The Federation Movement and the Founding of the Commonwealth

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The Federation Movement and the Founding of the Commonwealth

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Chapter XV The Federation Movement and the Founding of the Commonwealth

THE unity of Australia—a continent without natural divisions, isolated by surrounding oceans, settled by people of the same British race and flag—is so obvious to-day that it may seem surprising that the union of the Australian colonies took so long to achieve. But when we look at their early history, the surprise vanishes. It is a history of scattered settlements at vast distances from each other. New South Wales, though on the map it comprised all the eastern half of the continent together with Tasmania, at first meant only the settlements at Sydney (1788), Hobart (1804), Moreton Bay (1824), and Port Phillip (1835). The process of political separation began in 1825 when Van Diemen's Land (Tasmania) was erected into a separate colony. Western Australia was founded as a separate colony in 1829, and South Australia in 1836. The process was completed by the separation of Victoria in 1851, and of Queensland in 1859.

Each of these colonies was too much engrossed with its own immediate necessities, and its own independent development, to give much thought to its neighbours and its future relations with them. Centrifugal forces, for the time being, were dominant; and yet it is true that the idea of Australian unity is as old as the fact of Australian separation.

The first political necessity of all the colonies was revenue; and the easy and obvious way to obtain it was to impose duties on imports. The first federal gesture was an arrangement between New South Wales and Van Diemen's Land for reciprocal exemption from duty on goods passing between the two colonies; but when, in 1842, the Legislative Council of New South Wales passed an Act[1] to regularise this arrangement, it was disallowed by the Colonial Office. Lord Stanley, the Colonial Secretary of the day, told the Australian Governors roundly that Her Majesty's Government objected to colonial Legislatures taking upon themselves to impose differential duties—a policy which would not only involve the commercial treaties and foreign policy of Great Britain, but would also lead to retaliation and a system of protection and preferences.[2]

Sound as this attitude may have seemed from the point of view of Downing Street, it had an unfortunate effect in Australia. Inter-colonial barriers grew up, and, as trade developed, began to wear a protective aspect; and the fiscal policies of the several colonies drifted apart. The Legislative Council of New South Wales vainly protested, more than once, against the levying by other colonies of duties on the produce that she sent them. But a protest to the Colonial Office, in those days of sailing ships,

was a leisurely business, and Governor Fitzroy, in a despatch of 29 September 1846, forwarding one of these protests, suggested the appointment of some functionary in Australia to whom could be submitted local measures passed by any of the Australian colonies, and affecting their interests generally or those of the mother country.[1]

This was the first recorded suggestion of the need of some central authority to deal with matters of common Australian concern. But the idea was already in the air; and for the next decade and more not a year passed without a proposal, either from England or from Australia, for some form of Australian union.

The first of these proposals arose out of the project for the separation of the Port Phillip District from New South Wales. Earl Grey, Colonial Secretary in Lord John Russell's administration, took a keen interest in constitution-making, and in a despatch of 31 July 1847 he outlined elaborate proposals for new constitutions for New South Wales and the contemplated colony of Victoria—including two-chambered Legislatures and the indirect election of representatives by district councils. Incidentally, he made some wise observations as to the many common interests of the Australian colonies, and the need for some single central authority on the spot to deal with them; and for these purposes—including the imposition of import and export duties, road and railway construction, and mail services—he proposed to establish a General Assembly.[2] It is unfortunate that this first definite scheme for federal union was associated with proposed constitutional changes which the colonists regarded as reactionary, and which were greeted at once with a storm of disapproval. After a series of public meetings protesting against changes about which the people of the colonies had not been consulted, William Charles Wentworth, in May 1848, moved resolutions in the Legislative Council of New South Wales protesting generally against Earl Grey's proposals, but commending the plan for a General Assembly.[3] And at this early stage the first hint arose of the difficulties which were afterwards to prove so formidable in the way of reconciling the different colonies to any definite plan of union. Wentworth's resolutions were withdrawn in favour of others prepared by a committee of the Council, one of which declared that the Council could not acquiesce in any plan of an intercolonial Congress in which the superior wealth and population of New South Wales were not recognised in the basis of representation. The resolutions were ultimately shelved owing to differences of opinion on other matters; but Earl Grey had learned his lesson. In a despatch of 31 July 1848 he disclaimed any intention of imposing unwelcome constitutional changes on the colonies, and withdrew the proposals to which chief exception had been taken. He

adhered, however, to the plan for a General Assembly, and emphasised the inconveniences which would otherwise grow up as land communication was established between the colonies and intercourse increased.[1]

In 1849 the Committee on Trade and Plantations was commissioned to enquire into the constitutional changes which ought to be made in the government of the Australian colonies. It reported in favour of the erection of a new colony of Victoria, and the establishment in New South Wales, Victoria, South Australia, and Van Diemen's Land of single chamber Legislatures, partly elected and partly nominated by the Crown; and it dealt at length with the question of a uniform tariff and a federal Legislature. Having reached the conclusion that a uniform tariff should be established for all the colonies, with complete free trade between them, and that the first tariff should be enacted by the British Parliament itself, the Committee recognised the necessity for creating a joint authority competent to alter this tariff; and it proposed that one of the Governors should hold a commission as Governor-General, and be authorised to convene a General Assembly from time to time. The members of the General Assembly were to be elected by the four Legislatures—two members for each colony and one additional member for each 15,000 of population— and it was to have authority over a list of ten subjects, including tariffs, mails, intercolonial roads, railways and canals, the establishment of a general Supreme Court, legislation on matters referred by all the colonies, and the appropriation of a percentage of the revenues of all the colonies for the expenditure necessary for these purposes.[2]

The Australian Colonies Government Bill, introduced into the Imperial Parliament in 1849, contained provision for a federal Legislature on the lines of this report, and the proposed uniform tariff was duly scheduled to it. This well-meant scheme met with no better reception, either in Australia or in England, than Earl Grey's despatches. The bill was dropped for the session; and when it was reintroduced in 1850 the tariff schedule had disappeared, and the General Assembly was only to take effect in regard to those colonies which should ask for it. On the other hand, a notable addition was made to the list of its powers; it was to be authorised to make laws for the disposal of the waste lands of the Crown, and the appropriation of the resulting revenues. The federal clauses were critically debated both in the Commons and in the Lords.[3] The objections that carried most weight were that the colonies had not asked for these institutions, but had protested against them; and that the whole scheme was premature Though the clauses were carried through committee in both Houses, the Government, in view of the opposition they had aroused, decided to abandon them, and the separation of Victoria was effected without any

provision for a federal Legislature.[1]

This failure to provide Australia in her infancy with a federal government was unfortunate, but inevitable. Each colony at the time was striving for power to manage its own affairs, the importance of union was future rather than present, and probably no scheme of union, whatever its merits, would have been acceptable. But the episode was instructive as showing that the problem of union must be worked out in Australia, and the Home Government was clearly right in abandoning the attempt to solve it in England.

