

ABSTRACT

British Influence on the Federation of the Australian Colonies 1880-1901

Despite the obvious importance of federation in the political and general history of Australia it has received surprisingly little attention from historians. The three major accounts of the federal movement by Deakin, Wise, and Quick and Garran, were all written during or immediately after the events narrated, by men who had participated in them; though each is a valuable primary document, all exhibit inevitable limitations of bias and concentration on those aspects of the subject best known to the author. The only full length academic study of the federal movement, H.L.Hall's, Victoria's Part in the Australian Federal Movement (London, 1931), relies heavily on the earlier accounts, concentrates narrowly on one colony, and is generally disappointing. The excellent scholarly articles more recently published by Parker, Blainey, Bastin, Martin, McMinn, MacCallum et al have been concerned mainly with the re-assessment of the role of a few key individuals, and discussion of the significance of economic factors in promoting federation. The general emphasis of the whole corpus of material available is on the domestic politics associated with the federal movement

with particular reference to New South Wales and to the eighteen-nineties.

This thesis is intended to fill some of the many gaps that therefore remain in the existing state of knowledge about the federal movement, by studying it from within the context of Anglo-Australian relations. The aim is not to show that federation was brought about by British influence, but to examine in detail those periods and aspects of the movement in which the indirect effects of Anglo-Australian relations on such questions as tariffs, defence, and foreign policy, or the direct effects of British support for federation, were significant, and to view the more obviously domestic aspects of the movement from a different angle of vision. Eighteen-Eighty provides a convenient starting point, for the idea of federation was revived in that year after a long interval and it was more or less continuously under discussion thereafter. However in Chapter One the history of federal proposals before 1880 is surveyed to give an indication of the nature of previous interest in federation and of the nature of the obstacles to its achievement. The story ends naturally on 1 January 1901 when the Commonwealth was inaugurated.

In the eighteen-eighties although individual Australian leaders were aware of the need for a central

government to handle common problems and national questions, and the inadequacy of intercolonial conferences for this purpose had become apparent, the social and economic circumstances of the colonies favoured provincialism rather than union and public interest in federation was very low. That a Federal Council of Australasia was formed in 1885 and a more fully developed federal constitution drafted by a national convention in 1891 despite the prevailing climate of opinion was largely due to British influences, and the federal movement in the Eighties has therefore been examined in detail.

Chapter Two gives a full account of the agitation felt in the colonies between 1883-85 about the related questions of annexing New Guinea, the New Hebrides, and other islands, and preventing the transportation of French convicts to the Pacific, and the relationship between this agitation and the decision to create a Federal Council. The suggestion of D.C. Gordon in The Australian Frontier in New Guinea, 1870-1885 (New York, 1951) that Her Majesty's Government was deliberately unsympathetic to the Australian aspirations in order to push the colonies into federating has been shown to be unfounded, but it has also been demonstrated that Lord Derby used the incidents to bring home to the colonies the weakness of their divided state and that this was primarily responsible for the formation

of the Council. The negotiations between Her Majesty's Government and the colonies about the provisions of the Federal Council Bill are narrated here for the first time.

In the third Chapter the relationship between defence and the federal movement is examined, particular attention being given to the Edwards Report of 1889 and its effect on the events of 1889-91. Although less direct importance is attached to the Report than in some earlier accounts the interest of General Edwards and other defence advisers in promoting political federation is brought out, and held to be of significance. Considerable use has been made of the papers of Lord Carrington, Governor of New South Wales in this period, and his own role and that of the other governors of the time is shown to have been of some importance in bringing about the Federal Convention of 1891. Most of these papers have not been used by any previous writers and would be of relevance to the study of other aspects of New South Wales politics between 1885-91 in addition to the federal movement.

The economic depression of the early eighties, with the associated strikes and re-organisation of colonial politics brought the federal movement of the eighties to a halt, but provided the stimulus for a new movement which was more securely based on domestic pressures and less dependent on imperial prompting. For this reason the events of the nineties are surveyed more briefly and

the emphasis of the thesis shifts from examining British influences on the movement for federation, to examining British influences on the shaping of the instrument of federation, the constitution. Some assessment is made of the effect on the constitution-makers of their heritage of British constitutional thought and practice, and their attempts to reconcile this with a federal system of government. Further room remains for a great deal more analysis of the origins of the various provisions of the constitution and the influences on the constitution-makers however. The effect of Anglo-Australian relations on the growth of that Australian nationalism which was essential if federation was to be popularly accepted is discussed, as is the relationship between imperial and colonial federation. The relationship between the upsurge of nationalism in the eighteen-nineties and the final success of the federal movement is another subject requiring further study.

Chapter Five gives the first detailed account of the confidential memoranda suggesting amendments to the draft Commonwealth Bill which were given to the Premier of New South Wales by the Secretary of State for the Colonies in 1897, and assesses the extent to which Reid tried and succeeded to secure the amendments Her Majesty's Government proposed. This incident in the federal movement has hitherto been very obscure, but the discovery of the

memoranda among the colonial office records has thrown some light upon it. Despite the partial success of this method of bringing the draft Bill into line with imperial wishes, Mr. Chamberlain decided in 1900 that further changes were needed although the colonies had completed and ratified the constitution. The negotiations between Chamberlain and the Australian delegates about these amendments are traced, and some conclusions offered as to the reasons for Chamberlain's insistence on the retention of an unrestricted right of appeal to the Privy Council, and the character of the final settlement. The role of the Secretary of State in persuading Western Australia to join the Commonwealth is evaluated, and found to be less direct than has been suggested by some earlier writers.

The thesis as a whole is thus a survey of the federal movement between 1880 and 1901, organised to show the part played by indirect and direct British influence in bringing federation about and shaping the character of the constitution under which it was attained. In a Concluding Note the reasons for the sustained British enthusiasm for Australian federation are tentatively discussed.

The preparation of the thesis has been handicapped by the inadequate state of knowledge about the domestic Australian pressures which were forwarding the federal movement in the same period, and because of this it may

at times wander a little from its own implied limits in pursuit of interesting questions of interpretation. The thesis is based on sources available in England, the most valuable being the Colonial Office records, parliamentary papers and debates of Britain and the colonies, the Gladstone, Granville and Carrington collections of private papers, and newspapers and contemporary journals. These have provided ample material for a subject oriented in this way, indeed more than could well be used, although work on various collections of papers in Australia, other than the few Western Australian ones used, would be necessary for the more general study of the federal movement which cries out to be done.

**BRITISH INFLUENCE ON THE FEDERATION OF THE AUSTRALIAN
COLONIES, 1880-1901**

**A Thesis presented for the degree of
Doctor of Philosophy of the University
of Oxford.**

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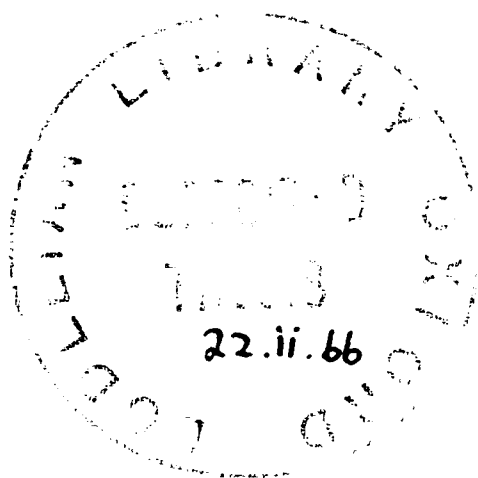


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TABLE OF ABBREVIATIONS USED

A.Q.	<u>The Australian Quarterly</u>
H.R.A.	<u>Historical Records of Australia</u>
H.S.	<u>Historical Studies: Australia and New Zealand</u>
J.R.A.H.S.	<u>Journal of the Royal Australian Historical Society</u>
J.W.A.H.S.	<u>Journal of the Western Australian Historical Society</u>
Proc. of P.C.I.	<u>Proceedings of the Royal Colonial Institute</u>
P.D.	Parliamentary Debates (This term is used only for the parliaments of the colonies, British debates being referred to by the word, Hansard)
A. to J.	Appendix to Journals
J. & P. (Fed. Co.)	Journals and Printed Papers of the Federal Council of Australasia
Parl. Pap.	British Parliamentary Papers
Proc. of Parlt.	Proceedings of Parliament
V. & P.	Votes and Proceedings and Printed Papers. (This is always followed in brackets by an indication of the colony and the House to which it applies, viz. V. & P. (F.A. of W.A.) refers to the Votes and Proceedings of the Legislative Assembly of Western Australia.
B.M. Addit. MSS.	British Museum, Additional Manuscripts.
C.O.	Colonial Office (Where a Colonial Office file is referred to the series number is given first, followed after a stroke by the volume number)
C.P.	Confidential Print
F.O.	Foreign Office
H.A.	House of Assembly
L.A.	Legislative Assembly
L.C.	Legislative Council
P.R.O.	Public Record Office
tele	telegram.

Introduction

This thesis was conceived as a study of the federal movement in Australia in the last twenty years of the Nineteenth Century, viewed from within the context of Anglo-Australian relations. This is not the only angle from which the federal movement might be studied, nor indeed the most obvious one, for all save one of the colonies had been independent and self-governing from the eighteen-fifties, and the men, the ideals, and the practical pressures which were responsible for the establishment of the Australian Commonwealth were largely Australian. Nevertheless the relationship of the colonies with Great Britain in this period was still an intimate, and in some respects a dependent one. Foreign policy, diplomacy and defence were still mainly imperial concerns; the developing economy on which the political and social structure of the colonies was based was British financed; and the last traces of imperial interference in domestic matters were only gradually shaken off in the eighties and nineties. It is not surprising therefore, that British influence, and at times colonial reaction against that influence, played a part in the Australian federal

movement; it is the aim of this thesis to show that a study of this influence can help towards an understanding of the as yet sketchily established story of the creation of the Commonwealth.

In the eighteen-eighties economic and social conditions within the colonies favoured provincialism rather than union, and the federal movement then was essentially a product of dissatisfaction with the British attitude towards Australia's aspirations in the Pacific. Towards the end of the decade British pressures on the colonies with regard to defence questions also became prominent in the federal movement. These indirect influences of British policy were supplemented by the direct support of federation by Secretaries of State for the Colonies such as Derby and Knutsford, imperial defence advisers to the colonies such as Jervois, Tryon and Edwards, and colonial governors such as Loch, Kintore, and Carrington. The circumstances leading up to the creation of the Federal Council of 1885 and the Federal Convention of 1891 are therefore examined in considerable detail in Chapters Two and Three.

In the eighteen-nineties when the impetus of the movement for federal union came more from domestic pressures within Australia, British influence was focussed

on shaping the character of the instrument of federation. The framers of the constitution were strongly influenced by their heritage of British constitutional thought and practice, and the document they produced bears the marks of this. Another Secretary of State for the Colonies, Joseph Chamberlain, sought, secretly in 1897 and openly in 1900, to amend their constitution bill where it was thought to impinge on imperial interests and prerogatives. These hitherto rather obscure episodes form the substance of Chapters Five and Six.

Other periods or aspects of the federal movement in which British influence and the impact of Anglo-Australian relations were less central are treated in less detail, though the work as a whole gives a comprehensive account of the subject in the twenty year period covered. The narrative of events flows in a largely though not rigidly chronological manner, but the material is also arranged to show the impact of British influence, indirect and direct, on the impulse for federation, and the character of the constitution under which federation was achieved.

Chapter One.FEDERAL ACTIVITY IN AUSTRALIA BEFORE 1880.

In the four decades which followed the first planting of the Union Jack at Sydney Cove in 1788, a number of further tiny settlements came into being around the coastal fringes of Australia. Founded in different ways and for different reasons, and almost as isolated from each other as they were from the rest of the world, these scattered colonies fought and won their separate battles, first for survival and later for population and prosperity. As each grew in size and stability its demand was not only for self-government, but for separate self-government. This background was reflected in the political framework of the colonies which evolved in the years between 1840 and 1860, and the division of Australia into six separate colonies was confirmed. By the time that expanding areas of occupation began to impinge upon one another, and increasing complexity of social and economic life brought problems which demanded common action, the colonies were steeped in a tradition of provincialism and mutual mistrust. The few who were conscious of the amount all colonies had in common and of the advantages which might be gained from union found themselves swimming against the tide. Half a century of the separate self-government established by the Australian Colonies Government Act

(1850) and the new constitutions which ensued from it was needed to prepare Australia for federation. The history of Australia in the Nineteenth Century may thus be viewed as a symmetrically balanced story of the division and reunion of a continent.

Yet even during the mid-century transition to responsible government, suggestions for the linking together of the new colonies were made. In Australia a handful of individuals were beginning to discern the need for a common intercolonial authority; in London, Earl Grey, Secretary of State for the Colonies from 1846 to 1852, sponsored an attempt to incorporate federation in the new constitutional arrangements. The failure of these early proposals, and the reasons for that failure, are important to an understanding of the federation movement later in the century.

Precisely when the federation of the Australian colonies was first advocated it would be pointless as well as difficult to determine.^{1.} A useful starting point is the speech in September 1846 of Edward Deas Thompson, Colonial Secretary of New South Wales, in which he agreed that "there should be some control established as to intercolonial legislation",^{2.} though it is unlikely that he

1. It was certainly as early as 1842, see J.M.Ward, "The Germ of Federation in Australia", B.S. Vol.4 No.15 (Nov. 1950) p.215.

2. Sydney Morning Herald, 11Sept. 1846, quoted ~~at~~, ibid.

was thinking in terms of a full federation. This speech by Deas Thompson was presumably the immediate inspiration behind the despatch of Governor FitzRoy, dated two weeks later, which suggested to the Colonial Office a need for "some superior functionary" with power to review and if necessary disallow the legislation of all colonies on matters other than purely local ones.^{1.}

It should be noted that these tentative steps towards a central authority were in no sense an expression of Australian nationalism, but rather were prompted by a practical problem, the development of intercolonial tariff rivalry. The federal movement and tariff questions were ever thereafter to be intimately entangled.

After the separation of Van Diemen's Land from New South Wales in 1825, informal free trade had continued between the two colonies, although both imposed tariffs on goods from elsewhere. The separation of New Zealand from New South Wales in 1841 led the Legislative Council of New South Wales to regularise this practice by passing an Act to admit goods from both Van Diemen's Land and New Zealand free of the duties which applied to other imports, but unfortunately this movement for free trade between the colonies was blocked by the Imperial Government -- in the name of Free Trade. Lord Stanley not only disallowed the

1. FitzRoy to Gladstone, 29 Sept. 1846. H.R.A. 1, XXV, pp.198-9.

Act, but informed the colonists that Her Majesty's Government objected in principle to all differential duties, as they would destroy the commercial uniformity of the Empire and encourage retaliation and protection. Governor Gipps' warning^{2.} that this would undermine friendly relations between the colonies was soon fulfilled. Financial difficulties led Van Diemen's Land to obey Stanley's ruling and impose a duty on tobacco from New South Wales, and the retaliatory tariff rivalry thus triggered off quickly became endemic. Stanley and his successors frequently suggested that the colonies should fix a uniform tariff, or abolish duties on those goods most common in intercolonial trade, but none of the colonies proved capable of making the necessary sacrifice of fiscal autonomy.

It was the dismay of Deas Thompson and others at the growth of intercolonial tariffs and tariff conflict which suggested to them the need for an intercolonial authority. The imperial restrictions on colonial tariff policy may thus appear to have indirectly stimulated thoughts of federation, but compared with the divisive effects of Lord Stanley's action such thoughts were weak,

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1. Stanley to Gipps, 28 June 1843. H.R.A. 1, xxii, pp. 801-3; Stanley to Gipps, 31 Aug. 1843. H.R.A. 1, xxiii, pp. 1-2.
 2. Gipps to Stanley, 1 Jan 1844. H.R.A. 1, xxiii, pp. 301-2. For a more detailed account of the matter, see, C.D. Allin, A History of the Tariff Relations of the Australian Colonies. (Minneapolis: 1918) pp. 9-13.

isolated, and shortlived. Just how weak was soon revealed by the apathetic reaction in the colonies to the direct federal proposals of Earl Grey.^{1.}

A vehement free-trader who combined liberal principles with a rather paternalistic concept of Imperial responsibility, Grey was attracted to federalism on theoretical grounds and attempted to apply his beliefs in Canada, New Zealand, and Australia alike. His desire to federate the Australian colonies owed little to FitzRoy's despatch or to peculiarly Australian conditions, though these were soon accommodated within his plans.^{2.} Only by the federation of adjacent colonies, Grey believed, could freedom of trade and commerce between them be ensured, and political conflicts avoided. The long list of Australian questions awaiting settlement when Grey went to the Colonial Office - agitation for the separation of the Port Phillip district from New South Wales, the demand of Van Diemen's Land and South Australia for representative government, and the tariff conflicts between the colonies-

1. The authoritative source for Grey's federal proposals and Australian federal activity to 1857 is, J.M.Ward, Earl Grey and the Australian Colonies, 1846-1857. (Melbourne: 1958). Also valuable is the earlier, C.D. Allin, The Early Federation Movement of Australia. (Kingston, Ontario: 1907) J.Quick & R.R.Garran, The Annotated Constitution of the Australian Commonwealth. (Sydney: 1901) surveys the federal movement to 1880 at pp. 79-107.
2. Ward, Earl Grey, pp. 39-44. cf. Allin, Early Federal Movement, pp. 104-5.

gave him the excuse for a thoroughgoing revision of the existing arrangements and he put his views before the colonists in a long despatch.^{1.} This proposed the revision of the New South Wales Constitution, separation of the Port Phillip district and the granting to it, as well as to South Australia and Van Diemen's Land, of the representative government already existing in New South Wales, and the creation of a "central authority" to control such matters as tariffs, transport, and communications.

