBLEMS CAUSED BY THE DIVISION OF THE COLONIES

(A.I. Clark to Edmund Barton, 19 June 1889, Barton Papers, 51/62(a), National Library, Canberra.)

....I wish to place before you a few of the cases that have lately arisen in this Colony [Tasmania] illustrating the necessity of some Federal Legislative authority. You will of course know that it is a very debateable [sic] and disputed point whether a joint Stock Company or other similar Corporation constituted under the Local Law of any Colony can hold land in another Colony. A Bill has twice been introduced into the Federal Council to deal with this question but on both occasions it has been withdrawn as it was thought not desirable to legislate upon the subject until all the Colonies of the Australian Continent were represented in the Council. The question is however daily becoming a more practical and important one on account of the Inter-colonial transactions of the numerous Trustee & Executor Companies established in the various Australian Colonies. A case of this kind has lately occurred here in which a Testator who owned land in this Colony appointed one of the Trustee and Executor Companies of Victoria the Trustees and Executors of his Will, and a prominent Firm of Solicitors here, acting under the advice of Counsel of high standing, has refused to accept a conveyance of that land on the ground that the Company cannot hold land out of Victoria. It is possible that the Supreme Courts of some of the Colonies might decide otherwise but the Courts of other Colonies might uphold the contention and the point could only be decided by an Appeal to the Privy Council.

Another question of Inter-colonial interest which only a Federal authority could provide for, is the recognition in one Colony of Orders in Lunacy made by the Supreme Court of another Colony in the cases of persons holding property in several Colonies. This question has also been discussed by the Federal Council but Legislation upon it has been delayed until the Council had a wider constituency.

A third matter requiring the intervention of a Federal Authority has lately been brought under my notice by a case now pending in our Supreme Court in which an unproved Will devising and bequeathing property situate in this Colony to a person resident here is in the possession of a person resident in Victoria who refuses to produce it so that it may be proved here notwithstanding that the Testator owned no property in Victoria and there is no valid excuse for detaining the Will there. Under the old Ecclesiastical practice in force in England when there were a number Ecclesiastical Courts having separate Jurisdictions in different parts of the Kingdom, there was a regular process by which the assistance of any one of those Courts could be obtained by another of them to compel the production in that Court of a Will that ought to be proved there but which was in the possession of a person resident out of its Jurisdiction.

There is no similar process available between the Supreme Courts of these Colonies and only a Federal Legislature can create it.

The establishment of a general Patent Law for all the Colonies is also another desirable object which only a Federal Authority could accomplish.....

[27a] THE RABBIT PLAGUE

(Jno. M. Creed, letter to S.M.H., 5 December 1883, reproduced in Report of the Proceedings of the Convention...Sydney...1883 to Consider the Subjects of the Annexation of Neighbouring Islands and the Federation of Australasia, V.P.P., 1884, Vol. II, No. 25, pp. 31-32.)

.....So serious a national evil [as the rabbit plague]... should not be left to the efforts of private individuals for its remedy, but those of the Australasian colonies who are infested should take united action, and offer a very large bonus for the discovery of some remedy, which should, before it was paid for, be shown to be effective in absolutely extirpating rabbits in some large district where it should be tried. I think that it would be possible to cultivate a special disease, which after a time should possess the characteristic of being easily intercommunicable and positively fatal amongst rabbits, yet not infectious to any other animal. This being arrived at, the problem is solved, and the most terrible peril to their prosperity to which the Australasian colonies have ever been exposed will have been averted.....

[27b] UNITED ACTION THE ONLY EFFECTIVE WAY TO FIGHT CATTLE DISEASE

(James Tolson, paper delivered to the Australasian Stock Conference, Melbourne, 1889, Report, Minutes of Proceedings, Resolutions, etc., of the Australasian Stock Conference held in Melbourne, 1889, V.P.P., 1890, Vol. II, No. 84, pp. 71-72.)

.....I now come to that part of the subject towards which our efforts were originally directed, and upon which the experiments of Dr. Germont and M. Loir have thrown some light, and have given hopes that ultimately it may be accomplished. This is the artificial

cultivation of virus apart from the living animal. In Dr. Germont's report you will observe that although not able to detect a microbe in the artificial cultivations made in Brisbane, still inoculation made with this artificial cultivation gave protective results. Now, what would be the position of affairs if this greatly desired result could be attained? Gentlemen, I have no hesitation in saying that in ten years, or less, Australia would be free from pleuro [-pneumonia], and the amount saved annually to the country something enormous, without counting the increased vigour conferred upon our herds by freedom from this disease. If this is not an object worth striving for, I do not know what is, and it is the hopelessness of obtaining it in any way but by united action that induces me to bring the matter before you with such persistency. Gentlemen, let me ask you, one and all, to use your utmost endeavours to impress upon the pastoralists, in the first instance, in your respective colonies, and through them the Governments, with the absolute necessity for an institution at which scientific investigations can be made, and from which the artificial cultivation of pleuro lymph, anthrax protective matter, vaccine for small-pox, &c., can be cultivated in quantities sufficient for all requirements. The cost would be but trifling, probably not exceeding £3,000 or £4,000 a year, and what is this on 100,000,000 sheep, and 9,000,000 or 10,000,000 cattle. It is so small that it could hardly be made a percentage of. Speaking for Queensland, I can safely say that we are ready now, or at any time, to make our contribution, and I do hope that the recommendation this Conference will make to the Governments represented will be of such a nature that, representing as I believe we do the great pastoral interests of Australia, it cannot be ignored.

[28] THE NEED FOR FEDERAL QUARANTINE

(Professor Anderson Stuart, "Federation in Relation to Quarantine", paper presented to Bathurst Convention, 1896, Proceedings [of the] People's Federation Convention, Bathurst, November, 1896, Sydney, 1897, pp. 155-156.)

The importance of this subject for Australia has not yet been realised by the Australian peoples. It may be put very shortly. There are some infectious diseases such as measles, scarlet fever and whooping cough, which are already in our midst. These are to be prevented from spreading by isolating the sick. There are other infectious diseases that are not amongst us abiding maladies, such as rabies amongst dogs and small-pox amongst men. These are to be avoided by preventing their entrance into the continent. Rabies, which produces hydrophobia in man, never has, it is believed, reached these shores. Small-pox has invaded

us some seventy times, I believe; but, owing to the prompt and severe isolation of the sick and quarantining of all other persons who had been exposed to a source of infection, it has never obtained a permanent footing in Australia. It is just as if any enemy had invaded Australia with the same frequency, but always in such small force that we had been able to overcome and vanquish him. What would happen if he landed in sufficient strength to overcome us? In the same way what would happen if small-pox were allowed to come in and spread in any part of the continent, so that large numbers of the population were affected by the disease? Each person sick of the malady would be but another source of infection and therefore just as much an enemy to the healthy as if he had been himself an invader. The people would be more than decimated - an unsuccessful war, a foreign invasion would be no less disastrous.

Further, an invader has always a better chance of success if he has the help of traitors within the gates. Have we in Australia any traitors as regards small-pox - for small-pox is for practical purposes the enemy we dread. I reply that all who have not been efficiently vaccinated are in that position in relation to those who have been so vaccinated. And the greater part of the inhabitants of this continent are unvaccinated. That is, they are unprotected against small-pox. Manifestly, therefore, so long as this state of matters remains, we should be most particular in the matter of quarantine, lest a spark be permitted to enter which would set on fire this vast store of inflammable material as it were.

Now, as the bush fire would spread without stopping at the border of the colony within which it began, so small-pox if it once got hold of one colony would surely spread to the adjacent colonies, for however difficult sea quarantine may be, land quarantine is so much more difficult that but little reliance can be placed upon its effectiveness. It is sea quarantine, therefore, upon which we must rely, and it is obvious that unless in all the colonies strict watch be kept at the seaboard, the disease may pass in unnoticed, particularly in these days of quick passages, which give so little time for the disease to fully declare itself on board ship. In passing I may note that every argument good for a military defence force is good for a medical defence force, for that is what a quarantine establishment really amounts to.

As a matter of fact it is the extreme western, eastern, and southern colonies, the ports of which oversea vessels arriving in Australia first touch as a rule; these colonies, however, are not yet so opulent as the more centrally situated colonies, and moreover they not unnaturally ask why they should do all this maritime medical detective work for all Australia. For these two reasons, amongst others, it seems proper that all the colonies should agree to pay, rateably to their population, for the establishment and maintenance of thoroughly efficient medical outpost stations, so that the disease may be detected, the infectious sick removed to a land hospital, and perhaps the vessel efficiently disinfected before proceeding on her voyage.

In order to carry this properly out in practice some central and directing organisation is required. What shall this be? There is but one answer - Federation of the Colonies of Australia into an Australian Dominion under the British Crown.

[29] THE RAILWAYS AND FEDERATION

(Archibald Forsyth, "State Railways under Federation", paper presented to Bathurst Convention, 1896, Proceedings [of the] People's Federation Convention, Bathurst, November, 1896, Sydney, 1897, pp. 173-176.)

In considering the various functions and powers on which a Federal Constitution for Australia should be based, the draft Constitution of the Federal Convention of 1891 must not be overlooked. Several important matters have doubtless been omitted, and others have been settled contrary to the general desire, still this draft Constitution forms a valuable starting point, and intelligently used should materially assist in the solution of this great problem. In the draft Constitution the State Railways were to remain under the control and ownership of the several State or Colonies. This proposal was not due to any want of knowledge on the part of the members of the Convention of the great loss which the various Colonies were sustaining through differential freight rates on the Railways of New South Wales, Victoria and Queensland, but to the general belief that the spirit of provincialism was too strong and the spirit of federalism too weak to sanction a transfer of the Railways and their debts to the Federal Government.

Whether the Convention correctly gauged public opinion is hard to say. But now after five years discussion and consideration we may fairly assume that local and provincial opinions and prejudices are sufficiently toned down so as to enable the question of Federating the Railways to be considered and dealt with on its merits, without endangering the acceptance of the Federal Constitution in any of the Colonies. In other words that they would agree to accept a Federal Constitution, which empowered the Federal Government to substitute mileage rates for the present differential rates, so as to permit the transport of goods to their nearest or natural market.

Now it is evident that if mileage rates are adopted while the Railways remain the property of the several States or Colonies that such Colonies would sustain great loss on the portion of lines dependent for traffic on differential freight rates, as producers would no doubt send their goods to the nearest market or port of shipment.

Under such circumstances it is doubtful whether New South Wales would consent to accept a Federal Constitution by which they would lose a portion of their trade and Railway traffic at the same time. That a policy which would enable goods to reach their market at the least possible cost must benefit the country as a whole is beyond doubt, at the same time any loss incurred to secure this benefit should be equally borne by the whole country that reaps such benefit and not by any one Colony. No doubt Victoria and Queensland have portions of Railway lines dependent for traffic on differential rates, since differential rates have been brought into force, but to a much smaller extent than New South Wales, and it would therefore be called upon to bear a greater portion of the loss arising from the adoption of mileage rates, than either Queensland or Victoria.

Now this loss can be equally divided amongst the Federated Colonies, as well as the greater gain to be derived from the transport of goods along the nearest and cheapest routes to their natural market, by empowering in the Federal Government to take over the Railways with their debts, and work them in the interests of the whole Federation with a well considered scale of mileage rates, sufficiently elastic to meet destructive private competition on river and coastal waters. This is only one of several reasons why the State Railways with their debts should be taken over and controlled by the Federal Government.

We are all agreed on the wisdom of passing a general tariff for foreign imports and having Free-trade between the various Colonies, thereby doing away with the tariff barriers which prevent free interchange between Colonies all on the same plane of civilization, standard of living and rates of wages, and therefore having nothing to protect against each other. Now so long as differential rates are permitted on the Railways this destructive competition can be as easily carried on under cover of a Railway tariff as a Customs tariff. Some of the differential rates at present in force amount to over 100 per cent. Take as an illustration the freight of greasy wool on the Western and Southern lines: Bourke to Sydney (on wool from district to the South and West of Bourke) 1d.37 per ton per mile; Dubbo to Sydney, 2d.96 per ton per mile; Bathurst to Sydney, 3d.64 per ton per mile; Hay to Sydney, 1d.69 per ton per mile; Junee to Sydney, 2d.91 per ton per mile; and Goulburn to Sydney, 3d.7 per ton per mile. This shows that the differential rates required to compete with the Darling River traffic and the Victorian Railways are more than 100 per cent below the general wool rates. A similar difference exists in the wool freights in the Albury, Quirindi, Jennings, and Narrabri districts. The differential rates on outwards freights for ordinary merchandise from Sydney to competing districts, are not so great as the inwards freights; but they are more than 50 per cent below the mileage rates, and together with the inwards rates cause a great reduction in the Railway revenue, or what is equally bad cause the general rates to be increased to make up the loss on the differential ones. Perhaps nothing shows the unfairness of differential rates more - whether intended to have this effect or not - than that they protect the trade of Sydney at the expense

of the inland towns as under the maximum rate, a truck load of goods to Bourke is charged the same amount of freight from Bathurst, Orange or Dubbo as from Sydney. Victoria is now using differential rates in Riverina for both trade and protective purposes as well as for Railway traffic, and New South Wales is using differential rates along the Darling, the Murray, and the Queensland border no doubt to increase her traffic; but at the same time it has the effect of booming Sydney trade at the expense of the inland towns and the Railway revenues. It is therefore evident that Freetrades between the Colonies cannot be secured while Railway differential rates are maintained. During the discussion of the Federal Convention Bill in committee, several members contended that Clause 12 of Chapter IV. would enable the Federal Parliament to annul or prevent the imposition of differential Railway rates, but it was shown by other members that this view was untenable as the clause could only apply to laws and regulations which directly interfered with freedom of trade between the Colonies. Even had the clause been applicable to prevent differential rates it would have been a bad remedy, as nothing short of placing the Railways under the control of the Federal Government can prevent the Railway tariff from being used for protective purposes by any Colony desiring to do so.

Another strong reason why the Railways should be owned and controlled by the Federal Government is the existence of three different gauges in the four adjoining colonies. New South Wales has a 4 feet 8 $\frac{1}{2}$ inch gauge; Victoria has a 5 feet 3 inch gauge; South Australia has a 5 feet 3 inch gauge and a 3 feet 6 inch gauge; and Queensland has a 3 feet 6 inch gauge. There is, perhaps, no immediate necessity to alter the gauges at present; at the same time, the break of gauge at Albury is already causing needless expense and interruption to traffic, which would be largely increased by the adoption of a mileage tariff. The alteration of gauge may be postponed, but cannot be avoided in the near future, and when the time comes nothing but Federal action and authority can carry it out.

A fourth reason why the Railways and Telegraph Lines, with their debts, should be taken over by the Federal Government is the desirability of placing the Federal Government in a position to consolidate the various State loans into a Federal one, by which a large reduction in the rate of interest could doubtless be secured. No doubt the debts of the several colonies could be taken over and dealt with without taking over the assets which they represent by making the several States the debtors of the Federal Government, who would be dependent on the States for the annual interest, thereby undertaking a great and dangerous responsibility, whereas, in taking over the assets with the liabilities, the Federal responsibility would be reduced to the minimum, as the greater portion of the interest would flow in from the Railway revenues.

Objection might be taken to handing over the Railways to the Federal Government on the assumption that new lines were to be carried out by the Federal Government, and that the several States might not be able to get such new lines as they considered necessary for their

development, but this need not necessarily be the case, as all the power which the Federal Government would require with regard to new lines of Railways is the power to construct and the power to refuse to sanction the construction of such proposed State lines as would come into direct competition with Federal lines.

It may be said that New South Wales is not likely to agree to a mileage rate, as she would thereby lose the traffic of certain districts, which the adjoining colonies would gain; but this is an erroneous opinion, as the traffic of a particular district belongs to the country having the shortest and cheapest route transit to market. Let us suppose that Victoria carries wool from the border, 200 miles at 60s. per ton, including cartage, and that New South Wales carries wool at the same mileage rate 300 miles at 85s. per ton, including cartage. Under such conditions Victoria has a natural advantage of 25s. per ton. Now, supposing New South Wales brings in a differential rate which reduces the freight to 60s. per ton, the carriage would then be the same on the long and short route; but, supposing Victoria likewise adopted a similar differential rate and reduced the carriage to 35s. per ton, she would still be as well paid at 35s. per ton as New South Wales would be at 60s. per ton, besides commanding the traffic, so that any natural advantage from distance can only be destroyed by the competing opponent paying a penalty equal to the value of the advantage possessed by the other. Differential rates effect their object when used by one party; when used by both competitions the one having the shortest transit secures the trade. New South Wales, therefore, in consenting to mileage rates, gives up nothing that she can retain.

Water cannot be made to run up a hill, but it can be carried up by those willing to bear the expense. This is like what New South Wales, Victoria, and Queensland are doing, in varying degrees, at the present time. It is therefore the duty of every one who is aware of the fact to use all means to put an end to such a stupid and wasteful system. This can be effected by including in the Federal Constitution provisions enabling the Federal Government to take over the railway and telegraph lines and their debts, and work them in the interests of the Commonwealth of Australia.

[30] THE POWERS OF THE FEDERAL COUNCIL

(Extract from The Federal Council of Australasia Act 1885, 48 and 49 Vict, Ch. 60, The Victorian Statutes, Vol. IV, May 1887, pp. 3526-3527.)

....

15. Saving Her Majesty's prerogative, and subject to the provisions herein contained with respect to the operation of this Act, the Council shall have legislative authority in respect to the several matters following:-

- (a) The relations of Australasia with the islands of the Pacific:
- (b) Prevention of the influx of criminals:
- (c) Fisheries in Australasian waters beyond territorial limits:
- (d) 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 is issued:
- (e) The enforcement of judgements of courts of law of any colony beyond the limits of the colony:
- (f) The enforcement of criminal process beyond the limits of the colony in which it is issued, and the extradition of offenders (including deserters of wives and children, and deserters from the imperial or colonial naval or military forces):
- (g) The custody of offenders on board of ships belonging to Her Majesty's Colonial Governments beyond territorial limits:
- (h) Any matter which at the request of the Legislatures of the colonies Her Majesty by Order in Council shall think fit to refer to the Council:
- (i) Such of the following matters as may be referred to the Council by the Legislatures of any two or more colonies, that is to say -
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 solemnized or decreed in any colony, naturalization of aliens, status of corporations and joint stock companies in other colonies than that in which they have been constituted, and any other matter of general Australasian interest with respect to which the Legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application: Provided that in such cases the Acts of the Council shall extend only to the colonies by whose Legislatures the matter shall have been referred to it, and such other colonies as may afterwards adopt the same.

Every Bill in respect of the matters marked (a), (b), or (c), shall unless previously approved by Her Majesty through one of Her Principal Secretaries of State, be reserved for the signification of Her Majesty's pleasure.

[31] OPTIMISTIC HOPES FOR THE FEDERAL COUNCIL

(James Service, President, at the opening session of the Federal Council, Federal Council Debates, Session 1886, 25 January 1886, p. 10.)

....I need not occupy time in dilating on the many advantages which must result from the establishment of this Federal Council. By it we have now the means of establishing a system of defence, the value of which would be doubled by the mere magic of a national name. We can now create a federal law by which letters of naturalization, taken out in any one colony, would constitute an alien a citizen of the Australasian Commonwealth. We have it now in our power by a uniform system of patent laws to give an impetus to that inventive genius which has done so much to place the United States of America in the van of mechanical progress. We have the means, by the establishment of a federal quarantine, to minimise the danger of the introduction into these colonies of diseases from other lands, and to secure almost absolute immunity from such danger to the central and more populous colonies of the group. But it is not only in respect to what may be termed domestic legislation that the people of these colonies have had

their powers enlarged. For the first time the exercise of Imperial authority has been transferred to the statesmen of Australasia by conferring on them the power to legislate on matters beyond their own territorial limits. The relations of Australasia with the Islands of the Pacific are daily becoming more close and intimate, and it is a matter for deep satisfaction that the regulation of these relations now rests with ourselves....

[32] REASONS FOR THE FAILURE OF THE FEDERAL COUNCIL

(Edward Jenks, The Government of Victoria (Australia), London, 1891, p. 372.)

...it has been very generally felt that the Federal Council can, at the best, only be regarded as a step in the direction of union. There are two main objections to it as a federal organ.

In the first place, its membership is purely optional. Not only may any colony refuse to join, a power which has been used by the great colony of New South Wales, the mother of four members of the group, but any member which is opposed to any proposal, however vital to the interests of the others, may cripple its prospects of success by withdrawing from the union. It is not surprising, therefore, to find that the matters with which the Federal Council has hitherto dealt have been those only of second-rate importance.

But, in the second place, the absence of an executive and a judiciary of a federal character leaves the Council in the position of a limbless trunk. The Acts of the Council are, doubtless, binding upon the executive officials and the courts of the various colonies represented in it, and so long as there is but little difference of opinion upon the subjects with which it deals, these agents are doubtless sufficient. But, in the event of a real conflict of views between one colony and another, it is too much to assume that the machinery of a colonial government would be promptly and effectively used to enforce legislation of which it did not approve, and which, possibly, had been passed at the suggestion of its rival. And, even in times of harmony, the absence of a revenue and visible engines of power must tend greatly to weaken the influence of any legislative body....

VII - THE DREAM OF NATIONHOOD

.... The ... figures of the 1899 Referendum are a striking proof of the extent and sincerity of the national sentiment throughout the whole of Eastern Australia the Australian Commonwealth ... came into voluntary being through a deep conviction of national unity(1)

For a modern nation to come into being, there must exist a number of common elements before the new state can hope to emerge. Perhaps the most important of these, and certainly the most difficult to document, is nationalist sentiment - the feeling of a people that they are part of the one community. It is both natural and easy for a man to develop a loyalty to his local region and his immediate neighbours, because these are familiar parts of his everyday existence. It is not as natural and is usually quite difficult for him to develop the same type of loyalty to the sum total of all regions and people in a particular area. Such a development is necessary for a viable nationalist attitude to emerge, and, providing that enough of his fellows feel the same way, it is likely that some type of nation may be created. Such was the case in Australia, as people gradually broke down regional prejudices. This occurred for many reasons - the great improvement in communications, the widening of their horizons through education and experience, and the realization that they stood

(1) Quick and Garran, p. 225.

to gain more as a unified nation - all these, and more, were of importance.

....The nation is a community of people who feel that they belong together in the double sense that they share deeply significant elements of a common heritage and that they have a common destiny for the future....(2)

In many ways the people of the various colonies had the ingredients for the creation of a political union many years before the event actually occurred. They all spoke the same language, worshipped the same God, and, perhaps most important of all, paid homage to the same monarch, and thus shared in the glories of blood, flag and Empire:

The crimson thread of kinship runs through us all.(3)

All of these features of Australian society were present in 1788, but it was not until 1900 that federation occurred. Why was this so?

Essentially, until well into the last half of the century, the colonials thought of themselves as members of individual colonies, each

(2) Rupert Emerson, From Empire to Nation. The Rise to Self-Assertion of Asian and African Peoples, Boston, (1960), paperback edition, 1962, p. 95.

(3) Sir Henry Parkes, speaking at a banquet in honour of the members of the Australasian Federation Conference, Melbourne, 1890, Correspondence relating to the Federation Conference in Australia, Commons Papers, Vol. XLIX, 1890, C.6025, p. 12.

of which shared equal membership of the British Empire. Thus when colonial representatives were sent to London on formal occasions such as the Queen's Silver Jubilee, New South Wales, Victoria, and the rest, had the same proud status as Natal or Newfoundland. For many, this separate state was quite a satisfying one, for it meant an independent, virtually self-governing status for each colonial government.⁽⁴⁾

Federation of all the independent areas was possible only when a sufficient number in each could see any worth in such a move. The preceding sections of this thesis have shown important forces which helped prepare people's minds for federation but more was required than just these. All had been a concern at some time since self-government in the 1850's, so that it was a deeper change in Australians which eventually made federation possible. The deeper change, which can be called the development of Australian nationalism, was essentially the result of a breaking down of the isolation and the associated parochialism of the various colonies, and the realization that the common elements shared by all should be safeguarded in a united whole.

This isolation and parochialism were largely a result of the way in which the colonies had been settled. In all, the chief settlement had absorbed much of the population, the lines of communication ran to this centre, and the distance between the capitals meant that overland communication, from one to another, was slow and difficult. In addition, the voyage from England was a slow and tedious one, and news came many

(4) See e.g. Mr Gordon (S.A.), Convention Debates, Adelaide, 1897, pp. 316-317.

weeks late to the main Australian ports. It then took a further length of time before it penetrated the interior. Thomas Mort, in 1858, expressed the feeling of being cut off from the world:

We are now two months without news from England ... you can imagine how inert and inactive everything is both politically and commercially.(5)

Gradually the distances were broken down, and as they were, awareness of each other grew.

The telegraph was a most important eraser of distance. News not only sped within a colony much faster than previously, but it also moved far more rapidly between the colonies - Sydney, Melbourne, Adelaide and Brisbane were all connected as early as 1861. In addition, once the telegraph link was completed with Europe,⁽⁶⁾ Australians could really begin to feel themselves a part of something much bigger than just an isolated settlement. Great was the excitement in 1889, when news of a successful Australian challenge, in London, for the World Sculling Championship reached the colonies in only 78 minutes.⁽⁷⁾ Australians were not backward in using this device, thousands of miles

(5) Quoted in Geoffrey Blainey, The Tyranny of Distance. How Distance Shaped Australia's History, Melbourne, 1966, p. 225.

(6) In 1872.

(7) Blainey, op.cit., p. 224.

were put up for their use in all colonies,⁽⁸⁾ and they soon used it far more than any other people in the world:

TABLE 1

Telegrams per head in various countries.⁽⁹⁾

| | | | |
|-------------------|-----|------------------|----|
| Western Australia | 3.7 | Norway | .7 |
| New South Wales | 3.3 | Denmark | .7 |
| South Australia | 3.2 | France | .7 |
| New Zealand | 3.2 | Germany | .5 |
| Queensland | 3.1 | Sweden | .4 |
| Victoria | 2.8 | Portugal (1880) | .4 |
| Tasmania | 2.5 | Austria (Proper) | .4 |
| United Kingdom | 1.6 | Italy | .3 |
| Belgium | 1.3 | Hungary | .3 |
| Switzerland | 1.1 | Spain | .2 |
| Holland | .9 | Russia | .1 |
| United States | .8 | | |

For Australasian Colonies - 1890 For others - 1887-9.

Hard on the heels of the telegraph were the developments in shipping and rail transport. Ships were continually cutting the time to and from England, and by 1879 were delivering first class mail in Australia an average of only 44 days after departure,⁽¹⁰⁾ thus further helping shake the sense of isolation from "Home". The rapid railway development - between 1875 and 1891 the miles of railway in Australia increased from 1,600 to over 10,000⁽¹¹⁾ - also helped break down regional barriers by bringing Australians closer together.⁽¹²⁾ Thus mail sent over 350 miles

(8) Victorian Year-Book, 1880-1, p. 129; Victorian Year-Book, 1890-91, Vol. II, p. 132.

(9) Victorian Year-Book, 1890-91, Vol. II, p. 127.

(10) Blainey, op.cit., p. 222.

(11) Ibid, p. 259.

(12) S.M.H., 14 June 1883.

from Sydney to Nyngan, had a good chance of being opened before mail sent at the same time to outer suburbs of Sydney.⁽¹³⁾ The mail could also move much more quickly to intercolonial capitals once the lines were through,⁽¹⁴⁾ and there were some who saw this as a valuable and even necessary spur to any type of federal feeling. The opening of the Albury and Wodonga Junction - and thus the Sydney-Melbourne line - was seen as

This great event, which may be looked upon as the first step towards the federation of the colonies....⁽¹⁵⁾ [33]

Closely associated with the development in communications between the colonies, was the greatly improved mobility that this gave Australians. When the census figures of the late nineteenth century are studied, it is very instructive to see the increase in the number of colonials who were, in fact, born in Australia, but in another colony from the one in which they resided;

(13) S.M.H., 9 June 1883.

(14) The main capital city links were completed at Albury in 1883, Serviceton in 1887, and Wallangara in 1888.

(15) S.M.H., 15 June 1883.

TABLE 2

Native-born Australians born in colonies
other than where they resided. (16)

| | N.S.W. | Vic. | Tas. |
|------|--------|-------|--------|
| 1871 | 2.46% | 3.70% | 1.80%* |
| 1881 | 2.54 | 4.27 | 3.46 |
| 1891 | 6.74 | 5.92 | 5.02 |

* 1870 figure.

Men were no longer pinned to their home regions, and the railways did much business transporting the country folk to the cities for business or for a holiday, as they became

....like next neighbours to the people
of the metropolis....(17)

By the eighties, then, Australians had become a mobile people. In addition, a majority were native-born, (18) and most were literate, (19) and these two factors helped in providing an audience for the many nationalist writers who were active in the last three decades of the century. Australians were developing a pride in their

(16) Results of a Census of New South Wales taken for the night of 31st March, 1901, Sydney, 1904, p. 267; V.P.P., 1872, Vol. II, No. 83, Table VII; Henry Heylyn Hayter, Census of Victoria, 1881...., Melbourne, 1883, Table XXXI; Hayter, General Report of the Census of Victoria, 1891...., Melbourne, 1893, Table XXIV; Census of the Colony of Tasmania...., Hobart, 1893, Part IV, Table 1.

(17) S.M.H., 9 June 1883; see also Blainey, op.cit., p. 239.

(18) C.M.H. Clark, Select Documents in Australian History 1851-1900, Sydney, 1955, p. 97.

(19) Commonwealth Year-Book, No. 2, 1909, pp. 906-907.

country and their achievements - the term "native-born" was, to many, one of pride⁽²⁰⁾ - and they were a people who responded eagerly to the nationalist message of many of the poets. Few of these writers were of the front rank as far as their literary talents were concerned, but their fervent belief in their country's destiny was unmistakable as they sang, romantically, of the glory that lay ahead for Australians, especially for Australians united in a mighty nation. To these writers Australia was a land of freedom and opportunity, the last area on earth offering the chance to create a perfect community, a land free from the corruption of the Old World - it was, indeed, a "virgin continent";⁽²¹⁾

This is the last of all the lands
Where Freedom's fray-torn banner stands,
Not wrested yet from freemen's hands.⁽²²⁾ [34]

Many of the nationalist writers were also radical writers, and they found a vehicle for their ideas in the radical newspapers and journals of the time. Perhaps not surprisingly, we find in such journals as the Brisbane Worker and Boomerang, or the Melbourne Tocsin, that for these writers Australian nationalism was closely interwoven with labor views such as republicanism or hostility to coloured

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- (20) See e.g. the letter from "An Australian Native", Argus (Melbourne), 29 April 1891. See also a later comment upon the man who is native-born in an area that is not yet independent: "he will take pride in his native characteristics, and...he will easily believe in their superiority", Hans Kohn, The Idea of Nationalism. A Study in its Origins and Background, New York, 1944, p. 5.
- (21) [Joseph Furphy], Such is Life. Being Certain Extracts from the Diary of Tom Collins, (1903), London, 1944, p. 81.
- (22) George Essex Evans, "Australia", Lorraine and other verses, Melbourne, 1898, p. 75.

labour.⁽²³⁾ This was a brash self-confident nationalism, fiercely patriotic towards Australia, and just as fiercely opposed to any type of union under the Crown. It was a reaction against imperialist attitudes combined with the radical hope of being able to create a new society in Australia.⁽²⁴⁾ [35] Much of the writing was concerned with the bush and its inhabitants:

....For long a homespun folk-hero, the bushman became from 1881 the presiding deity of formal Australian literature, not always at ease in his new, city-tailored garments....⁽²⁵⁾

and the desire for more information and stories of the bushman was filled capably by one paper in particular, the Sydney Bulletin.⁽²⁶⁾ This publication, with its cry of "Australia for the Australians", was probably the most influential of this type of periodical. The Bulletin helped direct nationalist energies into what one commentator has called, "the first substantial creation of a national literature".⁽²⁷⁾ It was in its literature sections, especially, that the journal probably achieved most. Many of its political views, in fact, were simply not

(23) For more on these topics see Chapters B V, A V.

(24) Robin Gollan, Radical and Working Class Politics. A Study of Eastern Australia, 1850-1910, Melbourne and Canberra, 1960, p. 112.

(25) Russel Ward, The Australian Legend, Melbourne, 1958, p. 207.

(26) Ibid, pp. 205-206.

(27) T. Inglis Moore, "A.G. Stephens as Critic", Prometheus, 1959, quoted by S.E. Lee, "The Bulletin - J.F. Archibald and A.G. Stephens", in Geoffrey Dutton (ed.), The Literature of Australia, London, 1964, p. 273.

acceptable to the mass of its readers - republicanism was one⁽²⁸⁾ - and despite the fact that it often supported unpopular political causes, still it managed to survive, and the reason is probably due to its hitting of the mark in its espousal of nationalist views through its literature pages. With people such as Henry Lawson, Price Warung and "The Banjo of the Bush", A.B. Patterson, as well as a host of less well-known but equally nationalistic writers, the journal helped immeasurably to develop nationalist attitudes. Whether the reader lived in the town or "up the country", he was continually reminded that he was Australian - and he should be proud of it:

....In the bush the leading radical paper, the Sydney Bulletin, was read to rags, and the message of egalitarian democracy and nationalism was hammered home.....(29) [36a, 36b]

For those who could not, or did not care to read what these writers said, there were other facets of society which helped widen the Australian outlook.

All the colonies were favoured with a healthy climate which allowed much time to be spent outdoors, and very quickly the young Australian had shown a liking for participation in sporting events. Having so much opportunity for practising his sport, the colonial soon

(28) See e.g. the issue for 14 February 1891, p. 6.

(29) Charles S. Blackton, "Australian Nationality and Nationalism, 1850-1900", Historical Studies Australia and New Zealand, Vol. 9, No. 36, May 1961, p. 353.

showed first-rate ability in many of the games he played, and it was not long before he was widening his horizons by taking on the best of the other colonies. The first representative intercolonial cricket match, for example, was held in 1856, and the first intercolonial rowing race was held in 1863 on the Parramatta River. Pride in local performances soon broadened into a pride in those sportsmen who sought further honours by competing against the best of the world and, on occasion, beating them. Thus the victory of Beach over the Canadian, Hanlan, for the latter's World Sculling Championship, was lauded by all, as people spoke proudly of the grand prowess and reputation of Australian sportsmen.⁽³⁰⁾ Similarly, the news of the soon-to-become-mythical "Ashes" Test match victory over the English cricket team prompted writers to praise Australian skills and prowess.⁽³¹⁾ [37] Perhaps this broadening of attitude was shown best in the reaction of Australians to the death of H.E. Searle, the newly-crowned champion sculler of the world, who died suddenly at twenty-three, only three months after winning the championship in England in August 1889. In a spontaneous demonstration of national grief, flags were hung at half-mast in many centres around the continent, paeans were sung to him in the press and from the pulpit, and both Melbourne and Sydney gave him huge funerals at which thousands paid their respects to the young champion.⁽³²⁾ As his funeral carriage

(30) See e.g. Argus and Age (both Melbourne), 18 August 1884.

(31) S.M.H., 1 September 1882.

(32) One newspaper estimated that there were 170,000 in the streets of Sydney - an "astonishing" spectacle - S.M.H., 16 December 1889.

progressed from Melbourne to Sydney, in itself an unusual occurrence, many more were at the line to see the train as it passed, and many wreaths were flung in its path. What seemed to matter for all these people was that Searle had been one of them, an Australian, and he was revered as one who had brought glory upon the colonies as a whole:

...Success did not spoil him, perfect
in manhood, lion-hearted in courage, he
lived like a man, wore his honours with
all modesty, and died like a hero....(33) [38]

The writers and the sportsmen had one common message for the colonial. They taught him that no matter what anyone else might say, he was as good as the next man, and well able to hold his own with anyone from overseas. This feeling of innate superiority was reinforced by the Australian Natives' Association (A.N.A.), a Melbourne-based friendly society which for many years after its foundation in 1871, allowed only native-born Australians to be members. As well as its friendly society activities, the A.N.A. was the oldest and most influential federation pressure group. It tended to exalt anything Australian - "Australia is doubtless the freest, most liberal, and most democratic country in the world" (34) and it saw the union of the colonies as the means of enhancing all they had become. By means of conferences, public meetings and addresses, distribution of literature and the encouragement of

(33) "Charon" to S.M.H., 12 December 1889.

(34) Will J. Sowden, "Australia : A Native's Standpoint", address delivered in Adelaide in 1892, reprinted in Will J. Sowden, An Australian Native's Standpoint, London, 1912, p. 50.

literature competitions, the Natives pushed continually the theme of Australian federation. This devoted work was a regular feature of its activities, and functions such as its Federation Conference in 1890, and the Corowa Conference of 1893, helped to bring the problems of federation before the public. It was due largely to its work that federation occurred when it did: (35)

We'll agitate and federate,
Despite old Georgie Reid. (36)

Less doctrinaire than the radical press, the organization knew the feelings of the people regarding loyalty to the Crown a little better than did they, and

...no single group did more to foster
a peaceful transfer of loyalty from
Britain to Australia... (37) [39]

Although most Australians remained loyal in their attitude to England, and were quite content to remain members of the Empire, over a century of wholly or partly dependent status could not be overthrown without some effect, and most were clear-eyed enough to realize that their status had to change when federation was achieved. Some dreamed

(35) Brian Fitzpatrick, Australian Natives' Association 1871-1961. A History of the A.N.A. since founded 90 years ago, Melbourne, 1961, p. 33.

(36) Advance Australia (Melbourne), 7 January 1899, p. 6.

(37) Blackton, op.cit., p. 354.

of an eventual Imperial Federation under the Mother Country,⁽³⁸⁾ but most seemed to desire some type of independent status. Australians had gradually become aware that their dependence upon England had certain weakening effects, and the realization of this galled the nationalist. The depression of 1893, for example, showed clearly enough how Australia was at the mercy of economic fluctuations in England,⁽³⁹⁾ and many feared that the same type of dependence was potentially dangerous if England was to go to war with other European powers.⁽⁴⁰⁾ The individual colonies were just too small to make any type of strong impression upon foreign affairs, and people believed that federation was the only way in which any strength in foreign affairs could be gained.⁽⁴¹⁾ After all, if Australians had been united in 1883, then they might have had more influence upon Lord Derby's action in regard to New Guinea.⁽⁴²⁾ Australians, then, could remain loyal while still asserting their nationality, and the English had to respect this. Failure to do so often resulted in a touchy reaction from slighted Australians. Thus the rejection, by the Bishops of Australia and Tasmania, of an Australian-

(38) See e.g. Henry D'Esterre Taylor, The Advantages of Imperial Federation, Melbourne, 1888; Imperial Federation League, Victorian Branch, Report of Public Meeting held in the Town Hall, Melbourne, on Friday Evening, 5th June, 1885, Melbourne, 1885.

(39) See above Chapter A III.

(40) See above Chapter A IV.

(41) Sir Samuel Griffith (Qld.), Conference Debates, Melbourne, 1890, pp. 54-55; J.T. Walker, The Federation of British Australasia: Sketch from a Political and Economic Point of View, Sydney, 1898, p. 4.

(42) Mr Kingston (S.A.), Convention Debates, Sydney, 1891, p. 154. For more on New Guinea see above Chapter A IV.

ordained minister who had been nominated for the See of North Queensland, on the grounds of his lack of university training, was seen as an unfair rejection of an Australian by superior Englishmen:

....let our Right Reverend Fathers in God
beware how they thrust back the shadow on
the dial of Australian progress....(43)

Australians held an ambivalent attitude to Britain and her sons. On the one hand, there was admiration and loyalty for the person of the Queen, as well as a satisfaction of being a part of the Empire,⁽⁴⁴⁾ while on the other was this annoyance and frustration with the British reaction - imagined as well as real - to anything Australian. The six colonies did not federate under the Crown in a blind exhibition of loyalty, for there was enough cynicism held for individual Englishmen to allow of a healthy attitude towards the Mother Country. [40]

A further conditioning process which prepared people for an acceptance of political federation, was the existence of various federated bodies, and other organizations which were organized across colonial boundaries. Such disparate bodies as the Church of England with its General Synod, which first met in 1872, the Roman Catholic Church with its Plenary Councils of 1886 and 1895, and the trade unions, with their Intercolonial Trades' Union Congress, the first of which met in 1879, were all examples. The Unions, in particular, with much of the

(43) Brisbane Courier, 4 March 1891.

(44) See e.g., Mr Abbott, N.S.W.P.D., Vol. XVI, 1885, p. 160.

force and drive coming from the Amalgamated Shearers' Union - formed by, and working for, men who cared little for colonial boundaries - long pursued the dream of "one big union". Unions were important as far as Australian nationalism was concerned, because they were an extension of the concept of "mateship",⁽⁴⁵⁾ and each union could be regarded as being, in effect, "an Association for the promotion of federation".⁽⁴⁶⁾ Such bodies had their counterparts in business firms which had interests in various colonies. William Crosby and Company and Elder, Smith were examples; many banks, including the Bank of New South Wales and the National Bank of Australasia, opened branches in different colonies. One of the notable examples was the A.M.P. Society, which was founded in Sydney in 1849, and which opened branches in Victoria in 1863, South Australia in 1872, Queensland in 1875, Tasmania in 1877, and Western Australia in 1884. Even at the government level intercolonial activity was important, and such matters as lighthouse construction, meteorology and diseases in stock were discussed and acted upon.⁽⁴⁷⁾ Australians gradually became used, then, to the idea that colonies could achieve something working together, and it was examples such as the bodies mentioned above, which helped prepare them for final political collaboration:

(45) Ward, op.cit., pp. 198-199.

(46) Dr Cockburn, S.A.P.D., 1890, p. 268.

(47) See above Chapter A VI.

...These different movements towards Australian federal organization were all consonant with, and derived from and gave their strength to the master movement, the Federation of the Australian Colonies.(48) [41]

(48) Fitzpatrick, op.cit., p. 29.

[33] THE EFFECT OF THE RAILWAY

(Mr Gillies, speaking at the opening of the Albury--Wodonga Junction, S.M.H., 15 June 1883.)