Earl Grey, out of the wreck of his scheme, contented himself with something that he could do without parliamentary authority. He sent out to Sir Charles Fitzroy four commissions appointing him Governor of New South Wales, Victoria, South Australia and Van Diemen's Land, and gave the title of Lieutenant-Governor to the Queen's representatives in those colonies. He also gave Fitzroy a further commission as Governor-General of all Her Majesty's Australian possessions, including the colony of Western Australia.[2] But the authority of the Governor of New South Wales over the other colonies was little more than nominal and was never exercised. When Fitzroy's term of office ended, his successor did not receive commissions for the other colonies; and though the title of Governor-General continued to be borne by successive Governors of New South Wales, it fell into disuse soon after the inauguration of responsible government.[3]

Federal proposals now came thick and fast. In 1852 the many-sided Dr John Dunmore Lang—Presbyterian clergyman, politician, pamphleteer, reformer, and a pugnacious separatist—published his *Freedom and Independence for the Golden Lands of Australia*,[4] advocating a republican United States of Australia. The *Sydney Morning Herald* took up the theme of union in a series of articles; and in 1856 Edward Deas-Thomson, ex-Colonial Secretary of New South Wales, and one of the most experienced and wisest administrators in Australia, speaking in the Legislative Council, treated the establishment of a Federal Assembly as a probability of the near future. He specified seven important subjects for which such an Assembly was needed: a uniform tariff, the land system, management of the goldfields, postal communications, intercolonial railways, intercolonial telegraphs, and coast lighthouses.[5]

Wentworth, who was then living in England, took the matter up, and, with the aid of a few other Anglo-Australians, drafted a memorial to the Home Government and a bill to authorise the Australian Legislatures to send delegates to a convention for the purpose of creating a Federal Assembly with power to deal with the seven subjects which Deas-

Thomson had specified. Labouchere, Colonial Secretary in Palmerston's administration, did not encourage the memorialists. He admitted the inconvenience of disunion, but doubted—with some reason—whether the proposal had any strong popular support; and merely promised to send the correspondence to the several Governors, and to give his attention to any suggestions that might come from the colonies in reply.[1]

Some support from Australia was soon forthcoming. In Victoria at the instance of Charles Gavan Duffy, in New South Wales at the instance of Deas-Thomson, and also in South Australia, select committees were appointed to consider the question; and they all supported the Victorian suggestion of an intercolonial conference to discuss it. There, however, the matter ended. In New South Wales a change of government put Deas-Thomson out of action, whilst jealousy of the young upstart colony of Victoria was intensified by the rush to the goldfields there, which gave Victoria a temporary lead in population. Two more Victorian select committees, procured by the zealous Gavan Duffy, only confirmed the suspicions of the mother colony that the scheme was planned by Victoria for her own aggrandisement. In none of the colonies was there as yet any real popular backing of the movement; each was engrossed in its own self-development, and unprepared for any limitation of its local independence.

The federal question was shelved for the time being; but the inconvenience of conflicting tariffs and border customs houses became daily more obvious. After the establishment of responsible government in 1855, the divergence between the different tariffs became more and more marked. New South Wales, with her larger land revenue, kept to free trade; Victoria, with a large population lured by the goldfields and seeking employment, became increasingly protectionist; and the other colonies extended their tariffs partly for revenue, partly for protection. An ever-growing volume of trade crossed the Murray River between New South Wales and Victoria, and went up and down the river between those colonies and South Australia; and the collection of duties on this trade became an intolerable nuisance. Many conferences were held; but the problem of combining different tariffs against the outside world with free trade between the colonies proved insoluble. For nine years, indeed, from 1855 to 1864, the Murray border was free; but there was constant wrangling about the financial adjustments between the colonies, with regard to imported duty-paid goods crossing the border; and the border duties were re-imposed. A second arrangement for a “free border” was made in 1865,[1] but eight years later after more wrangling it ended for good.

At the various conferences which were called to deal with that constant irritant, the tariff question, opportunity was taken to deal with other matters

of common concern, such as lighthouses, ocean mail services, cable communications, alien immigration and defence. And in course of time the federal question came up again. At a conference in Melbourne in 1867 resolutions were passed in favour of an extensive scheme for ocean mail subsidies, and incidentally it was resolved that a Federal Council should be established to carry the scheme into effect. The occasion is interesting for a striking speech by Henry Parkes—then Colonial Secretary of New South Wales in the Martin administration—in which he first came forward as a champion of federation. In an eloquent peroration, after parenthetical allusions to a new constellation in the heavens, and the footprints of six young giants in the morning dew, he affirmed the certainty that the proposal for union would make a profound impression upon English statesmen. This prophecy was not fulfilled. The conference was followed by a bill, introduced by Parkes and carried through both Houses of the New South Wales Parliament, to establish a Federal Council for the purposes of the resolutions. This bill was reserved for the royal assent, which it never received. No other colony had moved in the matter, and the Duke of Buckingham, Colonial Secretary in Lord Derby's administration, wrote, in a despatch of 5 January 1868, that a Federal Council to deal generally with postal administration, or any other matter, would have been favourably considered; but not a Federal Council whose powers were limited to the furtherance of a particular scheme, the details of which were not acceptable to Her Majesty's Government.[2]

Intercolonial free trade having broken down, the colonies, about 1866, turned their attention to the possibility of mitigating the consequences by some system of commercial reciprocity. An obstacle to this was the prohibition of differential duties contained in the Australian Colonies Government Act of 1850; and New South Wales pressed the Colonial Office for its repeal. This however was a matter of imperial policy on which the Duke of Buckingham was adamant; differential duties might discriminate against foreign nations, or even against the mother country. He expressed his willingness to encourage an Australian Customs Union, with a uniform tariff; and in 1870 a conference was held in Melbourne to discuss this, but the fiscal policies of New South Wales and Victoria proved irreconcilable. At length, after persistent resolutions and memorials from Australia, and much discussion with the Colonial Office, Lord Kimberley, Colonial Secretary in Gladstone's first administration, yielded, much against his will, on the question of differential duties; and the Australian Colonies Duties Act, 1873, was passed, which gave the colonial Legislatures power to carry out agreements for tariff reciprocity. The constitutional barrier was thus removed; but it was too late. The practical

difficulties had grown too great, and the power was never used.

Meanwhile the establishment of the Dominion of Canada had heartened Gavan Duffy, in Victoria, to make another effort, in the shape of a Royal Commission, appointed in 1870, to enquire into the necessity for federal union and the best means of accomplishing it. The Commission made an interim report, showing the usual unanimity as to the need for union, but a cleavage of opinion as between a Dominion constitution, on the Canadian model, and a Federal Council for legislative purposes; and it proposed to insert in its second report a draft of an enabling bill, authorising the Queen to establish a federal union of any of the colonies which should agree on the terms of union.[1] But no second report ever appeared. Even the stout-hearted Gavan Duffy had been discouraged at last by the lukewarmness of his colleagues.

The failure of every attempt at a customs union or a tariff agreement had convinced Henry (now Sir Henry) Parkes, who was by this time the outstanding figure in Australian politics, that federation must, for the time being, be approached by another road—a road that passed by the fiscal question altogether. At a conference held in 1880–1 to pursue the will-o'-the-wisp of a customs agreement, he brought up a draft bill for a Federal Council, with limited powers of legislation and administration as to a few matters of common concern, and submitted with it a memorandum stating, as indisputable facts, that the time was not yet come for a federal constitution and Parliament; that the time was come for some kind of federal authority; and that an organisation which would accustom men to think federally would be the best preparation for a real federation. The conference however split on details, and all that emerged was a resolution in favour of an Australian Court of Appeal—which was quietly pigeon-holed.[2]

In spite of the seeming futility of all these efforts, the leaven was working and events were shaping themselves. In 1883 the completion of the Murray bridge at Albury joined the railheads from Sydney and Melbourne. At about the same time Australia's complacent sense of security was shocked by foreign activities in the Pacific, and rumours of intended annexations by France and Germany. The disavowal by the Home Government of Sir Thomas McIlwraith's dramatic annexation of New Guinea in the Queen's name (1883), and its manifest reluctance to increase imperial responsibilities, even though urged by the colonies, showed the peril of disunion; and at the instance of James Service, the Victorian Premier, a Convention met in Sydney (1883), at which all the Australian colonies, as well as New Zealand and Fiji, were represented. Service was for a full federation, but the other delegates were not prepared to go so far;

and Samuel Griffith, Premier of Queensland, took the lead with a resolution, which was promptly adopted, in favour of a Federal Council. A "Bill to establish a Federal Council of Australasia", drafted by Griffith, was also adopted, with a resolution pledging the Governments to invite their Parliaments to address the Queen in favour of its enactment.[1]

In five colonies these addresses were passed—the chief defaulter being New South Wales, where the haste of the proceedings was much criticised. The Home Government, acting on the addresses received, passed through Parliament a bill substantially on the lines asked for. The Earl of Derby, introducing it in the Lords, apologised for it as a rudimentary measure, but said that the colonies had asked for it, and that it might lead to the real federation which differences of fiscal policy made impossible for the time.[2] In the Commons, James Bryce criticised it as "a very scanty, fragmentary, and imperfect sketch of a federal constitution".[3]

The Federal Council of Australasia Act, 1885, duly received the royal assent, and was adopted by Western Australia, Fiji, Queensland, Tasmania and Victoria, and later, for a time, by South Australia. New South Wales and New Zealand never came into it. The Federal Council was a mere Legislature, consisting of two delegates from each colony represented. It had no executive and no revenue. Its legislative power was limited to a few subjects, of which the chief were: relations with the Pacific Islands; the influx of criminals; fisheries beyond territorial limits; the service of civil process; the enforcement of civil and criminal process; extradition; and any other matters of general interest referred to the Council by the Legislatures of the colonies for uniform legislation.