In the colonies the federal aspects of Grey's plan were not so much criticised as ignored. Great indignation was aroused in New South Wales by Grey's unlooked for proposal to introduce a bicameral legislature, the lower house of which was to be indirectly elected through an already unpopular system of district councils. In the rush to oppose this plan the idea of an intercolonial council was forgotten except by the handful of men, such as Deas Thompson,^{2.} whose thoughts had already been turning in that direction. The other colonies were suspicious of any idea which might restore the hegemony of New South Wales but were preoccupied with the concessions to their wishes which were foreshadowed. Few people in any of the colonies troubled themselves to attack the federal clauses, but it

1. Grey to FitzRoy, 31 July 1847. H.R.A. 1, xxv, pp. 698-703.

2. Sydney Morning Herald, 4 May 1848, cited in Ward, Earl Grey, p. 74.

was clear that they were not wanted. However the Privy Council Committee for Trade and Plantations, which Grey revived to consider his plans, firmly supported the idea of a General Assembly of Australia,^{1.} and he included it in his first Australian Colonies Government Bill in 1849. This Bill provided for the creation of a new colony to be known as Victoria, by separating the Port Phillip district from New South Wales, and the granting to Victoria, Van Diemen's Land, and South Australia of representative government, but the proposals for constitutional change in New South Wales were dropped.

Throughout 1849-50 Grey made repeated attempts to get this Bill or revised versions of it passed by the Imperial Parliament, but the Government was weak politically and the federal clauses proved very unpopular, even when made permissive in their operation. In May 1850 the Bill passed the House of Commons, but in the House of Lords the federal clauses survived in committee by only one vote. As he was unable seriously to deny that he was trying to thrust federation upon colonists who had not asked for it, Grey was eventually forced to withdraw the federal clauses to safeguard the remainder of his Bill.^{2.}

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1. Cmd. 1074, pp. 33-47. Parl. Pap. 1849, xxxv.
 2. For details of the struggle over the Bill see, Ward, Earl Grey, Chs. V & VII.; Allin, The Early Federation Movement, pp. 115-34, 196-215.; W.P. Morrell, Colonial Policy in the Age of Peel and Russell. (Oxford: 1930) Ch. XV.; M.W. Kerr, "The Role of the British Parliament in Colonial Affairs, 1850-60". (Oxford B.Litt.Thesis, 1952)

The first attempt to federate the Australian colonies had been defeated by a combination of opposition at Westminster and apathy in Australia. Moreover the separate existence of the colonies had been more firmly established than before. This rebuff was long remembered in the Colonial Office and following it there was never any possibility that Australia would be federated by imperial legislation over the heads of the colonists, though Grey's successors seldom missed a chance to encourage Australian federal sentiment.

Grey himself made one last attempt to establish an intercolonial authority in Australia; on 13 January 1851 he sent to FitzRoy commissions as Governor-General of all Her Majesty's Australian possessions.¹ To this new office, large though inadequate powers over intercolonial matters were delegated, but no machinery was created to advise the Governor-General as distinct from the Governor of New South Wales, and no new Instructions were sent. In the colonies the new position was treated as if it were a purely titular one, and after Earl Grey left office in 1852 the Colonial Office also looked on it as a formality. Governor-General FitzRoy made little attempt to develop the post or to use his new powers, and though his successor, Sir William Denison, proved a more effective mediator in

1. Grey to FitzRoy, 13 Jan. 1851. Cmd. 1303, p.44. Parl. Pap. 1851, xxxv. For discussion see Ward, Earl Grey, Chs. IX & X, and Allin, The Early Federation Movement, Ch. 111.

intercolonial affairs, the position was abolished in 1861.

In the meantime there had been a few flutters of interest in federation among the colonists themselves, arising, as was again to be the case in the 'eighties, out of conflicts with the British Government. In 1848 Earl Grey had disclosed a desire not only to continue convict transportation to Van Diemen's Land but to resume it to New South Wales; the outraged colonists in all areas began to form Anti-transportation organisations, and by March 1851 these had combined in the Australasian League for the Abolition of Transportation.^{1.} For the first time the colonies had found a common purpose strong enough to overcome their parochialism. In uniting to oppose Earl Grey and the Imperial Government they had found a little of that community of interest to which he had previously appealed in vain. But the campaign to end transportation was soon successful and the talk of federation which had accompanied it died away. The incident was too shortlived to be of much significance either as a stimulus to Australian nationalism or as a stage in the federal movement,^{2.} but as Ward noted,^{3.} it saw the emergence of the

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1. See Ward, Earl Grey, Ch. VIII. & C.S.Blackston, "The Australasian League", Pacific Historical Review, Vol. VIII, (1939), pp. 385-400.
 2. C.S.Blackston, "The Dawn of Australian National Feeling", Pacific Historical Review, Vol. XXIV (1955) pp. 121-38 puts a slightly different view.
 3. Ward, Earl Grey, p.225.

anti-British element which will be found in later attempts to unite the Australian colonies. The proposals of the radical republican J.D.Lang, for federation and separation,^{1.} enjoyed only a brief notoriety in the early 1850's but were to be revived thirty years later.

That the separatists did not enjoy more success at the time was due largely to the early triumph of the colonists in the other major question at issue with the Colonial Office. The form of representative government which had been granted to New South Wales in 1842 and extended to the other colonies by the Act of 1850 did not satisfy them for long; in New South Wales in particular there was an insistent demand for the full internal responsible self-government which had been granted to Canada. Sir John Pakington, who had followed Grey as Colonial Secretary, acceded to this pressure in December 1852, and during 1853-4 each of the colonies was allowed to set committees to work at drafting for themselves completely new constitutions embodying responsible government.

It is interesting to note that in both New South Wales and Victoria the drafting committees made reference to the possibility of federation. The report of the

1. For his ideas see J.D.Lang, Freedom and Independence for the Golden Lands of Australia (London : 1852)

Victorian committee rather vaguely acknowledged a need for a General Assembly;^{1.} in New South Wales Deas Thompson and W.C. Wentworth fathered a sketchy scheme for a central authority on the lines suggested by Grey.^{2.} But in each case the actual draft constitution which was prepared contained no provision for an intercolonial assembly. Wentworth and Deas Thompson went to England in 1854 to see their draft constitution safely through the Imperial Parliament, and while there Wentworth participated in the formation of a body calling itself the General Association for the Australian Colonies. Both the General Association and Wentworth as an individual pressed the need for a federal union in Australia on the Colonial Office, but without success.^{3.} In forwarding the enacted Constitutions to the colonial Governors, Lord John Russell made a clear statement of the position adopted by the Colonial Office after the departure of Grey:

"I need scarcely say that the question of introducing into the measures lately before Parliament, clauses to establish a Federal Union of the Australian Colonies, for purposes of common interests, has been very seriously weighed by Her Majesty's Government, but they have been led to the conclusion, that the present is not a proper opportunity for such enactment,

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1. Report, p.5. V.& P. (L.C. of Vic.) 1853-4, 111, p.587ff.
 2. Report, pp. 3-4 V.& P. (N.S.W.) 1853, 11, p. 119ff.
 3. The Minute Book of the General Association is held by the Royal Commonwealth Society Library, London. For an account of Wentworth's efforts, see Ward, Earl Grey, pp. 342-6.

although they will give the fullest consideration to any propositions on the subject which may emanate in concurrence from the respective legislatures." 1.

The British Government wished to encourage Federation, and except in its prohibition of differential duties took some trouble to remove obstacles to it, but responsible government had been given to the colonists and any future initiative on the federal question would have to come from them.

For a few years there seemed a remote possibility that such initiative might indeed be forthcoming. A series of able letters, and later, editorials, in the Sydney Morning Herald by the Rev. John West kept the federal question in the public eye.^{2.} W.C. Wentworth, who had remained in London after the passing of the New South Wales Constitution Act, prepared a Memorial and Draft Federal Enabling Bill which were presented to the Colonial Secretary by the General Association for the Australian Colonies in March 1857.^{3.} Labouchere expressed sympathy with the plan but disagreed with the contention of the Memorialists that it was the "duty of the Imperial Government to anticipate the wants of its colonies"; rather he followed the precedent set two years earlier by Lord John Russell, and declined

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1. Russell to Denison, 20 July 1855. V.&P. (L.C. of N.S.W.) 1855, 1, p. 60+.
 2. Ward, Earl Grey pp. 337-9.
 3. The Wentworth-Labouchere correspondence is printed in V. & P. (L.A. of N.S.W.) 1857, 1, p. 383ff.

to act beyond forwarding the correspondence to the Australian Governors. In 1857 also, a select committee of the Legislative Council of New South Wales, moved for by Edward Deas Thompson, recommended co-operation with the other colonies towards federal union,^{1.} but its Report was not considered by the Legislative Assembly. The real centre of federal activity had, however, shifted to Melbourne, with Charles Gavan Duffy as its leader.

Gavan Duffy had come to Australia after years of unavailing political activity as an Irish Nationalist, so that it is not surprising that he soon became interested in Australian national union. In September 1857 a select committee of the Legislative Assembly of Victoria secured by Duffy and with himself as chairman, reported in favour of federal union and suggested that an intercolonial conference be called to determine what kind of federation would be most suitable.^{2.} The idea was kept alive by Duffy through a series of select committees during the three following years,^{3.} and overtures were made to the other colonies.

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1. Report of the committee, Journal of the L.C. of N.S.W., 1857, 11, p.109ff.
 2. Report, p.4. V.& P. (L.A. of Vic.) 1856-7, 111, Paper D46, p.141ff. For an evaluation of Gavan Duffy's role see, J.M.Ward, "Charles Gavan Duffy and the Australian Federal Movement, 1856-70". J.R.A.H.S. Vol.47, pt.1, 1961, pp.1-33.
 3. See the Reports;- V.& P. (L.A. of Vic.) 1857-8, 1, Paper D10, p.659; 1859-60, 11, Papers D12 & D29, pps. 153 & 423.

In South Australia there was an immediate response, select committees of each House reporting in November 1857 that federation seemed premature but that a conference would be justified.^{1.} In Tasmania (formerly Van Diemen's Land) the House of Assembly recorded its willingness to be represented at such a conference, and at one stage actually appointed delegates.^{2.} Later, in 1860, R.G.W. Herbert,[†] Colonial Secretary of the newly created colony of Queensland, expressed misgivings about federation but agreed to recommend to Parliament participation in a conference.^{3.} But this appearance of unanimity was deceptive for the colonies were in fact diverging from each other rather than drawing together; nothing came of all the reports and correspondence, and the proposed conference did not take place.

Duffy himself laid the major responsibility for this failure at the door of the Legislative Assembly of New South Wales,^{4.} and in a sense this was justified. The New South Wales Legislative Council had endorsed the idea of an intercolonial conference on federal union in

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- † Later to enter the history of the federal movement from another angle, as Permanent Under-Secretary for Colonies, 1871-92.
1. Reports:- Proc. of the Parlt. of S.A. 1857-8, 11, Papers 171 & 188.
 2. Journal of H.A. of Tas., 1857, 11, p.249.
 3. Herbert to Nicholson, 9 July 1860 & 31 July 1860, V. & P. (L.A. of Vic.) 1860-1, 1, Paper A9.
 4. Sir C.G. Gavan Duffy, My Life in Two Hemispheres. 2 vols. (London: 1898) 11., p.164.

November 1857, but it was never even considered by the Assembly, apart from an abortive effort by J.D.Lang to raise the federal issue in 1860.^{1.} That no conference was held may therefore be attributed at least in part to the lack of response from the senior colony, but had there been a conference it is most unlikely that it would have achieved much. In each colony there were only a handful of men who were interested in federation, and their activities were accepted only because no one took them seriously. Any attempt to translate talk about union into action would have been sure to arouse overwhelming opposition.

The newly created colonies were proud of their independence and afraid that a General Assembly might allow New South Wales to re-establish hegemony over them. New South Wales was jealous of the spectacular progress of Victoria made possible by the remarkable gold rushes of the 1850's, and afraid that it might be outvoted in a General Assembly by a combination of the other colonies. South Australia still held a little aloof from the convict-tainted colonies. Moreover all of the Eastern colonies were busy developing the institutions and practices of responsible government made possible by their new constitutions, often in divergent ways which

1. 3 April 1860, V.&P. (L.A. of N.S.W.) 1859-60, 1, p.5+1. 28 Sept. 1860, V. & P. (L.A. of N.S.W.) 1860, 1, p.15.

increased the gulf between them. While it was true that the colonies had a great deal in common, they were far more conscious of their differences. With the exception of the brief fight to end transportation there had been nothing to show them how much they needed each other. There was, in short, a great deal of local patriotism and no wider feeling of Australian nationality.

It was this absence of national sentiment that most puzzled and frustrated Gavan Duffy, for of all the early federalists only he and Lang appear to have been moved by anything more than a desire for greater administrative convenience. This last factor was an excellent reason for increased co-operation between the colonies, but of its nature it did not interest more than the narrow circle of experienced leaders who had to cope with intercolonial problems, nor did it necessarily indicate federation as the single inevitable solution. By 1860 it was apparent that the flurry of interest in federation which had accompanied the establishment of responsible government was to be no more fruitful than Grey's attempt to establish it by imperial intervention had been. This was emphasised by the refusal to discuss federation at ^{1.} a conference on the tariff problem in 1862, and was

1. Minutes of an Intercolonial Conference in Melbourne, March & April 1863, p.6. V.& P. (L.A. of Vic.) 1862-3, 1, Paper A29, p.669.

further confirmed by the lack of response to Duffy's last effort, his Royal Commission on federation in 1870. Indeed the Report of this Commission may well have done more harm than good, for it contained extraordinary and inappropriate proposals for the neutrality of the colonies if Britain were at war,^{1.} which angered the British Government,^{2.} and caused the federal movement to be regarded with suspicion.

Whilst these abortive parliamentary discussions proceeded, the fiscal relations of the colonies continued to deteriorate. Earl Grey's Australian Colonies Government Act had reinforced Lord Stanley's decision by absolutely prohibiting differential tariffs, which meant that each colony was forced to levy the same duty on goods from another colony as on goods from overseas. At this stage the tariffs of the colonies were for the most part still for revenue purposes only, but they began to diverge from one another markedly, and as the volume of intercolonial trade swelled with the stimulus of the gold rushes, this caused much inconvenience and ill feeling.

The problem was exacerbated by the growth of trade across and along the Murray River, for whereas

1. The Report of the Commission, pp. 7-8. V.&P. (L.A. of Vic.) 1870, 2nd Session, 11, Paper 10, p.463.
2. See below, p. 19-20.

duties had previously been collected only at the coastal ports it now became necessary to regulate trade across internal borders.^{1.} The Murray River Agreement of 1855 provided that trade across the river between New South Wales and Victoria should be free, and that goods brought up river to those colonies should pay duty only when landed in South Australia. In 1857 this Agreement was abrogated by Victoria, but in a revised form it remained in uneasy existence until 1864, when New South Wales finally established customs houses on the Murray. Further border treaties were negotiated for brief periods between 1865 and 1873, after which all attempts to reach agreement failed. After the establishment of a railhead at Echuca the rich farmlands of the New South Wales Riverina were closer to Melbourne than to Sydney and the struggle between the two cities for the trade of the area was intense. Few subjects caused more jealousy and friction between the colonies.

In the meantime attempts had been made to solve the more basic problem by assimilation of the differing tariffs.^{2.} An Intercolonial Conference held in Melbourne in March 1863 actually framed a uniform tariff upon which all persons present appeared to be agreed, but it was not

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1. For a detailed account of the border duties problem see, Allin, A History of the Tariff Relations of the Australian Colonies, Chs. V-VII.
 2. Ibid, Chs. VIII & IX.

enacted by the legislatures of the colonies. To make matters worse a protectionist tariff schedule was introduced in Victoria in 1866, and thereafter Victoria became as unswervingly protectionist as New South Wales remained staunchly free trade. With fewer natural resources to exploit than the older colony, and a far smaller revenue from the sale of land, Victoria chose to sustain the impetus of the gold rush decade by developing manufacturing industries behind a tariff barrier. The free trade versus protection controversy, exceeding in bitterness even the border customs issue and further complicating that question, subsequently bedevilled the relations of the colonies up to federation and beyond. Only a handful of colonial leaders rose above the general level of squalid bickering.

