Australian Federation: Its Aims and its Possibilities

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Australian Federation: Its Aims and its Possibilities

With a Digest of the Proposed Constitution, Official Statistics, and a Review of the National Convention

by

Melbourne

Sands & Mcdougall Limited, Collins Street

1891

Preface.

THE first portion of this work appeared in the columns of the Melbourne **Argus**. The republication is at the request of many readers, and with the kind consent of the proprietors of the journal in question. The object in view has been to put principles before the public rather than details, because the subject itself is new to most of us; it has been talked about after public dinners, rather than thought out in the closet; and unless principles are grasped it may not be easy to arrange the compromises on which all federations are founded. In the following pages the writer has endeavoured to state certain vital principles as clearly as was in his power, and to strongly, though fairly, advocate their adoption. For instance, the necessity for a Customs union is maintained throughout. But as a rule his aim is to give both sides of a case, so that the problem may be grasped, and so that federalists who differ may do so with good feeling and with mutual respect, and without injury to the national cause on which so much depends. When people who have lived under one form of government are invited to live under another, doubts and misconceptions must occur; but a fullness of knowledge should minimise these incidents, and all should be thrown into the shade by the grandeur of the common object—that of the bringing together of Australia. There are times when, according to a famous dictum, the statesman should be prepared to sacrifice his reputation to his country; and it cannot be too much to say that at a crisis in Australian history, Australian politicians should be prepared to moderate, and even to surrender, personal opinions. These papers were written with the conviction that unity in the ranks is essential if success is to be achieved, and that the way to obtain unity is, to show the magnitude and the importance of the cause.

Introduction.

AFTER a succession of events, including many failures, a convention has met in Sydney, composed of delegates formally appointed by the various Australian Parliaments, and entrusted with the task of framing a Federal Constitution under which the various colonies can come together to form a dominion—a nation within the British Empire, and under the Crown. The constitution so framed is to be submitted to the various Legislatures for their consideration. If the measure is so fortunate as to obtain their approval, then it will be remitted to Great Britain, where it will be placed upon the Imperial Statute-book, after which it will be duly brought into operation. The object of these papers is to call attention to the issues which have to be faced, to explain the problems, and to advocate a policy which will enable the colonies to come together for Australian purposes, while fully preserving their local liberties.

Federation has passed through three stages. The first was that of the early Grecian leagues, about which it may be said that a federal union was attempted because the Greeks were a highly civilized people, and that it failed because they were a primitive race without the social experience, the political expedients, and the material advantages—such as the printing press and the railways—of to-day. Then we have the mediaeval stage, the memory of which alone is preserved by such titles as the Lombard League, the Rhenish Confederation, the Holy Roman Empire—by-phrases which the hasty student is apt to pass by with the curious wonder bestowed by the traveller on the flotsam of history. The people of Europe were as ill equipped as the ancient Greeks, and were more barbarous, and were therefore less fitted for federal conditions. Only one federation has emerged from the mediaeval chaos of Europe, and that is Switzerland. Modern federalism is a discovery of the last century, and the claim is undeniable that it has been evolved by the free English-speaking race to whom apparently belongs the task of perfecting the political institutions of the world. It was in England that representative institutions were developed and maintained, and the representative idea made it possible for England's offspring across the Atlantic to create the true federal system. It has been claimed for the American federation that it was the first to provide itself with an independent and an adequate revenue; that it was the first to establish a federal judiciary with the supreme power of interpreting the federal bond; that it was the first to commit all internal and external commerce to the Union. These were great principles to affirm, but the founders of the Union introduced yet another principle which was of still greater moment. Former federation had been alliances of states, but to this essential alliance of states the framers of the American constitution were able to add a union of the people. One set of constitutions—particularly the House of Representatives and the President—spring directly from the people; and another set—particularly the Senate and partly the Judiciary—spring from the people also, but through the people in their organisation of states. The two elements of the people and of the

states are not fused; neither is the one nor the other ignored; but the two are brought together for working purposes. This is the new and cardinal principle on which the future of federation turns, for it permits of the co-existence of the national spirit without which union is a failure, and of the local independence which has been dear to men throughout the ages. On the one hand the expression of the national will is complete, and on the other the Union is to a large extent preserved from the temptation which has proved fatal to many federations—that of the great states offending the susceptibilities or encroaching on the privileges of the weaker states. The weaker states in an alliance must not only have some measure of protection but also they must have some sphere in which they can regard themselves as equals rather than as poor relations, taken into counsel for form's sake but without practical influence. The striking merit of the American plan, as compared with the earlier federal schemes, is its recognition of this duality, and the more this principle is departed from the less probable is the chance of permanent success.

It is said that the advocates of Australian federation are too fond of looking to America, to Canada, to Switzerland, for their examples, rather than to Great Britain. But it must be remembered that Great Britain is not a federal community, and that if she ever became one; if Imperial Federation ever became a reality; many of her existing institutions would require to be modified. We look to federal countries merely for federal information. It must be remembered, also, that while Canada, Switzerland, and Germany have largely drawn upon America for ideas, the founders of the United States kept as close to the British constitution as was consistent with the idea of a federal republic. Washington and his colleagues had had a quarrel with the British Government, but they had a general admiration for British institutions as the best known to them. It follows that in these references to existing federations we by no means turn our backs upon the British model, for it is on the British model that these federations were framed. The broad rule we in Australia have to lay to heart is that which our federal predecessors had in mind, namely, not to depart from the familiar lines without just cause or of necessity.

The poet probably was right, as true poets often are, when he declared, “Humanity, with all its fears, with all the hopes of future years,” to be bound up with the success of federal unity. We cannot hope to unify the world. We cannot hope even to unify the British Empire. Australia, for instance, would assuredly decline any other permanent connection with the parent country and the sister dependencies than that of the modern federal type. She would not commit her local affairs, under any circumstances, to a mixed body sitting in some other part of the world; and even as regards common Imperial issues, she would expect that the several parties to the federal compact would have something like an equality of influence. Nor is it desirable that there should be large unifications. The tendency of vast unified countries, such as Russia and China, must be to become monotonous; there must be a terrible sameness of institutions, customs, and laws, and a hurtful sacrifice of individuality. It can scarcely be advisable that men should come to be as alike as Birmingham buttons, nor that states should have interchangeable parts like machine-made watches. If, therefore, large portions of

the globe are to be brought politically together, so that they may be saved from wars without and feuds within, it must be by means of a true federal scheme which allows the parts to work for themselves and to think for themselves, and to advance themselves in culture and in wealth, while they recognise joint interests and mutual obligations. Competition is the essence of life, and co-operation is becoming more and more a necessity in human progress; and it may be claimed for federation that it reconciles these two principles in public affairs, and renders possible the “greater nation.”

Australian Federation.

The Three Courses.

THERE are three courses before any group of provinces or of neighbouring states. These are—(1) unification; (2) separate existence; while between these two extremes lies the *via media* of (3) federation. Great Britain, and France, and Spain, and Italy developed from collections of states into unification, while Germany, Switzerland, and the great British-American communities have become federations.

Unification is the first policy on the list, but it can be set aside as impossible for Australia. The smallest consideration shows that it would be hopeless to think of creating the one unified Australian state, with a simple drop from the central Government to the municipal council. Every colonist is very well aware that if Queensland and New South Wales and South Australia were to undertake to arrange the local affairs of Victoria, there would soon be dissatisfaction of an intense and determined character. The people would insist upon constructing the particular public works they wanted. They would demand as large a number of policemen and as many stipendiary magistrates as they chose to pay for. They would claim to deal in their own way with their public estate, and also the right to create what municipal institutions they pleased, and to regulate and to provide for education also at pleasure. If Victoria had to take orders from some outside centre on those subjects, there would soon be an incipient revolt; and so it would be with each colony in turn. The whole past of Australia is eloquent on this point. In the beginning we had unification here but colony after colony broke off from the original state in order to obtain the local expenditure of the local revenue, the local management of local affairs. This lesson, it may be said, has not been learned in vain. Probably not a province nor a politician but is sufficiently wise to know that the one state cannot understand nor deal with the domestic affairs of its neighbour so well as that neighbour can itself, and consequently there is no call anywhere in Australia for an impossible unification.

Unification is unattainable, and, on the other hand, every patriot, in proportion as his patriotism is intelligent and fervent, will unhesitatingly condemn the policy of isolation. That is a path easy to tread, but it is the downward path, and, happily, it becomes less difficult day by day to establish this much to a community which desires to take the upward way. There is a general feeling that Australia must be substantially reserved for the occupation of the European race—that the inferior members of the human family should be here only to fill up interstices in the community. Perhaps no sentiment is more widespread and is stronger in effect than this;

but it is clear that if we are to guarantee purity of race and constancy of possession there must be a general Government, inasmuch as otherwise some northern colony, tempted by the desire to turn its estates to immediate account, might let in Mongol or Malay wholesale, with complications that are too obvious to need explanation. So with defence. Although no one likes to dwell upon such a contingency, it is possible that the mother country might lose the command of the sea for a period, and at such a moment a foreign power, considering the advisability of seizing some one part of Australia, would be necessarily greatly influenced by the consideration whether the other colonies would say, "Oh, Brisbane has gone to the foe, and half Queensland, but what is Queensland to us;" or whether they would say, "To seize a hamlet anywhere is to invade Australian territory, and the resistance must be of all Australia to the last shilling and the shelter of the final scrub." And then, again, every colonial who thinks realises the supreme importance of the creation of some national authority to which all will bow, and which shall render innocuous all provincial strife. The fate and the fortunes of the petty American States are a significant warning to us here. The wars which have raged between Great Britain and the United States are over, it is to be hoped, for ever, and it is difficult to suppose that English-speaking peoples would ever condescend to the petty struggles of Chili and Peru, and of Guatemala, Ecuador, Costa Rica, and Honduras. But what is not only possible, but is almost certain, is that if the Australian colonies live apart a provincialism will flourish of the rankest growth, jealousies will be bitter, and instead of good work being done for the common whole, each part will consider that it has secured a benefit when it has injured a neighbour. The river question affords a familiar illustration. The Government of New South Wales can divert one at least of the Gippsland streams into the Murray. It can impound the upper Murray and use its waters in Riverina, and it has been advised to adopt both schemes; and if in anger or in careless indifference to outside opinion it entered upon such a policy, no one can measure the indignation which could be worked up in Victoria, nor could guess its mode of expression. Such issues confront us in every part of Australia. Every Australian must realise it to be a scandal and a shame that the products of one part of the land cannot be freely transported for sale or exchange to any other part of Australia, and yet each new impost goes to strengthen the provincial policy of hostile Custom-houses on imaginary border lines in the interior such as exist in no other part of the world. It would seem as if, separated, we might gradually descend to some terrible depth of mean and injurious reprisals, while union opens up a path to the highest pinnacle of national greatness.

Thus we are driven by the exclusion of the other plans to the third and last course of federation. English constitutional writers have scarcely given the federal scheme the attention it deserves. The most of the authors who have essayed the subject have reasons of their own for disliking federation, and for preferring unification, and the consequence is a nonsympathetic treatment of the issue. It may be said that federation becomes desirable where, on the one hand, the country is too enormous in extent and too diverse in conditions for its internal affairs to be satisfactorily managed by one central Government, while, on the other hand, the communities have certain common interests best served by their coming together, or are confronted by common dangers if they keep apart. There is no reason in the nature of things why England, Scotland, and Wales should be federal. In area they do not constitute one small Australian colony. The people are practically of the same race, language and religion, and unification is the natural condition of such a territory. But if the same race occupied Sweden, and Norway, and Denmark, and Germany, and France, and Spain, and Portugal, and Austria, and Italy, and Greece, and Turkey, the administration of all affairs from a common centre would be found practically impossible. The existence of a free people would also render a Russian despotism impossible. The choice would be between disintegration and federation. And this is the Australian position.

Happily there is little need to labour the argument in favour of some measure of Australian unity. A feeling is abroad of loyalty to Australia and of attachment to the “land we live in,” and it is a feeling that must daily gather strength. And it is self-evident that to give effect to this kindling patriotism we must consolidate and not disintegrate the communities which nature has so plainly marked out for the one nation. Self-respect would seem to force on this policy of union. In the outside world the mere colonist of Victoria, South Australia, or New South Wales is comparatively a nobody, while as an Australian he ranks at once as a “citizen of no mean state.”

It is conceded by the thoughtful that the British Empire itself can only avoid the disruption of its present parts by passing gradually into a federation. The present relation between the colonies and the mother country, excellent as it is for the time, is obviously not one which can endure. As the years roll on Australia must rival America in population and in wealth, and the United States of to-day could not exist as a dependency without a voice in such ultimate issues as those of peace and war. The noblest and the most far-seeing of England's sons frankly recognise that the empire must federate if it is to hold together, and they also see that prior to the union of the whole there must be the federation of the parts. Hence the

men whose end is Imperial Federation accept Colonial Federation as their means. There is no more powerful advocate of Imperial Federation than Principal Grant, and a statement which he has recently made upon the subject may be read with advantage. Delivering an address at Winnipeg, Dr. Grant said:— "Even Australasia—in my opinion—is not yet ripe for Imperial Federation, because it has not yet taken the step of Australian Federation. It is making tentative efforts in that direction. So far as I could discern during a brief visit there, the only opposition that has any vitality in it to Imperial Federation comes from men who regard it as a red herring drawn across the trail of Australian unity; and only when Australian unity has been consummated will the noblest minds—the minds that in the long run determine the thinking and action of a great people—be in a position to invite themselves and others to a far higher point of view."

A party exists no doubt in Australia, with organs in the Sydney and Queensland press, which has separation for its aim, and this party also does not quarrel with Colonial Federation. It believes that a union of the colonies is necessary for independence, as much as the other people believe that union is necessary in order to establish cohesion of the empire. So far the two antagonistic sections travel together; their break will not necessarily occur until after the event of the organisation of Australia. They both recognise that whatever the destiny of the colonies may be it is a primary duty to bring Australia together as a nation. The one real opponent of federation is the provincialist, who wants each party to have its own laws and its own markets, and who sees nothing improper in the existence of a group of bickering states. Better that, the provincialist says, than have some petty passing interest of his own interfered with. The provincialist has always existed in all federal communities, and his strength lies in the fostering of jealousies, creation of obstacles, and in the exaggeration of difficulties.

A Distinctive Australian Feature.

The labourers in the cause of federation in Australia have an immense advantage over the English speaking communities who have hitherto essayed the task. The Convention presided over by George Washington at Philadelphia had no experience to guide it. Its members could only fall back upon the Achaian and Lycian Leagues for precedents, while they took Blackstone as their guide for the principles of the British Constitution, and Blackstone was already obsolete, and they are known to have been powerfully swayed by Montesquieu and his work **Esprit des Lois**, and Montesquieu was a theorist. We, however, can refer to great and successful countries for methods which they framed with doubt, but which we can adopt without the loss of time that hesitation brings with it. But for the federal procedure which lies ready made to hand—which has been tried and which has stood the test—the Sydney Convention could scarcely have hoped to complete its task in the limits of time available for its labours.

On the other hand it is certain that the federation we shall achieve here will not be American, nor Canadian, nor German, nor Swiss, but will be distinctly Australian, and this, owing to circumstances over which no individual or group of individuals has control. In the first place, each of the Australian states is likely to be an empire or a kingdom in its territorial dimensions, and in the next place these states will be possessed of great powers, not exercised by the central or national Government elsewhere, and for the most part incapable of being so exercised—powers which are taken not from the Crown nor from the central executive nor from the Legislature, but are in the instances of other countries left with the municipal bodies or with the people.

It is important to elucidate this point, because the Federal constitution will be framed by members of the local Parliaments, and will require to be ratified by those Parliaments; and as everyone acquainted with those Parliaments is aware—as the discussion about the Federal Council disclosed—there is a great fear among among hon. members that, under a federal *régime*, the Australian colonies will sink to the level of an American state, and the position of a Legislature in an American state is not so high as that of the Parliament of an Australian colony. Hence it is common to hear statements in political circles to the effect that it will not be wise to go so far as America and Canada have done. There is a coolness towards a system which may lessen the prestige of the local institution while benefiting Australia. There is a disposition to starve the Federal power. This is the first “lion in the path.” But if the situation is fairly faced

this prejudice ought to disappear. It will be found that the example of the American state, the German duchy, the Canadian province, and the Swiss canton is to some extent misleading, and that each Australian territory will be possessed of powers that will secure it a prestige and a position of its own.

The powers in question are the very life blood of our social organisation in Australia. The construction and the management of the railways comes first upon the list. In Great Britain no statesman of the first class has ventured to propose that the Government should undertake this task of railway building and railway management, and in America the man who bruited the idea would be regarded as a mere dreamer. There are many reasons why the 160,000 miles of railway in the States are incapable of being concentrated in any single organisation. So with public works. These in Great Britain and in America are sedulously left to the individual or the municipality. Irrigation works in particular are never touched by the State, and it is not the Central Government nor the State Government that erects courthouses, gaols, and lunatic asylums, but the municipality. The police in both the old world and the new is under municipal control. So also is education. The power which makes and manages the railways, which takes charge of public works, which manages the police, and which is responsible for education, must always be a great power—probably the great power—in the realm, and that power must be here, the province, state, or colony, and not the Federal Government. This is self-evident. For though there are critics who contend that we should decentralise in these matters, and should transfer authority to local bodies and to the people, there are none to say that we should centralise still more, and should hand over *quasi*-local and *quasi*-trading functions to a body far more remote from the scene of operations than the Government of the province.

So little do the states of the American Union embark in public works that in many instances the state constitution puts a veto on borrowing. The constitution of the State of Arkansas contains a section—"Neither the state nor any city county town or other municipality in this state shall ever loan its credit for any purpose whatever." Other states are equally stringent in their regulations. In other instances the amount of the loans which may be floated is strictly limited. In America the state is not expected, and is often not allowed, to develop the resources of the country. The residents must do that work themselves, but in Australia the development of the resources of the country is regarded as the principal task of the Government of the colony, and the enormous difference thus made in the status of the two communities is evident at a glance.

The total debt of the various States of the Union is under £40,000,000,

which is an average of £750,000 per state. But New South Wales has herself a public debt of over £40,000,000, and so has Victoria. Or the difference may be brought out by comparing the average of state debts per head in America and in Australia. The figures are:—

	State Debts per head.
America	£0 13s. 0d.
Australia	£40 5s. 0d.

