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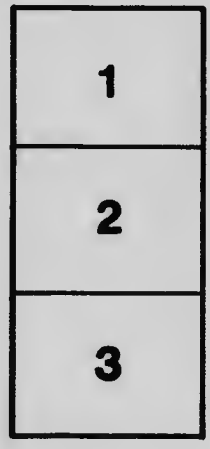

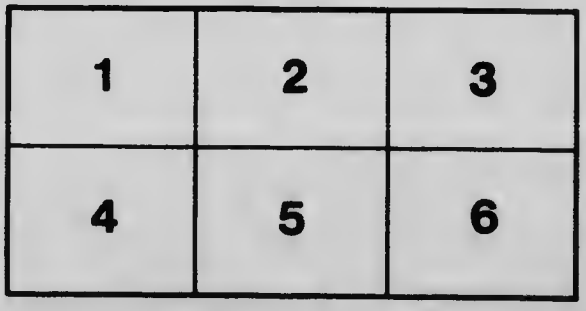

The Early Federation Movement of Australia

by

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PREFACE.

It is especially appropriate that the nineteenth century, the history of which has been dominated by the spirit of nationalism, and which has witnessed the important federal unions of Switzerland, Canada and Germany, should also see its last days crowned by the unification of the segregated colonies of Australia into a strong federation under the flag of Great Britain. The federal state promises to be as distinctly the dominant type of modern governmental organization as the city state was of ancient Greece. For this reason alone, the Australian federation is especially worthy of study, as the latest product of the spirit of the age. Its history and its constitution are particularly valuable, as illustrative of the tendencies of the powerful social and economic forces of society, which enter so largely into the political life of the modern state. The Australian Commonwealth Act is not only the most finished product of federal constitution making, embodying the experience of all previous federations, so far as they were found applicable to Australian conditions, but it is as well, one of the most democratic instruments of government ever framed, expressive of the socialistic tendency of the rule of the working-man. The interest and significance of this event is intensified, if we judge of its importance, not by the impression it creates at the moment, but by the truer test of its potentiality in the political and juristic world, in presenting to the nations of the East and West a new factor in international politics, and in offering to statesmen and jurists an unique model of constitution making. He would indeed be a bold political prophet who would venture to set definite limits to the future greatness and influence of the new federation under the Southern Cross.

The history of the evolution of a nation is always a fascinating and instructive study, more especially so when the newborn state is possessed of almost unlimited resources, is inhabited by a race of high intellectual attainments and of liberal culture, and when its citizens, moreover, are among the keenest students of political and of sociological problems. Australia, by reason of her situation, of her history, and of her homogeneous population is an exceptionally favorable field

for political experiments, and fortunately her leaders have not been afraid to endeavor to solve some of the complex questions of modern social relations, which have daunted the statesmen of the old world. The record of the early stages of the federal movement, when a few chosen spirits were vainly groping after some scheme of intercolonial co-operation and unity, is equally valuable if not so interesting as the history of its consummation, in revealing to us the source of the spirit of Australian nationalism, which has made federation both possible and actual. It is only in the light of this early struggle which brought out all the forces and issues of nationalism and provincialism, that we can properly interpret the events of the last few years.

In seeking to present an outline of the federal movement during the first twenty years of its history, almost exclusive attention has been given to the political or parliamentary aspect of the subject. No attempt has been made to trace out the popular history of the movement as it expressed itself in the social life of the people. This mode of treatment is the more justifiable as, during this early period, the question of federation presented a distinctly political character, as exemplified in the policy of an English Secretary of State, and the activities of a few leading members of the Australian legislatures. An Australian social consciousness had scarcely begun to emerge; it was a modern development of the movement, a product of the spirit of native-born nationalism. The federal history of the colonies can be traced through three distinct stages of development. It was first an official, then a political, and finally a social question. The movement originated in executive statecraft, was fostered by parliamentary discussion, and was brought to fruition by a triumphant social democracy. During the earlier stages of its evolution, with which alone we are concerned, we can keep close to the heart of the movement only by carefully following the proceedings of parliaments, and the intimately related political events out of doors, from which the life and inspiration of the federal cause was derived.

Closely associated with the action of the legislatures was the discussion of the press, which played a part in the movement scarcely second in its influence to the efforts of the federal leaders in the local parliaments. Through its earnest advocacy the question was rescued from neglect, and endowed with an importance and a utility which it did not hold in the public

estimation. In brief the history of federation during this period is largely a record of parliamentary proceedings and leading editorials, which acted and reacted on one another in an effort to stimulate public sentiment to a realization of the advantage of a federal union of the Australias. To these two sources we must look, not only for the most of our material upon the movement, but also for its best interpretation.

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PRINCIPAL ABBREVIATIONS.

G. B.—Great Britain.
Gov. Gaz.—Government Gazette.
Hans.—Hansard Debates.
Jr. H. A.—Journal of the House of Assembly.
Jr. L. C.—Journal of the Legislative Council.
N. S. W.—New South Wales.
P. D.—Parliamentary Debates.
P. P.—Parliamentary Papers.
Queens.—Queensland.
S. A.—South Australia.
Tas.—Tasmania.
V.D.L.—Van Dieman's Land.
Vict.—Victoria.
V. P. L. A.—Votes and Proceedings of the Legislative Assembly.
V. P. L. C.—Votes and Proceedings of the Legislative Council.

CORRIGENDA.

P. 321, for Mr. Faulkner read Mr. J. P. Fawkner.
P. 335, Ibid.

INTRODUCTION.

It is not easy to determine who were the original discoverers of Australia;[1] several nations aspire to that honor, but the name of England cannot be found among the claimants. Her navigators did not enter these southern seas until fully a century later than the Portuguese, the Dutch, the Spaniards or the French. It was a fortunate circumstance for Great Britain that these daring spirits came into touch with the northwestern portion of the continent, whose inhospitable shores gave the land an unsavory reputation throughout Europe.[2] With her usual good fortune, which the self-satisfied British public is prone to elevate into an evidence of special divine favor, the subsequent English explorers, Cook and Banks, were drawn to a more promising country, which they reported, on returning home to be a most suitable field for colonization.

The early history of Australian settlement stands out in marked contrast to the heroic beginnings of the American or Canadian colonies, as one of the most degrading records of English colonial history. Rejecting the noble project[3] for settling the dispossessed American Loyalists in the new island continent, Lord Stanley preferred the scheme[4] of ridding the mother country of her surplus criminal population by establishing a penal settlement in New South Wales, and steps were soon after taken to carry this purpose into effect. The action of the English government may possibly have been somewhat influenced by a desire for colonization and commercial expansion, but these motives at best played a very subsidiary part in the minds of the political leaders of the day.

The constitutional history of Australia dates from an act of 1787 "to enable His Majesty to establish a criminal jurisdiction on the eastern coast of New South Wales and the parts adjacent."[5] As though to add contumely to shame, the bill was passed through the imperial parliament without any discussion, so little did the legislators of that day realize the importance of the

[1] Collingridge, The Discovery of Australia. Coghlan, The Seven Colonies of Aust., p. 1. Quick and Garran, Annot. Const. of Aust., p. 23.
[2] Barton, Hist. of N.S.W., p. xxvi.
[3] Ibid, xlvii.
[4] Hist. Rec. N.S.W., vol. 1, pt. 2, p. 14.
[5] 27 Geo. III, c. 2.

step they were taking. Under the commission of April 2nd, 1787,[1] Captain Phillip, was appointed the first "Captain-General and Governor-in-Chief, in and over our territory called New South Wales, extending from the northern cape or extremity of the coast called Cape York in the latitude of 10° 37′ south to the southern extremity of the said territory of New South Wales, or South Cape, in the latitude of 43° 39′ south and of all the country inland westward as far as the 135th degree of east longitude, reckoning from Greenwich, including all the islands adjacent in the Pacific Ocean within the latitude aforesaid of 10° 37′ south and 43° 39′ south and of all towns, garrisons, castles, forts and all other fortifications, or other military works which may be hereafter erected upon the said territory or any of the said islands."

It will be observed from the above boundaries that the jurisdiction conferred was quite other than that we to-day associate with the colony of New South Wales, or with the Commonwealth of Australia.[2] It only covered about the eastern half of the continent of New Holland, omitting all the present state of Western Australia, and a portion of South Australia; to the south, the island of Van Dieman's Land[3] was included, while to the eastward a vast stretch of the Pacific as far as and comprising the greater part of the New Zealand group was incorporated in the new dominion by virtue of the sovereignty set up by Cook on his voyage to Australia.[4] The vast extent, the remote situation of parts of the territory, the absence of settlement and the entire lack of facilities for communication made the exercise of an effective jurisdiction over such an imperial domain an absolute impossibility. It was evidently the intention of the British government by this wholesale annexation, to forestall the settlement of foreign powers in the Southern Pacific, and to make liberal provision for the future expansion of an imperial race.

The powers conferred on the Governor, under his commission, and the accompanying instructions,[5] were very similar in character to those usually granted to administrators of military possessions. Although certain provisions were made

[1] Hist. Rec. N.S.W., vol. 1, pt. 2, p. 61.
[2] Egerton, British Colonial Policy, p. 265.
[3] It was at this time believed to be a part of the mainland.
[4] Coghlan, The Seven Colonies of Aust., p. 9.
[5] Hist. Rec. N.S.W., vol. 1, pt. 2, p. 84.

looking to the establishment of a general system of civil government and to the future development of the colony through free settlement, yet the government erected thereunder was in reality that of a military Crown colony,[1] in which the power of the Governor was practically uncontrolled by any authority within the colony, and virtually unrestrained by the home officials, on account of their remoteness and their ignorance of local conditions.

Speaking somewhat generally, the British colonial system may be said to reveal four distinct stages of colonial development. The first is that of a military or civil autocracy in the hands of a purely despotic intendant,[2] such as we have just seen was established in New South Wales. The second stage is attained upon the grant of a Legislative Council, usually a nominated body endowed with a limited legislative competency and designed to serve in an advisory capacity to the Governor. In this Council, may be occasionally found the beginning of popular representative institutions in the presence of a few elected members to act as an offset to the crown officials. This latter type, in process of time, with the growth of population, and the spread of political ideas, usually develops into the higher form of representative government. The transition from the so-called Crown colony type to the more progressive representative form, is generally marked by the entire elimination of the nominee element from the Legislative Council, a process usually accompanied by the organization of a bi-cameral parliament. The political result of this evolution, is the disappearance of the direct interference of officialdom in matters of legislation. But the full measure of constitutional liberty is not attained until popular control over legislation is supplemented by a similar control over the executive, until, in a word, the system of responsible government, such as exists in the British parliament, is secured. Then alone is the complete autonomy of the colony assured, and it enters upon the full rights and privileges of statehood. Recent constitutional developments in Canada and Australia,[3] reveal a still further evolution in colonial constitutionalism, namely, the appearance of the federal type of government, destined to be superimposed upon the system of provincial

[1] Jenks, The Government of Victoria, p. 11.
[2] Ibid, p. 11.
[3] The Customs Union of the South African colonies appears to be a step towards the formation of a political union in that group.

autonomy. This final stage is, moreover, associated with a more extended power of self-government and a freedom of constitution making and revision not possessed by the colonies under the simpler provincial form.

The history of the several Australian colonies, well illustrates the process of transition from autocracy to autonomy. Not all the colonies passed through each of the successive stages of this political evolution, but they each and all in a shorter or longer period of constitutional fruition exemplified the rapid development of liberal principles of government into a full measure of colonial independence and of democratic administration.

The first constitution of Australia, in accordance with the precedent of the Quebec Act, was statutory in character.[1] The practice had been quite otherwise in the establishment of the early American colonies, the erection of which had been looked upon as a prerogative of the sovereign, and which in consequence obtained their constitutions, either in the form of royal charters, or by proclamations of the Crown.[2] But the triumph of Whig principles at the English revolution, effected a change in the relation of the colonies to the British parliament. Henceforth, by virtue of their constitutional sovereignty, the Houses at Westminster assumed and exercised a legislative, and, through the Colonial Office, an administrative supervision over colonial affairs. On its legislative side, this parliamentary preeminence was displayed in the formation of colonial constitutions, by imperial enactment; on its administrative side, we witness the rapid growth in importance and responsibility of the office of Colonial Secretary. All the Australian constitutions have had a similar origin; they are either directly or indirectly the product of imperial legislation, enacted by parliament either on its own initiative or at the instance of the colonies themselves. Whatever may be the claim of these instruments of government to popular support and obedience, by reason of their local, conventional or parliamentary source, or their popular sanction,[3] yet, both in law and in fact, they owe their constitutional validity to an act of the British parliament.

The history of Australia would seem to lend some weight

[1] The Quebec Act of 1774 is the first colonial parliamentary constitution. Bourinot, Const. Hist. of Canada, p. 12.

[2] Report of the Committee of the Privy Council, May 1, 1849. Grey (Earl), Colonial Policy of Lord J. Russell's Administration, vol. 2, app. A.

[3] *e.g.*, The Commonwealth Act of Australia.

to the juristic claim that, not only is the administration of justice the primary function of government, but that it is also the source of government. Only by slow degrees did New South Waies free herself from the régime of martial law and develop a system of civil administration. The growth of the colony and the gradual change in the character of its population led the home authorities to introduce a modification in the autocratic form of government by the creation of a Legislative Council. In a despatch of January 19th, 1824, to the Governor of New South Wales, the Colonial Secretary authorized the appointment of such a body, which, acting in concert with the Governor, [1]should "have power and authority to make laws and ordinances for the peace, welfare and good government of the said colonies." By this concession an advisory body made up partly of official and partly of non-official members, was placed alongside the Governor as a check upon his legislative freedom of action.[2] The Executive Council was, of course, unaffected by this proceeding and still retained its strictly official independence and personnel. This form of government which was designed to introduce a semblance of constitutional freedom into the country and gradually prepare the way for a more popular system, lasted for a period of eighteen years, when further important constitutional innovations were made.

The Act of 1842,[3] for regulating the government of New South Wales and Van Dieman's Land, is the third great charter of the Australian people. This statute which attracted but the smallest attention in the imperial parliament, was principally concerned with the colony of New South Wales, into the Legislative Council of which it introduced a representative element, two-thirds of the members of that body being now made elective.[4] The Governor, with the advice and consent of the Council was empowered to enact laws for the peace, welfare and good government of the colony, subject to certain limitations intended to preserve the authority of the Colonial Office over the provincial executive and the land and revenue laws of the colony. Although but a half-way measure, it marked the beginning of

[1]Quick and Garran, Annot. Const. of Aust., p. 37.
[2]Woodward, The Expansion of the British Empire, p. 265.
[3]5 and 6, Vict. c, 76: "An Act for the Better Government of N.S.W. and V.D.L."
[4]Quick and Garran, Annot. Const. of Aust., p. 38.

representative institutions.[1] The powers conferred by the act were limited, yet these germs of political liberty and provincial autonomy, were capable of expansion into a complete system of parliamentary government. The organization of the executive was left unchanged. The new constitution was manifestly only a temporary compromise, which, however well adapted to the then condition of the colony, was altogether unsuited to the government of a body of free intelligent citizens.

A variety of circumstances hastened the consummation of a complete representative system. The three elements in the Council,—the official, the nominee and the elective, were in frequent strife, through the attempts of the popular representatives to secure some control over the conduct of the administration. With the growth of population and wealth, the demand for more liberal institutions became most insistent, until it could no longer be justly refused by the home authorities. The agitation which had sprung up for the separation of the Port Phillip district,[2] necessitated the interposition of the English government, and afforded a favorable opportunity for the revision of the constitutions of the several colonies. The proposed new constitution, outlined by Earl Grey, the Secretary for the Colonies, in his famous despatch of July 31st, 1847,[3] met with an intensely hostile reception in New South Wales. The colonists strongly resented the introduction of political changes upon which they had not been consulted, and especially objected to the suggested mode of electing the legislature through the district councils, which threatened to destroy the small instalment of popular liberty they then enjoyed These vigorous protests, together with the critical state of affairs in Europe occasioned the postponement of the measure, and its modification by a committee of the Privy Council, so as to make it more compatible with the wishes of the Australian people.

The Australian Colonies Government Act of 1850[4] was designed to effect two main objects; first, the separation of the Port Phillip district from New South Wales and its erection into an independent colony under the name of Victoria, and second, the introduction into the several colonies of an improved

[1] Speech of Lord Stanley, the Secretary for the Colonies, Hansard, 1842, vol. 2, p. 880.
[2] Turner, Hist. of Vict., vol. 1, p. 283.
[3] G.B.P.P. 1847-8, vol. 43, p. 3.
[4] 13 and 14, Vict. c, 59.

form of provincial constitution.[1] The government of New South Wales was but little disturbed by the provisions of this act, which practically continued the constitution of the Legislative Council of 1842.[2] The powers of that body were, however, considerably extended and the franchise was placed upon a more liberal basis. For the first time, the Council was empowered to impose customs duties on all importations, subject to a prohibition against discriminatory duties.[3] An even more liberal concession was contained in the provision whereby the legislature was enabled to amend its own constitution in respect to the membership of the Council, the qualifications of electors and members, the number of chambers and the nominee or elective character of its organization, but such bills should be reserved for the signification of the royal pleasure. The Crown still retained, in a large measure, its control of the land revenue and the civil list of the colony,[4] and the Council was further restrained from passing any legislation repugnant to the laws of England. A constitution similar in character to that of New South Wales, was conferred on the other three colonies of Victoria, South Australia and Van Dieman's Land, into the last two of which the elective principle was now first introduced. A commission was subsequently issued to the Governor of New South Wales, appointing him Governor-General of all Her Majesty's Australian possessions, in addition to a separate commission designating him Governor of each of the Australian colonies.[5]

The colonies were greatly dissatisfied with the limited concessions of the new constitutions, which virtually perpetuated the rule of the official bureaucracies from which they had been struggling to free themselves. The grievances of the colonial legislatures against the administration of Downing Street were intensely real. They were denied the complete control over their provincial revenues and taxation, appointments to the higher offices of trust and emolument were still subject to the dictation of the Secretary for the Colonies, the legislative powers of the Councils were unnecessarily limited even in respect to domestic affairs, and above all the irresponsibility of the local

[1] Speech of Under-Secretary Hawes, Hansard 1849, vol. 105, p. 1125.
[2] Quick and Garran, Annot. Const. of Aust. p. 40.
[3] Section 27. [4] Ibid, 14.
[5] Quick and Garran, Annot. Const. of Aust., p. 41.

executive prevented any effectual exercise of the right of self-government. The movement for the attainment of complete autonomy with a responsible ministry similar to that enjoyed by the Canadian colonies, was given a great impetus by the gold immigration of the early fifties. It was no longer possible as the Colonial Secretary, Sir. J. Pakington, clearly saw, to hold the thousands of free-born citizens in subjection to a distant administration.[1] In a despatch of Dec. 15th, 1852, to Governor Fitzroy, he admitted both the necessity of extending to the Australias a full measure of self-government and the capacity of the colonies to efficiently exercise it. Her Majesty, it was announced, would be pleased to accede to the desire of the Legislative Council of New South Wales for the establishment of a constitution similar in principle to that of Canada, when the Council shall have prepared a constitutional measure embodying a provision for a double chamber, one of which should be nominated by the Crown or appointed subject to its approval, and conditioned upon the appropriation of a civil list for the maintenance of the permanent officers of the executive. A similar offer was soon after conveyed to the Governors of the other colonies.[2] Under these conditions, the home government was ready to take such steps as would be necessary, to surrender to the local legislatures the imperial control over the crown lands and the civil lists, and to practically withdraw from participation in the domestic concerns of the Australian group.

Upon receipt of this encouraging communication, the provincial legislatures soon began to bestir themselves to exercise their power of constitutional revision under the provisions of their several constitution acts, which permitted a partial modification in the form of their governments. Under the influence of Mr. W. C. Wentworth, the most influential member of the liberal party in New South Wales, the Legislative Council of that colony took the lead in appointing a select committee to frame a new organic law. The other provinces shortly after followed the example of the mother colony, in undertaking a thorough revision of their several instruments of government. The result of these separate labors was the enactment by the respective legislatures, in some cases after a long drawn out struggle, of four popular constitutions, which, notwithstanding some minor divergences, were all practically of the same type

[1] Quick and Garran, Annot. Const. of Aust., p. 42. [2] Ibid, p. 55.

and character, and alike based upon the principles of the English constitution. The chief difference appeared in the organization of the second chamber, which, in New South Wales, was a nominated body, while in the other three colonies the liberal or democratic party was successful in its efforts to secure an elective upper house. By these acts, which were subsequently ratified by the imperial parliament,[1] in order to give them legal effect, the fullest measure of self-government compatible with imperial supremacy, was granted to the colonies. They had at last obtained the boon of free constitutions for which they had been long striving, as the Colonial Office surrendered all control over their domestic affairs into the hands of the provincial legislatures. The introduction of the system of responsible government at the same time, or soon after,[2] was the crowning measure of colonial autonomy by which the colonies were made the masters of their own destinies. These constitutions are the basis of the present free and liberal governments of the several colonies, and so well have they served their purpose, that but few modifications, and these of a minor character, have been introduced into them during the course of the ensuing half century.

We must now retrace our steps in order to direct attention for a moment to the history of the new settlements, the growth of which materially affected the territorial jurisdiction of New South Wales by the erection of a group of independent colonies within her original boundary. We have already alluded to the unwieldy extent of the newly formed colony. One of the first acts of Governor Phillip was the despatch of a party of occupation to Norfolk Island, for the purpose of establishing a branch colony. With the increase in the number of convicts, the population began to spread out beyond the immediate confines of Port Jackson. A little band of soldiers and prisoners from Sydney succeeded in planting a settlement in Van Diemen's Land in 1803.[3] With the gradual growth in its numbers, the difficulty of administering from Sydney the affairs of the distant and isolated offshoot, so much increased that, by an act

[1] Quick and Garran, Annot. Const. of Aust., p. 44.
[2] See Ibid, p. 44, &c., for the discussion of the question as to whether the grant of responsible government was the result of a despatch of the Secretary for the Colonies, or whether according to Chief Justice Higinbotham it was statutory in origin and character.
[3] Flanagan, Hist. of N.S.W., vol. 1, p. 132.

of 1823[1] the sovereign was empowered to erect the island of Van Dieman's Land and any islands territories and places thereto adjacent into a separate colony independent of New South Wales.

The Crown did not at once avail itself of the full power conveyed by the act, preferring to set up temporarily a modified form of independent government. Van Dieman's Land was accordingly erected two years later into a separate colony, with an Executive and Legislative Council as in New South Wales, but the head of the executive was not raised to the full gubernatorial rank.[2] He was created only a Lieutenant-Governor, capable of exercising all the powers and functions of a governor in the absence of the Captain-General and Governor-in-Chief, but subordinate to the representative of the Crown in New South Wales, who retained the superior title and dignity of Governor-in-Chief.[3] In all other respects the separation was complete. The relationship thus established between the two colonies, was a peculiar one, for, though their legislative powers were equal and distinct, yet the executive of the little island was subject to an indeterminate control from Sydney.[4] The English government was apparently seeking to combine the principle of local autonomy, which experience had proved was essential to the development of Van Dieman's Land, with the advantage of a supervisory unity of administrative policy throughout Australi..

This act of separation established an important precedent. Up to this time the history of New South Wales had been the history of Australia. The mother colony now entered upon a process of territorial disintegration by which she was gradually stripped of the most of her territory by her vigorous young offspring, who had gone forth to found new settlements. The history of the next forty years, which may fittingly be denominated the period of separation, is largely a record of the successive struggles of these outlying territories to attain an independent colonial status,—struggles which absorbed the political energies of the colonies to the exclusion of other more important constitutional matters.

In 1829, the unfortunate Swan River settlement was founded

[1] 4 Geo. IV, c. 96.
[2] Quick and Garran, Annot. Const. of Aust., p. 59.
[3] Flanagan, Hist. of N.S.W., p. 265.
[4] The character of this anomalous relationship is set forth in Lord Bathurst's letter to Sir T. Brisbane, N.S.W., V.P.L.C. 1823, vol. 1, p. 1.

by Captain Sterling,[1] under the regulations of the Colonial Office, in the western half of the continent. As the settlers were few in number, the machinery of government was very simple, the Governor and an Executive Council sufficing to satisfy the political needs of the community. The constitutional history of the colony during the next half century was uneventful and practically distinct from that of the Eastern group.

The colony of South Australia, like the ill-starred venture on the Indian seas, was the product of the new born interest of the English government and people in the subject of colonization. After the disastrous results of the American war, a deep depression, almost amounting to a re-action, set in against colonial enterprises and territorial expansion and even against the colonies themselves,[2] which were sometimes regarded as a source of embarrassment and expenditure, and at best but as a suitable dumping ground for convicts and other undesirables. As the inevitable law of colonial development, would it was believed, result in their separation as soon as they acquired sufficient strength and population to assert their independence, there was but little incentive to the fostering of over sea dominions.[3] But the commercial and political advantages of colonial possessions at last became evident; it was seen that they might become a source of strength to the motherland, by relieving the congestion of population through emigration, and that these new dependencies would in time furnish excellent markets for the expanding manufacturies of Great Britain. From a subject of careless neglect, the colonies now found themselves the centre of a philanthropic interest, and of social and economic speculation, almost as dangerous in character as the former indifference. In short, economic philanthropic political and commercial considerations combined to force the colonies into an unwonted prominence. This unnatural condition of theoretic interest produced its coterie of abstract political scientists. The immense unappropriated areas of Australia offered an ideal field in which to make experiments in colonization.

Foremost among these speculators was Mr. E. G. Wakefield,[4] whose name has since become identified with the scheme of assisted immigration by means of the land revenue fund to

[1] Quick and Garran, Annot. Const. of Aust., p. 67.
[2] Woodward, The Expansion of the British Empire, p. 261. Egerton, British Colonial Policy, p. 256-8. [3] Egerton, Ibid, p. 258.
[4] Egerton, British Colonial Policy, p. 282.

be derived from the sale of the unappropriated areas of the new country. He succeeded in interesting not only some philanthropists and capitalists in this project, as well as several leading members of parliament, but also secured the favorable consideration of the British government, for his scheme of founding a model colony. A colonization committee known as the South Australian Association, was formed in 1834, and promoted a bill in the House of Commons for the colonization of that territory, and, as the proposal enjoyed the support of the Colonial Secretary, it readily commanded parliamentary assent.[1] This act which constituted the charter[2] under which South Australia was organized, empowered the Crown to erect one or more provinces in that portion of South Australia lying between the 132nd and 141st meridian of east longitude, and between the 26th parallel of south latitude and the Southern Ocean. The act further provided for the freedom of all classes of the population, for the application of the Wakefield system of immigration, and for the grant of a free and liberal constitution as soon as the population should number fifty thousand souls.

The new colony which was organized on the most approved theoretic principles was based on three fundamental guarantees of progressive liberalism,—self-support, non-transportation and religious freedom.[3] The new province arbitrarily carved out of the territory of New South Wales, underwent, in the terse language of Sir G. Dibbs, "a caesarian operation in its birth."[4] Unlike the subsequently formed colonies, it did not have a native origin, nor enjoy a natural development; it was the artificial product of political and social speculation. Its early history reveals the fate that usually falls to such impracticable experiments. The Association became heavily involved in liabilities, the office of the commissioners in London was abolished and the Secretary for the Colonies was compelled to take over the direct administration of the colony.[5] The province thus assumed the normal type of a Crown colony under an executive head directly appointed by, and responsible to the Colonial Office as in the other colonies.

From the time of its discovery by Cook, up to 1837, but feeble

[1] Garnett, E. G. Wakefield, ch. IV.
[2] 4 and 5, Wm. IV., c. 95.
[3] Coghlan, The Seven Colonies of Aust., p. 98.
[4] National Australian Convention 1891, p. 88.
[5] Coghlan, The Seven Colonies of Aust., p. 101.

and altogether unsuccessful efforts[1] had been made to colonize New Zealand, owing partly to the indifference of the English government, partly to the opposition of the missionaries, and partly to the terrible, devastating wars which were sweeping over the north island. But in 1837, Captain Hobson, in a report to Governor Bourke of New South Wales, recommended the making of certain commercial treaties with the native chiefs. The same year a New Zealand Association was formed in London by several influential political and commercial gentlemen, for the purpose of colonizing the islands,[2] but as they were only able to obtain from the government a qualified assent to their proposals, the attempt to secure a charter in the House of Commons failed. Events in New Zealand proved their best ally. The prospect of British annexation had induced numerous land-sharpers to enter into fictitious agreements with the native chiefs for the alienation of a large part of their domain. These unscrupulous claims naturally provoked great bitterness among the deluded natives, and a period of anarchy seemed threatening. The missionaries, anxious to preserve the interests of their people from spoliation, were driven to favor a policy of annexation as the only peaceful solution of the difficulty. Meanwhile the eyes of the French government had been turned in the direction of this valuable group and the designs of the latter served as a spur to the Colonial Office, which at last awakening to the danger of procrastination determined upon the annexation of the islands.

About the middle of 1839 Governor Gipps was officially informed of the intention of the English government,[3] that "certain parts of the island of New Zealand should be added to the colony of New South Wales as a dependency of that government and that Captain Hobson should proceed thither as British consul to fill the office of Lieutenant-Governor,"—a policy possibly modelled after the precedent of the settlement in Van Dieman's Land. Under his instructions, Hobson was authorized to establish a form of civil government with the consent of the natives, and commanded to restrain as far as possible the alienation of native lands except where confirmed by royal grant. In these two conditions we see an earnest attempt of the British

[1] Coghlan, The Seven Colonies of Aust., p. 192.
[2] Egerton, Br. Colonial Policy, p. 290. Rusden, Hist. of New Zealand, ch. V.
[3] Quick and Garran, Annot. Const. of Aust., p. 75.

government to preserve as far as possible, both the freedom and the commercial interests of the natives, the promotion of whose welfare has since been the guiding policy of imperial action in the Pacific Islands. On the 29th of May, 1840, the formal act of annexation took place, just in time to prevent the acquisition of the group by the French.[1]

The subordinate relation of New Zealand to New South Wales could not long be maintained. Distance alone and ignorance of the condition of the islands made effective supervision on the part of the Sydney Executive altogether impossible. In an announcement to the Legislative Council of New South Wales on May 28th, 1840,[2] Governor Gipps recognized the purely temporary character of this relationship, in stating that "the annexation of these islands to the government of New South Wales would impose additional labors on the Council, but would be attended to until the New Zealand colonists were in a position to legislate for themselves." The time was not long coming, for towards the close of the year a royal charter[3] was issued erecting New Zealand into a separate colony, establishing a Legislative and Executive Council and conferring an independent authority upon the Governor for the administration of the colony. Thus quickly ended the nominal connection of New Zealand with New South Wales—a connection arising solely out of the inability of the English government to supervise the work of organizing the new colony, which necessitated the commission of the task to the nearest colonial Governor. The relationship was altogether too brief and too unreal to make the slightest impression on New Zealand's history, or affect her relation to the Australian group.[4]

Meanwhile an important migration had taken place to another part of Australia.[5] A small party of settlers from Launceston crossed over the strait and effected a settlement on the shores of Hobson Bay. They entered into an agreement with the natives for the surrender of a considerable tract of country, claiming to have acquired thereby a good title from the sovereigns of the soil.[6] But this claim was repudiated by Governor

[1] Quick and Garran, Annot. Const. of Aust., p. 75.
[2] N.S.W. V.P.L.C. 1840, no. 1.
[3] Nov. 16, 1840. Quick and Garran, Annot. Const. of Aust., p. 75.
[4] Rusden, Hist. of Aust., vol. 2, p. 192.
[5] Quick and Garran, Annot. Const. of Aust., p. 52.
[6] Bonwick, Hist. of Vict., p. 160.

Bourke, who at once proclaimed the district[1] as falling within his jurisdiction, and was likewise disavowed by the Colonial Secretary of State, to whom the settlers appealed. The adverse decision of the law officers of the Crown on the legal aspect of the contention, effectually crushed this initial attempt to establish an independent colony.[2] Governor Bourke soon after took steps to make his assertion of jurisdiction effective by proclaiming the Port Phillip district open for settlement, and by the appointment of a resident magistrate.[3] The steady growth of the community together with its remoteness from the capital led the Secretary for the Colonies in 1839 to appoint Mr. Latrobe superintendent of the district. A second proclamation,[4] issued soon after, defined the extent of his jurisdiction as "that portion of New South Wales which lies to the south of the thirty-sixth degree of south latitude and between the one hundred and forty-first and one hundred and forty-sixth of east longitude," and declared that therein the Superintendent should exercise the powers and functions of a lieutenant-governor.

From the very earliest period the land question has been a burning issue of Australian politics, affecting in its far-reaching consequences the whole polity of the colonial governments. In the Crown colony days it was one of the most difficult problems of the home authorities, as it is to-day one of the most crucial questions in Australian local politics. In issuing instructions[5] in 1840, for the regulation of the sale of land in the Port Phillip district, Lord John Russell made provision for the division of New South Wales into three separate provinces for all purposes connected with the disposal of land, and regulations were at once issued by the Governor partitioning the colony into the Northern, the Middle or Sydney district and the Southern or Port Phillip district and determining the boundaries of each.[6] The northern limit assigned to the Southern district was the course of the Murrumbidgee River and from thence along the thirty-sixth degree to the Pacific. The home government was not well advised in proposing this delimitation,[7] for although it

[1] N.S.W. Gov. Gaz., Sept. 2, 1835.
[2] Jenks, The Government of Victoria, p. 25.
[3] Turner, Hist. of Vict., vol. 1, p 152.
[4] N.S.W. Gov. Gaz., Sept. 11, 1839.
[5] May 23. 1840. G.B.P.P. 1840, vol. 7, p. 667.
[6] Jenks, The Government of Vict., p. 40.
[7] Lang, The Coming Event or Freedom and Independence for the Gold Lands, vol. 1, p. 50.

must be admitted that the territory south of the Murrumbidgee is geographically dependent on Port Phillip rather than on Sydney, and should properly belong to the former, if the physical features of the country and the commercial conditions arising therefrom, are to be regarded as determining factors, yet the other section of the boundary along the thirty-sixth degree to the Pacific was unjust to New South Wales in depriving her of a portion of territory which was naturally connected with the capital.

This proposal as might be expected, awakened great apprehension in Sydney, as giving an official sanction to the growing desire of the Southern district for political separation. The whole subject of the dismemberment of the colony came up for discussion in the Legislative Council upon a resolution by Bishop Broughton for an address to the Queen praying for an alteration in the boundary suggested.[1] The motion, which called forth a most important debate was carried unanimously, and a committee was appointed to prepare a petition in conformity with the resolution. The protest was not fruitless, for the imperial government was constrained to temporarily withdraw its proposition. One of the clauses of the new constitution act of 1842, authorized Her Majesty by letters patent to define the limits of New South Wales, "and to erect into a separate colony or colonies any territories which are now or are reported to be or may hereafter be comprised within the said colony of New South Wales, provided always that no part of the territory lying southward of the twenty-sixth degree of south latitude in the said colony of New South Wales shall by any such letters patent be detached from the said colony." The inhibition of the above proviso removed all danger of an arbitrary partition of the colony on the part of the home authorities . By the same act the Port Phillip district was given a parliamentary connection with Sydney, by being authorized to send six representatives to the Legislative Council of New South Wales.

The incorporation of Melbourne the same year[2] fostered the demand for separation, as the new municipal organization readily lent itself to the agitation for the status of full colonial autonomy. The movement first found official expression in a resolution[3] brought forward by the Reverend Dr. Lang in the

[1] Dec. 10, 1840. Debate in the Legislative Council on the Separation of the Colony, &c.
[2] Turner, Hist. of Vict., vol. 1, p. 257.
[3] N.S.W. V.P.L.C., 1844, vol. 1, p. 130.

Legislative Council in 1844, for an address to the throne praying for the "speedy separation of the Port Phillip district and its erection into a separate and independent colony." But the motion was decisively rejected by the compact vote of the New South Wales members.[1] From this time separation became the dominant issue in Melbourne politics. Petitions began to appear asking for independence on the various grounds of the injustice and inadequacy of the existing system of representation, the inequitable distribution of the land revenue of the colony, the actual enjoyment of the privilege of local administration and the moral and commercial advantages which would result from separation.[2] The claims of Port Phillip were indeed well-founded. Almost from the beginning, the district by reason of its isolation had practically possessed a large measure of provincial autonomy. Notwithstanding its corporate connection with New South Wales it had enjoyed the privilege of a distinct executive; its treasury, land office and judiciary had been administered as separate institutions distinct from the departments of New South Wales, and its officials, customs and police organizations were local in character[3] and peculiar to the district.

The Secretary of State to whom the citizens of Melbourne now addressed their prayers was not blind to the strength and justice of these representations. In a most important despatch of July 31st, 1847,[4] outlining the whole policy of the imperial government in respect to Australian affairs, he observes in regard to the failure of his policy of decentralization. "That the principle of local government in districts the most remote from Sydney is therefore acted upon almost as imperfectly as if the conduct of local affairs had remained under the same management and institutions as those which the existing system superseded. Members it is true are chosen to represent those districts in the Legislative Council, but it is shown that such of the inhabitants of Port Phillip as are really qualified for this trust are unable to undertake it at the expense of abandoning their residences and their pursuits in the southern division of the colony. Thus the Port Phillip representation is an unreal and

[1] Turner, Hist. of Vict., vol. 1, p. 288. Only 1 representative from N.S.W. proper. viz., Mr. Robert Lowe supported the 5 representatives of the Port Phillip district.
[2] Coghlan, The Seven Colonies of Aust., p. 17.
[3] Jenks, The Government of Vict., p. 126.
[4] N.S.W. V.P.L.C. 1848, vol. 1, p. 177. G.B.P.P. 1847-8, vol. 42, p. 3. Ibid, 1850, vol. 37, p. 36.

illusory not a substantial enjoyment of representative government." To remedy this evil Her Majesty's ministers "hoped in the next session of parliament to introduce a bill for the division of New South Wales into two colonies, the northern of which would retain its present name while the southern would by Her Majesty's gracious permission receive the name of the province of Victoria."

The despatch awakened the keenest interest in Melbourne,[1] but in the mother colony was largely overlooked in the animated discussion which ensued over other matters suggested by the Colonial Secretary in the same communication. Besides, the mind of the Sydney public had been gradually familiarized with the idea of separation of which the ultimate consummation was only a question of time, as the policy was favored by the home government and supported by many powerful interests within the colony.[2] Furthermore the people of New South Wales could not be insensible to the mockery of the existing representative system, as well as to the practical difficulties of administering so remote and extensive an area inhabited by an energetic but dissatisfied population, rapidly growing in numbers and political influence. Although the proposal was still distasteful to the citizens of Sydney, they were inclined to treat it with disfavor, rather than with open hostility. The Legislative Council in committee of the whole decided by a large majority that the proposal was at present premature,[3] but did not carry their opposition any further nor contest the principle of ultimate separation.

Events now hurried to a crisis. Upon the dissolution of the Council in 1848, the extreme separationist party of Melbourne, wearied with the delays in effecting their independence, took the radical step of at first refusing to choose any candidate, and on a second attempt to secure compliance with the writ of election, returned Earl Grey, the Colonial Secretary as their representative.[4] This stage play was not without effect upon the home and colonial governments which found themselves embarrassed by this striking exemplification of the farcical operation of the present system. The citizens of Melbourne were not slow to follow up their advantage by presenting an able memorial[5] to

[1] Jenks, The Government of Victoria, p. 130.
[2] The Governor and many members of the Legislative Council were favorable to separation, as was also a part of the press.
[3] N.S.W. V.P.L.C. 1848, vol. 1, p. 532.
[4] Turner, Hist. of Vict., vol. 1, p. 292.
[5] G.B.P.P. 1849, vol. 35., p. 22. N.S.W. V.P.L.C. 1849, vol. 1, p. 656.

the Colonial Secretary setting forth their grievances, and praying for the speedy execution of His Lordship's promise of an imperial act of separation.

The whole question of the suggested alteration in the form of the Australian constitutions was referred to a Committee of the Board of Trade, which brought up a report[1] recommending among other matters the separation of Port Phillip and its erection into an independent colony, and determining the boundary of the new province. "We propose," so runs the report, "that parliament should be recommended to authorize the division of the existing colony of New South Wales into a northern and southern province. Sydney would be the capital of the northern division which would retain the present name of New South Wales, Melbourne would be the capital of the southern division on which we would humbly advise that Your Majesty would be graciously pleased to confer the name of Victoria." Turning to the delimitation of boundary the report continues, "the line of demarcation between New South Wales and Victoria would coincide with the existing boundary between the two districts into which for certain purposes the colony is divided. It would commence at Cape Howe and pursue a straight course to the nearest source of the Murray River and follow the course of the river as far as the boundary which now divides New South Wales from South Australia."

Upon approval by the Cabinet, the report was sent out to the colonies, accompanied by a despatch from Earl Grey[2] promising the speedy introduction of a bill to carry out the committee's recommendations. But the sturdy objection of the New South Wales colonists to some of the constitutional provisions of the bill, and the pressure of parliamentary business at home caused His Lordship to postpone the immediate passage of the proposed measure. As the policy of separation was bound up with the fate of the new constitutions, and as the consideration of the latter would involve a long and tedious correspondence between the governors of the several colonies and the Colonial Office, the citizens of Port Phillip became fearful of the speedy realization of their desires. Petitions were again presented[3] to the Governor for forwarding to the Secretary of State, expressing

[1]N.S.W. V.P.L.C. 1849, vol. 1, p. 702. [2]Ibid, p. 704.
[3]G.B.P.P. 1851, vol. 35, p. 7.

regret at the delay in the passing of the imperial bill and pleading for the immediate erection of the district into an independent colony.

The petitioners did not this time confine themselves to a mere request for separation; that was the primary and immediate desideratum without doubt, but the present circumstances afforded an excellent opportunity for demanding more favorable conditions of constitutional divorce. Emboldened by the overt sympathy of the Secretary for the Colonies, and backed up by the united opinion of the citizens of Melbourne, the representatives in the Council of the Port Phillip district transmitted a memorial to the home government setting forth a desired change in the boundary.[1] "They would humbly submit that Melbourne is the nearest and most frequented seaport for much of the country to the north of the Murray River, ... that it would be most inconvenient for them to have all their business transacted in Melbourne, but to be compelled to go to Sydney, a distance of five hundred miles from some parts, for their communication with the government and for the administration of justice instead of to Melbourne their usual resort, on their usual avocations." As a further ground for their claim, they averred "that the demand for labor in that district is practically supplied from the Port Phillip land fund and that therefore Port Phillip is justly entitled to whatever crown revenues may be derived from that portion of the country." But the arguments of the petitioners were not exhausted by this strong appeal to the geographical, political and commercial conditions of the district, for, with an artful naïveté they sought to cover up the boldness of their territorial claim, by a specious pretence of philanthropic altruism towards the mother colony in relieving her of a grievous financial burden. "And inasmuch as the general revenue of Victoria will be augmented by the duties on articles imported for the consumption of that locality, that it would be but just to New South Wales that the former should bear the expense of governing that portion of the country."

Mr. Westgarth, one of the representatives of the Southern district, brought the question up in the Legislative Council on a motion for papers relative to the boundary between New South Wales and Victoria.[2] He justified his action on the ground

[1] G.B.P.P. 1851, vol. 35, p. 11.
[2] Apr. 15, 1851. Jenks, The Government of Victoria, p. 152. The Sydney Morning Herald, Apr. 17, 1851.

of the warm interest which the subject attracted in Victoria. The policy of the home government had at one time recognized the justice of their present contention, and the reversal of the delimitation of Lord John Russell had deprived the Riverine country of its natural geographical and political connection with Victoria. He did not anticipate that the claim of Port Phillip would be conceded without strenuous opposition from New South Wales, but he warned the people of that colony that they had little to gain from retaining these districts which would only prove a source of expenditure and a burden to them. In reply Mr. E. D. Thompson, the Colonial Secretary, expressed his regret that the motion was brought forward at the present juncture "as likely to excite very disagreeable feelings and to create a jealousy between the two districts which would prove seriously detrimental to the best interests of both, by preventing that unity and harmony of action by which they had hoped to be distinguished." He had thought that the question was settled once for all when the English government acceded to the address of the Legislative Council in 1840, and he much regretted to see that a clause of the new constitution act seemed likely to reopen the issue.[1] While admitting there was some force in the contention that the division of the colony should be made on commercial lines, he deprecated any agitation looking towards a change in the present boundary. Mr. Wentworth voiced the feeling of the citizens of Sydney in offering a strenuous opposition to the proposal. In a speech displaying an excess of passion, he denied the validity of the argument based on economic considerations, and charged the Southern district with an aggrandizing intent against the territory of South Australia as well. "The people of Port Phillip by insisting on this claim displayed a grasping and greedy disposition, . . . and it was clear that all would be done which this people had in heir power to exasperate the feelings of residents here before the time of separation." In marked contrast was the sympathetic utterance of Dr. Lang in support of the argument that the best interests of the colonies would be promoted by basing the delimitation on economic considerations, which would recognize to a large extent the justice of the claims of the soutnern district. The motion was defeated by the narrow majority of fourteen to eighteen.

[1] Section 30.

The home government was not influenced by these territorial pretensions, the acknowledgment of which they knew would certainly stir up the deepest animosity in New South Wales, which was unduly sensitive of any further partition of her territory. By the new constitution act of 1850,[1] the boundary between the old colony and the new was left unchanged; in other words the limits of Victoria were made co-extensive with those of the former Port Phillip district. By section 30 of the act, provision was made for effecting any future alteration in the boundary by Her Majesty's order-in-council upon petition of the respective legislatures.

Apparently undue attention has been paid to tracing in some detail the various steps by which Victoria acquired her independent status, but it is only from a somewhat definite acquaintance with these facts, that a proper appreciation can be formed of the significance of the subsequent relations of the Australian colonies. The circumstances connected with the separation of the Port Phillip district are, as must have been observed, quite dissimilar in character to those attending the grant of independence to the former colonies. In the case of Victoria separation represented a political movement; it was a chapter in the national history of the state, not merely the result of the policy of the imperial government. It was the product of domestic agitation, of the natural desire of an enterprising community to attain the full status of provincial autonomy. In a word, separation was an Australian act and had an Australian significance. The foundation of the earlier colonies had taken place at a time when the colonial policy of the southern seas was directed in fact as well as in theory from Whitehall, and when the views and particular interests of the several communities were either neglected or but infrequently respected. But in the meantime, there had been a rapid development of political sentiment in New South Wales owing to the immigration of free settlers. The grant of a Legislative Council furnished a constitutional organ for public discussion, and the establishment of the press afforded a means of political education, so that the opinion of the colony could no longer be coolly waved aside by the Colonial Office.

Popular interest in the subject of separation was generally

[1] 13 and 14, Vic. c. 59. "An Act for the better Government of Her Majesty's Australian Colonies."

awakened in Sydney by the growing agitation in Melbourne which threatened the severance of the close political and commercial relations of the Hobson Bay settlement with the capital. Although the earlier colonies at one time had been nominally subject to the jurisdiction of New South Wales, yet practically they had never enjoyed intimate social or political connections with her. The grant of independence to these outlying communities, so far from being a loss to the mother colony was in reality a relief, by freeing her from the responsibility and the expense of administering what was virtually a foreign territory. But with Victoria the case was quite different. Hobson Bay from the very first had been an integral portion of New South Wales, as much a part of the colony as Sydney itself. The growth and expansion of the new settlement had been materially assisted by the settlers and the wealth of the older community. Their history had been one, their social, political and economic problems had been shared in common. Under such circumstances, separation involved secession and partition, not merely the loss of an outside dependency. The unity of the colony, which had contributed so largely to the commercial prosperity of Sydney, would be discarded in favor of a policy of petty provincial autonomy.[1] The withdrawal of Port Phillip it was felt would be a precedent, and afford a justification for further dismemberment of the colony. It was but natural in view of these facts, that Sydney should look upon the separation of Victoria in a different light from that of the previous settlements, for in this case territorial unity to her involved consequences of equal sentimental, commercial and constitutional importance.

The attitude of the people of the Southern district was not less pronounced. From the very first its settlers had set up a claim for the independence of the district which had only been frustrated by the action of the home authorities. It is a significant circumstance that this—the opening page of the record of the relations of the two colonies was marked by a conflict of interests. With the growth of population and wealth, the sense of subordination to the Sydney government became more burdensome. The feebleness in numbers and influence of their representatives in the Legislative Council only aggravated the discontent by a sham pretence of unity. Nor was the attitude and policy of the New South Wales government and legislature

[1] Westgarth, Victoria, late Australia Felix, p. 288.

calculated to ameliorate the grievances or soothe the feelings of the people of Melbourne. The Sydney press manifested a tendency to disparage the pretensions of their energetic neighbors, and ruffled up the temper of their Victorian exchanges by a cynical indifference to Southern interests. The citizens of Port Phillip felt that their well-being was continually sacrificed to the preponderant influence of the capital. The administration of the land fund was an especial source of complaint and injustice, for the inhabitants of the Southern district naturally claimed that the proceeds of the sales of land within its bounds should be expended solely upon the necessary public works and the administration of the district, and not be drained off to Sydney to swell the coffers of the capital. In addition to the many material considerations of a commercial, political and administrative character, which fostered the desire for separation, a patriotic sense of the moral advantage of independence played no insignificant part in developing a spirit of state nationalism.

When the legislature of New South Wales hardened their hearts and would not let the people of Port Phillip go, the latter carried their petition to the foot of the throne. The whole history of the separation movement was a battle royal of the vigorous young community, first at Melbourne, then in Sydney and finally at Westminster, against the dominant partner in the union. Instead of that mutual sympathy and kindly feeling which should subsist between sister settlements, we find a constant conflict of interest and a spirit of rivalry and antagonism, as jealous and as bitter at times as that between the mediaeval Italian cities. Out of the seeds of this agitation for justice and independence sprang up a bounteous crop of the tares of distrust, suspicion, and narrow provincial feeling. It is always a dangerous course to allow a sense of injustice to fester in the mind of any section of the public, as it soon attacks the whole political consciousness of the state. Such a feeling had already begun to influence the attitude of the two colonies in their reciprocal relations. Neither party was free from blame,—a little more liberality on the side of New South Wales, and somewhat more consideration on the part of Melbourne might have enabled the two provinces to work out a peaceful and mutually satisfactory separation. But the circumstances of the time and the temper of the rival cities was not congenial to so happy a solution, and as a consequence, a history which began in an

unwilling subordination and whose whole course was marked by a spirit of revolt, was brought to a conclusion by an ungracious recognition of independence very similar in character to that which attended the separation of the American colonies from the motherland.

On the part of New South Wales separation meant the secession of a thankless and ambitious dependency. She could not bring herself to cordially extend the hand of congratulation to the new colony whose policy she had reason to fear might be selfishly operative to the disadvantage of the mother state. Rightly or wrongly she was firmly convinced that the policy of separation was a mistake, and that the best interest of the whole colony would be subserved by the maintenance of the unimpaired unity of its territory. On the other hand, independence meant for the people of Victoria release from a condition of administrative bondage and subjection, and the attainment of the full status of colonial autonomy: it is little wonder that the announcement of its realization was welcomed by a celebration like that to the founding of a new nation,—rejoicing it must be confessed in which the discomfiture of Sydney was not entirely absent.[1] But with all her jubilation there was "a fly in the ointment," for the new colony had not secured the boundary to which she believed herself rightly entitled. In her envious eyes New South Wales had deprived her by superior influence of a part of her just heritage in the Riverine country, to which she only waited a favorable opportunity to revive her pretensions.[2]

Meanwhile an abortive attempt to set up a new penal colony in Northern Australia had met with signal failure.[3] Under authority of the fifty-first section of the act of 1842, a proclamation was issued erecting all the territory of New South Wales north of the twenty-sixth degree into a separate colony. The unfavorable nature of the climate, the hostility of the Australian people to the establishment of a penal settlement, and a fortunate change of ministry in England combined to

[1] Turner, History of Victoria, vol. 1, p. 302.

[2] It may be added that the separation of Port Phillip was accompanied by an unfortunate dispute between the two colonies in regard to the adjustment of their accounts, which further aggravated the unkindly feeling already prevailing. The difference was finally settled by a reference to the Secretary of State, who on the advice of the Law Commissioners of the Treasury, decided in favor of the contention of N.S.W. This judgment set the matter at rest. G.B., P.P. 1853-4, vol. 2, p. 453. Jenks, The Government of Victoria, p. 163.

[3] N.S.W. Gov. Gaz. 1846, p. 1422.

wreck the scheme. The new colony was never recognized, the Russell government revoked the patent, and by proclamation the country was again incorporated in New South Wales.

In 1824 a small convict settlement was founded at Moreton Bay, as an offshoot of Sydney, but some years later was abandoned.[1] In 1840 free settlers began to move into the district for which two years later a chief magistrate was appointed. By the imperial act of 1842,[2] Her Majesty was empowered to separate from New South Wales any part of the territory lying northward of the twenty-sixth degree south latitude and to erect it into a new colony. But this boundary was placed too far to the north to be serviceable to the inhabitants of the district, so that after consultation, the Secretary for the Colonies determined to move the line further south, and by the new constitution act of 1850 it was declared that Her Majesty might upon petition of the inhabitants of that part of New South Wales lying to the north of the thirty-sixth degree, detach such territory from the mother colony and erect therein an independent colony or colonies. The Legislative Council of New South Wales in framing the draft constitution of 1853, was induced at the instance of Mr. Wentworth and the squatting party who were anxious to extend their holdings,[3] to insert a provision which was subsequently ratified by the imperial parliament, to the effect that nothing therein contained "shall be deemed to prevent Her Majesty from altering the boundary of the colony of New South Wales in the north as to Her Majesty may seem fit." The power previously granted to the Queen to alter the boundary was distinctly preserved in this act, and she was further authorized to establish one or more colonies out of any territory which might be separated from New South Wales.

In 1843 the settlers of Moreton Bay were granted representation in the Legislative Council at Sydney, and in 1851 the district was made a separate constituency entitled to elect one member. This number was subsequently increased with the growth of population, so that under the new constitution of 1856, the northern settlement returned nine members to the legislature.[4] The district, however, was strongly dissatisfied with the adminis-

[1] Coghlan, The Seven Colonies of Aust., p. 70.
[2] 5 and 6. Vict. c. 76.
[3] The Sydney Morning Herald, Dec. 21, 1853. Lang, Hist. Rec. of N.S.W., vol. 1, p. 404.
[4] Quick and Garran, Annot. Const. of Aust., p. 73.

tration of the distant Sydney government; it was suffering from much the same treatment in the neglect of its interests as had been experienced by the former Port Phillip colonists; its representation was unreal and its elections sometimes farcical. The agitation for independence first came into prominence in 1851, when petitions were forwarded to the imperial government from some of the settlers of the district praying for its separation, and for the continuance of the system of transportation.[2] The subject was at first very closely identified with the question of convictism, as the squatters were desirous of securing a continued supply of cheap labor which had been cut off in New South Wales.[3] This latter proposal met with the most stubborn opposition from the majority of the freemen, especially the laboring population of Brisbane, who while equally desirous of freeing the district from the yoke of Sydney, would not accept independence if accompanied by the moral and political danger of social degradation.[4] The arrival of large numbers of free immigrants from the motherland and the other colonies, together with the unfavorable attitude of the Colonial Office which had at last yielded to Australian opinion against the revival of transportation, convinced the squatters that there was little chance of securing their object, and they were consequently obliged to drop that feature of their program, and join forces with the free separationists in seeking for independence only.[5]

The attitude of New South Wales from the beginning was most hostile. A resolution of the Legislative Council in 1851,[6] declared that the premature separation of the northern territory would be a great injustice to this colony. The claims of Moreton Bay were subsequently taken up in the Legislative Council by Dr. Lang, who introduced a resolution[7] for the separation of the district. But the effort was premature, for notwithstanding a vigorous speech in which he justified the right of the new settlement to an independent existence on the ground of the difficulties of intercourse, and the difference of climate and of commercial products, the motion was voted down by a large majority.[8] The

[1] Coote, Hist. of Queensland, p. 118.
[2] N.S.W. Jr. L.C. 1856-7, vol. 1, p. 805.
[3] Russell, The Genesis of Queensland, p. 451.
[4] Ibid, p. 454. N.S.W. Jr. L.C., 1856-7, vol. 1, p. 812.
[5] Coote, Hist. of Queensland, p. 136.
[6] N.S.W. Jr. L.C. 1856-7, vol. 1, p. 823.
[7] Sept. 12, 1854.
[8] The Sydney Morning Herald, Sept. 13, 1854.

question now entered upon an acute stage, and considerable bitterness of feeling was displayed on the part of some of the political leaders of New South Wales against what they designated the continuous spoliation of the colony.[1] The Sydney Herald objected to the whole policy of splitting up the country into a number of petty principalities, until the federal principle was introduced into the constitution and a strong central government established, which would counteract the forces of disintegration by giving the necessary unity to Australian interests. It maintained that the institution of a federal government would satisfy the requirements of existing conditions without the necessity for dismemberment.[2] The opposition of New South Wales was further strengthened by the objection or indifference of a considerable portion of the inhabitants of the northern district.[3] The commercial connection of the settlers in the Clarence and New England districts was largely with Sydney, as were also the relations of the few scattered pastoralists in the extreme north and in the Wide Bay and Burnett country. The creation of a new colony with its capital at Brisbane would in their opinion, afford no better administrative facilities than the more distant but the more accessible Sydney government.[4] The demand for separation sprang mainly from the citizens of Brisbane and the surrounding country who hoped to build up a new metropolis in the north, and to reap the advantages which flow from political institutions and governmental favor.

The persistent agitation of Moreton Bay at last bore fruit in the announcement of Secretary of State Labouchere that the time for separation had come.[5] There were however two most important matters connected with that step which demanded careful consideration,—namely the location of the boundary, and the division of the debt between the two colonies.[6] Upon the former of these questions the Colonial Secretary requested the opinion of Governor-General Denison who recommended a line most favorable to the interests of his own colony. The Legislative Assembly and Council united in condemning any boundary

[1] Coote, Hist. of Queens , p. 176. Russell, The Genesis of Queensland, ch. xxv.
[2] The Sydney Morning Herald, Oct 15, 1855. The Empire, on the other hand supported the claims of the Northern District.
[3] Russell, The Genesis of Queensland, p. 501.
[4] The Sydney Morning Herald, Nov. 15, 1856.
[5] Despatch, July 21, 1856
[6] Coote, Hist. of Queens, p. 197.

which would hand over the Clarence or New England districts to the new province without a previous consultation of the inhabitants of these localities, The members of the extreme north likewise lodged a vigorous objection[1] to the proposed separation, which they maintained was "solely for the benefit of Brisbane," whose situation at the extreme south would soon require another subdivision of the colony. They preferred to trust in the justice of New South Wales, rather than be exposed to the jealous preponderance of Brisbane. After much delay, the royal letters patent were issued in 1859 erecting the Moreton Bay district into a separate colony under the name of Queensland. The boundary laid down followed the recommendation of the Governor-General in fixing an arbitrary line, commencing at the sea coast at Point Danger, in latitude about 28° 8′ south, running westward along the MacPherson and Dividing ranges and the Dumaresq river to the MacIntyre river, thence by the 29th parallel south latitude to the 141st meridian, east longitude; on the west the 141st meridian of longitude from the 29th to the 26th parallel, and thence to the 138th meridian, north to the Gulf of Carpantaria, together with all the adjacent islands in the Pacific Ocean. This boundary left the valuable Clarence, Richmond and New England districts within the limits of New South Wales, but, by extending the jurisdiction of Queensland to the Gulf cut off all hope of the formation of new independent settlements in the north.[2] The new colony was a noble heritage, with which to endow the 25,000 inhabitants, who dwelt within its borders at the time of separation.

The history of the separation of Queensland bears a striking similarity to that of Victoria;[3] it was the product of a long agitation carried on in the face of the most discouraging opposition of the mother colony. It was a political revolt against the centralized administration of Sydney; a phase of the long drawn out struggle which secured to the several provinces of Australia a full measure of colonial independence. It marks the final stage in the process of disintegration by which New South Wales was deprived of the larger part of her territory, in order to build

[1] Debate in the Leg. Ass., Oct. 4, 1859. The Sydney Morning Herald, Oct. 5, 1859. See speeches of Messrs. Eliot and Walsh. The latter further objected to the proposed apportionment of representatives which gave an overwhelming preponderance of the members to Brisbane and left the northern districts at the mercy of the jealous southern capital.

[2] Coote, Hist. of Queens, p. 225.

[3] Russell, The Genesis of Queensland, p. 497.

up rival communities, which could better supply the need and superintend the development of the new areas which were rapidly opening up to settlement. It was the break up of an unwieldy empire which had no cohesive unity, into a number of autonomous states, each of which was the centre of a distinct national life.[1] But this dismemberment, though a natural and necessary result of existing geographical and social conditions, was unfortunately attended by a bitterness of feeling which augured ill for the future friendly relations of the colonies.

Almost the first act of the Queensland government was to enter into negotiations[2] with New South Wales regarding an adjustment of the boundary line, so as to bring a part of the New England district within the colony. A portion of the settlers of that locality had petitioned for annexation to Queensland, and this memorial was backed up by an address[3] to the Queen from the Legislature, in which it was claimed that the present delimitation was a violation of the promise of the Secretary for the Colonies in 1856; that the boundary had been fixed according to the will of New South Wales, and could not be accepted as final since Queensland had had no voice in the settlement; that the citizens of the district in question desired incorporation in the new colony, and that the Clarence River was the only true boundary which would prevent a recurrence of intercolonial difficulties. But the opposition of New South Wales effectually prevented the home authorities from taking any steps towards compliance with the prayer of the Queensland legislature, so that the new colony was left to harbor a sense of injustice at the hands of her more powerful neighbor. A simultaneous attempt to effect an adjustment of the financial obligations of the two colonies resulted in a similar deadlock.[4] The Colonial Secretary, Lord Newcastle, had recommended the appointment of commissioners by the two governments to arbitrate the question, and steps were taken by the Queensland parliament to carry out this suggestion, but the negotiations fell through. Thus the political history of Queensland, like that of Victoria began with an unfortunate conflict of interest with the

[1] "Disruption was in fact a corollary to the growth of our Australian vast, little organized and imperfectly developed territories" Russell, The Genesis of Queensland, p. 448.
[2] Mar. 13, 1860. Queens, V.P.L.A. 1860, p. 967
[3] Ibid, 1861, p. 93.
[4] Ibid, 1860., p. 869.

mother colony, which the exercise of a spirit of broad liberality and of mutual concession might have prevented.

The constitution of the new colony, which was embodied in an order-in-council, of June 6th, 1859, established a form of government very similar in character to that of New South Wales, consisting of the Governor, a nominated council and a representative assembly. The powers and functions of the legislature were substantially the same as those possessed by the sister colonies. Unlike the other provinces, Queensland commenced her constitutional history with a full measure of colonial autonomy, including the right of responsible government, in consequence of which she was enabled at once to take her place as an equal and independent member of the group of free Australian states.

Of the six colonies which now constitute the Australian group, all but Western Australia have as we have seen, been carved out of the vast expanse of territory included within the commission of Captain Phillip. Three of the colonies, New South Wales, South Australia and West Australia have enjoyed a separate administration from the date of their foundation. The others, Tasmania, Victoria and Queensland, are the result of the natural expansion of the population of the mother colony, leading to the formation of new settlements, which, in course of time, sought to obtain an independent status co-equal with her. The first of these obtained her freedom without objection, but the separation of the two latter colonies was only effected after a strenuous contest with the government of Sydney,—a struggle in which the principles of central administrative authority and of provincial autonomy came into unavoidable collision.

Thus far we have been principally concerned with the history of the formation of the new provinces. The separation of the earlier colonies, through the agency of the imperial government, had passed almost unnoticed in the Australian capital. The establishment of the colonies of Van Dieman's Land and New Zealand had not affected the political unity of New South Wales. The grant of independence was but a natural application of the principle of local autonomy which had been extended to Sydney itself, since these islands could no more be properly administered from New South Wales than that colony from Westminster. The same remark applied with almost equal force to the settlement in South Australia, which although carved out of the territory

of New South Wales was from the beginning politically independent, and socially dissevered from any intimate relationship with her. But when this same policy of separation came to be applied to districts nearer the heart of the colony,—districts actually within the jurisdiction and subject to the political authority of the capital, the expediency of the policy was called in question. The projected separation of Port Phillip was the first sensible attack on the corporeal unity of the mother colony. Prior to this time, in the formation of distant settlements, there had been no constitutional alternative to the grant of complete colonial independence; the only possible option was to leave the country a no-man's land, open to the annexation of the most enterprising foreign nation.[1] But now the citizens of New South Wales were brought face to face with the practical question of the future constitutional organization of their own colony,—should it maintain its political unity or, on the contrary, be broken up into a number of autonomous states?

The whole subject was thrashed out carefully, in a debate in the Legislative Council[2] in 1840, on a resolution of the Bishop of Australia in regard to the boundary proposed by Lord John Russell for the Port Phillip district. While the debate naturally raged about the possession of the valuable Riverina territory, yet the political prescience of some of the members led them to consider the broader question of the effect of separation on the future political relations of the several colonies of Australia. This was in fact the first parliamentary debate on the subject of Australian unity. The Bishop, so far from objecting to the principle of partition foreshadowed in the government's policy, rather approved of it, and protested solely against the proposed delimitation of boundary, as certain to prove injurious to the true interest of New South Wales. He qualified his favorable opinion only by making any division of the colony's territory dependent on the pleasure of the Sydney legislature. But this view failed to commend itself to many of the members, who attacked the principle of separation itself. Mr. Jones, in a speech instinct with the spirit of nationalism, protested against the action of the British government in formulating a policy without consultation with the local legislature. He could dis-

[1] *e.g.*, The French annexation of New Caledonia.

[2] Report of the debate in the Legislative Council on the separation of the colony etc. Published under the direction of the Australian Immigrant's Association.

cover no justification for the scheme of dismemberment, which would break the colony up into a "number of petty local governments." He especially emphasized the inconvenience which would arise from the lack of uniformity of law in the several colonies, the diverse legislation of which would enable the debtor to avoid the fulfillment of his obligations by crossing the boundary. Mr. McArthur pointed out the inconsistency of the home government in strenuously advocating a policy of union in the Canadas, as a neeessary expedient for the furtheranee of the general welfare, while, at the same time, they were here promoting a measure of disintegration destruetive of the present prosperity of this eolony, "by dividing the eountry into petty district governments." The speech of the Governor[1] was a moderate justification of the policy of separation, coupled with a eriticism of the proposed boundary. Far from viewing the independence of Port Phillip with apprehension, it would personally be a subject of congratulation to him, for he had experienced the difficulty of administering the eountry at so great a distance. Besides, since the arrival of Mr. Latrobe, that district had practically enjoyed a separate and distinct local government. Although admitting the inconvenienees which would arise from the possession of property in different colonies, still he was inclined to minimize the evil effects, the jealous ill-will, and the commercial loss which some of the members had pictured as a eonsequence of independence. There would still, he urged, be the common bond of an imperial conneetion, just as, in the United States, there was a federal unity between the states. He agreed with Mr. MeArthur, in eriticising the singular inconsisteney of the English government in pursuing a poliey of union in one quarter of the globe[2] with a view to overcoming those very evils of disintegration, which their present proposals would ereate in Australia.

The honors of the debate were carried off by the Auditor-General, Mr. William Lithgow, who presented a most foreeful argument in reply to the liberal views so ably advocated by the Governor. In a speeeh whieh showed a deep appreciation of the advantages of unity, he de-

[1] Report of the debate in the Legislative Council on the separation of the colony, etc., p. 40.

[2] Not only in Canada by the Act of Union in 1840 but also in the West Indies by the federation of several groups of islands.

clared his strong aversion to any partition of the territory of New South Wales. "I am very deeply interested," said he, "in the prosperity of Sydney and anxiously desirous that it may continue to be the metropolis, but sooner than such dismemberment should take place, I would prefer that the seat of government be transferred to Port Phillip. Union is strength. The dismemberment of a colony containing not much above 125,000 souls would, be quite inexpedient as it could not fail to engender provincial heart-burnings, jealousies, weakness and discord. In no country, perhaps, is it as necessary as in this, that one uniform and general system of laws and regulations should be established by the authority of a central supreme government. . . . Any such dismemberment is every day becoming less called for. Steam communication is approximating more closely the different portions of the colony, and, so soon as municipal corporations are established and a representative government constituted, we shall require no more political divisions than those of the parent country. The establishment of circuit courts and quarter sessions conjoined with municipal institutions and a representative government will give all the advantages of the British constitution, and render entirely unnecessary the conflicting interests, the heavy expense and other serious evils which dismemberment would occasion." He proposed an amendment, for an address to the Queen against any partition of the colony, but his motion found no seconder and was dropped.

This debate possesses a special significance, not only as one of the earliest public discussions on the subject of the political future of Australia, but also on account of the ability and breadth of view which marked its treatment. The narrow question of provincial boundaries and the petty jealousy of local self-interest revealed in the speeches of a few of the members, were quite overshadowed by the higher views of constitutional policy presented in the statesmanlike utterances of the Governor and the Auditor-General. Amid the diversity of opinion on the subject of separation, two clear and conflicting views in regard to the process of Australian political development found definite expression. The first of these, for want of a better name may be called the doctrine of provincial autonomy. According to this conception which found its ablest expression in the speech of the Governor, the natural tendency of the outlying districts was towards an independent existence. Judged from the stand-

point of administrative efficiency and of legislative capacity, this tendency should be encouraged rather than opposed, since separation would prove equally advantageous to the mother colony as to the distant dependencies. The former would be relieved of the cost and responsibility of a burdensome and unsatisfactory supervision of subordinate local administration. For such a task, the central government was singularly unfitted, through its ignorance of local conditions and its inability to do proper justice to local requirements. The dissatisfaction and complaints of the settlers of the outlying districts, were not only evidences of the failure of the present unitary system of government, but an additional reason for throwing on them the obligation of ministering to their own necessities. Political unity could only be advantageously maintained when there was a sufficiency of knowledge, efficiency of government, unity of interest and loyalty of allegiance throughout the whole colony, all of which conditions were lacking under the present régime.

Moreover, the policy of separation, it was urged in effect, would be most beneficial to these thriving offshoots of the mother state. The necessity of local administration had already equipped Port Phillip with an autonomous organization of limited powers, which could naturally and easily be developed into the full status of independence, without effecting any material breach in its relations with the parent colony. The local community had already been trained to the exercise of the functions of government and, by reason of its isolated position, was best fitted to minister to its own domestic wants. The grant of provincial autonomy would elevate the political horizon of the population, would increase the prestige of the colony in distant lands, and by opening up the country more rapidly to settlement would advance the commercial interests of all Australia. While it was fully admitted that separation would involve many inconveniences, especially in regard to the diversification of laws in the several colonies, yet these would not offset the advantages which independence would afford. The jealousies which might arise from the aggressive competition of rival states, would not be so dangerous to their colonial relations as the open discontent of an embittered subject community. Besides, the evils of dismemberment would be minimized by the fact of an imperial unity, just as in the United States, the disadvantages of federalism were largely overcome by the existence of a

strong national government. The supporters of this autonomous view looked to the imperial connection as the bond of a common citizenship and the means of effecting a uniformity of policy. Imperial unity assured, the process of internal disintegration might safely go on without danger, since it only meant the creation of new provinces within the empire. They endeavored, by combining the two principles of imperialism and provincialism in the one political creed to secure the advantages of both a centralized and localized administration.

The second and rival view aimed at the maintenance of Australian unity, or rather at the indivisibility of the almost imperial domain of New South Wales. The able argument of the Auditor-General furnishes the best exposition of the faith of the political unionists. In this statesmanlike utterance, the consequences of separation—"provincial heart-burnings, jealousies, weakness and discord" were portrayed with almost prophetic vision. The advantage of a general and uniform system of laws was impressed upon the minds of several of the speakers, and the corresponding benefits of commercial unity were fully recognized. To the unionists, the primary requirement of Australian development was a strong and efficient supreme centralized government. The ideal of colonial unity even though not yet transformed into the nobler conception of Australian nationalism, appealed to their imagination. The immediate common citizenship aimed at was Australian and not imperial. It was admitted that this social unity was not then existent, but time and the art of man would speedily create it. The growth of population, the increased means of communication and the development of internal commerce would bind the colonists together in a common social and economic brotherhood. The danger of over-centralization, and the necessity of the devolution of many of the functions of government to local authorities was not denied. The difficulty would be met, however, not by the grant of colonial independence, but by the creation of municipalities and their endowment with a large measure of legislative and administrative power. An effective localization of the judicial establishment would also, it was believed, go far to satisfy the political requirements of the distant districts. In short, the unity of the central government would be complemented by a liberal measure of municipal autonomy and by a system of administrative devolution.

The Legislature was called on to deal with one of the most perplexing problems of politics,—to choose between the conflicting principles of national unity and local independence, each of which had many good claims for support. The idea of a federal compromise does not seem to have occurred to any of the members of the Council, although the Governor referred to the federal principle of the United States as a justification for separation. The issue and the moment alike afforded a splendid opportunity for constructive statesmanship. The separation movement had only just arisen in Melbourne, and that bitterness of feeling and that sense of distrust, which later frustrated all efforts at federation, was not yet engendered. But unfortunately the political experience of the colonial legislature was altogether too limited to initiate such a federal policy, and statesmanship has been singularly wanting in the history of Downing Street. The policy of that Office has fluctuated between the two extremes of official indifference and officious and ignorant interference in local affairs. The most opportune occasion for introducing a federal system was lost, and the colony was left to work out its own problem of governmental organization.

With the development of the separatist agitation in Port Phillip, the question of dismemberment became more acute, and the chamber of the Legislative Council at Sydney frequently resounded with familiar arguments upon the policy of state autonomy. In a debate of December 13th, 1841,[1] Mr. Windeyer urged with much force, that it was of the highest importance to the future welfare of this country "that we should form one united community. This colony had hitherto been able to command but little attention on the part of the home government, but if it were split up into portions, our representatives would have still less weight, as little as those of single parishes in England." But the issue was not one which could be settled by the weight of argument, but only by the mightier forces of economic and political events, which were steadily tending towards separation.

The history of modern federalism has shown that the federated state may be built up from previously independent units, or arise from the subdivision of an existing centralized state.[2] In some cases three different stages of development may be

[1] The Sydney Atlas, Dec. 21, 1844.
[2] A. B. Hart, Introduction to the Study of Federal Government, ch. v, p. 80.

traced, corporal unity, disintegration and federation. New South Wales was passing from the first to the second of these stages, in throwing off a group of promising new colonies. Her people at this time were not concerned with the subject of federation, but of disintegration. The debates in the Council, while revealing many of the arguments that a discussion of the former topic would produce, were confined exclusively to the present problem of the dismemberment of the colony. There was apparently no idea of extending the jurisdiction of the government at Sydney over the more distant colonies by means of any system of federation. The most ardent unionists thought only of maintaining the integrity of the colony's territory, and not of the political unification of Australia. The latter conception would, at this time, have been absolutely preposterous, in view of the almost complete absence of any regular means of communication between the several colonies. But it is a significant circumstance that the members of the Legislative Council should at this early date, have been called upon to consider and decide a question so closely related in its various bearings to the subject of federation, in the discussion of which they must have been slightly familiarized with many of the advantages and aspects of federal institutions. The question of federation is, in fact, the negative or reverse side of devolution.

The policy of separation was not a political issue, save in so far as it commanded the united support of the representatives of the Port Phillip district. It divided the members of the Executive Council as much as the non-official members of the legislature. But it is very doubtful, if many of the supporters of colonial unity were prepared to go so far as the Auditor-General in voluntarily offering to sacrifice the premier position of Sydney in order to maintain the territorial integrity of the state. The citizens of Sydney were very jealous of their preponderance; in fact one of the weightiest considerations against separation, in their eyes was, that the disintegration of the colony would create a rival capital which might seriously affect, if not endanger their commercial prosperity and political pre-eminence. This feeling was not in the least modified by the more rapid development of the Hobson Bay settlement and the ambitious pretensions of its aggressive citizens. Out of this circumstance arose much of the opposition to separation, and the mutual jealousy which marked the early history of the two cities, and

which proved too strong for the arguments of the political unionists.

The creation of the new colony of Victoria gave a practical settlement to the question of the future political organization of the country. The process of Australian development it as decided, should be through the medium of separate colonies and not through a centralized state. The cause of constitutional unity was forever lost. Sydney reluctantly submitted and in time when the bitterness of the controversy had passed away, the majority of her citizens came to recognize the wisdom of endowing the new communities with independent powers of government. Only by this means could the work of subjugating the great unoccupied areas, far distant from the capital, have been carried on: the grant of an independent status was essential to the effective organization and the development of the political and commercial life of the isolated settlements.[1] The separate existence of the colonies is from this time onward the most significant and the determinant fact in the political relations of the Australias. By the separatist movement it was determined that the process of reconstructing a new Australian union must be based upon a full recognition of the independence, the equal status and the individualism of the several colonies.

[1] Sir H. Parkes, An Aust. Nation, Melb. Rev., Oct., 1879.

CHAPTER I.

THE GERM OF FEDERATION.[1]

It is to another source that we must look for the true origin of the federal movement in Australia. At the time of the founding of the colony of New South Wales, the colonial policy of Great Britain was conducted on the most arbitrary and narrow-minded lines. A general impression has prevailed that the successful revolt of the American colonies taught the motherland a most valuable lesson and led to the adoption of a more liberal attitude towards them. But nothing could be further from the truth, as the majority of English public men were far from profiting from this most salutory experience.[2] Tory imperialistic ideas were in the ascendency.[3] The causes of the revolt were erroneously traced to the too great enjoyment of colonial freedom, and the error of that liberality was corrected by a more thorough supervision of, and interference with, the domestic affairs of the colonies. The territories beyond the seas were treated as exploitable possessions of the British Crown, to which the narrow selfish principles of Mercantilism were applied in all their rigor.[4] This policy was well exemplified in the instructions to Captain Phillip, who was commanded among other oaths of office to take the oath in respect to Trade and Navigation Laws,[5] the intent of which was to confine all colonial trade to British merchants and ships.

Under the more liberal administration of Huskisson some of the most irksome restrictions of the Mercantile System were removed, and measures were taken to encourage colonial commerce.[6] The theory of monopoly was slowly giving way to a more enlightened policy of reciprocity, though some of the in-

[1] This caption is borrowed from the corresponding section of Quick and Garran's Annotated Constitution of Australia.

[2] Sir C. Bruce, The Crown Colonies and Places, Proceedings of The Royal Colonial Institute, vol. 36, 1904-5, p. 213.

[3] The almost invariable practice in the 18th century had been to establish local legislatures consisting of three estates but in no one of the colonies acquired by cession or occupation at the beginning of the 19th, was any provision made for popular representation. Democratic institutions were regarded as a menace to the motherland. Egerton, Origin and Growth of the Eng. Colonies, p. 163.

[4] Egerton, British Colonial Policy, ch. x.

[5] Historical Records of New South Wales, vol. 1, pt. 2, p. 84.

[6] Shortt, Imperial Preferential Trade, p. 30. Egerton, British Colonial Policy, p. 257.

cidents of the old protective system continued for several years.[1] The true beginning of modern colonial history dates from the triumph of liberal principles at the time of the Reform Bill, and from the acceptance of the doctrine of free trade as the basis of the fiscal policy of the motherland. The former secured to the Anglo-Saxon colonies the bestowal of more liberal constitutions, in particular the concession of representative institutions, the exclusive control of local revenues and expenditure, the appointment and dismissal of government officials and finally, as the complement of all, the introduction of a system of responsible government. The latter was scarcely less revolutionary in its colonial consequences.[2] The blessing of absolute freedom of trade having been adopted as a fundamental tenet of English economics, the restrictions of the old Navigation Laws and the contracted policy of the Mercantile System were alike discarded. As a necessary result, the colonies were thrown open to international trade, and were "largely" left free to adopt such commercial policies as they might see fit. "Largely" not altogether, because, as we shall see, the policy of the home government, while removing the most irksome and burdensome of the protectionist limitations on trade, was instrumental in placing restrictions of another kind on colonial freedom, in the interest of imperial free trade.[3] The aim of the British government was especially directed to the suppression of discriminating duties in the colonies. In attempting to carry out this imperial program, the home authorities found themselves in conflict with the legislative and commercial policies of some of the Australian provinces, which were seeking to develop independent fiscal systems.

The early history of Australia, as has already been pointed out is a history of the separation and growth of distant settlements. The actual isolation of the new communities and the absorption of the energies of the early settlers in the task of making new homes for themselves, naturally produced a localization of senti-

[1] Earl Grey remarks in defence of his colonial policy that "the principle of placing the trade with the colonies on a different footing from that of other countries had been maintained up to the year 1846 and was generally regarded as one of unquestionable propriety and wisdom." Earl Grey, Colonial Policy of Lord J. Russell's Administration, vol. 1, p. 7.

[2] Griffin, Imperial Treaties and Preferential Tariffs, Blackwood Mag., June, 1893. Egerton, British Colonial Policy, p. 328. In his Introduction to Lewis, Government nf Dependencies, Mr. Lucas points out that the grant of self-government was due to the "noted coincidence in timo of the free trade question at home and the colonial question abroad." Lewis, Ibid, p. xxxiii.

[3] Davidson, Commercial Federation and Colonial Trade Policy, p. 15.

ment, which was far from feeling either the necessity or the advantage of any sort of union.[1] The pioneer is a household economist and not a political statesman. But the settlements could not long remain shut off from the outside world. In the decade between 1840 and 1850, the intercolonial relations of the Australian colonies first came into importance. The expansion of the communities and the development of an export trade created an increasing intercolonial commerce and a corresponding augmentation of social intercourse. Unfortunately the growing "entente cordiale" in the commercial and social relations of the provinces was not accompanied by a similar sympathetic movement in the conduct of their political and economic affairs, for with independence, there arose a divergence of commercial policies.

Each of the colonies naturally framed its tariff with a view to its own interests, and with little thought to the interests of its neighbors. The dissimilarity of their economic conditions, and of the financial requirements of the local treasuries further accentuated their fiscal differences. It can scarcely be said that any of the Australian governments at this time had a clearly defined commercial policy. The colonial executives were apt to adopt the easiest and the readiest sources of taxation to fill up their needy exchequers, without regard to economic principles. The tariffs were framed primarily for revenue purposes, although incidentally protective features were introduced. The leaven of free trade had not been working so effectually in the outer-most regions of the empire as at home. The Australian colonies had not yet risen to the doubtful dignity of modern materialistic politics,—of settling all political issues on fiscal lines. As the commercial policy of the colony was practically settled in the council chamber of the governor, according to the budget necessities of the treasury by the rough and ready method of rule of thumb, there was but little pretence of seeking to attain uniformity of intercolonial customs, or the recognition of the common commercial interests of the Australian group. The growth of intercolonial trade furnished a convenient source of revenue, and some of the colonies gladly availed themselves of the opportunity to clap a duty on the produce of their neighbors, especially when these imports came into competition with the home market, and even though in some cases they were at the

[1] Quick and Garran, Annot. Const. of Aust., p. 79.

same time, admitting the products of Great Britain free of duty or at a preferential rate[1]

But the principle and practice of treating the sister colonies as foreign states did not find entire acceptance. True, there was but a weak sentiment of community of interest between them, but it was at least striving with some success for recognition. A few feeble efforts were put forward by some of the colonies to secure a limited measure of reciprocal free trade,[2] but this step in the direction of intercolonial freedom was accompanied by the adoption of the discredited system of differential duties in its most anomalous form, namely, that of intercolonial discrimination. For many years after the separation of Van Dieman's Land, the government of New South Wales continued to treat the little island commercially as though she were still an integral part of the mother colony. The general customs acts were conventionally relaxed in her favor, so that her products found free admittance into the Sydney market. The ordinary duties, however, continued to be exacted on similar goods from the other colonies, as also from Great Britain and the outside world. This exception was not due so much to an enlightened public policy, as to an inherited tradition of the former union of the two colonies, when their fiscal policy was subject to a uniform system of regulation. It would indeed, at first, have seemed somewhat ridiculous to think of introducing protective tariffs between settlements, which for many years had been enjoying the benefits of unrestricted trade, merely because of a change in the constitutional status of one of them unconnected in any way with economic considerations.

Van Dieman's Land, on her part, reciprocated the liberal policy of the mother colony, by specially exempting, in her customs duties act, all imports from New South Wales.[3] The need of carefully preserving the privilege of freedom of intercolonial trade had been early seen by one of the first Lieutenant-Governors of the island, Sir. John Franklin. In a speech at the opening of the Legislative Council, January 3rd, 1839,[4] His Excellency pointed out the intimate economic connection between Australia and Van Dieman's Land, and, apparently anticipating the growth of a protectionist spirit, took strong ground against any inter-

[1] Westgarth, Victoria late Aust. Felix, app., p. 81.
[2] Quick and Garran. Annot. Const. of Aust., p. 79.
[3] Rusden, Hist. of Aust., vol. 2, p. 192.
[4] V.D.L., V.P.L.C. 1836-9, p. 122.

ference with intercolonial intercourse, the result of which might subsequently react on them. The warning was truly prophetic, though it met with the fate which so often befalls the words of the prophet, of being neglected in its own home land.

The necessity for some intercolonial arrangement for reciprocal freedom of trade became more apparent upon the separation of New Zealand. In furtherance of the policy adopted in the case of Van Dieman's Land, to which it was now proposed to affix a legislative sanction and, in the hope of stimulating intercolonial commercial intercourse, Sir George Gipps introduced a bill into the Legislative Council in 1842 to permit goods, the produce or manufacture of New Zealand or Van Dieman's Land, to be imported into the colony of New South Wales free of duty.[1] As this exemption did not apply to foreign goods, which had been imported into one or the other of the colonies, freedom of intercolonial commerce was confined to domestic products only. The bill awakened a most interesting discussion,[2] as an attempt was made to broaden its provisions so as to cover all the Australian colonies. A petition from the trading community was presented to the Council in favor of the proposed extension, but the Governor took a strong stand against the suggested amendment. The proximity of these two colonies and their former connection with New South Wales, which had been productive of peculiarly amicable relations, furnished in his opinion, especial reasons for extending an exclusive preference to them, but, if the Council proceeded further and legislated in favor of the other Australian colonies, they might as well include more distant dependencies of the Crown. "If the Council proceeded on the principle that the produce of all the Australian colonies was to be exempted here, that principle would have to be acted on hereafter and might lead to considerable loss and inconvenience."[3] New tropical settlements might be formed in the northern territories, the free admission of whose products would seriously endanger the revenue of this colony. It was

[1] "Whereas the free importation into New South Wales of goods and manufactures, the product of New Zealand and Van Dieman's Land may be productive of considerable commercial advantage, it is proposed to exempt from duty all goods and manufactures imported into New South Wales from either of these colonies, which shall not be the growth or manufacture of foreign countries, spirituous liquors alone excepted, and to indemnify the officers of customs for acts already done."

[2] June 21, 1842. The Sydney Morning Herald, June 22, 1843.

[3] It was a period of serious financial depression in N.S.W. Rusden, Hist. of Aust., vol. 2, p. 255.

not the business of the Council to interfere in such a manner with the commerce of the empire. Mr. J. Gibbes, the Collector of Customs, adopted a much more liberal and statesmanlike view. The Council, he contended, was quite competent to make laws regulating intercolonial commerce, without infringing on the functions of the imperial parliament. He strongly emphasized the wisdom of cultivating closer economic relations with South Australia. The amount of duty collected on the produce of that colony would be an unimportant item in the revenue of New South Wales for many years to come. This colony rather than South Australia would be the loser by the policy of exclusion, as the balance of trade at present was very much in its favor. The existence of the present discrimination against a sister state, which could not be justified in principle, would only be productive of jealousy and ill-will.[1] He would not, however, press the prayer of the petition, if the Governor and Council were of the opinion that the exemption should be confined to New Zealand and Van Dieman's Land. The bill, as agreed to by the Council was accordingly limited in its application as originally framed, to the two island colonies.[2]

The intention of the petitioners as expres[illegible]y the Collector of Customs, was to bring about a genuine syst[illegible] of preferential trade based upon a policy of commercial freedom between the Australian colonies. The policy here proposed was, in fact, an Australian preferential policy with free trade between the colonies and a tariff against the outside world. The proposal did not contain any suggestion of a uniform tariff or of a Zollverein. The question of international tariffs as distinguished from intercolonial, would, as heretofore, be left to the several colonies. Although the trade between New South Wales and South Australia was at this time too small to have occasioned any immediate fear of the invasion of the local market, the Legislative Council could not rise above a petty localism to the conception of intercolonial free trade. In declining to accept this proposal the legislature attested, that it thought less of the principle of intercolonial commercial freedom, than of its own advantage and its own revenue. By its action it demonstrated that it cared more for the policy of discriminating duties, than for the prin-

[1] Quick and Garran, Annot Const. of Aust., p. 80.
[2] Rusden, Hist. of Aust., vol. 2, p. 192.

ciple of reciprocal free trade. The decision was most unfortunate for the future commercial relations of the colonies.

The motives which induced the legislature to adopt this short-sighted policy are not easy to discover. The argument of the Governor would lead to the belief that he was opposed to the principle of an Australian preference, partly for imperial reasons, and partly on the ground of the needs of the local exchequer. The exemption of Van Dieman's Land and New Zealand from the general customs law, he regarded as an exceptional favor and not as a commercial precedent. It has been suggested that the attitude of the Council was governed by the small minded jealousy of Sydney towards the younger and feebler sister colony of South Australia, because of the supposed special favor bestowed on the latter by the home government.[1] Or, it may have been, that the independent policy of the South Australian government in maintaining a general ad valorem tariff against all the colonies deterred the New South Wales legislature from extending to her the reciprocal privileges that she so freely granted to the sister provinces. Whatever may have been the reasons which induced the Council to adopt the attitude of the Governor, their action defeated a sane policy which, in its ultimate effect, promised the realization of a commercially united Australia. The example of New South Wales would, in all probability, have been followed sooner or later by the other colonies, since the advantages of direct intercolonial free trade would always have operated as an inducement for them to join in a common preferential arrangement. The removal of the commercial barriers between the colonies could not have failed, by stimulating reciprocal intercourse and a community of interest, to have produced in time a demand for a uniform tariff, or a Zollverein, and possibly even for some sort of a political union in order to give permanency to any customs agreement which might be made between some or all the provinces.

But the colonies were not left free to pursue their irrational course of fiscal legislation. They had overlooked in their tariff vagaries the demands of an imperial policy. Naturally the home authorities were not sympathetic towards a scheme of reciprocal preference from which they were in some cases excluded, and which moreover, was bound to conflict with the international commercial policy of the mother land. They offered no objection

[1] Quick and Garran, Annot. Const. of Aust., p. 80.

to the imposition of import duties for purposes of revenue or protection, but they resolutely set their faces against the levying of differential duties. The kernel of this policy was set forth in a circular despatch of Jan. 28th, 1843, from Lord Stanley, the Colonial Secretary to the colonial governors.[1] After commenting on the extreme difficulty in the application of discriminatory duties by the colonial legislatures, on account of their lack "of an intimate acquaintance with the commercial treaties and political relations" of the motherland with foreign states, he emphasized the necessity of maintaining "the unanimity and consistency" of the "general code of the empire" free from the variations of local colonial interests, as the only means of enabling the Crown to freely treat with foreign powers for commercial purposes, to fulfill her international obligations and to secure exemption from claims of compensation for breach of contract. "For these reasons" he continued, "Her Majesty's government decidedly object in principle to the assumption by the local legislatures of the office of imposing differential duties on goods imported into the respective colonies. Parliament already having prescribed the rules by which such duties are to be discriminated with reference to the place of origin or of export, to parliament alone the power of altering those rules must be reserved. The single exception to this general rule must occur in any cases in which Her Majesty's government may have suggested to any local legislature the enactment of any such discriminating duties." For any such measure the sanction of the imperial parliament would be required, and the governors were instructed to use all the "legitimate influence" of their offices to "prevent the introduction into the legislatures" of any bill imposing differential duties on goods with reference to their place of production or export, and in case of the passing of any such bill or bills to withhold their assent. If this were not a sufficient precaution, the royal veto would be inevitably forthcoming, since Her Majesty could not be advised to sanction any such legislation.

The object of the home authorities in formulating the policy here set forth, was to foster the application of free trade principles throughout the empire. The imposition of differential duties on goods imported into or from the British colonies for the purpose of fostering or protecting some branch of English

[1] N.S.W., V.P L.C. 1843, p. 271.

or colonial industry had been a fundamental principle of Mercantilistic economics and a maxim of colonial politics. With the overthrow of the general protective system, the principle of imperial discriminatory duties also fell. Instead of longer seeking to develop inter-imperial trade by a system of preferential tariffs, Great Britain now sought to foster international free trade by their abolition. To accomplish this end, the government and parliament at Westminster were prone to employ their sovereign power of regulating the external commerce of the empire.[1] They did not directly interfere with the domestic tariff policy of the colonies, as their protective predecessors had done, but they indirectly accomplished the same object by restricting the economic freedom of their over-sea possessions through the treaty making power and the royal veto. This imperial control, though negative, was as effective as a positive regulation or an imperial statute in influencing the course of the commercial relations of the Australian colonies. There was still an imperial commercial policy; only its name and its practice had changed from protection to free trade. In the language of Earl Grey, parliament[2] "did not abdicate the duty and the power of regulating the commercial policy not only of the United Kingdom but of the British Empire. The common interests of all parts of that extended Empire requires that its commercial policy should be the same throughout its numerous dependencies, nor is this less important than before because her policy is now directed to the removal instead of as formerly to the maintenance of artificial restrictions on trade."[3] This sentiment was fully shared by even the most liberal-minded of English statesmen, such as Lord Durham and Mr. Buller, who were desirous of extending the autonomy of the colonies over all subjects of domestic concern, so far as was compatible with imperial supremacy in commerce and politics.

[1] Davidson, Commercial Federation and Colonial Trade Policy, ch. 2.

[2] Earl Grey, Colonial Policy of Lord John Russell's Administration, vol. 1, p. 281.

[3] In his celebrated report, Lord Durham expressly reserved the regulation of the commercial relations of the colonies to the imperial parliament. "The constitution or the form of government" he wrote "the regulation of foreign relations and of trade with the mother country, the other British colonies and foreign nations and the disposal of the public lands, are the only points on which the mother country requires a control." Lewis, The Government of Dependencies, Introduction by C. P. Lucas, p. xxxi. Griffin. Imperial Treaties and Preferential Tariffs. Blackwood Mag. June, 1893.

The despatch of the Secretary for the Colonies, while not designed to meet the special abuse arising out of the discrimination against South Australia, was calculated nevertheless, to check a growing economic evil. It was indeed not only absurd, but also inexpedient that neighboring provinces should be adopting a most favored nation policy towards one another at the expense of sister colonies. However strongly such a policy might be condemned on economic principles, it was even more reprehensible on political grounds as threatening the mutual cordial relations of the Australian states. It must necessarily have bred a spirit of retaliation and ill-will, hostile to the sentiment of a common Australian unity. But in endeavoring to curb one evil, the Colonial Secretary only succeeded in frustrating the incipient movement towards reciprocal free trade. Instead of breaking down the system of intercolonial protection, its application and its area was rather extended so as to include those colonies which enjoyed the benefits of free intercourse under the preferential policy. The colonies were restrained henceforth from adopting the principle of reciprocity, or from attaining the blessing of intercolonial free trade by means of a policy of tariff preferences.

These instructions occasioned some criticism in Australia,[1] as an improper interference with the fiscal independence of the colonies, but were generally approved, not only on constitutional grounds but also as a proper and beneficial measure for the regulation of the external trade of the colonies and the curtailment of the injustice of intercolonial discrimination. The several Australian legislatures refrained from any protest or overt criticism of the impolicy of the imperial regulation, and all accepted the edict with equanimity, if not with favor.

In accordance with the new imperial policy, the home government disallowed the New South Wales preferential act. In a despatch of Aug. 31st, 1843, to the Governor of New South Wales, announcing the royal veto, Lord Stanley set forth the grounds of his objection to the principle of differential duties, alleging that they would inevitably lead to the adoption of retaliatory measures and to a system of protective tariffs and preferential duties at variance with the fiscal policy of the empire.[2] There is little doubt but that the Secretary for the Colonies was

[1] The Sydney Morning Herald, June 23, 1846.
[2] Quick and Garran, Annot. Const. of Aust., p. 80.

thinking much more of the advantage to the motherland of an imperial free trade policy, than of the disadvantages of intercolonial discrimination and its evil effect upon their mutual relations, as is evident from his acceptance of the Canadian Preferential Act[1] of about the same date, notwithstanding the fact that it embodied the same reprehensible principle, in favoring the products of Great Britain over those from other lands.

The despatch of the Colonial Secretary, which, it will be observed, was not retroactive in its effect, did not put an immediate end to the practice of discrimination. It did not go to the repealing of existing duties,[2] but only to the prohibition of the levying of fresh differential charges. The practice of discriminating in favor of British and colonial products especially in the case of liquors, continued for some years in most if not all of the colonies.[3] Van Dieman's Land maintained for a time its unjustifiable preferential policy of admitting the produce of New South Wales, free of duty, while levying a fifteen per cent. tariff on that from the sister states of South Australia and New Zealand.[4] Nor was the despatch of Lord Stanley any more effective in preventing the growth of protective duties between the colonies. Under the stress or plea of the financial necessity of the local fiscus, several of the provinces entered upon the policy of fostering local industries. But this policy was not carried into effect without a protest both within the colonies and at Westminster. The action of the legislature of Van Dieman's Land in passing several enactments, imposing duties on tobacco and coal imported from New South Wales, brought the question into intercolonial prominence, by calling forth a resolution of the Legislative Council of the latter colony, upon the motion of Mr. Windeyer, one of its leading members, praying Her Majesty's government to disallow the legislation in question.[5] Two years later, in 1845, the legislature of New South Wales in framing its customs bill, was guilty of a similar offence, of imposing protective duties on colonial

[1] Griffin, Imperial Treaties and Preferential Tariffs. Blackwood Mag., June, 1893.

[2] Speech of Mr. Lowe in debate in the Legislative Council of N.S.W. on Sept. 8, 1846. The Atlas, Sept. 12, 1846.

[3] Westgarth, Victoria late Australia Felix, app., p. 81.

[4] The Sydney Morning Herald, June 22, 1846.