You have had some such excellent speeches delivered, and listened to them with such silence, that it would be a great mistake on my part if I asked too much forbearance from you. If the meeting of this vast assemblage, brought together on this occasion to meet the iron horse on this side of the Murray, be an emblem at all, it ought to be emblematic of the binding of the colonies in a bond still closer and more united than they are at present. (Cheers.) There is nothing that is truer than that these railways throughout the world have been great civilizers, and I hope that the railway between Sydney and Melbourne will be the means of bringing the people of both colonies into more intimate knowledge with each other than has been the case for the last 20 years. Federation can never come to these colonies until we know each other better, and appreciate each other's good qualities. (Hear, hear.) As soon as we know each other a little better, then that union will be fostered which will be the means of bringing about true federation, which is nothing unless it is preceded by mutual self-respect. (Cheers.) When that existed, federation would be near at hand....

[34] AUSTRALIA'S GLORIOUS FUTURE

(Brunton Stephens, The Poetical Works of Brunton Stephens, Sydney and Melbourne, 1902, pp. 8-11.)

THE DOMINION.

(1883.)

OH, fair Ideal, unto whom,
Through days of doubt and nights of gloom,
Brave hearts have clung, while lips of scorn,
Made mock of thee as but a dream---
Already on the heights of morn
We see thy golden sandals gleam,
And, glimmering through the clouds that wrap thee yet,
The seven stars that are thy coronet.

Why tarriest thou 'twixt earth and heaven?
Go forth to meet her, Sisters seven!
'Tis but your welcome she awaits
Ere, casting off the veil of cloud,
The bodied Hope of blending States,
She stands revealed, imperial, proud;
As from your salutation sprung full-grown,
With green for raiment and with gold for zone.

From where beneath unclouded skies
Thy peerless haven glittering lies;
From where o'er pleasant pastures rove
The flocks from which they greatness sprang;
From vine-clad slope and orange-grove:
From "grave mute woods" thy Minstrel sang;
From Alpine peaks aglow with flush of morn,
Go forth to meet her, thou, the eldest-born.

From where, reverberant at thy feet,
The billows of two oceans meet;
From where the rocks thy treasures hide;
From mart and wharf, and harbour-mouth;
From where the city of thy pride
Ennobles all the teeming South--
To meet her, thou with loftiest zeal inflamed,
Go forth, Victoria, queen and queenly named.

And thou, the youngest, yet most fair,
First to discern, and first to dare;
Whose lips, sun-smitten, earliest spoke
The herald words of coming good,
And with their clarion-summons broke
The slumber of the sisterhood--
Foremost of all thy peers press on to greet
Her advent, strewing flowers before her feet.

And thou, around whose brow benign
Vine-leaf and olive intertwine;
Upon whose victories the Star
Of Peace looks down with no rebuke,
The weapons of whose warfare are
The ploughshare and the pruning-hook--
Take with thee gifts of corn, and wine, and oil,
To greet they liege with homage of the soil.

Thou, too, whom last the morning-beams
Wake from thy sleep by peaceful streams
Slow westering to the Indian main--
Thou, too, beneath thy later sun
Conspire with these in glad refrain
Of welcome to the coming One,
And from thy fragrant forests tribute bring
Of grateful incense for thine offering.

And thou, Pomona of the South,
Ruddy of cheek, and ripe of mouth,
Who from thy couch of orchard-bloom
With fearless foot are wont to stray
By mountain lakes, or in the gloom
Of forest-depths unknown of day--
Be thy shrill greeting borne upon the breeze
Above the thunder of thy girdling seas.

Nor thou delay, who dwell'st apart,
To join thy peers with gladsome heart--
Whether the summons thee o'ertake
On icy steep or fruitful plain,
Or where thy craggy bulwarks break
The onslaught of the warring main,
Or find thee couched within some ferny lair,
Flax-flower and hyacinth mingling with thy hair.

Bind ye the sevenfold cord apace;
Weave ye the sevenfold wreath, to grace
The brow of her whose avatar
The mighty Mother waits to bless;
In sevenfold choir be borne afar
The music of your joyfulness:
Till o'er the world's disquiet your song prevail--
"Australia Foederata ! Hail ! all hail !"

[35] THE VIEWS OF WILLIAM LANE

(Boomerang (Brisbane), 19 November 1887, in C.M.H. Clark, Select Documents in Australian History 1851-1900, Sydney, 1955, pp. 564-565.)

Our principles are easily declared. They are Australian. Whatever will benefit Australia, that we are for; whatever will harm Australia that we are against.

We use Australian in its fullest, truest, broadest sense. To us it conveys an idea which we cannot adequately describe; a something far different from a vain and sectional clamour for the right to run amuck among the brawling nations of foreign lands, and to strike for conquests where we cannot rule; a something that may not be expressed in words and that is as yet outlined only by the spasmodic leaping of an embryonic sentiment. The Australian national movement is the setting in of one of those periodic tides which change and alter the whole life of the human race; it is the first pulsation of another of that series of upheavals which through countless cycles of evolution-phases have uplifted the senseless cell of protoplasmic life to the exalted station whereon the white man stands. It is in Australia that the battle against Nature's brutal laws will be fought out; it is here in Australia that human society will develop itself, and that the yet unanswered riddles of the Sphinx will be finally solved.

We are for this Australia, for the nationality that is creeping to the verge of being, for the progressive people that is just plucking aside the curtain that veils its fate. Behind us lies the Past with its crashing empires, its falling thrones, its dotard races; before us lies the Future into which Australia is plunging, this Australia of ours that burns with the feverish energy of youth, and that is wise with the wisdom for which ten thousand generations have suffered and toiled.

We are for Australia, for that which will work her weal, against that which will work her woe. We yield no other allegiance, profess no other loyalty; we recognise no duty as owing to others, we set above all other claims the claims of our own land....

[36a] THE BULLETIN AND AUSTRALIAN NATIONALISM

(Bulletin, 2 July 1887, p. 4.)

WHAT IS AN AUSTRALIAN?

...By the term Australian we mean not those who have been merely born in Australia. All white men who come to these shores - with a clean record - and who leave behind the memory of the class-distinctions and the religious differences of the old world; all men who place the happiness, the prosperity, the advancement of their adopted country before the interests of Imperialism, are Australian. In this regard all men who leave the tyrant-ridden lands of Europe for freedom of speech and right of personal liberty are Australians before they set foot on the ship which brings them hither. Those who fly from an odious military conscription; those who leave their fatherland because they cannot swallow the worm-eaten lie of the divine right of kings to murder peasants, are Australian by instinct - Australian and Republican are synonymous. No nigger, no Chinaman, no lascar, no kanaka, no purveyor of cheap coloured labour, is an Australian. True to his grovelling and lickspittle nature, the Chinaman in Australia is a toady and a "loyalist", and at least a pretended worshipper of his friend Missa PARKES, who poll-taxes him, and of the regime under which thousands of his countrymen have been slaughtered in order that Imperial opium might be stuffed down their brothers' throats....

[36b] THE PRIDE OF THE NATIVE

(Henry Lawson, Bulletin, 27 August 1892, p. 20.)

THE SOUTHERN SCOUT, OR THE NATIVES OF THE LAND.*

Ye landlords of the cities that are builded by the sea--
You toady "Representative", you careless absentee--
I come, a scout from Borderland, to warn you of a change,
To tell you of the spirit that is roused beyond the range;
I come from where on western plains the lonely homesteads stand,
To tell you of the coming of the Natives of the Land!
 Of the land we're living in,
 The Natives of the Land.
For Australian men are gath'ring - they are joining hand in hand!
Don't you hear the battle cooey of the Natives of the Land?

I've watched the march of Humbug here, I saw each evil sign
With eyes that ran a banker filled with hot, rebellious brine.
I saw the city mansions built on misery in slums---
The March of Greed and Poverty far out beneath the gums;
I saw the southern slaver-ship go sailing from the strand,
And listened for the war-cry of the Natives of the Land---
 Of the land we're living in,
 The Natives of the Land;
But Australian men are coming for the rights that men demand,
There's blood of many nations in the Natives of the Land.

"It's live or die!" you'll hear 'em sing, "so let the war begin
For the rights of man and woman, and the land we're living in.
It's right or wrong", you'll hear 'em sing, "we'll test it once again
Ere Greed shall rob the gardens where our mothers worked like men."
And Eastwood shall the army come with eyes all flashing grand
When Freedom's marching orders reach the Natives of the Land.
 Of the land we're living in,
 The Natives of the Land.
They'll sing a rebel chorus yet and play it on a band,
For the spirit of the country moves the Natives of the Land.

* The writer wishes to state, for the benefit of the majority of the English people, that Australians born of Europeans have been called "natives" for many years. Also that Australians are not all black, or even brown, neither are they red. Likewise, that the progeny of Marster "Jarge" or "Willum" as went "abrad" and came to Australia, are not necessarily little savages, unless, indeed, the Master Jarge or Willum aforesaid happens to live with a black gin.

[37] PRAISE FOR AUSTRALIAN SKILLS

(Age (Melbourne), 20 March 1877.)

An Australian eleven has met a picked eleven of the very flower of English cricketers, and has given them a very signal defeat. Such an event would not have been dreamed of as coming within the limits of possibility ten or fifteen years ago, and it is a crushing reply to those unpatriotic theorists who would have us believe that the Australian race is deteriorating from the imperial type, or that lengthened residence under Australian suns must kill out the Briton in the blood. The experience of yesterday points of the very opposite conclusion. It shows that in BANNERMAN we can train a batsman who is not surpassed in any English school of cricket, and in KENDALL and

MIDWINTER, both products of the soil, bowlers almost as good; while in the person of young BLACKHAM we have a wicket-keeper also of native growth who is in his department what ROBERTS is at the billiard-table and BLONDIN on the tight-rope. As long as we have such rare feats of skill and muscle to record as they have exhibited in the Melbourne oval within the last few days, we can very well afford to leave the pejor avis view of colonial life to the grumblers who insist that the Anglo-Saxon will not bear transplanting, and that lads who have selected their favourite vice before they have got their mustachios, and girls who have formed their private theories of the summum bonum while they are still in the middle form at school, offer a poor prospect for the health and vitality of the next generation. There is no doubt that in both sexes of the colonial there is wanting some organic element which supplies "the cheeks of cream" to the Englishman's familiar type of feminine loveliness, and furnishes what Falstaff calls "the big semblance of a man" to the champions of his playgrounds and his gymnasia. But though young Australia is apt to be too weedy to be symmetrical, he is a very Hercules in endurance, and as full of spirit and dash, and the courage which risks everything in the cause of humanity, as though he kept his teeth and his complexion for a ruddy old age....

[38] AN AUSTRALIAN HERO

(S.M.H., 16 December 1889.)

Sir, - A large number of Victorian and South Australian cricketers were assembled at the Mayor of Adelaide's reception of the Victorian eleven to-day. Feeling references were made to the sad and untimely death of Henry Ernest Searle, the late Sydney champion sculler of the world, and it was the unanimous wish of the meeting that a kindly hand of sympathy should be extended to our sister colony of New South Wales. Victoria and South Australia though not owning his citizenship were proud of Searle as an Australian, and fully recognise that his doughty deeds of valour in the old country, and his noble and exemplary character, largely influenced for good the national feeling of unity that is so rapidly growing in these young and free communities in their relation to one another and to the mother country, and to which athletic men contribute their full measure of support.

I am, &c., H.Y. SPARKS,
Chairman South Australian Cricket Association,
and late chairman South Australian Rowing Association.

Adelaide, December 11.

[39] AIMS OF AN A.N.A. JOURNAL

("Editorial Notes", Advance Australia (Melbourne), 26 January 1897.)

OURSELVES

We come into existence because we believe there exists a necessity for such a journal as we purpose to be - a national newspaper. We belong not to party-politics nor religion. Protection nor freetrade shall have no place in our columns. Australia - the land of our birth is the star that shall guide us, and the advancement of all that tends to her welfare is our high aim...

We will strive by means of original tales, essays, poems, etc., to foster the growth of an Australian literature, thereby bringing into publicity talent that would, in some cases at least, have remained unrecognised, as well as at the same time, having a valuable educational effect on the members of our branches.

But we have a very much higher ambition than to be merely the chronicler of branch news, and a record of the sayings and doings of this or that member of the A.N.A. On all affairs pertaining to the well-being of Australia, we will make ourselves heard, and that with no uncertain sound. Our country is just now stepping across the threshold of nationhood, and it behoves us to see to it that no irretrievable mistakes are made - mistakes for which Australians of a future generation would have to pay the penalty; therefore, as the necessity arises, we will not be slow to condemn or praise.

We belong to no province in particular. The welfare of Australia as a whole, and not the parish politics of any one part, is the matter which shall have our deepest concern. We are not Victorian or South Australian in our proclivities; neither do we incline towards New South Wales. We are Australians; and the interests of the commonwealth shall be striven for with singleness of aim.

On federation we will speak out, and will strive with pen and mind until a grand united Australia shall be an accomplished fact; and our country - the last-born of the nations - shall take her rightful place as mistress of the Southern Seas; and become an acknowledged factor in the destinies of the world.

On matters concerning the British nation as a whole, we will also have a word to say - holding that as a not unimportant part of that nation, our interests are identical....

We trust to receive the support of all Australians, whether

members of the A.N.A. or otherwise; and first, last, and always our aim will be to

"ADVANCE AUSTRALIA."

[40] AUSTRALIAN FRUSTRATION WITH THE ENGLISH

(A. Patchett Martin, Lays of To-Day. Verses in Jest and Earnest, Melbourne, 1878, pp. 10-15.)

MY COUSIN FROM PALL MALL

There's nothing that exasperates a true Australian youth,
Whatever be his rank in life, be he cultured or uncouth,
As the manner of a London swell. Now it chanced, the other day,
That one came out, consigned to me - a cousin, by the way.

As he landed from the steamer at the somewhat dirty pier,
He look my hand and lispingly remarked, "How very queer;
I'm glad, of course, to see you - but you must admit this place,
With all its mixed surroundings, is a national disgrace."

I defended not that dirty pier, not a word escaped my lips;
I pointed not - though well I might - to the huge three masted ships;
For, although with patriotic pride my soul was all aglow,
I remembered Trollope's parting words, "Victorians, do not blow."

On the morrow through the city we sauntered, arm in arm;
I strove to do the cicerone - my style was grand and calm.
I showed him all the lions - but I noted with despair
His smile, his drawl, his eye-glass, and his supercilious air.

As we strolled along the crowded street, where Fashion holds proud sway,
He deigned to glance at everything, but not one word did say;
I somehow thought he was impressed by its well-deserved renown
Till he drawled, "Not bad - not bad at all - for a provincial town."

Just as he spoke there chanced to pass a most bewitching girl,
And I said, "Dear cousin, is she not fit bride for any earl?"
He glanced, with upraised eyebrows and a patronising smile,
Then lisped, "She's pretty, not a doubt, but what a want of style!"

We paused a moment just before a spacious House of Prayer;
Said he, "Dear me! Good gracious! What's this ugly brick affair—
A second-rate gin palace?" "Cease, cease," I said; "you must—
O spare me" - here my sobs burst forth. I was humbled to the dust.

But, unmindful of my agonies, in the slowest of slow drawls
He lisped away for hours of the Abbey and St. Paul's,
Till those grand historic names had for me a hateful sound,
And I wished the noble piles themselves were levelled to the ground.

My young, bright life seemed blasted, my hopes were dead and gone;
No blighted lover ever felt so gloomy and forlorn;
I'd reached the suicidal stage - and, the reason of it all,
This supercilious London swell, his eye-glass, and his drawl.

But, though hidden, still there's present in our darkest hour of woe
A sense of respite and relief, although we may not know
The way that gracious Providence will choose to right the wrong,
So I forthwith ceased my bitter tears - I suffered and was strong.

Then we strolled into the Club, where he again commenced to speak,
But I interrupted, saying, "Let us leave town for a week,
I see that Melbourne bores you - nay, nay, I know it's true;
Let us wander 'midst the gum-trees, and observe the kangaroo."

My words were soft and gentle, and none could have discerned
How, beneath my calm demeanour, volcanic fury burned.
And my cousin straight consented, as his wine he slowly sipped,
To see the gay Marsupial and the gloomy Eucalypt.

Ah! who has ever journeyed on a glorious summer night
Through the weird Australian bush-land without feelings of delight?
The dense untrodden forest, in the moonlight coldly pale,
Brings before our wondering eyes again the scenes of fairy tale.

No sound is heard, save where one treads upon the leaf-strewn track;
We lose our dull grey manhood, and to early youth go back—
To scenes and days long passed away, and seem again to greet
Our youthful dreams, so rudely crushed like the leaves beneath our feet.

'Twas such a night we wandered forth; we never spoke a word
(I was too full of thought for speech - to him no thought occurred),
When, gazing from the silent earth to the star-lit silent sky,
My cousin in amazement dropped his eye-glass from his eye.

I fondly hoped he was impressed by the grandeur of the scene
(As the most prosaic Colonist I'm certain would have been),
Till he replaced his eye-glass, and remarked - "This may be well,
But one who's civilized prefers the pavement of Pall Mall."

* * * *

I swerved not, from that moment, from my purpose foul and grim,
I never deigned to speak one word, nor even glanced at him;
But suddenly I seized his throat He gave one dreadful groan,
And I, who had gone forth with him, that night returned alone.

[41] THE VALUE OF UNION

(Mr Thomas Caddy, President, Official Report of The Third Intercolonial
Trades' Union Congress, Held in Sydney, 5th, 6th and 7th October 1885,
Sydney, 1885, p. 16.)

....So much for victories won. But while exulting over the conquests of the past, we have a right to feel anxious as regards the issue of the battles to be waged by labour against capital in the future. The call to battle is sounded. The armies of Australasian labour have been summoned to the field. Their ranks are closing up, but I feel it my solemn duty to declare to you - delegates enjoying the sacred trust and confidence of your fellow-toilers - that the ranks of labour are not yet organised to that degree of perfection as to guarantee that speedy success we all hope for. But happily a new gospel, which shall free the working men of these colonies from those shackles which have prevented them from realising to the full their legitimate aspirations, has been declared, and the text of it is - Federation. When asked the secret of his eloquence, the greatest of Greek orators simply replied "Pronunciation, pronunciation, pronunciation." And so, ladies and gentlemen, if I were to be asked the most prompt and thorough mode of making the combined social and political force of the working classes of these colonies felt, I would reply, "Federation, federation, federation." A house divided against itself cannot stand. We are not divided, neither are we sufficiently united, yet we are a majority in the body politic. We constitute the stability, the endurance, the wealth and power of the State; and yet, during centuries, and even in part to-day, we are borne down by a minority. Kings and queens are not our danger, nor are crowns and sceptres emblems of the true peril we have to fear. All the woes of the working classes during the past, in the present, and to be dreaded in the future, are revealed and explained in the one word, "capital." The unrighteous uses of capital constitute our danger and federation is our remedy.

SECTION B

The Writing of the Constitution

I - INTRODUCTION

It took the Australian colonies eleven years and two constitutions before the document we know as The Commonwealth of Australia Constitution Act was passed by the British Parliament. This period, 1890-1900, saw a gradual crystallization of ideas, as the people who tentatively produced the Commonwealth Bill of 1891 came to a clearer understanding of what was involved in the writing of a constitution, and what was required in a constitution for the Australian colonies.

The opportunities for discussion of principles were many. On the official side, the Melbourne Conference of 1890 was the first. At this meeting the delegates decided that federation was a possibility, and, after a discussion of broad principles, their other work was the decision to hold a constitutional convention. In the following year the National Australasian Convention met in Sydney, and, after a month's labours, produced a draft Commonwealth Bill. This draft failed to win the acceptance of the various governments, and the official federation movement slowed for a period. A Premiers' Conference at Hobart in 1895 was the next important event, and the Premiers decided to try again. The 1897-8 Convention met at Adelaide, then in Sydney, and finally in Melbourne, and another draft Bill was produced. A few changes made at a Premiers' Conference in 1899, and in the British Parliament, saw the Constitution finalized, and it became operative on New Year's Day, 1901. This official discussion was reinforced by discussion of a more informal

nature. The Corowa Conference of 1893, the People's Federation Conference two years later, a multitude of public lectures and debates, pamphlets, discussions in the press (including some journals specifically aimed at promoting federation) - all presented chances for people, and the framers of the constitution in particular, to develop their ideas about this increasingly important subject.

All of this discussion of constitutional details actually did little to alter what had been done in 1891, for the final Constitution was little different from the general principles enunciated in the 1891 draft. The aim of this section is to investigate where the ideas embodied in the final document were derived from, whether they were points finalized in 1891 or in 1897-8. If they were in the latter category, the change in attitude between the two Conventions will be studied and an attempt made to explain the change. Only those parts of the Constitution which appear to have been regarded as the most important at the time will be discussed.

II - THE BASIS OF THE FINAL CONSTITUTION

As we have seen, any moves towards a union of colonies, or at least united action to remedy a specific problem, were generally hindered by intercolonial rivalry in the period 1856-1890. Few men were prepared even to consider the possibility of a colony losing some power, and it was only when this attitude modified and people realized the possible benefits of union, that federation became possible. Even when, in the nineties, federation was clearly a possibility, intercolonial rivalry, on many occasions, appeared likely to bring the movement to a halt. It does not surprise when we find that this rivalry - in some cases hatred might not be too strong a word⁽¹⁾ - had a very marked effect upon our final Constitution, in the same way that similar jealousies affected the United States' Constitution as it finally appeared.

The whole concept of a federal system of government as opposed to a unitary one, was devised by the American Founding Fathers because of regional rivalries,⁽²⁾ and for the same reason, it is not an exaggeration to say that this was the only type of government that had a chance of succeeding in Australia:

....It is state interests we have to deal with, and unless the State interests are effectually preserved in a federal scheme,

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- (1) See e.g., letters from Sir John Robertson, S.M.H., 11 December 1889, 31 March 1891.
- (2) See e.g., Mr Dickinson, 6 June 1787, in Max Farrand (ed.), The Records of the Federal Convention of 1787, (1911), New Haven and London, 1966, Vol. I, p. 136.

that scheme will be worth nothing, because it can be worth only so much as consists of the goodwill of the parties to it....(3)

A few voices called for a unitary state, but they seem to have been primarily either from the large colonies, being afraid of the small colonies becoming too powerful in a federation,⁽⁴⁾ or they were labor supporters⁽⁵⁾ who believed that a unitary system could best help the institution of the social reforms they desired. [42] The colonies were not prepared to give up all their powers, however, and any union had to be federal in organization.⁽⁶⁾ The separation and wide variation in size of the population of the colonies seem to have been the main hurdles that the writers of the Constitution had to face, and many of the most determined supporters of federalism were men in the smaller States who foresaw a complete swamping of their regions in a unitary system:

....we should deal in this Bill with the general questions, leaving as far as possible all the minor matters to the jurisdiction and control of the States....(7)

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- (3) Mr Barton (N.S.W.), Convention Debates, Sydney, 1891, p. 90.
- (4) See e.g. George Dibbs of New South Wales in a letter to Lord Beauchamp, 1901, "Letters to Lord Beauchamp, 1899-1901", p. 184, Beauchamp Collection (A3012), Mitchell Library, Sydney. At one stage, Dibbs even suggested a unitary state comprising New South Wales and Victoria alone; see his letter to Patterson, Premier of Victoria, in Quick and Garran, pp. 155-156.
- (5) Clipper (Hobart), 27 June 1896; Tocsin (Melbourne), 5 May 1898.
- (6) W. Jethro Brown, Why Federate?, Sydney, 1898, pp. 40-41.
- (7) Sir John Forrest (W.A.), Convention Debates, Adelaide, 1897, p. 246.

The primary fear was loss of identity in a large, anonymous union,⁽⁸⁾ and federalism would help avoid this. A far more practical and objective reason for opposing the creation of a unitary plan was the awareness of some that in a country as large as Australia, with such slow methods of communication, there was a real danger that a new, centralized Commonwealth would have its existence threatened by the great difficulty of enforcing its decrees in the outlying areas.⁽⁹⁾ [43]

With virtually all opposed to it,⁽¹⁰⁾ unification had little chance of realization in Australia and, in fact, it was taken for granted by most that if Australians could sink their differences in a scheme of union, then it would be federal in organization.⁽¹¹⁾

With the unease that surrounded the voluntary giving-up of powers by the colonies that would occur in a federal system, it is perhaps surprising that more people did not come out for a system of confederation, under which the Federal government would have had a minimum of power over the States which would retain almost all of the powers belonging to them in colonial times. Associated with this would be the matter of secession, for it could be thought of as essential to allow the States so to protect their interests if they saw them threatened.

(8) Isaac Isaacs, address at Wodonga (Victoria), Wodonga and Towong Sentinel, 26 February 1897.

(9) Mercury (Hobart), 12 February 1897.

(10) W.G. McMinn, "Australia's Constitution: 'The Fundamental Problem'", Quadrant, No. 41, Vol. X, No. 3, May-June 1966, p. 75.

(11) Sir Samuel Griffith (Qld.), Convention Debates, Sydney, 1891, p. 29.

In fact, very little debate was engaged in over this, for the examples of the Articles of Confederation and the American Confederacy seem to have had quite an important effect upon Australian politicians. Apart from a few last-ditch fighters who argued after the second Referendum for a trial constitutional period, following which the States could finally accept or reject the constitution,⁽¹²⁾ most seemed determined to avoid the pitfalls of confederacy as exemplified in the American experience. The Articles of Confederation were widely condemned -- "a mongrel federation in the form of incoherent confederacy",⁽¹³⁾ and the weaknesses of the Federal Council of Australasia highlighted. It was pointed out that the Federal Council was, in fact, a confederacy, and the lack of financial control at the centre, plus the right of secession, which South Australia had exercised, were both crippling factors in the efforts of the body to bring about union.⁽¹⁴⁾ [44a, 44b] Similar flaws would cripple the new federation from the start because without financial control the federal legislature would be powerless,⁽¹⁵⁾ and the union would be endangered continually if the dissatisfied States could leave when they chose.⁽¹⁶⁾

(12) W.A. Holman to H.B. Higgins, 3 July 1899, Higgins Papers, 1057/52, National Library, Canberra.

(13) Ballarat Courier, 28 May 1898.

(14) Edward Jenks, The Government of Victoria (Australia), London, 1891, p. 372n.

(15) Daily Telegraph (Launceston), 10 February 1891.

(16) Sir George Turner (Vic.), Convention Debates, Adelaide, 1897, p. 48.

A lot of ground was covered in the development of constitutional ideas in the colonies during the nineties, but this saw primarily an alteration of details rather than of the broad lines that were laid down at the National Australasian Convention of 1891. At this Convention, Sir Henry Parkes submitted a set of resolutions which formed the basis of the initial debate, and were later very close to the ideas of the final draft. The debt owing to Parkes' Resolutions and the 1891 draft was fully realized by the 1897-8 Convention delegates, some of whom actually favoured using the 1891 document as the basis for their labours.⁽¹⁷⁾ The second Convention began its work by considering a new set of Resolutions submitted by Edmund Barton, but, as he acknowledged, they were little different from those of Parkes.⁽¹⁸⁾

Basically, under the 1891 Resolutions, Australia was to be a federal state, with powers shared by the central government and the member colonies. The colonies were to remain intact, and the only change in their condition was to be the loss of certain powers to the central government. Essential to any federal scheme were the provisions that trade between the member units was to be free, and that the central government would have sole control over external tariffs. At the centre

(17) Convention Debates, Adelaide, 1897, pp. 246 (Forrest), 254 (Solomon), 272 (Reid). The origin of the Resolutions is clouded. Parkes maintained in his autobiography that they were solely his creation, but Deakin later refuted this, saying that they were largely the work of Sir Samuel Griffith: Sir Henry Parkes, Fifty Years in the Making of Australian History, London, 1892, Vol. II, pp. 359-361, 367; Alfred Deakin, The Federal Story. The Inner History of the Federal Cause 1880-1900, Melbourne (2nd ed.), 1963, edited by J.A. La Nauze, p. 47.

(18) Convention Debates, Adelaide, 1897, p. 20.

of the system, the organisation would follow the American version of Montesquieu's theory of the separation of powers, with a few local variations largely taken from British practice. There was to be a bicameral parliament, a judiciary, and an executive. The upper house of the Federal parliament was to be basically a provincial house with equal representation for all colonies, while the lower or people's house was to be elected on a population basis. Unlike the U.S. example, the executive was not to be a powerful political creation, but rather the representative of the British sovereign, advised by a cabinet responsible to the lower house, and was thus a passive figure. In addition, there was not the same rigid division between executive and legislature as in the U.S.A. An independent, federal supreme court was to form the final court of appeal for Australia, although the Sovereign in Council retained the final word. This, then, was the basis of the system referred to in Parkes' Resolutions, and this is the basis of our Constitution today. [45]

[42] AN ARGUMENT FOR UNIFICATION

(Henry Bourne Higgins, Q.C., "The Australian Federation Act", Contemporary Review, Vol. LXXVII, April 1900, p. 481.)

....Why, it is asked, should the States "as States" have any longer a voice in the making of laws on federal concerns? Why should the States keep back part of the price of union?

None of the advocates of the bill gives a satisfactory answer to these questions. But, to use the words of Mr. Wise, they insist, "on historic as well as theoretic grounds," on erecting a federal house in which to secure the recognition of the States as such, "each colony shall have an equal number of members, no matter what the population is - or may "become"; and this equality of colonies is made final and unchangeable (sec.128). If one colony 100 years hence should have a population of 20,000,000 and another a population of 200,000 the latter is (under the bill) to have the same number of members in one co-equal house of the federal parliament and is not to be deprived of this unfair advantage without its consent! The case of Manchester and Old Sarum is nothing to it. One Australian may have 100 times the political weight of another as to tariff laws, or as to bills of exchange, or as to divorce - because he lives on a different side of a degree of longitude....

[43] A REPLY TO HIGGINS

(Andrew Inglis Clark, "Federal Government. The Commonwealth of Australia. No.2", Daily Telegraph (Launceston), 7 November 1900.)

....each State is a separately organised community which has a distinct collective and corporate life and distinct interests which may be more or less affected by federal laws. Mr. Higgins seems to think that all the populations of the several Australian colonies are so perfectly homogeneous in character, habits, ideals, and interests that any recognition of them in severalty in the composition of the federal legislature cannot be supported on any firm foundation. But differences of climate, natural products, and geographical position will always create different industrial and commercial interests which political unity cannot obliterate. The industrial and commercial interests of California are distinct from those of Massachusetts, and the union under one government of two countries as far apart and exhibiting differences

in climate and natural products equal to those existing in such countries as Denmark and Portugal would not make their industrial and commercial interests identical. Equal differences in geographical position, climate, and products of the soil are found in Australia, and have already created distinct industrial and commercial interests in several of the colonies. Sensible differences in physical environment have also a constant tendency to produce differences in social habits, and each colony has had a separate local history out of which a distinct body of sentiments and opinions on many matters has grown up in it....

[44a] CONFEDERATION IS NOT THE RIGHT SYSTEM OF GOVERNMENT FOR AUSTRALIA

([Sir Henry Parkes], "One People : One Destiny". Speech of The Hon. Sir Henry Parkes, G.C.M.G., to The Citizens of Sydney, in the Gaiety Theatre, Saturday, June 13th, 1891, Sydney, 1891, pp. 24-25.)

....Some gentlemen have, in the recent discussion on federation expressed the opinion that the colonies should be confederated, each retaining its own State powers. I have heard many well-meaning men assert that they would be in favour of a confederation of the colonies, which would leave each colony independent. Well, that has been tried. It has been tried in America, in Switzerland, in the German Empire, and it has been found that a confederation of States, with each State independent of the other, cannot hold together for any real good purpose of government. The great witness of the failure of the American confederation was George Washington, and such a confederation is only like a rope of sand. If any time of trouble should arise in Australia, such as the appearance of a foreign power off our coast, any decision would have to be referred to New South Wales, to Victoria, to South Australia, to Tasmania, to Queensland; whereas, for the safety of the whole State, prompt and vigorous action would be required. (Cheers.) You will see, therefore, that there is no safety except in a United Australia. (Loud cheers.) We could not get on as a confederation of independent States. The thirteen colonies of America, when they won their independence, could not get on as a confederation of independent States, and they never asserted their position in the world until that great constitution was passed which made them one mighty nation....we shall make a mistake if we do not give the new Central Government adequate power. Every Government, to be effective, must be armed with the necessary power to maintain a national position, to protect

national interests, and to do all things necessary for preservation of freedom, and the security of national life. (Cheers.)

[44b] WE INTEND THIS UNION TO BE INDISSOLUBLE

(Mr Symon (S.A.), Convention Debates, Adelaide, 1897, p. 128.)

....We are all agreed, as was shown by the cheers which greeted the suggestion made by Mr. Wise, that we intend this Union to be permanent and indissoluble. But I do think that holding that view, as the Convention does, it would be well that it should be clearly and definitely expressed at every point wherever it is possible. My recollection is that one of the main causes of the fratricidal war of secession in the United States of America was that it was not clear, it was not contained in express terms within the four corners of the Constitution, that no State should be able to secede. The claim was made by State after State in what was afterwards known as the Southern Confederacy for years before the war of secession, and the contention always was that the Union was a compact between the States, and that any State, on being dissatisfied or thinking that its rights were assailed, was entitled to retire. Therefore we should make, I think, in common with the other hon. members whom I am proud to follow in their views on that subject, a considerable mistake if we do not make it absolutely clear - and we cannot begin too soon, it seems to me - that this Union is to be permanent, and that there shall be no secession....

[45] PARKES' RESOLUTIONS SUBMITTED TO THE NATIONAL AUSTRALASIAN CONVENTION, 1891

(Sir Henry Parkes (N.S.W.), Convention Debates, Sydney, 1891, p. 23.)

SIR HENRY PARKES: I have the honor to move:

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 Australia 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 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.

III - THE PREAMBLE

The Preamble of the Constitution caused little concern as a whole, but two sections did bother Australians, with one occasioning a noticeable public reaction.

"THE COMMONWEALTH OF AUSTRALIA"

"The Commonwealth of Australia" was the title chosen for the new nation by the delegates to the 1891 Convention, and despite some controversy in the intervening years, it was the title agreed to, with little fuss, in 1897. When one notices the ease with which it was adopted, compared with the controversy aroused by other questions, it is obvious that this was not a major issue, but the use of the word "Commonwealth" did cause some concern and a number of critics emerged to attack the word. It seems fairly clear that "Commonwealth" was first suggested by Sir Henry Parkes in the Constitutional Functions Committee of the 1891 Convention, a body which, unfortunately for the historian, met in camera.⁽¹⁾ According to Deakin, the word was not enthusiastically received by the Committee and it was apparently only after much lobbying of members by Deakin that it was carried by one vote.⁽²⁾ The main objections then and in the years following seem to have been twofold.

(1) Alfred Deakin, The Federal Story. The Inner History of the Federal Cause, 1880-1900, Melbourne (2nd ed.) 1963, edited by J.A. La Nauze, p. 48; Quick and Garran, p. 311.

(2) Deakin, op.cit., p. 49.

Primarily, for some people, "Commonwealth" smacked too much of republicanism. They recalled the government which was established by Oliver Cromwell in 1649, when it was proclaimed that

...the people of England and of all dominions and territories thereunto belonging, are and shall be, and are hereby constituted ... to be a Commonwealth and a Free State...(3)

It was this Commonwealth which was associated with regicide, and to men like Mr Wright, Victorian delegate to the 1891 Convention, the use of such a title was improper, hinting as it did of disloyalty to the Crown,⁽⁴⁾ despite clear proof presented by defenders of the word which showed undoubtedly that it had been in common usage long before the advent of Cromwell. Thomas Playford, of South Australia, was able to quote Shakespeare to show that it had been familiar at least a century before.⁽⁵⁾ Others, a little less emotional than Mr Wright, recognized that legally the word did not imply any republicanism but rather maintained that the popular understanding of it was connected with republican times, and thus it should not be chosen.⁽⁶⁾ [46]

The second main objection to calling an Australian union "The Commonwealth" came from people who worried that this was an inaccurate

(3) Quoted in George Burton Adams, Constitutional History of England, (1921), London, 1963, revised by Robert L. Schuyler, p. 325.

(4) Convention Debates, Sydney, 1891, p. 554.

(5) Ibid, p. 552.

(6) Sir John Downer (S.A.), ibid, pp. 551-552.

term. A commonwealth, to some, meant a state which was "complete and whole in itself", and as a federation, and a limited one at that, Australia was certainly not a commonwealth.⁽⁷⁾ More "accurate" names to describe this were suggested, "The Federated States of Australia" was one,⁽⁸⁾ "Federal Australia" was another,⁽⁹⁾ "United States of Australia", a third,⁽¹⁰⁾ but support for them was not broad enough for one to be accepted. For others, "The Commonwealth of Australia" did not describe accurately the territorial area of the new nation - it was too cumbersome, and lacked the "pure and natural simplicity" of "Australia".⁽¹¹⁾ The main propagandist against the "The Commonwealth of Australia" was an ex-Premier of Tasmania, J.W. Agnew, who favoured the one word "Australia", because it was a territorial title rather than being merely a community one.⁽¹²⁾ The title should be simple, and should be one "unlikely to be affected by the mere social or political changes of the day".⁽¹³⁾ [47]

Unfortunately for the opponents of the name chosen, their forces were too thinly spread to make much impact, and, apart from Agnew, himself a force of yesteryear, they had no really important leaders

(7) Mercury (Hobart), 22 July 1897.

(8) Mr Munro (Vic.), Convention Debates, Sydney, 1891, p. 550.

(9) Sir John Downer, ibid, p. 552.

(10) "Marcellus", letter to S.M.H., 4 March 1891.

(11) Mr Marmion (W.A.), Convention Debates, Sydney, 1891, p. 556.

(12) Agnew to Sir Samuel Griffith, 23 September 1896, Griffith Papers, ADD 452, Dixon Library, Sydney.

(13) Agnew to Griffith, 9 June 1891, Griffith Papers, ADD 451, Dixon Library, Sydney.

giving them support. The issue was virtually decided in 1891, when the Convention voted 26-13 in favour of Parkes' title, and although various counter-proposals were put forward at the 1897-8 Convention, they were all quickly negatived.⁽¹⁴⁾ As Barton told the Convention, it might have taken people a while to become accustomed to the word "Commonwealth", but by this time they were used to it, and were happy to accept it.⁽¹⁵⁾ [48]

RECOGNITION OF THE ALMIGHTY

One noticeable difference between the 1891 and 1897-8 Conventions was the apparent change in attitude towards the question of the place of religious references in the Constitution. At the 1891 Convention there had been no marked public attitude expressed over this matter, and the preamble of the Draft Bill was kept free of any mention of religion or a deity. The only reference to religion in the whole document was Chapter IV, 16, which forbade a State from making "any law prohibiting the free exercise of any religion".

At the 1897-8 Convention it first appeared as if the delegates might be satisfied with the 1891 provisions, as the preamble and clause IV, 16, were both adopted verbatim from the 1891 document.

(14) Convention Debates, Adelaide, 1897, pp. 616-618; Convention Debates, Sydney, 1897, pp. 224-225.

(15) Convention Debates, Adelaide, 1897, p. 618.

This time there was a definite public response, and a rush of petitions fell upon the Adelaide session, all calling for recognition of the Almighty. Despite these petitions, the gathering was content to defeat an amendment put by Patrick McMahon Glynn proposing such recognition. Glynn, who led the fight for the insertion of such a phrase or clause, spoke eloquently for the issue, but was overcome by a vote of 17-11.⁽¹⁶⁾

[49]

At this point public feeling took a hand, for reaction to the vote was not slow in forthcoming. To many, the omission of a reference to God meant that the Constitution was being shaped on "infidel lines".⁽¹⁷⁾ Pressure upon the Convention members became quite intense, and this was one part of the Constitution upon which the people gave something of a guide to their views.⁽¹⁸⁾ Letters to the press, sermons, resolutions passed by Church bodies, all these methods were used, but perhaps the most popular was the petition, and the Convention was flooded with them. The range of petitioners was a very wide one, not being confined to one or a few sects. [50] So effective was this public pressure, that when the phrase, "humbly relying on the blessing

(16) For details of the vote, see Convention Debates, Adelaide, 1897, p. 1189. It has been pointed out that the vote was unusually small as all of the Western Australian delegates had left for home, as had a number of New South Welshmen who, it is maintained, would have supported the amendment; see Gerald O'Collins, Patrick McMahon Glynn. A Founder of Australian Federation, Melbourne, 1965, p. 139.

(17) Nhill Free Press, 13 April 1897.

(18) James G. Murtagh, Catholics and the Constitution, Melbourne, 1951, p. 42.

of Almighty God", was inserted into the Preamble at the Melbourne session, it was done without a division.⁽¹⁹⁾ The few voices of opposition protested that such a matter did not belong in a constitution, but they were raised to no avail. No-one was listening.⁽²⁰⁾

The insertion of such a phrase worried at least one of the Founding Fathers. The Victorian, Higgins, feared that the phrase was potentially dangerous. He had a wide knowledge of American constitutional law, and he was anxious lest the National Parliament should use the words in the Preamble to assume powers that it did not, and should not, have. He cited the U.S. Congress which had quickly assumed a power not mentioned in the Constitution, only four months after the Supreme Court had declared that the U.S.A. was "a religious nation".⁽²¹⁾ Providing the Commonwealth Government was expressly forbidden to make laws with respect to religion, then Higgins was not opposed to the words of the Preamble.⁽²²⁾ [51] Higgins was successful in this desire to limit the power of the Commonwealth, and S.115 was included,⁽²³⁾ guaranteeing freedom for all, despite the indignant cries of some:

(19) Convention Debates, Melbourne, 1898, Vol. II, pp. 1732-1741.

(20) Prominent among these was the Sydney Bulletin, see e.g., the issue of 14 August 1897, p. 7. For similar views, see Arrow (Sydney), 13 March 1897; Barrier Miner (Broken Hill), 5 April 1897.

(21) The Church of the Holy Trinity v U.S. (1892), 143 U.S. 457.

(22) Convention Debates, Melbourne, 1898, Vol. II, pp. 1734-1736.

(23) Eventually S.116.

....this 115th Clause stamps the whole affair as irreligious and is positively dangerous in its present form....this Federation of Australia, this great body composed of Federated States, without religion, its own religion, the religion of Jesus Christ recognised, upheld, and supported, is a vile thing, which must come sooner or later to ruin....(24)

(24) Rev. T. Holme, Federation. Sermon preached in All Souls' Church, Leichhardt, Sydney, N.S.W., on Sunday Evening, April 17th 1898, Sydney, 1898, pp. 13, 16.

[46] "COMMONWEALTH" MEANS REPUBLICANISM

(Goulburn Herald, 3 April 1891.)