The Federal Council met in alternate years till 1899, and passed a few Acts, dealing with the intercolonial service of process and enforcement of judgments, and the *bêche-de-mer* fisheries. In 1888, at its second session, it passed an address to the Queen protesting against the French deportation of habitual criminals to New Caledonia, and the system which allowed many of them to escape to Australia. But the Council cannot be said to have fulfilled, to any appreciable extent, its function of preparing the way for federation. Doubtless it was hampered by the abstention of New South Wales; but in any case it would have been doomed by the inherent weakness of its constitution.

Sir Henry Parkes, absent in England in 1883–4, had taken no part in the convention that devised the Federal Council. The scheme was not unlike his proposal of a few years before; but perhaps, with that touch of vanity which is not inconsistent with greatness, he was ready to see the demerits of a plan which had been elaborated by others in his absence. Be that as it may, he had changed his mind, and was now convinced of the uselessness

of half measures. It was not long before he saw his opportunity. As a result of several war scares, there was much anxiety about the defence of Australia. In 1889 this anxiety was increased by a report by Major-General Bevan Edwards on the military forces and defences of the colonies.[1] Parkes, who was something of a poet as well as a statesman, had the imaginative vision to conceive a large idea, and the judgment to grasp a favourable occasion. He had been watching the signs of the times, and the growth of popular sentiment for union, and judged that the hour had come; and on October 24, at Tenterfield, in a speech which attracted attention throughout Australia, he opened a bold campaign for the appointment of a National Convention to draft a federal constitution. He emphasised the urgency of federal defence, and the need for a national Parliament with a strong central executive. With some difficulty he succeeded in assembling at Melbourne, in 1890, a conference representing all the Australian colonies and New Zealand, at which, after a notable debate, a unanimous resolution was passed for the summoning of a National Convention.[2] All the Parliaments endorsed the proposal and elected representatives. The Convention, consisting of forty-five leading statesmen, representing both political sides in each colony, met at Sydney in March 1891.

The Convention appointed Parkes as its President, and Sir Samuel Griffith, Premier of Queensland, as Vice-President, and began its work by discussing, first in general debate, and then in detail in Committee of the whole, a series of fundamental resolutions proposed by Parkes, enunciating the essential federal principles, and outlining the basis of a federal legislature, executive and judiciary.

The federal principles laid down may be summarised as follows: (1) that the powers of the several colonies should remain intact, except for such surrenders as were necessary to the power of the national Government; (2) that trade and intercourse between the colonies, by land and sea, should be absolutely free; (3) that the power to impose customs duties should be exclusively federal, subject to such disposal of the customs revenue as should be agreed upon; and (4) that the naval and military defence of Australia should be under federal control.

The constitution was to establish a Federal Parliament, consisting of a Senate in which the States were to be equally represented, and a House of Representatives elected on a population basis and having the sole power of originating and amending money bills; a judiciary, constituting a final court of appeal for Australia; an executive, consisting of a Governor-General and ministers sitting in Parliament and dependent on the confidence of the House of Representatives.

These resolutions, and the fortnight's discussion of them which followed,

were based largely on a comparative study of the constitutions of the United States and of Canada, in the light of the political experience of the members of the Convention in their several colonies. Bryce's *American Commonwealth* had recently been published, and was a mine of information as to the working of the federal system on a large scale. But the constitution of the United States had been framed before the principles of responsible government were understood. Moreover, it was the constitution of an independent nation, and its form was republican. The Dominion of Canada afforded a more modern example, and was an example also of a federation under the Crown of the United Kingdom, and under the British system of responsible government which was familiar to all the statesmen in the Convention, and from which they had not the slightest intention of deviating. The Convention contained a number of men who were not only experienced statesmen, but also students of constitutional law and history, well read in the literature of the subject. Foremost among these may be named Griffith, from Queensland, Parkes and Edmund Barton, from New South Wales, Alfred Deakin and Henry Wrixon, from Victoria, Richard Chaffey Baker and Charles Cameron Kingston, from South Australia, and Inglis Clark from Tasmania.[1]

The problem which chiefly exercised the minds of the Convention was the fundamental problem of the federal system: how to reconcile the principles of government by the will of a majority of the people, and government by the will of a majority of the States. The basis for such a reconciliation was found in the system, sanctioned by the example of Switzerland and the United States of America, of a two-chambered Legislature, in which one chamber represented population, and the other was based on the equal representation of all States, irrespective of population. This expedient also had the merit of affording a rational basis for a second chamber in the bi-cameral system postulated by British tradition and Australian experience. Equal representation of States in the Senate was granted without demur, and the battle centred in the relative powers of the two Houses, especially with regard to money bills.

Griffith voiced the “small State” view (for Queensland, vast in area and resources, was as yet relatively small in population). He carried the principle of duality to its logical conclusion, that every federal law must receive the assent of a majority of the people and of a majority of States. Therefore the Senate must have an absolute power of veto, exercisable, not only by rejection of whole measures, but also by amendment, or veto, in detail; and this power must extend to all legislation, including money bills. To the question how the British system of responsible government could be applied where there were two co-equal Houses whose confidence a

ministry would require, he replied that the constitution should be left sufficiently elastic to work out its own development.

The “large State” view, represented by New South Wales and Victoria, was that this absolute duality was impossible, and that equal representation in the Senate must be accompanied by the predominance, in the last resort, of the House of Representatives. A nominal equality of the two chambers in general legislation they were prepared to concede; but the House of Representatives, in conformity with the unwritten law which secured the effective supremacy of the British House of Commons, must have the “power of the purse”—at least to the extent of having the sole power of originating and amending bills for the appropriation of revenue or the imposition of taxation. A concession to the Senate in this respect which found favour, and which was based on the practice of the South Australian Parliament, was to allow the Senate to return bills which it could not amend to the House of Representatives with a “request” for their amendment by that House—a device characterised later by Griffith as a distinction without a difference, because “a strong Senate will compel attention to its suggestions; a weak one would not insist on its amendments”. Experience has proved, however, that there is a substantial constitutional difference between the power of request and the power of amendment, as regards the degree of responsibility incurred by the two Houses.

In the politics of all the colonies the tariff question was a principal dividing line between parties, and naturally it was prominent in the debate. Some of the Victorians asked for guarantees against the immediate overthrow of their protective policy and the vested interests which had grown up under it, and suggested a restriction on the power of the Federal Parliament to reduce existing duties too suddenly. The sense of the Convention, however, was that this must be left to the unfettered discretion of the Federal Parliament.

The opinion of members on the main matters of principle having thus been tested, the Convention divided into three committees, and in twelve days produced a complete draft of a federal constitution— the chairman of the Constitutional Committee and the chief draftsman being Griffith. So well had they gauged the views of the Convention that the subsequent discussion in committee resulted in few amendments of substance. On 9 April 1891 the draft constitution was adopted by the Convention, with a recommendation to the Parliaments of the several colonies that it be submitted to their people for approval.