[5] Quick and Garran, Annot. Const. of Aust., p. 80.

produce.[1] In defending this action, the Colonial Secretary evasively claimed that the imposition was obligatory under the instructions of Lord Stanley forbidding any discrimination on articles imported from abroad. But the policy was frankly supported by some of the members on purely protective grounds.[2] Under the terms of the new customs act, the produce of Van Dieman's Land could no longer be imported free of duty, but was liable to the same charges as that from foreign countries.

The following year, the Legislative Council of Van Dieman's Land retaliated in kind by abolishing the preference which New South Wales had up to that time enjoyed, and by imposing a high duty on tobacco—a staple product of the mother colony, and the ordinary ad valorem duty of fifteen per cent. on the cattle sheep and provisions imported from the sister province across the strait.[3] This step was also taken under the pretence of complying with the demand of the imperial policy, but, in reality, as we learn from the statement of the Governor, Sir. John Wilmot, was dictated by a desire to afford protection to the farmers of the island against the keen competition of the mainland pastoralists.[4] The action was made more excusable by the bankrupt condition of the local exchequer, which required that revenue should be raised from every possible quarter.[5] A part of the Council entered a protest against this enactment, as a violation of the principle of free trade,[6] and out of doors the measure was vigorously assailed by the mercantile community through the columns of the Launceston Examiner, as destructive of intercolonial commerce[7]—but all without avail; the protective interests had already gained the upper hand in the legislature and colony.

The Legislative Council of New South Wales was not slow in attacking an act which aimed so serious a blow at the intercolonial trade of the colony, particularly of the Port Phillip district which enjoyed a considerable export trade in agri-

[1] The Atlas, Sept. 12, 1846.
[2] The Sydney Morning Herald, Sept. 11, 1846.
[3] "An Act to abolish certain differential duties of customs" V.D.L., V.P.L.C., 1846, p. 134.
[4] Quick and Garran, Annot. Const. of Aust., p. 80.
[5] The Sydney Morning Herald, June 22, 1846.
[6] V.D.L., V.P.L.C., 1846, p. 134.
[7] "Hostile tariffs," it declared "are odious and in the case of young and adjacent colonies destructive."

cultural produce to the island. The debate in the Council[1] upon the motion of Mr. Windeyer for an address to the Queen to disallow the act of the Van Dieman's Land legislature, elicited a general discussion on the subject of differential duties and on the economic relations of the colonies.[2] In introducing the motion, Mr. Windeyer admitted that New South Wales "did not appear in the matter with clean hands, as she had sought to put a duty on the wheat of Van Dieman's Land," but fortunately for the honor of this colony, the iniquitous bill had been disallowed. He acknowledged his own mistake in supporting protective duties at the time of the passing of the present tariff act, for he now saw the evil arising from sister colonies imposing duties on each other's produce. Objection had been raised to the measure in Van Dieman's Land on the ground that it would cause retaliation, but he hoped this colony would never engage in such a hostile policy.[3] Mr. Robinson expressed the wish that the resolution had gone further, so as to include general free trade between the colonies, save perhaps in the matter of liquors. He hoped that the "trade of these colonies might be declared free by act of parliament," as the commerce between them was becoming considerable in amount and increasingly valuable. They should adopt the same principle of freedom of trade between the colonies as existed between the states of America and of Germany. The Colonial Secretary, Mr. E. Deas Thompson, "a man of many statesmanlike qualities,"[4] announced that the government would gladly support the resolution, as the legislation of their neighbor was based upon false principles, which he hoped for the future New South Wales would avoid. There was no doubt "that there should be some control established as to intercolonial legislation, and it had been suggested that the appointment of a Governor-General would effect this, but whether such a plan was best or whether it would be wiser to establish such control by act of parliament, he would not at present give an opinion upon. Some controlling power was required as there was too much cause to fear that acts like these would lead to retaliation." Several other leading members, including Messrs. Wentworth and Lowe, joined in voicing the injurious consequences which would result from the establishment of

[1] Sept. 10, 1846.
[2] The Sydney Morning Herald, Sept. 11, 1846.
[3] The Atlas, Sept. 12, 1846
[4] Sir H. Parkes, Fifty Years in the Making of Australian History, vol.2, p.332.

intercolonial duties. The resolution was then agreed to without opposition.[1]

The importance of this debate in the history of the federal movement in Australia cannot be overlooked. Its significance lies, not so much in the general unanimity of opinion regarding the evils of intercolonial tariffs, which had been impressed upon the Council by the legislation of the sister colony, as in the pregnant forecast of the Colonial Secretary of the need of some scheme of commercial or political union. His keen mind perceived that a mere policy of negation, of appeal to the Colonial Office for the disallowance of intercolonial protective legislation, would not solve the difficulty. The royal veto could not produce harmony out of divergent and hostile tariffs. The imperial control was too distant and too purely negative to be at all effective in unifying the commercial legislation of the colonies. Mr. Thompson had not yet developed a constructive policy upon the question, but he suggested two possible alternatives, namely, either the appointment of a Governor-General for the Australias, or the establishment of some system of control by or through the intervention of the imperial government. The first of these proposals practically involved the establishment of some form of an Australian federal executive, endowed with the power of supervising and regulating the intercolonial fiscal relations of the colonies. The second alternative appeared to look to the enactment by the parliament at Westminster of a uniform customs law, applicable to all the colonies, which would supersede and for the future prevent all divergent and discriminating fiscal legislation on the part of the several provincial legislatures. The sovereignty of parliament would, in short, be called in to correct the abuses of Australian fiscal legislation. Unfortunately these suggestions were not properly appreciated by the members of the Council, who took so little interest in the matter that the subject was allowed to drop without further discussion.

But Mr. E. Deas Thompson did not permit the question to remain unnoticed. The forwarding of the address of the Legislative Council to the Secretary of State for the Colonies afforded an excellent opportunity of bringing the subject to the attention of the home government. In a despatch of September 29th, 1846,[2] within three weeks of the debate in the Legislative

[1] The Sydney Morning Herald, Sept. 11, 1846.
[2] G. B. Barton, The History of Aust. Federation, The Year Book of Aust. 1891, p. iii.

Council, Governor Fitzroy recommended that the Van Dieman's Land Act be disallowed, as he conceived it to be "extremely desirable that the colonies in this portion of Her Majesty's dominions should not be permitted to pass hostile or retaliatory measures, calculated not only to interrupt their commercial intercourse with each other, but to create feelings of jealousy and ill-will among them, which, if not checked may lead to mischievous results." He concluded his remarks upon this subject by a guarded declaration that the number of questions of an intercolonial character which were frequently arising, suggested the advisability of creating some central intercolonial authority for the consideration of common Australian affairs. "I feel much diffidence," he states, "in offering an opinion so soon after my arrival in this part of the world, but it appears to me that considering its distance from home, and the time that must elapse before the decisions of Her Majesty's government upon measures passed by the legislatures of these colonies can be obtained, it would be very advantageous to their interests if some superior functionary were to be appointed to whom all measures adopted by the local legislatures affecting the general interests of the mother country, the Australian colonies or their intercolonial trade, should be submitted by the officers administering the several governments before their own assent is given to them."

For this suggestion, which may be said to contain the embryo of the federal movement, Governor Fitzroy has received undue credit. "We find it," says Mr. Barton,[1] "just where we should least expect to see it. It was not the conception of an Australian statesman, it was a measure of imperial policy, suggested in the joint interests of the colonies and the mother country." But this view entirely overlooks the prior proposition of Mr. Thompson in the Legislative Council and his close official relationship to the Governor. In the latter's suggestion we may "shrewdly suspect," if not plainly see, the inspiration of his own Colonial Secretary.[2] The proposal set forth was itself a product of the idea thrown out by Mr. Thompson in the course of the recent debate on discriminatory duties. Not only was the Governor devoid of statesmanlike qualities, but his appointment was also too recent for him to have independently formulated so important

[1] Barton, The History of Australian Federation, The Year Book of Aust., 1891, p. iii.

[2] Quick and Garran, Annot. Const. of Aust., p. 80.

an intercolonial policy. Undoubtedly he shared the opinion of the Colonial Secretary upon the question, but he cannot, on the ground of this despatch alone, establish a claim of originating the federal movement. That honor belongs, as of right, to Mr. Thompson, whose official experience of the difficulty of regulating intercolonial affairs had borne in upon him the necessity of some common Australian authority. In his fertile brain the idea first germinated, and to him Australia is indebted for its first recorded expression. He is par excellence the Father of Australian Federation.

The suggestion, here thrown out, was but a tentative and rudimentary scheme for a federal executive, but it contained a clear recognition of the need of uniform action on all matters of imperial and intercolonial concern, out of which developed in time the full conception of Australian unity. The proposal recognized, moreover, that the imperial government as well as the colonial legislatures had a direct interest in the constitution of such an authority, since there was at present no superior functionary to represent imperial and general Australian interests in the several colonies and to supervise their legislation in conformity with imperial policy. The Colonial Secretary seems to have had in mind the appointment of a federal executive with advisory functions, rather than the establishment of a common legislative organ. The duties of such an intercolonial official would have been somewhat similar in character to those then very ineffectually exercised by the Secretary for the Colonies. He would have been the guardian of imperial interests, the protector of intercolonial liberties, the critic and supervisor of provincial legislation upon matters of general concern, the arbiter of intercolonial difficulties and the promoter of freedom of trade. The reservation for his judgment of all enactments of an imperial or intercolonial import, would have given him a practical veto on a wide range of provincial legislation and have reduced the local governors to the position of subordinate officers. But the chief value of the suggestion lay, not in the form of the central authority it proposed to establish, but in the definite official pronunciamento of the need of some common federal organ. Through the efforts of Mr. Thompson, this question had been brought to the attention of the local legislature, and it was now broached to the Colonial Office as a fitting subject

for imperial consideration and if advisable, of governmental action or imperial legislation.

It was indeed high time that some action should be taken by the home government to effect an assimilation of the Australian tariffs, for the colonies, unheeding of the warning of Lord Stanley, were rapidly drifting towards a state of hopeless divergence of customs duties and even more serious, of conflicting fiscal systems. New South Wales and Van Dieman's Land had already, as we have seen, embarked upon a policy of colonial protection, which had brought them into collision. Shortly afterwards, South Australia had occasion to revise her customs act[1] and in so doing, turned out a tariff which would delight the heart of the modern Chamberlainite. It was a complex preferential schedule embracing two hundred and two items, on the majority of which a differential duty was chargeable, according as the articles were of British or of foreign origin. Upon some of the items, the duties were equal, but upon the average the tariff was about five per cent. on British products and manufactures and about twelve per cent. upon foreign articles.[2] A more flagrant defiance of both the letter and the spirit of Lord Stanley's instructions could not have been devised. About the same time, New Zealand framed her tariff upon the simpler lines of restricting taxation to a few products of general consumption, the dutiable schedule consisting of but eight articles.[3] The fiscal policy of that colony was, as far as the necessities of the revenue would permit, modelled on the free trade principles of the motherland.

The action of each of the colonies in thus independently formulating its own fiscal system, and pursuing its own commercial advantage without regard to the common interests of the sister colonies, had produced a strange mélange of fiscal regulations and of tariff anomalies. Economic independence had brought the fiscal relations of the several colonies into a state of absolute chaos. The principles of protection and free trade, retaliation and imperial preference were all found incorporated in the tariff policies of one or the other of the members of the Australian group. The unifying influence of the Colonial Office and the instructions of the governors had

[1] The Sydney Morning Herald, Oct. 9, 1846.
[2] Copy of Tariff, Sydney Morning Herald, Jan. 2, 1847.
[3] Ibid, Jan. 5, 1847.

entirely failed to bring about a policy of commercial uniformity in accordance with the dictates of imperial economics. It is little wonder that the Sydney Herald prophesied,[1] that when this medley of conflicting customs legislation came before the Secretary for the Colonies, as it all would at about the same time, Australia need not be surprised to learn that the local legislatures would in consequence, be relieved of the task of framing their own fiscal legislation, by the intervention of the imperial parliament for the purpose of enacting a uniform rate of duties for all the colonies, or of empowering the sovereign to exercise that function by order-in-council. The colonial legislatures had undoubtedly misused the powers entrusted to them, in thus blindly pursuing a policy of provincial economic gain instead of looking to the general welfare of the Australian group. The appeal of the New South Wales legislature had now been made to Caesar, on whose final decision the future relations of the colonies depended.

[1] The Sydney Morning Herald, June 5, 1847.

CHAPTER II.

THE FEDERAL POLICY OF EARL GREY.

The federal proposal was favored in coming before a sympathetic and appreciative Colonial Secretary, for Earl Grey was not only a doctrinaire free trader of the most pronounced type and naturally opposed to all forms of intercolonial preference, but he was likewise a warm admirer of the system of federal government, which he had sought to introduce into the New Zealand constitution of 1846.[1] He was evidently much impressed by the petitions and legislation brought to his attention, and by the astute representations of Governor Fitzroy in regard to the unsatisfactory state of Australian affairs. A splendid opportunity for constructive statesmanship was presented. A whole series of perplexing problems arising out of the changing conditions in Australian social and political life, were demanding solution. The primary requirement was the grant of more liberal local constitutions, as the old system of official government was quite outgrown. Unfortunately the legislative councils had no power to frame their own constitutions, but were dependent upon the favor of the home government for the satisfaction of their most pressing demands. The colonies could only hope for the privilege of previous consultation, and then trust to the ability and sympathy of the English Colonial Secretary and the wisdom of parliament to carry out the spirit of their representations. If Lord Grey failed in his task, it was from no lack of careful study of the momentous issues at stake, nor from any indifference to the welfare of the several colonies. His despatch of July 31st, 1847,[2] justly ranks as one of the most important documents in the constitutional history of Australia. It furnishes the key to the interpretation of English colonial policy, throughout the constitution making period upon which Australia was just entering.

In this despatch, His Lordship avowed his adherence to the first principle of colonial autonomy—"that all affairs of merely

[1] This Act 9 and 10 Vict., c. 103 was one of the first measures of His Lordship, but owing to the opposition of Sir. G. Grey, the Governor of New Zealand, it was never brought into operation. Rusden. Hist. of N.Z., vol. 1, p. 452.

[2] G.B., P.P., 1847 8, vol. 42, p. 3. G.B., P.P., 1850, vol. 37, p. 36. N.S.W., V.P.L.C , 1848, vol. 1, p. 177. Quick and Garran, Annot. Const. of Aust. p. 81.

local concern should be left to the regulation of the local authorities," and proclaimed his intention of framing the proposed modifications of the Australian constitutions in a spirit of conformity thereto. The constitutional alterations outlined were strikingly original and far-reaching in character. He announced the readiness of the home authorities to grant the desired separation of the Port Phillip district, and especially insisted upon the necessity of the acceptance of the system of municipal government which had failed in the District Council scheme of the Act of 1842, as the basal principle of his proposed constitutional reforms. To secure to these bodies "their just weight and consideration," and to effectually preserve them against the monopolistic spirit of the legislatures on the one hand, and the indifference of the public on the other, he suggested that they "bear to the House of Assembly the relations of constituent and representative." Lord Grey further proposed a reversion to the "more ancient system of a bi-cameral legislature," as best calculated to insure judicious and independent legislation. The exciting controversies which these clauses aroused, especially the suggestion relative to the mode of constituting the Legislative Council, largely obscured the further proposal of His Lordship for the creation of a general assembly.

Although much neglected at the time, this feature of the constitutional scheme was, by far, the most interesting and most important of his suggestions.[1] Earl Grey set himself the task of endeavoring to solve the perplexing intercolonial problems brought to his attention, by developing the form of a federal constitution. He clearly saw that the difficulties of the growing states were not purely domestic and constitutional in character, but intercolonial as well.[2] Their mutual relations were out of juxtaposition. With time these relations would become increasingly intimate, but under the present system, and according to existing tendencies, the legislation of the colonies and their political sentiments would become correspondingly divergent if not hostile. The absolute need of some common organ, to introduce harmony and unity into the present conflicting policies of the several colonies, was most strongly impressed on his mind. His despatch was the most convincing argument for Australian union that had yet appeared.[3]

[1] Quick and Garran, Annot. Hist. of Aust., p. 81.
[2] Ibid, p. 81.
[3] Quick and Garran assert "that this is the first recorded statement of the case for Australian union." Annot. Const. of Aust., p. 81.

"The principle of local self-government," he writes "like every other political principle, must, when reduced to practice, be qualified by many other principles which must operate simultaneously with it. To regulate such affairs with reference to any one isolated rule or measure, would, of course, be an idle and ineffectual attempt. For example, it is necessary that while providing for a local management of local interests, we should not omit to provide for a central management of all such interests as are not local. Thus questions co-extensive in their bearing with the interests of the empire at large are the appropriate province of parliament.

"But there are questions which, though local, as it respects the British possessions in Australia collectively, are not merely local as it respects any one of those possessions. Considered as members of the same empire those colonies have many common interests, the regulation of which in some uniform manner and by some single authority may be essential to the welfare of them all. Yet in some cases such interests may be more promptly, effectively and satisfactorily decided by some authority in Australia itself, than by the more remote, the less accessible, and in truth the less competent authority of parliament."

To supply this omission in the constitutional machinery of Australia, he proposed the creation of a central authority. "Some method will also be devised for enabling the various legislatures of the several Australian colonies to co-operate with each other in the enactment of such laws as may be necessary for regulating the interests common to those possessions collectively, such, for example, are the imposition of duties of import and export, the conveyance of letters and the formation of railroads, or other internal communication traversing any two or more of such colonies."

His Lordship throws a little more light on the purpose and the general principle of his proposal in two later remarks of the same despatch. In the first of these, he closely connects his projected congressional organism with the more liberal constitutional alterations he was introducing in the local government of the several colonies. "That part of the plan" says he, "which respects the creation of a central authority implies the establishment of a system of responsible government throughout

the whole of the Australian colonies" save Western Australia.[1] The second observation is more illuminative, as showing the remarkably intimate relationship, if not identity, in the mind of His Lordship of the two questions of discriminating duties and a common legislative assembly. "The subject," he adds,[2] "of the imposition of discriminating duties in any Australian colony on goods, the growth produce and manufacture of any other Australian colony, will also be adverted to and provided for in that part of the contemplated act of parliament which will relate to the creation of a central legislative authority for the whole of the Australian colonies."

His Lordship's proposal, in brief, was for the creation of a common legislative organ, endowed with certain limited powers in respect to intercolonial matters. No attempt was made to set forth these functions in detail, but certain of them were mentioned by way of illustration of those subjects of common interest which would naturally fall within the jurisdiction of such a body. These powers were those associated with intercolonial commerce, communication and postal facilities, all of which were beyond the legislative scope of any single colony, and proper subjects for uniform legislation.

The language of the Colonial Secretary is unfortunately too generally expressed, and his constitutional purpose too indistinct to enable us to determine the exact character of his proposed central legislature. The intent of his proposal was "to enable the legislatures of the several colonies to co-operate in the enactment" of laws affecting their collective interests. Standing by itself, this clause would appear to mean that an attempt would be made to secure uniform legislation in the several colonies by means of co-operate action. If this were the sole aim of the proposal, then the creation of a central assembly was unnecessary, or, if such a body were established, its powers would have been purely advisory or recommendatory in their nature, since the right to legislate would still have remained with each of the colonial legislatures. But His Lordship goes on to speak of the erection of a central legislative authority for all the colonies, a statement which implies that the character and functions of that

[1] The reason for this exception is stated to be that "it will probably be thought right to postpone the operation of this change until the colonists shall be prepared to defray the expenses of their own civil government without assistance of annual parliamentary grants."

[2] This declaration was made in response to the reference of Governor Fitzroy to the imposition of intercolonial differential duties, in his despatch of June 24, 1846.

body were parliamentary, not merely consultative. Only an assembly of a deliberative character could possibly secure the desired uniformity of legislation; an executive or legislative veto on provincial acts would not suffice. The power of fixing one common tariff must needs be entrusted to the exclusive jurisdiction of the federal congress, if the primary purpose of the Colonial Secretary in instituting that body was to be effected.

The obscurity in the meaning of His Lordship's proposal was reflected in the discussion in the colonies. The generally accepted opinion as revealed in the press, was inclined to consider the proposed central authority, to be a real deliberative body with independent powers of legislation, and the colonial public was probably correct in so estimating its true political character. Still the views of the colonists regarding its nature were by no means uniform. In the Port Phillip Herald,[1] for example, we find a quite different interpretation placed upon the suggestion of the Secretary for the Colonies. "It is proposed," said an editorial on the new constitution, "to form, but not at present, some central congress or legislative body" to deal with general interests. "What method will be adopted for this end does not appear, but from the context we gather that it will not be founded on any representative principle, but that there will be a Governor-General of all the Australias with a council who will have the power to veto all measures referring to the above subjects." According to this conception, the general legislative authority would be a mere consultative or executive organ to advise with the Governor-General upon the exercise of the federal veto.

The method by which the central legislature was to be chosen or appointed was likewise left in considerable obscurity. But from the fact "that its creation implied the establishment of a system of representative government," we may probably draw the safe conclusion that its members were in some way to be selected by and possibly from the legislative bodies of the several colonies. At any rate, the possibility of a direct mode of popular election would be excluded. Apparently also, the general assembly was to possess legislative authority over Western Australia, notwithstanding the nominee character of the Council of the colony, since the central legislature was in His Lordship's language, to be erected "for the whole of the Australian colonies."

[1] The Port Philip Herald, Jan. 6, 1848.

It is somewhat singular to find no express reference to the creation of a common executive organ, when the appointment of some such federal official had been distinctly present to the minds of leading Australians, and had been suggested in Governor Fitzroy's despatch. The language of the Colonial Secretary, however, pointed so unmistakably to such an appointment, that the omission of any direct provision for a federal executive was overlooked by the Australian public. In all the discussion it was generally assumed that there would be such a functionary, and his appointment was considered as necessarily ancillary to the creation of a legislative authority. Such a view was in strict conformity with the usage of the English constitution, which is accustomed to create appropriate organs for the performance of administrative duties, and not to devolve these functions on foreign or delegated bodies. In truth, a general assembly without some corresponding executive organ would have been as utterly helpless and inefficient as the revolutionary Congress of America. Its enactments would have been at the mercy of each and all of the colonial executives which could enforce or defy them at will. His Lordship had in mind the creation of a true federal organ, which on certain matters should possess an effective control over the policy and legislation of the colonies. The imperial government was to be relieved of many of its supervisory duties over colonial affairs, and these onerous and responsible functions were to be assumed by an Australian federal authority. For the proper performance of these duties, the appointment of a Governor-General or some superior officer was as absolutely essential as the creation of a common legislative organ.

On these and many other matters of equal constitutional interest, we are left to conjecture or inference, in seeking to determine the nature of the Colonial Secretary's federal scheme at this time. The present despatch contained but an outline, imperfect at that, of the designs of His Lordship; to fill in the details of the projected constitution, we must turn to the measure he later formulated in fulfillment of his colonial policy. But the tendency to interpret this despatch in the light of the subsequent constitutional bills, must not blind us to the real tentative character of these original suggestions and to the remarkable development they later experienced. The scheme for a central authority gradually evolved into a more comprehensive organ-

ization than was originally designed, and underwent a corresponding material modification in form, if not in character, so that it is somewhat unsafe, save in the main outline of the federal plan, to attempt to read into these germinal proposals, the fully developed conception of the elaborate federal constitution of 1850.

Lord Grey has received much commendation for his statesmanlike project for the unification of the Australian colonies. To considerable credit, he is undoubtedly entitled, though he has probably received more than he actually merited. While he cannot claim the honor of first suggesting or initiating the idea, it can justly be maintained that the scheme was evolved into actual constitutional form through his efforts. In politics, as in philosophy, one of the most valuable contributions to the solution of any problem is a clear and sententious statement of the problem itself. It is much to the credit of His Lordship that, though far removed from the seat of difficulty, he was able to clearly see wherein the confusion and conflict of Australian politics lay. For his shrewd appreciation of the situation, he was undoubtedly partly indebted to the exposition of Governor Fitzroy.[1] The suggestion thrown out in the latter's despatch was readily seized upon by the constructive mind of Lord Grey, and took definite form in the proposed constitution of a general assembly. What was merely a tentative project in the mind of Mr. E. Deas Thompson, assumed a practical constitutional shape in the proposal of His Lordship.

But not only did Earl Grey fasten upon the essential difficulty of Australian intercolonial relations and propose a statesmanlike measure to obviate the evil, but he also set forth most definitely and perspicuously in this despatch, the true theoretical basis, the politico-scientific justification of the principle of an Australian national autonomy,—that in addition to municipal, provincial and imperial interests, each of which should be controlled by the respective local and imperial governmental organs, there were likewise general Australian interests beyond the constitutional cognizance of any one colony, and outside the knowledge. political experience and competency of the imperial government, which required the creation of, and regulation by some cen-

[1] Mr. Edward Salmon has suggested in an article in the Fortnightly Review, July, 1895, p. 27, that Earl Grey may have been influenced by the political ideas of his son-in-law Lord Durham, as set forth in the report of the latter on Canadian affairs in 1840.

tral Australian authority.[1] The federal movement was fortunate in thus having at its very outset, such a splendid exposition of the fundamental truths of federal nationalism. In this proposal Lord Grey proved himself no inapt disciple of the noble principles of colonial autonomy and federation, so strongly advocated in the case of Canada by his brilliant son-in-law, Lord Durham.

For his practical contribution to the cause of Australian unity, His Lordship is equally worthy of honor. His proposed general assembly, endowed with limited powers of inter-colonial legislation, was, from that moment, the grand desideratum towards the attainment of which all federal efforts were directed, and without which it was seen there could be no true political unity. To a theoretical question he gave a constitutional form, and breathed into it the breath of an active political life. Both in the sphere of political speculation and of practical politics, the deep impress of the influence of Earl Grey has been felt throughout the whole federal history. More than any other man he stood forth as the guiding spirit of the early movement. Although the federal question was mixed up with several other important constitutional issues, it was never regarded by His Lordship, as by the majority of the people in Australia, as a mere incidental feature of the proposed constitutions of the several colonies. With him it was an inherent and fundamental measure of reform, as essential to the future welfare of Australia as any of the other suggested provisions of the state constitutions. In truth, it may be said that Lord Grey took a special personal interest, one may almost say a paternal interest in this scheme,—a fact best evidenced by his persistent advocacy of the measure through good and through evil report. Other features of his despatch he was prepared to yield in deference to Australian feeling, but no amount of indifference or disapproval could shake his absolute confidence in the merit of his federal proposal. No cause could ask for a more faithful or zealous advocate than he proved himself to be.

On the other hand, much of the criticism to which Earl Grey was subjected in the colonies, in which it was alleged that His Lordship had attempted to foist off on them a personal constitution, framed according to his own ideas without any consideration of the wishes of the colonies, was unjust and also un-

[1] Quick and Garran, Annot. Const. of Aust., p. 81.

called for.[1] In reply to a question of Lord Monteagle, in the House of Lords, the Colonial Secretary gave an emphatic contradiction to the imputation, that he considered it quite unnecessary to consult the colonies in advance in regard to the form of the constitution they would prefer. "He had never intended," he affirmed[2] "to propose any measure to parliament until it had been first submitted to the colonies themselves." From this statement, we must conclude that the object of the July despatch was to elicit the opinions of the colonists before proceeding with any great constitutional project for the settlement of Australian affairs. If his suggestions were then intended merely to furnish the basis for public discussion, there can be no doubt but that they most admirably served his purpose by calling forth a vigorous criticism on all points.

The constitutional proposals of the Secretary of State met with a decidedly hostile reception.[3] The colonial "amour propre" was considerably ruffled by the apparent neglect of His Lordship to consult the wishes of the colonists in advance. The proposition for a system of secondary election, which threatened to deprive them of the small instalment of representative freedom they then enjoyed, especially called forth the most vigorous protests of righteous indignation. At a series of public meetings in Sydney, resolutions were passed, expressive of the general "apprehension and dismay" with which the proposals were regarded, and praying that His Lordship would not make any changes in the existing constitution without colonial approval.[4]

It was a very unfortunate circumstance that the federal proposals were mixed up with other constitutional questions of an entirely extraneous nature, especially as the latter were of the most unpopular character and met with an increasingly bitter opposition throughout the colonies. As a result, the scheme for a central legislature never received the attention it deserved, nor was it discussed upon its own merits or demerits. In New South Wales, in particular, popular opinion ran high. In the

[1] A remark of Earl Grey in the previous session, to the effect that he hoped to introduce a measure speedily for establishing constitutions in the several colonies gave rise to this misapprehension, by lending a certain amount of support to the view that he did not intend to consult the colonies.

[2] Aug. 11, 1848.

[3] Flanagan, History of N.S.W., vol. 2, p. 24. Rusden, History of N.S.W., vol. 2, p. 465.

[4] Quick and Garran, Annot. Const. of Aust., p. 82.

storm of indignation awakened by the ill-considered and unconstitutional suggestions in respect to the form of the local constitution, the modest and sane design of a common federal organ was almost overlooked and neglected. At the many mass meetings for the discussion of the Secretary's despatch, the subject was not even mentioned. In only one of the petitions forwarded to the Colonial Office was it referred to, and that in a condemnatory tone "as altogether unnecessary."[1] By the press it was regarded with general indifference or treated with a mild scepticism. The Sydney Herald, the leading paper of the capital, characterized it as "comparatively harmless and uninteresting," and in further commenting on the character of the central legislature remarked, "The erection of such a body as this, which we have called the Australian Congress, appears to us unobjectionable, except that there would be scarcely anything for it to do, and that it would be exceedingly difficult to find gentlemen able or willing to submit to the inconveniences which its duties though of unfrequent occurrence, would unavoidably impose. The place of meeting would doubtless be Sydney, as the largest and oldest of our seats of government."[2]

This statement very clearly expressed the opinion of the public, so far as it may be said to have formulated any distinct views upon the subject. In general, the mass of the people paid no attention to the topic, or considered it as mildly unobjectionable. To the exceptional few who were interested, it appeared at best as an instructive experiment, which could do no harm, but might, on the contrary prove a useful institution, though of no immediate importance or utility. As it was assumed that the Assembly would meet at Sydney, from which some political advantage and prestige might accrue to the capital, there was one strong practical consideration in favor of the new constitution. At worst the scheme shared in the general condemnation of the policy of the Colonial Secretary, and in his personal unpopularity. There was in truth no special reason why the public, at this time, should have been aroused to a sense of the importance of the proposal. The inconveniences

[1] Resolution from the clergy landholders and inhabitants of Singleton and the District of Patrick Plains. "And moreover we are decidedly adverse to a central legislature as altogether unnecessary." N.S.W., V.P.L.C. 1849, vol. 1, p. 684. G.B., P.P., 1849, vol. 35, p. 3. G.B., P.P., 1850, vol. 37, p. 30.

[2] The Sydney Morning Herald, Jan. 4, 1848.

arising from the divergent tariffs and conflicting legislation did not directly or materially concern the man of the street. Unless the pockets of the people are affected, or their sentiments or prejudices are touched, they are usually lethargic creatures; at any rate they are not given to the science of political forecast nor to acts of constructive statesmanship except under the stress of circumstances. The citizens of New South Wales were no exception to the general rule. Only the commercial class and a few leading members of the legislature, who realized the inconvenience of the existing state of affairs, showed any real interest in the proposed federal innovation.

In the other colonies, the project was not received with any more favor than in New South Wales. In the Port Phillip district, which, for practical purposes, may be treated as an independent colony, since its position and its sentiment cut it off almost entirely from any community of interest with the mother colony, the agitation for separation had waxed so strong as to supersede all other political questions in public interest. The fact that the boon of separation was promised in the proposed constitution, naturally inclined many to accept it, notwithstanding their objection to other leading features of the contemplated act.[1] But for this redeeming prospect of speedy independence, His Lordship's proposal would have fallen upon stony ground. As it was, the public were in a strait betwixt two,—whether to accept a faulty and distasteful constitution for the sake of separation, or to condemn the whole scheme in the hope of thereby securing such a revision of the constitution as would separate the question of independence from it. Upon this general question of policy and political tactics, opinion was much divided.

In consequence of this conflicting attitude, the federal proposal met with but scant attention. The little criticism that appeared, was almost uniformly of an unfavorable character, for not only did the idea share in the general disfavor directed against the system of secondary election, but as bearing an appearance of continued subjection through the central legislature to the predominance of Sydney, was looked on with considerable suspicion, as limiting the grant of provincial independence. The Port Phillip Herald anathematized[2] the whole

[1] Westgarth, Victoria late Australia Felix, p. 291.
[2] The Port Philip Herald. Feb. 3, 1848.

measure in unsparing terms. "It is a subject of curiosity," it remarked, "to speculate upon the motives which induced the Secretary of State to burden us with a constitution which is in itself a compound of anomalies and altogether unsuited to the wants and wishes of the Australians."[1] But this criticism was rather more outspoken than that usually pronounced against the constitution, since for reasons of political diplomacy, many refrained from expressing an opinion or were guarded in their utterances. The apparently inseparable connection between the question of separation and that of a central assembly prevented the Southern District from making any definite decision upon the subject.

In Van Dieman's Land, fortunately, the proposed federal assembly escaped much of the confused criticism that was directed against it in the other colonies. The subject was brought out into bolder relief, and discussed upon its merits, apart from other features of the constitution, so that we are able to get more clearly at the state of public opinion in the island. It was very natural that the topic should arouse much interest in Van Dieman's Land, possibly more than in the other colonies, since the legislative independence of the colony might be affected by the measure. She had but recently come into the full enjoyment of her freedom, and was consequently inclined to view with a critical eye any proposals which might threaten her independent status. Her remoteness from New South Wales, the isolation of her position, the difference in her social and economic condition, and the recent commercial difficulties with the Sydney government, all conduced to lead her to prefer a state of single blessedness to a doubtful alliance with the larger colonies. The argument against Lord Grey's proposal was stated with much force in an editorial in the Launceston Examiner.[2] "The appointment of a Governor-General," it urged, "will be useless if full liberty be conceded to the colonies and a serious obstruction to redress should their freedom of action be restricted. The ostensible excuse for such a functionary is inadequate. What he is to perform, the imperial legislature could accomplish by a single section. Let it be enacted that in these colonies the duties on tobacco and spirits, the produce of Australia, shall not ex-

[1] The Herald answered its own question by assigning the probable explanation to the "factious" conduct of Wentworth.
[2] The Launceston Examiner, Jan. 19, 1848.

ceed the lowest rate levied on similar articles imported from all other quarters, that all other products shall be entirely free, or that the customs charged shall be the same as that imposed on British goods. The most absurd, because impracticable novelty, is the creation of a central legislative authority. Why is Port Phillip to be separated from New South Wales? Because, on account of its distance from Sydney, representation, says Lord Grey, has become unreal and illusive, and does not this argument apply with ten-fold greater force to every other Australian settlement which is to be represented in this central legislature? If the Governor-General with his legislature reside in New South Wales, Van Dieman's Land will not have a substantial enjoyment of representative government and vice-versa. Swan River, while the means of intercourse remain as at present, might as well elect representatives for the imperial parliament, as representatives for a central legislature established in Sydney."

A remarkably able statement, embodying somewhat the same ideas, is to be found in an address[1] submitted to the London Agency[2] subscribers, and adopted by them. The address at the outset, called attention to the growth of intercolonial duties which were seriously interfering with the commerce of the country, and expressed the hope that the imperial parliament would take this matter under its consideration, "and that means will be provided to prevent their recurrence." While Great Britain was engaged in sweeping away colonial preferences, she was permitting an equally serious obstruction to commercial intercourse, through the imposition of duties on goods of colonial growth and manufacture. The restriction upon freedom of trade between Port Phillip and the island was especially felt to be an economic evil requiring rectification. In summing up the opposition to intercolonial tariffs, the address affirmed; "The levying so large a duty is not less pernicious than setting up customs between neighboring towns." Turning then to the proposal for a federal legislature, the address proceeded in a carefully elaborated argument to condemn the scheme as incompatible with the principle and exercise of provincial autonomy. "The plan does not appear to us suitable to the geographical position

[1] The Launceston Examiner, Mar. 22, 1848.

[2] This was not an official agency of the government of V.D.L., but a private agency maintained by a number of public-spirited citizens who thus hoped to promote the interests of the island at home.

of the colonies. The cost of a central government will not be cheerfully borne in communities already seriously burdened by their local administration. The expense of money and time would increase the difficulty. Even the distance of the New South Wales legislature prevented several opulent and respectable settlers from Port Phillip from accepting seats as the representatives of their district. His Lordship should take up a map of these regions and ask if a congress of British delegates would readily consent to assemble at Berlin or St. Petersburg, even with all the facilities for continental communication. We trust that His Lordship will weigh well these local difficulties that have escaped apparently his observation." It was moreover recommended that the imperial government should determine by express reservation the powers to be retained by the parliament at Westminster and that all other questions should be left to the colonial legislatures. The political and commercial relations of the Australian provinces were somewhat singular to state, regarded as falling properly within the jurisdiction of the imperial parliament. "We also think that the principles of intercolonial trade should be resolved at home, well knowing that the small interests of particular governments too often prevail against the general welfare of the empire. Thus the internal concerns of the colonies would alone demand the care of their local legislatures, and the cumbrous and expensive machinery of the federal government would not longer appear necessary." The subscribers propose that a London Association be formed for the furtherance of the commercial and political interests of Van Dieman's Land and suggest in connection therewith, a most interesting scheme of a colonial consultative council at Westminster. "This measure," they hoped, "might lead to the more general union of colonial interests. By mutual assistance, the cause of any particuiar colony might be urged with irresistible force. A federal union out here would be of little utility, but a combination under the walls of parliament might both win the attention of the Colonial Minister and bring his policy under instant scrutiny."

From these quotations it may be seen that although it was generally recognized that there should be some common regulation of intercolonial commercial relations, yet, that the people of Van Dieman's Land did not look with favor upon the delegation of that power to a federal congress. They regarded it as properly

an imperial function, and preferred to entrust its exercise to the imperial authorities, in the belief that their interests would be safer in the hands of the more distant but more impartial care of the British parliament, than in a federal council where the influence of New South Wales would be preponderant, and provincial jealousies most pronounced. In forming this opinion, they were not governed by merely local prejudice, but appealed to the actual experience of intercolonial relations, as conclusive demonstration that the general interests of the empire at large were sacrificed to the petty interests of local governments. They looked rather to an imperial commercial policy than to an Australian Zollverein. The specific grounds of their objection to a central legislature were its remoteness, expensiveness, and the inadequacy of its representation to serve the interests of the distant colonies. With telling force, they appealed to the experience of the Port Phillip district, as proving how illusive such a representative scheme would be in practice, and how unjust its political operations. The novel suggestion for the appointment of colonial agents in England, who could co-operate in the advancement of Australian interests, subsequently bore fruit in the creation of a corps of agents-general, who have proved a most efficient instrument for influencing the policy of Downing Street. By reason of their official position, and their intimate acquaintance with colonial conditions and feelings, they have been frequently called upon by the Colonial Office for information and advice regarding the affairs of their respective colonies, so that they are gradually assuming the character of colonial consultative counsellors of the home government, without however endeavoring as suggested, by collective action to exercise the functions of an imperial council.

In South Australia the proposed new constitution met with but little consideration. That colony was too much engaged in the economic problem of recovering from the effects of its bankruptcy, and too much torn by the political and religious strife with its Governor, to devote much attention to the remote question of a central legislature. The general opinion, so far as it found expression, was very similar to that of Van Dieman's Land. One of the Adelaide papers[1] remarked in an editorial on the subject, "The colonists to a man can adopt the views as expressed by the Van Dieman's Land Committee in

[1]The South Australian Gazette, May 13, 1848.

the letter to their London agent." In fact, South Australia enjoyed so little social and commercial intercourse with the other colonies, that neither the advantage nor the necessity of a federal union had yet been borne in upon her with convincing force. She was more interested in the attainment of the privileges of local autonomy and representative institutions, than concerned about any federal experiment of the Secretary for the Colonies.

As for the colony or settlement of Western Australia, it had not yet reached the stage of having a public opinion of its own to express, and continued to be a negligible quantity without political recognition from the eastern colonies, throughout the whole period of the early constitutional movement in Australia.

In no one of the colonies do we then find that the federal proposal was received with popular approval. In New South Wales public opinion was inclined to be critical, and in the other colonies it was either non-committal or unfavorable. This variation in temper was mainly due to the difference in the economic and political position of the mother colony, and of the outlying provinces. The latter felt their weakness. and at the same time were jealous of their independence. They feared to enter into any federal compact, in which they would be exposed to the superior strength and the supercilious jealousy of New South Wales. At the same time the isolation of their situation had developed a spirit of provincialism and even of suspicion towards their stronger neighbor. The remote imperial government furnished them with a sufficiently satisfactory organ of federal action. Their connection with the motherland was, at this time, much closer than with the adjoining colonies. with which official and commercial relations were only commencing to become intimate. Moreover the practical problems connected with the institution of a central legislature, naturally appealed to them more strongly than to the citizens of New South Wales. Port Phillip had experienced the evils of absentee government, and the other colonies took warning from her example to refrain from making any similar experiment. Even admitting that there might be a possible advantage to them, in securing uniformity of fiscal legislation through the creation of a central legislature, still the burden of such an institution would be in inverse ratio to any benefits conferred. Their representation would be scant, their influence feeble, and it was feared, that they would lose "the substantial enjoyment" of self-government

they then possessed. The other colonies were not less prone than Sydney, to look upon the matter from the standpoint of their own material advantage and, judged according to this test, the project offered them but few inducements commensurate with its manifest disadvantages. In New South Wales, on the other hand, these considerations had not the same weight. To her the burden and the risk of a general assembly were comparatively small, since she could always safeguard her interests through her preponderant vote in that body, and, as the federal congress was almost certain to meet in Sydney, she would be assured of a full complement of effective representatives. Under such circumstances the more favorable attitude of New South Wales need occasion no surprise.

The Legislative Councils of Van Dieman's Land and South Australia, which were nominee bodies, do not appear to have given any attention to the subject. But in New South Wales, it was otherwise. Her Legislative Council, as we have seen, had experienced the difficulty of dealing with intercolonial relations, and the subject in consequence excited sufficient interest in that body to call forth an interesting discussion. Mr. Wentworth, the leader of the popular party and the ablest man in the Council, assumed the responsibility of bringing the matter of Earl Grey's despatch before the House. On April 26th, 1848, he gave notice of a set of resolutions[1] upon the proposed constitution which, however, underwent considerable modification before being submitted to the Council. The first of these read: "That the only useful amendment of our present constitution . . . . suggested in the despatch, is the proposition relative to a congress from the various colonial legislatures in the Australian colonies with power to enact laws on intercolonial questions, that such a congress, if not too numerous, might be got together for a short period at certain intervals," . . . . but all the rest of the scheme was condemned without reserve. The resolution as moved on May 2nd,[2] was changed in order to number five, but so far as its content was concerned was left untouched. In the ensuing debate upon the series of resolutions, neither Mr. Wentworth, the mover, nor Mr. Foster, the seconder, made any reference to the proposition for an Australian assembly.

[1]The Sydney Morning Herald Supplement, Sept. 27, 1848. N.S.W., V.P.L.C., 1849, vol. 1, p. 690. G.B.P.P. 1849, vol. 35, p. 13. Ibid, 1850, vol, 37, p. 28.

[2]The Sydney Morning Herald, May 3, 1848.

The Colonial Secretary, Mr. E. Deas Thompson, on the contrary, in his general defence of Lord Grey's constitutional proposals, devoted considerable attention to the subject. The federal proposition met with his warm commendation and hearty support. He thought that such a central congress for the discussion and settlement of general questions, affecting the whole of the colonies, as, for example, the imposition of import and export duties and the means of communication, "would work remarkably well." "The advantages," he pleaded, "of such an arrangement as this were evident, for, by a mutual consideration of the interests of each province, the welfare of the whole might be protected and promoted." The history of their commercial relations with Van Dieman's Land proved the necessity for some such arrangement. As a result of the instructions of Lord Stanley, the free importation of intercolonial products had been inhibited, retaliatory measures had ensued, and the economic interests of all parties had suffered. "There prevailed," he believed "a pretty universal desire to see these duties removed," and their removal would be "equally advantageous to both parties." There would be plenty of weighty business to engage the attention of such an assembly, for, in addition to the subjects already mentioned, there was the important matter of facilitating improved steam communication between the Australian colonies and England and British possessions in other parts of the world, as also "many other equally important duties which it could perform." Regarding the character of the federal legislature, he remarked, "The machinery of such an assembly might seem somewhat cumbersome, but, if the arrangements were properly made,—if such a congress assembled only at certain fixed times once in—say every two or three years,—he did think that the opinion of the most wealthy and influential colonists on matters of general import to the whole colonies" would be "highly beneficial." Mr. Lowe[1] announced that he would move as an amendment to the fifth resolution, "that this Council sees no objection to the suggestion of an intercolonial congress provided it be not too numerous, held short sessions and meet at fixed intervals of time." . . . . .

Although Mr. Lowe did not devote any attention to the discussion of the federal resolution, incidentally we catch a glimpse of his general views in regard to the federal system.

[1]Subsequently Viscount Sherbrooke.

which, in the course of his vigorous denunciation of the municipal council scheme of secondary election, he condemned as "next to an absentee government the worst government of any." Either Mr. Lowe did not consider that Earl Grey's proposal was of the nature of a federal government, or as is probable, his objection to the system did not involve the principle of federation itself but only the mode of indirect representation in the present municipal proposal. The other speakers did not touch upon the topic, confining their attention to the subject of the district councils and the constitution of the second chamber.

On resuming the adjourned debate,[1] Dr. Bland brought forward another set of resolutions, of which No. 2, regarding an Australian congress, was identical in its language with that of Mr. Wentworth. In the course of the discussion, Mr. Dangor, who was the sole speaker to refer to the topic, remarked, that the proposed congress "might probably work well if it were practicable" but the time was yet "unripe" for such an ambitious proposition, for the colonies had not yet reached such a point of independent wealth, as to permit of the protracted absence of their representatives to attend to legislative duties in Sydney. The debate on the resolution was ended by the carrying of an amendment proposed by Mr. Cowper[2] that the Council should go into a committee of the whole to frame resolutions upon the constitution. A set of resolutions was subsequently prepared by a committee of the Council and presented for consideration in committee of the whole, as an amendment to the Wentworth motion. Clause 6[3] of the committee's draft very materially modified the meaning of the original resolution in the interests of New South Wales. The clause now ran: "That this Council cannot acquiesce in any plan for an intercolonial congress in which the superior wealth and population of New South Wales, as compared with the other colonies of the Australian group, both individually and collectively, shall not be fully recognized as the basis of representation." The discussion of the draft resolutions was again adjourned, but came up for further consideration in committee on May 9th, when Mr. Cowper moved his resolution regarding the basis of federal

[1] The Sydney Morning Herald Supplement, May 5, 1848.
[2] Member for Cumberland and subsequently several times Premier of the colony.
[3] N.S.W., V.P.L.C., 1849, vol. 1, p. 688.

representation. The subject was briefly touched upon[1] by Mr. Foster,[2] the representative of Melbourne, who opposed the clause upon the ground, that to give "New South Wales a majority of members would be unjust." He reminded the Chamber, that time might work revolutions, and that in "a few years, the wealth and population of the other colonies might exceed that of New South Wales." Apparently feeling that the majority of the members were against him, he refrained from pressing the matter to a division, and the resolution was carried without further comment. This resolution, however, with the others came to naught, upon a motion of Mr. Wentworth to shelve the question, which was adopted by a vote of ten to five. On May 11th, Mr. Cowper again brought the matter up, by giving notice of a series of resolutions in the form of an address to the Governor on the new constitution. Resolution 6 was the same in its terms, as that proposed and agreed to at the previous sitting. On the address coming up for consideration, five days later, a point of order was raised that as the subject had been previously debated, it could not again be discussed, and the House by a small majority refused permission to move the resolution for reconsideration. On May 23rd,[3] Mr. Cowper gave notice of a motion to rescind the vote by which the draft resolutions were given the six months hoist, but one week later, he withdrew[4] the motion on the ground that it "otherwise might have caused embarrassment." The resolutions were thus dropped, without the Council having expressed any final opinion upon them.

Although the proceedings of the Council upon the question were barren of result, yet the discussion and treatment of the subject is most valuable, for the light it throws upon the attitude of some of the leading men in Australian political life. The introduction of the elective system into the Council under the Act of 1842, led to the formation of a liberal constitutional opposition, which carried on an incessant agitation for the immediate grant of responsible government. At the head of this "vanguard of liberalism" stood Mr. W. C. Wentworth, the ablest

[1] In a despatch of May 11, 1848, from Gov. Fitzroy to Earl Grey, he remarks regarding the passing of this clause, "This resolution carried almost without remark," N.S.W., V.P.L.C., 1849, vol. 1, p. 687.
[2] Subsequently Colonial Secretary of Victoria.
[3] The Sydney Morning Herald, May 24, 1848.
[4] Ibid, May 31, 1848.

most popular, and far-sighted statesman in Australia. Although bitterly hostile to the arbitrary policy of Downing Street, as expressed in the proposed constitution, he did not permit his opposition to the illiberal features of the despatch, to pervert his judgment as to the advantage of co-operative action on the part of the Australian colonies. He was not a blind partisan, seeking merely to defeat the official program of the government; he was a commanding leader animated by a warm devotion to his country's welfare, and a deep sense of personal responsibility for its future. His keen comprehensive intellect, and his political prescience revealed to him the difficulties and the dangers of Australian segregation, and the possibilities of national greatness in Australian unity.[1] From the very first and throughout his career, he was a strong and convinced advocate of some form of intercolonial co-operation. In his resolution relative to the Australian congress, he sought to winnow a few grains of constitutional wheat from out of the mass of Downing Street chaff, which the despatch of the Colonial Secretary presented. No fact could testify more strongly of his loyal attachment to the principle of a united Australia, than his attempt to save this one proposition from the universal condemnation bestowed upon the constitution as a whole. The federal proposal was far from being generally popular out of doors; no personal honor or party profit was to be gained by supporting any project originating with the Colonial Secretary. The spirit of ambition might easily have tempted a man of less public honor, to baulk this one beneficial proposal of the unpopular occupant of Downing Street, and to destroy the good with the evil in the constitution, under the guise of opposition to an arbitrary measure. Having warded off the danger of a non-elective local assembly, he might then have played the patriot, by coming forward with an indigenous scheme of Australian union, better suited to the wants and desires of his fellow countrymen. But Wentworth was too great and too high-minded a man to resort to any such political strategy. He preferred to throw his weight and influence in favor of the federal proposition of Lord Grey, in the hope that this one feature might be embodied in the more liberal constitution which he was endeavoring to secure.

[1] This sentiment had found expression in a prize poem while a student at Oxford.

The attitude of Mr. E. Deas Thompson was not less favorable and pronounced. From his official position as head of the government, he was in a better position, than his liberal opponent, to appreciate the disadvantages of the existing divergent relations of the colonies. We have already noticed, that his attention had been early drawn to this question, and the active part he had taken in suggesting a solution. The proposal of the Secretary for the Colonies warmly commended itself to his careful and constructive judgment. His speech, so amply illustrated with facts concerning the hostile commercial attitude into which the colonies were drifting, was the ablest and most convincing argument for Australian co-partnership, which had yet been presented to the public. It was with him, in effect, an official declaration of a personal policy, for the scheme of the Secretary of State was merely an enlarged application of his own idea. The disproportionate prominence he gave to this topic was not due solely to the fact, that he naturally dwelt on that feature of the constitution which evoked the least opposition or criticism; it was not a mere parliamentary device of the practised debater; on the contrary, the subject with him was one of paramount importance. As the official spokesman of the executive, he could not sympathize with the vigorous denunciations of the tyrannical features of the constitution, which monopolized the remarks of the liberal opposition, but he could and did feel most keenly the aspiration after a greater unity of political organization throughout the Australias. More than any other man, he was the representative of an Australian nationalism. No other leader in New South Wales so consistently and so forcibly advocated the advantages of union, and no other politician made such efforts on its behalf. The whole history of the early federal movement in the mother colony is associated with his name. He was at once the originator, the advocate and the most active propagandist of the creed of political unity. However illiberal might be his views on matters of constitutional freedom, his range of vision was not obscured in respect to the external and inter-dependent relations of the colonies. He was one of the shrewdest and most far-seeing foreign secretaries, (if one may use that term), that Australia has produced. Throughout the long course of his political career, as an official and legislator, his voice was ever to be heard counselling a policy of fraternal good-will, of hearty

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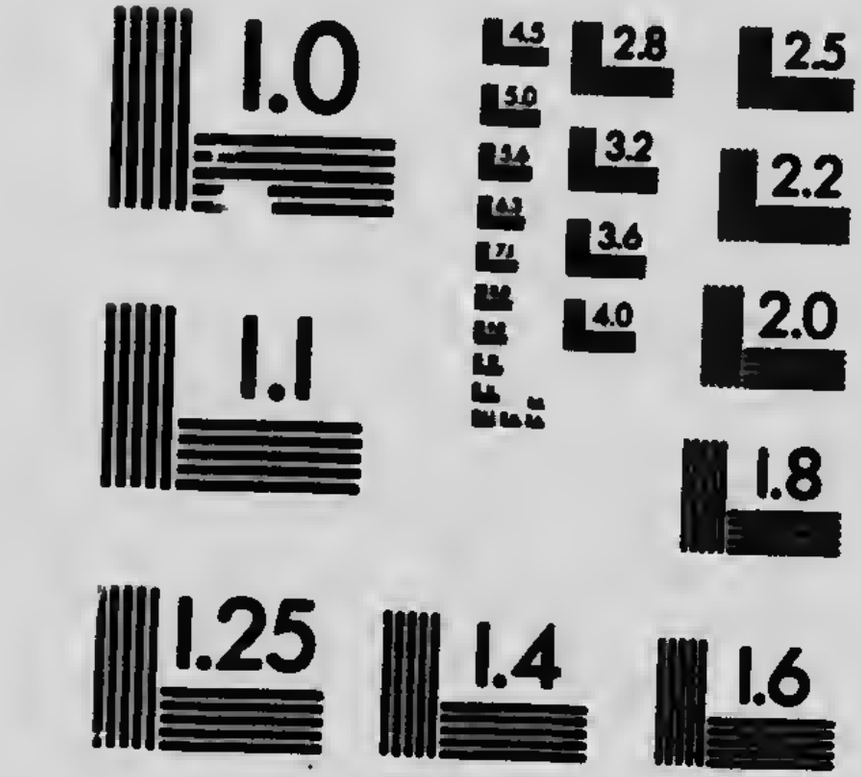

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and sympathetic co-operation of aim and of effort between the Australian states. In a word, he was the apostle of unity and brotherhood, in a day of small things and of narrow provincialism.

The agreement of the two most influential members of the Council, the leaders respectively of the government and opposition,—men who commanded no less authority, by reason of their outstanding ability, than by their public position, could not but have a marked effect upon the opinion of the chamber. The Council at this time was no unfit body to pass judgment upon the most momentous of Australian events. The personnel of its membership would bear comparison with many a more august deliberative body. Several of its leaders would, as speakers, as political thinkers, and as practical administrators, have graced a seat in the halls of Westminster. It is doubtful in fact, if at any period of her history, Australia has produced a galaxy of greater constitutional statesmen. Among this number must be included Mr. Lowe, whose services to colonial liberalism were not less valuable than his subsequent contributions to English politics. His attitude towards the scheme of a central congress, was as expressed in his resolution, one of doubtful support, or of conditional approval. It was a provisional approbation subject to certain well-defined qualifications of the nature of conditions precedent. He expressed no positive sanction; he merely withheld opposition in case certain provisions were clearly recognized in its constitution. Mr. Dangor was apparently prepared to go somewhat farther in his disapprobation; his attitude bordered on opposition to the measure, without however, actually assuming that position. He was exceedingly doubtful of its utility or practicability, in view of the existing immaturity of colonial development, but nevertheless was not prepared to carry his skepticism or conservatism to the extent of opposing the general opinion of the House. Mr. Dangor belonged to that numerous family of small critics and unimaginative politicians, who can see plainly the difficulties of the present, but have no outlook for the promises of the future.

The position of Mr. Cowper, as revealed in his resolution, was somewhat different from that of the other speakers. He looked at the subject primarily from the standpoint of the political advantage of New South Wales. This was the attitude of the average citizen of Sydney, whose interests he more particu-

larly represented as the leading exponent of the more democratic principles of the capital. Any consideration of a future Australian nationalism was regarded in terms of present provincial materialism. However honest his judgment, however patriotic his loyalty to his native colony, his view was essentially that of a Dumbarton citizen. The wording of his resolution showed upon its face, that it was framed with an intent to maintain the predominance of the mother colony in the Australian group, by requiring a due recognition of the superior interests of her democracy and plutocracy in the proposed general assembly. "The superior wealth and population of New South Wales" were made to demand as of right, a system of proportional representation, which, to a large extent would have perpetuated the very injustice from which the outlying district of Port Phillip was then suffering. Mr. Foster's brief remarks were a fitting, though fruitless rebuke to the creed of localism, and an opportune warning of the permutations which time may effect. But his words were unheeded. As for the other members, they were too much concerned in their speeches with the pressing question of the character of the New South Wales constitution, to devote any attention to the more abstract issue of a common legislature.

In the diverse opinions of the members, we may perceive three distinct tendencies of thought in respect to intercolonial relations. A few of the most prominent members of the Council were convinced federalists. With them, the question of some form of co-partnership was not a matter of theoretical speculation, but of practical politics. It was an issue demanding immediate settlement, under pain of more pressing complications in the near future. It was a problem of the actual administration and regulation of growing intercolonial interests. They welcomed the suggestion of the Secretary for the Colonies, as an admirable political expedient for the attainment of the desired end of colonial co-operation. As they were already agreed upon the necessity of some sort of union, and had accepted the principle of joint federal action, they were consequently ready to sanction the proposed machinery for effecting a constitutional union. A more cautious attitude was adopted in the moderate criticism of the doubting Thomases—Messrs. Lowe and Dangor. This view-point represented the opinions of men who were not yet familiar with the practical application of the federal question. Their judgment was more conservative in character, and inclined

to be critical towards any project which had the appearance of novelty, or which was not the product of an immediate necessity. These men saw clearly the difficulties in the way of the scheme, while its advantages were not so manifest to them. On the other hand they had no objection to the principle of a central congress; they simply desired to hedge it around with conditions, which would reduce to a minimum, the possibility of political danger to the self-governing provinces. They were a body of safe and conservative politicians who refused to be rushed into any rash experiment. Finally there were the provincialists whose views were expressed in the resolution of Mr. Cowper. They regarded the proposal, rather from the standpoint of local advantage, than of principle, political merit, or expediency. Upon the general question of a federal assembly they ventured no opinion. The primary consideration, in any case, was the protection of the political and material interests of the colony. It was, with them, not so much a question of the principle of federation, of union or segregation, as of provincial influence and prestige, of political profit or loss to the colony. Only if the privileged position of New South Wales was assured, but not till then, were they prepared to accept, or at least to withdraw their opposition to the scheme of a federal legislature.

We have little means of ascertaining the relative strength in the Council, of the supporters of these divergent views. From the fact that Wentworth's resolution was withdrawn, and that the Cowper amendment was carried without a dissentient vote, it is safe to conclude that the provincialists exercised a considerable influence on the decision of the chamber. It would not, however, be correct to deduce from this mere circumstance, that they constituted a majority of the House. Probably they did, either alone, or in conjunction with the more conservative members, for the superior influence of Thompson and Wentworth would not easily be overborne. But there was no inconsistency of conduct on the part of any of the federal leaders in cordially supporting the motion of Mr. Cowper, which appealed to the patriotism of all the members, without involving any necessary opposition to the proposed assembly, or demanding any sacrifice of federal principles. True, the resolution substituted a half-hearted and qualified approval for the unreserved endorsation of Mr. Wentworth's motion, but it at least committed the Council to the acceptance of the federal congress

under certain conditions. The amendment, in fact, reflected a compromise, in which the views of both federalists and provincialists were represented in part. This was as far as the legislature was prepared, at this time, to lend its sanction to the scheme of Earl Grey. All then that we are warranted in concluding, is that the Council did not feel it expedient to leave the whole question of the basis of representation in the proposed central legislature, to the free and unrestricted decision of the Secretary for the Colonies. The vote of the Council was intended to be a clear intimation to His Lordship, of the conditions under which New South Wales would agree to accept the proposed general assembly. For this favorable result we may largely thank the influence of the two political leaders, Thompson and Wentworth, who on this question, were much in advance of the majority of their fellow-members.

The suggested constitution of the central assembly, as set forth in the resolutions of the several members, and in some of the speeches, is equally instructive. Upon the broad outlines of its organization there appears to have been practical unanimity. Its membership should be limited, its meetings infrequent and at fixed intervals, and its sessions of short duration. From the speech of the Colonial Secretary, it is evident that the powers of the congress should, in his opinion, be limited to certain defined intercolonial questions. The system of representation, it was agreed, should be founded upon the double basis of wealth and population.

By combining these various features, we may form some general conception of the character of the assembly which the members of the Legislative Council had in mind to establish. The first impression must be, that the contemplated congress was not to possess the full attributes of a parliament, in the modern signification of that term. To-day it is of the very essence of such a body that its membership should be adapted to the requirements of the population, that its sessions should be at least annual, and governed as to their duration solely by the exigencies of public business. The federal leaders of New South Wales did not look to the creation of any such sovereign body; the Australian congress was to be framed according to much more modest conceptions. In respect to its legislative functions, the assembly would be endowed with full and unrestricted powers of law making within the very narrow limits assigned

by its constitution. It was not to be a mere delegated organ, with advisory functions, but a strictly deliberative and legislative body. In this regard, as also in the basis of its representation, the general assembly would embody the characteristics of a parliament, but in other respects, its nature would approximate more closely to the type of a diet of a confederacy. The fewness of its members, the infrequency and brevity of its sessions, the narrow limitation of its powers, the official or senatorial personnel of its membership and the system of secondary election, are all characteristic features of an intercolonial congress.

The views of the Council are not expressed with sufficient clearness or amplitude, for us to determine the exact scientific type of the projected constitution. We do know, however, that the organization of a national parliamentary body, or of a supreme federal government, was not intended. It is also clear, that the members did not contemplate the establishment of a rival or competing institution, or the creation of any body which might unduly restrict the autonomy of the colonies. The suggested assembly was a hybrid organization combining in its constitution some of the qualities of both federal and confederate governments, but so far as we can judge, approximated more closely in type, as it must have in practice, to an intercolonial diet. In its actual personnel the congress was expected to be a small somewhat aristocratic body, representative of the wealth, intelligence and official influence of the governing class in the several colonies, a body, in short, of similar character to the existing legislative councils[1] The social conditions of the different colonies, at this time, must apart altogether from any express design, have produced an assembly of this nature. The wealth, political education and experience of the colonies was largely confined to the official element and its friends, for there had not yet been developed a sufficient number of free, intelligent and independent citizens, capable of affording the time and the expense of undertaking the duties of federal legislators. It is possible that the suggested restriction on the meetings of the assembly, may have originated in some provincial suspicion or apprehension of the development of too powerful a central organism, but the reason would preferably seem to be, that the members did not anticipate frequent re-

[1] See speech of Mr. E. Deas Thompson, infra, p. 75.

course to the powers of the assembly, and had in mind the difficulties of attendance on the part of the representatives of the distant colonies. Doubt was even expressed by one of the members as to whether the business resulting from the functions to be assigned to that body would warrant its creation, and the opinion of the Colonial Secretary gave a colorable support to this view, since even he did not expect the duties and responsibilities of the congress to be of an arduous nature. A brief session, every two or three years, would in his opinion be sufficient to attend to all the questions which might arise out of their intercolonial relations.

The suggested two-fold basis of representation,—wealth and population, appears as an interesting attempt to combine the conflicting claims of a squatting aristocracy, which then practically monopolized the wealth of the country, with the views of the rising colonial democracy. It is even more significant that the question of the proper principle of representation, involving as it did an opposition of interest between the relatively opulent and numerous population of the mother colony, and the sparsely settled pioneers of the outlying provinces, should have come up for consideration on the very first appearance of the federal issue. The Legislative Council, with a keen eye to the interests of its own colony, endeavored in advance to settle this difficult problem decisively in its own favor, by the political sine qua non, that unless the superior position of New South Wales was adequately recognized in the central assembly, the acquiescence of the Council in the constitution of that body need not be expected. It is equally significant, that we find no suggestion for the creation of a second chamber to represent the federal interests of the smaller states, as it might have been expected that the Port Phillip members would have put forward that claim on behalf of their colony. Either they felt the fruitlessness of urging their rights in the face of the resolution just agreed to, or they did not regard the proposed assembly as a true federal legislature, but only as an intercolonial diet, whose proceedings would be subject to review by the local legislatures.

The adroit shelving of the resolutions in the committee, and the subsequent failure of the attempt to revive the motion in the Council, did not involve any change of attitude on the part of the legislature towards the scheme for a general assembly. Its opinion was definitely expressed in the Cowper resolution

which had passed unanimously. The defeat was due to the strong opposition to certain other clauses of the resolutions, and, in particular, to the endorsation of the bi-cameral system in the provincial legislatures. Upon this latter question the opinions of the Colonial Secretary and Mr. Wentworth were in conflict, and as the Council was almost equally divided in its judgment, a dead-lock ensued, which was fatal to all the other provisions of the resolution.[1] The federal clause suffered from the doubtful controversial company in which it was found. As a separate resolution it had been agreed to unanimously and it would doubtless have been again adopted, if presented as an independent motion.[2] It is, however, a striking proof of the relative subordination of the federal proposal in popular interest, and the merely incidental value which was placed upon it by the Council, that, notwithstanding the practically unanimous opinion of the members of the committee, no attempt was made to again bring the subject before the Council in the form of an independent resolution. It is evident from this attitude that, though the legislature was somewhat appreciative of the theoretical utility of federal action, it was not convinced of its practical and immediate importance.

In his despatches to the Colonial Secretary,[3] Governor Fitzroy set out at length the state of public opinion on the proposed constitution, not failing to emphasize on every occasion the "unpalatable" nature of the scheme of double election, and its certainty to "create great opposition and discontent." He expressed the belief that among the intelligent and experienced members of the community, the proposal for a double chamber would "not be ill-received" and, moreover, emphatically endorsed it from his own "long practical experience," as "a decided improvement upon the present form of legislature in the colony." But upon the subject of a central legislature, he had remarkably little information to convey, either of a personal nature, or in regard to the opinion which was entertained of the proposal on the part of the general public or the legislature. The only references to it in his correspondence are to be found in one of the constitutional petitions forwarded to the Secretary for the Colonies, and in the Governor's account of the proceed-

[1] N.S.W., V.P.L.C., 1849, vol. 1, p. 688.
[2] Quick and Garran, Annot. Const. of Aust., p. 82.
[3] G.B.P.P., 1847-8, vol. 42, p. 6, etc.

ings in Council. There was, in truth, as we have seen, very little for him to announce, since the public had scarcely formulated any definite judgment of its own. It is, however, surprising, that the Governor had no personal opinion to offer regarding the merits or demerits of a scheme, which was so peculiarly his own. He did not hesitate to express his personal views on other prominent features of the Secretary's despatch, but upon this proposal, he was even more reticent than the colonists themselves. His former contribution to the subject could certainly not have exhausted all the information or advice he was prepared to offer, had he considered the subject one of paramount interest to the colonies. We can only judge from this omission that, in the mind of the Governor, as in that of the colonists, the importance of the problem had been forced into the background by the strenuousness of the controversy over other features of the constitution.

The protests of the colonies reached the home authorities at a critical moment. Not only did they achieve their immediate purpose of preventing the introduction of a constitutional measure into parliament that session, but they effected a material change in the policy of the Secretary for the Colonies as well. In a despatch of July 31st, 1848,[1] called at the time, the "Golden Despatch," because of its liberal recognition of the desires of the colonists, Earl Grey disclaimed any wish "to impose upon the inhabitants of the colony a form of government in their judgment unsuited to their wants, and to which they generally object," and accordingly withdrew his project of making the district councils serve as constituents to the local legislature; nor did he desire to inflict upon an "unwilling or even indifferent people" the bi-cameral form of legislature, but would leave the power of effecting this reform entirely in their own hands, to be exercised at their convenience and pleasure. Legislative powers of a similar character to those granted to New South Wales, would, it was announced, be conferred on Van Dieman's Land and South Australia.

Notwithstanding the luke-warm reception of his suggested central assembly, the Colonial Secretary still persisted in his efforts to bring about intercolonial co-operation. He had not lost sight of the political differences of the colonies, especially

[1] G.B. P.P., 1847-8, vol. 42, p. 44. G.B. P.P., 1850, vol. 37, p. 39. N.S.W. V.P.L.C., 1849, vol. 1, p. 309.

the inconveniences which had arisen, and were certain to increase from their conflicting tariff policies. To this particular phase of the federal question he again directed their attention. "The communication by land," he declared, "between the districts of New South Wales and Port Phillip is already completely established, that of the latter with South Australia is becoming not inconsiderable and in the rapid progress in these advancing communities, the intercourse between them will yearly become more and more intimate and frequent. If, therefore, these three portions of the mainland of Australia should be placed under distinct and altogether independent legislatures, each exerting absolute authority as to the imposition of duties on goods imported, the almost inevitable result will be that such differences will grow up between the tariffs of the several colonies, as will render it necessary to establish lines of internal customs-houses on the frontiers of each. The extreme inconvenience and loss which each community would sustain from such measures needs no explanation; it will, therefore, be absolutely necessary to adopt some means for providing for that uniformity in their commercial policy, which is necessary in order to give free scope for the development of their great national resources and for the increase of their trade. In what manner this may best be accomplished, is a question of some difficulty, which I must reserve for more mature consideration."

In reading this despatch, we are again impressed by His Lordship's serious consideration of Australian affairs, his comprehensive breadth of view, and his intimate acquaintance with intercolonial conditions. No clearer forecast of the economic tendencies of Australian politics could have been made, and indeed, it is doubtful if any colonial politician read the signs of the times with the same true instinct of statesmanship. The very remoteness and abstraction of his position appeared to give him a more commanding outlook than that possessed by the majority of colonial political leaders, who were too close to the petty details of present provincial issues, to get a proper perspective of the future development of Australian politics. His Lordship's attention was still primarily directed to the subject of the unsatisfactory commercial relations of the colonies, which, he firmly believed, were at the root of existing intercolonial difficulties, from which, unless eradicated, an ever-growing harvest of internecine evils would inevitably spring up. The approach-

ing separation of the Port Phillip district, and its elevation, along with South Australia and Van Dieman's Land, to the full status of provincial autonomy, naturally directed his attention particularly to the geographical unity and the intimate relations of the three continental colonies. There is no reason to believe, that he had surrendered his broader conception of an Australian confederation of some kind. But in the case of the three contiguous provinces of the mainland, a higher law of virtual necessity pointed to a policy of commercial uniformity, whereas the need was not so pressing for an all embracing scheme of federal union. His Lordship admitted the difficulty of the question and the necessity for further consideration. No reference, it will be observed, was made in this despatch to the creation of a central legislature, which he had previously regarded as the most suitable instrument for effecting his purpose, but it was evidently still his intention to utilize that instrument in the solution of the fiscal problem.[1]

Considerable light is thrown upon the character of the difficulties which were perplexing the brain of the Colonial Minister, as also upon the reason for the omission in the recent despatch of any discussion of a federal legislature, by a letter from Mr. J. A. Jackson, the London representative of the Van Dieman's Land Association,[2] in which he gives an account of an interview with Mr. Merivale, the permanent Under-Secretary for the Colonies, upon the subject of the new constitution. Among the topics discussed were those of intercolonial relations and the projected general assembly. "Some difficulty," he writes, "was felt, as respects controlling by imperial enactment the different colonies, as regards the practice of protecting themselves by customs duties on each other's products, and I gather that it was rather the prevailing idea to get some limit to this power. The subject of a central authority was glanced at, but Merivale thought that however the necessity for such a power might arise hereafter, at present it would be quite undesirable to call it into existence." The Colonial Office was in somewhat of a dilemma in desiring to accomplish a good object through an objectionable instrumentality. The only immediate means of getting rid of intercolonial customs was through an imperial enactment. No one colony had the legislative power

[1] Quick and Garran, Annot. Const. of Aust., p. 33.
[2] The Port Phillip Herald, Feb. 17, 1849.

to enact a uniform customs law, and the chance of securing an assimilation of duties by common and identical legislative action in the several colonies, was too remote and problematic to be seriously considered by the energetic Secretary of State. The temporary postponement of the scheme to establish an Australian general assembly was an unpalatable alternative to an imperial statute. But it was felt that the intervention of Downing Street, or of the parliament at Westminster to regulate the commercial policy of the colonies, would occasion a serious colonial grievance, as an unwarrantable interference with local domestic affairs. Such an act would be strenuously challenged in Australia, as a violation of the Colonial Secretary's avowed policy of provincial autonomy. It was indeed questionable whether apart altogether from the satisfactory or unsatisfactory character of the imperial fiscal legislation, the intervention of the imperial authorities would not constitute a dangerous constitutional precedent, which no acknowledged advantage of commercial uniformity of intercolonial customs could possibly justify. The immediate result of such an enactment would be to augment the growing feeling of colonial resentment against the meddlesome supervisory policy of the home government.

But a still graver difficulty would be presented, in attempting to frame an acceptable tariff for the several colonies. Differences in local economic conditions had already produced an annoying dissimilarity in their customs acts. To arrange an equitable assimilation of these divergencies would require an exact and minute acquaintance with the economic conditions of each of the colonies, such as was entirely lacking to the imperial government and parliament, and for this reason alone, incapacitated those bodies from undertaking the function of framing the commercial legislation of the Australias. These various considerations, both of a colonial and an imperial character, were doubtless present to the mind of Earl Grey and the permanent members of his department. The experiment was a novel and crucial one, and they might well hesitate to take a step which would surely arouse colonial sensibilities on the one hand, and constitutional opposition at home on the other. The hesitancy of the Under-Secretary, to deal with the question of the general assembly, was probably due to somewhat similar considerations,—doubts as to the acceptability of the scheme in the colonies, as to its practical efficiency as a federal organ, and

in respect to the organization and constitution of such a body. From every side, constitutional, economic and administrative, the subject was hedged round with difficulties. It is no wonder under such circumstances that His Lordship felt the need of giving maturer consideration to the development of his project of Australian unification. The broad outlines of his scheme for a general assembly were already disclosed, but careful study and consultation were required to work out the intricate details.

Both the tone and the content of this despatch were warmly welcomed in Australia, as betokening a more liberal policy and sympathetic attitude towards the colonies. Partly for this reason, but more particularly because the present economic proposals were not incorporated in a plan for a general assembly, the Secretary of State's insistence upon the necessity of a common intercolonial tariff awakened a more responsive chord than did his former despatch. The public had been gradually familiarized with the idea of commercial uniformity, and the growing consciousness of the unsatisfactory and precarious character of existing intercolonial relations had brought many of them to view this feature of Earl Grey's policy with considerable favor. But the scheme for a local legislature was still open to the objection of novelty, and liable to popular misunderstanding. This gradual change of temper, from critical coolness to sympathetic appreciation, can be seen to good advantage by comparing the present utterances of The Sydney Morning Herald, with the language of its former editorial on the same subject. In a leading article of Nov. 17th, 1848, it commented: "The noble Secretary's suggestions respecting an intercolonial tariff are such as all right-minded Australians must approve. Let our commercial intercourse with each other be free from all such vexatious trammels as were lately imposed by the legislation of our Tasmanian neighbors. Let it be conducted on terms of reciprocal freedom and good-will, and let these terms be placed on a basis which no one colony shall be able to disturb." The process of public education had begun. The minds of the people were being prepared for the complete constitutional program of the home government. There was not long to wait, as the constitutional scheme of the Secretary for the Colonies was soon forthcoming.

The unfavorable criticism which his proposed constitution had received in the colonies, convinced the Colonial Secretary

of the unpopularity of his measure, and the necessity for a thorough revision and reconsideration thereof. His Lordship accordingly informed the Lords that, as "the general feeling of the colonists was against the alteration he had suggested," he had decided "not to propose any measure in the present session, and to modify during the recess the provisions of the bill, which he proposed to bring in next session.[1] But on this occasion Earl Grey did not rely solely on his own judgment in seeking to remodel his constitution, so as to bring it more fully into accord with colonial feeling. The importance of the various questions to the future administration of the Australian colonies, led him to advise Her Majesty to refer[2] the whole subject to the recently reconstituted Committee of the Privy Council[3] for Trade and Plantations. Mr. Jackson, the watchful agent of the Tasmanian Association, had already had cause to complain that an "important document"[4] which had recently been laid before parliament, proposing to refer to the above Committee by order-in-council, "questions on which it may appear to the Secretary of State for the Colonial Department expedient that Her Majesty should be advised by that Committee," had not received the attention it deserved in the colonies, although its influence on Australian affairs might be most pronounced. The increasing duties of the Colonial Office, arising out of the rapid expansion of the over sea dominions, had suggested the revival of this ancient advisory body.[5] For this purpose, the Committee was designed to act in the capacity of a consultative council, to make careful investigations into the condition and conduct of colonial affairs. The Secretary for the Colonies was, of course, its most influential member, and practically the guiding spirit of its policy.

By an order-in-council of Jan. 31st, 1849, the Committee was commissioned to consider and report upon the correspondence between the Colonial Office and the Australian governments on the subject of the proposed alterations in the colonial

[1] Aug. 11, 1848.

[2] Mr. Rusden looks upon this reference as the work of the Ministry and as a reflection upon the policy of the Colonial Secretary. Rusden, Hist. of Aust., vol. 2, p. 467.

[3] Grey (Earl), The Colonial Policy of Lord John Russell's Administration, vol. 2, p. 91. Adderley, Colonial Policy and History, p. 99.

[4] Letter of Apr. 12, 1848 from the Colonial Secretary to the Committee of Trade and Plantations.

[5] For the history of the constitution of this Committee, Jenks, The Government of Vict. p. 24. Trail, Central Government, ch. 6.

constitutions. The constitutionality of this reference to the Committee was called in question by Lord Monteagle,[1] in the debate on the Australian Colonies Bill in the session of 1849, and was, moreover, the subject of a slashing attack in the Commons by Mr. Disraeli[2] in the following year, on the ground that it destroyed the constitutional responsibility of the Colonial Secretary, but the proceeding was justified by Earl Grey[3] as in strict conformity with precedent. The practice of referring subjects to the Committee which, in former times, the Crown had been accustomed to consult on all important colonial matters, had indeed fallen into disuse upon the creation of the office of Secretary of State for the Colonies,[4] but it was one of the crochets of Earl Grey, that its services might be usefully revived, when subjects of more than ordinary importance or difficulty required to be investigated and passed upon by the Colonial Office.[5]

The question, moreover, from its intricate economic character and constitutional importance, was one with which the Committee was especially qualified to deal. The political and constitutional policy of the home government, in respect to the imperial relations of the motherland with the colonies, could, of course, be determined by the ministry alone upon the advice of the Secretary for the Colonies, but here was a case presenting many topics, properly included within the jurisdiction of the Committee, which by its constitution was particularly charged with the duty of dealing with the commercial interests of British merchants, traders and manufacturers.[6] Such subjects could be more fittingly investigated by an advisory committee, than determined by the judgment of one man or settled in the secrecy of a cabinet council.

The Committee appointed for the preparation of the report included, in addition to the Colonial Secretary, who was its presiding officer and its guiding spirit, the President of the Board of Trade, Mr. Labouchere; another member of the cabinet —Lord Campbell, Chancellor of the Duchy of Lancaster,[7] Sir

[1] Hansard, 1849, vol. 106, p. 1116.
[2] Ibid, 1850, vol. 110. p. 606.
[3] Ibid, 1849, vol. 106, p. 1120.
[4] Egerton, British Colonial Policy, p. 314.
[5] Barton, History of Aust. Federation, Year Book of Australia, 1891, p. 111.
[6] Ibid, p. 111.
[7] Afterwards Lord Chief Justice of Great Britain.

James Stephens, Permanent Under-Secretary for the Colonies,[1] and Sir Edward Ryan, formerly Chief Justice of Bengal, the three latter gentlemen being added specially to aid in dealing with the Australian problem.[2] Notwithstanding the reflections cast upon the constitution and fitness of the Committee, its personnel was of a very high order, though it is doubtful if some of its members had any special qualifications for dealing with colonial questions, or any intimate acquaintance with Australian conditions.[3] It is exceedingly unlikely from the nature of their positions, that either Lord Campbell or Sir Edward Ryan, to whom Disraeli slightingly referred in the Commons, as "Sir Somebody Ryan,"[4] had devoted any particular attention to the constitutional difficulties of the colonies, but Sir James Stephens, from his quarter of a century of service in Downing Street, was probably better equipped than any other official of his time to advise upon the question. At home and throughout the colonies he was charged with directing the policy of successive Secretaries of State according to his own sweet will, and in consequence was commonly spoken of as Mr. "Over-Secretary" Stephens.[5] In addition to his intimate acquaintance with colonial matters, and his far-reaching knowledge of modern history, he was a literary essayist of no mean ability. The excellent form of the report of the Committee bears witness to his authorship,[6] even though, for some reason or other, he did not, like the other members, append his name thereto. Whether in this case or not, Sir James directed the opinion of his political chief, at any rate, the views expressed in the report must be considered those of the Colonial Secretary himself, rather than of any of his associates.

The very able and statesmanlike recommendations of the Committee are the best demonstration of the careful investigation they gave to the subject. As the first occasion on which the revived machinery of the Privy Council was called into play, it was but natural that the Committee should aim to make their first public document a classic in the constitutional history of

[1] Appointed Professor of Modern History at Cambridge in 1849.
[2] Rusden, Hist. of Aust., vol. 2, p. 467.
[3] Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. 11.
[4] Hansard. 1850, vol. 110, p. 603.
[5] Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. 11.
[6] Egerton, British Colonial Policy, p. 314.

Australia. The report,[1] which bore throughout its pages the striking impress of the mind of the Colonial Secretary, recommended the division of the colony of New South Wales, the Port Phillip or Southern District of which should be erected into an independent colony under the name of Victoria. Notwithstanding a strong predilection for the bi-cameral system of the English constitution, the Committee, in compliance with the supposed attachment of the inhabitants of New South Wales to a single chamber, advised that in each of the four colonies there should be but one House, one-third of the members of which should be nominated by the Crown, the other two-thirds to be elected by the people. Representative institutions were to be conferred on Van Dieman's Land, South Australia and Victoria. The legislature of each of the colonies was empowered to amend its own constitution, by setting up a second chamber, subject to imperial consent. The report advised the suspension of the District Council scheme until revived by the local authorities, proposed that public support should be given to religion, and recommended that, subject to certain qualifications, the local legislatures should have complete control over colonial expenditures. The Committee then turned their attention to the still more important subject of a uniform tariff and a federal assembly, upon which they made the following report.

"There yet remained a question of considerable difficulty. By far the larger part of the revenue of the Australian colonies is derived from duties on customs. But if, when Victoria shall have been separated from New South Wales, each province shall be authorized to impose duties according to its own wants, it is scarcely possible but that in process of time differences should arise between the rates of duty imposed upon the same article in the one and in the other of them. There is already such a difference in the tariffs of South Australia and New South Wales, and although, till of late, this has been productive of little inconvenience, yet, with the increase of settlers on either side the imaginary line dividing them, it will become more and more serious. The division of New South Wales into two colonies would further aggravate this inconvenience, if the change should lead to the introduction of three entirely distinct tariffs,

[1] G.B.P.P., 1849, vol. 35, p. 33. N.S.W., V.P.L.C., 1849, vol. 1, p. 704. Grey (Earl), Colonial Policy and Lord John Russell's Administration, vol. 2, app. A, p. 313. Quick and Garran, Annot. Const. of Aust., p. 83.

and to the consequent necessity for imposing restrictions and securities on the import and export of goods between them. So great indeed would be the evil, and such the obstruction of intercolonial trade, and so great the check to the development of the resources of each of these colonies, that it seems to us necessary that there should be one tariff common to them all, so that goods might be carried from the one into the other with the same absolute freedom as between any two adjacent counties in England.

"We are further of opinion that the same tariff should be established in Van Dieman's Land also, because the intercourse between that island and the neighboring colonies in New Holland has arisen to a great importance and extent and has an obvious tendency to increase. Yet fiscal regulations on either side of the intervening strait must, of necessity, check and might perhaps, to a great extent, destroy that beneficial trade.

"If the duties were uniform, it is obvious there need be no restrictions whatever imposed upon the import or export of goods between the respective colonies, and no motive for importing into one goods liable to duty which were destined for consumption in another, and it may safely be calculated that each would receive the proportion of revenue to which it would be justly entitled, or, at all events, that there would be no departure from this to an extent of any practical importance.

"Hence it seems to us that a uniformity in the rate of duty should be secured.

"For this purpose we recommend that a uniform tariff should be established by the authority of parliament, but that it should not take effect until twelve months have elapsed from the promulgation in the several colonies of the proposed act of parliament. That interval would afford time for making any financial arrangements which the contemplated change might require in any of them, and by adopting the existing tariff of New South Wales, (with some modifications to adapt it to existing circumstances) as the general tariff of Australia, we apprehend that there would be no risk of imposing upon the inhabitants of these colonies a table of duties unsuited to their actual wants. We should not, however, be prepared to offer this recommendation, unless we proposed at the same time to provide for making any alterations in this general tariff which time and exper-

ience may dictate, and this, we think, can only be done by creating some authority competent to act for all those colonies jointly.

"For this purpose, we propose that one of the Governors of the Australian colonies should always hold from Your Majesty a commission constituting him the Governor-General of Australia. We think that he should be authorized to convene a body to be called the General Assembly of Australia at any time and at any place within Your Majesty's Australian dominions, which he might see fit to appoint for the purpose. But we are of the opinion that the first convocation of that body should be postponed until the Governor-General shall have received from two or more of the Australian legislatures addresses requesting him to exercise that power.

"We recommend that the General Assembly should consist of the Governor-General, and of a single house to be called the House of Delegates. The House of Delegates should be composed of not less than twenty, or more than thirty members. They should be elected by the legislatures of the different Australian colonies. We subjoin a schedule explanatory of the composition of this body; that is, of the total number of delegates, and of the proportion in which each colony should contribute to that number.

"We think Your Majesty should be authorized to establish provisionally and in the first instance, all the rules necessary for the election of the delegates and for the conduct of the business of the General Assembly, but that it should be competent for that body to supersede any such rules and to substitute others, which substituted rules should not, however, take effect until they had received Your Majesty's sanction.

"We propose that the General Assembly should also have the power of making laws for the alteration of the number of delegates, or for the improvement in any other respect of its own constitution. But we think that no such law should come into operation until it has actually been confirmed by Your Majesty.

"We propose to limit the range of the legislative authority of the General Assembly to the ten topics which we proceed to enumerate. They are:

1st. The imposition of duties upon imports and exports.

2nd. The conveyance of letters.

3rd. The formation of roads, canals or railways, traversing any two or more of such colonies.

4th. The erection and maintenance of beacons and light-houses.

5th. The imposition of dues or other charges on shipping in every port or harbor.

6th. The establishment of a General Supreme Court to be a court of original jurisdiction, or a court of appeal for any of the inferior courts of the separate provinces.

7th. The determining of the extent of the jurisdiction and the forms and manner of proceeding of such Supreme Court.

8th. The regulation of weights and measures.

9th. The enactment of laws affecting all the colonies represented in the General Assembly, on any subject not specifically mentioned in the preceding list, but on which the General Assembly should be desired to legislate by addresses for that purpose presented to them from the legislatures of all those colonies.

10th. The appropriation to any of the preceding objects of such sums as may be necessary, by an equal percentage from the revenue received in all the Australian colonies in virtue of any enactment of the General Assembly of Australia.

"By this means we apprehend that many important objects would be accomplished which would otherwise be unattainable, and by the qualifications which we have proposed, effectual security would, we think, be taken against the otherwise danger of establishing a central legislature in opposition to the wishes of the separate legislatures, or in such a manner as to induce collisions of authority between them. The proceedings also of the Legislative Council of New South Wales with reference to the proposed changes in the constitution, lead us to infer that the necessity of creating some such general authority for the Australian colonies begins to be seriously felt." The schedule referred to was as follows:

"Each colony to send two members, and each to send one additional member for every fifteen thousand of the population, according to the latest census before the convening of the House.

"On the present population the numbers would be as follows:

	Population by the last Census.	Number of Members.
New South Wales	155,000	12
Victoria	33,000	4
Van Dieman's Land (deducting convicts)	46,000	5
South Australia	31,000	4
Total	265,000	25

"Her Majesty having taken the said report, together with the schedule thereto annexed, into consideration, was pleased by and with the advice of Her Privy Council to approve thereof."

It is easy to recognize the source of the inspiration of this carefully elaborated document. The argument in favor of the establishment of a uniform tariff follows the familiar lines of Earl Grey's earlier despatches. The form and expression are improved, but the matter and the spirit remain unchanged. It is the old plea for an Australian Zollverein,—that the future commercial relations of the several colonies demand unrestricted freedom of intercourse. In the skillful hands of the Committee's draftsman, the broad and indeterminate outlines of His Lordship's suggestions are made to assume a more definite constitutional form. The snug little island of Van Dieman's Land is again admitted into the fellowship of the Australian group, with which her political and commercial relationship was growing more intimate. Only Western Australia is omitted from the family circle, on account of her dependent position as a Crown colony in receipt of imperial aid.

Upon the subject of a uniform tariff the Committee take no uncertain stand. They accept no half-way measure, such as reciprocal free trade or the abolition of intercolonial customs on articles of native produce or manufacture; they recommend an Australian Zollverein,—a complete customs union with a single uniform tariff throughout the colonies, and absolute unrestricted commercial freedom within the union. Only by the institution of a system of uniform duties, could they effectually avoid the fiscal preferences and fraudulent evasions of the revenue laws, which would otherwise arise from the importation of goods through the ports of the colonies, whose customs were the lowest, with intent to be subsequently forwarded for consumption in the other provinces with the higher tariffs. The perplexing question of the effect of a uniform tariff upon the revenues of

the several colonies, is briefly dismissed with the comforting assurance that each province would receive its just share of the general customs, or at least that its proportion would be so approximately correct that the difference would be a negligible quantity. This conclusion, that a uniform tariff would produce a proportionately equal revenue for each of the colonies, appears to rest upon several very doubtful assumptions, namely that the economic conditions of the several colonies were very similar, if not identical, that the consumption of dutiable goods would be the same per capita throughout Australia, and that the goods imported into the different colonies would be consumed in the province of the port of entry and not exported to the neighboring states. And even though the result should be an approximately just financial return to the local treasuries, there was still no guarantee that the revenue under the uniform tariff would suffice to satisfy the budget requirements of the federal or local governments, or fill up the coffers of the provinces as freely and equitably as the existing colonial duties. We do not know the basis of calculation upon which the Committee rested their conclusions, but the economic dissimilarities of the several colonies together with the marked divergence in their tariffs and financial policies, would seem to preclude the easy equalization of their revenues by the simple process of enacting a uniform tariff. That the Committee were aware of the difficulty of the problem is evidenced by the suggestion that a period of twelve months should elapse before bringing the general Australian tariff into operation, in order to afford an opportunity for the adjustment of any financial arrangements which might be found necessary in any of the colonies, and in the further recognition that the existing tariff of New South Wales, which was accepted as the basis for the uniform customs, would require some modification to adapt it to the varying circumstances of the different provinces. If a general uniformity of customs could be attained without injustice to any one colony, then one of the greatest stumbling blocks in the way of federation was removed.

From the recommendation of the Committee that parliament should be asked to establish a uniform tariff, we must conclude that the Secretary for the Colonies had partially overcome his scruples in the matter of imperial intervention in colonial fiscal affairs. But the report makes manifest, that such an enact-

ment would be of a merely provisional nature, justifiable only as a temporary expedient, until the general assembly should be called upon to deal with the matter. The Committee seem to have felt no lack of confidence in their ability to frame a satisfactory tariff; they hit upon the simple expedient of adopting that of New South Wales, which they fondly believed, with some modification, would be suited to the fiscal and economic requirements of the several colonies, and as future alterations in the customs duties would be entrusted to the general assembly, they excused their proposal by the plea that in the end the desire of the Australians to control their own tariff policy would be fulfilled. It is somewhat singular that a body, which acknowledged its unfitness to effect such modifications in the tariff, as "time and experience may dictate," should nevertheless essay the much more onerous task of devising an original schedule of customs. The explanation is to be found, not in the pressing need for immediate action, since His Lordship frankly admitted, that the scheme was designed for future contingencies more than for present evils,[1] but in the lurking fear, that if the initiative were left to the colonies themselves, they might never call the Assembly into activity. The Committee felt that if once the plan were successfully launched, its future history might safely be committed to the colonies. The enactment of a colonial tariff was not proposed in a spirit of dictation, but merely as a preparatory step in the organization of a federal union.

The recommendation that one of the governors be nominated Governor-General of all Australia, carried out the original suggestion of Mr. E. Deas Thompson. Although vested in one person, the federal and provincial offices were to be entirely distinct from one another, and the functions of each to be exercised by the Governor in a different capacity, in order to avoid any possible confusion of responsibility. No attempt was made to define the powers of the Governor-General, save in so far as he was authorized upon his own independent responsibility, to exercise the ordinary prerogative in respect to the convocation of the general assembly, subject however to the condition, that that body should not be called into existence until addresses had been presented from two or more of the provincial legislatures requesting him so to act. The effect of

[1] Hansard, 1850, vol. iii., p. 507.

this proviso was virtually to suspend the exercise of the prerogative until a certain contingency, and to leave the whole federal scheme at the mercy of the provincial legislatures, for by failing to pass the necessary addresses, the object of the Secretary for the Colonies in creating the Assembly would practically be defeated. His Lordship probably counted upon the political or fiscal complications of the governments to afford a sufficient inducement or compulsion to stir up the legislatures to take action.

By the curious provision that addresses need be presented from only two or more colonies to constitute the Assembly, it was left in the power of a moiety of the local Councils to coerce their unwilling neighbors into the organization of a federal government. It was certainly a most unique constitutional experiment to seek to initiate a system of federation, in which the principle of unanimous consent of the several colonies, or of majority rule found no recognition in its creation. In a federal more than in any other form of constitution, the legitimacy of the government is supposed to rest upon the consent of the governed,[1] whether the consent be that of the people, or of the states of the union, or of both. The explanation of this peculiarity of political science, is that in the formation of a federal union, there are the existing independent states or provincial organizations with which to deal, and these in their relations to one another, as well as towards the constituted federal government, appear in the character of quasi-contractual[2] parties. In the founding of the American constitution—the model of subsequent federations, we find a recognition of the principle of ratification as the source of constitutional validity.[3] But this characteristic feature of federalism found no place in the Committee's proposals. Both in the origin and organization of the federal assembly there was but the slightest recognition of the principles of colonial autonomy and popular sanction. The constitution itself was an imperial enactment in the shaping of which the local legislatures had only a consultative voice.

[1]This statement is not meant to maintain that the doctrine of Rousseau and the Declaration of Independence is the true philosophic principle of the state's existence, but only that in the federal constitution the element of consent is generally present.

[2]We say quasi-contractual because the federal relation is not based on contract, but on law, though it has somewhat of the appearance of the former.

[3]Const. of the U. S. art. vii.

The appearance of colonial consent in the organization of the Assembly was only a sham, for any two of the smaller colonies with comparatively insignificant populations, and in the face of the opposition of their more powerful sister provinces, could put the machinery of the federal government in motion and undertake the direction of Australian affairs. Only a firm conviction that the interests of the colonies were common, and that they would gladly co-operate in the development of an Australian policy, could justify the Committee in making a proposal which so flagrantly violated the principles of popular government and federalism. But apart from this theoretical but vital objection to the mode of creating the Assembly, it must be admitted that the proviso embodied a real practical advantage, in that it gave assurance that there would be no unnecessary convocation of the general assembly, but that at least two of the Legislative Councils must be convinced of the importance of the business to be brought before the House of Delegates. It was particularly desirable in the case of the new Assembly, that the objects of its deliberation and the conduct of its proceedings should be compatible with its Australian federal character. To have attempted to call it into existence at the mere personal whim of the Governor-General, without the approval of any legislative body, might have vitiated the whole scheme in the minds of the more distant colonies, which would be most inconvenienced by a useless formal or unimportant session.

With the first meeting of the chamber of deputies the political position of the Governor-General in respect to the House of Delegates was changed. His Excellency was at once relieved of the restrictions on the exercise of his prerogative; he became a free-will agent, at liberty to summon the federal legislature when and where, in his judgment, (since he was untrammeled by any constitutional advisers), the state of public business demanded it. The general assembly, likewise, legally attained an independent status which left it free to legislate on its own initiative upon the subjects committed to its care. It became in principle, if not in actuality, a true federal organ, since its existence was no longer dependent solely upon the will of the local legislatures. But in fact its character must have been essentially different. The members of the general assembly would not enjoy in practice, however much

they might in theory, the independent dignity of parliamentary representatives, but on the contrary, would occupy the humbler position of instructed delegates, who dare not venture to set up their individual or collective judgments against the will of their respective legislative councils. Only a direct mandate from the people could transform the Assembly into a free and independent parliamentary body, equal in power and in dignity to the colonial legislatures. The very nature of its organization as an intercolonial committee of the local legislatures, would forever subordinate it to the power which called it into being and gave it its vitality. There was indeed small hope of such a body developing into a truly national organ, unless it fundamentally changed the character of its constitution by obtaining the sanction of popular election.

The constitution of the general assembly was peculiar; it was not framed according to the normal federal principle, upon the familiar model of the United States constitution with a President and two Houses, the one representative of the national, the other of the federal element in the constitution, but on the contrary, was to consist of but two estates, the Governor-General and the House of Delegates. The position and functions of the former corresponded in character to those of the ordinary colonial governor, save in so far as his prerogative was uncontrolled by any advisory council; he was at once an imperial officer,—the viceroy of the Crown, and the head of the Australian executive. The office itself would be a high and valuable appanage of the gubernatorial chair of one of the colonies, manifestly New South Wales, although not so indicated in the report, since it would have been incompatible with the dignity of the governor of the largest and wealthiest of the colonies to be inferior in rank to one of the lieutenant-governors.