With all hope of a uniform tariff gone attention reverted to the possibility of differential duties, and criticism of the Imperial prohibition upon them was revived.^{1.} A Tasmanian Act of 1867 which incorporated this principle was promptly disallowed, and a New South Wales request for a removal of the ban was refused. The imperial authorities did not appreciate that with each colony stubbornly insisting on the right to pursue an individual tariff policy, free trade between them could be secured

1. For tariff problems, 1863-73, see C.D.Allin, Australasian Preferential Tariffs and Imperial Free Trade. A Chapter in the fiscal emancipation of the colonies. (Minneapolis; 1929)

only in this oblique way. And as Allin points out,^{1.} the fact that such a policy of tariff reciprocity was expressly prohibited enhanced its attractiveness to the colonists, and drew them together at conferences in 1870, 1871, and 1873 in common opposition to the Imperial government. At last the Colonial Office made up its mind that the colonies would have to be given their own way if only to facilitate federation,^{2.} but the decision was overruled by Gladstone and the Cabinet.^{3.} Gladstone himself was strongly against making any concessions, and in arguing his case referred heatedly to the insolent 'neutrality' recommendations of the Duffy Royal Commission.^{4.} By the time that the Australian Colonies Duties Act of 1873 finally removed the ban on preferential duties for intercolonial trade, the time when this might have been useful had passed; the differences in policy and the bitterness with which they were applied had become too great to be broken down except by complete federation, and in that no one was interested. Imperial interference with colonial customs policy thus had most serious repercussions on the federal movement; for if tariff differences constituted a powerful motive for union, they

1. Ibid., p.75.

2. See Herbert, Minute, 6 Dec.1871, C.O. 234/108,p.50.

3. P. Knaplund, Gladstone and Britain's Imperial Policy. (London: 1927) pp. 103-121.

4. Ibid., pp.247-50. (Gladstone to Kimberley, 29 Dec. 1871.)

were an even more powerful obstacle to it.

After the failure of Wentworth, Deas Thompson, Lang, Gavan Duffy and others in the 1855-60 period federation ceased almost even to be talked of in the colonies for twenty years. Apart from the Victorian Royal Commission of 1870, only such occasional flickers as the speech of Sir Hercules Robinson, Governor of New South Wales, in 1876,^{1.} and the lecture to the Royal Colonial Institute by the New South Wales Agent-General, Mr. W. Forster, in 1877,^{2.} showed that the idea was still tenuously alive.

For the most part the colonies remained preoccupied during this period with local affairs, particularly the development of their resources, but like the tariff issue, an increasing number of other problems required common action. Among the more important were postal and telegraphic communications, enforcement of judgments and other legal anomalies, defence, convict transportation to Western Australia, and especially Chinese immigration. Between 1863 and 1880 a series of eight intercolonial conferences met at frequent intervals to try to deal with

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1. Sir H. Robinson. Border Treaties and Australian Federation. A Speech Delivered at a Banquet at Albury, on the 31st Oct. 1876. (Melbourne, 1876.)
 2. W. Forster, "Fallacies of Federation", Proc. of R.C.I. VIII, (1876-7) pp.73-143.

1.

these and other such problems, but this method had only limited success. Questions of administrative co-operation could sometimes be sorted out, but where political considerations were involved it was difficult to secure anything like unanimity, and even more difficult to get conference decisions implemented. Many items recurred over and over again on conference agendas, and by 1880 the defects of this method of dealing with inter-colonial problems were becoming apparent to all.

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1. For a list of the conferences, with the subjects discussed and key decisions, see G. B. Barton, "Australian Federation: An Historical Sketch", Appendix to, E. Greville, Ed., Yearbook of Australia (London: 1891)

Chapter TwoAUSTRALIA AND THE PACIFIC: THE FORMATION OF THE
FEDERAL COUNCIL

1.

In November 1880 an Intercolonial Conference attended by representatives of New South Wales, Victoria, and South Australia met in Melbourne; its agenda was a long one, for it included nearly all of the problems which had been discussed but not resolved during the previous twenty years. The conference was not conspicuously more successful than its predecessors, but was distinguished from them by the resolutions in favour of a federal council introduced by Sir Henry Parkes, the Premier of New South Wales. Although these resolutions bore little immediate fruit, they may be seen in retrospect to have marked the beginning of a new stage in the federal movement.

Parkes had long been inclined towards federation, indeed at a much earlier conference held in 1867 on postal communications he had been a sponsor of a less developed plan for a federal council to implement the decisions of the conference.^{1.} On that occasion Parkes had

1. Proceedings of a Postal Conference held in Melbourne, 4 March 1867, p.8. V.& P. (L.A. of N.S.W.) 1867-8, 111, p.493.

followed up the conference resolution by carrying through both Houses of the New South Wales Parliament a bill to establish such a council, and an identical bill was passed through the South Australian Parliament. In each case, however, the measure was disallowed by the Duke of Buckingham and Chandos on the grounds that the postal arrangements which the council was intended to administer were no longer accepted by all the colonies, nor were they acceptable to Her Majesty's Government, and that the powers of the proposed council were limited to the one project. Nothing more was heard of the scheme, but in 1874 Parkes corresponded with Mr. Gladstone on the subject of federation, and the relations of the colonies with the United Kingdom. In 1879 he expounded in the Melbourne Review the advantages which would accrue from federation, and suggested that a beginning might be made by New South

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1. V.&P. (L.A. of N.S.W.) 1867-8, 1, p.180 Bill introduced (22 Aug. 1867); p.321 Assent (9th Oct. 1867). Proc. of Parlt. (S.A.) 1867, 1, p.175 Bill introduced (26 Sept. 1867); p.309 Assent (19 Dec. 1867).
 2. Buckingham & Chandos to Young, 5 Jan. 1868, V.&P. (L.A. of N.S.W.) 1868-9, 1, p.535. Buckingham & Chandos to Gov. of S.A., 26 April 1868; Proc. of Parlt. of S.A. 1868-9, 11, Paper No.30.
 3. Parkes to Gladstone, 5 June 1874. B.M. Addit. MSS. 44443, ff.276-7. (Gladstone Papers)
Sir H. Parkes, Fifty Years in the Making of Australian History, 2 vols. (London; 1892) 1, p.326.

Wales, Victoria and South Australia without the other
^{1.}
 colonies.

The federal council proposed by Parkes in 1880, while still very limited in both composition and powers, was more ambitious than his previous plans. The first of his resolutions declared that "in the opinion of this conference the time has arrived when a Federal Council should be constituted to deal with questions affecting all the colonies in common"; subsequent resolutions specified that the colonies should be equally represented on the Council, and that the control of each colony over
^{2.}
 its own revenues should be unimpaired. These resolutions were agreed to, and New South Wales was requested to prepare a Bill embodying them for submission to a further meeting to be held in Sydney, early in the following year, which Queensland, Tasmania, Western Australia and New Zealand were invited to attend.

When the adjourned conference met in January 1881 with representatives of all seven colonies present, Parkes

1. Sir H. Parkes, "An Australain Nation", The Melbourne Review, Vol. IV No.16 (1879) pp.325-33. Note the reply to the last point by J.Douglas, "An Australian Nation", Vol.V No.17, (1880), pp. 1-14.
2. Minutes of the Proceedings of an Intercolonial Conference held at Melbourne, Nov. & Dec. 1880, p.8. V.& P. (L.A. of N.S.W.) 1880-1, 1, p.327.

presented to it a Federal Council of Australasia Bill,^{1.}
and an accompanying Memorandum which began:

"In respect to the Federal Council Bill now submitted, the following positions are assumed as hardly open to debate:-

1. That the time is not come for the construction of a Federal Constitution with a Federal Parliament.
2. That the time is come when a number of matters of much concern to all the colonies might be dealt with more effectively by some Federal authority than by the colonies separately.
3. That an organisation which would lead men to think in the direction of Federation, and accustom the public mind to federal ideas, would be the best preparation for the foundation of Federal Government." 2.

In other words, Parkes judged that there was sufficient dissatisfaction with the conference method of dealing with common problems to make possible a tentative step in the direction of federation, but that parochialism and intercolonial jealousy were too strong for it to be more than a small step. His Bill provided for a Council composed of three members from each participating colony, upon which a limited list of powers was to be conferred. No revenues were secured to the Council, and it was not given control of the most important intercolonial problem

1. A copy of the draft Bill may be found as Appendix B to the Minutes of the Conference; V. & P. (L.A. of N.S.W.) 1880-1, 1, p.377.
2. Minutes of the Proceedings of the Intercolonial Conference held at Sydney, Jan. 18th 1, p.9. V. & P. (L.A. of N.S.W.) 1880-1, 1, p.337.

of all, the tariff question, upon which there was no possibility of Victoria and New South Wales being able to agree.

When the Bill was debated by the Conference, various amendments were proposed. That of Graham Berry, Chief Secretary of Victoria, to divert the land revenues of the colonies to the council was apparently an oblique attempt to discredit the Bill, and was supported by no colony save his own.^{1.} Three other amendments were proposed, including one which provided that acts of the council should continue to apply in any colony withdrawing from it until repealed by the parliament of that colony,^{2.} an issue which was to be argued much more fiercely a few years later. But when the Bill and amendments were voted upon, only South Australia, Tasmania and New South Wales were in favour; Victoria, Queensland and New Zealand were against, and Western Australia abstained, so that the colonies were equally divided and the Bill lapsed.^{3.}

It may be thought in the light of this reverse that the federal movement was no further forward in 1881 than it had been in 1850 or 1860, but such a conclusion

1. Minutes of Proc. of the Intercol. Conf. held at Sydney, Jan. 1881, p.12.

2. Ibid.

3. Ibid.

would be misleading. The colonies had come to realise that they could not live in complete isolation from each other, and it was accepted that united action, or at least co-operation, was necessary on some matters. Moreover by 1881 it was obvious that the haphazard summoning of occasional intercolonial conferences was not an efficient method of obtaining this. As the Victorian Premier, James Service, told his Legislative Assembly in a subsequent federal debate:

"Between twenty and thirty years in fact, the Australian colonies have been, as it were, groping after unity, by means of a series of conferences, moveable conferences, held sometimes in one place and sometimes in another, sometimes for one object and sometimes for another. The outcome of the whole of these conferences has really not been worth the time and trouble they cost. I hold in my hand a list of subjects dealt with by intercolonial conferences during the twenty years beginning with 1864 and ending with 1883, but not given effect to by any legislature. There are some twenty three of them altogether, and if I say that about three subjects have been dealt with effectively by these conferences I think I state the full number." 1.

On the other hand, while the matters which required federal action were mainly of a domestic character, such as posts and telegraphs, trademarks, legal processes, railways and tariffs, they were outweighed by the continuing jealous rivalry of the colonies. Parochialism remained far

1. P.D. (Vic.) Vol.45, pp.200-1. (19 June, 1884)

stronger than any feeling of national unity, and those who gained from intercolonial tariffs and differential railway rates were more influential than those who suffered from them. Parkes had hoped that the establishment of a limited federal body would "accustom the public mind to federal ideas", but his Governor, Lord Augustus Loftus, pronounced the accurate verdict to the Colonial Office that "there is no probability of any such body being created until it should be supported by a more extended federal action."^{1.}

Like almost all other Governors of the colonies in the latter part of the century, Lord Augustus supported the cause of Australian federation. He had tried to stimulate the more extended federal action he believed necessary with a public speech made at Deniliquin in October of the previous year, in which he advocated federation, and the abolition of border duties as a first step in this direction.^{2.} However after the defeat of Parkes' Bill the federal question fell back into temporary obscurity, broken only by periodic discussion in the Victorian Legislative Assembly.^{3.} The absence of public

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1. Loftus to Kimberley, 29 Jan. 1881. C.O. 201/595, p.7^r.
 2. Argus, 11 Oct. 1880. The speech was noted in the Colonial Office, C.O. 309/121, p.511.
 3. A federal conference was proposed by Munro, 6 Sept. 1882. V.& P. (L.A. of Vic.) 1882-3, 1, p.149; the debate was resumed on several occasions but was unconcluded when Parliament was dissolved in 1883.

debate did not mean that the federal cause was entirely stagnant though, for more silent factors were steadily increasing the cohesion of the colonies.

In December 1880 Lord Augustus pointed out in a letter to the Queen's Secretary, Sir Henry Ponsonby, that the rapid improvement of transport and communications between the colonies must bring home to them the need for closer relations.^{1.} In June 1883 this was dramatically illustrated by the junction of New South Wales and Victorian railway lines to complete the first through route between Melbourne and Sydney, greatly reducing the travelling time between the two cities. A celebratory banquet at Albury attended by the leading men of both colonies was marked by strong speeches in favour of federation,^{2.} but in contrast to the 1880-81 period, the enthusiasm came mostly from the Victorian side, whilst the New South Welshmen, with Parkes out of office, were noticeably more reticent. On the other hand the railway junction also demonstrated the obstacles which the federal movement had still to overcome, for the colonies had been unable to agree on a common rail gauge and travellers were consequently forced to change trains at the border. When a report of the banquet arrived in

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1. Loftus to Ponsonby, 4 Dec. 1880, in G.E. Buckle, Ed. The Letters of Queen Victoria, Second Series. (London: 1928) Vol. lll, p.161.
 2. G.B. Barton, "Australian Federation: An Historical Sketch", in E.Greville, Ed. A Yearbook of Australia. (London: 1891) p.xv.

London, Lord Derby, who had recently become Secretary of State for the Colonies, minuted of federation, "It will come, though not quite yet"^{1.} thus echoing the slightly more pithy judgement of Kimberley in the previous year, "Not ripe yet."^{2.}

Had the movement for federation continued to be sustained solely by domestic pressures for greater administrative convenience these predictions would probably have been completely vindicated. However even as Derby penned his assessment a new factor was at work which was to speed up events and give Australia its first taste of federal institutions within two years. In 1883 the colonists became excited by rumours of French and German designs upon the New Hebrides, New Guinea, and other islands in the Pacific, and were infuriated by the reluctance of the Imperial Government to forestall annexations in the area by other European powers. Just as the colonies had been drawn together for a brief period, thirty years before, in the fight to end transportation, so they were now drawn together by conflict with the British Government over Imperial policy in the Pacific. Colonial politicians became aware that their influence was weak because they spoke with many voices rather than one,

1. Minute: Derby, 15 Aug. 1883, C.O. 309/125, p.202.

2. Minute: Kimberley, 29 Oct. 1882, C.O. 309/124, p.258.

and their interest in federation was converted from the theoretical to the practical; the colonial public was aroused and united by the external threat as it never had been by local issues. The direct result was the Federal Council of Australasia Act of 1885.

There had always been a firm belief in Australia that as many as possible, preferably all, of the Pacific islands should be brought under British rule.¹ There were many reasons for Australian interest in the area. The bulk of the trade with the islands passed through the colonies; most of the missionary activity in the islands was based on Australia; colonial investment in island plantations was considerable, and native labour from the islands was regarded as indispensable to the Queensland sugar industry. Even more important, there was an unalterable conviction shared by almost everyone in the colonies that it was strategically essential to their safety to keep all foreign powers out of the Pacific.

In the case of New Guinea, which sparked off the agitation in the 1880's, this Australian 'Monroe Doctrine' was certainly the decisive factor, for none of the elaborate schemes for the colonisation and commercial

1. See J.M. Ward, British Policy in the South Pacific, 1786-1893. (Sydney: 1948) Ch. XIX.

exploitation of the island which were periodically aired had ever come to anything.^{1.} During the years 1874-5 the annexation of parts of Eastern New Guinea had been under consideration, and Lord Carnarvon, the Secretary of State for the Colonies, was not unfavourably disposed towards the idea, but considered that as Australia rather than Great Britain was likely to benefit from the annexation,^{2.} the colonies ought to contribute to the expense. This they were not prepared to do, even though they desired the annexation.^{3.}

There the matter rested, despite further correspondence in 1878,^{4.} until the end of 1882, when the Royal Colonial Institute drew the attention of imperial and colonial governments to an article in the Allgemeine Zeitung, which proposed a German settlement in New Guinea.^{5.} This news provoked an immediate reaction in Australia.