This calculation excludes the national debt of the American Union, which is a war debt, which is being as rapidly paid off as the dates of the securities will allow, and which has no corresponding obligation here. The American States are decreasing their liabilities under pressure from the electors; the Australian colonies are steadily increasing their public investment. These facts alone show that the position of the two bodies is not comparable.

The element of size has also to be taken into account. When we look at the States of America, and even the provinces of Canada, they shrink into insignificance in comparison with the size of the Australian territories, and the size of the state in itself dignifies the duties cast upon it. Our provinces will, as a mere matter of fact, be provinces upon a scale without a parallel in the world, and what this means as regards their own individual importance is apparent to all. We cannot imagine Australia divided into more than a dozen states. Victoria and New South Wales are likely to remain as they are. Queensland may be cut up into three portions, but scarcely more. Western Australia may divide into three or four at the utmost, South Australia may possibly be parcelled into three, and Tasmania completes the dozen. But this will be about all. The twelve Australian States will average each an area of 250,000 square miles, Tasmania being the smallest unit of the group, and Victoria the next. To give an idea of the real size of these areas, it may be borne in mind that the empire of Germany, with its historic kingdoms and its grand duchies, contains 212,000 square miles in all; or, in other words, the empire of Germany is, in territorial area, considerably smaller than will be the average Australian province even after subdivision has been pushed to its limits. It can hardly be said that the legislative bodies which will construct and manage the railways and the public works, and will have charge of the education and the public lands, and the internal revenue of domains imperial in their proportions, can do other than loom large in the public imagination.

In the United States the carving of states out of the territories is still going on, and it looks as if there would be 50 or 60 states before the

subdivision is concluded, and these states will be constituted in an area of practically the Australian size. The average size of the states already formed is 50,000 square miles, each, therefore, being one-fifth of the size of the thoroughly subdivided Australia which has been imagined as existing a century hence. The average size of eight of the leading New England States, including New York, Massachusetts, and Vermont, is 11,000 square miles, so that, placing Victoria in the same position, she would be cut up into eight such states. Eastern Gippsland would be a state with Bairnsdale as its chief town. Western Gippsland would centre on Sale. The Western district would be a separate province, with Hamilton as its city. Ballarat, Sandhurst, and Beechworth would be centres of separate states. Geelong would be the capital of the state of Grant, and Melbourne would take the remainder of the territory, say from Macedon and Marysville to the sea. A subdivided Gippsland can be imagined as having little weight or importance in a union, but Victoria as a whole—though the smallest of the continental states—will always be a power. The Canadian States promise to be larger than those of the neighbouring republic, but the five primary states of the Dominion might all be put into New South Wales, and the Australian colony would still have territory to spare. Switzerland, with its 22 cantons, has an area of 15,000 square miles, so that it is no larger than the corner of an Australian colony. A dozen of the cantons or more would go into an Australian county.

Six of the smallest American states are picked below to contrast with the six existing Australian colonies. This is the extreme example; but as the American states in question are as much sovereign states as any of their neighbours, the contrast between them and the gigantic provinces of Australia is instructive.

AMERICAN STATES.

	Square Miles.
Rhode Island	1,045
New Jersey	7,445
New Hampshire	9,005
Massachusetts	8,040
Vermont	9,135
Maryland	9,860
	44,530

AUSTRALIAN STATES.

	Square Miles.

Western Australia	... ...	1,060,000
South Australia	... ...	903,425
Queensland ...	... ...	668,497
New South Wales	... ...	310,700
Victoria ...	... ...	87,884
Tasmania ...	... ...	26,215
		3,056,721

The American, the German, the Swiss, and, in a measure, the Canadian confederations, are all composed of states which are pigmies in size, and consequently in possibilities, when compared with the enormous provinces of Australia. Australia will present the one spectacle of a few great national provinces allied together for federal purposes. And these provinces will not only have the dignity and the prestige which comes from vast size, but they will exercise important powers not possessed by other countries. Under these circumstances it is plain that there is no need for the colonies of Australia to grudge the Federal Government any of the functions which are bestowed upon federal governments elsewhere. On the contrary, all these and other functions can be freely bestowed, and the provinces can still retain a position which states and territories elsewhere can never hope to secure. The provincial jealousy, which has been so powerful a factor elsewhere, has no occasion to assert itself here as against national functions. We can afford to endow the Federal or Australian Government liberally with power and still be safe. We can certainly give all that is conceded in other countries—and there can be no need to delegate more—without any risk of endangering the individuality of states possessed of inherent powers so large and important.

According to a calculation made by Mr. McMillan, the Treasurer of New South Wales, the Federal outlay at the present time would be about £2,200,000 per annum, while the gross revenues of the seven colonies in 1889 amounted to £28,738,000. Under a federal system, therefore, the present revenues would be:—

Federal revenue	...	£2,200,000
States revenue	...	26,538,000

Such a return as this may well quiet local fears by showing that the provinces are not to be snuffed out. The two powers have different spheres. To the states belong everyday matters, while the Federal Government provides for defence without, and for tranquillity within, regulates commerce, takes charge of the marriage and other general laws, is the final dealer of justice, and represents the people before the world. The state is always with us, but to the nation belongs the higher life.

The possibility of delegating largely to Australia, while retaining great

power and prestige for the provinces, is the dominant feature of the Australian situation.

The Federal Powers.

The importance of the powers which attach to the Australian colony or state has been dwelt upon in order to show that under no federal system can these colonies or states lapse into insignificance, but that in the nature of things they must retain a higher position than either the American state or the Canadian province. It is now necessary to mention the powers which the provinces must surrender in order to create a Dominion or a Federal Government. Taking the United States of America first as an example of great interest, it will be found that Congress is empowered to—

1. Impose taxes, duties, and imposts to provide for the common defence and general welfare of the states; all duties, imposts, or excise to be uniform throughout the states.
2. To borrow money.
3. To regulate commerce.
4. To legislate on naturalisation and bankruptcies.
5. To coin money.
6. To establish postal services.
7. To pass patent laws.
8. To constitute federal law courts.
9. To punish offences on the high seas.
10. To declare war.
11. To raise and support armies and a navy.
12. To provide for a militia in conjunction with the states, and to erect forts, arsenals, etc., where required.

And Congress is forbidden—

1. To suspend *habeas corpus*, except the public safety so demand.
2. To pass *ex post facto* laws or bills of attainder.
3. To levy taxes or duties on any article exported from any state.
4. To give preference to any port.
5. To grant titles of nobility.

The above list is a complete summary of all the powers conferred upon Congress by the constitution. The Federal Legislature here could not have the power to declare war. That right, it is clear, must be vested in the Crown for the benefit of the empire as a whole until it is transferred to an Imperial Federal Council. But the other provisions, simple as they look, have enabled the American Government to create a nation and to exercise a national power which is felt and acknowledged as a national power both in America and the whole world over, and anyone who reads the list will see that it is perfectly practicable for us to transfer the same powers to an

Australian Parliament to-morrow if we are so disposed. Constantly we hear demands made for Australian commercial legislation, for an Australian law of insolvency, for Australian patent laws, for an Australian postal service, and for rendering our land and sea forces Australian in character. If we federate on the American lines we do no more than provide for these boons plus the formation of a Customs union. The federal structure is composed of the simplest materials, but they are strong. Federation on these principles is like the lattice girder, apparently fragile and inadequate for its purpose, but yet equal to the strain of bridging a torrent, or the stress of sustaining some storm-defying tower.

In one important matter Australia would probably add to the American list. Everyone here would willingly agree that marriage and divorce should be remitted to the Federal Legislature, and, indeed, both for moral and political reasons, this arrangement would probably be insisted upon. The circumstance that there are forty marriage laws in the States is one of the scandals of the Union, and there would be a sensitive desire to raise the status of the Australian marriage bond.

A Federal Government with these few powers occupies a great position, because it is the Government which represents the provinces of which it is composed to the world. The several members of the Union are unknown to other powers whose representations are all made to the federal Parliament. It makes treaties, appoints and receives ambassadors, and it is to strangers the national Executive. This ensures its position, yet in home affairs the state or province will in a federation always be likely to be the more practically important to the citizen.

The Canadian reference appears at first to go somewhat further than that of the United States. The subjects specifically remitted to the Dominion Parliament are—

1. The public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military, and naval service, and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.

12. Sea coast and inland fisheries.

13. Ferries between a province and any British or foreign country or between two provinces.

14. Currency and coinage.

15. Banking, incorporation of banks, and the issue of paper money.

16. Savings banks.

17. Weights and measures.

18. Bills of exchange and promissory notes.

19. Interest.

20. Legal tender.

21. Bankruptcy and insolvency.

22. Patents of inventions and discovery.

23. Copyrights.

24. Indians, and lands reserved for the Indians.

25. Naturalisation and aliens.

26. Marriage and divorce.

27. The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.

28. The establishment, maintenance, and management of penitentiaries.

To a large extent, however, the difference in the subjects mentioned in the two references is one of words. The public debt is named, but the public debt of Canada is not the local investment debt of Australia. Marriage and divorce is added to the Canadian list, but, unfortunately, a concurrent jurisdiction was given to the provinces. Criminal law is also transferred to the federal body. Switzerland gives less power to its federation than does Canada and the United States, and Germany gives no more.

The Tariff Question.

The more the reader studies the two lists the more he will be disposed to coincide with the opinion that— conceding one main point—it is not only possible, but that it is easy, for the Australian states or colonies, without suffering any material loss of authority themselves, to transfer the powers necessary for creating a Federal Dominion. The point to be conceded is this —that the colony shall forego the right of levying Customs dues, and shall vest that right in the General Government. Thus much granted, and the course is comparatively clear. The big jump has been negotiated.

This concession, it must be stated, is indispensable. There have been Customs unions without federation, but there are no federations without a Customs compact. The German Empire of to-day was founded not by Bismarck—who completed the task—but by the Zollverein, which was a Customs union pure and simple. The delegates met to arrange for a tariff which should be common to the various states in the bond, and to provide for the division of the proceeds *pro rata*. The Customs union had a small beginning, but one state joined after another, and, as it grew, so the desire for German unity increased, and so what was a dream at first became more and more possible. The Zollverein left some few incongruities and some outstanding ports, and the empire swept these remaining anomalies away. The Swiss Federal Government levies all import and export duties, so that there is free intercourse between the cantons. So it is in Canada; so in the United States. In one and all the examples we have before us federation implies the free intercourse of the affected states. The kingdoms, duchies, cantons, colonies, or provinces come together for the purpose of mutual aid and support, and to talk at the same time of hostile tariffs, of restricted intercourse, of endeavours to injure each other commercially, and also of federation, is to indulge in a contradiction in terms.

It is a mistake to suppose that the United States Federation was formed by the war with England, or that the Canadian Dominion was established to give home rule to the French Catholics of Quebec, or to present a bold front to a threatened invasion from the United States. These considerations were factors in the sum, but that is all. It is too frequently overlooked that the American Confederation, which was formed to resist Great Britain, broke down badly when it had accomplished its task. The Confederate Government of the day had no hold upon the people, and little control over the states, and its edicts were jeered at. And but for the necessity for a commercial union there is every reason to suppose that there would have been no subsequent federal pact, the colonies instead forming so many

independent pigmy communities. Bryce quotes from the memorial oration of the celebration of the 100th anniversary of the constitution, delivered by Mr. Justice Miller, as follows (vol. I, page 26, **American Commonwealth**): —"It is not a little remarkable that the suggestion which finally led to the relief, without which as a nation we must soon have perished, supports the philosophical maxim of modern times, that of all the agencies of civilisation and progress commerce is the most efficient. What our deranged finances, our discreditable failure to pay our debts, could not force the several states to attempt was brought about by a desire to be released from the evils of an unregulated and burdensome commercial intercourse." In **The United States: Its History and Constitution**, by Alexander Johnstone (page 79), the statement is made that one of the main influences at work in forcing on federation was that "state selfishness began to show itself in the regulation of the duties on imports." Dr. Hart also declares (**Federal Government: Monograph**, page 56) that commercial interests led to the calling of the Philadelphia Convention, and were the "cement of the union." The same principle was at work in Canada. Up to 1865 a reciprocity treaty existed between the United States and Canada for the free admission of each other's products, and on the termination of that treaty Canada felt the importance of securing the one large home market in order that her industries might be put upon a broad basis and have natural proportions. Her statesmen saw that if the provinces turned their energies to internecine warfare the end would be disastrous to all, and they worked resolutely to avert the danger. In every federal instance the keystone which keeps the arch from collapse is the uniform tariff, with its accompaniment of free internal intercourse, and it does not appear how Australia is to be any exception to this rule.

On this issue the battle is sure to be fought. The provincialists will rally their forces to show that it is an unfair thing that Victoria should be flooded with cheap produce from the sister states, and in Sydney and in Brisbane the tale will be that Victorian produce and Victorian manufactures must both be excluded. In the south the phrase will pass from mouth to mouth, "We must tax Queensland cattle," and in the north will be said, "We must keep out Victorian wheat, Victorian potatoes, and Victorian butter." And the cry against Victorian manufactures will be raised all down the line. On the other hand, here the alarm has been already sounded that when New South Wales comes under a protective tariff her coal supply will enable her to pass Victoria— though incidentally it may be remarked that so little does a few pence in the price of coal affect manufactures in comparison with other factors that the price of gas in Melbourne is lower than the price in Sydney. The Canadian debates show that the changes were rung there in

the same manner. Quebec was to be ruined by the competition of Ontario, and Ontario was to be crippled by the competition of Quebec, and both were to crush Nova Scotia, while Nova Scotia was to be crushed by them. The event has confounded the critics, and both in Canada and in the United States, as in Germany, the enormous advantages of large free home markets is now conceded. No protectionist would disturb the existing arrangement.

The provincialists have urged, also, that as land is worth, say, IOs. per acre in Queensland back blocks, and is worth, say, £20 or £30 per acre in river flats in Victoria, an interchange of products would destroy land values here. If they will look to the United States and to the Dominion they will find that there is cheap land and dear land there although interchange exists, the fact of course being that land values are fixed by the two co-considerations of inherent fertility and of access to market. The keenest-eyed critic cannot, in fact, find aught in our fiscal circumstances to distinguish us from those great British communities which have federated with success.

It may be said that given a uniform tariff, a common commercial law, and the federation of a people is practically complete, inasmuch as the communities have daily reasons in their ordinary business for recognising that they are a unit. All other products are taxed, or are liable to be taxed. Theirs go free. Germany is open to every German producer. The States are open to Californian, and Texan, and New Yorker. Canada is open to every Canadian. And if there is an Australian Federation, the Australian who breeds a horse, or paints a picture, or grows a sack of corn, or makes a pair of boots will necessarily have the right to sell the produce of his labour in any market in Australia. This privilege once enjoyed comes to be regarded as a birthright. But there were Scotchmen who fought against the commercial union with Great Britain; there were Particularists who contended strongly in Germany for disintegration; there were provincialists who claimed that the Canadian colonies had a right to prey upon each other, and timid interests will take alarm in each colony in Australia. This is inevitable. And because alarmed interests always fight with desperation, we have here the crucial test. At the same time it is for the Australian party to clearly understand that the first condition of national existence is freedom of intercourse within the national bounds—that unless all internal barriers are thrown down there is no real, but only a make-believe, federation.

Disposal of the Customs Revenue.

Supposing that the principle is conceded that the one nation must have the one tariff—that federation implies a Customs union—the Sydney convention will then be face to face with a practical issue of some moment. What is the Dominion Legislature to do with the Customs revenue? How are the provinces to do without the Customs money?

The Australian colonies largely rely upon their Customs to keep them going. From the receipts at Customs they not only pay for all the services which are to be remitted to the Federal Dominion, but also for a large number of other services more costly than these, and perhaps more dear to them.

The amount raised by Customs dues in the Australian colonies in 1888 was as follows. The figures for Victoria, it is to be noted, are exceptionally heavy, as there was a "boom period":—

—	Amount.	Proportion to Total Taxation.
	£	Per Cent.
Victoria	2,825,000	75
New South Wales ...	1,885,000	70
Queensland	1,350,000	85
South Australia ...	535,000	72
Tasmania	295,000	73
Western Australia ...	160,000	88
Total	7,050,000	

The average receipts from Customs are £2 7s. per head for the whole population of Australia. The Victorian receipts during "boom period" were £2 9s. per head, thus showing how close the average is between one colony and another. On the one hand it is to be observed that the Federal Government could not spend this money if it is to be confined to ordinary federal powers, and on the other hand the provinces could scarcely do without it.

A return laid before the National Convention gives a total Customs revenue for the colonies, with the addition of New Zealand, as £8,659,000 for the year 1889, or an average of £2 6s. 5d. per head. See APPENDIX.

Transfer the Customs to the Federal Government, and the Dominion has far too much money, while the provinces have far too little. The powers remitted to the Federal Government, such as the patent, the marriage, the banking, the currency, the naturalisation, and the insolvency laws involve a minimum of outlay, and the maximum expenditure occurs in connection with the provincial subjects of public works, police, and education. Hence

the situation in the United States, where the Federal Government has far too much money for its limited demands, and where the authorities have been puzzled what to do with their surplus. The United States Customs produce the not very magnificent sum of 17s. per head, and this amount, as is well known, fills the United States Treasury to repletion. The war debt has been reduced wholesale, and now no less a sum than £22,000,000 per annum is paid away in war and other pensions as a means of keeping down the national balance. The taxes are maintained by the protectionists, but the McKinley tariff was designed to cut down the revenue receipts, first by increasing the duty on goods which can be made in America, so that any importations should be stopped; and next by sweeping away non-protective duties—those taxes which merely brought in money. A really successful protectionist tariff would, of course, bring in no revenue at all. It would stop importations, and leave the Customs nothing to collect, and the McKinley party is endeavouring to partly realise this ideal in order to get rid of the embarrassment of too much money. If America were raising £2 7s. per head from her Customs, as Australia, some radical change in the fiscal arrangements between the Federal and the States Governments would be imperative.

In America the state or province relies upon direct taxation, and seeks to render that taxation as light as possible by throwing the onus of all works and duties upon the counties, the cities, or townships, and upon private enterprise. Connecticut is a small state of 650,000 inhabitants, but it is quoted by Professor Bryce as illustrative of the other states, and it is a proof how very different are the circumstances here. The Connecticut contributions to revenue during the year 1884 may be roughly stated as follows:—

Federal Revenue (Customs and Excise) ...	£800,000
Municipal Taxes (Direct Taxes) ...	1,400,000
State Revenue (Direct Taxes)	350,000

The state revenue is generally raised by a tax on all property, real or personal, and it is struck in conjunction with the municipal rates.