The constitution of the House of Delegates reveals an interesting attempt to combine some of the features of a federal and national government in a single chamber. In the mode of its appointment, through the legislatures of the several states, it followed the precedent of the American Senate, but in its system of representation, it largely adopted the familiar principle of most democratic governments of the unitary type, viz., apportionment according to population. The allotment of representation recommended in the Committee's report and the schedule accompanying the same, shows, however, that while

the proportional principle was adopted in spirit, it was not absolutely applied in the distribution of membership in the House. Had the rule been strictly drawn, each of the three smaller colonies would have lost one member, while New South Wales would have gained that additional number. In effect this would have established the hegemony of the mother colony, since her delegates would have a decided preponderance over the combined representatives of the other colonies. The Committee were anxious, however, to smooth the entrance of the smaller provinces into the union, and to safeguard their interests so far as was compatible with Australian unity, and an observance of the broad principles of liberalism. To this end, the proporion of representatives was so adjusted, that while recognizing the just claim of New South Wales to superior weight and influence in the common counsels, nevertheless the interests of the lesser colonies were effectively safeguarded by increasing the proportion of their representatives to such an extent that their rights could be successfully protected by combination. In spirit, at least, if not according to the letter of the law, the Colonial Secretary sought to satisfy the condition laid down by the legislature of New South Wales, without the infliction of an injustice upon the weaker sister states.

It may seem somewhat singular that the Committee, when confronted with the difficulty of reconciling these two conflicting principles of government, did not have recourse to the simple expedient of the American constitution,—the establishment of two houses. The explanation is obvious. The federal proposal had already been criticized in the colonies as a cumbrous piece of machinery to accomplish a simple purpose, and to have set up a more complete federal organization would have aggravated the evil by making the operation of the federal legislature more difficult. Though the powers of the general assembly were important, still its position was tentative, and its functions might seldom be called into play. It was thought under the circumstances, that the simpler the machinery, the more acceptable it would prove to the colonists and the more workable in practice. Moreover under the liberal concession by which the general assembly was authorized to alter the number of its delegates or otherwise amend its constitution subject to royal approval, ample provision was made for such further elaboration and improvement of the existing constitution as time and

experience in the working of the government might show to be desirable. Under this provision it would have been easy for the Assembly to take on the full character of a federal legislature, when the feelings of the colonies should desire such a change. It would be indeed much simpler and safer to gradually develop the complete intricate organization of a federation, with the growth of political experience among the people, than to essay a difficult experiment in government with a legislature new to the enjoyment of representative institutions. As the most delicate and complex species of government, the federal system especially demands the most careful handling and the broadest constitutional knowledge. His Lordship was well-advised in refraining from an ambitious program of federation, ill-adapted to the needs of the Australian colonies.

The powers of the general assembly were strictly defined in the report. Beyond the ten enumerated subjects its jurisdiction did not extend, but within these limits its legislative authority was as full and unrestricted as that of any sovereign body. Provided the subject were within its competency, the Assembly enjoyed an unlimited choice of means of attaining its object with respect thereto. All its powers, without exception, were of a general intercolonial character, i. which the interests of the colonies were supposedly common. Some of these functions, as *e.g.*, those in respect to a uniform tariff and a supreme court were imperial in their origin, that is to say, that heretofore the right of legislating in respect thereto had belonged to the imperial parliament. Upon these subjects it was felt that an Australian assembly was a much more competent organ of legislation, than the parliament at Westminster even with the best of intentions could ever hope to be, especially when the latter was anxious to relieve itself of a burdensome responsibility. But the majority of the powers conferred, were of a strictly colonial character; they were subjects over which the local legislatures already possessed statutory authority, but upon which they had either refrained from legislating, or their attempted enactments were faulty and imperfect through want of extra-territorial jurisdiction.

The transfer of these matters to the general assembly did not mean that the federal government was constituted the delegated agent of the local legislatures in respect thereto. By virtue of the imperial grant, the powers of the Assembly were

as inherent and as autonomous as those of the provincial legislatures. It was intended to set up a new and independent organization endowed with powers sufficient to secure uniform legislation and common action upon questions of general Australian interest, and possessed of sufficient resources to undertake many important objects of national concern, such as the extension of the facilities of communication, which at present were to a large extent unattainable by the feeble efforts of the separated provinces. The functions of the general assembly were designed to be complementary to those of the local legislatures, and not irreconcilable with them. The powers and privileges of the latter were unaffected, save in so far as it was found necessary to expressly curtail them in order to constitute the new government. We are not informed whether the enumerated powers of the general assembly were intended to be exclusive or not, but in the absence of any such provision, and from the nature of the subjects of federal legislation, as well as from the infrequency of the meetings of the House of Delegates, it may be concluded that they were concurrent with those of the local legislatures until such time at least as the general assembly should cover the whole field of its jurisdiction with its own legislation. The formation of the federal government, so far then from contracting the rights and privileges of the people of Australia, considerably extended the limits of colonial autonomy, by supplementing the existing provincial powers by the express bestowal of some imperial functions. True, the legislative competency of the colonies was of necessity somewhat restricted, but the loss was more than compensated by the gain in the federal jurisdiction of the general assembly.

The legislative powers of the Assembly, as set forth by the Committee, show a considerable expansion over those originally suggested by the Secretary for the Colonies. The sense of the utility of a federal legislature had grown with the maturing of His Lordship's scheme. But this amplification did not represent any mere political speculation on the future expansion of the functions of the federal government, or the development of a higher conception of Australian unity, or any conscious imitation of the enumerated subjects of the American constitution; on the contrary the new powers, each and all, arose out of the existing problems of Australian administration. In comparison with the extensive almost sovereign

powers of modern federal governments, the functions of the Assembly appear restricted and experimental, though they embraced some of the most important subjects of national legislation.

The legislative functions of the House of Delegates may be grouped into several distinct classes of powers according to their subject matter. There are, First, the commercial powers to be found in sections, 1, 4, 5 and 8, dealing with the subjects of customs duties, lighthouses, shipping dues, weights and measures. The question of a uniform tariff, it will be observed, occupied the place of honor in the enumerated list, as it did in importance in the minds of the Committee. Second, powers in regard to communication,—sections 2 and 3, to which may also be added section 4, which falls partly within the first and partly within the present category. These clauses were concerned with the improvement of postal facilities, and the means of commercial and social intercourse between the colonies and with foreign countries. It was to these two groups of subjects that the attention of the Australian federal leaders, as also of Lord Grey, had been directed in the first instance.

Third, the judical functions. A new subject of federal jurisdiction is presented in sections 6 and 7, relative to the constitution of a General Supreme Court, the determination of the extent of its jurisdiction and the mode of its procedure. Up to this time the subject of a federal judiciary had been forced into the background by the more pressing questions of legislative and executive unity. There had been no reference to the creation of such a body in the original proposals of either Mr. Thompson or Earl Grey, though the want of a general appellate court had been felt in all the colonies. For this idea the Committee were doubtless partly indebted to the precedent of the American constitution, which in providing for the organization of a federal judicature made one of the greatest of modern contributions to the theory of political science and the practice of constitutional government. This feature of the United States constitution had made a deep impression on English political thinkers and parliamentarians, who alike regarded it as one of the essential characteristics of a true federation. But the institution of a Supreme Court in this case seems to have been primarily the product of Australian conditions rather than a deliberate imitation of the American federal judiciary; to have been

due to the necessity of organizing an efficient system of general appellate jurisdiction within Australia, in response to the desires and requirements of the colonies themselves.[1] The indefiniteness of the language of the report does not enable us to finally determine whether the jurisdiction of the Supreme Court was intended to be alternative or conjunctive, to be original or appellate, or both. Nor have we any means of ascertaining what was the nature and scope of the jurisdiction to be assigned to the Supreme Court,—whether designed to embrace only matters of a strictly federal character or to extend to provincial subjects as well. The character of the original jurisdiction of that body is especially left in the deepest obscurity. But whatever may have been the nature and the jurisdiction of the Supreme Court, there can be little doubt but that the primary purpose of its constitution was to act as a general appellate court from the inferior tribunals of the several provinces. The chief significance of the Court both at that time as also in the history of the federal judiciary is to be found in this appellate jurisdiction. As a court of appeal the Australian Supreme Court was apparently constituted on entirely different lines, and intended to subserve different objects from the American Supreme Court. The latter is strictly a federal tribunal, dealing only with cases arising out of the laws or constitution of the United States; it is federal in its nature, its functions and its jurisdiction, separate from and independent of the judicial systems of the several states. But the Australian Supreme Court on the contrary, was designed to be the national complement of the existing colonial courts; to act as a regular court of appeal from provincial courts and apparently also in provincial cases. Its appellate jurisdiction was not federal, but national; it was to be the highest Australian tribunal. Its purpose was twofold, first, to supply the deficiency of a general court of appeal from the ill-qualified provincial tribunals and, second, to obviate the expense and the difficulty of appeals to the Judicial Committee of the Privy Council. The practical inconvenience in the administration of justice in the several colonies, and not a theoretical aspiration after a federal judicature, as a scientific complement to the legislative and executive organs of the federal government, prompted the establishment of the

[1] Statement of Earl Grey in debate in the House of Lords on the Australian Colonies Bill, Hansard, 1850, vol. 110, p. 1220.

proposed Supreme Court. The name of the court itself,—"General," not federal Supreme Court,[1] and the absence of any provision for the creation of inferior federal tribunals would seem to show, that the functions of the Supreme Court were regarded as appellate from provincial courts only.

As the general assembly was authorized to "determine the jurisdiction of the Supreme Court," it might seem at first as if it could not only regulate the exercise of original or appellate jurisdiction within Australia, but such is the generality of the language, that it could also cut off the right of appeal to the Queen in Council, and thus make Australia judicially independent of the mother country. But the power of the Assembly in this respect must be read subject to section 36, by which authority was conferred on Her Majesty in Council to determine conflicts of jurisdiction between the Assembly and the legislatures, and moreover should be construed in accordance with the principles of the imperial constitution, by which such a grant would not be held, without express language, to restrict the judicial exercise of the royal prerogative to entertain petitions for the redress of grievances from any citizen of the empire.[2] Under this clause it would not have been possible for the central legislature to determine the conditions upon which the Judicial Committee of the Privy Council could exercise its appellate jurisdiction, as this would be equivalent to depriving the Crown of one of its most exalted and beneficent prerogatives. The judicial proposals of the Committee raised the whole question of the constitutional character of the proposed federation, and its relation to the colonial governments on the one hand, and to the British on the other.

The Fourth class of powers, we may call the delegated powers. They are contained in the ninth clause which, for clearness, we may again quote, "The enactment of laws affecting all the colonies represented in the general assembly on any subject not specifi-

[1] We would not desire, however, to lay too much stress simply upon the use of the name.

[2] An interesting attempt was made by the parliament of Canada, in an act for the establishment of a Supreme Court for the Dominion, to make the judgment of that Court final and conclusive, but it was held that, in the absence of an express inhibition of the right of appeal from colonial courts, Her Majesty's prerogative to receive and determine petitions as of grace was not impaired by such legislation. Todd, Parl. Government in the British Colonies, p. 223.

cally mentioned in the preceding list, but on which the general assembly should be desired to legislate by addresses for that purpose presented to them from all these colonies." This omnibus clause was designed to supply such omissions in the enumerated powers as the experience of the general assembly should reveal. It was realized, that in time the powers of the federal government must necessarily expand with the growing intimacy of the social and commercial relations of the colonies. The right of initiating federal legislation on unenumerated subjects was left exclusively to the colonies represented in the Assembly; but to secure this power from abuse, and in recognition of the federal character of the constitution it was further provided that their action must be unanimous. It was indeed a singular anomaly, that in this case the power of constitutional amendment was made much more difficult than that of the organization of the constitution. The latter, as we have seen, required the consent of but two of the colonies to call the general assembly into being, whereas the former demanded unanimity of action. This clause was probably inserted to protect the smaller states against the legislative aggrandizement of the larger, through the agency of the general assembly. No limitation was placed upon the nature of the subjects which might be so delegated, save that the laws must affect all the colonies, a provision sufficiently elastic to permit of an almost unlimited extension of federal authority, were it not checked, as it assuredly would have been, by the unwillingness of the provincial legislatures to surrender any of their powers, and from the necessity of all such legislation being general and uniform in its nature and application, and not merely local in character.

The Fifth, and last class of powers were the financial, contained in clause 10. The control of the public purse is the motive of government. Without some means of providing for the expenditures incident to its administration, the new federal government would have been severely handicapped at the very outset, if not reduced to helplessness. The colonial legislatures could not be trusted to voluntarily appropriate on their own initiative, the funds necessary for the maintenance of a body whose disbursements they could not directly control, and whose legislative and administrative policy they might not approve, and towards the exercise of whose powers they might feel a

certain amount of suspicion and jealousy. The Committee's proposals were not well adapted to secure to the new government an independent or an assured source of revenue. The general assembly was authorized to appropriate to its objects an equal percentage from the revenues received in all the colonies in virtue of federal legislation. Put into actual practice this provision meant that the expenses of the central legislature would be met by an assessment on the federal customs, postal charges and shipping dues of the several colonies.

Although the general assembly was equipped with a reasonable complement of legislative powers, yet there were some few omissions which cannot fail to attract attention. The omission of any reference to the foreign relations of the Australian colonies is explainable on the ground of their colonial status, and the absence of a colonial foreign policy. The social and economic problems, which play the largest part in modern political life, had not yet assumed a crucial phase in the new colonies; it was the age of individualism, not of socialistic activities. It is however, somewhat surprising at first, though truly significant of the tone of thought of the day,[1] to find no mention of the subject of defence, which subsequently played such an important part in the federal movement. The explanation is, of course, that at this time, defence was looked upon as properly an imperial undertaking, for which the home government was primarily responsible. From the omission of any provision enabling the federal government to borrow money, it might be supposed that the Committee expected the federation to thrive without the luxury of a national debt, or, as is most probable, that the expenses of the general assembly should be provided for in advance by the colonial legislatures without the necessity of resorting to loans. But only as a public borrower, could the Assembly meet its obligations in case the provinces were in default in the payment of their federal contributions. Possibly the right to borrow may have been regarded as an implied power, inherent in the very nature of government.[2] It is more singular to find no reference to the matter of land regulation,

[1] Egerton, British Colonial Policy, p. 315.

[2] "A constitution establishing a frame of government, declaring fundamental principles and creating a national sovereignty, and intended to endure for ages and to be adapted to the various crises of human affairs is not to be interpreted with the strictness of a private contract." Juilliard v. Greenman, 180, U.S., 421.

a subject of the keenest interest in the Australian colonies, and one, moreover, on which there was great need for uniform legislation to prevent provincial cut-throat competition, now that the crown lands were about to be handed over to the control of the colonists. An attempt was subsequently made, as we shall see, to supply this defect. The omission of so many of the familiar commercial functions of modern federal governments such as those in respect to currency, banking, negotiable instruments, bankruptcy, copyrights, patents, and corporations, upon which the experience of the present day has demonstrated the advantage of statutory uniformity, was due to the modest conception of the character of the union in the minds of the framers of the constitution. Moreover, only an Assembly which was a free representative body could safely undertake such extensive functions of legislation. The codification of a legal system, the unification of the laws governing the commercial and social relations of the people, are tasks of infinite intricacy and delicacy beyond the cognizance of a mere congress of delegates. The powers of the Assembly were necessarily simple and limited, because its constitution was tentative and its purpose confined to the immediate practical necessity of securing uniform legislation on a few general subjects of common concern.

A most casual survey of the report reveals many similarities to the American constitution, such, for example, as the familiar federal provisions for the exercise of enumerated powers by the central government, for the enactment of uniform customs, for the organization of a federal judiciary, &c., but the most of these resemblances are superficial rather than real. The report was a serious though imperfect attempt to devise a loose but efficient federal organization adapted to Australian political conditions. The attempt was necessarily imperfect, not only on account of the Committee's unfamiliarity with the existing state of provincial affairs, but also by reason of the many fundamental difficulties in the questions presented. Only the most consummate statecraft could have satisfactorily settled the whole group of problems incident to federation, such as the nature of the federal government, the constitution of the legislature, the organization of the federal judiciary, the distribution of powers, the political and financial relations of the general and provincial governments, the location of the federal capital, and many other questions of an equally controversial, if not so fundamental a

character. When we find these problems baffling the political ingenuity of a generation of Australian leaders, it is no occasion for wonder that a small group of English functionaries should have partially failed at least, in a first attempt to draw up a modified form of federal constitution for a distant land.

The proposed constitution is an interesting type of a federal compromise, combining many of the features of a true federation with some of the characteristics of a federal council. It is no easy matter to determine its true juristic character, but it is probably an imperfect example of a "Bundesstaat" or federation. Both the federal and provincial governments appear to satisfy the test of a true federal union,—the test of legal competency, or "Verpflichtbarkeit durch eigenem Willen."[1] To the general assembly, as much as to the colonial legislatures, there was assigned by the constitution an independent legislative jurisdiction, within which its competency was unchallengeable. So far as their constitutional relations were concerned, the laws of each proceeded "aus eigenem Rechte." Neither the central nor the provincial governments could destroy or amend the constitutional form or the functions of the other. They were both the organs of the imperial government for the execution of the Australian will. The powers of the general assembly were not delegated; that body was not the instrument of the provincial governments for the realization of their common will; it was, on the contrary, an independent autonomous legislature. But its constitution was very immature, its functions were limited, its authority weak, and its organization imperfect. The Assembly was not worthy of the name of a federal parliament; it was a mere congress of provincial delegates. It is in respect to its organization, that the characteristics of a federal council are most marked: its equipment and governmental machinery was that of a mere consultative body. Although its legislative authority was inherent, and notwithstanding that its enactments presented the characteristic federal feature of operating directly upon the people, as well as upon the states, and were, moreover, enforceable through the General Supreme Court, still, for the execution of its legislation, and its administrative regulations, the Assembly was dependent upon the machinery of the provincial governments. Even its finances were not placed upon an independent self-supporting basis. The organization of the

[1] Jellinek, Die Lehre von den Staatenverbindungen, p. 34.

federal legislature was not in proper correspondence with its legal nature, and as the actual operations of a government, furnish the best conventional standard of judgment, as to the real political, as distinguished from the strictly juristic character of the government, it may be said that in practice the new federal organism must have approximated more nearly to a confederation or a federal council than to a true federation. The whole tendency of the Assembly, with the infrequency of its sessions, the limitation of its powers, the weakness of its authority, and the constitution of its membership, would have been towards the reduction of its status to a body of instructed delegates, in short to a "Bundesrat," as opposed to a federal parliament.

This report was adopted by the Cabinet on the advice of the Colonial Secretary, and forwarded to the governors of the Australian colonies, together with a despatch[1] announcing the intention of the Ministry to submit a bill to parliament along the lines of the recommendations of the Committee. So pleased was His Lordship with the character of the report, that he expressed the opinion that, thanks to the labors of the Committee, the bill had been rendered as "perfect as possible." Under these circumstances, he apparently regarded it as unnecessary to await the expression of colonial opinion upon the matter, for on June 4th, 1849,[2] before the colonists had had an opportunity of seeing the text of the report, Mr. Hawes, the Under-Secretary for the Colonies introduced in the Commons, "The bill for the better government of the Australian colonies." This premature action of the Colonial Office was not dictated by any intent to flaunt the wishes of the colonies, but rather from a desire to speedily satisfy the demand of Port Phillip for separation, and the clamour of the colonies for more liberal institutions and, it must be admitted, from a strong ir pulse to press to fruition a scheme which, for two years, had been under discussion at home and in Australia. Earl Grey was attentive to the voice of colonial residents in England, and showed a commendable spirit of enquiry and consideration towards Australian views. Mr. Jackson, the Tasmanian delegate, not only exchanged opinions with the Colonial Office in regard to the proposed constitution,[3] but fully

[1]May 24, 1849. N.S.W., V.P.L.C., 1849, vol. 1, p. 704. G.B.P.P. 1849, vol. 35, p. 33.
[2]Hansard, 1849, vol. 105, p. 1125.
[3]The Launceston Examiner, Oct. 20, 1849.

discussed the provisions of the bill in a private consultation with Mr. Hawes, and was encouraged to express his views upon the course of the measure during its passage through parliament, —a privilege of which he availed himself, not without effect upon the shaping of the bill. Mr. Scott, the agent of New South Wales, was likewise active in keeping in touch with the intentions of the Colonial Office and in pressing his views of the situation upon the government at home and at Sydney.

The clauses of The Australian Colonies Bill dealing with the subject of uniform customs and the constitution of a general assembly, are a fairly faithful copy of the recommendations of the Committee of the Privy Council. But in some important respects, namely in the matter of differential duties, the supremacy of federal legislation, and the determination of conflicts of jurisdiction between the federal and provincial legislatures, new material was incorporated in the bill.

The sections[1] relating to the federal constitution are the following,—sections 29 to 36 inclusive.[2]

The first of these paragraphs was designed to carry into effect the opinion of the Committee in respect to an imperial customs act for the Australian group, by proposing a uniform federal tariff, the details of which were set out in an annexed schedule. This bold attempt was, however, an unfortunate illustration of zeal without knowledge. The courage of the Committee ran away with its discretion, for however advisable it might be to enact a uniform tariff, an imperial body was manifestly incompetent, as well as conventionally debarred from fixing the minute and intricate specifications of a customs list. Such were the complications of the problem, that it was doubtful if even the Australian general assembly could frame a measure suited to the conditions, and acceptable to the governments of all the colonies. The imperial tariff was, however, not to come into effect until one year after the proclamation of the act in New South Wales; meanwhile, the existing colonial customs

[1]Section 28 repeals in respect to the Australian colonies so much of an imperial act, 9 & 10 Vict. c. 94, for the regulation of the trade of British possessions abroad, as authorized Her Majesty by order-in-council to give directions and make regulations in respect to the same. The effect of this provision was, with some slight qualifications in favor of imperial rules relative to trade and navigation, to place the customs systems of the colonies under their own control. Jenks, The Government of Victoria, p. 164.

[2]See Appendix A.

would remain in force. The clause further provided for unrestricted freedom of intercolonial commerce, and determined the mode in which the act was to be made operative throughout the colonies. It was a most unfortunate circumstance, that the wise provision for inter-Australian free trade, which would have readily commended itself to all parties at home and to most of the colonists, should have been bound up with an ambitious but futile attempt at tariff legislation. In His Lordship's view, the desirability of the end justified the means employed, but he failed to realize how unfitted was the instrument to accomplish the end, and how strongly the sentiment of colonial autonomy opposed such interference.

The 30th section provided for the appointment of a Governor-General of Australia, the summoning of a general assembly, the constitution of the House of Delegates and the rules of its proceedings, all of which matters were regulated in strict accordance with the recommendations of the Committee. The two unsettled questions of the nomination of the Governor-in-Chief and the time and place of convening the general assembly were still left open, probably from a desire to avoid provincial jealousy at the very outset of the federation. The selection of a federal capital was a particularly delicate subject. With the matter left in suspense, the clause was capable of a double construction. New South Wales naturally interpreted the omission of any express provision, as a tacit recognition of her premier position, while the other colonies were prone to seize upon the language of the section "at such place within any of the said colonies as such governor shall from time to time see fit to appoint," as supporting their view of a migatory Assembly. It will be noticed that the Committee's schedule of representation has been omitted from the bill, but as the latter adopted the same basis of calculation, the excision was a mere matter of form of no political significance.

By the following section provision was made for the admission of Western Australia into the union upon the establishment of a legislative council within that colony. Her representation in the Assembly was not governed by the general principle, which applied to the other colonies, but was left to the discretion of the Queen in Council. The sparseness of the population, and the difficulties of attendance furnished the probable occasion for this exception. As the isolated settlers were a mere handful in

comparison with the population of the eastern colonies, it would have been scarcely fair to apply the same rigid rule of representation to them. It is quite inconceivable that the imperial government should ever have been tempted to use its power under this section, to swamp the opinion of the other colonies, but the language of the clause was so loosely framed as to leave a most dangerous and arbitrary power within the control, and at the discretion of Downing Street.

Paragraph 32 gave the general assembly control over its own elections, the business of the House, the number of the delegates, and generally authorized the amendment of the constitution of the Assembly, subject to the ratification of the home government. The effect of these provisions was to equip the Assembly with the general rights and privileges of a legislative body, and to endow it with a limited constituent power. In most, if not all federal governments the right of constitutional revision or amendment is carefully safeguarded by some special machinery outside the course of regular law making procedure. The power of changing the representative system, in particular has been hedged round with careful restrictions, in order to preserve the rights and the influence of the weaker states. But in the Australian bill the contrary policy was adopted, of leaving the matter to the free determination of the Assembly itself. For the protection of their right to a fixed constitutional, as opposed to a proportional representation, the smaller provinces would have to look to the imperial government to withhold its sanction to any inequitable amendment of the basis of apportionment. Even the Committee, it is clear, had not yet apprehended the federal nature of the constitution they desired to establish. The Assembly was to them, much more of a parliamentary body, than of a federal organ, and conceiving of it as such, they naturally endowed it with the attributes of the ordinary legislature in respect to its own system of representation. When once the principle of proportionate representation had been recognized, as the proper basis of apportionment, it was necessary to provide for its further application to meet the requirements of the growing population. The parliamentary character of the general assembly is also to be seen in its liberal power of varying or revising its own constitution. To the modern federalist, this would appear a most dangerous anti-federal clause, since under the guise of a mere amendment

of its organization, the Assembly might introduce such radical changes in the form of the constitution, as to practically revolutionize the character of the government. It is doubtful if a federal constitution has ever been framed with so few express federal safeguards, or guarantees for the maintenance of state rights, or in which so much reliance was placed on the honor and justice of the states, and of the federal parliament.

The most important section of the bill,—section 33 enumerates the powers of the federal assembly, which though generally the same as those set forth in the Committee's report, show some slight alterations of considerable importance. One new subject is added to the list of powers within the federal jurisdiction, "the regulation of post offices" within the colonies. The control of the post offices and the conveyance of letters are inter-dependent branches of postal administration, which could not well be assigned to different agencies without rendering nugatory any attempt to secure uniformity and efficiency of management. The power was essentially one of federal character, requiring a common system of legislation and administration. In including the regulation of the postal system within the functions of the Assembly, the bill was supplying a manifest omission in the report of the Privy Council.

A second alteration will be found in respect to the financial powers of the federal legislature. It will be observed that there is a difference between the language of the bill and the report of the Privy Council, in regard to the source of the appropriation of revenue for general purposes. According to the recommendation of the Committee the federal appropriation was limited to such revenues in the several colonies as were received "in virtue of any enactments of the general assembly of Australia." This restriction was a very natural one, in view of the requirements of the local treasuries. Moreover in requisitioning a percentage of the customs or other federal revenue, the general assembly appeared to be claiming only a portion of that to which it might with some show of justice, put forward a plea of absolute ownership. The colonies would naturally be jealous of any similar demand upon strictly provincial sources of revenue, the product of provincial legislation. In their view the latter demand would resemble a raid on the local exchequers, more than a legitimate assessment for federal objects. In the bill, this qualification is withdrawn, and in its

place is substituted a clause limiting the federal requisition to revenues " received in all the colonies and subject to be appropriated by the legislatures of such colonies respectively." It is possible that the Committee were of the opinion, that a percentage on the revenues from federal legislation would prove insufficient to meet the expenses of the new government, and that a broader source of requisition must be secured. At any rate the provincial revenues from whatever source derived were now, subject to legislative appropriation, thrown open to federal assessment. This clause involved a serious interference with the right of the colonies to the exclusive control over their own revenues.

The greatest difficulty of interpretation arises in connection with these financial clauses. The recommendations of the Committee were not clear, and the language of the present bill still left the matter in doubt. It might seem at first as though the general assembly were provided with an independent source of revenue through its power of legislating in respect to customs, etc., but in reality, it does not seem to have been entitled to its own taxation, but was a mere federal agency for the collection of provincial revenues. The amounts raised in virtue of federal legislation were not to find their way into the general treasury for the satisfaction of the expenses of the federal government, but were to be transferred or deflected in some undesigned manner, into the provincial exchequers to supply the demands of local administration. The finances of the colonies would be affected only in so far as each colony's proportion of the federal taxation fell short of or exceeded the amount formerly raised under the authority of provincial legislation over customs and other sources of revenue. On the other hand, the federal government was apparently not so favorably situated. It was deprived either wholly or in part of its natural source of income provided by its own legislation, and to meet the legitimate expenses of its administration was compelled to look to the annual parliamentary subsidies of the several legislatures. The Assembly had a right to demand such a contribution, but no means of enforcing its payment should the local legislatures refuse compliance with the requisition. It was in the position of a helpless eastern tyrant with an unlimited right of exaction but no power to collect. There was all the greater danger that the provincial legislatures would be tempted to use their superior power to humiliate the general government, of which they

would be naturally jealous, from the fact that the right of assessment for strictly federal objects was unbounded, and moreover uncoupled with any direct responsibility to the colonies. The local parliaments were in the position of paying out money to a federal organ, whose policy and expenditure could be more effectively restrained by the withholding of the sinews of war, than by the criticism or protest of their representatives in the Assembly. This provision embodied some of the worst features of public finance,—the confusion of federal and provincial revenues and taxation, and an uncontrolled administration of the public funds.

The next section qualifies the generality of the grant of power in the previous paragraph, in respect to the levying of custom duties, by prohibiting both the general assembly and the colonial legislatures from imposing any kind of discriminating duties. Neither the royal veto, nor the instructions of the Secretary of State had succeeded in wholly eradicating the reprehensible practice. Even the enactment of a uniform federal tariff would not have sufficed to put down the evil of foreign discrimination, as it would that between the colonies. His Lordship now had recourse to a more effective method of getting rid of this "bête noir," by inserting an inhibitory clause in the several constitutions, by which an absolute prohibition "ab initio" would be effected. The language of the section was made very comprehensive so as to cover all possible evasions by the grant of "exemption, bounty, drawback, or other privilege." The clause was framed with a view to being equally operative between the several colonies, as towards the outside world. The general assembly was restrained from favoring any one or more colonies by a system of unequal duties, and a general inhibition was laid against the levying of differential transportation charges by which the products or ports of any one colony might be favored at the expense of another. The section sought in short to put an end to the whole system of discrimination, whether by direct or indirect methods, whether intercolonial or international in its operation, whether immediately injurious to the relations of the colonies, or merely threatening to prove a serious hindrance to freedom of commercial intercourse.

Paragraph 35 contains two distinct inhibitory clauses. The first forbad both the general assembly and the local legislatures,

to levy any import duties upon supplies for the British army and navy,—an exemption in accordance with the uniform policy of the imperial military and admiralty departments. The second prohibition was of much more consequence both from the imperial and colonial point of view. It prohibited the imposition of any import or export duties, the grant or withholding of any trade privileges, and the levying of any shipping dues in conflict with imperial treaties. By this section, the unquestioned supremacy of the treaty making power of the Crown was secured against any repugnant commercial legislation of the colonies. It enabled the government at Westminster to dictate the commercial policy of the empire through its treaty making power, and to that extent to limit the fiscal freedom of the colonies in their relations with one another and with the motherland, as also with foreign countries.

The final section was devised to secure the preeminence of the legislation of the general assembly within the federal jurisdiction. In the report of the Committee there was but the bare implication that in case of a conflict of legislative authority between the federal and provincial governments, the laws and ordinances of the former should prevail. The question was now definitely settled by an express article, as in the American constitution, in favor of federal legislation. This clause further made clear a matter which had been left in some obscurity in the report, viz., that the enumerated powers of the general assembly were concurrent with and not exclusive of the existing powers of the provincial legislatures. The language of the section runs thus,—the legislation of the Assembly "shall control and supersede any laws, statutes, or ordinances in any way repugnant thereto which may be enacted by the respective legislatures." Until then there was some express federal legislation upon a subject within the enumerated list, the provincial governments were as free as heretofore to enact such laws as might seem to them desirable. But upon the exercise of the federal power previously held in reserve, or only partially made use of, the local statutes, to the extent of their repugnancy, were superseded by the new legislation of the general assembly. From the very nature of some of these powers, as for example the regulation of customs, it must have ensued that the first act of federal legislation would practically exclude all further provincial jurisdiction over the subject. In the case

of disagreement between the central and local governments regarding the limits of their respective competency, the question was to be referred upon petition of any of the legislatures, to the determination of Her Majesty in Council, or in other words to the decision of the Judicial Committee of the Privy Council. The effect of this provision would seemingly be, to endow Her Majesty with original jurisdiction in cases of constitutional conflict, and by implication to exclude the Australian Supreme Court from the cognizance of the most important class of cases which would naturally come before it. To deprive the Supreme Court of original federal jurisdiction in constitutional cases, would be to reduce it in practice to the level of an appellate court of general civil and criminal jurisdiction. It was probably thought that the colonial judiciary could not properly furnish a tribunal of sufficiently high juristic rank, and of such commanding influence and prestige, as to secure unquestioned respect for its decisions on matters of the most weighty import, affecting the very nature and limitations of the several governments,—matters moreover on which political feeling was apt to run high within and between the colonies.

This clause must be regarded as a qualification of the right of the general assembly under section 33, to determine the jurisdiction of the Supreme Court; the specific power conferred on Her Majesty in Council, superseding or suspending the general competency of the federal assembly to legislate in respect to this subject matter. The ordinary appellate jurisdiction of the Supreme Court in cases in which a question of constitutionality was incidentally involved, would apparently not be affected by this provision, since it is not easy to perceive by what means a private individual could be restrained from prosecuting his appeal from court to court up to the highest Australian tribunal. Nor would this section interfere in the slightest with the right of every citizen to carry his plaint to the foot of the throne. The right of petition granted to the legislative councils by this clause, would not affect the subject's right of appeal, or the sovereign's grace to allow it. It merely conferred a new power upon the legislative councils, by which they could secure a more speedy and efficient adjudication of constitutional controversies. It seems rather curious at first, to observe that no similar power of petition was bestowed upon the general assembly by which to vindicate its legal competency when called in ques-

tion by the legislation of the provincial governments. From this want of reciprocity it may be inferred that the danger of legislative aggression was anticipated only on the side of the Assembly, and that it alone would desire to encroach upon the jurisdiction of the local governments, or was thought capable of successfully doing so. But in fact the following clause of this section afforded the federal authorities sufficient protection against any possible provincial aggrandizement.

This clause strengthened the paramountcy of federal legislation by enacting that the judicial and administrative officers of the Australias should "confirm and give effect to the decisions of the said general assembly of Australia on any such questions until the decision of Her Majesty in Council" was promulgated in the colonies. The enactments of the Assembly went immediately into effect, notwithstanding that their validity was called in question by the petition of a legislative council, and remained in force in the several colonies until set aside by the decision of the Judicial Committee of the Privy Council. The provincial judiciaries and executives were legally obliged, not only to recognize but also to enforce such legislation, until its ultra vires character was established. The effect of this provision was to render nugatory any attempted nullification proceedings on the part of the provincial governments and their officers. No such circumstance of either a judicial or administrative nature, such as was presented in the celebrated American cases of Worcester vs. the State of Georgia,[1] and Abbleman vs. Booth,[2] could possibly arise with this compulsory clause in the constitution. This imperial act and the federal legislation passed in pursuance thereof, were made the supreme law of the land, as obligatory upon the several provincial governments as upon the individual citizens. Opposition was made illegal, and resistance a crime even in the eyes of the provincial judges and authorities.

In some respects there is a striking resemblance between this section and article 6 sub-section 2 of the American constitution, which reads, "This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States shall be the supreme law of the land, and the judges in every state shall be bound thereby anything in the constitutions or

[1] 6 Peters, p. 515. [2] 21 Howard, p. 506.

laws of any state to the contrary notwithstanding." In both articles there is the same intent to establish the supremacy of the federal constitution and laws, and to enforce its recognition upon the judiciary of the several states. But The Australian Colonies Bill went much further than its American prototype to assure this object, for whereas the latter left the question of judicial competency to pass upon the constitutionality of federal legislation, to be inferred from the spirit of the constitution, and only gradually developed the doctrine of legislative ultra vires and the judicial guardianship of the constitution,[1] the former, on the contrary, by express enactment conferred this supreme authority of constitutional interpretation of the respective limits of conflicting jurisdiction, upon Her Majesty in Council. The imperial Committee, warned by the many difficulties which the early American judges had experienced in attempting to develop and apply their doctrine of the inferential powers of the judiciary to control the legislature, wisely placed the matter beyond question, by providing for the constitutional exercise of this function by an absolutely impartial and learned tribunal, whose judgments were final and supreme over all the colonies.

The Australian bill likewise was far more explicit and far reaching in its provisions for the maintenance of the preeminence of federal legislation, and sought to make that supremacy unquestioned and unchallengeable by any authority within Australia. The provincial courts and administrative officers were especially restrained from refusing to recognize federal legislation, and sworn on the contrary, to "confirm and give effect to" the orders of Her Majesty in Council. Whereas in the sixth article of the American organic law, the constitution statutes and treaties are made binding upon the judges of the several states, in the Australian measure the application of federal laws was more extended, and applied to all "courts, officers of justice and others," in brief, to the whole judicial and administrative organization of the colonies. So explicit was the declaration of federal ascendency, and so effective the judicial means of maintaining it, that little opportunity was afforded for the advocacy and growth of a doctrine of state sovereignty, or the formation of a political creed and party based

[1]Rutgers v. Waddington, Thayer's Cases in Const. Law, p. 63. Marbury v. Madison, 1 Cranch, p. 137.

upon its assertion. However imperfect the organization of the new general government might be, however dependent it might prove in actual practice upon the will of the provincial authorities, yet the legal preeminence of the federal laws was placed upon a sure and established constitutional basis. The legislative supremacy of the general assembly was judicially assured, even though its political ascendency was not correspondingly provided for.

The debate in the House of Commons upon The Australian Colonies Bill awakened much more interest among the members than was usually bestowed upon colonial topics. In the course of the general discussion of the clauses of the constitution, the federal articles received a fair measure of consideration. The speech of the Under-Secretary for the Colonies, Mr. Hawes,[1] in introducing the bill, briefly set forth its principal objects, among which were "to create a federal union of the colonies, for certain general purposes," and to "attempt to place the colonial trade on an equal footing between colony and colony, so as to place them in their commercial relations with each other on precisely the same footing as the counties of England." He further recited the provisions in respect to the general assembly, and explained the mode of its constitution. Mr. Gladstone adopted a very critical attitude towards the federal proposal.[2] In his view "the greatest difficulty" arose over the constitution of a general assembly,—whether "the representation was to be based on population, or to be founded on the notion of treating the different colonies as independent political bodies." Although admitting that New South Wales "was entitled to a considerable share of the representation, it seemed to him, on the other hand, most important that the other colonies should enjoy a perfectly free and fair representation, and in no way could both objects be attained except by adopting the principle of a double chamber." Upon the subject of a uniform tariff, his opinion was more pronouncedly hostile, his liberal constitutional views upon colonial matters finding expression in a vigorous protest against parliamentary interference with the customs regulations of the colonies. He apprehended "danger in any such proposal, as it was an extension of the sphere of parliamentary legislation" to a subject upon which hitherto there

[1] Hansard, 1849, vol. 105, p. 1125.
[2] Jenks, The Government of Victoria, p. 146.

had been no direct intervention, although in some cases imperial sanction had been refused to colonial laws. "He entirely granted that uniformity in the colonial tariffs would be productive of great advantages, and he should be glad to see the different colonial constitutions embrace that view by legislation of their own." But in the absence of "intolerable inconvenience" to intercolonial commerce, or "overruling necessity, he should be extremely unwilling to extend the sphere of parliamentary legislation by direct enactment." A further novel objection was advanced, that as the power of altering the uniform tariff was in the hands of the general legislature, it might abuse its constitutional authority by the "enactment of one tariff for New South Wales and another for Van Dieman's Land, as there were different duties on spirits in England, Scotland and Ireland." But in this case, the analogy of British finance led Mr. Gladstone to conjure up a suppositional bogy, for even admitting that the general assembly would be tempted to impose a system of differential colonial duties—an almost inconceivable assumption, still a more careful perusal of the terms of the bill would have shown, that such a contingency was provided against under clause 34, forbidding the imposition of intercolonial discriminatory duties. In criticising the contingent character of the Assembly, Mr. Gladstone stood upon firmer ground, for it certainly seemed somewhat unreasonable, as set forth in his argument, to create a constitutional organ which might never be called upon to exercise its functions. Nor was he forgetful of the primary consideration, which should be shown to colonial opinion in the matter of the framing of the constitution, and rightly anticipated that the imperial tariff, with its manifest neglect or disregard of Australian sentiment, would arouse no small discontent in the colonies. In concluding his objections to these features of the measure, he remarked, "The uniform tariff might consequently remain in force for a considerable time, and it would probably excite great jealousy and irritation of feeling among the colonists, and seriously mar the good which this proposed measure would be understood to confer."

Mr. Gladstone was the only speaker to give this feature of the constitution any extended attention, though some other members briefly alluded to it in the course of the general discussion. Mr. V. Smith shared the opinion of Mr. Gladstone in regard to the difficulty of devising a satisfactory system of

representation for the general assembly, but he went much further, in casting grave doubt upon the utility of a federal legislature at all, "for he believed that the distances which it would be necessary to travel, and the difficulties of communication would render it much less easy to work in Austr.lia than it was in the United States." Mr. McGregor, on the contrary, expressed the view that "no difference of opinion would exist regarding the policy of" the federal provisions. He conceived of the functions and character of the Assembly in an entirely different light. "With respect to the tariff, he apprehended that each colony would have the power to regulate the scale of its own tariff, the federal government only interfering to see that the measures of one colony did not interfere with the interests of another." It is very evident that Mr. McGregor had not mastered the details of the constitution of the Assembly, in thus ascribing supervisory functions to a distinctively legislative body.

On June 11th the bill received its first reading in the Commons without debate,[1] and was put down for a second reading on the 18th of the month. Owing, however, to an informality in the presentation of the bill,[2] pointed out by Mr. Gladstone, the government was under the necessity of withdrawing the measure, but at the same time, announced through the Under-Secretary, their intention of immediately introducing a similar but less faulty bill, so that no unnecessary delay would ensue. Whereupon Mr. Gladstone stated, that if Mr. Hawes purposed to move the House into committee for the purpose of submitting an imperial tariff for the Australian colonies, he could not expect that the measure would go through without careful discussion and criticism. Mr. Adderley also gave notice of his intention of moving a set of resolutions by way of amendment to the bill. Shortly after, The Australian Colonies Bill No. 2, "so-called as a matter of form," was presented to the House and received its first reading on June 26th, pro forma.[3] The important character of the measure, and the late stage of the session, rendered it desirable that the bill should be pressed on as rapidly as possible. It was, however, several

[1] Hansard, 1849, vol. 105, p. 1368.

[2] The informality consisted in the violation of the standing order, by which every bill relating to trade must first be considered in committee of the whole House.

[3] Hansard, 1849, vol. 106, p. 792.

times postponed on the days fixed for discussion, notwithstanding the efforts of several of the members to draw out a declaration of the government's intention to proceed with the bill. The Ministry found itself in an embarrassing position. The protracted discussion of the second reading of the English Criminal Bill wasted away the declining days of the session, and the House showed a marked unwillingness to take up the consideration of this important colonial measure at so late a period. The mass of the members were largely indifferent, or thinking mainly of the approaching escape from parliamentary duties, while the opinions of those who were most interested in colonial questions, were unfortunately much divided. Some strong notes of opposition had already been voiced against certain features of the constitution, and, as the subject afforded unlimited scope for political speculation upon the general principles of government, the discussion promised to be long drawn out. It is at such a period as this, when the House is impatient and divided in its views, that the power of a compact and resolute minority is most pronounced, if not decisive. They can easily block a measure, if not defeat it; and in this case they were determined to accomplish that purpose.

But another difficulty had presented itself in connection with the framing of the bill. The imposition of an imperial tariff had already evoked hostile criticism which threatened the defeat of the proposal, and now the alert watchfulness of Mr. Jackson detected a blunder in the provision for a federal tariff, in failing to preserve the privileges of the bonding system, the loss of which would inflict a serious blow upon the commerce of the colonies.[1] He brought the matter to the attention of the government, and the correctness of this position having been endorsed by Mr. Sargeant Merivale, to whom the question was referred for legal advice, His Lordship was compelled to change his program in respect to this feature of the measure. In a debate, raised by Lord Monteagle, in the House of Peers, July 2nd,[2] on the subject of the proposed Australian constitution, Earl Grey announced a modification of the policy of the government upon this question, with a view to promoting the passage of the bill that session.[3] To that end it was "pro-

[1]The Launceston Examiner, Oct. 27, 1849.
[2]Hansard, 1849, vol. 106, p. 1115.
[3]Ibid, p. 1120.

posed to make a material alteration" in the bill by "the omission of certain clauses which would have occasioned much obstruction to its course in the House of Commons, the clauses, namely that created a common tariff among the colonies. He still thought that there ought to be a common tariff, and that it would much facilitate trade among the colonies, but he found that it could not be created here without creating also the detailed machinery necessary to carry it out, and, as it was never intended that that portion of the act should come into operation till one year after, there was ample time for the colonies to agree on that subject, and to introduce a measure, if they thought proper to give it effect." Lord Stanley pointed out in reply,[1] that this union sanctioned a novel principle in legislation, by which it would be possible for a minority to coerce a majority, and that by this means, New South Wales, a wealthy and populous colony could, by securing the co-operation of one of the smaller provinces, succeed in absorbing the other colonies against their wills. He suggested that certain objectionable features of the bill be omitted, or otherwise on account of the lateness of the session, it must be either dropped or rejected.

Meanwhile the few friends of Australia at home had not been inactive. Mr. Jackson was pressing upon Lord Grey the desire of the colonies for the immediate enactment of the bill, and at the same time was bringing his influence to bear upon such of the members of the House as were interested in Australian affairs, to induce them to support the bill, or at least to withdraw their opposition to its passage.[2] On two occasions he carefully examined every clause of the measure with Sir. William Molesworth, but that stalwart champion of colonial freedom, together with several other parliamentary friends of Australia, would agree to support the bill only "on condition that the municipal and federal clauses were withheld," as he was convinced "that the question of a federal union should at least be postponed for more mature consideration." Molesworth's attitude was not without influence upon the doubtful members of the House, some of whom, not being familiar with the federal question, were naturally opposed to committing themselves at once to any positive action, and accordingly sought to secure

[1]Hansard. 1849, vol. 106, p. 1128.
[2]The Launceston Examiner, Oct. 27, 1849.

a postponement of the measure till the following session; while, in the minds of others, who might otherwise have been prepared to give a hearty support to the government's bill, doubts had arisen regarding its utility, on account of the presence of the questionable federal and district council sections. Fearing that the opposition to, or suspicion of these two clauses might defeat the measure, Mr. Jackson inquired of the Colonial Secretary "if His Lordship felt disposed to waive that part of the bill which provided for these institutions," in order to assure the certain passage of the bill that session. But Earl Grey "expressed himself inflexible on these points, considering them essential to the character of the measure," and particularly emphasized the permissive operation of the clauses, as removing any possible objection to their enactment on the score of arbitrary action towards the colonies. He had, however, in consideration of the general criticism, thought it best to omit the imperial tariff provisions of the bill, and with that modification it would, in his opinion prove satisfactory to parliament, as well as to the colonial public.[1] Mr. Jackson expressed his regret that the objects sought to be attained by this clause had been abandoned,[2] but comforted himself with the assurance, that but for this sacrifice, the bill would have required such material amendment in its tariff clauses, that the enactment of the whole constitution would have been placed in jeopardy for that session. He was in hopes, however, that the conciliatory suggestion of Lord Stanley, that the two debatable clauses be withdrawn as the price of the passage of the bill, would even yet be favorably considered by the Colonial Secretary. It was at least certain, that the omission of these two sections would remove much of the opposition to the bill and greatly facilitate its acceptance.

While Mr. Jackson was exerting all his energies to secure the speedy enactment of the bill, Mr. Scott, the agent of New South Wales, was assuming an attitude of strong hostility to the measure. In a letter of August 1st, 1849,[3] to the Speaker of the Legislative Council of New South Wales, he unsparingly

[1]The Launceston Examiner, Oct. 27, 1849.

[2]As early as 1847, Mr. Jackson had expressed the opinion that "parliament would do well to prohibit the colonies carrying on a system of protective reprisals in the shape of duties on each others' products. Let the imperial parliament once for all proclaim free trade between all the colonies in respect to their own products." Simmond's Col. Mag., vol. 11, p. 331.

[3]The Sydney Morning Herald, Nov. 26, 1849.

criticised the bill "as a very crude and ill-digested matter to proceed from the government after the time and opportunity for consideration it had enjoyed." Of the proposed formation of a general assembly, he remarked, "This concession, great in appearance would, I fear have proved useless in practice, the distance of some colonies and the jealousies of others would effectually have prevented harmonious workings, especially as New Zealand, (as was to be proposed), were added to the number, and West Australia obtain a representative system. Two colonies have power to constitute the general assembly, and as the rates, duties, and imports were to be identical in all, conflicting interests would render the conference a source of constant discord rather than a bond of union." He illustrated this by a reference to the "much vexed question of the price of land." That subject had been omitted from the draft bill, but "it was however intended, I believe, to insert provisions regarding this in the bill, and to leave the matter to the discretion of the congress." The result would be to perpetuate a long standing grievance of New South Wales, by withholding from her the control of her own crown lands; it would be fairer to leave the matter in the hands of the local legislatures. "Thus in this material point as in other important questions, New South Wales would obtain litt'e real advantage, while her superior numbers, and the pro[illegible]ity of Sydney being the seat of the congress, would expose her to the odium and jealousy of the adjoining states." The weak and vacillating character of the policy of the Colonial Secretary was seen, in his opinion, in this "vague and indefinite" project of a general assembly "into whose imaginary hands he proposed to place the interests of a vast continent, before ascertaining whether the ingredients can be brought together, or even the elements exist." Mr. Scott's attitude was doubtless somewhat influenced by the fact of his general opposition to the colonial policy of Lord Grey. It was certainly quite unreasonable to criticise the system of proportional representation demanded by the local legislature, as a dangerous provision, calculated to expose the colony to the jealousy of the neighboring provinces.

The government wavered. They could doubtless have carried the bill by a considerable majority, by bringing party discipline to bear upon their luke-warm following.[1] But to have

[1]Letter from F. A. Jackson, London Agency, July 19, 1849. Launceston Examiner, Nov. 24, 1849.

resorted to such means on a measure, which was not a strictly party question, would have been a bad piece of political tactics, for the average member likes to pride himself on the possession of a certain amount of political independence, which he occasionally exercises on private bills and non-contentious legislation. It is the policy of the shrewd politician to encourage this mistaken sense of freedom, and to reserve severe coercionary measures by the whip, for more crucial partisan conflicts. Earl Grey was still desirous of pressing on the bill, though doubtful of its prospects, and accordingly informed the Lords that the intention of the government to persevere with the measure would depend upon the character of the discussion in the other chamber. In reply to a further question by Lord Monteagle, as to whether any clause would be introduced into the constitution for dealing with the land question, His Lordship stated, "that there was no objection to allowing the colonists by their representatives to form a federal body to deal with the subject."[1] Lord Stanley briefly criticised the federal provisions which transferred to the general assembly questions of no less imperial than colonial concern, and involved grave matters of constitutional import which could not be properly discussed at this late stage, especially as the new bill had not yet been printed in the shape in which it was to be passed. But the fate of the bill had already been decided by the Premier in the lower house. He was more sensitive to the varying moods of the Commons, and more amenable to the force of public criticism than his aristocratic colleague in the upper chamber. The policy of the Ministry in respect to proceeding with the bill, was left to the decision of the moment. On the same night, and but a few minutes previous to the declaration of Earl Grey, the Premier informed the House, that as the bill was certain to evoke much discussion, and would require to be sent very late to the Lords, who objected to the practice, the government were of the opinion that the measure should be withdrawn for the session. This slight discrepancy in the two statements can only be explained on the presumption that Lord Russell was convinced from the temper of the House, of the advisability of postponing the measure, and with his customary off-handedness, announced the fact without previous consultation with his colleagues.[2] The

[1]July 17, 1849. Hansard, 1849, vol. 107, p. 464.
[2]Letter from F. A. Jackson, London Agency, July 19, 1849. The Launceston Examiner, Nov. 24, 1849.

Cabinet, in truth, was not prepared to proceed with the bill that session, and readily seized upon the most plausible explanation for holding the measure over till a more convenient season. In this little incident we see an amusing attempt of the leaders of the government in the respective chambers, to shift the responsibility off on the other House; but in the case of the Colonial Secretary the postponement of the measure was undoubtedly an occasion of real disappointment. The decision of the Premier was of course, final, and Earl Grey was subsequently compelled to acknowledge that he saw no reason for presenting a new bill that session.[1] The efforts of His Lordship had again been defeated by time, the indifference of the House, the wavering support of his colleagues, the interference of injudicious partisans and opponents, and the conflicting desires of Sydney and Melbourne.[2]

The reception which greeted the report of the Committee of the Privy Council, and the imperial bill framed in pursuance thereof, manifested but little increase in public interest or popular favor on the part of the mass of the Australian people or their political leaders. The minds of the public had become slightly better familiarized with the idea of federation, for the growing popular interest in political matters, had led to a more general discussion of the subject in some of the colonies; still it cannot be said, that anywhere throughout Australia the question met with the attention it deserved.

In New South Wales a remarkable apathy prevailed upon the subject of the new constitution. Two public meetings in Sydney, called to discuss the matter, turned out to be complete failures, notwithstanding the vigorous efforts of the promoters to arouse some public spirit.[3] The explanation of the general quiesence is to be found, not so much in a feeling of popular indifference, as in the fact that on the whole the public felt themselves fairly well satisfied with the imperial proposals. They were principally concerned with the grant of more liberal institutions, and in this respect the proposed constitution was a great improvement on previous measures. With the withdrawal of the obnoxious provision for district council representation, the fears of the people were largely removed, and there remained

[1]The Launceston Examiner, Nov. 24, 1849.
[2]Turner, Hist. of Vict., vol. 1, p. 298.
[3]The Sydney Morning Herald, Dec. 19, 1849.

no special cause for apprehension from any of the other clauses of the bill, especially as the constitution exhibited a liberal spirit, and a desire to concede a reasonable part of the popular demands. The federal sections were never regarded as a salient part of the measure, but were treated with the general unconcern which greets a proposal which does not intimately affect the public, either by promising great advantage, or threatening dire calamity, or by arousing the selfish interests of particular groups. What is even more striking, the indifference of the electors was equally reflected in the Legislative Council. That body, which a year before had engaged in an interesting discussion on the subject, did not now deign to express an opinion on the matter, or even to consider it in their proceedings.[1] That the selected representatives of the public kept silent on such an important issue, is proof that no one of the provisions of the constitution bill awakened any considerable feeling of dissatisfaction or hostility, and that the colonists were generally prepared to accept the bill as a reasonable expression of their desires.

The press devoted some small space to the subject, towards which it maintained a somewhat critical attitude. The Sydney Morning Herald came out enthusiastically in favor of the commercial union of the colonies, and gave its cordial support to the federal provisions.[2] It heartily approved of the policy of a uniform tariff, and endorsed the means proposed by the Privy Council for effecting that purpose as, "a liberal and most judicious arrangement," and, speaking of the character of the federal union, and its marked resemblance to the American constitution, it somewhat proudly and grandiloquently exclaimed, "We shall be the United States of Australia." It even proposed to endow the general assembly with the additional power of determining the uni-or bi-cameral form of the constitutions of the several provinces. But The Herald subsequently adopted a more cautious, though still favorable attitude. In a review of the letter of Mr. Scott to the Speaker of the local Council, it cast grave doubt upon the effective operation of the chamber of deputies. "Mr. Scott's objections to the proposed general assembly are much better founded. Indeed if, as he intimates, New Zealand and West Australia are to be included

[1]Quick and Garran, Annot. Const. of Aust., p. 86.
[2]The Sydney Morning Herald, Sept. 15, 1849.

in the group over which the authority of such an Assembly is to extend, there can be no doubt that the scheme would be absolutely impracticable. Distant as these colonies are from Sydney, the presumed seat of the federal legislature, and irregular as are the means of communication between them, it would be impossible to find gentlemen who could afford the large sacrifice of time, and the protracted neglect of their private affairs, which the duties of congress would unavoidably demand. The same difficulty, though in lesser degree, would apply to South Australia and Van Dieman's Land, and many intelligent men are of the opinion that even in regard to these colonies the difficulty would be fatal to the plan." But The Herald still held firm to its conviction of the necessity of some bond of commercial union. Replying to the argument of Mr. Scott, that the conflicting tariff interests of the several colonies would "render the congress a source of discord rather than a bond of union," it remarked,[1] "This may to some extent be true, but still it is so desirable that there should be a uniformity of duties on the imports and exports of the several provinces, that for this purpose alone were there no other, a general assembly with all the inconveniences with which it may be beset would seem to be a wise and necessary expedient." It agreed that it would be better to leave the question of land regulation to the several colonies, as their "territorial diversification" would only breed dissension of opinion in the Assembly, and might produce inequitable legislation.

This editorial fairly reflects the views of the more intelligent body of the electorate. Public opinion had not undergone much modification since the federal proposal was first broached in Lord Grey's despatch. There was the same clear recognition of the need of some system of customs uniformity to prevent the growth of tariff divergencies and fiscal retaliation, and likewise an appreciative sense of the utility of a general assembly to accomplish this purpose. Yet at the same time there was withal, a serious doubt as to the practicability of a permanent federal legislature or government, for the management of their common affairs.

In the Port Phillip district the question of separation was still to the fore, outclassing in public interest all other matters. Postponement had only whetted the desire of the people for in-

[1] The Sydney Morning Herald, Dec. 1, 1849.

dependence, and they were more intolerant than ever of further delay.[1] The report of the Committee appeared to open up a certain prospect of speedy separation, and the introduction of The Australian Colonies Bill into parliament promised its early attainment. It was very unfortunate under these circumstances, that the federal proposal should have been mixed up with a question of more absorbing interest. To still further complicate matters, so as to prevent a clear expression of opinion on the federal issue, a serious divergence of view had arisen in the community, as to the best policy to be pursued in respect to the new constitution.[2] On the subject of independence, all were agreed, but one party feared to imperil the attainment of that end, by engaging in any constitutional conflict with Downing Street. To gain the boon of separation, they were prepared to accept, or at least not to oppose some of the other features of the bill objectionable to them. This view was strongly emphasized by The Melbourne Argus, which condemned the discussion of the merits of the proposed federal union, declaring that the public was opposed to the extreme impolicy of raising any controversy upon this issue, until the liberation of the district from the tyranny of Sydney was secured. The other faction, on the contrary, whose views were represented in The Melbourne Morning Herald,[3] desired to freely criticise the proposal of the Committee, believing that in so doing, they would not only carry out the wish of the home government, but would best serve the interests of their own community, by seeking to secure a constitution more generally acceptable to the colonists. But The Herald was not prepared to carry its policy of public criticism to the extent of postponing the settlement of the question of independence. Both parties would preferably have seen the question of a general assembly entirely dissociated from that of separation, in order that the subject might have been discussed upon its own merits. They equally agreed in urging the imperial authorities[4] to defer the consideration of the constitution of a federal legislature, in order to avoid the threatening danger of the further postponement of separation. The imperial bill did not satisfy their aspirations, but the good so preponderated over the evil elements therein, that they were prepared

[1] McCombie, History of the Colony of Victoria, p. 189.
[2] Ibid, p. 189.
[3] The Melbourne Morning Herald, Jan. 30, 1850.
[4] Ibid, Sept. 9, 1850.

to gratefully accept the benefits it promised to confer, as a first instalment of political autonomy.

But apart from the controversy over the tactical expediency of a free criticism of the constitution, there was no general agreement of opinion in regard to the character and utility of the federal assembly. In an early editorial on this topic, The Melbourne Herald[1] referred to the general legislature as "novel in its operation," and a subject "of far greater importance than any other contemplated by the bill." The functions of the Assembly were described "as a species of Privy Council or Court of Appeal in all questions of administrative government." In a subsequent leading article,[2] it spoke in no cordial spirit of its practicability and of its formal organization. "How far this itinerant tribunal of executive government[3] may answer the purposes designed, is a matter very problematic. We apprehend there will be found with difficulty, men both willing and able to compose this wandering senate. . . . . The only security for the people in such an imperial institution would be found in its elective constitution," but should the non-elective principle be adopted in the local legislature, "it is not impossible that the nominee system may be made to prevail in the highest department of the colonial estate, for the deliverance from which we should require at least one additional verse to the litany." The appearance of the imperial bill removed the chief cause for apprehension upon this latter ground, by providing for a parliamentary elective assembly. The proposal for an imperial tariff especially came in for adverse criticism. The suggested customs bill, it was admitted,[4] would produce considerable revenue, but many of the articles of the schedule were quite unsuited to the economic requirements of the colony. Moreover, the policy of an imperial parliamentary tariff was in its judgment extremely doubtful, even though the desirability of uniformity of customs were admitted. This objection was well summed up in a sentence from the same leading article. "While the equalization of duties between the several colonies of Australasia might be very desirable to fix by an imperial act, we cannot but consider that the question as to the amount upon the

[1]The Melbourne Morning Herald, Sept. 13, 1849.
[2]Ibid, Sept. 24, 1849.
[3]This characterization of the general assembly called forth much ridicule from the Melb. Argus, Feb. 4, 1850.
[4]The Melbourne Herald, Oct. 6, 1849.

respective articles of import would have been more satisfactorily conceded to the legislatures of the several colonies." The grounds of opposition were both constitutional and practical, constitutional, as involving imperial interference with a strictly colonial matter, and practical, as a measure upon which the domestic legislatures were most competent to act. The objections of The Argus, which unlike its contemporary, succeeded in correctly analyzing the true legislative character of the Assembly, were on the other hand, mainly directed against the distribution of membership in the federal legislature, which, it was alleged, was likely "to give Sydney a very great and undue preponderance upon many important questions."[1] It touched the provincial pride of this popular organ to find almost one-half of the delegates allotted to the tyrannical mother colony, and to feel that "the arbitrary power of the Governor-in-Chief as to the place of assemblage," would assuredly be used to forward the claims of the New South Wales capital to political pre-eminence throughout Australia. But for these provisions, it declared, there would scarcely be found a dissenting voice on the subject of federal union. The opinion of the press, so far as it was expressive of public feeling, would seem to show that from local causes the sentiment of Port Phillip was more unfavorable to the general assembly than that of New South Wales.

In Van Dieman's Land, the Committee's report met with a mixed reception, but on the whole more cordial than the original suggestion of Lord Grey. The unsatisfactory economic condition of the commercial classes had awakened a lively interest in the subject of intercolonial fiscal relations. The protective tariff on the products of the other Australian colonies had materially interfered with the growing trade across the strait. The Launceston merchants, in particular, who had large commercial dealings with Melbourne and Sydney, were hard hit by this repressive legislation, and were naturally disposed to welcome any measure which promised to remove the existing evil. The Launceston Examiner, the leading organ of the northern residents, entered upon an active propaganda[2] for the abolition of intercolonial duties, which it contended, would afford an incalculable impetus to trade by opening up an enlarged market for local products. Amongst the merchantile community in

[1]The Melbourne Argus, Feb. 1, 1850.
[2]The Launceston Examiner, Oct. 13, 1849.

general, the prospect of a uniform tariff and intercolonial free trade, held out by the imperial bill, was an alluring boon, even though coupled with a provision for a general assembly. The federal proposal was accepted, not by reason of any inherent merit of its own, but as a necessary concomitant of unrestricted reciprocity and as the best devisable agency for effecting a unity of commercial policy. The Assembly, according to this view, was a means to an end, rather than a desirable end in itself. The moderate nature of the Committee's scheme also tended to remove the suspicion at first directed against the creation of a general assembly which, it was feared, would be under the domination of Sydney. The commercial classes were now able to quiet their apprehensions in the belief,[1] that as the powers of the congress were limited, its sessions necessarily infrequent, probably not oftener than once in three or even ten years, and as New South Wales would not possess an absolute majority in the Assembly, the proceedings of that body need not endanger their colonial autonomy. Needless to say, this acquiescent attitude did not express any real enthusiasm for federation itself. Some few persons were wise enough to appreciate its immediate advantage, some sufficiently far-sighted to perceive that it was bound to come, but no one regarded it as a subject of pressing moment.

The views of that portion of the commercial community which was most sympathetic towards the scheme of commercial union, and some loose form of confederation, were well represented in an Examiner editorial on the subject of a federal union.[2] "It is a matter of little moment, in our opinion, whether along with free institutions for each of the Australian colonies a federation of all is carried or not. That they will ultimately be associated and inseparably linked in their faith, is more than probable, but a present fusion is of little importance. There are, however, objects to be attained by means of a chamber of deputies which are worthy of regard. A uniform tariff and scale of duties on spirits and tobacco manufactured in the colonies, as well as the preservation of free intercourse among them, are subjects of vast importance. If these matters are left to the jealousy of each, hostile tariffs and retaliatory duties may become the order of the day and prove incalculably pernicious.

[1]The Launceston Examiner, Sept. 8, 1849.
[2]Ibid, Oct. 31. 1849.

. . . There is no reason why the Australian colonies might not be federally united with benefit to all. The representations of the body proposed in the imperial bill, would, if unanimously adopted, prove irresistible. The proportion of deputies seems to be equitably arranged, and big as New South Wales is, she would be outvoted in any selfish scheme of aggrandizement. Uniformity in the price of waste lands is, we fear, impracticable, but while the general assembly is to have the power to alter it, we may fairly expect that the recommendations of each colony will be attended to, when dealing with its own soil. Still the important point is representative government for each, and federation is not urgent. It may be enacted or delayed without danger."

The significance of this quotation is not confined to the friendly, if not enthusiastic endorsation of federation at present, or in the future, but extends to several interesting suggestions which it contains. The first of these is the necessity for a uniform excise law, at least on spirits and tobacco, in addition to customs uniformity. The matter of excise duties had, up to this time escaped general observation, but, as all the colonies were raising a considerable proportion of their revenue from liquors and tobacco, it became increasingly evident that intercolonial free trade must be accompanied by an equalization of duties on the two main sources of excise. The second suggestion of interest is the value placed on a federal union as a means of influencing the conduct and the policy of the imperial government. With further consideration, the conception of the purpose and advantages of some sort of union were gradually expanding. The benefits, it was seen, were no longer confined solely to intercolonial relations, but extended to imperial and foreign relations as well. One is somewhat surprised to find the apportionment of representation described as equitable in view of the preponderance of New South Wales, but it was assumed with much justification, that the natural association of the three smaller states for purposes of self-defence, would be a sufficient guarantee against the aggrandizement of their big sister colony. The question of land regulation, which the editorial erroneously regarded as a subject of federal legislation, involved so many controversial issues, and such divergent intercolonial interests, that it was felt the topic might best be reserved for local deter-

mination. In a subsequent leading editorial[1] The Examiner took an even more advanced stand in favor of a speedy federation. After remarking that the colonies had received Earl Grey's bill with much cordiality, it proceeded to set forth some of the sentimental and practical grounds of union, with appreciative clearness and in a spirit of broad Australian nationalism. "A federal union is highly desirable if its powers are few and accurately defined. The permanent prosperity of the Australian colonies will best be secured by unity. They have a community of interests and should be politically what they are socially. No evil could arise from federation to any but officials." Then citing the experience of Great Britain and the United States, as conclusive evidence of the advantages of union it concluded, "Instead of a number of weak isolated settlements vexing each other with retaliatory duties and countervailing prohibitions which retard their individual advancement, Australia would be one vast and growing empire," and a real source of strength to England.

We have quoted freely from the columns of The Examiner, because in it perhaps more than in any Australian paper of the time, is to be found the true sentiment of unity and of a common nationality. Its view extended beyond the mere commercial advantages of federation to a sense of the social and political kinship of the Australian people. It recognized an identity of interest, a community of spirit, and an inseparability of destiny in the relations of the colonies. It was but natural under such circumstances, that it should largely lose sight of the narrow views, the selfish interests, and the petty jealousies of so many of the colonists. But the gospel of an Australian nationalism, as proclaimed by The Examiner, led the way to a severance of the imperial connection, and to the attainment of a complete measure of national freedom. We cannot shut our eyes, it declared to the fact[2] "that sooner or later these settlements will become an independent federation, or seek shelter under the wing of the American eagle." The suggestion of annexation to the United States called forth a strong protest, which compelled the editor to modify his statement by the declaration, that the subject was not yet ripe for discussion in any of the colonies, but some day would be. The association of a federal union with

[1] Jan. 2, 1850.
[2] The Launceston Examiner, May 9, 1850.

the policy of imperial dismemberment undoubtedly injured the cause in the minds of all those who were loyal to the throne, and strong as was the dissatisfaction with the administration of Downing Street, it had not gone so far as to affect the sense of allegiance to, and the spirit of affection for the motherland, in the hearts of the mass of the people.

The Hobart Courier, the leading paper of the southern district of the island, also advocated some sort of a federal union, and waged an able battle against the popular prejudice which had arisen against the proposal. The Courier was inclined to share the belief, that if the boon of local representative institutions were secured, then all other matters in the constitution might be safely left to the imperial government. It suspected the motives of those who raised so strong an outcry against the general assembly, insinuating that their attitude was not altogether unconnected with the desire to defeat a constitution which promised to overthrow the old autocratic régime. The limitation of the powers of the federal government, and the necessity of the colonial initiative in the formation of the Assembly, had, it urged, removed the original objections of the committee of the London agency to the scheme. "We mean to assert," said The Courier,[1] in a strong editorial on the topic of an elective general assembly, "that there are no real difficulties to the trial of this plan, and that the attempts to raise local prejudice against it would be most mischievous were they not palpably absurd." And in proceeding to rebut the statement of Mr. Morphett in the Council of South Australia, to the effect that the habits, views and feelings of the colonies were antagonistic to one another, it boldly proclaimed the social unity of the Australian people. "There is no radical difference," it exclaimed, for the people have come from the same country, are of the same race and hold similar opinions. "True there may be slight differences in the class of immigration, but time will improve that, and bring all the colonies to a social level."—an allusion to the curse of transportation then inflicted on the island by imperial policy, but which the liberal colonists hoped to revoke upon the attainment of self-government. But even more interesting is its depreciation of the spirit of narrow provincialism, and its attitude of confidence in the equity and liberality of the other colonies. "Nor are we disposed to believe

[1]Quoted in The Adelaide Times, Jan. 3, 1850.

that schemes of encroachment and injustice would ever be entertained by the Assembly. We have far more reason to dread that local governments, assisted by some particular interests that happened to be in the ascendant, will make the lust of protection, as they have made the lust of strong drink, subservient to taxation, . . . but it is reasonably certain that a congress of colonists would render their own commerce perfectly free." The English government, it shrewdly remarked, may oppress us but it is certain that it "will take care that the colonies should not become the oppressors of each other." Any possible danger that might exist could be obviated, "by requiring a larger number to concur in any measure affecting the interests of the whole, or by the veto reserved to the executive." The insertion of a provision such as that first suggested of requiring a special majority in certain cases, by effectually safeguarding the interests of the smaller colonies against invasion, would have brought the general assembly more nearly into accord with the true federal type, and have served to remove much of the objection to the unequal apportionment of representation. This was one of the few valuable suggestions for the amendment of the bill which the discussion in Australia called forth.

But to the majority of the islanders the question of confederation was primarily a matter of commercial advantage or disadvantage. Coupled with this was the further consideration, would the interest of the colony be effectually safeguarded in the general assembly? The first of these questions appealed most strongly to the personal self-interest of the people, the second to their collective interests and patriotism. This was the practical standpoint of the average citizen who sought to count the cost of a federal legislature. The withdrawal of the provision for an imperial tariff, consequently occasioned much regret among those who had regarded the immediate enactment of a uniform customs law, as the main justification of federation and its chief desideratum. With the omission of that feature of the measure which principally recommended the proposal, they were prone to look upon the remainder of the scheme with a more critical eye. This attitude came out very clearly in a resolution on the new constitution, at a public meeting in Hobart Town,[1] which expressed the deep regret of the colonists, "that those parts of the bill lately brought before parliament which

[1]The Hobart Town Britannia, Nov. 22, 1849.

would have relieved them from the present ruinous intercolonial duties should have been withdrawn," and voiced the fear that by persisting in the federal scheme, the redress of the evils arising from irresponsible government would be long delayed, and that the preponderance of New South Wales in the intended general assembly might prevent that redress from being complete. The domination of Sydney was conceived of as a possible evil more injurious even than the dictation of the Colonial Office.

The same motive of self-interest that led the mercantile community to seek to secure the benefit of free intercourse, naturally moved the producing interests to strive to maintain their existing tariff advantage. We have already seen how, at the dictation of the agriculturalists, protective duties had been raised against the products of the other colonies. The farmers were not willing to throw open their market, small as it was, to the competition of the larger provinces where agricultural and pastoral pursuits could be carried on with greater profit. The ancient feud of the industralist and the consumer was again renewed, for in some form or other, open or concealed, the issue of freedom or restriction of intercourse, is constantly being fought out. In this case the balance of power lay on the side of the protectionists; they had all the advantage of defending an established economic system, of appealing to the security of vested interests, to the feeling of suspicion towards stronger rivals, to the difference in the economic conditions of the colonies, and to the danger to local autonomy in the form of the federal proposal. Against these combined factors of provincialism, it was no easy task for the doctrine of intercolonial free trade to make headway.

In a lengthy despatch to the Secretary for the Colonies,[1] commenting upon the report of the Privy Council, Sir. William Denison, the Lieutenant-Governor of the island, devoted special attention to the two features of a uniform tariff and the federal legislature. Regarding the proposal to include Van Dieman's Land in a commercial federation, he writes, "Agreeing as I do most fully in the opinion that an absolute and unrestricted freedom of intercourse is most advantageous, yet I have very serious doubts whether the recommendation of the Committee will be found to work satisfactorily as regards the revenue of the dif-

[1] G.B.P.P., 1850, vol. 37, p. 3. V.D.L., V.P.L.C., 1850, no. 23.

ferent colonies, or at all events as regards Van Dieman's Land." Proceeding further to refute the statement of the report, that a uniform tariff would not materially affect the several colonial revenues, he maintained, "It may be true that the revenues would not be much affected by the legitimate process of shipping goods which have paid duty in one colony to supply the carnal wants which may arise in another from a deficient supply or any other temporary cause, but a great opening would be afforded to the fraudulent trader who would take goods out of bond in one colony and shipping them as for export would find means of landing them in another free of duty.

"As regards this colony in particular, I think that any general scheme of the kind would be likely to operate injuriously to the revenue." In support of this statement, he appealed to the course of intercolonial trade, which afforded many examples of the manner in which this loss would work out in practice. A considerable portion of the local revenue was derived from duties upon the exports of the mainland, whose pastoral and tropical products flowed in to supply the deficiency of the home market. The adoption of a uniform tariff would deprive the treasury of a lucrative and progressive source of revenue, without affording any means of restoring the equilibrium of the colony's finances.

The proposal was likewise objectionable from an imperial standpoint. "To allow articles imported from the Australian colonies to enter Van Dieman's Land free of duty would, in point of fact, be equivalent to the imposition of a differential duty upon the produce of every other colony and of the mother country. . . . . I consider therefore that a more satisfactory arrangement than the one proposed by the Committee, would be to leave the regulation of the import duties to the legislatures of the different colonies, with the limitation by act of parliament of the amount of duty to be imposed of five per cent ad valorem, or, in some instances where it can be managed, to some specific charge upon a given amount or weight of the article imported."

Turning then to the proposed constitution of the general assembly, and the consideration of the powers to be entrusted to it, he says, "In addition to this I believe that an assurance was given, that to this general assembly should be allotted the task of framing some general rules for the sale or disposal of

the waste lands of the Crown in the Australian colonies. In point of fact, it is proposed to establish a kind of federal union between the different colonies of Australia, to hand over to the general assembly of the union not only some of the powers which have hitherto been exercised in the respective legislatures of the different colonies, but also some which have been either retained by the Crown or exercised with its sanction by the imperial parliament.

"Whatever may be the case with the colonies upon the mainland whose relation with each other may differ from those which exist between them and Van Dieman's Land, I confess that I can see but few advantages which can accrue to this colony from a federal connection with those of the mainland, while I anticipate the occurrence of many difficulties and inconveniences, some of which will be financial and others will arise from the marked difference which even now exists in the occupation and pursuits of the inhabitants of this colony and those of New South Wales." The character of these differences he sums up in the statement, "New South Wales may be said to be marked out by nature as the seat of a pastoral community, and Van Dieman's Land as of an agricultural and manufacturing community."

"The complicated question of the minimum price of the waste lands of the Crown, or of the facilities to be afforded to the colonists of renting or otherwise rendering available the unlocated districts of the country will most certainly be discussed on very different grounds in this country than in New South Wales, and as the views which the members of the general assembly may take of the matter brought under their notice, will of course be affected by their position as inhabitants of one colony or another, the predominance which will be given to New South Wales in the Assembly will operate unfavorably to the interests of Van Dieman's Land, and a jealous feeling will then be excited similar to that which did and does prevail between the southern and northern states of the American colonies."[1]

Coming then more particularly to the question of the advisability of a federal union, he continues, "In discussing however the local application of the federal system to these colonies, I have touched upon that which all experience has shown to be a

[1]In a subsequent despatch of Jan. 11, 1850, to Earl Grey, Sir. Wm. Denison again emphasized at great length the difficulty of attempting to decide the question of the regulation of waste lands, with reference to the Australian colonies as a federal whole.

vital objection to the system itself, viz., the probable marked preponderance of one of the members as tending to produce a jealous and angry feeling among the remainder of the states composing the union. This has always been productive of evil results and it has been the means in several instances of breaking up confederacies of long standing, and especial attention has generally been paid at the original formation of a union to equalize the powers of the different members so as to prevent so far as possible the evils which must necessarily result from the preponderance of one, an evil which will be of course enhanced in proportion as the confederacy is composed of a smaller number of members.

"In the present instance, however, it is proposed at once to give to New South Wales the entire power of regulating all those matters which are reserved for the decision of the general assembly, for the schedule shows that the number of members which New South Wales is entitled to send is twelve, while the three other colonies composing the union only furnished thirteen, and Van Dieman's Land is entitled to only five. I can hardly think that the advantage to be derived from the adoption of one general assembly with regard to some of those points reserved for the decision of the general assembly, (a uniformity which might be arrived at by other and more simple means) are sufficiently marked to counterbalance the evils which are sure to arise when the clashing interests of the different colonies are brought into active collision in the general assembly, while a positive predominance is secured to one member by the constitution of the body."

The Lieutenant-Governor's despatch was the strongest and ablest presentation of the case against a federal assembly which had yet appeared in Australia. He did not pretend to reflect the state of public opinion on the recommendations of the Committee, because as he explained, public satisfaction was so pronounced upon the promised grant of a local representative government as to preclude the general discussion of the provisions of the constitution on their merits. The statement, nevertheless is particularly valuable, not only on account of the high official position of the author, but also by reason of the superior opportunities he possessed of carefully and impartially viewing the relations of the several colonies. The document itself bears evidence of thoughtful study and consideration of

Australian conditions. It was a serious attempt to turn aside the policy of the Colonial Office, to divert the Secretary for the Colonies from the path he was then pursuing, at least in so far as to exempt Van Dieman's Land from the operation of the federal proposal. Such a declaration supported by an intimate acquaintance with local conditions, and backed up by a strongly presented argument could not fail to make an impression at home and in the colonies, though in the latter its force was weakened by the personal unpopularity of the Lieutenant-Governor and the general condemnation of his domestic policy. The argument of Sir William covered a wide range of territory including a consideration of the financial and economic position of the colonies and their community of interest, discussed the theoretical character of confederation, and estimated the practical utility of the federal proposal to Van Dieman's Land in particular.

The subject of a uniform tariff was looked at by the Governor primarily from an administrative standpoint. To an executive officer the first consideration must always be the financial; to it, natural sympathies, and theoretical and positive convictions must be subordinated. Sir William went at once to the heart of the issue. What would be the effect of a federal tariff on the budget of Van Dieman's Land? Until that question was decided, he considered it premature to discuss the advantages of commercial uniformity, great as he admitted them to be. Financially, he declared, the result of the proposed uniformity of customs would be injurious to the revenue of the colony. He set up his practical acquaintance with the public finances of the province, and his knowledge of the economic conditions of his own and the adjoining colonies against the theoretical opinion of the Privy Council, and supported his view by an appeal to the existing fiscal position and economic relations of the several colonies. There can be but little doubt of the correctness of the Governor's judgment. Brief as had been the political life of the island colony, it had already produced a difference of financial conditions from those of the mother colony, which rendered a tariff assimilation no easy task. As she derived a larger proportion of her revenue from customs duties than any of the sister colonies, and as so considerable a part of her trade was intercolonial in character, she would be more materially affected

by any financial changes than they.[1] Her loss would be all the heavier from the fact, that the more moderate tariff of New South Wales was selected as the basis of the new act of uniformity. With these facts so open to observation, it is little wonder that the Governor felt alarmed over the solvency of the local treasury in case a commercial union was effected upon the suggested lines.

The fear that the improper manipulation of the bonding system would entail a heavy loss upon the local revenue, was apparently unfounded, for as we have seen, in the opinion of the legal adviser of the Colonial Office, the effect of the tariff clause would have been to put an end to that convenient facility of intercolonial trade. The meaning of the section was, however, by no means clear, and the effect of bonding operations upon intercolonial commerce does not seem to have been present to the minds of the framers of the act. But apart from this fact, it should have been possible for the Chamber of Deputies to lay down regulations which would have prevented the abuse of the bonding privilege. Even at this early date the course of intercolonial trade made the bonding system a matter of growing importance to the colonies. Sydney and Melbourne were the entrepôts for foreign commerce and the natural distributing points for the trade of the Australian provinces. It was a great convenience to the importers of these two cities to be able to enter their goods in bond to be subsequently withdrawn for export to the neighboring colonies, when a favorable market presented itself. Yet the enjoyment of this privilege, if unrestrained, might under a uniform tariff, have been ruinous to the revenues of some of the colonies, and unduly advantageous to others, through the diversion of the customs receipts from the province in which the goods were consumed, to the treasury of the colony of importation. In this way the interests of commerce clashed with the financial necessities and the fiscal systems of the provincial governments. The increasing intricacy of intercolonial trade aggravated the difficulty, which in course of time seriously affected the commercial and political relations of the whole of Australasia.

Sir William had a further objection of a political economic nature to the adoption of a uniform tariff. He was an imperial commercialist, opposed to the fostering of a system of Australian

[1] Quick and Garran, Annot. Const. of Aust., p. 89.

protection at the expense of other portions of Her Majesty's dominions. He looked at the question from the standpoint of an imperial officer especially commissioned to safeguard and promote the interests of the motherland. In his judgment, the policy of intercolonial free trade would create that very evil of differential duties within the empire, which it was intended to preclude between the provinces. This view was undoubtedly correct, and the only ground upon which such an unnatural discrimination between different states of the same empire could be justified, was by demonstrating the inherent community of interest between the Australian colonies, as contrasted with their dissimilar or extraneous relation to other portions of the imperial dominions. His Excellency endeavored to establish the contention that there was a complete absence of any commercial or political unity of interest between Van Dieman's Land and the colonies on the mainland. He rightly felt that if this position could be demonstrated, the very "raison d'être" of a federal legislature had been destroyed, and he consequently devoted the most of his attention to a verification of this proposition. His argument was primarily based upon an alleged difference of economic conditions between the provinces, which produced a marked dissimilarity in the "occupations and pursuits" of their inhabitants. These conditions, in his opinion, were permanent and determinative of the future course of economic development in the several colonies. Nature had designed New South Wales for a pastoral community; Van Dieman's Land for an agricultural and manufacturing country; the former on account of her expansive central plains, the natural haunt for the nomadic rancher; the latter by reason of the richness of its fertile valleys and the abundance of its forest and mineral resources, the predestined home of a presperous farming and industrial population. To disregard these conditions, by seeking to unite the two countries in an economic unity, was to defy the laws of nature. It cannot be said that history has verified the predictions of this prophecy, though it must be admitted that the fiscal ingenuity of man has done much to interfere with the natural course of the development of the different colonies. The conflicting interests of the provinces in the matter of their crown lands afforded the best illustration of their economic antagonism on a subject upon which uniformity was most desirable, and furnished the Governor with an admirable text upon

which to base an argument, that any attempt to secure a unification of policy through federal legislation would only aggravate the existing dissensions. It apparently did not occur to His Excellency that his reasoning, based on the alleged dissimilarity of economic conditions might easily be turned against him in favor of a policy of commercial union. The very fact that adjoining provinces were manifesting complementary tendencies of economic development, would afford an excellent justification for uniting them. It furnished the ideal condition in the minds of protectionists for the application of the principles of reciprocity or of limited free trade. There would not be the antagonism of protected interests fearing competition, but rather the expansion of an open market for the natural industries of each colony. Whatever may be the value of the Governor's argument upon this point, it served the important purpose of emphasizing the fact that fiscal and economic considerations lay at the very basis of the question of federation.

As a preferable alternative to a federal tariff, His Excellency suggested that the matter of customs duties be left to the colonial legislatures, subject to an imperial restriction as to the character and amount of duty which might be levied on intercolonial products. This limitation would not have secured an absolute uniformity of duties, since within the restrictions of the tariff schedule of the suggested English act, the colonies would have been free to levy such duties as they desired, but the limited range of charges must have produced an approximate assimilation of customs. The proposal was not original, as somewhat similar suggestions had been broached on several occasions in the press and legislature.[1] There were several manifest objections to this proposition; it involved imperial intervention in the domestic affairs of the colonies, it placed an undue restriction upon freedom of colonial action in tariff matters, and it did not secure that uniformity of customs and that permanency of legislation which a federal assembly was designed to firmly establish. So long as the regulation of the tariff was left in the hands of the local legislatures, it would be subject to constant adjustment to satisfy the demands of various political groups or commercial interests. The evils of intercolonial protection and dis-

[1]The Sydney Morning Herald, June 22, 1846: In this editorial the imposition of a uniform 5 per cent. ad valorem duty was advocated; Ibid, Jan. 5, 1847; Debate in the Leg. Council N.S.W., Sept. 10, 1846, Ibid, Sept. 11, 1846; The Launceston Examiner, Jan. 19, 1848.

crimination would still continue to exist, though on a smaller scale than before. What was required was not an alleviation, but an eradication of the evil, which could only be secured by an express imperial or federal enactment of a uniform Australian tariff.

His Excellency was equally opposed to the creation of a general assembly. His attitude towards that body was expressive of the feeling of the provincial patriot, in its manifest anxiety to estimate the usefulness of the suggested Assembly in proportion to the advantage it promised to confer on his own colony. The benefits, in his opinion, were few as compared with the difficulties and inconveniencies which must result from combining a province with a distinct life of its own, with others whose interests were entirely different. He was unfriendly to the very principle of federation as productive of internecine jealousies. His appeal to history was made with the evident intention of lending support to His Excellency's political theory in respect to the proper relations of the Australian colonies, and he accordingly set himself the task of interpreting the history of previous federations with special reference to his own views upon intercolonial politics. His historical studies of federal unions led him to associate the constitution of a confederation with the idea of a hegemony. Undoubtedly the history of many of the early confederacies or looser alliances of Greece and Italy as also of mediaeval Europe did lend considerable support to this theory, but in identifying the two, he was led into the mistake of misconceiving the true character of federal institutions. The marked preponderance of one of the members of a federation, so far from being an essential characteristic of that type of government, is, on the contrary, an anomalous feature to be found in but few of the modern federations.[1] Where it does exist, it incontrovertibly breeds the antipathy and suspicion which His Excellency feared. In pointing out the evil results, which were likely to arise from unequally yoking together provinces of dissimilar strength and character—a danger all the greater as the number of Australian colonies was limited, Sir William directed attention to one of the weaknesses of Australian federation. But in ascribing the jealousies of states within the federal bond to that peculiar form of government, he was adopting the popular

[1]The best example is to be seen in the German federation where Prussia enjoys an absolute preponderance, which in practice almost reduces the government to the character of a unitary state.

error of confusing cause and effect, since these interprovincial dissensions, so far from being occasioned by the federal union itself, will generally be found to have existed prior thereto, and to be the product of untoward historical or political circumstances, which the confederation was designed to correct or alleviate. The fact that such jealousies already prevailed between the colonies, together with the marked predominance of New South Wales in the Australian group, called for a careful handling of the subject of federation with a view to minimizing, and if possible reconciling these divergencies of interest. By emphasizing this unfortunate condition of affairs, the Governor, perhaps unwittingly, rendered a great service to the federal cause, in aiding the public to see more clearly the obstacles in the way of union before entering upon a course, the end of which no man could foresee. In so adversely criticising the federal system, His Excellency failed to make any distinction whatever between the various forms of federal unions, but grouped them all in one class of ephemeral confederations.

The constitution of the general assembly, in his opinion, was open to the fundamental objection of so distributing the representation of the colonies as "to give to New South Wales the entire power of regulating all those matters which are reserved for the decision of the general assembly." The effect of this arrangement would be to subordinate the interests of Van Dieman's Land, and of the smaller colonies, to those of New South Wales. This danger would be particularly acute in the matter of the disposition of the crown lands and customs duties, and was certain to give rise to a jealous feeling on the part of the feebler states. This was an argument that appealed to the provincial consciousness of the people in a way that no mere theoretical objection to the principle of federation ever could. It affected the local pride and patriotism of the public as well as their manifest self-interest, and thus furnished the fundamental ground of popular opposition to the proposed measure.

Although admitting the advantage of uniform legislation on federal matters, His Excellency nevertheless condemned the projected institution of the Assembly, as likely to create still greater evils than it was expected to remedy. The breeding of inter-colonial jealousies, and the danger from the marked preponderance of New South Wales, were in his judgment, too high a price to pay for the benefits of unity, especially when these

advantages might be procured "by other and more simple means." We are not informed of the nature of these simpler means, but it seems reasonable to presume from the suggestion in respect to customs duties, that the Lieutenant-Governor had in mind some similar scheme of imperial legislation and colonial co-operation. These, in fact, either alone or in conjunction, were the only alternatives to a federal assembly, by which uniformity might be attained.

In South Australia the subject of a federal union aroused a greater amount of interest than in any of the other colonies. The matter came up for consideration in the Legislative Council, in the course of the debate on the new constitution. On December 12th, 1849, Mr. Morphett, "an intelligent, highly respectable and influential member of the local legislature,"[1] introduced a string of resolutions regarding the new constitution for the colony, included in which was one referring to the proposed general assembly.[2] "That in the opinion of the Council it is most inexpedient to create an elective general assembly, as the physical features of the different colonies of Australia are totally dissimilar, and the habits, views and feelings of the people, opposed to each other. Even if the condition of the people and country did not make it inexpedient, this Council would object to such Assembly, because the relative proportion of inhabitants is such that this colony would practically have no voice in the disposition of the questions brought under the consideration of the Assembly, many of which questions, such for example, as the price of waste lands, affect the country's dearest interests." In supporting this strongly condemnatory resolution, Mr. Morphett alleged[3] that a federal government would be "repugnant to the wishes of the people of this colony." He regarded the proposal as an emanation of the brain of the Colonial Secretary, and the product of the political theory of a school of English writers and thinkers who were desirous of "grouping or systematizing the colonies," and had marked out Australia as forming one of these groups. He was especially severe in his criticism of the motives and nationalistic views of Mr. Roebuck, the leader of the English school of colonial federalists, whom he charged with looking to the institution of

[1]Comment of Lieut.-Gov. Young, G.B.P.P., 1850, vol. 37, p. 14.
[2]G.B.P.P., 1850, vol. 37, p. 15. The Sydney Morning Herald, Dec. 19, 1849.
[3]The Adelaide Times, Dec. 13, 1849.

a general assembly as a fitting instrument for the ushering in of colonial independence. The discussion of this latter question was "premature," and it was consequently unnecessary for "parliament to legislate for a contingency which might never arise." And even though separation should come they could not expect that a group of native statesmen would appear to work out the problems of an Australian confederation, like or equal to those high-born patriots who had framed the noble constitution of the United States. The proposed Chamber of Deputies met with scant support from the other members. Mr. Swillie, the Advocate-General considered "that a federal union would greatly facilitate" many improvements which this colony could not carry on alone, "such as intercolonial railways, postal communication and a general scale of duties," to which Mr. Hagen replied that similar improvements were effected in Europe without such a union, and that by agreements among themselves the colonies could carry out all such common objects without the need for a federal government. In the long debate which ensued, the question of a general assembly was entirely lost sight of by the members. But two days later the subject again came up for discussion,[1] when a resolution condemnatory of the federal regulation of crown lands was unanimously agreed to,—"That in the opinion of this Council no general system of regulation for the disposal and management of the waste lands of the Australian colonies would be suitable for all the provinces." Mr. Hagen moved a further resolution expressing disapproval of the proposed erection of a federal legislature.[2] "That in the opinion of this Council it is most inexpedient to create an elective general assembly for the following reasons: first, there is great dissimilarity in the pursuits and interests of the several provinces; second, the overwhelming preponderance that the larger provinces would have in the Assembly would be greatly injurious to the lesser; third, this Council cannot see any points upon which benefit would accrue to any of the provinces by the establishment of such an Assembly." The resolution was most strongly supported by Captain Bagot,[3] in a speech redolent of a spirit of provincialism. He hoped to see "the most strenuous opposition" to a federal union, which would only "subject the lesser to the

[1]The Adelaide Times, Dec. 17, 1849.
[2]G.B.P.P., 1850, vol. 37, p. 14. Quick and Garran, Annot. Const. of Aust., p. 86.
[3]The Adelaide Times, Dec. 17, 1849.

greater colonies," and enable New South Wales and Victoria to swamp the representatives of the other provinces in the House of Delegates. It would create a cumbrous and injurious piece of political machinery, would arbitrarily withdraw the delegates to any distant point that the Governor-General might choose, and offered no compensatory advantages for the sacrifice of provincial autonomy. He maintained that the argument of the Colonial Secretary, who had emphasized the political strength which would accrue from unity, was inapplicable to local conditions, since South Australia was not likely to have enemies, and it could not be supposed that the colonies would join their powers to fight one another. Mr. Hagen renewed his opposition "to any measure looking to a visionary scheme of federation," while Mr. Finniss announced his approval of the resolution subject to certain verbal alterations. Only two members of the Council,[1] both of whom were executive officials, were favorable to the organization of a federal legislature. The Colonial Secretary, Captain Sturt, could see no cause for apprehension in the proposal; on the contrary in his judgment a friendly association of their small powers might prove of great benefit hereafter by unifying their strength in case of danger or common emergency. He disclaimed the imputation of Mr. Hagen, "that he had supported a claim for federation on the ground that they would be more powerful for obtaining independence." The speech of the Advocate-General showed a deeper sympathy with the federal movement. He believed it possible to have a union in which the interests of all the colonies could be harmonized without an injustice to the minor provinces. He was not, however, very hopeful of the attainment of this object, as he did not "expect to find much support in this opinion, for he really believed that he stood alone in favor of federation." This statement did not mean as might at first appear, that the support of the Colonial Secretary was official rather than personal, an administrative justification of the policy of the Colonial Office rather than an expression of individual conviction, but simply that the Colonial Secretary did not approve of so close a form of union as a federation involved. The supporters of the motion won an easy victory, as the resolution was agreed to without division.

[1]G.B.P.P., 1850, vol. 37, p. 4.

In a despatch[1] to the Secretary for the Colonies, Lieutenant-Governor Young commented briefly upon the course of the debate, and expressed an opinion adverse to the cause of a federal union, and its acceptability in the colony. "Mr. Swillie, the Advocate-General and Captain Sturt, the Colonial Secretary were," he remarked, "the only members of the local legislature favorable to the establishment of a federal union of the Australian colonies, and my own opinion is that such a union is not required at the present time, nor probably for some generations to come. I believe also the voice of the community to be opposed to such a measure at any time whatever." The ground of His Excellency's opposition was quite different in character from that of Sir William Denison; he had no criticism to offer relative either to the principle of federation, or the organization of the general assembly, but objected only to the opportuneness of the proposal. He would shelve the question, until the needs of the several colonies demanded union, and the popular voice desired it.

Outside the legislative chamber the subject awakened an equal interest, which found expression in a large public meeting in Adelaide to consider the proposed constitution, at which a resolution was passed condemnatory of a general assembly. This resolution had a very interesting history which throws much light upon the state of public opinion on the question of federation. At a preparatory meeting of a number of the leading citizens of the capital, called for the purpose of considering and preparing the several resolutions which should be submitted to the general public, a marked divergence of opinion arose on the matter of the general assembly.[2] Three different motions were presented, expressive of different shades of opinion; some of the members were favorable to a federal assembly, others on the contrary, as strongly opposed to it in principle, while a temporizing party stood mid-way between the extremists, in recognizing the advantages of such an Assembly, but at the same time objecting to its organization under the existing social circumstances of the colonies. No one of the three original resolutions could command general support, but after a time a compromise was adopted which all the parties agreed to accept. The view of the moderates was fairly expressed in the resolution, which ran, "Resolved that the formation of a general

[1]Nov. 16, 1849. G.B.P.P., 1850, vol. 37, p. 14.
[2]The Adelaide Times, Dec. 27, 1849.

assembly of the Australian colonies, however desirable on the majority of matters proposed to be left to the decision of such Assembly, so long as transportation be continued to the neighboring colonies, is, in reference to this province, highly objectionable." The opponents of federation, however, were not satisfied with this reasonable compromise. Believing that their views would find general acceptance, they quietly decided, under the inspiration of Mr. Davenport, to substitute another resolution, expressive of anti-federal sentiments, and submit the same to their fellow citizens. When this intrigue came to the ears of the supporters of a federal union, and it was further learned that the supposititious resolution would be insisted upon notwithstanding their remonstrance, it was thought best not to disturb the harmony of the gathering by moving an amendment, but that Mr. Fisher should explain the flagrant character of the alteration, on behalf of those who could not concur in the resolution.