....Having looked into the dictionary, we are unable to assert that the word "commonwealth" is absolutely incorrect as applied to a federation of states under a sovereign; but we do not recollect a single instance of its being used except in relation to a republic. Certainly the commonwealths we most read of - that of Rome and that of England - were republics; and the English people have for generations been accustomed to regard the Commonwealth as synonymous with the abolition of royalty. Assuredly the first impression of strangers who read that there is to be an Australian commonwealth must be that we are about to throw off our allegiance to Queen Victoria....

[47] WHAT SHALL THE FEDERATION BE CALLED?

(J.W. Agnew, letter to Mercury (Hobart), 12 May 1891.)

Sir,-Should you think it well to allow the enclosed letter to appear in The Mercury, on the chance that it may elicit some public expression from Tasmania in regard to the subject of which it treats, I should be glad to preface it by a very few words. On thinking over the subject, I am more and more impressed by the conviction that the official name, or title, of our nascent nation should be given solely in respect to the territory, to the material and physical country, to, as it were, the very soil itself; so that it should endure for ever under any changes, even to extermination, that might affect the inhabitants. Now it is proposed by the Constitution Act, apparently without any dissent, that the official designation of our united territories shall be, "The Commonwealth of Australia." I submit, speaking the strict accuracy which the subject demands, that the word Commonwealth is applicable to the mass of inhabitants, rather than to the bare country itself. I am aware, of course, that this four-worded title can by a figure of speech mean Australia. But why employ a tissue of words when a single one - in accordance with general usage in these cases - is perfection? The word Commonwealth (with a small c) would still be useful in common parlance, but as it is applicable to committees in general, it seems somewhat unnecessary that such a very prominent and important position should be assigned to it in the constitutional title of Australia. I venture to think also, that any title that includes the word "of,"

is more or less imperfect and therefore objectionable. We don't want anything "of," or belonging to, we want the thing itself. We don't want anything "of" or belonging to Australia. The word Australia leaves nothing to be desired. By way of objection it might be asked, "What then of 'The Dominion' "of" Canada?" (I select this title because we all know it has been specially admired). In reply I must ask, however much the query may savour of temerity - Why should not the word Canada alone have been considered vastly superior to any other form of title?...

[48] "COMMONWEALTH" IS A SUITABLE TITLE

(Mr Barton (N.S.W.), Convention Debates, Sydney, 1891, pp. 554-555.)

....I rise chiefly for the purpose of referring to the suggestion of the hon. member, Mr. Wright, that the title "Commonwealth" has an unsavoury signification. How that can be I do not know. If we are to be frightened away from the use of any proper word, or the expression of any proper idea, from the fact that it has been usurped or perhaps misused by others who have gone before us, we shall be deterred from doing a great deal we ought to do. If there are those who think that, under the great Protector - whose name, as we live longer to understand history, will always be more venerated among English-speaking people - the process of Republicanism as associated with the title given to the English body politic under him was inimical to the common-weal, and who think that on that account we ought to depart from the title, I would remind them that it was a name inherent in the minds of Englishmen long before that time There can be nothing unsavoury in a title which means, according to the best authority, "the nation, state, realm, the commonwealth" - the word being interposed between "realm" and "republic", showing that it is used to signify the common good and that it has that signification whether under a queen or a republic Our purposes of government may be national while we preserve the utmost loyalty to the monarch whom the constitution sets over us. As the hon. member, Sir George Grey, has expressed it, we have constituted the Queen a member, and the highest member, of our parliament. The association of the Queen with the action of the commonwealth is distinct, and is firmly embedded in the whole bill. If that is done, there can be no association of the idea of republicanism with this bill. However appropriate the name "commonwealth" may be to a republic, it has been clearly shown from the quotations made by the hon. member, Mr. Playford, from Shakespeare to be associated in the minds of Englishmen with government for the public good - with government for the people - and as it so expresses

in itself the very essence of government for the good of the people, and because we cannot suggest anything else which expresses the idea in one word, I hope we shall retain this name, and I believe that if we do, we shall all live to be proud of it.

[49] THE DESIRE TO RECOGNIZE THE DEITY

(Mr Glynn (S.A.), Convention Debates, Adelaide, 1897, p. 1185.)

....The foundations of our national edifice are being laid in times of peace; the invisible hand of Providence is in the tracing of our plans. Should we not, at the very inception of our great work, give some outward recognition of the Divine guidance that we feel? This spirit of reverence for the Unseen pervades all the relations of our civil life. It is felt in the forms of our courts of justice, in the language of our Statutes, in the oath that binds the sovereign to the observance of our liberties, in the recognition of the Sabbath, in the rubrics of our guilds and social orders, in the anthem through which on every public occasion we invoke a blessing on our executive head, in our domestic observances, in the offices of courtesy at our meetings and partings, and in the time-honored motto of the nation. Says Burke:

"We know, and, what is better, we feel inwardly that religion is the basis of civil society."

The ancients, who, in the edifices of the mind and marble, have left us such noble exemplars for our guidance, invoked, under a sense of its all-pervading power, the direction of the Divine mind. Pagans though they were, and as yet but seeing dimly, they felt that the breath of a Divine Being -

"That pure breath of life, that spirit of man,"

which God inspired, as Milton says - was the life of their establishments. It is of this that Cicero speaks when he writes of that great elemental law at the back of all human ordinances, that eternal principle which governs the entire universe, wisely commanding what is right and prohibiting what is wrong, and which he calls the mind of God. He says:

"Let this, therefore, be a fundamental principle in all societies, that the gods are the supreme lords and governors of all things - that all events are directed by their influence, and wisdom, and Divine power."

Right through the ages we find this universal sense of Divine inspiration - this feeling, that a wisdom beyond that of man shapes the destiny of states; that the institutions of men are but the imperfect instruments of a Divine and beneficent energy, helping their higher aims. Should we not, Sir, grant the prayer of the many petitions that have been presented to us, by recognising at the opening of our great future our dependence upon God - should we not fix in our Constitution the elements of reverence and strength, by expressing our share of the universal sense, that a Divine idea animates all our higher objects, and that the guiding hand of Providence leads our wandering towards the dawn?...

[50] PUBLIC DESIRE FOR RECOGNITION OF THE ALMIGHTY IN THE CONSTITUTION

(Convention Debates, Adelaide, 1897, pp. 404-405.)

PETITIONS

MR.WALKER: I have the honor to present a petition from 402 members of the Presbyterian Church of Australia and Tasmania, resident in New South Wales. Its object is that the preamble of the Constitution of the Australian Commonwealth shall recognise the Supreme Ruler of the world. I beg to move that the petition, which is respectfully worded, be received.

MR.HOLDER: I have six petitions to present, - one from 103 Congregationalists, sixty-six Bible Christians, forty-six Presbyterians, twenty-nine Wesleyans, and thirty-eight members of the Salvation Army, residents of South Australia. They are similar to the petition just presented.

SIR JOSEPH ABBOTT: I have a similar petition, signed by 2,447 residents of the diocese of Sydney.

SIR GEORGE TURNER: I have a similar petition from members of the Church of England in Australia and Tasmania.

MR.GLYNN: I have a similar petition, signed by the Right Rev. John O'Reilly (Archbishop of Adelaide), James Maher (Bishop of Port Augusta), and Anthony Strele (Administrator of Palmerston and Victoria in the Northern Territory portion of South Australia), on behalf of the Catholic community resident in South Australia.

[51] "WE ARE NOT CONFERRING ON THE COMMONWEALTH A POWER TO PASS
RELIGIOUS LAWS"

(Mr Higgins (Vic.), Convention Debates, Melbourne, 1898, Vol. II,
p. 1735.)

....I find, on looking to a number of decisions in the United States, that it has been held again and again that, because of certain expressions, words, and phrases used in the Constitution, inferential powers are conferred upon the Congress that go beyond any dreams we have at present. I know that a great many people have been got to sign petitions in favour of inserting such religious words in the preamble of this Bill by men who know the course of the struggle in the United States, but who have not told the people what the course of that struggle is, and what the motive for these words is. I think the people of Australia ought to have been told frankly when they were asked to sign these petitions what the history in the United States has been on the subject, and the motive with which these words have been proposed. I think the people in Australia are as reverential as any people on the face of this earth, so I will make no opposition to the insertion of seemly and suitable words, provided that it is made perfectly clear in the substantive part of the Constitution that we are not conferring on the Commonwealth a power to pass religious laws. I want to leave that as a reserved power to the state, as it is now. Let the states have the power. I will not interfere with the individual states in the power they have, but I want to make it clear that in inserting these religious words in the preamble of the Bill we are not by inference giving a power to impose on the Federation of Australia any religious laws....

IV - THE PARLIAMENT

PART I - GENERAL

One constitutional issue over which there was little debate in the Conventions was the provision that the national parliament was to be bicameral. All the experience of the delegates to both gatherings pointed to the institution of a bicameral legislature, as did the oft-cited examples of federal governments, the United States and Canada, and the concept seems to have been accepted automatically. The Labor candidates for the 1897 Convention campaigned on a policy which included opposition to an Upper House [52], but with the failure of the group to elect any delegates, little more was heard of such a view.

The way in which the two Houses were constructed indicates that two main roles were envisaged for them. The British examples of the House of Commons and the House of Lords (or the colonial Legislative Assemblies and Councils), showed a system where one House acted as a restraint which counterbalanced the possible rashness and excesses of the House elected upon "a thoroughly popular basis". Such an upper chamber should have within itself

....the only conservatism possible in a democracy - the conservatism of maturity of judgment, of distinction of service, of length of experience, and weight of character....(1)

(1) Sir Henry Parkes (N.S.W.), Convention Debates, Sydney, 1891, p. 26.

which would be used in the furtherance of the nation.

The other important role was that of the representation of different regional interests, and here the most salient examples were the North American, with the United States' being particularly important. Each House was to have a different electorate and thus, a different character. Of basic importance was the equality of the States in the Upper House, and it is doubtful if federation could have succeeded if this had not been achieved - the reasons for the emergence of the "Connecticut Compromise" in 1787 were just as important in the Australia of the nineties.

PART II - THE SENATE

The federal (rather than unitary) ideas which were developed in the nineties evolved because the most potent force acting upon the Constitution writers was that of "State Rights" or "State Interests" as some people preferred to call them. All the colonies except Western Australia had achieved virtual self-government by 1859, and, by the end of the century, all were concerned that union would mean a decline in the importance of local matters. So strong was this concern with State Rights, that representatives at the Conventions had to prove their bona fides on the issue before they could hope to be chosen. In 1897, for example, at least one journal warned its readers that no vote should be cast for a Convention candidate who was not absolutely sound

on this.⁽²⁾

Perhaps the most important part of the new system, as far as the defenders of State interests were concerned, was the Federal Parliament. It was generally conceded that Lower House representation had to be based on population density in the States, if only for reasons of democracy. On the other hand, if the Upper House was to be the bastion of the States - some favoured the name "Council of the States", to show this quite clearly⁽³⁾ - then certain provisions had to be written into the Constitution to help in its role. Of major importance were the basis of representation, and the powers that the States' House was to enjoy, while the method of choosing the body and the length of its tenure also caused much discussion. [53]

(i) Equal representation

The colonies entered the Constitutional Conventions very warily. Representatives from each region expressed at various times their suspicions of the designs of the others. An alliance of New South Wales and Victoria against the smaller colonies was one great fear, and it was of major importance in the creation of the Senate:

....If the smaller colonies do not wish
to become provinces of Victoria and New

(2) Tasmanian News (Hobart), 17 February 1897.

(3) Mr Kingston (S.A.), Convention Debates, Sydney, 1891, pp. 157-158;
Mr Deakin (Vic.), Convention Debates, Adelaide, 1897, p. 291.

South Wales, the Senate must be made strong and powerful.....(4)

With such a lack of trust - on all sides - it is not surprising that hard bargains were driven, and on a number of issues compromise was the only way to produce an acceptable constitution. The main split was that between the larger and the smaller colonies. The one side was generally hostile to the pretensions of the other, and was determined to enforce majority rule; while the other was fearful of the larger areas, and was adamant that it should not be overruled. It is on this clash that most attention must be focussed.

If the States' House was to be of any value, it was held that, to begin with, membership had to be divided evenly amongst the Original States.⁽⁵⁾ This was an article of faith with the small colonies, which relied heavily upon the example of the U.S.A. - "a conclusive precedent"⁽⁶⁾ - to support their claim. Many regarded an alliance in the new federation between New South Wales and Victoria against the other States as inevitable,⁽⁷⁾ and equal representation in the Senate would help act as a shield for these areas. In vain did speakers demonstrate the unlikelihood of these large rivals, with their long-standing antipathy, forming a close alliance. Many pointed out that in

(4) Sir R.C. Baker, Federation, Adelaide, 1897, p. 4.

(5) The "hinge of federation" according to the Western Australian, Hackett, Convention Debates, Sydney, 1891, p. 277.

(6) Mercury (Hobart), 17 February 1897.

(7) Mr J. Forrest (W.A.), Convention Debates, Sydney, 1891, p. 221.

post-Federation Australia, divisions were more likely to be based on class rather than on geography:

....It is a complete fallacy to argue that the states as states will have either a majority or a minority....(8)

To the people who supported the concept of a strong Senate, there was a very important difference between "the people" and "the States", and, in the new federation, due power had to be given to the Lower House to protect the rights of the people, while due power was to be given to the Upper House to protect the rights of the States.⁽⁹⁾ To achieve the latter, majority rule had to be replaced with equal representation for each State. There could be no compromise on this point as far as the smaller colonies were concerned, for it would be better to stay out of federation than be swamped in a system which had New South Wales and Victoria in complete dominance.⁽¹⁰⁾ The larger colonies had to realize this point and be prepared to induce the smaller colonies to enter the federation by some assurances that their rights and interests would be safeguarded.⁽¹¹⁾ Equal representation in the Senate was just such an assurance. [54]

(8) Alfred Deakin, Argus (Melbourne), 7 May 1898. See also Mr Isaacs (Vic.), Convention Debates, Adelaide, 1897, pp. 173-174. Few in the small colonies saw it this way. One exception was the North-West Post of Devonport, Tasmania, see, for example, the editorial of 27 January 1898.

(9) Edmund Barton, address to the Bathurst Convention, Proceedings [of the] People's Federation Convention, Bathurst, November, 1896, Sydney, 1897, p. 97.

(10) Mercury (Hobart), 11 February 1897.

(11) Sir Edward Braddon (Tas.), Convention Debates, Adelaide, 1897, p. 65.

The opposition to this principle was strong and vigorous with Messrs Higgins and Lyne well to the fore. The New South Welshman, Lyne, was bitterly opposed, for he saw the small colonies out to wring the necks of the large colonies at the earliest opportunity.⁽¹²⁾ It was completely unfair and undemocratic for a minority of the population to have so much power over the majority:

....I will consent to nothing that provides that legislation passed by the Lower House can be upset by the representatives of a minority of the people in the Senate. It absolutely drags down responsible government....⁽¹³⁾

In addition, it was unwise to legislate for the future in this way because who could accurately predict how the population distribution of the country would change? It would be much fairer to give Senate seats on a sliding scale based on population.⁽¹⁴⁾ The American example was dismissed as invalid because it was not applicable to Australian conditions over one hundred years after the writing of the U.S. Constitution. Furthermore, equal representation was part of the "Connecticut Compromise", and not all the American Founding Fathers had favoured it.⁽¹⁵⁾ Braddon's argument that some inducement must be given

(12) Ibid, p. 166. Lyne even went so far as to question, perhaps with his tongue in his cheek, whether it was wise for Tasmania to enter a federation at all, suggesting it should join with Victoria as one State, ibid, p. 158.

(13) Ibid, p. 652.

(14) Higgins proposed this at the Adelaide session of the 1897-8 Convention, but it was defeated by a vote of 32-5, ibid, p. 668.

(15) Higgins (Vic.), ibid, p. 646; see also Isaacs (Vic.), ibid, p. 173.

to the small colonies was ridiculed, for many pointed out that the assumption seemed to be that the large colonies were automatically going to federate once the small colonies were satisfied with their lot, but, in fact, nothing could be further from the truth.⁽¹⁶⁾ [55]

Fortunately for the Australian federationists, this opposition was not shared by all in the large colonies, and there were many who saw the need for compromise. It was due largely to the efforts of these people that a solution was finally reached. While recognizing the generosity of equal representation for all in the Senate,⁽¹⁷⁾ these men were still practical enough to realize that without a compromise on this point, then federation would continue to be a dream - "it would be waste of time to take any other course".⁽¹⁸⁾ To add weight to this opinion there were many in the large colonies who feared a centralization of power in any political union, and men like Barton saw that if complete supremacy was given to majority rule, then all States could suffer irrespective of their size.⁽¹⁹⁾ Equal Senate representation, therefore, would benefit all colonies. Once enough people realized this, the role of the Senate was safeguarded and one of the largest hurdles for the federation movement was cleared. [56]

(16) Dr Quick (Vic.), ibid, p. 183.

(17) S.M.H., 10 March 1891; Brisbane Courier, 17 April 1897.

(18) Isaacs, Convention Debates, Adelaide, 1897, p. 173.

(19) Barton, address to Bathurst Convention, op.cit., p. 98.

(ii) Election of the Senate

If the Senate was to be a States' House, then it was thought that some special attention had to be paid to the method of selecting its members. The important question was to ensure that the Senators chosen reflected accurately the wishes of the State as a whole, not the wishes of people in various electorates as was to be done in the elections for the Lower House.

In the 1891 Convention, it was agreed that the States should have equal representation in the Senate, and that the election of Senators would be by the respective State legislatures as was the practice in the U.S.A.⁽²⁰⁾ In the early days of the Convention a few voices spoke in favour of the election of Senators by popular vote,⁽²¹⁾ but when this was discussed in the committee of the whole, no amendment was proposed and, in fact, the matter was not even reopened. Speaking in favour of the indirect form of election, Sir Samuel Griffith pointed out the advantage of a member of a States' House thus being able to keep in close touch with his State legislators. In addition, as the franchise for the different colonies was so varied, this would ensure a uniformity of election.⁽²²⁾ John Forrest, of Western Australia, argued

(20) This was altered in 1913 by the ratification of the Seventeenth Amendment.

(21) E.g., Convention Debates, Sydney, 1891, pp. 121-122 (Mr Bird), p. 334 (Dr Cockburn).

(22) Ibid, p. 591.

the necessity of having the people's House and the States' House as different as possible, and election of the latter by the people would mean that the two Houses would be too much alike and the object of the States' House would be frustrated to some extent.⁽²³⁾ [57]

Between the Conventions the climate gradually changed, and at the People's Convention at Bathurst in 1896, John Quick moved successfully a resolution in favour of the popular election of Senators. [58] It was apparently an open question at the beginning of the first session of the 1897-8 Convention, for, in his Resolutions, Barton refused to spell out any provision. He said that he actually favoured election by the people, but as some people had expressed a preference for election by State legislatures, it was a question that could be best resolved in committee.⁽²⁴⁾ It is not quite clear why opinion changed in favour of direct election of the Senate. A reason that does seem to have influenced some was the desire to make the Constitution as democratic as possible. The 1891 Convention had not been elected by the people, and some thought this a reason for the failure of the Commonwealth Bill.⁽²⁵⁾ This general attitude may not have affected directly the particular matter of the election of Senators, but it is likely that there was some connection, especially as

(23) Ibid, p. 222.

(24) Convention Debates, Adelaide, 1897, p. 22.

(25) See e.g. Mr Abbott (N.S.W.), ibid, p. 36; N.J. Brown, Federation, Launceston, 1895, pp. 3-4; Daily Telegraph (Launceston), 23 January 1897.

many decried indirect election as being "in direct opposition to representative government".⁽²⁶⁾

When it seemed likely that popular election of Senators would be instituted, a different type of opposition to the idea developed, primarily along the lines of State Rights. It was held that control over the franchise should be a local matter, and, while not disputing the worth of widening the electorate, it was felt that each State should have sole control over the matter because each State would know best what would suit its conditions. Uniformity of election was desirable, but this should not be used to restrict the powers of the State. [59] The final solution, a compromise, gave the power to the Commonwealth, but a State could also make laws upon the question subject to any Commonwealth law.

On this question of Senate electorates, another problem was how to devise electoral boundaries which would reflect accurately what the Constitution writers desired for their Senate. If it was to be a States' House, then its electorate must be devised to reflect particular State interests. The solution of this problem seemed to lie in establishing the States as single electorates and having a number of seats to be filled from this one area, as had been done in the election for the 1897-8 Convention. In this way it was believed that a wide view of a State's wishes could be established, rather than the narrower view that could easily prevail if there were a number of small electorates:

(26) A. Forsyth, Suggestions on Australian Federation Including the Prevention of Preferential Railway Rates, Melbourne, 1897, p. 5.

....the very idea of locality in the election of a body which is to represent the States as separate entities in the States Council is a total abnegation of the motive principle....(27)

It was also believed that by establishing State-wide electorates, the best men available would be chosen - men of broad views, extended experience, and above all, of established reputations.⁽²⁸⁾ [60]

Most of the opposition to the proposal of State-wide Senate electorates wanted to replace this with one establishing a number of smaller electorates within the State. It was said that smaller electorates would give a much truer system of representation, and would be much less expensive to administer at election time.⁽²⁹⁾ Above all, it would be easier for a man of limited resources to run for office, because the existence of an electorate the size of Queensland, for example, would mean that only those of means would be able to canvass the State adequately.⁽³⁰⁾ There was also a fear in country areas that such an electorate would mean that the capital cities would dominate the Senate as only men from these areas would be known well enough to have a chance of success.⁽³¹⁾ To solve the problem of anonymity it appeared

(27) Mr Barton (N.S.W.), Convention Debates, Adelaide, 1897, p. 26.

(28) Quick and Garran, p. 420.

(29) Mr Fraser (Vic.), Convention Debates, Adelaide, 1897, p. 79.

(30) Mr Lyne, ibid, p. 160; Australasian (Melbourne), 18 September 1897, p. 618.

(31) See e.g. Barrier Miner (Broken Hill), 28 September 1897; Tasmanian News (Hobart), 25 March 1897; Bairnsdale Courier, 22 September 1897; Ballarat Courier, 5 May 1898.

obvious to many that the solution would be the running of "tickets" as the Age had done in the Convention election in Victoria:

....The desire for uniformity is the ruin of independence and real representation, for it puts all power into the hands of managers, as has been abundantly shown in the United States....(32) [61]

Despite these possible weaknesses, the one-electorate idea was quite a popular one, and was, in fact, written into the final Constitution with little opposition being expressed by the Convention delegates.

PART III -- THE HOUSE OF REPRESENTATIVES

In the part of the Australian Constitution devoted solely to the people's House, or the House of Representatives as it was called, there was only one of the eventual seventeen Sections (Ss. 24-40) which caused any concern to the framers of the document. This was the final S.24 which established the numbers to be in the House of Representatives.

In the Commonwealth Bill the seats for the House of Representatives were to be apportioned in the ratio of one for every thirty thousand of a State's population, with a minimum guarantee of

(32) Mercury (Hobart), 4 August 1897. See also Forrest, Convention Debates, Adelaide, 1897, p. 249.

four seats per State.⁽³³⁾ In the later Convention, members were divided over this issue, and in the Constitutional Committee, the New South Welshman, O'Connor, produced the scheme which was to be enshrined in this Section. Essentially, the Section was divided into two parts. The first (and the controversial) part was concerned with what is today called the "nexus". The total number of Senators always being known,⁽³⁴⁾ the total number of Representatives was to be, "as nearly as practicable", twice the number of Senators. The second portion of this Section was merely the mathematical formula needed to work out how many Representatives should be in each State. A minimum of five per State was to be allowed.

Apart from the "defection" of a few from the larger colonies, notably Barton and O'Connor, the battle order over the "nexus" was drawn up on State Right lines. The larger colonies did not want a constitutional tie between the Houses, while the smaller regarded this as another bastion in the general defence system that they were erecting within the Constitution. Basic to their espousal of O'Connor's scheme was this desire to create the Senate as the champion of their rights. Under the 1891 Commonwealth Bill, the Senate did not necessarily have to increase at the same rate as the House of Representatives, and if the U.S.A. was any guide, it would probably never increase except on the rare occasions when new States were created. If the 2:1 ratio was

(33) Chapter I, 24.

(34) The eventual S.7.

established, however, an additional safeguard was firmly entrenched in the Constitution. There would be no danger of a great disparity between the Houses which could otherwise result in the relative loss of power and status of the Senate.⁽³⁵⁾ [62] Related to this point was the constitutional question of a joint sitting between the two Houses to break a legislative deadlock - if the difference in size of the two Houses was too great, then the Lower could swamp the States' House in a joint sitting, and thus the States' role would decline. [63] As a clincher to their argument, the supporters of the ratio pointed out that with such a limitation placed on the House of Representatives, the number of parliamentarians would be restricted and thus the country would save money.⁽³⁶⁾ [64]

Opposition to the fixed ratio was quite vocal, but the numbers were lacking to secure its removal. Many decried the principle as being undemocratic, maintaining that the numbers of the people's House should not be controlled by those of a House that was not elected on the basis of population.⁽³⁷⁾ By fixing such an arrangement in the Constitution, it would be extremely difficult to keep the numbers in the electorates at a manageable level.⁽³⁸⁾ [65] In addition, it was

(35) Mr Barton, Convention Debates, Adelaide, 1897, p. 706.

(36) Mr O'Connor, Convention Debates, Sydney, 1897, p. 432.

(37) Mr Higgins, Convention Debates, Adelaide, 1897, p. 692.

(38) Mr Deakin, ibid, p. 702.

dangerous to fix such a system for all time because who could tell how the country would develop, and how conditions would change in future years. It was not good enough to say that a Constitutional Amendment would be all that was needed to alter the Section, because such methods were notoriously ineffective.⁽³⁹⁾ It had not been necessary to do this in the U.S.A. and their Senate was a powerful body despite the great disparity in size between it and the House of Representatives.⁽⁴⁰⁾ As the U.S. body demonstrated, it was a fallacy to think that the influence of a particular House depended upon its size:

....it matters very little whether you
have two, four, six, or eight
[members]....⁽⁴¹⁾ [66]

A provision of a fixed quota was much better. At the Sydney sitting of the 1897-8 Convention a proposal from the Legislative Assembly of New South Wales of one member for every thirty thousand people was discussed, and at the Melbourne session, Premier Turner, of Victoria, moved for a quota of 1:50,000. The final decision established not a fixed quota, but a mathematical method for ascertaining what it should be.

The large colonies were outnumbered in the vote over the nexus, and, with the defection of some of their members, they lost quite

(39) Ibid, pp. 702-703.

(40) Sir George Turner (Vic.), ibid, p. 686.

(41) Mr McMillan (N.S.W.), Convention Debates, Sydney, 1897, pp. 436-437.

easily. A break-down of votes is interesting to show the result of a typical Convention clash between the large and small colonies:⁽⁴²⁾

| | Sydney Session | | Melbourne Session. | |
|--------|---------------------|----------|--------------------|----------|
| | In favour of ratio. | Against. | In favour. | Against. |
| N.S.W. | 3 | 5 | 5 | 4 |
| Vic. | 0 | 8 | 1 | 8 |
| S.A. | 7 | 1 | 5 | 3 |
| Tas. | 9 | 0 | 6 | 0 |
| W.A. | 7 | 3 | 8 | 0 |
| <hr/> | | <hr/> | | |
| | 26 | 17 | 25 | 15 |
| <hr/> | | <hr/> | | |

PART IV - REPRESENTATION

The question of the franchise for the Federal Parliament was another matter which divided opinion along the lines of State versus national attitudes. Many believed that the organization of the franchise should be spelled out by the Federal Constitution, or at least be a power given to the Federal Parliament, while others held that it must remain a State concern only.

The first view saw a need for national elections to be

(42) Ibid, p. 452; Convention Debates, Melbourne, 1898, Vol. II, p. 1837.

organized nationally rather than by the States. A federal franchise should be uniform, and it was only by giving the power to decide upon franchise qualifications to the Federal Parliament that this could be achieved.⁽⁴³⁾ [67] The State Right argument followed the traditional line that such a matter had always been a local function, and that the people in the various colonies would not accept a clause which effectively took the power from them, preferring to decide for themselves how their federal members were to be chosen.⁽⁴⁴⁾ Some were prepared even to reject federation if this were not granted.⁽⁴⁵⁾ [68] A modification of this view was that although a uniform franchise was desirable, the achievement of it would be so difficult and potentially disruptive, that it should be left with the States.⁽⁴⁶⁾

As matters developed, the solution of the problem satisfied both camps.

At the 1891 Convention, Chapter I, 25 of the final Draft Bill was adopted from the United States' example.⁽⁴⁷⁾ By this clause the

(43) Mr Playford (S.A.), Convention Debates, Sydney, 1891, p. 623; Robert Randolph Garran, The Coming Commonwealth. An Australian Handbook of Federal Government, Sydney, 1897, p. 132.

(44) Mr Gillies (Vic.), Convention Debates, Sydney, 1891, pp. 625-626. See also Brisbane Courier, 4 April 1891; Argus (Melbourne), 29 June 1896; Mercury (Hobart), 14 January 1897.

(45) Tasmanian News (Hobart), 17 February 1897.

(46) A. Inglis Clark, "The Federal Suffrage", The Commonwealth, Vol. I, No. 7, 8 April 1895, p. 3.

(47) Sir Samuel Griffith (Qld.), Convention Debates, Sydney, 1891, p. 613.

qualifications of franchise in each State for the Federal Lower House, were to be the same as for "the more numerous House of the Parliament of the State". This meant that the States would decide what the federal franchise would be, and State Rights would be satisfied. An effort was made by Barton to make provision for a uniform franchise by the addition of a phrase "until the parliament of the Commonwealth otherwise provides".⁽⁴⁸⁾ His case probably was not helped by the intrusion into the debate of a red herring in the form of the concept of one man one vote. Some members were not satisfied to seek merely a provision for a uniform franchise, but they wanted the franchise qualifications along these lines written into the Constitution.⁽⁴⁹⁾ Such a move had no chance of success, and Barton's amendment - which probably was doomed in any case - was swamped by the concerted opposition to the idea of complete manhood suffrage. It failed even to divide the Convention.⁽⁵⁰⁾

The 1891 clause was almost identical with that which emerged from the Constitutional Committee at the Adelaide session of the 1897-8 Convention. There was an important addition. An opening phrase had been added: "Until the Parliament otherwise provides".⁽⁵¹⁾ That this undoubtedly gave the Federal Parliament the power to create a uniform

(48) Ibid, p. 628.

(49) Sir George Grey (N.Z.), ibid, pp. 615-618; Dr Cockburn (S.A.), ibid, pp. 613-614, 628.

(50) Ibid, p. 636.

(51) Convention Debates, Adelaide, 1897, p. 437.

franchise was confirmed by the Chairman of the Committee, Barton.⁽⁵²⁾
In fact, he even went so far as to demonstrate that such a clause enabled
the Parliament to do this without having to amend the Constitution.⁽⁵³⁾
How the new phrase was added is unclear - perhaps the fact that its
1891 proponent was Chairman of both the 1897 Constitutional Committee
and its three-man Drafting Committee helped? Whatever the reason, the
clause was adopted in virtually the form that it was first mentioned at
the Convention, so that the States were to have the power over the
franchise until the Federal Parliament provided otherwise.⁽⁵⁴⁾

There was no problem over the franchise for the States' House
in 1891, as it was to be chosen by the State Legislatures,⁽⁵⁵⁾ but
some provision had to be made at the later Convention when it was
decided that the people should vote in the elections for this House.
A few believed that the franchise should be a restricted one to ensure
that the States' House would be a conservative body,⁽⁵⁶⁾ [69] but
they were howled down in the Convention.⁽⁵⁷⁾ The mood was clearly in

(52) Ibid, p. 455.

(53) Ibid.

(54) S.30.

(55) Chapter I, 9.

(56) See e.g. Henry Dobson to Griffith, 23 December 1897, Griffith
Papers, ADD 452, Dixson Library, Sydney; Mr Fraser,
Convention Debates, Adelaide, 1897, p. 78; Albury Banner and
Wodonga Express, 19 February 1897, p. 22.

(57) See e.g. the attack by the Tasmanian Premier, Fysh, upon his
fellow Tasmanian, Dobson, Convention Debates, Adelaide, 1897,
p. 242.

favour of a wide suffrage for this House and the Constitutional Committee's solution was simple - it merely made the provisions the same as for the Lower House.⁽⁵⁸⁾ The Section was adopted without a division.⁽⁵⁹⁾

The discussion of the franchise did not end here. At the time, South Australia was the only colony to have full adult suffrage, and her delegates were concerned that in the new Commonwealth the female population of the State might lose its right to vote. In their opinion, South Australia would reject federation if she lost the adult suffrage for federal elections.⁽⁶⁰⁾ [70]

An initial South Australian proposal was to include adult suffrage in the Constitution, but this was quickly squashed as the move for manhood suffrage had been in 1891.⁽⁶¹⁾ None of the other colonies wanted to be committed in such a way to so important a policy decision. They did not care how the electors of South Australia were constituted, however,⁽⁶²⁾ and a compromise suggested by a Victorian, Trenwith,⁽⁶³⁾ was finally adopted. This ensured that no adult who

(58) Barton, ibid, p. 670.

(59) Ibid, p. 672. The section was the final S.8. For more on the Senate see Part II above.

(60) Mr Symon (S.A.), ibid, p. 132; Mr Holder (S.A.), ibid, p. 150.

(61) Ibid, pp. 715-725.

(62) Mr Reid (N.S.W.), ibid, p. 727.

(63) Holder, ibid, p. 725.

...has or acquires a right to vote
at elections for the more numerous
House of the Parliament of a State...

could be deprived by the Commonwealth of the right to vote at elections for either Federal House. Only a State could so deprive a citizen of this right.⁽⁶⁴⁾ This solution also settled the fears of those who worried that the Federal Parliament would in some way limit the numbers who could vote.⁽⁶⁵⁾

PART V - POWERS OF THE PARLIAMENT

(i) Legislative powers of the Parliament

There were a number of stimuli which forced men to the conclusion that federation was essential for the future of the Australian continent. These included a number of government operations like immigration, quarantine and postal facilities which, it was believed, could best be operated by a central authority. When men came to write a constitution, there was wide agreement about such a need, and it seems to have been the influence of one man, in particular, which laid the guide-lines for this area of the Constitution.

(64) This was the eventual S.41.

(65) Such a fear had been expressed by Sir Samuel Griffith in 1891, Convention Debates, Sydney, 1891, pp. 633-634. For an attack upon such a view that was expressed after the institution of this Section, see Atlee Hunt, Newcastle Morning Herald and Miners Advocate, 1 June 1898.

At the Australasian Conference of 1890, a gathering which prepared the way for the 1891 Convention, the Tasmanian Attorney-General, Andrew Inglis Clark, outlined what he believed were the essential points that should be followed in the creating of a Federal Parliament. Clark said that a specified list of powers be given the Federal Parliament - some would be new powers, some would be powers taken from the colonies. Although a disciple of the American system,⁽⁶⁶⁾ Clark believed that the powers given to the U.S. Congress were insufficient for the Australian setting, and that they should be increased to include some of the specific questions that had done so much to turn people's attention to federation in this country.⁽⁶⁷⁾

Clark continued his argument in a draft constitution that he wrote and distributed amongst the delegates to the 1891 Convention.⁽⁶⁸⁾ In S.45 of this draft, there were inserted thirty sub-sections that specified the concurrent powers that should be given to the Federal Parliament. The importance of this is clear when we compare it with the drafts of 1891 and 1897-8. Of the powers Clark listed, all but three were accepted in 1891 and in the final Constitution.⁽⁶⁹⁾ As Neasey has

(66) For a discussion of this see John Reynolds, "A.I. Clark's American Sympathies and his Influence on Australian Federation", Australian Law Journal, Vol. 32, No. 3, 21 July 1958, pp. 62-75, passim.

(67) Conference Debates, Melbourne, 1890, pp. 105-109.

(68) For much of the information in this paragraph I am indebted to F.M. Neasey, "Andrew Inglis Clark Senior and Australian Federation", unpublished paper given to me by the author.

(69) Ibid, p. 32.

pointed out, many of these powers were not new as they had been discussed for years at the various intercolonial conferences, but it was Clark who gave them some definite form.⁽⁷⁰⁾ Although the Tasmanian had effectively done the work for them, the delegates to the two Conventions still spoke at length over the particular powers to be given to the Federal Parliament. Generally, there was agreement that no more powers should be taken from the colonies than was absolutely necessary,⁽⁷¹⁾ and so, with this attitude uppermost, and with Clark's guide before them, the eventual S.51 was written. The extent of Clark's influence can be seen in a comparison of the two Sections. [71]

Most of the powers which came under this Section had formed the basis of the many cries for federal action that had occurred in the years prior to the nineties. Naval and military defence, external affairs and immigration were all covered,⁽⁷²⁾ as also were the less spectacular problems like quarantine, copyrights and postal, telegraphic and telephonic services.⁽⁷³⁾ Two powers which were included in the final list, about which there had been little prior discussion, and which had not been on Clark's list were those set out in Ss.51 (xxiii) and (xxxv) which dealt respectively with invalid and old-age pensions, and conciliation and arbitration in disputes extending beyond State

(70) Ibid.

(71) See e.g. Mr Playford, Convention Debates, Sydney, 1891, p. 54.

(72) Ss.51 (vi), (xxix) and (xxvii) respectively.

(73) Ss.51 (ix), (xviii) and (v) respectively.

boundaries. The inclusion of these sub-sections showed the changing attitude towards the role of the state which was emerging in the colonies - a change which had been affected greatly by the strikes and the depression of the early nineties.⁽⁷⁴⁾ There were a number of other interesting similarities between the two. In each case the clause was inserted largely because of the efforts of one man. Each clause was concerned with the problems associated with the division of the country into different administrative areas, and how to divide the powers satisfactorily between the central and the regional governments. A further similarity was that in each case the clause was accepted only after early opposition had caused its defeat. The opposition to the clauses reflected the type of opposition most thrown up at the whole concept of federation - they could not be accepted because they were an unwarranted encroachment upon the powers of the States.

In the case of invalid and old-age pensions, the South Australian, Howe, first brought up the question at the Sydney session of the 1897-8 Convention. Howe's main argument was that the support of the aged and invalid poor could best be managed by a "Federated Australia".⁽⁷⁵⁾ In addition, with the problems involved with a

(74) T.H. Kewley, Social Security in Australia, Sydney, 1965, p. 64; Robin Gollan, Radical and Working Class Politics. A Study of Eastern Australia, 1850-1910, Melbourne and Canberra, 1960, pp. 152-153, 161-162, 163.

(75) Convention Debates, Sydney, 1897, pp. 1085-1087; Convention Debates, Melbourne, 1898, Vol. II, p. 1992.

population which moved with great mobility between the colonies, it was virtually impossible for a State pension scheme to work properly.⁽⁷⁶⁾

[72]

Most of the opposition to this proposal was concerned that such a matter should not be a federal responsibility, as it was a field dealing with the private lives of individuals, and, as such, traditionally belonged to the States. The federal government must not be burdened with too much, and this was an unnecessary addition to its responsibilities.⁽⁷⁷⁾ Edmund Barton, who had been the leading federation propagandist in his many appearances around the country, feared that such a clause could be dangerous for the whole future of federation.⁽⁷⁸⁾ Most were sympathetic to the idea, but were opposed simply on grounds of principle, [73] and there was little open opposition of the type expressed by McMillan of New South Wales:

...why should the states in one part
of Australia have to bear the pauperism
of the states in another part?...⁽⁷⁹⁾

The first, and apparently the final, vote on the sub-section resulted in a 20-25 loss for Howe,⁽⁸⁰⁾ and the issue seemed to be closed.

(76) Mr Higgins, ibid, p. 1994; Sir John Forrest, ibid, pp. 1994-1995.

(77) Mr Peacock (Vic.), Convention Debates, Melbourne, 1898, Vol. I, pp. 14-15.

(78) Ibid, p. 20.

(79) Ibid, p. 10; see also pp. 22-23.

(80) Ibid, p. 29.

It was not, and in the forty-four days following the vote the South Australian "wore down" the opposition,⁽⁸¹⁾ and finally was encouraged by some of the men who had formerly opposed him, to bring the matter before the Convention once again.⁽⁸²⁾ One thing prompting a change of heart was a realization that the inclusion of the clause would assist public acceptance.⁽⁸³⁾ This time the numbers were firmly his way, 26-4, although fifteen fewer participated in the vote, possibly because of the lateness of the hour.⁽⁸⁴⁾

Another South Australian, Charles Cameron Kingston, was the man who first espoused the idea of federal power in the field of industrial conciliation and arbitration.⁽⁸⁵⁾ Kingston believed that a federal court would be best able to resolve the problem of industrial disputes that extended beyond the borders of a State. He moved an amendment to Chapter III, 1 of the 1891 Draft Bill that would have left the way open for the establishment of courts to deal with such disputes. One problem in Kingston's mind was that of the industrial turmoil which hit Australia in the last decades of the century, and he saw federal activity as the only solution.⁽⁸⁶⁾ [74] Little time was spent on

(81) R.L. Reid, "South Australian Politicians and the Proposals for Federation", in E.L. French (ed.), Melbourne Studies in Education 1960-1961, Melbourne, 1962, p. 213.

(82) Howe, Convention Debates, Melbourne, 1898, Vol. II, p. 1991.

(83) Mr Trenwith, ibid, p. 1995.

(84) Ibid, p. 1996.

(85) See Mr Deakin, C.P.D., Session 1903, Vol. XV, p. 2858.

(86) C.C. Kingston, Industrial Agreements and Conciliation, Melbourne, 1894, pp. 1,8.

the matter, and the Convention followed Griffith who believed that this was best left to the States.⁽⁸⁷⁾ Kingston's amendment was defeated by 25 votes to 12.⁽⁸⁸⁾

The opinion that conciliation and arbitration was a State concern formed the kernel of the opposition to a motion by H.B. Higgins, at the 1897-8 Convention, to include this power in a sub-section of the section dealing with the powers of the parliament. The federal government must not be given any power to interfere with the self-government of a State, and such would occur with this clause.⁽⁸⁹⁾ Despite the view of the clause's proponents that many disputes were not restricted in their effects to one area:

....If there is a shipping dispute in Sydney it is sure to be felt in Melbourne; if there is a coal dispute in Newcastle it is sure to be felt in Korumburra....⁽⁹⁰⁾

the opposition denied that the sub-section was necessary because all disputes occurred within a State and could be dealt with accordingly by the government of the State.⁽⁹¹⁾ [75] Others worried less about

(87) Convention Debates, Sydney, 1891, pp. 781, 782.