The practical politician will realise at once that the American system is not possible here. We cannot so largely endow the Federal Government, and we cannot so starve the state. Our guide will have to be Canada, where, as Dr. Bourinot says (**Federal Government in Canada**, page 73), this question was one which gave the delegates at Quebec the greatest difficulty. In all the Canadian provinces the sources of revenue were—as here—chiefly customs and excise duties. Some of the delegates from Ontario, where there had been for many years an admirable system of

municipal government in existence, covering both local works and education, saw many advantages in direct taxation, but the representatives of the other provinces could not consent to such a proposition. In Nova Scotia, New Brunswick, and Prince Edward Island there were either no municipal bodies or those bodies—as in Victoria—largely relied upon annual subsidies from the state to enable them to meet their local necessities. All the delegates, adds Bourinot, felt that *to force the provinces to resort to direct taxation in order to carry on their Governments would be fatal to the success of the Federal scheme*.

This dictum may be applied to ourselves. The Federal Government will not largely relieve the burden of the Provincial Governments, and Victoria, for one colony, could not be asked to give away its Customs receipts of £2,500,000 and to raise an equivalent sum by direct taxation. It was finally decided in Canada to grant annual subsidies to the provinces based on population, the relative debts, the financial position, and such other facts as could be fairly brought into the consideration of the case, and it is from these subsidies that the provinces derive the greater part of their revenue.

This substantially will, it may be assumed, be the Australian arrangement. Apart altogether from issues of free trade and protection, it is certain that here, as in other countries, the bulk of the state revenue must come from indirect taxation, that is to say, from the Customs, and as the provinces will undertake the most of the public works they must receive the most of the Customs dues.

The Public Debt and The Public Estate.

The question whether the public debts and the public estate of the various colonies shall be transferred to the Australian Government is one of the big subjects which have to be dealt with, but though the subject is large it is easily disposed of. It is true that to some extent precedents can be quoted from other countries, but these precedents are partial, and occur under circumstances different from our own.

Those who argue that the states in the American Union and the provinces in Canada have no large public debts forget that railways, roads, public works, and irrigation schemes are left there to individuals and to companies. If the obligation of constructing such works could be transferred to private enterprise here, the contention that the public debt of the colonies should be an amalgamated public debt would be a feasible contention, but as this cannot be the argument fails.

Let us imagine for a moment that the provincial debts of the past and the public work obligations of the future have been transferred to the Dominion Parliament, and reflect what would happen. Victoria might some day arrive at the conclusion that the time was ripe for a bold borrowing policy to place her in front of the sister states. Her resolution might be that a loss in interest for a few years would be repaid by the advantages of the present expenditure of capital, and by the future development of local resources, and her citizens would be eager for the effort. But the Dominion Parliament would to a certainty look coldly on this scheme, and would assuredly not sanction the pledging of the credit of Australia for the special advantage of Victoria. The Dominion Parliament must ever keep before its eyes the principle of share and share alike. Again, if Queensland made proposals for what we call here a "spirited policy of public works" on its own account, we may be sure that Victoria would join in sitting on Queensland, and so it would be with each colony in turn. One can imagine members from Brisbane, Sydney, and Adelaide coldly rejecting proposals to spend four or five millions on suburban railways for the accommodation of Melbourne, but one cannot suppose that Melbourne would be content to have her progress barred in this manner. To transfer local works from the provinces is, in short, to revive local jealousies, and to imperil the union.

A statement of the public debt of each colony shows how different are the ideas that prevail as to the proper rule of borrowing. An exact estimate is difficult to obtain, as the figures—especially the population returns—are always varying, but in round numbers the obligations are:—

	Debt per Head.
Queensland	£66
New Zealand	62
South Australia	60
New South Wales	40
Victoria	31
Tasmania	30
Western Australia	30

What such a list makes evident is that circumstances may warrant a different rate of borrowing in each district. We could not divide the loans fairly to-day. Still less could we, acting as a whole, arrange the proper individual rate of investment in the future. Even if the general decision were wise—which it might not be—it would none the less provoke local discontent.

With regard to the public estate much the same principle obtains. You cannot deal with all the lands of the Australian continent upon the same basis. The Victorian members sent to a federal Legislature would not be the proper judges of how to dispose of the areas of Northern Queensland nor of Western Australia. Those who have parted with the bulk of our estate have no right to expect to go shares with their neighbours. The land question in some of the states may yet give rise to bitter struggles, and as one great aim is to keep the Australian Government free from local friction and from provincial complications, it must be wise for the Federal Government to stand aloof, and to let experiments be tried on local reponsibility. The success of a settlement plan in one state will inform the others, and a failure in one part of Australia will be a warning to the other provinces. Local knowledge is required in dealing with the land problem in each colony, and where local knowledge is the indispensable condition the interference of the Dominion Parliament is out of place.

Colonists must be well aware that any attempt to deprive the provinces of the right to push on public works with such vigour as they please must end in disaster. To use a metaphor, it may be said that it is impossible to reduce the speed of such a convoy as the Australian colonies to that of the slowest sailer.

The Dual Governments.

When introducing a new form of Government it is but natural that doubt should prevail with regard to its powers and its operation. Australians have lived under a municipal, a provincial, and an Imperial Government, and the greatest of these to them has been the provincial authority; practically, it has been all in all. It is natural to ask how, if a Federal Government is introduced between the provincial authority and the Crown, will that affect the situation. To whom will the citizen look for the making of laws, the development of resources, and for attention to the thousand and one wants of daily life? To-day the colonist lives under the one Government, for he knows only his own colonial Ministry—Victorian, South Australian, or Queensland, as the case may be. The Queen, with her authority, is remote. But as a member of a federation, he will live under a dual Government. He will be the citizen of an Australian State, and he will be also a member of the Australian nation, and he may reasonably desire to know which of the two colonial Governments will be the one making daily calls upon his attention. Argument is of little use here, nor yet the expression of individual opinion. The best way of "spreading light" is to give authoritative statements from men who have made the ten English-speaking federations their special study.

With regard to the United States, Bryce writes: —"An American may, through a long life, never be reminded of the Federal Government except when he votes at Presidential and Congressional elections, lodges a complaint against the post office, and opens his trunks for a custom-house officer on the pier at New York when he returns from a tour in Europe. His direct taxes are paid to officials acting under state laws. The state, or a local authority constituted by state statutes, registers his birth, appoints his guardian, pays for his schooling, gives him a share in the estate of his father deceased, licenses him when he enters a trade (if it be one needing a license), marries him, divorces him, entertains civil actions against him, declares him a bankrupt, hangs him for murder. The police that guard his house, the local boards which look after the poor, control highways, impose water rates, manage schools—all these derive their legal powers from his state alone. Looking at this immense compass of state functions Jefferson would seem to have been not far wrong when he said that the Federal Government was nothing more than the American department of foreign affairs. But although the National Government touches the direct interests of the citizen less than does the State Government, it touches his sentiment more. Hence the strength of his attachment to the former, and his

interest in it must not be measured by the frequency of his dealings with it. In the partitionment of governmental functions between nation and state the state gets the most but the nation the highest, so the balance between the two is preserved."

With regard to Canada, Bourinot says:—"The province in many respects touches more nearly the civil and the political side of the people within its limits than the central authority with its more general or national attributes of power. The exaction of indirect taxation does not come home immediately to all classes in everyday life like the tax collector who presents himself under the municipal system in vogue in the provinces. Comfort and convenience, liberty and life, civil rights and property, endless matters that daily affect a community are directly within the jurisdiction of the provincial organisms. If the Dominion should cease to-morrow to exercise its constitutional powers, the province would still remain —for it existed before the union—and its local organisation could very soon be extended to embrace those powers which now belong to the central authority." . . . . "If we take up any volume of the Statutes of a province, of Ontario for instance, we shall see the truth of the observation I made in the course of the third lecture, that provincial legislation in every way more nearly affects our daily life and interests as citizens of a community than even the legislation of the Dominion Parliament. In the Statutes for 1888 we find laws relative to probate and letters of administration, executions, mortgages, sales of chattels, solemnisation of marriage, married women's real estate, benevolent, provident, and other societies, liquor licenses, frauds, closing of shops and hours of labour, prevention of accidents by fires in hotels and other places and public buildings, protection of game and fur-bearing animals, protection and reformation of neglected children, agricultural exhibitions, besides a large number of private and local Acts for the incorporation of insurance and other companies, for the incorporation of towns, for the issue of debentures for certain local purposes, and the multiform objects which the constitution places under provincial control. Then every session there is the distribution of the public moneys, which, as in the Dominion Parliament, are voted in the committee of supply, and included in an Appropriation Act."

A similar picture comes to us from Switzerland. Sir F. O. Adams writes (**The Swiss Confederation**, page 26):— "Upon public occasions when all the cantons are represented, such as the Federal Rifle Meeting, or the Gala Day of an Exhibition, a stranger witnessing the unanimity of feeling, the cordial greetings, the affectionate manner in which each orator addresses his "Dear friends" and his "Dear confederate," would be led to believe that no more united country than Switzerland could exist in the world. When,

however, such festive gatherings are over, and when the Confederates have returned home, each to his canton, the interests of the particular canton become once more predominant and the national sentiment is no longer apparent. . . . . It may be affirmed that the (cantonal) feeling induces additional life and vigor into the component parts and encourages a healthy emulation and rivalry amongst them, so that Switzerland is materially stronger as a Confederation of cantons than if she were a centralised state." One phrase with regard to the relative position of the cantons and the Confederation has become historic. "I love my shirt," said a local patriot, "better than my coat, because it is nearer my back."

The situation in the United States and the situation in Canada must be the position here—with the provincial tie necessarily stronger, however, in Australia than it is abroad—for reasons already given. It will be noted that the writers who have been quoted agree that the provincial Government is really little affected in power by the federal institution, but that it remains the authority most in touch with the people. The Federal Government flourishes to a large extent not by virtue of what it takes away from the local Parliament but by means of new powers acquired for the people. The federation is a Customs union plus foreign relations and plus intercolonial business.

Another practical test of what the Federal Government takes away from the provincial Government is to note what of the business transacted in an actual session would be removed to a Federal Legislature. In the year 1890 the Victorian Parliament dealt with forty-three measures, and the division would have been as follows:—

Australian (or Federal).

1. Census Bill.
2. Customs Act Amendment Bill.
3. Marriage Act Amendment Bill.
4. Trade Marks Bill.

Victorian (or Provincial).

1. Railway Loan Act 1889 Amendment Bill.
2. Consolidating Bills.
3. Presbyterian Trusts Bill.
4. Kew Church of England Lands Bill.
5. Law of Evidence Amendment Bill.
6. Electoral Rolls Validating Bill.

7. Shire Boundaries Bill.
8. Real Property Act 1890 Amendment Bill.
9. Portland Shire Hall Bill.
10. Melbourne Hydraulic Power Company's Amendment Bill.
11. Consolidated Revenue Bill (No. 1).
12. Land Act 1890 Amendment Bill.
13. Consolidating Acts Revision Bill.
14. Railways Standing Committee Bill.
15. Municipal Overdrafts Indemnity Bill.
16. Consolidated Revenue Bill (No. 2).
17. Declarations Commissioners Bill.
18. Partition Laws Amendment Bill.
19. Melbourne Tramways Trust (Borrowing Powers) Bill.
20. Mining on Private Property Act 1884 Amendment Bill.
21. Melbourne and Metropolitan Board of Works Bill.
22. Suburban Tramways Bill.
23. Melbourne Harbor Trust Act 1890 Amendment Bill.
24. Consolidating Acts Further Revision Bill.
25. North Melbourne Railway Lands Exchange Bill.
26. Mines Act 1890 Amendment Bill.
27. Irrigation and Water Supply Loans Bill.
28. Agricultural Showyards Sale Bill.
29. Appropriation Bill.
30. Cape Patterson and Kilcunda Junction Railway Bill.
31. Treasury Bonds Bill.
32. Railway Loan Application Bill.
33. Victorian Stock Bill.
34. Fire Brigades Bill.
35. Infant Life Protection Bill.
36. Evidence Law Amendment Bill.
37. Waterworks Construction Encouragement Act 1886 Amendment Bill.
38. Mines Bill.
39. Supreme Court Rules Bill.

The session of Parliament just taken is the last session, and it is no exception to the general rule. In other sessions, as in it, not above one measure in eight is federal, and, as a rule, this eighth measure is one which is of only secondary interest. In Victoria the recent important discussions have been with regard to the Treasury book-keeping and to railway construction, and to the rate of borrowing, and these issues will remain with us after federation is established. So an American publicist writing on the subject has observed that nearly all the “burning questions” of Great

Britain since the Reform Act of 1832 was passed would never have come before Congress, but would have been settled by the States. It is a misconception to suppose that federation necessarily sweeps away provincial rights and liberties.

To colonists born under British institutions the idea of a dual Government may at first appear strange. People who have been accustomed to highly centralised government might in the same manner think that municipal self-government would involve difficulties. But experience shows that in neither case is there any real awkwardness. We do not rob the provinces when we leave them their full, varied, and all-important provincial powers, and when we create a Federal Government to control those issues which are common to all, and which cannot be dealt with satisfactorily by the colonies apart, we merely complete our organisation. And we can only refuse to develop as nature indicates at our own cost and peril.

The Form of Government.

The Lower House.

The federal constitution naturally lends itself to the bi-cameral system, inasmuch as the quasi-sovereign states can be represented as states in the Upper Chamber, while the people of the nation as a whole can be represented in the Lower.

The formation of the Lower House should not give the trouble which the working out of the Senate may involve. All the federal states of the world, from Germany to America, elect their lower houses on the same basis, namely, direct election by the people at large; and the setting aside of these precedents is out of the question. The Australian House of Representatives will need to be as "broad-based" as the others. Given manhood suffrage and equal electoral districts—or rather electoral districts approximately equal—it must be said that the issues to be decided in connection with the House of Representatives are only machinery matters.

The three possible modes of electing the House are represented by the examples of Switzerland, Canada, and lastly Germany, and the United States. The Swiss system is simple. Each group of 20,000 citizens is entitled to a member. A decennial census is taken, and seats are allotted accordingly. Canada is more complex. Her Lower House contains 215 members, or about one to each 20,000 persons, but the numerical unit is not recognised. The province of Quebec is allotted the fixed number of 65 members, and each of the other provinces obtains the number of members that will give it the same representation in proportion to its population that Quebec enjoys. If 65 members is a member for each 20,000 people in Quebec, then the other provinces obtain a member for each group of 20,000. If the 65 represent a member for each 30,000 persons in Quebec, then 30,000 becomes the electoral unit for the remainder of the provinces. In Germany the basis of the Reichstag is manhood suffrage and the ballot. The term of service is three years, and its 397 members represent one member for every 118,000 inhabitants. In the United States the constitution provides that "representatives shall be apportioned among the several states according to their respective numbers." The original arrangement was that there should be one member for each and every 30,000 persons, but this standard would give the United States to-day a House of 2,000 members, and it was long ago abandoned as impracticable. At present the number of members is fixed at 325, and Congress allots so many members to each state in proportion to its population at the last decennial census. The Swiss

system might be adopted as a convenient stopgap, but it would soon become impossible in a country where population is increasing so rapidly as in Australia, and the permanent choice will be between the Canadian and the United States plan. The Canadian arrangement was adopted to avoid wounding the *amour propre* of Quebec, which would not like to see its delegation reduced by the growth of the sister states, though it cannot object to having their representation increased. Possibly Victoria, which is likely to be passed in numbers by its larger trans-Murray neighbour, might wish to take this Quebec position, but otherwise the United States arrangement goes straight to its end.

As to the term of election, the various federal Houses have the following duration:—

	Years.
House of Commons (Canada) ...	5
National Council (Swiss)	3
Reichstag (Germany)	3
House of Representatives (United States)	2

If the life of the Canadian House is too long, the tenure of the United States House is too short, and either three or four years would seem to be the happy medium. One consideration is that with a short existence of two years dissolutions for taking the opinion of the country at any particular crisis become practically impossible, and they are eliminated accordingly from the American Constitution.

The Senate.

All Federal Governments have their Senates or Councils of the States, and in all of them the Senate is based upon the principle that in a federation the states must be represented as well as the people. The principle, if not as old as the hills, goes as far back as the Achaean league, where each city, independent of its size, had one vote. And the reason why the principle is universal is not far to seek. It is probable that no small states would care to link their fortunes with large states if they were liable to be out-voted and ignored by virtue of the superior population of their greater brethren. Certainly the American states would never have set aside their loose confederation, unworkable as it was, if it had not been for this method of alleviating their fears and of extinguishing their jealousies. In their Senate each state, the great and the pigmy, is equal. We shall undoubtedly to a large extent have to recognise this principle here.

There are three leading questions to be decided in connection with the creation of a Senate:—1. Is the body to be elective or nominee? 2. Are its

powers to be co-equal with those of the Lower House? 3. Are the provinces to be equally represented irrespective of their population?

The existing Senates of to-day are for the most part elective. In Germany the Bundesrath, or Federal Council, is composed of members selected by the Governments of the various states each session, so that the Council directly represents those states. In the United States, the States Legislatures return each two members. So it is in Switzerland, though there the cantons can vary their mode of choice. The only federal country which departs from the elective arrangement is the Dominion of Canada, where the principle of representatives for provinces is recognised, each province being entitled to be represented by so many senators, but where members are nominated for life by the Crown, and not by either people or Legislature or Government. As a consequence the power allotted to the Senates in other countries is greatly reduced in Canada.

There are many special reasons why the nominee principle should not obtain in the Federal constitution. One is that it is necessary to interest the people in the Federal Legislature, and if the members of the Upper House are nominated for life by the Crown we shut out interest in its composition. Vacancies are irregular, and, when they occur, they lead not to a public appeal but to intrigue behind the scenes. In America the Presidential contest with all its drawbacks—and they are many and great—has the advantage that it deeply interests man, woman, and child in the government of the country. Each individual is for the moment warmly interested in the person of the federal officer, and thus the federal nationality is brought home to one and all. Next in America to the interest taken in the election of the President comes the interest in the election of the senators for the province, for though the election is made by the Legislature, yet not only is the choice of the two Houses the great subject of the day in the state, but state elections will often turn on the senatorial issue, and on occasions the candidates will appeal directly to the people to influence the Houses. Thus the famous struggle between Mr. Lincoln and Mr. Douglas in 1858 for the Illinois senatorship—a struggle which largely influenced the fate of the Union—was conducted in a stump campaign. When this occurs we may be sure that public feeling is running high on some federal question, and that it is advisable that it should have a safety valve, and the interest taken in the election goes greatly to popularise the Senate.