The general scheme of the draft constitution was on lines which have since been adopted in all later stages. It was in the form of a bill of a few

clauses for submission to the Parliament of the United Kingdom, providing for the establishment of the Commonwealth, the constitution itself being appended as a schedule. It provided for a complete central government, with federal legislature, executive, and judiciary. The Federal Parliament was to consist of a Senate, composed of eight members for each State, elected by the State Parliaments, and a House of Representatives elected by the people of the States in proportion to population. It was to have legislative power as to specified subject-matters, substantially the same as the Commonwealth Parliament now has, except that insurance, invalid and oldage pensions, industrial arbitration, and the acquisition and construction of railways, were not included. All the residue of legislative power was, as in the United States, left to the State Parliaments. The Senate was given equal power with the House of Representatives, except that it could not originate or amend appropriation bills or tax bills, though it might request amendments in such bills. The executive power was vested in a Governor-General, who was to be advised by a Federal Executive Council. Ministers of state were to be members of this Council, and capable of being members of Parliament—the intention being "that responsible government may, not that it must, find a place in the constitution".

There was to be a Federal Supreme Court, with a general appellate jurisdiction over the State Supreme Courts, and its decisions were made final, except that the sovereign might grant leave to appeal to the Privy Council where the public interests of any part of the British dominions were concerned; and the Commonwealth Parliament was empowered to restrict or abolish the right of appeal from the State Supreme Courts to the Privy Council.

As to finance, the chief problem was the basis of apportionment among the States of the surplus revenue of the Commonwealth. The customs and excise revenue was to be collected by the Commonwealth, which was also given a general power of taxation. The Commonwealth was empowered to take over the debts of the States; but until it should do so, it was expected that only a small part of the federal revenue would be needed for federal purposes, whilst much of it would be needed by the States to balance their budgets. It was therefore provided that the surplus revenue of the Commonwealth should, at the outset, be returned to the several States in proportion to the revenue raised therein; but that the Parliament should have power, after the imposition of uniform duties, to alter the basis.

The framing of this draft constitution marks an epoch in the federal movement. From a vague dream, federation changed at once into a definite policy embodied in a practical scheme, and complete in all essentials. It is true that as regards some of the problems, which were then being mooted

for the first time, the bill had the defects of a first draft, and was less precise and less elaborate than the constitution as enacted ten years later; but it brought home to the Australian people the full meaning of federation. The era of vague generalities was ended, and the era of close criticism begun.

The hope that the draft constitution would be forthwith accepted by the Parliaments and people of the several colonies was doomed to disappointment. The force of inertia was not yet overcome. Moreover, the constitution, if it gave a definite rallying ground to its friends, also gave a definite target to its critics, and its critics were many. It was, as every federal constitution must be, a compromise. Neither large colonies nor small colonies, neither free-traders nor protectionists, neither Liberals nor Conservatives, were wholly satisfied, and the pros and cons were vigorously debated in the press and on the platform. When the Parliament of New South Wales opened on 19 May 1891, the Governor's speech promised that resolutions would be submitted on the subject, and the same day Parkes gave notice of resolutions approving the scheme embodied in the bill, but reserving to the House the right to propose amendments to be dealt with if necessary by a second Convention, and providing for submission of the constitution to the electors for final approval.

These resolutions were never moved. George Houstoun Reid, whose devotion to free trade left little room for the intrusion of other ideas—especially of an idea which he suspected to have a protectionist taint — moved an amendment on the address in reply, affirming the desirability of federation “on principles just to the several colonies”, but affirming also the injustice of the bill in important respects. The real ground of his attack was the fear that in a federal union the fiscal orthodoxy of New South Wales would be overwhelmed by the protectionist tendencies of the other colonies; and he characteristically likened New South Wales to a teetotaler who contemplated keeping house with five drunkards. The amendment was rejected; but a general election was looming ahead, and political exigencies required progress to be made with matters of “urgent local legislation”. On June 6, as the result of a motion of censure, the Assembly was dissolved, and the new Assembly which met in July contained a new element—the Labour Party, some thirty strong in a House of one hundred and forty-one members. This Party and its adherents, unversed as yet in the text of constitutions, saw in the clauses of the bill all sorts of imaginary dangers—imperialism, militarism, “enormous powers” vested in the Governor-General, and so forth. Besides, their zeal for social reform centred their interests, for the time, in local politics, and federation failed to rouse their enthusiasm. As the price of Labour support, the ministry placed the federal

resolutions third on their programme, where they stayed till the defeat and resignation of the ministry in October.

Meanwhile, the Parliaments of Victoria, South Australia, and Tasmania had found time to deal in a partial and desultory fashion with the bill; but lacking the expected lead from New South Wales, their interest waned. Queensland, Western Australia, and New Zealand did nothing, but waited for New South Wales.

In New South Wales the retirement of Parkes from the helm delayed matters. Sir George R. Dibbs, the new Premier, was no federalist. Edmund Barton and Richard E. O'Connor, close political associates, both of whom placed federation before everything else, took office under him on the understanding that they were to have a free hand on this subject, and in the Assembly and Council respectively they moved the federal resolutions and tried desperately but unsuccessfully to interest Parliament in the Commonwealth Bill. In December 1893 they both resigned from the ministry, and all hope of that Parliament dealing with the bill was at an end.

But while the parliamentary process of dealing with the question languished and died away, public interest in federation was steadily growing. The Commonwealth Bill, neglected by the Parliaments, had attracted the attention of the people. In 1891 and 1892 the collapse of the land boom, and the ensuing financial panic and commercial stagnation which spread from one colony to another, emphasised the weakness of disunion. Adversity set men thinking, and federation began to appeal to the business sense as well as to the imagination. In Victoria, the Australian Natives Association, an active organisation in which youth predominated, had already declared enthusiastically for federation. In New South Wales, Parkes, the recognised leader of the movement, was enfeebled by age. Edmund Barton took the torch from his failing hand, and recognising that Parliament needed to be spurred on by its masters, began a vigorous platform campaign throughout the colony. Farmers and merchants, especially on the Murray border, where the pinch of inter-colonial duties was especially felt, began to organise into Federation Leagues, which increased and multiplied. Central leagues were formed in the capital cities, and the movement for the first time acquired a popular impetus.

On 31 July 1893, at the invitation of the Border Leagues, a conference was held at Corowa, at which not only the Federation Leagues, but many political, commercial and social organisations, were represented. The conference showed impatience of the usual federal resolutions and the eloquence lavished in support of them, and demanded deeds, not words—some practical action which would set the movement going again and keep

it going. In response to this demand, Dr John Quick, from the Bendigo branch of the Australian Natives' Association, moved the famous resolution which swept the movement out of the doldrums and set it fairly upon its way. This resolution advocated Enabling Acts in each colony, providing for the election of representatives to a statutory convention, which should frame a federal constitution to be submitted to a referendum in each colony for acceptance or rejection. This proposal was unanimously carried, and was soon afterwards crystallised by Dr Quick in a draft bill. The novel and significant feature of the proposal was that it mapped out in advance, by Act of Parliament, the whole process of Commonwealth-making, so that, when the first step of electing a convention was taken, it would lead automatically to the last step of the definite acceptance or rejection of the work of the convention. The draft constitution of 1891 had had no such pre-natal provision made for it. It had been born helpless into a world busy with other affairs, and had been left to the accidents and delays of political opportunity.

The new proposal at once struck the popular imagination. Not only were the electors to choose their representatives to frame a federal constitution, but also—a fact which invested their votes with a deep seriousness—they were to be definitely called upon to say “Yes” or “No” to the constitution when framed. The scheme was taken up at once by the Federation Leagues and other sympathetic organisations, and quickly became a leading issue in the politics of all the colonies.

The anti-federal forces, whose stronghold was chiefly in New South Wales, and especially in the metropolitan area, were seriously alarmed; and under the leadership of Dibbs, the Premier, they drew a red herring across the trail in the shape of a scheme for unification. This was an astute move. It is undeniable that unification, where practicable, has certain advantages over federation. It makes a strong appeal to the class of mind that tends to the logical conclusion and dislikes compromise. But it seemed a fair criticism at the time, and in retrospect it still seems so, that the sponsors of unification never took it up actively for its own sake, but merely used it to divide the unionists, to discredit federalists as apostles of a half-and-half union, and thus to perpetuate disunion.