(88) Ibid, p. 785.

(89) Mr Symon, Convention Debates, Adelaide, 1897, pp. 787-789; Sir Edward Braddon, ibid, pp. 791-792.

(90) Higgins, ibid, p. 782.

(91) Sir John Downer (S.A.), ibid, pp. 783-784.

principle and looked at the issue pragmatically. They maintained that such a provision would just not work because conciliation and arbitration of disputes had been a proven failure. Why, then, include it in the Constitution?⁽⁹²⁾ As in 1891 the numbers were lacking, and Higgins was defeated by an almost identical vote.⁽⁹³⁾

Higgins tried again at the third session of the Convention, and once again the same arguments were expressed on both sides. On this occasion, however, Higgins had the votes,⁽⁹⁴⁾ but not because of a change of attitude by delegates as one commentator, at least, has suggested.⁽⁹⁵⁾ Twenty-eight of the twenty-nine members who voted on both occasions did not alter their vote,⁽⁹⁶⁾ and the difference was due largely to the Western Australian delegates, all of whom had been absent on the occasion of the first vote. At the second vote they followed their leader and voted 7-1 in favour of what finally became S.51 (xxxv).⁽⁹⁷⁾

(92) Mr O'Connor, Convention Debates, Melbourne, 1898, Vol. I, p. 200; Mr Glynn (S.A.), ibid, pp. 206-208. See also Mercury (Hobart), 4 February 1898.

(93) 22-12, Convention Debates, Adelaide, 1897, p. 793.

(94) 22-19, Convention Debates, Melbourne, 1898, Vol. I, p. 215.

(95) Orwell de R. Foenander, Towards Industrial Peace in Australia. A Series of Essays in the History of the Commonwealth Court of Conciliation and Arbitration, Melbourne, 1937, p. 4.

(96) The one who did was Sir Joseph Abbott, who changed his vote to an "aye".

(97) One other, Leake, did not vote, but presumably would have voted against Higgins; see Convention Debates, Melbourne, 1898, Vol. I, p. 205.

(ii) Powers of the Houses in respect of legislation

If the small States were to have any importance at all in the Federation, the powers of the Senate had to be made as strong as possible. Equal power over legislation was basic to the State Rights argument, with particular importance being placed upon the question of Senate power over financial legislation. The split between the larger and the smaller colonies was clearly evident over this matter, and it was a problem which continually threatened the prospects of federation.

At the 1891 Convention there was a long debate over Parkes' proposal that the Lower House was

...to possess the sole power of
originating and amending all bills
appropriating revenue or imposing
taxation.

and the issue was initially stood over without anything concrete being decided. Eventually the Drafting Committee produced the "compromise of 1891", which restricted initiation of money bills to the House of Representatives,⁽⁹⁸⁾ and forbade the Senate from amending such legislation.⁽⁹⁹⁾ The Senate could, however, reject such Bills outright,⁽¹⁰⁰⁾ and it could

(98) Commonwealth Bill, Chapter I, 54.

(99) Chapter I, 55 (1).

(100) Ibid.

...return... [such Bills] to the House of Representatives with a message requesting the omission or amendment of any items or provisions therein. (101)

The important vote came on a proposed amendment by Sir Richard Baker of South Australia, who moved that the Senate be given equal power over all legislation. The motion was lost, 22-16, with New South Wales and Victoria providing half the majority with only one of their number in opposition. The question was not seriously divisive, however, for eleven delegates from the other colonies were obviously satisfied enough to "cross the floor" and vote with the larger colonies. (102)

In the years between the two Conventions, opinion apparently hardened and the small colonies elected men who were pledged to vote the "right way" on this matter - the Senate was to be given full legislative power over finance bills, or the small colonies would not join the union. There was little point in having a States' House, they thought, if it was to be inferior in any way to the Lower House. New South Wales and Victoria could do anything they wanted to the other if they were given control over money matters in the House of Representatives. [76] The representatives from these larger colonies viewed this development with alarm, for they could foresee a parliament

(101) Chapter I, 55 (5); emphasis added.

(102) Convention Debates, Sydney, 1891, p. 755.

in which the majority represented in the House could be defeated by a minority represented in the Senate. The example of the House of Lords, which had, for some time, appeared to have given up any real pretence to financial control, was outlined,⁽¹⁰³⁾ as also were the dangers to responsible government that would ensue from having the finances of the government of the day dependent upon the Upper House.⁽¹⁰⁴⁾ [77]

The spirit of compromise, present at Sydney in 1891, was not so apparent at the Adelaide session of the 1897-8 Convention. The small colonies were prepared to concede the point that initiation of money bills should begin in the House of Representatives, but they maintained the right of the Senate to amend such bills.⁽¹⁰⁵⁾ Unfortunately for these colonies, New South Wales and Victoria were not prepared to be ignored over this matter, and the Convention appeared to be fatally split. [78] The way was open for the success of the small colonies when the Constitutional Committee dropped the 1891 compromise, and the new clauses contained no restriction upon the Senate's power of amendment. The crucial vote came on an amendment motion, put by George Reid, Premier of New South Wales, to prohibit Senate amendment of taxation bills. A great deal of lobbying had preceded this climactic point in the Convention - and, for that matter, in the whole federation story - and, according to Deakin, a trip to Broken Hill was the occasion for a

(103) Mr Reid, Convention Debates, Adelaide, 1897, pp. 275-276.

(104) Mr Wise (N.S.W.), ibid, p. 106.

(105) See e.g. Mr Dobson, ibid, p. 194.

concerted effort by the Victorians, Zeal, Higgins and himself, to persuade some of the Tasmanians to vote with the larger colonies.⁽¹⁰⁶⁾ The hardening of attitudes since 1891 was reflected in the voting upon Reid's amendment. In an air of tension, the New South Wales and Victorian delegates voted 20-0 in favour of restricting the Senate, and they carried three Tasmanians and two South Australians with them. Deakin's lobbying may well have swung the day, for the final vote was 25-23.⁽¹⁰⁷⁾ The votes of the Western Australian, Hackett, who was absent, and the Chairman, Baker of South Australia, who could only vote in the event of a tie,⁽¹⁰⁸⁾ would have tied the issue.⁽¹⁰⁹⁾

The "deserters" who had voted with the enemy were attacked bitterly by their fellow colonists,⁽¹¹⁰⁾ and dire forecasts as to the future of federation were the order of the day.⁽¹¹¹⁾ The battle was effectively over, however, despite the narrow margin of success (or defeat) in the Convention's first session, for many in the smaller colonies came to appreciate that New South Wales and Victoria would not go further than the 1891 settlement, and that this was, after all, much

(106) Alfred Deakin, The Federal Story. The Inner History of the Federal Cause 1880-1900, Melbourne (2nd ed.), 1963, edited by J.A. La Nauze, p. 84.

(107) Convention Debates, Adelaide, 1897, p. 575.

(108) Ibid, pp. 7-8; Standing Rules and Orders for Regulating the Public Business of the House of Assembly, Adelaide, 1897, S/O 214.

(109) Erling M. Hunt, American Precedents in Australian Federation, New York, 1930, p. 151, n.1.

(110) See e.g. Tasmanian Mail (Hobart), 17 and 24 April 1897.

(111) Ibid, 17 April 1897.

better than nothing.⁽¹¹²⁾ Further Convention attacks, from both sides, did occur - at Sydney a Western Australian amendment proposed to give full legislative powers to the Senate, and at the Melbourne session, Reid moved that the paragraph giving the Senate power to request amendments be deleted - but they failed,⁽¹¹³⁾ and the "compromise of 1891" survived as S.53.

(iii) Disagreement between the Houses

The recurring question of State Rights, and the defence of these by the Senate, was to the fore once again with the discussion at the 1897-8 Convention over methods for breaking deadlocks between the two Federal Houses. In 1891 the matter had been touched upon at the Sydney Convention - the Tasmanian, Bird, was the first to do so⁽¹¹⁴⁾ - but delegates could see no need for such a section,⁽¹¹⁵⁾ and a motion by Mr Wrixon, for a joint sitting of both Houses, upon the request of the Senate, was defeated.⁽¹¹⁶⁾ Griffith agreed with the view that it was unnecessary, but he also opposed "artificial means" of settling differences,⁽¹¹⁷⁾ while Deakin gave a hint of later large colony opinion

(112) Mercury (Hobart), 7 August 1897.

(113) Convention Debates, Sydney, 1897, pp. 537-538; Convention Debates, Melbourne, 1898, Vol. II, pp. 1997-1999.

(114) Convention Debates, Sydney, 1891, pp. 122-123.

(115) Mr Kingston, ibid., p. 159.

(116) Ibid., pp. 706-707, 759-762.

(117) Ibid., p. 760.

when he attacked the motion because it would strengthen the States' House. (118)

At the later Convention, deadlocks between the Houses caused a lengthy and continuing debate, during which both the definition of, and the attitudes towards, deadlocks altered. At the Adelaide session, they were generally taken to mean deadlocks over financial matters, and, as there were to be safeguards against "tacking", most believed that such problems would never occur. (119) The debate at this session was not protracted, and when it was ended nothing definite had been done. The outlook for such a clause was, indeed, doubtful, as motions put forward, first by Wise and later by Isaacs, had been comfortably beaten 19-11 and 18-13 respectively. (120) What was partly achieved, although probably not by design, was a broadening of the definition of "deadlock" to include virtually any clash of importance between the two Houses. (121) This was reinforced in debates in the colonial legislatures.

In the interval between the Adelaide and Sydney sessions of the Convention, a quite widespread feeling in favour of a deadlocks clause made itself manifest. People could remember the troubles that the Victorian Lower House had experienced with the Legislative Council, and

(118) Ibid, p. 761.

(119) See e.g. Mr Barton, Convention Debates, Adelaide, 1897, pp. 1151-1152.

(120) Ibid, pp. 1150-1173.

(121) See e.g. Mr Trenwith, ibid, pp. 1157-1158.

they wanted to avoid such problems in the new Commonwealth:⁽¹²²⁾

....I know the ghost of dead Victorian
controversies in still alive and
walking....⁽¹²³⁾

The Federal Upper House was thought likely to be conservative and wealthy, therefore it was essential that some democratic method be devised for the breaking of deadlocks.⁽¹²⁴⁾ Others saw the benefits of a deadlock provision acting as a safety-valve in times of conflict between the States and the federal government, and they cited the American Civil War as an example of what could happen if there was no such safety-valve.⁽¹²⁵⁾ Most of the colonial legislatures believed a mechanical solution was necessary, and many proposals were put forward for consideration at the Sydney session of the Convention.⁽¹²⁶⁾ [79]

The opposition to such a provision seems to have come mainly from the smaller colonies, who continually feared plots to coerce the Senate by the larger colonies.⁽¹²⁷⁾ There was little likelihood, it was

(122) Advance Australia (Melbourne), 1 April 1897, p. 11.

(123) Mr Wise, Convention Debates, Melbourne, 1898, Vol. II, p. 2135.

(124) Ballarat Courier, 22 September 1897.

(125) Mr O'Connor, Convention Debates, Sydney, 1897, p. 574.

(126) For the amendments proposed by the Lower Houses of New South Wales, Victoria and South Australia, see ibid, pp. 541-778 passim.

(127) See e.g. Mr Symon, Convention Debates, Adelaide, 1897, p. 1165.

said, of a deadlock ever occurring,⁽¹²⁸⁾ and if such an occurrence did eventuate, then it would be best to leave the solution of this to the members themselves, i.e. the Senate must not be weakened.⁽¹²⁹⁾ [80]

A few voices, crying in the wilderness, argued that such a provision was unnecessary because future conflicts would be on ideological rather than regional lines. The effect of their cries was probably negligible. [81]

Withmost at the Sydney session converted to the need for a deadlock provision - the vote in favour of the principle was 30-15⁽¹³⁰⁾ - the main problem seemed to be the selection of a satisfactory method. The confusion over this was reflected in the general discussion, for there seemed to be almost as many blueprints as there were delegates. The referendum was widely espoused, the "Norwegian System", which featured a joint sitting of the Houses, was mentioned, and dissolutions of one or both Houses, either consecutively or simultaneously, had their followers. The scarcity of clear ideas was such, that the Sydney session accepted two schemes - one proposed by Mr Symon, and the other by Mr Wise, with the help of Mr Carruthers. The latter scheme, which was very much a compromise, proposed a simultaneous dissolution of both Houses, followed by a joint sitting if agreement still could not be reached after the ensuing election. A three-fifths majority would be

(128) Mr Kingston, Convention Debates, Sydney, 1897, p. 579; Daily Telegraph (Launceston), 15 January 1898.

(129) Mr Dobson, Convention Debates, Adelaide, 1897, p. 198.

(130) Convention Debates, Sydney, 1897, pp. 708-709.

needed to pass a bill at a joint sitting. Such an amalgam of different ideas was complicated, and no doubt had weaknesses, but it had fewer opponents than the other proposals, and was regarded as the best compromise. Small colonies were satisfied with the three-fifths majority requirement, and larger colonies were happy to have further restricted the Senate. Democrats would have preferred the referendum, but at least the election gave the people an important role in the process.⁽¹³¹⁾ The Wise-Carruthers clause did not formally displace that of Symon, but it was regarded as being the preference of the Convention,⁽¹³²⁾ and Mr Symon's clause was removed eventually, late at the Melbourne sitting. [82]

The intercolonial bitterness that was always just beneath the surface erupted over this part of the draft constitution. The extreme views wanted it dropped altogether, either because it might weaken the Senate,⁽¹³³⁾ or because this "cumbersome provision" would strengthen the Senate because of the delay involved in working the machinery.⁽¹³⁴⁾ Because of the enforced dependence upon the States' House for the passage of Appropriations Bills, there was a definite threat to responsible government.⁽¹³⁵⁾ Others, more prepared to compromise, accepted the

(131) Kiama Independent, 23 September 1897.

(132) Quick and Garran, p. 193.

(133) West Australian (Perth), 21 September 1897.

(134) H.B. Higgins, Argus (Melbourne), 6 May 1898.

(135) A.B. Piddington, letter to S.M.H., 29 March 1898.

principle of a deadlock clause, but were opposed to the three-fifths majority requirement because it strengthened the position of the smaller States. This feeling was strong in New South Wales, where both Houses of Parliament attacked the provision strongly. [83] At the 1899 Premiers' Conference, which was called at the New South Wales Premier's instigation, Reid, no doubt strengthened by the defeat of the first referendum in his colony, secured an alteration of the joint sitting requirement to "an absolute majority of the total number of members of the Senate and the House of Representatives". S.57 was, overall, a clear victory on points for the larger colonies:

....they had to make very considerable concessions to the larger states in return for the concession they had made of equal representation in the Senate.(136)

(136) Interview with N.E. Lewis, Tasmanian delegate to the 1897-8 Convention, Daily Telegraph (Launceston), 29 September 1897.

[52] OPPOSITION TO AN UPPER HOUSE

(Worker (Sydney), 20 February 1897.)

THERE MUST BE NO UPPER HOUSE.

We believe in one House, elected on the basis of one adult one vote. Some people seem

AFRAID TO TRUST THE PEOPLE.

We are not. We believe that a Constitution based on the deep and lasting foundations of the people's will - where every man and every woman has a voice in the making of the laws under which they live - will make the United Australian Commonwealth a great and prosperous nation.

WHY SHOULD WE HAVE AN UPPER HOUSE?

Our opponents, the Conservative candidates, all declare that there must be a second Chamber, or else we shall not get Federation. They say that unless the smaller States like Tasmania have as much voice in the Federation as ourselves they will never federate. That argument is all very well, but it assumes too much, for we are not

FEDERATIONISTS AT ANY PRICE.

We lay down our terms; the other colonies can please themselves whether they accept them or no. The terms are perfectly fair. Every man and woman in any colony has just the same power in electing representatives - no more, no less. Under our idea a Tasmanian would have one vote - and only one - just as the inhabitants of New South Wales. Under the scheme of our opponents

A TASMANIAN WOULD HAVE FIVE VOTES TO A
NEW SOUTH WELSHMAN'S ONE.

The Conservatives who are opposing us say that State rights will not be secured without each colony electing an equal number of representatives to an Upper House. But what are State rights? What is a State but the men and women who live in it. Surely the land of a State has no rights, but only the people who live on it. Under our system of adult suffrage the rights of every man and woman in each State would be secured. There would be justice for all.

NO PRECEDENT FOR ONE HOUSE.

The lawyers who are standing as candidates in this election - 12 of them - all say that there is no precedent for a Federation with only one House. They would have you believe that all Federations have had two. This is not true; for the Federal Government that existed

the longest had only one Chamber, and the

PEOPLE'S WILL WAS THE GOVERNING POWER.

But even if there were no precedent, is that a reason why we should erect a Constitution that bitter experience has taught us is fraught with the greatest danger to the liberty of the people? If we want a reason why we should not have an Upper House, the history of our colony will surely furnish one. This Chamber has been the resort of the people's most determined enemies; in this accursed place, which our opponents seek to perpetuate in a united Australian nation, the people have been successfully defied, their petitions spurned, and their entreaties disregarded.

DEMOCRACY ONLY A SHAM.

Where an Upper House exists the people rule only in name. Democracy is a hollow farce and a sham. No matter what it be called, a Government of two Chambers is an oligarchy pure and simple. No matter how Democratic the Lower House may be, it can never pass a law in the interests of the people who elected it. The Upper House, crammed with the representatives of

MONOPOLY AND PRIVILEGE,

simply reject every Bill affecting the welfare of the people....

[53] A STATE RIGHTS VIEW OF FEDERATION

(Tasmanian News (Hobart), 17 February 1897.)

....We regret to find that there is in some quarters a disposition to sneer at State rights - speakers and writers are prepared to accept Federation on any terms that the leaders of the larger colonies choose to dictate. But in the matter of State rights there can be no half-way house. On this great principle compromise would be absolute treason to Tasmania and if necessary this little Colony will prepare its Bill of Rights, and our entrance into the Union shall wholly depend on the acceptance or rejection of those State rights. The history of Federation demonstrates that the inevitable tendency of a Federal Government is to extend its powers octopus-like - to become a veritable rod, swallowing in turn the other rods represented by the rights of the States forming the Union.... [Here follow some U.S. examples of the extension of Federal Government power at the

expense of the States.] Of course some of our would-be Federation creators and authorities have never read, or if so, have certainly not profited by, these historical precedents, but we warn the Tasmanian candidates that should they prove disloyal to their Colony in the vital subject of State rights, then the Tasmanian Parliament and people will supply the necessary loyalty and will afford the required protection, even if it necessitates the refusal to join any Federal Union in which ample and irrefutable provision is not made for the complete guardianship and protection of those State rights which this Colony cannot, will not, dare not surrender....

[54] THE IMPORTANCE OF EQUAL STATE REPRESENTATION IN THE STATES' HOUSE

(Daily Telegraph (Launceston), 10 February 1891.)

....in an Australian Federation the very safety of the smaller Colonies demands that at least in one of the two [Federal] Chambers there shall be equal State representation. In the United States each State in the Union, irrespective of area or population, sends two members of the Senate, whilst one member to every 165,026 of the population is sent from each State to the House of Representatives, the Senate being representatives of the State, and the House of Representatives of population. The necessity of such a safeguard for the smaller Colonies in an Australian Federation will be seen at a glance. In the House of Representatives, on the basis of one member for every 20,000 inhabitants as proposed by Mr [A.I.] Clark [Tasmanian delegate to the 1891 Convention], Tasmania would send 8 representatives; Victoria, 50; New South Wales, 50; Queensland, 20; South Australia, 16; West Australia, 2; New Zealand (if represented), 30. As there is no hope of the last named Colony entering the Union in the near future, it will be seen that in the Federal House of Representatives Victoria and New South Wales, if working together, would possess 100 votes against 46 of the other Colonies combined....

[55] OPPOSITION TO EQUAL REPRESENTATION IN THE SENATE

(Mr Carruthers (N.S.W.), Convention Debates, Adelaide, 1897, p. 656.)

....I do not wish to jeopardise Federation by opposing equal [State] representation [in the Senate]; but I would sooner wreck Federation than thwart the will of the people, who should rule in their own way. I believe that a Federation of a character that imposes on the majority of the people the rule of the minority, will be a curse and not a blessing; and I think we can well afford if we have to wait until we have a Federation which is in accord with the will of the majority. I say that it is nothing more or less than provincialism under the cover of another name [i.e. State Rights], which seeks to impose on the majority doctrines, principles, and legislations which they hate....

[56] THE NECESSITY FOR COMPROMISE ON EQUAL REPRESENTATION IN THE SENATE

(Australian Federalist (Sydney), 23 April 1898.)

SENATE REPRESENTATION.

....It is fair to ask the opponents of equal representation what they would substitute for it. Remember that no Federation exists, or ever has existed, in which representation in the Senate was in proportion to population. Such a scheme could have no chance of acceptance by the smaller States; and anyone who refuses Federation except on these terms must be set down as an opponent of any possible form of Federation. Federation means that the interests, the policies, and the responsibilities of the States are preserved, and that the smaller States will require some safeguard against those being swept away at the dictation of a bare majority. Therefore, even proportional representation in the Senate, or a mass referendum in the case of a deadlock, is a visionary and unattainable ideal. It is opposed to the notion of State independence, which is embodied in Federation. These things would be proper in a Unification, but are impossible in a Federation....

[57] ELECTION OF THE SENATE BY STATE LEGISLATURES

(Sir Samuel Griffith (Qld.), Convention Debates, Sydney, 1891, p. 591.)

This matter was very fully considered by the Constitutional Committee, and, if I remember rightly, was discussed pretty fully in the Convention beforehand. Briefly stated, the reasons which prevailed with the majority of the committee were these: that it is very important that the senate of the commonwealth should be in direct touch with the parliaments of the several states. It has been found in the United States that the election of members of the state parliaments may often be determined by the views held by the candidates as to the proper persons to be elected by the Senate. Again, unless the course proposed were taken the senators would not necessarily be representing the same kind of constituency at all. For instance, in one state they might represent the property-holders of the state, and in another state universal suffrage, and one man one vote. The senators ought to be a homogeneous body, and it was thought that the best way to indicate that would be to say that they should be directly chosen by the members of the houses of parliament - as houses of parliament and not as the legislature.

Mr. Deakin: Separately or conjointly?

Sir SAMUEL GRIFFITH: That we leave to them to settle. But it was thought best to allow the parliament of the commonwealth to adopt a uniform mode if it thought fit.

[58] POPULAR ELECTION OF THE SENATE

(Dr. Quick, address to the People's Convention, Bathurst, 1896, Proceedings [of the] People's Federation Convention, Bathurst, November, 1896, Sydney, 1897, pp. 105-106.)

...he was of the opinion that the members of the Federal Senate could and should be elected by the people directly, and there was no occasion to test the choice in State legislatures. In Australia there was a particular reason why the proposal of the Commonwealth Bill should not be followed. In two of the six Australian colonies, viz., Queensland and New South Wales, the Upper Houses were nominated by the Crown, and not elected by the people. It would be highly undesirable for Federal Senators to be elected by Legislatures, one branch of some of which would

not be elected by the people, and, therefore, would not be responsible to the people. It would also be highly desirable that the senators representing the various states should be elected on a uniform basis, but there would be no such uniformity if some senators were elected by nominated Chambers and other by Chambers deriving their existence directly from the people.... He hoped that when the Federal Constitution of Australasia was launched it would be found to be broadly and largely based upon the people's will. If it were not so there would not be much chance of it receiving the support and sympathy of the people of Australia....

[59] THE STATES SHOULD HAVE THE RIGHT TO DECIDE THE ELECTORAL
DETAILS FOR THE SENATE

(Sir S.W. Griffith, Chief Justice of Queensland, "The Draft Federal Constitution Framed by the Adelaide Convention of 1897. A Criticism", Review of Reviews, 20 July 1897, p. 56.)

How the Senate is to be Elected.

The Draft Bill of 1891 provided that the Senators should be directly chosen by the Parliaments of the States, as in the United States of America. The Convention Draft proposes that they shall be directly chosen by the people of the State voting as one electorate. The representatives of the four of the colonies represented at the Convention had been sent there by popular election conducted on this basis, and this circumstance undoubtedly had much weight in inducing the change in the Draft. But, with all respect, I venture to think that the generalisation was a hasty one. The circumstances of the election were unique, and it by no means follows, because one election so conducted gave eminently satisfactory results, that a succession of elections conducted under quite different circumstances would be equally satisfactory.

It will hardly be disputed that such a basis of election is only applicable with a reasonable hope of good results when the candidates are men already generally known throughout the constituency. Such a knowledge is indeed an elemental idea of the theory of representative government. But when the most capable representative men of a State are divided between the Senate and the House of Representatives, and when, if certain other provisions of the Convention Draft are adhered to, the inducements to seek a seat in the Senate are seriously diminished, can it be expected that a choice of men who have made themselves known to the whole community will always be available?

And here the want of general knowledge of the varying conditions of the several Australian colonies makes itself felt. Who, knowing the conditions, would seriously propose to enact for that for all time (until majorities in other States, under quite different conditions, think fit to change their minds on a subject of no immediate interest to them) the people of a State equal in size to France, the German Empire, and Austria-Hungary combined, and populated throughout shall be a single constituency periodically electing three members by manhood suffrage? If wisdom consists in a fit adaptation of means to ends, and the end is to secure the choice of the three men best representing the whole State, the plan is hardly a wise one as applied to such a State. In some States the plan might be the wisest possible. But why, as the effect of a hasty generalisation, should it be imposed on a State which it does not suit? There is nothing in history to commend it. Even of the small Swiss Cantons, which are free to adopt it, few have done so. The plan was tried for many years in South Australia, and, although it worked well at first, was found unsatisfactory and abandoned. Few persons actually acquainted with the conditions of Queensland, both as to distribution of population and as to differences in climate, will deny that to make it one constituency periodically electing three members would be likely to effectually prevent, instead of securing, a fair representation of the whole community.

Is not this a matter especially of State concern?....

[60] SENATE ELECTORATES SHOULD BE THE WHOLE STATE

(Mr Barton (N.S.W.), Convention Debates, Adelaide, 1897, p. 669.)

....I wish to put this on record that, if you are to divide each State into electorates, knowing as we do that this Convention will probably impose some qualifications for the electors to each House and the members of each House, and if you have locality as the guiding principle of election to both Houses, you destroy from its very base the purpose for which the Senate is established. The purpose is that each State shall be represented as one whole, as one entity, and that will be destroyed by the proposal....

[61] OPPOSITION TO SENATE ELECTORATES BEING THE WHOLE STATE

(Nhill Free Press, 6 April 1897.)

The Mass Vote Unfair

Owing to our recent experience in connection with the Federal Convention election when the whole colony [of Victoria] was treated as one constituency, probably there is no question that has been debated at the Convention now sitting in Adelaide in which we have taken so much interest as that of the mode in which the Senate is to be elected. Fortunately we are not to have the American plan of election by the State Legislatures, and Senators are to be chosen by the people. This has been agreed upon. So far so good, but unfortunately there is not unanimity among delegates as to whether the people are to vote in districts or in the mass, as they did at the Convention election. This is to be deeply regretted, as our recent experience of the Convention election has made the fact plain that to take the mass vote is a gross injustice to country districts. Take our own district as an illustration. At the late election we were neither visited by any one of the candidates, nor were many of the candidates who stood highest in local public estimation returned. To a certain extent the district was disfranchised, nor was such a result unforeseen. It was a foregone conclusion that the cities and towns would swamp the country. Although the injustice of the mass vote was strongly brought out by many of the members both of the Lower and Upper Houses when the proposal was under discussion, the objectionable and unfair system was adopted, and we fear that the evil may be repeated in the case of the election of Federal Senators. We were pleased to notice that Mr SIMON FRASER [Victorian delegate] raised his voice at the Convention in favour of the colonies being divided into districts, but he did not appear to meet with that support that the proposal deserved. In a report published in Thursday's Argus [Melbourne] of Mr IRVINE'S speech [M.L.A. for Lowan, which included Nhill] at Kaniva we notice that he touched upon this point, but strange to say, in arguing against the division into districts he urges as a reason that subdivision would "preclude all but wealthy men from contesting such elections". Mr SIMON FRASER views the matter in quite a different light. He favours the plan of electorates on the ground that the elections would entail less expense upon candidates, and certainly it would seem as though his view is the more rational. Surely it would be less costly for a candidate to canvass a part of the colony than the whole. But to do Mr IRVINE justice we must point out that, though he favours the mass vote, he proposes a plan whereby each district may have its particular vote respected. He is reported to have said, "but to secure the fair representation of country districts he would suggest that the votes given in each electorate should be counted separately, the six men at the head of the poll in each district being considered as having received one vote each; and the six who received most votes on that basis being elected".

While this plan is decidedly an improvement on the recent mode, and reflects much credit on the ingenuity of Mr IRVINE, it fails, in our opinion, adequately to meet the case. There would still be the danger of the country vote being swamped, and under the system candidates would still be unable to visit the remote parts of country electorates as their claims would justify. It seems to us that the only way to meet the claims of country districts is to divide the colony into six electorates, and let one candidate be returned for each. Were such a course followed there would be a very good chance of all parts of an electorate becoming acquainted with candidates, interest in the election would be stimulated, and the vote of the electorate would count, as the man highest on the poll of the electorate would be returned. We are almost afraid that the district plan will not be decided on. If our fears be realised let us hope that some modification of the mass vote will be submitted in order to lessen the evils that we have pointed out as attaching to that mode of election.

[62] THE NEXUS AND THE STRENGTH OF THE SENATE

(Mr O'Connor (N.S.W.), Convention Debates, Sydney, 1897, p. 429.)

....The fact of its [the ratio between the two Houses] limiting the numbers of members of the house of representatives is incidental merely to the main object of the application of this principle, which is to keep up that relation between the number of the senate and the number of the house of representatives. On what ground does that stand? It stands on this ground, which, it appears to me, certainly ought to commend itself to everyone who wishes to see the senate an effective body in the legislature. Of course numbers are not always a guarantee of effectiveness or power in any legislative body, but if you have two bodies which are working co-relatively, and there is a tendency of the number in one body to become larger and larger every decade, and the other body to remain at a standstill, you get to a point to which from the mere smallness of its numbers, the house which contains the smaller number of members will necessarily lose in power and importance in the community....

[63] THE NEXUS AND A JOINT SITTING OF THE HOUSES

(Mr Barton (N.S.W.), Convention Debates, Melbourne, 1898, Vol. II, p. 1834.)

I think the matter on which my honourable and learned friend [Isaacs] touched the most lightly was the matter to which he ought to have devoted most attention in his very elaborate and admirable speech - the fact that there is a provision in this Constitution to the effect that when there is a difference between the two Houses, under certain circumstances, they shall sit together, and that a majority of three-fifths shall carry a Bill [later altered to an absolute majority]. Now, we will put an instance of this kind. Supposing as a result of the adoption of the proposal of Sir George Turner [to delete the nexus clause and insert a simple quota for the House of Representatives of one member for fifty thousand people] there were a House of Representatives of 120 members, while the Senate stood at its original number of 30.... There you have 150 members, with a provision that if they disagree, and there has been a dissolution, after which they still disagree, a vote shall be taken at a joint sitting, and that three-fifths of the members shall control the matter. Thus out of that number of 150, 90 votes would rule the roast, and those 90 votes might be every one of them votes of members of the House of Representatives, while of the 60 there would be in that case 30 members of the House of Representatives and the whole body of the Senate....

[64] THE NEXUS AS AN ECONOMY MEASURE

(Sir John Downer (S.A.), Convention Debates, Sydney, 1897, p. 449.)

....There is not a colony in Australasia which is not suffering from an excessive number of members in its house of assembly. There is not a single house that would not like to reduce its number if it had a chance; and there is not a single house that is able to do it; and, with these awful warnings before us, if we can, by some perfectly harmless and innocent provision - because that is what my right hon. friend, Mr Reid, says it is - prevent that which is a public scandal and public nuisance, which we will have to accept, if once established, to all eternity, then it should be, not merely our duty, but our pride to do it....

[65] THE NEXUS IS UNDEMOCRATIC

(Mr Isaacs (Vic.), Convention Debates, Melbourne, 1898, Vol. II, pp. 1831-1832.)

....The Senate is not to be checked by the House of Representatives, but the House of Representatives is to be checked by the Senate.

Mr. Barton. - You mean that Chamber that speaks second is always a check on the other.

Mr. ISAACS. - No, I mean that you can make the Senate as large as you like without reference to population at all. But although the needs of the population may require a larger quota in the House of Representatives, and although there may be no need whatever to extend the number of representatives in the Senate, the House of Representatives cannot be altered without altering the Senate, and what is worse, without the consent of the Senate. I do not argue that this should be done without the consent of the Senate, but I want that consent to be required only as in America. If, for the purpose of enabling the people to choose their representatives freely and voluntarily, we intend to say that there shall be one member for every 50,000 or 60,000 of the population, we may find that we have agreed in this way that there shall be only one member of every 100,000, 200,000 or 300,000 of the population. What opportunity will there be for a fair representation? The quota will be constantly altering, but the ratio will remain the same. When the people of the colonies are told that each state is to have six representatives in the Senate without relation to its population, they are also told that, although the population requires for a fair representation a quota less than that which prevails, the matter is to be governed, not by the population of the Commonwealth, but by the number of representatives in the Senate. What connexion is there between a House which is avowedly based upon equality of statehood without regard to population, and a House of Representatives elected on the basis of population?...

[66] THE DANGER OF CONSTITUTIONAL RIGIDITY

(Mr McMillan (N.S.W.), Convention Debates, Sydney, 1897, p. 437.)

....It seems to me that we have to look very far ahead in considering a question like this. I can imagine a case of this kind. We will take for granted that the population of this colony has grown to 10,000,000.

We will even take it for granted that the states have been doubled in number. That is to say, that there are twelve states instead of six, including Queensland, of course. That would give seventy-two members for the senate. But it does not follow that, because seventy-two would be a fair representation for the senate, 150 with 10,000,000 of people would be a fair representation in the house of assembly. You must recollect, as I said, that what you want is to get at the real opinion of the country. You might find that by these large overgrown electorates it would be impossible to get by popular vote the real opinion of the country. After a certain amount of reflection on this matter, I have come to the conclusion that there is absolutely no analogy between the representation of the senate and the representation of the house of assembly, and ... I fear that the introduction of any rigid system affecting matters in the future which nobody can foresee may lead to incalculable trouble. Therefore, it seems to me that it would be better to adopt a system which would leave in the hands of the federal parliament the arrangement of this matter in the years to come....

[67] "THERE SHOULD BE A UNIFORM BASIS OF ELECTION FOR MEMBERS OF THE HOUSE OF REPRESENTATIVES"

(Mr Barton (N.S.W.), Convention Debates, Sydney, 1891, p. 629.)

....I believe that, although we are giving to the various states, in the first instance, the power of sending members to the house of representatives, elected upon the franchise for the time-being of the more numerous house, still that is a power which ought never to be intended to be perpetuated in the constitution, because there can be nothing more desirable than that there should be a uniform basis of election for members of the house of representatives, and there can certainly be nothing more undesirable than that members of the house of representatives, being elected upon different suffrages in different states, should be met with the argument that they are either more conservative or more democratic in the manner of their election than those who represent other parts of the commonwealth. We have to recollect that, with respect to the house of the commonwealth - that which may be more accurately described as the main house of the commonwealth, the national assembly - we should endeavour to represent uniformly the nation....

[68] THERE MUST BE NO INTERFERENCE WITH STATE ELECTORAL LAWS

(Sir Patrick Jennings (N.S.W.), Convention Debates, Sydney, 1891, p. 635.)

....I think nothing could be more disastrous than any gratuitous interference with the constitutions of these colonies with regard to their electoral laws. We have accepted the constitutions of the various parliaments so far as the election of the senate is concerned, and we may safely take the same course with regard to the house of representatives. It would be safer and easier in every way to initiate the working of this great scheme without dictating to the several colonies an alteration of their electoral laws. These laws have been made by the people of the several colonies, and the people can alter them from time to time so as to admit of the introduction of any new proposal such as that of one man one vote. It will make very little difference in the representation of New South Wales whether we here adopt the principle or not. I am not personally opposed to it; but I do not want to go back to the electors of the colony and tell them that they cannot join the federation until they have adopted it. I think it would be extremely unwise to hamper the bill in that way....

[69] THE DESIRE FOR A RESTRICTED FRANCHISE FOR THE FEDERAL UPPER HOUSE

(Mr Dobson (Tas.), Convention Debates, Adelaide, 1897, pp. 192, 196-197.)

....There is a common opinion all the world over that the people are divided into two classes, those who have and those who have not; and those who have, although some of us have been born with a silver spoon in our mouths, have generally acquired their property by thrift, hard work, industry, and by the sweat of the brow or brain; and the people who have, require, in my idea, far more consideration than those who have not.... I believe there will be a reaction over this question of the franchise; and, although it is very difficult for a democratic country to go back unless you send it back before a policeman's baton or a soldier's bayonet, I believe they will want to go back. So far from the people in Belgium becoming more democratic and going in for the one man one vote principle, they are going back, and have lately established for themselves a form of voting which many may think is a bad thing. They give a man who is 25 years of age a vote, and a second vote if he takes unto himself a wife, and a third vote if he has any educational or professional qualification; so that in the franchise

there they recognise education. They acknowledge all those things which the advanced democrat, but not the true democrat, eliminates. Some members talk about governing united Australia upon principles which they would not listen to for a moment in connection with the conduct of their own private concerns. I do not think any members who pose as or who are advanced democrats, would agree to enter into an industry or company, and give to their working men and everyone engaged in the industry, no matter how ignorant, the same equal voice in the management of it, and expect to extract dividends out of a competitive market.

Mr. Isaacs: To whom does the country belong?

Mr. DOBSON: The country belongs to the people; but the people who are most entitled to our consideration are the people who are thrifty and intelligent, and have something to pay our liability....

[70] THE EXISTING PRIVILEGES OF THE PEOPLE MUST NOT BE TAKEN FROM THEM

(Mr Trenwith (Vic.), Convention Debates, Adelaide, 1897, pp. 726-727.)

....this is a question involving the right of the people to take part in the government of the country in which they live. The Parliament of the future might have power to extend the privileges of the people, but not the power to restrict the privileges of the people with reference to self-government and in pursuance of the legislation upon which we first proposed that we federated. Mr. Holder, as I understand it, is anxious to provide that no whim of a Parliament to be elected shall enable it to deprive any person who is now possessed of the right to vote of the power to vote in the future, or any class now possessed of the vote to vote in the future, and to provide that such alterations of franchise as may take place shall go on in accordance with historical precedent, which is to broaden out rather than to narrow or restrict.... We are to ask the electors of these colonies to say whether they will have the Constitution which we submit to them, and we shall have a greater chance of their endorsing the Constitution if upon the face of it there is a declaration that they cannot in future be deprived of a right they now possess. I opposed putting female suffrage in this Constitution because I do not wish to increase the difficulties of obtaining Federation and I felt by inserting female suffrage I should not be advancing the chance of its adoption; but I feel if we do not have some clear declaration made to the people who now have a vote that they will always be privileged to exercise their vote in the future,

and that if there is an alteration made it will be in the direction of giving a vote to the people now if they have it not, we can well imagine the women of South Australia giving a negative vote for fear that the privilege for which they have struggled, and which has been obtained, may be taken from them at the will of the other colonies who have not yet obtained female suffrage; and I can readily understand the people who by this Constitution will be for the first time presented with equal voting power with their other male comrades in their colony, fearing that manhood suffrage may be taken from them by the whim of a Parliament that may be elected. Such a power as is now possessed by voters should only be taken from them, if taken at all, through the most difficult process; for while it is proper that Parliament should have the right to facilitate and extend the privileges and powers of the people, it is only right that it should be most difficult to restrict the freedom of the people.

[71] SECTION 45 OF THE DRAFT CONSTITUTION OF ANDREW INGLIS CLARK

(Appendix to John Reynolds, "A.I. Clark's American Sympathies and his Influence on Australian Federation", Australian Law Journal, Vol. 32, No. 3, 21 July 1958, pp. 70-71.)

POWERS OF FEDERAL PARLIAMENT.

Taxation.

45. The Federal Parliament shall have power-

- I. To raise money by any mode or system of Taxation for the purpose of providing for the due and efficient exercise of the executive power and authority of the Queen in the Federal Dominion of Australasia, and paying the public debt of the said Federal Dominion, and the interest from time to time accruing due thereon, and for the purpose of exercising and carrying into execution any of the powers hereinafter enumerated, and for the maintenance of the Federal Judicatory hereinafter mentioned:

Loans.

- II. To borrow money on the credit of the Federal Dominion of Australasia for any of the purposes aforesaid:

Defence.

- III. To raise and maintain Military and Naval Forces, and otherwise to provide for the defence of the Federal Dominion of Australasia:

Post and Telegraph.

- IV. To provide for Postal and Telegraph Services throughout the Federal Dominion of Australasia:

Commerce and Trade.

- V. To regulate Commerce and Trade with other Countries and among the several Provinces:

Coin Money.

- VI. To coin Money, and to regulate the value thereof, and to provide for the punishment of counterfeiting any coin current in the Federal Dominion of Australasia, and for counterfeiting the Securities of the Federal Dominion of Australasia:

Weights and Measures.

- VII. To fix a standard of Weights and Measures for the Federal Dominion of Australasia:

Piracies and Felonies.

- VIII. To define and punish Piracies and Felonies on the high seas, and offences against the Laws of Nations:

Immigration.

- IX. To regulate the immigration of Aliens into any part of the Federal Dominion of Australasia:

Aliens.

- X. To make an uniform law for the naturalization of Aliens throughout the Federal Dominion of Australasia:

Bankruptcy.

- XI. To make an uniform law on the subject of Bankruptcy throughout the Federal Dominion of Australasia:

Marriage and Divorce.

- XII. To make an uniform law regulating Marriage and Divorce throughout the Federal Dominion of Australasia:

Patents and Copyrights.

- XIII. To make an uniform law regulating Patents of Inventions and Discovery and Copyrights throughout the Federal Dominion of Australasia:

Navigation and Quarantine.

- XIV. To make an uniform law throughout the Federal Dominion of Australasia in regard to Navigation and Shipping and Quarantine, and to establish and maintain Marine Hospitals:

Bills of Exchange, &c.

- XV. To make an uniform law in regard to Bills of Exchange and Promissory Notes throughout the Federal Dominion of Australasia:

Census.