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1. For background to Australian interest in New Guinea see, J.D.Legge, Australian Colonial Policy. (Sydney/ 1956) pp. 7-18; D.C.Gordon, The Australian Frontier in New Guinea. (New York: 1952) Chs. 1-V; A.C.V.Melbourne, "The Relations between Australia and New Guinea up to the Establishment of British Rule in 1888", J.R.A.H.S. Vol.XII Part V (1926), pp.238-314.
 2. Carnarvon to Robinson 9 July 1875, and 8 Dec. 1875, V.& P. (L.A. of N.S.W.) 1875-6, 11, pp.56-8, 60-1.
 3. See for example, Robinson to Carnarvon, 26 Nov. 1875, Ibid., pp.58-60.
 4. C 3617, pp.29-94, Parl.Pap. 1883, XLVII.
 5. Royal Colonial Institute to the Colonial Office, 9 Dec. 1882, Ibid., p.119; Archer to McIlwraith, 15 Dec. 1882, V.& P. (L.A. of Q.) 1883, pp.774-5.

Governor Loftus reported to Lord Derby in February 1883 the conviction current in New South Wales that unless Britain acted quickly, New Guinea would be annexed by another power; he added his own opinion that conditions had changed sufficiently since Lord Carnarvon's decision in 1875 to warrant, not annexation, but the establishment of a protectorate.^{1.} The energetic and aggressive Premier of Queensland, Sir Thomas McIlwraith, forwarded a memorandum to the Governor of that colony, Sir Arthur Kennedy, arguing in favour of immediate annexation on the grounds of increased steamer traffic through Torres Strait, the increasing population of New Guinea in need of government,^{2.} and the danger of foreign intervention. At the same time McIlwraith cabled his Agent-General in London, Thomas Archer, to inform Lord Derby that Queensland was now willing to bear all the expense of government, and, if authorised, to effect the formal annexation of the island.^{3.}

To the representations of Mr. Archer and the Royal Colonial Institute, Derby cautiously replied that the matter would require further consideration before a final decision could be given, and that he would need more definite guarantees that the promised finance would

1. Loftus to Derby, 19 Feb. 1883, C 3617, p.123, Parl. Pap. 1883, XLVII.
2. McIlwraith to Kennedy, 26 Feb. 1883, V.& P. (L.A. of Q.) 1883, pp.773-4.
3. McIlwraith to Archer, 26 Feb. 1883, Ibid., p.776.

be forthcoming.^{1.} This was not enough to satisfy McIlwraith and his cabinet, and acting on their own authority they despatched the Magistrate of Thursday Island to take possession of Eastern New Guinea;^{2.} on the 4th April 1883 the flag was duly hoisted at Port Moresby.

Unofficial news of this bold stroke reached London ten days later, and Lord Derby immediately cabled for an explanation.^{3.} However Governor Kennedy's reply merely confirmed that the annexation had indeed been carried out, "to prevent foreign powers from taking possession" and "pending your decision"^{4.} Not until June did more detailed despatches arrive by sea-mail,^{5.} and even then explanation of why such precipitate action had been needed was so scanty that Derby was obliged to request more information.^{6.} The Cabinet took some time to agree as to what attitude they should adopt, and the Colonial Office and the Foreign Office could not agree on the wording of an interim announcement.^{7.} In this way more than two months elapsed

1. Derby to Kennedy, 8 March, 1883, C 3617, p.121, Parl. Pap., 1883, XLVII.
2. Minute of the Exec. Council, 15 March 1883, V. & P. (L.A. of Q.) 1883, p.777
3. Derby to Kennedy, 14 April, 1883 (tele). C 3617, p.131, Parl. Pap. 1883, XLVII.
4. Kennedy to Derby, 16 April, 1883 (tele), Ibid.
5. Kennedy to Derby, 19, 26 April 1883. C 3691 pp.9-10, 19. Parl. Pap. 1883, Vol. XLVII.
6. Derby to Palmer, 1 June 1883 (tele), Ibid., p.13.
7. See the correspondence between Herbert (C.O.) and Lister (F.O.) and minutes thereon, May 1883, C.O. 234/43, pp.242, 305ff.

without the British Government having either ratified or disallowed the annexation. During this period McIlwraith had no difficulty in persuading the other Australian governments to swamp Lord Derby with messages in support of the Queensland action,^{1.} for public opinion in all colonies instantly rallied behind him.

Moreover the Victorian Premier, James Service, not to be outdone by his Queensland counterpart, initiated the further demand that the New Hebrides and all other unclaimed islands in the Pacific up to New Britain should also be taken.^{2.} In 1878 Australian ambitions in the New Hebrides had been countered by an agreement between the Governments of France and Great Britain to respect the independence of the group, but the anxiety of the colonists was revived by the activities in 1882 of the Compagnie caledónienne des Nouvelles-Hébrides.^{3.} Rumours flew around the excited colonies that French annexation of the islands was imminent, and when, on 6 June, a deputation of missionary groups in the South Pacific urged that they should be claimed for Britain for humanitarian reasons,^{4.}

1. C 3617, pp.138-9, Parl.Pap. 1883, XLVII.
2. Normanby to Derby, 9 June, 1883 (tele), C 3814, p.1. Parl. Pap. 1883, XLVII; Service to Normanby, 18 June 1883, enclosed in Normanby to Derby, 27 June 1883, Ibid., pp23-4.
3. See, W.F. Morrell, Britain in the Pacific Islands. (Oxford: 1960) pp.194-204; S.H. Roberts, History of French Colonial Policy. (1870-1925) (London: 1929) Vol.2, p.531.
4. V. & P. (L.A. of Vic.) 1883, 2nd Session, 11, pp.1061-4.

Service needed little persuasion. Once again the other colonies showered messages of support upon the Colonial Office,^{1.} and on 28 June their Agents-General jointly met Lord Derby and put to him a co-ordinated case covering all their demands in the Pacific area. They received a courteous hearing, and were invited to submit their arguments in writing.^{2.}

It therefore came as a shock to the increasingly ambitious plans of the colonists when four days later Mr. Gladstone announced in the House of Commons that the action of the Queensland Government "is clearly null in point of law, and we cannot admit it to be warranted in point of policy, and we are not prepared to confirm it".^{3.} In the despatch which conveyed this decision to Queensland,^{4.} Lord Derby stated that the British Government was satisfied that no European power was contemplating annexations in the Pacific. Even if it were thought desirable to extend the Queen's sovereignty to parts of New Guinea, Lord Derby continued, it would have to be done on a much more limited scale, and there would be strong objections to any territory so annexed coming under the control of Queensland. The most that Derby would promise was that if the colonies

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1. C 3814, pp.1-2, Parl. Pap. 1883, XLVII.
 2. Samuel to Stuart, 29 June 1883, V & P. (L.A. of N.S.W.) 1883-4, IX, p.144.
 3. Hansard, 3rd. Ser., CCLXXXI, 55.
 4. Derby to Palmer, 11 July 1883, C 3691, pp.32-4, Parl.Pap. 1883, XLVII.

would provide the necessary finance a Deputy to the High Commissioner for the West Pacific would be placed on the New Guinea coast. In reply to the memorandum which the Agents-General submitted in response to his earlier invitation,^{1.} Derby simply rehearsed the understandings in existence between Great Britain and other powers which, he claimed, precluded the annexation of the New Hebrides and other groups of islands mentioned.^{2.}

This news was received in Australia with great dismay and indignation; public, press and politicians were for once in complete accord. As McIlwraith wrote in reply to Derby's despatch of 11th July:

"Not only has Lord Derby's despatch failed to allay the apprehensions of the Australian people as to the possible occupation of New Guinea by a foreign power, but they derived as little comfort from his statement in Parliament that the formation of a settlement on the coast of that island by such a power would be regarded as an unfriendly act. At the stage at which the act could be regarded as an unfriendly one, it must have been already accomplished."^{3.}

To the colonists the issue had an urgency and emotional force which were quite incomprehensible 12,000 miles away.

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1. Agents-General to Derby, 21 July 1883. C 3814, pp.5-16, Parl.Pap. 1883, XLVII.
 2. Bramston to Agents-General, 31 Aug. 1883. Ibid., pp.33-4.
 3. McIlwraith to Palmer, 28 Sept. 1883. C 3863, pp.65-8. Parl.Pap. 1884, LV.

Each of the Australian governments urged Derby to reconsider his decision on New Guinea,^{1.} and where parliaments were in session, addresses in favour of annexation were passed.^{2.} Queensland, New Zealand, and especially Victoria were just as vehement about the importance of the New Hebrides and other island groups, though New South Wales, South Australia and Tasmania were less willing to risk embarrassing relations between France and Great Britain by pressing too hard on this question.^{3.}

The agitation did not, however, dwindle away into the usual internecine bickering, and the weakening of the unanimity previously shown by the colonies was partly balanced by an upsurge of feeling on a fresh but related topic, the transportation of French convicts to New Caledonia. As a legacy of their own past the Australian colonies were extremely sensitive about convicts; transportation to New Caledonia had been detested since its commencement in 1864, and one of the main reasons for the desire to annex the New Hebrides and other islands was the fear that if they fell into French hands they also would become convict colonies.

The trouble flared up when the French Government

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1. C 3863, Victoria, 30 July 1883, p.14; S.A. 1 Aug. 1883, p.17; N.S.W. 4 Aug. 1883, p.20; New Zealand 11 Aug. 1883, p.22. Parl. Pap. 1884, LV.
 2. Enclosed in Normanby to Derby, 12 July 1883, C 3814, pp. 31-2, Parl. Pap. 1883, XLVII; Strahan to Derby, 1 Oct. 1883, C 3863, p.6. Parl. Pap. 1884, LV.
 3. See, for example, Bray to Service, 20 July 1883 (tele), Paper 125, p.3. Proc. of Parlt. (L.A. of S.A.) 1883-4 vol.1V.

refused to extradite three escapees from New Caledonia who had been apprehended in Queensland, and on 26 July 1883,^{1.} McIlwraith cabled an emphatic protest to London. His hand was strengthened by the fact that the colonies had long been complaining about the number of convicts and ex-convicts reaching Australia,^{2.} and that in the previous year the British Government had withheld assent from a Queensland bill to exclude foreign criminals, brought down as a result of similar trouble.^{3.} At much the same time, the colonists learned with consternation of a bill then before the French Senate which proposed the exile of a new class of habitual criminals or recidivistes, who would be allowed almost complete freedom to work and to move about New Caledonia and possibly other nearby islands, but who could never return to France.^{4.} Three points seemed clear to the horrified Australians: that the men were to be of the worst possible type, that it would be exceedingly easy for them

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1. McIlwraith to Archer, 26 July 1883 (tele), enclosed in Archer to Colonial Office, 26 July 1883. C 3814, p.20, Parl.Pap. 1883, XLVII.
 2. 247 recorded captures were made between 1874 and 1883 (N.S.W. 158, Vic. 33, Queens. 56) Loftus to Derby, 13 Dec. 1883, C 3839, p.12. Parl.Pap. 1884, LV. For further information see, C.Lack, "The Problem of the French Escapees from New Caledonia" Jnl. Hist. Soc. of Queens. Vol V, No.3 (1955), pp.1046-65.
 3. Kimberley to Kennedy, 24 May 1882, "The Criminals Expulsion Bill of 1881", V.& P. (L.A. of Q.) 1883-4, p.535.
 4. For details of the plan see, Roberts, French Colonial Policy, p.519.

to escape, and that the new scheme would increase the likelihood of further French annexations in the area. They therefore urged the Colonial Secretary to press the French Government either to drop the bill completely, or to guarantee that none of the recidivistes would be sent to the Pacific.^{1.}

The excitement and emotion generated by these three movements, each reacting upon the others, in favour of the annexation of New Guinea, and of the New Hebrides, and in opposition to French transportation to New Caledonia, is demonstrated by a cable from Service to the Agent-General dated 24th July:

"England must act promptly and firmly. Latest news Noumea shows great danger. Intense indignation here if France is allowed to make New Hebrides cesspit for convicts. Consider this as crisis Australian history." 2.

Public meetings all over the country endorsed this view; before the end of October 1883, Service was able to forward to the British Government fifty-eight sets of resolutions passed by public meetings in Victoria in favour of annexations in the Pacific and opposing French transportation.^{3,} More such resolutions followed later,

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1. Agents-General to Derby, 21 July, 1883, C 3814, pp.5-16. Parl. Pap. 1883, XLVII.
 2. Service to Murray-Smith, 24 July 1883. V.A. P. (L.A. of Vic.) 1884, 111, p22.
 3. Enc. in Normanby to Derby, 21 Nov. 1883. C 3863, p.87ff. Parl.Pap. 1884, LV.

and numerous pamphlets and articles were produced in support of the Australian aspirations.^{1.} Certainly the Governor of Victoria was impressed by it all, for in forwarding to Derby a Memorandum by Service on New Guinea, Lord Normanby wrote:

"The subject is one which excites very deep interest in this colony, and I am bound to say that I have never known any question in Victoria which has commanded such universal support. It has received the unanimous approval of Parliament, and is advocated by the press of all shades of politics, and it has also been adopted by various large and influential public meetings" 2.

It is true that for reasons not easy to determine the air of crisis was more strongly marked in some colonies than others, but nevertheless the groundswell of popular feeling carried over the colonial boundaries and united the Australian people as they seldom had been before, in condemning Lord Derby and the Colonial Office. In this way the incident gave a powerful stimulus to that awareness of an Australian nationality transcending local loyalties and common to the people in all colonies which was an essential basis for the progress of the federal movement.

That it should have been indignation and anger with the Colonial Secretary and his permanent advisers

1. W. Delisle Hay, "The New Guinea Question from a Colonial Point of View" National Review, Vol. 11, No. 7, (1883). "An Australian", The Australian Crisis (Sydney, 1883); G.A. Bicknell, "The Annexation of New Guinea", Victorian Review, 1 May 1883.
2. Normanby to Derby, 30 July 1883. C 3863, p. 9. Parl. Pap. 1884, LV.

which aroused this upsurge of expansionist nationalism was a little ironic, for they by no means deserved all the blame that was attributed to them.^{1.} When the annexation of New Guinea was first mooted early in 1883, the Colonial Office staff unanimously agreed that, in the words of Sir Robert Herbert, the Permanent Under-Secretary, "This (is) one of those 'growths' which cannot be arrested, although we have retarded it as much as possible";^{2.} they were disposed to assent to the annexation as soon as all the details had been tidied up. This Colonial Office view was not significantly altered by the news that Queensland had acted without waiting for an official decision. It was agreed that the annexation was legally invalid, that there was no substance to the claim that foreign intervention was imminent, and that the Governor ought to have cabled for instructions before yielding to his Ministers -- but that it would probably prove convenient to confirm the step once more comprehensive information had been received.^{3.}

Lord Derby himself was not inclined by nature towards an imperialist policy nor to acquiesce in unauthorised annexations, but he respected the advice of

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1. See M.G. Jacobs, "The Colonial Office and New Guinea, 1874-84", *H.S.* Vol.5 No.18, (1953), pp.106-18.
 2. Herbert, 28 Feb. 1883. Minute on Archer to Colonial Office, 28 Feb. 1883, C.O. 234/43, p.237. See other minutes by Mercer & Bramston.
 3. Minutes on Kennedy to Derby, 16 April 1883 (tele) by Mercer, Fuller, Bramston, Herbert, 16 April 1883. C.O. 234/43, p.43.

his officials and had no wish to antagonise the Australians. On the day official news of the annexation reached him, Derby wrote to Sir Henry Ponsonby, "I hold that we are free to sanction or annul the act as we may think expedient, though no doubt to undo what the colonists have done would create a bad feeling locally",^{1.} from which it seems reasonable to infer that left to himself he might very well have accepted the Queensland fait accompli. But the matter was not one which could be settled in the Colonial Office, and at the Cabinet level only the Chancellor of the Exchequer, Mr. H.C.E. Childers, supported the annexation, whilst strong opposition to it came from the Prime Minister, Mr. Gladstone, Lord Chancellor Selborne,^{2.} and Sir William Harcourt.

These senior Liberal Ministers were predisposed against an annexationist policy, unconvinced that any other European power was interested in ^{EASTERN} New Guinea, and suspicious that Queensland was motivated by the desire to gain control of a large reservoir of native labour.^{3.} This

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1. Derby to Ponsonby, 16 April 1883, Letters of Queen Victoria, p.419.
 2. See, Gordon, Aust. Frontier in New Guinea, Ch.VII; W.O. Aydellotte, Bismarck and British Foreign Policy, 1883-5. (Philadelphia: 1937) pp.11-13; Roundell Palmer (Lord Selborne) Memorials. Part II Vol.II (London: 1898) pp.103-9.
 3. Selborne to Gladstone, 22 April 1883, Addit. MSS. 44298 ff.44-7. (Gladstone Papers).

last suspicion was shared and nourished by the Aborigines^{es}
 1. Protection Society, a Royal Commission on the Western
 2. Pacific, and by the High Commissioner for the Western
 3. Pacific, all of whom suggested that Queensland's record of
 native labour traffic unfitted it to have authority over a
 great native population. The unhappy Derby resisted these
 4. objections, though he saw the force of them, but he was
 overruled in Cabinet. The additional demands initiated by
 Mr. Service and pressed by the Agents-General for further
 annexations all over the Pacific were evidently the last
 straw....