Then, again, the elective House is entitled to much greater power than is the purely nominee Chamber. In Switzerland and in the United States the Senates have practically equal rights as regards the Budget and financial expenditure in general. In Switzerland the two Houses stand on the same footing. In the United States the only difference is that “All bills for raising

revenue shall originate in the House of Representatives," but the Senate may propose or concur with amendments the same as on other bills. No class of bills is more freely amended by the Senate than money bills, and the idea that the Upper House should be excluded from this right would be regarded as absurd by the American people. With a nominee Upper House it is natural that privileges should be curtailed; but when the one Chamber represents the people as much as does the other, then the reason for restriction does not obtain.

A reproduction of the House of Lords is, of course, impossible. Nor is the House of Lords a federal institution. Such a body could only exist in a unified country. The Australian choice will be between the Senate of Canada and that of the United States, the latter being practically similar to the Bundesrath of Germany and the Council of States of Switzerland.

Each of these Senates of the North American continent has been painted recently by dispassionate observers. The Canadian Senate, according to Dr. Bourinot, has failed to take a high position. The object of its founders was to follow the model of the House of Lords as far as circumstances would allow, but it shares the legislative and executive weakness of the Lords, while it obtains none of the prestige attaching to an ancient body of hereditary legislators. As a group of individuals the Canadian Senate is said to compare favourably with any House elsewhere. It has within its ranks men of fine ability, and large experience in commerce, finance, and law, and if it is weak—as it is admitted to be—the fault must be inherent in the nature of its constitution. The system of nomination by the Government of the day tends to fill the Senate with men drawn from one political party whenever a particular Ministry has long been in office. "Life Peers," as the senators may be called, soon lose touch with the community, and soon cease to be regarded as representative men. On the whole Canada would seem to tolerate its Upper House, and not to believe in it, nor to admire it nor regard it as a powerful factor in the sum.

On the other hand, Professor Bryce admits that there is much force in the contention that the Senate is the success of the American constitution. The mode of election by the state Legislatures is simple and natural, and produces a body which is both strong in itself and different in its collective character from the Lower House, while ultimately resting upon the same popular basis. It also constitutes, as its authors expected, a link between the state Governments and the Federal National Government. It is a part of the latter, and yet each member is in direct touch with the former, which has elected him.

The aims with which the Senate was created are set forth in the **Federalist**, as follows:—

To conciliate the spirit of independence in the several states by giving each equal representation with regard to size.

To restrain the impetuosity and fickleness of the Lower House, and so guard against the effects of gusts of passion or sudden changes of opinion in the people.

To do so by establishing such a body as will divide with the House of Representatives the affections and support of the centre body of the people themselves.

To provide a body of men whose greater experience, longer term of membership, and comparative independence of popular election will enable them to preserve a continuity of foreign policy.

The objects, it is admitted by all critics, have been substantially obtained. "The Americans," says Bryce, "consider the Senate the success of their constitution, a worthy monument of the wisdom and foresight of its founders. It has now the respect, if not the affection, of the people, by its sustained intellectual power."

Bryce adds—"It is only to-day that the philosophers of England are awakening to perceive that the fault of their House of Lords is not that it is too strong, but that it is too weak, and that no Assembly can now be strong unless it be representative. Now, the Senate, albeit not chosen by direct popular election, does represent the people; and what it may lose through not standing in immediate contact with the masses, it gains in representing such ancient and powerful commonwealths as the states. A Senator from New York or Pennsylvania speaks for and is responsible to millions of men. No wonder he has an authority beyond that of the long-descended nobles of Prussia or the Peers of England, whose possessions stretch over whole counties."

The one weighty argument against the American Senate is that it is said to be incompatible with party or responsible government as known in the colonies and in Great Britain. A House so powerful, would, it is urged, have a voice in the making or unmaking of Ministries, and a Government cannot serve two Houses. It is not sure, however, that the Australian Federal Government will be a party catch-vote Government, such as obtains in the present provincial Houses. The system may admit of modification to be considered in connection with the Executive. But even if the so-called responsible system is retained in its entirety, and if the Ministry of the day is practically a committee of the Lower House, it by no means follows that legislation should not be reviewed by a Second Chamber directly representing the states by election through the States Legislatures. As the American Senate is at once the most respected and the most conservative body in the land, we appear to have in it an example that

cannot be lightly passed over.

Second Election.

A great deal of the success of the Washington Senate is attributed to the mode of election. The members of a provincial Legislature are in a position to make a better choice than are the people at large, if only because they know the candidates so much the better. The owner of strong lungs, and of a glib tongue, may achieve a success on the platform among people to whom he is practically a stranger, but in daily intercourse he may show himself to be shifty and shallow, and his own party will set him aside for some one on whose judgment and whose integrity they can more rely. When demagogues find their way into a Legislature they are apt to discount the arts by which they have risen themselves. Although not good representatives themselves, they are excellent judges of what a representative should be. De Tocqueville, in his classic work on **Democracy in America**, expresses a strong opinion on this point. "Why," he asks, "are the most able citizens to be found in the one Assembly more than another. Both of them emanate from the people; both of them are chosen by universal suffrage, and no one has been able to assert that the Senate is hostile to the interests of the people. From what cause then does so startling a difference arise? The only reason that appears to me to adequately account for it is that the House of Representatives is elected by the populace directly, and the Senate is elected by elected bodies." It would be a misfortune if the experience of double elections were not further tested.

The American Senator sits for six years. One-third of the House retires every two years, so that it continually receives accessions of new blood. In Germany, on the other hand, the Governments of the "principalities and powers" nominate their delegates annually. In Switzerland the canton elects its member how it pleases and for so long as it pleases. So long as the canton sends its two representatives the constitution is satisfied. The American practice appears by far the most satisfactory, though, of course, it is susceptible of modification. The representation per colony would be larger here than it is in the States. If six were the unit of representation, then one member might retire annually from each province, so that the freshening process might be more systematic and continuous. The smallness of the American states does not allow of this provision.

Of the three questions at issue the most arguable will be whether the representation of the colonies in the Senate should be equal. In America this equal representation is a part of the federal bond. The union would not

have been effected if the concession had not been made, and had not been rendered irrevocable. But state jealousies and fears which were natural then should be less now after the experience of a century of federation. In Canada some attention has been paid to proportion, and so Ontario has twenty-four members, Nova Scotia has twelve. In Germany also, Prussia sends seventeen members to the Bundesrath, while Bavaria sends six, and Lippe and Waldeck each send one. That is to say, the smaller states are highly favoured, but population and area are not totally disregarded. In the United States to-day the arrangement which allows Nevada, with 40,000 people, an equal power with New York, with its 2,500,000 people, seems open to criticism. Supposing there are six colonies in the Australian federation, it would be absurd for Western Australia with 40,000 inhabitants, to send ten senators, and for Victoria, with 1,200,000 people, only to send ten. Such limits as not less than five senators for any colony, and not more than twenty, would seem to commend themselves to common sense, while still retaining the principle that the province is the unit rather than area or population. But all down the line the composition of the Senate will draw largely upon the intelligence, the knowledge, and the good feeling of the community.

It has to be borne in mind that in a federal Government a Senate is a necessity, and that it occupies an entirely different position from the second Chambers—the Upper House, or the House of Lords —of unified nations, because it exists to represent the states, and to give them a position of equality in one of the branches of the Legislature.

The Executive.

The successful working of any federal constitution which Australia may agree upon will largely depend upon the Chamber of the Executive which may be created. The making of the laws is often regarded as the most important part of the duties of a Government, but as a rule the administration of affairs occupies the prime place in the fortunes of a country. Bad laws have often existed in conjunction with the successful government of a nation, but it will be much more difficult to find instances of success, under weak, corrupt, or incapable administrators. It may be said of a united Australia that from the first she will have need of wise Ministers, and Ministers in whom the Australian people will have confidence.

We have three types of Executives from which to choose. The first and simplest is that of Germany, Russia, and the United States, where the Sovereign selects the Ministers and maintains them in office. It would be

idle to say that the system has not much to recommend it, inasmuch as experience shows that it enables strong and patriotic men to be brought to the front. The Prussian Parliament sought from the first to destroy Bismarck, and it is questionable whether Gortschakoff or any of the great chancellors who have built up Russia would have proved flexible Parliamentarians, just as it is problematical whether powerful American secretaries of state such as Seward or Blaine would have commanded Parliamentary majorities in the States. However, the German-American type, whatever its advantages or disadvantages, may be described as impossible for us, and this for the simple reason that there is no one deputed by the people—no father of the country—to select the men. The Governor, who is the nearest approach we have to hereditary Emperor or elected President, is usually an impartial, and is frequently an able man, but nevertheless he is very often the public man who knows least of all the choice that would be grateful to the community, and it will be felt that it would be ridiculous to delegate a task so vital and so delicate to other than Australian hands. In other words, our choice is between the English and the Swiss systems, under which Parliament directly appoints Ministers. It goes without saying that with our traditions, our training, our knowledge, we shall adopt the British Executive as Canada has done before us, though it may be with modifications at the start, to be developed as time rolls on. To do more than glance at the English system would be a waste of time. Under it the Executive is supposed to be a party Executive. It is selected from the party which is in a majority in Parliament, and it retains office so long as its party retains that majority, and so long as Ministers themselves retain the confidence of that majority. This system has done good service in its day. It creates vigilant critics, and it prompts Ministers to be "up and doing." But the medal has its reverse. When a great principle is at stake a division into parties is inevitable, but in ordinary times and in ordinary countries there will be no such great principles to persistently fight about; and then party government is liable to degenerate into the struggle of factions. The Opposition will resort to unworthy practices to bring their party into power, and the Ministry will be tempted to resort to countermining in order to retain possession. When matters are at their very worst, the one party will bitterly vilify the other so as to expose it to public opprobrium, and the worse the faction the lower it is in intelligence, and the less lofty it is in principle and aim, the more readily will it use such weapons and the greater for the moment its chance of success with the multitude. The cure comes later on, but not until mistakes have been made and excesses committed. The frequent formation of coalition Governments in the Australian colonies is evidence in itself that the party system is by no

means an unqualified success here, and of itself suggests that a new arrangement is desirable—one that will enable the state as a rule to command the services of its best men and its ablest administrators, irrespective of short-lived cries or factious imputations. In Victoria there have been a succession of coalition Governments since 1881. Mr Service and Sir Graham Berry were at the two ends of the pole in this colony, but in deference to the necessities of the state they came together. So did Sir Henry Parkes and Sir John Robertson in New South Wales, so it was with Sir Robert Stout and Sir Julius Vogel in New Zealand, and so it is with Sir Samuel Griffith and Sir Thomas McIlwraith in Queensland. In Tasmania the experience has been the same. A coalition Ministry means the suspension of party government, and the frequency of coalition Governments in the Australian colonies is evidence that we have not here the two well-marked irreconcilable divisions—which may be defined as caste and anti-caste—existing elsewhere. All of us are what would be called in Switzerland progressionists. All are liberals in the sense that they desire a fair field, and no favour to every man and woman in the community. All are conservatives in the sense that they wish to preserve honour and honesty and domestic institutions. Under such circumstances the natural course of events is for new combinations to be formed to deal with new problems as they arise, and this condition of affairs tells against purely party Executives. In a Federal Legislature—an Australian Parliament—it should be possible to more frankly recognise than has hitherto been done this new principle of an Executive of the whole.

There are points in the Swiss system which are highly suggestive of possibilities in the future. In brief, it may be said that the first duty of a new Parliament in Switzerland is to appoint the Ministry, which will hold office during the term of that Parliament. There are seven Ministers, and no two must sit for the same canton, the object being of course to give the Executive a national rather than a local character. It is also understood that all the great parties in the state are to be represented in the Ministry. The Ministry is formed to represent the Parliament as a whole, and therefore the country as a whole, and consequently "Nationalists," "Progressionists," "Radicals," and other local divisions are always included. The idea that the Ministry should be the agents or tools of any section of Parliament or of the people is not entertained. All legislation must emanate from the Ministry. But if the bill is distasteful to the House, neither the Minister nor his colleagues resign; while, on the other hand, the Parliament may direct that a measure to effect certain objects shall be brought in, and Ministers in due course will submit the draft of a measure. In these colonies the standing committees of the two Houses, and especially the joint

committees, are constituted so as to represent Parliament as a whole. It would be felt that a gross wrong had been done if these committees had a party caste, and the joint standing committee is the nearest approach we have here to the Swiss Ministry.

There are many reasons why the Swiss system could not be transplanted here. It will be sufficient to mention one, namely, that the country is not prepared for so great a change. Our politicians who have lived, so to speak, with the one machine, could not be expected to work the other. We are bound to proceed on British lines, and yet it may be submitted that not even from the first should the party system be pushed to any extreme, but, on the contrary, a real or genuine effort should be made to give the Federal Executive an Australian rather than a sectional character. Is it desirable to create party issues here; is it advisable to split the newly-founded Australia—or try to split it—into two camps, each party or each camp raging against the other and endeavouring to make it appear that the hostile faction would subvert Australia? Such questions have only to be put to obtain the one answer. Supposing that an issue free trade or protection springs up, then we do not want an Executive which will throw its interest or its influence into the scale the one way or the other; or suppose that the burning question of the day is the selection of the federal capital, there would be a danger if either a New South Wales or a Victorian Cabinet were in power. Given a party Cabinet indeed, and nothing is more possible than that one party in the House would be led by Victoria, and another by New South Wales. And thus a division which we hoped to abolish would be perpetuated to the no small peril of the union. Reflection shows that there is every reason why we should endeavour to diminish the party character of the Australian Executive; and, certainly, a great opportunity would be missed if the effort were not made. It was natural for Great Britain to drift into the party system. Our forefathers had little choice, inasmuch as to summon all parties to the Cabinet in the early days of the House of Hanover was to entrust the avowed foes of the dynasty with secrets and with power, but no such situation occurs here. We can afford to lessen the party strain, with the view of offering all Australians an opportunity of serving their common country.

There is no need to embody any provisions about the Cabinet in the federal pact. The Cabinet in Great Britain is a body with an unwritten constitution, and so it may well be here in order that we may develop gradually the institution most fitted to Australian wants. In the first place it is probable that there will be a consensus of opinion that the seven colonies (for with the separation of Queensland there will probably be seven in the union) should each furnish one Minister. There will be a reluctance to

leave any colony out of the Cabinet in the first instance, and this arrangement will powerfully tend to give the Executive a national rather than a party character, and it will follow, also, almost as a matter of course, that such a Ministry will not have to stake its existence upon points in law, acts, or incidental proposals, but will retain office as long as it enjoys the confidence of Parliament as a whole. Again, if a particular member is a failure as a Minister, there can be no harm in such a Minister being replaced. In Victoria it looked, a few years back, as though the Government would be re-arranged at the commencement of each Parliament, weak men being weeded out and strong men taken in. Had this been done, a great stride would have been taken towards the Swiss principle of a Cabinet composed of the best men in the House. And the influences which were almost successful here—the influences which have told, and which are setting against a purely party Executive— will be far stronger in the Federal Legislature than they are in the local Parliaments. English lines will be substantially followed, but Australia will probably render the Empire yet another service by continuous and ultimately successful efforts to establish a National Executive.

The Governor.

The position of the Governors of the colonies is liable to be changed by the federation of Australia. Hitherto the Governor of a colony has had no superior in Australia, but with a Governor-General there will be a higher official position. Not only that, but the great Imperial interests which the Governor is supposed to protect will be relegated to the Dominion, so that all important correspondence with Downing Street will be conducted by the Governor-General. The foreign policy of Australia will be controlled by the Dominion, and the home policy will belong to the provinces, and consequently Imperial interest in provincial policy must ever be small. It is certain that the Governor-General of Australia will be one of the high positions of the Empire. On the other hand, there will be a fear that the Governor of the colony may not possess the status which he now enjoys.

In Canada there is now but the one Imperial officer, namely, the Governor-General, the Governors of the colonies being nominated by the Dominion Government in the same way as the Imperial Government appoints its representative. The Governor so appointed exercises the same authority as he would were he nominated by Downing Street; but in the event of misconduct or failure he is liable to be reprimanded or dismissed by the Dominion Ministry, and this power has been exercised. Under this arrangement it is clear that the Governor can be either a public servant or a

politician, or a citizen of wealth and influence and abilities, but such a Governor is essentially a local officer. In his case the Queen's commission and the Queen's instructions do not exist.

So far as the Imperial Government is concerned, its interests are amply protected by the Canadian arrangement, as the Governor-General is there to represent it. And all issues connected with the Empire come under his observation. Wherever the Empire is concerned he can delay a decision until the Imperial authorities have been consulted, and this is all that the British Government can desire. There is, indeed, every reason to suppose that the Colonial Office would prefer to have one Governor in Australia, and not many Imperial agents, for the Colonial Office does not like to be perplexed with either local troubles or conflicting claims. The difference of opinion as to the right policy to be pursued, whether to make the governorship of the colony a local or an Imperial appointment, will occur, not in England, but in Australia itself. A number of people will no doubt support the local scheme, because it affords opportunities for men who have made their mark in the colonies to earn further social and political distinction. It will be argued that the more prizes are offered the more it is probable that men of character and of position will be tempted to enter public life, to the great benefit of the individual and of the community. And this is a point which admits of being strongly pressed. On the other hand, there is a strong belief that the colonies will not part with their respective "Government-houses," and with all that Government-house means to many without great reluctance. The Governor is also an object of interest to tens of thousands who know nothing of Government-house, partly because he comes from another sphere, and largely because he is the direct tie with the old world and the direct representative of what, to them, are home institutions.

The hands of this party will be powerfully strengthened by the consideration, which has been pointed out in these papers, that the Australian states will be unique in size, power, and wealth. They will exceed the empires of Europe in area, and they will discharge duties which few European empires would care to face. After making allowance for federal transfers it is probable that the revenue the Government of Victoria will have to deal with five years hence will be not less than £10,000,000 per annum, and such an outlay is far in excess of the second-rate kingdoms of the old world, such as Denmark, Portugal, Greece, etc. So it will be with New South Wales and Queensland, and South Australia will in due course attain the same proportions, and the elder states will be growing rapidly. The Governor of such provinces takes part in large and interesting social experiments; he may exercise an influence in big and novel issues; he may

teach much and may learn much. The position of such provinces is entirely different from that of the states of the American Union and of the Canadian Dominion. They can offer a place and an opportunity for good work and a stipend, which may reasonably be attractive to men of standing who have any desire to serve the Empire abroad.