At the grand mass meeting, with an elaborate flourish of trumpets, Mr. Davenport presented his resolution,[1] "That the formation of a general assembly of the Australasian colonies, however desirable on the majority of matters proposed to be left to the decision of such an Assembly, is, in principle as in form, a federal union; it is in a British sense unconstitutional, as morally opposed to the social institutions of the colony, and endangering our colonial independence."[2] In a grandiloquent speech, he condemned the proposition for a general assembly as "objectionable in every point of view." A system of secondary election to the Chamber of Deputies through the local legislatures was no less unconstitutional than injurious to the interests of the colonies, for the danger of unsuitable legislation was increased in proportion to the distance that the public was removed from the law making body by intervening agents. "Our distant irresponsible delegates" would, he contended, be exposed to all the enticements of foreign influence. The Assembly would not be a true representative body, but a group of secondary delegates "remote from their constituents, unwatched and unheard by them, beyond the extent of their advice and remonstrance, having substituted the alluring entertainment of an alien's hospitable board for the direct presence and acquaintance of their

[1]The Adelaide Times, Dec. 24, 1849.
[2]G.B.P.P., 1850, vol. 37, p. 19.

constituents views and wants." He apprehended an especial danger from the power of federal interference with provincial taxation. Deputies from the other colonies would be empowered to make laws affecting the local port and custom regulations, from which the most of the revenue was derived, and so "impoverish our funds as to compel our local government to increase our internal taxation." In the halls of the general assembly, the voice of the few representatives of South Australia would pass unheeded. Of the deliberations of the federal legislature nothing would be known, yet its "illegal commands shall be heard in our streets, seen in our houses, felt in our purses." The constitution of the Assembly, he claimed, violated an "essential principle of the British constitution," in not providing a balance of power to offset any possible abuse which might arise from the proportionate system of representation. In a passion of rhetorical despair, he commiserated the state of his unfortunate colony. "Poor, victimized South Australia, where will she be; bullied and trodden upon by her older and larger companions in this game of legislation." It was useless to look to the sister colonies for sympathy or assistance. South Australia was but an infant in years and in strength beside New South Wales; there was "neither moral nor physical analogy" in the social conditions, political interests and economic resources of the two colonies. Nothing could be expected from Van Dieman's Land; her isolated position, her "reserved and eccentric" course of conduct, her four-fold greater population, and superior representation in the Assembly,[1] would preclude any effective cooperation with this colony. Port Phillip and Western Australia were "less formidable antagonists," but equally ignorant of South Australian requirements, and incapable of advancing her interests. In truth the colonies were mutually unfitted to legislate for each other, or to interfere in one another's affairs. The proposition to hand over the control of all waste lands to the general assembly would spell ruin to the local land owners, for with capital vested on security of a minimum price per acre of crown lands, they could not hope to compete with the lowered price, which "it would be to the interest of all the other colonies to introduce at their expense." Moreover, what would become of the land revenue fund,—"the sinews of the labor market?"

[1]This statement is manifestly incorrect, as a reference to the schedule of the Committee's report will show.

He was convinced by these facts, that any present or remote advantages of federation would not offset the evils it would necessarily entail. The laws of the colony should originate with her own direct representatives, her territory should be kept free from the pollution of intercolonial convictism, her status, as an equal and independent member of the Australian group should be maintained unimpaired; in short, every care should be taken to avoid a policy which would reduce this colony to a "position physically and morally lower than a petty German state."

In supporting the resolution, Mr. Elder briefly stated the three main grounds of his opposition to a federal union; first, this colony could take care of itself; second, a general assembly "would subject the lesser to the greater colonies;" and third, the existence of "transportation to the neighboring colonies rendered it imperative" that this government "should not mix with them in any closer alliance" than can possibly be avoided. Mr. Dutton concluded the list of objections by adding that the grant of representative institutions to South Australia should not be clogged by a permanent and uniform federal tariff, which would deprive this province of its control over the most important department of colonial administration. In accordance with the prior arrangement, Mr. Fisher explained on behalf of the dissentients, that the substituted Davenport resolution did not express their opinion, as they believed, on the contrary, "that a general assembly would be highly advantageous to these colonies if carried out as proposed." Nothwithstanding this protest, the resolution was adopted by a large majority, only two votes being recorded against it, although there was a considerable minority, both on the platform and in the audience, who expressed a silent dissent by refraining from voting.

This discussion is particularly valuable in revealing to us the chief grounds of popular objection to the scheme of a federal union. The meaningless jumble of words in the resolution, and the oratorical verbiage of Mr. Davenport cannot obscure the weight of the argument and the importance of the considerations which appealed to the mass of the people, and determined their attitude of hostility to the measure. The most influential of these considerations had no relation whatever to the principle of federation, or the character of the proposed constitution, but arose out of the peculiar social condition of one of the sister colonies. It affords an interesting example of how an external

and foreign factor may determine the course of the history of a state. The paramount question in the mind of the South Australian public was that of transportation. The colony had been founded as a free community, and jealously guarded herself against the degrading influence of convictism. The isolated independence of the province had been the most effectual preventative of this invading scourge. The advent of a federal union, by threatening to destroy the present provincial restrictions upon criminal immigration, and to throw open the whole country to unrestrained social intercourse, awakened the serious apprehension of a population which was quick to detect any danger from this quarter, and was a unit in opposing it. The anti-federationists were not slow to fan this general suspicion into an open hostility to the whole proposal. On the other hand the supporters of a federal union were correspondingly embarrassed in their defence of the principle of the measure, by the necessity of freeing the project from the contaminating association of convictism. They were generally compelled to qualify their approval of the principle of federation by a declaration of opposition to any policy which would open the door to the spread of transportation. This meant in effect that the federal issue must be postponed until the English government should cease making Van Dieman's Land a cess-pool of criminality. The introduction of this extraneous issue prevented the Adelaide public from passing an unbiassed judgment upon the question of a general assembly, for with them the danger of convictism was final and decisive, apart altogether from any other objections which might be offered to the project.

The remaining arguments of the speakers were of a provincial character, directed to show that the interests of the colony would be sacrificed in the federal congress. To South Australia the danger of absorption appealed with two-fold force, for not only was she the smallest of the colonies, and consequently the least able to defend her rights and interests in a general assembly, but her past history and her isolation had cut her off from that general social and commercial intercourse with the other colonies so conducive to the development of a sense of common kinship. The very weakness of her position made her peculiarly sensitive about transferring any of her powers to a strange if not a foreign assembly, in which she could place little confidence. From the day of her founding, the colony had enjoyed

an independent existence, and now that she had pulled through the season of financial stress, thanks to the energy of her population, and was about to enter upon the fuller enjoyment of political freedom, she was naturally loth to surrender any of her autonomy.

With most of the criticism of the federal proposal we are already familiar; here as in the other smaller colonies, we find the same grounds of objection to the apportionment of representation and the preponderance of New South Wales. But the speech of Mr. Davenport raised several new and interesting constitutional points, which touched the very heart of the principle and organization of the general assembly. He objected to the system of secondary representation, not only on the ground of its un-English character, but also as conflicting with the principle of direct responsibility of the legislature to the people which lay at the very basis of sound legislation. The salutary influence of public discussion and criticism, both in parliament and before the electorate, cannot be over-estimated; publicity is not only the best guarantee of the probity of the legislature, but also the most effective medium of political education. The intervention of the legislative councils as a species of electoral college, destroyed the parliamentary and fiduciary character of the federal legislature, and exposed both the Assembly and the public to all the dangers of irresponsible rule. The organization of the House of Delegates upon the model of a federal council was in fact open to all the theoretical objections and the substantial difficulties, so graphically charged against it; it was an institution ill-adapted to the principle and practice of a liberal representative system.

The proposed federal assembly was moreover open to the objection, so strongly urged by Mr. Davenport, of failing to provide a balance of power in the formation of a second chamber, such as he conceived the British constitution to afford, as a palladium of liberty against the abuse of power by any one organ. But the powers of this single House, whether regarded from a legal or political point of view, were by no means so unrestrained as might at first be supposed. They would have been limited on the one hand, by the authority of the Governor-General, the veto of the Secretary for the Colonies and the legislative sovereignty of the imperial parliament; and on the other, by the practical supervision and control of a group of legislative councils naturally jealous

of a possible rival, and quick to vindicate the rights of their respective colonies, or to resent any attempted interference with their provincial autonomy. For practical political reasons, the Assembly must have been the servant rather than the lord of the several legislatures. However advantageous on general principles a bi-cameral legislature may be, the weakness of the general assembly was such, that to have introduced an elaborate system of checks and balances into its feeble organization would have reduced that body to complete impotency. The concentration of powers in a single chamber is only dangerous when the right to legislate is unrestrained and backed up by coercionary force. Even on theoretical grounds the objection of Mr. Davenport was not applicable to federations in general, but only to the present proposal of a unitary assembly, for in the federal more than in any other form of constitution, the principle of the distribution of the functions of government finds its most adequate expression. While this principle practically disappeared from the English constitution with the advent of responsible government, it remained firmly imbedded in the American organic law as the fundamental guarantee of the federal union. Under the scheme of the proposed general assembly, the balance of power had to proceed and be operative from without and not from within, but it might have been none the less effective on that account. Moreover the competency of the Assembly to modify its own constitution would have indirectly enabled the colonial legislatures to establish the desired constitutional check of a second chamber, were it found expedient so to do.

The financial powers of the Assembly were likewise the subject of adverse criticism, as subjecting the provincial treasury to outside control. One would naturally expect that the stoutest opposition would have been raised to the Assembly's right of taxation without direct representation,—a right which violated the most sacred principle of British political freedom. But instead of that, the attention of the speakers was entirely directed to practical matters of public finance. Mr. Dutton was concerned about the limitation of the financial powers of the local Council, and Mr. Davenport with the threatening impoverishment of provincial funds, which it was conceived might occasion a recourse to direct taxation,—a subject upon which the Australian mind has always shown itself peculiarly supersensative.

Singular to state, the question of a general customs union, which had commanded the principal attention in some of the other colonies, attracted the smallest interest in the course of the present discussion. In the matter of federal regulation of crown lands, South Australia felt that she had a special cause for apprehension. Her land system, like that of the other colonies, was based upon the imperial act of 1842, fixing a uniform price of twenty shillings per acre on waste lands throughout Australia. It was feared that New South Wales, in the hope of promoting the settlement of her vast central plains, might be tempted to induce the Assembly to dispose of federal crown lands at the lowest possible rate. The land-owners of South Australia would have been ruined by any material alteration in the selling price of such lands, as by reason of their fixed investments in limited holdings, they could not hope to compete with the easy terms or free land grant settlers of favored colonies. The revenue and prosperity of the province would be equally affected by any such policy, since the land fund formed a considerable item in the local budget, and was moreover the principal source of assisting immigration. The control of crown lands, it was felt, could be safely reserved to the English government or entrusted to the local authorities, but not to an Australian Assembly.

The arguments of the speakers sound strangely familiar in the ears of the present generation of Australians. Throughout the history of the federal movement, the same line of reasoning has been closely adhered to, the same political and constitutional objections have been in the mouth of every opponent of federation. But for a few contemporary observations, arising out of the peculiar local circumstances of the time, such as the transportation question, it would be easy to suppose that the address of Mr. Davenport had been delivered some forty years later in the same city upon the discussion of the Federal Council Bill. The importance and the significance of the federal question was from the first clearly appreciated by the political leaders of South Australia, who may claim some measure of credit for giving a form or character to the consideration of the issue during the ensuing half century.

Although the opponents of a federal union were in a considerable majority in the province, yet the adherents of that faith formed a numerous and influential section of the commun-

ity. Mr. Davenport is reported[1] to have said, that at the time of presenting his resolution, he had believed that it expressed the unanimous wish of the colony, but he had since been surprised to find that every second person differed from him on the subject. The editorial columns of The Adelaide Times were a most valuable instrument for the propagation of federal ideas. That paper, which had long held views in sympathy with those of the Advocate-General, took up the cause with much enthusiasm. It found an especial delight in poking fun at the "utter want of coherence and grammatical propriety" in Mr. Davenport's resolution, and in pointing out its meaningless inconsistencies. In a critical review[2] of the several clauses of the resolution, it challenged the validity of its assumptions, and appealed to the future greatness of a united Australia as a justification of the present federal measure. "Never," it exclaimed, "was such a bundle of bad English and worse politics crammed into the same space." It maintained that the federal proposal was not without precedent in the constitutional history of other groups of English colonies. "The unconstitutional claim is idle talk, an attempt to make a bugbear of United States republican institutions, which are not intended to be copied even in the matter of a federal union, however well it might work in Australia." This colony, it urged, should aid in ridding its neighbor of the taint of convictism, so that the latter might be raised to an equal social status, compatible with a constitutional union with this free state. It was "frivolous" to contend that federation would involve the loss of colonial independence, since the several states in America do not "lose in individuality by submitting to Congress. Or what right have we to conceive we will be overpowered by rival interests of other colonies? Are their statesmen less scrupulous than ours, or more ready to coalesce with each other than with the South Australian delegates? And if so what matter is left to them in which they can inflict injury upon us?" No apprehension need arise over the power of federal taxation, since the rate to be levied must be proportionably applicable to all the colonies. The editorial concluded with a splendid appreciation of the influence of Lord Grey's policy on the future of Australia. "Altogether then, this opposition to the general assembly scheme is one of the most

[1]The Adelaide Times, Jan. 3, 1850.
[2]Ibid. Jan. 3, 1850.

peddling and contemptible with which any liberal and statesmanlike measure of the home government was ever met.

"What has surprised us throughout the whole has been, that the Lords of the Treasury should have recommended, and that Earl Grey should ever have sought the adoption of a scheme which is calculated to place such power in the hands of the united provinces of this great southern land. Their proposition is not to legislate for the present merely, but for a distant futurity, and should this project be carried out, our children and children's children will have to bless Earl Grey and his coadjutors for the benefit of this wise and far-seeing measure."

In reviewing the attitude of the several colonies, it will be seen that in no one of them was there a pronounced general opinion in favor of federation. New South Wales was apathetic; Port Phillip had centered her thoughts on the attainment of separation; Van Dieman's Land was absorbed in the struggle against transportation; only in South Australia was a minor interest evidenced in the question of a federal union. Australia was not yet prepared to pass judgment upon this question, because she had not given to it that serious and undivided attention which it demanded. Such little criticism as was awakened, largely proceeded, as might have been expected, from the smaller colonies, whose interests were more materially affected by the measure. Their objections were directed mainly against the principle of federation, as involving the loss of provincial independence, and against the constitution of the general assembly on the basis of proportional representation. Each of these objections was but a varied expression of the familiar doctrine of provincial or state rights; on the one hand, the right of the colony to lead its own life, to work out its destiny, to direct its own policy in the furtherance of local interests; on the other hand, the right of the province to an equal recognition of its independent status in any general assembly. The colonies had not yet entirely passed beyond the stage of isolated communities, and were still imbued with a narrowness of feeling, of provincial loyalty and of political interest, corresponding to the localization of their social life. Federal sentiment was weak and sporadic: the movement had not yet taken on an inter-provincial character, but was confined in its operation within the bounds of each colony. Even among those who realized the need of some sort of federal association, the feeling was common that the present

measure was premature, and might better be postponed until inter-communication was developed, and the colonies learned to know one another more intimately. It was likewise felt that the movement would be assured of more success, if it were spontaneous and native in its origin, and did not bear so distinctly the imprimatur of the Colonial Office. The leadership of the cause and the propagation of its principles, was left almost entirely to the press, which proved much more sympathetic than either the legislatures or the people. The wider outlook of the press and its closer acquaintance with the feelings and conditions of the neighboring colonies, had developed a spirit of common kinship, and a clearer appreciation of the underlying unity of interest of all the colonies, than was present to the mind of any other section of the community. But the task was too great for the press alone. Its educational campaign could not, in so brief a time, overcome the indifference of the public, or remove the suspicion of the provincialists.

Although public opinion was adverse to the formation of a federal legislature, it was on the contrary generally favorable to a uniform regulation of intercolonial customs. In two of the provinces at least, New South Wales and Van Dieman's Land, the opinion of the commercial community was most pronounced, in regarding a commercial union as the greatest boon that federation would confer. These colonies had already enjoyed the advantage of freedom of trade, and were now unfortunately suffering from the evils of restricted intercourse. In Port Phillip, the feeling was likewise favorable if less outspoken. The close commercial relations of these three colonies evidenced to the trading community the serious inconvenience of conflicting tariffs. Only in South Australia do we find an absence of any general interest in this phase of the question. Neither in the discussions in the legislature nor in the press of that colony, did it receive any proper attention. Although the omission of any general criticism of the proposed Zollverein would seem to show that this feature of the report encountered no pronounced disapprobation, nevertheless it must be admitted that the principle reason of this manifest neglect was the relatively small commercial intercourse between the southern province and her neighbors. The question of tariff uniformity in consequence, appealed to her as a theoretical issue rather than as a practical problem, as in the other provinces. Some doubt was expressed in certain quarters re-

garding the impartiality of the general assembly and its ability to frame a federal tariff, but it was commonly felt that the blessings of uniformity of customs and of intercolonial freedom would more than compensate for any fiscal prejudice any one province might suffer. It was feared, however, in Van Dieman's Land and South Australia, that the federal regulation of customs might have an injurious effect upon the local exchequer. But a slight attempt was made to separate the tariff question from that of the federal assembly, as it was generally recognized, that, apart from imperial intervention, permanent uniformity of customs and other federal legislation could only be secured through a superior legislative body, such as the proposed Australian Assembly. Governor Denison's suggestion of an alternative policy of colonial co-operation did not win any general support as might have been expected, although it commended itself to those who favored a federal association of the colonies, but were not prepared for a closer union. Opinion was divided on the question as to whether the imperial parliament or a federal assembly was best fitted to undertake the function of determining the fiscal policy of the colonies. Those who were suspicious or jealous of the neighboring provinces, preferred to entrust the duty to Westminster, on account of its supposed impartiality; those on the contrary who were imbued with a deeper sense of colonial independence and of the common unity of the Australias, instinctively favored an Australian body. But in any case uniformity was held to be desirable; and while the general assembly might not be the best, it was at least recognized as a fit and natural body to be endowed with authority to deal with this subject.

The withdrawal of The Australian Colonies Bill was a great disappointment to Earl Grey, but did not at all dampen his desire to secure its enactment. The discussion of the constitution in parliament had served a valuable purpose, in showing the necessity of materially revising some of the provisions of the bill in conformity with the official announcement of His Lordship at the close of the late session. In conveying to the Australian colonies the notification of the alteration in the government's program, the Secretary for the Colonies stated[1] that the bill would be reintroduced as early as possible after the meeting of parliament in order to insure its certain passage. But one im-

[1]Aug. 18, 1849, G.B.P.P., 1850, vol. 37, p. 64.

portant modification would be made in the measure. The provision for "a uniform tariff to be established by the act itself, and unalterable except by the general assembly," would be dropped. While insisting with his customary fervor upon the cardinal importance of intercolonial free trade, he was forced to acknowledge that "inquiry and discussion had rendered it evident that the proposed uniformity could not be carried into practical effect without a variety of subsidiary arrangements which could only be well considered and matured on the spot." This was the extent of the concession which His Lordship was prepared to make to parliamentary criticism and to the feeling of the Australian public.

To the representations of the colonial governors he was even less amenable. The letter of Lieutenant-Governor Denison evoked an emphatic response from the Colonial Secretary, who did not kindly brook the opposition of his subordinates, in which he discussed[1] very plainly and unfavorably some of the suggestions of the former's despatch. "Your remarks," he writes, "upon the probable effect of the proposed abolition of all duties on goods carried from one of the Australian colonies to another, do not appear to me to be altogether correct, but as in the bill now before parliament, it has been considered expedient to omit the clauses upon this subject which were contained in that of last year, it is needless to enter into the question." Upon the kindred subject of the wisdom of a general assembly, his convictions were unchanged. He strongly dissented from the view of the Lieutenant-Governor in regard to the political isolation of Van Dieman's Land. "I have to point out to you that although by its geographical position Van Dieman's Land has not the same need as the colonies on the mainland of New Holland, of being enabled to be combined with these for the accomplishment of certain objects of common interest, still there are some of these objects upon which it may be of great advantage to Van Dieman's Land to be enabled to do so. For instance the establishment of a general court of appeal, and of improved communication by post both with the neighboring colonies and with other parts of the world, are subjects no less interesting to Van Dieman's Land than to the colonies on the mainland, nor would it be difficult to suggest other matters to which the same remark would apply. Hence it would be undesirable that Van Dieman's

[1]Despatch Apr. 11, 1850. G.B.P.P., 1850, vol. 37, p. 9.

Land should be excluded from sending representatives to such a general assembly, should it hereafter be convoked, while at all events no injury can be inflicted on the colony, since by the bill which has been submitted to parliament it has been provided, that such a general assembly shall only be called together at the desire of the legislatures of the several colonies, and that its powers shall only extend to those colonies of which the legislatures have concurred in applying to have it convoked. I anticipate that for the present, this part of the bill will probably be inoperative, but that the power it gives may hereafter prove highly useful."

Neither the weight nor the amount of criticism could shake His Lordship's unwavering faith in the future advantages of a federal union. The stronger the opposition, the more vigorously did he espouse the measure; to him it was the crowning glory of the Australian constitutional system he was attempting to set up in all the colonies. In the preparation of the revised bill, he took every care to facilitate its passage through parliament, by removing those clauses which had aroused the strongest objection during the late session, and by the insertion of permissive provisions which would appeal to men of liberal and moderate judgment. Notwithstanding these alterations, the bill throughout its provisions bore his own personal imprimatur as unmistakably as had the original report.

The year's delay proved a blessing in disguise, by stimulating a greater public interest in the new constitution. Since the act of 1842, a remarkable change had taken place in the attitude of the English people and their leaders towards the colonies.[1] A concatenation of circumstances, commercial, social and political had combined to force the colonies prominently before the attention of the nation. At home questions of emigration and finance were perplexing the social reformer and the business man, and the rapid growth of the colonies promised to afford some relief, by providing an outlet for the excess population and the surplus capital of the motherland. A series of political events[2] springing up in almost every quarter of the globe, aroused

[1]Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. v.

[2]In Canada political ferment had culminated in the rebellion. The grant of responsible government demonstrated the capacity of the colonists to successfully manage their own affairs, and formed the precedent for a future liberal colonial policy. On the Pacific the Hudson Bay Company had extended its jurisdiction over Vancouver island; in the West Indies serious commercial depression prevailed; the feeble South

the Colonial Office from its indifference, and disturbed the provincialism of the English public, by reminding them in the most unpleasant way of the existence of a colonial empire and the responsibilities of imperial administration. "Never before," said Mr. Scott, "had colonial interests excited so large a share of public attention." The social unrest, the political agitation and the military dangers of the colonies were re-echoed in the ears of the English public, and the question of colonial policy so long neglected, at last became a vital political issue.

The Australian Colonies Bill appeared at a most opportune moment to attract general attention. The brief discussion of the late session had revealed the keen controversial interest which was taken in the measure, and had served to familiarize the public with the character of the proposed bill. During the prorogation, the subject was given still further publicity by the criticism of the press, so that upon the reassembling of parliament and the appearance of the revised bill, both outside and within the Houses, the question had come to be recognized as of the most far-reaching constitutional importance, affecting the whole course of colonial policy. The criticism of the public and the press was, as might be expected, largely influenced by partisan considerations, which destroyed much of its educational value. It covered the whole field of the colonial policy of the government as well as the character of the new constitution, particularly of those clauses which provided for the creation of representative institutions in the several colonies.[1] The subject of a federated Australia was largely overlooked, yet not entirely, for here and there we find an occasional minor reference to the topic. In an able editorial marked by a spirit of broad liberality towards the claims of colonial autonomy, The London Times[2] expressed its appreciation of the present and future importance, both to the colonies and to the empire at large, of the institution of a federal government, and notwithstanding the misgivings with which this feature of Earl Grey's proposal was regarded in many quarters, bestowed its unqualified approval upon the beneficial nature of the scheme. "To us at home," it declared,

African colonies were trembling for their existence in the face of the native peril; and Ceylon was suffering from grave disturbances. On the top of this social unrest, political agitation and military danger came the Australian demand for a new constitution and the cessation of transportation.

[1]The London Times, Feb. 20, 1850, and Mar. 23, 1850.
[2]Ibid, Feb. 4, 1850.

"the most striking feature of the measure which has just been submitted to the judgment of the colonists is the proposed federal union of the Australian settlements. Grand as the idea is, we believe it to be not less necessary: for though the time may be yet distant when federation may be required for self-defence against a common enemy or for some other imperial purpose, it is already wanted for the settlement of a common tariff without which the colonies are likely to be brought into early and unpleasant collision. . . . . We know not why a liberal statesman need reject from his thoughts the chance of a consummation which so many historical precedents render not improbable; we know not why we should shrink from a scheme equally pregnant with benefit whether the Australian colonies shall continue our own, or whether they are fated to become the United States of the southern hemisphere." The Spectator[1] also contributed a trenchant and sarcastic condemnation of the presumption of Downing Street officials in attempting to arrange a common tariff for the Australian colonies with whose conditions they were not personally familiar. And in an article in Colborn's New Monthly Magazine[2] in criticism of the new constitution, the writer was inclined "to question the present expediency of empowering the colonies to create a confederate union. We fear overlaying these new states with somewhat too much of government and lawmaking," though "sooner or later such a union would be desirable." It was admitted, however, that the force of this objection was much impaired if not removed, by the permissive clauses of the new bill and the withdrawal of the imperial customs schedule.

The most intelligent and constructive criticism of the bill proceeded from the Society for the Reform of Colonial Government,[3]—a group of advanced thinkers interested in colonial problems, who were seeking to curb the arbitrary authority of Downing Street, and introduce more liberal institutions throughout the empire, especially in the self-governing colonies. Upon Mr. Adderley devolved the duty in parliament and through the press of acting as the principle critic of the government's colonial policy. He censured[4] the imperial creation of a federal legis-

[1]The Spectator, May 9, 1850.
[2]Colborn's New Monthly Magazine, March, 1850.
[3]This Society was formed under the influence of Adderley, Wakefield and other colonial reformers. Garnett, Ed. G. Wakefield, p. 327.
[4]C. P. Adderley. The Australian Colonies Government Bill, p. 22.

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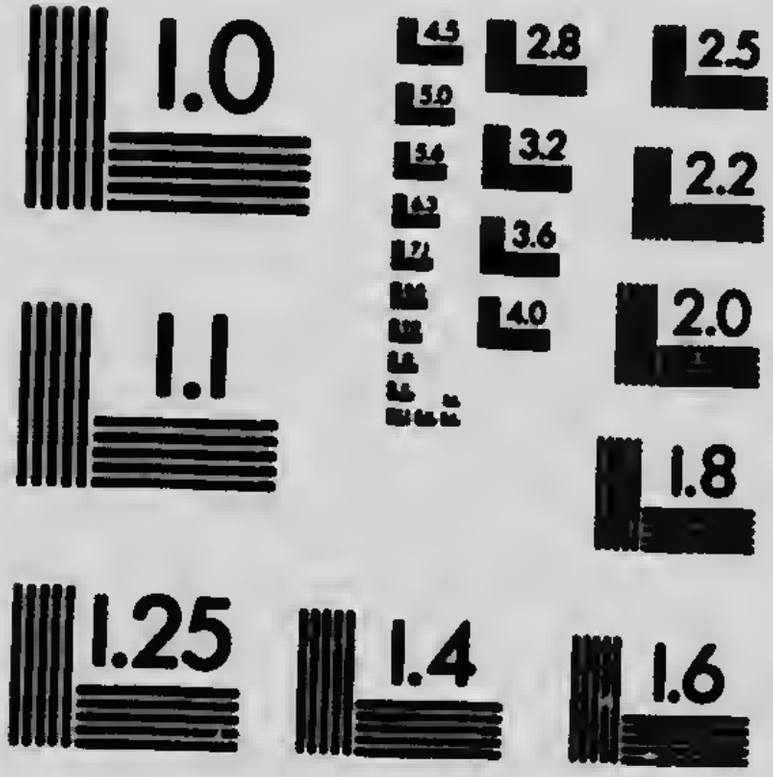

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lature, as an encroachment upon a high constitutional function which should properly be left to the colonies themselves. From the history of the federal union of the New England colonies in 1643, and of the American constitution,—the precedents for the present ministerial proposals, he drew the moral "that congresses can only originate with a feeling of common want on the part of the colonies themselves. The parent country only gets involved in intricacies of mutual jealousies by attempting it, and the best congress its sagacity could devise would be but an artificial fanciful suggestion, and no vital creation of real exigency. All the parent country can do is to permit the colonies to form into congress, to recognize them, and to secure its own proper interest in the arrangement.

"But this bill eager to anticipate the wishes of the colonies, not only offers a general scheme of permission, which I think ought to be done, but enables New South Wales, while it has a great preponderance of influence, with the agreement of only one other colony to grasp all five Australian provinces, at once inflict all the anomalies of its own precious constitution on the whole convention." New South Wales he pictured as a mother of discord, the rapacious despoiler of her own children. "What a glorious system," he exclaimed, "of custom duties, lighthouses, post-offices, railways, etc., New South Wales will get at the expense of the united revenue. And what a glorious harvest of jealousies, remonstrances, expensive rebellions will surely spring out of the seed so diligently sown." He condemned the bill for withholding from the colonies many subjects which exclusively concerned themselves, such for example as the imposition of import duties. In attempting to secure an equalization of tariffs, there was involved an actual interference with the existing customs of all the colonies save New South Wales. He ridiculed the efforts of the Colonial Secretary to secure a uniform tariff. Only some strong reason would justify such an interference with the colonial power of taxation, and he failed to find an explanation in the unanswered queries he addressed to the Colonial Secretary. "Is Lord Grey afraid of a hostile tariff to this country, or is it the little international free trade measure that is such an amusement to him? Or does he see imminent danger of the general assembly making a complication of different customs duties for each of its component provinces?" A portion of this criticism was disarmed by the appearance of the revised bill, which showed a

greater consideration for the colonial right of self-government than had the original measure, but it expressed, nevertheless, somewhat fairly, some of the principle grounds of objection on the part of the more liberal school of imperial thinkers.

The more arduous but honorable task of constructive criticism[1] was committed to Mr. Angus Mackay, whose keen constitutional and scientific analysis of the amended bill of 1850 is immeasurably the best legal and political exposition[2] of the measure which we possess. The task essayed by Mr. Mackay in his detailed commentary on the bill, clause by clause, practically amounted to a counter-project for the creation of a new federal constitution based upon the model of the United States. For the criticism of the federal clauses of the bill, he drew his inspiration almost exclusively from that pure source of federalism. Those particulars in which the Australian bill differed from its American prototype were especially subjected to adverse criticism. The American constitution upon almost all points was accepted as the absolute criterion of judgment, and its final authority was unquestioned. The optional character of the general assembly, the system of representation, the jurisdiction of the supreme court, the distribution of the powers of government, and the mode of constitutional amendment, came in for special condemnation. Into his own alternative constitution, he incorporated not only some of the broad principles of the American organic law, as for example the bi-cameral system of national and federal congressional representation, and the federal organization and jurisdiction of the supreme court, but even some of its details, such as a federal territorial capital. The idealization of American institutions was at this time among this school of political theorists, a favorite form of constitutional worship.[3] In the writings of Mr. Roebuck, one of the leading colonial reformers of the nation, we find this tendency to adopt the federal system of the United States, as the most suitable model for the political institutions of the several groups of colonial possessions, in which the Australian colonies were naturally included as a federating unit, and for which in particular a federal constitution

[1]The Times, Mar. 23, 1850.

[2]A. Mackay, Analysis of the Australian Colonies Government Bill. Published by the Society for the Reform of Colonial Government.

[3]The Society for the Reform of Colonial Government had even resurrected the old American Colonial Charters as object lessons. The Times, Mar. 23, 1850.

was outlined, similar in form and in principle, except in some minor features, to that of the United States.[1]

The revised bill contained several material alterations, which in the minds of the liberal constitutionalists, effected a great improvement on the original measure, by more fully recognizing the rights of the colonies in respect to the organization of the federal assembly. The character of the constitution was changed; it was no longer compulsory and imperial in its nature, but had taken on a permissive and more truly Australian form. By leaving the initiation and operation of the federal clauses of the bill to the legislatures, it sought to commend the federation scheme to the good-will of the colonists instead of imposing it upon them by an external and unpopular coercionary authority. It expressed in fact, a great concession to the spirit of colonial autonomy and of constitutional freedom.

The clauses of the present bill[2] which relate to the subject of a uniform tariff and the general assembly are sections 26, and 30 to 34 inclusive.[3]

The first and most important alteration in the bill was the omission of the clause imposing a uniform tariff, that subject being now relegated to the general assembly. The tariff provisions which are contained in the three sections 26, 32 and 34, are very simple. Under the first of these, the various colonial legislatures were empowered to levy such customs duties as they might see fit, subject to a prohibition of any discriminating duties. This was a complete reversal of the policy of the previous bill which had limited provincial autonomy in fiscal matters through the enactment of an imperial tariff. The several colonies were now, subject to certain constitutional restrictions, endowed with the commercial powers of independent states in the regulation of their custom duties. But as this liberal grant of fiscal freedom opened the door for the revival of customs discrimination, a differential proviso was inserted with the intent of constitutionally forestalling any possible action by the local legislatures in that direction. The language of this proviso, it will be noticed, is not nearly so broad and inclusive as that of the original bill, for whereas the latter applied to the levying of any prohibition or restriction, or the grant of any exemption, bounty, drawback or other privilege, the former is limited to the levying

[1]J. A. Roebuck, The Colonies of England, p. 175.
[2]Clauses at length. H. L. (Sess. Pa.), 1850, vol. III, p. 18-21.
[3]See Appendix B.

of "new" import duties. Under the wording of the revised clause, there was nothing to prevent the grant of special intercolonial concessions or privileges in matters of commerce, providing they did not fall within the meaning of the terms of the express prohibition of differential imports. The alteration of this section turned out to have a most important effect upon the commercial relations of the colonies, by enabling or permitting the several legislatures to enter into various border duties conventions, by which a limited measure of special freedom was conferred upon intercolonial trade.[1] But the application of the proviso was sufficiently inclusive to frustrate any policy of intercolonial free trade, or reciprocity, or the grant of any most favored nation privilege as between the colonies themselves.[2]

Among the enumerated powers of the general assembly under section 32, was that "for imposing and levying any duties of customs imposed on the importation or exportation of goods into or from all or any of the colonies represented in such general assembly, or into or from any ports or places in such colonies respectively, or for repealing varying or regulating any such duties for the time in force in all or any of the colonies represented in such general assembly." The effect of this clause was the same as the original,—to vest the regulation of customs duties in the hands of the general assembly, although the operation of such legislation was now restricted to the provinces represented in the federal legislature. The constitutional limitations upon the exercise of this power are found in section 34, whose language is identical with that of section 35 of the bill of 1849, in forbidding the imposition of any duty upon supplies for Her Majesty's army and navy, and in prohibiting the levying of duties, bounties or drawbacks of any kind whatsoever, or the imposition of shipping dues, at variance with imperial treaty obligations. The legal prohibitions of clause 34 of the original bill are, strange to say, omitted from this, so that there was nothing to prevent the general assembly from imposing general differential duties, or levying discriminatory tariff and unequal shipping charges as between the colonies in so far as they did not conflict with Her Majesty's treaty obligations. It may have been thought an act of supererogation, to seek to enforce on the general assembly the self-evident policy of a uniform tariff for all the colonies.

[1]Quick and Garran, Annot. Const. of Aust., p. 101.
[2]Ibid p. 104.

The matter at any rate was one of purely domestic concern which might safely be left to the good sense and justice of the colonists themselves.

In the sections relative to the constitution and powers of the general assembly we also find some material alterations. The most important of these is in section 30, relating to the mode of constituting the House of Delegates and determining the character of its organization. Under the original bill, it will be remembered, that addresses from the legislatures of any two of the colonies was sufficient to call the federal assembly into existence with legislative and administrative authority over the whole of the Australian colonies. But by the present bill, only those provinces were included in the federation which presented addresses asking for the establishment of a general assembly, or which subsequently signified their desire by similar addresses to be represented therein. The general assembly was now established on a surer foundation of provincial consent: the objectionable coercive features of its formation were superseded by a voluntary and permissive provision for entering the union. The power of instituting a House of Delegates was still retained by the legislatures of any two or more states, but any such action did not affect the independent status of those colonies which preferred to remain outside the federal union. Each province was left to decide for itself whether it would become a member of the federation, or on the contrary live on in a state of isolated blessedness. But when once that choice was made in the affirmative, the colony lost its right of independent judgment in respect to its future relation to the federal government. The coercive power of the general assembly at once became applicable to it, and no escape could be found from any objectionable federal legislation or policy by an attempted withdrawal from the union. The constitution contained no right of secession; the union once established was legally indissolvable save by the imperial parliament itself.

Among the minor features of constitutional interest which this section presents, may be mentioned the substitution of Her Majesty's order-in-council for the act of the Governor-General in establishing the general assembly, thus bringing the institution of that body more immediately under the surveillance of the Colonial Office. The addresses of the legislative councils had still to be presented to the Governor-General, but the inaugur-

ation of the Assembly took place under the direct auspices of Downing Street. The subsequent admission of other colonies did not, however, require the intervention of the imperial authorities, but was left to the determination of the federal government.

The report of the Privy Council had recommended that one of the governors of the colonies should be appointed Governor-General for Australia, but both the original bill and the present contained an alternative proviso for the nomination "of such other person as in any letters patent" shall be appointed. Under this provision an outside person unconnected with any of the colonial governments, might have been nominated to the office of governor-general. Such an appointment would have removed much of the colonial jealousy attaching to the connection of the chief federal office with one of the provincial governorships. The duplicate appointment was open to the further criticism, that although the two offices might easily be united in one person so long as the duties of the position were merely titular, yet whenever any serious functions and responsibilities of a federal nature devolved upon the Governor-in-Chief, he could not effectively fill the two offices.[1] His two-fold position would be made all the more untenable by the possible conflict of the federal assembly and a provincial legislature over some question of policy, or as to the limits of their respective jurisdictions. This provision, moreover, presented the anomalous possibility of the appointment of a Governor-General prior to the institution of a federal government, since the petition of two legislative councils was necessary to call the general assembly into existence, and they might never care to exercise that privilege.

To secure the establishment of a general assembly, addresses were required from only two of the colonies, but provision was made for the subsequent admission of others upon petition. If, as was alleged[2] might easily happen, all but two of the colonies decided to stay out of the union, the assumption by this minority of the name and the dignity of a general assembly would seem a somewhat preposterous, if not presumptuous action. The outstanding provinces might desire to join in a separate confederation, but the language of the section effectually precluded that eventuality, by speaking in the singular of "such" general assem-

[1]A. Mackay, Analysis of the Aust. Colonies Bill, p. 46.
[2]Ibid, p. 47.

bly. Nevertheless the interesting spectacle might have been presented of two rival unions seeking recognition from the Colonial Office, each claiming to be the only original and legitimate federation. It is difficult to see in any case how the imperial government could justly refuse the request of the colonies to unite in a separate confederation, if they could show reasonable cause for believing that their interests would not be properly safeguarded in the existing general assembly. This clause apparently assumed that the recalcitrant provinces would be admitted as of right into the union, upon petition to the Governor-General, but it is not easy to perceive by what means they could be actually received into membership, if the House of Delegates should object. But no federal government, in fact, could be considered truly worthy of the name, or qualified to perform the functions assigned to its care, unless it represented the great majority if not all of the colonies in the Australian group.

The last clause of the section supplied a serious omission of the original bill, in failing to determine the duration of the House of Delegates, which was now fixed at three years from the date of the return of the writs for the first election, subject, of course, to be sooner prorogued or dissolved by the Governor-General whose powers in this respect were similar in character to those of the several colonial governors. This provision applied only by its terms to the first general assembly, but it was doubtless expected that the rule would be made permanent, or that the Assembly under its power of constitutional amendment would determine some other period more satisfactory to the wishes of the colonies represented therein. The elections were to be held simultaneously in parliamentary fashion, and not according to the rotatory system of the American Senate. The parliamentary character of the Assembly was further emphasized in the omission of any provision looking to the instruction of the delegates, such as would be expected in an intercolonial diet. As the duration of the House of Delegates was unaffected by the dissolution of the legislative councils, it might occur that the delegates to the Assembly would be chosen by an expiring provincial legislature, and thus not be truly representative of the views and the policy of the newly elected parliament. In seeking to secure the permanence of the federal assembly, the bill exposed that body to the danger of becoming a non-representative and an unpopular institution. The power of dissolution might possibly

be used to bring the House of Delegates into more immediate touch with its constituents, but as the delegates would be virtually a body of instructed representatives, this prerogative could only have been sparingly used by any Governor-General.

The provisions in regard to the time and place of the meeting of the general assembly were wisely left to the future determination of the colonial authorities, who were in a better position than the home government to deal with the ticklish question. Mr. Mackay scored[1] the bill for failing to provide that the federal legislature should possess "exclusive municipal jurisdiction, either permanent or temporary" over the capital of the confederation. The Assembly, he maintained, would be thrown upon the local government for protection, which would create a jealousy on the part of the other colonies of the ascendency or the superior influence of that state within which the House of Delegates held its sessions.[2] But it is very doubtful if any of the colonies, least of all New South Wales, would have agreed to surrender its exclusive jurisdiction, even temporarily, over its provincial capital. The suggestion was manifestly a mere adaptation of the provision of the United States constitution, altogether unsuited to the local conditions of Australia, where the means of communication had not yet been fully developed, and subsidiary centres of population had scarcely begun to spring up, which would have afforded satisfactory places of assemblage.

The basis of representation in the Assembly was left unchanged. The system of apportionment came in for special criticism both inside and outside parliament as conflicting with the principles of federalism, which should represent a compromise between the extreme claims of the larger and of the smaller colonies as exemplified in the congressional organization of the United States. The argument against the government's proposal was stated with singular force by Mr. Mackay.[3] If, said he, the Australian provinces were determining this matter for themselves, and New South Wales proposed a system of inequality, the others would not listen to it for a moment. We should not expect them to adopt at our dictation, a principle they would scornfully reject if permitted to frame their own federal

[1]Mackay, Anal. of Aust. Col. Bill, p. 63.

[2]Theoretically this is undoubtedly true, but practically it has not proved the case in the Dominion of Canada where the capital, Ottawa, is under the jurisdiction of the Province of Ontario.

[3]A. Mackay, Anal. of Aust. Col. Bill, p. 51.

constitution. That which New South Wales could not voluntarily secure, should not be arbitrarily forced upon the unwilling colonies by an imperial strong arm. He strongly urged the creation of a second chamber, as the only just solution of the conflicting interests of population and statehood.

Section 31, conferring on the general assembly the power to alter the rules prescribed by Her Majesty's order-in-council for the election of delegates, the enactment of laws and the conduct of the business of the Assembly, and authorizing the federal congress to amend its constitution subject to royal confirmation, is identical in its terms with section 32 of the bill of 1849. The prerogative of the Crown was intended to be used only as a temporary expedient to set the machinery of the federal government in motion, after which the function would be handed over to the colonial legislatures. But it was carrying the right of imperial control very far to subject the regulation of even the minute rules of the House of Delegates for the conduct of its own business to the sanction of the Colonial Office.

The legislative competency of the general assembly under section 32 was now restricted to such colonies as were represented in the said Assembly, whereas under the original bill, its jurisdiction extended to all the colonies, whether they were consenting parties to the formation of the union or not, and irrespective of the acceptability of the federal legislation to any of them. The territorial limitation of the present bill to voluntarily federating colonies, failed to secure the desired uniformity of legislation throughout Australia, which it was the primary aim of Earl Grey to promote, but, on the other hand, it respected the constitutional right of each of the provinces to determine the operation of federal authority in respect to itself.

The enumerated powers of the Assembly remained unchanged save in the following particulars.

There is one most important addition to the former list of subjects upon which the federal assembly was authorized to legislate by this section, namely that in respect to the sale and regulation of the crown lands of the several provinces. The control of waste lands had long been a subject of dispute between the colonial governments and the imperial authorities. Partly on the ground that the colonies would dissipate these most valuable territories, which were the common heritage of the British race, and not the possession of a mere handful of Australian settlers,

and partly in order to maintain the independence of the local executives, the home government had steadfastly refused to surrender its exclusive jurisdiction over these unappropriated areas. The imperial enactment establishing a uniform price for waste lands throughout the Australian colonies was a source of constant complaint by the colonial legislatures, which felt that the public lands of their respective provinces were properly their own possession, and that their resources could never be successfully developed until they were placed under the unrestricted regulation of the local governments. Moreover they could never attain to the liberty of complete self-government so long as the Colonial Secretary retained control over one of the most important sources of provincial revenue. On the other hand, the subject had proved a veritable thorn in the flesh to successive Secretaries of State, who, but for the responsibility of an assumed imperial trusteeship, would gladly have rid themselves of any further supervision over so harassing a matter. Besides it was becoming increasingly evident, that with the growth of the colonies and the extension of the right of self-government, the management of the public domain could no longer be withheld from them. The formation of the general assembly promised an easy escape from the worst evil that had been apprehended from the transfer of the waste lands to colonial control, namely, provincial competition in the sale or disposal of these valuable areas. The House of Delegates could be trusted to establish a uniform system of regulation, and to preserve the lands from wasteful and useless spoliation. To safeguard the public domain against any possible interference from the provincial legislatures, the general assembly was endowed, in the following clause, with the "exclusive" right to make laws for "selling, devising, granting licenses for the occupation of and otherwise disposing of waste lands of the Crown," in the colonies represented in the federal assembly, and for the appropriation of the receipts arising from such disposition.

The Colonial Secretary may not have been uninfluenced by the consideration, that the grant of a control over public lands to the federal government would be one of the strongest inducements to the several colonies to unite.[1] But, judging from the colonial opposition to this proposal, the provinces could not have been easily bribed to surrender their claims to the lands in their own

[1] Jenks, History of the Australasian Colonies, p. 295.

right, by the illusive disposal of the same upon the general assembly. The revision of the bill in this particular was an attempt on the part of the Colonial Office to combine the imperial policy of uniform land regulation, with the satisfaction of the colonial aspiration after complete autonomy. On no other subject of common interest within the enumerated list was singleness and uniformity of legislation more desirable, and yet on none was it more difficult of attainment on account of the different economic conditions in the several colonies and the jealousies existing between them. The views of the colonists were practically unanimous in objecting to the transfer of the public estates to the general assembly. We have already pointed out the hostile attitude which was assumed by the colonies of Van Dieman's Land and South Australia upon this matter. A similar protest was soon after embodied in one of a series of resolutions upon the grievances of the colony, introduced by Mr. Wentworth in the Legislative Council of New South Wales on August 28th, 1850,[1] and unanimously assented to by that body. . . . . "That although by the bill now before parliament for the better government of the Australian colonies, it is proposed to vest in the federal or general assembly to be hereby constituted the power to redress this grievance, this House, seeing the uncertainty that any two of these colonies will agree to set the general assembly in motion, that the process for calling it together, even though they should agree, is very dilatory, and that there is little chance of any uniformity in regard to a uniform price for the public lands of these colonies, so diverse in climate, productions, soil, does not look to any relief from a legislative body so unfitted to deal with its grievance, and insists on the justice and expediency of vesting plenary powers with respect to the public lands of these several colonies in the several legislatures." In adding this power to the jurisdiction of the general assembly, that body was exposed to the same public criticism and jealousy of the colonial legislatures, which had long been directed against the policy of the Colonial Office. In the light of subsequent experience it is doubtful, however, if the imperial government's proposal for federal control would not have been a wiser policy than the handing over of the public lands to the local legislatures.

An additional clause to the provision respecting the power of the general assembly to regulate customs duties, throws con-

[1]Official History of N. S. W., p. 169.

siderable light on the financial relations of the federal and local governments,—a matter which had been left in much obscurity in the former bill. By virtue of this clause, the Assembly was empowered to allot to the several colonies represented in that body, such portion of the aggregate revenue arising from the federal customs, as it might see fit. This appropriation was made in compensation of the loss the colonies would otherwise suffer from the transfer of this source of indirect taxation to the general legislature. The language of the provision is most indefinite and unsatisfactory. No attempt was made to lay down any equitable or clearly defined principle upon which such allotment should be made; the matter was left entirely to the good sense and justice of the House of Delegates. The way was thus thrown open to grave abuses, should any one colony seek to make the apportionment serve its own particular interests. This danger might have been avoided by the addition of a stipulation, that the apportionment should be made in proportion to the customs revenue contributed by each colony on the goods consumed within it. Both in respect to the expediency of an allotment and as to the mode of its distribution, the discretion of the general assembly was left unfettered. As no reference is made to the apportionment of any other part of the federal revenue than the customs duties, apparently in respect to all other sources of supply such as the land fund and postal receipts, the powers of the federal congress were uncontrolled in the matter of user or distribution.

The remarkable confusion and interdependence of the financial relations of the federal and local governments is made manifest by comparing the above provision with the final clause of the section relating to federal assessments on provincial revenues for the purposes of general government. The two legislatures were made reciprocal contributors to each others treasuries. Each was dependent on the high sense of honor and the gracious bounty of the other for at least a part of its financial supplies. On the one hand, the general assembly was authorized to appropriate to the provinces, so much of its customs duties as it might see fit. The colonial tariffs furnished the principle source of revenue for the several provinces, and to have entirely deprived them of their customs receipts would have impaired the efficiency of their respective governments, and have compelled a recourse to direct taxation, against which there was the strongest popular objection. The federal government, on the contrary, with its control of the customs and land funds, would possess an

income far in excess of the legitimate requirements of its own administration. It was but natural under such circumstances, that the federal legislature should be called upon to pay back a part, if not the whole, of the customs duties, which the several colonies would lose through federal union. But no legal means was provided by which the colonial governments could get hold of their share of the federal customs. As the apportionment was left to the discretion of the general assembly, the provincial authorities were in the unfortunate position of worthy but helpless supplicants on the favor of the federal treasurer. At the same time, the federal legislature was entitled to make unlimited demands by way of assessment upon the provincial revenues, for the furtherance of all objects of general administration. The revenues of the several colonies were exposed to the insatiable claims of the Assembly, which was the primary judge of the necessity, the legality and the amount of its requisitions; it threatened to make the provincial exchequers mere financial reservoirs upon which the federal government could draw. On the other hand, the local legislatures had a most effective safeguard against such exactions, in the provision requiring legislative appropriation of the provincial funds. In effect, this was equivalent to a limited right of veto on federal legislation for the purpose of which the assessment was made. Any one province would practically be able to defeat the unanimous wish of the others, as expressed in the general assembly, by withholding its appropriation for the desired object. The temptation to resort to this expedient would be all the greater in case a spirit of retaliation should arise against the federal assembly, on account of some action of the latter in respect to the allotment of the customs revenue.

Upon no subject are legislatures so sensitive as upon the control of the public purse; yet the financial clauses of this bill seem specially designed to bring about a conflict of interests between the two agencies of government. Out of the confusion of the financial relations of the federal and local legislatures, a deadlock must have ensued which might have proved fatal to the federal experiment. A greater hodge-podge of public finance could scarcely have been devised for setting the two governments at loggerheads. The principle of the fiscal clauses would almost seem to be, that each of the governments should have its hands in the pockets of the other with a view of extracting a revenue therefrom. In short, the provisions of the section were singu-

larly ill-adapted to furnish either the general assembly or the local legislatures with a satisfactory revenue. Rejecting the simplest and soundest expedient of giving the House of Delegates an independent financial status, the bill resorted to a system of intermediary provincial appropriation which was as unsound in principle as unworkable in practice. Instead of freeing the provincial governments from the entangling meshes of federal finance, and compelling them to work out their own system of taxation, it bound them closely to the fiscal policy of the general assembly. Neither of the governments was enabled to maintain an independent fiscal existence, but each was left feebly leaning upon the other for contributory support. The difficulty of federal finance has pursued the federal movement throughout its whole history, becoming increasingly intricate with the divergence of the fiscal systems of the colonies, and with the growth of large national debts, until the problem seemed almost insolvable upon an equitable basis, save to a few ardent nationalists of unbounded faith.

The clause relative to the constitution of the general Supreme Court called forth from Mr. Mackay a very able criticism upon the unfederal character of that body.[1] "It is important," he writes, "that we should know whether the jurisdiction alluded to is to be conferred in the alternative, or in the conjunctive. Is it meant that the Court shall possess either original or appellate jurisdiction, or that it shall possess both? If only one or the other, and its jurisdiction should be exclusively original, the important question is, to what is that jurisdiction to extend? Is it to embrace federal matters only, or to comprehend local with federal matters? To extend it to local matters will only be to give to the Supreme Court a very needless concurrent jurisdiction over such matters with the local courts, unless it is intended to deprive the local courts of jurisdiction so far as it is conferred upon the Supreme Court, which cannot possibly be in contemplation. But to give the Supreme Court original jurisdiction of any kind, concurrent or exclusive, over local matters would be to vest it with an authority which the colonies could not recognize, for it would be intolerable that a court not deriving its authority from any of the colonies, should interfere with the administration of justice between the citizens of any of them in questions of a purely local character, depending perhaps

[1] Mackay, Analysis of Aust. Col. Bill, p. 58.

for their decision upon a current of local precedents, or in interpretations to be put on local statutes. If, on the other hand, the jurisdiction of the Supreme Court is to be exclusively appellate, the question then, as in the former case, is to what is that jurisdiction to extend. By the terms of the clause, it is to be a Court of Appeal from the local courts. If by that is meant that an appeal is to lie to it from the local courts, in reference to local matters, the same objection holds good as to the embracing of similar matters within the original jurisdiction of the courts. There is also this additional objection, that such an arrangement would superinduce a conflict between the federal and local tribunals. If the Supreme Court reverses a decision of a local tribunal, it would necessarily be armed with the power of carrying its judgment into effect, so that federal officers deriving their authority solely from a federal court would be empowered to execute in all the colonies the judgment of a court in reference to a purely local dispute, and this too when that judgment was in direct conflict with the judgment of the local court, . . . but if it is intended that an appeal shall lie from the local courts to the Supreme Court only in matters of federal import, the arrangement is equally objectionable, on the ground that it contemplates the conferring of original jurisdiction upon the local courts over questions of a federal bearing. The impracticability, as well as the impolicy, of this will be seen and acknowledged when we consider what a federal question may be. Suppose, for instance, that a dispute arises between a colony and citizens of another colony. Can the latter as plaintiffs, summon the former before the courts of the colony of which they are citizens, or will they be obliged to resort to the courts of the colony against which they are proceeding? If the colony is plaintiff, can it summon the citizens of the other colony before its own courts, or will it have to resort to the tribunal of the colony of which they are citizens? Or take the case of a dispute between two colonies; which can summon the other before its own local court? It is clear that in these and similar cases, there will be a defect of justice unless some other machinery is provided for the administration of justice in such cases than the local courts. That such machinery is not contemplated is evident from the fact that the appellate power of the Supreme Court is to have reference solely to the local courts. If jurisdiction, original or appellate are to be conferred in the conjunctive upon the Supreme Court, the

objections will equally lie to extending the original or the appellate jurisdiction of the Supreme Court over local matters, or the original jurisdiction of the local courts over federal matters."

But it may be said that this is provided for by the words "empowering the general assembly to determine the extent of the jurisdiction and regulate the course of the proceedings" of the Supreme Court. "But not so," he continues, "for whatever the general assembly does in this respect, must be within the act, which is the fundamental law. It cannot, for instance, make the Supreme Court a Court of Appeal from any but local courts. However it may deal with the extent of the jurisdiction in this case, it cannot get rid of the objection either that the federal courts will have appellate jurisdiction over local matters, which it should not have, or that the local courts will have original jurisdiction, which they should not have."

"The proper mode of proceeding would be for the bill in establishing a Supreme Court, to state specifically the character and extent of its jurisdiction, whether original or appellate or both. It should then empower the general assembly to constitute inferior federal tribunals throughout the colonies, which should have, exclusive of the local courts, original jurisdiction over all questions of a federal bearing. From these inferior federal courts, should there alone be an appellate power lodged in the Supreme Court. This arrangement would entirely get rid of the objection as to conflict of jurisdiction. The local courts should be independent, and their powers sufficient for all local questions; that is to say, there should be no court of appeal in local questions, beyond the highest local courts. In the same way, the federal courts should be independent and all-sufficient quoad federal questions, there being no court of appeal on such questions beyond the highest federal court. This is as it should do, confine the jurisdiction of the imperial tribunal solely to questions of an imperial bearing. That as regards the different classes of courts, such a division of power is not contemplated, is evident from the thirty-third-clause, which provides that in case of a conflict of authority between the federal government and any of the local governments, the question should be decided by an imperial tribunal. What is the Supreme Court for, if it is to be thus unceremoniously ousted of its jurisdiction in a matter so obviously and so purely federal in its bearing? Should the conflict be between a local legislature and the imperial gov-

ernment, or between the latter and the federal government, the Judicial Committee of the Privy Council would in that case, but in that case only, be the proper tribunal for the decision of the question."

This clear cut analysis affords an admirable demonstration of the indefiniteness of the judicial organization of the federal government as provided for in this section. Notwithstanding the time that had been devoted to its preparation, the bill provided but the mere framework of a federal constitution. Many most important and salient matters were altogether omitted, or left in a state of indeterminateness that was equally objectionable. To this extent the bill was liable to the severity of condemnation that Mr. Mackay cast upon it. But in so keenly criticising the composite nature of the federal judiciary, he largely missed the purpose which that body was intended to serve. Mr. Mackay was dominated by the idea of the United States judicial system with its two-fold organization of independent state and federal courts. He sought for the same definite separation of functions in the Australian bill, and finding it not, condemned the judicial clauses without qualification, and proceeded to construct a more perfect model upon American lines. But the Australian Supreme Court was not framed according to the federal type of the United States judiciary; it was not designed to perform the same federal functions, but on the contrary to serve as the national complement of the existing provincial courts. Possibly in respect to its original jurisdiction, there may have been a faint imitation of the American constitution. It would at least be tempting to surmise that the original jurisdiction of the court was intended to extend only to federal concerns, and to deal with much the same legal questions as fall within the original jurisdiction of the American federal courts, including all cases in which either the federal government or a state was a party to a suit. Some support for this supposition may perhaps be found in a statement[1] of Earl Grey in the House of Lords, to the effect that the reserved jurisdiction of Her Majesty in Council under section 33 of the bill, might be delegated to an Australian court of appeal, should the general assembly successfully constitute such a body: in other words the Supreme Court might be empowered to exercise an alternative or concurrent jurisdiction in case of conflicts between the federal and provincial governments,

[1]Hansard, 1850, vol. III, p. 1222.

or between the colonial legislatures over the limits of their respective competency. In such a case the jurisdiction of the court would undoubtedly have been both original and federal, since it is extremely improbable that either the general assembly or the local legislatures would consent to submit the question of their legislative powers to the determination of a subordinate or foreign provincial court. However this may be, the original jurisdiction of the court would have been but a minor feature of its activities, since the primary purpose of its constitution was to act as a general court of appeal. The appellate jurisdiction of the Supreme Court was not intended to be federal in character but general, for the decision of all questions coming up from the provincial courts on appeal. This is evident, as Mr. Mackay pointed out, from the language of the bill in limiting appeals to cases from local courts only. The Supreme Court was to be the highest Australian court of appeal; to perform in a minor degree the functions of the Judicial Committee of the Privy Council. The performance of such a function was certainly not compatible with the strictest principles of federalism, but was designed to satisfy the desire of the colonies for an improved judicial organization, by providing an efficient court of appeal from the ill-qualified provincial tribunals, and in place of the expensive and time wasting resort to the Judicial Committee, and to confer the inestimable advantage of a uniform system of legal interpretation throughout Australia. In this case, theoretic perfection was sacrificed to practical convenience. The arguments of Mr. Mackay against the impracticability of such an appellate federal jurisdiction, while scientifically correct, overlooked entirely the national character of the government established under a federal constitution, and the advantage of uniformity of judicial interpretation, which have been clearly recognized in several modern federations.[1] The Colonial Secretary happily anticipated the tendency of the federal judiciary to develop its organization on national lines, and roughly prototyped in this respect the juridical system of the Australian constitution of half a century later.

Mr. Mackay's suggestion in regard to making the Supreme Court a final court of appeal for the decision of constitutional conflicts between the state and federal legislatures, and his further proposal to limit the appellate jurisdiction of the Judicial

[1]For example, in the German and Canadian constitutions.

Committee of the Privy Council to cases in which the imperial government was a party, are interesting applications of the logical principles of federalism to the judicial system of the whole empire. The former proposition had much to commend it, provided the Australian Bench could supply men of sufficient constitutional learning and ability to command respect for all its judgments and unquestioned recognition of its decisions on the part of the colonial authorities; while the latter suggestion involved such a revolution in the judicial organization of the empire, and such a destructive attack upon the royal prerogative, as to place it outside the bounds of possible acceptance. In seeking to construct a federation under the Crown, there was certain to be a conflict between the principles of pure federalism and of imperial dependence. These two principles are irreconcilable in all three departments of the government, and in none more strikingly so than in the judiciary. No amount of legal ingenuity would have enabled the Colonial Secretary to devise a judicial system free from the legitimate charge of inconsistency. In making a choice in favor of a national, as opposed to a federal organization of the judiciary, His Lordship was justified by the conditions of the time, and by the subsequent developments of Australian history. In laying down but the bare framework of a judicial system, and in empowering the Assembly to determine the jurisdiction and procedure of the Supreme Court, the bill left room for the normal development of a federal judiciary to answer the requirements of local circumstances and of the imperial connection.

The right of constitutional revision conferred by section 31, was characterized by Mr. Mackay as "illusory," since the power of amendment was ultimately vested in Downing Street, which could withhold its assent to any objectionable alteration.[1] He suggested however that it would be possible to introduce amendments under the language of the concluding portion of the present section, by which the general assembly was empowered to legislate on subjects outside of the enumerated list, upon the presentation of addresses from all the legislative councils represented therein.[2] In other words, according to this view, what the general assembly could not directly attain in the way of revision without the express ratification of the imperial government, it

[1]Mackay, Analysis of the Aust. Col. Gov't. Bill, p. 66.
[2]Ibid, p. 67.

could indirectly accomplish by inducing all the legislative councils to unite in petitioning it to make the desired alterations. But it is very improbable that the judiciary, in the face of the well-known canon of construction which restrains a legislature from exercising indirectly any power, which is expressed placed outside its direct legislative competency,[1] would have allowed this open abuse of the powers of the Assembly for the purpose of accomplishing a constitutional amendment in flagrant violation of the spirit of the imperial act. The suggestion, moreover, overlooked the fact that even though the courts were derelict in performing their constitutional duty, the imperial government could easily defeat such an attempted evasion of the express provision of the constitution, through the use of the royal veto, applicable to all colonial legislation, or by instructing the Governor-General to refuse his sanction to any proposed alterations.

Section 33 removed the doubt which had arisen in the original bill, as to whether the legislative powers of the general assembly were concurrent with, or exclusive of those of the provincial legislatures, by providing that, "save as to waste lands and the revenue therefrom," the powers of the Assembly did not supersede those already possessed by the colonial legislatures. This exception was introduced so as to prevent any possibility of competitive legislation on the part of the several states in disposing of their most valuable public estate. This concurrence of jurisdiction was adversely criticised as tending to produce a conflict of authority between the federal and local governments, but it is extremely doubtful if the grant of exclusive legislative competency would have been a preventative of the anticipated evil. The experience of the Canadian constitution will at least teach the fruitlessness of expecting to avoid legislative friction of jurisdiction, and the resultant plethora of litigation, by any such device as the exclusive grant of expressly enumerated powers. In addition, the practical difficulties in the way of conferring an exclusive authority on a merely tentative body were manifestly great, since the Assembly could not hope to speedily cover the whole field of legislation committed to its care.

The clause in respect to the legislative supremacy of the general assembly was somewhat modified. In the original bill, only the future legislation of the colonial councils was avoided

[1] See Lefroy, Legislative Power in Canada, p. 386, for list of cases in application of this principle.

by reason of repugnancy to federal enactments, but now the principle of federal predominancy was extended so as to cover the past legislation of the local parliaments as well,—a modification which was absolutely essential to assure the unquestioned supremacy of the House of Delegates over the whole field of federal legislation, which otherwise would have been restricted by the pre-federation statutes of the local legislatures. On the other hand, the scope of the legislative authority of the general assembly was limited to such states as voluntarily entered the union. Conflicts of jurisdiction between the federal and provincial legislatures were still to be determined by reference to Her Majesty in Council. This provision was most severely criticised by Mr. Mackay[1] as ousting the Supreme Court of its most natural jurisdiction,—a criticism however, which was disarmed by the subsequent explanation of the Colonial Secretary, that it was intended to confer a similar power of constitutional interpretation upon an Australian court of appeal. It would indeed have been anomalous, that the Assembly should be authorized to amend its own constitution, but that the federal judiciary could not assume the complementary power of interpretating it. The aim of His Lordship was to secure an efficient and final court of appeal, and to maintain the judicial unity of the empire, by a reference of the most difficult and delicate class of constitutional questions to a tribunal which would command the highest legal talent and respect, and at the same time be free from any suspicion of partiality. He did not desire to reserve the highest judicial powers to the exclusive cognizance of an imperial tribunal, but only to make the grant of a similar power to an Australian supreme court, conditioned on the organization of a federal tribunal capable of exercising the function of constitutional interpretation as competently as the duty was then performed by the Judicial Committee of the Privy Council.

In comparing the present bill with that of the previous session, we discover that three important modifications had been introduced, first, in the omission of the clauses providing for an imperial tariff; second, in the substitution of a permissive for a compulsory or coercive organization of the federal legislature; third, in the grant of a new legislative power to the general assembly over the waste lands of the colonies. Several minor

[1]Mackay, Anal. of Aust. Col. Gov't. Bill, p. 62.

differences arising out of defects in drafting and inelegancies of language may also be detected, but the three above features stand out in bold relief as the essential characteristics of the revised constitution. The object of the first two alterations, was to popularize, if possible, the federal constitution, and to introduce a distinctly Australian element into the bill. Instead of an arbitrary imperial tariff, the colonies were enabled to determine their own fiscal policy; in place of a compulsory federal union, the principle of voluntary adherence was recognized. The proposed constitution was still an imperial act, but its operation was now virtually suspended until an Australian sanction should be given to the measure. The bill was transformed into a permissive act, endowing the colonies with limited powers of constituting an embryonic federation. As in the case of a local option law, the federal provisions of the bill could be put into effect or not, according to the sole discretion of the colonial legislatures. In its origin and its ultimate sanction, the bill bore the imprimatur of Westminster, but its immediate force was dependent on Australian consent. Instead of leaving the colonies in their own good time and pleasure, and on their own initiative, to devise the form of a federal constitution, the English government anticipated the colonial need of some sort of federal union by providing the constitutional machinery of a federal government, which the colonists could themselves set in motion. In effect, parliament submitted a provisional constitution to the ratification of the several colonies. The scheme assumed the very modest form, in the language of Lord John Russell, of merely giving "the colonists power to do of their own will what they could not otherwise be able to do." So far from being an arbitrary interference with colonial autonomy, it was rather an extension of the powers of the local legislatures, by authorizing them to set up, should they so desire, the structure of a federal government.

The Colonial Office had proceeded as far as it safely could in forwarding the cause of Australian unity by official support and parliamentary action, without directly enforcing its will on the colonists, and outraging their sense of provincial independence. So tentative indeed was the final form of the government's proposal, that it was open to the criticism levelled against it by Mr. Roebuck, that instead of framing a constitution for the Australian colonies, they were only "sending out a warrant for consti-

tuting one." But this was not an objection that would forcibly appeal to the minds of the colonists keenly sensitive of the interference of both Downing Street and the imperial parliament in any matter of domestic concern, such as the question of Australian federation was felt to be. The government was well advised from past experience, in leaving to the colonies themselves as far as possible the responsibility of working out their own political institutions. All the pressure of imperial influence had not made the municipal councils system operative, and a similar attempt to enforce a federal union upon an indifferent or hostile population would have been equally unsuccessful. The provisional character of the federal clauses of the bill was in truth its most commendable feature, and might have partially removed at least some of the colonial opposition to the measure.

The last principal amendment of the bill,—the provision for the federal control of crown lands but slightly and casually affected the organization of the federal government; it merely relieved the English authorities of a perplexing question of provincial concern, deprived the local executives of their financial independence of the several legislatures, and at the same time promised to strengthen the legislative influence and authority of the general assembly.

Never before had a colonial bill aroused so much interest in the imperial parliament.[1] The debates adundantly prove, that notwithstanding the general opinion to the contrary, the average English member has a passion for constitution making in common with the French and German legislators. The discussion might almost claim to rank as an English "Federalist"; it certainly attained the dignity of a valuable political commentary on the science and practice of colonial administration and constitutional government. Several of the members aspired to incorporate in the bill their own political theories and philosophy. The debate was keenly contested on both sides of the House. Although the government was responsible for the passage of the bill, and was consequently exposed to the severest criticism

[1] Mr. Barton declares: "The debate on the bill of 1850 stands out conspicuously as the most memorable of all the parliamentary debates on the affairs of these colonies." This fact is best brought out by comparing the discussion in parliament upon this bill with that upon the constitutions of 1842 and 1855, or even that upon the Federal Council Bill—a very similar measure, in 1885—all of which succeeded in attracting but little attention in either House. Year Book of Aust., 1891, p. v.

of the opposition benches, the measure was not made a distinctly party question, but in accordance with the excellent principle of excluding colonial matters from the arena of partisan conflicts, the greatest latitude of expression was allowed to the various minor political groups within the party ranks. The deepest anxiety was shown by every section of the House to respect the wishes of the colonies in regard to the bill, but there was a great divergence of opinion as to the true state of Australian feeling.[1] The high quality of the discussion may be best judged by the names of some of the speakers who prominently participated in the Commons debate, including the Premier—Lord John Russell, Gladstone, Disraeli, Molesworth, Roebuck, Adderley and many other lesser lights; in the Lords the discussion had less personal interest, but on the other hand made an even more valuable contribution to the subject of a federal union.

The interest which the federal clauses aroused, is all the more remarkable, when we bear in mind that they represented merely the proposals of a committee for which the Colonial Secretary was responsible, and did not bear the sanction of popular opinion at home, or come before parliament at the instance of the colonies themselves.[2] The question of federation, at this time, was scarcely considered either in England or in the colonies as a matter of national importance to the empire or to the Australian group. It was largely a subject of speculative discussion or of amateur constitution making. Yet notwithstanding these facts, it almost secured the approval of parliament, and but for the faint-heartedness of the government would have done so. The truth of the matter is, that the abnormal interest which the question evoked, did not arise from the inherent character of the proposal itself, but was due to the fortunate circumstance, that it appeared at a time when the matter of colonial policy was one of the primary issues of English politics, and was connected with a constitutional measure which called forth the deepest parliamentary interest from different schools of thought. It enjoyed in fact a fortuitous advantage which raised the subject from comparative obscurity into the full glory of constitutional importance.

The intention of the Ministry in respect to the revised bill was explained by Lord John Russell in a speech of Feb. 8th,

[1]Jenks, The Government of Victoria, p. 148.
[2]Barton, Hist. of Aust. Fed., Year Book of Aust., 1891.

1850,[1] setting forth the general policy of the government on colonial matters. The present bill, he stated, was nearly the same as that of last year. The most important of the alterations introduced was the omission of the provision for an imperial tariff.[2] Although the government was still of the opinion that it was inexpedient that customs duties should vary in the different colonies, it was not deemed "advisable to enact that uniformity by authority of parliament, but that it is better to leave them to settle for themselves whether they will not adopt a similar tariff for all the various parts of Australia." After reciting the provision for the organization of a general assembly, he proceeded to explain the reason for the introduction of the new clause in respect to waste lands "which is so important to all the Australian colonies. . . . . It appears to us that it would be a great mischief that the price should be altered in one of these colonies and remain the same in the others; that there should be a bidding of one colony against another for the purpose of procuring immigrants, very much depreciating the value of waste lands, and we therefore propose that if an alteration be made, it should be an alteration that should extend to the whole." The discussion which followed ranged around the question of the general conduct of the Colonial Office, and the advisability of introducing second chambers into the provincial constitutions.

On Feb. 11th, The Australian Colonies Government Bill received its first formal reading,[3] and one week later came up for a second reading on motion of Mr. Hawes.[4] The debate covered much the same ground as in the former discussion, so that amid the criticism and defence of the general colonial policy of the Ministry, and the theoretical advantages of the bi-cameral system, the federal clauses largely escaped attention. But not entirely so, as several of the speakers incidentally alluded to practical objections to that proposal. Mr. F. Peel argued[5] that in order to secure the permanency of the federal union "it would be necessary to place a constitutional barrier against the encroachment of one state against the other, and that that would be best secured by requiring the representatives of the states to sit in one chamber and the representatives of the inhabitants of the states

[1] Hansard, 1850, vol. 108, p. 535.
[2] Ibid, p. 555.
[3] Ibid, p. 634.
[4] Ibid, p. 976.
[5] Ibid, p. 1000.

in the other." In the course of a general attack on the principle of Australian federation, as "unprecedented and uncalled for," Mr. V. Smith advanced[1] the interesting contention "that the federal system was a republican institution, and he was not one of those who wished to see England establishing republican institutions all over the world." In the United States federation had been "adopted for the purpose of dealing diplomatically with foreign states;" but no such raison d'être was operative here since it was not intended to confer this power on the Australian colonies. Mr. Adderley objected[2] to the principle of apportionment as giving to one colony an overwhelming influence in the general assembly. On the other hand Mr. Milnes approved[3] of the idea of an Australian assembly "analagous to the United States constitution," and trusted that "it would advance the English name, language and institutions as well as the great federation of the world." In this latter respect, the Milnes' conception of the ideal of federation appears to have been very similar to the view so powerfully advocated in more recent times, by the colonial statesman, Sir George Grey. On the motion, that the House resolve itself into committee, Mr. Davitt explained that on account of the apprehension of South Australia of being placed under the rule of New South Wales, he had given notice of his intention to move that the federal clauses be struck out.[4]

In the committee stage of the bill, on April 25th, the discussion was renewed on section 30 relative to the establishment of a general assembly. Mr. V. Smith[5] again assumed an attitude of vigorous opposition to the principle and constitution of a federal union. He condemned the federal assembly as introducing a novel principle "which it had been impossible to effect in other colonies, and which would fail in this instance from the distance at which the settlements were from each other, if from no other cause." Every governor had expressed an opinion adverse to it, and by the public it was held in open contempt. Why he demanded "should they encumber the bill with such a clause" when the Colonial Secretary had expressly admitted that the assembly would be inoperative for a long time to come. Mr. Adderley[6]

[1]Hansard, 1850, vol. 108, p. 1013.
[2]Ibid, p. 1017.
[3]Ibid, p. 1019.
[4]Hansard, 1850, vol. 109, p. 1258.
[5]Ibid, vol. 110, p. 799.
[6]Ibid, p. 804.

ran Mr. Smith a very close race in the vehemence of his opposition to the federal scheme, which he contended had been repudiated by official and public opinion, and "by every interest under heaven." He erroneously censured the bill, as Mr. Roebuck pointed out, for permitting the establishment of two rival Assemblies, and repeated his former argument that no colony save New South Wales would ask for such an institution, or voluntarily enter the union at the risk of sacrificing its own independent existence. The clause, he regarded, as the "result of a mania" in the mind of the Secretary for the Colonies, for "finishing of constitutions." Several of the speakers expressed a similar doubt whether any of the smaller colonies would ever voluntarily join the federation under such a liability.[1] Mr. Disraeli especially emphasized his firm conviction that the Premier "would never see federation existing in the colonies if inequality and not equality were to be the basis of their legislation,"[2] and suggested[3] that it would be the wisest course for the government to withdraw these clauses altogether. The most weighty utterance in opposition to the federal proposal proceeded from that staunch friend of the colonies—Sir William Molesworth. During the late session, as we have seen, he had stoutly opposed the passage of the bill containing any federal clause, though he had privately expressed the opinion that this was a question which might best be left to the colonies for decision. Time had only served to strengthen his objection, and now he came out flat-footed against the scheme. "If," said he,[4] "they wished to lay the foundation of a great federal republic in Australia to be independent of this country, as were the United States of America, then the plan recommended by the honorable and learned member for Sheffield,[5] might be adopted. He did not see how a federal assembly could be admitted at all unless the intention was to separate these colonies from the motherland. It appeared to him that the monarchy of Great Britain was the true federal assembly that should be contemplated, at all events for a long time to come for these colonies. All the questions that were proposed to be left to the general assembly could be settled by mutual arrangement between the colonies without any such

[1] *e.g.* Mr. J. F. Denison, Hansard, 1850, vol. 110, p. 800.
[2] Hansard, 1850, vol. 110, p. 801.
[3] Ibid, p. 803.
[4] Ibid, p. 802.
[5] Mr. Roebuck.

authority, whereas if they appointed a general assembly and gave them only a few matters to devote their attention to, they would be sure to begin encroaching on the imperial power." Mr. Roebuck was placed in an embarrassing position by the bill, which was designed to accomplish an object he had long ardently advocated, but which at the same time did not embody in his opinion the true principles of federalism. He was forced to adopt the somewhat neutral position of supporting the principle of the bill, but condemning its federal provisions for departing from the model of the American constitution in permitting the larger states to overrule the smaller. He reminded[1] the House, that in these provisions they were legislating for the future and not for the present, and deprecated "the sneering that was so often heard at the idea of a great confederation of states in that part of the world." He believed that such a result was certain to take place, and that "they ought now to act under the conviction that these colonies would be united hereafter in a great confederation of states having the same language, the same institutions, and the same motives for mutual peace."

In defending the federal provisions against the unfavorable expression of opinion in Australia, and the adverse criticism of the House, Lord John Russell took up the position,[2] that the chief objection of the opposition to the compulsory character of the federation "could not apply," since no colony could be included in the general assembly without its own consent; the union would be based on the voluntary association of the colonies and not on imperial authority. He admitted that a federal government might not be called for at the present moment, "but in two or three years hence it was probable that there might be a desire to form such a body, and then it might be inconvenient to come to parliament for the necessary powers which they might now give without any inconvenience." The existence of a number of subjects, which "could scarcely be left to each colony to decide for itself," was proof of the need for "establishing some common system." He feebly attempted to defend the provision for the apportionment of the representation in the House of Delegates, from the general attack upon it, by claiming that the Committee had duly respected the conflicting principles of provincial equality and proportionate representation, by allotting two members to

[1] Hansard, 1850, vol. 110, p. 800.
[2] Ibid, p. 799.

each of the colonies and additional delegates in proportion to excess population. He refused to accede[1] to the suggestion that the Ministry withdraw the clause, as to do so "would abandon the principle of the general assembly" which they approved. The "only question for consideration," he thought, was in regard to the apportionment of representation as set forth in the bill, and "whether it might not be advisable to have a greater latitude than was given by the clause." Mr. Labouchere[2] in supporting his leader, replied to the anti-republican argument of Sir William Molesworth, by asserting "that so far from leading to a separation from the mother country, the establishment of a federal assembly would have the very opposite effect." The clause was carried in a very small house by the large majority of sixty three to ten,—a result somewhat surprising in view of the force of the arguments and the vigor of the opposition offered to the provision. It is possible that the opinion of the Commons may have been influenced by the manifest willingness of the Premier to reconsider the question of the basis of representation.

In compliance with this intimation, the clause was withdrawn for further consideration. On May 6th, in reply to a question from Mr. Denison regarding the state of the matter,[3] Mr. Labouchere declared that the clause had been carefully reviewed "and that the government was prepared while adhering to the principle upon which it had originally been framed, so to alter it as to give the smaller colonies sufficient weight in the federal assembly, should they think proper to join it." To this end material alterations were introduced into the distribution of membership. The principle of proportionate representation was compromised by increasing the number of delegates from the smaller provinces, or in other words the element of equality was favored at the expense of the proportional element. By the amended provision, "four members were allotted for each such colony, and one additional member for each such colony for every twenty thousand inhabitants thereof." The result of this change was, while leaving the representation of New South Wales undisturbed, to greatly increase the number of delegates to which the smaller colonies were entitled. It effected a general leveling up of the representation, so as to bring about a more equitable balance of numbers and power in the Assembly than heretofore.

[1]Hansard, 1850, vol. 110, p. 805.
[2]Ibid, p. 802.
[3]Ibid, p. 1164.

The danger of the smaller colonies being swamped by the overwhelming preponderance of New South Wales was now greatly diminished, since by combination they could easily command a considerable majority in the Assembly, and any two of them by joining forces could act as an effectual check upon the mother colony. The new distribution was an interesting attempt to reach an equitable adjustment of conflicting claims by striking a rough balance between them. The government endeavored to reach a common middle ground which would satisfy the reasonable demands of New South Wales, and at the same time remove the existing apprehensions of the other colonies. The attempted revision did not aspire to be a scientific or logical settlement of the difficulty; it was merely a political compromise, dictated by considerations of natural equity and constitutional expediency. This amendment seems to have removed much of the objection to the federal provision, as in the debate on the third reading of the bill, the clause received but scant attention, Mr. Denison alone offering any open opposition. He did not believe that New South Wales with a larger representation would secure the cooperation of the other provinces, nor that in case of union "they would form a harmonious partnership in the matter of rates and revenues. Though the proportion had been altered, the principle remained the same, and was essentially vicious." In a fair sized House, the government succeeded in carrying the third reading of the bill by the splendid plurality of 226 to 128.[1]

On May 14th, the bill was given its first reading in the Lords without comment.[2] It was brought up for the second reading on May 31st, in a very slim House, there being less than twenty members present.[3] Colonial matters, above all others, failed to interest a body whose neglect of ordinary parliamentary duties is proverbial. In an explanatory statement of the provisions of the measure, Lord Grey[4] made a most interesting historical reference to the efforts of the American colonies to form a common association. He expressed the belief that had such a body been permanently created, as proposed by Franklin, so far from hastening the time of separation from the mother country, it would, on the contrary have helped to avert it, or at least have

[1]Hansard, 1850, vol. 110, p. 1429.
[2]Ibid, vol. 111, p. 1.
[3]Ibid, p. 511.
[4]Ibid, p. 507.

given it a less disastrous form. If such a policy had been adopted, the "home government would not have taken an unreasonable and violent course, which could lead to nothing but separation." It is evident that these colonial experiments had impressed themselves deeply upon His Lordship's mind as a valuable prccedent and a serious warning to both the home and colonial governments. This circumstance affords us a partial insight into the motive which actuated Earl Grey in so strenuously urging forward his policy of federation. But apart from the lesson of the American colonies, he was convinced of the need of a common legislature for the affairs of the Australian provinces. "It might not, however, come into immediate operation, and upon the whole he was inclined to think that it would not, for some considerable time must elapse before the necessities became so strong as to overrule all the local interests, prejudices and passions, which in the first instance he [illegible] would be arrayed against any such scheme of union; but in the nature of things, no very great length of time would pass by before circumstances would call such a system to come into operation. It was highly desirable therefore, that parliament should now provide for a necessity thus foreseen. At the same time, ... it was equally right that the formation of any such general assembly should not be rendered imperative upon the colonies." Lord Wodehouse contended[1] that all the colonies, save New South Wales were opposed to a federal union, and that the support of that colony was dictated by the selfish consideration of making Sydney the capital. He objected to the principle of concurrent powers, and pronounced the whole federal scheme "premature," and likely to prove "most dangerous in operation." The ablest speech in opposition to the proposal came from Lord Stanley, the leader of the Conservative party in the Upper House, who based his objections primarily upon constitutional grounds.[2] He argued at length that the provisions of the bill left the whole constitution of the Assembly under the "undisputed control" of the Secretary for the Colonies, and that parliament was called upon to "abdicate its own proper functions." In language that revealed the prescience and wisdom of the statesman, he pointed out the true course by which Australian unity was to be attained. "Let the colonies themselves point out the nature of the combin-

[1]Hansard, 1850, vol. III, p. 521.
[2]Ibid, p. 526.

ation, the species of concert, the mode in which they desire to effect that combination or federative system of government, and upon their petition and advice let parliament not the Crown, by an enactment passed in concurrence with the wishes of the colonies, give effect to that which upon experience they found to be necessary, and impart to that federal government precisely those powers which the colonies themselves and no others, should find it necessary to be exercised by somebody acting in concert or combination from those different colonies."

His Lordship's remarks went to the very heart of the question. Previous speakers in the Commons, as well as the Lords, in discussing the principle of federation and its effect on colonial relations, and in criticising the character and provisions of the constitution, had missed the primary and fundamental question as to whether the devising and framing of colonial constitutions fell properly within the constitutional functions of the imperial parliament, or whether on the other hand, that power should not be relegated to the colonies themselves. Not until this question had been decided in favor of the political right or expediency of English intervention in constitution making could the other matters above discussed, logically come under the consideration of parliament. On the part of all prior participants in the debate, the legitimacy and constitutionality of the action of parliament had been tacitly assumed. This view was doubtless in accord with the whole series of legal precedents since the time of the Quebec Act, but with the growth of the colonies, and the extension of their powers of self-government, a higher political principle was gradually coming into recognition, by which the function of framing and revising the local constitutions was regarded as inherently a part of colonial autonomy as the right of ordinary domestic legislation. In voicing these sentiments, Lord Stanley contributed to the development of a new convention of the imperial constitution for the regulation of the political relations of the English and the colonial governments.

The Bishop of Oxford sought to shelve the bill for the session by referring it to a select committee.[1] In a speech that was as intemperate in language as it was illiberal in thought, he denounced the federal provision as "the most monstrous and the most ill-considered proposal" ever made in the House.[2] Keenly

[1]Hansard, 1850, vol. III, p. 956.
[2]Ibid, p. 962.

sensitive to any extension of colonial autonomy, which might encroach upon the arbitrary authority of Downing Street, he suspected that the project for the creation of a federal assembly would involve the transfer to that body of "the absolute control of imperial questions," and would, in so doing, "sow the seed of the dismemberment of our empire. For the unity of our empire, in fact, consisted in a reserve to the centre of the dominion of these very questions." He ridiculed the conception of a unity of Australian interests, as a fallacious persumption. "That was indeed to be governed by a sham or a name." The vast distance between the settlements and their conflicting interests made the plan of an Australian confederation a "most capricious and ill-advised" piece of legislation. But the strategy of the reverend prelate failed to commend itself to the House, and the proposed reference was defeated by a considerable majority.[1]

On consideration of the bill in committee, Lord Stanley renewed[2] his opposition to section 30, for much the same reasons as he had previously adduced. While admitting there might in some cases be common interests of the colonies, nevertheless their special and divergent interests would prevent the development of a policy of federal uniformity. The general assembly was a "rash and perilous innovation" in English legislation, and moreover, the "mode in which the experiment was to be carried out" was not "less objectionable than the experiment itself." It was no defence to allege that membership in the Assembly was a voluntary act, since the outstanding colonies would "find themselves drawn into that league against their will, and contrary to their own true interests." Upon the subject of the distribution of representation in the Assembly, he took an opposite view to that of the other speakers, as well as to what he himself had previously advocated, in protesting "that the influence and power of a great colony will be overbalanced by the smaller colonies." In conclusion, he moved that the "thirtieth clause and those which have relation to the constitution of the general assembly be expunged."

Earl Grey in his reply,[3] traversed the whole argument of Lord Stanley. The federal clauses were proposed, he stated, under the conviction that there were certain common subjects demanding almost immediate consideration by a joint authority.

[1] Hansard, 1850, vol. III, p. 979.
[2] Ibid, p. 1217.
[3] Ibid, p. 1220.

So long ago as 1846 Governor Fitzroy had emphasized this fact in a despatch to the Colonial Office. There was no other means, save a general assembly, by which the necessary uniformity of legislation could be attained, for if everything "was to be done by correspondence, a settlement of such affairs would be almost impossible." The tentative nature of the proposed constitution was well brought out in His Lordship's conception of the probable organization of the first general assembly, and in his announcement of an alteration in the functions of that body. "He thought it probable that, in the first instance, it would act only for New South Wales and Victoria, which would have in many respects such intimate relations; in order to maintain a common tariff and the existing facilities for intercourse arising from the absence of intercolonial customs duties, it was probable that these two colonies might create some authority of this kind for themselves. It was only with certain subjects that this general assembly was to deal, and in consequence of the discussion of the other evening, he had prepared an amendment . . . enabling any legislature applying to be included, to require to be included only for certain purposes. Thus, with regard to Van Dieman's Land, it was improbable that the people there would wish to be included in a customs union with the other colonies, being separated by seas and their productions being different; but for postage, a court of appeal, and some other purposes, a union would be desirable." The criticism of the Peers had proved more effective than the protest of Sir William Denison in convincing the Secretary for the Colonies of the divergence of interests between the colonies. He minimized the force of Lord Stanley's contention in regard to the unconstitutional usurpation of powers by the Colonial Office, by pleading that "the mere formal regulation as to the manner of electing to the general assembly parties who, in the first instance, would probably be little more than commissioners from the different legislatures to regulate certain matters of common interest, might surely be left to the government for the time being." The establishment of a general Court of Appeal found particular favor in his eyes. The expense and inadequateness of the present right of appeal to the Judicial Committee of the Privy Council had, he alleged, occasioned many complaints on the part of the colonists. If the general assembly should constitute as they were empowered to do, an effective Supreme Court, questions of conflict of juris-

diction between the different colonies might be determined by that court. In regard to the apportionment of representation, he had sought to combine in the one chamber, the principles of representation by population and according to states. In closing an able defence, he expressed the view that the establishment of some such federal system was essential to the development of a strong Australian nationality. "His firm conviction was that if these clauses were adopted, they might not make any extensive or important alterations in the first instance, but that they would be the beginning of a system which would swell and develop itself with the growing wants of these colonies, and tend to blend them into one great nation intimately and closely connected with this, and subjects of the British Crown. He believed that if we did not provide before difficulties and disputes and questions arose, some mode of solution, we should have infinitely greater difficulty afterwards in bringing the different parties to concur in some arrangement that would be fair to all."

Several of the Lords briefly expressed their opposition to the federal proposals, the ground of these objections being either that the provision was premature[1] or unnecessary, or that the object in view could be attained as well by a conference of provincial commissioners,[2] or that it conferred unconstitutional authority upon the Colonial Secretary,[3] or that the whole federal scheme was contrary to the general opinion of the colonies.[4] Earl Granville alone approved of the measure[5] as conducive to uniformity of legislation, which he conceived to be most desirable. Upon division, the clause was agreed to by the very narrow majority of one, contents 23, non-contents 22.

Earl Grey thereupon informed the House,[6] "that he intended upon the report being brought up to move the addition of a proviso to the clause, enacting that when the legislative councils of any of the colonies in their addresses for the establishment of a general assembly desired that certain subjects so far as these colonies were concerned, should be excepted from the decision of that Assembly, the general assembly should not have power to make laws on such subjects affecting those colonies." Lord Stanley pointed out the obvious objection to this amendment, that

[1]Lord Wharmcliffe, Hansard, 1850, vol. III, p. 1225.
[2]Earl of Harroway, Ibid, p. 1225.
[3]Lord Kinnaird, Ibid, p. 1227.
[4]Lord Lyttleton, Ibid, p. 1227.
[5]Ibid, p. 1225.
[6]Hansard, 1850, vol. III, p. 1227.

it "would introduce unnecessary complications," and that "there would be perpetual doubt" arising from the differences in the legislative powers of the representatives of the several colonies, upon what subjects the general assembly could actually legislate. A sort of legislative hodge-podge would be produced owing to the want of general unanimity in the delegation of powers, which would practically restrain the Assembly from the exercise of any of its functions.

The opposition was renewed on clause 31,[1] to which Lord Stanley demurred on the ground that it conferred a power on the Assembly to tax all the colonies for measures of interest to only one or more. This argument was emphasized by the Earl of Harroway,[2] who contended that "there was no sufficient identity of interest to render such a power acceptable to all the colonies, and that it would be liable to abuse." His further objection to the principle of the delegates of one colony voting on the internal affairs of another, was neatly countered by the Earl of Carlisle's observation that this objection would apply equally to the United Kingdom. The Colonial Secretary could only reply that it was impossible to prevent all abuses, but that "it was the general object to create a representative power which should deal fairly by the whole country." He acknowledged that it might be necessary to further safeguard the bill, by providing that colonies which derive no benefit from any particular measure should not be required to contribute equally to its cost.

The narrowness of the majority on the federal clause, and the strenuousness of the opposition to the whole proposal apparently convinced Earl Grey of the hopelessness of attempting to carry the bill with these provisions included, for not only was there arrayed against the scheme the united strength of the Tory peers, but the followers of the government were very lukewarm in their support and could not be depended upon in the division lobby. He had endeavored to disarm the numerous objections to the measure, by the introduction of amendments aiming at the curtailment of the powers of the general assembly, at the preservation of the autonomy of the several provinces, and the maintenance of their special interests against federal interference. So far did he carry the spirit of compromise, in the hope of saving the federal principle, that he threatened to destroy

[1]Hansard, 1850, vol. III, p. 1228.
[2]Ibid, p. 1229.

the utility of the institution he was seeking to establish, by depriving it of all effective powers of legislation. But the effort was in vain. The opposition to the principle of the proposal was too fundamental and too powerful to be appeased by a mere modification of the provisions of the bill. The clauses might possibly have been carried, but at the risk of endangering the safety of the whole bill, whose passage dare not be again postponed. Moreover, the debate had brought up many questions with which the government were not prepared to deal; the balance of the argument had gone against them in both Houses and they were naturally disinclined to renew a debate in which they were not prepared to meet on all points the assaults of the opposition. The easy alternative was to follow the precedent of the previous session in the case of the imperial federal tariff, by dropping the federal clauses entirely out of the bill. And this the government, after carefully considering the situation, decided to do.

On January 28th, 1850, in moving[1] that the report on the amendments be now received, Earl Grey explained the reason for the omission of the federal provisions.[2] They were withdrawn, "not because there was any change of feeling in the government respecting them, but simply on the ground that, on looking into these clauses, it certainly did appear to them that there were many defects in the machinery, which would have prevented them coming into practical operation, and he believed that as the clauses stood they would have been a dead letter. The real object of the omission was merely to strike out clauses which, as they stood, would have been inoperative." To cover his retreat, he maintained that, notwithstanding this omission, the bill was essentially the same as that originally introduced into parliament. The withdrawal of the federal clauses practically killed all effective opposition to the bill, which passed its third reading on July 5th without division.[3]

On August 1st, the bill came back to the Commons for the consideration of the Lords amendments.[4] Mr. Smith was again to the front with a question as to the intention of the government in regard to the amendments of the Upper House.[5] While not objecting to the omission of the federal clauses, he

[1] Hansard, 1850, vol. 112, p. 600.
[2] Ibid, p. 602.
[3] Ibid, p. 980.
[4] Ibid, vol. 113, p. 615.
[5] Ibid, p. 621.

pointed out that they were carried in this chamber by a majority of six to one. In striking out these provisions, he feared that "they were exhibiting to the colonies a spectacle of how little attention was paid to the subject which interested them." In offering an extended explanation of the reasons which had induced the government to omit the provisions for a general assembly, the Premier endeavored to minimize the importance of the federal clauses in an effort to conceal the actual reverse which the Ministry, or rather the Colonial Secretary had received in his own pet measure, and yet, sought to show his personal interest in the question by expressing a friendly sympathy towards any future federal movement which should commend itself to the colonies. The speech was a clever piece of special pleading, but at the same time truly descriptive of the attitude of the government towards the federal scheme. While sympathetic towards the proposal, the Cabinet had never been so enthusiastic as the Colonial Secretary in its support, and they were consequently not prepared to carry their sentiments of platonic friendship to the extent of injuring the position of the government. It will be remembered, said Lord John Russell, that Earl Grey and "other members of the government repeatedly stated that they thought it desirable to show that w[illegible] willing to allow the colonies to meet together for legislative purposes, by a body legally constituted for that purpose, but that we did not expect for some years any such powers to be called into action. When the clauses proposed for that purpose came under discussion, it was stated in this House that the smaller colonies would be overpowered by the great influence of the colony which was most populous and most powerful, namely, New South Wales. We endeavored to meet that objection by giving greater power to each separate colony, and by diminishing the proportion which the members would bear to the population of each colony in the federal assembly. However upon further discussion of this question, my noble friend was of opinion that, as the colonies stated, that provision might give means to the most powerful and most populous colony to take funds derived from all the colonies for purposes which would be advantageous more especially to the colony which was the most powerful of the whole. He was of opinion that defect was such, that when the question was argued he was not prepared with any provision which would completely obviate the inconvenience. Seeing then that it was a part of the

measure which was not expected to come into immediate operation, he thought it better to omit the clauses altogether rather than insist upon them being carried with this acknowledged and avowed defect. I think that my noble Lord took an expedient course on that occasion, and I think at the same time we have shown to the House of Commons that we shall be quite willing, if a federal assembly should be thought generally advantageous to the colonies, to entertain that question, and that we have no insuperable objection to it, and that, although we have not been able to frame clauses entirely satisfactory at the present time, if in future they should be asked for by the colonies, we should endeavor to frame some provisions which would guard the smaller colonies, and at the same time provide for the requirements of the greater. We propose therefore to agree to this amendment of the Lords and omit these clauses, which were conceived to be useful and valuable for future operations, but which were not part of the advantages to be obtained by this bill."

The Ministry did not succeed in carrying out their withdrawal without some parting shots to their discomforture. Mr Gladstone averred[1] that, although the federal clauses had been an important part of the bill of 1849, "they did not form an acceptable portion"; and Mr. Roebuck could not miss the splendid opportunity of driving home the example of the American constitution as the only model which should hereafter be followed in the framing of a federal government. The scheme of the Colonial Secretary was, he maintained[2] from the very first doomed to failure, through a persisting adherence to but one federal chamber. His Lordship would not listen to the reasoning of the members on the evils of the plan, but had been compelled to yield to the opposition of the House of Lords. The amendments were thereupon agreed to without division,[3] and on August 5th, The Australian Colonies Bill, providing for the separation of Victoria, and the establishment of new constitutions in the several colonies, but without any provision for an intercolonial Assembly or a uniform tariff, received the royal assent.[4]

The withdrawal of the federal provisions occasioned no surprise or special interest, as for some time strong influences in the two Houses had been tending in that direction. Under the

[1]Hansard, 1850, vol. 113, p. 626.
[2]Ibid, p. 631.
[3]Ibid, p. 634.
[4]Ibid, p. 762.

combined pressure of an adverse colonial opinion and the keen criticism of a parliamentary opposition, the government had gradually weakened. Just as in the previous session the Colonial Secretary had thrown overboard his indefensible project of an imperial tariff in an effort to save the federal clauses, so in the present, he had been willing to introduce almost revolutionary modifications in the constitution of the general assembly in order to carry the principle of federation. He was assured, that if once the principle were established, the course of Australian events would justify the wisdom of his policy. He failed, however, to convince parliament of the expediency of his measure or of the wisdom of the provisions of the bill. The debates in both Houses went strongly against the government. In answer to the keen and conclusive arguments, that the opinion of the colonies was opposed to a federal union, and that the Australians themselves should initiate the movement for a federal government and determine the framework of its constitution, the Ministry could only set up their personal judgment upon the need for uniformity of action and legislation on intercolonial matters, and plead that the optional or permissive character of the provisions of the bill virtually left the decision of the question in the hands of the colonies. But in admitting as they were compelled to do, that public sentiment at the antipodes had protested against the measure, the government placed themselves in a most embarrassing position. Instead of appearing before parliament at the solicitation of the Australian provinces and virtually as their accredited agents, in seeking parliamentary ratification of a constitution prepared and approved in the colonies, the Ministry presented the sorry spectacle of an autocracy riding rough-shod over the wishes of its subjects, and forcing upon them an arbitrary and objectionable instrument of government. They had, of course, no desire to coerce the colonies, but their action in pressing on the proposal in the face of colonial opinion was open to that construction. The scheme was admittedly not immediately called for and considerably in advance of Australian sentiment, and in consequence was justly exposed to the criticism of premature and coercionary legislation so strongly urged against it.