"I asked them whether they did not want another
 planet all to themselves? and they seemed to think
 it would be a desirable arrangement, if only feasible.
 The magnitude of their ideas is appalling to the
 English mind." 5.

This then, was the background to the announcement of
 2 July that the annexation had been disallowed.

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1. Aboriginal Protection Society to Derby, 14 May 1883, C 3617, pp.140-1. Parl.Pap. 1883, XLVII.
 2. Report, C 3905, pp.12-15; Parl.Pap. 1884, Vol.LV.
 3. Gordon to Gladstone, 20 April 1883. B.M.Addit. MSS. 44321, ff.157-62, (Gladstone Papers); See also, P. Knaplund, "Sir A.Gordon on the New Guinea Question, 1883", H.S. Vol.7 No.27, (1956), pp.328-33.
 4. Derby to Gladstone, 23 April 1883. B.M.Addit. MSS. 44141, ff.68-9. (Gladstone Papers)
 5. Derby to Ponsonby, 29 June 1883. Letters of Queen Victoria, p.432.

So far as Australian aspirations in the Pacific were concerned that announcement was, of course, a negative one, but in the history of the federal movement it is a more positive milestone. For out of the Cabinet discussions of the New Guinea question there evolved the idea that it might be possible to grant to a federated Australia that which could not be granted to a single colony. The other colonies were not associated with the native labour trade in the way that Queensland was, and it was also thought that there would be a better chance of financial guarantees being honoured if they were made by a federation. This view was clearly expressed by Mr. Gladstone in a letter to Lord Derby, dated 19 May 1883:

"I hope we may find ourselves in a condition utterly to quash this annexation effected by Queensland on her sole authority, for I suppose her to be untrustworthy as well as unauthorised. If the Australian colonies would combine into some kind of political union, we should at all events have much better means of approaching the question. They would present to us some substantial responsibility for whatever they might undertake." 1.

Whether this was an original suggestion by Gladstone, or whether he was commenting on an idea proposed by Derby or another, it is difficult to tell. What is certain is that Derby made use of it in his dealings with the colonists. Even before the decision

1. Gladstone to Derby, 19 May 1883. (Copy) Addit. MSS. 445+6 ff.115-16. (Gladstone Papers)

of Her Majesty's Government on New Guinea was announced, Derby told the deputation of Agents-General which discussed the range of Pacific questions with him, that confederation would be the most practical step their colonies could take towards the realisation of their desires. When informing the House of Lords that New Guinea was not, for the time being, to become part of the Queen's dominions, Derby repeated what he had said to the Agents-General, though he took care to describe it as no more than a friendly suggestion.^{1.} A similar hint was conveyed in the official despatch of 11th. July:

"Her Majesty's Government regret that it should be necessary from time to time to refuse assent to proposals coming from individual colonies for the assumption of large and serious responsibilities in regard to places and questions not specially concerning those of Her Majesty's subjects who live in other parts of the Empire; and I trust that the time is now not distant when, in respect of such question (if not for other purposes of government) the Australasian Colonies will effectively combine together, and provide the cost of carrying out any policy which after mature consideration they may unite in recommending, and which Her Majesty's Government may think it right and expedient to adopt." 2.

On the basis of these remarks, D.C.Gordon has suggested that the refusal of the British Government to annex New Guinea and the other islands was governed by the

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1. Hansard, 3rd Ser. CCLXXXI, 19. (2 July, 1883)
 2. Derby to Palmer, 11 July 1883, C 3691, pp.32-4. Parl.Pap. 1883, XLVII.

desire to foster the unification of Australia. The position taken up by the Cabinet has been described by him as "a considered policy of salutary neglect designed to get the Australians together to obtain what Whitehall was refusing to grant them"^{1.}, but this is surely to confuse effect with cause. There is no evidence to suggest that the New Guinea decision was based on anything other than the reluctance of some members of the Cabinet to place a large but little known island with a considerable native population under the control of a single and supposedly untrustworthy colony, or to add to the existing commitments of the Imperial Government in this way. It is true that Derby believed the union of the Australian Colonies to be desirable, but there is no reason to suppose that in urging confederation upon them in this context he was doing anything other than preparing the ground for a compromise on New Guinea by breaking down some of the objections of his colleagues to annexation, and extracting what benefit he could from a situation little to his liking.

Be that as it may, the colonists were not slow to heed Derby's hint. Indeed the incident had made the

1. Gordon, Aust. Frontier in New Guinea, p.173.

Australians aware of the need for unity even without his prompting. A memorandum drafted by Sir Thomas McIlwraith and approved on 17 July by the Queensland Executive Council stated that the position taken up by Her Majesty's Government with respect to New Guinea made the institution of federal government in Australia a matter of urgency, and summoned the other colonies to a conference to consider how this could best be done.^{1.} It is interesting to note that McIlwraith cited the procedure which had been followed for the drafting of the Canadian constitution, and the advantages which had accrued to Canada from federation. The Queensland Premier forwarded a copy of the memorandum to the Colonial Office and turned the tables on Lord Derby by pointing out that the moment was the most propitious there had yet been for federating the colonies, and exhorting him to intervene to this end.^{2.}

The approach to the other colonies was the more fruitful, and though McIlwraith was compelled by the exigencies of local politics to hand the initiative over to James Service of Victoria, plans were set in train for

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1. Minute of the Queensland Executive Council, 17 July 1883, enc. in Palmer to Derby, 13 Aug. 1883. C 3863, p.24. Parl.Pap. 1884, LV.
 2. McIlwraith to Palmer, 2 Aug. 1883 enc. in Palmer to Derby, 13 Aug. 1883, Ibid.

a convention to discuss the related questions of annexation, French transportation, and federation. The connection between these subjects rapidly became established in the public mind, and both before and after the convention the phrase "annexation and confederation" was in constant though imprecise use. All colonies agreed in principle to the idea of such a meeting, but the familiar difficulties of finding a time and place convenient for everyone were soon encountered. As has been shown above,^{1.} the colonies were by no means as unanimously in favour of a general annexationist policy in the Pacific as they were on the basic question of New Guinea, and their variations in militancy were now reflected in varying degrees of enthusiasm for a federal council, and varying readiness to set other matters aside to attend a conference.

The Government of New South Wales, in particular, hung back, and a revealing debate took place between the Premier, Mr. Stuart, and Mr. Service.^{2.} Stuart supported Australia's claims in the Pacific, but he understood and sympathised with the British objections, and did not see any need to force the pace. His attitude to federation

1. See above, p.39.

2. V.& P. (L.A. of N.S.W.) 1883-4, 1X, pp.146-55.

therefore remained exactly that which had been shared by most people only a few months before - that it was a desirable goal, but was not practicable yet.^{1.} Service expressed with considerable passion the contrary view that the events of recent months had made at least a limited federation not only necessary but possible, by awakening and sustaining the interest of the people of all colonies. His summary of the situation makes explicit the direct connection between the Pacific controversies and the renewal of the federal movement, though the experience of the previous twenty years is apparent in his conviction that united action could only be achieved by federation:

"A common danger (the outpouring of the moral filth of Europe into these seas), and a common desire (to save the islands of Australasia from the grasp of strangers) render federal action a necessity, and federal action is only possible by means of federal union of some sort." 2.

These differences were further reflected in differing ideas as to what type of intercolonial meeting should be held. Service wished to call it a convention to distinguish it from the traditional conferences, and proposed that each colony should send four delegates so that all shades of political opinion might be represented.

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1. Stuart to Service, 31 Aug. 1883 & 17 Oct. 1883. *Ibid.*, pp.147-8, 153-4.
 2. Service to Stuart, 24 Oct. 1883, see also his letter of 4 Sept. V.& P. (L.A. of N.S.W.) 1883-4, IX, pp.154-5, 148.

This, he said, would follow the Canadian precedent,^{1.} whereas Stuart held that the Canadian Convention had met only after all the colonies had decided in favour of federation, a point not yet reached in Australia.^{2.} This disagreement may have delayed the meeting by a month or two, but despite its views the New South Wales Government was prepared to confer as soon as it was convenient, and the flaring up of the French transportation issue kept up interest in the subject. At length it was agreed that a convention should meet in Sydney on November 28th., 1883, and all the Australasian colonies, including Western Australia, New Zealand and Fiji arranged to be represented.

Prior to the assembling of the convention the Victorian Agent-General sought, on behalf of Mr. Service, to pin the Secretary of State for the Colonies down to a more definite statement about the conditions on which he would agree to the annexation of New Guinea and other islands.^{3.} It would greatly help the convention, Murray-Smith said, if it was known whether federation of the colonies was necessary, or a united guarantee to meet all expenses incurred would suffice. If federation was decided

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1. Service to Stuart, 9 Oct. 1883. Ibid., pp.152-3.
 2. Stuart to Service 17 Oct. 1883. Ibid., pp.153-4.
 3. Murray-Smith to Derby, 5 Oct. 1883, C 3863, pp.26-7. Parl.Pap. 1884, LV.

upon, how should it proceed? Whilst Derby had held out hope to the colonists that federation might assist them in achieving their desires, he had previously been vague on these points, and with the attitude of the Cabinet what it was he was not in a position to be more precise now. As Herbert noted upon Murray-Smith's letter, although Her Majesty's Government might well be prepared to consider the annexation of several of the islands after the conference, "no conditions of yea or nay can be laid down in black and white".^{1.}

A reply in this sense was duly returned to the Agent-General and sent on to the Premier,^{2.} going no further than a statement that if the convention decided upon federation or united action the difficulties in arranging for the transfer to the colonies of Britain's obligations towards neighbouring native peoples would undoubtedly be reduced. Service was therefore unable to go to the meeting as he had obviously hoped to do, armed with a promise that annexations would follow federation. However on the basis of further conversations at the Colonial Office, Murray-Smith cabled Service on the eve of the convention that,

1. Minute: Herbert, 9 Oct. 1883. C.O. 309/126, p.151.
 2. Bramston to Murray-Smith, 22 Oct. 1883, C 3863, p.33. Parl.Pap. 1884, LV.

"Formation of Colonial Confederation most essential otherwise Lord Derby will do nothing. Offer Colonial Confederation, guarantee two-thirds cost, believe immediate success as to New Guinea, and the others by degrees." 1.

Whether he had received more verbal encouragement than Herbert had been prepared to give "in black and white", or whether he was simply giving his own optimistic interpretation, is a matter for speculation. It may be noted, however, that only a few days before, the New South Wales Agent-General had advised his Premier that since Derby's refusal to state grounds on which the annexation would be made, "nothing reliable had transpired on the subject"². Perhaps this is more consistent with what had gone before.

ii.

The delegations which travelled to Sydney for the Convention included the Premiers of all those colonies with responsible government, a representative of the Crown Colony of Western Australia, and the Governor of Fiji who attended

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1. Murray-Smith to Service, 26 Nov. 1883. (confid. tele). V. & P. (L.A. of Vic.) 1884, 111. p.91.
 2. Samuel to Stuart, 16 Nov. 1883. V. & P. (L.A. of N.S.W.) 1883-4, IX. p.169.

by permission of the Colonial Office. Ironically enough Sir Thomas McIlwraith who had sparked off the controversy and proposed the Convention was not present, for his Government had been defeated shortly beforehand in an election bitterly fought on an entirely different issue. McIlwraith's absence left the leadership of the Convention very much in the hands of Service of Victoria, especially as he was able to secure a large measure of support from the new Premier of Queensland, S.W. Griffith, who^{1.} subsequently was to become a major figure in the federal movement. Service was also able to rely on support from the New Zealand delegates on all matters relating to the Pacific, though they had been instructed by their Parliament not to commit New Zealand to participation in any federal organisation.^{2.} Stuart of New South Wales, on the other hand, did his best to moderate the turbulent enthusiasm of the Victorians, and did so with some success for Service believed that unanimity was essential if any impact was to be made on the British authorities, and had no alternative but to compromise to obtain it.

The first items considered by the Convention were naturally the various Pacific problems, and several

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1. A. Deakin, The Federal Story. (2nd Ed., Melbourne, 1963) pp.12-14.
 2. A. Ross, New Zealand Aspirations in the Pacific in the Nineteenth Century. (Oxford, 1964) p.146.

sets of declaratory resolutions were proffered by different colonies. These alternatives were handed over to the Premiers, meeting as a sub-committee, and they eventually came up with a series of seven resolutions which were unanimously adopted by the Convention on 5^{1.} December, a high water mark of colonial unity. The first resolution amounted to the proclamation of an Australian 'Monroe Doctrine' for the Pacific:

"That further acquisition of dominion in the Pacific, south of the Equator, by any Foreign power, would be highly detrimental to the safety and well-being of the British possessions in Australasia, and injurious to the interests of the Empire." 2.

Bold and decisive though this formula was it would of course remain no more than empty words unless the British Government could be induced to endorse it.

This they were called upon to do by the second resolution, which was worded with surprising moderation however, and clearly reflects the efforts of the moderates to counterbalance the sweeping nature of the first. In contrast to the usual blunt demands of McIlwraith or Service, the Convention refrained from dictating how its wishes might best be carried out, and contented itself with an expression of confidence that Her Majesty's

1. Report of the Proceedings of the Intercolonial Convention held in Sydney, Nov. & Dec. 1883, pp.13-14. V.& P. (L.A. of N.S.W.) 1883-4, IX, p.1.
2. Ibid., p.13.

Government would promptly and wisely secure its interests as expressed in the resolutions. In a third general resolution the governments represented at the Convention committed themselves, subject to the approval of their parliaments, to contribute to the cost of implementing the resolutions. The four remaining resolutions dealt with specific problems; one reiterated the necessity for the immediate "incorporation within the British Empire" of the whole of eastern New Guinea; one called for a more definite arrangement over the New Hebrides and preferably for negotiation with France to secure sole control of the islands; another condemned the French plan to transport relapsed criminals to the Pacific and requested the British Government to "use every means in its power" to prevent this; the last expressed the pious hope that the transportation of any sort of criminal to this area would soon be stopped. It is noticeable that the Convention made no direct reply to Derby's offer to establish a Deputy Commissioner for the Western Pacific on the New Guinea coast if finance was forthcoming.

Although there had been disagreements as to how these resolutions should be framed, all delegations had been in broad agreement on the basic principles involved. This was by no means the case when the Convention turned

its attention to the other major business to be considered, federation. There was a considerable gulf between Service, who had been on the verge of sponsoring a federal conference even before the rebuff over New Guinea, and those whose interest in federation sprang only from their concern with the Pacific. An even greater gulf lay between these, and the New South Welshmen, who could see little point in a Federal Council even in the new circumstances, and the New Zealanders, who gave place to no one in their desire to annex the islands of the Pacific but saw their own future as quite separate from that of Australia.

Service himself moved for the establishment of a federal union to deal with such subjects as the Convention decided, in view of the important questions on which the colonies, "although of one mind, are unable to obtain united action owing to the absence of some common authority."^{1.} In his earlier correspondence with Stuart, Service had conceded that the time was not yet ripe for a complete federation, but said that he hoped for a federal union of an executive and legislative kind.^{2.} It is likely that he went to the Convention hoping for something like this,^{3.}

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1. Convention Report, p.3.
 2. Service to Stuart, 24 Oct. 1883. V.& P. (L.A. of N.S.W.) 1883-4, IX pp.154-5.
 3. This is suggested by Quick & Garran, The Annotated Constitution of the Australian Commonwealth. (Sydney, 1901) p.111.

and that he wished to include some domestic problems among the matters referred to the Council, but that proved to be out of the question. An alternative motion by Griffith proposed the creation of a Federal Council to deal with four specified subjects, marine defence outside territorial waters, relations with the islands of the Pacific, the exclusion of criminals, and quarantine.^{1.} In the end neither of these motions was accepted; instead a sub-committee composed mainly of Attorneys-General was asked to report on how a federal council should be constituted and what functions should be given to it.^{2.} In response, the committee presented to the Convention a "Federal Council of Australasia Bill", drafted, it is reported, by Samuel Griffith in one evening.^{3.}

The title of the Bill was exactly the same as that brought forward by Sir Henry Parkes three years previously, and the general character of the Council was much as Parkes had proposed, but the Bill was otherwise quite new. A number of amendments were made to the draft by the Convention, notably in reducing the powers of the Council,^{4.}

1. Convention Report, p.4.

2. Convention Report, p.10.

3. See, Barton, "Aust. Fed.; An Historical Sketch", A Yearbook of Australia 1891 p.xvii, FN.

4. Quick & Garran, Annotated Constitution, p.111. Only indirect evidence is available, for the Convention met in camera and the published minutes give only the final version of the Bill.

and it was then adopted. All the governments represented with the exception of that of the Crown Colony of Western Australia pledged themselves to seek its enactment. Fiji, the other Crown Colony, was in a different position from Western Australia, for a large group of its European residents had actually petitioned the Convention for inclusion in any federation which might be formed.^{1.}

The Bill provided that the Council thus resolved upon should have no authority over any colony until its parliament had passed adopting legislation, nor was the Council to come into being until the Bill was so adopted by at least four colonies.^{2.} Once created, the Council was required to meet at least once in every two years, and was to be attended by two representatives from each self-governing colony, and one from each Crown Colony, appointed as seen fit by the parliaments of each member colony. No provision at all was made for a federal executive and no revenue was secured to the Council, though clause 26 stated that where the Council incurred expenditure member colonies should contribute to defray it in

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1. "Memorial from Inhabitants of Fiji on the Federation of the Australasian Colonies." 19 Sept. 1883. Convention Report, pp.29-31.
 2. "A Draft Bill to constitute a Federal Council of Australasia", Convention Report, pp.17-21.

proportion to their population. Bryce's comment in the House of Commons that it was a "very scanty, fragmentary,^{1.} and imperfect sketch of a federal constitution" was clearly justified.