A precedent is to be found in India, where the Governor-General is directly appointed by the Crown, but so also are the Governors of Madras and Bombay, and these posts have from time to time been filled by men of high talent and repute. The status of the Governors of Bombay and of Madras is by no means below that of the ordinary Australian Governor. And there is every reason to suppose that the Imperial Government would willingly fall in with any proposal to continue the Imperial Governors in Australia, and so strengthen the Imperial tie.

The possibility of a collision between the Governor-General and the provincial Governor, if both are appointed by the Crown, may seem an obstacle at first to the dual arrangement. But unless with regard to such trivial matters as precedence and etiquette, which would soon settle themselves, disputes are less likely to occur under this system than the other. The Governor in the United States is never in collision with the President, because his duties are separate and are well marked, the Governor being as independent in his own sphere in his own state, as the President is in the Union. Otherwise, with nearly forty Governors, including men of all characters, and many of them bitterly hostile in practical politics to the natural chief, bickerings must be incessant. And we should have this absolute mutual independence here, if the provincial Governors were Imperial appointments.

Under the Canadian policy a serious collision between a provincial Governor and the Dominion Government has already occurred. Dr. Bourinot gives the particulars as follows:—

"M. Letellier de St. Just was appointed Lieutenant-Governor of Quebec by a Liberal Administration at Ottawa, and thought proper to dismiss his Executive Council, though it had a large majority in the Legislature. The constitutionality of his action was at once sharply attacked in the Dominion Parliament by the Conservative party, which was politically identified with the dismissed Ministers, but it was only in the Senate where it had a majority that a resolution was passed censuring him for an act emphatically declared to be at variance with the principles of responsible government. The Conservatives soon afterwards came into power, and a similar resolution was again proposed and passed by a very large majority. The Government, who had not up to that time thought it incumbent on them to assume any responsibility under section 59 of B.N.A. Act, which gave

them the power of dismissal, then recommended to Lord Lorne that the Lieutenant-Governor be dismissed; but the Governor-General, as stated in the text, hesitated to accept the advice, and preferred to ask instructions from the Imperial authorities. In consequence of their answer, he had no other alternative than to consent to the removal of M. Letellier, on the ground, as set forth in the Order in Council, that his usefulness was gone. . . . The consequences of this affair were serious, not only in creating a violent agitation for a long while, but in the effect upon the unfortunate principal actor, who felt his position most keenly, and soon afterwards died."

In this instance a party majority in the Dominion Legislature appointed a party man. The party agent was guilty as Governor of a serious party act, and thus brought upon himself what the one side considered punishment and the other a policy of revenge. The whole case is most instructive. The Governor of the colony, if he is appointed by the Dominion Government, will be responsible ultimately to that Government for his good behaviour, and he may be dismissed by the Federal Government as was M. Letellier de St. Just. But if he is appointed by the Crown he will be responsible only to the Crown, and not to the Dominion Legislature, nor to the head of the Dominion Executive, namely, the Governor-General. And if he is to be dismissed it must be by the Crown, as Sir Charles Darling was.

A third course is that the Governor should be elected by the people directly. He is so elected in all the states of America. But this is to transform the Governor into a powerful executive officer. A man so elected becomes the most powerful personality in the state; he overshadows the Parliament, and the British system of government by a Premier and by a Cabinet is practically set aside. The chances given to demagogism by this arrangement need not be dwelt upon.

It may be said that there is nothing in the circumstances of the case to prevent the people of Australia exercising a perfectly free choice, and of obtaining either an Imperial Governor-General, with colonial Governors of provinces (as in Canada), or an Imperial Governor-General, with Governors of provinces also appointed by and responsible directly to the Crown.

The Judiciary.

In connection with the federal judiciary an unusually large number of interesting issues and of moot points will occur, few, if any, of which have been debated.

Perhaps the best way of stating the problems is to mention the

arrangements in Canada and in the United States, both of which deserve to be closely studied, inasmuch as both have worked successfully, while they differ materially the one from the other. In the United States a double system of courts obtains. The federal Government creates federal courts to administer federal law throughout the land, and leaves the individual state to provide its own courts for the administration of state laws. The federal courts consist of a Supreme Court of nine judges, sitting at Washington, as a court of appeal, and as the ultimate legal tribunal of the country. The Supreme Court judges are not highly paid, their salaries being only £2,000 per annum; but great lawyers are found to accept the position because of its honour and dignity. In some respects the tribunal is described as the greatest in the world, inasmuch as it pronounces on the validity of the Acts of the Legislature, and because it decides as between sovereign states. The Privy Council could not pronounce any Act passed by the Imperial Parliament as *ultra vires*; but the Supreme Court in America can, and has, overruled Congress and the President when Congress and the President have gone beyond their powers. It is not sufficient that a law is enacted either in Congress or in the states. That law must also in the opinion of the Supreme Court be constitutional. Thus, the other day, the execution of a murderer was long delayed because the law permitting the use of electricity was protested against as a contravention of the constitution, which prohibits "cruel and unusual punishments," and the issue went before the federal courts accordingly. The law was upheld, but neither in Great Britain nor the colonies could the right of Parliament to pass such a law have been questioned. Judges placed in this high position of arbiters between Parliament and people, and state and state, require to be independent; and hence the federal judges hold office by an exceptional tenure. They are appointed by the President with the consent of the Senate, and once appointed they are not removable except by impeachment, for alleged crime or incapacity. The British practice of appointing the judges during good behaviour, but liable to be removed upon addresses presented by both Houses, was not considered a sufficient guarantee, inasmuch as such addresses might be procured in cases where the court and the Legislature are in political conflict. Alexander Hamilton—to whom the United States owe so much—was strenuous in his insistence upon this provision. In a monarchy, he said, "the danger is the despotism of the Prince, and in a republic it is the encroachments and oppression of the Legislative body." Only once has impeachment been resorted to as against a Supreme Court judge in America, and then the prosecution failed.

The common impression about the imperfect tenure of the American judge is founded on the position of the judges in the individual states,

where these officers are usually elected either by the people direct or by the Legislature, and for short terms only, with the frequent result of a terrible degradation. The federal courts of America show the advantages that result from rendering the judiciary absolutely independent. The state courts—with their judges occasionally in league with Boss Tweeds—exhibit the frightful mischief that may ensue when the judge has to supplicate for his place or drive bargains in order to obtain it.

The federal courts in America take cognisance of the following cases:—

1. Cases in law and equity arising under the constitution, laws, and treaties of the United States.
2. Controversies between two or more states, and between citizens of different states.

In the Cootamundra railway accident, when the Sydney express was wrecked, the Victorian citizens who were injured brought the action in the law courts of New South Wales. In the United States such an action would have gone to the federal court.

Each of the American States has its own Supreme Court or Court of Appeal, and its own minor courts, and so far as offences or matters covered by state legislation are concerned there is no appeal beyond the final local tribunal of the state. As a rule, the Supreme Court at Washington does not administer state but only federal law. A citizen who bases his case on federal law goes to the federal court. If a case is taken in the state court, and the defendant claims that the federal law governs the issue, he is entitled to have the case removed.

To us this system of co-ordinate jurisdiction seems to threaten terrible complications, and though long use has reconciled the American people to it, yet it is probable that the much simpler system of Canada will suffice here. There, all cases go to the provincial courts, these bodies administering provincial and federal law, but there is an appeal to a Supreme Court of Canada. This court consists of a chief justice and five puisne judges, and it is competent to hear appeals from the highest court in any province. But the judges of the provincial court are appointed and are paid by the federal Government, and not by the provincial Governments, and are consequently federal officers. The Quebec judges must, however, be taken from the Quebec law, and the judges for the other provinces must be taken from the respective provinces' bars until their local laws are assimilated, a contingency which is probably as remote as the millennium. No difficulty arises in Canada from the administration of state law and federal law by the same tribunals any more than a difficulty is occasioned

here by municipal laws and colonial laws and Imperial laws being administered by one and the same set of courts, and hence the American system may be pronounced unnecessary.

The most important issues that will have to be settled here will be as follows:—

1. The tenure of the federal judges. Does the circumstance that the judges will have to review Statutes, and may be in conflict with the Legislature render it undesirable to depart from the Imperial precedent of removal by joint addresses from the two Houses in favour of the tenure of the federal judges of the U.S.?

2. Shall there be federal and provincial courts in each province, or shall both provincial and federal law be administered by the same tribunal?

3. Shall the federal Government or the provincial Government appoint the local judges?

4. Should a federal Supreme Court be constituted?

5. Should there be an appeal from this federal court to the Privy Council?

This last is a burning question. By many the appeal to the Privy Council is looked upon as the birth-right of the British born, and as the link connecting the various parts of the Empire. Yet there is a feeling that the Privy Council appeal is a delay of justice, and that federal laws will be best interpreted by a high court that is in touch with their intention and meaning. One point may be taken for granted, namely, that the suitor who solicits the federal Supreme Court as a court of appeal will not be allowed to drag his adversary to yet another tribunal.

The Federal Veto.

A considerable difference of opinion may well prevail upon a question which greatly exercised in turn the constitution makers both in the United States and in Canada. In the States one conclusion was arrived at, and in Canada another. In the Republic the various states are supposed to delegate power to the Federal Government, and to retain all such powers as are not delegated; in the Dominion the Federal Government is supposed to delegate to the provinces and to exercise all powers not included in the reference. And one practical result from the adoption by Canada of this principle is, that the Constitution gives the Dominion Government the power of vetoing the acts of the provincial Legislature. The subject of the veto was fully discussed in the **Federalist**, and is noticed in all the histories and text-books relating to the Philadelphia convention, and these references of themselves show that the importance of the issue was fully recognised when the American Constitution was framed. The decision was

that there could be no federal veto, inasmuch as the power would tend to provoke ill-feeling and contests between the state and the federal authorities. When the state is legally competent to deal with a subject, then it was held that its decision is entitled to be final, and when its actions or its laws are *ultra vires*, the courts will repair the error. The principle that a province has a right to please itself in provincial matters was freely conceded, and it is, indeed, the rock on which the American union is built. The state, it is conceded, may go wrong. It may, for instance, tax capital and frighten it away, as California was near doing in the Kearney days; but such a state will, it is urged, be taught by experience, and in the meantime it will serve as an object-lesson to others, warning them off the dangerous track. The cities of a state that has gone wrong may be ill-governed under bad charters, but that is its own concern. It may neglect schools, with the result that it will become an object of scorn in the union, and other states will be strengthened in the resolution to act differently. It may maladminister right and left the powers entrusted to it, but it must be allowed to work out its own destiny and effect its own cure. The general sanity of the people will, it is urged, in the long run restore any erratic community to its corporate health. On the other hand, the province may try some local experiment, unpopular at the time in the general realm and distrusted, but which may prove to be a brilliant success. And the principle once granted that the sovereign state is entitled to its sovereign pleasure within state limits, the veto was condemned. It was urged that the Federal Government ought to have the power of saying that the local legislation was legal, and this power, it may be noted, is to-day conferred upon and is exercised by the Federal Government of Switzerland. But this contention, says Bryce, "was effectively demolished in the convention by Roger Sherman, who acutely remarked that a veto would seem to recognise as valid the state Statute objected to, whereas, if in consistent with the constitution, it was really invalid already, and needed no veto."

The non-existence of a federal veto has probably saved the States from serious strife. On the other hand, its existence in Canada has already been a source of danger and of ill-feeling. There has been anger because the veto was not exercised, and there has been threatened rebellion because it was. The Jesuits' Endowment Act of the Quebec Legislature is fruitful in lessons which cannot be too closely studied (Bourinot, **Federal Government in Canada**, page 518, *et. seq.*). In the year 1800 the British Government took possession of the Jesuit estates (the order having been suppressed by the Pope), and applied the revenues to the purposes of public instruction. But the Quebec Government recently assented to the proposition that the estates ought to have been given to the Roman Catholic churches, and it

voted $400,000 as compensation for the wrong alleged to have been done by Great Britain nearly a century back, the money to be spent with the assent of the Pope. As can readily be understood, the Protestant feeling on the subject was keen. The Protestant minority in Quebec protested with a vehement Protestant indignation, and appealed to the Federal Government to exercise its powers of veto, and the Protestant majority in the other provinces shared the feeling that the grant was highly improper and was an outrage upon feelings and principles which to them were sacred. The Cabinet as a whole shared these views, but it was placed in the difficulty that if it fell in with the views of the Dominion majority it would rouse feeling in Quebec to a fever heat. It was to obtain local independence that the Dominion was formed, and rather than run the risk of serious provincial trouble the Government gave way and assented to an Act of which it profoundly disapproved. Again, after vetoing certain railway Acts passed by Manitoba, and almost precipitating a revolt, the Canadian Government had to ignominiously give way. In both instances it is plain that it was an error to drag the General Government into the local struggle. To give power to states with one hand and to take that power away with the other is not proving a successful experiment.

The Federal Capital.

Although no principle is involved in the issue, yet probably the one question which will be found most difficult of settlement of all, when federation is grappled with, is the selection of the federal capital. We may be right well sure that each of the great seaboard cities will be jealous of the other, and will not willingly let the prestige and the material advantages of the Australian metropolis attach to its rival. So it has always been in federations. Germany, it may be said, is the only one in which the great city of the country is also the capital of the federation, and this exception arises from the preponderating and, indeed, overwhelming influence of Prussia in the empire. The German Confederation is not a union of equal states, but is the grouping of a number of minor powers about one whose greatness overshadows all the others. The first step taken by Prussia towards the German union was the exclusion of Austria, but if that rival state had remained thus there would have been the usual jealousy between Vienna and Berlin, and it may be that some inferior town would have been the capital. In America, as we know, New York, Boston, and Philadelphia were set aside, and an artificial metropolis was created. So it was in Canada, where Quebec, Montreal, and Toronto were passed over in favour of Ottawa. In Switzerland, the two centres of population, Geneva and

Basel, gave way to Berne. In New Zealand, the two large commercial centres, Auckland and Dunedin, have neutralised each other, and the minor city of Wellington has been made the capital.

We must anticipate that the same influences will be at work in Australia—our New York and Philadelphia, our Geneva and Basel, our Quebec and Montreal, our Dunedin and Auckland, being Melbourne and Sydney. There are pessimists who declare that the selection of either of these great cities for the position of Australian metropolis would break any newly-formed federal bonds, or rather would prevent their creation. Without going so far as this, it may be admitted that the difficulty is real and great. The orator who rose in the Melbourne Parliament to move the ratification of the choice of Sydney would by no means have a friendly audience; and a speaker who rose in Sydney to announce the choice of Melbourne would occupy a most unenviable position. The importance of unity to Australia is far and away above and beyond the value of this dispute between the cities. The loyal feeling for the grandeur of the whole should altogether outweigh this jealousy of the parts, but there is a difference between what should be and what is, and no one can affect to overlook or to despise this rivalry of the seaboard capitals. The easy mode of escape would, no doubt, seem to be that which has been adopted elsewhere, and to select some city or to create one which is not in competition with the commercial centres. Adelaide, Brisbane, and Hobart, it must be remembered, have to be consulted, and the probability is that those cities, as they nourish hopes of their own, would rather consent to the installation of the Federal Government at some new place than they would see the premier position allotted to any one of the flourishing cities of to-day. It will be argued here, as elsewhere, that if you create a political capital you avoid favouring any one of the commercial or social rivals; but, on the contrary, you allow a fair field to each, and thus encourage various centres of population to grow up. If, it is contended, you give the leading commercial city the social and political advantages of the capital, you cause it to dwarf all its rivals. Better, it is urged, half a dozen great towns, as in America, than England with London and France with Paris.

There is a plausibility in this argument, but yet there are numerous and weighty considerations against creating an artificial capital in Australia—against taking some bush township and converting it into a metropolis. In the first place it would be a great trial to a Governor-General and to all officials and members and officers to be banished for the best part of the year to some out-of-the-way and probably arid spot. It seems absurd to obtain Governor-Generals, as we expect to do, of the highest social and political standing, and then banish them so that they can with difficulty

come into contact with the Australian society which they will be supposed to lead. In Australia, it must be remembered, it is either in the capitals on the seaboard that the higher conveniences of life such as we associate with a metropolis are found or nowhere. Thus the selection of a bush town would tell greatly against the federal experiment at the outset, by making the arrangement of affairs unattractive. Again, many and costly buildings are required for the federal capital, such as a residence for the Governor-General, a parliament-house, court of justice, public offices, institutions, etc., and it does not seem advisable to invest millions in some spot which might twenty years hence, in consequence of the shift of population, be condemned as non-central and inconvenient.

If we choose some place remote from the large cities and the great centres of population, it must be somewhat doubtful whether Australia can send her best men there. Captain Russell remarked at the recent conference that one great obstacle in the way of New Zealand joining the federation was that the place of meeting would be too far off, and that men could not spare the necessary time from their occupations. The same difficulty must be felt in some degree if we make the federal capital in the wilderness. Adelaide men can visit Melbourne easily, and Queensland men can visit Sydney, and as to Melbourne and Sydney themselves it is becoming difficult with many men to say whether they are to be found more in the one place than the other, but if we depart from the capitals, then, instead of reducing inconveniences to a minimum, we increase them to a maximum. There is another less tangible, but not less important, consideration. To order Parliament to assemble in some far-off provincial town is to remove it to a considerable extent from a daily and healthy contact with public opinion. The debates cannot be—and are not in America—reported at the length they would be were the proceedings conducted in the place where the principal papers are published; and indeed in the States reporting has been superseded in New York, Chicago, and Boston by gossiping political letters, which cannot fully and properly inform the public, and which are in many instances untrustworthy, and in some detestable.

We may have to fall back upon the American system of choosing provincial centres in order to set aside the jealousies of the great cities, but the arrangement should be regarded as a last resort. It is not one of mutual convenience, but one of mutual inconvenience.

Some thought may reasonably be given to the consideration whether it is necessary to permanently fix upon any one place as the federal capital at the present stage of our affairs. The suggestion that we should divide the institutions and the privileges of a metropolis between two or three of the great cities should not be set aside without much deliberation. As regards

the institutions no great difficulty presents itself, inasmuch as railways, the telegraph, and the telephone are ever at work destroying distances and lessening the need for centralisation. If the federal fleet has its depôt at Sydney, the federal army might have its headquarters at Melbourne, and, indeed, as shown by the establishment of a cartridge factory here, while the naval department remains in Port Jackson, we seem to be dropping naturally into a division of that character. If the Patents office were in one place, the Postal department could be in the other. The Law Courts need not be in the same city as the Parliamentary buildings.