Some of the provisions of the federal constitution were also found unacceptable, and the opposition to the system of apportionment was so pronounced as in itself to endanger the passage

of the bill. In attempting to so modify the plan of the distribution of seats as to satisfy the demands of the advocates of provincial equality, the government only exposed themselves to the condemnation of the supporters of the opposite principle of proportional representation. The Colonial Secretary had attempted an impossible constitutional experiment in seeking to combine two conflicting principles of representation in one chamber. It is difficult to determine how much weight was attached to the argument that a federation was a "republican institution," and its establishment a step towards colonial independence, but the fact that the contention was advanced by several speakers in both the Upper and Lower Houses, and that Earl Grey and Mr. Labouchere took particular pains to combat it, shows that at least some importance was attached to the theory, and that it was expected to influence those members who were either undemocratic or imperialistic in their sentiments. The other objections were of a minor nature, but they all combined to strengthen the case against the general assembly.

The burden of meeting these accumulating attacks fell almost exclusively on the Premier in the Commons, and the Colonial Secretary in the Lords. They made the best presentation they could of the argument in favor of anticipating the need for some co-operative action. Their fault, if any, was that in their superior wisdom they were too much in advance of a localized Australian opinion. But the attitude of the Premier showed from the first that he was prepared to make concessions to colonial and parliamentary feeling, and though desirous of retaining the principle of federation did not regard it as a fundamental part of the bill. Accordingly, when the opposition to the clauses became most pronounced, he was not prepared to further commit the government to their support, and the Cabinet in consequence, backed down as gracefully as possible. The withdrawal was a personal defeat to Earl Grey rather than an attempt to frustrate the colonial policy of the government which was generally approved. The two Houses had quite failed to realize that the federal clauses were an integral part of the bill, for, in the mind of the majority of the parliament, the chief object in view was the establishment of more liberal representative institutions in the several colonies. To some of the members, the federal provisions were an extraneous matter improperly incorporated in the bill to please the fancy of the Colonial Secretary. Private

members felt no obligation to support the government in the course of the debate on the subject, and accordingly left the Premier to fight the battle out alone. Under such circumstances, the action of the Ministry in omitting the clauses assumed the form of a rational compliance with the temper of parliament rather than a victory of the anti-federal principles of the Tory opposition.[1] The conservative spirit of that august body of legislators had again triumphed, for not only was parliament chary of any constitutional innovations, but it was decidedly averse to being called upon to settle at once several new and difficult questions such as The Australian Colonies Bill presented. The opposition of the colonies and the intricacy of the constitutional problems presented in the formation of a general assembly, furnished an excellent reason for declining to proceed with the measure at present.

While the federal clauses met with an untimely fate, the sister tariff provisions were favored by a kindly fortune. In both Houses they were agreed to without the slightest discussion. In England, the question of differential duties was no longer a subject of party controversy; it had temporarily, if not finally been put to rest, with the acceptance of the principles of free trade, and there was consequently not the slightest compunction in imposing on the colonies a fiscal regulation which had been found to work beneficially at home. The question as to whether this system was best adapted to Australian economic conditions, or compatible with colonial feeling or policy, was not at all taken into consideration. What was best for the motherland was assumed without question to be equally advantageous to the colonies, and as the local legislatures had refrained from protesting against this feature of the bill, it was reasonable to suppose that it was acceptable to them.

The history and fate of the federal clauses in the English parliament almost escaped unnoticed in the legislatures of the several colonies. Only in the Council of New South Wales was

[1]Mr. Herbert Paul throws the whole responsibility for the defeat of the federal clauses upon the Conservative party, but in so doing he seems to have over-emphasized their obtuseness. "Thus," says he, "the germ of Australian federation was sterilized by the Conservative party. Colonists were then regarded as dangerous and revolutionary Radicals who had to be kept in their places." The debates in parliament will scarcely bear out this sweeping condemnation, as the Conservative members rather than the government were supporting the right of the colonies to determine the question for themselves. Paul, Hist. of Modern England, vol. 1, p. 188.

there an incidental reference of an unfavorable character to the qualifications of the Assembly to deal with the waste lands of the colony, owing to "the uncertainty that any two of these colonies will agree to set the general assembly in motion, that the process of calling it together, even though they would agree, is very dilatory, and that there is little chance of any uniformity in regard to a uniform price for the public lands of these colonies" . . . Although this resolution was expressly limited to the case of crown lands, and might consequently be held to have no applicability to other subjects of common federal legislation, still it served to show the low estimation which was placed upon the constitutional utility of the Assembly, for a body whose very existence was problematic could scarcely be expected to satisfactorily perform the functions of a federal parliament. There was a similar absence of any general reference to the matter in the press. The Sydney Herald[1] spoke of the rejection of the federal clauses as "regrettable," though it considered the scheme was attended with many practical difficulties. An Australian federation would, in its opinion, have been especially valuable in giving additional weight to the representations of the colonies on the subject of transportation. The Launceston Examiner, which meanwhile had changed its views in regard to the principle of representation in the general assembly,[2] briefly remarked that "the union of the colonies is not less real because it has not been formally recognized. Their interests are identical by nature and providence," as has been shown in their united action against convictism.[3] But throughout the colonies public interest was too much centered on the subject of the discontinuance of transportation, and the character of the new provincial constitutions, to take heed to the equally important question of intercolonial organization.[4]

The attitude of the English government, and the views of Earl Grey in particular, in regard to the rejected federal proposals, are clearly set forth in a despatch of August 30th, 1850,[5] to Governor Fitzroy, accompanying the new constitution act 13 and 14 Vict. c 59. In this despatch, the Colonial Secretary

[1]The Sydney Morning Herald, Nov. 16, 1850.
[2]It now attacked the principle of proportionate representation in the Assembly. July 3, 1850.
[3]The Launceston Examiner, Oct. 30, 1850.
[4]McCombie, Hist. of Vict., p. 192.
[5]G.B.P.P., 1851, vol. 35, p. 32. N.S.W., V.P.L.C., 1851, p. 37. Earl Grey, Colonial Policy of Lord John Russell's Administration, vol. 2, app. A, p. 347.

comments concisely on the several provisions of the Australian Colonies Act and explains the occasion and the nature of the changes that had been introduced in it. Referring to the tariff clauses, he remarks, "The effect of sections 27 to 31 is to give the several legislatures the full power which is understood to have been hitherto curtailed by the restrictions of the various acts of parliament to impose such customs dues as they may think fit, providing only that they are not of a differential kind, and do not contravene certain other regulations of minor importance."[1]

The omission of the federal clauses from the bill was not due he explains, in language almost identical with that he had used in parliament, to any change of opinion on the part of Her Majesty's government as to the wisdom and importance of the recommendations of the Committee of the Privy Council. "But it was found on examination that the clauses in question were liable to practical objections, to obviate which it would have been necessary to introduce amendments entering into details, which there were no means of satisfactorily arranging without further communication with the colonies.

"Her Majesty's government have been the less reluctant to abandon for the present this portion of the measure which they proposed, inasmuch as even in New South Wales it appeared as far as they could collect the opinion which prevails on the subject, not to be regarded as of immediate importance, while in the other colonies objections have been expressed to the creation of any such authority.

"I am not, however, the less persuaded that the want of some such central authority to regulate matters of common importance to the Australian colonies will be felt and probably at a very early period, but when this want is so felt, it will of itself suggest a means by which it may be met. The several legislatures will, it is true, be unable at once to give the necessary authority to a general assembly, because the legislative power of each is confined of necessity within its territorial limits; but, if two or more of these legislatures should find that there are objects of common interest for which it is expedient to create such an authority, they will have it in their power, if they can settle the terms of an arrangement for the purpose, to pass acts for

[1]It apparently did not occur to His Lordship that this prohibition placed a material limitation upon the right of the colonies to frame their own fiscal systems with a view to reciprocal tariffs or intercolonial free trade. In any case, according to his strict economic views, such a provision would be a most salutary restriction. Paul, Hist. of Modern England, vol. 1, p. 28.

giving effect to it with clauses suspending their operation until parliament shall have supplied the authority that is wanting. By such acts the extent of objects, or the powers which they are prepared to delegate to such a body, might be defined and limited with precision, and there can be little doubt but that parliament when applied to, in order to give effect to an arrangement so agreed upon would readily consent to do so."

The last paragraph is of particular importance as marking a tendency towards a liberal modification of the policy of the Colonial Secretary. Up to this time he had been primarily concerned in an endeavor to solve the problems of Australian intercolonial relations through the intervention of the imperial parliament. He had seen more clearly than the colonists themselves, the need of at once instituting some general authority within the colonies to prevent the provinces from drifting into antagonisms towards one another, which would make future cooperation and ultimate union much more difficult of realization. Probably he had selected the only means at that time available for its accomplishment, but the sovereignty of Westminster was at best an inferior instrument for colonial legislation. Its power was direct and effective, but its knowledge was extraneous and deficient and, above all, it was non-representative of colonial sentiment. His Lordship himself admitted that the indifference or hostility of colonial opinion, together with the complexity of the constitutional machinery required for a federal government, seriously impaired the competency of parliament to adequately deal with the question. The whole project of an imperial federal constitution had broken down, and Earl Grey had the wisdom to see that henceforth the initiation and decision of the question must be left with the colonies themselves. So firmly convinced was His Lordship that the course of Australian events would demonstrate to the colonists the desirability of union, that he ventured to outline a scheme by which they could most readily attain that end. At the same time, he clearly perceived the difficulties in the way of its accomplishment, and took pains to point out how the necessary co-operation of the imperial and local governments for this purpose could be best assured.

The problem of a federal legislature was not simply a social and political question, a mere matter of the development of a spirit of sympathetic interest and of mutual co-operation between the several provinces. This was a phase of the general

question that time and the growth of the means of communication and of social intercourse would enable the Australians to settle for themselves. But there was a serious constitutional problem as well, which the colonies could not effectively solve without the supplementary assistance of the imperial parliament. The legislative competency of each of the colonial legislatures was territorially limited, and could not be extended throughout Australia by any number of intercolonial agreements for co-operative action. This cardinal truth so definitely stated by the Colonial Secretary was not properly appreciated either at home or in the colonies, where the opinion commonly prevailed, and frequently found expression in the discussion of the federal question, that all the advantages of union could be secured by a common concord of the colonies. Had this simple constitutional principle of the territoriality of colonial jurisdiction been borne in mind, subsequent Australian leaders like Sir Henry Parkes, would not have fallen into the egregious mistake of seeking to create an Australian Federal Council by a delegation of intercolonial or federal powers to a general assembly, through the supposed inherent authority of the colonial legislatures. Here again we see that Earl Grey's grasp of the constitutional principles of federation was much more comprehensive than that of most of his English or colonial contemporaries.

But what could not be accomplished by the colonies singly or in unison was a simple matter for the imperial parliament with its sovereign and extra-territorial powers. But the exercise of the legislative power of Westminster, it was now recognized, should wait on the initiation of the scheme for a federal union by the colonies themselves. Any two or more of the legislatures were authorized under their provincial constitutions to agree upon a basis of union, and prepare a draft constitution embodying the subjects of common interest which they were willing to entrust to a federal government. At this point colonial authority reached its uttermost limit, and application must needs be made to the omnipotence of parliament to supply the deficiency of provincial powers. The local legislatures could frame an agreement but had no competency to make it operative; the sanction of parliament alone could legalize it and give it life. Anxious to forward the cause so dear to his heart, the Colonial Secretary suggested an easy mode of effecting the desired union. Provincial acts should be passed embodying the terms of the feder-

ation, but with clauses suspending their operation until the necessary imperial sanction should be bestowed. By this means the colonies would be practically their own constitution makers; the imperial authority only appearing to ratify the action of the local legislatures. Such a constitution would be truly Australian in origin, in character, and in spirit,—the product of Australian conditions and public opinion, and moreover, would be free from the prejudice attaching to an extraneous parliamentary instrument of government. The machinery suggested by His Lordship to effect the union was somewhat more elaborate than was absolutely necessary, but it showed a due deference to the legislative autonomy of the several provinces. A simple imperial act framed in answer to the petition of the colonial legislatures, as had been suggested in the speech of Lord John Russell, would have equally served the purpose, but would have failed to satisfy the spirit of constitutional independence, the same as a distinctive colonial measure.

The intervention of the imperial parliament, it would seem, was intended to be directed to the ratification of the provincial measures rather than to the enactment of a federal constitution upon the line of the colonial bills. In other words the action of parliament would be administrative in character rather than legislative,—a ratification of the draft federal constitution acts of the several colonies, rather than a deliberative determination of the form of a federal constitution for the Australias. In either case, the autonomy of the colonies would be assured, since the colonial legislatures would determine the nature of the federal constitution they desired, and parliament would scarcely have dared to materially alter its provisions. There was no uncertainty in the mind of the Colonial Secretary, in regard to the sympathetic response of the imperial parliament, should the colonies seek for legislative assistance in effecting a federal union. The recent action of that body had not been dictated by a spirit of antagonism to the idea of colonial partnership, but by a desire to prevent the enactment of a measure, which it believed was contrary to the public opinion of the colonies. Parliament would gladly co-operate in passing the desired legislation, if once assured of the favorable intent of the local legislatures by the presentation of the requisite federal addresses. The suggestion of His Lordship, as we shall presently see, exercised an important influence upon the course of the federal movement, although his

advice was not brought to fruition till some years afterwards, in the Federal Council Act of 1885.

The collapse of the scheme so auspiciously launched by Earl Grey, and so strongly supported by the whole weight of the Colonial Office inevitably raises the question of the cause or causes of the miscarriage of the federal proposals. Several of these have already come incidentally under our notice. The first that may be mentioned, arose out of the personal character of the Colonial Secretary; the scheme was "unfortunate in its author."[1] Lord Grey was a man of generous intentions and liberal mental attainments, but of strong and imperious will.[2] His outlook on the political future of the Australias was much more comprehensive than that of the colonists themselves; he saw most clearly the folly and pettiness of intercolonial bickerings, and appreciated most keenly the future advantages of a united Australia, but his policy and his statesmanship were not equal to his political foresight and wisdom. He endeavored to bend the course of colonial development to his own individual judgment; he was a benevolent dictator of the modern Kaiser Wilhelm type, given to the utterance of "constitutional homilies,"[3] and the writing of didactic despatches.[4] It was an unfortunate characteristic of his policy to attempt too much, and to destroy the value of his own good projects by an undue interference in colonial affairs,—examples of which we have already noticed in his proposals for district councils and an imperial tariff. The several colonies in their struggle for the largest measure of self-government continually found themselves in conflict with His Lordship's well-meant, but injudicious efforts to remodel their institutions according to his own ideas. As a natural result, the wisdom of his proposals was too often overlooked in the antagonism towards the man himself, and the policy of the Colonial Office which he represented.[5] His personal unpopularity already well established, was greatly increased by his unreasonable and hostile attitude on the subject of transportation, which had become the burning question in Australian social and political life. So strong in fact, was the suspicion and antagonism at this time directed against the administration of Downing Street as per-

[1]Quick and Garran, Annot. Const. of Aust., p. 88.
[2]Paul, Hist. of Modern Eng., vol. 1, p. 28.
[3]Egerton, British Colonial Policy, p. 318.
[4]Quick and Garran, Annot. Const. of Aust., p. 88.
[5]Ibid, p. 88.

sonified in the Colonial Secretary, that any proposal coming from that quarter was unlikely to be considered on its merits, but on the contrary, was exposed to an unjust prejudice in the minds of the colonists.

Besides as we have already intimated, the Colonial Secretary was unfortunate in his course of procedure, in the choice of means by which to accomplish the end in view. He was working at the subject from the wrong end. For this mistake in political tactics, His Lordship's judgment was more excusable than censurable. It was but natural, when he viewed the narrow provincialism and the immaturity of colonial opinion upon the question, and perceived moreover that the legal limitations of provincial authority would prevent the attainment of a federal union by unaided colonial efforts, that he should turn to the simple, most expeditious, and effective method of parliamentary intervention. In this policy, he was encouraged by the action of Governor Fitzroy and his advisers, in referring the question to Downing Street for solution. Instead then of fostering the incipient movement within the colonies towards co-operation, by lending it the full support of the Colonial Office, he boldly transferred the question from its native soil, and endeavored to settle it in a foreign land by imperial fiat. He took on himself the position of federal dictator, and from his office at Downing Street, sought to direct the course of events at home, in parliament, and in the colonies. In so doing he not only wounded the susceptibilities of Australian freemen, but exposed the movement to all the prejudice attaching to imperial interference. His Lordship's policy was open to the criticism, so justly levelled against it by Lord Stanley, of seeking to decide a purely colonial question by an external authority. In calling in the superior wisdom and authority of parliament to remedy the defects of colonial administration, he mistakenly injured the federal cause he was striving to serve. Fortunately the discretion of parliament prevented the establishment of a dangerous constitutional precedent. It is exceedingly doubtful if the colonies, owing to their objection to the principle of federation, would willingly have accepted an imperial federal constitution, or have made a bona fide effort to bring it into operation.[1] To them, it would have borne the impress of the hateful domination of Downing

[1] See resolution of the Legislative Council of N.S.W., infra, p. 216.

Street, and they would consequently have been slow to take advantage of the suspicious privileges which it conferred.[1]

The colonies had not yet agreed upon the principle or expediency of union; they had but scarcely emerged from the condition of isolated communities with special local requirements. They were each and all mainly engaged in an economic struggle with the forces of nature, in seeking to open up their vast territories to foreign settlement, and such political interest as existed among them, was absorbed in the constitutional conflict with the authorities at home for the complete right of self-government, and for the discontinuance of transportation. There had been little opportunity for the importance of the federal question to receive public consideration. Some were prepared to approve of the principle of union, others looked upon it as a wise future colonial policy, but the majority regarded it with indifference or hostility. The federal scheme called for the surrender of a portion of the limited right of colonial autonomy at a time when the provinces were seeking an extension of the existing powers of local self-government,[2] it involved the danger of a sacrifice of the interests of the smaller colonies to the larger, it aroused the slumbering embers of intercolonial jealousy and suspicion, it proposed to form a constitution which was unacceptable to most if not all of the colonies,—in short, it affected the social economic and constitutional relations of the different states in a way, which in the absence of countervailing influences tended to marshal the financial and the material interests of the public, as well as the prejudice of popular sentiment, against the policy of a federal association or the idea of union. Unfortunately the forces of integration were at this time feeble and unorganized; the spirit of Australian nationalism had as yet scarcely found expression.[3] Whatever hope there might have been that the growing sentiment of kinship would soon develop into a strong political association for united action, was injured by the premature presentation of Lord Grey's imperial scheme in the face of colonial opinion, which consolidated the interests opposed to federation without correspondingly strengthening the influences in its favor. At the same time the proposal served the most important purpose of focusing the attention of the public throughout all the colonies upon the question, and stimu-

[1]Quick and Garran, Annot. Const. of Aust., p. 88.
[2]Ibid, p. 89.
[3]Westgarth, The Colony of Vict., p. 423.

lated an interest in its discussion which it would have been impossible for the few scattered leaders of Australian federal sentiment to have aroused without long years of agitation. Notwithstanding then some of the unfavorable incidents of his relation to the subject of federation, it cannot be doubted but that Earl Grey exercised a determinative influence upon its early history, by giving to the movement the necessary impulse which enabled it to appear before the public as an accredited future policy for the Australias.

Moreover the form of the constitution was not calculated to commend itself to a skeptical public. In seeking to devise a fair compromise between the principles of equal state rights and proportional representation, Earl Grey exposed his plan to the adverse criticism of both parties. In truth His Lordship had little choice as to the constitutional form he would give to the organization of the general assembly. A double chambered legislature, which was so strongly urged upon him in the English parliament as the only settlement compatible with the true principles of federalism, was quite out of the question in the Australian colonies.[1] The simple machinery proposed was already condemned as too cumbersome, and it was even doubtful if men of sufficient talent and leisure could be secured to properly represent the several colonies in a single chambered assembly. The colonies were not yet prepared either to sustain or operate a complete federal parliament, nor did the limited powers entrusted to the Assembly require the creation of such a body. With all these factors combined against it, the scheme of the Colonial Secretary was foredoomed to failure. That it came so near to a successful issue was largely due to the energy and determination of will of Earl Grey himself, who made the question peculiarly his own. But the political instinct of parliament in referring the question back to the Australias for settlement, showed a truer wisdom than the statesmanlike proposal of the Colonial Secretary. The experiment of Earl Grey taught the most valuable lesson that a satisfactory scheme of federation could only be worked out in Australia and by the colonists themselves.[2]

To the person familiar with the issues of the recent conflict which resulted in Australian federation, the discussions attending this—the introductory stage of the movement, have a particular

[1]Quick and Garran, Annot. Const. of Aust., p. 89.
[2]Ibid, p. 89.

value in showing how fundamental were the difficulties in the way of federation.[1] The crucial problems of union had already arisen; they were in fact inherent in the scheme,—problems arising out of the different economic conditions of the several colonies, out of their diverse fiscal systems, out of the financial requirements of the various treasuries; questions regarding the constitution of the general assembly, the principle of representation, the mode of election, the legal character of the federation, and the limitation of its powers; difficulties in relation to the constitutional competency of the provincial legislatures, the selection of a federal capital, the revenue of the federal government, the financial relations of the federal and provincial legislatures, the claim of preponderance on the part of New South Wales, the fear of the smaller colonies of losing their autonomy, and the jealousies between the states,—all these matters and many others of a similar character came under review, and were the subject of criticism in the course of the discussion of Lord Grey's proposal both at home and in the colonies. We see in embryo almost all the issues which were so keenly contested half a century later. On the other hand, the usual arguments in favor of federation present an equally familiar appearance,—the need of uniformity of legislation, the danger of diversified tariffs, and conflicting policies, the advantage of a general supreme court, the increased prestige the country would gain in the motherland and abroad, the assertion of a common community of interest, social, economic and political between the colonies, and an appeal to the rising spirit of Australian nationalism. The broad outlines of the question of federation were fairly covered. The Australian public at this time did not enjoy the educational advantages which arise from the careful consideration of constitutional difficulties, and the minute study of the details of the proposed organic law, but they were at least made acquainted with the principles and the significance of a federal union and its effect upon their political condition. In practically every important feature of the question we can trace an instructive similarity in the considerations pro and con, which were placed before the Australian public at the opening and the closing years of the federal movement. Throughout its whole course the movement retained essentially the same character; at times one aspect or another of the question, under the pressure of special

[1] Quick and Garran, Annot. Const. of Aust., p. 89.

local circumstances, might assume a more prominent position, but the primary and fundamental issues were always the same.

It has been an interesting question to Australian historians and politicians, as to whether the failure of Lord Grey's scheme is to be deplored or not in the light of subsequent events, which more than abundantly realized the evils which the Colonial Secretary prophesied as a result of disunion. We find this query the subject of frequent discussion at the various intercolonial conferences, in which the widest differences of opinion are revealed on the part of the political leaders of Australia. The issue is of course a problematic one upon which no person can speak with authority; and from its nature, moreover, a question in which the personal equation will be the decisive factor, since the judgment of each critic will be determined by the standpoint he adopts. Should he look to the great economic losses, the deplorable conflicts of legislation, and the jarring rivalries of states, which would have been largely avoided by a federal union, he will be inclined to at once pronounce the opinion that the result was a national calamity to the Australian people[1] from which they will suffer for generations to come; but should he on the other hand, look to the primary principle of constitutional liberalism, viz., that the colonies themselves should work out their own organization free from imperial interference, and should he moreover accept the historical doctrine of constitutional development so brilliantly expressed in the political philosophy of Burke,—that institutions to be permanent must be the product of time and political circumstances, then he will unreservedly adhere to a contrary view. The dispute is a phase of the old question of the end versus the means,—would the admitted advantages which federation held out and would have assured, have justified the establishment of a bad constitutional precedent, or could they be set off against the excellent political training the colonies received in working out the problem of their intercolonial relations? We believe not. The material gains in the economic prosperity and the political advancement of the country could furnish no adequate compensation for any interference or tampering with the principles of constitutional freedom and colonial autonomy. Political liberty cannot be bartered for national progress without spiritual degradation; the promotion of political virtue, and not of material progress is the true end of the state.

[1] *e.g.* Speech of Hon. N. Brown, M.L.C. (Tas.), Report of Proceedings of Australasian Commercial Congress, Melb., 1888.

CHAPTER III.

THE GOVERNOR-GENERAL.

Notwithstanding the failure of his legislative program, and his official announcement that the question of the institution of a general assembly would be left to the colonies themselves, Earl Grey did not entirely abandon his federal designs, nor give up the hope of promoting some scheme of federal co-operation in the colonies. Parliament had failed him, but there was still the royal prerogative to fall back upon.[1] For the establishment of a federal executive, no legislative sanction was required. This afforded the Colonial Secretary a favorable opening for introducing the federal principle into that department of the government which was more immediately under the control of Downing Street. He seems to have entertained a hopeful expectation, that the colonists would repent of their former attitude, and that the pressure of economic and political conditions would lead them to do for themselves, if afforded the opportunity, what they objected to having forced upon them. He could at least prepare the way for a federal union, and give the principle an official recognition through the nomination of a superior officer empowered to exercise a supervisory control over the colonies. Accordingly in addition to his commission as Governor of the colony of New South Wales, Sir Charles Fitzroy was appointed by separate commissions, Governor of each of the colonies of Van Dieman's Land, South Australia, and Victoria respectively.[2] At the same time there was transmitted to him another commission, by which he was constituted "Governor-General of all Her Majesty's Australian possessions including the colony of Western Australia."

In an accompanying despatch of January 13th, 1851,[3] His Lordship explained the nature and object of this constitutional innovation. "As the commission of the Governor-General of the Australian colonies is now for the first time issued by Her Majesty, it is necessary to explain to you that in entrusting to you the extensive powers which are conveyed to you by this and by Her Majesty's other several commissions, I neither desire

[1]Quick and Garran, Annot. Const. of Aust., p. 89.
[2]Copy of the Commission and Instructions. N.S.W., V.P.L.C., 1851, p. 17.
[3]G.B.P.P., 1851, vol. 35, p. 40. Jenks, The Government of Victoria, p. 156.

nor intend that you should exercise practically any interference in the administration of the government of the colonies of Van Dieman's Land, South Australia, and Victoria, with respect to matters affecting only the internal interest of any of these several colonies. No change is to be made in the mode in which the ordinary public business of each of the Australian colonies has hitherto been transacted and carried on. This is to be performed as heretofore by their own administrative officers, separately from and irrespective of the officers of the other colonies.

"The Lieutenant-Governor of Van Dieman's Land and Victoria, together with the Governor of Western Australia will continue to administer as heretofore the governments of these colonies, and to correspond directly with the Secretary of State respecting their affairs.

"But as the expanding interests and increasing relations of these communities with each other cannot fail to create a want of some means of establishing a mutual understanding and concert between them on a variety of subjects, Her Majesty's government has considered it fitting that the officer administering the government of the oldest and largest of these colonies should be provided with a general authority to superintend the initiation and foster the completion of such measures as these communities may deem calculated to promote their common welfare and prosperity. I therefore deemed it proper to avail myself of the occasion, which has arisen out of the recent act of the legislature of this country for altering the commissions of the Governors of New South Wales, Van Dieman's Land, and South Australia, and for issuing a new commission for Victoria, in order to supply you with those fresh powers which seemed to be needed for the purpose which I have thus very briefly indicated. In furtherance of the same purpose, the Lieutenant-Governors of the other colonies will be directed to communicate with you on all points in which the measures adopted in any one colony may appear calculated to affect the interests of others, and in the absence of any express instruction from Her Majesty's government, to be guided by your own judgment, should any question arise in which more than one of the colonies is concerned.

"With the colony of Victoria, from its having hitherto formed part of New South Wales, the relation of the latter

must necessarily continue to be more intimate than those which it will at present have with Van Dieman's Land and South Australia.

"This remark applied more especially to the commercial relations of the first two mentioned colonies, and I should regard it as very injurious to both that the freedom of intercourse which has hitherto existed between them should be restricted, as it must be, if differences should arise in the scale of duties imposed in the ports of each on goods imported for consumption. Hence I consider it highly necessary that there should be no legislation by either of these colonies for the purpose of altering the existing duties on imports without previous communication with the other, and I shall instruct Mr. Latrobe accordingly.

"You will perceive from what I have said that I do not contemplate any immediate necessity for your repairing to Van Dieman's Land, South Australia and Victoria, but you will understand that if such a necessity should arise, you would by virtue of the Queen's commission to you, assume the government of any one of those in which you might be present, and retain it during the whole period of your residence. During such period, the functions of the Lieutenant-Governor would be completely suspended. Bearing this in mind, you will take care that no unnecessary interruptions to the ordinary government of any of these colonies takes place, and, if it should in this manner devolve on yourself, you will, I have no doubt, take the utmost care by all your acts and proceedings to maintain unimpaired the respect and deference which are due to the authority of the Lieutenant-Governor.

"To Western Australia it is unlikely that you would have occasion under any circumstances to proceed, and the administration of the government of that colony remains entirely in the present Governor."

In a letter of the same date[1] to Lieutenant-Governor Latrobe of Victoria, transmitting a copy of the above despatch to Governor Fitzroy, Earl Grey again stated that it was not intended that the Governor-General should interfere with the ordinary administration of the province. The former officer was instructed, as the new colony had such intimate relations with New South Wales, to keep in close communciation with the Governor-General on questions of public interest. On the subject of the tariff

[1]G.B.P.P., 1851, vol. 35, p. 46.

relations of the two colonies, a special injunction was delivered; "And you will, I am certain, not fail to notice the caution conveyed against inadvertently allowing any legislative measure to affect that freedom of traffic between the two colonies which is so essential to their prosperity, and any infringement of which would do them injury more than counterbalancing such benefit as they have derived from separation." And in a despatch of a few days later to Lieutenant-Governor Denison[1] of Van Dienman's Land, he made a similar explanation in regard to the appointment of a Governor-General, "who, in accordance with the precedent established in the colonies of British North America, will be Governor severally of each of the colonies in which the recent act establishes separate legislatures." His Excellency was likewise enjoined that on any question affecting the interests of any other of the Australian colonies, he should be guided by the judgment of the Governor-in-Chief in the absence of any royal instructions. The Lieutenant-Governors were informed that they would receive their commissions through Sir Charles Fitzroy.

These despatches furnish their own interpretation of the new policy of the Colonial Secretary to advance his favorite scheme of the federalization of the Australias. He recurred to the original suggestion of Governor Fitzroy to institute a supreme Governor for all the colonies, who should be charged with a supervisory control over the provincial governments on all matters of common concern. Under The Australian Colonies Bill, the Governor-in-Chief or other senior governor was the first administrative officer of the general government, but under the present plan, an independent quasi-federal executive was established, out of which, it was hoped, in process of time, a true federal government might develop.[2] The anomalous position of the Governor-General has been usually described as that of a federal executive, on account of a supposed resemblance to the executive of a federated state. But the name is rather misleading, as conveying the natural impression that some kind of federal government was thereby instituted. The duties of the office were, in fact, more nearly of the character of an advisory overlordship,[3] and the status of His Excellency, that of a con-

[1] G.B.P.P., 1851, vol. 35, p. 51.
[2] Jenks, The Government of Victoria, p. 159.
[3] Quick and Garran, Annot. Const. of Aust., p. 90.

sultative high commissioner to whom all subjects of general interest were properly referable.

The idea of a superior functionary for all the Australias was not new. At the time of the separation of the early settlements from New South Wales, the governments of the new provinces were not placed on an equality with that of the mother colony. Their position was a quasi-inferior one, as expressed in the subordinate rank and position of the local representatives of the Crown. Even when South Australia was established as an independent colony, the titular rank of the head of the executive was simply that of Lieutenant-Governor, the same as in the other smaller colonies. But in reality, the superior dignity of the Governor of New South Wales was merely nominal, a matter of official precedence only, since no administrative powers or duties in respect to the other colonies were attached to the position. In the new commissions the old distinction in rank was still maintained, although the occasion of the invidious pre-eminence had departed, for with the grant of the new constitutions, the smaller colonies acquired an equal legal status with the mother colony, and were endowed with the same powers and privileges and the same extensive right of self-government. But the political history of Australia does not seem to have furnished the Colonial Secretary with the constitutional precedent for his action. He had turned his eyes further afield, and found in the constitutional relations of the provinces of British North America a quasi-federal executive in the person of a Governor-General, whose office and functions, he believed, could be advantageously adapted to Australian conditions, and might, under favorable circumstances, develop into a fully organized federal government.

The Colonial Secretary did not intend that the office of Governor-General should be a mere position of dignity. He endeavored to define, though very ineffectually, the nature of the office, and the character and limitations of the functions attached thereto. To guard against any possible misapprehension on the part of the colonies that the appointment of the Governor-in-Chief involved an interference with their provincial autonomy, he took pains to negatively restrict the powers of the Governor-General in relation to the provincial governments. The domestic administration of the several colonies was to be carried on as heretofore, free from any external interference, and their im-

mediate relation to the Colonial Office was to remain unimpaired. They still retained their independent status of self-governing colonies under the direct supervision of Downing Street, and not of Sydney. The incongruous circumstance that the Lieutenant-Governors were to receive their new commissions through Sir Charles Fitzroy did not involve any interference with colonial autonomy, or subordination of constitutional functions to the federal executive.

The duties of the office of the Governor-General arose out of the community of interests between the colonies, which demanded a common concert of legislative action on certain matters. No attempt was made to definitely determine the scope of the federal functions of the Governor-in-Chief, but he was generally to "superintend the initiation of and foster the development" of measures for the common welfare, and to correspond with the Lieutenant-Governors regarding the same. This language is as vague as it is comprehensive. Possibly the Colonial Secretary, warned by past experience, thought it the part of wisdom to avoid any suspicion of dogmatic constitution making by leaving the matter to the discretion of the Governor-General. Besides, it would have been most difficult to determine in advance the classes of cases in which the legislation of one colony would directly or necessarily affect the interests of another, and upon which the advisory intervention of the Governor-General could be advantageously employed. The course of Australian events would best determine these matters as they respectively arose. If once a general mode of dealing with such questions were established, the experience of the colonies would determine when and what circumstances justified the taking of common action. Doubtless His Lordship had in mind the subjects he had enumerated in The Australian Colonies Bill, though he specifically referred only to the one topic of colonial tariffs, which, from the first, had been uppermost in his mind, and even in this case he confined his remarks primarily to the commercial relations of New South Wales and Victoria. Having failed to secure a uniform tariff by imperial or federal legislation, he sought to attain an assimilation of customs by expressly forbidding the alteration of the existing import duties without previous intercolonial communication. His Lordship was apparently of the opinion that publicity would be an effective cure of the danger of divergent customs, and that the enlightened self-interest of the two col-

onies would lead them to maintain a policy of tariff uniformity. The levying of a different scale of duties was not expressly forbidden as might have been expected, but security was taken that fiscal legislation in either colony should not be enacted in the dark and without the opportunity for consultation or protest, if necessary, on the part of the sister state.

The method provided for attaining uniformity of action in matters of common welfare was a system of federal supervision over colonial legislation. The Lieutenant-Governors were instructed to report to the Governor-General any measures of the several colonies calculated to affect the interests of their own or a neighboring state. These measures need not arise in their own colony; it was sufficient if the interests of any should appear to be prejudiced by proposed adverse legislative action in another. In the absence of express instructions from the Colonial Office, the decision of the Governor-General was to be decisive. We have no means of determining the manner in which the judgment of the Governor-in-Chief was to be exercised, but he was apparently entitled to interfere at any time, either in initiating or fostering the enactment of federal measures, or for preventing the passage of any legislation injurious to intercolonial interests. In the exercise of his supervisory functions over the measures of the several colonies, he possessed a reserve power of ratification or veto, either directly, or indirectly through instructions to the Lieutenant-Governors to baulk an objectionable bill, reserve it for further consideration, or absolutely reject it. It would seem reasonable to suppose in the latter case, that the usual practice of the Colonial Office would have been followed,—that a questionable measure having passed a provincial legislature would have been reserved by the Lieutenant-Governor to ascertain the will of the Governor-General in the matter. This was the method moreover, which had been recommended by Governor Fitzroy at the time of the first suggestion for the appointment of a superior functionary for Australia. It was evidently intended by the Colonial Secretary, that the Governor-in-Chief should exercise a part of the supervision with respect to provincial legislation, which up to that time had devolved upon the authorities at home. Such a federal oversight would be much more scrutinizing, expeditious, effective, and intelligent than Downing Street could possibly provide. A measure might be promptly checked at its very inception by a private intimation

to the local legislature through the Lieutenant-Governor, of the objection of the Governor-General thereto; or if it safely passed the legislative council, could be reserved or vetoed at once according to the Governor's discretion.

The power of the Governor-General with respect to colonial legislation was largely negative in its operation, and almost purely consultative in character; true he might suggest needed intercolonial measures but he had no direct means of influencing or procuring their enactment. There was no corresponding federal legislative organ through which he might hope by personal pressure to attain the desired uniformity of action. The provincial legislatures were each free to go their own way, subject, of course, to his intervention, but they were too far removed from his immediate influence for him to exercise any efficient control over their respective policies or legislation. To have effected the purpose in view, a hearty co-operation of all the colonies would have been required, but the permanent attainment of that ideal condition, when their divergent interests furnished so many occasions for disagreement, was entirely out of the question in view of the provincialistic spirit of local politics. The most that the Governor-General could hope to effect under the circumstances, would be to check the growth of divergent and retaliatory legislation, and to promote by his good offices a spirit of unity and a friendly community of interest between the colonies. He might be an arbitrator and a peace maker, but never a lawgiver or administrator.

The most interesting of the functions devolved on the Governor-General was the visiting power, by which, in virtue of his commission as Governor of each of the colonies of Van Dieman's Land, South Australia and Victoria, he was authorized in case of necessity, to repair to any of the three aforementioned provinces and at once assume the reins of government to the superseding of the authority of the Lieutenant-Governor during the period of his sojourn.[1] But in so doing, he was warned to show all deference and respect to Her Majesty's local repre-

[1]Mr. Jenks has expressed the opinion that, had the home government desired merely "to pay a well merited compliment to a valuable public servant whose sphere of action was apparently reduced, just as he was deserving well of his country, the object might have been attained by the simple grant of the titular distinction of Governor-General," Jenks, The Government of Victoria, p. 159. But the object of Earl Grey was not to reward a public official but to promote a favorite federal policy.

sentative, that the latter's official position and dignity might not thereby be brought into disrepute. This power, though connected with the office and function of the Governor-General, was seemingly exercised by virtue of the special gubernatorial commission for the several colonies. As a consequence it did not extend to Western Australia,[1] for which no separate commission was issued, although the authority of the Governor-General was exercisable over that province equally with the sister states. It would appear as if a distinction were drawn between the supervisory, and the suspending or visiting power of the Governor-General. As high commissioner of Australia, the Governor-in-Chief exercised a general oversight over the federal concerns of the colonies: as supplementary Governor of the several provinces he might temporarily assume the administration of any one of them when occasion demanded. The visiting power was not inherent in the office of the Governor-General, but rather an extraneous authority specially attached to it for the purpose of more effectually supervising Australian affairs. Although the federal executive was nominally based upon the Canadian precedent, the functions of the office were by no means as extensive as those enjoyed by the Canadian Governor-in-Chief. The instructions of Lord Dorchester authorized him[2] to assume a supreme authority over the Lieutenant-Governors, whom he could dismiss at pleasure without assignment of cause; he was commissioned to summon, prorogue, and dissolve the provincial legislatures at will: in short the local governor was a mere glorified chief of clerks, though nominally holding an independent position as the executive head of an autonomous colony. It is true that the powers of the Governor-in-Chief were latent so long as he remained outside the province, but the suspension of their exercise did not in the slightest affect the possibility of mischievous but legal interference. The dangerous latitude of these powers, and the unfortunate experience of Canada probably produced the attempted limitation of the functions of the Australian Governor-General.

Upon the face of it, the visiting power, with its temporary eclipse of the functions of the Lieutenant-Governors, seemed to imperil the independence and ruin the prestige of the local executives. Undoubtedly, if arbitrarily exercised, it would have

[1]The reason for this exception was that it was unlikely that the Governor-in-Chief would ever have occasion to visit that colony.
[2]A. Pardoe, Ontario Hist. Pap., vol. 7, 1906.

had that effect, but the Colonial Secretary made it abundantly evident that the Governor-General's action must be guided by the utmost discretion. He was practically forbidden to visit any of the other colonies unless some actual necessity for doing so should arise. He could not go ambulating around from province to province according to his own pleasure, on junketing trips, or in a pretended discharge of the duties of his office as Governor-in-Chief; he could not make his position an excuse or an occasion for interfering with the local administration of the colonies. In short, the power was intended to be used only in case of some urgent contingency, which it was impossible to determine in advance, and even in such a case there was to be no arbitrary invasion of provincial rights and privileges. Hedged about with such precautions, it is not surprising to find that the power was never called into action, since no Governor-General ever dared to run the risk of exercising it.

The office of Governor-in-Chief was conferred on the royal representative in New South Wales, for the reason that it was "the oldest and largest of all the colonies in the Australian group." The Colonial Secretary was very discreet in choosing two incontestable facts as the assignable ground for the selection. He had, in fact, no option in the matter, as the purely tentative nature of the office and of the functions attached thereto did not warrant the appointment of an independent federal Governor-General. New South Wales already possessed a commercial and political superiority over the other colonies, and her chief executive officer enjoyed a titular pre-eminence. Her claims could not fail to be acknowledged, even though their recognition touched the jealous susceptibilities of the other states, and embarrassed the freedom of action of the Governor himself. Although the office of Governor-General was attached to the gubernatorial chair of New South Wales, there was no constitutional connection between the two positions. The relation was that of an official union of two distinct offices in one individual, somewhat similar in character to the dynastic personal unions of the law of nations. The Executive Council of New South Wales had nothing whatever to do with the action of the Governor-General, whose powers were exercised solely on his own responsibility, and without the assistance of any advisory council.

The position of the Governor-General as thus established was

an impossible one; he was armed with a power and discretion which he dare not exercise. Unsupported by any federal legislature, his functions were a mere executive travesty, and his dignity a high-sounding but empty title. Any attempt to have interfered with the affairs of any of the colonies would have been strongly resented by them as an improper encroachment upon their provincial autonomy. Now that they had secured representative institutions, they were peculiarly sensitive to any attempted infringement of their newly acquired liberty by the shadowy representative of Downing Street officialdom at Sydney. Besides, the fact that the Governor-General was also Governor of New South Wales would always have exposed his action to the criticism of being influenced or governed by the policy of that colony. His position was open to suspicion, and his political liberty and usefulness as a federal agent were correspondingly restricted. But above all else, the inherent weakness of the Governor-General's position is most manifest. He had no means of initiating a policy but by suggestion, and no method of promoting uniformity of legislation save by correspondence; he was without legislative power or executive force, and only by commanding ability or tactful diplomacy could he hope to make his influence felt in furthering Australian co-operation. To the ordinary Governor-in-Chief, the policy of non-intervention must have appeared a wiser and more prudent course.

The announcement of the appointment of a Governor-General was received with surprise by the interested few in England, and many were the idle conjectures as to the import of Lord Grey's latest policy.[1] The defeat of last session, it was generally believed, had dissuaded the Colonial Secretary from any further efforts to bring about federation by imperial action, so that most of the suppositions flew in entirely wrong directions. A few of the critics surmised that His Lordship still harboured the hope of a federated Australia, and that the institution of the new office foreshadowed the introduction of another measure for a general assembly at the approaching session; while others connected the appointment in some mysterious way with the subject of transportation, or the serious disagreement between Sir Charles Fitzroy and the liberal party of New South Wales. Mr. Robert Lowe, with his keener appreciation of the situation

[1] Letter of Mr. R. Lowe, London correspondent of The Sydney Herald. The Sydney Morning Herald, June 12, 1851.

of the Australian colonies and of the policy of the Colonial Office in respect thereto, read aright the purpose of the action as related to the future federation of the colonies, but unconnected with any present intention of parliamentary intervention. Outside the limited circle of those who were interested in the legislation of last session, the innovation of the Colonial Secretary was neglected.

In Australia the new program of His Lordship was greeted with general indifference. In New South Wales, as might be expected from the honor conferred upon that colony in the appointment of the Governor-General, it was regarded with more favor than in the other colonies. At the opening of the Legislative Council on October 16th, 1851, Sir Charles Fitzroy, in referring to his recent elevation to the federal governorship, remarked;[1] "It will afford me much gratification in the exercise of the powers which are entrusted to me to promote and cement those friendly relations between the several colonies over which my commission extends, which are so desirable for their mutual welfare and prosperity," and in the address in reply, the Council concurred in the expression of the hope that "mutual feelings of good will might be maintained among the several Australian dependencies." The Sydney Herald voiced the satisfaction of the colony upon the official recognition of the political preeminence of New South Wales in the Australian group, which involved no invidious reflection upon the other colonies, and "ought in reason to give satisfaction to all whom it concerned."[2] It admitted, however, that the other colonies would be likely at first to take umbrage at the visiting power of the Governor-General, but argued that this temporary supersession of the Lieutenant-Governors was essential to the function of the Governor-in-Chief, and "is the practice in every part of our colonial empire where a Governor-General exists." It heartily approved of the purpose of the office to promote colonial co-operation, and was prepared to go even further in urging the necessity of some central authority for adjusting and harmonizing intercolonial legislation on subjects of general concern. The belief prevailed in New South Wales that in time the office of Governor-General would develop into a composite federal organization.[3] Although then at present the mother colony expected

[1] N.S.W., V.P.L.C., 1851, p. 9.
[2] The Sydney Morning Herald, June 13, 1851.
[3] Ibid, Dec. 16, 1853.

to derive but little substantial benefit from the merely titular distinction, still she fondly hoped in the future to reap the advantage of being the social and political centre of the Australian group, and probably the capital of an Australian confederation.

In the other colonies little interest was manifested in the matter. At the opening of the first session of the Legislative Council of Victoria, Lieutenant-Governor Latrobe briefly referred[1] to the appointment of the Governor-in-Chief, as intended "to lend facilities to the consideration of intercolonial questions, to the arrangement and adoption of such measures as may be judged expedient for the general interests" of the Australian colonies, and expressed the hope that the common community of interests between them would lead to a general recognition that their legislation should, as far as possible, "embody and carry out the same principles." He did not anticipate any "insuperable difficulties" in the way of securing this advantage. In their reply to the address, the Council concurred in the hope that uniformity of colonial legislation might be attained, but were discreetly silent regarding the appointment of the Governor-General. Outside the legislature almost everything else was forgotten in the excitement upon the discovery of gold. Such little attention as was given to politics was directed mainly to the subject of transportation, and the organization of the new government. When, however, affairs again assumed a somewhat normal condition, and Victoria found herself as a result of the great immigration, placed at the very forefront of the Australian group in the matter of population and commerce, the old jealousy of the official supremacy of Sydney again flamed out, and any suspicion of the slightest interference on the part of the Governor-General in local affairs was most bitterly resented.[2]

In the Legislative Councils of South Australia and Van Dieman's Land, the question of the appointment of the Governor-General was quite overlooked, although the closely related subject of uniformity of fiscal legislation received special consideration.[3] In these colonies the same supersensitive feelings over the nominal supremacy of Sydney did not exist as in Victoria, since they had not the same ambitious aspiration after leadership as their enterprising progressive neighbor. They de-

[1]Vict., V.P.L.C., 1851-2, vol. 1, p. 11.
[2]The Melbourne Argus, Jan. 3, 1855.
[3]S.A., V.P.L.C., 1851, p. 29. V.D.L., V.P.L.C., 1851, p. 57.

sired only to be left alone, and did not much worry over the titular dignity of the mother colony so long as it involved no interference with their provincial rights. For this reason there was a tendency in some quarters to depreciate the office of the Governor-in-Chief, and the importance of his functions, and to emphasize on the other hand the real independence of the local legislatures from federal control. The Governor-General, it was asserted, had nothing to do with their internal legislation, and the colonies were as free as when the dignity was first conferred. "There must be," said The Adelaide Times,[1] "the intervention of an act of parliament before the Governor-Generalship of these colonies can be anything more than a mere name." Nevertheless there was always the secret apprehension that the dormant powers of the Governor-in-Chief might, upon a favorable occasion, be called into play, and with the growth in wealth and population of the colonies, there was a heightened aspiration after complete independence, and a sense of humiliation at the nominal supremacy of Sydney. If, it was contended, the dignity of the Governor-General was a mere name, then the distinction should be abolished as an idle sham, but if on the other hand, it were intended to make the office one of real effectiveness, it should for even stronger reasons be abrogated as dangerous to the provincial autonomy of the states. The right of appeal to the home government, it was felt, was a surer guarantee of just and peaceful relations than any reference to an Australian authority at Sydney. The presidency of New South Wales might, it was feared, under an ambitious Governor-General, develop into a tyranny, and in any case would prove a source of inconvenience. The only safeguard of colonial independence lay in the freedom of each government to initiate its own legislation, intercolonial as well as domestic, and to negotiate freely with the other provinces in respect to all federal relations. Colonial co-operation should be a free and voluntary act, for, said The South Australian Register,[2] "We can see no active connection of any kind that promises half so much advantage as it threatens annoyance. . . . . But to establish a vice-regal court in this part of the world and to endow it with powers of judicial interference with the various colonies adjacent would only tend to excite jealousy, envy and political

[1] The Adelaide Times, Jan. 28, 1851.
[2] The South Australian Register, May 8, 1855.

animosity, in addition to involving a great sacrifice of time and patience."

In none of the colonies, save New South Wales, do we find any desire that the functions of the Governor-General should develop into some sort of political union. Even to the federationists, the office presented little attraction as affording a sound substratum on which a federal system might be gradually erected. Throughout the whole course of the movement for a general assembly, and the discussion which it called forth, the existence of the office was practically ignored. Neither in the negotiations between the colonies, nor in the debates in the several legislatures do we find any appeal to its good offices, or reference to its powers. It was treated as a mere crotchet of the Colonial Secretary, which was not entitled to the consideration which a legitimate federal executive would properly demand and secure. Its innocuousness was, in fact, the sole excuse for its existence, and the only reason why it was so long tolerated.

A series of events at home and in Australia soon put an end to any forlorn hope that the latest scheme of the Colonial Office might be made to serve the purpose of colonial unity. The first of these was the departure of Earl Grey from the Colonial Office in 1852,[1] and with his disappearance the policy of fostering a federal union came to an end. Had he continued to administer the affairs of the colonies, it is very probable that the Governor-General would have been instructed to make some use of the powers entrusted to him, as divergences of legislation soon arose in the several provinces. The scheme was his own creation, and naturally he would have been anxious for an experiment to be made of its usefulness. There is every reason to believe that His Lordship would have been quick to take advantage of any opportunity of creating the other branches of a federal government,[2] and would readily have lent his official influence to the subsequent efforts put forward in Australia to that end. As it was, the Governor-in-Chief was left without the advice, the special instruction, or the support of Downing Street, and consequently did not feel strong enough alone to take on himself the direction of an Australian policy of legislative uniformity. The assistance of the Colonial Secretary was even more necessary to the successful development of the scheme than

[1]Lord John Russell's ministry was defeated on an adverse amendment to the Militia Bill moved by Lord Palmerston.

[2]Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. iv.

to its initiation, for he at least was free from the rival jealousies which attached to the administration at Sydney, and could safely take steps towards the furtherance of co-operative action, which would have been resented by the smaller colonies if suspected of proceeding from the influence of the New South Wales executive. The Governor-General was thus turned adrift to pursue what course he thought best under the circumstances, exposed as he was on the one side to the suspicion of the colonies, and on the other unsupported by the counsel and influence of the home government.

The departure of Earl Grey exercised an important influence on the course of the federal movement. He had been its chief inspiration and its most earnest advocate. Although his several legislative and executive measures had miscarried, and although his conduct at the Colonial Office in some respects had injured the cause he wished to serve, nevertheless he succeeded in crystallizing public sentiment on the question, and awakening an interest in it which would not have been possible to any group of colonial leaders. The very fact that the scheme was backed by the whole influence of Downing Street had enhanced its importance in the eyes of the colonies, even though it was disadvantageous to the popularity of the proposal itself. But he not only gave the movement a powerful impetus, but he also provided it with a much needed draft of a federal constitution, which served as a basis for discussion throughout the earlier years of the movement. This service was of the highest educational and political value in familiarizing the people with the form and character of federal institutions, and in preparing them to intelligently consider the merits and the faults of that type of government, and its adaptability to Australian conditions.

The passing of Earl Grey marked the beginning of a new period in the history of federation. The tutelary régime of the Colonial Office had ended; henceforth the successive Secretaries for the Colonies refrained from direct participation in the efforts put forward in the colonies to effect an Australian union, preferring to remain sympathetic onlookers whose interference was limited to occasional suggestions, usually expressed through the mouth of one of the governors, of the need and advantage of some kind of federal action.[1] The history of the movement from

[1]At a later period the attitude of the English government became more pronounced and we find several secretaries for the colonies throwing their strong influence in favor of federation.

this time ceased to revolve around the colonial policy of an imperial Ministry, but was now transferred to Australia to be shuffled backwards and forwards in the different legislatures and between the several colonies. The question at last had lost its imperial character and had become a truly Australian issue.

A second event that materially affected the position of the Governor-General was the flood of immigration consequent upon the gold rush, which completely reversed the relative positions of the colonies.[1] At the time of the grant of the new constitution, New South Wales had enjoyed an unquestioned supremacy in population, commerce, and in social and political influence.[2] But by far the larger number of the new arrivals were attracted to the richer fields of the younger colony, so that within the short space of two years Victoria had forged to the first place in population, in wealth, and in industrial and commercial development. The energy of the aggressive young citizens of Victoria soon left the conservative squatocracy of the mother colony considerably in the rear in the race for economic leadership. It was not to be expected under such circumstances, that the spirited young colony would tamely submit to the political supremacy of her rival. Victoria had many old grievances against her neighbor to wipe off the slate, and she was not slow to press her claims for imperial recognition as the premier colony. On September 14th, 1852, Mr. Johnson introduced a resolution into the Legislative Council to the effect,[3] "That Victoria, having now arrived at the position of being the first and most important of the Australian colonies, as possessing the most extensive commerce, the greatest revenue, and the most valuable exports of both gold and wool, and the widest extent of fertile soil, and being besides the most centrally situated in the Australian group, is in the opinion of this House the proper location for the seat of the federal government;" and further, that an address be presented to the Queen to constitute Victoria the place of residence of the Governor-General. In supporting his motion, Mr. Johnson maintained that great advantages would accrue from Victoria being made the seat of the federal government. It should also be constituted the postal and military centre, and the seat of the Australian Court of Appeal which would soon be instituted. The motion was agreed to unanimously, and an address in ac-

[1] Jenks, Hist. of the Aust. Col., p. 295.
[2] Coghlan, The Seven Colonies of Australasia, 1901-2, p. 534.
[3] The Melbourne Morning Herald, Sept. 15, 1852.

cordance therewith was adopted three days later for presentation to Her Majesty. This address[1] recited at length the superior economic advantages of Victoria, and its rapid commercial development as compared with New South Wales, and concluded with the self-satisfied assertion, "that in the opinion of this Council so remarkable a concurrence of circumstances at once indicate the destiny of this colony, and vindicate its pretensions to be the seat of the supreme government."

The citizens of Sydney naturally waxed wroth over this act of Victorian aggression, which was characterized by The Sydney Morning Herald as the offspring of an "inordinate ambition," and as an unjust and offensive action towards New South Wales.[2] Sydney, it asserted, had "a vested interest in the capital" for which no cause of forfeiture could be set up. Victoria's demand was a claim of spoliation; "she would rob us, and make our gracious sovereign a party to the theft." With plenteous unction it warned the Victorian people to bear in mind the commandment, "Thou shalt not covet." The question did not fail to attract the attention of the jealous Legislative Council,[3] where Mr. Wentworth was always to the fore when the interests of Sydney were involved. On the discussion of clause 56 of the draft constitution of the colony, fixing the civil list of the Governor-General,[4] he argued that should Victoria succeed in carrying away the seat of government, it would be a serious blow to the prestige and influence of New South Wales, as other departments, such for instance as the proposed supreme judicature, would be certain to follow; "and if ever these colonies should form themselves into a grand federation the result will be still worse for New South Wales. Instead of being one of the wealthiest and most important of the Australian colonies she would sink into comparative insignificance." Several other speakers argued to the same effect, Mr. Martin insisting that it was not the commercial prosperity, but the political, social, and intellectual character of the two provinces which should guide the British government in determining the location of the federal capital. In these latter respects he seemingly had no doubt but that the palm of merit would be awarded the mother colony. But

[1] Vict. V.P.L.C., 1852-3, vol. 1, p. 197. The Melbourne Herald, Sept. 22, 1852.
[2] The Sydney Morning Herald, Sept. 24, 1862.
[3] Ibid, Dec. 15, 1853.
[4] N.S.W., V.P.L.C., 1853, vol. 2, p. 152.

the alarm of Sydney was needless for the prayer of Victoria did not receive a favorable answer. In a despatch of February 5th, 1853,[1] the Duke of Newcastle, Secretary for the Colonies, replied that he did not "deem it advisable to recommend Her Majesty to constitute any seat of supreme government in the Australian colonies."[2]

This little incident must have served the important purpose of revealing to the home government the true condition of affairs in respect to the office of the Governor-General. Instead of serving as an efficient instrument for bringing about a helpful co-operation of the colonies, as had been intended, it had become a bone of contention, and an occasion of discord between the two rival provinces. In truth there was no longer any justification for maintaining the preferential distinction of New South Wales after she had lost the economic and political leadership of the colonies. Its retention could not fail to occasion provincial heart-burnings and recrimination without affording any compensating advantages. The title was a mere bauble, but when once it had become the passion of contending colonies it attained an importance which was as injurious as it was unreal. Besides, the possibility of a federal union lent to the office a fictitious value which it would not otherwise have possessed, and occasioned an unfortunate association of the idea of federation with a struggle for political pre-eminence, which was hostile to the growth of a true federal sentiment.

The last important circumstance which had a material bearing on the position of the Governor-General was the introduction of the system of responsible government under the new and popular constitutions of 1855. So long as the several Lieutenant-Governors personally formulated the policy, and directed the administration of their respective colonies, there was some hope that the authority of the Governor-General, through his social and official relationship with his brother governors might influence the conduct of provincial affairs, but with the transfer of the actual power of government into the hands of a group of ministers primarily responsible to the local legislatures, the last vestige of the utility and of the authority of the federal office

[1]Vict., V.P.L.C., 1853-4, vol. 2, p. 415.

[2]One year later the ambition of Melbourne was partially satisfied by the Colonial Office, in the transfer of the headquarters of the military command to that city. Vict. V.P.L.C., 1854-5, vol. 1, p. 967.

disappeared.[1] No Governor-General, however strong and able he might be, could venture to dictate to a colonial cabinet upon a matter properly within the cognizance of the provincial legislature. To attempt such a policy would only be to expose himself to ridicule and humiliation. The grant of responsible government carried with it, for better or for worse, the entire and exclusive conduct of provincial affairs; and the prerogative of no Governor-General could override or set aside that constitutional fact. The same result was equally applicable to the visiting power. Although the advent of the Governor-General might temporarily displace the functions of the Lieutenant-Governor, it could never supplant the dominant authority of the responsible ministry, which would admit no superior power but the imperial parliament itself. In the face of the responsible leaders of the people, and the jealousy of the local legislatures, the weakness of the Governor-General's position was most pitiful.

Moreover even in his own colony the Governor-in-Chief might now find himself in a most embarrassing situation by reason of his dual position. He might, for example, be called upon by his responsible advisers to pursue an intercolonial policy which his duty as Governor-General would require him to oppose. Such a state of affairs did actually arise in 1854, just prior to the introduction of responsible government, when the New South Wales executive set up border customs at Albury, in the face of the instructions of the Governor--in-Chief, which specially condemned any undue restrictions upon freedom of intercourse. If then the Governor-General was unwilling or unable to control the policy of his own government when he was its irresponsible head, it was folly to expect that he could influence even remotely the course of legislation in his own or in the sister colonies after they had come into the enjoyment of the full liberty of responsible self-government. In brief the position of an autocratic or irresponsible Governor-General was incompatible with the free institutions of the self-governing colonies.

The administration of Sir Charles Fitzroy, the first Governor-General, reduced the authority of the office to a mere name. Notwithstanding his express declaration at the final session of the Legislative Council prior to the separation of the two colonies, that it would be not only his duty, but would afford him

[1] Jenks, The Government of Victoria, p. 159.

the sincerest "gratification to promote to the utmost of his power" the cultivation of "mutual feelings of good will" and the "most liberal principles of reciprocal advantage" in intercolonial legislation, he adopted the prudent if unenergetic policy of non-intervention. While maintaining the friendliest relations with Mr. Latrobe[1] and the other Lieutenant-Governors, he permitted each of the colonies to freely pusue its own domestic policy, whatever might be the effect upon the harmony of intercolonial relations. As a natural result, before the close of his term of office the three eastern colonies were already at loggerheads over the question of border customs,[2] and New South Wales and Victoria had indulged in the delightful little experience of retaliatory tariffs. He allowed his instructions to remain a dead letter, and neither by direct nor indirect influence sought to curb the diverging tendencies of colonial legislation. The visiting power was likewise allowed to fall into desuetude. When he did venture out of his own colony to make a visit to Tasmania, he declined to interfere even in the slightest, with the functions of the Lieutenant-Governor.[3] The canny Governor-General was sensible enough to appreciate the fact that any interference in provincial affairs would be productive of more harm than good.

The English government was not unobservant of the material changes effected by the recent course of events in Australia, and of the jealousy which had been aroused over the presidency of the Governor of New South Wales. From the tone of official opinion at home, it was thought in colonial circles that the abolition of the office of Governor-General was practically agreed upon.[4] But Whitehall was not prepared to take that decisive action without one more effort to rehabilitate the position by removing its most objectionable feature. When the term of office of Sir Charles Fitzroy came to an end in 1855, the separate commissions for each of the colonies previously granted to the Governor of New South Wales were not renewed, though the commission of the Governor-General was still retained. The commissions of the several Lieutenant-Governors were likewise modified, and their title and office were now raised to full gubernatorial rank.

The effect of this new alteration was explained in the speech

[1] Jenks, Hist. of the Aust. Colonies, p. 296.
[2] Vict. V.P.L.C., 1854-5, vol. 1, p. 951.
[3] The Melbourne Argus, Jan. 3, 1856.
[4] Denison, Varieties of Vice-Regal Life, vol. 1, p. 265.

of Governor Young of South Australia at the opening of the Legislative Council.[1] "The development of this colony has been recognized by its separation from the control of the New South Wales government. The officer administering this government is no longer merely a Lieutenant-Governor, but holds now the commission of Captain-General and Governor-in-Chief of South Australia formerly held by the Governor-General at Sydney. The authority of the latter can therefore no longer supersede the powers of the former within the limits of this province. It is nevertheless the same especial privilege to originate measures for the advancement of all these colonies." The Governor-General, he continued, would find but one feeling "animating this community as to the policy and necessity of hearty co-operation in all measures requiring as it were a federal action for the promotion of the great objects common to the Australian colonies." The question of the significance of the changes in the commissions[2] likewise came up for consideration in the Legislative Council of Victoria, where the Colonial Secretary explained that the Governor-General could not now interfere in any way with the provincial executive, and that his office was merely "a nominal distinction;" in effect the old relation of subordination had been reduced to a "mere inferiority of rank and precedence." But the people of Victoria did not take kindly to even the titular precedence of the Governor-General, and were most strongly opposed to the idea of intervention even to promote a spirit of friendly co-operation between the colonies.[3] They had not the same liberality of spirit in this matter as was shown in the sister colony of South Australia. The mere suggestion of invoking the interference of Sir William Denison,[4] at the time of the disturbances in the gold-fields "occasioned some sensation," and called forth a vigorous protest on the part of the Melbourne press against any attempt to exercise "dead powers." In New South Wales the constitutional change was not received with favor. The Sydney Herald protested[5] against the statement of the Victorian Colonial Secretary that the alteration in the commissions signified an abandonment by the Colonial Office of the idea of establishing a federal government, for otherwise it

[1] S.A., V.P.L.C., 1855-6, vol. 1, p. 4.
[2] The Melbourne Argus, Jan. 31, 1855.
[3] Ibid, Jan. 3. 1855.
[4] Puseley, Australia and Tasmania, p. 83. McCombie, Hist. of Vict., p. 286.
[5] The Sydney Morning Herald, Feb. 6, 1855.

argued "they would not have enacted the farce of creating a Governor-General." It had however to admit that the office had become a mere titular dignity without any effective influence on intercolonial affairs.[1]

If the home authorities were of the opinion that by dropping the special local commissions of the Governor-General, the position could be popularized, or made effective as a means of united action, they entirely misjudged the tendency of Australian events. Even the strong self-reliant temper of Sir William Denison failed to revive the moribund office. During the course of his administration several efforts were made to bring about a common concert between some of the colonies, especially in regard to tariff[2] and postal arrangements.[3] But these proposals seem to have proceeded from him in his capacity as Governor of the colony acting on behalf of its government, rather than from him in virtue of his position, as Governor-General.[4] At any rate in the other colonies the negotiations were looked upon simply as propositions of the Ministry of New South Wales to be considered with all the critical suspicion which was due to the suggestion of a rival state seeking to advance its own interests. The position of the Governor-in-Chief had no influence whatever in commending the proposals to the sister colonies. A solitary attempt was made by a faction in Victoria to secure the intervention of Sir William Denison in the troubled affairs of that colony, but without success.[5] He adopted the inactive policy of his predecessor in carefully avoiding mixing himself up in the domestic concerns of the other colonies. Upon intercolonial questions, he maintained an attitude of strict neutrality, contenting himself with the performance of his gubernatorial duties, and not seeking to play the ambitious role of intercolonial arbiter or dictator.

The quiescent attitude of the two Governor-Generals is the more remarkable in the face of the strong federal movement then in progress in several of the colonies. Neither Sir Charles Fitzroy nor his successor appear to have made the slightest effort to turn their vice-regal position to account in the promotion

[1]The Sydney Morning Herald, Apr. 21, 1855.
[2]Vict., V.P.L.C., 1855-6, vol. 1, p. 1198.
[3]Ibid, vol. 1, p. 771. Ibid, 1854-5, vol. 2, p. 1111.
[4]Letter of Sir Wm. Denison to the Hon. H. Labouchere, Feb. 7, 1857. Denison, Varieties of Vice-Regal Life, vol. 1, p. 378.
[5]The Sydney Morning Herald, Apr. 21, 1855. Puseley, Australia and Tasmania, Editorial quoted from The Argus, with criticism, p. 84.

of the federal cause. This is the more surprising in the case of the former, as he had taken an active part in the initiation of the question in 1846, and had actually suggested the institution of a federal executive. The Colonial Office was known to be thoroughly sympathetic, and the instructions of the Governor-General especially required him to take all necessary measures for the furtherance of intercolonial co-operation. One would have naturally supposed that he, before all others, would have exerted all the influence of his office to effect so desirable an object; and more especially so as the federal movement was fathered by his former trusted counsellor, Mr. E. Deas Thompson. Certainly no more effective mode of promoting intercolonial legislative concord could be devised than the institution of a general assembly for all the colonies. Possibly he may have thought that his intervention would have injured the cause more than assisted it, in view of the suspicion and hostility entertained towards the movement in certain quarters. One thing is certain, that in adopting a neutral attitude upon this most important issue, Sir Charles Fitzroy missed the most splendid opportunity of making his influence permanently felt in the constitutional history of Australia. He might have been the actual author of confederation, or at all events the leading figure in its early history.

The position of Sir William Denison was somewhat different; he had at the outset declared himself an opponent of the principle of federation, and this conviction had been strengthened by the course of Australian events. In a private letter to Sir Geo. Grey,[1] the Colonial Secretary, just on the eve of his promotion to the Governorship of New South Wales, he candidly expressed his doubts as to the desirability of retaining the office of Governor-General, or of seeking to promote a general assembly for the Australias. "The question of a federal system of government for these colonies is, I am informed, still under consideration. I am to a certain extent interested in the settlement of the question, inasmuch as my title when I move up to Sydney may depend upon the decision of the government. I shall be sorry if the people of New South Wales are placed in a position to identify me with any loss of dignity which they may conceive this colony to have suffered; but still the more I consider the subject the more convinced am I of the impolicy of giving

[1] Nov. 18, 1854. Denison, Varieties of Vice-Regal Life, vol. 1, p. 261.

to any one colony a predominance over the rest." Referring then to his despatch of 1849, he declared, "I see but little to alter; and much has happened since which confirms me in the opinion I then expressed."

"There is in point of fact little or nothing for a general assembly or congress to do. The colonies are satisfied with a very simple tariff of duties on imports; the postage system is settled, the mode of providing light-houses has been arranged by an agreement between Van Dieman's Land, Victoria and New South Wales; port dues are done away with pretty generally: the only matter which remains to be determined is the character and powers of a court of appeal. It can hardly be worth while to attempt to establish a system of government of a most complicated character for the purpose of legislating as to this. There is, it is true, the question as to the disposal of crown lands, but as the position of each colony is with relation to this subject different from that of its neighbor, each had better be allowed to legislate for itself in the matter. There will be little or nothing for a federal assembly to discuss, if it be constructed according to the original sketch in the report of the Committee of Council. Are its attributes to be extended till it is assimilated in some respects to the Congress of the United States? If so, much of the power now vested in the separate legislatures of the colonies must be taken from them and entrusted to the new body. I will not attempt to decide upon the wisdom of such a scheme; but will it be found practicable? Will the different legislative bodies be willing to divest themselves of a power of which they are just beginning to taste the sweets, for the purpose of transferring it to another body in which each colony can only have a fractional share of influence? What benefit can they propose to themselves to counterbalance the sacrifice they will be called on to make, first of power, secondly of dignity? There may be a desire on the part of New South Wales or Victoria that some arrangement should be made by which one or the other of these colonies should be established as the headquarters of a federal government, and thus have a nominal, if not a real superiority over the rest; but I question whether the legislatures of either would be willing to yield a portion of the power they now possess in order to carry out such a scheme." Notwithstanding his personal objections to the plan, he declared himself

ready to give effect to the decision of the government, whatever it might be, without regard to personal considerations.

The grant of responsible government rendered it impracticable for Sir William to lend even an unwilling or lukewarm support to the policy of the Colonial Office. As a constitutional ruler his influence was necessarily indirect: he dare not antagonize the measures of his advisers on fiscal and intercolonial questions, but was restricted to using his friendly counsel in the cabinet chamber in favor of a liberal policy in intercolonial relations. In this case the personal inclination, and the constitutional obligations of the Governor-General coincided with the independent spirit of the several legislatures. Under these circumstances Governor Denison wisely resigned himself to accepting as far as possible the advice of his Ministry, and to maintaining a strict impartiality in domestic party controversies and unseemly intercolonial conflicts. He accordingly carefully refrained from any participation in the active struggle that was being waged within and without the colony upon the federal question; and this moreover at a time when his influence might have been a decisive factor in favor of federation. During this early period, when the personal authority of the Governor was most pronounced in the policy of the executive, the steadfast support of the representative of the Crown would probably have secured the co-operation of the mother colony in the attempted conferences upon this subject, and might possibly thereby have been the means of effecting some sort of a federal league or association among the colonies, which would have paved the way to an ultimate political union.

With the departure of Sir William Denison in 1861, the office of Governor-General was allowed to lapse, as the home authorities wisely decided not to renew the federal commission, which had served no useful purpose in promoting the object for which intended. In a despatch to the Governor of New South Wales, the Duke of Newcastle explained[1] the reason for this decision on the part of the Colonial Office. Such a title indicated in his opinion, "a species of authority and pre-eminence over the governors of the other colonies which . . . . could not with justice be continued, and if continued, could not fail to excite dissatisfaction very prejudicial to their common interests." The rivalry between New South Wales and Victoria had at last con-

[1]Harrison Moore, Const. of the Aust. Comm., p. 22.

vinced the home government of the undesirability of longer continuing an office, whose existence from the first had been merely nominal and which had served only to foster an invidious distinction and arouse false and unseemly jealousies. The scheme of a federal executive was unfortunate in its origin, negligible in its history, and forgotten in its demise; it was an unhappy attempt to create a federal institution foreign to the character of Australian political conditions. From the first it was doomed to ignominious failure. Neither the functions of the Governor-General, nor the character of the men who held the position, made any impression on the course of the federal movement. Only the non-exercise of the duties of the office saved the holders from the humiliation of many provincial rebuffs. The Governor-Generals acted the part of wisdom, if not of heroism, in allowing the office to sink into innocuous desuetude. If as a mere titular distinction, it occasioned envy, as a positive institution, it would have bred discord and enmity.[1] Its disappearance accomplished one good purpose in removing a source of jealousy and of false supercilious superiority between the states by placing them all on the same common level. The experiment was not only a failure but left an unfortunate legacy of evil results. The abolition of the office cleared the way for the cultivation of more cordial relations between the colonies.

[1]Mr. Jenks sums up the influence of the position of the Governor-General in these words: "Perhaps its most practical result was to cause the jealous Victorians of 1853 to vote their Governor £2,000 a year more of salary than his nominal superior at Sydney." Jenks, Hist. of the Aust. Colonies, p. 165. Labilliere, Hist. of Vict., p. 312.

CHAPTER IV.

THE PERIOD OF CONSTITUTIONAL COMMITTEES.

By the constitution acts of 1850, as we have seen, the colonies were left almost entirely free to pursue their own course in respect to intercolonial affairs. They had at last attained a portion of the liberty for which they had been striving for years, and were now prepared to enjoy it to the fullest extent. Under such circumstances the project of a federal union, which involved a delegation of a part of their provincial powers to a general assembly, seemed somewhat incongruous if not inconsistent with their newly acquired independence. The colonial interest which had been awakened in Earl Grey's scheme for a federal assembly, was largely the result of the external pressure of Downing Street. The proposal of the imperial government had given the question a factitious importance, and occasioned a forced and unnatural development of colonial sentiment, which was not a true reflection of the state of public feeling. The natural growth of the conception of Australian unity had been unduly stimulated by the premature and coercive action of the home government. In forcing on the federal education of the public at too rapid a rate, the movement was exposed to the danger of a reaction, and as a natural result of the removal of the pressure of the Colonial Office, the subject of a general assembly fell for a time into the background.

Moreover the work of electing and organizing the new provincial governments absorbed for a period most of the political energy of the people and of the legislatures. In the various speeches and election addresses of the candidates for the first Legislative Council of Victoria, but one reference is to be found to the question of federation, and that a decidedly adverse utterance of Mr. J. O'Shanassy, whose remarks are doubly interesting on account of the prominent part he subsequently played in local politics. In a speech on the hustings he declared[1] that this colony had already sufficient experience in dealing with her neighbors to prove that it would not be beneficial to join in a federal union, as all her efforts to secure proper representation in the lately proposed general assembly had failed owing to the

[1]The Melbourne Daily News, July 12, 1851.

opposition of New South Wales. And in his public address to the electorate a few days later, he stated;[1] "I am unfavorable to the establishment of a federal government in Australia, persuaded that the European system of centralizing power has not proved itself beneficial to mankind, and that we have paramount reasons to preserve a separate independent government in Victoria." A similar indifference prevailed in the other colonies, where the pressure of local considerations obscured all thought of the broader issue of intercolonial relations.

Meanwhile a great social question had arisen which stirred the whole political life of the colonies, and indirectly exercised an important influence on the federal movement. The action of the Colonial Office in forcing upon the unfortunate colony of Van Dieman's Land a continuance of the evil of transportation called forth a united protest from all the colonies, which felt that their social and political life was almost equally imperilled by the injury to a sister state. The common danger of convictism served to awaken a strong community of interest and of sympathy throughout Australia. It was realized that the protest of a single colony would be ineffectual to reverse the policy of Downing Street, and that the combined strength and influence of the colonies would be necessary to overcome the selfish interest of Great Britain in the matter. An Anti-Transportation League was formed in Tasmania, and quickly spread to the other provinces.[2] A central organization was soon after effected, which united all the colonial branches in a common alliance. The movement was entirely a popular one, unconnected with the official and parliamentary protests which were being made by the different legislatures. For this reason it had the higher educational value in revealing to the general public the intimate interrelation of the interests of the several colonies. It gave the necessary impetus to the development of a spirit of common fellowship, if not of nationality. A voluntary federation was created capable of speaking with a single and powerful voice on behalf of Australia, and wielding all the influence if not the power of a constitutional body. By his arbitrary policy, Earl Grey had unwittingly served the cause of a federal union more effectually than by his well-intentioned efforts to establish a general assembly. The several intercolonial conferences, at

[1]The Melbourne Daily News, July 19, 1851.
[2]Rusden, Hist. of Aust., vol. 1, p. 479.

which delegates were present from the various colonies, familiarized the people with the conception of an Australian congress, served to bring many of the leading public men of the different provinces together, and was a most valuable medium for the general dissemination of knowledge concerning the social economic and political conditions of the respective colonies. It moreover taught the colonists the value of intercolonial organization, and impressed upon them the inherent strength which comes from unity.

The success which attended the efforts of the League, suggested the idea that its scope should be widened so as to include other matters upon which united action was desirable. The proposal was favorably taken up in some quarters,[1] but met with general discouragement. It was objected that upon no other subject, and leastwise upon the character of the political institutions of the colonies, could unanimity of sentiment be secured.[2] This feeling found expression in a speech by Mr. Dutton in the Legislative Council of South Australia on a grant to the Anti-Transportation movement, in which he uttered a vigorous protest against co-operation with the sister colonies in respect to other matters.[3] "South Australia," said he, "was decidedly opposed to any system of federation. In this one instance she could co-operate with the other colonies but in no other." As a result of this limitation of its activities, the League virtually proclaimed its own dissolution upon the attainment of the purpose for which it was specifically created. It declined the leadership of a movement which promised to weld into harmonious unity, the sympathies and interests of the whole population of Australia, not on one social question only, but on all common social and political subjects. It might have been the precursor of an Australian federal association and have wielded a powerful influence in the formation of a national spirit, but instead the League voluntarily assumed the purely ephemeral character of a single objective organization whose death marked the triumph of its principles. A striking illustration of this fact was seen in the dispute which broke out between the governments of Victoria and Van Dieman's Land almost immediately after the cessation of transportation, over an enactment by the former colony of a convict's

[1]The Sydney Morning Herald, Mar. 10, 1852.
[2]Ibid, Mar. 27, 1852.
[3]The Adelaide Times, Sept. 10, 1851.

prevention bill,[1] which aimed to shut out from its territory the criminal population of the island.

Although the immediate effect of the League's organization upon the federal movement was practically nil, its indirect influence in promoting a spirit of co-operative action was very great. It pointed out the true course by which federation could be attained, viz., by appealing to the common unity and national consciousness of the Australian people. The federal movement, it demonstrated, must follow in the lines of The Anti-Transportation League; it should be popular in its origin, and democratic in character, an expression of the social instinct of the people, rather than the product of legislative deliberation. Moreover the success of the efforts of the League amply attested the power which could be wielded by a united Australia. Let the colonies once speak with a single voice and the home government must listen and accede. It gave the colonists a sense of pride in their own strength and established a valuable precedent for future united action.

The anti-transportation agitation was likewise instrumental in awakening a keener interest in a revision of the several colonial constitutions.[2] The colonists were much dissatisfied with the meagre measure of self-government accorded them by the imperial act of 1850, and demanded the full enjoyment of the privileges of responsible government which had been bestowed upon the British North American colonies. Finding that their remonstrances were sympathetically received by the Colonial Office, they proceeded to take advantage of their limited powers of constitutional amendment, to revise their several instruments of government. In the public and parliamentary discussions which the new organic proposals called forth, the question of some sort of a federal union again came before the people and legislatures. Now that the gold fever had partly subsided, and the organization of the new governments was complete, both the public and Councils were prepared to more carefully consider the various political questions, domestic and intercolonial, that were arising out of their new colonial status. The need for some common action or general agreement had already been forced on the attention of the several governments in connection with a variety of matters, such as transportation, intercolonial

[1]Vict. V.P.L.C., 1853-4, vol. 1, p. 99.
[2]Official History of N.S.W., p. 671.

gold regulations, postal and railroad facilities, and lighthouses, each of which had been the subject of considerable intercolonial correspondence.[1] The question of border duties had early assumed an aspect of importance, and had entered upon a long course of official negotiations. The colonies were made to realize that they could no longer live as isolated communities, but must each consider in its domestic affairs and intercolonial relations, the common and reciprocal interests of the Australian group.

The press assumed the leadership in the discussion of these various intercolonial questions; the leading papers of the several colonies displaying in their attitude and tone a breadth and liberality of view which was far in advance of that commonly held by the public or legislatures. Almost all the most influential journals of the country showed a sympathetic interest in the cause of co-operation, and several of them warmly approved of the principle of a federal union.[2] The discussion carried on in their columns is the best federal literature of the period in furnishing us with the motives, the principles and the arguments that most strongly appealed to the people. The moment seemed opportune for a forward federal movement, now that the growing community of sentiment and mutuality of interest between the colonies were making bare the advantages of some sort of union. And even if a federal association were not obtainable, or some looser form of co-operative organization immediately practicable, it was felt that steps could be at once taken to assimilate their political institutions and their legislation so far as possible, in order to prepare the way for a future federal union.

The Launceston Examiner[3] threw out a very interesting suggestion in this connection, that a conference or convention of delegates from all the colonies should be brought together to frame a model constitution for the several provinces, and to draw up a scheme of federal government to be referred to the several legislatures for acceptance or rejection. The proposal was heartily supported by the Hobart Courier which urged the local Council to immediately take up the matter; but in the other colonies the suggestion did not meet with the same favor. The

[1] S.A., V.P.L.C., 1853, p. 19. Vict., V.P.L.C., 1853-4, vol. 1, p. 657, 669, and 674.

[2] *e.g.*, The Sydney Herald, The Empire, The Melbourne Argus, The Hobart Courier, The Launceston Examiner, The South Australian Register.

[3] The Launceston Examiner, May 24, 1853.

New South Wales legislature had already taken steps for the revision of its constitution. In South Australia the feeling prevailed[1] that the matter could be more satisfactorily dealt with by the local government and Council than by a federal congress. In Melbourne, The Argus[2] approved of the suggestion, but frankly admitted that it was entirely out of the question in this gold-worshipping age. "The scheme of federation," it declared, "must originate with the people. The Councils will never take it up of themselves. They are too full of petty jealousies and self-consciousness to listen to it for a moment." Under other circumstances the colonies might adopt the idea but the present moment was unfavorable. "The time for union and co-operation has not yet arrived. The era of federation is an advanced stage of political life, and bold and effective as is the suggestion it will find but a faint response in the heart of the money-grabbers." With the failure of the suggestion for the summoning of a constitutional convention, the task of framing the several new constitutions, and of formulating any proposal or devising a scheme for a federal union, was left to the determination of the provincial legislatures.

Meanwhile the Legislative Council of New South Wales, under the direction of Mr. Wentworth,—the unofficial leader of the dominant party in that body, proceeded to take measures to draw up a more liberal constitution for the colony. On June 16th, 1852, in moving for a select committee to frame a new instrument of government,[3] he had occasion to incidentally refer to the federal principle of the United States constitution, and expressed the hope that it would not be reproduced here. But it was not until the following session[4] that the task of constitution making was taken up in earnest. On May 20th, Wentworth secured the appointment of a select committee[5] to prepare a draft constitution. The personnel of this body, which was composed of leading representatives of the official nominee and elective elements in the Council, was an exceptionally able one. With the Colonial Secretary, Mr. E. Deas Thompson, and Mr. Wentworth—the two most influential men in the colony and the

[1]The Adelaide Times, June 30, 1853.
[2]Quoted in the Launceston Examiner, July 14, 1853.
[3]The Sydney Morning Herald, June 17, 1852.
[4]Rusden, Hist. of Aust., vol. 3, p. 3.
[5]The committee was composed of Wentworth, Thompson—the Colonial Secretary, Plunkett—the Attorney-General, and Messrs. Cowper, Martin, Mackay, Thurlow, Murray and Dingless.

dominant spirits in the chamber, were associated Mr. Plunkett—the Attorney-General, a capable and highly respected gentleman, Mr. Cowper,—an adroit and shrewd politician who was aspiring to the leadership of the liberal party, Mr. Martin,—a rising young solicitor whose later career bore out the promise of his younger days, and several other gentlemen who subsequently played a prominent part in the political history of the colony. It was as strong and capable a body as the colony could choose for the task, and well represented the ability, political experience, and divergent views of the legislature. On July 28th, the Committee brought up their report,[1] to which was annexed a draft of the proposed constitution. The bill itself contained no federal provisions, as it was considered inadvisable to incorporate any such proposal in the provincial constitution, but the report concluded with a most important recommendation on the subject.

"One of the more prominent legislative measures required by this colony, and the colonies of the Australian group generally, is the establishment at once of a general assembly to make laws in relation to the intercolonial questions that have arisen, or may hereafter arise among them. The questions which would claim the exercise of such a jurisdiction appear to be as follows:

1. Intercolonial tariffs and coasting-trade.
2. Railways, roads and canals, etc., running through any two of the colonies.
3. Beacons and lighthouses on the coast.
4. Intercolonial penal settlements.
5. Intercolonial gold regulations.
6. Postage between the said colonies.
7. A general court of appeal from the courts of such colonies.
8. A power to legislate on all other subjects which may be submitted to them by addresses from the legislative councils and assemblies of the other colonies, and to appropriate to any of the above objects the necessary sums of money to be raised by a percentage on the revenues of all the colonies interested.

"As it might excite jealousy if a jurisdiction of this importance were to be incorporated in the act of parliament, which has unavoidably become a necessary part of the measures for conferring a constitution on this colony, in consequence of the defective powers given by parliament to the Legislative Council, your Committee confine themselves to the suggestion that the

[1] G.B P.P., 1854, vol. 44, p. 15. N.S.W., V.P.L.C., 1853, vol. 2, p. 119.

establishment of such a body has become indispensable, and ought no longer to be delayed, and to the expression of a hope that the Minister for the Colonies will at once see the expediency of introducing into parliament, with as little delay as possible, a bill for this express object."

The recommendation of the Committee clearly shows that however just the strictures of The Melbourne Argus may have been in regard to the narrowness of view of the legislative councillors in general, there were at least a few choice spirits whose range of vision was not circumscribed within the limits of the provincial boundary, but who looked with far-seeing eye to the common welfare of Australia, and the mutual association of the several colonies in forwarding that aim. The report itself bears the impress of the mind of Wentworth and of his co-adjutor Thompson, to the latter of whom it has been suggested the Committee were probably indebted for the federal proposal.[1] We do not know to what extent it expressed the opinions of the other members of the Committee; the Attorney-General, at least, was in thorough sympathy with the suggestion, but if we may judge from the subsequent attitude of some of the other members, notably Messrs. Cowper and Martin, we will be forced to conclude either that they did not consider the recommendation of sufficient importance to challenge its acceptance, or that having given the subject but little consideration they were dominated by the strong will and the commanding intellect of the chairman, or by the official influence and experience of his colleague. The report came before the Council bearing the endorsation of the whole Committee, although we know from the subsequent debate that the members were by no means agreed in regard to all of the provisions of the draft bill.

The importance of the report is to be found, not so much in the nature of its recommendations, or the personnel of its membership, as in the insight it affords into the character of the federal opinions of Wentworth and Thompson. The question of federation was still in the region of speculative discussion with all but a few far-seeing statesmen.[2] To the thoughtful public it appeared much more a prudential measure for escaping future complications, than as a pressing necessity of practical politics. Its immediate utility as a means of correcting the existing abuses

[1] Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. vii.
[2] Ibid, p. vii.

of conflicting legislation, and of enabling the colonies to assume a desired extra-territorial jurisdiction was doubtless open to general observation, but there was no immediate pressure either from within or without the legislature to compel the colonies to take decisive action. The relations of the several provinces were peaceful and comparatively harmonious. There were some minor divergencies in legislation and administrative regulations in regard to border customs, postage, and other matters, but these had not yet engendered a spirit of antagonism, or occasioned a violent disturbance of the social and economic relations of the colonies. The Wentworth proposals were not the product of public feeling; even less were they in any way connected with an apprehension of foreign danger. From time to time the colonists were temporarily alarmed by the news of European complications, which set them to discussing for the moment the necessity of putting their defences in order.[1] But the threatening danger did not arouse any realization of the need for united defence; each colony thought only of its own ports, and looked to the protection of the imperial army and navy for its security. The subject of defence was not even included among the topics to be referred to the general assembly. Notwithstanding then the growing evidences of the wisdom and advantages of co-operative action, the colonies felt themselves fairly well prepared to severally deal with the issues of the present without looking to the federal demands of the future.

The language of the report is so indefinite that it is impossible from its content to determine the exact nature of the federal association which was in the minds of its framers. There is no suggestion whatever as to the character of the organization of the general assembly, the principle of its representation, or of the relation which the federal government should bear to the several states. Upon all these fundamental questions, as many others of a similar nature, we are left to speculation.[2] Either the Committee were not prepared from lack of sufficient consideration, to pass upon these intricate questions of constitutionality; or they hoped to escape the criticism of seeking to frame a federal constitution by confining their report to a simple recommendation of the principle of a general assembly; or perhaps as has been suggested, they were content to accept the scheme

[1]Barton, Hist. of Aust. Fed., Year Book of Aust., 1891.
[2]Quick and Garran, Annot. Const. of Aust., p. 91.

which the imperial government had already proposed,[1] or that parliament was likely to devise in answer to the prayer of the local legislatures. Upon only two points were the recommendations clear and definite, viz., the necessity for the immediate establishment of a general assembly, and the extent of its jurisdiction over federal matters. On the first of these matters the voice of the Committee was most insistent; several times in the course of the report they speak not only of the indispensability of a federal legislature, but of the expediency of no longer delaying its creation. It was not with them, as with the public, a question of problematic interest for future consideration, but a present day need which demanded speedy attention. To this end they pressed upon the Secretary for the Colonies the desirability of introducing a bill for this express purpose with the least possible delay.

In respect to the enumerated powers of the general assembly, the language of the report is very brief and careless in construction. The whole of the federal portion of the report bears the appearance of having been hastily prepared as an afterthought by way of addendum to the constitution bill. It has none of the marks of the careful consideration of an expert draftsman; it has not even the precision of an ordinary parliamentary document. What for example could be more loosely expressed than the wording of clause eight, of the enumeration of federal powers, in speaking of addresses from the legislative councils and assemblies "of the other colonies," when it was doubtless intended to say "of all those colonies," as in the language of the report of the imperial Committee of 1849. Such a mistake could scarcely have escaped attention and due rectification, had the several paragraphs been closely examined clause by clause. The subjects of federal legislation bear a general resemblance to the corresponding list of Earl Grey's report, and doubtless that important document was consulted in its preparation. Several of the clauses, especially No. 8, present the appearance of having been taken outright from the original report. But the similarity is far from absolute, as there are several important differences in the two proposals. The commercial powers of the general assembly were now limited to intercolonial tariffs and coasting trade, instead of covering the whole field of customs duties and shipping charges. The select committee had evidently in

[1] Quick and Garran, Annot. Const. of Aust., p. 91.

mind the existing difficulties over border duties, and the need for uniform legislation in respect to intercolonial trade, but had no desire to interfere with the general fiscal systems of the colonies. The subject of tariffs was still the most important factor in the federal question, though another aspect of the problem had now come to the front. With Earl Grey, it had been primarily a question of differential duties and general uniformity of customs, while in the present instance, it was the simpler matter of placing intercolonial commerce under a common system of regulation.[1] The two questions were, in fact, most closely related and inter-dependent, as was later seen, but at this moment the immediate difficulty in regard to the Murray River trade had partially obscured the bearing of the larger issue of a general customs union. This clause, together with the two new sections 4 and 5 conferring additional powers on the Assembly in respect to intercolonial penal settlements and gold regulations, shows the exceedingly practical character of the present proposal. It was directed to meet existing complications of legislation and administration, which had arisen out of the rapid settlement of the border districts, the transportation question, and the conflicting mining regulations in the gold fields of the several colonies.

The judicial clause of the present proposal likewise differs from The Australian Colonies Bill in only providing for the constitution of a "general Court of Appeal for all the colonies;" and omitting any provision for an alternate or conjunctive original jurisdiction of the Supreme Court. The Court of Appeal was not designed to be a court of federal jurisdiction, but an ordinary appellate tribunal of unlimited competency. The delegated powers of the general assembly under clause 8 would seem to be capable of indefinite extension. In the corresponding section of the Privy Council's report, the legislative authority of the Assembly was limited to the enactment of laws "affecting all the colonies" represented in the Assembly, upon petition from the legislatures of all the provinces. But in the present section, the qualifying phrase requiring intercolonial uniformity of legislation is omitted, so that apparently the Assembly was now authorized to make laws on any subject whatsoever, whether federal in character or not, or whether applicable to only one or all the colonies, provided only that addresses were submitted

[1] The difference between a policy of intercolonial free trade and a common Zollverein is ofttimes overlooked.

from the legislatures "of the other colonies." The effect of the removal of this restriction would seemingly be to confer on the general assembly an unlimited legislative power in respect to any or all subjects delegated to it. But the language of the clause is so loosely expressed and its political consequence so far-reaching in character, that we are forced to conclude either that the Committee failed to appreciate the full significance of the provision, and the revolutionary possibilities of thus indefinitely extending the competency of the Assembly over provincial matters, which would have opened up the way to a complete transformation of the constitution of the central government from a mere federal association of independent states into an incorporate legislative union of the colonies; or as seems more probable, that the Committee were of the opinion that the legislative self-consciousness and independence of the local legislatures would prove a sufficient safeguard against any tendency to transfer provincial functions to the general assembly. The financial powers of the Assembly were also slightly modified in an attempt to avoid the difficulty which had perplexed the imperial parliament,—namely of federal taxation of all the colonies for objects of concern or utility to only one or several of them. By the present clause, it would appear, that only those colonies would be subject to taxation which were directly interested parties to the expenditure in question, but no attempt was made to determine how this indefinite rule was to be construed, whether according to the actual benefits conferred, or otherwise. It is safe to prophesy that it would have been exceedingly difficult to apply the principle in actual administration. There is a singular omission of a power to legislate in respect to uniform weights and measures, which would seem to be a natural and one of the most necessary functions of any general assembly. The other clauses of the report are similar in their terms to those of the original scheme of 1849.

In order to avoid the deep seated jealousy of the other colonies, and to overcome the constitutional impotency of the local legislature to frame its own constitution, recourse was suggested to the good offices of the Secreary of State and the sovereign authority of the imperial parliament. It is very evident however, that the chairman of the Committee did not tamely submit to this evidence of political subordination, but would gladly have seen the colonies endowed with an independent power of constitution

making. Warned by the past unfortunate association of the federal proposals with the provisions for the establishment of provincial constitutions, the home government was now requested to introduce a distinct bill for the express purpose of setting up the organization of a federal assembly in conformity with the recommendation of the report.

Some little light is thrown upon the character of the general assembly which Wentworth desired to establish, by his attitude towards the federal system of the United States, to which we have already alluded. In the course of the debate on the second reading of the constitution bill,[1] he made a savage onslaught on the views of the Reverend Doctor Lang, who, he declared, "had set forth that the only constitution which the colonists of New South Wales will accept, and which they are resolutely demanding, and which they are determined to obtain, or else cut the painter from England, is a constitution similar in all its provisions to that of the United States, namely, a federal government. He described them as demanding a great federation of all the colonies of Australia, of New South Wales, Victoria, Tasmania, and South Australia, each state to have a separate local government, and sending members to Congress to form a great central government, (shouts of laughter). Absurd as is this notable scheme, treated as it would be if only propounded here by the utter derision of the people, the writer has had the audacity to describe it as peremptorily demanded by the colonists, the penalty of their refusal being cutting the painter. (Derisive laughter)."

It is difficult to determine to what extent Wentworth's attitude and that of his supporters was influenced by their deep-rooted objection to republicanism and independence.[2] In his mind and that of many others, the idea of a federal constitution was indissolvably associated with republican institutions and the democratic government of the United States. On this ground alone he would doubtless have opposed the establishment of a federal constitution upon the American model in and for the Australian group.[3] But judging from his public utterances, he

[1]Sylvester, Speeches on the second reading of the N.S.W. Constitution Bill, p. 34.

[2]Quick and Garran, Annot. Const. of Aust., p. 91.

[3]Wentworth was a devoted admirer of the principles of the English constitution. The best expression of his political opinion is contained in his description of himself as a "Whig of the Revolution." Unfortunately his constitutional whiggery was out of sympathy with the rising Australian democracy.

was at this time hostile to the principle of federation, the nature of which however, he did not properly comprehend. He did not desire or seek to establish a national union of the Australias, nor did he wish to set up a complete federal government whose sovereign powers would overshadow the limited autonomy of his native state to which he was devotedly attached. He preferred on the contrary, the simpler organization of a federal or consultative council, the instructed delegates to which would assume the humbler function of endeavoring to restore harmony and uniformity to the divergent intercolonial legislation of the colonies. He would establish a common legislative organ with a view to promote Australian co-operation, and not as an integral part of a federal organism.[1] In brief he looked to a loose form of confederation rather than to a federal constitution as the true goal of an Australian organization, and as the constitutional instrument best adapted to deal with general intercolonial affairs. The derisive laughter which greeted his mordant criticism of the federal proposals of Dr. Lang, was undoubtedly directed against the person and principles of the reverend gentleman rather than against the scheme of a federal union. The Council heartily agreed with Mr. Wentworth in rejecting any scheme of federation which involved or was designed to promote a severance of the imperial connection, or had a tendency to foster a republican spirit or ultra democratic institutions.

That the federal feature of the report was of comparatively little interest is evidenced by its failure to attract any attention during the course of the debate on the constitutional bill in the Council. The nearest reference to the subject is contained in the remarks of Wentworth we have just quoted. The reason of this neglect is to be found not so much in the indefinite or speculative character of the recommendation owing to the omission of any federal provisions from the draft constitution, which naturally removed the subject from the range of the general debate, as in the absorbing interest which was aroused by the insertion of

[1] Sir H. Parkes adopts a somewhat different view from that here expressed relative to the character of Wentworth's proposal. "It is not therefore an inference," he writes, "or a surmise, but a matter of certainty, that if Mr. Wentworth were still living he would be a decided advocate of federation, for he was decided in its advocacy at a time when the reasons in support of it were not one-hundredth part so strong as they have since become by the amazing expansion of Australian progress." Parkes, Fifty Years in the Making of Aust. Hist., vol. 2, p. 332.