Moreover the powers entrusted to the Council^{2.} were equally limited. The first two listed, and clearly the most important at least at that time, were the relations of Australasia with the islands of the Pacific, and the prevention of the influx of criminals. The other two powers originally proposed by Griffith³ were dropped, but in their place came control of fisheries beyond territorial limits, and of offenders aboard ships belonging to colonial governments, beyond territorial limits, plus three legal processes for which uniformity and co-operation were desirable. It is striking that only the three legal powers related to domestic affairs. A large number of other domestic concerns which might have been thought suitable for federal jurisdiction such as defence, quarantine, patents and copyright, weights and measures, and divorce and marriage law, were listed as matters which could be referred to the Council by the legislatures of two or more colonies, though in this case Council

1. Hansard, 3rd Ser., CCC, 1121. (4 Aug. 1885)

2. For the powers of the Council see Cl. 15 of the Draft Bill, Convention Report, p. 15.

legislation was to apply only in colonies which had requested it. The most important domestic problem of all, tariff policy and intercolonial customs collection, did not appear even in this list.

The primacy of the Pacific issues among the powers assigned to the Federal Council and the almost complete omission of domestic powers, again emphasises the direct connection between this step towards federation and the friction between the colonial and imperial governments. It was a step welcomed by a handful of ardent federalists in the colonies, but forced on the majority by pressure of external events at a time when local conditions, though steadily moving in a federal direction, still supported colonial particularism. Since the Convention deliberated in secret it is difficult to be certain of the reasons given for deciding upon a Federal Council, but from public speeches on the subject it seems certain that despite the cautious nature of Lord Derby's advice and his refusal to guarantee that annexations would follow federation, the delegates believed themselves to be federating at his behest. This was stated most explicitly by the Premier of Tasmania, W.R.Giblin, when he proposed the Convention resolutions for adoption by his Legislative Assembly:

"Lord Derby thus made these distinct, definite recommendations to the Colonies, and we now practically ask the House to sanction the recommendations which were made by the Convention acting on Lord Derby's advice. This question of New Guinea was one of those which served to force federation into prominence, and by the action of the Secretary of State it has been forced on the attention of the Colonies. The Home Government have simply said to us in so many words- 'Bind yourselves together, let us see that the recommendations come not from an isolated colony, not from one particular portion of Australia, but let yours be an united recommendation from the whole of the Australian group, then your requests will be attended to, then your wishes will be carried out. But so long as you act disjointedly, so long will there be a delay in granting an individual request from an individual colony, and so long will there be a delay in that which you separately ask receiving the approbation of the British Government.'" 1.

Both Giblin and Service quoted Derby's Despatch of 11 July as a major reason for the formation of the Federal Council, though they were careful to add that the New Guinea question and Lord Derby's attitude to it had demonstrated rather than created the need for federation.^{2.}

The Governor of New South Wales remarked in a despatch towards the end of the Convention that its proceedings had "been marked by a spirit of moderation, and an anxious desire to avoid causing any embarrassment to Her Majesty's Government."^{3.} The London Times, which shortly

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1. W.R. Giblin, Federation of Australasia. Speech on moving the adoption by the House of Assembly (Tas.) of the Resolutions endorsing the proceedings of the Sydney Convention of Nov. & Dec., 1883, 9th July 1884. (Hobart: 1884)
 2. Ibid., (Giblin); P.D. (Vic.) Vol.45 p.202. (Service).
 3. Loftus to Derby, 6 Dec. 1883. CO.201/599, p.136.

prior to the Convention had recalled the "feelings of mingled admiration and astonishment with which we first heard, last spring, of the annexation of New Guinea",^{1.} hailed with joy the advance made towards union and smiled tolerantly on the other resolutions.^{2.} The reaction of the British Cabinet was very different.

The resolutions relating to the Pacific were described by Derby in a letter to Gladstone as "mere raving" which he could scarcely suppose to be seriously intended.^{3.} Nevertheless he concluded that they should go so far to meet the colonial demands as to establish a protectorate over the South-East coast of New Guinea and end the danger of being forestalled by another power. Gladstone was made of sterner stuff; like Derby he condemned the Convention resolutions, unlike him, he saw no reason to make any concession. Indeed in Gladstone's eyes the Australians had made their demands so absurdly extreme that they "supplied the best possible grounds for a negative answer".^{4.} Nothing could demonstrate more clearly than this comment on resolutions which the Australians believed to be studiously moderate, the mutual inability of Gladstone's

1. The Times, 1 Nov. 1883.

2. The Times, 7 Dec. 1883.

3. Derby to Gladstone, 7 Dec. 1883, B.M. Addit. MSS. 44142, ff.14-15. (Gladstone Papers).

4. Gladstone to Derby, 8 Dec. 1883 (Copy), B.M. Addit. MSS. 44547 f.10. (Gladstone Papers).

Cabinet and the colonial leaders to understand each other's outlook. Neither Derby nor Gladstone remarked at all on the resolutions in favour of a Federal Council, and in public Derby promised only to give the Convention's decisions his careful consideration.

Nevertheless, more initiative came from London than from the colonies in the months immediately following the Convention. Anxious though Mr. Service was that there should be immediate action in New Guinea, and that the Imperial Parliament should consider the Federal Council Bill at its next session, he did not consider it necessary to summon the Victorian Parliament from its long summer recess to debate the Convention resolutions and pass the necessary Address to the Crown, and the other colonies were content to follow his lead. Moreover Service nullified much of his previous effort in coaxing the colonies into agreement by boasting at a banquet given for some of the other Convention delegates who were returning home through Melbourne that he and his friends had awakened the slumbering New South Welshmen and showed them their duty. This indiscreet speech revived the bitterness between the two colonies and strengthened the hand of the powerful anti-federal faction in New South Wales.^{1.}

1. Deakin, The Federal Story, pp.16-17, and see the speech of Sir John Robertson opposing the Federal Bill in N.S.W. Parlt. P.D. (N.S.W.) First Ser. Vol.25, 1883-4 & Session of 1884, pp.6185-6.

Thus it was that when the full report of the Proceedings of the Convention reached London in February 1884, none of the colonies had given any official consideration to its decisions, and to the onlookers in the Colonial Office they appeared to be sliding back into their old disunion.^{1.} However the enthusiastic Victorian Agent-General, Robert Murray Smith, hastened to urge to Sir Robert Herbert that Her Majesty's Government should immediately proceed with the Federal Council Bill, and the latter set his staff at work to analyse the Draft Bill so that it might be ready for submission to the Imperial Parliament as soon as this had been requested by the requisite number of colonial parliaments.^{2.} A number of possible amendments were discussed and on 11 March Herbert suggested in a Minute that matters might be expedited by inviting all the Agents-General to a conference on the draft. This plan was evidently vetoed by Derby, who felt that the next move was up to the Australians. A few weeks

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1. Minutes: 21-25 Feb. 1884, on Loftus to Derby, 31 Dec. 1883. C.O. 201/599, p.176.
 2. See Minutes by Herbert, 25 Feb. & 11 March 1884; Bramston, 6 March 1884; Ashley, 11 March 1884. These are all to be found in C.O. 280/391 at p.155, and apparently relate to a Memo of 17 April 1885 by the Premier of Tasmania. However they are clearly misplaced and must belong to February and March of the previous year.

earlier he had commented that "the less we meddle in the material arrangements of the colonies, the better"^{1.} and he now suggested that the colonies were unlikely to pass the necessary Addresses in favour of the Bill in time for it to be considered during the current Session, and that the House of Commons would not have time for it even if they did.^{2.} When questioned on the subject in the House of Lords on 22 February, Derby claimed the credit for initiating the current interest in federation in Australia, and stated that he and the Government wished to forward the scheme by all the means in their power, but that the Convention had referred it to the colonial parliaments,^{3.} and they must be waited upon.

In the meantime, as a result of his interview with Sir Robert Herbert, Murray-Smith had cabled to Service that the British Government had resolved to make no annexations until there was an Australian confederation, and that the Convention resolutions must be passed through all Colonial legislatures before the Imperial Government would enact the Federal Enabling Bill.^{4.} It must once again

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1. Minute: 25 Feb. 1884, C.O. 201/599, p.176.
 2. Minute: 13 March 1884, C.O. 280/391, p.155
(See F.N. 2 p.66.)
 3. Hansard, 3rd Ser., CCLXXIV, 1711-12.
 4. Murray-Smith to Service, 20 Feb. 1884 (tele). V.& P.
(L.A. of Vic.) 1884, 111, Paper 38, p.86.

be held doubtful whether Murray-Smith's account of his conversation with Herbert was strictly accurate; it certainly lost nothing in its retelling by Service, who despatched to his fellow Premiers a telegram which began:

"Have just received a telegram from Agent-General reporting important interview with Under-Secretary of State for Colonies, who announced that Her Majesty's Government had resolved not to authorise 1. any annexation without a Federation of the Colonies"

If Murray-Smith had hoped to provoke some action with this message he was disappointed, for the only immediate response was a negative one in New South Wales, where fear was aroused that Victoria was conniving with the British Government behind their back. A back-bench M.P., Mr. L.F. Heydon, successfully proposed a motion calling on Her Majesty's Government not to deal with the Federal Council Bill until the New South Wales Parliament had had an opportunity to discuss the Convention resolutions. 2.

Curiously enough one of Heydon's main worries was that the "great men at home" were driving the colonies into a union which would inevitably cause speedy separation from Britain. 3. The Premier deprecated the possibility of Lord Derby taking any action before the colonies were ready,

1. Service to all Premiers, 21 Feb. 1884 (tele).
Ibid., p. 87.
2. V. & P. (L.A. of N.S.W.) 1883-4, I, p. 363.
3. P.D. (N.S.W.) 1st Ser. XII, p. 245.

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but did not oppose the motion.

The Hansard report of this debate reached the Colonial Office in due course, and E.H. Mercer of the Australian Department expressed bewilderment at a statement by Heydon that Lord Derby had said he would not allow annexation unless the colonies were federated,² a statement obviously based on the Service-Murray-Smith telegrams. Mercer did not believe that Lord Derby had ever said anything of the sort and presumed Heydon to have evolved this idea from Derby's speech in the House of Lords in July 1883, when he had announced the disallowance of the New Guinea annexation. Mercer's Minute supplies further corroboration for the view that although Derby had hinted to the colonists that federation might provide an answer to some of the objections he and his colleagues held to their plans for the Pacific, he had never made annexation conditional upon federation. Since he clearly believed the union of the colonies to be desirable in itself Derby may have hoped that the Australians would read more than was stated into his words, but both before and after the Convention he refused to be drawn into saying anything more definite, or into backing a Victorian lead which the

1. Ibid., p.2464.

2. Minute, 10 May 1884, C.O. 201/600, p.185.

other colonies were not ready to follow. It may be that Sir Robert Herbert was less guarded than his Minister, and encouraged the Australians to interpret Derby's speech and despatches as they did, but in general he was more in sympathy with the moderate New South Wales Government than with McIlwraith, Service and Murray-Smith, and it is at least as likely that he was misunderstood or misrepresented by the Victorian Agent-General and his Premier.

Like the Federal Council plan, the New Guinea question hung fire in the first half of 1884, for no direct reply had ever been returned by the colonies to the offer made by Derby in his despatch of 11 July 1883, to establish a Deputy Commissioner for the West Pacific on the Southern Coast of New Guinea. Furthermore, although the Convention had re-iterated the by now traditional demand for the annexation of the whole of non-Dutch New Guinea and had volunteered to share the costs incurred, these resolutions had yet to be adopted by the colonies.

Both questions were taken up by Derby in his first formal answer to the Convention, a despatch to all colonies dated 9 May 1884,¹ in which he reversed his normal role and with what reads like deliberate irony, chided the colonists for their dilatoriness. He had been led to

1. Derby to all Australian Governors, 9 May 1884, C 3839, pp.34-5. Parl.Pap. 1884, LV.

believe, Derby said, that Addresses in favour of the Federal Council Bill would be adopted by colonial parliaments in time for him to introduce the measure at the current session of the Imperial Parliament, but the possibility of this was now diminishing. He had told them that if they combined together to provide funds he would strengthen the control of the High Commission over New Guinea, but no colony had yet guaranteed the money. This offer Derby now renewed in more specific terms, with a promise that Her Majesty's Government would act immediately to place the Commissioner on the New Guinea Coast if £15,000 was forthcoming from the colonies.

Much of what had seemed like colonial delay to British eyes was probably due to the attitude of colonial politicians to their parliaments. The federal movement was at this stage almost entirely in the hands of the various governments, who looked on parliamentary ratification of their plans as a formality which could be left for a convenient moment. However the arrival of Derby's despatch towards the end of June, by which time most of the parliaments had re-assembled, sparked off a burst of activity. Service and Griffith at once informed Derby that Victoria and Queensland would jointly guarantee

the £15,000 pending the decisions of the others,^{1.} but within a matter of days all the governments except that of New Zealand which was embroiled in an election, had agreed to contribute their share, and resolutions of their legislatures began to flow in to the colonial Office.^{2.} The Convention resolutions also came under parliamentary consideration, and by early August they had been adopted, and Addresses in favour of a Federal Council passed, by Victoria, Queensland, South Australia and Tasmania.

The speed of the colonial reaction to Derby's proposal was also prompted by signs that Bismarck's long standing opposition to the acquisition of colonies by Germany was changing. The formation of a Neu-Guinea Kompagnie, the German claims to Angra Pequena, and Bismarck's assertion on 23 June of Germany's right to defend her interests in areas where trade and settlement had been established,^{3.} combined to revive old and lingering fears in Australia. In the Colonial Office too, fear was aroused that Germany might, after all, intervene^{4.} in New Guinea, though the complacency of the Cabinet on

1. Service to Derby, 1 July 1884 (tele). C 3839, p.48. Parl.Pap. 1884, LV.
2. C 3839, p.48, Parl.Pap. 1884, LV.
3. M.G.Jacobs, "Bismarck and the Annexation of New Guinea", H.S. Vol.5 No.17, (1951), pp.18-20.
4. See the Confidential Print (C.P. Aust. No.103) hastily prepared on "Annexation or Protectorate of New Guinea and other Islands in the Western Pacific". June, 1884, C.O. 881/7.

the subject was sustained by the Foreign Office which continued to discount all such fears. Despite the immediate compliance of the colonies with the conditions he had made for the establishment of British authority over the island, Lord Derby found it difficult to induce the Cabinet to spare time from Irish, Egyptian, and home affairs to discuss New Guinea. At the Cabinet of 27 June the matter was raised but postponed;^{1.} on 5 July it was raised again in response to a note from Derby to Gladstone - "I am sorry to press for a hearing but New Guinea is very urgent indeed. I have seen the Agents. Can I bring it on when this is over?"^{2.} Although a majority of the Cabinet now favoured the Australian proposals,^{3.} the result was summed up by Gladstone's minute: "New Guinea. Much discussion and scruples of Chancellor, Harcourt, and W.E.G. Subject postponed."^{4.}

The postponement cost a month's delay, a delay which may ultimately have been decisive, before Harcourt and Selborne suggested terms on which they could acquiesce in intervention in New Guinea. At the Cabinet

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1. Gladstone's Cabinet Minutes, 1884, f.4. B.M. Addit. MSS. 44645. (Gladstone Papers).
 2. Ibid., p.138.
 3. See the appraisal of Sir Charles Dilke, 5 July, Dilke's Diaries, March-Nov. 1835. B.M. Addit. MSS. 43926. (Dilke Papers)
 4. Gladstone's Cabinet Minutes, 1884, f.138. B.M. Addit. MSS. 44645. (Gladstone Papers).

of 6 August it was at last decided to establish a British Protectorate over the whole of non-Dutch New Guinea, with all native titles to be recognised and native rights respected.^{1.} When advising the Queen of the decision Derby gave as reasons the strong wish of the Australian population, the danger of convict settlements there, the encouragement Prince Bismarck is "supposed to be giving" to German colonisation, and the need to protect the natives against adventurers.^{2.} The Queen was more easily persuaded than her Cabinet for she replied that "she rejoices at it as it will enable us to protect the poor natives and to advance civilisation, which she considers the mission of Great Britain".^{3.} Two days after the decision was taken the Government learned that Bismarck's encouragement of colonisation was more than "supposed" for the German Ambassador in London, Count Munster, informed Lord Granville that although his Government recognised the desire of the Australians to settle on the coasts of New Guinea opposite their own country, they believed that parts of the Northern coast should be available for German enterprise.^{4.} Exactly what passed at

1. Ibid., ff.167-8.

2. Derby to Queen Victoria, 6 Aug. 1884. G.E. Buckle, Ed., The Letters of Queen Victoria, 2nd Series, Vol. 111. (London, 1928) pp. 524-5.