The real danger, however, still lay, neither in direct opposition to union, nor in the rival scheme of unification, but in the unwillingness of party leaders and their followers to forsake the old party issues— and particularly the issue of free trade or protection. In New South Wales the Dibbs ministry was defeated at the polls, and was succeeded by the Reid ministry in August 1894. Reid promptly placed federation on his programme, but not in the first place. First came the main plank of the

government party's policy—the repeal of the Dibbs tariff, in favour of a purely free-trade tariff supplemented by land and income taxes. Reid had no real enthusiasm for federation, which kept intruding into party politics, and upset the comfortable see-saw of government and opposition. But Barton—who, in spite of a temperament inclining him to indolence, was capable of intense concentration on an idea—was dominated by the idea of a united Australia, and was an untiring crusader for it. The people were evidently on the march under Barton's banner, and Reid saw his leadership in New South Wales threatened. Waited upon in November by a deputation from the Federation League, which submitted Quick's scheme and the League's modification of it, Reid declared himself impressed, and promised a conference of Premiers to discuss the procedure.

The conference met at Hobart in January 1895, and carried a series of resolutions submitted by Reid, of which the first was: “that this conference regards federation as the great and pressing question of Australian politics”. The other resolutions substantially followed Quick's plan; affirming that a convention should be elected by the people to frame a federal constitution; that the constitution should be submitted to a vote of the electors, and, if accepted by three or more colonies, should be transmitted to the Queen for enactment; and that a bill to give effect to the resolutions should be prepared and submitted to the Parliaments of the several colonies. The draft Enabling Bill was promptly prepared, and contained one important addition; it provided for an adjournment of the convention, after it had framed the draft constitution, in order to give the Parliaments of the colonies an opportunity to consider the draft and make suggestions, which were then to be considered by the convention before its final report. This met the main criticism that Quick's scheme had encountered; it gave time for reflection and reconsideration, and gave a voice in the matter to the parliamentary representatives of the people.

But the intrusion of local politics was not yet at an end. The fiscal legislation of the New South Wales Government involved a dispute between the Houses, a dissolution, and a general election. Not till December 1895 was the road cleared by the establishment of the new fiscal policy of New South Wales—which incidentally added to the difficulties of federation by increasing the divergence of the tariffs of the colonies. In the same month the mother colony redeemed her pledge by passing the Enabling Act. South Australia, Tasmania, and Victoria promptly followed suit. Western Australia, some months later, came partly into line with an Enabling Act which provided for the nomination of its representatives by Parliament, and reserved to Parliament the right to decide whether the constitution should be referred to the people. Queensland was waited for;

but at last it was decided to wait for her no longer, and the election of federal representatives in four colonies was held on 4 March 1897, the West Australian representatives being chosen later.

The Convention thus elected consisted of ten representatives from each of the five colonies, and comprised the leading men in the political life of Australia. The majority were of ministerial or exministerial rank, including the five Premiers and two leaders of opposition. The electors had not voted on party lines, but had shown a marked preference for staunch federalists. In New South Wales Edmund Barton, the acknowledged leader of the movement, headed the poll; in Victoria Quick came second to Sir George Turner, the Premier. The Labour Party had only one representative, William A. Trenwith, of Victoria, and anti-federalists were unrepresented.

The Convention met at Adelaide on 22 March 1897, and began by electing as President Charles Cameron Kingston, Premier of South Australia. But it was still a Parliament without a guiding executive; and its next step was to appoint Edmund Barton leader of the Convention. Even then it was somewhat inorganic—rather like a small League of Nations Assembly, whose members were largely strangers to one another. Barton therefore began by moving a series of resolutions, much on the lines of Parkes' resolutions of 1891, with the double object of clarifying the issues and bringing the members into touch with each other. In the course of a seven days' debate both objects were achieved. It was soon obvious that the chief battleground would be the central problem of every federation: how to reconcile the desire of the large States that the controlling power should rest with a majority of the whole people, with the demand of the small States for an influence as equal partners in the union. It was conceded on both sides, as a practical if not a theoretical necessity, that the House of Representatives should be constituted on a population basis, and the Senate by an equal number of Senators for each State; but the question remained of the relative power of these two Houses—particularly as to control of the executive and control of finance. The ideal from the standpoint of the small States was that both Houses should be equal in all things; and to the argument that it would embarrass a ministry to be responsible to two Houses, the answer was that if responsible government was inconsistent with federation, responsible government must go. The representatives of the large States, again, claimed that the power of the Senate to initiate and amend money bills must be restricted; and that there should be some provision for overcoming a “deadlock” between the Houses on any legislative measure—either a joint sitting of both Houses, or a reference to the electors, being suggested. But though the debate showed sharp differences of opinion on these and other points, there was no indication

that reasonable compromises would not ultimately be accepted. The resolutions were carried on March 31.

The next task was to prepare and bring in a draft constitution to be discussed in detail. For this purpose, the Convention divided itself into three committees: a constitutional committee, a finance committee, and a judiciary committee. The two latter reported to the constitutional committee, which, after consideration of the main issues, appointed a drafting committee consisting of Edmund Barton, Sir John Downer, and R. E. O'Connor to prepare a bill, which was submitted to the Convention on April 12.

The draftsmen had taken, as the basis on which to work, the draft of 1891, which they moulded and elaborated to meet the views of the Convention. But the alterations of substance were surprisingly few.

The Convention lost no time in going into committee of the whole, and after full discussion of almost every clause the bill was reported with amendments on April 22, and next day the report was adopted. The Convention then adjourned, as required by the Enabling Acts, while the Parliaments of the several colonies considered its handiwork. The draft was roughly handled by the New South Wales Parliament, but criticism in the other Parliaments was more moderate. A survey of the suggestions made by the several Legislatures shows two main lines of cleavage. On questions of constitutional machinery, the tendency was to break away from the federal compromises embodied in the draft constitution—the more populous States favouring absolute supremacy of the majority, regardless of State boundaries, and the less populous States favouring some degree of control by a majority of States. But there was also another line of cleavage between the Conservative element—represented for the most part by the Legislative Councils—and the Liberal element represented by the Assemblies. The resulting tendency was for the Legislative Councils, even in the populous States, to favour a strong Senate.

On September 2 the Convention met again in Sydney to consider the suggestions, 286 in number, made by the Parliaments, and generally to reconsider the whole bill. Three weeks were spent in the discussion of four main problems: the finance clauses, representation in the Senate, the power of the Senate as to money bills, and provisions to deal with “deadlocks” between the Houses. Then, as an impending election called away the Victorian representatives, a further adjournment was made to Melbourne, where the Convention met on 20 January 1898, and in two months completed its task of revision and adopted a draft constitution.

The published debates of the Convention[1] are a mine of information as to the difficulties which had to be faced in reconciling the views of different

States and of individual delegates, and as to the various compromises suggested and made to meet those difficulties. It is only possible here to sketch the main lines of development from the first draft of 1891, and to describe briefly the influences under which, and the steps by which, the constitution was shaped at the three sessions of the Convention.

The dominating problem was still, as it had been from the beginning, that of determining the relative influence on federal legislation of a majority of the Australian people and a majority of the States. It presented itself in several issues: especially the basis of representation of the two Houses of Parliament; their respective powers with regard to legislation generally and to money bills in particular; a provision for reaching finality in case of "deadlock" or disagreement between the two Houses. Some attempts were made to vary the fundamental compromise of equal representation of the States in the Senate, but they met with little support from the Convention. A proposal by Henry Bournes Higgins, leader of the Equity Bar in Victoria and member of the Legislative Assembly, for representation on a scale intermediate between equal and proportional representation was negatived by thirty-two votes to five; and a suggestion by both Houses of the New South Wales Parliament, for proportional representation with a minimum of three Senators for any State, was defeated even more decisively. But a suggestion by the Legislative Assembly of Victoria, that the right of equal representation in the Senate should be conceded only to original States, was accepted; so that equal representation stands in the constitution as a compromise, not as an essential principle of federal union.