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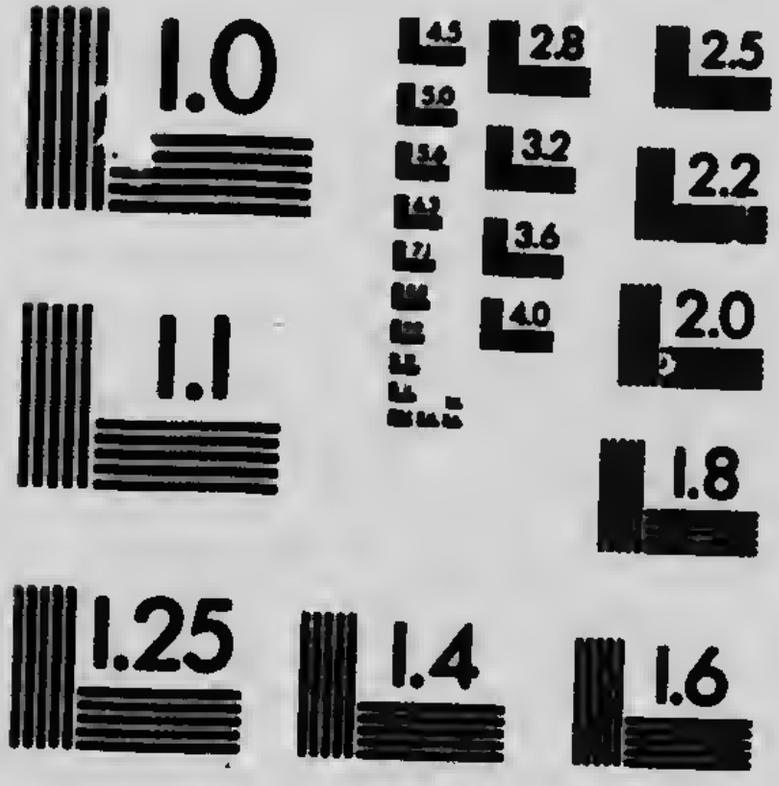

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other most controversial proposals in the local constitution. It was the misfortune of the present report, as of the original suggestion of Earl Grey, to be appended to a most unpopular constitutional measure. Wentworth had incorported in his draft constitution provisions for the creation of a colonial nobility, and for a nominated upper chamber, and had unequally distributed the electoral seats so as to secure his friends the squatters à sure majority in the House. Amid the vehement opposition of the liberal party to these undemocratic proposals, the suggestion for a general assembly was almost entirely overlooked, outside as well as inside the legislature. The so-called popular constitutional committee, selected by the public to frame a more democratic instrument of government, made no allusion whatever to the subject, and among the numerous petitions[1] protesting against the provisions of the Wentworth constitution but one made any reference to the question of a federal union.

But that one exception is a most interesting and exceptional document,[2] in that it is the first public declaration we find in

[1] G.B.P.P., 1854, vol. 44, p. 42. N.S.W. V.P.L.C., 1853, vol. 2, p. 253.

[2] "The humble petition of the undersigned landed proprietors, tenant farmers and other inhabitants of the Shoalhaven District recites: 'that upon the general question of framing a constitution for New South Wales only, it appears to your petitioners, both strange and unstatesmanlike as well as a most unseemly and untoward piece of patch-work legislation, that Australasia comprising but four colonies, dependencies, not far distant from each other, peopled by the same race, British subjects too, under one head, the Governor-General, the delegated representative of one Crown and one constitution, shall be doomed to have no less than four constitutions. The great study and aim of all practical British statesmen is not only to have and preserve one British constitution, but also to assimilate the local laws of England, Ireland, Scotland and Wales, as being most conducive to maintain and advance international interests to promote and foster the happiness, the convenience, the intercourse, and the traffic, as well as the social and political harmony of the people, in order thus to neutralize and in time obliterate national jealousies; while, in Australasia, the aim and effect of all legislative acts appears to be, not only to have four separate constitutions, but that each shall differ as widely as possible, and thus such legislation instead of advocating and promoting uniformity of constitution and laws for the whole, will teach the first lesson and lay the early groundwork and the bitter humiliating consequences of separate governments or states independent of England and opposed to her great and glorious constitution.

"Your petitioners would therefore suggest that instead of your honorable House passing into law the proposed constitution bill, that you request His Excellency the Governor-General to invite the Lieutenant-Governors of Tasmania, Victoria, and South Australia, with delegates from each Council to a conference in Sydney to prepare one constitution for Australasia to be submitted to the imperial parliament and the Queen in Council."

This petition had 416 signatures.

G.B.P.P., Ibid, p. 48. N.S.W., V.P.L.C., Ibid, p. 707.

favor of a national legislative union of the colonies as opposed to some form of a federation or looser association. The petition presented a brief but able statement of the advantages of an incorporate union, criticised severely the present unseemly division of the Australian people which was promoting jealousies and legislative dissimilarities between the colonies, and prayed that the Governor-General invite an intercolonial conference "to prepare one constitution for Australasia" to be submitted to the imperial government and parliament. But the language of the petition was a voice crying in the wilderness. A legislative union at this time when the means of communication were limited, was entirely out of the question, and the abolition of the local legislatures would have greatly retarded the development of the several colonies. Even the organization of a federal government was in advance of the political opinion of some of the most far-seeing of Australian statesmen, and in the judgment of the public at large was quite out of the range of practical politics. The complicated structure of a federal constitution would, at this moment, have been premature, but the recommendation of the Committee showed that a few of the leaders of Australian opinion, however unwittingly, were surely preparing the way for such a consummation by the proposal for a general assembly, which however little or much it might differ from a true federal legislature was intended to subserve practically the same purpose and perform much the same functions.

Some months later, the legislature of Victoria also took steps for the framing of a new constitution. On September 1st, 1853, a select committee was appointed to "consider and report upon the best form of constitution for the colony." This Committee,[1] like that of New South Wales, was made up of an able group of men, including two prominent members of the executive council, viz., Mr. Foster,—the Colonial Secretary, and Mr. Childers,—the Collector of Customs[2] together with several other influential gentlemen from both the government and opposition sides of the House, some of whom were subsequently raised to the highest position in the state, three of them, viz., Messrs. Haines, O'Shanassy, and Nicholson, becoming Premiers of the colony.

[1]The committee was composed of Mr. Foster, the Colonial Secretary; Mr. Childers, the Collector of Customs; Messrs. Stalwell, Palmer, Haines, O'Shanassy, Greeves, Miller, Goodman, Nicholson, Smith and Thompson.

[2]Subsequently Chancellor of the Exchequer at Westminster.

The report[1] of the Committee on December 9th, 1853, vaguely refers to the subject of a federal assembly in these terms:

"From the great extent of Australia and the widely differing circumstances of its several colonies, your Committee do not think it essential for local legislation that uniformity of institutions should prevail. They have followed as far as principle permitted the bills prepared in New South Wales and South Australia. If, therefore, in the various constitution acts, about to be transmitted to England, any variance may appear, they would earnestly deprecate that it should furnish any reason for delay in the enactment of the proposed bill.

"But they do feel most strongly that there are questions of such vital intercolonial interest that provision should be made for occasionally convoking a general assembly for legislating on such questions as may be submitted to it by the act of any legislature of one of the Australian colonies."

The recommendation of the Wentworth Committee appears to have made little impression on the Committee of Victoria, though it may possibly have suggested the insertion of the clause in reference to a general assembly. The Victorian report is even more indefinite than that of New South Wales, and takes a somewhat different view in respect to the character of the suggested general legislature. There is no call for the immediate enactment of imperial legislation to institute a federal assembly, or attempt to define the functions of such a body; there is the mere expression of an opinion that there are certain subjects upon which general legislation was desirable, and that a conference of delegates should be occasionally convoked with power to legislate on any question submitted to it by one of the legislatures. There is no conception whatever of a permanent federal assembly endowed with specific legislative authority, but only of a simple intermittent congressional organization with delegated powers and instructed representatives. The Committee had in view a common legislative assembly to which delegates from the several colonies might be sent from time to time, as intercolonial questions arose demanding some uniform action. There was a distinct difference between the mode of delegating powers to the Assembly under the Wentworth scheme and the present vague suggestion. By the former, "addresses" were required

[1]The Report of the Committee together with the Resolutions, Proceedings and Draft of the Bill. G.B.P.P., 1854, vol. 44, p. 73.

from "the other colonies," whereas in the latter, an "act" of a single legislature was sufficient to authorize the general assembly to legislate in respect to a particular subject. While a more formal legislative procedure was here demanded in order to refer a subject to the Assembly, the present proposal did not require unanimity of action by the several legislatures. This provision would have afforded an easy opportunity to an aggressive state for expanding the functions of the Assembly, unless the legislation of the latter was expressly limited in its application to the petitioning colony, as may have been intended. The Committee assumed that such an Assembly would be created, probably by the imperial parliament, but did not presume to intimate the desired form of its constitution.

It is probable that the vagueness of the Committee's recommendation most truly reflected the sentiments of most of the members upon the subject. The need of some sort of a general assembly to regulate their common intercolonial affairs was generally recognized, but little or no careful consideration had been given to the constitutional form of such a body; consequently the Committee were not prepared to do more than express an indefinite opinion in favor of the expediency of creating some such organ. The Colonial Secretary would gladly have seen the Committee take steps towards incorporating in the bill some scheme of confederation,[1] but he was much in advance of his fellow members upon the question, thanks mainly to his official position which had brought him into close contact with the difficulties of existing intercolonial relations. The question was a practical one with which he had had to deal in the course of his administration, and to which, as a result, he had been compelled to devote some attention, whereas the ordinary members of the Council had enjoyed no such experience and were lacking in the political education of official responsibility. But the influence of Mr. Foster was by no means equal to that of Mr. Wentworth; he could only commend where the latter could command, and the Council paid little heed to his advice. The report of the Committee therefore reflected the views of the members in general, much more than the opinion of its titular head.

The Committee's recommendation received but scant notice in the Council, when the constitution bill came up for debate.

[1] Debate on the Constitution Bill, 1853, Vict. Leg. Council, p. 17.

Mr. Foster made a plea for the enactment of some scheme of confederation,[1] and sought to elicit the opinion of the members as to the advisability of such a measure, in order that the views of the House might be laid before the imperial government. "There is one subject," said he, "which it was found impossible to embody in the bill. While we wish to continue members of the British empire, we must not forget that we are also colonists of the Australian branch of the empire, and as there are many subjects of mutual interest to the different Australian colonies, in my opinion some provision ought to be made for their confederation. I think there are some questions in which the welfare of the one so much depends upon the welfare of the other, that the various governments ought not to be allowed to act altogether independently of each other. Local jealousies, local piques will arise, and no doubt these piques, jealousies, and recriminations, and retaliations will arise. I do not think such a state of things should be allowed by the imperial government, and although it is impossible for us in this act to pass any law which would ensure the confederation of these colonies, I think it would be very well, if, in the course of these discussions, this House would express its opinion to the imperial government of Great Britain as to whether they are in favor of such a confederation."

But the Council disregarded the request of the Colonial Secretary refusing to be turned away from the discussion of the much more interesting question of the mode of selecting the second chamber. Only one other member, Mr. Splatt,[2] referred to the subject of a federal union. He regarded the question as of "considerable importance," and desired to see the establishment of "some form of federal government which would be empowered to legislate upon general questions, such as the tariff, railway gauges and regulations, the best means of defence, and so on." This colony had already suffered from the lack of such powers, and the evils and inconveniences "must greatly increase in magnitude unless some provision is made here or elsewhere, for assimilating the tariff in these colonies, and for legislating on other matters of mutual interest." But these arguments did not avail to awaken the Council to a realization of the importance of the question. They were satisfied to con-

[1] Debate on the Constitutional Bill, 1853, Vict. Leg. Council, p. 17.
[2] Ibid, p. 135.

cur in the recommendation in favor of the Assembly, but refused to commit themselves to any positive action in respect thereto They sympathized with the principle of the proposal, but threw all the responsibility for constituting such a body back upon the imperial parliament.

Outside the Council, the federal recommendations attracted even less attention. In the various petitions in respect to the new constitution we find many objections to the granting of aid to religious bodies, to the high qualification of legislative councillors, but no reference to a general assembly. The same was equally true of the public discussion. The proposal was at least inoffensive to the people, or some opposition would have surely developed. But the absence of such objection was a very doubtful advantage, for it betokened an unfortunate condition of apathetic indifference; the subject did not excite sufficient interest to win either approval or disapproval, and in consequence, the attitude of the public was even more non-committal than that of the Council itself.

In the other colonies, a similar condition of lethargy prevailed upon the subject. The Legislative Councils of Van Dieman's Land and South Australia confined themselves strictly to the task of framing their own local constitutions, and did not touch upon the question of an intercolonial assembly, although the recommendations of the legislatures of New South Wales and Victoria were before them.[1] The inaction of the government and Council of Van Dieman's Land is the more surprising, as that little colony more than any of the others, had felt the necessity and had experienced the advantage of intercolonial co-operation on the subject of transportation. Apparently when this pressing danger had passed, the colony relapsed into the former state of isolation. It should, however, be borne in mind in partial explanation of the silence of her legislature, that she had not been called upon to deal with the perplexing questions of border duties, railway and mining regulations, &c., which had aroused a few of the leading men in the other colonies to an active interest in a federation, and to a realization of the need of a uniform system of legislation on matters of common con-

[1]The subject of a new constitution had come before the Legislative Councils of both colonies during the session of 1853, but the great struggle over the form of the constitution took place in the following year some time subsequent to the reports of the select committees of the two larger colonies.

cern. The political life of the little island was at this time more self-contained than that of the other provinces, for she was not brought into such intimate relations with them as they were with one another. Her economic relations, which formed the closest tie connecting her with the Australian group, were friendly and fairly satisfactory, and no great divergence of customs duties or other material interests was as yet in evidence to enforce upon her the need of political union.

A portion of the press of the colony continued to urge upon the government and public the advantage of some sort of union. The Launceston Examiner threw the whole of its influence on the side of an Australian federation. In editorial[1] after editorial, it insisted upon the inherent oneness of the several colonies.[2] It admitted that owing to the many difficulties, the drafting of a satisfactory constitution would require the genius and the labor of a master mind, but it believed, nevertheless, that it was possible to reconcile the supremacy of the federal government with the principle of provincial autonomy. It urged that, even though a perfect federal constitution could not be formed, "no evil would arise from the adoption of a consultative council of delegates deputed by the several colonies similar to the Diets of Germany and Switzerland." But these appeals to the material interests and to the Australian consciousness of its readers fell

[1]The Launceston Examiner, May 24, June 7, June 11, July 14, 1853.

[2]The Examiner of August 30th, 1853, contained a very interesting outline of a confederate constitution for the Australian colonies. The Legislative Council should send one delegate, and the House of Assembly two, to represent Tasmania in the general assembly, the colony paying the expenses of the delegates. Members of either House were eligible to appointment, and should not thereby vacate their seats in the local legislature. The delegates might form conventions or agreements with the other colonies, which however should not take effect unless ratified by both Houses of the colonial legislature. Among the subjects suggested for discussion or agreement were intercolonial tariffs, postage, electric telegraphs, light-houses, beacons, penal settlements, extradition of criminals, copyrights, patents of invention, professional qualifications, a mint, bankruptcy, and laws for the more easy recovery of debts due in one colony by persons residing in another, naturalization, minimum price of waste lands, and defence. Provision was also made for the constitution of a federal court of appeal to be composed of one judge, nominated by the Governor and confirmed by the legislature, from each of the colonies, whose salary should be paid by the local parliament. The jurisdiction of the court should extend to all cases now referred to England for trial, save those in which imperial interests were involved. Other classes of appeals might be referred to the federal judiciary by the local Councils. All questions arising in regard to the interpretation of the conventions or agreements between the colonies were to be decided by the federal court of appeal.

upon deaf ears; the legislature could not be stirred to take any action in the matter, and public opinion was not sufficiently strong to impel it to do so.

In South Australia, the energies of the legislature and public were too deeply absorbed in the struggle between the liberal party and the nominee element of the Council backed up by the Governor, over the organization of the second chamber of the local constitution, to give much thought to the formation of a federal assembly. In the battle of democracy for freedom and predominance, all other issues were forgotten. The small attention that was given to the intercolonial relations of the colonies, was bestowed upon the practical problem of the opening up and development of the Murray River trade, which was just beginning to assume an intercolonial importance.

Only two out of the four colonies had expressed an opinion in favor of a general assembly, and even in these two the action of the legislatures was perfunctory rather than spontaneous. The recommendations were not the product of popular interest or widespread enthusiasm; on the contrary, to a large extent they voiced merely the personal opinion of a few far-seeing leaders of Australian thought, who had the ability and the influence to carry their fellow members with them in a mild acquiescence in a scheme of federal association. The personal factor of these two reports transcended any inherent value in the recommendations themselves. Apart from the personality of a small group of men, it is doubtful if these recommendations would ever have been broached, for the mind of the ordinary member at this time was not turned in the direction of intercolonial politics. These expressions of opinion were isolated and sporadic, and not the result of any general movement or concerted action on the part of the people, the legislatures, or even of the federal leaders.

The proposals, moreover, were untimely in their birth and unfortunate in their connections. Not but that it was high time that steps should be taken to unify the diverging policies of the several colonies, but that a period of general constitutional agitation was an inopportune moment at which to propose a scheme for a general assembly. With the minds of the public and the energies of the Councils absorbed in the character and details of the provincial instruments of government, there was little chance of an indefinite and nebulous federal proposal receiving

the consideration it merited. The citizens properly turned their attention to the study and criticism of that governmental organism which was most closely related to their own persons and property. The constitutional struggle which was going on in the several colonies was no ordinary partisan conflict, but a great political contest on the part of the mass of the working population, who had come in with the gold rush, to assert their influence in the affairs of state; it was a battle of democracy for political and social liberty over against the privileged position of the landed and official interests.

It is commonly charged by the Tory critic that democracy is blind to the demands of national and international statesmanship. Too frequently the truth of this allegation must be admitted, but it will ofttimes be found that this limitation of political vision is due to an absorbing interest in the deeper issues of social and political existence immediately at hand. It was so in Australia; the colonial liberals may indeed be blamed for failing to see the immeasurable advantages which would accrue to their country from the institution of some form of federal assembly, but they may plead in attenuation that they secured to the citizens of the Australian group the boon of free and democratic institutions. Even the most ardent of modern federationists would not desire to exchange the inheritance of political liberty they now enjoy, for any advantages, commercial or otherwise, which a general assembly would have conferred upon the land.

It was also an unfortunate circumstance that the recommendations of the Committees originated with unpopular administrations, and were identified with constitutional measures to which the liberal party most strongly objected. The federal proposals were consequently associated in the minds of the thoughtless with a scheme of arbitrary government in both New South Wales and Victoria. Wentworth, Thompson and Foster were all at this time in public disfavor on account of their legislative policy, or administrative action, and any suggestion proceeding from them was tainted with the suspicion which attached to their personal unpopularity and undemocratic measures. It was difficult for the project of a general assembly to secure any proper recognition in New South Wales in the face of the ridicule that was poured out upon the plan for an hereditary nobility, or due consideration in Victoria in the teeth of the opposition to the tyrannical mining regulations of the colony, which

soon after flamed out in open rebellion. The history of the federal movement had repeated itself; the misfortunes of the proposals of Earl Grey were re-enacted in the present miscarriage of the first Australian efforts after federal co-operation.

The draft constitutions of the several colonies came before the home government in due course, and subject to some minor modifications, were accepted by the imperial parliament.[1] Nothing shows so conspicuously the purely ephemeral character of the former parliamentary interest in the question of a federal union, as the heedless neglect which that subject now experienced. In the general discussion of the constitution bills of New South Wales and Victoria, which reveals a great falling off in public and parliamentary interest as compared with the debates of 1850, there is not a single reference to the subject of federation.[2] This is all the more surprising as the bills were in charge of Lord John Russell who had previously exhibited a cordial sympathy towards the proposal, and a true appreciation of its value. Even Mr. Lowe, the principle critic of the new constitutions, who was better acquainted with Australian feeling and conditions than any other man in parliament, could find no place for a federal suggestion, although, as we have seen, he had formerly supported a federal resolution when a member of the Legislative Council of New South Wales. This omission was not accidental, or the result of an oversight due to the superior importance of other features of the constitution, as might perhaps be supposed, for the subject was brought to the attention of the Colonial Secretary during the progress of the bills through parliament, though perhaps at too late a period to permit of the insertion of a federal provision in the constitutions,[3] or the due consideration of an independent measure to that end.

Meanwhile Messrs. Wentworth and Thompson, who had been sent to England to assist the passage of the New South Wales constitution bill, were through the agency of the General Association for the Australian Colonies, using every effort to enlist the support of the Secretary for the Colonies to the intro-

[1] 18 and 19 Vict., c. 54 and c. 55.
[2] Hansard, 1855, vols. 138, 139.
[3] The memorial of the Australian Association was despatched to Lord John Russell on June 28th; the two Bills passed the House of Commons the following day, and were sent up to the Lords, where they were agreed to on July 13, 1855.

duction of a federal measure into parliament.[1] To this end a memorial was presented to the Colonial Office, but Lord John Russell[2] did not think it wise to follow the advice of the two Australian select committees, even though reinforced by the petition of the Australian Association, and declined to incorporate into the state constitutions any provision for a general assembly. In a despatch of July 20th, 1855,[3] accompanying the constitution acts, His Lordship, after explaining that the imperial parliament had been as careful as possible to "preserve the form and the substance of the local acts," set forth the reasons which had influenced the government in refusing to take action upon the federal suggestion. "I need scarcely say," he declared, "that the question of introducing into the measure lately before parliament, clauses to establish a federal union of the Australian colonies for purposes of common interests, has been weighed by Her Majesty's government, but they have been led to the conclusion that the present is not a proper opportunity for such an enactment, although they will give the fullest consideration to any propositions on the subject which may emanate in concurrence from the separate legislatures."

There is no reason to believe that Lord John Russell's opinion in regard to the advantage of a federal union had undergone any change.[4] His remarks on the subject show that he was still in thorough sympathy with the proposal, and would gladly assist in its realization under more favorable circumstances. But his experience with Earl Grey's federal scheme had taught him the fruitlessness of attempting to promote a confederation by imperial enactment unless supported by the public opinion of the colonies, since the latter were not prepared to heartily accept any measure however statesmanlike that was an emanation of the policy of Downing Street. The Secretary for the Colonies had learned the lesson, that it was best to leave the settlement of all purely colonial questions to the colonists themselves. His Lordship accordingly intimated that the initiation and formulation of any scheme for a federal union must rest with the local legis-

[1] Minute Book of the General Association of the Australian Colonies.
[2] Colonial Secretary in Lord Palmerston's Administration.
[3] Vict., V.P.L.C., 1855-6, vol. 2, p. 529.
[4] Quick and Garran, Annot. Const. of Aust., p. 92. A contrary view is expressed by Mr. Barton in commenting upon the above passage, "From which it would appear that Lord John Russell's views on the subject had been materially modified by the debate of 1850." Year Book of Aust., 1891, p. iv.

latures, whose concurrence would be a condition precedent to any action on the part of the home authorities.

The recent movement in Australia was far from satisfying the conditions here laid down, since only two of the provinces had expressed a favorable opinion upon the question, there had been no definite form of constitution proposed, and no concurrence between the separate legislatures regarding the matter.[1] There was not sufficient evidence before the Colonial Secretary to warrant the belief that there was any general unanimity of Australian opinion in favor of any kind of a federal association. Although His Lordship felt compelled to refuse to accede to the recommendations of the legislatures of New South Wales and Victoria, he held out to them the hope that by co-operating with the other colonies in a definite scheme of federation, the assistance of the imperial government might readily be secured. The policy that had guided the Ministry in honoring the views of the colonists in respect to their provincial constitutions, would be equally operative in regard to any future recommendation upon the question of a federal constitution, which should carry with it the approval of the several legislatures of Australia.

Moreover now that the imperial government had fully conceded the right of the colonists to frame their own constitutions, and had conferred upon them the privilege of responsible government, the Colonial Office felt that the colonies were fully equipped to determine the issue for themselves. The imperial ministry in reality referred the matter back to the provincial legislatures for decision, as they alone could satisfactorily settle the principles and the form of a federal union. The several legislatures by friendly negotiations, by concurrent action, or by a conference or convention of delegates could arrive at the general principles of the federal association upon which they were agreed, and having determined the form and the structure of the constitution they desired, could then with full confidence in the sympathy of the home authorities, appeal to the imperial parliament to ratify their proposals by an imperial federal act. Such in effect was the policy outlined by the Colonial Secretary, as the most satisfactory method of obtaining the desired object. The views of Lord John Russell, as here expressed, were in thorough accord with those previously enunciated by his former colleague Earl Grey, in devolving upon the colonies the largest measure

[1]Quick and Garran, Annot. Const. of Aust., p. 92.

of constituent power, and in entrusting to them the full responsibility of making or marring their own political history.

There had been growing up in England for some time a feeling that the imperial authorities should as far as possible, relieve themselves of colonial responsibilities, and throw all the duties of government upon the colonists themselves. The despatch of the Colonial Secretary was but a faint echo of this general sentiment. Some time previously, The Times[1] had come out with a strong pronunciamento against any imperial interference in the question of a federal union. "Keep the colonies attached to the mother country," it urged, "and they will need no federation, because the mother country always gives that support for which alone a federation is valuable. Little as the colonies relish the interference of the home government, they will still less relish the meddling of each other in their affairs. . . . . For these reasons we are compelled to dissent from the proposition to entrust the affairs of the colonies, even for the purpose of advice, to an assembly composed of colonial delegates, and must still adhere to the notion, void as it is of novelty, that the proper way to do justice to the colonies and to ourselves is to leave them to manage their provincial affairs without interference from us." Whatever were the particular views of public men or journals, in respect to the applicability of the federal principle to Australian affairs, whether favorable as in the opinion of the Colonial Secretary, or adverse as in the leading article of The Times, they were all agreed upon the cardinal point that the Australians themselves must finally settle the matter.

The unfavorable decision of the Colonial Secretary awakened no public interest in Australia, doubtless partly because the two leading advocates of a general assembly,—Thompson and Wentworth were absent in England, but more particularly on account of the general indifference to the subject. Only The Sydney Herald[2] was heard to complain that "the British government were too eager to wash their hands of colonial responsibilities." It appeared to think that without the stimulus of the home authorities, the colonies could scarcely be induced to take any federal action. Each colony for itself, it declared, had become the settled policy of the local legislatures. "These colonies could probably have taken their cue from the British government, but they

[1]The Times, Oct. 12, 1852.
[2]The Sydney Herald, Nov. 12, 1855.

will never under ordinary circumstances take it from each other, and federal action will only spring from some urgent pressure. However the opportunity had been lost, and the British government has constitutionally put it out of its power to interfere, and the issue must be otherwise evolved."

The second attempt to effect a union had thus failed more signally than the first, and for much the same reasons. The two efforts present several interesting points of similarity. Both failures occured in England; in each the immediate occasion of defeat was the decision of the Colonial Office not to press forward an imperial federal bill, and in both instances the federal scheme was a part of an important constitutional measure affecting the several colonies. But these resemblances lie only on the surface; in reality the two movements were entirely distinct in character; the first was imperial and official, whereas the latter was colonial and parliamentary. These two experiences clearly proved that the question of a federal union must be considered apart and distinct from other constitutional issues. It could not command proper consideration by being appended to any other instrument of government, or seeking to gain recognition under the cover of a popular or general modification in the form of the local constitutions. It must appeal to the public on its own merits and as an independent issue; it must be accorded legislative approval and popular support; it must needs be the product of educational effort and co-operative sympathy; it must be national in its universality, and distinctly federal in its type. Such in the past it had not been, and failure had dogged the movement at every step.

CHAPTER V.

THE PERIOD OF PARLIAMENTARY REPORTS.

In the next stage the federal movement is not essentially different in character from the last. It is still largely the record of the efforts of a few colonial statesmen to arouse their respective legislatures from their narrow provincialism to a sense of the need of a common Australian policy upon matters of general concern. But the movement no longer retained its comparatively simple and indefinite aspect.[1] With the expansion of the colonies and their growing social and economic intimacy, the question of federation assumed a more important place in domestic politics, appealed to a larger range of interests, became more general in its scope, more complex in its ramifications, and more practical in its aims. The movement was no longer local and sporadic, but extended throughout all the colonies, and awakened attempts at concurrent action in the several provincial legislatures. The federal question was passing out of the provincial into the intercolonial stage of activity. A whole series of intercolonial problems, economic, territorial, judicial and political, brought the subject of a general assembly into the closest touch with provincial politics, and forced it upon the attention of the local governments. With the increasing complexity of intercolonial issues, there was fortunately a growing appreciation of the political character and practical purpose of a federal union, and a corresponding development of definiteness in the constitutional form of the federal proposals.

One of the complexities of the federal question arose out of its unfortunate association with the agitation for an independent Australia. The old tradition of Downing Street rule,—"divide and govern," of maintaining an imperial unity through the segregation of the colonies, was not entirely forgotten, though it had been superseded by the nobler conception and the happier policy of colonial autonomy, of encouraging the self-development of the colonies, of stimulating their national aspirations, and of making them responsible for their own political future.[2] The belief that a federal union would pave the way to imperial dismemberment found much support in England and some ac-

[1] Quick and Garran, Annot. Const. of Aust., p. 92.
[2] See Lord Durham's Report, p. 111-2.

ceptance in the colonies, especially among the so-called imperialists who feared the growth of a spirit of Australian nationalism. They failed to appreciate either the truth or the significance of the liberal principle that the political unity of the empire could be best promoted by its constitutional disunion, that the grant of the largest measure of colonial self-government would develop a spiritual relationship, stronger and more cohesive in its binding force than any imperial organization.

The course of political events in Australia tended to give a certain amount of credibility to this imperialistic anti-federal opinion. For some time a vigorous propaganda in favor of the allied policies of separation and federation had been carried on by the Reverend Dr. Lang,—a Presbyterian clergyman of the militant type,[1] and one of the most active leaders of the radical party in the strenuous political struggle for the full right of self-government, and for the institution of a more democratic form of colonial constitution. The reverend gentleman was a born agitator of more than average ability, who by reason of his position in the community and his undoubted services[2] to the colonies exerted considerable influence in their political affairs. As a member of the legislature of New South Wales he took every opportunity in and out of season, to voice his separationist views, notwithstanding their unfavorable reception and the ridicule which was heaped upon him.[3] He was likewise an active publicist and wielded a trenchant though rather belligerent pen. Already in 1852 he had published a book, which he gratuitously dedicated to the citizens of Sydney, entitled "Freedom and Independence for the Golden Lands of Australia," in which he sought to mark the lines of Australian political development. He rejected[4] the suggestion of a federated Australia subject to the imperial Crown on the ground that "nationality or their entire freedom or independence is absolutely necessary for the social well-being and political advancement of the Australian colonies."

[1] Mr. Jenks characterizes him as "a Presbyterian minister by calling and an agitator by predilection. Jenks, History of the Australasian Colonies, p. 107.

[2] He had played a leading role in the separation of the Port Phillip district, and had been a strenuous advocate of a more liberal constitution for N.S.W., he was alive to the importance of the Pacific islands to the Australian colonies, was a staunch supporter of Australian unity and independence, and was soon to assist the colonists of Moreton Bay in their struggle for provincial autonomy.

[3] Russell, The Genesis of Queensland, p. 469.

[4] J. D. Lang, The Coming Event or Freedom and Independence for the Golden Lands of Australia, p. 125.

But it was insufficient, in his opinion, for the imperial government merely to bestow on the colonies the gift of independence. The latter should not be permitted to retain their existing unorganized relationship, or to start out on a national career as a number of petty and independent states, but ought to be formed into "one great state through a confederation of separate and independent provinces like the United States of America."[1] As separate communities they would always be insignificant and without influence or prestige in the circle of nations, but united they "would make at once the first power in the southern hemisphere," and a worthy rival of the great American union.

He elaborated the form of a constitution for the "united provinces," as he termed the confederation, closely based on that of the United States. The Doctor was an ardent admirer of American institutions, which he sought to reproduce almost in their entirety into the government of Australia. In rough outline the federal constitution he proposed was somewhat as follows. The federal government on its legislative side should consist of a senate and a house of representatives; together with a president and a vice-president, as chief executive officers; and should have exclusive control over the foreign relations, commerce, customs, and post-offices of the colonies. The house of representatives would be a national parliamentary body similar to its American prototype, each province returning the number of members proportioned to a certain fixed numeral of its population; the senate should be composed of delegates from the several states, each of which would be entitled to the same number of members, who would be selected by the respective legislative councils and assemblies in joint session. The president should be chosen directly or indirectly for a term of years, and be re-eligible for one additional term of office only. There should be a supreme court similar in function and character to that of the United States. Such a constitution, he believed, would furnish a satisfactory organ of federal government, and prove an efficient and economical instrument for promoting the general welfare of Australia.

At one time the movement for independence threatened to loom large in Australian politics.[2] The perversity of Earl Grey

[1] Lang, The Coming Event, &c., p. 315.

[2] In a despatch of Feb. 14th, 1854, Lieutenant-Governor Denison of Tasmania, informed the Colonial Secretary, the Duke of Newcastle, "That the only clearly defined party objects in these colonies are those with reference to

in so long defying the protests of the colonies against transportation almost drove them to the verge of secession. The proposals for revolt, which were ofttimes uttered in the fierce excitement of the agitation, were frequently coupled with an indefinite suggestion of some sort of a federal union in imitation of the example of the United States, as it was realized that the attempt of four feeble communities to monopolize a vast continent could only result in ridiculous if not ignominious failure. The necessity of self-preservation would have compelled the colonies to unite in a federal association in order to preserve their freedom and independence against European aggression. The agitation, for the most part, was based on legitimate grievances, so that when the British government tardily removed the cause of disaffection, the old spirit of loyalty revived, and the movement for separation practically collapsed. Henceforth the crusade of Dr. Lang and his supporters, so far from forwarding the cause of union, rather re-acted against it. His extreme utterances, his belligerent attitude, and his constant clamor for "cutting the painter" not only annoyed the great bulk of the population, but gave an unenviable notoriety to the cause of federation. Those loyalists, who like Wentworth, Thompson and others were desirous of establishing a general assembly, carefully dissociated themselves from his advocacy of a federal union, and poured a constant stream of ridicule upon his proposals. Even The Launceston Examiner which had been somewhat sympathetic toward his aims, strongly advised the reverend Doctor to discontinue[1] his present agitation, as independence though inevitable was far removed. It urged however the wisdom of "anticipating this contingency however remote" by at once devising institutions which would facilitate the change when in the fruition of time it should come.

Thus at the very outset of the federal movement, the most important question was threshed out as to the direction it should take. Should it be a federal union under the British crown, or as an independent state? Should the views of Wentworth or

the connection of the colonies with the motherland; that there is a party which advocates the complete separation of these colonies from the motherland there can be no doubt, and it numbers amongst its members several active and energetic persons, but the recent concessions have taken away these complaints and have deprived them of the support of the community and have nearly silenced its members," V.D.L., V.P.L.C., 1854, no. 72.

[1] The Launceston Examiner, Oct. 1, 1853.

Dr. Lang be accepted as the ideal of an Australian nationality? Should the colonies aim at a status of corporate statehood in an imperial federation, or dismember the empire in order to establish a new nation and gain a new citizenship? The issue was clearly presented to the Australian people and their answer was decisive; they were too much attached to the motherland, too proud of her traditions and of their common British citizenship to yet think of severing the imperial tie. The verdict exercised a determinative influence on the progress of the movement. Its immediate effect was to relegate Dr. Lang to the background, and to minimize the consideration which his federal views might otherwise have received. Wentworth, Thompson and the friends of federation in the other colonies were left free to develop their plans of an Australian confederation relieved of the distraction and embarrassment of a parallel movement directed to different purposes. There could be no suspicion of disloyalty attaching to their aims and proposals for a general assembly. For the future every parliamentary scheme of a federal union was based upon the maintenance of the British connection; it was a fundamental postulate of the advocates of the federal cause. The decision involved the postponement of the accomplishment of federation for half a century, since the preservation of the imperial tie gave to the colonies that protection and security which otherwise must have been sought in some form of combination.

Moreover it complicated the question of federation by retaining the interest of the imperial government in the determination of a federal organization for Australia. Three parties, instead of two, as in the constitution of an independent state, were involved in the compact, viz., the imperial, federal and provincial governments. In any scheme for a federal constitution there must needs be a three-fold distribution of the powers of sovereignty. There must be first of all the determination of the limits of the national autonomy of the federating colonies as over against the imperial functions of the parliament at Westminster. Not until the English government had agreed to the extent of the jurisdiction it would willingly confer upon the Australias, could there be any final division of the respective powers of the federal and provincial governments under the terms of the federal constitution act. Having then negatively settled the extent of the reserved powers of the imperial parliament through the

positive grant of enumerated functions to the federating colonies, the Australian public or their representatives must then themselves determine the principle and classification of the distribution of their autonomous powers between the central and local governments; and as the imperial powers were such as in an independent federal state would naturally have been conferred upon the national or federal government, it was the more difficult to make a satisfactory division of the remaining powers of the federation without either weakening too much the autonomy of the several colonies by bestowing upon the central legislature distinctly provincial functions, or in seeking to preserve the local self-government of the states, of failing to provide the federal government with a sufficient general jurisdiction, and an authority and influence compatible with its national representative character.

The question of a general assembly, which had been temporarily dropped by the colonial legislatures, was taken up by a portion of the press which carried on an active educational campaign in its favor. The leadership of this popular movement was assumed by The Sydney Morning Herald which dealt with the question not only in its editorial columns but also in an able series of articles from the pen of the Reverend John J. West, who veiled his identity under the "nom de plume" of "John Adams." While a resident of Tasmania, Mr. West had taken a leading part in the organization of the Anti-Transportation League which had brought him into intimate association with many of the prominent men of the other colonies, and had given him a close acquaintance with the political and economic relations of the several provinces. By reason of this favored intercolonial experience, as well as on account of the careful study he had given the federal question, which is well brought out in the thoughtful character of his letters, he was probably better equipped than any other man in Australia to discuss the problem of intercolonial relations in an impartial and scientific manner. This series of articles, which appeared from time to time during the year 1854,[1] is most instructive, not only as expressing the personal opinion of one of the ablest and most prominent federal advocates, but more especially in revealing the character of the discussion of confederation among the more

[1] The Sydney Morning Herald, Jan. 30, Feb. 1, Feb. 6, Mar. 24, Mar. 25, Apr. 4, Apr. 12, Apr. 25, May 5, May 15, May 26, June 3, July 25, Aug. 17, Aug. 31, Sept. 1, 1854.

thoughtful and public spirited section of the community, and in bringing out those phases of the subject which were regarded as possessing particular interest or importance to the colonists at large.

The reader is at once impressed with the somewhat academic character of the treatment; there is an interesting discussion of the need of Australian union, and of the existence of the necessary elements thereto in their intercolonial relations, a thoughtful analysis of the principles of federalism, and of the advantages and disadvantages of that form of government, and an intimate acquaintance with the history and the constitution of several of the leading confederations of ancient and modern times; but there is little attempt to build up the framework of a federal constitution, or settle the principles which should govern its formation. The letters were, in fact, introductory and educational in character rather than practical; they were intended to familiarize the public with the principles of a federal union and their adaptability to Australian conditions, and thus prepare the way for the more serious task of devising the form of a federal government. This attitude affords us an admirable insight into the state of public opinion on the question at this time throughout Australia. The people were only just beginning to consider the subject which was being forced on their half averted attention by a series of unseemly intercolonial difficulties and jealous bickerings, and required to be instructed in regard to the nature of federal institutions before they were qualified or prepared to consider any actual scheme of union.

The articles are still worth careful study as the first scientific treatment of the question of federation from the pen of an Australian. Very briefly stated, the argument ran to this effect. The supervision of the Colonial Office had not proved sufficient to secure uniformity of Australian legislation, and the experience of their intercolonial relations had shown that the local legislatures were incapable of and could not be safely entrusted with the duty of looking after the common interests of the colonial group, since they had selfishly sought in various ways to advance their own separate interests at one another's expense. To obviate the jealousies which were promoted by these conflicting policies, a federal union should be organized as soon as colonial conditions favored its establishment. There was already a "substantial unity" in the community of race, language, religion, and

in the economic and social relationship of the colonies, in all of which respects Australia was more fortunate than any other federation in history. The complete liberty of the colonies could only be consummated by such a union, since Great Britain would gladly devolve many of her reserve powers upon a federal government which she now withheld from the several provinces for fear of misuser. Only through federation could Australia rise to the full height of national greatness. The chief advantage of the federal system to the colonies would be its happy combination of municipal freedom with national strength, by which each province would still retain its autonomy, and gain in addition the strength of national unity. It was the duty of colonial statesmen to ascertain the nature, and define the limits of these general interests which ought to be transferred to the jurisdiction of the federal government. Among such subjects were to be reckoned defence, customs, commerce, communication, postal regulations, lighthouses, shipping dues, differential duties, gold regulations, and the "higher business of legislation," under which generic heading was included legislation affecting life and liberty, the control of the courts, the removal of judges, and the organization of a court of final appeal.[1] In framing the federal constitution, regard should be had to the various historical models of that form of government, although it would not be possible to adopt either the American or English political system in its entirety. The United States constitution was a "masterpiece" of constructive work from which much of their knowledge as to the organization and working of federal institutions would necessarily be derived. Particular care should be taken against too much centralization of power, for it was "better to run the risk from want of a close federal union than cramp local public opinion." The difficulty in regard to the selection of a federal capital could only be surmounted by the lapse of time, and by avoiding any appearance of local partiality. The opponents of a federal union were divided into three classes: first, the imperial federationists, who feared a severance of the British connection; second, the provincialists, who refused to sacrifice the smallest iota of colonial self-government; third, petty politicians, who dreaded extinction in the larger arena of federal politics, where higher talent and nobler ideals would be required. The

[1] This statement is sufficiently broad to place practically the whole of the administration of justice within the jurisdiction of the federal government.

federal experiment ; New Zealand would be a useful object lesson to Australia.[1] There should be no undue eagerness in pressing forward the union of the colonies as the question could afford to wait until it had been carefully analyzed, and was clearly understood by the public; and possibly some qualified statesman might then appear to assume the leadership of the movement.

From these letters it is evident that the federal question was still in the preliminary stage of discussion. The movement could only be advanced by the adoption of careful measures and cautious tactics, and by a due consideration of the sensibilities of provincial feeling. The primary requirement was the education of public opinion to a realization of the importance of the subject. Mr. West's articles had the desired effect of awakening a renewed interest in the topic, for soon after The Sydney Herald came out with a series of editorials in which it threw all the weight of its influence in favor of a federal union. In the earlier of these leading articles,[2] its tone was somewhat pessimistic as to the prospect of federation, for although the need of a federal chamber to regulate intercolonial affairs was commonly acknowledged, nevertheless the governments of the several colonies were averse to the surrender of any provincial functions and opposed to any federal action. To secure permanent intercolonial unity, something more than a general assembly was required; a complete federal organization with legislative administrative and judicial departments, entirely independent of the governments of the several colonies would be necessary; but it doubted very much,[3] if, in the absence of some special pressure, that end would soon be attained. The ultimate consummation of a federal union was inevitable, "but we do not know the ordeal through which each colony may have to pass before it will be achieved." It could only deplore the growth of diverse tariffs and postal regulations and the outcropping of intercolonial jealousies, which were forcing the colonies further and further apart.

In the later editorials, it struck a much more hopeful and independent note. The colonies, it was stated,[4] were rapidly

[1]For a description of the New Zealand federal constitution see Rusden, History of New Zealand, vol. 1, p. 524.
[2]The Sydney Morning Herald, Aug. 20, 1856.
[3]Ibid, Nov. 12, 1855.
[4]Ibid, Oct. 6, 1856.

tending towards the consummation of a federal union, and the intervention of the imperial government would only be productive of an artificial association with barren results. "A natural union was springing up, founded on mutual interests, and this union, as it gradually develops itself, will satisfy the wants of the colonies and prove a permanent bond." The editorial of October 23rd, 1856,[1] attracted much attention throughout Australia on account of the advanced position it assumed upon the question. It not only pleaded strongly the advantage of uniform legislation, but endeavored to lay down some of the principles of the proposed federation, and suggested a practical method of bringing it about. It appealed to the experience of the last few years as demonstrating the importance of a federal connection, and the injury which had resulted from want of union. The question was admittedly attended with serious difficulties. "Its importance and desirableness is at once perceived; its practicability becomes a question involving many considerations, some of which will be determined by time, and others which will rather gain additional strength by delay." One very practical question will be the determination of the seat of the federal government. For a time, the "perambulatory system" might serve the purpose, but ultimately some definite locality must needs be selected. As this question would prove a serious impediment to federation by calling forth the conflicting claims of the rival colonies, it could best be postponed for future determination when the federal union was fully developed. The concurrence of the colonies was a necessary condition precedent to any imperial enactment of a federal constitution, since the powers to be conferred on the general government would necessarily be abstracted from the provincial legislatures. In the constitution of the federal assembly, due regard should be paid to population and wealth on the one hand, and on the other, this preponderance of the larger colonies must needs be balanced "by giving increased representation to remote localities" in recognition of their equal status, and as a federal guarantee of the protection of their interests in the union. Some of the questions demanding uniform legislation were the regulation of the sale of crown lands, (a recent attempt to tamper with which had threatened to involve all the colonies in ruinous competition), customs duties,

[1]The Sydney Morning Herald, Oct. 23, 1856. G.B.P.P., 1857, 2nd sess., vol. 28, p. 4. N.S.W., Jr. L. C., 1857, p. 103. N.S.W., V.P.L.A., 1857, vol. 1, p. 387.

border regulations, which would become more complicated with the separation of Moreton Bay, postal arrangements, lighthouses, the formation of a Court of Appeal, defence, railways and telegraphs. As Tasmania perhaps was not so deeply concerned in these matters as the other colonies, she should be left to choose for herself whether she would join the union or not.

"The question however remains how shall this federation be effected? We believe it might be accomplished first by the action of the home government. A law should be passed enabling the colonies to enter into engagements for defined purposes, and of course, subject to the oversight and approval of the Crown. Having an enabling law and not a compulsory enactment, they would either allow the power to slumber or put it in motion at their pleasure." If New South Wales and South Australia united, undoubtedly Victoria would soon give in her adhesion. Some of the difficult points of federation, upon which a division of opinion was likely to arise, might be safely postponed until the federation was placed upon a permanent basis. "Or, it might ultimately be found possible to commit to each of the governments the execution of the determinations of the general body, and thus avoid, for the time at least, anything more than the establishment of a chamber of registration, which might be also a High Court of Appeal."

Interest in the federal question was no longer isolated, as the movement soon spread through all the colonies. In Victoria the subject was taken up cordially by The Melbourne Argus,[1] which, pleaded that now the old enthusiasm over separation was dying out, the time had come for the colonies to cultivate friendly relations and look forward to "a voluntary partnership." Socially and economically, the colonies were one. Every year "the spontaneous federation, which commerce brings about, makes it more and more desirable that a definite and acknowledged federation should be established by law." Intercolonial customs duties, it asserted, were becoming intolerable. "We must have a Zollverein with all convenient despatch, even if we go more deliberately about the task of establishing a complete federation." In subsequent editorials,[2] it deplored the false spirit of parish patriotism, which was preventing a settlement of the border duties, postal and Western Australian transportation questions. "The only kind of Australian patriotism that can be at all worthy

[1]The Melbourne Argus, July 4, 1856.
[2]Ibid, July 28 and Aug. 5, 1856.

of admiration, is that which embraces the whole group of these colonies, and desires the advancement of them all." Nothing would do so much to check the mistaken spirit of provincial nationalism as the institution of a federal union.

South Australia was at last aroused from her indifference to the question. The opening up of the Murray River had brought her into the most intimate social and economic relations with the sister states, and she was no longer able to think and act only for herself. The difficulties in respect to the navigation of the Murray, and especially the establishment of border custom houses affected her more seriously than the other colonies, so that all her energies were now devoted to furthering the freedom of trade along the river and across the boundaries.[1] The question of intercolonial relations had become one of the most important issues in her domestic policy. Although attention was principally directed to the possible assimilation of intercolonial tariffs, or to the negotiation of a border duties convention,[2] the closely related question of a federal union was also forced to the front as the only possible means of securing a permanent settlement of intercolonial difficulties.

In the columns of The South Australia Register, one of the most influential organs of that province, we likewise find a clear recognition of the natural unity of the Australian colonies and of their general community of interests. "Although a perfect federation," it declared,[3] "must be the growth of time," yet the increasing inter-relation of the interests of the colonies demanded that their common affairs should be dealt with on a broad constitutional basis, and "prudence suggests that there should be both an intercolonial code and an intercolonial tribunal." Events were surely tending towards a federation, which would be advantageous to all the states if local liberties were carefully safeguarded. The colonies should aspire to "the greatest independence consistent with the imperial connection," and to the exclusive management of their intercolonial relations. Among the matters requiring uniform action were defence, postal communication, telegraphs, tariffs, convictism, the regulation of crown lands, immigration, and laws regarding debtors and creditors in other colonies. It was better for the colonies to develop as a federal unit than as isolated communities with divergent in-

[1] Harcus, South Australia, ch. 17, p. 92.
[2] S.A., V.P.L.C., 1855-6, vol. 1, no. 36.
[3] The South Australian Register, Apr. 11, 1856.

terests and conflicting legislation. "A central council for the conduct of intercolonial business framed in a manner leaving each local legislature perfectly free, and whose acts should be ratified by the local legislatures of each province would probably meet the requirements of the situation." It admitted that there was undoubtedly a suspicion against the institution of a federal council, but in no other way could unity of action be attained. The sphere of its jurisdiction should be carefully defined, and all its acts require provincial sanction. So guarded, "it would be most useful to superintend those general questions of intercolonial policy" which arise from time to time, and "such a body might possibly afford what many persons will admit to be a desideratum, a tribunal of reference or appeal in important judicial cases." Although federation was inevitable, it was "at present a matter rather for discussion than for action," but now was the time to consider its advantages and the best mode of its accomplishment.

In Tasmania, The Launceston Examiner continued its campaign[1] on behalf of federation, which it believed was not far removed. A "united Australia," it declared "would present an imposing aspect to the world." Many questions could only be satisfactorily settled by a federal government, as for example, uniform tariffs, currency, the survey of the coasts, lighthouses, postal and telegraph arrangements, immigration, defence, judicial decisions, and possibly land legislation. To avoid intercolonial jealousies, it "might be advantageous to found a Washington in Australia. But the first step is to agitate the question of federation out of doors and then inside the walls of parliament until the conviction becomes general that Australia ought to be legally and formally, as she is geographically, one."

With a portion of the press in all the colonies seriously considering the question of union, there was hope that the federal movement would at last succeed in attracting general interest, would throw off the official character it had hitherto possessed, and take on a more popular form. A combination of circumstances had forced the subject of intercolonial relations to the front. The invasion of the gold seekers had served to partially obliterate the historic feuds of the colonies, and had moreover introduced throughout Australia a more uniform social system. The new immigrants knew no territorial limitations or provin-

[1]The Launceston Examiner, Mar. 18 and June 3, 1856.

cial allegiance, but passing freely from colony to colony promoted a close social and economic intercourse between them, and effected an assimilation of the populations of the several states. The rapid settlement of the border districts, and the opening up of internal trade effectually broke down the isolation of the provinces, and threw them into the most intimate commercial and political association with one another. An expansion of intercolonial trade and intercourse followed, such as had scarcely been anticipated by the most hopeful colonists. Henceforth, the provinces could not live apart, even had they desired to do so. Intercolonial relations assumed an aspect scarcely less important than colonial politics, and the two subjects acted and reacted upon one another in an inseparable connection. A whole series of intercolonial questions had arisen demanding common federal action. The commercial relations of the colonies along the border had been drifting into a hopeless tangle, their seaboard customs threatened to become more divergent, their postal, mining, and land regulations were wanting in uniformity, and occasioning much inconvenience, their feebleness and scanty resources prevented the undertaking of national schemes of development so necessary for opening up the inland country to settlement, the expansion of the French power in the Pacific, and the presence of convictism in West Australia, all revealed the danger of isolation, and proclaimed the need of union. These and many other factors had not escaped the notice of the all observing press.

In reviewing the attitude of the local newspaper world, as revealed in the quotations which have just been made, a general unanimity of sentiment will be found upon the federal question. The leading organs of public opinion not only agreed in condemning the intolerable inconvenience and danger of the existing state of intercolonial bickerings, of divergent tariffs, and conflicting legislation, but they were practically one in recommending some sort of a federal union as the only solution of the multiform difficulties. They each and all struck the true note of federation,—the natural and inherent unity of the Australian people; they repeatedly insist upon the fact that the Australias were geographically, socially, racially, religiously and economically one. The conception of an Australian nationality and of an Australian patriotism had at last emerged in these appeals to the higher destiny and the future greatness of a united people.

The difficulties in the way of a federal union were clearly recognized, and some of these it was acknowledged could only be solved in time. There was a remarkable agreement in respect to the powers which should be entrusted to the general assembly, and a strong consensus of opinion that the provincial rights of self-government should be respected as far as possible. Moreover, they were at one in maintaining that the colonies must be allowed to settle the federal question for themselves, free from the intervention of the imperial government. The feeling was unanimous that the time was not yet ripe for a complete federation, although its ultimate realization was both inevitable and desirable. The duty of the present was to thoroughly discuss the question with a view to some future action, as it was recognized that any attempt to hasten or force a union would only retard the natural evolution of events which were surely working towards a federation. Meanwhile, the closest attention should be given to the consideration of the nature and advantages of a federal union, and the best means of its attainment. By a portion of the press, it was suggested that an important step in this direction might be taken by the creation of a federal council with limited powers whose legislation and administrative recommendations should be executed by, or require the ratification of the provincial legislatures. Such an institution, it was urged, would serve the immediate needs of the present, would interfere but little with the autonomy of the colonies and would arouse the least provincial opposition. There was a common fear of the danger of over-centralization and its attendant evils. In brief, there was a growing sympathy with the cause of federal union and an increasing appreciation of its advantages, but at the same time a fixed determination to move cautiously and only after the fullest discussion and deliberation.

After the failure of the constitutional recommendations of 1853, and the departure of Wentworth and Thompson for England, little was heard of the subject of federal union for a time in the Sydney legislature. Such occasional references as were made to the topic, were merely incidental to the discussion of other matters of an intercolonial nature. In the course of his latest agitation[1] for the separation of Moreton Bay, Dr. Lang contended that it would be but another step towards some form of federation, and prophesied that all the colonies would be soon

[1]Sept. 12, 1854. The Sydney Morning Herald, Sept. 13, 1854.

united in "one grand confederation." The complications arising out of the Murray River traffic and the border customs duties occasioned much criticism in the legislature, and directed the attention of a few of the members to the advisability of adopting one uniform tariff. In an important debate, August 10th, 1855, in respect to the Murray customs,[1] Solicitor-General Manning briefly touched upon the desirability of "some union among the colonies." Apart from a common legislature, he saw no means of securing a satisfactory arrangement, as intercolonial correspondence was endless and ineffectual, and separate legislative acts were required to ratify any agreement. In a later debate[2] of the same session, upon a message from the Governor-General, recommending a scale of duties as a means of assimilating the tariffs of New South Wales and Victoria,[3] Colonial Treasurer Merewether remarked that "it might be necessary hereafter for these two colonies in conjunction with South Australia to join in some such scheme" as that of the German Zollverein, but that at present, they "were not ripe for it, neither did it appear to be immediately necessary."

The return of Mr. E. Deas Thompson to New South Wales at the beginning of 1855, and his acceptance of office the following year as the representative in the upper chamber of the newly formed Parker Ministry,[4] again served to bring the question of a federal union prominently before the legislature and public. In making the ministerial explanation of the policy of the government on October 29th, 1856, he remarked,[5] "I look upon the tariff as one of those federal arrangements, which ought not to be touched without consulting the neighboring colonies. The time I look upon it is not far distant when all the colonies will adopt some federal arrangement, and by this means a tariff, congenial to all, may be agreed upon. The land system may, in the same manner, be settled upon a good and sound basis, so that the different colonies may not be found endeavoring as it were to outbid each other. Another matter which ought also to be settled with Victoria is the management

[1]The Sydney Morning Herald, Aug. 11, 1855.
[2]Ibid, Sept. 13, 1855.
[3]Letter from C. S. Riddell, the Colonial Secretary, to the Governor of Victoria, Sept. 12, 1855. Vict., V.P.L.C., 1855-6, vol. 1, p. 1198.
[4]Thompson was President of the Executive Council in the ministry.
[5]The Sydney Morning Herald, Oct. 30, 1856. G.B.P.P., 1857, 2nd sess., vol. 28, p. 4. N.S.W., Jr. L.C., 1857, p. 103. N.S.W., V.P.L.A., 1857, vol. 1, p. 387.

of the gold fields, and I will here observe that it is the intention of the present government, so far as it is concerned, to adopt the policy of Victoria, which has been found to work so beneficially. The question of postal communication should also be settled upon a federal basis, as could also the subject of international railways. In reference to these, it is important that a settlement should be come to as to the gauge to be adopted. In cases where the electric telegraph passses through various colonies, it might prove a subject for federal arrangement; but there is still one more important subject in which already some progress has been made in securing the concurrence of the adjoining colonies,—that is, the establishment of light-houses on the coast. Therefore there are seven great subjects, which ought to be submitted to some general federal assembly representing all the Australian colonies."

Although the federal question was nominally a part of the government's program, practically it was a mere expression of the personal opinion of Mr. Thompson. This fact is brought out most clearly by the failure of the Premier to make even the slightest allusion to the topic in his opening speech in the legislative assembly[1] setting forth the policy of the government and its program of legislation; nor did the supporters of the Ministry consider the subject of sufficient importance or public interest to even refer to the matter in the course of their defence of the government's measures. The weakness of the Ministry and the precarious life it was leading in the lower chamber effectually prevented Mr. Thompson from taking any immediate steps for the furtherance of his federal proposals, and the subject was consequently held over till the next session of parliament.

The re-opening of the question by Mr. E. Thompson represented something more than a mere revival of the traditions of Earl Grey's scheme; it was rather the practical application of the official experience of the honorable member, the consummation of an enlightened Australian intercolonial policy which he had earnestly striven to promote. Both in his former position as Colonial Secretary and in his present office, he had been called upon to deal with intercolonial difficulties, more particularly in respect to a uniform tariff,—a subject to which he had devoted special consideration, and upon which he had already sought to formulate a policy looking towards the assimilation of the sev-

[1]The Sydney Morning Herald, Oct. 29, 1856.

eral colonial tariffs. When chief executive officer of the government in 1852, he had introduced and carried in the Legislative Council a customs duty bill[1] which greatly simplified the lengthy tariff schedule then in force, by reducing the list of dutiable articles to a few leading products of general consumption, especially liquors of various kinds, tobacco, tea, coffee and sugar. As an avowed free trader, he was naturally anxious to place the tariff of the colony on the simplest possible basis. The adoption of a similar commercial policy, about the same time, by the neighboring government of Victoria gave occasion for the hope that the other colonies would speedily follow this excellent example. In South Australia and Tasmania there was a much longer list of dutiable articles, but as the rates were moderate in amount, not generally exceeding a ten per cent. charge, and as the tariffs were framed primarily for revenue purposes, the adoption of a more liberal commercial policy might have been effected with a minimum of fiscal disturbance.[2] The differences in the customs duties, save in the case of spirituous liquors, had not yet become so marked as to seriously interfere with trade,[3] and the tendency of events seemed gradually leading towards a practical assimilation of the tariff systems. Doubtless Mr. Thompson had these facts immediately in mind in bringing forward the present federal proposal, for he does not appear to have anticipated any unreasonable opposition to such a policy on the part of any of the colonies. The spirit of co-operative action, which he pointed out had already settled some of their intercolonial difficulties, had only to be applied on a more general scale, and furnished with an effective medium of legislative expression in order to secure the desired uniformity of policy and legislation.

But before any practical measures could be taken to follow up this official declaration of the government's policy, the subject was revived in a far distant quarter. The history of the federal question was again shifted back to England. Nothing shows so conclusively the essentially personal character of the movement at this time, as the persistent way in which it attached itself to the leadership of two or three men. Wherever the presence and influence of Wentworth and Thompson were in evidence, there we soon discover that the subject of a federal

[1]Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. vii.
[2]Westgarth, Victoria late Australia Felix, appendix, p. 80.
[3]Rusden, Hist. of Aust., vol. 3, p. 7.

union is under consideration. They were true missionaries of the cause, preaching the gospel of co-operation at home and abroad. In Australia the movement owed its origin and its vitality to their persistent efforts, and after their departure for the motherland, the question remained practically voiceless, save for the noisy and injurious agitation of Dr. Lang. Upon the return of Mr. Thompson from his English mission, we again find the subject forced upon the attention of the Australian public. Meanwhile, Wentworth, who had remained in England, was not forgetful of the interests of his native land. In a farewell speech, on leaving Sydney in 1854, he had stated:[1] "Whatever may be my destiny, believe me that my latest prayer shall be for the happiness and prosperity of the people of Australia and for its rapid expansion into a nation, which shall rule supreme in the southern world." More than any other man, he had a revelation of the national future of the Australias, to the advancement of which he devoted his talent and his energy. He was soon active in taking steps for furthering the interests of the colonies in the home land by securing the co-operation of the many Australians who were to be found in the imperial capital.

Largely owing to his efforts, in 1855, a General Association for the Australian Colonies was formed. The object of the Association,[2] which was composed of colonists and others interested in the welfare of Australia, was to take all necessary measures for promoting the interests of the colonies, more especially to assist in the passage of the several constitution bills, to secure a revival of steam postal communication, and to enter into correspondence and make representations to Her Majesty's government, members of parliament, and such of the general public as were interested in Australian questions. A permanent committee made up of three representatives from each colony, with power to add to their number, was appointed to conduct the affairs of the Association, and act as its executive. The organization rapidly grew in numbers and influence, so that at the end of its first year, it boasted that it numbered "besides a large body of influential colonists, upwards of twenty gentlemen who had held seats in the different legislatures of the Australian colonies."

[1]The Sydney Morning Herald, Mar. 21, 1854.

[2]Report of the Permanent Committee to the members of the General Association at their first annual meeting, June 13, 1856. Minute Book, Gen. Ass. of the Aust. Col., June 13, 1856.

The question of a general assembly was soon brought to the attention of the Association, undoubtedly at the instance of Wentworth himself.[1] At a meeting of the general association, June 11th, 1855,[2] it was moved by Mr. W. H. Splatt, seconded by Mr. C. H. Ebden, formerly Auditor-General of Victoria, that a general meeting be called as early as possible to take into consideration the following resolution; "That the attention of the Right Honorable the Secretary of State for the Colonies be called to a report of July 28th, 1853, from a Select Committee of the Legislative Council of New South Wales on the subject of a federal chamber, and to urge upon His Lordship the strong necessity which exists for passing a measure for such purpose in the present session of the imperial parliament." The resolution found favor with the Association and a short time after[3] a memorial was despatched by Mr. William Rutledge, the Secretary of the Association, to Lord John Russell, to the following effect: "As the constitutions of the colonies forming the Australian group will be incomplete until a federal association is constituted with power to legislate on all intercolonial questions, and as no such assembly can be created except by and under the authority of an act of parliament, I am desired by the committee of the General Association of the Australian Colonies to call Your Lordship's attention to the concluding paragraph of a report from the Select Committee of the Legislative Council of New South Wales, dated July 28th, 1853, and to request to be favored with Your Lordship's intention upon this subject."

In the report of the permanent committee of which Mr. Wentworth was chairman, to the members of the general association at their first annual meeting on June 13th, 1856,[4] a brief reference was made in the course of the review of the labors of the year, to the action of the Committee on the subject of a federal legislature, and the policy which should be pursued in respect to that question. "The next object to which the attention of the permanent committee was directed in the year 1855 was the necessity of constituting a federal assembly with power to legislate on all intercolonial subjects, but though it is evident that the constitution of the Australian colonies will not be complete until such a federation is constituted either directly by

[1]E. Deas Thompson had returned to Sydney in January, 1855.
[2]Minute Book of the Aust. Ass., June 11, 1855.
[3]June 28, 1855. Ibid.
[4]Ibid, June 13, 1856.

parliament, or indirectly under an authority from parliament given to these colonies, the late period of the then session of parliament, the indisposition of the home authorities to take up the question until a desire for such an institution shall be expressed by the local legislatures, and the almost undivided attention which the revival of postal steam communication has required this session from the permanent committee, will necessarily postpone the further consideration of this important subject until a future session of parliament." The report urged as a reason for continuing the existence of the general association, that one of the great measures to which it was devoting its attention, namely, the institution of a general assembly, was still unsettled.[1] The matter was felt to be one "of increasing urgency," and until such an assembly was created, the colonial constitutions "will be defective in all that relates to the great intercolonial interests which already exist and are continually arising."

Wentworth was closely watching the course of political events in Australia, which seemed to him to present a favorable opening for again taking up the question. In continuation of his efforts to induce the Colonial Office to take action upon the matter, he had an interview[2] with Mr. Labouchere, the Secretary for the Colonies, and urged upon him the wisdom of introducing into parliament a permissive bill, empowering the Australian colonies to join in a federal assembly. The Colonial Secretary appears to have been very non-committal in his reply, merely suggesting that a memorial be drawn up stating the specific grounds for such action. In compliance with this suggestion, a sub-committee of four was appointed,[3] one member from each of the colonies, to prepare the desired memorial. Several sittings were devoted to the discussion of the subject before they were prepared to lay their recommendations before the Association.[4] The memorial which was probably drafted by Wentworth himself, judging from its contents, and the evidence it presents of expert preparation,[5] was after careful consideration adopted by the sub-committee. Several appendices setting forth the grounds upon which the prayer of the petitioners was based,

[1]The Association was regularly constituted for only one year, and consequently was compelled to ask for an extension of its life.
[2]Minute Book of Aust. Ass., Feb. 13, 1857.
[3]The Sub-Committee consisted of Wentworth, representing N.S.W.; Ashurst, Victoria; Youl, Tasmania; Stephens, South Aust.
[4]Minute Book of the Aust. Ass., Feb. 26, 1857.
[5]Rusden, Hist. of Aust., vol. 3, p. 115.

and a draft permissive bill to constitute a federal assembly were agreed to at the same time and annexed to the memorial; all of which, a few days later, were unanimously accepted by the general committee.[1]

In accordance with the rules of the Association, which required that all addresses be submitted to the whole body of members, a call was issued by the Secretary for a general meeting of the Association to consider the memorial. On March 31st, a general assembly was held,[2] about twenty members being present, with Mr. Wentworth in the chair. The memorial was read paragraph by paragraph and carried without a dissenting voice. The draft bill was then taken into consideration in a similar way. It was moved by Mr. D. Dearmouth "that the words in paragraph two, 'the minimum or upset price of land' be omitted from the list of enumerated powers assigned to the Assembly," the object being to reserve to the several colonies the control of their own crown lands; but the motion was defeated. The South Australian members alone appeared hostile to the remission of this matter to the federal government.[3] The draft bill was then agreed to, and the chairman was instructed to sign the two documents on behalf of the Association. It was resolved that a deputation should wait on the Secretary for the Colonies, to present the memorial and draft bill. Accordingly, on April 23rd, a few of the members assembled, and Wentworth was requested to act as leader of the deputation, which consisted of about twenty persons.[4] The documents were duly laid before Mr. Labouchere, who promised to seriously consider the matter and to communicate with Wentworth on the subject.

The memorial read as follows:[5]

The memorial of the General Association for the Australian Colonies, adopted at a meeting held in the city of London on the 31st of March, 1857, W. C. Wentworth, Esq., late member of the Legislature of New South Wales, for the city of Sydney, in the chair.

"That at the time the constitution now in force for the government of New South Wales was presented by its framers to

[1]Minute Book of the Aust. Ass., Mar. 19, 1857.
[2]Ibid, Mar. 31, 1857.
[3]The Sydney Morning Herald, June 13, 1857.
[4]Minute Book of the Aust. Ass., Apr. 23, 1857.
[5]G.B.P.P., 1857, 2nd sess., vol. 28, p. 1. N.S.W., Jr.L.C., 1857, p. 101. N.S.W., V.P.L.A., 1857, vol. 1, p. 385. Vict., V.P.L.C., 1856-7, vol. 4, p. 1383.

the legislature of that colony, it was foreseen that a federal assembly would soon be an indispensable bond of union for all the colonies forming the Australian group, as the subjoined extract, marked A,[1] from the report of the Committee appointed to prepare the bill, which resulted in that constitution will prove.

"That the same conviction was strongly impressed on Earl Grey, as Secretary of State for the Colonies, at a much earlier period, as clauses for the establishment of a federal assembly were introduced by him into the previous bill for the government of the Australian colonies, though these clauses were subsequently abandoned by His Lordship from difficulties which occurred, c were suggested in the progress of that measure through the House of Lords.

"That the want of a federal authority has already been felt in regard to the establishment of light-houses in Bass' Strait, to the collection of customs duties on the River Murray, which intersects the three colonies of New South Wales, South Australia and Victoria, and to the construction of an electric telegraph between Adelaide and Melbourne, which is about to proceed under a similar arrangement; it is evident that all such arrangements must be uncertain or unsatisfactory so long as the federal sanction necessary for their legalization is wanting.

"That although by a similar arrangement between the governments of South Australia, Victoria and New South Wales, the customs duties payable on commodities conveyed to these colonies by the Murray River are collected in South Australia and divided among the governments of those three colonies, the result of this clumsy contrivance is that the duties only which are payable by law in the colony of South Australia can be levied there, and that hence the colonists of Victoria and New South Wales, consumers of those commodities pay a greater or less amount of duty than are leviable by law in the colonies to which they respectively belong, and in some instances pay duties on commodities not subject in their colonies to any duty at all.

"That under these circumstances, it is not to be wondered at that a strong feeling of discontent should be growing up among the inhabitants of these colonies, from their being compelled to resort to such indirect tedious and illegal expedients, in substitution of that federal authority without which their several institutions must continue incomplete, as regards all measures

[1]Report of the Legislative Council N.S.W., July 28, 1853.

and undertakings which require the joint action and co-operation of any two or more of them.

"That the amount of inconvenience, arising from the want of this federal authority, may be collected from the speech of the Honorable E. Deas Thompson, delivered by him on the 29th of October last in the Legislative Council of New South Wales, in his capacity as Vice-President of the Executive Council, and as representing in that House the opinion of the Parker Ministry, in which speech, there is an enumeration of seven matters requiring immediate federal action. Vide, Extract B.[1]

"That in the subjoined extract from The Melbourne Argus[2] on the 4th of November last, an influential and widely circulated paper in Victoria, the necessity for establishing at once a federal assembly is strongly insisted upon. Vide, Extract C.

"That it is understood that this necessity has been strongly represented by the government of South Australia, and it may be presumed that although responsible government is only just beginning to take effect in the Australian colonies, that such representations have been general from the governors of the colonies comprising the Australian group, to Her Majesty's Secretary of State for the Colonies.

"That your memorialists humbly conceive that it is the duty of the imperial government to anticipate the wants of the colonies, to see that their institutions keep pace with their wants, and not to defer an indispensable enactment like this until grave inconveniences arise, and produce, as they assuredly must, universal dissatisfaction and complaint.

"That a federal assembly can only originate in an act of parliament, directly constituting such a body, or giving the legislatures of the different colonies, now or hereafter composing the Australian group, or any two or more of them, a permissive power to form and join such a federation, when and as they may think fit.

"That the latter course is that which your memorialists would press upon your attention, as the most desirable if not the only practicable course which can now be adopted, but that, in their opinion, a complete equality of representation between all the

[1]G.B.P.P., 1857, 2nd sess., vol. 28, p. 4.

[2]The memorial is wrong in attributing this article to The Melbourne Argus. The editorial was, as we have already pointed out, written for The Sydney Morning Herald of Oct. 23, 1856, and was reprinted in The Melbourne Argus of Nov. 4, 1856.

Australian colonies should be insisted upon without reference to the extent of their population, in any federal assembly that may be formed.

"That this principle of equality is quite as indispensable to the fair representation of these colonies in a federal assembly as it is to the fair representation of the states of America in the Senate of that country, and that the adoption of any other principle would tend to the undue debasement and detriment of the weaker colonies, and to the unfair exaltation and advancement of the stronger.

"That in the opinion of your memorialists a permissive act of parliament, which would enable any two or more of these colonies to depute an equal number of persons to be selected by and from each legislature, to form a convention with power to create a federal assembly and to define as far as possible the various subjects to which this federal action should extend, is all the parliamentary interference that is required, and that in our opinion this object would be accomplished by the passing of some such bill as is subjoined. Marked D.[1]

"That in the event of any jealousy arising in the colonies in respect to the place for holding a federal assembly, or the power of any governor to assent to or dissent from its acts, these jealousies, we submit, might be got rid of in the first instance, by making the Assembly perambulatory (as suggested in the article from The Argus), and giving the veto to its acts only to the Queen; but as the bill subjoined does not contemplate or allow any federal revenue, properly so-called, to be at the immediate disposal of the federal assembly, and, as it will be little more, under these circumstances, than a court of registry for its own acts, it is not conceived that the colonies generally will feel much interest in its locality. The subjects it has to legislate upon are few, and its sessions will be short. Each colony represented in this Assembly ought to bear a quota of the expense necessarily attendant upon it, as well as a just allotment of the expenses attendant upon those acts or measures in which such colony may be interested.

"That in the event of any supposed encroachment by the authority of any federal assembly being resisted by any of the colonies submitting to its jurisdiction, the Privy Council might be resorted to to settle any such difference until the creation of

[1]See Appendix, C.

a court of appeal for these colonies generally, or in the last instance after the creation of such a court.

"That your memorialists do not consider it necessary to go into further details as they do not desire that parliament should legislate directly upon this subject, and the necessary details connected with the proper creation of a federal assembly will rest with the convention, to whom this power may be delegated by the colonial legislatures, which doubtless will select the most competent men they possess for the discharge of this very important function. The perfection too of such details in the first instance will be of less importance, if that permissive act of parliament which your memorialists request you to bring in and pass with all convenient speed, shall contain a power enabling the federal assembly itself after it shall be created to supply any necessary details which may be omitted in its original constitution."

The memorial was as strong a presentation of the case for a federal union as could well be made out. But it was weak at the crucial point where it should have been strongest. There was little need to emphasize at length the desirability of a federal assembly, or the serious inconveniences which had resulted from the absence of a common federal organ, as this fact had long been patent to the Colonial Office, even though it had not been so clearly recognized by the Australian public. What was required, however, was a clear demonstration of the desire of the colonists for the creation of some form of federal constitution, which would justify the imperial government in introducing a measure for that purpose. But so trifling was the evidence to present,—a report of a select committee, a speech, and a newspaper editorial, constituting the sum-total,[1] that Wentworth was obliged to fall back upon an alleged representation of the South Australian government of similar effect, and the speculative presumption that the governors of the several colonies must surely have brought the subject to the attention of the Colonial Office. But there appear to be no parliamentary documents which will afford a reasonable support to either of these suppositions. We find indeed that Governor Young of South Australia[2] made representations to the home authorities in re-

[1] It would almost appear as though Wentworth were unacquainted with the recommendation of the Victorian legislature in regard to a federal assembly, as he makes no reference whatever to their report.

[2] Vict., V.P.L.C., 1854-5, vol. 1, p. 966.

spect to the collection of border duties, but he seems to have gone no further, and neither the Governor-General nor the other governors seem to have evinced any special interest in the question of federation, and were even charged, probably unjustly, with official antagonism towards one another provocative of retaliatory legislation.[1] The memorialists, in fact, admitted the weakness of Australian federal sentiment in urging the imperial government to anticipate the wants of the colonies by providing the necessary enabling legislation.

Of the two suggested modes of originating a federal assembly, by the enactment of a federal constitution, or by permissive legislation, the latter was regarded as the more desirable, if not the only practicable course, since it would not involve any encroachment upon the autonomy of the colonies, but would leave them free to consult their own wishes and interests in the matter. In either case the responsibility for initiating the required legislation was thrown upon the imperial government. It is rather singular that a third alternative, viz., that the colonies themselves should initiate the constitutional movement, by drawing up a draft constitution for submission to and enactment by the imperial parliament, found no place in the program of Wentworth, but it is possible that he felt the need of the previous approval or sanction of the home authorities as a necessary stimulus to colonial action.

The memorial did not confine itself, as might have been expected, to a prayer for an enabling act, but endeavored to lay down a few constitutional principles which might with advantage be incorporated in a federal measure. By this means, it was hoped to forestall some of the political difficulties which would inevitably arise in the suggested constitutional convention in regard to the organization of the Assembly. The most interesting of these proposals was that in respect to the apportionment of representation in the Assembly. The principle of equality was declared to be indispensable to a fair distribution of membership, and the example of the American Senate was cited as an approved precedent. The temporary out-distancing of New South Wales in the race for colonial pre-eminence had worked a remarkable change in the opinion of the people of that province since the former decisive declaration of the Cowper resolution of 1848. The mother colony was now prone to vindicate

[1]The Sydney Morning Herald, Mar. 24, 1854.

the equal rights and status of the smaller colonies, as she herself was afraid of the superior numbers, wealth, and influence of her younger rival—Victoria. Equality of representation should also prevail in the convention, which it was proposed, should be called for the purpose of creating the federal assembly. Wentworth was inclined to depreciate the importance of a federal capital under the proposed constitution, as the legislative functions of the House of Delegates would be limited and its sessions brief, but to meet any possible objection upon this score, he adopted the suggestion that the Assembly be migratory. To avoid any further controversy, which might arise from the peculiar relation to the federal legislature of the Governor of any of the colonies, who might also be appointed Governor-General, it was suggested that the right of vetoing all federal enactments be reserved exclusively to the Queen. By this constitutional device, he hoped to get rid of a possible confusion of federal and provincial politics, and to prevent the government of any colony from interfering in the affairs of the general assembly.

The question of federal finance was as ever, an exceedingly embarrassing one, which it was proposed to avoid by the adoption of the simple expedient of practically depriving the federal government of any financial powers. Such expenses as the Assembly might incur in the course of its duties should be raised by assessment upon the several colonies interested. In case of conflict of jurisdiction between the federal and colonial governments, resort should be had, as in Earl Grey's bill, to the Judicial Committee of the Privy Council until an Australian court of appeal should be established. But the creation of this Supreme Court was not intended to interfere with the sovereign's prerogative as the fountain of justice, nor to cut off the right of final appeal to the throne. To the mind of Wentworth these five points, viz., the principle of representation, the selection of the federal capital, the veto on federal legislation, the matter of federal finance, and the determination of questions of constitutionality, appeared as the five cardinal difficulties in the formation of a general assembly, and for each he suggested a constitutional provision which he trusted would satisfactorily serve the purpose. In these proposals we see his solicitude that the scheme should not miscarry owing to any outbreak of colonial jealousies, or for want of a definite constitutional program.

The accompanying draft bill[1] was of composite character, combining the features of an enabling act with an outline of certain constitutional provisions for incorporation in the new instrument of government. The proposed federal union was limited to the four eastern colonies, Western Australia being excluded primarily on the ground of its transportation policy, which socially and politically ostracised it from the sister provinces. Besides at this time it had few interests in common with the other colonies, and would have been a useless and negligible member in any Assembly. The suggested mode of constituting the federal legislature was different from that contained in any former proposal. Any two or more of the legislative councils were authorized to appoint an equal number of delegates to "form a convention for the purpose of creating a federal assembly." Here for the first time we have a clear recognition of the distinctive function of the constitutional convention as the proper constitution making body. Other proposals had left the duty of framing the organic law to the judgment of the imperial parliament, or to the determination of the Australian legislatures in such a manner as they might see fit. But the function was here regarded as appertaining as of right to an expressly selected body of parliamentary representatives. The convention, moreover, was endowed with a power even beyond that generally exercised by its American prototype, of actually framing and establishing a federal assembly without requiring the sanction of the imperial parliament, or the popular ratification of the Australian people. The only limitation upon its freedom of action in the framing of the constitution was that contained in the provisions of the enabling act. The constituent powers of the convention are all the more surprising as it was essentially a parliamentary and not a popularly elected body, and did not require to submit its draft constitution to a referendum of either the people or the states. As the federal assembly was empowered to amend its own constitution as "occasion shall require," the federating colonies were practically endowed with sovereign powers with respect to their organic law.

The provision for a constitutional convention shows the growing influence of American institutions upon the federal movement, and marks in addition a broadening conception of the national autonomy of the colonies. The widest liberty of

[1] See Appendix, C.

choice was granted in the selection of delegates to the convention, private individuals equally with members of the legislature being eligible for election. It is rather interesting to observe that although the memorial regarded equality of representation in the federal assembly as indispensable, the bill only provided for it expressly in the constitution of the convention, and did not bind the latter in specific terms to respect that principle in the establishment of the federal assembly. But in clause five governing the conditions of admittance of new states into the union, there is inferentially a clear recognition of the principle and there can be no doubt from the language of the memorial that it was intended to be equally applicable to the general assembly.

It will also be noticed that the expression "federal assembly," was now regularly employed to describe the common federal organ, in the place of the former customary term "general assembly. The alteration in the name has probably no legal significance as the character and functions of both bodies were essentially the same. But the modification is not without political interest as expressive of a truer appreciation of the real federal character of that body, and as revealing an enlarged conception of its national aspect. But for the emphatic language of the memorial to the contrary, it might be supposed that the use of the phrase "federal assembly" was intended to imply a political union of the colonies under the form of a federal constitution and not merely the occasional meeting of a legislative or consultative council of instructed delegates such as was generally understood in the employment of the term, general assembly. Nevertheless the conception of the character of the desired constitution was taking on a more definite form, which did not find proper expression in the vague indeterminate ideas as to the nature of the general legislature which up to this time had prevailed. Freed from the association of Dr. Lang's agitation, the proposed legislature could be properly designated a federal assembly without creating an erroneous impression. Wentworth's own views on the nature of the federal union do not appear to have undergone any material change. He did not desire that the proposed Assembly should be merged into a national parliament, representative of the Australian people; he was satisfied that it should fill the humbler role of a federal council independent of, but not superimposed upon the local legislatures.

Possibly the adoption of the name, "federal assembly" was not the result of deliberate purpose, but may have been due to a natural employment of the language of Thompson's speech,[1] which was admittedly the source of the memorial, though the expression had been occasionally used in popular discussions prior to this time.

The legislative jurisdiction of the federal assembly was considerably enlarged in accordance with the demands of the more intimate relations of the colonies. Throughout the whole course of the federal movement there will be found this tendency to expand the list of enumerated powers as new subjects continually appeared upon which co-operative action was required. The present enumeration was a mere amplification of the powers set forth in the report of Wentworth's constitutional committee,—the new subjects being navigation of connecting rivers, coinage, weights and measures, and defence. The first of these arose out of the opening up of the Murray and its tributaries to navigation; coinage, weights and measures were the product of the rapidly expanding commercial relations between the colonies which demanded a uniform system of regulation for their proper development; while the inclusion of defence was doubtless due to a variety of circumstances,—the influence of the Crimean War, the unwelcome presence of the French in the neighboring Pacific Islands which had already called forth Australian protests, and to the temper of the English government and people, who were beginning to think that the time had arrived when the colonies should bear a share of the cost of their own protection. It is certainly a fact significant of the relative importance which was placed upon the question of imperial defence at home and in the colonies that this vital subject should have cropped up incidentally for the first time in the report of a Committee sitting in England, and not in an Australian assembly where it ought properly to have arisen. But upon one subject there is an interesting exception to the general extension of federal authority, namely, in respect to railways, federal jurisdiction over which was now restricted to the regulation of the gauge of intercolonial lines, instead of covering the whole field of interstate control as in former proposals. Finally there was the usual supplementary clause relative to the delegation of legislative authority upon subjects which might be referred to the

[1] Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. viii.

Assembly by addresses from the colonies, "having an interest in the question so submitted." The aim of this last qualification was to avoid if possible the danger, which had wrecked Earl Grey's scheme, of undue interference on the part of any of the colonies in the domestic affairs of a sister state, by restraining a non-interested province from becoming a party to an address to the federal legislature for an enactment upon some matter which did not immediately concern it, and on which it was only lending its support to another colony for political considerations.

The choice of time and place for holding the sessions of the federal assembly was left to the discretion of the Governor-General or senior governor of the federated colonies. It was evidently intended, as is apparent from the memorial, that the perambulatory system of conferences should be adopted, but the language of the bill placed no restriction on the independent judgment of the Governor-General, so that it would have been possible for him in the exercise of his constitutional prerogative to fix the meeting of the Assembly permanently in one place. The insertion of the phrase "or senior governor" was perhaps intended to disarm the jealousy of the other colonies over the titular precedence of the governor of New South Wales, and at the same time to provide a flexible administrative expedient by which, in case of a nomadic Assembly, it would have been possible for the governor of the colony in which the federal legislature was sitting, to act for the time being at least, as the chief executive officer of the confederation. It is rather surprising to find the recommendation of the memorial in favor of an exclusive royal veto over federal legislation plainly disregarded in the bill, which authorized the Governor-General or senior governor "to assent to or dissent from the acts of the said federal assembly," subject however in case of assent to royal disallowance within a year.

The bill affords but few materials for the construction of the federal assembly, as that task was properly held to devolve upon the constitutional convention. Any two or more of the colonies, through the medium of a convention, were authorized to determine the form of a federal government for themselves. Provision was made for the subsequent admission of other colonies, subject to certain conditions which were intended to debar any penal community from becoming a member of the union. This

proviso was primarily directed at Western Australia, but may have also had in view the threatening danger of a convict colony at Moreton Bay. Upon the admission of any outstanding colony, it should be entitled to the same number of representatives as were returned by the original states. Membership should not be forced on any province, but each colony was free at any time to signify its desire to enter the union by an express act submitting itself to the federal jurisdiction. The Assembly was empowered to select its own president, to provide for its own expenses, the salaries of its officials, and the expenditures incident to its legislation. But the mode of meeting the cost of federal administration was somewhat different from that outlined in the report of the constitution bill of 1853, in which it will be remembered the select committee adopted the financial proposals of Earl Grey. Wentworth's views upon this point had apparently undergone a change;[1] possibly his strict constitutional principles, or the colonial criticism of the unlimited right of federal appropriation of provincial revenues, may have led him to reject the unconstitutional suggestion of empowering a non-representative body by virtue of its inherent authority to collect a revenue for its own purposes at the expense of the self-governing legislatures. The federal assembly was accordingly made dependent for its supplies on the legislative grant of the several colonies, upon which the federal expenses were assessed in such proportions as the central government might direct. The weakness of the financial position of the Assembly reduced it, as was pointed out in the memorial, to the status of a mere "court of registry for its own acts." Without an independent revenue, and with no means of enforcing the payment of its assessments it could not hope to exercise any real federal authority over the colonies.

The proposed federal organization was in fact very similar in character to that later established under the Federal Council Act. The Assembly was essentially a deliberative body intended to exercise legislative and advisory functions. There was no attempt to set up an independent federal executive worthy of the name, for the nominal Governor-General was not endowed with any administrative functions corresponding to the legislative powers of the federal assembly. The memorial incidentally suggested the creation of an Australian court of appeal, but

[1] Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. ix.

it was not designed to be a federal judiciary, but a colonial appellate tribunal. In brief the scheme here outlined did not contemplate the establishment of a federal constitution or the institution of a federal government, but rather the creation of a confederate diet with limited legislative powers in respect to certain common affairs.

The memorialists entertained the hope that their petition would receive favorable consideration from the Colonial Office, from the fact that Mr. Labouchere, the Secretary for the Colonies had been a member of the Committee which drew up the report of 1849, and had moreover supported the federal proposals in the debate in the Commons. But these expectations of a sympathetic response were doomed to disappointment. The reply of Mr. H. Merivale, on behalf of the Secretary for the Colonies was an emphatic non possumus. In his letter of May 16th, 1857,[1] to Mr. Wentworth, he states: "He is fully sensible of the inconvenience which has already been felt in some instances in Australia from the want of any means of joint action by the several colonies, and he is aware that inconvenience of this kind is likely to be experienced still more strongly in future, unless some remedy be found for it."

"Nevertheless, after weighing to the best of his ability the reasons for and against the scheme submitted to him, he has arrived at the decided opinion that Her Majesty's government would not in reality promote the objects of the memorialists by introducing such a measure as that of which the outlines are given in the memorial, notwithstanding its purely permissive character.

"Without entering into all the objections to which it appears to him to be exposed, it may be sufficient to say that he cannot think it at all probable that the several colonies would consent to entrust such large powers to an Assembly thus constituted, or to be bound by laws imposing taxation (such as is involved for instance in the tariff arrangements), or in the appropriation of money which is involved in several of the subjects of legislation suggested by the memorialists, and even if they were to consent in the first instance to the establishment of such a system, the further result would, in his opinion, very probably be dissension and discontent. He does not therefore think that Her Majesty

[1]G.B.P.P., 1857, 2nd sess., vol. 28, p. 6. N.S.W., Jr.L.C., 1857, p. 99.
[2]N.S.W., V.P.L.A., 1857, vol. 1, p. 388.

ought to introduce a measure of this character although merely permissive in its provisions, unless they are convinced that there is a reasonable prospect of its working in a satisfactory manner. Mr. Labouchere would not consider himself warranted in making such a proposal unless he was himself both satisfied that it was founded on just constitutional principles, and also that there was reason to believe that it was likely to be acceptable to the colonies which were concerned in it.

"Mr. Labouchere proposes to send copies of this correspondence to the governors of the several Australian colonies for their information, and he will readily give his best attention to any suggestions that he may receive from those colonies in reply, with a view to providing a remedy for defects which experience may have shown to exist in their institutions, and which the aid of parliament is required to remove. In the meantime, he cannot but hope that even if an attempt to provide for their joint action in a regular and binding manner by the establishment of some general controlling authority should be found impracticable or premature, yet that much may be done by negotiation between the accredited agents of the several local governments, the results agreed upon between such agents being embodied in legislative measures passed uniformly and in concert by the several legislatures."

The answer of the Secretary for the Colonies was thoroughly in accord with that of his predecessor, Lord John Russell. He seems to have lost all faith[1] in the immediate possibility of effecting an Australian federation. The question was one which the colonies must first definitely decide for themselves, before the imperial government would feel warranted in intervening. However disappointing his decision may have been, there can be no doubt of the correctness of his constitutional attitude, and the justness of the criticism he passed upon the memorial. There was not sufficient evidence before him, as he frankly alleged, to warrant the belief that an imperial federal act would be acceptable to the colonies. The expression of a general desire for a federal assembly was properly made a condition precedent to any future imperial action. The Colonial Secretary appealed to the actual condition of political affairs in Australia, as against the personal opinion and assumptions of Mr. Wentworth. There was, in truth, insufficient evidence offered to prove either that

[1]Barton, Hist of Aust. Fed., Year Book of Aust, p. ix.

the colonies approved of the principle of a general assembly, or that they were likely to take advantage of an enabling act, should it be passed. The presen proposal had only the influence of Wentworth behind it and the sanction of an absentee association, as unrepresentative of the people of Australia as the Anglo-Irish landlord of the Emerald Isle. Now that the full measure of self-government had been conferred upon the colonies, it was felt that the responsibility of acting in this matter should be entirely assumed by them. The attitude of the Colonial Secretary though passive, was nevertheless sympathetic; he would readily give his earnest consideration to any representations the colonies might make with a view to remedying the admitted want of some federal authority. As a partial expedient, should the scheme of a federal assembly prove impracticable or premature, or fail to commend itself to the local legislatures, he suggested that much might be accomplished by negotiation and concurrent legislation. In effect, Mr. Labouchere recommended a policy of intercolonial conferences and co-operative action as a practical alternative to the more ambitious scheme of a federal union, for which the colonies did not seem at present in his opinion prepared. The conclusions of the Colonial Secretary were soon to be justified by the course of Australian events.

Mr. Labouchere's reply was brought before the committee of the Australian Association in due course and considered by them at their meeting on May 28th, 1857.[1] It was moved by Sir C. Nicholson[2] and agreed to without dissent, that the chairman acknowledge the receipt of the Colonial Secretary's letter, and signify their disappointment "that he does not feel justified in acceding to the requests of the memorial, and to urge upon him at all events to lose no time in referring the matter to the several colonial governors with a view to their being brought under the consideration of the several legislatures." In accordance with his instructions, Mr. Wentworth, a few days later wrote to the Colonial Secretary,[3] expressing the regret of the Association at the delay which the proposed reference to the several Australian governors "will unavoidably occasion, and their hope that this reference may be made as speedily as possible, so that the opinions and suggestions of the

[1]Minute Book of Aust. Ass., May 28, 1857.
[2]Former Speaker of the Legislative Council of N.S.W.
[3]G.B.P.P., 1857, vol. 28, p. 7. N.S.W., Jr.L.C., 1857, p. 100. N.S.W., V.P.L.A., 1857, vol. 1, p. 389.

several colonial legislatures on the important matters which the memorial involves may be obtained previously to the next meeting of parliament." From the last clause of Wentworth's reply, it is evident that he still hoped that the local legislatures would take decisive action at once in favor of a federal union, so that the imperial government would be justified in taking the course he had recommended to them.

There is but one further reference in the proceedings of the Australian Association to the subject of a general assembly, and that is of the nature of a valedictory statement.[1] In reviewing the labors of the permanent committee during the past year, in the annual report to the Association members, the Committee referred to the memorial to the Secretary for the Colonies in the following terms: "They had the satisfaction of being able to state that their exertions have been appreciated by the several colonial legislatures." The reply of Mr. Labouchere had, in truth, convinced the Association of the fruitlessness of further action on their part upon this question, and they accordingly turned their attention to other matters on which they might lend practical assistance to the Australian colonies.[2]

In the meantime, the question of a federal union was experiencing a genuine awakening of interest throughout the Australian colonies, and especially in Victoria, whose politicians aspired to the leadership of the intercolonial politics of the Australian group, in virtue of the colony's premier position. In a speech of Nov. 25th, 1856, at the opening of the first parliament of Victoria[3] under the new constitution, the Governor announced a somewhat extensive program of co-operative action with the other colonies, more particularly in respect to telegraphic communication, lighting of the coast, and assimilation of tariffs. Shortly after, the desirability of uniform legislation upon these and other matters was brought to the attention of

[1] Minute Book of the Aust. Ass., Jan. 24, 1858.

[2] In reminiscences of the Australian Association, Mr. J. S. O'Halloran briefly summarized its subsequent history. "In 1857 the Association discussed questions of imperial representation, but the proposal was withdrawn. In 1859 the weakness of the imperial fleet in Australian waters was brought to the notice of the House of Commons and a deputation waited on the Admiralty. As a result the fleet was augmented, and Australia became a commodore's station. Many other questions such as objections to the revival of transportation, etc., were also dealt with At one time the Association had 231 members, but at the close of 1862 its funds proved inadequate to carry on its objects, and it became necessary to terminate its career."

[3] Vict., V.P.L.A., 1856-7, vol. 1, p. 23.

the Legislative Council by Mr. McCombie, who, on December 11th, 1856, in furtherance of a notice of motion he had already given, moved a resolution to the effect,[1] "That a select committee of the House consisting of Messrs. Hervey, Faulkner, Kennedy, Hood, Keogh, and the mover, be appointed to frame a circular letter to be addressed to the legislatures of New South Wales, Van Dieman's Land, South Australia and New Zealand, setting forth the necessity of uniform legislation for the whole of the Australian colonies, upon the following questions: "(1) The upset price of public lands; (2) The prevention of transportation to any part of Australasia, or to any island adjacent. (3) The coinage of money, and the regulation of its value. (4) Postage and postal communication, both inland and to England. (5) The naturalization of aliens. (6) Military establishments. (7) Light-houses, railways, tariffs, or duties, and excise, etc. (8) And suggesting that as these and many other subjects not so much of a local as of a general character, and having reference to the trade, good government, prosperity and progress of all the Australian colonies, will frequently have to be debated, it would naturally tend to facilitate public business, if, in the absence of any federal union, delegates from the various legislatures were to meet once a year to deliberate upon measures of the character referred to."

In an able but lengthy speech in support of this resolution, Mr. McCombie urged that those subjects which concerned the whole group of Australian colonies could most appropriately be regulated "under some system of federation." The imperial authorities, as was evident from their attitude in 1849, were favorable to some form of federal union. The bill of the Russell government had been wrecked by its violation of "the only just principal in a confederation," namely, that all the states should be placed on an equality. "His resolution, although it certainly had a federal union of the Australian group of colonies in contemplation, did not go exactly that length, but simply for union, where diverse legislation would be injurious." A union of the colonies by "a like federal tie" would not only heighten their influence, and augment their prosperity, but would add "to the glory of the motherland" without materially affecting their relations with her. Australian statesmen must look to the future, for within the short space of a quarter of a century, she would be the

[1]Victorian Hansard, 1856-7, vol. I, p. 108.

leading power of the southern Pacific. "From the importance of the Australian colonies, it was high time that something towards the object of uniform legislation if not federal legislation, had been accomplished." Whether they continued as dependencies of the British Crown, or became a group of independent states, they must follow the course of the American colonies by uniting in a grand federation. The metropolitan cities of Australia were even now larger than the chief American cities at the time of the Continental Congress and their import and export trade was vastly greater. Even though the other colonies might not meet them "in a liberal spirit," it would be honorable to this colony to have originated the movement which "the laws of progress must ultimate." Even if one legislature should mistakenly refuse to co-operate, others might be more far-seeing, and the adherence of one would speedily necessitate the accession of the others. It would be better for the colonies to unite at once in a federal bond, than be at the great trouble and inconvenience of later having to retrace their course in order to secure the desired uniformity of legislation. Australian unity would prevent the policy of meddlesome interference of the imperial authorities in their domestic affairs. He hoped the present motion by calling attention to the need of a federal concert, would be a means of ultimately bringing about a federal union. An Australian federal constitution must be somewhat different in character from that of the United States on account of the dependent relation of the colonies to the motherland, which formed a great imperial bond of union within which a lesser local federation must be organized. There should be uniform legislation on all questions of a social and general nature, such as those set out in the resolution, which would serve not only to unite the material interests of the colonies, but to bind them together by the closest ties of amity and friendship. Even though the other colonies did not immediately respond to this suggestion, it was well to draw attention to a subject which the progress of Australian colonization would compel them to soon consider in its practical aspects.