Again, the rotatory principle is not to be summarily rejected as at all events a temporary expedient. The English Parliament did not always meet in London. The Swiss Legislature needed to move about until quite modern days. In India the seat of Government is sometimes at Simla and sometimes at Calcutta. It may be that no such arrangement would be permanent, but time alone could decide that point. With the development of Australia, we should learn where the real centre of the continent is; and as our territory becomes populated and opened up, it is possible that some one place would establish a claim that could not but be recognised. The south-eastern corner of the continent may not retain its present preponderance. The ultimate centre may be Brisbane, or it may be Adelaide, or it may be Perth, or, as some enthusiasts say, it may be the Upper Barcoo. Thus, in New Zealand, Auckland was at one time the capital, but the superior convenience of Wellington now commends itself to all. But no such claim can be successfully put forward now; and, as we are not in a position to build a federal capital on the outskirts, it may be submitted that it is worth while making an effort to tide over present difficulties by some arrangement which may be temporary, but which will reserve all rights.

The first question to be decided is whether the site of the national capital is to be fixed, or whether the rotatory principle is to be temporarily adopted. If the former course is favoured, then it will be wise to defer the actual selection until after the federation has been proclaimed, and to leave the decision to judicial and unbiassed arbitration.

Dr. Arnold has a noble passage, in which he declares that the greatest triumph of Demosthenes was the reconciling of Athens and Thebes, so that the men of these two jealous cities stood side by side for the good of Greece. A good deal of power would be evinced by the statesman who could bring Sydney and Melbourne together in this matter, and he would deserve a full meed of praise.

The National Convention.

Review of the Proceedings.

This little work naturally divides itself into two parts. The first is composed of the preceding chapters, which were written and published before the meeting of the National Convention, while the second is composed of a notice of the proceedings of the Convention and of its work. Whatever value the papers first published may have possessed was not taken away, but was increased by the Convention. The principles they seek to explain were embodied in the proposed Constitution, and consequently they may be read as showing, in part at any rate, the reasons which were in men's minds when the Constitution was drafted.

The National Convention, composed of seven delegates from each colony (New Zealand, however, sending only three), met in the hall of the Sydney Legislative Assembly, 2nd March, 1891. The list of members is given in an Appendix. There was not a member who had not played a part in Australian politics, and some had played great and conspicuous parts. Moreover, as the delegates had in each case been elected by the local Legislatures, they were essentially representative men. To a large extent the delegature was composed of Premiers, Treasurers, Attorney-Generals, and chief of the various Opposition, that is to say, ex-Premiers, ex-Treasurers, and ex-Attorney-Generals, or, in other words, the picked men of Australian politics were present; and, consequently, the Convention was well qualified for its special task of framing a Federal Constitution which would be acceptable to Australia as a whole. The delegates unanimously elected Sir Henry Parkes as President, and Sir Samuel Griffith as Vice-President.

The communications that passed between the delegates before they formally assembled were highly satisfactory, because they made evident that there was not only a general desire to achieve a success and to formulate a constitution which Australia could adopt, but also that there was a substantial and a gratifying agreement upon main issues. It had been expected out of doors that the difference of opinion would be marked as to tariff arrangements, and that upon this rock the Convention would split; but the common sense and patriotic view generally prevailed that there must be a Customs union, based on the federal taxation of foreign imports and on an absolutely free interchange within Australian bounds, so that the island continent may form the one market. The delegates realised that their meeting was a farce if they could not create the one commercial, manufacturing, and producing Australia.

It was found, also, that up to a certain point the delegates were of one

mind with regard to the relative position of the states or colonies, and of the federal or Australian Government. This fundamental question had been thought out by many minds, representing different schools of thought, and up to a particular point the one conclusion had been arrived at. This was, that the earlier federal systems of America and Switzerland are more suited to the circumstances of Australia than the later Canadian federation. Such a result was unexpected, because nearly every British thinker starts with a bias in favour of the Dominion Constitution. It was adopted later in the day than the others; it was adopted by our own countrymen; it is constantly praised in the English textbooks; and so it comes to us with strong recommendations. Australians would have felt a genuine pleasure in following in the steps of Canada, but her statesmen found this an impossibility, and their unanimity must be held to dispose of the question. Some of them were strongly in favour of the Canadian system when they first attacked the Australian problem, but one and all of them ended by recognising that the Canadian peculiarities must be abandoned. On exchanging views the Australian delegates discovered that they, one and all, objected to the Federal Government delegating power to the states instead of the states retaining all powers, except such as they choose to specifically surrender to the Federal Government. They objected also to a nominee Upper House, inasmuch as such an arrangement is repugnant to democracy, with its love of representative institutions. Moreover, a nominee Chamber is particularly obnoxious to the party which favours the recognition of state rights, because it evidently deprives the states of the possession of a powerful, if not a co-ordinate, House. The strongest possible objection was taken also to the federal veto which obtains in Canada, the belief being that the high-spirited and powerful Legislatures of the Australian states or colonies would decline to work with this sword hanging over their heads—would refuse to make any such admission of inferiority. Exception was taken to other Canadian arrangements, which need not be enumerated, but the effect of which is to municipalise the provincial Legislatures. The Canadians, it is pointed out, practically recognise their surrender of local independence by speaking of "provincial" institutions, and by establishing in some provinces only one House, this being the ordinary municipal system.

Yet the agreement about state rights did not cover the whole of the ground, and the very first day the Convention proceeded to business the dispute broke out which threatened to ruin all. It was at once seen that there were two parties in existence. The one led by Sir Henry Parkes (New South Wales) and Mr. Munro (Victoria) admitted that the states must be sovereign states in the sense that each must be left to the uncontrolled

management of its own affairs, but they contended that this rule of absolute control applied also to the National Government, and that what powers the states surrendered to the National Government they surrendered finally and absolutely, without having, as states, any further voice in these matters. The other party, led by Sir Samuel Griffith (Queensland) and Sir John Downer (South Australia), challenged the vital issue in this contention. Not only, they said, do the states retain control over local affairs, but such surrender of powers as they make not to a nation, but to a federation, and there can be no true federation unless the group of sovereignties constituting the union are separately represented. Both parties were practically agreed that the Senate should be elected by the Parliaments of the states, but the one merely adopted this system as a convenient machinery for calling a second house into existence, while the other adopted it in order to give effect to their views that the states must be a power in the national organisation. The one party treating the Senate as an ordinary Upper House of the English or class type, was inclined to insist that it should be severely restricted in its authority with regard to money Bills, and the other claimed that it should have, if not equal rights, at least some substantial power, in order that state rights might be maintained. Sir Henry Parkes and Mr. Munro claimed that as regards money Bills the two Houses of the Federal Parliament should stand in the same relative position as the House of Lords and the House of Commons, and Sir Samuel Griffith and Sir J. Downer looked rather to the two Houses of the Swiss and the American and the German federal unions, and also to the Senates of France and Italy and other European countries, the rule with these bodies being that money powers are not denied. The House of Lords, they urged, is a non-federal and a non-representative body, and can therefore be no model for a federal democracy. The one party took “the British Constitution” for its cry, and the other “federal principles.” Battle was joined fairly and at once, and was continued almost to the end of the proceedings, nor is the stubbornness of the contest to be wondered at when the interests at stake are considered. If the Senate is to have little or no power in finance, the states are excluded from any control in the questions, such as the tariff, in which they are the most vitally interested, and the House itself must wither, while, if it has real power in finance, the states are fully recognised as entities and their House may flourish.

The first difference of opinion was as to the admission of the press. A decision in favour of full publicity was unanimously arrived at.

The procedure adopted was that Sir Henry Parkes, as President, should table general resolutions on which debate could take place and on which, as amended and accepted, a Bill could be framed. Sir Henry Parkes

submitted these resolutions, and they provided that the federation should be under the Crown, that the states or colonies should retain all the powers they did not surrender to the Federal Government; that a Customs union should be established so as to give intercolonial free trade, that the Senate or Upper House should have no power to amend money bills, that the Executive should be responsible to a majority of the Lower House, and that a Federal Supreme Court should be established, whose decision should be final. These resolutions raised the whole of the questions in debate, and the discussion which took place upon them cannot be considered as wasted, inasmuch as it enabled the committee to prepare a Bill which satisfied the Convention as a whole. Three questions were argued. The first was as to the character of the Senate and its powers; the second was as to whether "responsible" or party government should be formally recognised and established by enactment; and the third was as to the tariff.

The State Rights—Senate Debate.

As to the Senate, the party that pleaded for "an absolute surrender to the nation" declared that a Senate with financial powers meant government by the minority. Under such a scheme the people would be taxed without direct and proportionate representation, and consequently a principle was introduced foreign to the British Constitution. A British people could not be expected to consent to such terms. There was no reason to suppose that the large states could ever use their majority in the Lower House to the financial detriment of the smaller states, and certainly, it was urged, the federal spirit requires trust in each other's good faith and honesty of intention. The Victorian speakers in particular recalled the disastrous strife between the two Houses in their state, and declared that they could not propose to their constituents a scheme giving any Upper House power to amend money Bills, inasmuch as popular indignation would be at once aroused. The reply of the federal or state rights party was that the proposed Upper House would not be a class or a nominee body such as obtains under the British Constitution, but would be a House representing Parliaments, which in their turn represent the people. They did not ask for full and equal money powers, but merely that no Bill should pass nor any part of a Bill, nor yet should any expenditure take place without the assent of the states. Their idea was not that the Senate should amend money Bills, but that it should strike out any items to which it objected, or in other words that it should "veto in detail." No power of proposing taxes or of increasing taxes was demanded, but it was said the right to stop taxation obnoxious to a majority of the states must be insisted upon as an integral part of any true

federal compact. Otherwise a land tax which would be perfectly fair for the rich and thickly populated states might be adopted, though it would be ruinous to the poorer and sparsely populated portions of the country, or a federal expenditure of which the bulk of the federated states disapproved might take place, or a tariff might be passed hurtful to the distant communities. The large states, it was urged, ran no risks, and practically surrendered nothing inasmuch as their majority in the Lower House secured them, but the smaller states could not be expected to come into a federation, bringing their liberties with them, without the usual federal guarantee. The cry of no taxation without representation was, it was pointed out, raised in America, but America has never objected, and does not object, and is never likely to object to a federal check upon federal expenditure.

A strong point made by Mr. Munro and Sir Henry Parkes was that given two equal Houses and responsible government would become impossible. No ministry, it was said, can serve two masters. The reply was that the assertion is prophecy, and prophecy is often fallacious. Ministers are not wrecked if an Upper House amends or rejects an ordinary Bill, and why should they take the fate of a money measure more to heart. No Upper House would ever wantonly throw the affairs of a country into confusion, and certainly not a Senate responsible to the Parliaments of that country. In Tasmania the Upper House exercises financial control, and the Premier and the Leader of the Opposition of that colony were put up to affirm that responsible government was by no means interfered with by the working of the system.

Sir Samuel Griffith, in opening the debate, quoted from the **Federalist** the federal rule, "that every law submitted to the Federal Parliament shall receive the assent of the majority of the people, and also the assent of the majority of the states. This is the essential condition of the union." (**Convention Debates Official Reports**, page 30.) He added:— "This is a condition absolutely new to us in Australia. It is absolutely new to us in the British Empire." But the hon. gentleman went to assert that though the condition was new it was indispensable, and, further, he declared that "the proposal that the Lower House shall have the sole power of originating and and amending all Bills appropriating revenue or imposing taxation seems to me, as I am at present advised, quite inconsistent with the independent existence of the Senate representing the collective states." Sir Samuel Griffith gave instances of the injustice which could be done, as he claimed, if the power of veto were not given to the States House. The states might object to the proposed site of the federal arsenal. Why should their views be disregarded? A land tax unfair to one

of the poorer colonies, though perfectly fair as regards others, might be included in a general Bill. Why should not the Senate veto that one item? The very opposite view was at once taken by Mr. Munro, who declared that "in questions of finance the Lower House must have the ultimate power. I am satisfied that under responsible government, and that in justice to all the colonies, you must do that. You cannot allow a small section to govern the majority on a question of finance. You cannot give 250,000 people the power to tax 2,500,000 against their will. Surely that sort of thing is not intended?" Sir John Downer, who subsequently took the lead of the more pronounced of the Senate advocates, referred, in reply, to the example of America. There has always been in America a greater disproportion between the population of the States than there is in Australia, but the whole body of the American people have cheerfully acquiesced in granting the States equal representation in the Senate, and in endowing the Senate with full financial authority. In asking only for leave to omit objectionable items, Sir J. Downer declared that he was astonished at his own moderation. Sir Henry Parkes, on the other hand, protested with warmth that Australia had nothing to do with the Senate of the United States; he passed a high eulogium upon the House of Lords, and declared that he would be no party to entrusting any Upper House with greater financial powers than Great Britain, as the result of her experience gave to that body. The Convention went into committee in this conflict of mind and came out of committee in this conflict also. An amendment was submitted by Sir John Downer, authorising the Senate to veto in detail, and another was proposed by Mr. Wrixon, refusing the power of amendment, but providing against tacks and thus strengthening the power of rejection. Both were withdrawn. A general committee, with sub-committees, had to be appointed to draw up the Constitution, and to this body was left the responsible and arduous task of reconciling the apparently irreconcilable views on the Senate and states rights issue.

The Responsible Government Debate.

The terms of the Parkes resolution practically made party or responsible government a portion of the Constitution by providing that, to hold office, Ministers as a whole must obtain and retain a majority in the Lower House, and this proposal provoked criticism. Sir Henry Parkes contended that the step was right and proper, because Great Britain has worked party government in its present English form with success, and because she is wedded to it and so are her colonies. On the other hand it was alleged that the principle that the Ministry proceeds from a party and is responsible to

that party is no fixed part of the British Constitution, nor is it mentioned or legislated for in any of the constitutions granted by Great Britain to her dependencies. There is no such provision in Canada, nor yet in any of the Australian enactments. The critics averred that they made no attack on party or responsible government, but on the contrary they admitted that a start would have to be made with it, but they urged that the hands of the Federal Parliament of Australia ought not to be tied when the hands of every other Parliament are left free. If Ministers are entitled to sit in Parliament then Parliament can be left to appoint them and to remove them at pleasure. The essence of the British Constitution, it was pointed out, is not an Executive responsible to a party, but is elasticity and freedom. If this generation has a right to appoint and to remove Ministers in one way, another generation should be at liberty to appoint and to remove them in another. There was no effective reply to these arguments, and at the conclusion of the debate it was frankly recognised that the cause of restriction was lost and that the Federal Parliament must be left free to constitute its Executive at pleasure.

The American system, under which Ministers are removed from Congress and are responsible to the President, who appoints them, found no support. It was agreed that Parliament must elect, and must elect from its own members. The points at issue were as to the mode of election, and as to the period and tenure of office.

Sir Samuel Griffith, Mr. Deakin, and Mr. Inglis Clark, and many of the younger members favoured the idea of an ultimate change in the appointment of the Executive. For the most part they look to the Swiss system, under which Ministers are elected for a fixed term, as a legitimate middle way between the American system where Ministers are irremovable by the Houses, and the British system where the Treasury seats are played for by the Ins and Outs, and the Ministry does not know what a day may bring forth. It was pointed out that Sir Henry Parkes and his friends, who apparently imagined that the British Constitution is a fixture, or can be stereotyped without danger, might with advantage study Sir Henry Maine's **Popular Government** on the subject. In that volume the writer—the most acute and well-informed of modern conservative philosophers—pours out the reflections and wisdom of an observant lifetime, and his remarks on the rapid changes in the British Constitution are *ad rem*. He remarks that Montesquieu's maxim that the separation of executive and legislative functions is liberty, and that their union is tyranny, greatly swayed the Americans. “But,” says Maine, “the national assembly whose constitutional practice suggested to Montesquieu his memorable maxim has in the course of a century falsified it.” Now, if England has reversed

her practice—has absolutely swung round—in a century, the Australian colonies, it is urged, may surely be left free to modify their practice as experience suggests. One of the decisions arrived at, namely, that Parliament may appoint Ministers who will not have to go back to their constituents for re-election, is itself an important departure from the British Constitution. Should this arrangement encourage cabals, the need will then arise of giving the Ministers greater stability, and so evolution proceeds.

The Tariff Debate.

The discussion on the tariff disclosed the unanimity that prevailed on this point. At the commencement of the proceedings some outspoken remarks by the Queensland Treasurer attracted much attention.

Sir Thomas McIlwraith said (**Convention Debates Official Reports**, page 60) :— "There is no question in my mind that the President's resolutions which I have read imply free trade between the federated colonies and protection against the rest of the world. There is no doubt in my mind that this is implied, because, in the present position, the protectionists will, of course, vote for such a system, and the free traders will require to vote for it also if they desire federation, because this is the only means by which they can get the revenue. Unless they did, the result of the first law passed would be to dislocate the revenue branch of the Governments of the separate colonies. Take the case of Queensland. They cannot say to that colony all at once, `We intend to have free trade, and the money previously obtained by your Government through the Customs you must get from another source.' This would burst up the confederation before it was fairly started. We must proceed on the supposition that there will be free trade between the colonies and protection against the world. I believe that the opinion of the colonies is that this would be a good National Australian policy." These views were endorsed by every following speaker, the only appearance of dissent came from Mr. Deakin and Col. Smith, who intimated that while Victorian protectionists accepted the policy of protection without and free trade within, they might require some guarantee both that the Federal Parliament would adopt it and also would impose duties of the same amount as those levied in Victoria. It was pointed out, however, that no guarantee can be given, inasmuch as no Parliament can bind its successors, and this consideration, and the fact that the delegates one and all accepted "protection without, and free trade within" as the policy with which the federation must start, induced the Victorian delegates in question to abstain from disturbing the unanimity of the Convention.

Appointment of Committees.