- XVI. To provide for taking a Census at stated periods of the inhabitants of the Federal Dominion of Australasia:

Statistics.

- XVII. To provide for the collection and publication of the Statistics of the Federal Dominion of Australasia:

Foreign Companies.

- XVIII. To declare and regulate the rights and status of Corporations and Joint Stock Companies in Provinces other than that in which they have been constituted:

Criminal Process.

- XIX. To provide for the enforcement of Criminal Process beyond the limits of the Province in which it is issued, and the extradition of offenders, including deserters of wives and children, and deserters from the Imperial Naval and Military Forces:

Civil Process.

- XX. To provide for the service of Civil Process of the Courts within the Federal Dominion of Australasia beyond the jurisdiction of the Province in which it is issued:

Judgments.

- XXI. To provide for the enforcement of Judgments of Courts of Law within the Federal Dominion of Australasia beyond the jurisdiction of the Province in which the same was issued:

Recognition of Acts, &c.

- XXII. To provide for the recognition in each Province of the Acts of the Parliament, the Public Records, and the Judicial Proceedings in the Courts of every other Province:

Division of Provinces.

- XXIII. To divide any Province into two or more Provinces and to admit the additional Province or Provinces so created into the Federal Dominion of Australasia:

Union of Provinces.

- XXIV. To unite any portions of any two or more Provinces into a separate Province, and to admit such separate Province into the Federal Dominion of Australasia:

Fisheries.

- XXV. To regulate the Fisheries in Australasian waters beyond territorial limits:

Islands of the Pacific.

- XXVI. To regulate the affairs of the Federal Dominion of Australasia with the Islands of the Pacific:

Criminals.

- XXVII. To prevent the influx of Criminals:

Matters referred by Provincial Parliaments.

- XXVIII. To legislate on any matter with respect to which the Parliaments of the several Provinces can legislate within their own limits, but which the Parliaments of any two or more Provinces may refer to the Federal Parliament for legislation thereon: Provided, that in every such case the Acts of the Federal Parliament shall extend only to those Provinces by whose Parliaments the matter shall have been so referred to it and such other Provinces as may afterwards adopt the same:

Exclusive area for Seat of Government.

- XXIX. To exercise exclusive legislation in all cases whatsoever over such area (not exceeding Ten miles square) as may by cession of any Province or Provinces, and the acceptance by the Federal Parliament, become the Seat of the Government of the Federal Dominion of Australasia, and to exercise

like authority over all places purchased by consent of the Parliament of the Province in which the same shall be for the erection of forts, magazines, arsenals, dock-yards, and other necessary buildings or works:

General.

XXX. To make all Laws which shall be necessary for carrying into execution for foregoing powers and all powers vested by this Act in the Governor-General or in the Federal Judicatory hereinafter mentioned.

[72] THE NEED FOR A FEDERAL SYSTEM OF PENSIONS

(Mr Howe (S.A.), Convention Debates, Sydney, 1897, p. 1086.)

....In every civilised community we find men who have given their best mental and physical labour to the state becoming, in their declining years, through no fault of their own, a burden to their friends, who cannot afford to maintain them, or entering charitable institutions, and finally finding a pauper's grave.

The Hon.E. Barton: Does not this matter stand in the same category as state banking and state insurance?...

The Hon.H. Dobson: Is not this purely a state matter?

The Hon.J.H. HOWE: If I thought so I would not bother the Convention about it. The people who would benefit most by such a provision are a moving population. They are engaged in seeking work all over Australia, and are constantly going to those places, which, for the time being, are more prosperous than other places. Our labouring classes will be a nomadic race for a considerable time to come. If the state took this matter in hand, and made payments compulsory, it could not follow a contributor to the fund from one state to another. The duty is one which can only be performed by the federal authority....

[73] OPPOSITION TO THE INCLUSION OF A PENSIONS CLAUSE

(Mr Trenwith (Vic.), Convention Debates, Melbourne, 1898, Vol. I, pp. 8-9.)

I sympathize most heartily with the sentiment which has animated the honorable member (Mr Howe) in introducing this proposal at this stage. I shall not attempt to discuss the desirability of old-age pensions further than to say that I think them extremely desirable. The question we have rather to consider is whether this power should be conceded to the Federal Parliament at this stage, and it seems to me extremely undesirable that it should.... It seems to me that it will be better to leave this matter as it is - a matter of domestic legislation - until under the powers of the Constitution the various states choose voluntarily subsequently to hand them over....

[74] THE ARGUMENT FOR A FEDERAL COURT OF CONCILIATION AND ARBITRATION

(Mr Kingston (S.A.), Convention Debates, Sydney, 1891, p. 688.)

I desire to propose a new clause, to follow sub-clause 22, as follows:-

The establishment of courts of conciliation and arbitration, having jurisdiction throughout the commonwealth, for the settlement of industrial disputes.

I do not propose to discuss the question at any length, but I think in view of the magnitude of the recent industrial disturbances which have affected Australia and the whole of the civilised world, it is desirable, when we are framing this federal constitution, that we should at least consider whether we cannot do something in the way of avoiding difficulties of the character to which I have referred. I am not in favour of conferring unnecessarily any powers on the federal parliament. I have hitherto seized various opportunities for advocating the expediency of leaving the settlement of matters of purely local concern to the local legislatures. But we cannot avoid recognising this fact - that in disputes of the magnitude to which I refer, which affect not only one, but all the Australian colonies, it is utterly impossible for any local legislature to constitute a tribunal competent to deal satisfactorily with the question. The adoption of the amendment which I now indicate will not in the slightest degree interfere with the

powers which are at present possessed by the various state legislatures to legislate within their state limits. It seems to me that there is only one way out of this industrial difficulty which will commend itself to the good sense of the general community. It is impossible, having regard to the disastrous effects which are occasioned to society generally, to leave the contending parties to fight the matter out to the bitter end, and the only means which occur to me by which some good can be done is the appointment of a tribunal qualified to investigate the matters in dispute, to reconcile the parties if possible, or, if such a course be impossible, to pronounce an award which will fix what, according to the decision of the court, is right and proper to be done, and will carry with its pronouncement the means of its enforcement. Conciliation and arbitration therefore seem to me the only means of doing anything towards the settlement of the difficulties to which I refer. Hon. delegates will recognise that courts having competent jurisdiction cannot be established by the local legislatures. I would therefore ask the Convention to assist me in procuring the insertion of the amendment which I am moving, which will simply give the federal parliament the power to deal with a momentous question in a way which I trust will commend itself to the good sense of this Convention.

[75] CONCILIATION AND ARBITRATION IS A STATE MATTER

(Mr McMillan (N.S.W.), Convention Debates, Melbourne, 1898, Vol. I, p. 184.)

....Now, I do not...profess...to understand this subject of conciliation and arbitration in trade disputes as thoroughly as some honorable members who have given years of attention to it. But, on the other hand, we have not to consider the merits of this question in itself. We have to consider whether it is one of those things which, at the present stage of our federal evolution, so to speak - we ought to include in the powers which are to be more or less exercised by the Federal Parliament. I am as anxious as any one to see that all large national questions that should come under a Supreme Parliament like that of the Federation are given over to it. But, at the same time, I believe that a great deal of the success of our efforts will depend upon the fact that, while keeping clearly in view the sovereign character of that Parliament, we do not infringe in the slightest degree upon that local autonomy which is the basis of federation. I am therefore strongly against the inclusion in the clause of this sub-section, even with the qualification that it is only to refer to trade disputes extending beyond the limits of any one state....

[76] THE SENATE MUST BE AS STRONG AS THE HOUSE OF REPRESENTATIVES

(Mr Holder (S.A.), Convention Debates, Adelaide, 1897, pp. 145-146, 148.)

....We would not be content with one House, because under neither of the two possible alternatives would that be satisfactory. We cannot be content with a single House elected on the population basis, because that would be unfair to the smaller States. We could not content ourselves with one House on the basis of States representation, because that would be unfair to the larger States. We are bound, then, to go for two Houses, one of which shall represent the people as units of the whole Commonwealth, and the other the State units which must have equal power with every other State. If we are to have this State authority maintained by the existence of a Senate, and if we are to have called into existence a Senate for no other purpose than to preserve the rights of the separate States as States, we must take care that the Senate shall be able to preserve those rights. Much has been made of the importance of equal representation in the Senate, but it seems to me that fully as important as the question of equal representation is the question of the relative powers of the two Houses. Equal representation of the States in a manifestly inferior House would be of no value to the smaller States. We might as well have no Senate at all. So far as equal representation of the smaller States in the Senate goes, if the Senators are to have one of their hands tied behind their backs, we may as well throw it away. Therefore I think we must insist upon having a Senate to guard the interests of the smaller States, as we shall have a House of Representatives to guard the interests of the whole of the Commonwealth. We must insist upon the possession by the States House - and I prefer the wording of this proposal to that of the Commonwealth Bill [of 1891] - we must insist upon such powers being given to the States Council as will enable it to withstand any encroachment on its rights by the National Council.... we should provide absolute strength in that House whose business and whose only reason for existence will be the protection of the interests of States one against the other. To set up a Senate which will have no power of the purse will be to set up an absolutely worthless body. The member for New South Wales, Mr. Barton, in the able and lucid speech in which he presented the resolutions to the Convention, clearly indicated the importance of the power of the purse, and if we give the power of the purse and the control of the Executive to the House of Representatives we might just as well have no Senate at all.

Sir Edward Braddon: Hear, hear.

Mr. HOLDER: If we are to have the Senate for the protection of State rights, we must have a Senate as strong as the House of Representatives....

[77] THE SENATE MUST NOT BE GIVEN EQUAL POWERS WITH THE HOUSE
OVER MONEY BILLS

(Mr Carruthers (N.S.W.), Convention Debates, Adelaide, 1897, pp. 91-92.)

....so long as the burden of maintaining the States is borne by the larger States they must hold the financial control.

Mr. Peacock: That is the way to put it.

Mr. CARRUTHERS: It seems to me that is the only position which can be taken up if you look at the matter from a logical standpoint. If taxation and representation are to go together, it is a corollary that representation as well as taxation should be proportional. It is absurd that you should give to a House which may have a majority of representatives from the smaller contributories power to control the finances of the whole Federation. Has it not been well pointed out that the power of veto of a Taxation Bill practically gives a power to direct the form of taxation. And if the Senate has the power of amending Money Bills, or finally vetoing them, it will have the power to mould the finances of a country.

Mr. Reid: Hear, hear.

Mr. CARRUTHERS: There would be the continual saying of "No" to the financial proposals of the Government, a continual refusal to reform the finances. That is practically the imposition on the country of a continuance of an unfair system of finances. Therefore, if you give the power from time to time to thwart the will of the majority of the people by rejecting money and financial Bills, you will give through the Senate a right to the minority of the taxpayers to mould the finances of the country. The proposal seems to me to be indisputable, that those paying the taxes and finding the money should have the right to mould the finances of the country.

Sir William Zeal: Hear, hear.

Mr. CARRUTHERS: It will be intolerable if the $2\frac{1}{2}$ million of people living in New South Wales and Victoria find the bulk of the money necessary to support Federation only to see the financial policy of the country governed by a minority of the people who might hold the majority in the Senate....

[78] THE DETERMINATION OF THE LARGE COLONIES TO RESIST

(Alfred Deakin to Sir Samuel Griffith, 21 May 1897, Griffith Papers, ADD. 452, Dixon Library, Sydney.)

....my object in this note [is] to assure you, if assurance be needed, of the importance to the Federal cause of an adherence to the Sydney compromise [of 1891] in regard to the power of the Senate over money bills. I have seen it stated that the Queensland representatives [*] are likely to support the view that the Senate should have the power of amending such bills as well as rejecting them. If this be done, & it appears very likely to be done by then and as the majority was so small [25-23] & secured with such difficulty - in Adelaide - then the rejection of the Bill at the polls is assured both in N.S.W. & Victoria.... in regard to the money powers of the Senate I find that both in this colony & across the Murray the question is not even arguable. All this was pointed out at Adelaide, but I thought it perhaps not untimely to offer you this private assurance that the statements then made were not mere bluff but correctly indicated a rock upon which the whole of our hopes & labours in the Federal cause may yet find shipwreck....

[*At this time it was expected that Queensland would be sending delegates to the Sydney session of the Convention.]

[79] THE NEED FOR SOME METHOD OF BREAKING DEADLOCKS

(Dr Quick (Vic.), Convention Debates, Sydney, 1897, p. 552.)

....I know of no method by which we ought to create a senate or an upper house, except by providing that it shall be duly elected by the people. For my part I do not believe in a nominee house, and I do not believe in an upper house elected on a partial suffrage. But, unfortunately, the necessity for yielding to that important principle inevitably brings into existence two houses which are practically co-ordinate, with the exception of equal control over money bills, and that leads to this result, that having called into existence two strong houses, and especially a senate the like of which will not be found in any constitution that is in existence, or has ever been in existence in the world, we ought to make provision for great, important, probably historical, occasions when those co-ordinate houses may be brought into serious conflict. I do not suggest that such a conflict would arise on trivial occasions. No doubt on matters

of minor importance those two co-ordinate or equal houses would be able, and ought to be able, to settle their differences without resort to any novel machinery in the constitution; but, still, we must contemplate the possibility on great occasions of grave and important disputes arising between the two houses. Now, in an ordinary constitution, where we have an upper house not elected by the people, or not elected on the same basis as the lower house, that second chamber would be disposed to yield to the pressure of the lower chamber elected upon a popular basis; but here, where we are creating a senate which will feel the sap of popular election in its veins, that senate will probably feel stronger than a senate or upper chamber which is elected only on a partial franchise, and, consequently, we ought to make provision for the adjustment of disputes in great emergencies....

[80] SMALL STATE FEARS

(Sir John Forrest (W.A.), Convention Debates, Sydney, 1897, pp. 610-611.)

....I take it that all these precautions for preventing deadlocks are unnecessary, and may be found mischievous, because they will encourage differences rather than put an end to them. The people of the larger colonies have nothing whatever to fear from this federation. If there is any cause of fear it should exist on the part of the colonies which are situated far away from the seat of government, and from the influences which surround the meeting place of parliament....

[81] THE UNLIKELYHOOD OF DEADLOCKS ON REGIONAL LINES

(North-West Post (Devonport), 27 January 1898.)

....As the two Houses are to be elected by the same voters, there is no reason to suppose that hopeless differences on vital points will occur. If they do occur, there is not the slightest possible reason to suppose that the representatives of the populous colonies will be

on the one side, those of the sparsely on the other. Any great struggle will be between Conservatives and Radicals....

[82] THE DEADLOCK PROVISION IS ESSENTIALLY A COMPROMISE

(Bairnsdale Courier, 22 September 1897.)

....It has at length been decided that deadlocks are to be met by a simultaneous dissolution of both Houses of [the Federal] Legislature. This will most likely be accepted as a compromise, but it is not by any means as sound in principle as the referendum. In the latter, the abstract question on which the Houses were divided would be put to the electors to be determined by a simple yea or nay. In the case of a dissolution the main question would often be obscured by personal and local considerations, and considerations bearing on totally different matters to the one at issue. Members who were not in accord with the general opinion of the constituency on the test question would often be returned for other reasons so that the purpose of the dissolution might be entirely defeated. However expedient it may be to allow the smaller states more than their due proportion of representation in dealing with general business, there do not appear to be any reasonable grounds for supposing that they should have more votes than their numerical proportion entitles them to in deciding any such questions as would come within the scope of the referendum. These would refer only to matters of national concern, and public opinion might be expected to be divided in very similar proportions in all the states. In such event, of course, it would not be material whether the smaller states had more than their legitimate voting power or not, and the main objection to the dissolution is that it is a round-about way of settling the difficulty and associated with conditions that are likely to defeat its own ends. The necessity for settling a deadlock may never arise, but the Federal Government will be like the American with his revolver, they may not want the means of dealing with the difficulty but if they do they will want it "awful bad"....

[83] CRITICISM OF THE THREE-FIFTHS MAJORITY PROVISION

(Mr G. Reid, speech at the Town Hall, Sydney, 28 March 1898, in S.M.H., 29 March 1898.)

....The two Houses, if they do not agree [a second time] have to sit together. As the Lower House has 64 and the Upper House 30 members, that gives an advantage to the Lower House. But a further stipulation is attached that there shall be a majority of three-fifths. (Hear, hear.) Mr Wise in a letter to the press, put it very fairly that the united power of the two larger colonies, when sitting together, was 59 - if they voted together. (Laughter.) He says that would carry a bill for the Representatives. But if three members happened to be away or went over to the other side...then the 56 votes in a joint sitting would be powerless, and the 38 votes would win. There is another way of putting this thing. Let us say that the whole of the members of the House of Representatives were on one side and all the Senators on the other on a given vote, it would come out this way: Sixty [sixty-four] votes for the Lower House; 3 [30] votes for the Upper House; flying majority for the Lower House and the bill carried. But if 8 of the 64 went over to the other side, or were not present to vote, the 56 votes would lose, and the 38 [or 30] would win. That means this - in a majority of 18 in the joint Houses of 94, in an appeal to the people, say in the case of New South Wales, three-fourths of the population as represented perhaps by the majority would be powerless....

V - THE EXECUTIVE

The questions of what type of executive was best, and what was the best suited for Australia, caused much debate in the nineties. Since the granting of self-government, the colonies had been governed under a system of "responsible government", with the Crown as the constitutional Head of State, and the question was whether or not these institutions were still appropriate for Australian conditions. Actually, the whole debate achieved very little, for when the issue was finally resolved, the solution was little different from the ideas which had been put forward at the beginning of the decade, and which had been in practice in the colonies for fifty years.

(i) The Crown

Opinion ranged widely over the question of what role (if any) the Crown and its representatives should play in the new nation. The extreme nationalist view was the republican, and this expressed the desire for a complete break with Britain, holding the belief that

....the ultimate destiny of Australia
is undoubtedly that of a republic.(1)

(1) B.B. Nicoll, The Commonwealth, Vol. I, No. 12, 7 September 1895, p. 3.

Being utterly opposed to the idea of a monarchy, the republicans held that federation "under the Crown",⁽²⁾ was not independence for the colonies, being merely a continuation of the state of subservience that had existed in one form or another since 1788.⁽³⁾ Australia had to break with the "Royalty fetish" completely,⁽⁴⁾ if she was not to make a mockery of the word "Federation". The most vocal, and most consistent, voice propounding the republican cause was the Sydney Bulletin, for whom the term Australian nationalism was synonymous with Australian republicanism.⁽⁵⁾ The Bulletin - and radical writers in general - complained continually of Australians grovelling to a foreign crown ("tinsel titles for the vulgar and the vain"⁽⁶⁾), the inequalities of the class system perpetrated by the existence of the Crown, and the unfairness inherent in an executive of a democracy which altered by means of "animal succession".⁽⁷⁾ The essential basis of the republican cry was that Australians could not be loyal to two masters - to an Australian and to a foreign Head of State. [84a, 84b, 84c]

(2) The origin of this phrase is obscure, but it had achieved at least semi-official status in S.7 of the New South Wales Enabling Act (59 Vic. No. 24, 1895).

(3) Arthur Gayll [Francis Joseph Donohue], The History of Botany Bay. Reprinted from "The Bulletin", Sydney, n.d. [but from the advertisements probably 1888], introduction.

(4) Clipper (Hobart), 24 April 1897.

(5) For the nationalism of the Bulletin see above Chapter A VII.

(6) 14 February 1891, p. 6.

(7) Arthur Griffith, The Labor Platform: An Exposition, Sydney, 1893, p. 13.

Although the republicans made a lot of noise, the support for their views was not large, and the suspicion that the views of George Dibbs, the most prominent supporter of republicanism, were merely an example of political opportunism, seemed to be confirmed when Dibbs accepted a knighthood from the Queen, "Just to oblige a lady".⁽⁸⁾ A measure of the influence of republicanism was the lack of comment in the press of the day - only the Bulletin attacked Dibbs, for betraying the cause⁽⁹⁾ - the remainder did not think it important enough to mention.

Those who were not republicans were loyal to the Crown, but it was a loyalty which differed in its degree of fervour from one man to another. To many Australian nationalists who could accept the presence of the Crown, it smacked of a little too much subservience to allow the Monarch to retain anything more than the legal title of Head of State. The Monarch should not have the power to veto Acts passed by the Australian Parliament, for, if the primary reason for federating was to set the infant upon her feet, the retention, in London, of such a power severely restricted this aim.⁽¹⁰⁾ [85] Many loyal nationalists also were concerned about the selection of the Monarch's representatives. Generally, they were content to recognize the need for such persons, but they believed that the actual choice should

(8) E.W. O'Sullivan, "From Colony to Commonwealth. Half a Century's Reminiscences", unpublished MS, n.d., pp. 256-257, Mitchell Library, Sydney.

(9) 30 July 1892, p. 6.

(10) Mr Playford (S.A.), Convention Debates, Sydney, 1891, p. 59; Mr Clark (Tas.), ibid, pp. 255-256.

reflect the new status of the Australian people. Some suggested an elected Governor-General, as this would ensure a Queen's representative who would understand fully the problems of his subjects.⁽¹¹⁾ Others, who were not prepared to go this far, believed that at least there should be some constitutional provision whereby every Governor-General or State Governor should be an Australian.⁽¹²⁾ Yet another view was to have a Governor-General who would act as Executive for both the Commonwealth and the States, thus saving the States the cost of maintaining their own Governors.⁽¹³⁾

None of these views greatly disturbed the assurance of the majority who favoured retaining the Crown in essentially the same form as they were used to. Republicanism was opposed as being non-British, and as containing the ever-present danger of producing a despotic Executive as in the U.S.A.⁽¹⁴⁾ An elected Governor-General would result in the position becoming a political one, and it was much more advantageous to have a Head of State who was above politics.⁽¹⁵⁾ The veto was no problem at all as it was never used, so where was the point needlessly disturbing the Monarch's prerogative?⁽¹⁶⁾ There was, in

(11) Sir George Grey (N.Z.), Convention Debates, Sydney, 1891, p. 138.

(12) For a cartoon on the subject, see Melbourne Punch, 12 March 1891.

(13) Mr Carruthers (N.S.W.), Convention Debates, Adelaide, 1897, p. 89; Nhill Free Press, 30 March 1897.

(14) Sir Henry Parkes, N.S.W.P.D., Session 1890, Vol. XLIV, pp. 205-206.

(15) Mr Barton (N.S.W.), Convention Debates, Adelaide, 1897, p. 24.

(16) Mr Cuthbert (Vic.), Convention Debates, Sydney, 1891, p. 295.

fact, no valid reason for overthrowing the position of the Crown - the U.S. example did not apply, so there were not the same forces present as there had been in colonial America⁽¹⁷⁾ - and many could see a clear loss to Australia if the Crown was to be dispensed with. The impossible situation, seen by the republicans, of loyalty being given to two masters, was an "imaginary" foe and was just not a problem.⁽¹⁸⁾ Australians, as a whole, simply did not want to break completely with Britain, and thus they were content to remain loyal to the Crown. To quote a later observer:

....Australia's loyalty was dual but not divided....⁽¹⁹⁾ [86a, 86b]

(ii) Responsible Government

The problem of what type of executive was best, and what was the best suited for Australia, caused much more debate than did the question of the Head of State,⁽²⁰⁾ but similarly, it was quite a futile exercise, because when the issue was resolved at the 1897-8 Convention, the solution was little different from the ideas which had been put forward

(17) Mr Abbott (N.S.W.), ibid, pp. 301-302.

(18) N.J. Brown, Federation: A Lecture delivered in the Mechanics' Institute, Launceston, on Monday, May 20, 1895, Launceston, 1895, p. 5.

(19) B.R. Penny, "The Age of Empire; An Australian Episode", Historical Studies Australia and New Zealand, Vol. 11, No. 41, November 1963, p. 41.

(20) To George Reid it formed, together with the question of the rights of the Federal Houses over Money Bills, "the Scylla and Charybdis of this federal enterprise", Convention Debates, Adelaide, 1897, p. 273.

at the beginning of the nineties. The opinions upon this facet of the governmental structure were many, but essentially they boiled down to the one central question: was the system of administration known generally as "responsible government", the best system for a united and a federal Australia? Further confusing the matter was the recurring sore of State Rights, for some men's views were coloured more by the possible effect of whatever system was chosen upon the federal balance, than by the question of what was "best" for the new Commonwealth.

The Australian colonies had all been raised upon responsible government, i.e. a government whereby the ministry of the day drew its existence from the majority group in the Lower House, and where the ministry would resign if it lost the confidence of this House. So established was this, that most of those debating the issue - and many who were not - seem to have expected that this would naturally have been adopted for an Australian nation.⁽²¹⁾ They were quite sure that responsible government was the only scheme that would suit Australians. It was ages old, it was the British way of government, and it simply could not be abandoned overnight - even if retaining it meant that "true" federation could not be achieved:⁽²²⁾

....I take it as an incontrovertible axiom
that responsible government is to be the
keystone of this federal arch....⁽²³⁾ [87]

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- (21) Erling M. Hunt, American Precedents in Australian Federation, New York, 1930, p. 119.
- (22) Mr Wise (N.S.W.), Convention Debates, Adelaide, 1897, p. 106.
- (23) Mr Isaacs (Vic.), ibid, p. 169.

Others, while slightly less rapturous over the advantages of responsible government, were still prepared to support it. Even if there were weaknesses in it, at least Australians were familiar with it, and to alter this would require some good reasons for doing so - O'Connor, for one, believed that to scrap responsible government would be "a dangerous experiment".⁽²⁴⁾ [88]

Despite the eventual success of these voices, the discussion raised by opponents or doubters of the worth of responsible government, was loud enough to cause the issue to appear in doubt until the 1897-8 Convention. The opposition seems to have been based on three ideas. The first was that federalism and responsible government were incompatible, the second queried whether responsible government was as good a system as people believed, and the third feared the effect it might have upon State Rights.

The first of these views was based upon a study of responsible government as practised in Great Britain and the Australian colonies, and federalism as practised in the U.S.A. As Dixon has pointed out,⁽²⁵⁾ the combining of these two systems was an important innovation, and it seemed impossible of realization for a system which depended upon a dominant Lower House that could be dissolved at any time, and that had the executive among its membership, to be amalgamated with one which

(24) Ibid, p. 51; see also Mr Higgins (Vic.), ibid, p. 96, Sir John Forrest (W.A.), ibid, p. 247.

(25) Sir Owen Dixon, "Marshall and the Australian Constitution", in Woinarski (ed.), Jesting Pilate and Other Papers and Addresses, Melbourne, 1965, p. 167.

had Houses virtually equal in power, where the Houses could not be dissolved, and where the legislature was rigidly separated from the executive. If one were to try to join federalism and responsible government, then one "apparently" did not understand federation in the Australian context,⁽²⁶⁾ for upon such an attempt either one or both would be corrupted:

....either responsible government will kill federation, or federation in the form in which we shall, I hope, be prepared to accept it, will kill responsible government....⁽²⁷⁾

There was apparently no way in which these could co-exist, and as one therefore had to go to the wall it was better to kill responsible government if the colonies were to be combined.⁽²⁸⁾ [89]

Sir Samuel Griffith was a leading Australian who queried whether responsible government was necessarily the best system for Australia. He did not doubt that it had worked satisfactorily for the British, and that it had also functioned adequately in the colonies, but it was a new idea, it was still in the trial stage, it might not stand the test of time or of its incorporation into a federal system:

....History affords no instance of the application of the system called "Responsible Government" to a Federal

(26) Sir Richard Baker to Sir Samuel Griffith, [April 1897], Griffith Papers, ADD 452, Dixon Library, Sydney.

(27) Mr Hackett (W.A.), Convention Debates, Sydney, 1891, p. 280.

(28) Mr Holder (S.A.), Convention Debates, Adelaide, 1897, p. 148.

State....(29)

Because of its untried nature, it was best to leave open the question of the type of executive. The Governor-General could be mentioned in the Constitution, but to write in such provisions for responsible government as: all Ministers should be members of the Federal Executive Council, and that all Ministers must be or become Members of Parliament, was to tie the new nation to a method which might yet prove to be worthless for Australian conditions.⁽³⁰⁾ [90]

The third point of opposition was concerned with the old cry of State Rights, for some people came to see responsible government, as planned, to be a threat to the smaller States.⁽³¹⁾ The fear was easily expressed. Responsible government implied responsibility to the Lower House, but the Lower House would be dominated by New South Wales and Victoria, therefore responsible government was likely to be used unfairly by the larger States to control the national government. What was to be safeguarded with a strong Senate would be countered with a strong Executive, for the larger States would combine to control the Lower House, and would thus be able to elect their own men to the Executive. There were a number of solutions proposed to surmount this problem. A

(29) Sir Samuel Walker Griffith, Notes on Australian Federation: Its Nature and Probable Effects, Brisbane, 1896, p. 17.

(30) Sir Samuel Griffith, Q.P.D., Vol. LXI, 1890, p. 195.

(31) Sir John Downer (S.A.), Convention Debates, Sydney, 1891, p. 102.

guarantee that there should be representation of every State in the Cabinet, was one,⁽³²⁾ the guarantee of a minimum Senate representation was another,⁽³³⁾ and elective Ministries, elected by both Houses - the so-called Swiss model - was a third.⁽³⁴⁾ [91]

The reaction to the State Rights argument was much more hostile than had been that occasioned by other opposition to responsible government. Most believed that a Cabinet could not function if the Prime Minister did not have full power to choose a Ministry that would support him:

....Divided control means divided responsibility....⁽³⁵⁾

In addition there was a danger of having Houses of equal strength, and this was foreign to the principle of responsible government, where the House that controlled the purse and which contained most of the executive had to be dominant.⁽³⁶⁾ The erratic history of colonial governments since the advent of responsible government showed the importance of a stable Ministry, and the dangers of a powerful Upper

(32) Mr Playford, ibid, p. 59; Mr Wrixon (Vic.), ibid, pp. 215-216.

(33) Messrs Zeal (Vic.), and Dobson (Tas.), Convention Debates, Sydney, 1897, pp. 799-804.

(34) Sir Richard Baker (S.A.), Convention Debates, Adelaide, 1897, p. 30; Tasmanian Mail (Hobart), 14 March 1891, p. 22.

(35) Mr Reid (N.S.W.), Convention Debates, Adelaide, 1897, p. 275. For another Prime Ministerial view, see Sir Edward Braddon (Tas.), ibid, pp. 66-67.

(36) Mr Isaacs, ibid, p. 175.

House. The extreme view also believed that enough was already being granted to the smaller States, and that such a further concession would cause the balance of power between the Houses to tip too far towards the smaller States. [92] Moreover, to replace a familiar system with the unfamiliar Swiss model would endanger the whole future of the new Commonwealth. (37)

The advocates of responsible government were strong enough to defeat all proposals put forward by opponents of the system, and the final Sections of the Constitution dealing with the Executive Government differed only slightly from the 1891 Commonwealth Bill, which had incorporated the familiar principles of responsible government.

(37) Mr Deakin (Vic.), ibid, p. 287.

[84a, 84b, 84c] THREE REPUBLICAN VIEWS

(Arthur Griffith, The Labor Platform: An Exposition, Sydney, 1893, pp. 12-13.)

....the Australian Democracy has no fierce craving for this "Federation under the Crown." We do not want our young Australian nation fastened to an effete and decaying monarchical system - the heritage from a cruel and shameful past. As self-respecting men we refuse absolutely to acknowledge in any mere "animal succession" the "Fountain of all Honor". Honor is a virtue, and can no more be bestowed on one human being by another than could honesty or chastity. 'Tis a sight most discouraging to any believer in human nature to see our crawlsome politicians, down on their marrow-bones, lapping up the turgid stream of alleged "honors", and meaningless titles that, flowing from the stagnant swamps of Royalty along the gutters of Imperialism, pollute and degrade our public life. Why should Australian politicians look to any other country than Australia for the rewards of their work....

(Andrew Inglis Clark, "The Evils of Monarchy", n.d., unpublished article in Clark Papers, D3b, exercise book number 9.)

....apart from the exercise of the royal power on Australian legislation, a permanent connection of the Commonwealth with the British Empire will necessarily continue to submit Australian policies to the influence of monarchial [sic] institutions and sentiments....

(Steele Grey [G.M. Smith], "The Voice of Australia", Bulletin, 23 September 1893, p. 5.)

The Voice of Australia

(A Reply to the Imperial Federation League.)

Under the Crown! do you cry, my friend?
Nay; our toil shall have nobler end.
A day shall come, and its dawn is near,
When Southern throats, with one mighty cheer,
Shall voice to the world in a thunder-tone:
"We are lords of ourselves and our land is our own!"

Our fathers came of the English race!

They did, and now they have found their place;
But one English way hath from them remained,
For we shall keep what their right hand gained,
And the sons shall reap what their sires have sown-
We are lords of ourselves, and our land is our own!

But the Mother-land, whose sons ye were!

We know her, but light is our love of her.
Small honour have we for the mother's name,
Who stained our birth with the brand of shame.
We were flesh of her flesh, and bone of her bone;
We are lords of ourselves, and our land is our own!

Would ye break away from the British Crown?

That with us is a thing of ill-renown;
For, war-begotten, each gem it bore
Is a crystal born of a sea of gore,
And the chief we want is no nerveless drone.
We are lords of ourselves, and our land is our own!

Friend, your boasted "kinship's silken band"

Is naught more true than a rope of sand.
Must the South-land cling to the North-land old?
Must life blood-warm mate with death corpse-cold?
Must the future aye for the past make moan?
We are lords of ourselves, and our land is our own!

Under the Crown let us all join still!

Nay: "Ours for Us!" is the people's will.
Let Britain weep, if she will, our loss,
As we raise the flag of the Southern Cross.
Our choice is made; we will stand alone-
We are lords of ourselves, and our land is our own!

[85] OPPOSITION TO THE REJECTION OF ACTS OF THE AUSTRALIAN PARLIAMENT
 BY THE CROWN

(George Higinbotham to Andrew Inglis Clark, 8 March 1891, Clark Papers,
D2b, Incoming Letters, G-H.)

....The form used in the Constitutions of [a] majority of these Colonies,
N.S. Wales, Victoria, Queensland & [?] Western Australia, by which the
Queen is represented as one part of the Legislature, appears to me to
recognise the chief & an essential constitutional tie between Great

Britain & the self-governing dependencies of Great Britain. With the exception of the appeal from the courts of law to the Queen in Council it is indeed the sole tie; and if both of these ties be removed I do not know of any restraining or controlling power remaining to the Imperial Government that would justify it continuing to acknowledge the responsibility under which it undoubtedly now lies to other independent States for acts of the Legislatures & Governments of dependencies which would in law & in fact have then ceased to be dependencies. The form adopted by the majority of the Australian Constitutions distinctly and accurately expresses the essential fundamental fact of our legal relation of dependence on the British Crown & of the limitation of our rights of legislation springing from that relation. Thus is an all-sufficient reason for retaining this form so long as we are not prepared to assume the burdens of independence.

I do not understand you, however, to wish that the power of disallowance of Australian Acts of Parliament should be taken away from the Crown, but you would represent that power as an executive function of the Imperial Government, & not as a power exercised by the Crown as one branch of the Federal & Provincial Legislatures. But this view if it were adopted in legislation & acted upon would appear to justify & might lead to very dangerous interference by the Imperial Government with our legislation from its initial stage down to the time of reservation of Bills for the Royal Assent. We have had experience of such interference in Victoria. When protective legislation was first introduced in the Victorian legislature, Mr. Cardwell, the Secretary of State for the Colonies, wrote a series of despatches, threatening to the Governor & insulting to his Ministers to whom the Governor was instructed to show them, with the view of preventing the introduction of such measures. The action of the Secretary of State was illegal and unconstitutional, but it had a powerful effect at the time. If your suggestions were adopted, it might be argued with some force that as the act of the Crown in assenting to & dissenting from Bills was only an executive act, the Imperial advisers of the Crown would be justified in instructing their agent, the Governor, to try to prevent the passing of Bills which they might be induced by secret influence to condemn. The bare possibility of such influence being exercised would have the worst effects....

[86a, 86b] TWO LOYALIST VIEWS

(Jacob Goldstein to Sir Henry Parkes, 18 January 1894, Parkes Correspondence, Vol. 15, pp. 225-226, Parkes Papers, Mitchell Library, Sydney.)

....One thing has always been a source of irritation to me (who am "colonial" or "Australian" from surface to centre) and that is the blatant baseless cry, which is now so frequently heard, of "an Australian Republic" - as tho[ugh] we owed nothing in the past to the hard fighters for constitutional liberty in England; as tho[ugh] each starkly-won victory for England's liberties were not the indestructible foundation for our own freedom; as tho[ugh] the very existence and vigour of all Greater Britain were not nourished by the tap root of English political liberty. Your noble utterance last night [on the amendment to the Address-in-Reply] reminded us all of this. Let us hope that the reminder will act as a "reveille" to the sleeping "rank-and-file" on our own political battle-grounds....

(Brisbane Courier, 17 March 1891.)

....It is fortunate that Mr Dibbs's ungracious and untimely advocacy of republican institutions last week met with no sympathy whatever from the succeeding speakers [at the 1891 Convention], and that the overwhelming weight of argument and opinion were in favour of the British system of responsible government under the Crown, with which the people of Australia have already been familiarised by usage. We know by experience the advantage of having for the chief in the State a personage who can do no wrong, because he or she, as the case may be, always acts upon the advice of constitutional Ministers enjoying the confidence of the people's representatives, and liable to instant dismissal should that confidence be impaired. We want no republican president with a four years' absolute tenure of office, and with authority almost as despotic as that of an absolute monarch. We want no irremovable Ministry endowed with authority to obstruct the will of the people; nor do we want a Senate armed with executive functions, and enabled to ride over the people's representatives.... Our Government must be under the Crown, and the Queen's representative must be selected by the Crown acting under Constitutional advice of the Imperial Ministry. Sir George Grey's expedient of the people electing their own Governor-General in the Australian Commonwealth is clearly inadmissible, and we are glad to notice met with no countenance at the Convention. So long as we form a part of the British Empire the nominal head of our

Government must be appointed by and solely responsible to the Imperial authority; and so long as we are permitted a free hand in the management of our own affairs no sensible person will clamour for cutting the connection with the mother country. Having all the liberty that they could hope for under a republic, the people of Australia are not likely to turn their backs upon the free institutions handed down to them by their forefathers to please a small minority of zealots who do not know when they are well off....

[87] RESPONSIBLE GOVERNMENT THE BEST SYSTEM FOR AUSTRALIA

(Mr Gillies (Vic.), Convention Debates, Sydney, 1891, p. 239.)

....The popular branch of the legislature being the branch which determines the existence of ministries, even if you inserted no provision on the subject it would be indispensable that ministers should appear in that branch. Their political existence is dependent upon the voice of the popular branch. Of what use, therefore, is it to shut our eyes to the fact? It is said that it is not well that the existence of ministers should depend absolutely upon the popular branch of the legislature. If hon. members will insist upon shutting their eyes to all the experience of the past they may make that contention; but I challenge any one to point to a single instance of such a thing being tolerated throughout the whole experience of the British Constitution. It is necessary to remember that ours is a constitution that is not every constitution. It has not been made up of parts of all the constitutions of the world. It has been the growth of centuries; it is based upon well-known principles; its working is well recognised; and he who runs may read it.

Mr. Gordon: It will not work in a federal government!

Mr. GILLIES: I require something more than a mere statement to that effect; I require some proof of it. I do not believe the hon. member could point to one set of circumstances in which the constitution, as it is proposed to establish it - ministers being responsible to only one house of the legislature - would not work....

[88] RESPONSIBLE GOVERNMENT IS WHAT THE PEOPLE ARE USED TO

(Robert Randolph Garran, The Coming Commonwealth. An Australian Handbook of Federal Government, Sydney, 1897, p. 148.)

....every federal executive must ... be constructed to meet the political habits and needs of the time, place, and people. It seems clear that we should adopt in the main - at least for the present - the "cabinet system," which is the common heritage of the British people: the system of government by Ministers nominally appointed by the Crown, but really dependent on the confidence of a representative Chamber. This system ... is one with which every Australian citizen is thoroughly familiar. There is no need to discuss here the abstract merits and demerits of the British parliamentary system. Its ample recommendation is that we know its strength and its weakness; we understand what it is and how it is worked. We hear it sometimes suggested that we should imitate the Swiss model of a cabinet elected for a fixed term, or adopt some hitherto untried pattern of executive system. The answer to such suggestions is that the experiment would be too rash, and that a nation's cradle is not the place for any more experiment than is absolutely necessary. The real lesson to be learnt from the Swiss Federal Council, as from every other federal executive, is to take the materials ready to our hands....

[89] RESPONSIBLE GOVERNMENT WILL NOT WORK IN A FEDERATION

(Sir R.C. Baker, Federation, Adelaide, 1897, p. 19.)

....It is wonderful how little notice has been taken by anyone except by Sir Samuel Griffith and myself, of the relationship which ought to exist between the two Houses of Parliament, and the Executive in a federal form of Government. It is usually assumed that what is called the "responsible Ministry system" will work in [a] Federation.... As everyone knows, that system has arisen in consequence of the predominant power of one branch of the Legislature - the House of Commons - in the British Constitution. It is unworkable with two Houses of co-equal powers.

A responsible Ministry is not a necessary corollary to free political institutions or to Representative Government. It is only an accidental result of Representative Government in Great Britain, and has never been adopted in a Federation....

[90] RESPONSIBLE GOVERNMENT IS NOT NECESSARILY THE BEST SYSTEM
OF GOVERNMENT FOR AUSTRALIA

(Sir Samuel Walker Griffith, Notes on the Draft Federal Constitution framed by the Adelaide Convention of 1897. A Paper Presented to the Government of Queensland, Brisbane, 1897, pp. 10-11.)