3. Queen Victoria to Lord Derby, 8 Aug. 1884. Ibid., p. 525.

4. See Granville to Amthill, 9 Aug. 1884. F.O. 64/1144.

this interview is obscure, for Munster apparently did not give Granville the pro memoria he had been instructed to hand to the British Government, and Granville was left with the impression that he had received no more than a preliminary warning of possible German interest in New Guinea, whereas Bismarck subsequently claimed that his intention of establishing a protectorate on the North coast had been announced.^{1.}

However Lord Granville was sufficiently perturbed by the German intimations to urge upon a meeting of the Cabinet on the following day, through Lord Northbrook since he was himself unable to attend, that the plan to establish a Protectorate should be reconsidered.^{2.} Thus on 9 August, only three days after the original decision to protect the whole of Eastern New Guinea had been made, a depleted Cabinet quietly resolved to limit the Protectorate to the South Coast "with wide meaning of this phrase",^{3.} a formula designed to include the Macleay Coast in addition to the more strictly Southern area. Later that day

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1. For a full discussion of the episode see M.G. Jacobs, "Bismarck and the Annexation of New Guinea", H.S. (1951), pp.19-22.
 2. P.Knaplund, Gladstone's Foreign Policy (New York: 1935) p.111.
 3. Gladstone's Cabinet Minutes, 1884, f.173. B.L. Addit. MSS. 44645 (Gladstone Papers).

Granville informed Munster that Her Majesty's Government would shortly announce a Protectorate but that it would probably embrace only that which was specifically of interest to the Australians.^{1.}

Lord Derby and the Colonial Office were keen to carry out this amended decision without giving any further notification to Germany, Derby cogently arguing that if Bismarck objected to their proposals they would be compelled either to stand firm and cause a breach with him, or to give way and infuriate the Australians.^{2.} However this point of view was overruled by Granville, Northbrook, and Lyons who insisted that to act without communicating with Bismarck would be to court an open quarrel with him.^{3.} Another month was lost before a note giving details of the projected protectorate was handed to the German Government on 19 September 1884.^{4.}

During all these months the Australians had been told nothing of the Cabinet's decision and counter-decision, indeed they knew less of Her Majesty's Government's plans than did Bismarck, so that they were naturally restive. The Agents-General pestered Derby for news, and Childers, the Chancellor of the Exchequer and a former colonist,

1. Granville to Amthill, 9 Aug. 1884, F.C. 64/1144.
2. Derby to Granville, 16 Sept. 1884, P.R.O. 30/29/120. (Granville Papers).
3. Granville to Gladstone, 30 Sept. 1884. B.M. Addit. MSS. 44177, ff.165-9. (Gladstone Papers).
4. Scott to Hatzfeldt, 19 Sept. 1884, encl. in F.O. to C.O. 27 Sept. 1884. C 4273, p.11. Parl. Pap. 1884-5, LIV.

strongly interceded with Granville on their behalf.^{1.} Then on 29 September, as Granville was about to assent to the establishment and announcement of the Protectorate without further delay, a letter was received from the new German Ambassador, Count Plessen,^{2.} protesting that the proposed extension of the Protectorate into the North and North East (to include the Macleay Coast) came unexpectedly upon his Government which must therefore reserve its attitude on the matter. Plessen suggested that the delimitation of areas of mutual interest should be submitted to a Commission.

The fact was that on 19 August Germany had set in motion the machinery for creating a Protectorate of its own in North East New Guinea, and wished to delay Britain until this had taken effect.^{3.} But this the British Government did not guess, especially since Granville had never received the pro memoria which would have given slightly more explicit notice of Germany's intentions. Consequently the Cabinet unenthusiastically agreed on 6 October, to further limitation of its plans.^{4.} It was

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1. Childers to Granville, 29 Sept. 1884. P.R.O. 30/29/119. (Granville Papers).
 2. Plessen to Granville, 27 Sept. 1884, encl. in F.O. to C.O., 29 Sept. 1884. C 4273, p.12. Parl.Pap. 1884-5, LIV.
 3. See Jacobs, "Bismarck and the Annexation of New Guinea", H.S. (1951) pp.2-3.
 4. Gladstone's Cabinet Minutes, 1884, f.179. B.M. Addit. MSS. 44645 (Gladstone Papers).

resolved to declare immediately a Protectorate over the South coast (but not the Macleay Coast) "without prejudice to any territorial question beyond this limit". This time prompt action was taken to implement the decision and Major-General Seratchley was appointed as Special Commissioner for New Guinea. The announcement naturally was received with pleasure in Australia, though much disappointment was felt that it fell so far short of their demands, disappointment which developed into disillusion when Derby informed the colonies that £15,000 would not now be enough and asked them for doubled contributions.^{1.} For the British Government to have dallied so long and then demanded twice as much money as had formerly been requested, to protect not annex, less than half the area desired, did not seem at all satisfactory to the colonies, most of which flatly rejected the demand.^{2.}

Worse was yet to come however. On 18 October the German Government was informed that in consequence of its representations the British Protectorate had been limited to the South Coast "without prejudice", and that no further claims would be made pending general discussions on the interests of the two countries in the South Seas.^{3.}

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1. Derby to Loftus, 30 Oct. 1884 (tele) C 4273, p.17. Parl.Pap. 1884-5, LIV.
 2. See telegrams from N.S.W. Tasmania, Victoria, Queensland, South Australia and New Zealand, 3-19 Nov. 1884. C.P. Aust. No. 108, C.O. 881/6.
 3. Scott to Busch, 9 Oct. 1884, encl. in F.O. to C.O., 18 Oct. 1884, C 4273, p.13. Parl.Pap. 1884-5, LIV.

Such discussions were begun in Berlin in December 1884, but were rudely interrupted by the leakage of the news on 17 December that the German flag had been hoisted at three places on the North Coast of New Guinea and on several nearby island groups.^{1.} The long nourished suspicions of the Australians had at last been vindicated and their anger and dismay knew no bounds.^{2.} Even before news of the coup had been confirmed the Colonial Office was bombarded with messages demanding repudiation of the German move and condemning the British procrastination which had made it possible. Because it was well known that Britain and Germany had been negotiating with respect to their interests in the South Pacific the colonists leapt to the conclusion that the German annexation was part of an agreement between the countries, and this added to their feeling of betrayal. Mr. Service, with his usual dramatic vigour cabled;

"We protest in the name of the present and the future of Australia. If England does not save us from the danger and disgrace, as far at least as New Guinea is concerned, the bitterness of feeling towards her will not die out with this generation." 3.

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1. Admiralty to C.O., 17 Dec. 1884. Ibid., p.45.
 2. For a first hand account of the Australian reaction by the British Historian J.A. Froude who was visiting the Colonies at the time see his Oceana or England & Her Colonies (London, 1907) pp. 84-7. (The first edition was published in 1886.)
 3. Service to Murray Smith, 20 Dec. 1884 (tele), encl. in Murray Smith to Derby, 22 Dec. 1884. C 4273, pp. 53-4. Parl. Pap. 1884-5, LIV.

and the Queensland Government also threatened that relations between the colonies and the mother country were likely to be "seriously affected"^{1.}

That the strength of feeling was not simply an invention of the governments concerned was attested by the Melbourne correspondent of the London Times, who told British readers that "in infinitely varied phrase he (Derby) was denounced as weak, shifty, imbecile, treacherous, and even as a palpable promise breaker"^{2.} The Sydney correspondent reported that in New South Wales where opinion had previously been more moderate, the people were angrier than they might otherwise have been because they felt their trust in the British Government had been betrayed.^{3.} Nor was dissatisfaction confined to the colonies, for long before these reports arrived in London the Times itself had adjudged that:

"Lord Derby's refusal to recognise the annexation (ie. by Queensland in 1883) even provisionally, his 'Masterly inactivity' in adopting any alternative policy, and, finally, after eighteen months delay, his imperfect concession of the demands of the colonists, have held the door open for Germany almost as if it had been desired that German settlements and German naval stations should be established close to the Australian colonies" ^{4.}

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1. Griffith to Derby, 29 Dec. 1884 (tele). Ibid., pp. 59-60.
 2. The Times, 17 Feb. 1885. (Report dated 29 Dec. 1884)
 3. Ibid. (Report dated 31 Dec. 1884).
 4. The Times, 23 Dec. 1884.

This last suggestion was clearly intended to be outrageous, yet it was not so wide of the mark as it might at first sight have appeared. For although the unfortunate Derby was shocked by the news of the German annexation and feared that it might cause the loss of the colonies,^{1.} Gladstone wrote to Granville;

"I see my way clearly to this: that German colonisation will strengthen and not weaken our hold upon our colonies; and will make it very difficult for them to maintain the domineering tone to which their public organs are too much inclined" 2.

His view was not generally shared by the Cabinet, but apart from Childers who strongly championed the Australian cause,^{3.} even those members such as Chamberlain and Dilke who were incensed by the German action objected more to Bismarck's methods than to his acquisition of a part of New Guinea;^{4.} and although the British Protectorate in the South was immediately extended to meet the German boundary and to include more offshore islands, and full British sovereignty over it was eventually declared, the German fait accompli in the North was accepted after diplomatic

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1. Derby to Gladstone, 23 & 26 Dec. 1884. B.M. Addit. MSS. 44142 ff.106-7, 108-9. (Gladstone Papers).
 2. Gladstone to Granville, 29 Jan. 1885. P.R.O. 30/29/129. (Granville Papers).
 3. See Childers to Granville, 23 Dec.1884. P.R.O. 30/29/129. (Granville Papers).
 4. Chamberlain to Dilke, 29 Dec.1884. B.M.Addit. MSS. 43836 (Dilke Papers); Chamberlain to Dilke, 3 Jan. 1885 (copy) Chamberlain Papers, 5/24/320, 384.

protests which lasted for only a few months. For in the eyes of Gladstone and Granville New Guinea was entirely insignificant by comparison with Egypt, and Bismarck made it clear that acquiescence in Germany's new colonising ventures was to be the price of his support in that country.^{1.} The potency of this bargaining point is revealed by Gladstone's instructions to his Foreign Secretary following an unofficial conference with Herbert Bismarck:

"Now I do hope that you are pressing forward the Pauncefote settlement for the North Coast of New Guinea.... It is really impossible to exaggerate the importance of getting out of the way the bar to the Egyptian settlement. These words strong as they are, are in my view words of truth and sober-ness; as, if we cannot wind up at once these small colonial controversies, we shall before we are many weeks older, find to our cost." 2.

The 'bar' was duly removed by an Anglo-German boundary agreement signed in April 1885^{3.} and Australian excitement about New Guinea gradually dwindled, though not before it had served to maintain interest in a Federal Council through the eighteen months following the Convention, and thus helped to translate intention into fact.

In the same period the question of French convict transportation to the Pacific had also continued to excite

1. Gladstone to Granville, 5-6 Feb, 1884 (midnight) Report of discussion with Herbert Bismarck. P.R.O. 30/29/129. (Granville Papers).
2. Gladstone to Granville, 6 March 1885. P.R.O. 30/29/129. (Granville Papers)
3. See C 4441. Parl.Pap. 1884-5, LIV.

public opinion in Australia and thus sustain the impetus of the federal movement. The Recidivist Bill which had first been denounced by the colonies early in 1883 remained before the French legislature in draft form right through into 1885, and the colonies complained to the British Government at regular intervals that not enough was being done to persuade France either to drop the Bill altogether, or to promise that it would not affect the Pacific. Intense irritation was frequently aroused in Australia by what was considered to be the dilatory and ineffectual handling of the matter by Britain, though this was largely unjustified. For although Lord Derby and Lord Granville mistrusted the discretion of the colonists and were reluctant to reveal the details of negotiations to them, for more than two years constant pressure was kept up on the French Government for modification of the recidivist plans.

In response to the first outcry in Australia in July 1883, a Note Verbale was handed to the French Government on 31 August on the subject of the Recidivist Bill and the extradition of escapees captured in the colonies.¹ After a delay of several months this elicited a promise to extradite all French criminals captured in

1. Encl. in F.O. to C.O. 5 Sept. 1883, C 3863, p.7.
Parl.Pap. 1884, LV.

Australia, but a refusal even to discuss the recidivist question.^{1.} Following the Resolutions of the Australasian Convention, and a further protest to the Colonial Office by the Agent-General for New Zealand,^{2.} the British Ambassador in Paris, Lord Lyons, pleaded the Australian case with M. Ferry, the French Foreign Minister, on a number of occasions in January 1884, with a little more success.^{3.} Ferry was inclined to dismiss the Australian protests as a thirst for annexation rather than a genuine alarm about French transportation, which was doing them no harm. But Lyons was armed with the fact that 267 convicts from New Caledonia had been captured in Australia since 1873; this, he argued, showed that the fears of the colonists were already justified, and the situation would be severely aggravated if recidivists, who would be of worse character but allowed more liberty, were sent to the Pacific. After some hesitation the French Foreign Minister did concede that although he could not allow a foreign country to prevent France sending convicts to her own colony, it was likely that the bulk of them would be sent

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1. Encl. in F.O. to C.O., 7 Dec. 1883, Ibid., p.73.
 2. Bell to C.O. 30 Nov. 1883, C 3863, pp.58-60. Parl.Pap. 1884, LV.
 3. See F.O. to C.O. 22 Jan. 1884, Ibid., p.126; 13 Feb. 1884, C 3839, p.5. Parl.Pap 1884, LV.

to Guiana and that only a small number of skilled workmen would go to New Caledonia.

A fresh outburst of indignation in the colonies was occasioned by the landing in Sydney in May 1884 of nine time expired convicts from Noumea. Although these men had completed their sentences some of them were not permitted to return to France, and the colonists were incensed that such men should be assisted, or even allowed, to come to Australia.^{1.} Moreover the incident created a suitable opportunity for renewed objections to the Recidivist Bill. Within a few days New Zealand and the Eastern Australian colonies all forwarded protests to the Colonial Office.^{2.} Lord Roseberry, who had recently returned from a visit to Australia and was deeply impressed by the depth of feeling on the subject which he had found, raised the subject in the House of Lords,^{3.} and the London Times advised the Government to use every available means to induce the French Government to modify the proposed law to meet the just desires of the Australian colonists.^{4.}

For once the Colonial Office had anticipated its critics by emphatically urging the Foreign Office to make

1. Loftus to Derby, 6 & 7 May, 1884 (teles) C 3839, pp.32-3, Parl.Pap. 1884, LV.
2. See C 3839, pp.36-7, Parl.Pap. 1884, LV.
3. Hansard, 3rd. Series, CCLXXXVlll, 643-4. (19 May 1885)
4. The Times, 6 May 1884.

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 further strong protests to the French Government. In the ensuing months Lord Lyons continued to press the Australian view upon M. Ferry,^{2.} whilst the Recidivist Bill itself was undergoing considerable modifications at the hands of a Senate Committee. The Agent-General for New Zealand, Sir Francis Dillon Bell, who had been educated in France and was personally acquainted with many government officials there, visited Paris frequently during 1884 to use his unofficial influence on behalf of the colonies.^{3.} Bell also kept the Colonial Office informed of the progress of the Bill through the Senate and Chamber, a most unusual role for a colonial representative at that time.

In February 1885 the Agents-General for the Colonies jointly approached the Colonial Secretary about the recidivist question once again,^{4.} but by this time it was already apparent that although the Bill was likely to become law many of its more objectionable features would

1. C.O. to F.O., 8 May 1884. C 3839, pp.33-4. Parl.Pap. 1884, LV.
2. Such discussions occurred on at least a dozen occasions between May 1884 and May 1885. The relevant correspondence is usefully brought together as Paper No.2 in Journals and Printed Papers of the Federal Council of Australasia, Vol.1 (Hobart, 1886).
3. A. Ross, New Zealand Aspirations, pp.206-11.
4. Agents-General for the Australasian colonies to the C.O. 25 Feb. 1885, C 4584, pp.51-3. Parl.Pap. 1885, LIV.

be removed, and despite a change in the French Government, this was what happened. The Bill was finally passed by the Chamber and was promulgated on 27 May 1885, but the control which was to be exercised over the recidivists had been greatly tightened up, the number to be exiled had been reduced, and most of the details left to the executive - which had privately agreed to send few if any convicts to New Caledonia.¹ In July a further Bill was passed allocating one and a half million francs for the transportation of recidivists to Guiana, but no mention was made of New Caledonia,² and no convicts of this type were in fact sent there until several years later.