Finally on the 18th March, sixteen days after the first meeting, three committees were appointed to draw up the Constitution. The first was the constitutional or general committee, and consisted of two members from each delegature, with Sir Samuel Griffith as chairman. To it the other committees made their report. The finance committee, presided over by Mr. Munro, consisted of one member from each delegature, and the judiciary committee presided over by Mr. Inglis Clark, was similarly constituted. The names of the members are given in an Appendix. The sub-committees soon made their report, but the constitutional committee naturally found much greater difficulty; the Senate and state rights were the trouble. When an agreement was finally arrived at, Sir Samuel Griffith was requested to draw up the Bill. The hon. gentleman was assisted by his fellow member, Mr. Inglis Clark, and the advice of Mr. Kingston, and subsequently that of Mr. Wrixon, was also sought. There were grave doubts as to whether any compromise the committee could propose would be acceptable to the Convention as a whole or to the colonies, and several of the leading delegates lost hope, and expressed opinions that the result would be a failure.

Re-assembly of Convention.

The Convention re-assembled on Tuesday, 31st March. The Constitution Bill was at once presented, and was explained by Sir Samuel Griffith. It was a striking, and to a large extent an unexpected, success. The hon. gentleman was warmly congratulated, both privately by the delegates and publicly in the press, both on the skilful, non-technical, and non-ambiguous character of the draft, and also on the complete and happy manner in which he had caught the spirit and had interpreted the thoughts of hon. members, and in disputed issues had found a middle way. The more the measure was considered the more it grew upon the delegates, until, at last, the conviction spread that to tinker with such interwoven proposals would be to destroy the efficacy and the symmetry of the whole, and when Mr. Suttor declared in the middle of the discussion that he had come to the conclusion to "Go for the Bill, the whole Bill, and nothing but the Bill," he was warmly applauded. This feeling, it should be added, did not become general until the replies given by Sir Samuel Griffith had convinced the Convention that he and his fellow-labourers had gone far more exhaustively into the various subjects, and had a far firmer grasp of them, than any of their critics. After short second reading addresses from Mr. Wrixon and from Mr. R. C.

Baker, and a reply from Mr. Inglis Clark, the Convention went straight into committee on the Bill, thus adopting its principles.

The Constitution Bill.

The main feature of the measure was that it embodies "the South Australian plan" of dealing with money Bills. This is that the Upper House shall not amend such measures in the ordinary way, but if it objects to any portion of a financial measure, shall send down a message suggesting the alterations it desires, the Assembly being free to adopt these suggestions, to reject them or to accept them with alterations. The merit of this plan appears to be that the Assembly does not formally concede the right of amendment to the Upper House, and at the same time the Upper House is not shut out from letting the Lower House know that unless alterations are made there is a chance of the right of veto being exercised. It is scarcely a logical plan, but rather it is one of those charmingly illogical schemes which Englishmen take to kindly, and which it gives them a pleasure to work as demonstrating their saving common sense, and their inherent sagacity. The institution of party government had, of course, been treated as an open question, the people and the Federal Parliament being left free to please themselves. Free trade within the Australian borders was insisted upon, and provision was made for the imposition of a federal tariff on goods imported from without.

The name adopted by the constitutional committee, "the Commonwealth of Australia," challenged criticism. It was pointed out that the meaning of the term is "common-weal," and that it is a frequent phrase with Shakespeare and the Elizabethan writers, and Sir Samuel Griffith declared that the more it was used the better it was liked. An effort by Mr. Munro to secure the title "Federated States of Australia" was defeated by 26 votes to 13. A more serious amendment was moved by Sir George Grey, and was to the effect that the Governor-General should be elected by the people at large instead of being appointed by the Crown, but the proposal was not taken seriously and was negatived by 3 votes to 35. Mr. Kingston and Dr. Cockburn joining the minority.

The State Rights—Senate Settlement.

Real debate did not begin until the clauses defining the power of the Senate with regard to money Bills was reached. The important section setting out the powers of the Federal Parliament was readily passed, the delegates, one and all, concurring with the proposals. But issue was once

more joined with regard to Senate powers. Sir Samuel Griffith stated that he had changed his position, though he had not modified his views. Those who desired the end desired the means, and as he desired federation he accepted the only means which would bring about the desired result. An amendment was moved by Mr. R. C. Baker to strike out all the words qualifying the action of the Senate, and it received warm support. Virtually it was said only two states could be represented in the Lower House, while the Senate would be the House of all the states. The minor states who were dominated in the one body would be utterly crushed if the states House had not full financial power. Mr. Playford repeated, however, the evidence which had swayed the committee, that the "suggestive" arrangement was formed to satisfy the Upper House of South Australia, and that it had ended all disputes and troubles, and after an animated discussion the proposal of the committee was accepted as a fair compromise by a majority of 22 votes to 16. The voting was:—

AYES.

VICTORIA (7).	QUEENSLAND (4).
Mr. Munro.	Sir S. Griffith.
Col. Smith.	Sir T. McIlwraith.
Mr. Gillies.	Mr. Rutledge.
Mr. Wrixon.	Mr. Macdonald-Paterson.
Mr. Fitzgerald.	
Mr. Cuthbert.	SOUTH AUSTRALIA (3).
Mr. Deakin.	Sir J. Bray.
	Mr. Playford.
NEW SOUTH WALES (4).	Mr. Kingston.
Sir H. Parkes.	TASMANIA (3).
Mr. McMillan.	Mr. Inglis Clark.
Mr. Suttor.	Mr. Fysh.
Sir P. Jennings.	Mr. Bird.
WESTERN AUSTRALIA (1)	NEW ZEALAND.
Mr. Hackett.	Nil.

NOES.

VICTORIA.	NEW SOUTH WALES (1).
Nil.	Mr. Dibbs.
QUEENSLAND (2).	SOUTH AUSTRALIA (4).
Mr. Donaldson.	Dr. Cockburn.
Mr. Thynne.	Mr. Gordon.
	Sir J. Downer.
TASMANIA (3).	Mr. Baker.
Mr. Douglas.	
Mr. Burgess.	WESTERN AUSTRALIA (4)

Mr. Moore.	
	Mr. Marmion.
NEW ZEALAND (2).	Mr. J. Forrest.
Sir G. Gray.	Mr. A. Forrest.
Capt. Russell.	Mr. Loton.

Mr. Abbott (New South Wales) was in the chair. Mr. Macrossan (Queensland) died during the sittings of the Convention. Sir J. Lee Steere and Mr. Wright (Western Australia) and Mr. N. J. Brown (Tasmania) had left Sydney. Mr. Barton and Sir H. Atkinson were temporarily absent from the Assembly. These names account for the 45 delegates.

Miscellaneous.

Once the question of the Senate was disposed of, rapid way was made with the remainder of the Bill. The judicature chapter was adopted at the same sitting that the Senate division was taken. There was a marked divergence of opinion as to whether appeals in private cases should be restricted to the proposed Federal Supreme Court, and an amendment by Mr. Wrixon to allow all cases to go to the Privy Council obtained 17 votes as against 19. Sufficient stress was scarcely laid in the debate upon the circumstance that the Supreme Court of the Commonwealth will not be created without special legislation by the Federal Parliament, and that if the Federal Parliament creates the court it need not necessarily interfere with appeals to the Privy Council. The Constitution does not establish the court, but gives authority for its establishment with or without certain powers.

The most animated discussion took place with regard to the division of the surplus revenue. After paying all its own services, the Federal Government will have at least a surplus of £6,000,000 from the Customs receipts. The finance committee recommended that the distribution should be according to population, and the constitutional committee decided in favour of a return according to the contribution made by each state. At present Western Australia pays £4 per head through the Customs; Queensland £3 7s. 10d., and South Australia £1 15s., and even with a uniform tariff there might be large discrepancies. The Convention was favourably disposed to a distribution per population, but the great irregularity shown by these figures caused a change of view, and the distribution per states was maintained by a division in which Victoria, New South Wales, Queensland and Western Australia voted one way, and Tasmania, South Australia, and New Zealand another. This was the only instance in which solid voting by states occurred. Authority was given to the Federal Parliament to vary the mode of distribution. A proposal to destroy the surplus by taking over public debts, the interest on which

would amount to the same sum, was favourably received, but it was submitted too late to be adopted. Power, however, is given to Parliament to act in this matter.

The position of the Governor of a state led to the only other warm discussion. Mr. Gillies moved to strike out the clause authorising the Parliaments of the state to make what arrangement they deemed fit as to the choice of a Governor, his view being that the "Queen's Governor" should always be retained, and he obtained 19 votes to 20. Sir Samuel Griffith, Mr. Munro, and others declared they were opposed to the states electing their own Governors, but they argued that the state ought to have the power to exercise at their discretion.

An attempt by Mr. Dibbs to induce the Convention to select the capital and to name Sydney as the place met with little support, and proposals to introduce the plebiscite, and to insist on the "one man one vote" principle, instead of adopting the state franchises, and also to elect the Governor-General by the direct vote of the people, were one and all signal failures. The two propositions last named were submitted by Sir George Grey, who consequently voted against the adoption of the Bill, and who was the only delegate to take this course.

The Constitution was adopted on Thursday, 9th April, when the Convention dissolved after a session marked by good temper, great forbearance, and a highly creditable display of constructive ability. The last act of the delegates was, at the instance of the President, to give "three cheers for Her Majesty the Queen."

Digest of the Constitution.

The Constitution is embodied in a Bill divided into eight chapters.

The Federation is to be entitled "The Commonwealth of Australia," and the colonies are to be termed "States."

Chapter No. 1 deals with the Parliament.

Legislative power is vested in a Federal Parliament, to consist of Her Majesty, a Senate, and a House of Representatives.

The Queen may appoint a Governor-General, whose salary shall be not less than £10,000 per annum. The Senate is to be composed of eight members for each state, to be directly chosen by the Houses of Parliament of the several states. The term of office is six years, but half the senators are to retire every third year. The senator must be thirty years of age, and must have been five years a resident within the Commonwealth.

The House of Representatives is to be composed of members elected for a term of three years by the electors of the Lower House of each State, but no existing colony is to have less than four representatives. There is to be one representative for every 30,000 people. The member must be twenty-one years of age, and must have been three years a resident within the Commonwealth.

Members of both Houses are to be paid £500 per annum.

The powers of the Federal Parliament are stated as follows:—

The Parliament shall, subject to the provisions of this Constitution, have full power and authority to make all such Laws as it thinks necessary for the peace, order, and good government of the Commonwealth, with respect to all or any of the matters following, that is to say:—

1. The regulation of trade and commerce with other countries, and among the several states;
2. Customs and Excise and bounties, but so that duties of Customs and Excise and bounties shall be uniform throughout the Commonwealth, and that no tax or duty shall be imposed on any goods exported from one state to another;
3. Raising money by any other mode or system of taxation; but so that all such taxation shall be uniform throughout the Commonwealth;
4. Borrowing money on the public credit of the Commonwealth;
5. Postal and telegraphic services;
6. The military and naval defence of the Commonwealth and the several states and the calling out of the forces to execute and maintain the laws of the Commonwealth, or of any state or part of the Commonwealth;
7. Munitions of war;
8. Navigation and shipping;

9. Ocean beacons and buoys, and ocean lighthouses and lightships;
10. Quarantine;
11. Fisheries in Australian waters beyond territorial limits;
12. Census and statistics;
13. Currency, coinage, and legal tender;
14. Banking, the incorporation of banks, and the issue of paper money;
15. Weights and measures;
16. Bills of exchange and promissory notes;
17. Bankruptcy and insolvency;
18. Copyrights and patents of inventions, designs, and trade marks;
19. Naturalization and aliens;
20. The status in the Commonwealth of foreign corporations, and of corporations formed in any state or part of the Commonwealth;
21. Marriage and divorce;
22. The service and execution throughout the Commonwealth of the civil and criminal process and judgments of the courts of the states;
23. The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the states.
24. Immigration and emigration;
25. The influx of criminals;
26. External affairs and treaties;
27. The relations of the Commonwealth to the Islands of the Pacific;
28. River navigation with respect to the common purposes of two or more states, or parts of the Commonwealth;
29. The control of railways with respect to transport for the purposes of the Commonwealth;
30. 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 the state or states by whose Parliament or Parliaments the matter was referred, and to such other states as may afterwards adopt the law;
31. The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the states concerned, of any legislative powers with respect to the affairs of the territory of the Commonwealth, or any part of it, which can at the date of the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;
32. Any matters necessary or incidental for carrying into execution the foregoing powers and any other powers vested by this Constitution in the Parliament or Executive Government of the Commonwealth or in any department or officer thereof.

Further, the Parliament has exclusive power to make special laws for the people of any particular race, and to govern any territory which may become the seat of the Government.

With regard to money Bills it is provided that laws appropriating any part of the public revenue, or imposing any tax or impost, shall originate in the House of Representatives. The Senate has equal power with the House of

Representatives in respect of all laws, except laws imposing taxation and laws appropriating the necessary supplies for the ordinary annual service of the Government, which it may affirm or reject, but must not amend. But the Senate may not amend any law so as to increase any charge or burden. Laws imposing taxation shall deal with the one subject of taxation only. The expenditure for services other than the ordinary annual services shall be authorised by a separate law or laws. In case of a proposed law which the Senate may not amend, the Senate may return it with a message requesting amendments, and the House of Representatives may, if it thinks fit, make such amendments, with or without modification.

Laws may be reserved for the Queen's assent, and the Queen may disallow a Bill within two years after it has received the Governor's assent.

Chapter No. 2 deals with the Executive. The Governor-General is authorised to create an Executive Council. For the administration of the executive government the Governor-General shall appoint seven Ministers, who may sit as members of either House of the Parliament. The salary of these Ministers (who form the Cabinet) is to be £15,000 per annum.

The control of the following departments passes at once to the Ministry of the Commonwealth:— Customs and Excise, Posts and Telegraphs, Defence, Ocean Lighthouses, Quarantine.

Chapter No. 3 deals with the Federal judicature. Parliament has power to establish a Supreme Court of Australia to consist of a Chief Justice and not less than four other judges. Also, Parliament may establish courts to administer federal law. Appeals from the state courts are to be made to the Supreme Court of Australia when it is established, and such appeals are to be final, but in any case in which the public interests are concerned leave may be obtained to further appeal to the Privy Council.

Chapter No. 4 relates to finance and trade. So soon as a federal tariff is imposed, trade throughout the Commonwealth is to be absolutely free. Parliament may annul any law or regulation made by any state derogatory from this freedom.

The expenditure of the Commonwealth is to be deducted from the revenue and—until Parliament otherwise orders—the surplus is to be returned to the states in proportion to their respective contributions.

The Parliament may, with the consent of the Parliaments of all the states, take over the whole or the part of the public debt of any state or states, deducting the interest from the state's share of the surplus revenue.

Chapter No. 5 relates to the states.

All powers possessed by the states, and not withdrawn by the Constitution of the Commonwealth, remain vested in the states. State law relating to withdrawn subjects remain in force until repealed or altered by

the Parliament of the Commonwealth. In such cases, when two laws are inconsistent, the law of the Commonwealth prevails.

All communications to the Queen are to be made through the Governor-General. The Parliament of a state may make such provision for the appointment of the Governor of a state as it thinks fit.

No member of the Parliament of the Commonwealth shall sit as the member of a Parliament of a state.

Chapter No. 6 relates to new states, and provides that existing colonies may enter the Commonwealth by adopting the Constitution, and that Parliament may admit new states on such terms as it thinks fit.

No territory is to be taken from any state without the consent of its Parliament.

Chapter No. 7 provides that the seat of government shall be determined by the Parliament of the Commonwealth. Until such determination the Governors of states shall name the place of the meeting of Parliament, or in the event of an equal vote, the Governor-General shall direct.

Chapter No. 8 provides that a law amending the Constitution must be passed by absolute majorities of both Houses, and by an absolute majority of State Conventions, the approving states to contain a majority of the people of the Commonwealth. The Conventions are to be elected by the electors of the House of Representatives.

Resolutions were also passed by the Convention recommending the Parliaments of the several states to make provision for submitting the Constitution to the people for their approval, and also recommending that the Constitution should be brought into force by Her Majesty's proclamation so soon as it has been adopted by three colonies.

Notes on the Constitution.

The student of the scheme of the Convention will realise that it leaves the enormous provinces of Australia with enormous powers to develop their individualities, and to guide their own destinies, and that it asks them to surrender merely such powers as are absolutely necessary to create the world-expected Australian nation.

As it stands, the Constitution aims at a true federation of the modern type, inasmuch as it provides for a double count of the people, first as population and next as states. If a nation had been founded, the voting would have been by the people only; and if a confederation, the voting would have been by states alone. Federation is the middle way.

The Australian Federation differs from the American Union on many points. There is no President but instead a Governor-General nominated by the Crown. The Ministers have seats in Parliament, and this allows of the continuance of the responsible or party Ministry as long as the country desires that system. The Senate has no executive functions, and neither are its powers with regard to money affairs complete. The state Governors are not necessarily elective. The Supreme Court of the states is not supreme in state matters, but there is an appeal from it to the Federal Supreme Court. The marriage and divorce law is taken from the states and given to the nation. The Federal Government is authorised to raise revenue in excess of its own wants on account of the states. On the other hand, it resembles the American Union in the fundamental principles that the federation is an alliance of states, each of which is sovereign in its own sphere, that the Senate is elected by the Legislatures of the states, and is thus made a powerful states House, that as far as possible the state institutions are used for federal purposes, and that the states retain all powers they do not voluntarily surrender.

Again, the confederation largely differs from Canada. In the first place, there is no federal veto over state legislation. The Governor of the state is not to be appointed by the Federal Government, and to be responsible to it, but whether he is the Queen's Governor or an elective Governor he is to be independent of the federal authority. The state retains all the powers it does not surrender. It retains, as in the American Union, the criminal jurisdiction. The Senate is a powerful elective House, with a large money veto power, and is not an inefficient nominee body, standing apart from the people, and with little or no monetary control. Moreover, the Australian Constitution provides for its own amendment by the Australian people, whereas in Canada the people have to obtain an Act of the British

Parliament to amend theirs. But the Australasian Federation resembles the Canadian Union in the points that it is a union under the Crown, that a responsible Government is let in, and that the states expect the Federal Government to collect revenue, and that there is an appeal from the local courts to a federal tribunal.

Several of the features of the Bill are peculiar to Australia. The arrangement made with regard to money Bills has a local origin. So has the proposal to divide the Customs revenue according to the amount collected by the states instead of per head of the population. The arrangement is new that any state may accept a Queen's Governor, or may ask the Federal Government to appoint, or may decide to elect a Governor directly or indirectly itself. New, also, is the provision which may prove of great value, that the Federal Parliament may legislate upon any subject remitted to it by any two or more states, such legislation to be binding upon those states and upon any state or states adopting the same.