But the strong and logical argument of Mr. McCombie did not meet with the consideration it merited. Objection was at once taken by several of the members to the constitutional propriety and expediency of the course proposed by the Honorable

member.[1] It was urged that the Legislative Council was not competent alone to move in the matter, and that the subject was of such a nature as to demand a conference of the two Houses before any action could be taken, and that the sister colonies might, and probably would refuse to communicate with this House without the concurrence of the lower chamber.[2] It was contended that the motion was premature and the time inopportune for its introduction;[3] the very importance of the question, which was generally recognized, was adduced as an argument for withdrawing the resolution. Mr. Faulkner urged that they should not rush hastily into the matter. The relative value of waste lands was in itself a topic presenting a most formidable obstacle to any scheme of a federal union. On several of the subjects, such as transportation, postal communication, lighthouses and railroads, he thought that uniform action might be attained, but he anticipated difficulty in respect to the military defence of the colonies, as Victoria was differently situated in this regard from the other states. It was moreover possible that two other colonies might combine in a federal assembly to the injury of Victoria. He suggested that the motion be deferred until the Council was in possession of more information. Mr. McCombie stated, in reply, that he proposed asking the other House to join in the resolution but as there were as yet no standing orders, a conference could not be arranged. He offered to postpone the resolution, but the concession failed to satisfy Mr. Hodgson, who intimated that, unless the motion were withdrawn, he would move the previous question. "Seeing that the feeling of the House was against him," Mr. McCombie reluctantly withdrew the resolution.

The federal movement in Victoria was now about to enter upon a period of unusual interest and activity. A new apostle of the gospel of federation had recently arrived from over the seas, and had almost immediately entered upon an active missionary campaign on its behalf. Mr. Gavan Duffy's experience in Ireland had not cured him of his taste for politics, and he was soon engaged in the party struggles and political agitation of his adopted land. It was but natural to the man who had struggled for the creation of an Irish nationality, that the noble conception of an Australian citizenship should have appealed with

[1]Vict. Hansard, 1856-7, vol. I, p. 111.
[2]Mr. Urquhart.
[3]Messrs. Cruickshank and Hodgson.

irresistible force. Duffy enjoyed a great advantage over the local political leaders, in that, from his European training and experience, he had acquired a broader range of vision and a deeper appreciation of the national factors that enter into the life of a state. Moreover, he was free from the petty provincial pride and the small jealousies and suspicions, which played so large a part in the intercolonial relations of the several governments. To his mind, the differences and mutual rivalries of the provinces seemed insignificant alongside of the grand fundamental fact of the inherent national unity of the Australian people. With all the ardor of his Irish nature, he threw himself, heart and soul, into the federal movement, which promised to afford full scope for his talents and energy.

One of the most crucial questions that faced him on his arrival was his future attitude towards the imperial Crown. Dr. Lang had received him with open arms, as a valuable recruit to his propaganda, and had published a manifesto of welcome[1] in his honor, in which he called upon him "to strike the key note of Australian freedom and independence, and every Australian colony will reverberate the sound." But Duffy was too shrewd a politician to be deceived by the harangues of the militant clergyman, and in a tactful letter of May 27th, 1856,[2] he dissociated himself from the agitation of the latter without, at the same time, committing himself to any course of conduct upon the question of independence, or disclosing the aim he had in view in striving for a federal union of the colonies. "I cannot for a moment conceive of an Australian policy which would commend itself less to my judgment," than to seek to ripen "by public agitation or artificial stimulants the natural growth of events," which in "the fullness of time will bring the fullness of liberty to this new world." The colonies he argued should first become accustomed to, and demonstrate their capacity for self-government before aspiring to the higher functions and honor of statehood. Having freed himself from this undesirable connection, Duffy was at liberty to carry on his campaign upon truly national and federal lines.

The important part which Duffy had played in Irish affairs, warmly commended him to the hearts of his compatriots in Australia, so that within a short space of time he had gained a prom-

[1] Rusden, Hist. of Aust., vol. 2, p. 652.
[2] The Launceston Examiner, June 17, 1856.

inence and an influence in colonial politics which enabled him not only to place himself at the head of the federal movement in his own province, but also to command the attention of the citizens of the adjoining colonies. In his earliest utterances in Victoria, he pointed to a federal union as the true national policy of the Australian colonies.[1] The favorable reception which was accorded his views by the press and public, encouraged him in the belief that the time was opportune for a general federal propaganda. A visit to New South Wales afforded an excellent opportunity of stirring up the embers of the federal sentiment in the mother colony. A banquet in his honor[2] at Sydney almost assumed the form of a demonstration in favor of federation, so pronounced were the utterances of several of the speakers on the question. Mr. Duffy declared that some federal connection would soon become indispensable to the national progress of Australia. "There was no separation in fact and there should be none in feeling." A common race, a common interest and a common destiny united the colonies in an inseparable unity. Mr. W. B. Dalley voiced the opinion of the gathering in hoping "that the principle of framing all the colonies into one Australian community would be carried out through Mr. Duffy's efforts." Mr. Duffy's own enthusiasm was contagious, and he was prone to believe that the sympathetic interest of his immediate friends and political associates was representative of the feeling throughout the country. But he overlooked the fact that the public might not, like himself, be able to appreciate the grandeur of the conception of Australian nationalism, while they could and did feel, on the other hand, a keen sense of the immediate advantages of provincial independence, and a latent suspicion towards the advocacy of a federal union on personal, local and imperial grounds.

A fortunate election to the first Legislative Assembly of the colony enabled Mr. Duffy to presently bring the question of federation prominently before that body. On October 18th, 1856,[3] he gave notice of a resolution "for the appointment of a committee for the purpose of considering and reporting on the best means to be adopted for the accomplishment of a federal union

[1] In appealing to the electors of Villiers and Heytesbury in 1856 he urged that means should be devised to rouse "a national Australian spirit to force us all into one." Rusden, Hist. of Aust., vol. 3, p. 172.
[2] The Sydney Morning Herald, Mar. 12, 1856.
[3] The Vict. Hansard, 1856-7, vol. 1, p. 163.

between the whole of the Australian colonies." But as the wording of the motion was objected to by some of the members of the government, as committing the House and the select committee in advance to the principle of a federal union,[1] Mr. Duffy altered the terms of the resolution so as to meet their views. Accordingly, on January 16th, 1857, he moved,[2] pursuant to amended notice, for a select committee "to consider and report upon the necessity of a federal union of the Australian colonies for legislative purposes, and on the best means for accomplishing such a union, and that the following members constitute the committee: Messrs. Childers, O'Shanassy, Moore, Michie, Foster, Horne, Griffith, Evans, Harker, Syme, McCullough and G. Duffy."

In reply to a question by Captain Clarke, the Surveyor-General, who pronounced himself "most decidedly" opposed to a federal union, Mr. Duffy explained that the first part of the amended resolution had been introduced with a view to leaving the members unpledged in regard to the principle of federation. The effect of this modification was to enable the Committee to freely pass upon the whole question of the necessity or advisability of a federal union, whereas under the original notice of motion, the need of such a union had been prima facie assumed. It will also be noticed that, by the new clause, the attention of the Committee was directed to the consideration of a union "for legislative purposes." The addition of this clause was not however intended to restrict the freedom of the Committee in any way to pass upon the general question of the form of a federal government which would be most practicable and the best adapted to Australian conditions.[3] It is evident from these proceedings that the opinions of the legislators were not nearly so advanced, nor so clearly formulated on the subject, as Duffy had been led to suppose. The members refused to be hurried into even an approval of the abstract principle of a federal union, until they were allowed time for a careful consideration of its various bearings. The majority of the members were not hostile, but only conservative, and Mr. Duffy found it necessary to regulate his enthusiasm according to the temper of the House. As thus amended, the resolution was agreed to without further discussion.

[1]The Vict. Hansard, 1856-7, vol. 1, p. 286.
[2]Ibid, p. 286. Vict., V.P.L.A., 1856-7, vol. 1, p. 175.
[3]See Report of the Committee.

The Committee selected was made up of excellent men,[1] chosen from both parties without regard to political opinions. Three of its members afterwards became Premiers of the colony;[2] six filled important positions in various governments, and one became an English cabinet minister.[3] The non-partisan character of the federal question is well brought out in the personnel of the Committee, only two members of which were chosen from the right of the Speaker;[4] singular to state the name of the Colonial Secretary was omitted, but the government was well represented by Mr. Childers, the Collector of Customs, who took a genuine interest in the subject;[5] on the other hand, seven supporters of the opposition,[6] including some of its most influential leaders were given a place on the Committee, together with several representatives from the cross-benches.[7] No doubt, in choosing the Committee, Duffy sought, as far as possible, to secure members in personal sympathy with the object in view.

The labors of the Committee were carried on under most inauspicious circumstances. The instability of parties in the legislature produced a series of political crises, there being no less than three governments in office[8] during the few months of the Committee's existence. These changes in the Ministry necessitated a renewal of the membership of the Committee upon two occasions, though its personnel remained unchanged throughout, save for the disappearance of Mr. Childers.[9] The proceedings of the Committee reveal a lamentable lack of interest on the part of the majority of the members, since at three out of six sittings, no quorum could be obtained, and for over three months its labors were suspended.[10] Even when the Committee did manage to get together to do business, the attendance was so small as barely to constitute a quorum. Mr. Rusden[11] accounts for this

[1]Parkes, Fifty Years in the Making of Aust. Hist., vol. 2, p. 333. G. Duffy, The Road to Aust. Federation, Contemporary Review, Feb., 1890.
[2]Messrs. O'Shanassy, McCulloch and Duffy.
[3]Mr. Childers.
[4]Messrs. Childers and Griffith.
[5]Duffy, My Life in two Hemispheres, vol. 2, p. 163.
[6]Messrs. O'Shanassy, Michie, Horne, Moore, Hacker, Syme and Duffy.
[7]Messrs. Moore, Foster, McCulloch.
[8]The Haines ministry up to Mar. 11, 1857. The O'Shanassy, Mar. 11 to Apr. 29, 1857. The Haines ministry, Apr. 29, 1857, to Mar. 10, 1858.
[9]Vict., V.P.L.A., 1856-7, vol. 1, p. 251.
[10]The Committee discussed the question on Feb. 10 and Feb. 26. On July 7 9 and 30 there was no quorum. On Sept. 8 the report was adopted. Minutes of the Proceedings of the Committee. N.S.W., V.P.L.A., 1857, vol. 1, p. 394.
[11]Rusden, Hist. of Aust., vol. 3, p. 106.

on the ground of the general suspicion which was entertained of the loyalty and motives of Mr. Duffy whose Irish antecedents and recent public utterances led many to believe that his ultimate goal in advocating a federal union was to effect the independence of the colonies. But this explanation reflects too seriously on the well known patriotism of the other members of the Committee who joined in the recommendation of the report, to receive due credence or deserve a specific refutation. It is far more reasonable to suppose that the slackness of attendance was mainly due to the political commotion of the House and to the series of bye-elections which affected several of the members, partly also to the limited political experience of Mr. Duffy in Australian affairs,[1] and to the general indifference of public opinion in the face of pressing provincial concerns. Mr. Duffy, who was appointed chairman of the Committee was practically its constituting member, for on him devolved the labor of preparing and presenting the report. At a final meeting of the Committee on September 8th, 1857,[2] the draft report on motion of Mr. McCullough, was adopted without dissent. The following day, Mr. Duffy brought up the report which by an interesting coincidence was presented to the House on the same day that the Governor laid upon the table the correspondence of the Australian Association with the Secretary for the Colonies.

The report reads as follows:[3]

"The necessity of a federal union of the Australian colonies for legislative purposes, and the best means of accomplishing such a union, if necessary, having been referred to the present Committee, they have given these questions of national policy the prolonged and deliberate consideration which their importance demanded.

"On the ultimate necessity of a federal union, there is but one opinion. Your Committee are unanimous in believing that the interests and honor of these growing states will be promoted by the establishment of a system of mutual action and co-operation among them. Their interests suffer, and must continue to suffer, while competing tariffs, naturalization laws and land

[1] Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. x.

[2] Members present, G. Duffy, in chair, Messrs. McCulloch, Moore, Hacker, O'Shanassy. N.S.W., V.P.L.C., 1857. p. 108.

[3] N.S.W., Jr.L.C., 1857, p. 107. N.S.W., Jr.L.C., 1859-60, pt. 2, p. 683. N.S.W., V.P.L.A., 1857, vol. 1, p. 393. Vict., V.P.L.A., 1856-7, vol. 3, p. 141. Tas., Jr. H. A., 1867, vol. 2, no. 73.

systems, rival schemes of immigration and ocean postage, a clumsy and inefficient method of communicating with each other and with the home government on public business, and a distant and expensive system of judicial appeal exists; and the honor and importance which constitute so essential an element of national prosperity, and the absence of which invites aggression from foreign enemies, cannot perhaps in this generation belong to any single colony of the southern group, but may, and we are pursuaded would, be speedily attained by an Australian federation representing the entire.

"Neighboring states of the second rank inevitably become confederates or enemies. By becoming confederates so early in their career, the Australian colonies would, we believe, immensely economize their strength and resources. They would substitute a common national interest for local and conflicting interests and waste no more time in barren rivalry. They would enhance the national credit and obtain much earlier a power of undertaking works of serious cost and importance. They would not only save time and money, but obtain increased vigor and accuracy by treating larger questions of public policy at one time and place and in an assembly which it may be presumed would consist of the wisest and most experienced statesmen of the colonial legislatures. They would set up a safeguard against violence and disorder, holding it in check by the common sense and the common peace of the federation. They would possess the power of more promptly calling new states into existence throughout their extensive territory, as the spread of population required it, and of enabling each of the existing states to apply itself without conflict or jealousy to the special industry which its position and resources render most profitable.

"The time for accomplishing such a federation is naturally a point upon which there is a variety of opinion, but we are unanimous in believing that it is not too soon to invite a mutual understanding on the subject throughout the colonies. Most of us conceive that the time for union is come. It is now more than eight years since the Privy Council reported to Her Majesty 'that the want of some such general authority for the Australian colonies began to be seriously felt.' At present, a federal assembly would not only have the control of a larger territory than any of the great powers possess in Europe, but of a population exceeding that of several of the smaller sovereign states, and of

a revenue which equals or exceeds the revenue of the kingdoms of Belgium, Sweden and Norway, Hanover, Holland, Naples, Hungary, Turkey, Bavaria, Saxony or Greece. Some of the most renowned federations of history had less population or wealth and certainly possessed infinitely inferior agencies of government, than belong to an age of telegraphs and railroads.

"Of the best means of originating such a union, we are unanimous. No single colony ought to take exclusive possession of a subject of such national importance, or venture to dictate the program of union to the rest. The delicate and important questions connected with the precise functions and authority of the federal assembly, which present themselves on the threshold of the enquiry, can be solved only by a conference of delegates from the respective colonies. The course we recommend therefore is that such a conference should be immediately invited. To it will properly belong the duty of determining whether the plan of union to be submitted to the people shall propose merely a consultative council authorized to frame propositions for the sanction of the state legislatures, or a federal executive and assembly with supreme powers on national and intercolonial questions, or some compromise between these extremes. And to it also must be referred such minor questions as the following, which press for a decision.

"If a consultative council be adopted, can it act without the aid of ministers charged to submit measures for its consideration? Is it desirable to constitute it a court of impeachment for the colonies? Shall its deliberations be restricted to certain specified questions and if so, to what questions?

"If the plan embrace a federal legislature and executive, is the legislature to consist of two branches? Must an absolute majority of its members or the representatives of a certain number of states concur to make its decisions law? Are its laws to take effect directly on the population of Australia, or only after the assent of their respective states? Are they to be administered by the existing colonial judicatures or by federal courts? If its orders are violated by any state of the federation, how are they to be enforced? Shall it possess the power of taxation or only of assessment on the respective states?

"In either case, where shall the federal body sit, or shall it be rotatory? If the latter, shall the governor of the state where

it sits for the time being exercise the royal prerogative on its bills, or must they be sent to the Governor-General or senior governor?

"These and similar questions must be determined before a coherent scheme of federation can be framed, but we do not feel at liberty to offer an opinion on any of them.

"In order to invite a conference of the colonies it is necessary to make some specific proposition, and we therefore recommend:

"1. That the legislatures of New South Wales, South Australia and Tasmania be requested to select three delegates each, two of whom might be members of the assembly, and one a member of the council, to meet three delegates from this colony.

"2. That these delegates in conference assembled be empowered to frame a plan of federation to be afterwards submitted for approval, either to the colonial legislatures, or directly to the people, or to both, as may be determined, and to receive such further legislative sanction as may appear necessary.

"3. That the expenditure incident to the conference shall be borne by the respective colonies in whatever proportion may be fixed by the conference itself.

"4. That the conference shall hold its meetings in whatever place the majority of the delegates may determine, their decisions being interchanged in writing within one month of their election being completed.

"If your Honorable House think fit to adopt these recommendations, it will be necessary to present an address to His Excellency the Governor, praying that he may communicate with the governors of the other colonies named, requesting them to submit the proposal to their respective legislatures for consideration.

"And we further recommend that this report be communicated by message to the other House, inviting their concurrence in the selection of delegates from Victoria, in case the project is accepted by the other colonies.

"In conclusion, your Committee are fully convinced that a negotiation demanding so much caution and forbearance, so much foresight and experience, must originate in the mutual action of the colonies and cannot safely be relegated even to the imperial legislature."

While the report was nominally a recommendation of the select committee, in reality it was an expression of the opinion of Duffy himself, modified, to some extent, so as to prove more acceptable to the conservative members. In the splendid marshalling of the arguments in favor of a federal union, we see the political art of Duffy at its best. It is doubtful if an abler and more comprehensive statement of the national advantages of federation is to be found in the whole history of the federal discussion. It appeals to Australian experience, to material interests, to foreign danger, to national pride, to the various instincts and motives of colonial political existence, to attest the desirability of federation. In one striking sentence he applies the political philosophy of history to the condition of the Australian provinces, that "neighboring states of the second rank inevitably become confederates or enemies." Upon the desirability and the ultimate necessity of a federal union the Committee were in perfect accord, but upon the more practical question of the time for its accomplishment, there was an unfortunate division of opinion. The majority of the members agreed with Duffy that now was the acceptable time, but a cautious minority refused to be moved by the eloquence, the earnestness, or the logic of the chairman, and would go no further than to admit "that it was not too soon to invite a mutual understanding on the subject."

The Committee were likewise a unit upon the best means of originating a union. This was much the more difficult and delicate aspect of the subject with which to deal, on account of the jealousies of the colonies, but Mr. Duffy handled the matter with much discretion and moderation. The report laid down as a primary principle of the federal movement, that no single colony should seek to "dictate the program of the union;" the federal question it was recognized was one of national concern in which all were equally interested. Had the spirit of this maxim been carefully observed, there would not have been that selfish desire which was unfortunately manifested at times to place one particular colony at the head of the movement, and to utilize the national aspiration as a means of promoting the interests of one state without due consideration to the feelings and interests of the sister provinces. The suggested intercolonial conference was somewhat different in character from the constitutional convention of the Australian Association. As its name, the limitation

of its numbers, and its functions signified, it was merely a small congress of delegates appointed for the express purpose of devising a plan of union for submission to the colonial legislatures or the people. It did not differ from the ordinary conference except in so far as the purpose of its meeting and the subject matter of its deliberations were of higher constitutional importance. It was to be a delegated not a constituent body, and its authority was limited to the drafting and recommending of the form of a federal government. While on the one hand, Mr. Duffy's proposals were much less pretentious and authoritative than Mr. Wentworth's, on the other they were more compatible with the autonomy of the colonies, and the rising spirit of democracy.

It will be observed that while the formal resolutions of the report speak of a reference of the plan of federation either to the colonial legislatures or directly to the people or to both, either unintentionally, or by design, the report itself speaks only of submission to the people, from which we may perhaps conclude that Mr. Duffy would have preferred a popular constitutional referendum similar to that in use in the United States. The principle feature in which the proposals of Wentworth and Duffy are in agreement is in the recognition of the principle of equality of representation in the constitutional convention. No opinion whatever was offered upon the form of union which might best be adopted; the report contenting itself with stating in the shape of a series of queries some of the more important constitutional questions which would have to be determined by the conference in drafting the measure. Of these the fundamental question was in regard to the juristic character of the union, should it be a consultative council or a true federal government or a compromise between these extremes? The report throws no light whatever upon the opinion of the members of the Committee upon this point, though there is reason to believe from the nationalistic tone of Mr. Duffy's speeches at this time that he would have preferred the closer form of federal union, were it attainable. The subsidiary questions are for the most part but a detailed amplification of the above primary constitutional question. The nature of the federation once decided, the minor features of the constitution might be readily deducible therefrom.

The vagueness of the recommendations of the Committee may in the view of Mr. Barton,[1] be considered as evidence that "public opinion on the subject had not then taken any definite form even among advanced thinkers." Undoubtedly there is much truth in this observation, but the statement should be supplemented by the further explanation that the Committee studiously avoided any attempt to formulate a plan of constitution for fear of giving offence to the other colonies. It was part of the political skill of Mr. Duffy to refrain from identifying Victoria too prominently with the leadership of the movement, and not to commit her in advance to any definite form of federal constitution. The task of constitution making was wisely regarded as the proper function of the conference, and not a matter to be determined ex parte by any particular colony.

The resolutions of the Committee, which were intended to be mere suggestions for the organization of the conference, were few and simple. The respective Houses should select their delegates to the conference from out of their own membership. The idea of a popularly elected convention, as in the United States, had not yet arisen, and was moreover incompatible with parliamentary principles.[2] The plan of union was to be submitted to the ratification of the legislatures, or to a popular referendum or to both as might be determined upon, but by whom to be determined whether by the conference itself or the respective legislatures, we do not know. The further legislative sanction which might appear necessary, is presumably a reference to the possible necessary intervention of the imperial parliament to pass a confirmatory act for making the draft federal constitution legally effective throughout the colonies. Duffy did not anticipate that this would be required,[3] but as a precautionary measure it was probably thought wise to introduce the clause. The expenses of the conference were to be apportioned by the conference itself. In order to avoid the dilatoriness characteristic of such bodies, the delegates were required to determine the place of their meeting by a consultative exchange of opinion within one month of their appointment. The

[1]Barton, Hist. of Aust. Fed., Year Book of Aust., 1891, p. x.

[2]The fundamental conception of English parliamentary government is the supremacy or sovereignty of parliament, not of the people, and for this reason the highest constitutional power, namely, the function of constitution making or revision, is lodged in parliament and not reserved to the nation.

[3]The Vict. Hansard, 1856-7, vol. 2, p. 1197.

report concluded with the recommendation that the above proposals be submitted to the other colonies, and that the concurrence of the upper house be requested in them.

One interesting observation at the close of the report in respect to the conduct of negotiations brings out most strongly the popular objection to any outside interference. It is plainly intimated, probably for the benefit of the Australian Association[1] and the Colonial Secretary, for Mr. Duffy had no desire to appear like Wentworth as a suppliant to the British parliament,[2] that this subject must "originate in the mutual action of the colonies and cannot be safely relegated even to the imperial legislature." The extreme jealousy of the local parliament in regard to this matter had found fitting expression in the assembly a short time previously, when Mr. Hughes called the attention[3] of the House to the action of a committee of gentlemen in London, "a sort of convention arrogating to themselves powers which they had no right to possess." Their action, however well intended, was unwise, and could only lead to unsatisfactory results. Mr. Haines, the Colonial Secretary explained that his government had had no communication with the British authorities on the subject, and had not authorized anyone to make representations on their behalf. As the Association "appeared to be an unauthorized body," he had merely acknowledged the receipt of the documents containing the correspondence which had been forwarded by the home government.

On September 5th, 1857, Mr. Duffy moved[4] the adoption of the report of the Committee on federal union, and of the resolutions necessary to carry its recommendations into effect. In support of his motion, he stated that "no specific resolution was involved in the report," and since all that was desired of the House was an affirmation of the proposition that the time had come when a federal conference was desirable, he did not expect any opposition to the proposal. Nor did he believe that it would be necessary to obtain imperial sanction for a union, as a constitution based upon federal principles had been recently conceded to New Zealand. Mr. Haines the Colonial Secretary, before agreeing to the motion, desired to know the meaning of the words "to the people" in the second resolution. The govern-

[1]Quick and Garran, Annot. Const. of Aust., p. 96.
[2]Turner, Hist. of Vict., vol. 2, p. 331.
[3]Aug. 20, 1857. The Vict. Hans., 1856-7, vol. 2, p. 1096.
[4]Ibid, p. 1197. Vict., V.P.L.A., 1856-7, vol. 1, p. 482.

ment admitted that some federal measure was required, and were generally disposed to concur in the Committee's recommendations. A further remark to the effect that he would defer expressing a final opinion upon the question, until resolutions based on the Committee's recommendations were presented to the House, called forth from Mr. Duffy the explanation that the resolutions were only intended as suggestions to which the chamber was not committed. It is evident from the attitude of the Colonial Secretary, that while in sympathy with the report, he did not wish to pledge either himself or the government absolutely to the policy of a federal union. Mr. Michie was favorable to a federation, but shared in the objection to the reference of the constitution to the people. He pointed out that in this case the constituencies of all the colonies would have to be consulted, and that "if Victoria carried the propositions by numerical strength, from which the others dissented, they would break away from it." Without unanimity federation could not be a success. He would prefer a submission of the plan of union to each of the colonial legislatures, and to that end moved the excision of the alternative clause of the second resolution.[1]

The only discordant note came from Dr. Greaves, who maintained that the promotion of a federal union would entail an early separation from the motherland. "The time for either the one or the other had not yet arrived although undoubtedly it would come." Several questions had already been settled by negotiation; upon others, in particular the creation of a court of appeal, federal action was required, but he did not see the necessity of providing the elaborate machinery of a federation for that purpose. He severely criticized the Committee's lack of interest in their work, and the hasty manner in which the report had been adopted.[2] The leader of the opposition, Mr. J. O'Shanassy had apparently experienced a change of heart upon this question since his nomination address a few years previously, for he now came out strongly in support of the motion. He considered a federal union immediately desirable on "the ground above all others" of the need of uniform land regulations. A federation would likewise have prevented the present difficulty over the influx of Chinese from South Australia. The colonies would never be respected in the eyes

[1]Vict., V.P.L.A., 1856-7, vol. 1, p. 482.
[2]Vict. Hans., 1856-7, vol. 2, p. 1197.

of the motherland until they had a united parliament. There need be no provincial hesitancy, for a federal union would be equally advantageous to all the colonies. He prophesied that separation would come with the growth of the colonies but at present the time for that event could not be foreseen. Mr. Duffy agreed to accept the proposed amendment, and declared his willingness to leave the delegates to carry on their proceedings in accordance with such instructions as they might receive from the legislature. The resolution as amended, was then agreed to without division,[1] and an address was carried for presentation to the Governor[2] asking him to submit the federal proposals to the governors of the other colonies, and a message was transmitted to the Council requesting their concurrence in the above resolutions.

In the Legislative Council, Mr. McCombie took charge of the resolutions sent up by the Assembly, and on November 17th, 1857, moved[3] their adoption in a speech which was practically a resumé of that delivered by him earlier in the session in support of his own resolution. He regretted that the Council had rejected the honor of originating a federal conference, the need of which was becoming more urgent with the increasing complexity of intercolonial relations. Mr. Miller thought that parliament should be prepared to legislate for the future. These resolutions only paved the way to a federal union for which the colonies might not yet be ripe. He deprecated the narrow-minded view that Victoria was too well off to need to join with the other colonies, and should not do so because perchance they might derive the most of the benefit from union. There were many subjects upon which uniform legislation was required even at the present time. He contended that the general assembly would not have the right to fix the price of waste lands in this colony, so that no danger need be apprehended on that account. A union would be advantageous in abolishing local jealousies, and in knitting the colonies together in a friendly association. Mr. Faulkner opposed the resolutions as premature, for so long as the colonies enjoyed the protection of the imperial government a federation was not required. The subjects upon which it was claimed common action was desirable, could be satisfactorily settled at present by intercolonial agreement. Unless they cre-

[1]Vict., V.P.L.A., 1856-7, vol. 1, p. 482.
[2]Copy of Address, N.S.W., V.P.L.A., 1857, vol. 1, p. 392.
[3]Vict. Hans., 1856, vol. 2, p. 1374. Vict., V.P.L.C., 1856-7, vol. 1, p. 413.

ated a president, which he never wanted to see, there would be no power to enforce the legislation of the federal assembly. They did not want Dr. Lang or Mr. Wentworth set over the colonies. If a union were formed the other provinces would combine to plot against Victoria, and sacrifice her interests in the Assembly. An army and navy would likewise be requisite to maintain the authority of the federation within its bounds, and to assure the colonies international protection. As a federal union would be a failure at present, they should not waste the public money upon it. Several other members briefly expressed opinions favorable to the resolutions either on the ground that the time for union had arrived,[1] or that it would be bad form to reject the resolutions when some of the other colonies had agreed to them.[2] The motion was then adopted without division, and an address in accordance therewith was prepared for presentation to the Governor.

The debate in the two Houses shows how strongly pronounced was the sentiment in favor of union. Only two speeches were delivered in opposition to the resolution, in both of which the common ground was taken that federation meant imperial separation and a sacrifice of provincial interests, and that the advantages of union could be secured by co-operative action. But neither the appeal to the sentiment of imperialism, nor to the suspicions of a narrow provincialism made any material impression upon the liberal views of the general body of legislators; in fact the opponents of the principle of a federal combination were in such a hopeless minority that they did not dare challenge a division in either chamber. The most influential members of the Assembly, including the leaders of the government and the opposition, expressed their concurrence in the principle of federation, and acknowledged its utility in view of the present state of intercolonial relations. The discussion revealed a marked difference of judgment as to the immediate preparedness of the colonies to effect a federal union, but there was a hearty agreement in the opinion that steps should be at once taken to reach a mutual understanding with the other provinces upon the subject. Several of the speeches evidenced a strong nationalistic tendency, and a sense of the common unity of the Australian people. The parliamentary discussion was to a large extent a

[1] Mr. Urquhart.
[2] Mr. Hood.

reflection of the views set forth in the report. No attempt was made by the speakers to define the form of a constitution which Victoria would desire, or to specify the conditions under which she would be prepared to enter into a federal union. The Legislature merely discussed and agreed upon the desirability of union, and the preliminary steps to be taken for its attainment.

In accordance with the addresses presented to him by the two Houses, Sir H. Barkly instructed the Colonial Secretary to forward copies of the report of the select committee to the Governors of the other colonies for their consideration. The despatch of Mr. Haines[1] accompanying the report, throws considerable light upon the attitude of the government, and the intention of the legislature in entering upon the federal negotiations. The experience of the last few years, he declared, had demonstrated that there was a class of federal questions upon which the action of one colony affected the interests of all. Heretofore the colonies had endeavored to deal with these matters as they arose from time to time by the holding of a series of intercolonial conferences, the decisions or deliberations of which were subsequently referred to the respective legislatures for final determination. But the present report of the Victorian select committee "indicates a desire to invest the delegates of the different colonies with a more directly representative character than that which belongs to nominees of the government. Although this principle is not objectionable it remains to be seen whether it can be satisfactorily carried into practice under the present circumstances of the colonies." It would be the duty of the conference to decide "what changes if any should be made in the mode of dealing with subjects affecting the Australian colonies generally." He requested in conclusion, that the recommendations of the report be brought before the local legislature for favorable consideration.

The attitude of the Colonial Secretary, as revealed in this letter, was not calculated to stimulate much interest in the other colonies. He showed himself to be at best but a lukewarm supporter of the federal cause by casting doubt in advance upon the possibility of a conference being held, and by speaking of the principle of federation which he had commended in the House as "not objectionable," but of doubtful applicability. He con-

[1] N.S.W., Jr.L.C., 1857, p. 105. N.S.W., V.P.L.A., 1857, vol. 1, p. 391. S.A.P.P., 1857, vol. 2, no. 171. Tas., Jr.H.A., 1867, vol. 2, no. 73.

ceived of the suggested union as of the nature of a consultative council or a loose confederation. The intention of the Legislature according to his interpretation was to establish an improved form of intercolonial conferences, which would differ from the occasional congresses of delegates now held, only in having a more representative character and possibly a more permanent constitution. The statement of the Colonial Secretary can scarcely have been intended to commit the Victorian delegates to this looser form of federal organization at the approaching conference in the face of the resolution of the Committee to leave that question to the decision of the conference itself; the explanation, on the contrary, was only designed to afford the necessary information to the sister governments and legislatures, as to the purpose of Victoria in issuing the call for a federal congress.

This little incident illustrates one of the difficulties with which the federal movement had to contend. The friends of federation might successfully take steps in one of the legislatures to initiate or secure the approval of some particular line of policy. The co-operation of the sister colonies then became necessary to any further action, and for this purpose the services of the government were required to open up and carry on official negotiations with the executives of the other states in regard to the matter. But it might happen, as in this instance, that the local Ministry was lukewarm or indifferent, or might possibly even be hostile to the object in view, so that the efforts of the federal leaders would be unsympathetically supported or even retarded by the chief officials of their own government. But any coolness in the cause of union on the part of Mr. Haines, was in this case made up for by the energy of Mr. Duffy himself, who as chairman of the Committee undertook the duty of unofficially communicating with the political leaders of the other colonies. This task he found a very easy and congenial one "as they were all prepared to assist the beginning which had been made."[1] Federal prospects at this moment seemed more promising than at any former period.

The appointment of Mr. Duffy's select committee attracted considerable notice in New South Wales. There was an indefinite feeling in the mother colony in favor of some form of

[1] C. G. Duffy, The Road to Australian Federation. Contemporary Review, Feb., 1890, p. 158.

federal co-operation, which the events of the last few years, in showing the importance, the need, and the difficulty of united action, had duly served to strengthen. What was now required was not additional evidence of the desirability of union, which was generally recognized, but some practical measure for effecting a federation, which would preserve the largest measure of provincial autonomy and likewise secure equal advantages to all the colonies. It was hoped[1] that the Victorian committee might be the means of originating a plan of federal union, or at least point the road to its realization. The appearance of the papers of the Australian Association diverted attention to the proposals of that body, which were welcomed as the first practical step in the federal movement.[2] As the product of one of their own statesmen, the memorial was not looked upon with the same critical suspicion that attached to the deliberations of Mr. Duffy's committee. It carried with it the commendation and authority of one who had always proved himself foremost in the defence of his own colony, and who sought with a single mind to promote its future welfare. The attention of the legislature was accordingly turned to the consideration of the Wentworth memorial and correspondence.

On the reassembling of parliament, August 11th, 1857, the influence of Mr. Thompson secured the insertion of a paragraph relative to a federal assembly in the official declaration by the Governor-General of the government's program for the session.[3] "The important questions of an intercolonial character which are constantly arising suggests the establishing of a federal legislature, possessing power and authority for their discussion and determining in the interest of the Australian colonies generally. I recommend this important subject to your early consideration." The paragraph attracted but little attention in either House in the debate upon the address. In the Legislative Council[4] it called forth a passing reference from Mr. Lutwyche,—the leader of the opposition in that chamber, who criticised the government for wasting time in the preparation of such a measure which it would take the whole session to discuss, and which could never be carried. Mr. Thompson, in reply, pointed out that the Honorable member had quite misinterpreted the Gov-

[1]The Sydney Morning Herald, Jan. 26, 1857.
[2]Ibid, June 12, 1857.
[3]N.S.W., V.P.L.A., 1857, vol. 1, p. 4.
[4]The Sydney Morning Herald, Aug. 12, 1857.

ernor-General's reference to the subject of federation, which only involved a consideration of the expediency of union,—a question which had been raised by the Australian Association "in the most tangible shape of an enabling bill." In the Assembly, Mr. Piddington[1] was the only speaker to refer to the topic, and he attacked the proposal in no uncertain terms. He could not understand why the subject had found a place in the Governor's speech, since there was no public demand for it save from a clever writer in The Sydney Herald. There was no constitutional exigency, such as occurred in the United States, to require the establishment of a federal legislature to which the control of provincial taxation must needs be sacrificed. Intercolonial questions and difficulties, he maintained, could be easily settled by the despatch of a delegate to another colony or colonies with plenipotentiary powers to determine any matter in dispute.

Mr. E. Deas Thompson seized the first opportunity of bringing the subject to the early consideration of parliament. In the Legislative Council on August 19th, 1857, he moved pursuant to notice,[2] "That a select committee be appointed to consider and report on the expediency of establishing a federal legislature invested with the necessary power to discuss and determine all questions of an intercolonial character arising in the Australian colonies generally, and to suggest the manner in which the object can be best attained "2. That such Committee consist of the following members—Sir A. Stephen, Sir W. W. Burton, Mr. Knox, Captain Lamb, and Messrs. Want, Holden, Isaacs, Norton, Warren and the mover." The object of the Committee was practically the same as that of Victoria, though the language of the appointment was somewhat less assertive. The character of the members in point of public estimation and ability compared very favorably with that of Mr. Duffy's committee, but from the fact that they were chosen from a nominee House, the proceedings of the Committee were lacking in that popular interest which attached to the presence of a number of prominent and shrewd politicians. It was doubtless better qualified by reason of its constitution, and the judicial training and character of some of its members, to give an impartial consideration to the question of a federal union, and pass an unprejudiced judgment upon it. But on the other hand federation was essentially a

[1]The Sydney Morning Herald, Aug. 13, 1857.
[2]N.S.W., Jr. L.C., 1857, p. 7.

political question, which could only be directed by politicians, and decided by the influences they could bring to bear upon the public.

The motion called forth a brief but interesting debate.[1] Mr. Thompson explained that its object was to promote an inquiry into the question of federation, which had been before the public since 1849, but for the last few years had been "slumbering." It was surrounded by many difficulties, for "while all admitted the desirability of establishing a federal legislature, some doubted its feasibility from the numerous difficulties which might arise from the jealousies of the different colonies, and in apportioning the degrees of representation." The course adopted by the Secretary for the Colonies in reply to the memorial of the London Association was a further reason why a Committee should be at once appointed. He would shrink from the responsibility of himself preparing a measure, but if the House would associate with him the above Committee, "he had the strongest hope that such a report would be prepared as would clear away many of the difficulties which now appeared most prominent." Under the present Ministry many cases had arisen where federal legislation was desirable. He thought the best model for an Australian assembly would be the United States Senate, but he would not go into the Committee with "any strong preconceived notions," but simply with a desire to benefit this and all the other colonies. Mr. Lutwyche declared he would not oppose the appointment of the Committee, if it were willing to serve, but strongly objected to the premature and untimely introduction of the motion when there were now before this Chamber several questions of importance to the interest of this colony, which should first be disposed of before they meddled with intercolonial concerns. Chief Justice Stephen contended, in reply, that the subject of a federal legislature was as "important and as pressing" as any exclusively domestic matter, and that its settlement should not have been so long delayed. Its immediate necessity was shown in the existing unsatisfactory state of the criminal law as between the colonies, which enabled many offenders to escape justice by slipping across the boundary. He advocated the establishment of a neutral belt within which if a crime were committed the offender might be tried in either colony. The erection of an Australian Court of Appeal might

[1]The Sydney Morning Herald, Aug. 20, 1857.

be desirable, but there would be the difficulty of finding judges to constitute the tribunal, whose decisions would command the same respect among the colonists, as a judgment from Westminster, and it would be no easy matter to arrange for the bench to go on circuit from colony to colony to hear appeals. But the practical difficulties of a federal union were no reason for postponing the consideration of the question. A uniform tariff was necessary, and uniform land regulations desirable, though he feared impossible of attainment. But the present question was not as to the manner in which a federal legislature should act, but how best to promote its organization. It would be an honor to this House to place before the colonies such a measure as would assist the other legislatures in passing an opinion on a subject "which would in a few years press irresistibly upon them." Mr. Want urged that the reply of the Secretary of State to the Wentworth memorial showed that no time should be lost in dealing with the matter, for if the Legislature failed to take action this session the establishment of a federal assembly might be postponed for years. In closing the debate, Thompson expressed the fear that instead of the motion being premature it was almost too late, since it would be difficult to secure the co-operation of the colonies after serious complications had arisen. As the intervention of the imperial parliament would be required to create a central legislature, no time should be lost in preparing a feasible plan to lay before the colonial legislatures. The motion was then agreed to without division.

Mr. Thompson was much more fortunate than Mr. Duffy in securing a Committee which took an active interest in its proceedings.[1] All the meetings save one, at which there was no quorum,[2] were well attended, and important resolutions were brought forward for consideration. The Committee had before them the memorial of the Australian Association, which at first exercised a determinating influence over their proceedings, and served as a model for the resolutions in process of preparation. At the first meeting Mr. E. Deas Thompson was called to the chair. The initiative was taken by Sir W. W. Burton a former member of the supreme court who was much interested in the subject of federation, who presented a number of distinct resolutions relative to the organization of a federal assembly, which

[1] N.S.W., Jr.L.C., 1857, p. 117.
[2] Sept. 9, 1857.

were carried seriatim.[1] "That it is expedient that a federal legislature should be established invested with the necessary power to discuss and determine all questions of an intercolonial character arising in the Australian colonies generally. "2. That such Assembly shall consist of such delegates as shall be chosen by the legislatures of the different Australian colonies with power to elect their president from their own body. "3. That each colony be represented by an equal number of delegates, that is to say, four for each of the Australian colonies. "4. That such federal assembly shall have power to legislate on all intercolonial subjects which shall be submitted to it pursuant to a resolution of any two or more of the legislatures of the colonies having an interest therein and on no other subject."

By its first resolution the Committee proclaimed at the very outset the desirability of the principle it was commissioned to investigate, and in so doing practically constituted itself a committee of inquiry into the best means of attaining that object. The first three resolutions were substantially an epitome of the provisions of the Wentworth memorial, but the last was essentially different. Instead of assigning to the federal assembly a definite sphere of legislation over certain enumerated subjects, as had been proposed in the report of the Wentworth constitutional committee, and but recently set forth in the draft bill of the London Association, and moreover suggested in Thompson's speech at the late session, the jurisdiction of that body was now limited to such intercolonial matters "as might be submitted to it by the legislatures of two or more colonies interested." This provision was somewhat similar in character to the recommendation of the Victorian constitutional committee in 1853. While theoretically permitting an indefinite extension of the competency of the federal assembly, practically it would have restricted its jurisdiction within the narrowest limits if not have reduced its authority to a mere name, since the colonial legislatures would not willingly have surrendered any of their powers, save under the pressure of special circumstances. No attempt was made to define what was meant "by intercolonial subjects,"—an expression capable of unlimited expansion or contraction, since almost all domestic questions had an intercolonial bearing and most if not all matters of common concern had a provincial signifi-

[1] Aug. 28, 1857. Members present, Thompson, Warner, Norton, Sir W. Burton, Capt. Lamb and Mr. Holder.

cance. Nor is there any explanation of the apparent difference in meaning between the first and last resolutions of the group, by the first of which the federal assembly was empowered to "discuss and determine all questions of an intercolonial character arising in the Australian colonies generally" while in the final section it was authorized to legislate only on such "intercolonial subjects" as were submitted to it by the legislatures of two or more colonies. The question arises, was the last resolution intended to restrict or amplify the meaning of the first; if the former then the opening resolution was unnecessary and misleading; if the latter, wherein do "questions of an intercolonial character" differ from "intercolonial subjects?" The presence of the two resolutions in seeming conflict with one another is most confusing, since in the absence of any public explanation of the provisions, we are left to blind inference as to the intention of the mover and of the Committee.

At the second meeting of the Committee, Mr. Thompson took the lead, and from this time onward the conduct of proceedings was practically in his hands. He proposed a further series of resolutions which were adopted by the Committee.[1] "1. That the power of assenting to or dissenting from or reserving for the signification of Her Majesty's pleasure thereon, of any acts of the federal assembly should be vested in such authority as Her Majesty may appoint for that purpose, and that such acts should nevertheless be subject to the disallowance of Her Majesty in Council at any time within one year after such assent shall have been given. "2. That such federal assembly should be empowered to make rules and orders for the conduct of its business subject to disallowance by Her Majesty. "3. That such federal assembly should have power to appoint a president at the commencement of each session thereof, and oftener if a vacancy should arise, and fix the amount of its own expenses and the salaries of its officers. "4. That the expenses and salaries of such federal assembly should be equally apportioned between the different colonies represented in the same. "5. That the payment and expenses of the delegates be left to be provided for by the legislatures of the colonies they respectively represent. "6. That the time and place of holding each session of the Assembly should be fixed by Her Majesty or by such authority as she may appoint. "7. That the power of summon-

[1] N.S.W., Jr.L.C., 1857, p. 117.

ing dissolving and proroguing the Assembly should be vested in the same authorities, provided that the Assembly be not summoned unless on the requisition of the legislatures of two or more of the colonies interested in the question to be submitted to it. "8. That the delegates composing the Assembly should be chosen for each session, and that their functions as such cease at its termination."

These provisions are for the most part an embodiment of the draft memorial bill of Wentworth, (to which the Committee duly acknowledged their indebtedness), save for one material alteration in section 4, and the addition of two new resolutions Nos. 7 and 8. The alteration had reference to the mode of apportioning the expenses of the federal assembly, which by this provision were divided equally among the colonies, instead of leaving the amount to be distributed according to the discretion of the Assembly itself. It may be safely presumed, that though this change recognized the equal and independent status of the several provinces, it would scarcely have been acceptable to the smaller colonies, upon which the burden of taxation for federal purposes would have fallen most heavily. The effect of the two new clauses was to further reduce the status of the federal legislature to the level of a provisional council. Deprived of the right of initiating its own legislation, with no independent deliberative authority, owing its very existence to the agreement of two or more colonies, and with the functions of its members limited to a single session which would have destroyed the continuity of parliamentary life, there was little possibility of the Assembly ever rising to the dignity of a federal representative congress. The Committee were evidently prepared to recommend only a minimum measure of a federal union.

Up to this time the Committee had drawn their inspiration from the Wentworth memorial, upon which had been based the series of resolutions which it was evidently their intention to embody in their report. But at this juncture the report of the Victorian committee came to hand, which gave a new turn to the course of events. The Committee were now called upon to determine their attitude towards the federal movement at Melbourne. Should they show a hearty spirit of co-operation by adopting the substance of the recommendations of Mr. Duffy's committee, and thus effect a unity of policy at the outset, or proceed with their own program and produce a report and independent resolutions

which at many points might be at variance with those of the sister colony. To persevere in the latter course would surely wreck all prospect of a common concert, and Thompson accordingly decided to adopt the wise policy of bringing his resolutions into line as far as possible with those of Mr. Duffy.

On the 25th of September, he presented a new group of resolutions[1] of composite origin and character, the first of which was taken verbatim out of Wentworth's draft bill, article 5. Relating as it did to the organization of the federal assembly, in particular to the admittance of new states into the union, it appeared very much out of place at the head of a series of resolutions dealing with the best means of originating such an Assembly. It belonged more properly to the previous resolutions relative to the form of the federal constitution, which it was proposed to set up in the colonies, but which were now discarded in favor of the recommendations of Mr. Duffy's Committee. The other resolutions, with the omission of one clause, were taken bodily from the report of the Victorian select committee. The omission from the third resolution of the words, "or receive such further legislative sanction as may appear necessary," was possibly intended to exclude an appeal to the electorate, but may have been directed against a reference of the constitution to the imperial government. The former explanation would seem the more likely, if we may judge from the remarks of Mr. Thompson during the course of the debate on the appointment of the Committee, to the effect that the intervention of the imperial government would be necessary to create a federal assembly, as also from the language of the Committee's subsequent report, that imperial legislation would not be objectionable if the principles of the federal constitution were first agreed upon by the colonies. But it may have been that Thompson was converted to the views of Mr. Duffy, that the colonists could best frame their own federal institutions without outside interference. It will be remembered that Wentworth had gone even further in this direction by giving to his proposed constitutional convention a plenary power of constitution making.

The individual and collective opinion of the members having been elicited through the general discussion of the whole federal question which the above resolutions had called forth, the Committee instructed Mr. Thompson to draw up a draft report, which

[1] N.S.W., Jr.L.C., 1857, p. 118.

as far as possible should express the common sentiment of the Committee upon the principle and organization of a federal union. Mr. Thompson was very fortunate in the execution of his commission. The report, which was laid before the Committee at its final sitting[1] on October 15th, and adopted unanimously after due consideration, reads as follows.[2]

"The select committee of the Legislative Council appointed on August 19th, 1857, to consider and report upon the expediency of establishing a federal legislature invested with the necessary power to discuss and determine all questions of an intercolonial character arising in the Australian colonies generally, and to suggest the manner in which the object can be best attained have very carefully considered the important questions referred to them and have agreed to the following report.

"In the course of their inquiry your Committee have been forcibly impressed with the expediency of adopting at as early a period as possible some comprehensive measure for the purpose contemplated in the resolutions under which they were appointed. The intricate questions of an intercolonial character which have arisen during the last few years, and which are likely to arise in the natural progress of settlement, as the relations between the different colonies gradually extend, can scarcely, it is conceived, be dealt with by the respective colonial legislatures (even if their powers were adequate, which they confessedly are not), in the manner best calculated to promote the general interest. Local jealousies and local views on particular subjects will, it is feared, frequently exert an influence inconsistent with the determination of questions at issue according to principles of mutual advantage. Independently moreover of considerations of a political fiscal and commercial character, which can be satisfactorily decided by the joint authority of the states interested, there are some of great importance connected with the administration of justice, such for example as the jurisdiction over crimes committed on the borders of conterminous colonies, the power of executing writs in more than one colony, and the like.

"Your Committee are quite aware of the difficulties which at present exist in suggesting any measure for this purpose acceptable to the several colonies concerned and the legislatures

[1] Present, Thompson, Want, Norton, Lamb, Sir W. Burton and Sir A. Stephens. N.S.W., Jr.L.C., p. 118.
[2] Ibid, p. 111.

representing them. Your Committee however conceive that these difficulties will rather increase than diminish by delay, and they entertain a confident hope that when the great advantages to be gained by a liberal and enlightened settlement of the question are duly considered there may be such a general concurrence of opinion on the subject as will lead to the adoption of some safe and practical measure, to which the legislatures of the respective colonies will consent to give their approval. These matters cannot however be definitely settled without the aid of the imperial parliament, to which there would of course be no objection, if the general principle of the measure were primarily agreed upon."

The report then refers to the history of the American colonies as showing the necessity, at an early period of their history, of the formation of a federal union, and quotes at length from Bancroft's account of the short lived New England confederation as illustrative of the process by which an imperfect federal league might point the way to, and prove the basis of a more perfect federal organization.

"The federal union of the Australian colonies," it continues, has been long felt to be highly desirable if not absolutely necessary for their steady advancement and prosperity." As evidence of this fact the Committee appeal to the report of the Privy Council in 1849, the recommendation of the constitutional committee of New South Wales in 1853, the memorial of the Australian Association "which contained some very valuable suggestions for the preparation of a suitable measure to give effect to the object in view," and the recent report of the select committee of the legislative assembly of Victoria, and freely recite many extracts from these several documents in support of the expediency of union.

"Fortified by so many concurrent opinions of high authority, your Committee feel no hesitation in recommending the immediate initiation of measures calculated to carry out the highly desirable object in view, in the firm belief that the federal union of the Australian colonies will contribute more effectually to their general benefit and prosperity than any other measure that can be devised.

"Your Committee are fully alive to the importance of securing, as far as possible, unanimity in deciding upon some common scheme of federation, and they are quite disposed to think that

this object will be best promoted by adopting the course suggested in the above extract from the report of the Victorian committee. They have, therefore, unanimously resolved on recommending it for consideration and approval of your Honorable House.

"Your Committee concur with the committee of Victoria in thinking it better that the precise mode of effecting the object should be suggested not by one colony but by the combined wisdom of delegates from all the colonies. It is only by mutual forbearance and concession that the question can be determined in a manner satisfactory to all of them. Before receiving a report of the committee of Victoria, your Committee had made some progress in the way of suggestions for placing the subject in a practical point of view for legislation. They refer to their proceedings in this direction not with the intention of dictating any precise mode of dealing with the subject, but in the hope that their labors may assist the delegates from the different colonies, if ultimately appointed, in preparing some feasible plan by which the object in view may be brought into operation. It will be perceived that they availed themselves to a great extent of the provisions, they considered advisable for this purpose, of the draft bill prepared with so much ability by the Australian Association in England.

"If your Honorable House should coincide with the views of your Committee, it will be necessary to invite the concurrence of the legislative assembly in a joint address from both Houses to the Governor-General, requesting that His Excellency will be pleased to take the proper measures for placing the subject before the governments and legislatures of the other Australian colonies, in order that the proposed conference of delegates may be held with as little delay as possible.

"It is impossible to contemplate the rapidly increasing population of the Australian colonies, and the future development of the unbounded resources which they undoubtedly possess in the great extent and diversified character of the country which they embrace, from the tropical regions of the northern districts to the more temperate climates of the south, and their consequent adaptation to the production in a high degree of perfection of almost every article suitable to the wants and luxuries of society, without entertaining the most confident expectation that they are destined in the fullness of time to rank among the most im-

portant communities founded by the British nation. It becomes therefore the more necessary in this early stage of their existence, that every means should be adopted to render legislation on matters affecting their common interests mutually advantageous and acceptable. And your Committee are of opinion that a measure of this kind cannot be longer postponed without the danger of creating serious grounds of antagonism and jealousy which would tend greatly to embarrass, if not entirely to prevent, its future settlement upon a satisfactory basis.

"Your Committee for these reasons are induced to urge the expediency of carrying out with the least possible delay the recommendation which they now have the honor to submit for the consideration and approval of your Honorable House.

Mr. Thompson's report, though not so cleverly written as that of Mr. Duffy presents an equally strong and more comprehensive plea for a federal union, supported by an appeal to the political experience, the documentary wisdom, and the national destiny of the Australian colonies. Little if anything new, either by way of argument or suggestion, is added in the report to the existing information upon the subject. A reference to the advantage of co-operation in the matter of intercolonial criminal law, for which the report was probably indebted to the suggestion of the Chief Justice, is practically the only original contribution of any value. Thompson was prepared to follow in the path that Wentworth and Duffy had blazed out before him. In so doing, he showed an abnegation altogether too rare in Australian politics, as he, more than any other man, was entitled by virtue of his previous efforts to assume the direction of the federal movement. In accepting the proposals of the Victorian committee, he virtually surrendered his claim to the leadership of the federalists in favor of that ardent young politician, Mr. Duffy. But to Thompson, the subject of federation itself was of primary importance, and he was willing to co-operate heartily in any efforts which promised to forward that object. He proved by his conduct that he was prepared to forego the honor of attaching his name to an Australian constitution, (an outline of which he had set out to frame with the aid of the Committee), and to play the humble part of joining with his fellow citizens of the other colonies in a conference to consider the feasibility of a federal concert and the plan of a federal constitution. In the early resolutions of the Committee, we are fortunately furnished

with a skeleton form of the federal government which he desired to set up in Australia, from which it will be seen that his views were in practical accord with those of his chief co-adjutor, Mr. Wentworth.

On November 6th, 1857, Mr. Thompson moved[1] the following resolutions on the subject of a federal union.[2]

"This Council, having taken into consideration the report of the select committee on Australian federation, resolve as follows:—

"1. That it is expedient that a federal assembly should be established, invested with the necessary power to discuss and determine all questions of an intercolonial character arising in the Australian colonies generally.

"2. That the best means of originating a federal assembly would be by inviting a conference of delegates from the respective colonies to which will properly belong the duty of determining upon a plan of union, and for this purpose that the legislatures of Victoria, South Australia and Tasmania should be requested to select three delegates each, one of whom might be a member of the council, and two members of the assembly, to meet three delegates from this colony to be similarly appointed.

"3. That these delegates assembled in conference be empowered to propose a plan of federation to be afterwards submitted for approval to the legislatures of the respective colonies.

"4. That the expenditure incident to the conference should be borne by the respective colonies, in whatever proportion may be fixed by the conference itself.

"5. That the conference should hold its meetings in whatever place the majority of delegates may determine, their decision being interchanged in writing within one month of their election being completed."

These resolutions, it will be observed, have a composite origin; the first being selected from Sir W. Burton's resolution in the select committee, and the others from the Thompson series, based upon the report of the Victorian committee. In brief form, they embody the answer of the Committee to the motion constituting it, by asserting primarily the expediency of a federal union and then suggesting the best means for its accomplishment. The resolutions are in substance identical with

[1]N.S.W., Jr.L.C., 1857, p. 20.

[2]He had previously given notice of another series of resolutions which he now withdrew in favor of the present resolutions.

those which had recently been adopted by the assembly of Victoria, so that there was every hope of concurrent action in the two colonies.

In introducing the resolutions, Mr. Thompson stated[1] that the Committee had not thought it necessary to take evidence on the subject, as they considered the question one with which they could deal "without getting information from others." As the Parker government had resigned during the sittings of the Committee, he, as Chairman, thought he was no longer bound to proceed with the consideration of the subject, but upon consulting the Committee, it was deemed inexpedient "to abandon the inquiry, and, at the request of the other members," he continued to act as presiding officer. He had felt diffidence about assuming the chairmanship, but as he was "associated with men of experience, he hoped their labors would be approved by the legislature and public." After briefly referring to the previous efforts which had been made to bring about a federal union he turned to the consideration of the present state of the federal question. It was evident from the reply of Mr. Labouchere to the London Association that, unless the subject was taken up by the colonial legislatures, it would attract little attention in England, and as the proposal could only be carried out by imperial legislation, it was advisable to take steps as soon as possible to bring the matter before the English government. He then reviewed succintly the history, the powers, and the constitution of some of the more important ancient and modern federations, showing an intimate acquaintance with the character and organization of each.[2] The most remarkable of modern federations was the American, and although that country was differently situated from the Australian colonies in being an independent state, yet upon whomsoever the task should fall of framing an Australian constitution, the most valuable assistance would be found in the "Federalist." He devoted considerable attention to an explanation and analysis of the recent federation in New Zealand, from which some valuable hints might be derived, even though it had not worked very successfully.[3] He would not submit the reso-

[1]The Sydney Morning Herald, Nov. 7th, 1857.

[2]The Amphytionic Council, The Achaean League, The Germanic Confederation, The United Netherlands, and The Swiss Confederation.

[3]The federal constitution set up in New Zealand under the imperial act 15 and 16, Vict., c. 72, does not seem to have exercised any influence on the Australian federal movement, save to point a moral against the organization of a similar form of government in the Australian colonies.

lutions as they had been printed, but in a different form, which "by giving the substance of the report, would prevent the necessity of referring to the document itself." These propositions were practically identical with those of the Committee of the sister colony. The Victorian report, which had greatly aided their efforts, was "characterized by a liberal spirit" and your Committee have "unhesitatingly agreed to adopt" its recommendations. He had recently been in communication with Mr. Duffy, and "had pointed out that some difficulty would arise in the choosing of a capital, as each set of deputies might name their own, so that there would be no majority for either. To obviate this difficulty, it was suggested that each deputation should name two capitals, by which means it would happen we would have a majority." He did not know what policy the present Cowper ministry would pursue on the federal question, but he hoped they would not oppose a measure of so much importance to all the colonies. "There could be no reasonable objection to the appointment of delegates," since their proposals would require to be submitted to the colonial legislatures for approval, before they could take effect. Any further delay in initiating this measure would only complicate the difficulties which now stood in the way.

In seconding the resolutions, Dr. Dickson declared no more important subject could be brought before the House. He hoped that Mr. Thompson would continue to "bring his ability and experience to bear upon the question" until a federation was an accomplished fact. Trifling matters in the past had turned public attention from its discussion as in 1849, when the offers of the home government, though warmly welcomed by a few far-sighted individuals, were treated with such disfavor as to banish all hope of their revival. Out of doors, the report was adversely criticised, and to some extent justly. The Committee had been most unfortunate in their selection of a historical precedent in the New England Confederation, as there were several federations, both ancient and modern, whose history and constitution[1] were more applicable to the conditions of the Australian colonies than that ephemeral league. The United States federal government would furnish the desired precedent for the formation of a federal constitution for the Australias. The Secretary of State's reply to the Wentworth memorial seemed to

[1] *e.g.*, The Confederation with Argo, The Dutch and Swiss Confederations.

show a fear that a union of the colonies might develop into a federal republic. The Victorian committee had wisely left the question open, as to whether the federal legislature should consist of one or two Houses. It was a doubtful problem in his own mind which could not be settled in advance but would have to be reserved for future determination. He hoped the federal movement would be carried on until the "lack of charity between the colonies disappeared." Sir William Burton contended that the imperial government should have made provision for a federal union before the separation of the colonies. At one time, New South Wales could legislate satisfactorily for all Australia, but now owing to their territorial divisions and separate governments they were compelled to ask the imperial parliament to do so for them.[1] The only precedent to influence him was that of the United States constitution, and not the much ridiculed New England Confederation. The American Confederation, following the war, should be a warning to Australia to avoid a weak executive. On the other hand the colonies would not willingly agree to have their functions reduced to the level of municipal governments, as were the provincial legislatures of New Zealand. Sometime possibly a federation would be necessary for defence, but now its objects were peaceful to promote the commerce and best interests of all the colonies. To this end, the federal government must have power to carry its legislation into effect, and not merely to recommend it to the colonies. The foundation of the union should be laid before the spirit of jealousy permeated the policies of the provinces, and made a federal association impossible or most difficult of accomplishment. Mr. Lutwyche again adopted a censorious attitude of criticising the resolutions without directly opposing them. He could see no pressing necessity for a federal legislature, since the advantages of union could be otherwise obtained. The creation of an Australian Court of Appeal was however a real desideratum, but that could be secured without the formation of a federal union. He believed that the colonists should be left to determine the rates of their own customs duties and shipping charges; and the other federal questions such as weights and measures, postal

[1]The former territorial jurisdiction of New South Wales extended over all Eastern Australia, but by the separation of the colonies it was split up between the several provinces, which even by combination could not exercise the same far reaching legislative authority for lack of extra-territorial competency. This is one of the most interesting examples of loss of power through dismemberment.

communication, roads, telegraphs and light-houses could be readily settled by intercolonial arrangement. The examples of the German, Swiss and New Zealand Confederations were an unfortunate object lesson of the working of federal institutions, since the states of these unions were drawn against one another. However in deference to opinion here and in Victoria and South Australia, he would agree to an intercolonial conference on condition that its resolutions were submitted to the several legislatures. In winding up the debate, Mr. Thompson maintained that the arguments of the last speaker were untenable, as the recent experience of the colonies had shown the need of legislative uniformity. A mistaken interpretation had been given to the letter of the Colonial Secretary to Mr. Wentworth, as the Colonial Office so far from entertaining any suspicion of a federal union would gladly accede to any recommendations of the local legislatures upon that subject. The resolutions were then carried without division.

On November 13th, the Council, on motion of Mr. Thompson resolved,[1] that a message be transmitted to the legislative assembly forwarding a copy of the report of the select committee, and of the resolutions of the legislative council, and inviting their concurrence therein, and also requesting a conference with that body with a view to the adoption of a joint address to the Governor-General, praying that the necessary measures be taken to carry out the recommendations of the resolutions. A committee was appointed to act as managers of the conference,[2] on behalf of the Council. On December 1st, on the order of the day, for the consideration of the above message from the upper house, Mr. Parker, the ex-Colonial Secretary, moved[3] that the legislative assembly agree to the proposed conference and appoint the following members to manage it on its behalf, namely, Messrs. Cowper, Donaldson, Jones, MacLeay and Parker. The committee selected[4] was a strong and representative body, well qualified to act on a subject of such importance.

In introducing the motion, Mr. Parker stated[5] that he antici-

[1] N.S.W., Jr. L. C., 1857, p. 22.
[2] Sir W. Burton, Messrs. Dickson, Allen, Lutwyche, and Thompson.
[3] N.S.W., V.P.L.A., 1857, vol. 1 p. 200.
[4] Mr. Cowper was Colonial Secretary, Messrs. Donaldson and Parker were former Colonial Secretaries, Mr. Jones was a prominent member of the ministry, and Mr. MacLeay the leading representative of the Border district.
[5] The Sydney Morning Herald, Dec. 2, 1857.

pated no objection to the conference, as the resolution did not pledge the House to any definite action. The legislatures of South Australia and Victoria had shown the way to this colony by taking favorable action upon the federal question; moreover there were a number of subjects of common interest upon which the joint deliberations of colonial delegates should be mutually advantageous to the interests of all the provinces. He was not however prepared to speak on the subject at present. It would almost seem from this last statement that Mr. Parker brought forward his motion out of a sense of loyalty to his former colleague, Mr. Thompson, rather than from a high purpose or a fixed determination to promote the adoption of one of the chief articles of the late government's policy. Personally he does not appear at any time to have taken an active interest in the federal movement. Mr. Donaldson, a former Colonial Secretary, showed his sympathy with the motion by seconding it, though without comment. The Premier, Mr. Cowper, assumed an attitude of strong opposition to the plan of a federal union. "His feelings," he declared, "were altogether opposed to the proposed conference," as no public good would be attained and much valuable time wasted, but, as it would not be in accordance with constitutional usage to refuse the request of the other House, he would not oppose the motion. As Mr. Labouchere declined to lay the matter before the imperial parliament, it was premature for the colonies to take it up. Before a federal union could be established, the very questions which it was intended to relegate to the general assembly would be settled in a more satisfactory manner by intercolonial negotiations than by a federal government. As the session was far advanced, the subject could not be properly considered, and might better be postponed. Mr. Piddington spoke at length in opposition to the conference, advancing the singular argument that it would be flagrantly unconstitutional to agree to such a federation as was proposed, by which this legislature would be required to divest itself of its constitutional powers. Mr. Murray agreed that the time had not yet arrived for a federal measure; the day might come when it would be beneficial, but, by entering into the conference with the upper chamber an erroneous impression, which they should distinctly repudiate, would go abroad that they were prepared to enter at once into a federal union. Mr. MacLeay, on the other hand, could not understand why a mere act of courtesy

should be rejected in so unceremonious a manner; a view which was likewise adopted by two of the leading members of the government,—Messrs. Martin and Jones, both of whom supported a favorable response to the Council's request as a mere matter of parliamentary courtesy. The latter declared that, when the propositions came before them, at the proper time, no member would offer a more decided opposition than he; but notwithstanding this appeal to constitutional usage and parliamentary courtesy, so determined was the hostility to the proposal that a division was demanded. The motion was however agreed to by a considerable majority[1] and a day appointed for the holding of the conference.

At the meeting of the committees of the two Houses on Dec. 9th, Mr. E. Deas Thompson[2] presented to the assembly's managers the draft of a joint address to the Governor-General, which had been agreed to by the Council in the form of the resolutions on federal union. Mr. Donaldson, on behalf of the representatives of the Assembly, accepted the address and promised to lay it before the speaker of the House for concurrence. The same day the address was duly presented to the Assembly, and on motion of Mr. Donaldson its consideration was fixed for December 18th. But the fates were unpropitious, for, on December 17th, the Cowper Ministry was defeated on the crown lands bill, and a dissolution at once followed.

An examination of the debates in the two Houses leads to the inevitable conviction that the dissolution of parliament did not materially affect the federal cause, since there would have been but a small chance of the federal resolutions winning the concurrence of both chambers. In the Legislative Council, where the influence of Thompson was most pronounced, the feeling was undoubtedly sympathetic towards a federal union. In the two discussions of the subject in that chamber, only one discordant note was struck, and that in both instances by Mr. Lutwyche, who ventured neither to directly attack the principle of federation nor to demand the voice of the House upon the question. On the other hand, the proposal had secured the support and warm endorsation of many of the most influential members of the chamber. But the support of the Council counted for little, so far as public sentiment was concerned. That body

[1]Ayes 22, Noes 7. Noes—Wilshire, Oakes, Brynes, Dickson, Campbell, Robertson, and Piddington.
[2]N.S.W., Jr. L.C., 1857, p. 34.

was practically a survival of the old official regime; its members, though in many cases highly respected on account of their superior ability and character, were not at all in touch with popular opinion. The decision of the Council was rather of the nature of a judicial verdict than a popular expression of opinion on the question; it represented only the personal views of a number of most thoughtful and far-seeing public men, whose assured position in a nominated chamber, and whose consequent freedom from the distracting activities and the provincial prejudices of domestic politics, enabled them to take a broader survey of the present relationship and the future organization of the Australian colonies. It might almost be said that the majority of the members were federationists because they were not active politicians.

But the temper of the legislative assembly was decidedly different; in the debate in that chamber, only one voice, and that a feeble one, was raised in support of a federal union, though Mr. Donaldson showed by his conduct that he was in sympathy with the resolutions. So strong indeed was the opposition even to the preliminary consideration of the federal question, that although the motion for a conference was only a formal act of parliamentary courtesy, which under ordinary circumstances would have been agreed to as a matter of course, since it did not commit the House to an expression of approval of the federal principle, yet in the present instance it called forth an adverse criticism which culminated in a test of the feeling of the Chamber. A minority of the House, including several influential members signified by their uncompromising attitude that they would have absolutely nothing to do with the question; they would even refuse to inquire into either the advisability or feasibility of the proposals of the legislative council. They placed the subject entirely outside the pale of political discussion. The attitude of the majority was almost as unfriendly; several of the ministers and other prominent members of the House openly announced their antagonism to any scheme of federation, and only accepted the motion as a matter of proper constitutional duty. The debate does not furnish any overt support to the many forced explanations which have been made to account for the attitude of that body. There is no internal evidence to support the theory of a loyal suspicion of the real character of the federal move-

ment in Victoria;[1] there are no attacks upon the ulterior motives of Messrs. Duffy and Lang, no expressions of jealous apprehension of the unseen though powerful influence of the absent leader Wentworth,[2] and no petty feelings of resentment against Victoria for taking the lead in this question.[3] However much any or all of the members may have been moved by any of these considerations, they did not venture to publicly avow them. The objections were for the most part directed against the very principle of federation. The opposition did not conceal themselves behind such arguments as the untimeliness or prematurity of the federal proposal, but took a firm stand against the sacrifice of a single particle of provincial autonomy. That, in its essence, was the ground of opposition to a federal union.

The attitude of the new Ministry was equally unfavorable. Mr. Cowper, who was a shifty politician, would have nothing to do with the subject, and the Attorney-General,—Mr. James Martin, the dominant mind in the Cabinet, was entirely out of sympathy with the project. The government at this moment were much more concerned about their tenure of office and their own political program than about any intercolonial question.[4] The very fact that the present proposal came before them bearing the endorsation of the late Ministry, did not lend it favor in the eyes of their successors, for, such is the false pride of public administration, that no government is desirous of taking up a measure of its political opponents.

Moreover the resolutions came before the Assembly at an untimely moment. A friendly Ministry under the controlling influence of a prominent leader of the federal cause had just made way for a government which cared nothing whatever about the matter. The colony had not yet secured a strong stable administration, which could authoratively deal with such an important intercolonial issue. The domestic politics of the colony were in a state of ferment; questions of land laws, the franchise, and the reform of the Upper House were absorbing public attention

[1]Mr. Rusden seems possessed of the idea that the action of the Assembly was due to a suspicion of the motives and loyalty of Mr. Duffy and Dr. Lang. The fact that the ultra patriotic Legislative Council do not appear to have been influenced by any such suspicion must cast grave doubt upon the value of this explanation. Rusden, Hist. of Aust., vol. 3, p. 116.

[2]Turner, Hist. of Vict., vol. 2, p. 331.

[3]Duffy, My Life in two Hemispheres, vol. 2, p. 164.

[4]Quick and Garran, Annot. Const. of Aust., p. 97.

to the exclusion of other matters. Intercolonial relations at this time were equally unsatisfactory; the old jealousy of Victoria was intensified by the sudden pre-eminence of that colony owing to the gold rush, and the consequent irritability of Sydney was such that in her envious rivalry she was prone to regard the friendly overtures of Mr. Duffy as part of a plot for Victorian aggandizement.[1] And finally the whole scheme which had been launched under such favorable circumstances, suffered a complete shipwreck from one of the periodic crises to which, like the recurrent seasons of drought and flood, the Australian colonies seem subject.

In the general election which ensued upon the appeal of the Cowper government to the country, the question of federation was entirely overlooked. The return of the Ministry with a considerable majority at their back boded ill for the federal cause, and the Governor's speech at the opening of parliament fully confirmed these fears.[2] "The question of a federal legislature," he declared, "is still under consideration by the legislatures of the neighboring colonies, but I am of opinion that the consideration of this subject may also without inconvenience be deferred for future consideration." The government, in short, shelved the question and refused to express an opinion upon it. The address of the Assembly in reply re-echoed the opinion of the Ministry that the discussion "may under existing circumstances be deferred," while the language of the Council was even more emphatic in stating that it "must under existing circumstances be deferred."[3] No intimation or suggestion is afforded by the debate on the address, as to what these existing circumstances were supposed to be, but in all probability the language primarily referred to the pressure of domestic legislation, more particularly with respect to land and electoral reform, and possibly also to a growing suspicion of the motives of Victoria in pressing forward the subject of federation, while at the same time acting in an independent and somewhat haughty spirit in her intercolonial relations, especially in the matter of border duties and of mail communication. In the debate upon the address the subject escaped attention, a passing reference by Mr. Donaldson[4] to the paragraph in the Governor's speech being

[1] Quick and Garran, Annot. Const. of Aust., p. 97.
[2] Mar. 24, 1858. N.S.W., Jr. L.C., 1858, p. 5.
[3] Quick and Garran, Annot. Const. of Aust., p. 98.
[4] The Sydney Morning Herald, Mar. 25, 1858.

received with laughter. In the Council, Mr. E. Deas Thompson seems to have recognized the hopelessness of further effort, as he quietly allowed the subject to drop without even a word of protest, or any attempt to revive an interest in the question. Henceforth he withdrew himself from any active participation in the federal movement,[1] a course which was also adopted by Wentworth on his return to Sydney. With the suspension of their splendid efforts, the federal cause in the mother colony collapsed, for there was no other federalist of sufficient ability and influence to assume the leadership of the movement, or command the consideration of the public upon the merits of the question.

At the same time, the subject was also engaging the attention of the legislature of South Australia. The matter was brought to the notice of the two Houses by a message from the Governor,[2] enclosing a despatch from the Secretary for the Colonies, and the correspondence with the Australian Association in respect to a federal legislature. On October 8th, 1857, in the Legislative Council, Chief Secretary Younghusband moved "that a select committee be appointed to consider and report upon" the subject referred to in the above documents. The object of the government, he explained,[3] was to elicit the opinion of the Chamber upon the question of federation. Many other topics in addition to those enumerated in the memorial would doubtless arise of "a proper character for federal consideration." The motion was agreed to without further debate and the Council thereupon selected the following members by ballot to compose the committee: The Chief Secretary, Messrs. Baker, Forster, Angas, and Bagot.[4]

Shortly after in the legislative assembly, Attorney-General Hanson moved for the appointment of a select committee on Australian federation[5] to consider the despatch of the Secretary for the Colonies and to have power to confer with the Committee of the Legislative Council and to call for papers, persons and records. In introducing the motion, he alluded[6] to the importance of the subject "as affecting the future interests of South

[1]Quick and Garran, Annot. Const. of Aust., p. 98.
[2]S.A.P.P., 1857-8, p. 109.
[3]S.A.P.D., 1857-8, p. 579.
[4]S.A.P.P., 1857-8, p. 109.
[5]Oct 16, 1857. Ibid, p. 210.
[6]S.A.P.D., 1857-8, p. 600.

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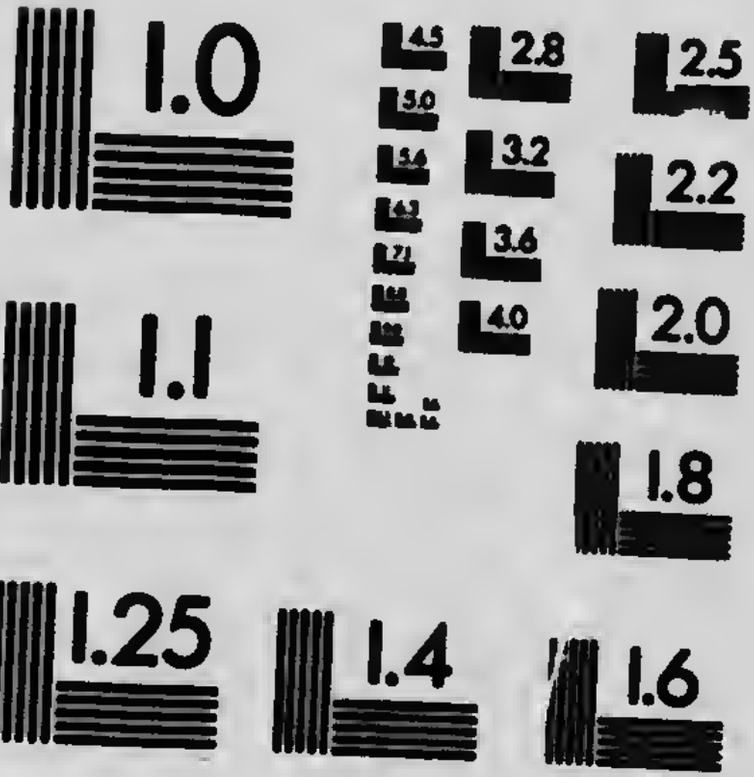

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Australia." Although probably all "deemed a federation of the several Australian colonies necessary, he confessed he did not think the period had yet arrived for it." But as it was desirable "to determine the basis upon which such a union should be negotiated," he proposed a Committee so that the two Houses could confer together upon the subject. Mr. Burford pointed out that this question had emanated from a body of private individuals, and "that there might be some scheming in the matter." The several colonies entertained different views on many important questions, and he saw nothing but disaster to this colony likely to result from federation. Mr. Peake supported the motion for a Committee, but opposed a federal union upon the ground that it would be suicidal to the interests of this colony, by preventing her from opening up internal communications and carrying on her policy of public works. Mr. Bakewell, on the contrary, was convinced of the desirability of a federal association, and enumerated many measures upon which, in his opinion, uniformity would be advantageous. Notwithstanding these objections, the motion was carried without division, and a Committee was chosen by ballot, on which several of the leading members of the House[1] were appointed to serve.

The proceedings of the Committees of the two Houses were very uneventful. That of the Legislative Council was called together on seven occasions, at only one of which was a quorum lacking, and at the first and last sittings all the members but one were present.[2] The Chief Secretary was appointed Chairman.[3] It was soon found that the Committee had tackled too large a subject to be handled within the short period contemplated at the time of its appointment, and that the question was one upon which common action by the two Houses would be most desirable, so that recourse was had to the Council for an extension of time in which to report, and for the privilege of consultation with the similar Committee of the legislative assembly, both of which requests were readily granted.[4] Application was then made to the Committee of the House for a joint consultation upon the subject.[5] This request stirred up the latter to organize itself; Attorney-General Hanson was appointed Chairman and

[1]Messrs. Blyth, Bagot, Bubbage, Bakewell, Finniss, and Hanson.
[2]S.A.P.P., 1857-8, vol. 2, no. 190.
[3]Oct. 12, 1857.
[4]Oct. 20, 1857.
[5]S.A.P.P., 1857-8, p. 115.

a conference with the Council's representatives agreed upon.[1] The Committee of the Assembly held but three meetings, two of which were in conference with the Council, and at all a quorum was obtained. At the first of the joint meetings on November 3rd, the rough draft of a report was agreed upon, and at a further conference, certain resolutions were concurrently adopted.[2] Subsequently the Committee of the Legislative Council ratified these resolutions, and they were thereupon reported by the respective chairmen to the two Houses. During the progress of the proceedings the report of the Victorian committee was brought to their attention.[3]

The resolutions, which were concurrently agreed to by the two Committees in joint session, are as follows:[4]

"That although under existing circumstances, the formation of a federal legislature would, in the opinion of the Committee, be premature, there are nevertheless so many topics in which the colonies have a common interest, and in which uniform legislation would be desirable, that the Committee consider it expedient to adopt some measures to secure these objects, and in addition to the topics referred to in the correspondence transmitted by the Secretary of State for the Colonies to His Excellency the Governor, and laid upon the table of both Houses on the 23rd of September, 1857, the following have occurred to the Committee as fitting subjects for consideration) namely, patents, copyrights, law of insolvency, professional qualifications, and a uniform time of meeting of parliament.

"With a view to the more general discussion of these various subjects, and of others in which the colonies are mutually interested, the Committee recommend, in conformity with the suggestion originated with the legislature of Victoria, that three delegates be appointed, one by the Legislative Council and two by the House of Assembly to meet delegates to be appointed by the other colonies, at such place as may be agreed upon. The expenses of such meeting to be borne by each of the colonies interested in proper proportions.

"The Committee moreover recommend that the delegates appointed should not be authorized to bind the legislature of

[1]S.A.P.P., 1857-8, vol. 2, no. 188.
[2]Nov. 5, 1857.
[3]Oct. 22, 1857.
[4]S.A.P.P., 1857-8, vol. 2, no. 190. N.S.W., Jr. L.C., 1859-60, pt. 2, p. 680. N.S.W., V.P.L.A., 1859-60, vol. 2, p. 682. Vict., V.P.L.A., 1857-8, vol. 2, p. 237.

this colony to adopt any decision or resolutions which the united conference may come to, but that their mission should be simply to discuss such matters as may be brought before the conference, and to report the result of such discussion to the legislature."

These resolutions contain several features of especial interest. While admitting the desirability of common legislation on many topics, they emphatically pronounce against the immediate formation of a federal legislature. They aim at the attainment of uniform legislation through general co-operation, rather than through any federal agency. The conference would be engaged in devising the best means of reconciling and assimilating the legislation of the several colonies, instead of formulating a plan of federal government. It would be a consultative diet or congress, in contradistinction to a constitutional organ of the several colonies. The Committee, in short, desired legislative uniformity and mutual co-operation throughout the colonies, but not political unity or federation. They were prepared to consider and inquire into the subject of a federal union, but they would not at once commit themselves to any definite action. The importance of the question to the colony was fully recognized, the subject was worthy of serious consideration, and a proper matter for discussion in conference, but the final determination of the question should be left to future events. The attitude of the Committee was liberal-minded and cordial towards the other colonies, but at the same time cautious and conservative. In the list of new subjects suggested as proper matters for joint consideration, we see a clear appreciation of the advantages of commercial uniformity, and a recognition of the social unity of the colonies. Many of these topics lay within the domain of civil rights, which, up to this time, had been regarded as exclusively within the jurisdiction of the provincial legislatures and not as proper subjects for common federal action. But the social relations of the colonies disregarded boundary lines, and legislation upon such matters required a corresponding universality of application. The suggestion in respect to a uniform time for the meeting of the several parliaments was an ingenious but ineffective means of seeking to secure simultaneous co-operation on the part of the several colonies, in place of the existing hap-hazard method of conducting intercolonial affairs. But the date of summoning parliament could not well be fixed by common agreement, since considerations of public business and gov-

ernmental convenience in each colony would necessarily determine when a session was desirable. The Committee did not, like that of New South Wales, adopt the resolutions of the Victorian committee as their own, but only accepted so much of their proposals as related to the appointment of delegates to the conference, leaving the subsidiary questions arising out of the holding of such a conference to future determination. Only a "proper proportion" of the expense of the congress was to be allotted to each colony,—a vague recommendation which may have been intended to serve as a qualification of the unfettered discretion of the conference as agreed upon in the resolutions of the other two colonies. The final clause, limiting the authority of the delegates, was really unnecessary, but was added by way of special caution. It was not designed by the Victorian federalists that the delegates of any of the colonies should be endowed with the powers of plenipotentiaries, but that they should enjoy merely the status and functions of consultative counsellors, whose deliberations were subject to review by the local legislatures. The presence of this recommendation evidenced a fear in the minds of the local Committee that otherwise South Australia might be drawn into an agreement which the provincial parliament would not wish to adopt. This precaution was only natural, as South Australia was the weakest of the colonies, and her interests were more likely to suffer than those of the sister provinces in case of any conflict between them at the conference.

On December 23rd, 1857, Attorney-General Hanson moved[1] the adoption of the report of the select committee, and that the House should nominate delegates in accordance with its recommendations. It would be the duty of the government, he stated,[2] while "taking no steps to bind the colony by any legalized or executive action," to put the delegates to be selected by this legislature in communication with the representatives of the other colonies and then "leave them to act to the best of their judgment." The delegates would attend at the expense of the province, but would give their services without remuneration. Messrs. Burford and Hughes thought that the powers of the delegates should be inserted in the motion, and that the House should be acquainted with the terms of their instructions The

[1]S.A.P.P., 1857-8, vol. 1, p. 329.
[2]S.A.P.D., 1857-8, p. 725.

Attorney-General replied that the delegates were to be appointed in accordance with the report which furnished sufficient evidence of the "ground of the appointment and the powers to be exercised." The motion was agreed to without division, and upon a ballot being taken, Messrs. Hanson and Torrens—the leaders of the government and the opposition respectively, in the lower chamber, were elected as representatives of the House, and their names duly forwarded to the Governor together with the report of the select committee.

Shortly after[1] a similar resolution was introduced into the Legislative Council by Mr. Younghusband. In a few words he emphasized the need of some sort of federation to produce legislative harmony between the colonies. The Committee did not think it desirable[2] to confer plenary power on the delegates, but recommended that they be merely authorized to open up a discussion of the question on an equal footing with the larger colonies. This he believed was a step in the right direction and would lead to useful results. "We must look forward to the time when these colonies occupied by one people, living on a common soil, and speaking a common language would become united, and would take their place among the nations of the world." Should the first selected delegates decline to act, as they were entitled to do, other representatives would be chosen. The motion was then agreed to without further discussion, and Mr. Hall was elected to represent the upper branch of the legislature in the proposed conference. Addresses were subsequently presented to the Governor from the Legislative Council and Assembly informing him of the action which the two Houses had taken.

It was thus left to South Australia to take the first practical step towards the holding of a conference. Notwithstanding the reports and discussions of the legislatures of New South Wales and Victoria, they had not advanced the movement beyond the theoretic stage. The action of the South Australian parliament in appointing delegates opened up the way for the joint consideration of federal questions, and placed the subject of intercolonial relations within the range of practical politics. In proroguing the legislature a few days later,[3] the Governor stated, "I trust that the action that you have taken in this important

[1] Jan. 7, 1858. S.A.P.P., 1857-8, vol. 1, p. 163.
[2] The Melbourne Age, Jan. 15, 1858.
[3] Jan 27, 1858.

matter may lead to the immediate adoption of measures calculated to remove the existing obstacles to combined action on the part of the colonies, whenever circumstances may permit or require it."[1] An official record of the proceedings of the local legislature was, on instruction from Governor McDonnell, conveyed by the Under-Secretary of State, Mr. O. K. Richardson to the Governors of the other colonies, accompanied by the statement that the "government of South Australia will be glad to learn that the governments of the other Australian colonies respectively have taken action in the matter."[2]

The attitude of the South Australian parliament represents an interesting compromise between the positions of the two rival colonies; it stood midway between the reactionary position of New South Wales and the more advanced progressive policy of Victoria. The legislature was moderate in its counsel, liberal in its outlook, and conservative in its action; it showed throughout an active interest in the subject, a sympathy towards the end in view, and a readiness to participate with the other colonies in a free and full discussion of the question. This attitude was representative of the more enlightened and far-seeing opinion of the colonial leaders in desiring to secure some arrangement with the other provinces, which without imperiling their provincial autonomy would produce a harmony of action and a spirit of co-operation between them. While not prepared to go as far as Mr. Duffy and the Victorian federationists in seeking the immediate consummation of a federal union, the great majority of the members of the legislature were ready to consider how far the proposals of the Victorian committee were adapted to the circumstances of the colony, and to what extent they could safely give their adherence thereto. While careful to safeguard the independent status of the colony, they did not show the same spirit of suspicion, of jealousy, and of narrow-minded patriotism, which was so strongly in evidence in the assembly of New South Wales. True, there were some voices to raise the provincialistic cry, but they were fortunately few in number and weak in influence, and did not venture to challenge the verdict of either chamber upon the question. Taken as a whole, the members were broader in their conceptions and more liberal-minded in their policy than the parish politicians of the sister

[1] S.A.P.P., 1857-8, vol. 1, p. 357.
[2] Feb. 4, 1858. N.S.W., Jr. L.C., 1859-60, pt. 2, p. 680. Vict., Jr. L.C., 1857-8, vol. 2, p. 237.

colony of New South Wales. The attitude of the government throughout was actively sympathetic; the Colonial Secretary took personal charge of the subject, and the influence of the Ministry was effectively used to promote the adoption of the resolutions in the select committee and in parliament. The report of the Committee was to a considerable extent a reflection of the views of the Attorney-General as expressed in his speech in moving for the appointment of the Committee. Doubtless the support of the government was partly due to the influence of Governor McDonnell, who took a deep interest in all intercolonial questions, and was especially active in seeking to promote a permanent settlement of the border customs difficulty by an assimilation of the tariffs of the three colonies. The federal movement was quite in line with the policy of co-operative action he was advocating, and for this reason alone apart from its inherent advantages would appeal to his sympathies and call for his support.

The negotiations which the government opened up with the other colonies in regard to the holding of a conference were not productive of any result. This failure was due, as Mr. Younghusband explained in a subsequent speech, "to the cold water thrown upon it by the governments of the adjacent colonies." The discouraging reception which befell the South Australian overtures appears to have taken all the spirit and energy out of the supporters of federation in the legislature, for the subject was allowed to drop almost without question, and some time elapsed before any attempt was made to revive it. The action of the legislature was, in truth, directed by a desire to co-operate with the other colonies in the settlement of a few practical questions, rather than prompted by any deep conviction of the necessity for a federal union, so that when the neighboring provinces either did not evince much readiness in responding to these advances, or like New South Wales stubbornly refused to join in the movement in any way, the federal cause soon dropped into the background.

Mr. Duffy had in the meantime again taken up the question in the Victorian legislature. His hopefulness and energy were not discouraged by the inaction of the mother colony, which he believed could be overcome by the combined influence and pressure of the other states. On December 14th, 1857, he moved[1]

[1]Vict., V.P.L.C., 1857-8, vol. 1, p. 19.

for the appointment of a select committee on the question of a federal union of the Australian colonies,[1] and "that they have power to confer with any Committee appointed by the Legislative Council, and to communicate with the parliamentary Committees appointed on the same business in the other colonies; three to form a quorum." The personnel of the Committee was the same as that of the last session save for the substitution of the name of Mr. Ebden for that of Mr. Foster, so that Mr. Duffy was surrounded by a body of members already familiar with the subject, and to a large extent in sympathy with his policy. In support of the motion, Mr. Duffy pointed out[2] that the proposals of the federal committee of the previous session had been favorably received in the two adjoining colonies which had taken action in the matter, and it was therefore necessary to re-appoint the Committee as "Victoria had taken the initiative in the movement, and as there were several questions that had yet to be determined." The only other speaker was Dr. Greeves, who, as on the former occasion, opposed the establishment of a federation at least for the present. He admitted that "he was in the minority in his view that the time had not yet arrived by several years for the initiation of the federal union." New South Wales, through a change of circumstances, had abandoned her former pretension at the time of the separation of Port Phillip, that she should elect a preponderant majority of the members in the proposed federal assembly, and now was contending that the number of delegates should be equal from each colony, and that the revenue of each should govern the financial arrangements of the federal legislature. The principle of equality, which, strange to say, found recognition in this House, would operate injuriously to the interests of this colony, as a similar senatorial system had to the larger states in the American union. In considering the federal question, they should not forget the past unfriendly attitude of New South Wales towards this province. He disagreed with Mr. Duffy in regard to the grant of instructions to the delegates, whose action, he thought, should be under the closest surveillance of the legislature. Notwithstanding this appeal to the enmity of former days, and to the suspicion and jealousy

[1]The Committee nominated was made up of Messrs. Michie, O'Shanassy, Ebden, Ireland, Moore, Evans, Horne, McCulloch, and Duffy.
[2]Vict. Hans., 1857-8, vol. 3, p. 45.

of the present, the motion was carried nemine dissentiente, the Assembly showing by its action that it had no sympathy with such narrow-minded parish politics.

It was not until the following February[1] that the Committee were ready with a progress report for the House. The impending dissolution of the Assembly forced the hand of Mr. Duffy, compelling him to bring up an interim report containing some minor suggestions, before he had prepared a complete program of recommendations. The report[2] begins by referring with satisfaction to the measures taken by the parliaments of New South Wales and South Australia, "to carry the proposed conference into speedy effect." In the former colony, it was confidently stated, the legislature would immediately resume consideration of the question "on the meeting of the new parliament next month." The report then continues:

"Under these circumstances we are of opinion that the parliament of Victoria, which invited the conference, ought to postpone no longer the nomination of its delegates. It would be desirable perhaps that your honorable House which is about to be dissolved could remit this duty to its successor; but as the other colonies have acted on your initiative it will scarcely be courteous to do so, and it must not be forgotten that the business of the conference being merely to recommend a plan of federation to the local legislatures, the future parliament will have absolute control over the terms and conditions on which Victoria will consent to enter into such a union.

"It will probably be an additional motive with your honorable House for naming delegates at present, that the members selected may have adequate notice of so important and onerous a duty.

"In South Australia the Assembly have taken one of their delegates from the members of the government and one from the opposition, in order that the opinion of the House may be effectively represented in the conference and that its decisions may be regarded without jealousy or distrust by any party; an arrangement which we cannot but approve.

"As the place where the conference will meet is to be fixed by the delegates, and they may possibly fix on Melbourne, your Committee recommend to your honorable House that should

[1]Feb. 9, 1858.
[2]Vict., V.P.L.A., 1857-8, vol. 1, p. 659.

this city be chosen a suitable building may be placed at the disposal of the conference, and all necessary measures taken to convenience and facilitate their labors."

It is evident from the report that Mr. Duffy had a sanguine faith in the assembling of the conference. The action of South Australia in appointing delegates had not only encouraged him in the hope of a happy consummation of his program, but afforded him also the required ground for an appeal to the Victorian parliament to take similar action. The miscarriage of the federal proposals in New South Wales, he construed in the most favorable light, as due to political accident, and not as an expression of legislative opposition; and he had every expectation that the new parliament would again take up the consideration of the federal question under more auspicious circumstances. The present favorable opportunity, in his opinion, should not be lost by the postponement of the question until after the general election. Unless Victoria immediately took measures for the calling of a conference he feared that the subject would be allowed to lapse in the other colonies. It was a most difficult matter to get them all to act in unison, and now that the adjoining provinces were evidencing a cordial spirit of co-operation, Victoria should be prepared to carry on the work which she had initiated, and which as he diplomatically pointed out, she was under the honorable responsibility of carrying through by reason of her assumption of the leadership of the movement. Duffy also undoubtedly felt that unless some definite steps were now taken, that even in his own colony during the excitement of the general election and the stress of the opening of the new parliament, the subject would fall into the background and possibly be forgotten or neglected in the next legislature. He met the objection that the question might better be left to the new assembly by pleading, first, the discourtesy to the other colonies of such a postponement, and second, the fact that the business of the conference would be subject to the absolute control and supervision of the future parliament, and lastly, that the delegates if now appointed would have more time for the consideration of the questions which would come before the conference.

The report recommended the immediate appointment of delegates, commended the example of the South Australian assembly in selecting its representatives from both political

parties, and indirectly intimated to the legislature that the local parliament buildings should be placed at the disposal of the conference if held in Melbourne. In seeking to keep the federal question free from local politics, Duffy was only carrying out the policy he had adopted from the first. The subject, he clearly perceived, was one transcending all considerations of partisanship, and should appeal to the common sympathies of the Australian people irrespective of political principles or party allegiance. The safest way of avoiding any inclination to make political capital out of the question was by interesting prominent members of both parties in the movement, and by giving the opposition in the several legislatures an equal share with the government in its consummation. Indeed unless some such arrangement as this were adopted, Duffy and Thompson alike, as members of the opposition in their respective legislatures, would have been excluded from the list of delegates, and the conference have been deprived of the services of its natural leaders, whose counsel and direction alone could give an organic purpose and consistency to its weighty deliberations. Justice and expediency alike demanded that the coming conference should be a fit and thoroughly representative assembly, composed of those individuals who had devoted the most careful consideration to the subject of a federal union and were prepared to assume the leadership of the movement in their respective colonies. From the final recommendation of the Committee, it would appear as though Duffy had reason to believe that the conference would meet in Melbourne in the very near future.

In bringing up the Progress Report a few days later,[1] Mr. Duffy briefly stated that "the other colonies would cordially cooperate with this," and as they would shortly appoint their delegates it was not too soon to ask this House to take action. As the Legislature had already passed a favorable opinion on the expediency of a federal congress, the motion was agreed to without discussion, and subsequently transmitted to the upper house with a request for their concurrence in the appointment of delegates to the conference.[2] In the notice, as it originally stood on the motion paper, the word "convention" was used to describe the meeting of delegates, but whether by inadvertence or

[1] Feb. 23, 1858. Vict. Hans., 1857-8, vol. 3, p. 309.
[2] Mar. 10, 1858. Ibid, p. 340.

designedly it is difficult to determine with any certainty. Mr. Brooke in proposing the motion in the absence of Mr. Duffy, explained that the word "convention" had been erroneously misprinted, but the value of this explanation was destroyed by the statement of Mr. Fellows that the word had been so written in the manuscript sent to the printer. The correction set at rest any suspicion which might have been raised of an attempt to confer upon the delegates constitution making powers.

In the Legislative Council, Mr. McCombie[1] soon followed the example of Mr. Duffy in applying for a select committee to confer with that of the Assembly on the federal conference, and the Chamber agreed to the appointment without question.[2] The Council however failed to take any action upon the report of the Committee, and the matter was allowed to drop without any effort being made to secure the nomination of delegates.