V. - THE EXECUTIVE GOVERNMENT

The only material change made by the Convention in the Draft Bill of 1891 with respect to the Executive Government is the introduction of a provision that "after the first general election no Minister of State shall hold office for a longer period than three calendar months unless he shall be or become a member of one of the Houses of Parliament." Cannot, then, the Federal Parliament be trusted to insist upon Ministers being members if it thinks fit to do so? Why this want of confidence in the Parliament? They will have to work the machine which is now being constructed. Why should the use of a recent invention, never tried in a Federal State, be prescribed for all time? And why, in the case of what is, admittedly, a mere experiment, prohibit the use of a safety valve? In truth, the reason for the insertion of this provision seems to be a fear that the sacred ark of "Responsible Government" may not find a secure anchorage in the unknown sea of a Federal Constitution and a desire to establish an artificial shelter for it. But, surely, if the institution in its present form is good it will last, and if it is not good it ought to be modified. Precedent, with one or two exceptions, is distinctly against the proposal. The history of most countries where Responsible Government has been tried is against it. In regard to Law Officers especially, who in the Australian Commonwealth will have to discharge most important functions, there have been frequent instances in which the necessity has arisen of appointing a lawyer not a member of Parliament. With the proposed small number of members of both Houses the difficulty is extremely likely to occur. If it is desired that the best men should be appointed Ministers of State, why arbitrarily limit the field of choice? It may be noted that the provision is distinctly objectionable in form as being a limitation of the Royal Prerogative. (This term, it may be well to observe, really expresses the embodiment of the Sovereign Power

of the whole people, and does not signify the personal privilege of an individual.) But perhaps the strongest objection to such attempts to fetter the freedom of a nation is their futility. The exclusion of Ministers of State from Congress in the United States has not prevented the practical exercise of important functions, which under our system of government properly appertain to the Executive Government, by Committees of Congress. And a law which required that executive functions should be formally exercised by a member of Parliament would not prevent the real exercise of them in the name of a member by a person not a member, if the State desired that they should be so exercised. The result might be the establishment of a bureaucracy under the disguise of Responsible Government. It is manifestly desirable that the person who really exercises authority should, as far as practicable, be the same person who is formally responsible for its exercise.

[91] THE NECESSITY FOR PROVIDING REPRESENTATION FOR ALL STATES
IN A FEDERAL MINISTRY

(Mr Playford (S.A.), Convention Debates, Sydney, 1891, p. 59.)

....With regard to the question of the executive, I understand Sir Samuel Griffith to say that he thought it might be well to have an executive that would not be responsible to Parliament.

Sir Samuel Griffith: I said that the constitution might ultimately tend to work in the direction. I prefer the present system.

Mr. PLAYFORD: But there is this danger: I can see that we ought to make provision to meet in common fairness the smaller Australian colonies. Two colonies - say, Victoria and New South Wales - might join themselves together, and might have a majority in the house of representatives, which would, of course, keep the ministry of the day in power; the whole of the ministry might be taken from the representatives of New South Wales and Victoria, and the rest of the colonies have no representation whatever.... We might have an unwise government with a majority at their back, and who might do anything. If the two larger colonies were to join together, they could undoubtedly do that, and, as long as they kept a majority, they could keep on doing it. It would be a mistake. It may not be done in the first instance - I do not suppose it would be done; but in drafting a constitution we should take up this point for the protection of the other colonies: that they should

have some representatives, at all events, in whatever government is formed, and that the government of the country shall not be formed out of one state alone....

[92] A DANGER OF RESPONSIBLE GOVERNMENT

(A.B. Piddington, "Federation and Responsible Government", in A.B. Piddington, Popular Government and Federation, Sydney, 1898, pp. 14-15.)

....The Senator of Australia would be a man wearing the star and garter of a vast constituency whenever he rose to speak; and how would such a magnifico compare, in his own esteem or that of his province or of the nation or of the outside world, with the inferior creature who is returned to Parliament by a fraction of his own electorate - the whole colony? Add to this the longer duration of his office (six years instead of three), the glamour of his quasi-ambassadorial function, and the greater manageability for business or debate of a small chamber, and, whatever the strictness with which equal powers are assigned to the two Houses by statute, the Senate must become the more powerful engine of legislation. Can it be supposed that such a body, comprising the strongest and most ambitious politicians of the continent and animated by an esprit de corps of unusual intensity, would be content to be ignored for long in the formation and control of the Cabinet? Every victory over the Lower House in matters of legislation (and such victories, as in America, would be neither rare nor insignificant) would increase the Senate's prestige and make its share in the Executive Government a matter of course for two motives:- to admit capable men to their natural rank, and to facilitate the passage of legislation....

VI - THE JUDICATURE

As with many other parts of the Constitution, the third Chapter, on the Judicature, had very little significant alteration between the 1891 Commonwealth Bill and the final Constitution.⁽¹⁾ In fact, the Chairman of the Judiciary Committee at the 1891 Convention, Andrew Inglis Clark, expressed himself as "flattered" that the 1897 Convention had altered the work of his Committee so little.⁽²⁾ This was due largely to the generally non-controversial nature of the whole question of the future national judicature, and also to the fact that people appeared to be quite satisfied with the work of the men of 1891. The only controversial sections, those dealing with the appellate jurisdiction of the federal supreme court, were also the only sections to be altered markedly between 1891 and the final document of 1900.

(i) Judicial Power and Courts

There had long been a belief in Australia that there was a necessity for a national Court of Appeal which could hear appeals from the various colonial supreme courts. Not only would this bring some type of uniformity to Australian law, but it was seen as a spur to the

(1) Mr Barton (N.S.W.), Convention Debates, Adelaide, 1897, p. 445; see also Geoffrey Sawyer, Australian Federalism in the Courts, Melbourne, 1967, p. 11.

(2) Mercury (Hobart), 29 July 1897.

eventual federation of the colonies. As early as 1849 it was suggested by the Privy Council Committee which recommended responsible government for the colonies,⁽³⁾ and on a number of occasions in the latter half of the century the proposal was revived.⁽⁴⁾ [93] There seems to have been no debate of importance over the worth of such a court, for, both prior to, and during, the constitutional Conventions of the nineties, discussion centred upon how to establish such a court rather than on whether or not such a move was wise.⁽⁵⁾

The concept of judicial supremacy and the final plan for a federal supreme court was taken directly from the U.S. example, with a few local variations,⁽⁶⁾ as was the provision for the creation of other, lesser, federal courts. A comparison of the final S.71 with Article III, 1 of the U.S. Constitution will illustrate this. [94] Once the need for such a federal judicature was established, without dissent, at the 1890 Conference, there was general agreement from then until the final

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- (3) Circular to the Governors of the Australian Colonies, 24 May 1849 (Enclosure), Copies or Extracts of Correspondence on the subject of the Australian Colonies Government Bill, p. 63, Commons Papers, Vol. 37, 1850.
- (4) For a Draft Bill for the establishment of an Australasian Court of Appeal, see Minutes of the Proceedings of the Intercolonial Conference Held at Sydney January 1881, V.P.P., 1880-1881, Vol. IV, No. 62, Appendix A, pp. 23-29.
- (5) The only serious opposition, which seems to have had little effect, was from labor journals which saw a federal supreme court as being in some way superior to the Parliament and the country thus exposed to the possibility of judicial tyranny, see e.g. Tocsin (Melbourne), 26 May 1898.
- (6) Erling M. Hunt, American Precedents in Australian Federation, New York, 1930, p. 193.

document was accepted.⁽⁷⁾ A difference from the U.S. example, was that in the Australian system the federal court was to be a general court of appeal from the State courts - as had long been envisaged - unlike the Supreme Court of the United States, which was far more limited in the cases from the states that it could hear.⁽⁸⁾ Some Australians, who were favourably impressed with the American system of federal lesser courts, believed that such a system should be written into the Australian Constitution,⁽⁹⁾ but most did not want to burden the new nation with courts which might not be needed for years. They were happy to follow the U.S. Constitution and leave a provision giving the Commonwealth power to establish extra courts as the need arose.⁽¹⁰⁾ An interesting deviation from the American example was the provision which would enable the Commonwealth to invest State courts with federal jurisdiction, thus obviating the immediate need for establishing federal lesser courts if the expense and effort to do so appeared too great to warrant such a

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- (7) A minor worry was the concern, held by Barton, Isaacs and O'Connor, that the creation of federal jurisdiction could mean that conferring on a citizen of a State, a legal right, which was previously non-existent, against a citizen of another State. It was not important enough for them to oppose a federal judicature; see Barton to Clark, 14 February 1898, Clark Papers, D2b, Inward Letters A, B, University of Tasmania Archives.
- (8) Mr Clark (Tas.), Convention Debates, Sydney, 1891, p. 253. See also Sawyer, "Judicial Power under the Constitution", in R. Else-Mitchell (ed.), Essays on the Australian Constitution, Sydney, 1952, p. 73.
- (9) Most notably A.I. Clark of Tasmania, see Convention Debates, Sydney, 1891, p. 253; Clark to Griffith, 3 March 1891, Griffith Papers, ADD 450, Dixon Library, Sydney. Clark was still pushing for such a system of courts in the early days of the Commonwealth, see Clark to Deakin, 3 June 1901, Deakin Papers, 1540/1073, National Library, Canberra.
- (10) Draft Commonwealth Bill, 1891, Chapter III, 1; Commonwealth Constitution, S.71.

move.⁽¹¹⁾

(ii) Appellate Jurisdiction of the High Court

The question of the appellate jurisdiction of the federal supreme court was not a controversial matter at the Conventions, but that of appeals from the court to the Privy Council was one of the most contentious of all sections of the Constitution dealing with the judicature. It was not just a problem in Australia, for when the Constitution was sent to the British authorities for final ratification, it was the only clause of 127 which seriously bothered the British Government. Simply stated, the question was whether or not appeals should be able to be taken from Australian federal courts, and the supreme court in particular, to Her Majesty in Council - the Privy Council as it was commonly referred to.⁽¹²⁾

Opinion was bitterly divided on this matter as it was a problem which had its origins less in questions of law, although they played a part, but more in the less tangible (and more emotional) questions of

(11) Sir Samuel Walker Griffith, Notes on the Draft Federal Constitution framed by the Adelaide Convention of 1897. A Paper Presented to the Government of Queensland, Brisbane, 1897, p. 12. Whether this played any part in the Constitutional Committee's move is not clarified by the records of the debates of the Convention.

(12) This was not concerned with appeals to the Privy Council direct from State courts.

blood, Empire and Australian nationalism. Some believed that all appeals to the Privy Council should be allowed. Others said that these should be limited to appeals only in certain questions. Others, again, preached the extreme nationalist view, which held as basic the belief that no appeals should be able to proceed from any Australian court to the Privy Council. The controversy which raged over this tended to emotionalize the issue to a point where the worth, or otherwise, of Privy Council appeals was lost sight of. Accusations of "cutting the painter" and "republicanism" became the stock-in-trade of the traditionalists,⁽¹³⁾ who maintained that it was "the birthright of British citizens" to petition the Queen⁽¹⁴⁾ - although as often as not the petitioners would not be heard - and that one of the strengths of the Empire was the uniformity of its law⁽¹⁵⁾ - yet even in Britain this did not apply as there had been cases in which lower courts had said they would not follow a Privy Council decision.⁽¹⁶⁾ Such objections had little effect upon the traditionalists. [95] In any case, it was

(13) See e.g. Mr Lee-Steere (W.A.), Convention Debates, Sydney, 1891, p. 194.

(14) Australasian Insurance and Banking Record, Vol. XXIII, No. 1, 19 January 1899, p. 5.

(15) Australian business interests appear to have widely held this view and they were active in petitioning the 1897-8 Convention to retain Privy Council appeals, see Alfred Deakin, The Federal Story. The Inner Story of the Federal Cause 1880-1900, Melbourne (2nd ed.), 1963, edited by J.A. La Nauze, p. 149. See also Australasian Insurance and Banking Record, Vol. XXII, No. 3, 19 March 1898, p. 140.

(16) E.g. Leask v. Scott Brothers, L.R. 2 Q.B.D., 376, which refused to follow Rodger v. The Comptoir d'Escumpte de Paris, L.R. 2 P.C., 393. See also Clark, Convention Debates, Sydney, 1891, p. 255.

agreed that Privy Council appeals had to be retained because the local Australian judges were not up to the standard of those of the Privy Council. [96] Some questioned if the right of appeal could, in fact, be taken away as it was held to be a "prerogative of the Crown for the Benefit of the Subject:- i.e. a Right of the subject".⁽¹⁷⁾

The nationalists spoke of a continuing colonial subservience and a restriction of Australian nationality if Privy Council appeals were retained.⁽¹⁸⁾ The whole glorious aim of federation would be defeated if the new court was not the final tribunal for Australia. The argument that Australian judges were lesser men than those on the Privy Council was an insult to Australia and her sons⁽¹⁹⁾ - had not Chief Justice Way of South Australia been appointed recently to that same body? [97]

Emotionalism did not intrude into all arguments, for some were concerned about the distance of the Privy Council from Australia, with the resulting lack of knowledge and understanding of Australian conditions.⁽²⁰⁾ The distance also affected the costs involved in cases

(17) P. McM. Glynn, 189-, "Book 16", Chapter III of Glynn's notes on The Commonwealth Bill, Glynn Papers, Box 1084/63-84, National Library, Canberra.

(18) Bulletin, 4 April 1891, p. 7.

(19) Mr Symon (S.A.), Convention Debates, Adelaide, 1897, p. 981.

(20) S.M.H., 18 March 1891.

taken to Britain, largely because of the delay in having cases heard so far away. Many, while supporting the principle of Privy Council appeals, believed this factor of distance to be an insurmountable problem if appeals were retained.⁽²¹⁾

As was so often the case in matters of controversy concerning the new Constitution, the path finally chosen was not necessarily the best one, rather was it the easiest available - the tried path of compromise. At the 1891 Convention a number of speakers took the view that appeals to the Privy Council should be restricted to matters of Imperial concern while matters of specifically Australian concern should be restricted to appeals as high as the federal supreme court.⁽²²⁾

This view, although not popular with the extremists of both camps, was allowed to pass, and despite some modifications and alterations, it was essentially the view enshrined in the Constitution which emerged from the Melbourne sitting of the 1897-8 Convention. S.74 of this document stated that no appeal to the Privy Council could be made in cases involving interpretation of this Constitution or the Constitution of a State, unless it involved the public interest of some part of Her Majesty's Dominions other than the Commonwealth or an Australian State. Except as mentioned in this Section, there was to be no Constitutional restriction upon appeals from the High Court to the Privy Council,

(21) Australasian (Melbourne), 5 February 1898, p. 315; see also Daily Telegraph (Launceston), 1 March 1898.

(22) Sir John Downer (S.A.), Convention Debates, Sydney, 1891, p. 103.

although the Commonwealth Parliament had the power to make laws "limiting the matters in which such leave may asked". [98]

When the Draft Constitution was sent to London, complete with a representative of each colony (and New Zealand) to see it safely through Westminster, a serious snag in the process quickly became evident. The British Government, with Joseph Chamberlain, the Foreign Secretary, as its spokesman, strongly opposed S.74 and its limitations upon Privy Council appeals. Chamberlain was concerned with the maintenance and development of the Empire, and the right to appeal to the Privy Council was basic to this concern. He and his colleagues were also disturbed that, for the first time, the Privy Council was to be told which cases it could, or could not, hear.⁽²³⁾ The wording of the draft did, indeed, ignore the prerogative of the Queen to hear cases if she chose, and it left the Australians "open to the charge of discourtesy or disregard of established usage".⁽²⁴⁾ It was a challenge that the Government could not but accept.⁽²⁵⁾ [99]

A deadlock was soon apparent when Chamberlain expressed his Government's intention to alter S.74, for the Australian delegates

(23) A.B. Weston, "The Privy Council and Constitutional Appeals. An Historical Retrospect", University of Western Australia Annual Law Review, Vol. I, No. 2, December 1949, p. 255.

(24) Griffith, op.cit., p. 12.

(25) Earl Jersey to Lord Beauchamp, 10 May 1900, Letters to Lord Beauchamp, 1899-1901 (A 3012), p. 117, Mitchell Library, Sydney.

maintained that they only had instructions to see the Constitution through Parliament. They could not agree to any alterations as they did not have orders to do so⁽²⁶⁾ - in the rather unkind view of one commentator, they stood firmly by "their dogma of the sacrosanctity of the syllables and the untouchability of the commas".⁽²⁷⁾ After a lengthy period of stalemate, during which time differences between them and their governments split the Australian delegation, both parties eventually gave ground in their demands. Possibly helped by some quiet fraternizing between Chamberlain and some of the delegates,⁽²⁸⁾ a common ground was finally reached, and S.74, which had been omitted completely by the British Government, was reinstated in a significantly amended form. The only limitation upon Privy Council appeals was to be on inter se matters affecting the limits of the powers of any two or more States, and also the limits of the powers of the Commonwealth and those of any State or States. Only on certification of the High Court could such cases go to the Privy Council. In all other cases an appellant had a choice of the High Court and the Privy Council for an appeal,⁽²⁹⁾ with the national Parliament retaining the right to limit the types of cases that could be so taken. As is so often the case with

(26) Deakin, op.cit., p. 108.

(27) J.L. Garvin, The Life of Joseph Chamberlain, Vol. III, London, 1934, p. 562.

(28) Deakin, op.cit., p. 161. See also Chamberlain to his wife, 21 June 1900, quoted in Garvin, op.cit., p. 567.

(29) Higgins to Deakin, 11 January 1900, Deakin Papers, 1540/2405.

a compromise, the inter se concept had not been debated before, although Robert Garran had suggested something akin to this in a paper read in 1895 before the Australasian Association for the Advancement of Science.⁽³⁰⁾ There was no constitutional basis for such a concept, perhaps being accurately described as the brainchild of "an unknown official of the British colonial office".⁽³¹⁾ The brief conflict thus ended in a draw. Although his biographer quotes Chamberlain as saying

....They [the Australian delegates] have got what they wanted and I have got what I wanted....⁽³²⁾

Garvin himself was probably the more accurate when he said that

....Neither side won all it originally strove for, but each gained what it most desired....⁽³³⁾

Despite a bitter attack upon the delegates for taking upon themselves actions not allowed under their terms of reference - Griffith described their behaviour as "monstrous"⁽³⁴⁾ - Chamberlain

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- (30) R.R. Garran, "A Problem of Federation Under the Crown. - The Representation of the Crown in Commonwealth and States", Report of the Sixth Meeting of the Australasian Association for the Advancement of Science, held at Brisbane, Queensland, January 1895, p. 694.
- (31) Sawyer, Australian Federalism in the Courts, p. 28.
- (32) Garvin, op.cit., p. 567.
- (33) Ibid.
- (34) Griffith to Clark, 29 June 1900, Clark Papers, D2b, Inward Letters G-H.

stood by them, and when the Bill had finally passed the Imperial Parliament to become law, S.74 stood as amended.

(iii) Original Jurisdiction of the High Court

There was little controversy over the original jurisdiction of the High Court. Only the Tasmanian, Clark, was really concerned with the scope of the Court's jurisdiction. He believed that the clauses which eventually became Ss.75 and 76 of the final Constitution gave too large a jurisdiction to the Court, and that too many cases coming to the High Court would divert it from its important appellate work.⁽³⁵⁾ Clark's was a lone voice in this matter, however, and little heed was taken of his complaints, so that the provisions of 1897-8 were virtually the same as those which he attacked in 1891.

(35) Convention Debates, Sydney, 1891, pp. 547-548.

[93] AN EARLY SUGGESTION TO FORM AN AUSTRALIAN COURT OF APPEAL

(First Report of the Royal Commission upon Intercolonial Legislation and a Court of Appeal, V.P.P., 1871, Vol. II, No. 11, pp. 14-15.)

As to the establishment of a Court of Appeal.

This subject has been frequently mooted. The arguments in its favour are the increased facilities for the hearing of appeals, the promptness of decision, conformity of law, and considerable reduction in the cost of appealing that will be thereby afforded.

A Court of Appeal has become almost a matter of necessity. The number of appeals from the vast dominions of the Crown is greater than it appears the Privy Council is dealing with.

Independent of the difficulty in getting appeals heard by the Privy Council, it is thought that it would be more satisfactory to litigants if their cases were decided by judges who were familiar with the policy of Australian laws. Take, for instance, disputes affecting our pastoral or mining interests, which are based upon laws almost peculiar to Australia. Another difficulty presents itself in the case of appeals in criminal cases. In New South Wales, after a conviction for murder, the prisoner appealed, the conviction was sustained; but after so long a delay between the sentence and the decision of the Privy Council the judgment of the court could not be carried into effect. In another case that occurred in Victoria, the Privy Council ordered, on a technical point, a new trial; but, after so long a lapse of time, the witnesses had disappeared and the prisoner, although previously found guilty was allowed to go free....

Considerations of grave importance suggest the expediency, if not the necessity, that a Court of Appeal, formed of colonial judges, should be established for the Australasian colonies. The cost and delay occasioned by appeals to the Privy Council would be removed. Judges conversant with colonial life, manners, and laws would adjudicate on matters presenting peculiar and distinctive features - the result of colonial habits, industries, and trade. The decisions of the various Supreme Courts upon purely colonial affairs would thereby be brought into harmony, and uniformity of law be thus encouraged to the great advantage of commerce. The first effective step towards the union and consolidation of the colonies would thus, it is thought be consummated.

We recommend that a Court of Appeal for Australasia be formed, consisting of one judge from each colony, and that the Court should sit

in each colony successively, or at such places as may be determined upon as occasion required; and that the quorum be regulated in proportion to the number of colonies that appointed judges....

[94] THE PRINCIPLE OF JUDICIAL SUPREMACY

(Andrew Inglis Clark, "The Supremacy of the Judiciary under the Constitution of the United States, and under the Constitution of the Commonwealth of Australia", n.d., unpublished article in Clark Papers, D3b ii, p. 28, University of Tasmania Archives.)

The supremacy of the judiciary, whether it exists under a federal or a unitary constitution, finds its ultimate logical foundation in the conception of the supremacy of law as distinguished from the possession and exercise of governmental power. If governmental power is in any case unlimited, the exercise of it is not subject to any law, and it is therefore impossible that the judiciary, in such circumstances, should have any authority to declare any exercise of it invalid. But if governmental power is in any case limited by a law proceeding from a source superior in political power to the organ by which such limited governmental power is exercised, the constant and immediate supremacy of that law cannot be maintained without the existence of a separate tribunal which has authority to declare the contents of that law whenever an appeal is made to it to do so in exercise of its proper functions. The courts of law in England have not hesitated to declare acts of the Crown, legislative and executive, invalid, because they were contrary to law, and the Crown is under the law. The law in many of those cases was unwritten, but it was none the less definite law, and the authority of the courts to declare it maintained its supremacy so long as it continued to exist. If, under a written constitution, the powers of the legislative organ of the government are defined and limited, the supremacy of the law which defines and limits those powers cannot be regularly and constantly maintained against attempted infringements of it by the legislature, if there is not a separate tribunal invested with authority to declare that law at the appeal of any person who claims the protection of it.

[95]

WE MUST RETAIN PRIVY COUNCIL APPEALS

(Mr Wrixon (Vic.), Convention Debates, Sydney, 1891, pp. 216-217.)

....I now come to a point on which I have observed that several of my learned friends have expressed opinions which I sincerely trust will be deeply considered before they are adopted: that is, in favour of taking away the appeal to the Privy Council. It seems to me that if you do that, you make a very great sacrifice for a very small gain. At present it is one of the noblest characteristics of our empire that over the whole of its vast area, every subject, whether he be black or white, has a right of appeal to his Sovereign for justice. That is a great right, and a grand link for the whole of the British empire. But it is more than that. It is not, as it might be considered, a mere question of sentiment, although I may say that sentiment goes far to make up the life of nations. It is not merely that; but the unity of final decision preserves a unity of law over the whole empire. The Privy Council at any rate, when it decides, decides finally, and for the whole of the empire. If you provide that your court of appeal in Australia shall be final, this evil may arise: The Supreme Court of Australia will decide, say, a commercial question on the construction of a charter party in one way this year; while next year the Judicial Committee of the Privy Council, composed, I will say for the sake of argument, of a very strong court, will decide the very same question in another way. We should then be in this curious position: that we should have a different law from that of the rest of the empire on a great mercantile question. There would then be a feeling in our local courts as to whether they should follow the decision of the court of appeal in Australia, or the decision which they might consider to be the better law of the judicial committee in England. I believe there is a vast gain in unity of administration and interpretation of the law, and in having in all these distant and scattered dependencies, not only the decisions of the English judges to go upon, but also the legal literature of England, the books and comments upon them, to guide us as to the law on different subjects. All lawyers know how valuable that is. All that, however, would be lost when you cut away the connection in judicial matters between the dominion and the old country....

[96]

AUSTRALIAN JURISTS ARE NOT OF A SUFFICIENT STANDARD

(Australasian Insurance and Banking Record, Vol. XXII, No. 3, 19 March 1898, pp. 139-140.)

....That the authority of the Privy Council as the ultimate Court of Appeal will be greater than any authority which could be acquired by the proposed Federal Court goes, in our opinion, almost without saying. We have no wish to belittle either the technical knowledge or the individual ability of members of the colonial benches, but it must be confessed by any disinterested inquirer that the colonial legal standard is not equal to the standard at Home. We have men like Sir SAMUEL GRIFFITH and Chief Justice WAY, whose presence would strengthen any tribunal in the Empire, and who are deeply imbued both with the principles and practice of English law. But two swallows do not make a summer, and two pre-eminent jurists cannot constitute an appellate court that may reasonably be expected to vie in power and acumen with the picked men of the infinitely larger legal community in the Old Country. The complaint which had some force in years gone by, that the Privy Council Board consisted merely of ex-Indian judges, whose experience and skill were no greater than the experience and skill of colonial lawyers, has ceased to rest upon any tangible basis. Upon all important occasions the Judicial Committee is reinforced by the law lords of the regular House of Lords' Bench, and the decisions arrived at are practically on a par, in point of authority, with the rulings of the House of Lords itself. What colonial appellants need is a clear-cut and dispassionate statement of the law - fearless as to results, and the mere logical sequence of legal principles properly applied to particular facts. By no tribunal short of the Privy Council can that sine qua non be attained for colonists. The very presence of local knowledge as to the intentions of colonial Legislatures, which was urged as an advantage to be secured by the establishment of a final Federal Court, is, in our view, one of the strongest reasons against the position in furtherance of which the suggestion was advanced. The function of the Court is to determine the meaning of the words which the Legislature has actually used, and the less the judges know of the political contentions which led to the passing of the law, the more likely are they to arrive at a true legal interpretation. If a colonial Parliament has not expressed what it meant to express, the remedy lies in an amending Act. But once admit the idea that the Court is to be influenced by the tendency of legislative debate, and you introduce an element of uncertainty which is fatal to the precise definition of the law, and hurtful to public trust in the ordinary interpretation of statutory language....

[97] APPEALS TO THE PRIVY COUNCIL SHOULD BE ABOLISHED

(Mr Kingston (S.A.), Convention Debates, Sydney, 1891, pp. 163-164.)

....As regards the judiciary, one hon. delegate, I think, has referred to the appeal to the Queen-in-Council as a bond of union existing between the colonies and the mother country, which ought not to be disturbed. In my opinion, sir, it is a bond of union which is productive of considerable irritation and annoyance, and I think it would be a pity indeed if we did not, as contemplated here [i.e. Parkes' Resolutions], provide for the constitution of a high court of appeal, its most important functions being the duty of deciding constitutional questions arising between the federal and local parliaments, and the duty of finally settling all disputes arising in Australia, and dispensing with the necessity for an appeal to the Queen-in-Council....

[98] APPEALS TO THE PRIVY COUNCIL SHOULD BE ALLOWED IN IMPERIAL MATTERS ONLY

(Mr Clark (Tas.), Convention Debates, Sydney, 1891, pp. 253-254.)

....I hope our Supreme Court will take the place of the Privy Council, and hear appeals upon all questions of law. I now come to the question as to whether the decision of that court of appeal ought to be final or not. I unhesitatingly say that, so far as the cases which come before that court are purely Australian, the judgment ought to be final; but if a case comes before it affecting imperial interests, or depending upon the interpretation of an imperial statute in force throughout the whole empire, it would be absurd to talk about taking away the right of appeal to the Privy Council. If the British legislature does what it has the power to do, and what it has done - that is, if it passes a law for the whole empire, such as the British Merchant Shipping Act or the Plimsoll Act - it would never listen to a proposal to take away from its own court the right of interpreting its own acts. That, I think, is perfectly clear....

(Speech by the Secretary of State for the Colonies, Mr J. Chamberlain, 14 May 1900, G.B.P.D., Vol. LXXXIII, pp. 55, 62-63.)

....it is ... on these main principles that the Government have proceeded in dealing with this Bill. On the one hand, we have accepted without demur, and we shall ask the House of Commons to accept, every point in this Bill, every word, every line, every clause, which deals exclusively with the interests of Australia. We may be vain enough to think that we might have made improvements for the advantage of Australia, but we recognise that they are the best judges of their own case, and we are quite content that the views of their representatives should be in these matters accepted as final; and the result of that is that the Bill which I hope to present to the House to-night is, so far as ninety-nine hundredths of it, I think I might almost say 999-thousandths of it is concerned - as regards the vast proportion of the Bill - exactly the same as that which passed the referendum of the Australian people. But the second principle which I ask the House to assent to, and to which we have given application by certain amendments we have made in the Bill, is that wherever the Bill touches the interests of the Empire as a whole, or the interests of Her Majesty's subjects, or of Her Majesty's possessions outside Australia, the Imperial Parliament occupies a position of trust which it is not the desire of the Empire, and which I do not believe for a moment it is the desire of Australia, that we should fulfil in any perfunctory or formal manner....

We have got to a point in our relations with our self-governing colonies in which I think we recognise, once for all, that these relations depend entirely on their free will and absolute consent. The links between us and them at the present time are very slender. Almost a touch might snap them. But, slender as they are, and slight as they are, although we wish, although I hope, that they will become stronger, still if they are felt irksome by any one of our great colonies, we shall not attempt to force them to wear them. One of these ancient links is precisely this right of appeal by every subject of Her Majesty to the Queen in Council. The Bill weakens that - and there is no doubt about that - and thereby there opens up, as I shall show, a prospect of causes of friction and irritation between the colonies and ourselves which, in my opinion, would be more numerous and more serious than anything that is likely to result if the right of appeal is retained. Well, how shall we deal with this question? I am sure the House will feel that there is no man in the House who is more anxious to maintain the good feeling between ourselves and our colonies than I am. Ever since I have been in office that has been my chief desire. Sir, in a case of this kind nothing is more easy than to concede; nothing is more difficult than to refuse. At the same time, believing firmly as

the Government do, that what is asked for in this Bill, as it originally came to us, is not only injurious to the best interests of Australia, but that it would lead to complications which might be destructive of good relations and prejudicial to the unity of the Empire, we feel that we are bound to ask the House of reconsider it....

VII - FINANCE AND TRADE

As was shown earlier, one of the most important reasons given for Australian federation was the question of trade among the various colonies. As we have seen, many thought it ridiculous that tariff barriers should exist between the colonies, and, for these people, the presence of customs houses on colonial borders was completely iniquitous. The principle of inter-colonial free-trade was written, with little opposition, into both the 1891 and 1897-8 drafts. Trade and intercourse, according to both documents was to be "absolutely free".⁽¹⁾ This phrase, apparently quite simple to understand, caused much more trouble at the second Convention than did the principle involved, for Isaac Isaacs, in particular, feared that such a phrase was too wide in its meaning and would be immediately necessitous of judicial interpretation to clarify its intention. Isaacs had few supporters, however, and at the Melbourne session he caused much unrest in the Convention by his pushing for some type of amendment,⁽²⁾ and in the key vote over the issue, he failed to amend the clause by a vote of 20-10.⁽³⁾ Most of the Convention were concerned that their views on this matter be clearly understood and the phrase, for them, was quite clear in its meaning. As G.H. Reid put it:

....This clause touches the vital point for
which we are federating, and although the words

(1) Chapter IV, 8; S.92.

(2) Convention Debates, Melbourne, 1898, Vol. II, pp. 2365-2375 passim.

(3) Ibid, p. 2367.

of the clause are certainly not the words that you meet with in Acts of Parliaments as a general rule, they have this recommendation, that they strike exactly the notes which we want to strike in this Constitution. And they have also the further recommendation that no legal technicalities can be built up upon them in order to restrict their operation. It is a little bit of laymen's language which comes in here very well....(4) [100]

In the nineties the principle of inter-colonial free-trade was opposed less for itself, as both federationists and anti-federationists recognized that federation automatically meant internal free-trade, and rather more for the effects that it would have upon the finances and the independence of the States. It was the fear that many people had of these effects which caused the most important differences of opinion over this part of the Constitution. To many it was this finance question which was regarded as

....the highest of the fences now
barricading us off from federation.(5)

There was much concern over the possible - many said the probable - loss of State power and independence which would follow upon the assumption of the tariff power by Commonwealth. The money earned from tariffs upon the trade flowing in and out of the colonies formed a large and important proportion of the money raised by the colonial governments:

(4) Ibid.

(5) Daily Telegraph (Launceston), 4 January 1898.

Customs Revenue as a Percentage of Total Government Revenue

1894-5 - 1899-1900⁽⁶⁾

| Year | Vic. | N.S.W. | Q. | S.A. | W.A. | Tas.* |
|-----------|-------|--------|-------|-------|-------|-------|
| 1894-5 | 26.95 | 21.60 | 33.54 | 19.41 | 45.61 | 39.94 |
| 1895-6 | 26.84 | 19.38 | 35.45 | 20.66 | 41.96 | 41.23 |
| 1896-7 | 26.54 | 13.77 | 33.30 | 21.24 | 38.25 | 41.64 |
| 1897-8 | 26.68 | 13.41 | 32.84 | 20.84 | 36.94 | 44.79 |
| 1898-9 | 26.40 | 13.51 | 32.85 | 20.94 | 34.06 | 45.08 |
| 1899-1900 | 26.43 | 14.04 | 31.89 | 20.49 | 31.47 | 44.19 |

*Tasmanian figures are for Calendar years.

All the colonies had built up some dependence upon their customs revenues, even the "Free-Trade" colony of New South Wales, and to some, the loss of this revenue was seen as a potentially calamitous event. In no colony was this felt more than in Western Australia. The youngest of all the colonies, Western Australia, had had little time to develop her resources and she was greatly dependent upon her customs revenue, much of which come from duties levied upon produce from the other colonies. It was thought that her reimbursement from the Commonwealth tariff upon goods imported from overseas would not be enough to enable her to remain solvent, so there appeared to be very reason for Western Australia to

(6) Source: S.A.P.P., 1897-1902.

fear federation. The Premier, John Forrest, was, at best, only lukewarm about federation, being

... full of misgivings as to the effect
Federation ... [would] have on the
finances of the colony.(7)

At the 1897-8 Convention the delegates from the West pushed claims for special consideration in the new Constitution, and, finally, were successful. Although a uniform tariff was to be instituted by the national government within two years of the establishment of the Commonwealth,⁽⁸⁾ Western Australia was allowed to continue her tariffs after the imposition of the uniform Commonwealth tariff for a period of five years, reducing the rate one-fifth each year until parity was achieved.⁽⁹⁾ [101]

No Australian politicians wished to have to turn to any other major form of taxation to replace the tariffs that would be lost, so they focussed their attention upon the handsome surplus which, it was expected, the Commonwealth would have in its coffers once it had control over tariffs. It was believed that this surplus, less what was needed to pay for Commonwealth needs, rightly belonged to the colonies, and that there should be some constitutional provision for the redistribution of this

(7) J.W. Hackett to Deakin, 27 June 1899, Deakin Papers, 1540/2268, National Library, Canberra; see also Forrest, Convention Debates, Adelaide, 1897, pp. 252-253.

(8) S.88.

(9) S.95.

to the States. [102] If most agreed upon the necessity for some redistribution, there was far less accord over the method to be employed. Should it be distributed to the States on a population basis, or in proportion to each State's contribution, or should the method be left to the Commonwealth Parliament to devise? The method decided upon at the 1891 Convention was to charge the States for Commonwealth expenses in proportion to the population, and then to redistribute the surplus in proportion to the amount paid by each State.⁽¹⁰⁾ Although, at first glance, this appeared a satisfactory scheme, people soon came to see that it could work very unfairly upon some States,⁽¹¹⁾ and the problem was so difficult of solution that it was not resolved until the final session of the 1897-8 Convention. S.87, named the "Braddon Blot" after its proposer, limited the use by the Commonwealth of only one-fourth of its customs revenue for its own purposes, with the balance being payable to the States in accordance with the Constitution. Until uniform customs were established, and for five years afterwards, the so-called "book-keeping system" was to operate, whereby the surplus was to be redistributed in proportion to the amount paid by each State.⁽¹²⁾ Thereafter, the

(10) IV, 9.

(11) Critics included Sir Samuel Griffith who came to the view that errors had been made in this part of the 1891 Bill, see Griffith's Some Conditions of Australian Federation, Brisbane, 1896, pp. 12-17. For another criticism see Reginald J. Black, "The Finances of Federation", The Commonwealth, Vol. I, No. 7, 8 April 1895, pp. 8-16.

(12) Ss.89, 93.

redistribution was to be as the Commonwealth Parliament might provide.⁽¹³⁾
A great many Australians disliked this part of the Constitution, and S.87 was slated for removal at the 1899 Premiers' Conference, yet it remained in the document - more by default than any other reason, as there was no agreement upon an effective alternative.⁽¹⁴⁾ [103] All the Premiers could achieve was a limiting of the operation of the clause to the first ten years after federation, and so George Reid, who had firmly opposed the clause, was forced to gulp it down "with all the ease of an eastern sword swallower".⁽¹⁵⁾

Many campaigned against the finance clauses, because of the fear that they would cripple permanently the finances of the States. Two of the keenest opponents were the Statisticians of New South Wales and Tasmania, T.A. Coghlan and R.M. Johnston. These men, with the support of many others, launched determined attacks upon the Constitution, based largely upon statistical grounds, which predicted dire economic results for the States if the financial clauses as written were accepted.

[104a, 104b] Although much effort was taken over these arguments, and Johnston, in fact, made himself quite ill with all his exertions,⁽¹⁶⁾ these opponents of the financial clauses made little headway, possibly

(13) S.94.

(14) Premiers' Conference, 1899, p. 2; George Huston Reid, My Reminiscences, London, 1917, p. 177.

(15) Tenterfield Star, 7 February 1899.

(16) James Backhouse Walker to his sister Sarah, 22 May 1898, Walker Papers, A, II, 2+3, University of Tasmania Archives.

for three reasons. Firstly, the Federationists made very little effort to meet the statistical arguments - the answer to questions about surpluses, or State debts, or tariffs was invariably, "Trust the Federal Parliament".⁽¹⁷⁾ Although men fumed over this deliberate avoidance of debate,⁽¹⁸⁾ it was a successful tactic, for it meant that the worth of what was being put forward in opposition to the finance clauses was never really established. Rather, the second stumbling block worked in the other direction, due to the excessive zeal of some of the clauses' opponents. Figures used by different men often clashed, and people began to wonder which figures, if any, were being used fairly. Coghlan, for one, was suspected of distorting his figures for political reasons ("figure-faker Coghlan"⁽¹⁹⁾), and many were antagonized by the way in which this civil servant entered the political world in pushing his case.⁽²⁰⁾ If the figures of these men could not be believed, perhaps their general arguments could not be accepted either?⁽²¹⁾ This doubt probably combined with the third difficulty, the general lack of public understanding of the principles involved in federation, a lack of

(17) A.I. Clark to Deakin, 3 June 1901, Deakin Papers, 1540/1073.

(18) See e.g. Tasmanian Mail (Hobart), 6 May 1899, p. 22.

(19) Australian Federalist (Sydney), 30 April 1898.

(20) R.R. Garran to a member of his family (from the Melbourne Session of the 1897-8 Convention), 4 March 1898, quoted in Robert Randolph Garran, Prosper the Commonwealth, Sydney, 1958, p. 121.

(21) For a typical cynical view see the letter from the Queenslander, J.C. Byrnes to S.M.H., 10 May 1899.

knowledge that could only be reinforced by the masses of confusing, conflicting figures that were being hurled about.⁽²²⁾ Even many of the politicians were confused by all they heard, and so many and conflicting were the predictions, that people came to realize the impossibility of forecasting, with any certainty, what would occur after federation.⁽²³⁾ A writer in the Sydney Morning Herald summed up the seeming futility of the debate, when he spoke of

... how little is really known of the effects of the Braddon clauses.⁽²⁴⁾ [105]

One pessimistic view of the financial clauses feared their future rigidity. This view, shared by many in the smaller colonies, held that there should be some way of avoiding the strict constitutional provisions of the finance clauses of the 1897-8 Bill if the need ever arose. The colonies were handing over so many of their assets, while retaining all of their liabilities, that there should be some provision whereby the Commonwealth could come quickly to the aid of a State, without having to abide by the restrictive formula of the redistribution clauses. A motion to this effect was put to the Melbourne session of the Convention, where it was negatived following a hostile debate, only to reappear with slight alterations at the 1899 Premiers' Conference, and

(22) C. Crisp (Proprietor, Bacchus Marsh Express) to Griffith, 6 March 1896, Griffith Papers, ADD. 452, Dixon Library, Sydney.

(23) See e.g. F.W. Holder, "The Sydney Convention of 1897", Review of Reviews, 15 October 1897, p. 442.

(24) See article by "Yes", 12 May 1899.

be accepted as S.96. This Section gave the Commonwealth the power for at least ten years to grant financial assistance to any States "on such terms and conditions as the Parliament thinks fit". Although Quick and Garran mention the fear of an excessive tariff,⁽²⁵⁾ the basic reason for the insertion seems to have been the desire for financial elasticity in the early days of the Commonwealth - thus the guaranteed operation for only the first ten years of federation. A further spur, no doubt, was the need to keep the smaller colonies happy as New South Wales gained most of what it wanted at the 1899 Conference.⁽²⁶⁾ [106] None seem to have realized how important S.96 would become in the long-term,⁽²⁷⁾ rather did some merely see it as a way of discouraging economy by the States.⁽²⁸⁾

If the Commonwealth was to take over the main revenue-raising facility of the States, many believed that as a quid pro quo it should also take over their debts as well. It was believed that for the States to give up the one while retaining the other would only help to cripple them financially. Support for the principle came as early as the Melbourne

(25) P. 869.

(26) Mr Reid, N.S.W.P.D., Session 1899, Vol. XCVII, p. 48.

(27) S.R. Davis, "A Vital Constitutional Compromise", University of Western Australia Annual Law Review, Vol. I, No. 1, December 1948, p. 28; Sir Robert Menzies, Central Power in the Australian Commonwealth: An Examination of the Growth of Commonwealth Power in the Australian Federation, (1967), Melbourne (paperback ed.), 1968, p. 75.

(28) Australasian Insurance and Banking Record, Vol. XXIII, No. 2, 20 February 1899, p. 77.