Co-ordinate power has been cheerfully granted to the Senate, except in the case of money Bills, and the concessions which have been made need scarcely create alarm. It is true that no tax could be carried and no novel expenditure could be incurred under the scheme without the consent of a majority of the allied states; but, on the other hand, no tax and no expenditure can be so much as discussed, nor yet the repeal or the amendment of any tax or the stoppage of any expenditure, without the preliminary consent of the Lower House. Nor is the Senate allowed in any way to increase the burdens of the people. The Senate may help to lighten the people's load, but it cannot render that load more heavy. It may fairly be argued that if there is to be any check upon expenditure we must go thus far, and that if there is to be a check it could scarcely be entrusted to safer hands than to those of representatives elected by and responsible to the local Parliaments. To many minds the merit of the Convention plan is that it recognises that there is a difference between monetary measures and other legislation. The Senate merely suggests alterations to the House, this being a broad hint to the Senate not to interfere vexatiously, nor to busy itself with details; while, on the other hand, the suggestion is an equally broad hint to the House of Representatives that there is such a thing as a power of veto reserved for proper occasions. This, at least, is the happy manner in which the majority of the Convention think that the plan will work.

The point upon which critics fix with regard to the Senate is the disproportion between the states. They argue that it is manifestly unjust to give Western Australia with 45,000 people, and Tasmania with 150,000 people, the same representation in the Senate as Victoria and New South

Wales, each with more than a million of population. And these objectors are not satisfied with the reply that in the United States the one inalterable provision of the Constitution is that the states shall be equally represented in the States House. The contrasts in America are extreme, Nevada having 45,000 people, and New York 2,500,000, and yet no one has ever seriously proposed a change, and, not only that, but new states, poor in population, are regularly admitted on this basis. Still there is another precedent, and it is somewhat surprising that no reference was made during the debates to the German principle of a differential rather than of an equal or a proportional representation. Prussia has a preponderating influence in the German Federation, and as it was felt that the federal principle would be pushed to an absurd extreme if she were restricted in the Upper House to the representation of a minor duchy, a new arrangement was made. Prussia has 17 votes out of a total of 62 in the Upper House, Bavaria has 6, Saxony 4, Hesse 2, and the most of the other states 1 each. If the German states had equal representation in the Senate, then Prussia would be in a minority of 25 to 1. If the population basis were adopted, she would be in a majority, as she is in the Lower House, of nearly two to one. As it is, she is in a minority in the Upper House, but not a hopeless minority.

The writer made the suggestion to several leading members of the Convention that many difficulties would be surmounted by a provision that no state should claim more senators than it was entitled to by population to return members to the Lower House. This would give Western Australia two senators and Tasmania five, and would leave the other colonies unbonded. Tasmania would soon achieve her full quota of eight and Western Australia would probably increase her senatorial strength each decade. Broadly speaking the rule would be that each colony, with a population of a quarter of a million people, would be entitled to its full quota of senators, and the colonies below that standard would work up to the full quota on a liberal allowance scale. The advantage would be that the federal principle would be preserved, but the extremes which tend to occasion dissatisfaction would be avoided. The suggestion was not made however, until after the Committee on the Constitution had presented its report, and it was considered too late to take action upon it. With regard to new states some such rule might be applied with advantage.

According to the present population returns the House of Representatives will be constituted as follows:—

	Members
New South Wales ...	39
Victoria	38

Queensland	14
South Australia ...	11
Tasmania	5
Western Australia ...	4
Total	111

If New Zealand came in her quota would be 22. Of course the census may alter all this. Estimates of population are seldom found to be exact when the count comes to be made.

The Free Trade—Protection Settlement.

The disappearance of the tariff difficulty from the path of the National Convention was one of the most significant and hopeful incidents connected with the proceedings. The event is another illustration of the line, “Fling but a stone, the giant dies!” Very likely the Convention is in advance of public opinion to some extent. The general willingness to come to terms manifested by the delegates may not prevail out of doors, but the fact remains that forty-five men who are Parliamentary leaders, and who represent parties, see their way to an arrangement which they are prepared to recommend to their constituents and to defend on its merits. And this arrangement is not a mere *modus vivendi* or a patched-up compromise, but is one which both parties can accept with satisfaction, as taking nothing away from them that they prize, and as giving to each something that it greatly desires. The Conference has disclosed not grounds of difference, but reasons for unity.

Freetraders certainly ought not to criticise nor to obstruct the proposed compact. If the freetrader looks about him, what does he see? Notoriously protection is in possession of the field in all the colonies except New South Wales, and everyone must recognise that the protectionist party has increased there during the last ten years, until now the issue of the next general election is a matter of doubt.

The statesman sees Australia not merely committed to protection, but committed to that primitive, barbarous, and exploded form, which consists of provinces of the same state preying upon each other with the inevitable result—alike degrading and dangerous—of fostering bitter local animosities. His obvious duty is to mitigate as far as possible what he regards as an evil, and the Convention compact enables him to do this. Its great advantage to such a man—to a freetrader seeking his country's good—is that it sets aside for ever and a day the particularly odious system of border duties, with their drag on the development of Australia, with their social inconveniences and their political risks; and this is an object for which he is entitled to make great sacrifices. On the other hand, all that he does is to accept the conditions which prevail in five colonies out of six, and which seem likely to prevail in the sixth also as regards the outside world. Practically, the freetrader does no more than recognise that he is in a minority, and as a member of the party of common-sense he is bound to do this; and, on the other hand, this frank recognition secures free trade throughout Australia for ever. We shall then be in the American position, the German position, the Swiss position, and the Canadian position.

Whether in the course of years there will be protection or not as regards the outside world will depend upon the will of the people, who will make and alter tariffs as their interest and as their conscience may dictate, but free interchange inside the bounds of the federation will be the rock on which the union is established, and will endure for all time. In Germany, in Switzerland, in America, and in Canada, outside protection depends upon the decision of the people, who act as they are educated, but internal freedom is the inalterable law of their federal existence. The freetraders are put in possession of a citadel, which they occupy with the willing consent of all parties. There is no occasion to dwell upon the importance of securing such a position. And it may be submitted that freetraders sacrifice no principle in striving to attain it.

To protectionists the arrangement is equally honourable and equally satisfactory. The protectionist believes, as a matter of course, that his policy benefits the community, that it enriches the capitalist, secures higher wages to the workman, and that its advantages have only to be known to be appreciated. Give the system a fair trial, and he regards its permanent adoption as secure. He hails, therefore, with pleasure, the idea of committing all Australia to his scheme. The practical protectionist freely says that there is only one obstacle to his success, and that is the lack of a market. It is a law of manufactures that the larger the market, not only the cheaper the output, but the more numerous the manufactories themselves. The establishment of one calls for and renders possible another. Again, if you are only to turn out 10,000 yards of a particular cloth the price may be prohibitory, as that quantity has to bear the whole of the initial cost of the new article; but if 50,000 yards can be made, the initial cost will be so spread as to lower the price to a selling, and yet a payable, rate. All this is A B C to traders, but it is the reason why they are strongly in favour of throwing down the barriers as between the colonies. Each trader will have a larger market. He will be able to produce more cheaply what he is manufacturing now, and he will be able to add to his price-list articles which at present he cannot touch. The manufacturer knows, also, that the experience of the world is not wrong, and that the protectionists abroad would not adhere to this policy of the largest possible home market unless it was justified by results. He is well aware that in Canada or in the States or in Germany any proposal that the states should endeavour to injure each other would meet with universal reprobation as involving the ruin of the industries. They would be crushed in detail. To-day the protectionists in the States are not fighting for the isolation of Canada, but they are endeavouring to “capture” her in order to increase their home market, while the freetraders in America are ready to assist them, because the

“capture” extends the area of fiscal freedom. Every protectionist leader abroad would tell the protectionists here that they are right in their effort to secure as large a home market as possible, but such advice is needless, because personal experience, that most efficient of all instructors, has taught the lesson.

Conclusion.

That the National Australian Convention will live in history is certain. Whether aught will come of its labours is, of course, another and a very different matter, but the friends of federation have obtained a scheme which they can put before the people as fairly raising the issue whether Australia, while preserving her local independence, should come together for certain specified broad national purposes. The hope must therefore be entertained that from this time forward the Bill and the Australian cause will become identical.

The provincialist will of course never be won over to any scheme. His small-minded and selfish idea that you benefit a locality by isolating it from its natural whole is not a garment to be detached at pleasure, but is a natural skin. He has always to be fought. He existed in America, in Canada, in Germany, in Switzerland, and he always will exist, because he represents a type, just as the jealous woman and the sullen man will always be amongst us. Happily for mankind more generous impulses and truer instincts—those that tell us that all men's good is each man's benefit—are in the end usually triumphant, and with Australian intelligence and Australian patriotism, the nobler cause should be sure of an early victory.

The influences and reasons which should sway the people of the Australian colonies to favour federation are great and enduring. United it is self-evident that they can preserve their island continent inviolate for the one race, the one language, and the one sovereign, while disunited they may sooner or latter tempt some military power, with a real or pretended quarrel with a weaker state, to found a settlement here—perhaps an Algeria, perhaps a Gibraltar. Socially and politically the colonies are saved by federation from envy of each other, and from petty stratagems and lowering bickerings; and they obtain instead great aims and nobler ambitions which they can honourably share together. In commerce disunion means that the Australian is to be deprived of his birthright and that he is to be shut up to Victorian, or Queensland, or Tasmanian products, whereas he has an inherent right to all the blessings and the bounties which Providence has showered upon Australia. A Federal Union means in defence, safety; in commerce, freedom and wealth; in society, peace; in politics, greatness. Also it means that Australia as a whole is a common heritage, is free without barrier to any and every Australian.

This picture of a United Australia has no seamy side. The situation is one of those rare cases in which it can be said that by the adoption of a certain course there is everything to gain and naught to lose. It has been admitted

that there are difficulties in the way—temporary, personal, and founded on misapprehension—but it may be contended that there are no drawbacks. The results are all pure national gain. As Lowell wrote of the issue of his country and of his day, so it may be said of the union or disunion of Australia—

> "Set the two causes foot to foot
> And every man knows which'll be winner
> Whose faith in God has any root
> That goes down deeper than his dinner."

Recognising, indeed, that a healthy public opinion must be with the federalists, the provincialists for the most part confine themselves to assertions that the time is not ripe for unity. But it is to be feared that to many men who urge this view the opportune time would never come. There would never be a day when there would be no personal interests to be unnecessarily alarmed; no local jealousies to be extinguished; no molehills to be magnified by fear and suspicion into mountains. America had a smaller population when she federated than has the Australia of to-day, and to take a happier instance, Canada had no more people, and as regards resources and capabilities both countries occupied an inferior position to that of Australia. Nor can it be said that though we have the people and the resources, yet we have not the American nor the Canadian need for unity. It is true that we have no outside foe, nor yet a resident but alien population craving for Home Rule—and such factors as these were operative in the trans-Pacific States. But on the other hand there is an impalpable danger far more to be dreaded than any of these material troubles, in the extending and pernicious blight of provincialism—the blight which causes the one colony to be jealous of the other; which forbids the one to share the riches of the other; and which makes the very existence of those riches a reason why the one should regard the other as its nearest foe. We are told of constitutions in which

> "The young disease, which must subdue at length,
> Grows with its growth and strengthens with its strength."

And there are ominous signs and indications that provincialism is this morbid and destructive influence with us. The struggle for unity is not likely to be easier but is rather likely to be more difficult later on, as local interests grow more powerful and manufacturing and producing rivalries more pronounced. Those who counsel delay would do well to realise the

peril they run of postponing and postponing until unity becomes hopeless; and assuredly if “now” is possible, there can be no justification for running the chance of “never.”

Appendices.

List of Delegates.

The following is the list of Delegates appointed to represent the Colonies at the National Australasian Convention:—

New South Wales.

1. The Hon. Sir HENRY PARKES, G.C.M.G., M.P., Colonial Secretary and Prime Minister.
2. The Hon. WILLIAM MCMILLAN, M.P., Colonial Treasurer.
3. The Hon. JOSEPH PALMER ABBOTT, M.P., Speaker of the Legislative Assembly.
4. GEORGE RICHARD DIBBS, Esquire, M.P., formerly Colonial Secretary and Prime Minister.
5. The Hon. WILLIAM HENRY SUTTOR, M.L.C., Vice-President of the Executive Council.
6. The Hon. EDMUND BARTON, Q.C., M.L.C., formerly Speaker.
7. The Hon. Sir PATRICK ALFRED JENNINGS, K.C.M.G., M.L.C., formerly Prime Minister and Colonial Treasurer.

Victoria.

8. The Hon. JAMES MUNRO, M.P., Prime Minister and Treasurer.
9. The Hon. DUNCAN GILLIES, M.P., formerly Prime Minister and Treasurer.
10. The Hon. ALFRED DEAKIN, M.P., formerly Chief Secretary.
11. The Hon. HENRY JOHN WRIXON, Q.C., M.P., formerly Attorney-General.
12. The Hon. Lieutenant-Colonel WILLIAM COLLARD SMITH, M.P., formerly Minister of Education.
13. The Hon. HENRY CUTHBERT, M.L.C., formerly Minister of Justice.
14. The Hon. NICHOLAS FITZGERALD, M.L.C.

Queensland.

15. The Hon. Sir SAMUEL WALKER GRIFFITH, K.C.M.G., Q.C., M.P., Chief Secretary and Prime Minister.
16. The Hon. Sir THOMAS MCILWRAITH, K.C.M.G., LL.D., M.P., Colonial Treasurer.
17. The Hon. ARTHUR RUTLEDGE, M.P., formerly Attorney General.
18. The Hon. THOMAS MACDONALD-PATERSON, M.L.C., formerly Postmaster-General.
19. The Hon. ANDREW JOSEPH THYNNE, M.L.C., formerly Minister of Justice.
20. JOHN DONALDSON, Esquire, M P., formerly Postmaster General and

Secretary for Public Instruction. [The Hon. J. M. MACROSSAN, M.L.A., died during the sittings of the Convention.]

South Australia.

21. The Hon. THOMAS PLAYFORD, M.P., Treasurer and Prime Minister.
22. The Hon. Sir JOHN COX BRAY, K.C.M.G., M.P., Chief Secretary.
23. JOHN ALEXANDER COCKBURN, Esquire, M.D., M.P., formerly Prime Minister and Chief Secretary.
24. The Hon. Sir JOHN WILLIAM DOWNER, K.C.M.G., Q.C., M.P., formerly Prime Minister.
25. The Hon. CHARLES CAMERON KINGSTON, Q.C., M.P., formerly Attorney-General.
26. The Hon. JOHN HANNAH GORDON, M.L.C., formerly Minister of Education and of the Northern Territory.
27. The Hon. RICHARD CHAFFEY BAKER, C.M.G., M.L.C., formerly Attorney-General and Minister of Justice.

Tasmania.

28. The Hon. PHILIP OAKLEY FYSH, M.L.C., Prime Minister and Chief Secretary.
29. The Hon. BOLTON STAFFORD BIRD, M.H.A., Treasurer.
30. The Hon. ANDREW INGLIS CLARK, M.H.A., Attorney-General.
31. The Hon. WILLIAM MOORE, President of the Legislative Council.
32. The Hon. ADYE DOUGLAS, M.L.C., formerly Chief Secretary and Prime Minister.
33. The Hon. WILLIAM HENRY BURGESS, M.H.A., formerly Treasurer.
34. The Hon. NICHOLAS JOHN BROWN, M.H.A., formerly Minister of Lands and Works.

New Zealand.

35. Sir GEORGE GREY, K.C.B., formerly Governor, and more recently Prime Minister.
36. Sir HARRY ALBERT ATKINSON, K.C.M.G., Speaker of the Legislative Council, late Prime Minister and Colonial Treasurer.
37. Captain WILLIAM RUSSELL RUSSELL, M.H.R., formerly Colonial Secretary and Minister of Justice and Defence.

Western Australia.

38. The Hon. JOHN FORREST, C.M.G, M.P., Prime Minister and Treasurer.

39. The Hon. WILLIAM EDWARD MARMION, M.P., Commissioner of Crown Lands.
40. The Hon. Sir JAMES GEORGE LEE-STEERE, Kt., M.P., Speaker of the Legislative Assembly.
41. The Hon. JOHN ARTHUR WRIGHT, M.L.C.
42. The Hon. JOHN WINTHROP HACKETT, M.L.C.
43. ALEXANDER FORREST, Esquire, M.P.
44. WILLIAM THORLEY LOTON, Esquire, M.P.

The Committees.

The Convention Committees were constituted as follows:—

VICTORIA.—Constitutional Functions: Mr. Gillies and Mr. Deakin. Finance, Taxation, etc.: Mr. Munro. Judiciary: Mr. Wrixon.

NEW SOUTH WALES.—Constitutional Functions: Sir Henry Parkes, Mr. Barton. Finance, Taxation, etc.: Mr. McMillan. Judiciary: Mr. Dibbs.

SOUTH AUSTRALIA: Finance: Sir John Bray. Constitutional Functions: Mr. Playford and Sir John Downer. Judiciary: Mr. Kingston.

QUEENSLAND.—Constitutional Functions: Sir Samuel Griffith and Mr. Thynne. Finance, Taxation, etc.: Sir Thomas McIlwraith. Judiciary: Mr. Rutledge.

TASMANIA.—Finance, Taxation, etc.: Mr. W. H. Burgess. Constitutional Functions: Mr. Clark and Mr. Adye Douglas. Judiciary: Mr. Clark.

WESTERN AUSTRALIA.—Constitutional Functions: Mr. John Forrest and Sir James Lee-Steere. Taxation, Finance, etc.: Mr. Marmion. Judiciary: Mr. Hackett.

NEW ZEALAND.—Constitutional Functions: Sir George Grey and Captain Russell. Finance, Taxation, etc.: Sir Harry Atkinson. Judiciary: Sir Harry Atkinson.

Statistics.

The following statistics were laid before the Convention:—

ESTIMATED POPULATION
OF AUSTRALASIA,
DECEMBER, 1890.
Approximate Statement.)

New South Wales	...	... ...	1,170,000
Victoria ...	...	... ...	1,148,000
Queensland ...	...	... ...	422,000
South Australia	...	... ...	327,300
Western Australia	...	... ...	45,500
Tasmania ...	...	... ...	156,600
New Zealand*	...	... ...	630,600
	3,900,000		

* Not including 42,000 Maoris.

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