Mr. Duffy still persevered in his efforts notwithstanding the discouraging inaction of some of the other colonies. The following session on November 2nd, 1858, he again moved[3] for the reappointment of the select committee on federal union, the personnel of which was the same as that of the last session, save for the omission of the names of Messrs. McCulloch and Griffith.[4] In support of his motion he reviewed[5] the action which had been taken by the other provinces, and explained the reason for the failure of the negotiations up to the present. The attitude of the Colonial Secretary of New South Wales,—Mr. C. Cowper, who thought that the time had scarcely come "for bringing forward such a question, or at all events that there was more urgent business to be dealt with by the legislature of New South Wales," had prevented the meeting of the conference, as it was deemed inadvisable to hold such a gathering in the absence of so important a colony. "A fresh necessity" and "a new impetus" for the summoning of a federal conference had arisen in connection with the subject of colonial defence. Now that the electoral reform bill had been passed in New South Wales, he did not anticipate much difficulty in securing

[1]Dec. 22, 1857. Vict., V.P.L.C., 1857-8, vol. 1, p. 9.
[2]The Committee was composed of Messrs. Mitchell, Strachan, Miller, Urquhart, Patterson, Hood and the mover. On Dec. 23rd the name of the President was added.
[3]Vict., V.P.L.A., 1858-9, vol. 1, p. 43.
[4]Messrs. Michie, O'Shanassy, Ebden, Ireland, Moore, Evans, Horne, Syme, Harker and Duffy.
[5]Vict,. Hans., 1858-9, vol. 4, p. 187.

the co-operation of the legislature of that colony in any proposition that might be made by this parliament upon the federal question. "Under these circumstances it became advisable to revive the Committee, to continue the correspondence with the neighboring colonies, and to stimulate the friends of the measure in New South Wales to take up the subject." The motion was agreed to without further discussion. The Committee however failed to take any decisive action and did not even bring up a report.

The uncompromisingly hostile attitude of the New South Wales government evidently convinced Mr. Duffy and his associates of the immediate hopelessness of persevering in their efforts. Although the overtures of the Victorian committee had been comparatively successful in enlisting the co-operation of two of the three colonies possessing responsible government, still the obstruction of the legislative assembly of New South Wales was felt to be "a fatal impediment to action."[1] For this unyielding attitude, Mr. Cowper was held personally responsible by Mr. Duffy's friends and advisers in New South Wales—Messrs. Parkes and Butler, who declared that the Colonial Secretary's conduct was governed by the selfish and provincialistic motive of unwillingness "to allow Victoria the initiative" of the movement. They were of opinion however that he would not long be an impediment in the way of federation, and recommended that the best policy would be to wait for the advent of his successor before taking further measures. Acting on this advice Mr. Duffy allowed the subject to quietly drop for the time being, until a more favorable opportunity of reviving his federal proposal should present itself.

Tasmania did not long remain undisturbed by the course of the federal movement upon the mainland. A strong federal sentiment had, as we have seen, long prevailed among a section of the people of the island, though it had failed to secure any recognition in the legislature. But now however, thanks to the growing intimacy of the economic and political relations of the colony with the sister states, the question of intercolonial relations was to receive a due measure of attention from the local parliament. Tasmania could no longer remain an isolated community, for she was now bound by the closest social and commercial ties with the provinces across the strait. The sub-

[1]Duffy, My Life in two Hemispheres, vol. 2, p. 164.

ject was first taken up by the Gregson ministry on accepting office in the early part of 1857.[1] In an Executive minute, the government proposed the holding of an intercolonial conference for the discussion of various federal questions. The matter was also brought before the House in a ministerial statement of the Colonial Secretary to a similar effect. The Cabinet, he declared, desired the legislature to address the Governor "for the purpose of communicating with the governments of the other Australian colonies with a view to the holding of a conference on the propriety of taking some combined action to effect such objects as a consolidation of tariffs, the equalization of weights and measures, and other matters affecting their common welfare. Such a conference, however short it might fall of the objects sought to be obtained, could not fail to be productive of beneficial results." This proposal, it will be observed, while subsequent to the appointment of the Victorian committee on federal union was prior to the issuance of its report, and seems to have been quite independent of it. It is probable that Mr. Gregson was aiming at a mutual understanding between the colonies for co-operative action and not at a general scheme of federation, but in any case the proposed conference must have contributed to the object which Mr. Duffy had in view, by bringing the island colony into the closest association with the neighboring states in the consideration of their common intercolonial relations. But the defeat of the Gregson ministry a few days later prevented any steps being taken to carry out the suggested federal program, and the Weston administration which succeeded to office was too short-lived to develop any constructive policy. With the advent of the Smith government political conditions for the first time became stable, and the legislature settled down to the performance of its normal functions as a deliberative body.

An influential section of the press heartily took up the federal question, and urged upon the local legislature the advantage of joining in the movement which was going on in the other colonies. The Launceston Examiner[2] expressed the belief that there was perhaps no subject upon which sentiment was "more prevalent in these colonies . . . . . than that the Australias should be consolidated into one great confeder-

[1]The Launceston Examiner, Mar. 28, 1857.
[2]Ibid, June 13, 1857.

ation;" and The Tasmanian News argued with much force and ability,[1] that as the federal question had been so fully considered in the other colonies, all that would be required of the local legislature would be to agree to resolutions similar to those adopted in Victoria, and follow this up by the early nomination of delegates. The greatest boon which such a union would confer would be in "imprinting a national character upon our habits of thought and action," in contra-distinction to the existing selfish provincialism. As the colonies became more "conscious of their power and felt themselves more capable of independence," they would become more jealously disposed towards one another and less inclined to a federation. A union, it urged, would be most beneficial in promoting a common purpose "in matters of high state policy, of religion, of literature, of science, and of art," would raise the standard of "principle and taste" among her most gifted public men, and save the colonies intellectually and morally from the spirit of "wrangling municipalities."[2]

The promptings of the press and the appearance of the federal correspondence at last aroused the government to action. The subject was brought to the attention of the Assembly by Dr. Butler[3] on a motion to take into consideration the papers on the above subject which had been laid before the House by the Executive. He was "not prepared to propose any definite scheme of federal government, but had brought forward the subject more as a matter of courtesy to the legislature of Victoria." As the session was far advanced, he did not desire to do more than "place on record a resolution which would show the neighboring colonies that the legislature of Tasmania had not overlooked the extreme importance of a federal union, and had not failed to recognize the advantages which would accrue to this colony by sending delegates to meet those from the other colonies." He did not consider it necessary to select delegates this session because the representatives of the sister provinces had not yet been appointed, and some months must elapse before they could be. If this resolution were agreed to however, it would be morally obligatory upon them to send delegates to the conference when convened. In so slim a House it would be unnecessary for him to discuss at length the advantages of

[1]The Tasmanian News, Jan. 20, and Jan. 22, 1858.
[2]Ibid, Jan. 22, 1858.
[3]Feb. 16, 1858. Ibid, Feb. 17, 1858.

federation, and he would rest content with moving a resolution concurring in the sentiment of the other colonies upon the federal question, and accepting the offer of the Victorian legislature to appoint delegates.

The resolution read as follows:[1]

"That this House concurs in the opinion expressed by the legislatures of Victoria, New South Wales and South Australia, that it is desirable that delegates from the Australian colonies should assemble in conference with power to frame a plan of federation for the approval of their respective legislatures.

"That this House therefore responds to the invitation of the Victorian legislature and is prepared to appoint delegates from this colony when arrangements for the proposed conference shall have been completed."

In the debate which ensued,[2] there was general unanimity in acknowledging the importance of a federal union, but some difference of opinion in respect to its immediate utility. Mr. Innes supported the motion merely as a courteous recognition of the action of the Victorian legislature, but did not think that there "were just now many questions upon which federal action could be taken," and Mr. Chapman was of the opinion that it was hardly necessary to move in the matter at present, as next session would be soon enough to think of appointing delegates. The resolution was agreed to without division, and a message sent to the Council asking for their concurrence.

The following day the Upper Chamber,[3] on motion of the Chief Secretary, accepted the Assembly's resolution almost without question. The course of events moved more rapidly than had been anticipated, so much so that Dr. Butler had reason to change his opinion in regard to the appointment of delegates that session. A few days later, Feb. 20th, he accordingly moved,[4] "That in the event of the conference of delegates from the Australian colonies assembling previously to the next meeting of parliament, it will be expedient that this colony should be represented at such conference. That this House do therefore nominate two of its members to act in conjunction with a member of the Legislative Council as delegates from the col-

[1]Tas., Jr. H. A., 1857, vol. 1, p. 249.
[2]The Tasmanian Daily News, Feb. 17, 1858.
[3]Tas., Jr. L.C., 1857, vol. 2, p. 212.
[4]The Tasmanian Daily News, Feb. 22, 1858.

ony of Tasmania, to act in such capacity only until the next meeting of parliament."

The motion is its own explanation; it was feared that a conference might be held during the prorogation of the local legislature, and that if no appointment were now made, the colony would be unrepresented at a gathering in which it was materially interested. A suggestion that the selection of delegates be postponed on account of the slimness of attendance was dismissed, as there was no hope of a larger House at the fag hours of the session. The resolution was then carried without opposition. Upon the motion of Colonial Treasurer Innes, that Messrs. Gibson and Butler be appointed the representatives of the Assembly, a discussion arose over the personal qualifications of the delegates, and as to the proper mode of selection, whether by nomination or ballot. An amendment was moved that the selection be made by ballot, but was subsequently withdrawn, whereupon the House proceeded on motion of the Treasurer to elect one delegate at a time and Messrs. Butler and Gibson were duly chosen, notwithstanding some opposition as to the mode of appointment from the supporters of one of the opposition candidates. Two days later the Legislative Council[1] concurred in the appointment of a delegate. In a few brief remarks the Colonial Secretary explained[2] that in about four months a conference would probably take place in Melbourne, and he proposed Mr. Nairn as the representative of the Council. The resolution and nomination alike found favor with the other speakers, except Mr. Wythe, who thought the appointment too hurried; notwithstanding this one discordant note the motion was unanimously agreed to. The nominee briefly expressed the pleasure he would feel in performing his duty.

The action of the Tasmanian legislature was guided largely by considerations of political expediency. No pretension was made of any sentimental interest in the subject of a federal union. Intercolonial comity required that the invitation of the Victorian legislature be accepted, and considerations of provincial advantage and colonial self-respect demanded that the colony be represented in a conference, at which the federal interests and relations of all the colonies would be discussed and perhaps provisionally determined. In the deliberations and decisions of

[1]Tas., Jr. L. C., 1857, vol. 2, p. 235.
[2]The Tasmanian Daily News, Feb. 22, 1858.

such a gathering Tasmania was almost as materially interested as the provinces on the mainland. While neither the government nor the legislature were enthusiastic over the question of federation, they were at least sympathetic towards the movement and appreciative of the advantages it would confer. Not a single dissentient voice was raised in either House to the appointment of delegates, nor were any express limitations placed upon the freedom of action of their representatives as in the case of the South Australian delegates. Legislative opinion upon the subject seems to have been more definitely formed, and in a more advanced stage than in some of the other colonies. Tasmania was the first of the provinces to dispense with the preliminary appointment of a select committee to consider the expediency of a federal union. This omission may have been partly due to the lateness of the session, partly also to the fact that the legislature had sufficient information before it in the reports and correspondence of the other colonies, but it appears to have been mainly due to a general conviction of the advantage of federal co-operation which did not require evidence to be adduced in its support. Tasmania had been less prompt than the sister states in dealing with the subject, a tardiness due[1] according to Mr. Henty—the Colonial Secretary, to the regrettable pressure of public business, but her action when taken was definite and decisive, and placed her at once alongside of South Australia at the very forefront of the movement.

As the prospect of the assembling of the conference still seemed hopeful, the question of the appointment of delegates again came up at the Fall session of the legislature. On October 7th, 1858, the House resolved[2] to nominate two of its members to act in conjunction with a representative from the Legislative Council as the delegates from Tasmania to the approaching conference. Upon a motion that the delegates be selected by ballot, a warm debate ensued, which was only decided in the affirmative at an adjourned sitting, when Messrs. Chapman and Nutt were chosen.[3] A few days later the Council concurred in the appointment of a delegate, and Mr. Nairn was again sel-

[1]See letter of W. Henty, Colonial Secretary to the Chief Secretary of Victoria, March 6, 1858, in which he apologizes for the delay in considering the report of the select committee, and details the proceedings and resolutions of the Tasmanian legislature in appointing delegates to a conference, Vict. V.P.L.A., 1857-8, vol. 1, p. 395.

[2]Tas., Jr. H. A., 1858, vol. 3, p. 104.

[3]Oct. 19, 1858. Ibid, p. 140.

ected.[1] Shortly after the parliament was again called together to rectify an omission in a criminal act, and as the appointment of the delegates had only been made until the next session of the legislature, it became necessary to go through the form of re-election. A motion by Mr. Miller[2] "that the standing orders be suspended for the purpose of moving the appointment of two delegates" to the conference, was met by an amendment by Mr. Chapman for the adjournment of the House, and a stormy discussion ensued which was finally terminated by the adjournment of the House for lack of a quorum without the question being put. In the Legislative Council proceedings were more favorable, and for the third time Mr. Nairn was the choice of the members of the upper chamber.[3] There was thus presented the peculiar spectacle of the one House having selected a delegate and the other having failed to do so, the practical effect of the want of concurrence being to render the action of the Legislative Council valueless in case the conference should be called.

The frequent disappointment in the non-assembly of the conference did not destroy the hopes of the Tasmanian federalists. The following session, the customary resolution was introduced by Mr. Miller,[4]—one of the most active and loyal supporters of the federal cause in the lower chamber, to the effect that the House proceed to ballot for the election of delegates to represent the interests of Tasmania in any general Australian conference which may be held in the interval between the present and the next session of parliament; and the motion being accepted without discussion the Assembly chose Mr. Chapman on the first ballot. As there was an equality of votes between Messrs. Henty and Officer, a second ballot was necessary, when the latter gentleman was chosen. In the Legislative Council, the oft-elected Mr. Nairn was again nominated as the delegate[5] of that chamber.

The chief interest in these recurrent proceedings is to be found in the evidence they afford of the vitality of the federal cause, of the hopefulness of a speedy meeting of the conference, and of the general unanimity of the legislature upon the question.

[1]Dec. 9th, 1858.
[2]Tas., Jr. H.A., 1858, vol. 3, p. 199.
[3]Tas., Jr. L.C., 1858, vol. 3, p. 124.
[4]Tas., Jr. H.A., 1859, vol. 4, p. 209.
[5]Tas., Jr. L.C., 1858, vol. 4, p. 131.

In the other colonies some of the federal leaders had become discouraged and had practically suspended all efforts to attain their object, but in Tasmania, session after session, parliament went through the form of selecting its representatives in the hope that the other colonies might agree to a conference. It was a splendid exhibition of persistency in the face of discouraging circumstances, and manifested an abiding faith in the ultimate success of the movement.

The only other feature of interest is the determination with which the Assembly sought to secure the appointment of its delegates by ballot instead of by nomination. By its assertiveness the House succeeded in firmly establishing the right of parliamentary election and the theory of parliamentary responsibility. The principle involved was a most important one; it meant that the conference should owe its origin, so far as Tasmania was concerned, to the action of the legislature and not to the fiat of the executive, that the delegates should be representatives of parliament rather than the nominees of the Ministry, and that the proceedings of the intercolonial congress and the actions of the delegates should be immediately under the supervision and the control of the legislature and not of the Governor and his advisers. An attempt was made to raise the question of federation above the level of party politics or ministerial policy to the higher plane of a parliamentary issue, by the association of the whole body of members in the initiation of the federal movement. As the conference was to undertake the work of framing a draft constitution it was felt that it should possess a parliamentary character compatible with its legislative functions. Alike from its constitutional purpose, and the mode of the selection of the delegates, the conference must have possessed a more authorative character than the previous executive congresses, and have occupied a position more nearly corresponding to a constitutional convention than to a mere conference of official delegates.

Mr. Duffy was still anxiously expectant, and watchful of an opportunity to revive his proposal. He had not long to wait, for a change of Ministry in New South Wales afforded a more cheering prospect of securing the co-operation of that colony in a federal conference. On January 26th, 1860,[1] he once again moved for the appointment of a select committee "to consider

[1]Vict., V.P.L.A., 1859-60, vol. 1, p. 119.

the question of a federal union of the Australian colonies, and that such Committee consist of Messrs. Nicholson, Michie, O'Shanassy, Brooke, Evans, Anderson, Caldwell, Grey, McCulloch and the mover; three to form a quorum." This Committee like its predecessors was a very able, representative and non-partisan body, its members being chosen impartially from both sides of the House.[1] It embraced in its personnel the most influential public men of the colony, including the Chief Secretary,—Mr. Nicholson, three subsequent premiers, and four future cabinet ministers. The name of Mr. Grey was withdrawn at his request, and that of Mr. Mollison substituted on motion of Mr. McCulloch. In explanation of the revival of his resolution, Mr. Duffy stated that the labors of past committees had not been altogether in vain, as they had stirred up an interest in the federal movement in the other colonies. He would not again have asked the House for the appointment of a Committee "unless there were some prospect of the concurrence of New South Wales being also obtained," and he was much pleased to inform them that such was the case. While the Committee was substantially the same as the last, some new names had been added to give representation to the new element in the House. The motion was accepted nemine contradicente.

The Committee were not long in preparing their recommendation, for on February 7th, Mr. Duffy secured leave to bring up a progress report[2] as follows:

"The question remitted to your Committee for consideration admits in their opinion of but one solution. Any plan of federal action likely to command the sympathy and confidence of the entire colonies must originate in a manner which will place it beyond the suspicion of local influence. And they concur with the Committee of 1857 in believing that this object will be best attained by entrusting in the first instance the construction of such a plan to a conference of delegates selected and empowered for this duty by the colonial legislatures.

"With this view they recommend that the negotiations formerly held on the subject with New South Wales, South Australia and Tasmania be renewed. The two latter colonies, when

[1] On the Government side Messrs. McCulloch, Nicholson, Michel, and Mollison. Below the Gangway, Brooke, Anderson, Caldwell. On the Opposition benches, O'Shanassy, Evans. Below Gangway, Duffy.

[2] Vict., V.P.L.A., 1859-60, vol. 1, p. 147. Ibid, vol. 2, p. 153. N.S.W., Jr. L.C., 1859-60, pt. 2, p. 682.

the project of a conference was first proposed promptly acceded to it, and though an objection originated with New South Wales which retarded any joint action, they have reason to believe that it was of a temporary nature and has disappeared before the urgency with which the question is invested by the necessity of a united defence of the territory of Australia in case of war.

" Your Committee recommend that the revival of these negotiations be entrusted to the Chief Secretary, and that the report of the federal Committee of 1857 (adopted by the Assembly on the 11th of September, and by the Council on the 17th of November) be transmitted with the present report to the governments of the other colonies, as containing the necessary details of the arrangement in which they are invited to concur."

The Committee in short resurrected the proposals of 1857, and again presented them to the legislature for submission to the other colonies as a proper basis for joint action. Time and experience had not revealed to Mr. Duffy any more suitable means of promoting a federal union than an intercolonial conference. The latest problem of intercolonial relations, viz., the question of Australian defence had assumed a new and pressing importance now that the English government was entering upon a policy of throwing upon the colonies the duty and burden[1] of their own protection. In all the colonies the subject of establishing a separate naval and military force was engaging the consideration of the government.[2] The Governor-General of New South Wales had recently suggested the formation of a body of Australian rifles, to embrace by mutual arrangement the whole of the Australian colonies, which force could be moved from one province to another according to the necessities of defence.[3] Mr. Duffy was possibly justified under the circumstances in believing that the pressure of self-protection would force the colonies into federal co-operation. The disappearance of the "temporary" objection to which reference was made, was probably an allusion to the overthrow of the Cowper ministry whose hostile attitude had proved the chief obstacle to all efforts looking to a federal concert.[4] Mr. Duffy may perhaps be pardoned for entertaining a feeling of quiet satisfaction at the

[1]Egerton, British Colonial Policy, p. 362.
[2]N.S.W., Jr. L.C., 1859-60, pt. 2, p. 33. N.S.W., V.P.L.A., 1859-60, vol. 2, p. 641 S.A.P.P., 1859, vol. 2, no. 136.
[3]N.S.W., Jr. L.C., 1859-60, pt. 2, p. 253.
[4]Quick and Garran, Annot. Const. of Aust., p. 99.

downfall of his doughty opponent. Judging from his speech on moving for the appointment of the Committee, he appears to have had reason for the belief, that the new Forster government would be more favorable to a federal union, or at all events to the consideration of the subject of intercolonial relations in conference. He had been keeping in touch with the leading advocates of federation in the other colonies, and was undoubtedly encouraged by their reports to believe that the opportune moment had at last arrived. The conduct of negotiations was placed in the hands of the Chief Secretary who was fully in sympathy with the object in view, and who by reason of his official position could approach the other governments with more authority than the private chairman of a Committee.

A few days later the House agreed without discussion to a couple of motions[1] by Mr. Duffy for carrying out the recommendation of the report in respect to the opening up of negotiations with the three sister colonies and the conduct of the same. But the Committee had made an oversight in limiting the negotiations to New South Wales, South Australia and Tasmania. In 1859, as we have seen, the district of Moreton Bay was erected into an independent colony under the name of Queensland. It would not only have been most discourteous to have omitted the new colony from the invitations to the conference, but would have rendered incomplete ab initio the scheme of a federal union, since Queensland was an integral member of the eastern group of states. To leave her out of the proposed confederation would be to perpetuate the very inconveniences and abuses which a union was intended to obviate. Besides the presence of Queensland, which from her situation and her intimate social and commercial relations with Sydney, was the natural ally of the mother colony, would give New South Wales an additional sense of security in entering into a political partnership with the three southern colonies. Sydney greatly feared the preponderance of Victoria and the two satellite colonies of South Australia and Tasmania, whose interests and relations bound them more or less closely to the policy of the former. The participation of the northern colony in the conference, and her entrance into any plan of confederation would serve as a partial offset to the superior weight and influence of the southern group, and would prove of the nature of a guarantee that the interests of the

[1]Vict., V. P. L. A., 1859-60, vol. 1, p. 174.

mother colony would not be sacrificed. The Committee made haste to repair their omission by bringing up a second progress report[1] to the effect that Queensland be also invited to send delegates to the conference, and that the government be requested to communicate with her on the same terms as with the other colonies. The recommendation was cheerfully accepted by the House,[2] and carried into effect by the Ministry.

The Chief Secretary promptly took steps to carry out the instructions of the House, addressing[3] communications to the Premiers of New South Wales, South Australia and Tasmania[4] and subsequently Queensland,[5] enclosing the report of the Victorian committee and requesting them to move the Governor to bring the subject before the provincial legislature, "with a view to obtain its sanction to the proposed conference." Replies were soon forthcoming from the governments of Tasmania and South Australia, that from Colonial Secretary Henty of the former colony stating "that the subject will receive the earliest consideration of the government,"[6] while that of Mr. Younghusband, on behalf of the South Australian ministry was even more favorable.[7] He announced that it was the intention of the government to again bring the subject to the attention of the parliament at its next session. But quite otherwise was the attitude of the New South Wales executive. Either the government did not think the subject worthy of notice, or entirely overlooked the matter in the pressure of public business consequent upon a change of administration, for they discourteously treated the invitation with neglect. The proposal of the Victorian committee arrived at a most inopportune moment, as the legislature was in the midst of a political crisis, which led to the replacing of the Forster government, a few days later,[8] by the Robertson ministry. Mr. Forster was certainly much more sympathetic towards the policy of cultivating the most friendly relations with the sister colonies than his successor in the premiership, who did not harbour the kindliest feelings towards Victoria, and was strongly opposed to entering into any form of political fellow-

[1]May 1st, 1860, Vict., V. P. L. A., 1859-60, vol. 2, p. 423.
[2]May 4, 1860.
[3]Vict., V.P.L.A., 1859-60, vol. 1, p. 561.
[4]Feb. 25, 1860.
[5]May 18, 1860.
[6]March 5th, 1860. Vict., V.P.L.A., 1860-1, vol. 1, p. 562.
[7]March 14, 1860. Ibid, p. 562.
[8]March 8, 1860.

ship with her. From almost the very beginning of his career, Mr. J. Robertson exhibited a spirit of antagonism towards the younger colony. His personal opposition to a federal union had already been shown by his vote on the Parker resolution against even accepting the invitation of the upper chamber to a conference on the question. A spiteful fate seemed to pursue the efforts of Mr. Duffy, as now for the second time, an unfortunate change of government in the mother colony blocked what appeared to be a favorable opportunity for pressing on the assembling of a conference. Whatever might be the attitude of the Robertson administration, it was evident that, for some time at least, it could not give any attention to the subject of a federal conference.

The response of the northern colony through its first Colonial Secretary, Mr. R. G. W. Herbert,[1] is a most interesting document. The Victorian correspondence, together with that of South Australia was laid by the Governor before the Executive Council, which recognizing the importance of the subject in respect to the present and future relations of all the colonies, deemed it advisable, without loss of time, to lay the matter before both Houses of parliament. The government[2] "were disposed to the belief that a conference of the character suggested would be attended with many important results, as enabling the respective legislatures to gather from the reports of their delegates the views and requirements of the other colonies concerned with respect to all topics bearing upon their mutual interests, and to determine to what extent a federal union of the whole group would be practicable or expedient.

"Upon both these points, the Council, with the information before them, could not fail to entertain serious doubts, and without desiring to prejudice the question they perceived obstacles of a serious character to any project which might, by the creation of a central authority, tend to limit the complete independence of the scattered communities peopling this continent one of the other, or to interfere in however remote a degree with their present direct and happy relations with the mother country.

"At the same time, the Council were alive to the importance

[1] Subsequently Sir. R. Herbert, Permanent Under-Secretary for the Colonies.

[2] This letter of July 31, 1860, is a minute of the Executive Council of June 25, 1860. Queens., V.P.L.A., 1860, p. 299.

of the various matters in which it is desirable that as far as possible the legislation of the colonies should be uniform, and their action united, among which may be enumerated the customs and postal tariffs, communication postal and telegraphic between themselves and the mother country, the local arrangements necessary for defence in case of war; upon all these matters,—upon all matters in fact, such as are managed under treaty by the German Zollverein, the labors of the conference might in their opinion be advantageously employed, it being understood that the delegates should be confined to discussing and reporting on the several questions without power to take any action binding on the colonies which they may respectively represent, and it is principally with these views that the Council have recommended that the proposal before them should be submitted for the favorable consideration of the Queensland parliament."

The Queensland government was somewhat suspicious of the scheme for a federal union; its feeling and attitude were very much the same as that of Port Phillip at the time of Earl Grey's federal proposal. The colony had just come into the enjoyment of the right of self-government, and did not propose to sacrifice a particle of it. To her, federation presented somewhat of the aspect of subordination to the larger colonies, of a partial abnegation of her autonomy.[1] It might also involve, in the opinion of Mr. Herbert, an interference with the existing direct relations between the colony and the home government. The colony, it was feared, would lose her independent colonial position in the empire and be reduced to a provincial status in an Australian federation. But the Queensland government was not so narrow minded or provincialistic in its view, as to fail to appreciate the importance of the subject, or to see the manifest advantages of co-operative action and uniform legislation on matters of common concern. To this end, the Ministry were prepared to recommend to the legislature that the colony be represented in a consultative conference. It was apparently their opinion that through the deliberations of an intercolonial congress, a uniform policy in respect to subjects of general concern might be agreed upon for recommendation to the several colonial legislatures. By adopting these recommendations, the colonies would secure the advantage of uniform legislation and

[1]Quick and Garran, Annot. Const. of Aust., p. 99.

administration, and at the same time obviate any necessity for the creation of a federal assembly.

In compliance with his promise, Mr. Herbert, on July 20th, 1860, laid the federal correspondence before the Assembly, but no further steps were taken to elicit the opinion of the House upon the question, or secure the appointment of delegates. We are not informed of the reason of this inaction, but it is reasonable to suppose that the government were convinced by the hostile attitude of New South Wales, or possibly by the unfavorable temper of their own legislature of the fruitlessness of pressing the matter further.

Although the government of New South Wales failed to respond to the invitation of the Victorian assembly, the question of federation was nevertheless brought to the attention of the legislature shortly afterwards, upon the motion of the Reverend Doctor Lang for the appointment of a select committee[1] "to take into consideration the subject of federation of the Australian colonies, with a view to ascertaining what are the specific objects which it would be advisable to attain through such federation, and whether, in the existing circumstances of these colonies, a federation is at all practicable."[2] The motion, he affirmed, was not introduced to carry out a theory,[3] but to ascertain the objects and feasibility of federation. As other colonies were dealing with the subject, New South Wales should also express her opinion. "Personally, he thought differently on the practicability of the subject than he did some time ago." All the gentlemen proposed for the Committee had agreed to serve. The resolution called forth much adverse criticism from all quarters of the House and upon very diverse grounds. Mr. Windeyer objected to the mode of the nomination of the Committee, and moved an amendment that it be chosen by ballot. Mr. Darvall commented ironically on the present position of Dr. Lang, who had changed his role from playing the part of the chief separationist to that of acting as a promoter of union. If the reverend member had advocated a policy of federal union at the time that he was clamoring for dismemberment the proposed federal concert might have been attained, "but the day was now passed for that."

[1]April 3, 1860. N.S.W., V.P.L.A., 1859-60, vol. 1, p. 541.

[2]The Committee nominated by the Rev. Doctor consisted of Messrs. Arnold, Black, Campbell, Hay, Jones, Moines, Parkes, Robertson, Rotton and the mover.

[3]The Sydney Morning Herald, April 4, 1860.

Now that they had divergent laws and political institutions, it was hopeless to secure uniformity without interfering with colonial legislation. One of the chief advantages of federation in his opinion would be the establishment of a general Court of Appeal. The conference, he feared, would not produce beneficial results, but only augment mutual jealousies, as each colony would try to overreach the other in a species of intercolonial barter. However he would not oppose the appointment of the Committee if the House was favorable to its constitution. Mr. Martin likewise declared his unwillingness to vote against the motion, although it did not meet with his approbation, for he could not conceive of any possible good arising from the inquiry. Australia had not the same motives for federating as had the United States, and moreover the colonies had not men of sufficient leisure and statesmanlike qualifications to form a federal congress. They had failed to solve their provincial land, education, and tariff problems, and yet an ambitious project of federation was now proposed. It might be desirable to have uniformity of legislation, but it was improbable that the different colonies would agree on the land and other questions. The time was not ripe for a federal union, the "public exigency did not require it," and the labors of the Committee would be wasted. Mr. Plunkett was glad that attention was called to the subject, as some uniformity in legislation was most desirable. Because there were innumerable difficulties in the way was no sufficient reason for refusing to enquire into the question. The Committee was a fair and representative one and he hoped that the members would attend regularly. In reply, Dr. Lang said he agreed that a complete federation such as was contemplated by some of the members was impracticable on account of the enormous expanse of some of the colonies, whose size was altogether out of proportion to that of the American states. He had no objection to the selection of the Committee by ballot. The amendment was agreed to, and the House chose Messrs. Windever, Hay, Parkes, Jones, Arnold, Black, Lang, Robertson, Campbell, and Darvall, to form the Committee.

Several of the members of the Committee were very able men, and had they been a unit upon the federal question, a strong report might have been looked for, which would have given an impetus to the federal movement. But the debate in the House clearly revealed that the unfriendly attitude of that body was

unchanged. A federal union was entirely out of the question in the minds of almost all the members, and even the desire for co-operation found but a feeble expression. Some of the leading members did not hesitate to deprecate the wnole movement and to pronounce it valueless, if not injurious, to the interests of New South Wales. The recent sharp conflict of interests with Victoria over the postal service had hardened the hearts of the New South Wales legislators, and made them obdurate to any proposal which involved a partnership with that colony. Copies of the federal correspondence of the different colonies were subsequently referred to the Committee, but, on account of the lateness of the session, that body was prevented from reaching any definite conclusion[1] on the matter, or even bringing up a report.

The following session Dr. Lang again introduced the subject by moving for the appointment of a select committee[2] to ascertain the specific objects and desirability of federation. The personnel of the proposed Committee was the same as that of the last session, save for the substitution of the name of Mr. Morris for that of Mr. Jones. The present relations between New South Wales and Victoria in respect to border customs, the Rev. Dr. declared, showed the importance of investigating the advisability of adopting some organization in the Australian colonies similar in character to the German Zollverein. The appointment of the Committee was promptly acceded to, but like its predecessor, it failed to make a report. The best explanation of this inaction will be found in a perusal of the debates in the House upon the border customs disagreement,[3] which reveal a decided tendency on the part of many of the members to treat the interests of the colonies not only as divergent, but even as antagonistic. Instead of seeking to bring the colonies closer together in a commercial and political unity, they drove them further and further apart by retaliatory measures and conflicting policies. A few of the members did indeed plead for a more enlightened policy of co-operation, but the voice of intercolonial brotherhood was lost in the clamor of provincialism. It was this spirit of colonial jealousy which caused the rejection of all the overtures of the Vic-

[1]Speech of Rev. Dr. Lang, Sept. 28, 1860, The Sydney Morning Herald, Sept. 29, 1860.
[2]Sept. 28, 1860, N.S.W., V.P.L.A., 1860, vol. 1, p. 15.
[3]June 26 and June 28, 1860, The Sydney Morning Herald, June 27 and June 29, 1860.

torian legislature, and defeated the efforts of the friends of federation within the local parliament.

In South Australia, the resignation of the government[1] prevented the fulfillment of Mr. Younghusband's promise to bring the question of a federal union before the legislature. He however requested the Colonial Secretary[2] to lay before the Council copies of the correspondence between Victoria and South Australia upon the subject of federation and of a Court of Appeal. The question of a general appellate court for the Australian colonies was forced most prominently upon the attention of the legislature this session by a serious conflict between the local supreme court and parliament. The existing Court of Appeal, which consisted of the Executive Council under the presidency of the Governor with the Attorney-General as legal adviser, was, by reason of its non-professional and political character, a most unsatisfactory final tribunal, and as judicial ability for the constitution of an appellate court was very limited within the colony, attention was naturally directed to the possibility of establishing an Australian Court of Appeal, which should possess the necessary legal qualifications. Resolutions affirming the desirability of creating such a general appellate court for the colonies of New South Wales, Victoria, Tasmania and South Australia, and requesting the Governor to communicate with the said colonies in respect to the matter, were agreed to in both Houses.[3] In the debate in the Legislative Council upon the question, several of the speakers chose to treat the proposal as though it were a part of a general scheme of federation, so that incidentally much light was thrown upon the attitude of the Council upon the latter subject.[4] The opinion was generally expressed that at present a federal union was impracticable, although its ultimate attainment was regarded with favor. There was at this moment unfortunately a marked indisposition on the part of the colonies to co-operate with one another.[5] Previous efforts to effect a union had failed on account of the coolness or suspicion of the sister colonies, but it was urged that the establishment of an Australian appellate court, which was generally admitted to be desirable, might pave the way to a federation.[6]

[1]May 9, 1860.
[2]June 5, 1860, S.A.P.D., 1860, p. 154.
[3]Legislative Council, June 5, 1860. Legislative Assembly, June 26, 1860.
[4]S.A.P.D., 1860, p. 154.
[5]Ibid, opinion of Hon. G. F. Angas.
[6]Ibid, Hon. J. Morphett.

.The new Ministry felt themselves under a moral obligation to carry out, in spirit at least, the engagement of the late government to the Victorian executive, and, on July 17th, 1860, the Council, upon motion of Mr. Waterhouse,[1] the Colonial Secretary, resolved itself into a committee of the whole for the consideration of the following resolutions in respect to federal action upon certain subjects.

"1. That, while in the opinion of this Council, the time has not yet arrived for a federal union of the Australian colonies for legislative purposes, it is nevertheless extremely desirable that these colonies should be more closely united than they are at present, and that all legislation calculated to widen existing severances should be remedied. That to these ends, in order to facilitate an eventual federal union, it is desirable:

'A. To establish a customs union based on a division of the customs receipts on a scale proportionate to the population, and whereby provision shall be made that all articles of colonial produce, not being spirits or tobacco, shall pass intercolonially free of duty, but leaving to each colony the appointment, control and payment of its own staff of customs officers.

'B. To alter existing legislation with a view to providing that naturalization in one colony should entitle its recipients to equal rights and privileges with British subjects in all.

'C. To create a general Court of Appeal.

"2. That in order to give effect to the above resolution, it is desirable that negotiations be entered into with the adjacent colonies with a view to the appointment of delegates, who shall meet in conference and who shall possess full powers of arranging all details, subject only to the eventual sanction of the legislatures of the several colonies."

In support of the resolutions Mr. Waterhouse[2] maintained that "the colonies are not ye. ipe for a federal union, as their usages were too diverse, their mutual jealousies too great, and their interests too various." Although a federation was not now desirable, still he would gladly see a closer bond of union between the colonies than at present existed. The colonies were drifting more widely asunder, heart-burnings had sprung up between them, which might in future years separate them into distinct nationalities, whereas they ought to grow up into an

[1] S.A.P.D., 1860, vol. 1, p. 35.
[2] Ibid, p. 405.

organic unity. The best interests of all would be consulted by limiting, or if possible removing the existing causes of difference between them, the foremost of which was the diversity of tariffs and the establishment of border customs, which had not only retarded the development of the country, but would occasion a "feeling of alienage" between the colonies. The Zollverein of the German states, upon which the present resolution with respect to uniform customs was based, had proved most beneficial both commercially and politically to that confederation. Upon the subjects of naturalization and a Court of Appeal, it would be also advantageous to have a common arrangement with the other colonies. These resolutions did not go so far as the Victorian government proposed in reference to federation, but were a step in that direction. The establishment of a central government must follow, not precede the construction of railroad communication between the colonies. Besides there were some questions which this colony could not safely entrust to a federal union, for example, "the subject of telegraphic communication or postal arrangements." In the event of the acceptance of these proposals, it would be necessary to fix some place of meeting for the conference, the delegates to which would have the power of deciding such questions as were submitted to them, subject to the sanction of the respective legislatures.

In supporting the resolution, Mr. Angas also expressed the opinion[1] that the time was not yet ripe for confederation, but that these resolutions would be a means of promoting conciliation and a federal concert between the colonies. He thought it would be wiser to submit the various federal complications to the Governors of the colonies, between whom a friendly feeling prevailed rather than to a general conference of delegates. A former Colonial Secretary had suggested to him the desirability of appointing a central committee to arrange intercolonial difficulties. Mr. Morphett believed "it was scarcely possible that each colony would give up its interests for the object of realizing so beautiful and utopian a scheme" as a federation. Treaties of commerce on general principles were injurious, for each colony should be left to regulate its own tariff according to the necessities of the local revenue. The difficulty regarding naturalization could be met by making the oath of allegiance in another colony valid in this, and as the Council had already taken

[1] S.A.P.D., 1860, p. 406.

action on the matter of a Court of Appeal, there was no object to be gained by the resolutions. Mr. Younghusband suggested that the resolutions be put seriatim, as he desired to support "C," but did not think that they could legislate in respect to "B" without imperial sanction, and objected altogether to "A." Neither the precedents of the German Zollverein nor the United States federation were analagous to the position of the Australian colonies, so that it would be fallacious to attempt to apply these exotic constitutional examples to their peculiar conditions. From a practical business standpoint, a customs union was unwise, since either South Australia, or the other colonies would reap the benefit therefrom, and the province disadvantaged would naturally object to such an arrangement. The resolutions of 1858 were directed to entirely different federal objects than those now proposed. Mr. Scott declared the present moment was inopportune to propose a federal union, as the existing feeling between the colonies was somewhat strained, if not hostile. He attacked the colony of Victoria, in particular, for her supercilious conduct, and attempt to lord it over the other provinces. Federation would be most disadvantageous to this colony in subjecting her to the will of a stronger and wealthier state. "He would rather see South Australia free than chained to the wheels of the golden chariot of Victoria." When their neighbors became sober minded, it would be soon enough to discuss the subject of federation with them. In reply, the Colonial Secretary said that the resolutions had been misunderstood, as they did not involve federal action, but only united action. He stoutly defended the policy of a customs union from the illiberal attacks upon it. He had discharged his duty in bringing forward the resolutions, but would now withdraw them if the Council thought it desirable so to do. Notwithstanding the protests of several of the members who urged the postponement of the subject for further consideration, Mr. Waterhouse, in response to the general opinion of the House, and with no apparent reluctance, withdrew the resolutions, of which only the first in respect to the prematurity of a federal union had been adopted.

Somewhat later in the session, Mr. Baker attempted to revive the discussion[1] of the question, on the ground that no disinclination to meet the overtures of Victoria should be shown by this colony. The Council had affirmed the statement that the

[1]Sept. 28, 1860.

time for federation had not yet arrived, while the Victorian legislature had taken the opposite view. He feared that the time had arrived, and was already passed. The Colonial Secretary replied that the resolutions had been withdrawn in compliance with the wish of the majority of the members, and he did not think that any practical results would arise from the revival of the question.

From a review of the discussion, it is evident that the feeling of the Council had undergone considerable modification since the resolutions of 1858. The view was still maintained that the formation of a federal union at present was premature, but that opinion had become more pronounced. There was no longer a willingness to meet the other colonies in conference to discuss the matter in all its various bearings, and consider the best means of effecting that object. The proposals of the Victorian government were on this occasion practically rejected, not as in the former instance, tentatively accepted, or at least held open for discussion. The debate reveals the growth of the spirit of jealousy and suspicion towards the other colonies, more particularly Victoria and New South Wales, whose attitude in the matter of border customs, postal and telegraphic communication, and the transfer of the western territory, had been somewhat independent, if not high-handed at times. There was a feeling of resentment on the part of South Australia of the cavalierly treatment she had received from her more powerful neighbors, and a general conviction that the interests of the colony would be sacrificed by entering into a league or union with them.

The resolutions submitted by the Colonial Secretary did not at all correspond to the invitation of the Victorian legislature. At the very outset, they repudiated the proposal for a federal union, though professing a desire for heartier co-operation between the colonies with a view to ultimate federation. They were of the nature of a counter-proposal to the overtures of the Victorian committee. In place of the federal program of the latter, a scheme for united colonial action was now substituted. Uniformity of legislation in respect to certain subject matters was to be attained by the concurrent efforts of the several legislatures, and not through the establishment of a federal assembly. The conference to be called, unlike that acceded to under the resolutions of 1858, was not to be an intercolonial congress for the free and unfettered discussion of the "many topics in which

the colonies have a common interest, and on which uniform legislation would be desirable," but was restricted to the consideration of three special topics. With a bare semblance of compliance with the overtures of Victoria, the government had in fact selected certain features of their own political policy, and now offered them to the other colonies as suitable subjects for uniform action. All three of the matters suggested were then engaging the attention of the legislature, and upon all of them the need of intercolonial co-operation had been forced upon the consideration of the government and parliament by the inadequacy of provincial legislation. Most favorably construed, the resolutions were but a colorable response to the proposals of the Victorian committee; they represented at best the policy of independent co-operation through the instrumentality of an intercolonial conference. But even these resolutions, unpretentious as they appear, failed to secure the endorsation of the Council. By its attitude the upper chamber showed that it was not only opposed to any scheme of union, but also that it was unwilling, under existing circumstances, to join with the sister colonies in a general plan of federal action. The conduct of the Colonial Secretary in so weakly withdrawing the resolutions is the best evidence that his heart was not committed to a federal policy, however favorable he might be to a customs union. The Assembly was apparently even less interested in the subject, for it took no action whatever upon the Victorian proposals.

The Tasmanian legislature gave a further demonstration of its continued interest in the question, and of the advanced state of federal sentiment in that colony as compared with some of the sister states, by readily assenting to the invitation from Victoria. On August 20th, 1860, Mr. Miller again moved[1] that the House proceed to elect by ballot delegates to any Australian conference which might be held during the ensuing year. The motion was agreed to without discussion, after the defeat of an amendment by the Attorney-General that the delegates of last year be re-appointed; and Dr. Officer and Mr. Chapman were duly chosen. A further series of resolutions[2] moved by the same member, to the effect that a conference should speedily be held for the consideration of the critical state of New Zealand, the desirability of a general Court of Appeal, the assimilation of

[1]Tas. Jr. H.A., 1860, vol. 5, p. 150.
[2]Ibid.

colonial tariffs, and the defenceless condition of the colonies was withdrawn upon the advice of Mr. Chapman. In the Legislative Council for the fifth time Mr. Nairn was appointed the delegate of that chamber.

Mr. Duffy's last effort was thus even less successful than the first, since Tasmania was the only colony to respond to the invitation by the appointment of delegates to the suggested conference. The Queensland government gave a qualified assent, but the legislature took no action; in New South Wales and South Australia, steps were taken to forward the project, but without practical result. With such a hopeless outlook, the Victorian committee could only allow the subject to lapse till a more auspicious season.

Shortly after, the Tasmanian legislature, urged on by a part of the press, again took up the federal question, which had been dropped in the other colonies through force of circumstances. The island colony was in a much better position to re-open negotiations upon the subject, and to put herself at the head of the federal movement, than any of the other provinces. She had been enjoying the advantage of a stable administration during the past few years, and was moreover not exposed to the suspicion and jealousy which was felt towards the premier colony Victoria. The growing protectionist tendency of the Victorian legislature was beginning to alarm the more far-seeing of the Tasmanian public, and gave a stimulus and a practical aim to local federal sentiment.[1] On September 19th, 1861, the Assembly resolved, on motion of Mr. Hill, "That an address be presented to the Governor praying him to cause communication to be opened with the other Australian governments, urging on them the importance of immediate steps being taken to establish a federal assembly for the consideration and settlement of all fiscal and other questions affecting the prosperity and welfare of the whole group;"[2] and a message was sent to the Council asking concurrence. The latter readily assented after a brief discussion in which the Colonial Secretary stated[3] that the Ministry would gladly initiate a measure for carrying out the object in view. In compliance with the address, the Honorable W. Henty directed a communication to the Premier of Victoria, sometime

[1]The Hobart Mercury, Dec. 12, 1860.
[2]Tas., Jr. H.A., 1861, vol. 6, p. 137.
[3]The Hobart Mercury, Sept. 20, 1861.

later,[1] informing him of the steps which had been taken by the Tasmanian parliament at the late session to revive the question of federation, and of its readiness to join in any movement to promote a union of the colonies. He expressed the hope that the "recent circumstances which had led to the consideration of the united naval defences, and other important questions of mutual interest, such as light-houses, ocean postage, differential duties, patents and others, may induce your government to persevere in its movement for the initiation of some early measure on the subject." In reply, Mr. O'Shanassy, stated[2] that he would lay the matter before parliament, but he feared that, as the session was drawing to a close, there was little prospect of so grave a question being now entertained. Probably at the next parliament the government would be "in a better position from the state of public business to enter upon its consideration."

Meanwhile, the South Australian government had earnestly espoused the policy of an Australian customs union. The fiscal policy of that colony had for some time been tending towards an assimilation of the tariffs of the three adjacent colonies, and now an almost irresistible impulse was given to the scheme of a common Zollverein by the pressing demand for free distillation. On March 18th, 1862,[3] Mr. Waterhouse opened up correspondence with the governments of the other colonies, upon the desirability of adopting a uniform tariff throughout the Australias. He pointed out that the diverse customs and the "systematic treatment of each colony by its neighbors, as though it were a foreign state," was gradually creating a feeling of antagonism which "may eventually render impossible that federation which all look forward to as ultimately desirable." Until the facilities for communication were much improved, "probably matters will not ripen sufficiently to allow of complete federation," but meanwhile much might be done to create a more cordial feeling, and prepare "the way for a future federal union." As a step in that direction, his government intended to introduce a measure for reciprocal free trade in intercolonial products, and he suggested that a conference be held at Melbourne

[1]May 6, 1862. Vict., V.P.L.A., 1861-2, vol. 1, p. 779. Tas., Jr. H.A., 1862, vol. 8, no. 15.
[2]May 23, 1862 Tas., Jr. H.A., 1862, vol. 8, no. 15.
[3]N.S.W., V.P.L.A., vol. 2, p. 647. N.S.W., Jr. L.C., 1863-4, p. 14. Vict., V.P.L.A., vol. 1, 684. S.A.P.P., 1862, vol. 2, no. 21. Queens., V.P.L.A., 1863, p. 205.

for the consideration of the subject of a uniform tariff. In this despatch, there is a clear recognition that the policy of an assimilation of tariffs was a preliminary measure to an ultimate federation, and it was partly upon this ground that its adoption was advocated in the hope of commending the proposal to the other colonies. The question of intercolonial economic relations was inseparably connected with the political constitution of the colonies throughout the whole course of the federation movement. Again and again in one form or another, we find it acting as the primary source of federal action.

In the subsequent debate in the legislative assembly[1] upon the resolutions introduced by the government for the assimilation of tariffs, and the appointment of delegates to an intercolonial conference, the subject of a federal union came up for considerable discussion, in which the widest diversity of opinion found expression. The principle of federation was favorably regarded by the majority of speakers, Mr. Hart being the only member to openly express opposition to the general desire for ultimate union, but there was no inclination to treat the subject as a practical problem of the near future. The Colonial Treasurer, Mr. Blyth, in presenting the resolutions, expressed the opinion that although some form of federation was admittedly necessary, still there were many matters of a federal nature which could well be settled before such a union was formed, such as general uniformity of customs, a court of appeal, naturalization, the lighting of the coasts, and other minor matters, as for example, the reciprocity of professional qualifications. But an entirely contrary view of the true relation of a uniform tariff to a federal union was voiced by Mr. Finniss, an ex-Colonial Secretary, who declared that a federation must precede and not follow the adoption of a policy of customs uniformity. The latter, he asserted, could not be carried into effect without some central authority sanctioned by the imperial parliament. This debate, like that upon the Waterhouse resolutions of 1860, showed the immaturity of federal sentiment on the one hand, and the strength of provincial feeling on the other.

The suggestion of the South Australian government was favorably received in the other colonies, which all expressed a willingness to send delegates if satisfactory arrangements could be made. To Mr. Duffy, the moment seemed opportune for

[1] July 8, 10 and 11, 1862. S.A.P.D., 1862, p. 412.

bringing the subject of federation before the approaching conference. The presentation of the letter from the Tasmanian government in regard to the re-opening of the federal question was taken advantage of by him to move for the re-appointment of a select committee.[1] At the same time Mr. O'Shanassy, the Chief Secretary, explained that he had also received a communication from the South Australian ministry in reference to the adoption of a uniform tariff, and he suggested that possibly the deliberations of the federal union committee might also embrace the question of intercolonial customs, or perhaps if a conference were held, it "might take a wider scope than that suggested by the South Australian government." On May 23rd, the House agreed[2] to the appointment of the desired Committee, after a brief statement by Mr. Duffy to the effect that the duty of that body would be to re-open negotiations with the other colonies. He had reason to believe that the feeling of New South Wales had considerably changed, and was now more favorable to a federal conference than in the past. He did not anticipate that the Committee would need to be convened more than once.[3] The Committee of which Mr. Duffy was elected chairman, held but two sittings both of which were well attended, and on June 13th agreed to a draft report drawn up by its chairman for presentation to the House.[4] The report read as follows:[5]

"Your Committee having learned that the Australian governments are desiróus of obtaining a conference of colonial delegates at Melbourne during the present year on the question of a uniform tariff, we are of opinion that such a conference would afford a suitable opportunity to consider the larger question of Australian federation.

"For five years past negotiations on this topic, initiated by the parliament of Victoria, have been pending between the colonies, awaiting apparently only such an occasion as the present to proceed from negotiation to action.

"Your Committee therefore recommend to your Honorable House that communication may be opened with the Australian

[1]May 21, 1862. Vict. Hans., 1861-2, vol. 8, p. 1151.
[2]Vict., V.P.L.A., 1861-2, vol. 1, p. 299. "That a select committee be appointed to consider and report upon the subject of a federal union of the Australian colonies, such committee to consist of Messrs. O'Shanassy, Nicholson, Sullivan, Heales, McCulloch, Anderson, Mollison, Evans, and the mover; 3 to constitute a quorum."
[3]The Vict. Hans., 1861-2, vol. 8, p. 1192.
[4]Vict., V.P.L.A., 1861-2, vol. 2, p. 1886.
[5]Ibid, p. 1285.

governments, requesting the delegates about to be appointed may be empowered to take this subject into consideration, and be clothed by the respective legislatures with the necessary authority for this purpose.

"The number of delegates formerly adopted was two from the Assembly, and one from the Council of each colony, and this arrangement seems still in all respects a suitable one.

"The only duty such a conference would be expected to undertake would be to deliberate and report, leaving the colonial parliaments to deal ultimately with their recommendations as they may deem fit.

"If the suggestions of your Committee should be adopted by your Honorable House, we further recommend that it may be immediately communicated to the legislative council, and if it should receive their assent, that the Chief Secretary may be requested to convey the decision of the Victorian parliament to the Australian governments for their consideration.

"Your Committee urgently advise that the present opportunity should not be lost. The condition of the world, the danger of war, which to be successfully met, must be met by united action, the hope of a large immigration, which external circumstances so singularly favor, the desire to develop in each colony the industry for which nature has fitted it, without wasteful rivalry, and the legitimate ambition to open a wider and nobler field for the labors of public life combine to make the present a fitting time for reviving this project.

"It is the next step in Australian development. In the eyes of Europe and America, what was a few years ago known to them only as an obscure penal settlement in some uncertain position in the southern ocean, begins to be recognized as a fraternity of wealthy and important states, capable of immense development, and if our current history and national character are in many respects misunderstood, we shall perhaps best set ourselves right with the world, by uniting our strength and capacity in a common centre and for common purposes of undoubted public utility."

The report has the true nationalistic spirit characteristic of Mr. Duffy's utterances on the federal question. He aimed at the formation of a strong united Australia, which would be worthy of her destiny as mistress of the southern seas, which would call forth a patriot's pride and a nation's sacrifice, and would honor-

ably play a part in the world's affairs. But this attitude was in striking contrast to the sentiments of the political leaders of the other colonies, with their feeble half-hearted suggestions of co-operation, and their timid fear of the loss of the smallest particle of provincial autonomy. But the legislators of Victoria could speak with a bolder tone than their confreres in the other provinces, for they were representatives of the dominant state of the Australian group, whose counsel and whose interests in any federal union would command due weight and consideration.

On January 17th, Mr. Duffy brought up the report of the Committee,[1] the object of which, he briefly explained, was to empower the delegates to the customs conference to also consider the question of a federal union.[2] In furtherance of that object he accordingly moved "That the Chief Secretary be requested to communicate with the governments of the neighboring colonies, recommending that the delegates about to be appointed to consider the question of a uniform tariff may be authorized also to confer and report upon the question of a federal union of the Australian colonies." A short discussion ensued, in which Mr. Francis argued that the two questions of a uniform tariff and a federal union were distinct subjects, and ought to be considered by distinct intercolonial bodies, while Mr. Mollison adopted a contrary view, and wished to authorize the coming conference to deal with the further questions of steam communication with Europe, and Australian defence, especially the latter, as the other colonies had declined to share the burden of maintaining the headquarters staff, and Victoria was unwilling to bear it alone. Mr. Duffy pointed out in reply that some of the very objects of a federation would be to deal with such subjects, so that there was "no necessity for their being entertained at the preliminary conference." The motion was then agreed to without division, as was also a further resolution asking for the concurrence of the legislative council.

The same day, in the upper chamber, Mr. Mitchell moved that the Council concur[3] in the Assembly's resolution, but an amendment was offered by Mr. Fellows for the omission of the word "also" after the word "authorized," and the insertion in its place of the phrase "by their respective legislatures." He had no objection, he explained, to the Australian governments

[1]Vict., V.P.L.A., 1861-2, p. 370.
[2]Vict., Hans., 1861-2, vol. 8, p. 1337.
[3]Ibid, p. 1332.

appointing delegates to confer on the subject of a uniform tariff, but he thought that the appointment of representatives to consider the expediency of a federal union should be made only by the respective legislatures. The amendment which brought the motion into line with previous resolutions upon the subject was intended to give a parliamentary character to the conference and to secure to the Council the right of selecting an independent delegate. The motion, as amended, was carried unanimously. The amendment[1] was accepted by the Assembly without discussion, as a correct expression of constitutional principles.

In accordance with this resolution, Mr. O'Shanassy despatched a circular letter[2] to the governments of the other colonies, in which he expressed the opinion of the Victorian ministry, that the suggested conference would be a "favorable opportunity to consider the important question of Australian federation," and proposed that the delegates, "be authorized also to confer and report upon that question." To assist the governments in their consideration of the matter, he enclosed several copies of the correspondence on the subject of federation.

The response of the colonies was by no means encouraging. That from Tasmania, as might have been expected, was the most hopeful, Mr. Henty, the Colonial Secretary, stating that the subject would be shortly brought before parliament,[3] and requested to be furnished with one hundred copies of the pamphlet containing the federal correspondence with a view to better acquainting the members of the legislature with the problem. The question was not brought directly before the legislature[4] as a distinct proposition, but the Victorian suggestion was incidentally referred to by Mr. Chapman in moving for the appointment of a select committee to consider the advisability of furnishing instructions to the delegates, and to report upon the nature of their deliberations. He apparently assumed, as did several of the other speakers, that federation would be one of the subjects to come before the conference, though he did not specifically mention it in the enumeration of the questions upon which it would be desirable that the delegates should receive instructions. One of the members, Mr. Horne, objected to a federal union on the

[1]Vict., V.P.L.A., 1861-2, vol. 1, p. 377.
[2]July 18, 1862. N.S.W., V.P.L.A., 1862, vol. 2, p. 648. N.S.W., Jr. L.C., 1863, pt. 2, p. 16. Vict., V.P.L.A , 1862-3, vol. 1, p. 687. Tas., Jr. H.A., 1862, vol. 8, no. 15.
[3]July 26, 1862, N.S.W., Jr. L.C., 1863-4, pt. 2, p. 16.
[4]Oct. 2, 1862, The Hobart Mercury, Oct. 3, 1862.

ground that it would involve separation from Great Britain, but this view met with general disfavor. The House however failed to take any action on the motion.

But the subject received due consideration in the instructions[1] issued by the Governor for the guidance of the delegates at the conference, though the treatment of the question was of the most non-committal character. In the paragraph devoted to that topic, it was declared at the outset that the government refrained from furnishing "any definite or extended instructions" upon the subject of federation, for the reason[2] "that, from the nature of the question, it could only be dealt with in the way of suggestive inquiry or speculative discussion," from which no practical results could follow without the interposition of the imperial parliament. Besides the circumstances under which the conference assembled "precluded the possibility" of a matter of this magnitude being adequately discussed. "It will be the duty of the Tasmanian delegates," so run the instructions, "to seek rather than impart information on this point," since the subject was one which could not fail to attract the attention of the delegates of some of the colonies. "Tasmania had many advantages to gain from the establishment of federal action in Australia, while she is fortunately able to approach the question undisturbed by the sentiment of jealous rivalry, which is almost certain to embitter and possibly impede its discussion between her wealthy and more powerful neighbors, Victoria and New South Wales.

"My government desires that the Tasmanian delegates should devote special attention to ascertaining what may be considered the real views upon this question of the governments of the other colonies represented at the conference.

"The question itself can receive no practical solution on the present occasion, but much useful information may be elicited to be turned afterwards to beneficial account, when the future development of Australian colonization shall have tended to equalize the weight and influence at similar conferences of the great colonies now jealously contending for metropolitan consideration."

[1]Tas., Jr. H. A., 1863, 2nd and 3rd sess., vol. 10, no. 1. Tas., Jr. L. C. 2nd and 3rd sess., vol. 9, no. 8.

[2]These are the reasons assigned for the omission of definite instructions upon the subject of an Australian appellate court, and were made equally applicable to the question of federation.

The Tasmanian government considered that federation was a proper subject for preliminary discussion at the conference, but were not prepared to take any definite position in respect to the matter, desiring rather to get hold of the views of the other colonies than commit themselves to any specific action. Nor did they expect any practical results to flow from its consideration, on account of the irreconcilable jealousy of the two leading colonies. Tasmania was neither ready to lead in the movement, formulate a distinct policy concerning it, nor act as peace-maker between the contending provinces in order to promote the end in view; she preferred to be a passive but sympathetic participant in the deliberations of the conference, leaving the decision of her policy for future determination. The government were desirous in fact of first learning something of the character of the proposed federation which the Victorian delegates had in mind, and which the other colonies were prepared to accept, before they committed themselves in any way to becoming members of a federal union. Although the principle of an Australian federation was approved, it was held that the question could only work itself out in the future development of the colonies; in short the subject could only come within the range of practical politics when the economic and political strength of the colonies were more nearly equalized, and the danger of the predominance of any one or two states in the union was removed. The chief advantage which would arise from the consideration of this topic at the approaching conference would be educational; through the free exchange of opinions around the conference table, the delegates of the several provinces would be familiarized with the diverse views of the sister colonies, and would acquire a broader liberality of judgment, and an intercolonial perspective which would enable them the better to understand and appreciate the claims and interests of the colonies, severally and collectively, in any future negotiations or conference on the subject.

The response of the Queensland government[1] also seemed very promising at first for Mr. Herbert replied that the subject was engaging the consideration of the Governor and Council, who were "fully sensible of the importance of the questions involved," and were "prepared to co-operate with the governments of the other colonies." But before finally accepting the

[1]Aug. 16, 1862. N.S.W., Jr. L.C., 1863-4, pt. 2, p. 17. Queens. V.P.L.A., 1863, 1st sess., p. 207. Tas., Jr. H.A., 1863, vol. 10, no. 1.

invitation, the Ministry were desirous of securing information on certain points touching the modus operandi of the conference. A request of a few days later[1] for some additional copies of the pamphlet on federal union showed that the government were preparing to lay the matter before parliament. But this hopeful beginning was soon after rudely shattered by the announcement,[2] that although certain papers upon the subject of a uniform tariff and federation were laid before the legislature no action had been taken, and no authority conveyed for entering an appearance at the conference. A., it appeared from the precedents of South Australia and Victoria that the sanction of parliament was considered necessary to the official recognition of the delegates, the Queensland government had concluded that the colony, much to their regret, could not be represented in the coming conference. It would almost seem as though the Queensland ministry were not thoroughly in earnest in their desire to participate in the conference, or else felt the hopelessness of consulting the Assembly upon the subject, since they took no practical steps to elicit the opinion of the legislature, which might easily have been done by means of a simple resolution. At any rate, whether from policy, compulsion, or neglect, they did nothing, and then pleaded the inaction of parliament as an excuse for failing to carry out their original promise of co-operation.

The reply of New South Wales was an unqualified negative,[3] such as might have been expected from Mr. Cowper who was again at the head of the government of that colony. The attention of the delegates should in the opinion of the Ministry "be confined to the question of the tariff." The subject of a federal union however came up for considerable discussion in the debate in the legislative assembly upon the appointment of delegates to the approaching conference.[4] This debate which was marked by a spirit of the narrowest provincialism brought out the most diverse expression of opinion in regard to federation, and revealed the utter lack of harmony in the views of the members. There was, as yet, no general consensus of opinion in the House, nor any party formulation of principle upon the question, but each member was free to express his own personal

[1]Sept. 1, 1862.
[2]Sept. 16, 1862. N.S.W., Jr. L.C., 1863-4, pt. 2, p. 18.
[3]Oct. 4, 1862. Ibid, p. 19.
[4]Sept. 10, 1862. The Sydney Morning Herald, Sept. 11, 1862.

judgment. Opinions ranged all the way between the two extremes of the progressive federalists on the one hand, who were desirous of obtaining at least a partial measure of federal co-operation, and favored a consideration of the federal question by the conference as a means of promoting that object,[1] to ultra anti-federalists on the other, who could see in the Victorian suggestion only a Machiavellian scheme of Melbourne to make herself permanently predominant in the Australian group by securing the federal capital.[2] To some a uniform tariff was a step toward federation and was supported upon that ground,[3] whereas others refused to consider a Zollverein practicable or beneficial unless established by a federal power. Mr. Cowper maintained that the discussion of the federal question at the conference would only prove embarrassing, and was altogether premature, while ex-Colonial Secretary Forster reiterated the famliar argument, that the imperial tie was the best federal bond until the time should arrive for an Australian nationality. It was manifest however from the tone of the speeches that the great majority of the members were opposed to having anything to do with the question of federation, and that the attitude of the government enjoyed the general approval of the House.

In South Australia, as we have seen, the legislature practically declined to take action upon the federal question, by failing to provide for the desired extension of the functions of the colony's representatives to the Melbourne congress; nor did the executive instructions[4] to the delegates make any mention of federation in the list of subjects which it was suggested might be advantageously discussed at the conference. Nevertheless the Ministry still held out the prospect of ultimate federation as a tempting bait with which to induce other colonies to co-operate with them. At the time when the outlook for the conference seemed dark, Mr. Blyth appealed to the Chief Secretary of Victoria, in the hope of awakening his federal sympathies to join in the customs conference, since the meeting of delegates "might be the first step towards a federal union."[5]

The question of federation was settled in fact prior to the meeting of the conference. Only one of the colonies,—Tas-

[1]Messrs. Samuel and Wilson.
[2]Mr. Hoskins.
[3]Mr. Hay.
[4]S.A.P.P., 1863, vol. 2, no. 50.
[5]Vict., V.P.L.A., 1862-3, vol. 1, p. 692.

mania, was prepared to accede to the request of Victoria to include the subject within the scope of the labors of the delegates; the others were either indifferent or hostile, or so engrossed in the business of domestic politics as to have no time for the consideration of this the most important of intercolonial questions. Victoria alone, thanks to the efforts of Mr. Duffy, was really in earnest in the matter, and this very advocacy was far from commending the proposal to some of the other colonies which suspected the motives of this activity. When the conference at last assembled after a surfeit of negotiations, the delegates were not prepared to discuss the question, from lack of instructions. In the official record of its proceedings[1] the conference reported that "the subject of federation of the Australian colonies was not taken into consideration, for although the question has during some years occupied the attention of several of the legislatures, the delegates had no instructions in the matter, and it did not seem probable that its discussion at present would be attended with any benefit." This simple statement of fact undoubtedly reflected the view not only of Mr. Cowper and his colleagues, but of all the members of the conference. It merely proclaimed a self-evident truth. Mr. O'Shanassy must have realized from the opposition of some of the delegates, the hopelessness of attempting to further press the subject, when to do so would only breed dissension, and endanger an agreement upon other matters of more immediate and practical concern. Even the energy of Mr. Duffy, had he been a member of the conference, would have availed nothing in the face of the hostility of New South Wales and the apathy of the other provinces. The shelving of the question was merely a diplomatic way of declaring the subject closed for the present so far as the colonies were concerned.

Mr. Duffy and his friends had staked their last hope of the speedy realization of their object upon the holding of the conference. With the failure of that body to take up the question, the active propaganda in favor of federation which had been carried on with indifferent success in the several colonies, and more particularly in Victoria during the last six years practically collapsed through lack of popular and parliamentary interest. The uselessness of further effort at present was so obviously demonstrated that a considerable period elapsed before

[1] N.S.W., Jr. L. C., 1863-4, pt. 2, p. 1. Vict., V. P. L. A., 1862-3, vol. 1, p. 669. S.A.P.P., 1863, vol. 2, no. 44. Tas., Jr. H. A., 1863, vol. 10, no. 1.

another attempt was made by Mr. Duffy to revive public interest in the question.[1] The conference of 1863 consequently ends the history of the early federal movement. During this period, the federal question had passed through a great variety of political experiences,—initiated by an Australian official, taken up by an imperial statesman, discussed by the imperial parliament, reported upon by constitutional committees, recommended by select committees, and debated in colonial legislatures, yet all without avail. Three distinct stages of political development are distinctly traceable in its history; first, the period of Downing Street rule, when the proposal was a part of the colonial policy of an English government; second, the period of constitutional committees, when the question was tentatively broached in an indefinite form by a few far-seeing colonial leaders; third, the period of select committees, when the subject, emerging from its obscurity, and throwing off its official character, first became a topic of parliamentary discussion in all the colonies, and promised for a time to become a live political question. But neither the patronage of a Secretary of State, the advocacy of Australian statesmen, the reports of legislative committees, nor the debates in colonial parliaments could make federation a vital issue. This—the third and last stage of early federal history was likewise attended with no practical result. In the face of intercolonial jealousy, the efforts of Australian statesmen were as fruitless as those of a strong-willed Secretary of State to effect a unity of purpose or of political organization in the Australias. The several legislatures were resolved to lead their own independent lives, to pursue their own selfish interests, and to work out their own political futures; in accordance with that policy they now entered upon an era of intercolonial conferences, as a means of adjusting intercolonial relations without the sacrifice of any of their powers, such as a federal union would have demanded. The path of progress for many years to come lay along the line of the evolution of provincial society and politics, the development of local resources, and the stimulation of a colonial nationalism and self-interest. Co-operation, not federation, was the goal of the Australian patriot.

What then were the causes of the signal failure of this series of efforts on the part of the federal leaders? We can only touch upon a few of the more important and characteristic of them.

[1] The Victorian Royal Commission of 1870.

The most insidious and fundamental obstacle to a federal union was the reciprocal jealousy and suspicion of the colonies, especially the deep-seated ill-will, if not hostility of New South Wales and Victoria. The former could not tamely submit to the sudden elevation of her younger sister to the premier position in the Australian group; she could not rise to the noble conception of an Australian nationalism, of rejoicing in the prosperity of the neighboring colony for its own sake; nor even adopt the liberal and enlightened view that the well being of each and all the provinces must contribute to their mutual advantage. She harbored instead a spirit of envious discontent, which too frequently expressed itself in a perverse policy of independent action, or in a refusal to freely co-operate with the sister colonies. On the other hand the conduct of the Victorian legislature was sometimes too assertive, and provocative of a natural intercolonial resentment and suspicion. What for example could be more inconsiderate and presumptious at the very moment of the launching of the federal movement in Victoria, than the foolish resolution of Mr. Hood[1] looking to the dismemberment of the mother colony as a means of promoting federation, by effecting a more equal distribution of colonial territory. There was always a tendency on the part of the baser sort of legislators to exploit these unseemly rivalries to their own advantage, to pose as patriots, when acting as parish politicians; and unfortunately there were too many opportunities for playing the mischievous role before a selfishly sympathetic public. The perennial and inseparable questions of border customs and of the Riverina trade were constant sources of conflict and embittered feeling, which was intensified by the outbreak of the agitation for the separation of the Riverina from New South Wales and its annexation to Victoria, or erection into an independent state.[2] For this agitation, Victoria was held responsible by the New South Wales public, which was prone to interpret these evidences of discontent and the sympathetic attitude of the commercial community of Melbourne, as a clear manifestation of the design of the former colony in promoting a federal union. Differences in respect to postal arrangements, defence, gold and land regulations, all tended to set the two colonies at loggerheads in a

[1] Vict., V.P.L.C., 1856-7, p. 30.
[2] G. Lang, Collection of Papers and Articles on the Independence of the Riverina.

way that promised a record of intercolonial bickerings and strife incompatible with a permanent federal concert.

The relations of the other colonies were not so embittered, but their attitude was one of suspicious wariness towards one another, which was far removed from that hearty spirit of cordial co-operation so essential to a federation. They were in the habit of constantly analyzing the motives and intentions of the sister colonies, and ofttimes discovered, through a faculty of splenetic psychology, mysterious and dangerous designs in the simple proposals of their neighbors. They were supersensitive of their weakness and of their local autonomy, and in consequence were inclined to postpone the day of federation, until the fortunate moment should arrive when by reason of some great accession of population and wealth, they might be able to enter into a union on equal terms with the at present more favored colonies. They each and all had their special grievances against one another; Tasmania in respect to the lighting of the coasts, South Australia in the matter of the Murray river trade, and postal and telegraphic communication, Queensland in regard to the loss of the Clarence River district; all of which differences were rolled as sweet morsels under the tongue by the provincialists of the respective colonies whenever a more liberal policy of federal co-operation was suggested. In the clamor aroused by these divergent interests the essential unity of the colonies was often overlooked.

What the rivalries of the colonies were lacking in historic interest was, singular to state, largely made up for by the sharpness and intensity of their material antagonisms as new communities. All new states, whatsoever their character or form of government, are primarily economic and not political organizations.[1] They are principally concerned with the opening up and development of the resources of the country through public and private agencies. During this period of economic exploitation, questions of high state-craft are of subordinate importance. This was especially the case in the Australian colonies where the governments had already entered upon the policy of socialistic activity in connection with the public works of their respective colonies. Now it was in regard to economic matters that the interests of the colonies most frequently clashed; each was anxious to promote its own prosperity by all means

[1]Quarterly Review, Oct. 1898, The Federation of Australia.

within its power, and pursued that end without much regard to the interests or welfare of its neighbors. The governments in consequence ofttimes assumed in their intercolonial relations the attitude of rival and competing corporations; they approached intercolonial questions from the standpoint of provincial hucksters anxious to drive a good bargain at the expense of a sister colony, rather than as citizens of a common country. The whole tendency was to develop the spirit of a narrow localism which masqueraded around under the guise of patriotism,—a false patriotism which found excellent expression in a remark by Mr. W. B. Allen in the New South Wales assembly,[1]—"It was enough for him to advance the interest of New South Wales without interesting himself in the welfare of the other colonies." As a result of the adoption of this narrow-minded policy, the interests of the colonies tended to diverge further and further apart, and to be ofttimes treated as antagonistic. Measures were sometimes supported on the ground that they would weaken the position of a neighboring colony, or as it was commonly expressed bring it to a more complacent state of mind. Legislation in respect to tariffs, postal arrangements, land regulations, and gold duties, was frequently framed with an intent to secure an undue advantage to the home colony at the expense of the sister states. Instead of uniting their resources to develop a mighty nation, the competing governments dissipated their forces in useless rivalries, in endeavoring to offset the natural advantages of the more favored colonies by artificial barriers or discriminating favors. The policy of provincialism was everywhere triumphant; it was allowed free course and was glorified.

The love of power appears to be a natural passion of all political bodies. The grant of responsible government had largely satisfied the cravings of the Australian colonies, but unfortunately neither the imperial parliament nor the provincial legislatures had been able to set up any protection or safeguard against the abuse of the powers conferred. Each colony accordingly set out to indulge its legislative will without much consideration to the feelings and interests of the others, and so self-satisfied were they with their new political functions, and so jealous at the same time of any interference from without, that they refused to sacrifice the smallest portion of their autonomy, even in response to the demands of their common in-

[1]The Sydney Morning Herald, Sept. 11, 1862.

terests and welfare. They were prepared to co-operate if necessary, but not to subordinate themselves to a federal assembly for fear of losing their status as independent communities and of being reduced to the rank of dignified municipalities. The smaller colonies instinctively preferred a policy of united or co-operative action to any scheme of a federal union. This feeling of independence was intensified with the growth of the several colonies in wealth and population, which far from drawing them closer together politically, served rather to develop a self-reliant temper and a sense of their own strength which was far from compatible with a spirit of federalism, or of mutual co-operation.

During the early years of colonial separation, it almost appeared as though the policy of legislative co-operation would be crowned with success, and that there would be no need of a federal union. The natural course of events had driven the several states into a loose form of partnership or alliance, which had expressed itself in a series of agreements on various matters of minor interest, which promised to be a prelude to a more ambitious program of intercolonial action. By means of commissions or negotiations the questions of intercolonial light-houses, overland telegraphs, border customs, and intercolonial postage were temporarily adjusted on a more or less satisfactory basis. Besides the abolition of ad valorem duties in South Australia had brought that colony into a general agreement with the fiscal systems of the other states, so that in 1856 partly by accident and partly by design something approaching an assimilation of tariffs was temporarily effected in all the colonies.[1] The settlement or partial accommodation of several of these intercolonial questions not only diminished the pressure of the demand for an immediate federal union, but also afforded evidence in support of the growing feeling that the relations of the colonies could be satisfactorily adjusted by mutual agreement and intercolonial co-operation. The provincialist was always able to refer to these facts as conclusive proof that a federation was not required. The conference of 1863 marks the triumph of the policy of a consultative conference over the conception of a federal Australia.

Nor can we overlook the fact that the movement for the decentralization of the vast unwieldy colonies had not yet spent its

[1] Westgarth, Victoria late Australia Felix, p. 81.

force.[1] Queensland had only just come into possession of her huge heritage which already in anticipation had been subdivided into several new colonies. The Riverina settlers were suffering from the neglect of absentee government, and had started an active agitation for the separation of that district from New South Wales. Even in the smaller colony of Victoria threats of secession had been uttered by the western country unless its legitimate demands were more readily recognized by the Melbourne legislature.[2] In Tasmania the scheme of federation had been associated in the minds of some of the northern residents with the vague idea of the division of the island into two separate governments.[3] In South Australia the inhabitants of the eastern district had long felt themselves cut off from any real connection with the capital, and were agitating for union with the western district of Victoria and its formation into an independent colony. In each and all of the provinces the disadvantages of a distant centralized colonial administration were still strongly in evidence. These centrifugal forces were even more pronounced in the case of the intercolonial relations of the states. Communication was not sufficiently developed to bind all the scattered settlers of these huge territories into one social and political organic whole. The conditions of the colonies were still largely those of isolated communities, and their political organization required a corresponding constitutional form primarily adapted to local development. So long as the centrifugal forces of Australian political life were strongly operative, there was little hope of success in an appeal to the feeble national sentiment of the colonies.

There was moreover the practical difficulty of securing simultaneous and uniform action in the different colonies. The attitude of each colony at any given moment depended largely upon the state of domestic politics and the humor of the man at the head of the government. Now provincial politics were as restless and unstable as the sea; scarcely a season passed but the executive of one or the other of the colonies was in the midst of a political crisis. This instability of governments was a great hinderance to the successful conduct of intercolonial negotiations, as a change of Ministry might undo all that had been accomplished, and necessitate a practical recommencement of the whole

[1] Westgarth, The Colony of Vict., ch. 8.
[2] The Western Victoria Separation Movement, Pamphlet., 1862.
[3] The Launceston Examiner, June 11, 1863.

of the negotiations under circumstances much less favorable than before. The opposition of a single government could defeat the common policy of the others, and frustrate all attempts at general co-operation. Beside the undue stress of domestic political affairs prevented a proper consideration of intercolonial questions, or sometimes unfortunately gave them a partisan character. When a Ministry was either battling for existence or pressing on some measure which it was hoped would secure it popular support in an approaching election, there was little time for the sober discussion of the weightier subject of a federal union. With governments as with men, self-preservation is the first law of nature, and no Colonial Secretary however sympathetic towards the principle of federation was desirous at a critical moment of committing himself to an intercolonial policy which would attract no support at home, and at the same time expose him to the criticism of either neglecting more pressing local concerns, or of truckling to the sister colonies. In short the consideration of federal questions had to wait upon the exigencies of local politics, and the convenience and humor of ministerial favor. A new political issue, a parliamentary crisis, a dissolution, or a change of government might at any moment alter the attitude of a colony, and affect the prospect of uniform or co-operative action throughout the colonies. Time and again the wisest schemes and the best strategy of the federal leaders were defeated by the fickleness of Australian public opinion, and the instability of governments.

And finally it was only too manifest that there was no general enthusiasm in favor of a federal union. Even in Victoria, where parliamentary and public sentiment was much more advanced and sympathetic than in the other colonies, there was no real federal movement of popular or spontaneous character.[1] The ability and energy of Mr. Duffy alone kept the question before the legislature, and gave it a factitious prominence and importance. In the other colonies only an occasional apathetic interest was taken in the subject. The question was an entertaining topic of political speculation, which came up for discussion at odd moments when the attention of the people or legislatures was not engrossed in local political affairs or schemes of economic development. The agitation was still largely associated with a few prominent men, and had failed to take a hold on the

[1]Garran, The Coming Commonwealth, p. 114.

consciousness of the public. It is very doubtful if a single colony would have been prepared to make the sacrifice of local independence, and accept the compromise of provincial interests which a federation would have entailed.[1] Some of them undoubtedly were ready to co-operate in a consultative council with a view to the promotion of common federal action, but to the surrender of a portion of their autonomy to a superior central government, they would have strenuously objected, or only acceded under a pressure of circumstances amounting to compulsion.

Notwithstanding the persistent efforts of Mr. Duffy and his associates, it cannot be said that the cause of federation had made any progress during the last six years. It would appear in fact that towards the close of this period it had actually retrograded. The differences of the colonies had become more acute, and at the same time their sense of independence was becoming more pronounced. The movement certainly did not command the same sympathetic support in 1863 that it did at the time when select committees were sitting in three of the colonies in 1857. The high-water mark of the movement had been reached when the Parker government, under the influence of Mr. E. Deas Thompson committed itself to a policy of federation, and the two sister colonies almost simultaneously expressed an approval of the principle of a federal union. The discontinuance of Mr. Thompson's efforts was a fatal blow to the federal cause in the mother colony, as there was no one of sufficient commanding influence to take his place at the head of the movement. Dr. Lang was a sorry substitute, whose support was of doubtful utility; and Mr. Parkes had not yet established his position as a leader in local politics. The co-operation of the Tasmanian government in the movement could not compensate for the dereliction of New South Wales. In South Australia also, the early cordial sympathy and interest in the question had gradually waned, until the attitude of the legislature and government had become practically indifferent or unfavorable. Only in Victoria and Tasmania did the federal cause reveal any true vitality, but even there the movement could not be kept going in the face of the apathy and perverse temper of the other colonies.

The feebleness of Australian opinion is well brought out by the fact that throughout this period the federal movement had

[1]Quick and Garran, Annot. Const. of Aust., p. 99.

not once progressed so far as to secure general legislative approval of the principle of federation, or the adoption of even the rudimentary form of a federal constitution by a single colony. There had been a plethora of select committees, federal reports, legislative recommendations, parliamentary discussions, and the nomination of delegates, but nothing more. Each and all of the colonies had at one time or another in different forms taken steps looking towards the formation of a federal union, or the holding of a conference to discuss the matter, but notwithstanding the favorable consideration of the different parliamentary bodies, the active promotion of the scheme never got any further forward than a series of legislative recommendations, and the sporadic appointment of delegates. The principle of a federal union was approved on several occasions, the advisability of holding a conference to discuss the subject and to prepare a draft constitution was also favorably considered but the legislatures refrained from committing themselves to any definite scheme of union. But these proceedings were merely a light curtain raiser to the discussion of the more vital issues of the nature and organization of the proposed central government. In the multitude of counsellors no great law-giver appeared to convert the speculations of thinkers and the resolutions of legislatures into an organic federal law. One of the colonies was unwilling to lend even an appearance of favor to the federal cause by accepting the principle of the expediency of federation, or by the appointment of delegates for its consideration. The question had not yet freed itself from the preliminary academic consideration of the committee room; it had not gone forth boldly onto the hustings to fight for a place in practical politics. No pressing necessity had yet arisen to make the subject a vital issue in all the colonies, to awaken the dormant spirit of national unity, and to confound and supersede the petty local jealousies which played so large a part in provincial politics. In the absense of any such unifying force, the colonies went on living their narrow lives, immersed in the development of their local resources, and forgetful of the higher destiny to which they were called.

APPENDICES.

A.

THE FEDERAL SECTIONS OF THE AUSTRALIAN COLONIES BILL OF 1849.

29. "Be it enacted that from the end of one year next after the proclamation of this act in the colony of New South Wales all duties of customs heretofore levied in such colony and in the colonies of Van Dieman's Land and South Australia, respectively, and if the same shall be established in the Colony of Victoria, under and by virtue of any act or acts of parliament, order or orders in council, or by or under any colonial law or ordinance, shall cease and determine and instead of all other duties of customs there shall be raised, levied, collected and paid unto Her Majesty, in each of the said colonies of New South Wales, Van Dieman's Land and South Australia, and if and when the same shall be established in the said colony of Victoria, the several duties of customs as the same are respectively set forth in figures in the table of duties to this act annexed, upon all goods, wares or merchandise imported into the said colonies respectively, except the articles included in the list of exempted articles in the said table contained, and except articles imported and brought into any of the said colonies from any other of them, and the Governor of the said colony of New South Wales shall forthwith, after such proclamation of this act as aforesaid, notify such proclamation and the time thereof to the governors of the said colonies of Van Dieman's Land and South Australia, respectively, and such last mentioned governors shall forthwith, on the receipt of such notification, cause the same to be published in the Government Gazette of Van Dieman's Land and South Australia, respectively, and each such publication shall be evidence of the proclamation of this act in the said colony of New South Wales and of the time of such proclamation.

30. "Be it enacted that it shall be lawful for such one of the governors of the said colonies of New South Wales, Victoria, Van Dieman's Land, South Australia and Western Australia, or such other person as in and by any letters patent under the great seal of the United Kingdom shall be constituted by Her Majesty, Governor-General of Australia, to convene at such time or times and at such place within any of the said colonies, that such Governor-General shall, from time to time, think fit to appoint, a general assembly for all the said colonies to be called the 'General Assembly of Australia,' which said General Assembly shall consist of such Governor-General and a House of Delegates, and such House of Delegates shall consist of members to be elected by the respective legislative councils of the said several colonies of New South Wales, Victoria, Van Dieman's Land and South Australia in the proportion following; that is to say, two members from each of the said colonies for every fifteen thousand inhabitants thereof, the number of inhabitants being calculated according to the last authentic enumeration at the date of the election, and such members shall be elected, and all laws to be made and enacted by such Assembly shall be made and enacted and the business of such Assembly shall be conducted in such manner and form and subject to such rules and conditions as Her Majesty by order in council shall direct; provided always that the first convocation of such Assembly shall not take place until the said Governor-General shall have received from the legislative councils established under the said first recited act of the sixth year of Her Majesty, or this act, of two or more of the said colonies, addresses requesting him to convene such Assembly.

31. "And be it enacted that after a legislative council shall be established under this act within the said colony of Western Australia, it shall be lawful for Her Majesty by order in council to authorize such number of members of the said House of Delegates (in addition to the number of members of which such House shall already consist) as Her Majesty with the advice of Her Privy Council shall think fit to be elected by the legislative council of the said colony of Western Australia, and by such order in council to prescribe rules for the election of such members.

32. "Provided always and be it enacted that it shall be lawful for the said General Assembly by any law or laws duly made and enacted by such Assembly to supersede or alter the rules prescribed by any such order in council as aforesaid concerning the election of members of the House of Delegates, the making and enacting of laws by such Assembly and the conduct of business of such Assembly, and to make such other provision in relation to the matter aforesaid as to such Assembly may seem meet, and to alter the number of members of such House of Delegates to be elected by the respective legislative councils represented therein, and to increase or reduce the whole number of members of such House, and generally to vary the constitution of the General Assembly, provided also that no such law shall take effect until the same has been confirmed by orders of Her Majesty in Council.

33. "And be it enacted that the said General Assembly of Australia shall have power to make and enact such laws as may be required for all or any of the purposes after mentioned: that is to say for imposing and levying any duties of customs imposed on the importation or exportation of any goods at any port or place of any of the said colonies of New South Wales, Victoria, Van Dieman's Land, and South Australia, and also Western Australia, after a legislative council shall have been established there, and after such legislative council shall have been authorized to elect members to represent them in the House of Delegates, or for repealing, varying or regulating any such duties imposed by this act, or for the time in force in the said colonies (subject nevertheless to the restrictions hereinafter contained), for the establishment of a general supreme court to be a court of original jurisdiction or of appeal from any of the courts of such colonies aforesaid, for determining the extent of the jurisdiction and the course and manner of the proceedings of such general supreme court, for regulating the weights and measures to be used in the said colonies, for regulating the post-offices within and the carriage of letters between the said colonies, for the formation of roads, canals or railways traversing any two or more of the said colonies, for the erection and maintenance of beacons and lighthouses on the coast of the said colonies, for the imposition of any dues or other charges on shipping at any port or harbour within the said colonies, respectively, for the enactment of laws affecting all the said colonies in relation to any subject or matter in relation to which the General Assembly may by addresses presented to such Assembly from the legislative councils of all the several colonies represented in such General Assembly be desired to legislate, and for the appropriation to any of the objects or purposes for which such Assembly shall legislate of such sums as may be necessary for the same, and for the raising of such sums by an equal percentage on the revenues received in all the said colonies and subject to be appropriated by the legislatures of such colonies respectively.

34. "Provided always and be it enacted that it shall not be lawful for the said General Assembly, or for the legislatures of any of the colonies represented therein, to levy any duties, or to impose any prohibition or restriction, or to grant any exemption bounty drawback or other privilege upon the importation of any article, or the exportation of any article to any particular place or country, or part of the world, which shall not be equally levied, imposed or granted upon the importation or exporta-

tion of the like articles from or to all other countries, places or parts of the world. Provided also, that no duties shall be imposed upon the carriage of any articles from one of such colonies to another except such as may at any time be also imposed upon the carriage coastwise of the like articles from one part of any one or more of such colonies to another part of the same colony.

35. "Provided always and be it enacted that it shall not be lawful for the said General Assembly, or the legislatures of any of the said colonies, to levy any duties upon articles imported for the supply of Her Majesty's land and sea forces, to levy any duty, impose any prohibition or restriction or grant any exemption bounty or drawback or other privilege upon the importation of any articles, nor to impose any dues or charges upon shipping contrary to, or at variance with any treaty or treaties concluded by Her Majesty with any foreign power.

36. "And be it enacted that the laws so to be enacted as aforesaid for any of the purposes aforesaid by the said General Assembly of Australia shall control and supersede any laws, statutes or ordinances in any wise repugnant thereto, which may be enacted by the respective several legislatures of any of the said colonies, and if any question shall arise regarding the limits of the authority and jurisdiction of the said General Assembly of Australia, and the authority and jurisdiction of such separate legislatures, such questions shall be determined by the order of Her Majesty in Council upon the petition of the legislative council of any of the said colonies, and all courts, officers of justice and others shall conform and give effect to the decision of the said General Assembly of Australia on such questions, until the decision thereof of Her Majesty in Council shall have been made known and promulgated within the said colonies.

B.

THE FEDERAL SECTIONS OF THE AUSTRALIAN COLONIES BILL, 1850.

26. "And be it enacted that, subject to the provisions of this act and notwithstanding any act or acts of parliament now in force to the contrary, it shall be lawful for the Governor and Legislative Council of the colony of New South Wales, and after the establishment of legislative councils therein respectively under this act, for the respective governors and legislative councils of Victoria, Van Dieman's Land, South Australia and Western Australia to impose and levy such duties of customs as to such respective governors and councils may seem fit on the importation into such respective colonies of any goods, wares and merchandise whatsoever, whether the produce or manufacture of or imported from the United Kingdom or any foreign country; provided always that no new duty shall be so imposed upon the importation into any of the said colonies of any article the produce or manufacture of, or imported from any particular country or place which shall not be equally imposed on the importation into the said colony of the like article, the produce or manufacture of or imported from all other countries and places whatsoever.

30. "And be it enacted that in case the legislative councils of the said colonies of New South Wales, Victoria, Van Dieman's Land, South Australia and (after the establishment of a legislative council therein under this act) Western Australia, or any two or more of such colonies present addresses to such one of the governors of the said colonies of New South Wales, Victoria, Van Dieman's Land, South Australia and Western Australia, or such other person as in and by any letters patent under the great seal of the United Kingdom shall be constituted by Her Majesty

Governor-General of Australia, signifying the desire of such legislative councils that an Assembly be established under the provisions of this act, it shall be lawful for Her Majesty by order in council to establish a general assembly to be called 'the General Assembly of Australia', and the members of the said General Assembly shall be elected and their seats vacated and all laws to be made and enacted by such General Assembly shall be so made and enacted, and the business thereof conducted in such manner and form and under and subject to such rules and conditions as Her Majesty by order in Council shall direct, and the said General Assembly shall consist of such Governor-General and a House of Delegates, and such House of Delegates shall consist of members to be elected by the respective legislative councils of the colonies, the legislative councils of which shall have presented such addresses as aforesaid for the establishment of a General Assembly, and after the presentation to the said Governor-General of addresses from the legislative council or councils of any of the said colonies not represented in such General Assembly signifying the desire of such legislative council or councils to be represented in such General Assembly, members of the said House of Delegates shall be elected by the legislative council or the respective legislative councils of such last mentioned colony or colonies, and the members of the said House of Delegates to be elected by the legislative councils of the colonies for the time being represented in the said General Assembly shall be elected by such respective legislative councils in the proportions following, that is to say two members for each such colony, and one additional member for each such colony for every fifteen thousand inhabitants thereof, the number of inhabitants being calculated according to the last authentic enumeration at the date of the election, and it shall be lawful for the said Governor-General for Australia from time to time to convene such General Assembly at such time and place within any of the colonies for the time being represented therin, as he may see fit, and from time to time to prorogue and dissolve the said General Assembly by proclamation or otherwise as he may see fit, and such General Assembly shall notwithstanding the dissolution of the legislative councils of the colonies represented therein continue for three years from the date of the return of the writs for the first election of any members of the House of Delegates and no longer, subject to be dissolved or prorogued by the said Governor-General as aforesaid.

31. "Provided always and be it enacted that it shall be lawful for the said General Assembly by any law or laws duly made and enacted by such Assembly to supersede or alter the rules prescribed by any such order in council as aforesaid concerning the election of members of the House of Delegates, the making and enacting of laws by such Assembly and the conduct of business of such Assembly, and to make such other provision in relation to the matter aforesaid as to such Assembly may seem meet, and to alter the number of members of such House of Delegates to be elected by the respective legislative councils represented therein, and to increase or reduce the whole number of members of such House, and generally to vary the constitution of the General Assembly, provided also that no such law shall take effect until the same has been confirmed by orders of Her Majesty in Council.

32. "And be it enacted that the said General Assembly of Australia shall have power to make and enact such laws as may be required for all or any of the purposes after mentioned, (that is to say) for selling, devising, granting licenses for the occupation of, and otherwise disposing of waste lands of the Crown in the colonies represented in such General Assembly, and for the appropriation of the money to arise from the disposition of such lands, anything in an act of the 6th year of Her Majesty intituled 'An Act for regulating the sale of waste lands belonging to the

Crown in the Australian Colonies,' or in any act of the 10th year of the reign of Her Majesty to amend such act, and to make further provision for the management of such land to the contrary notwithstanding; for imposing and levying any duties of customs imposed on the importation or exportation of goods into or from all or any of the colonies represented in such General Assembly, and when such General Assembly may see fit for alloting to the several colonies represented in such General Assembly, and subject to the appropriation to the public service of such colonies respectively, by the separate legislatures thereof, such portions as to such General Assembly may seem fit of the aggregate revenue arising from the duties of customs for the time being levied in all such colonies, in lieu of the separate revenues arising from such duties levied within such several colonies respectively; for the establishment of a general Supreme Court, to be a court of original jurisdiction or of appeal from any of the courts of such colonies as aforesaid, for determining the extent of the jurisdiction and the course and manner of proceeding of such general Supreme Court; for regulating the rates and measures to be used in such colonies; for regulating the post-offices within and the carriage of letters between such colonies; for the formation of roads, canals or railways traversing any two or more of such colonies; for the erection and maintenance of beacons and light-houses on the coasts of such colonies; for the imposition of any dues or other charges on shipping at any port or harbor within the said colonies respectively; for the enactment of laws affecting all the colonies represented in such General Assembly in relation to any other subject or matter in relation to which the said General Assembly may by addresses presented to such Assembly from the legislative councils of all such colonies be desired to legislate, and for the appropriation to any of the objects or purposes for which such Assembly shall legislate of such sums by an equal percentage on the revenues of all such colonies, and subject to be appropriated by the legislatures of such colonies respectively.

33. "Provided always, and be it enacted that the powers hereby given to the General Assembly to make and enact laws for the purposes hereinbefore mentioned shall not be taken to supersede the authority of the respective legislatures of the said several colonies to make laws for the like purpose so far as concerns their respective colonies (save as to waste lands of the Crown and the revenue thence arising), but the laws so to be enacted as aforesaid by the said General Assembly of Australia shall control or supersede any laws statutes or ordinances in any wise repugnant thereto, which have been or may be enacted by the respective legislatures of any of the said colonies represented in such General Assembly. and if any question shall arise regarding the limits of the authority and jurisdiction of the said General Assembly, and the authority and jurisdiction of such separate legislatures, such questions shall be determined by the order of Her Majesty in Council upon the petition of the legislative council of any of the colonies, and all courts, officers of justice, and others, shall conform and give effect to the decision of the said General Assembly of Australia on any such question, until the decision thereof of Her Majesty in Council shall have been made known and promulgated within the said colonies.

34. "Provided always and be it enacted that it shall not be lawful for the said General Assembly, or the legislatures of any of the said colonies to levy any duties upon articles imported for the supply of Her Majesty's land and sea forces, to levy any duty, impose any prohibition or restriction or grant any exemption bounty or drawback or other privilege upon the importation of any articles, nor to impose any dues or charges upon shipping contrary to, or at variance with, any treaty or treaties concluded by Her Majesty with any foreign power.

C.

THE DRAFT FEDERATION BILL OF THE WENTWORTH MEMORIAL.

"Bill to empower the legislatures of the Australian colonies to form a federal assembly.

"Whereas it is expedient to empower the several legislatures of New South Wales, Victoria, South Australia and Tasmania to form a federal assembly, be it therefore enacted, etc., as follows:

1. "Any two or more of the above named legislatures are hereby respectively empowered to select and depute any (four) persons being members of either of their houses of legislature or not members thereof, to form a convention for the purpose of creating a federal assembly with all necessary powers and incidents, and such federal assembly when so created shall have power from time to time to amend its constitution as occasion shall require.

2. "Such federal assembly shall have full power and authority to make laws for such federated colonies on the following subjects, viz., tariffs, light-houses, gauges of connecting railways, navigation of connecting rivers, telegraphs connecting with any two or more colonies, postage between such colonies, the upset or minimum price of lands, management of the gold fields, common coinage, weights and measures, general defence, a court of appeal, penal settlements, and upon any other subject which shall be lawfully submitted to such federal assembly by an address from the legislatures of the said federal colonies having an interest in the question so submitted.

3. "The time and place for holding such federal assembly shall be fixed by the Governor-General (or senior governor) of the said federal colony and the said Governor-General (or senior governor) shall have the power to assent to or dissent from the acts of the said federal assembly, and such acts notwithstanding such assent shall be subject to disallowance by Her Majesty in Council at any time within one year after such assent thereto shall have been given.

4. "The said federal assembly shall have power to appoint a president at the commencement of each session thereof and oftener if a vacancy shall arise, and to fix the amount of its own expenses and the salaries of its officers by acts to be passed from time to time, and assented to as aforesaid. And all such expenses and salaries and all other expenses incident to any act or acts of the said federal assembly shall be apportioned by such assembly among the respective colonies represented in such federal assembly in such proportions as such assembly shall direct, and all such expenses shall be provided for by the respective legislatures thereof accordingly.

5. "In the event of any one or more of the said Australian colonies not becoming members of this federation in the first instance, such colony or colonies or any future colony of the Australian group not now in existence, and not being a penal colony or settlement for or consenting to the reception of convicts or exiles from Great Britain or elsewhere, may join such federation and have the right of sending to the said federal assembly the same number of representatives as shall be fixed for all the other colonies represented in the said federal assembly, provided the respective legislatures of the colony or colonies so desiring representation therein shall pass an act submitting such colony or colonies to the federal jurisdiction of such assembly."

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