Conference of 1890,⁽²⁹⁾ and it found expression in Chapter IV, 13 of the Draft Commonwealth Bill of 1891. This gave the Commonwealth the power to take over any State's debts with the consent of all the States. This was thought too restrictive, however, and when a similar clause was inserted in the 1897-8 Draft, the necessity to seek the permission of all States was dropped. The exact terms of the Section were a difficulty as some thought that a compulsory taking over of all debts was necessary, while others held this to be too extreme. Finally, the Parliament was given the option of taking over State debts, "as existing at the establishment of the Commonwealth", if it saw fit to do so. [107]

Many who pushed for such an assumption of State debts by the Commonwealth, also called for a federating of the railways. Like the State debts, the railways were more of a liability than an asset, and the Commonwealth should take them off their hands. In addition, the necessity of having a uniform gauge for defence and trade purposes was cited as a reason for giving the Commonwealth complete powers in this field. The idea failed, however, for the pressure supporting it was not sufficient to overcome the colonial fear of handing over too many colonial powers to the central government.⁽³⁰⁾

The finance and trade sections did not end here, however, for a further problem of some importance to three colonies, at least, now

(29) See e.g. Mr Clark (Tas.), Conference Debates, Melbourne, 1890, p. 101.

(30) For a brief argument in favour of transferring the railways to the Commonwealth, see the letter from the New South Wales Chief Commissioner for Railways to the Premier, G.H. Reid, 16 March 1897, E.M.G. Eddy, Federation, Sydney, 1897, passim.

emerged. There were many in the colonies of New South Wales, Victoria and South Australia, who feared that the paramountcy of the Commonwealth power over trade and navigation might harm the power of the States to control irrigation and water conservation. Because of this, there were pressures - from South Australia in particular - to safeguard the rights of each State to a reasonable use of the waters of the Murray, or any other rivers which they made use of. Some believed that this could best be achieved by placing the control of all rivers in the hands of the Commonwealth,⁽³¹⁾ but this had little chance of passing the jealous colonies, and a clause guaranteeing the rights of the States to a fair use of the waters of rivers, was inserted eventually after a long discussion at the Melbourne session of the 1897-8 Convention.⁽³²⁾ [108]

To ensure that all governments observed the various finance and trade clauses, the 1897-8 Convention produced the Inter-State Commission, based upon a similar type of body created in the U.S.A. in 1887.⁽³³⁾ The clash of State interests in the questions of railway and river trade was so bitter that the Inter-State Commission was a compromise devised to keep the antagonists from each others' throats.⁽³⁴⁾

(31) See e.g. Australasian (Melbourne), 29 January 1898, p. 257.

(32) S.100.

(33) Messrs Barton and Wise (both N.S.W.), Convention Debates, Adelaide, 1897, pp. 1114, 1118. There were also English examples of such a body, see Quick and Garran, p. 896.

(34) F.R. Beasley, "The Commonwealth Constitution: Section 92. Its History in the Federal Conventions", University of Western Australia Annual Law Review, Vol. I, No. 2, December 1949, p. 275.

The Commission, which emerged from the deliberations of the Finance Committee,⁽³⁵⁾ was to possess both administrative and adjudicative powers, and was to have the final word on all matters arising under Chapter IV, with the only appeal from it being to the High Court. It was felt that such a body would be sufficiently powerful to solve all the thorny problems that were sure to arise in this area of the Constitution.⁽³⁶⁾

[109]

(35) Barton, Convention Debates, Adelaide, 1897, p. 451.

(36) R. Lochhead, The Federal Inter-State Commission, Melbourne, n.d., p. 3.

[100] CONCERN ASSOCIATED WITH THE PHRASE "ABSOLUTELY FREE"

(Mr Isaacs (Vic.), Convention Debates, Adelaide, 1897, pp. 1141-1142.)

I am heartily in sympathy with the desire of the hon. member. I want, however, to draw attention to the clause as it stands. It is not only unnecessary, but it is very dangerous. It goes much further than it is intended, and there are some expressions which, taken in connection with other portions of the Bill, are extremely large and alarming.

The clause reads:

So soon as uniform duties of Customs have been imposed trade and intercourse throughout the Commonwealth.

That will include internal trade and intercourse; it is not

Among the States,

as in another portion of the Bill, and the clause proceeds:

Whether by means of internal carriage or ocean navigation shall be absolutely free,

That is free of everything.

Mr. Glynn: What is the objection to that?

Mr. Symon: It is only the assertion of a principle.

Mr. ISAACS: It is a very wide assertion of a principle, and goes further than is intended. Taken literally, it means "free of everything, even of a licence". You cannot charge any licence fee in connection with any trade. In clause 50, sub-clause 1, there is the amplest power of the Commonwealth to regulate trade and commerce with other countries and amongst the several States. That expression "trade and commerce" has been defined by various American decisions as of the widest possible meaning; commerce is traffic and more than traffic - intercourse. It has been held that the words comprehend every species of commercial intercourse....

This particular clause is not in the American Constitution, and the words are very wide indeed. I think the words

Throughout the Commonwealth

should be

Among the States.

We certainly want to secure intercolonial freetrade, and to do all that is necessary to secure it, but to say that trade and intercourse throughout the Commonwealth shall be "absolutely free" I think goes further than we intend.

Mr. Barton: How would that affect bounties?

Mr. ISAACS: Bounties do not prevent trade being free.

Mr. Symon: Surely!

Mr. Barton: If they have a protective effect are they not against free trade?

Mr. ISAACS: They give a preference, they disturb equality, but they do not prevent anything coming in. This provision is really pointed at the border duties. It is intended as an indication of our adhesion to a principle that we shall not have any duties on the border to prevent the free introduction of goods, that is, that we shall have nothing that bars freedom of entry into any State of goods from any other State....What we intend to do is to prevent any State from charging importation duty on goods coming into its territory. If we use the words:

Throughout the Commonwealth,

I feel no shadow of doubt that these words will be construed as much larger than the well-known phrase expression:

Among the States.

We know what we intend, but these provisions are to be subject to judicial interpretation hereafter.

Mr. Kingston: What is the precise thing you fear?

Mr. ISAACS: Trade and intercourse of all kinds and throughout the Commonwealth by internal carriage or ocean navigation is to be absolutely free. Then supposing a carrier were asked to pay a licence fee, and he should say "I am not going to do anything of the kind; I can carry on my trade without paying any duties. It is absolutely free", there would be much force in his contention, and indeed I should very much doubt whether if a licensed victualler were to say "My trade is absolutely free" anything could be done to insist upon his paying a fee....

[101] WESTERN AUSTRALIAN FEARS OF THE FINANCIAL PROVISIONS OF THE
NEW CONSTITUTION

(Report of the Joint Select Committee of the Legislative Council and the Legislative Assembly Appointed to consider The Draft of a Bill to Constitute The Commonwealth of Australia, W.A.P.P., 1899, Vol. III, A.10, p. iv.)

Amendment 3:

Section No.95. - That as Section 95 of the Commonwealth Bill, which provides for an annual reduction by a sliding scale of 20 per cent. of duties of Customs on intercolonial manufactures and products, was intended as a concession to Western Australia with a view of enabling her to enter the Federation as an original State, without due loss; and as it is believed that an annual change of tariff would result in great inconvenience and injury to trade, this Committee is of opinion that this Section should be amended to read as follows:-

"95. Notwithstanding anything in this Constitution the Parliament of the State of Western Australia may, during the first five years after the imposition of uniform duties of Customs, impose duties of Customs on goods passing into that State, and such duties shall be collected by the Commonwealth. Provided that during the aforesaid period of five years all goods imported into the other States of the Commonwealth from Western Australia shall be subject to such duties of Customs as the Parliament of the Commonwealth may provide.

All duties imposed under this Section shall cease at the expiration of the fifth year after the imposition of uniform duties."

The effect of this amendment would be that Western Australia would have the right, for a period of five years after the imposition of uniform duties of Customs, to impose duties of Customs on importations from the other States of the Commonwealth, and from all places beyond the limits of the Commonwealth.

[102] THE FEDERAL SURPLUS

(Mr Deakin (Vic.), Conference Debates, Melbourne, 1890, pp. 88-89.)

....There must from the first be a Federal control over all the ports of Australasia by Federal Customs officers. It will be necessary for the Federal Government to have the means of maintaining itself. It must receive the Customs revenues, and deduct what it is authorized to deduct, paying back to the several colonies the surplus there would be over the small expenditure upon such a form of government....

[103] BRADDON DEFENDS HIS "BLOT"

(Sir Edward Braddon, "The Case for the 'Braddon Clause' in the Federal Bill", Review of Reviews, 15 September 1898, p. 329.)

In writing my justification of the Braddon clause of the Constitution Bill, as finally adopted by the Convention at Melbourne, I labour under the serious disadvantages: (1) Of shortness of time, and (2) of scarcity of material. I shall therefore give merely a brief and rough outline of the reasons that led to the action I took in this respect, and the necessity, as a majority saw, for some such provision as the Braddon clause made.

From the outset it was recognised by members of the Convention, with but few exceptions, that the intercolonial Free Trade that was to come of Federation must be accompanied, both for revenue purposes and for the preservation of local industries by some measure of Protection against the colonies and countries outside the Commonwealth.

It was also felt by the larger number of representatives that there must be in the Constitution some certain guarantee of a return to the several States of their share of the surplus revenue from customs and excise - a guarantee that was not provided in any form until my clause was inserted.

There were, also many representatives, including that capable and cautious Treasurer, Sir Geo. Turner, who urged at every opportunity the necessity for such measures as should insure, at least in the early days of the Commonwealth observance of rigid economy in the Federal administration. But these views did not always prevail, as, for example, when that costly tribunal, the Inter-States Commission was created during the Melbourne Session of the Convention.

As that session drew to a close, there were upon the notice paper three motions, all very much alike in character and motive, whereof mine was one, and the others stood in the names of Messrs. Deakin and Higgins. Mr. Deakin's motion stood before mine, but he was good enough to allow mine to take precedence, and, that being carried, the others were allowed to drop.

That motion became Clause 87 of the Bill with the following effects:-

1. By limiting the Commonwealth expenditure to one-fourth of the net revenue from customs and excise, it insured economy of the federal administration, inasmuch as no federal government would venture to raise such heavy customs and excise duties that one-fourth of the net collections would permit of extravagance.

And here I would specially note that, as Mr. Nash has frankly admitted, it would be impracticable to the Federal Government to raise, by way of income or other direct taxation upon the States, any revenue whatever under the existing order of things, or so long as that order remains.

2. Because of the necessity of that one-fourth of the net customs and excise revenue being sufficient for efficient, although economical, discharge of federal affairs, this clause makes it incumbent upon the Federal Government to raise such a sufficient revenue that three-fourths of it will provide for the reasonable requirements of the several States.

3. Because it gives to the States a guarantee - the only guarantee in the Bill - that there shall be such return of revenue to them.

The principle of this clause was, I believe, urged strongly by Mr. Holder in the Financial Committee of the Convention, but without effect. The clause, as submitted and carried, was approved of by all the Premiers and Treasurers present in the Convention with the exception of Mr. Reid, who at least, preferred it to any other suggestion of like character. And it was carried because of the strong feeling which existed then - and still exists in many quarters - that without such a clause, or such safeguards as this clause provides, Federation would not be acceptable to some of the States represented in the Convention.

[104a] AN EXAMPLE OF COGHLAN'S OPPOSITION

(T.A. Coghlan, Notes on the Financial Aspect of Australian Federation. The Convention Bill and the Federal Tariff, Sydney, 1898, pp. 5-6.)

The Financial Position after Federation.

Tasmania.

The use of the word "insolvent", as applied to the future condition of some of the States, has been characterised as wicked and unpatriotic. But it will be seen that there is no other term that will so fitly describe the condition to which they will be brought under the financial arrangement proposed by the Convention. To understand this best it will be as well to glance at the revenue and expenditure during recent years. Tasmania may first be dealt with. The following figures show her financial condition during the last five years:-

| Year. | Revenue. | Expenditure. | Surplus. | Deficiency. |
|-------|----------|--------------|----------|-------------|
| | £ | £ | £ | £ |
| 1892 | 787,764 | 919,802 | | 132,038 |
| 1893 | 706,972 | 836,417 | | 129,445 |
| 1894 | 696,795 | 789,806 | | 93,011 |
| 1895 | 761,971 | 748,946 | 13,025 | |
| 1896 | 797,976 | 750,244 | 47,732 | |

These figures, though in the nature of "mere arithmetic", make it evident that this province cannot afford to part with much revenue without her financial equilibrium being destroyed. Any one who knows Tasmania will be aware that any change in her taxation system must be in the direction of a remission of duties; that is to say, the province has reached the stage when taxation is oppressive. Of her imports for home consumption 91 per cent. are taxable, the duty levied thereon being equal to 24.2 per cent. ad valorem. The land tax is at the rate of $\frac{1}{2}$ d. in the £ of capital value, and the income tax runs from 8d. in the £ to 1s. where the income is derived from property. If it be supposed that the Tasmanian tariff is imposed by the Federal Parliament - and for the sake of illustration this tariff will serve as well as any other - and that Tasmania gets back her share of the surplus according to her contributions, then the effect of federation will be as follows:- Tasmania will lose the present intercolonial duties, which are estimated to yield a revenue of £38,500. She will be called upon to bear her share of the federal expenditure, £82,100 - that is to say, the loss of revenue and the new charges will amount to £120,600; the colony

will be relieved of present services, involving an outlay of £33,000; so that, financially, under federation the province will be £87,600 worse off than she is at present. In these and following estimates, the postal and telegraph revenue and expenditure have not been considered, the difference between them alone being brought to account. The Treasurer of Tasmania, therefore, will find himself with £87,600 less resources than he has at present, while the calls upon his purse are not in any wise abated. It is idle to suppose that Tasmania could raise £87,600 by additional taxation; any attempt to force more revenue out of the colony would neutralize the advantages of federation great as they undoubtedly are. Nor could there be any appreciable lowering of expenditure, seeing that everything that economy can dictate has already been practised. No one, therefore, can gainsay the fact that unless Tasmania is specially treated, she will become under federation a financial wreck....

[104b] R.M. JOHNSTON ON THE FINANCE CLAUSES

(R.M. Johnston, The Federal Finance Problem. Further Observations, Hobart, 1900, pp. 7-10.)

....The first and most important consideration is, what will be the nature and extent of the disturbance to each of the State revenues caused by the transfer of the most important element of existing State revenues, viz., Customs and Excise, together with a comparatively small proportion of the existing State expenditure? Broadly speaking, the effect will be, that the State expenditure that will not be affected by transfer will exceed the State revenues that remain undisturbed by transfer by about £6,000,000. It follows, if this deficit is to be restored to the several States, that a sum of £6,000,000 must be raised by the Commonwealth by Customs and Excise, in addition to the revenue to be raised by it to discharge its own proper functions. The latter may be set down, roughly, including new and old elements, at about £1,500,000. This, then, must strongly arrest our attention at the outset; for, if this matter be not firmly grasped, the confusion which at present prevails will be perpetuated. Clearly, therefore, if the aggregate deficit in the revenue of the six federating States is to be made good to them, the Commonwealth Treasurer must raise not less than £7,500,000 by means of Federal Customs and Excise duties. Even then, this aggregate will not suffice if the surplus be not distributed to each State in the same proportion that each State's loss contributed, in detail, to form the aggregate State's loss of £6,000,000.

Now, the proportion which each State, by its own loss, contributed to form this aggregate deficit of £6,000,000, is nearly as follows:-

APPROXIMATE Natural Deficit in each State caused by Federal Transfer.

| State. | Deficit. | Per cent. to Total Surplus. | Per cent. to Gross Revenue. |
|----------------------|-----------|--------------------------------|--------------------------------|
| | £ | | |
| New South Wales..... | 1,452,000 | 24.2 | 14.89 |
| Victoria..... | 1,698,000 | 28.3 | 23.02 |
| Queensland..... | 1,122,000 | 18.7 | 28.83 |
| South Australia..... | 528,000 | 8.8 | 20.05 |
| West Australia..... | 840,000 | 14.0 | 33.89 |
| Tasmania..... | 360,000 | 6.0 | 38.14 |
| Six States..... | 6,000,000 | 100.0 | 22.19 |

It is important to observe, at this stage, that the above proportions do not correspond with the known proportions which the estimated population of each State bears to the total population of the six States; nor does it in any way correspond with the proportion which opimeter index, that is, the relative revenue-yielding power of each State, bears to that of all the six States..

The important differences of these several proportions are the cause of all the trouble to the State finances of the several Colonies; for the provisions made for the distribution of what is now generally known as the Federal Surplus contemplates only those proportions which are related to population and to revenue-yielding power, and do not recognise (in distribution) the true proportions relating to the actual loss of each individual State, which loss, in the aggregate, is the only justification, in principle, for raising the extra £6,000,000 by means of Federal Customs and Excise.

The extent and effect of these differences will be seen in the following Tables:-

| State. | Per-centage Proportions. | | |
|-------------------|--------------------------|-------------------------|-------------|
| | Actual Loss by Transfer. | Revenue-yielding Power. | Population. |
| New South Wales.. | 24.2 | 36.92 | 36.06 |
| Victoria..... | 28.3 | 29.07 | 31.49 |
| Queensland..... | 18.7 | 16.50 | 13.35 |
| South Australia.. | 8.8 | 7.87 | 9.85 |
| West Australia... | 14.0 | 6.38 | 4.50 |
| Tasmania..... | 16.0 | 3.26 | 4.75 |
| Six States.. | 100.0 | 100.0 | 100.0 |

To fully appreciate the disastrous results to each State by distributing the £6,000,000 Federal Surplus on any other proportion than that by which the aggregate loss is determined, the proportions related to each State by the several methods are placed side by side, by way of contrast; thus:-

| State. | Federal Surplus distributed on the basis of - | | |
|-------------------|---|-------------------------|-------------|
| | Actual Loss by Transfer. | Revenue-yielding Power. | Population. |
| | £ | £ | £ |
| New South Wales.. | 1,452,000 | 2,215,200 | 2,163,600 |
| Victoria..... | 1,698,000 | 1,744,200 | 1,889,400 |
| Queensland..... | 1,122,000 | 990,000 | 801,000 |
| South Australia.. | 528,000 | 472,200 | 591,000 |
| West Australia... | 840,000 | 382,800 | 270,000 |
| Tasmania..... | 360,000 | 195,600 | 285,000 |
| Six States.. | 6,000,000 | 6,000,000 | 6,000,000 |

It is plainly revealed by the above contrasts that if the Federal Surplus be distributed by either the revenue-yielding or the population methods it will be utterly impossible to prevent financial

disaster to some of the smaller States, together with financial embarrassment to the larger. It means, that by these improper methods of distribution, the larger and financially-stronger States will be embarrassed by the return of a far greater amount of the surplus than their respective losses caused by transfer, while the financially-weaker States will be landed in financial disaster by the great amount of the shortage of Federal Surplus returned, as compared with their estimated actual loss caused by Federal transfer....

[105] PUBLIC UNCERTAINTY OVER THE FINANCE CLAUSES

(James Backhouse Walker to his sister Sarah, 22 May, 1898, Walker Papers, A, II, 2+3, University of Tasmania Archives.)

....A lot of us have been hesitating, but people are beginning to recover from their panic. I shall vote 'yes' [in the Referendum], and so will many other doubters. I must confess it is very much of a leap in the dark, and I don't believe either R.M. J[ohnston] or any one else can prophesy what the effect will be. There is no doubt it will make a lot of changes in trade & business, some good & some bad. But I think Tasmania cannot afford to stand out alone against the United Colonies - with a united hostile tariff against her. N.S.W., and large parties in Vict[oria] and S.A. are equally emphatic with the opponents here, that Federation will damage them severely in pocket & in other respects. But this seems to me an argument in its favour. If all the colonies complain that their neighbours have got better terms than they have themselves, it looks as if substantial justice had been done all round. In N.S.W. 80,000 must vote for it, and it is doubtful if it will go. If the people here will only stir themselves & go to the poll, I think it will be carried. This is far & away the most important thing that has ever come before the electors, a thing which, whichever way it is decided, will have the most far reaching influence on the whole of the colonies, and yet people can't be stirred up to take any really keen interest in it - except those few who dread any change for fear they might individually lose something by it....

[106] PARLIAMENT SHOULD BE ABLE TO COME TO THE FINANCIAL AID OF STATES IF THE NEED ARISES

(Mr Henry (Tas.), Convention Debates, Melbourne, 1898, Vol. I, pp. 1100-1101.)

....It is generally recognised that there is a strong necessity for the Federal Parliament to have power in the event of any state being seriously embarrassed financially to step in and give aid to that state. It is very important that we should have an assurance embedded in this Bill that the Parliament shall have power in any such contingency to afford the necessary aid it is the first five years [after Federation] which will be really the crucial period, in which the states will be passing through a trying financial time. So far as we have gone in these financial proposals, we have tied the hands of the Federal Parliament in a very rigid manner as to the mode of distribution of the surplus. I do not see how the Federal Parliament could possibly employ any portion of the surplus in aid of any particular state since we have tied it down as we have done in this proposal These colonies are entering into a great partnership in this Federation. Seeing that the several states are practically handing over to the federal authority the larger portion of their assets, while they are retaining their entire liabilities, it must necessarily be a somewhat hazardous affair for the several states as to how they will come out under this arrangement. So far as we have gone there is no obligation laid on the Federal Parliament to make good the liabilities of these states with reference to the payment of interest on their debts. As a matter of fact, the entire amount contributed by the several colonies in customs duties for a long period has been absorbed in the payment of interest on their debts. If the several states hand over to the Federal Parliament the entire customs duties, and retain the whole of the interest on their debts and other liabilities, we should have some assurance that the Federal Parliament has at all events the power to aid the states....

[107] THE FEDERAL GOVERNMENT MUST ASSUME RESPONSIBILITY FOR THE PUBLIC DEBT

(Mr Macrossan (Qld.), Conference Debates, Melbourne, 1890, pp. 186-187.)

....I consider that the dealing with the public debt and the public property ought to belong, exclusively, to our Federal Parliament, when we have the happiness to establish it. The subject was slightly touched upon by Mr McMillan this morning. That honorable gentleman

alluded to the public debt, and he spoke of the probability of a Federal Government being able to borrow money at a lower rate of interest than the several governments of Australasia are at present able to borrow. But we can go further than that. I think that a Federal Executive would not only be able to borrow at a much lower rate of interest than are the several governments at present, but that they would be able to convert existing debts to a much lower rate of interest than the several governments are at present paying. By this means we would probably save a million or two millions of money. I look upon the unification of the debt as a sine qua non to the establishment of a Federal Government and Federal Executive. This brings me to a few remarks I have to make on the observations of Mr Bird, one of the representatives of Tasmania. That honorable gentleman seemed to be under the impression that if a Federal Customs Union were established, and if the Customs barriers were abolished between the different colonies, the colonies would suffer through being obliged to raise money to make up for the loss. I, myself, do not like the expression "Federal Customs Union", and I would rather speak of it as the giving of power to the Federal Government for raising money by any mode or system of taxation. Well, the honorable gentleman overlooked the fact that if a Federal Government has the power given to it of raising money by any mode or system of taxation, it must, of necessity, take over the public debt. Therefore, the different colonies will be relieved from the interest they now pay upon their public debts, and ... that will be full compensation for the abolition of the Customs barriers between the different colonies....

[108] SOUTH AUSTRALIAN FEARS OVER THE FUTURE OF THE WATERS OF THE MURRAY

(Mr Glynn (S.A.), Convention Debates, Melbourne, 1898, Vol. II, pp. 48-49.)

....What would be the effect, independent of navigation, on South Australia of the carrying out of the water storage and irrigation schemes contemplated by New South Wales and Victoria? The mouth of the Murray has been mentioned. There are two or three lakes near the mouth of the Murray - the Alexandrina and the Albert being the two principal ones - on the waters of which about one-third of a million of sheep depend. When the river goes down the waters of these lakes become brackish. The result of the diversion of water from the Murray will be to keep the mouth of that river at a very low level, and, consequently, it will be injurious to the interests of the owners of those sheep. In order to prevent the waters of those lakes becoming brackish, South Australia proposed to carry out a system of weirs,

which cannot be done if the schemes of New South Wales and Victoria are carried out. The upshot of the matter is that we must have federal action, or we cannot maintain existing rights in regard to the waters of those lakes in South Australia....

[109] THE ROLE TO BE PLAYED BY THE INTER-STATE COMMISSION

(Armidale Chronicle, 28 May 1898.)

...the [Inter-State] Commission is to be an impartial, judicial, and administrative tribunal, removed altogether from political control. Its members will hold office for seven years, during which time their independence is secured in the same way as that of a Supreme Court Judge; they will be men of high commercial standing, filling a most honourable office. To suppose that they would be swayed by the interests of this or that colony would be like imputing partiality to a Supreme Court Judge who might be trying a case between a Victorian and a New South Welshman. The decisions of the Inter-State Commission may be trusted to be as free from political bias as those of the High Court itself - by which body, indeed, they will be subject to review on all matters of law.

Moreover, the powers of the Commission, though certainly large, are by no means so vague and unlimited as the critics assert. Its powers will be confined to the "execution and maintenance of the provisions of the Constitution relating to trade and commerce, and of laws made thereunder" [sic.]. In other words, it will only be able to carry out the law. It is merely a judicial and administrative body, which cannot step beyond the sphere of adjudication and administration; it has no power to make laws, and even in its task of interpreting laws it is subject to the supervision of the High Court. The scope of the Commission's activity, therefore, will be confined to carrying out the law as to foreign and inter State Commerce; but even within these limits it will have no powers which are not expressly given to it by the Federal Parliament. That is to say, its powers of adjudication and administration are only to be such as the Parliament deems necessary. The Commission, therefore, can only have the powers given to it by the Parliament, and the Parliament cannot exceed the powers given it by the Constitution; so that although the independence of the Members is perfectly secured, their powers are effectively limited....

VIII - THE STATES

Although the question of State Rights was a continual problem for the framers of the Australian Constitution, when the protection of the legal position of the States was considered at the Conventions, it occupied surprisingly little time and caused little bother to the delegates. The fear that some held (or appeared to hold) of a conspiracy to take away the liberties of the States, was directed primarily at such questions as the position of the States' House and its powers over Money Bills.⁽¹⁾ The principle whereby the powers and privileges of the States were to be safeguarded rigidly in a federation, was established, without dissent, in the resolutions submitted by Parkes at the 1891 Convention, and it was never overturned. It was incorporated in the draft presented to the Convention by the Constitutional Committee, and the appropriate clauses were adopted with little alteration. [110]

Although little was said by the delegates upon the matter, the main sources of inspiration for this part of the Constitution appear to have been the U.S. and Canadian systems. A comparison of the Australian clauses with the North American Constitutions shows a marked similarity between them. Chapter V, 1 of the 1891 Draft, which guaranteed the continuance of power of the Parliaments of the States, was very similar to the Tenth Amendment of the U.S. Constitution, while Chapter V, 2, guaranteeing the validity of existing State laws was similar to S.129 of

(1) See above Chapter B IV.

the British North America Act, 1867. Chapter V, 3 dealt with the inconsistency of State and Commonwealth laws, stating that if an inconsistency occurred then the State law, to the extent of the inconsistency, should be invalid. This was a basic principle of the U.S. Constitution as expressed in Article VI, and was soon to be confirmed by the U.S. Supreme Court in Gulf, Colorado and Santa Fe Railway Company v. Hefley and Lewis (1894).⁽²⁾ Although few wanted the States to be stripped completely of their powers, there was a general desire to avoid, whenever possible, a clash between the States and the national government. It was impossible to prevent entirely a conflict of jurisdiction,⁽³⁾ but when there was, the Federal law should predominate. [111] Finally, Chapter V, 6, dealing with the saving of State Constitutions, had some similarity with S.64 of the British North America Act, 1867.⁽⁴⁾

As things turned out, the provisions of the Draft Bill of 1891 were regarded as being quite adequate for the Chapter on the States, and at the 1897-8 Convention these four clauses were adopted in the first instance almost verbatim. Although they were amended during the

(2) 158 U.S. 98.

(3) Sir Richard Baker, A Manual of Reference to Authorities for the use of the Members of The National Australasian Convention which will assemble at Sydney on March 2, 1891, for the purpose of Drafting a Constitution for the Dominion of Australia, Adelaide, 1891, pp. 85-86.

(4) F.M. Neasey, "Andrew Inglis Clark Senior and Australian Federation", unpublished article given to me by the author, Appendix, p. 3.

Convention, there was little significant change, so that Chapter V, 1, 2, 3 and 6 of the 1891 Bill, can be traced clearly through to Ss.107, 108, 109 and 106 of the final Constitution.

As we have seen, the failure of each Australian colony to recognize fully the laws, Acts and court judgments of fellow colonies, was a sore point with many Australians,⁽⁵⁾ and there was a determined effort to solve this problem in the Conventions. Here again, the U.S. example was important. S.117, for example, which guaranteed the rights of a citizen of one State if he moved to another, was derived from U.S. Article IV, 1 and the Fourteenth Amendment.⁽⁶⁾ It entered the 1891 Draft as Chapter V, 17, and was essentially the same in the final document. Similarly, S.118, which guaranteed the recognition of the laws, public Acts and records, and judicial proceedings of any State throughout the nation, was derived from U.S. Article IV, 1,⁽⁷⁾ and was little different from Chapter V, 18 of the 1891 Draft. S.51 (xxiv) and S.51 (xxv), which gave the Commonwealth power to make laws with regard to the guaranteeing of State laws and judgments, came respectively from the Federal Council Act, 1885 (d), (e) and (f),⁽⁸⁾ and U.S. Article IV,

(5) See above Chapter A VI.

(6) Quick and Garran, p. 953.

(7) Ibid, p. 961.

(8) Ibid, pp. 613-614.

1. (9) Both were very similar to two sub-sections in the 1891 Draft. (10)

When it came to provisions for new States also, the Australian Founding Fathers had much to thank their U.S. counterparts for, and the pattern of Chapter V was followed in Chapter VI, which dealt with new States. Ss.121, 122 and 124 were all very similar to parts of Article IV, 3 of the U.S. Constitution, (11) and with S.123, all of these Sections were little different from similar clauses in the 1891 Draft. (12)

An interesting point of controversy which stirred briefly the 1891 Convention, but was dropped completely six years later, was the part of the earlier Constitution referring to the executive power of the State Governors. The 1891 Draft had three clauses which caused some concern. The first (13) directed that all communications from the Governor of a State to the Queen had to be made through the Governor-General. The second (14) directed that there should be a Governor in each State, while the third (15) gave the Parliament of a State the power to control the manner and conditions of the appointment of the Governor of that State.

(9) Ibid, p. 620.

(10) Chapter I, 52 (22) and (23).

(11) Quick and Garran, pp. 967, 971 and 976.

(12) Thus Chapter VI, 2-5 became Ss.121-124.

(13) Chapter V, 5.

(14) Chapter V, 7.

(15) Chapter V, 8.

The debate upon all three clauses was a spirited and, at times, a bitter one, and the basis of the attack was the old question of State Rights. The States were going to be stripped of enough of their powers as it was, and there was no call for the Convention to interfere with the States more than was absolutely necessary.⁽¹⁶⁾ In fact, it was averred that the Convention had no mandate to restrict the States in this way.⁽¹⁷⁾ The defenders of the three clauses spoke of the importance of the nation being able to speak with one voice rather than seven if Chapter V, 5 was passed,⁽¹⁸⁾ and they referred to the freedom that Chapter V, 8 gave to the States in being able to change the method of selection of their Governor whenever they chose.⁽¹⁹⁾ They did not answer adequately the charge that these provisions were unnecessary in the Federal Constitution, and the issue was left uneasily placed after two close votes carried the day for the insertion of the clauses.⁽²⁰⁾

(16) Mr Gillies (Vic.), Convention Debates, Sydney, 1891, p. 850; Mr Baker (S.A.), ibid, p. 871 (although Baker supported Chapter V, 5; see pp. 852-853.)

(17) Mr Macdonald-Paterson (Qld.), ibid, pp. 873-874.

(18) Sir Samuel Griffith (Qld.), ibid, pp. 850-851.

(19) Mr Playford (S.A.), ibid, pp. 868-869; Mr Clark (Tas.), pp. 870-871. Mr Douglas (Tas.), spoke of Chapter V, 8, and the opening it gave for elected Governors, as a "fad" of Clark's that "must be well known to many hon. members of the Convention", ibid, p. 871. It seems likely that the clause was Clark's, as his Draft Constitution which he circulated members with before the Convention met, contained a clause providing for the election of State Governors for a six year term, see John Reynolds, "A.I. Clark's American Sympathies and his Influence on Australian Federation", Australian Law Journal, Vol. 32, No. 3, 21 July 1958, p. 73, S.67.

(20) The vote on Chapter V, 5 was 22-16, there was no vote on Chapter V, 7, and a vote of 20-19 carried Chapter V, 8, see Convention Debates, Sydney, 1891, pp. 864, 866 and 877.

By the 1897-8 Convention the numbers had swung the other way, and the clauses were omitted because they were an uncalled for and unnecessary interference with State Constitutions.⁽²¹⁾ [112]

(21) See e.g. Messrs Symon (S.A.) and Dobson (Tas.), Convention Debates, Adelaide, 1897, pp. 999-1000.

[110] THE SAVING OF THE RIGHTS OF THE STATES

(Goulburn Herald, 16 March 1891.)

....The first resolution which was agreed to [at the 1891 Convention] after a brief debate, declares 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 parliament". In this we have the foundation upon which the federal structure may hereafter be raised; and it will be recognised that the principle it involves is strictly voluntary. The federal government is to derive its being from the states themselves, and owe its powers and privileges to their free will. Upon this basis the federal constitution will claim the loyalty of every state which is a party to it. It is well to bear this fundamental principle in mind, because fears have been expressed here and there that the promoters of federation had in view the establishment of a system which would interfere unduly with the rights and liberties of individual states. But the very foundation of the scheme as so far developed is entirely opposed to this supposition. Nothing is to be given up by the existing colonies except what may be agreed upon as necessary and incidental to the power and authority of the federal government.

Of course there is room for diversity of opinion as to what is necessary and incidental. But bearing in mind that the assent of the people and the legislatures of the respective states has to be obtained before any system of federal government can take effect, we may be sure that nothing which is not plainly necessary and incidental will be given up. Some sacrifices, as the President [i.e. Parkes] in his reply on the preliminary debate pointed out, will have to be made by all the states; but we may trust to the strong feeling of individuality which exists on the part of the colonies to prevent these sacrifices or surrenders being in excess of the actual necessities of the case; and in view of this feeling it will not be wise on the part of any of the delegates to strive for any thing more....

[111] "THERE CANNOT BE TWO LAWS ... ON THE SAME SUBJECT"

(Mr Reid (N.S.W.), Convention Debates, Adelaide, 1897, pp. 271-272.)

....As I have said with reference to the powers of the Federation, subject to a few minor alterations, I entirely accept the scope of the draft Bill of 1891. There is a possibility of confusion in the construction of the clauses which confer these powers and the clauses which refer to State legislation on the subjects of the same kind, which must be regretted. [Chapter I] Clause 52 of the Bill does not give exclusive power on the long list of subjects therein mentioned to the Commonwealth. It gives concurrent authority to legislate; the States Chapter contains the power for State legislation on these subjects until other provision is made [Chapter V, Clause 2]; and there is another clause [Chapter V, Clause 3] which provides that when the law of a State and the law of the Commonwealth conflict the law of the Commonwealth shall prevail. Now, we must have a Bill so drawn, that that illimitable field of ingenuity for the legal profession which might arise in the federal courts on questions as to whether State laws and federal laws were inconsistent, is avoided. We must make it clear that the moment the Federal Parliament legislates on one of these points enumerated in clause 52, that instant the whole State law on the subject is dead. There cannot be two laws, one Federal and one State, on the same subject....

[112] OPPOSITION TO UNNECESSARY LIMITATIONS UPON THE STATES

(Mr Gillies (Vic.), speaking upon proposed clause, Chapter V, 5, Convention Debates, Sydney, 1891, p. 850.)

I propose to ask the Committee [of the whole Convention] to omit this clause. I do not desire to make many observations. I believe that we were not called upon by our respective colonies, who gave us authority to come here, to interfere in the slightest degree whatever with the governments of the states. In addition to that it is not necessary.... I have contended constantly that where a provision is not necessary to the creation of the constitution it ought not to be inserted. It is far better to err on the safe side.... in my judgment it is not necessary that a clause of this kind should be inserted,

because unquestionably it interferes with the present position of state governors, and I consider that ought not to be done. We ought not to create anything likely to beget antagonism to any portion of this bill. We shall have trouble enough without that; and I confidently believe that everything of this kind that we insert in the bill will beget opposition elsewhere, where we do not desire opposition.

IX - SEAT OF GOVERNMENT

Many of the final details of the Australian Constitution were arrived at by a process of compromise. There were a few clauses, however, which were forced into the document by the determined advocacy of a particular group. Such a clause was the final S.125 which outlined the relevant details concerning the establishment of the seat of the Commonwealth government. The division over this question was essentially one between New South Wales and the rest of the colonies. Gradually through the nineties New South Welshmen came to the view that the seat of government should either be Sydney or another New South Wales town, or at least it should be in a territory formed within the borders of that colony. The opposing view held that this was a question that was best left for the Commonwealth Parliament to decide, and that the Constitution should not tie the hands of the new Parliament.⁽¹⁾ For most of the period 1891-1899 it appeared that the latter view would win the day.

(1) The existence of these views did not stop many small towns and/or their supporters from pushing the merits of their regions. Albury (Echo (Sydney), 22 January, 16 March 1891), Echuca (S.M.H., 21 February 1891), Parramatta (S.M.H., 28 March 1891), Goulburn (Goulburn Herald, 3 and 5 February 1897), Ballarat (Ballarat Courier, 27 September 1897), were just a few of those who expressed hopes. Such hopes were well parodied by a writer to the press who solemnly suggested Alice Springs. The main benefit, he suggested, was that all State capitals would be linked with the Federal Capital by rail, and the resultant railway construction would help ease unemployment, S.M.H., 18 March 1891.

At the 1891 Convention, George Dibbs of New South Wales moved that the seat of government should be "Sydney, New South Wales", but he was soundly defeated by 26 votes to 4, with two of his supporters being New Zealanders. No other New South Welshman supported him.⁽²⁾ [113] Chapter VII, 1 of the Draft Bill therefore decreed that the seat of government should "be determined by the [Commonwealth] parliament", a provision which was met with some disapproval in New South Wales.⁽³⁾ In the draft of 1897 the 1891 clause was adopted verbatim at the Adelaide session,⁽⁴⁾ and this remained unchanged until the Melbourne session of 1898. At this session the particular claim for Sydney was effectively defeated. A proposed amendment from the Legislative Council of New South Wales making Sydney the capital had already been defeated,⁽⁵⁾ when the Victorian Premier, Sir George Turner, later successfully moved an amendment which created a federal territory, thus effectively excluding the New South Wales' capital.⁽⁶⁾ A New South Wales delegate, William Lyne, wished to have such a territory within the boundaries of his colony, and after being brow-beaten into withdrawing an earlier

(2) Convention Debates, Sydney, 1891, p. 900.

(3) See e.g. speeches by Messrs. Reid and Slattery, N.S.W.P.D., Session 1891, Vol. LI, pp. 51, 113.

(4) S. 118.

(5) Convention Debates, Melbourne, 1898, Vol. I, pp. 700-703.

(6) Convention Debates, Melbourne, 1898, Vol. II, pp. 1802-1816 passim.

amendment,⁽⁷⁾ he moved to that effect on 3 March 1898. Once again such an amendment was defeated soundly, this time by a vote of 33-5, but an analysis of the voting showed the existence of a warning for the future. All five minority votes were New South Welshmen, there were no New South Welshmen voting against Lyne, and of the five who did not vote, at least two, O'Connor and Wise, were present in the chamber a few minutes before the vote was taken. For these men it was perhaps safer to abstain by leaving the chamber for the division rather than to appear in the "No" column.⁽⁸⁾ Apart from Turner's amendment, then, the clause remained much the same as in 1891, as most still favoured leaving the final choice of a site to the Commonwealth Parliament. [114]

After the failure of the 1897-8 Bill to receive the necessary votes for acceptance in New South Wales, the local legislature reopened the question of the site. The Legislative Assembly suggested an amendment placing the federal territory in New South Wales,⁽⁹⁾ while the Legislative Council still wanted to see Sydney named the capital city.⁽¹⁰⁾ The main

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- (7) Convention Debates, Melbourne, 1898, Vol. II, pp. 703-711 passim. In an effort to ridicule Lyne, Sir Edward Braddon moved an amendment for the capital to be "some suitable place in Tasmania", while other amendments were moved in favour of St. Kilda, Mt. Gambier and Adelaide, ibid, pp. 702-703.
- (8) For the votes cast, see Convention Debates, Melbourne, 1898, Vol. II, p. 1805. For the comment upon O'Connor and Wise, see pp. 1802 and 1805. The New South Wales delegates who did not vote were Barton, O'Connor, Wise, Abbott and McMillan.
- (9) N.S.W.P.D., Session 1898, Vol. XCIV, p. 1399.
- (10) Ibid, Session 1898, Vol. XCV, p. 2793.

fear was that a Commonwealth Parliament, with New South Wales outnumbered, would choose another State for the site. New South Wales should insist therefore on the area being named before the first Parliament met. If a decision was made before Federation, then New South Wales would have a much better chance of success:

Unless a decision is arrived at before the Constitution is fixed that the capital shall be somewhere in the mother colony, there is no shadow of a show of New South Wales getting it....(11)

Armed with this legislative support plus the fact that the question had been an important one in the election of July 1898,⁽¹²⁾ the New South Wales Premier, Reid, attended the 1899 Premiers' Conference fully determined to protect what he saw as the rights of New South Wales. [115] He was quite successful in this, having the federal territory placed within New South Wales at a distance "not less than one hundred miles" from Sydney. A necessary concession was made to the rivals south of the Murray, with the addition at the end of the clause of the words:

The Parliament shall sit at Melbourne until it meet at the seat of Government.(13) [116]

(11) Interview with Lyne, Daily Telegraph (Sydney), 14 March 1898.

(12) See e.g. speeches by Messrs. Hawthorne and B.B. O'Connor, S.M.H., 12 July 1898.

(13) Reid apparently found it impossible to refuse this concession; see S.M.H., 3 February 1899 and N.S.W.P.D., First Session 1899, Vol. XCVII, pp. 37-38.