A numerical proportion between the two Houses was secured by a novel provision that the electoral quota for the House of Representatives should be determined from time to time so as to make the number of members of the House of Representatives approximately double that of the Senators. One reason for this was to prevent the inordinate growth of the House of Representatives with the increase of population; but it also gained support as giving a reasonable weight to the Senate, if, as afterwards happened, a joint sitting of both Houses were provided for as part of the machinery for settling deadlocks.

The system of election of Senators by the State Legislatures, which had been adopted in 1891 from the American constitution, was superseded by direct election by the electors of each State. And the national basis of the Federal Parliament was emphasised by empowering the Parliament to fix a federal franchise, and by forbidding plural voting.

Next in importance to the basis of representation was the "power of the purse". Equal representation in the Senate had only been accepted by New South Wales and Victoria on the understanding that the House of

Representatives should have the dominant control of finance. The "compromise of 1891"—that bills appropriating money or imposing taxation should originate in the House of Representatives, and that the Senate, though it might reject them, should have no power to amend them, but should have the right of requesting the House of Representatives to amend them—was generally thought reasonable. But in the Convention of 1897–8, owing to the non-representation of Queensland, the "small States" were in a majority, and the constitutional committee, which settled the draft to be submitted to the Convention, departed from the compromise of 1891, and allowed the Senate full power to amend taxation bills. Then followed the most critical debate of the whole Convention. There was a clear majority that favoured this extension of the Senate's powers; but insistence would undoubtedly have wrecked the prospects of Federation. It was recognised that the Convention was a negotiating, not a legislating, body; and one by one members of the solid majority fell away, and the Senate's right of amendment was ultimately lost by two votes. Thus, in substance, a return to the compromise of 1891, insisted on by the larger States, was accepted by the Convention for the sake of union.

Not as to money bills only, but also as to general legislation, was there a fear that equal State representation in the Senate might thwart majority rule. The main expedients suggested for reaching a decision in case of disagreement between the Houses were: a joint sitting of both Houses; a "mass" referendum of the whole people; a "dual" referendum requiring majorities in a majority of States as well as a "mass" majority; a simultaneous dissolution of both Houses; and a consecutive dissolution, first of the House of Representatives, and then, if disagreement persisted, of the Senate. To all these plans objections were raised by one side or the other. At a joint sitting, the House of Representatives, by reason of its two-to-one majority, would have an overwhelming advantage; the mass referendum would merely echo the House of Representatives; the dual referendum might intensify, not settle, the dispute; the simultaneous dissolution would bring undue pressure on the Senate; and the consecutive dissolution would penalise the House of Representatives. And there was a substantial body of opinion that no deadlock provision was necessary; that deadlocks in the past had usually been caused either by the Upper House amending money bills, or by the Lower House "tacking" taxes or appropriations to other measures—both of which contingencies were already provided against. A deadlock clause, however, the Convention would have; and it met the objections to the several proposals by combining them. After exhaustive debate, it adopted a clause providing that if the Senate failed to pass, in a form acceptable to the House of

Representatives, a bill passed by that House, and if in the same or the next session the House again passed the bill and the Senate again failed to agree, the Governor-General might dissolve both Houses simultaneously. If in the new Parliament the disagreement continued, the Governor-General might convene a joint sitting of both Houses to deal finally with the measure, which, if affirmed by a three-fifths majority of the joint sitting, should be deemed to be passed by both Houses.

The preliminary resolutions which were moved by Barton when the Convention assembled at Adelaide opened with a declaration—which had been suggested by Mr Bernhard Wise—that the object of federation was "to enlarge the powers of self-government of the people of Australia". The intention was to direct the attention of opponents and lukewarm supporters to the fact that, though federation involved the surrender by the Governments of the several colonies of certain rights and powers, yet as regards each individual citizen there was no surrender, but only a transfer of those rights and powers to a plane on which they could be more effectively exercised. And the first condition of the proposed union affirmed in the resolutions was "that the powers, privileges, and territories of the several existing colonies shall remain intact, except in respect of such surrenders as may be agreed upon to secure uniformity of law and administration in matters of common concern".[1] The intention again was to quiet the fears and doubts of provincialists who shrank from the idea of control by a national government. But the words in themselves suggested that the method of distribution of legislative powers should be that familiarised by the American constitution—of assigning to the Federal Parliament specific subject-matters of legislative power, and leaving the residue to the States; not the Canadian method (due to a revulsion of feeling against the American "State-rights" doctrine, supposed to have been responsible for the Civil War), of assigning to the Dominion Parliament the unspecified residue of power.[2] Indeed this alternative method was never discussed or even suggested in the Convention. From the earliest times, every scheme for Australian union had taken the form of a proposal to hand over certain definite powers to a central authority; and this plan was followed by the Convention as a matter of course and without challenge. So far were "State-rights" from being unpopular in Australia, that even the most ardent federalists were anxious to secure the complete independence of the States in matters other than those which they recognised to be of national concern. It must be remembered that the problem of federation in Australia presented a different aspect from that which confronted the Quebec Conference in 1864. The "two Canadas" had then been joined for twenty-three years under a unitary government, so that

to the two largest provinces federation was a centrifugal, not a centripetal, process. In Australia, apart from the embryonic, Federal Council, there had been no previous experience of union. Again, Australia had not that incentive to a strong union which Canada found in the political, economic and military problems set by the long land frontier separating her from the United States of America.

As to the specific subject-matters to be assigned to the Federal Parliament there was surprisingly little difference of opinion. The long series of intercolonial conferences had sifted out the subjects suitable for federal control; and with few exceptions the list of subject-matters prepared by the Drafting Committee, which followed closely in this respect the bill of 1891, was accepted by the Convention with little or no debate. The attention of members was concentrated on a few subject-matters which were thought debatable, and to which particular reference will be made.

There was no opposition to following, too unquestioningly, the American lead as to the general distribution of the trade and commerce power; i.e. assigning inter-State and external trade to the Commonwealth, and leaving each State in full control of its domestic trade. As compared with the American system, however, a somewhat wider scope was given to the federal power over trade and commerce by assigning to the Commonwealth the subject-matters of banking, insurance, and trade marks, irrespective of State boundaries. The bearing of the commerce power on such important matters as the control of river and railway traffic was the subject of long and critical discussion, which led to the insertion in the constitution of special provisions as to these matters.

The control of rivers, both for purposes of navigation and for purposes of development, such as irrigation and water conservation, led to a hard-fought contest between New South Wales and Victoria on the one side and South Australia on the other. The one great river system of Australia, consisting of the Murray and its large tributaries, the Murrumbidgee and the Darling, runs through four States—Queensland, New South Wales, Victoria and South Australia. Its catchment area embraces nearly the whole of New South Wales (except the eastern coastal strip) and part of Victoria; whilst some of the sources of the Darling are in Queensland. The united stream then runs through South Australia for some hundreds of miles to the sea. The Darling, fed by irregular semi-tropical rains, is sometimes a mere chain of waterholes, and sometimes a broad navigable stream, stretching out into vast backwaters, and carrying immense volumes of water to the sea. The Murray is less variable, being fed by the snows of the Australian Alps. In a country of vast distances and limited rainfall, these rivers have great potentialities both as highways and for purposes of irrigation and

water storage. South Australia was interested chiefly in the navigation of the rivers, and was much concerned at the extensive irrigation and conservation works and schemes in the upper riparian States, which threatened large diversions of water; and the first draft at the Adelaide session empowered the Commonwealth Parliament to control and regulate "navigable streams and their tributaries within the Commonwealth and the use of the waters thereof". This proposal seriously alarmed New South Wales and Victoria, which were jealous of any limitation of their right to impound, for developmental purposes, waters which came from rainfall within their own boundaries. Though adjured to "trust the Federal Parliament", they envisaged a possible federal law, based on the common law of the plentifully watered mother country, which would reserve to lower riparian owners an undiminished flow, regardless of the needs of agriculture in the upper States. After many proposals and counter-proposals, the whole provision was omitted. But even this did not satisfy the upper States, who still feared that their water rights might be unduly restricted by navigation laws, and contended that, as production was more important than transport, irrigation and conservation should have claims prior to navigation. The ultimate compromise was a provision forbidding the Commonwealth to abridge the right of a State or its residents to the "reasonable use" of the waters of rivers for conservation or irrigation.