[113] THE CLAIMS OF SYDNEY

(Mr Dibbs (N.S.W.), Convention Debates, Sydney, 1891, p. 899.)

I move:

That the words "determined by the parliament" be omitted with a view to the insertion in their place of the words "Sydney, New South Wales."

I am perfectly satisfied that this Convention has no right to close its proceedings without giving an expression of opinion as to where the capital of the future commonwealth should be. I should fail in my duty as a representative of New South Wales if I did not ask the Convention to unanimously record their vote in favour of the amendment. Hon. members made very light of the matter when they heard this notice of motion being given, and the hon. member, Mr. Munro, made the remark "We want it in Melbourne," and another hon. member said, "We want it in South Australia," and so on. There is one place alone which the people of New South Wales will accept as the capital. If they are to give up all their privileges and a large portion of their liberties, which this bill will take from them, they must, at least, have some regard to their antiquity, and their natural advantages, to the fact of their being centrally situated, and, above all, to the fact that New South Wales is practically the mother of all the other colonies. I will divide the Convention on the matter. Those members who represent New South Wales will be traitors to their colony, and the representatives of the other colonies who vote against me will be ungrateful to the colony from which they sprang, and will be neglecting the interests of the whole of the commonwealth, if they do not give me the full measure of their support on this motion.

[114] THE DECISION SHOULD BE LEFT TO THE FEDERAL PARLIAMENT

(Sir John Forrest (W.A.), Convention Debates, Melbourne, 1898, Vol. I, p. 708.)

I, too, would like the honorable member [Mr Lyne] to withdraw the amendment. If he persists in forcing it to a division I shall vote against it. At the same time, I should not like it to be thought that I am opposed to the claims of New South Wales. The matter, however, is one which in my opinion should be left to the Federal Parliament. No doubt a great many honorable members held strong views in regard to the

position which the federal capital should occupy, but since 1891 they have always been content to suppress them and to leave the matter to the Federal Parliament. We have met four times to consider the drafting of the Constitution, but until now no motion of this kind has been made.

Mr.Lyne. - Yes a similar motion was moved at the Convention of 1891 [by Mr Dibbs].

Sir JOHN FORREST. - Well, it was not much listened to, and I think that we should leave the matter to the Federal Parliament. Everyone knows that I have no feeling against the great colony of New South Wales. On the contrary, I should like to help those who are representing that colony as much as possible, because I recognise that they have an arduous task before them. At the same time, we must not forget that we are here specially at the invitation of New South Wales, and it ill becomes that colony to urge to the furthest extent a claim of this kind. I think she should be content, seeing she will have the largest representation there, to leave the matter to the Federal Parliament. If the amendment is forced to a division, I shall vote against it; but I wish it to be distinctly understood that my vote will in no way indicate my view as to what should be the position of the federal capital.

[115] REID'S VIEW REGARDING THE SITE OF THE CAPITAL

(Mr Reid, N.S.W.P.D., Session 1898, Vol. XCIV, pp. 1337-1340.)

Mr.REID (Sydney - King), Colonial Treasurer, rose to move:

The capital of the commonwealth, concerning which this House desires to submit for the consideration of the other colonies, that clause 124 should be amended, and provision made in the bill for the establishment of the federal capital in such place within the boundaries of New South Wales as the federal parliament may determine.

He said: In dealing with this matter I do not want to go into it at any great length, because I think it was spoken to on innumerable occasions during the late general election, and at other times, but I should just like to summarise the points upon which I think that we, without any imputation of selfishness, can base the claim for the position expressed in the proposition before the Committee. I do not at all dwell on the fact that New South Wales happens to be the oldest of the colonies, the colony from which several of the other colonies were detached. I do not

place any importance on that, I simply refer to it in passing, but I would like to point out that there is a more important factor in the matter, that New South Wales is the most populous colony of the group, that under her peculiar position she will be called upon to make greater sacrifices, what I should call personal sacrifices, in the cause of federation than any other colony of the group; and although this is ridiculed in some quarters I should like to say that it is a statement which has solid grounds to rest upon. In the first place, as I have said, the situation of New South Wales is such that in joining Australian federation she will practically give up, in a commercial sense, large tracts of her present territory, a large tract of her present territory on the Victorian border, a large tract of her present territory on her South Australian border, and if, as we hope, Queensland is included in the federation, she will practically give up a large tract of territory, in a commercial sense only, to our neighbours on the north. I do not put this forward as a thing to be regretted. I consider that the enterprise of federation legitimately takes with it this incident, and it is not at all that I wish to put it forward as a subject of regret. I simply put it forward as a fact which bears out the statement that I make, that we shall be called upon to make sacrifices which the other colonies will not be called upon to make. For instance, what sacrifice of territory, in a commercial sense, will Victoria be called upon to make under federation? What sacrifice of territory will South Australia be called upon to make under this federation, or Queensland, or Western Australia? The circumstances of New South Wales are absolutely different in this respect from the circumstances of the other colonies. Then, again, there is a circumstance which exists in the case of New South Wales which does not exist in the case of any of the other colonies - again not a subject for regret or grudge, but simply a subject for the consideration of the other colonies in support of the claim which we think we are entitled to make in reference to the capital of the federation - that is, the fact that in this country we have a river system which will be of the utmost value to the neighbouring colonies of South Australia and Victoria as a highway of national commerce. Speaking, for instance, of the Darling, which runs through New South Wales for, I think, about 1,200 or 1,300 miles, and speaking of the Murrumbidgee, which runs across the colony in another direction, we have at present absolute control of the Darling. We at present have absolute control of the Murrumbidgee, and so far as the Imperial laws with reference to the boundaries between New South Wales and Victoria are concerned, control in respect to the Murray. The whole of the water-course of the Murray belongs to New South Wales, so far as Imperial statute could give us possession. Now, these facts are facts which you find no parallel for in connection with any of the other colonies. As I have said, at present we have an absolute power if we choose, a power of levying tolls on these rivers which would seriously embarrass the commercial operations and interests of the two colonies I have mentioned. Again, I say that I do not mention this in an unfriendly spirit, I simply mention it as a fact, and I also proceed to mention another fact, that New South Wales having the absolute power of practically blocking intercolonial trade on the Darling and on the Murrumbidgee, has never done so, has never made any attempt to do

so, except a proposal on the part of the late Government, which suggested, in a ways and means policy - I think it was in 1893 - that a revenue of £75,000 could be gained for this colony if tolls were placed on the Darling and Murrumbidgee. This £75,000 was to be derived partly from the tolls themselves, and partly from increased revenue which would come to our railways by blocking the intercolonial commerce on those rivers. With that exception - and that died a natural death very soon; fortunately Mr. Dickens was in a position to kill that project - this colony has shown a most neighbourly spirit in connection with these great waterways. Although there is no doubt they compete to a serious extent with our railway system, we nevertheless spend our own moneys in snagging them, so as to promote rather than to destroy the commerce of the other colonies, and, of course, of our own people, because commerce has always two sides, although some of my hon. friends do not always recognise that principle. We have, as I have said, so far from endeavouring to interfere with the commerce of our sister colonies, endeavoured rather to promote it - I admit to the interests of our own people; but, again, I say it is a fact, and it is a fact which ought to be taken into consideration. No other colony is called upon to give up rights such as those we possess over those rivers. Then there is another sacrifice which we make, and cheerfully make, in the interests of Australian federation. Owing to our superior population, and the wealth derived from our natural resources, we are the largest guarantors of the integrity of the territory of the future commonwealth. Every colony in the union will enter into an engagement to protect every inch of the colonies in the union against foreign aggression to the last shilling that colony possesses. All the colonies do the same. To the extent of their resources they will be called upon, if necessary, to make just as great sacrifices as we will per head. But still the fact remains that the wealth of this colony, being greater, the sacrifice in the case of New South Wales would be greater than in the case of the other colonies. It would not become a matter per head, probably; it might in some future contingency acquire such a magnitude that that principle could not operate at all. We cheerfully undertake that responsibility in going into federal union. In fact, I think without federal union we cheerfully recognise the obligation to go to the assistance of our sister colonies to the extent of any power we possess to help them in such an event. Still, as I say, this is a fact which should not be ignored. Then the colonies will make another very substantial sacrifice for federal union. Owing to the financial circumstances of the different colonies - and this is admitted universally - the entrance into federal union under any scheme which has yet been approved, will involve New South Wales in a system of taxation twice as heavy as our internal requirements demand.

Mr. Hayes: Through the Custom-house only!

Mr. REID: I do not think money comes from the clouds. The money has to be passed through a mint, and some one has to hand it over, and that some one happens to be in New South Wales. Let us remember, however, that we get that money back to spend for the public

benefit. Still the fact remains that, whereas under the financial system of the new commonwealth the tax-paying incidents of the other colonies will never be changes, probably the tax-paying incidents to this colony will be revolutionised to this extent: that, whereas a customs revenue of £1,500,000 will be sufficient as we stand, a customs revenue of £3,000,000 must be raised under federation - not that we want it, but we cannot divide the revenue of the different colonies and raise funds according to the necessities of each. The federal system of finance must be such that the necessities of each colony in the union are honorably recognised. Then there is another sacrifice - although it is a terrible sacrifice for any man, like myself, who believes in the freest interchange with the rest of the world, to make it is no sacrifice at all, perhaps, to others who have different opinions, but for men who think as I do it is a great sacrifice to make for federation - still I am prepared to make it. I confess that my fiscal faith was so strong in me for many years that it, more or less, consciously or unconsciously, kept me back from welcoming the union as cheerfully as I certainly should have done if my principles in that respect had been of an opposite type. I have, however, got far enough on now to look upon the federal principle as of greater importance than the fiscal principle. Putting our fiscal theories aside, it is a fact to be taken into consideration that our people will, under a federal financial system, be called upon to pay taxes of a much larger amount than they do at present, although, as I say, we get the money back again, and can expend it in various useful ways. Nevertheless, it is still an inconvenience to the taxpayer. I put that forward again, not as a thing which will cause us to shrink from federal union, but as a fact which the other colonies might fairly take into their consideration on this question of the capital. Then I have to point out a reason why we have to take up the position - and this is a point to which I should like to invite particular attention, because it might well be said to me, "Well, Mr. Reid, surely you can trust the other colonies to take all these matters into consideration?" Now there is one matter which I have to put forward as my justification for taking up this attitude, which I admit is one that I would like not to take up. If the federation included - as it does not at present - the great northern colony, the position would be considerably different, the stress of this matter would not be so great. But, as hon. members must see and honestly admit, as I do, that, taking the geographical area described by the five colonies now in this federal enterprise, no one can deny that at present, and within the next two or three years, and more, the true convenient centre to that geographical area is not in New South Wales. But then, that is the thing which makes this matter one which we have to take seriously into account beforehand; because, taking the five colonies instead of the six, we happen to be in one extremity of a vast semicircle, and upon no ground of convenience of to-day, of the present time, can we put forward our claim to the capital. We can point to the other grounds I have mentioned, and we can point to a still more important ground than all of these. It is this: that, although that can be admitted, and must be admitted with Queensland out of the federal boundaries, it is equally true, and must be admitted, that the present centre of convenience in the area I have described

would be absolutely false and misplaced as a test of the ultimate centre of the Australian colonies. My reason for saying that is a plain one. Put in your mind a conjecture as to the progress of the western seaboard of this great continent during the next fifty years, and then conjecture the progress of the eastern seaboard of this great continent within the same time, with Queensland, I admit, included, and no frank judgment can deny that, whilst the present convenient centre may be somewhere away from New South Wales, such are the vast natural resources of the eastern seaboard for the energies of mankind, and the development of a national condition, that it is one of the certainties of the future of this Australian continent that the centre will not be on the western or the southern, but on the eastern seaboard. So that I strengthen my position, in addition to those matters to which I have referred, which affect New South Wales alone by, I believe, the sound statement that in the time to come the fixture of the capital within the boundaries of New South Wales will be a step absolutely right and just; that we are not asking by any artificial demand to twist the conditions of Australian development and to fight against nature. On the contrary, the whole of the natural resources which under human energy will make a people great will and must fight for a colony with the resources which we possess. So that having pointed out the circumstances peculiar to New South Wales which make me believe that it is an absolutely fair thing that this colony should have the capital, I proceed to strengthen my position by the statement that it is not only fair to New South Wales, but it will be a beneficial arrangement for the future national commonwealth of Australia in any possible development of the future. I admit at once that if we were to go further and endeavour ourselves to decide what particular spot in this great colony bordering three other colonies the capital of the commonwealth should be fixed, we should absolutely cease to have any justification. I am quite prepared to leave to the wisdom of the federal parliament the arrangement as to the particular spot in this great colony where the capital should be fixed. I am prepared absolutely to leave that to the federal parliament. It is only the pressure of the circumstances which I have mentioned that enabled me to bring up this matter at all. I say frankly that but for the exceptional - in a most marked degree exceptional - circumstances which surround this colony in connection with the project of federation, I admit I would have no justification in bringing up this matter. But I think I have a justification for doing it for the reasons I have mentioned. I discard altogether as a reason the fact that such a settlement would make the project more likely to be successful in New South Wales than otherwise. That is no ground with which to address the other colonies, it may be a matter for the other colonies to consider if they choose, but it is entirely a matter which we should not press on the other colonies.

Mr. Piddington: It was the main objection to the bill in this colony!

Mr. REID: No doubt one of the main objections rested on that ground, and it was based on the reasonable feeling that without any

choice of our own, but from the course of natural circumstances and political conditions, this union does cast upon us in a larger degree than on the other colonies a change in our conditions. I would not say for the worse at all. I admit that in the ultimate result of any form of union, the probability is that New South Wales will hold her own. But I do feel penetrated by a sense that the general feeling in New South Wales is based upon a just and reasonable foundation, not as a prejudice, or a weakness, or a mere caprice; but that it has a solid ground of justification, and I feel justified therefore in including this matter among the subjects to be discussed between the colonies. As hon. members will see, it was the duty of the Government not to omit any of the serious conditions of this problem. We should not be doing our duty to this House, or to the prospects of Australian federation, if we did not look the difficulties of the question fairly in the face, because a policy of suppressing difficulties may be an easy one for men in responsible positions, but it intensifies their difficulties when they come before the people of the country to convince them that the arrangements made for them are satisfactory. I admit that my sincerity has become a subject for favourite disquisition in a certain section of the press and amongst a certain section of public men. I present them with all the amusement or capital which they may make out of aspersions against the sincerity of my motives. I feel confident that in the days to come my conduct will be such as to show how unworthy these suspicions were, and I do say frankly to this House that I have only one desire in putting forward these propositions - the desire to bring all the difficulties of the question to the front, not in order to increase the difficulty of federal union, but that this time we may succeed in arriving at such a settlement that it will become final, owing to the approval of the people of this country. That is the inspiring motive of these resolutions. I will say no more on the subject, feeling convinced that I have said enough to justify my conduct in submitting this matter for the consideration of the Committee.

[116] THE DECISION OF THE PREMIERS' CONFERENCE

(Premiers' Conference 1899.)

3. With regard to the Resolutions -

"(c) THE CAPITAL OF THE COMMONWEALTH,"

It is considered that the fixing of the site of [the] Capital is a question which might well be left to The Parliament to decide; but in view of the strong expression of opinion in relation to this matter in New South Wales, the Premiers have modified the clause, so that while the Capital cannot be fixed at Sydney, or in its neighbourhood, provision is made in the Constitution for its establishment in New South Wales at a reasonable distance from that city.

X - ALTERATION OF THE CONSTITUTION

A problem that is always of concern to the writers of a constitution, is whether or not it should contain a provision for its alteration, and if there is such a provision, whether it should make the constitution easy or difficult of amendment. The Australian Founding Fathers were agreed that some amendment clause should be included in the new Australian Constitution, but wide differences of opinion arose over the degree of difficulty that was to be written into the clause.

The debate upon amendment of the Constitution had two definite phases. At the 1891 Convention the majority view was that the Constitution should be as difficult to amend as possible, [117] while at the Convention of 1897-8, the prevailing opinion held that the Constitution should not be made too rigid and inflexible. [118] The question was complicated by the creation of the federal state, because the amendment procedure not only had to be given a "degree of difficulty", but it had to be written in such a way as to ensure the safeguarding of the federal system:

....The problem is to find the golden mean
which will adequately secure state rights
whilst allowing fair scope for constitutional
development....(1)

(1) Robert Randolph Garran, The Coming Commonwealth. An Australian Handbook of Federal Government, Sydney, 1897, p. 182.

The 1891 Convention was a more conservative body than the 1897-8 meeting, and one indication of its conservatism was the amendment clause which it produced.⁽²⁾ After being passed by both national Houses, a proposed amendment was to be submitted to State conventions which were to be elected by those with the right to vote for the Commonwealth Lower House. A majority of the conventions, representing a majority of Australians, had to vote for the amendment before it could be presented for the Queen's Assent. Any amendment affecting a State's representation in the Commonwealth Parliament also needed the consent of that State's convention. In the discussion of this part of the Draft Bill, two important principles were raised which later found their way into the final Australian Constitution. The first, which was initially mentioned by Mr Munro of Victoria,⁽³⁾ was concerned with the ratification by State conventions. He maintained, and he was strongly supported by Mr Playford of South Australia who quoted the Swiss example, that the ratifying conventions should not only be in the majority, but they should also represent a majority of the people. In this way the federal system was protected, by ensuring that the smallest four States could not disrupt the federal balance by combining against New South Wales and Victoria. The principle was accepted by Griffith, the leader of the

(2) Chapter VIII, 1.

(3) Convention Debates, Sydney, 1891, pp. 885-888. This was apparently at the behest of Mr Shiels who had been an acting member of the Convention a month before, see Argus (Melbourne), 9 April 1891.

Convention, and the "double majority" was quickly incorporated into the draft.⁽⁴⁾ [119]

The second matter, which was not finally resolved until the second Convention, was also concerned with the method of ratification of amendments. The idea of ratifying conventions was a U.S. idea, and it appealed to many as being a fairly rigid method of ratification.⁽⁵⁾ Led by Messrs Cockburn and Deakin, a minority of the Convention believed that such conventions were undemocratic, and that a direct vote upon the amendment, again similar to the Swiss example, should be allowed. [120] They did not have the numbers, however, for members were hostile to the referendum: "the last contrivance of political ingenuity",⁽⁶⁾ and when Griffith declared his support for a system of conventions, the gathering was content to move with him. [121]

The 1897-8 Convention made a number of additions and one important change to the amendment clause of the 1891 Bill. The change was a major one, but it elicited no opposition. In the draft bill which emerged in the third week of the Convention, the provision for ratification by State conventions had been altered to ratification by the people voting in a direct, nation-wide referendum. The "double

(4) Convention Debates, Sydney, 1891, p. 897.

(5) See e.g., Mr Donaldson (Qld.), ibid, p. 887.

(6) Sir Richard Baker, A Manual of Reference to Authorities for the use of the Members of The National Australasian Convention which will assemble at Sydney on March 2, 1891, for the purpose of Drafting a Constitution for the Dominion of Australia, Adelaide, 1891, p. 141.

majority" requirement was retained, so that a majority of people in a majority of States, as well as a majority of all electors voting, had to vote in favour of an amendment for it to become law. The Constitution was thus still well safe-guarded against sudden, rash change, and the federal system was unlikely to be threatened.⁽⁷⁾ The change was quite unheralded, despite the fact that it had been discussed in 1891. In his speech introducing the draft, Barton pointed out the important change that had been made, but gave no reasons for it.⁽⁸⁾ Apart from a brief reference by Garran in his Coming Commonwealth,⁽⁹⁾ there had been no advance discussion of this point, and, in fact, the 1896 People's Convention at Bathurst had accepted the 1891 clause without change.⁽¹⁰⁾ Such was the changed attitude of the Constitution-writers, most of whom had been elected by the people to write a constitution that was to be ratified by the people, that when "amendment" was mentioned it was in the same breath as "referendum", and such a complete change from the 1891 clause was not remarked upon.

(7) Sir Edward Braddon (Tas.), Convention Debates, Adelaide, 1897, p. 1021; Quick and Garran, p. 988.

(8) Convention Debates, Adelaide, 1897, pp. 454-455.

(9) P. 184.

(10) Proceedings [of the] People's Federation Convention, Bathurst, November, 1896, Sydney, 1897, pp. 30 and 75. In a detailed summary of candidates' views prior to the election for the 1897-8 Convention, the Sydney Morning Herald did not mention any views concerning amendment procedure, S.M.H., 3 March 1897. On the other hand, Isaacs, at least, made a point of stating his views at a public meeting in support of his candidature for the Convention, Wodonga and Towong Sentinel, 26 February 1897.

Once the Convention had done its work, voices were raised over this part of the Constitution, claiming that it was potentially dangerous from the point of view of the larger States. As the clause stood, the States' House could stand in the way of an amendment that was desired by States representing a majority of Australians, and, in addition, there was a fear of there being insufficient safeguards for the protection of the powers of the States. Both these fears were expressed in resolutions submitted to the New South Wales Legislature by the Labor Party, which were accepted by both Houses as being necessary alterations to the Constitution. [122] These resolutions were used by Reid with great effect at the 1899 Premiers' Conference, and the amendment clause was altered to contain a paragraph stating that if after disagreement between the Houses over a proposed amendment, the identical bill was again passed by the original House following an interval of three months, the Governor-General could then submit it direct to the people for their verdict. Another addition made by the Premiers' Conference required an affirmative vote of the people of the State concerned with a proposed alteration "increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto".

One segment of the population was still not satisfied. Many in the labor movement had favoured more "democratic" provisions than those accepted in the resolutions passed by the New South Wales Legislature, and, with the assistance of H.B. Higgins, they

endeavoured to secure a further change. The only democratic method would be the "national Referendum, easily obtainable", by which was meant amendment of the Constitution by a majority of the people irrespective of what State they resided in.⁽¹¹⁾ [123] Their efforts to alter S.128 were concentrated in the doubtful and extremely important colony of New South Wales,⁽¹²⁾ but they were unavailing, and in the 1899 referendum the people of that colony accepted the clause as written by the Premiers.

(11) See labor writer, John Willard, writing to Higgins, 2 July 1899, Higgins Papers, 1057/53, National Library, Canberra. For similar labor views see Tocsin (Melbourne), 24 March, 1 December 1898; W.M. Hughes and W.T. Dick, Australian Workman (Sydney), 25 September 1897.

(12) See Willard to Higgins, n.11.

[117] A VIEW FAVOURING CONSTITUTIONAL RIGIDITY

(Mr Fitzgerald (Vic.), Convention Debates, Sydney, 1891, p. 164.)

....I do sincerely trust that in any federation scheme which the Convention may sketch out, no opportunity will be given for effecting an easy reform of its clauses. We must remember that our federal constitution, if it ever should be passed, must be included in an act of the Imperial legislature, and a reform of it must be and can only be by obtaining the consent of that sovereign body. I sincerely trust also that this structure will have its foundations laid so solidly and so soundly, that it will rise up in such strength and harmony of proportion as not to require repair for many years to come....

[118] A VIEW FAVOURING CONSTITUTIONAL FLEXIBILITY

(Mr Isaacs (Vic.), Convention Debates, Adelaide, 1897, p. 180.)

....With regard to the amendment of the Constitution, I desire to say that no more difficult problem can present itself to the framers of a Constitution than to make provision for its own amendment. I think it is imperative on us to recognise that we must make some provision for changing circumstances and altered conditions, so as to provide the means of meeting the new requirements of our nation while guarding against undue precipitancy, and at the same time without imperilling or endangering the necessary local autonomy of the States upon the basis of which they enter into the federation....

[119] THE NEED FOR THE "DOUBLE MAJORITY"

(Mr Playford (S.A.), Convention Debates, Sydney, 1891, pp. 887-888.)

....It appears to me worthy of consideration whether we should not insist that before any amendment of the constitution shall be made, there must be, in addition to a majority of the states, a majority of the people in its favour.

Mr. Fysh: Does the hon. member mean the people of each state?

Mr. PLAYFORD: No; a majority of the whole people. The people of the states are always agreed to what the house of representatives may determine on their behalf, and if you had no doubt about the mind of the people, there would be no necessity to refer the question from the house of representatives to the people themselves. But in the remission of the question to the people of the commonwealth, you want to get the view of the people of all the states, and not the views of their representatives in the house of representatives.

Mr. Gillies: And the hon. member would sacrifice the colony!

Mr. PLAYFORD: I am not prepared to sacrifice any colony, but I desire to look after the interests of the people quite as much as to look after the interests of the states.

An Hon. Member: This is a double check!

Mr. PLAYFORD: Yes, and I want to hold the balance equal. I think my action here has shown that I am not led away by any desire to unfairly protect the interests of the smaller as against the larger states. I want also to protect the interests of the larger as against the smaller states, and it appears to me that the double check is necessary.

Mr. Gillies: The danger is all the other way!

Mr. PLAYFORD: I do not think it is. The Swiss Constitution, which has worked exceedingly well, provides that any alteration in it shall be effected only by an expression of the views of the majority of the states and also of a majority of the people [Article 123]. But this clause certainly does not carry out that idea. It leaves it entirely to the Convention or the states to say whether the constitution shall or shall not be altered. I think with the hon. member, Mr. Munro, that the Swiss provision ought to be embodied in the clause, so that in addition to a majority of the states there might also be a majority of the people.

[120] AMENDMENTS SHOULD BE REFERRED DIRECTLY TO THE PEOPLE

(Dr Cockburn, Convention Debates, Sydney, 1891, pp. 892-893.)

....I ... most heartily agree that what ... [Mr Playford] 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 popular will. 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 any conventions whatever. In conventions the issue is obscured by personal considerations, and people pronounce a decision quite different from what is required - that is to say, whether they approve of the proposed alteration of the constitution, apart from all side issues....

[121] THE ARGUMENT FOR CONVENTIONS

(Sir Samuel Griffith (Qld.), Convention Debates, Sydney, 1891, p. 894.)

The amendment [of Dr Cockburn] fairly raises the question of conventions as against a plebiscite. I certainly challenge the accuracy of the hon. member's statement as to the history of conventions. I do not believe the historical view is correct as to the object for which conventions were introduced; but certainly the purposes for which they have been used have been absolutely in the interests of democracy. It is an institution thoroughly used in America. No amendment of the constitution is made without a convention [sic.]. The people of that country, who are practical people, recognise that millions of people are not capable of discussing matters in detail; they deal with general principles, and select men whom they trust to deal with details. That is the principle of conventions. That is why I think they are far preferable to a plebiscite. If the question were to be simply a kingdom, or a republic, there might be a plebiscite upon that. But suppose the question were settled in favour of a kingdom, what would be the basis? How many other questions would you have to put? You must have a complicated document, and in order that the electors may exercise an intelligent vote they must be thoroughly familiar with every detail. Is that a practicable state of things? Will you ever get the electors to vote under those circumstances? I think not....

[122] OBJECTIONS TO THE AMENDMENT CLAUSES

(Mr McGowen, N.S.W.P.D., Session 1898, Vol. CXIV, pp. 1865-1866.)

....I submit these two points - first, that the scheme proposed by the Convention Bill in clause 127 [finally 128], does not provide for majority rule, because ... the people are nullified in their majority by a majority of states. The principle of national referendum, speaking in the interests of the nation, is violated by the votes from the states referendum, speaking in the interests of the states. The clause I am seeking to amend does not provide, therefore, for majority rule. Secondly, I say that the proposed scheme does not protect state interests with regard to proposed alterations in the constitution, and I desire to prove that.... Even the framers of the constitution in the latter sub-clause of clause 127 provided for two things, one was that equal representation should not be interfered with except with the consent of the state, that the minimum number of representatives in the house of representatives should not be taken away except with the consent of the state interested. What did that show? Did it not show that in spite of all they were claiming for the protection of state interests, the time might come, or would come, when a state might be robbed of its representation by a combination of other states? They considered it absolutely necessary to preserve the state entity.

Mr. Barton: Does not the proviso protect the state interests in that case?

Mr. McGOWEN: The argument I am putting before the Committee, with due deference to the hon. and learned member's opinion, is that while you contend that state interests have been preserved right through the bill, you acknowledge by the incorporation of the sub-clauses of clause 127 that it would be possible, unless you put it in black and white in the bill, that under no set of circumstances could a state be robbed of its minimum number of representatives, for such a thing to take place. The small states contended that the clause should remain as law for all time, that their representation should never be diminished either in the house of representatives or in the senate. Why was that insisted upon? Because it was thought possible that a number of states might combine and take away from an individual state certain rights. It was contended the other night that there should be an interpretation in the constitution of the word "reasonable" as applied to the use of the waters in the inland rivers for irrigation. Would it not be possible for Tasmania, Western Australia, South Australia and Victoria to combine and strike out the word "reasonable" altogether? There is nothing within the four corners of the constitution which would prevent those colonies from taking away from New South Wales any chance of irrigation on her inland rivers. The framers of the constitution acknowledged that equal representation should be conserved by putting it in the act itself, and

on the same principle they should have conserved some of the other powers.... The amendment I have submitted protects state interests by conserving the power in the hands of the state. In the clause it states:

That, respecting proposed alterations transferring to the commonwealth any of the powers retained by the several states at the date of their acceptance of the constitution, such alteration should not take effect in any state unless approved by a majority of the electors in such state voting.

I know nothing that preserves state rights so much as that does. It simply says to the states, "You come into this union with your eyes open. Everything you hand over to the federal parliament will be dealt with as it may decide; but anything that you are not agreeable to hand over shall not be taken away from you...."

[123] A CALL FOR A NATIONAL REFERENDUM

(Mr W.M. Hughes, N.S.W.P.D., Session 1897, Vol. LXXXVII, pp. 650-651.)

....I believe that there should be an amendment of the Constitution under terms in which every man in the commonwealth should have an opportunity after reasonable delay for the expression of an opinion, and in which a majority of the people should carry the day, because this is not a question of union of the states at all. It was pointed out by Webster in the great debate which he had with Calhoun prior to the American Civil War - when Calhoun endeavoured to prove that the states had a right to secede if necessary - that when the constitution had been violated the states were no longer compelled to be bound by the acts of the central body - that central body having violated the constitution, and rendered nugatory any of its edicts - it was pointed out by Webster that theirs was a union, not of states, but of the people, and to that end he quoted the preamble of the American Declaration of Independence [Constitution?] which says, "We, the people of America", [sic.] not "We, the states of America". The same thing obtains in our case. It is not a collection of states; it is a collection of individuals. The preamble of the [1897 Draft?] bill reads, "We, the people of the various colonies of Australia, hereby agree, &c." [sic.] Therefore the people are the sovereign electorate. It is to

the people that all things must be submitted, and rightly so, and when the interests of the states run counter to the interests of a majority of the people of the commonwealth, the interests of the state must go, and the interests of the entire commonwealth must survive. To that end I do not believe the assent of the states is a desirable or necessary thing in the amendment of the constitution....

APPENDIX

THE
COMMONWEALTH OF AUSTRALIA
CONSTITUTION ACT.

63 & 64 VICT.

CHAPTER 12.

An Act to constitute the Commonwealth of Australia.

A.D. 1900

[9th July 1900.]

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

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

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

Short title.

1. This Act may be cited as The Commonwealth of Australia Constitution Act.

Act to extend to the Queen's successors.

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

Proclamation of Commonwealth.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria,

South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

Commencement Act.

4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Operation of the constitution and laws.

5. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

Definitions.

6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.

"The States" shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called "a State."

"Original States" shall mean such States as are parts of the Commonwealth at its establishment.

Repeal of Federal Council Act. 48 and 49 Vict. c.60.

7. The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

Application of Colonial Boundaries Act. 58 and 59 Vict. c.34.

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

Constitution.

9. The Constitution of the Commonwealth shall be as follows:-

THE CONSTITUTION.

This Constitution is divided as follows:-

| | |
|---------------|--|
| CHAPTER | I. - THE PARLIAMENT: |
| Part | I. - General: |
| Part | II. - The Senate: |
| Part | III. - The House of Representatives: |
| Part | IV. - Both Houses of the Parliament: |
| Part | V. - Powers of the Parliament: |
| CHAPTER | II. - THE EXECUTIVE GOVERNMENT: |
| CHAPTER | III. - THE JUDICATURE: |
| CHAPTER | IV. - FINANCE AND TRADE: |
| CHAPTER | V. - THE STATES: |
| CHAPTER | VI. - NEW STATES: |
| CHAPTER | VII. - MISCELLANEOUS: |
| CHAPTER | VIII. - ALTERATION OF THE CONSTITUTION |
| THE SCHEDULE. | |

CHAPTER I.

The Parliament.

Part I. - General.

Legislative power.

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is herein-

after called "The Parliament," or "The Parliament of the Commonwealth."

Governor-General.

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

Salary of Governor-General.

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum, which, until the Parliament otherwise provides, shall be ten thousand pounds.

The salary of a Governor-General shall not be altered during his continuance in office.

Provisions relating to Governor-General.

4. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

Sessions of Parliament. Prorogation and dissolution.

5. The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

Summoning Parliament.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

First session.

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

Yearly session of Parliament.

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

Part II. - The Senate.

The Senate.

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

Qualification of electors.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

Method of election of senators.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

Times and Places.

The Parliament of a State may make laws for determining the times and places of elections of senators for the State.

Application of State laws.

10. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

Failure to choose senators.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

Issue of writs.

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

Rotation of senators.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.

Further provision for rotation.

14. Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.

Casual vacancies.

15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.

Qualifications of senator.

16. The qualifications of a senator shall be the same as those of a member of the House of Representatives.

Election of President.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of President.

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

Resignation of senator.

19. A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

Vacancy to be notified.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

Quorum.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Voting in Senate.

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Part III. - The House of Representatives.

Constitution of House of Representatives.

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:-

- (i.) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:
- (ii.) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

Provision as to races disqualified from voting.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

Representatives in first Parliament.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:-

| | | | | |
|-----------------|-----|-----|-----|---------------|
| New South Wales | ... | ... | ... | twenty-three; |
| Victoria | ... | ... | ... | twenty; |
| Queensland | ... | ... | ... | eight; |
| South Australia | ... | ... | ... | six; |
| Tasmania | ... | ... | ... | five; |

Provided that if Western Australia is an Original State, the numbers shall be as follows:-

| | | | | |
|-------------------|-----|-----|-----|---------------|
| New South Wales | ... | ... | ... | twenty-six; |
| Victoria | ... | ... | ... | twenty-three; |
| Queensland | ... | ... | ... | nine; |
| South Australia | ... | ... | ... | seven; |
| Western Australia | ... | ... | ... | five; |
| Tasmania | ... | ... | ... | five. |

Alteration of number of members.

27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.

Duration of House of Representatives.

28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

Electoral divisions.

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

Qualification of electors.

30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

Application of State laws.

31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

Writs for general election.

32. The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

Writs for vacancies.

33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ.

Qualifications of members.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:-
- (i.) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen;
 - (ii.) He must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

Election of Speaker.

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of Speaker.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

Resignation of member.

37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

Quorum.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

Voting in House of Representatives.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Part IV.— Both Houses of the Parliament.

Right of electors of States.

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

Oath or affirmation of allegiance.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

Member of one House ineligible for other.

43. A member of either House of Parliament shall be incapable of being chosen or of sitting as a member of the other House.

Disqualification.

44. Any person who—

- (i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

- (ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or
- (iii.) Is an undischarged bankrupt or insolvent: or
- (iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or
- (v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv. does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

Vacancy on happening of disqualification.

45. If a senator or member of the House of Representatives—

- (i.) Becomes subject to any of the disabilities mentioned in the last preceding section: or
- (ii.) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or
- (iii.) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place shall thereupon become vacant.

Penalty for sitting when disqualified.

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Disputed elections.

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

Allowance to members.

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Privileges, &c. of Houses.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Rules and orders.

50. Each House of the Parliament may make rules and orders with respect to—

- (i.) The mode in which its powers, privileges, and immunities may be exercised and upheld:
- (ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

Part V. - Powers of the Parliament.

Legislative powers of the Parliament.

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth, with respect to:-
- (i.) Trade and commerce with other countries, and among the States:
 - (ii.) Taxation; but so as not to discriminate between States or parts of States:
 - (iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:
 - (iv.) Borrowing money on the public credit of the Commonwealth:
 - (v.) Postal, telegraphic, telephonic, and other like services:
 - (vi.) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:
 - (vii.) Lighthouses, lightships, beacons and buoys:
 - (viii.) Astronomical and meteorological observations:
 - (ix.) Quarantine:
 - (x.) Fisheries in Australian waters beyond territorial limits:
 - (xi.) Census and statistics:
 - (xii.) Currency, coinage, and legal tender:
 - (xiii.) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:
 - (xiv.) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:
 - (xv.) Weights and measures:
 - (xvi.) Bills of exchange and promissory notes:

- (xvii.) Bankruptcy and insolvency:
- (xviii.) Copyrights, patents of inventions and designs, and trade marks:
- (xix.) Naturalization and aliens:
- (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:
- (xxi.) Marriage:
- (xxii.) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:
- (xxiii.) Invalid and old-age pensions:
- (xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:
- (xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States:
- (xxvi.) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:
- (xxvii.) Immigration and emigration:
- (xxviii.) The influx of criminals:
- (xxix.) External affairs:
- (xxx.) The relations of the Commonwealth with the islands of the Pacific:
- (xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:
- (xxxii.) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:
- (xxxiii.) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State.

- (xxxiv.) Railway construction and extension in any State with the consent of that State:
- (xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:
- (xxxvi.) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides:
- (xxxvii.) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:
- (xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:
- (xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

Exclusive powers of the Parliament.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—
- (i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:
 - (ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth:
 - (iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

Powers of the Houses in respect of legislation.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys,

or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Appropriation Bills.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Tax Bills.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation of money votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

Disagreement between the Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

Royal assent to Bills.

58. When a proposed law passed by both Houses of Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Recommendations by Governor-General.

The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Disallowance by the Queen.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Signification of Queen's pleasure on Bills reserved.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

CHAPTER II.

The Executive Government

Executive power.

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Federal Executive Council.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Provisions referring to Governor-General.

63. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

Ministers of State.

64. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to sit in Parliament.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

Number of Ministers.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

Salaries of Ministers.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Appointment of civil servants.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.

Command of naval and military forces.

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

Transfer of certain departments.

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth:-

Posts, telegraphs, and telephones:

Naval and military defence:

Lighthouses, lightships, beacons, and buoys:

Quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

Certain powers of Governors to vest in Governor-General.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

CHAPTER III.

The Judicature.

Judicial power and Courts.

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament

creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

Judges' appointment, tenure, and remuneration.

72. The Justices of the High Court and of the other courts created by the Parliament—
- (i) Shall be appointed by the Governor-General in Council:
 - (ii) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity:
 - (iii) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

Appellate jurisdiction of High Court.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—
- (i) Of any Justice or Justices exercising the original jurisdiction of the High Court:
 - (ii) Of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council:
 - (iii) Of the Inter-State Commission, but as to questions of law only:

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

Appeal to Queen in Council.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

Original jurisdiction of High Court.

75. In all matters---

- (i) Arising under any treaty:
- (ii) Affecting consuls or other representatives of other countries:
- (iii) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:
- (iv) Between States, or between residents of different States, or between a State and a resident of another State:
- (v) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

the High Court shall have original jurisdiction

Additional original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—
- (i.) Arising under this Constitution, or involving its interpretation:
 - (ii.) Arising under any laws made by the Parliament:
 - (iii.) Of Admiralty and maritime jurisdiction:
 - (iv.) Relating to the same subject-matter claimed under the laws of different States.

Power to define jurisdiction.

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws—
- (i.) Defining the jurisdiction of any federal court other than the High Court:
 - (ii.) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States:
 - (iii.) Investing any court of a State with federal jurisdiction.

Proceedings against Commonwealth or State.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

Number of judges.

79. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

Trial by jury.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.
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CHAPTER IV.

Finance and Trade.

Consolidated Revenue Fund.

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Expenditure charged thereon.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Money to be appropriated by law.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

Transfer of officers.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time,

and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Transfer of property of State.

85. When any department of the public service of a State is transferred to the Commonwealth—
- (i.) All property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary:
 - (ii.) The Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth:
 - (iii.) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament:
 - (iv.) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

Uniform duties of customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Payment to States before uniform duties.

89. Until the imposition of uniform duties of customs—

(i.) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.

(ii.) The Commonwealth shall debit to each State—

(a) the expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;

(b) the proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.

(iii.) The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

Exclusive power over customs, excise, and bounties.

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

Exceptions as to bounties.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Trade within the Commonwealth to be free.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

Payment to States for five years after uniform tariffs.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—
- (i.) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State:
 - (ii.) Subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

Distribution of surplus.

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

Customs duties of Western Australia.

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth; and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.

Financial assistance to States.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

Audit.

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned.

Trade and commerce includes navigation and State railways.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

Commonwealth not to give preference.

99. The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Nor abridge right to use water.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-State Commission.

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

Parliament may forbid preferences by State.

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

Commissioners' appointment, tenure, and remuneration.

103. The members of the Inter-State Commission—
- (i.) Shall be appointed by the Governor-General in Council:
 - (ii.) Shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:

- (iii.) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

Saving of certain rates.

104. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

Taking over public debts of States.

105. The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

CHAPTER V.

The States.

Saving of Constitutions.

106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

Saving of Power of State Parliaments.

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or

withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

Saving of State laws.

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

Inconsistency of laws.

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Provisions referring to Governor.

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

States may surrender territory.

111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

States may levy charges for inspection laws.

112. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

Intoxicating liquids.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

States may not raise forces. Taxation of property of Commonwealth or State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

States not to coin money.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth not to legislate in respect of religion.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Rights of residents in States.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

Recognition of laws, &c. of States.

118. Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public Acts and records, and the judicial proceedings of every State.

Protection of States from invasion and violence.

119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

Custody of offenders against laws of the Commonwealth.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.
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CHAPTER VI.

New States.

New States may be admitted or established.

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

Government of territories.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of an accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Alteration of limits of States.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

Formation of new States.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.
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CHAPTER VII.

Miscellaneous.

Seat of Government.

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

Power to Her Majesty to authorise Governor-General to appoint deputies.

126. The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

Aborigines not to be counted in reckoning population.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.
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CHAPTER VIII.

Alteration of the Constitution.

Mode of altering the Constitution.

128. This Constitution shall not be altered except in the following manner:—

The proposed law for the alteration thereof must be passed by an absolute majority of each House of Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise

altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

SCHEDULE.

OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. So HELP ME GOD!

AFFIRMATION.

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE. - The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.)

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