The railway tariff question was mainly a duel between New South Wales and Victoria. The railway system of each State was designed and administered to draw traffic to its own capital, and had led to a long-standing war of competitive rates. The southern part of New South Wales, including the rich Riverina between the Murray and the Murrumbidgee, was geographically and commercially nearer to Melbourne than to Sydney. Victorian railways had tapped this district by several lines reaching to the border. The New South Wales railways had, on sound developmental principles, adopted a system of tapering "long-haul" rates for the outlying districts; and keen competition for the trade had followed—Victoria offering specially low rates for goods from across the border, and New South Wales trying to retain the trade by specially low rates at competitive points. There was much argument both as to the interests of the public and the ethics of the competition; and also as to the extent to which the Federal Parliament, as the regulator of inter-State trade, should be empowered to control such competition. The Convention found it difficult to formulate any definition of unfair preference; and it was also impressed by the view that the main purpose of federal control of inter-State trade was to remove obstacles, not to discourage competition. Moreover, so long as the financial responsibility for railway administration remained with the States, there

was an obvious difficulty in giving the Commonwealth any extensive control of railway policy. Ultimately, the federal "trade and commerce" power was declared to extend to railways the property of a State; and in particular to forbidding, as to such railways, any preference or discrimination which is undue or unreasonable, or unjust to any State; due regard being had to the financial responsibilities of the States in connection with their railways. Provision was also made for an independent authority in the form of an Inter-State Commission to be appointed by the Commonwealth. No preference or discrimination was to be taken to be undue, unreasonable, or unjust, unless so adjudged by the Inter-State Commission; and no rate was to be unlawful if the Commission deemed it necessary for the development of the State and it applied equally to goods from other States.

When in the 1891 Convention Kingston had proposed that the Commonwealth should have power to establish courts of conciliation and arbitration for the settlement of industrial disputes, he found few supporters. The prevailing opinion was that the industrial field should be left wholly to the States. In the interval between 1891 and the assembling of the National Convention in 1897 the subject-matter had assumed greater prominence. Courts of industrial arbitration had been established in New Zealand and in South Australia; and in New South Wales a similar proposal was under consideration. Moreover, there was a tendency, on the part of employers as well as employees, to organise on a continental scale, which suggested a doubt as to the adequacy of State tribunals to deal with industrial troubles overstepping State boundaries. At the Adelaide session, H.B. Higgins[1] took the first opportunity of proposing that the Federal Parliament should have legislative power in industrial disputes extending beyond the limits of any one State. It was objected that this would give the Commonwealth a wide and indefinite power of legislation in industrial matters; and Higgins modified his proposals by limiting the power to conciliation and arbitration. It was, however, negatived by twenty-two votes to twelve. When, at the Melbourne session, Higgins renewed his proposal, it was found that the opinion of the Convention had undergone a marked change. Several members, who had previously spoken and voted against the amendment, announced their conversion, and the conciliation and arbitration clause, as it finally stood in the constitution, was carried by twenty-two votes to nineteen.

The financial clauses gave the Convention much trouble. Events since 1891 had accentuated the difference in the fiscal systems of the colonies. New South Wales had reached the extreme of free trade; Western Australia, still in the mining stage of development, relied on a purely

revenue tariff; and the other States, with Victoria at the head, had tariffs more or less protectionist. Each colony feared the unknown future, when the Federal Parliament would control the tariff, and inter-State duties would be abolished. What the federal tariff would produce, how much of it would be spent by the Commonwealth, how much would be available for the States, and on what basis it would be apportioned—these were the questions on which the different colonies asked for assurances and guarantees. The Convention of 1891 had provided for a preliminary "book-keeping period", under which each State should, subject to minor adjustments, be credited with the revenue raised therein, and debited with federal expenditure therein; and had then left the Parliament free to terminate this system at pleasure and deal with the matter at large. It was now sought to find some formula for the future by which the Federal Parliament should be bound. There was no question that the "book-keeping system" was a necessary evil at the outset, to be discarded as soon as possible. A *per capita* distribution of surplus revenue was looked forward to as the ultimate ideal—but whether Australia would be ripe for it in five years or fifty was quite uncertain. After much debate, the Convention decided to continue the "book-keeping" for five years after the uniform tariff, and then to leave the matter to the Federal Parliament. But the question of "guarantees" had yet to be dealt with. Proposals to limit federal expenditure for a term of years were discussed and rejected. Proposals to guarantee to each State, or to the States collectively, a minimum return of revenue, based on existing figures, met the same fate. At last Sir Edward Braddon, Premier of Tasmania, succeeded in carrying a proposal—known to history as "the Braddon clause", and strenuously but unsuccessfully opposed by the New South Wales delegates—which required the Commonwealth to return to the States, for all time, three-fourths of the customs and excise revenue raised.

The constitution thus drafted had now to run the gauntlet of a referendum in each colony; and it was in New South Wales that the chief danger lay. The opponents of federation in that colony were still strong, and had, during the sitting of the Convention, scored a technical advantage by securing the passage of a bill[1] to amend the Federation Enabling Act by requiring, in that colony, an affirmative vote of at least 80,000 for the acceptance of the constitution; so that its supporters entered the field heavily handicapped. The main lines of criticism of the draft constitution were: first, the principle of equal representation of States in the Senate, and the powers given to the Senate, which it was said would enable the will of the majority to be thwarted; and, next, the financial provisions, which were denounced as necessitating an enormous customs and excise revenue, and

therefore a great increase of taxation in New South Wales; the Braddon clause, nicknamed “the Braddon blot”, being particularly the subject of attack. There was also an influential body of opinion, centred in Sydney as the mother city of the mother colony, which was really anti-federal, and regarded all the compromises of the constitution as a base surrender of the rights of New South Wales. The campaign was vigorous; the federalists having the best of the debating strength and a cause which appealed to national idealism, whilst their opponents had the support of provincial sentiment and the advantage of attack in detail which the critics of a scheme always enjoy.

Much depended upon the attitude of Reid, the Premier of the colony, upon whose invitation the process of framing the bill had been undertaken, but who was known to be not altogether satisfied with the result. After a fortnight's reflection he revealed himself, at a huge public meeting in the Sydney Town Hall, as a candid critic of the bill; and in a dramatic peroration he announced that he personally would vote for it, but he abstained from any recommendation to the electors, for or against it.[1] This speech earned him the *soubriquet* of “Yes—No” Reid, which followed him throughout his political life.

The vote was taken in New South Wales, Victoria and Tasmania on 3 June 1898, and in South Australia on June 4. The result in the three last-named colonies was an overwhelming majority for the bill. In New South Wales there was a majority of 5367 in favour of the bill; but as the total affirmative votes fell short by 8405 of the total of 80,000 required by the statute, the bill was “deemed to be rejected”.

The moral effect of a majority, however small, prevented federalists in New South Wales from losing heart, and was not lost on Reid, whose Government was about to face a general election. He promptly invited the other Premiers to a conference to consider amendments to the bill, but received a definite rebuff. Obviously, negotiation was impossible till after the election. The Reid administration went to the country as the Liberal Federal party, with a programme of seven amendments to the draft constitution. The opposition, led by Barton, styled itself the National Federal party. It had been willing to accept the bill as a fair compromise; but in view of the difficulties in New South Wales, it was prepared to ask for three amendments—the removal of the three-fifths majority at the joint sitting, the omission of the Braddon clause, and the location of the capital in New South Wales. Both parties were thus supporting federation, with little apparent difference in their programmes. The real question was one of leadership—whether the negotiations should be entrusted to the whole-hearted federalists, or to the more or less reluctant converts. The voting

was close, and resulted in the return of the Reid administration with a narrow majority. Having received a mandate from Parliament, Reid secured a conference of the Premiers of all the six colonies, which met at Melbourne in January 1899. In the end, a substantial part of his requests was complied with. It was agreed to submit the bill again to the electors with certain amendments, of which the chief were: the abolition of a three-fifths majority of members present at a joint sitting, and the substitution of an absolute majority of all the members; the limitation of the Braddon clause by empowering the Federal Parliament to terminate it after ten years; the concession of the federal capital to New South Wales, but with the condition that it should not be within 100 miles of Sydney, and that until its establishment the Parliament should meet in Melbourne; and a provision that a proposed alteration of the constitution, if twice passed by either House of the Federal Parliament, should be submitted to a referendum notwithstanding the dissent of the other House.

Reid announced his unqualified support of the amended bill; but opposition in New South Wales was not yet scotched. A new Enabling Bill, for the submission of the amended constitution to the electors, was introduced and passed the Assembly, but was mangled in the Legislative Council, which insisted on vital amendments. A prorogation, and the appointment of a batch of new members to the Council, had the desired effect, and the Enabling Bill was passed in April 1899. The referendum campaign in New South Wales was again strenuously fought, but this time the victory was decisive, the voting being 107,420 for the bill, and 82,741 against. In South Australia, Victoria and Tasmania the majorities for the bill were greatly increased. Queensland, though she had not been represented in the Convention of 1897–8, decided to submit the question to the electors, who accepted it by a substantial majority. Only Western Australia for the time being stood aloof—her main difficulty being the fear that by the abolition of intercolonial customs duties she would lose, not only revenue, but also protection for her nascent industries against Australian competition.

It remained for the Imperial Parliament to pass the constitution into law. At the invitation of Joseph Chamberlain, Secretary of State for the Colonies, a delegation from the federating colonies, led by Barton, went to England in March 1900; their instructions being to urge the passing of the bill by the Imperial Parliament without amendment. At their first conference with the Colonial Secretary and the Crown law officers, it became clear that the British Government was determined to amend certain provisions of the bill which seemed to them to affect imperial interests. Their chief objection was to the limitation of the right of appeal from the

High Court to the Judicial Committee of the Privy Council. Under the draft constitution, the decisions of the High Court in its general appellate jurisdiction were to be final and conclusive, subject to the prerogative right of the Queen to grant special leave of appeal to the Privy Council. But the Federal Parliament was empowered to limit the matters in which such leave might be asked; and the constitution expressly for-bade any appeal to the Privy Council "in matters involving the interpretation of this constitution or of the constitution of a State", unless the public interests of some other part of the British Dominions were involved. The principle underlying these provisions was that the final interpretation of the constitution, framed by Australians for Australia, should belong to an Australian court; and that the Australian Parliament should have power to declare that the final interpretation of Australian laws generally should also be an Australian matter. The British objection was that the limitation of the prerogative right was a weakening of a link which helped to bind together all parts of the Queen's Dominions. Another amendment that was strongly pressed was the insertion of a declaration that the Colonial Laws Validity Act, 1865, was applicable to laws passed by the Federal Parliament. A memorandum of these and three other amendments suggested by the Crown law officers was handed to the delegates; and there followed an exchange of lengthy memoranda, and a conference at the Colonial Office, presided over by Chamberlain, at which all the seven Australasian colonies were represented—Western Australia asking for an amendment to give her special rights for five years as to customs duties, and New Zealand asking for an "open door" giving her the right to join the Federation later as an Original State.

The delegates protested strongly that no amendments were necessary, and that they had no authority to agree to any. Chamberlain then appealed over their heads to the Australian Premiers; but they, after a hurried conference at Melbourne, also disclaimed authority, and pointed out that the bill as it stood had been sanctioned by the electors, whose mandate to Governments and Parliaments was to seek its enactment by the Imperial Parliament without alteration.

The Colonial Secretary, however, was not prepared to yield, and on May 14 introduced the bill into the House of Commons with certain amendments in the "covering clauses", which he hoped would be regarded in Australia as less sacrosanct than the constitution itself.[1] The only important amendments were a declaration that nothing in the constitution should limit the prerogative right of the Queen to grant special leave to appeal to the Privy Council, and a declaration that the Colonial Laws Validity Act should apply to the laws of the Commonwealth. The other

amendments were of a formal character.

The delegates, having failed to secure the introduction of the bill without amendment, now directed their efforts to securing a minimum of amendment. In this they met with sympathy both from the House and the Government. The bill was restored substantially to the form in which it left Australia, except as to Privy Council appeals. As to these, after many proposals and counter-proposals, a compromise was agreed to, by which the decisions of the High Court upon a particular class of constitutional questions—namely questions "as to the limits *inter se* of the constitutional powers" of the Commonwealth and a State, or of one State and another—were made unappealable to the Privy Council, unless the High Court should certify that the question ought to be determined by the Privy Council. The power of the Parliament to limit the matters in which leave might be asked was retained, subject to a provision that bills containing any such limitation should be reserved for the royal assent. The bill passed both Houses without further difficulty, and on 9 July 1900 received the royal assent.

Meanwhile an Enabling Bill had at last, in May, been introduced in the West Australian Parliament, and speedily passed. A referendum was held on July 31, and resulted decisively in favour of federation, chiefly owing to an overwhelming majority in the goldfield electorates. The consent of every Australian colony was now complete, and on August 17 the Queen's proclamation was issued establishing the Federal Commonwealth of Australia as from 1 January 1901. Shortly afterwards the Earl of Hopetoun received his commission as first Governor-General of the Commonwealth. On his arrival in Australia he commissioned Edmund Barton to form the first Federal Ministry. On 1 January 1901 the Governor-General assumed office and the Ministry was sworn in at an imposing ceremonial in Centennial Park, Sydney; and on May 9 the first Federal Parliament was inaugurated in Melbourne by H.R.H. the Duke of York, now King George V.

1 6 Vic. No. 1.

2 Despatch of 28 June 1843; *H.R.A.* Series 1, vol. XXII, p. 801.

1 *H.R.A.* Series 1, vol. XXV, pp. 198–9.

2 *Ibid*. pp. 698–703.

3 *Sydney Morning Herald* (Supplement), 4 May 1848.

1 *H.R.A.* Series 1, vol. XXVI, pp. 529–32.—

2 *Parl. Pap.* 1849, XXXV, 1.

3 Hansard, 1850, CX, 799; CXI, 1217.

1 Hansard, 1850, CXII, 600; 13 & 14 Vic. c. 59.

2 Despatch of 13 Jan. 1851; *A. and P.* XXXV, 44.

3 *Vide supra*, pp. 294–5.

4 London, 1852.

5 *Sydney Morning Herald*, 30 Oct. 1856.

1 *V. and P., N.S.W.* 1857, I, 383–94.

1 *V. and P., N.S.W.* II, 305; N.S.W. Act, 31 Vic. No. 1.

2 *V. and P., N.S.W.* 1868–9, I, 535.

1 Victoria, Papers presented to Parliament, 2nd session, 1870, II, 463.

2 *V. and P., N.S.W.* 1881, I, 327–419.

1 *V. and P., N.S.W.* 1883–4, IX, 1–190.

2 Hansard, 1885, CCXCVII, 434.

3 Hansard, CCC, 1121.

1 *V. and P., N.S.W.* 2nd session, 1889, I, 167.

2 *Ibid*. 1890, VIII, 441–580.

1 *Official Report of the National Australasian Convention Debates*, Sydney, Government Printer, 1891.

1 *Official Report of the National Australasian Convention Debates* (Adelaide), Adelaide, Government Printer, 1897. *Official Record of the Debates of the Australasian Federal Convention* (2nd session, Sydney), Sydney, Government Printer, 1897. *Official Record of the Debates of the Australasian Federal Convention* (3rd session, Melbourne), Melbourne, Government Printer, 1898.

1 *Official Report of the Debates (Adelaide Session)*, p. 17.

2 See *C.H.B.E.* vol. VI, chap. xviii, especially p. 456.

1 Higgins in 1906 became a Justice of the High Court of Australia, and for sixteen years presided over the Commonwealth Court of Conciliation and Arbitration.

1 Act No. 34, 1897.

1 *Sydney Morning Herald*, 29 March 1898.

1 Hansard, 1900, LXXXIII, 46.