Although this was not a final and satisfactory answer to the objections held by the colonies to French colonisation in, and transportation to the Pacific, the fact that the Bill had at last been passed after years of indecision, and in a form less repugnant than had originally been feared, dampened Australian feeling on the subject. Its settlement, at much the same time as the New Guinea question was being settled, led to a noticeable decline in colonial interest in the Pacific

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1. See Lyons to Granville, 8 May 1885 encl. in F.O. to C.O., 13 May 1885. Ibid., pp.134-5. A copy of the Act as promulgated was enclosed in F.O. to C.O. 1 June 1885, Ibid., pp.150-2.
 2. See Lyons to Salisbury, 28 July 1885, encl. in F.O. to C.O. 31 July 1885, Ibid., pp.200-1.

from the middle of 1885. Between 1883 and 1885 however, opposition to French transportation had been an important component of Australian excitement about the Pacific and an inflammatory factor in relations between the colonies and Great Britain. Quite apart from the objections which were held to the activities of France in New Caledonia, the fear that further convict colonies might be established, perhaps even nearer to Australian shores, contributed to the desire that the Pacific should be declared an exclusively Australian preserve, and to the strength of the colonial reaction when Great Britain declined to sanction such proposals. Before the agitation about these inter-related Pacific questions subsided, the movement for the creation of a Federal Council had achieved some degree of success.

iii

In the flurry of legislative activity which had followed the arrival in Australia of Lord Derby's general despatch of 9 May, 1884 not only were the Convention Resolutions on New Guinea and the Pacific ratified by a

number of colonies, but by the end of July Addresses to the Imperial Parliament in favour of a Federal Council of Australasia were passed by Victoria, Queensland, South Australia and Tasmania. As soon as the requisite four colonies had passed Addresses the enterprising Mr. Murray Smith by-passed the Colonial Office, it appears, and with the support of the pro-Australian Childers, directly approached the Prime Minister with the request that the necessary Enabling Bill should be introduced into the Imperial Parliament before the end of the Session, then fast approaching. When the sympathetic Irish Member, Mr. Blake, asked Mr. Gladstone in the House of Commons on 4 August whether he would comply with the colonial request, the latter replied that his Government would be perfectly willing to introduce the Bill, provided the other parties would agree to accept it unanimously. On the other hand, Gladstone said, if the Opposition intended to debate the measure there would not be time to fit it in.² Blake pledged his "corner" of the House, but the Tories were not co-operative; Sir Stafford Northcote would not undertake to accept the Bill without discussion, but suggested that it might be brought on in the special

1. See a minute by Herbert, 28 Sept. 1884 on Loch to Derby, 25 Sept. 1884 (tele). C.O. 309/127, p.151.
 2. Hansard, 3rd Ser., CCXC1, 1580. (4 Aug. 1884).

1.
 autumn session which was planned. To this Gladstone retorted that his Government would have been willing to act immediately if they had received more co-operation, but that they could not consider breaking their pledge to restrict the autumn session to the Franchise Bill unless the Federal Council question were then to present special "features of urgency".^{2.}

These parliamentary skirmishings extended over a week, and in the meantime an inaccurate report that Her Majesty's Government was planning the immediate introduction of the Federal Enabling Bill was received with horror in New South Wales. In vehement editorials the Sydney Morning Herald castigated Mr. Gladstone for his capitulation to the wicked schemes of Messrs. Service and Murray Smith to have the Bill enacted before the New South Wales Parliament had time to discuss it.^{3.} For the mother colony was still pre-occupied with the land bill which had been before it for months, and the Stuart Government declined to debate the Convention Resolutions and Federal Bill until this was completed. The intervention of the Conservatives to prevent rushed legislation was gratefully acknowledged by the Herald, but the shrewd suspicion was expressed that they had been actuated more by "political"

1. Hansard, 3rd. Ser., CCXCII, 440. (11 Aug. 1884)

2. Ibid.

3. Sydney Morning Herald, 6 & 7 Aug. 1884.

motives than by concern for the well being of New South
 Wales.^{1.}

The Agent-General for New South Wales hurried to
 the Colonial Office with the protests of his Government,^{2.}
 and was able to assure Premier Stuart that the Bill would
 not be introduced in the current session.^{3.} By and large
 the Colonial Office was more disposed to co-operate with
 New South Wales than with Victoria, although Sir Robert
 Herbert noted that since the Bill under discussion was
 only an enabling measure which would not commit anybody to
 anything there was no real reason why New South Wales
 should be upset if the Bill were proceeded with.^{4.} This
 argument was also used by Service in correspondence with
 Stuart, but the latter refused either to "imperil" his
 land legislation by bringing the Bill before the New South
 Wales Parliament immediately, or to withdraw his objection
 to the Imperial Parliament proceeding with it before he
 had done so.^{5.}

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1. Sydney Morning Herald, 6 Aug. 1884.
 2. Samuel to C.O., 11 Aug. 1884. C.O. 201/602, p.159.
 3. Samuel to Stuart, 11 Aug. 1884. (tele). V.& P.
 (L.A. of N.S.W.) 1885 2nd Sess., 11, p.1068.
 4. Herbert, Minute, 11 Aug. 1884, on Samuel to C.O.
 11 Aug. 1884, C.O. 201/602, p.159.
 5. See Stuart to Service, 8 Aug. 1884 (tele) and Service
 to Stuart, 9 Aug. 1884 (tele) in V.& P. (L.A. of N.S.W.)
 1885 2nd Sess., 11, p.1068.

The situation remained unaltered when the Imperial Parliament assembled in the Autumn after a short recess, but Murray Smith at once made a fresh approach to the Colonial Office and apparently claimed that Gladstone had promised in the last session to deal with the Bill in the new one.^{1.} This was an obvious misrepresentation, almost a reversal, of what the Prime Minister had said, and Herbert was not impressed.^{2.} However when Gladstone was consulted he conceded that it might be possible to fit in some other legislation in addition to the Franchise Bill and that the claims of the Federation measure "might depend upon the respective force and scope of the declarations pro and con from the different colonies".^{3.} Within a few weeks of the commencement of the session though, Gladstone concluded that there was no possibility of the House of Commons taking up the Bill but that there was no reason why the House of Lords should not discuss it.^{4.} Thus when Lord Carnarvon enquired on 23 October as to what the intentions of Her Majesty's Government were in this matter, Derby replied that he was willing to introduce the Bill if the outcome of the long delayed but now imminent debate upon

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1. See Minute by Bramston 25 Sept., on Loch to Derby, 25 Sept. 1884 (tele), C.O. 309/127, p.151.
 2. Minutes: 25 & 28 Sept. 1885, on Loch to Derby, 25 Sept. 1885 (tele) C.O. 309/127, p.151.
 3. Gladstone to Derby, 1 Oct. 1884 B.M. Addit. MSS. 445+7, f.198. (Gladstone Papers).
 4. Gladstone to Derby, 23 Oct. 1884 B.M. Addit. MSS. 445+7, f.128. (Gladstone Papers).

it in New South Wales should be favourable, but that he would not undertake to say whether it would be possible for it to be considered in "another place"^{1.}

On 30 October 188⁴ the resolutions of the 1883 Convention were at last brought before both Houses of the New South Wales Parliament, so belatedly that, as the Opposition speakers pointed out, the first resolution had already been substantially answered by the establishment of the Protectorate in New Guinea.^{2.} The debate in the Assembly took place under inauspicious circumstances for it came two days before the end of a long session and on the eve of the Melbourne Cup race meeting which many members were anxious to attend. Two days before the debate Premier Stuart was struck down by severe illness, and moderate federalist as he was Stuart would certainly have moved the resolutions with more conviction than did his deputy, George Dibbs.^{3.} Apart from Dibbs only two members supported the Federal Council and the debate was a dreary affair punctuated by endless quorum calls to keep the House in business.

Opposition to the resolutions, and in particular to those in favour of a Federal Council was led by Sir John Robertson,^{4.} who damned the proposed Council as a Victorian

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1. Hansard, 3rd. Ser., CCXC111, 45 (23 Oct. 188⁴)
 2. P.D. (N.S.W.) First Ser. 1883-⁴ & Session of 188⁴, Vol 25, pp.619 -200 (Parkes), 6212 (Copeland).
 3. Ibid., p.6172ff.
 4. Ibid., p.6183ff.

invention and devoted most of his speech to raking over old grievances against the neighbouring colony. Unlike
 1.
 Robertson, Sir Henry Parkes was at pains to deny antipathy to federation as such, and to assert that opposition to the present scheme was compatible with his previous sponsorship of similar plans. Nevertheless the defects to which he pointed in the Bill do not explain the violent opposition to the measure of a man who, before and after this episode, was one of the foremost sponsors of federation. Perhaps he judged the time unpropitious and preferred not to be associated with an unsuccessful plan; perhaps he was piqued at being supplanted in the vanguard of Australian nationalism and federalism during his extended absence overseas in the previous two years by men like Service, McIlwraith and Griffith. Whatever the reason, Parkes's attitude helped tip a precarious balance against the Convention resolutions and Federal Bill, and the Previous Question which was moved by Sir John Robertson was carried by 1 vote in a total of 43 votes
 2.
 cast in a House of 113, thus shelving the whole matter so far as New South Wales was concerned.

The range of opposition ran the full gamut from Mr. Heydon, who declared himself in favour of imperial

1. *Ibid.*, p.6190ff.

2. *P.D. (N.S.W.) First Ser.*, 1883-4 & Session of 1884, Vol 25, p.6231.

federation rather than the local variety,^{1.} to the radical Mr. Buchanan, who opposed the measure because it requested imperial legislation rather than settling the matter without reference to Downing St.^{2.} Several valid points were stressed by speakers against the Bill, notably that they were being given no opportunity to amend it but must swallow it "holus bolus" or not at all.^{3.} In contrast to the absurd fears of some that the new body would usurp their constitutional rights and privileges, Mr. Burns made the reasonable claim that with the New Guinea and recidivist questions nearing settlement there would be nothing of importance left that the Council was entitled to discuss.^{4.}

By and large however, the most striking feature of the debate was the extreme anti-Victorian prejudice of many members, and the apathy and lack of interest in federation of the remainder. The Federal Council movement had been born in neighbouring colonies of an excitement about Pacific issues never fully shared by New South Wales, and the debate came after such agitation as there was in this colony had been mollified by the creation of a Protectorate, and before it had been revived by the German annexation. Federalism in New South Wales therefore could

1. Ibid., p.6216.
 2. Ibid., p.6201ff.
 3. Ibid., pp.618+ (Robertson) & 6206 (Cameron).
 4. Ibid., pp.6222-3.

scarcely have been at a lower ebb. Ironically enough the resolutions were adopted by the Legislative Council in a simultaneous debate,^{1.} but this was of little significance after their defeat in the lower House.

Naturally the Victorian Government lost no time in urging that in the light of this vote New South Wales should be allowed to delay the federal movement no longer,^{2.} and on 5 November the Agents-General of Victoria, Queensland, South Australia and Tasmania jointly asked that the Bill should be introduced in the House of Commons before the end of the session.^{3.} This turn of events placed the British authorities in a difficult position, for although they had long favoured an Australian federation almost to the point of sponsoring it, they were not so enthusiastic about a federation which would not include the mother colony, especially when in November New Zealand also asked that federal action be postponed.^{4.} Herbert and Mercer in the Colonial Office recognised that it was impossible to set aside the wish of four colonies that the Bill should be introduced, especially in view of the slender majority against it in New South Wales, but Herbert felt it necessary to "devise some course which will turn away, as far as possible, the wrath of the party whose wish is not

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1. Ibid., p.6168. (Thirteen voted in favour & nine against)
 2. Murray Smith to C.O., 31 Oct. 1884, C.O. 201/601, p.462.
 3. Agents-General to C.O., 5 Nov. 1884, C.O. 201/602, p.431.
 4. See Jervois to Derby, 6 Dec. 1884, C 4273, pp.79-80. Parl.Pap. 1884-5, LIV.

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 complied with".

Such a course was, it seems, found. On 24 November Gladstone informed a questioner in the House of Commons that the Federal Enabling Bill required amendment in certain respects, and that it was desirable to consult the colonies about the proposed amendments before it was

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 introduced. A few days later Derby added that it would have been impossible to complete the consideration of the Bill in the current Session, so that by consulting the colonies during the recess in preparation for the following session,

3.
 no time would be wasted. In a major despatch to all the Australian colonies dated 11 December 1884, Derby outlined the amendments to the draft Bill desired by Her Majesty's Government and gave reasons for them.
 4.
 The creation of a Federal Council in Australasia was thus further delayed.

Herbert's reaction to the news that the federation question had been shelved in New South Wales suggests the possibility that the insistence of the British Government on the need to amend the Bill may have been a skilful manoeuvre to delay decisive legislative action and allow

1. Minute: 31 Oct. 1884, on Loftus to Derby, 31 Oct. 1884 (tele) C.O. 201/601, p.461. See also Minute by Mercer, 6 Nov. 1884, on Agents-General to C.O. 5 Nov. 1884. C.O. 201/602, p.431.
2. Hansard, 3rd Ser., CCXCIV, 280. (24 Nov. 1884)
3. Ibid., col.342 (1 Dec. 1884).
4. Derby to all Australasian Governors, 11 Dec. 1884. C 4266, p.3. Parl.Pap. 1884-5, LIV.

time and opportunity for the reconciliation of the views of the colonies. For this insistence was, after all, scarcely compatible with Gladstone's frustrated willingness four months previously to pass the Bill through all stages without debate. Had the need for amendments not come to the fore it would have been difficult for the Government to have avoided speedily enacting the Bill and antagonising New South Wales. Yet it was New South Wales which had consistently defended the actions of Her Majesty's Government over New Guinea and the Pacific and exercised a moderating influence on the other colonies. That this last factor did weigh with the Colonial Office is attested by the observations which were made on a copy of correspondence between Service and Stuart about New Guinea which arrived in London in November 1884. One member of the Colonial Office staff suggested that:

"the temperate and constitutional attitude of N.S.W. throughout this discussion can scarcely fail to weigh with HMG when considering the position of the colony towards the Federal Council scheme", 1.

To which Herbert responded that New South Wales was very friendly and that it ought to be possible to satisfy her on "almost any point", and Derby added, "I hope so".

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1. Minute: 25 Nov. 1884, on Loftus to Derby, 16 Oct. 1884 & enclosures. C.O. 201/601, p.418.
 2. Minute: 25 Nov. 1884, on Loftus to Derby, 16 Oct. 1884, Ibid.
 3. Minute: 26 Nov. 1884, on Loftus to Derby, 16 Oct. 1884, Ibid.

On the other hand it must be remembered that as early as February 1884 when the Bill drafted by the Convention first reached the Colonial Office Herbert had anticipated that amendments might be required.^{1.} Again, in September, before the Federal debate in New South Wales the Assistant Under-Secretary in charge of the Australian Department, John Bramston, had suggested that amendments should be prepared in readiness for legislation.^{2.} Nothing very much was done on either occasion but the two episodes do indicate that the idea of amending the Bill was not entirely a novelty; even if New South Wales had joined with the others in requesting the immediate enactment of the Bill it is possible that amendments might have been required. But despite Herbert's insistence that the opposition of New South Wales and New Zealand to the Federal Council should not be cited as a reason for the action of the British Government,^{3.} indeed partly because of this fact, it is clear that the attitude of New South Wales in particular did play some part in the decision to delay legislation while amendments were discussed. Quite apart from any desire which may have been felt to reward

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1. See p. 66 above.
 2. Minute: 25 Sept. 1884, on Loch to Derby, 25 Sept. 1884 (tele) C.O. 309/127, p.151.
 3. Minute: 22 Nov. 1884, as basis for answer to a proposed House of Commons Question which was not actually put. C.O. 201/602, p.93.

New South Wales for past moderation, the very fact that the mother colony was likely to abstain from the Federal Council was in itself enough to put a different complexion on the proposal. An all inclusive federation could more safely be left to rectify constitutional deficiencies by experience, and work out its own future, than a limited grouping of four or five colonies including the most radical and troublesome ones.

The amendments proposed in Derby's despatch of 11 December affected six of the thirty clauses in the draft Federal Council Bill, in addition to which a wholly new thirty-first clause was suggested.^{1.} Several of the proposed changes were merely verbal or technical improvements of a non-controversial character, but four or five were more significant, most of them allowing for the future development of the Council. In Clause Five additional words were proposed giving power to Her Majesty to increase by Order in Council the number of representatives of each colony on the Federal Council. This power of enlargement might become useful, Derby explained, if the Council developed in importance; and although the Council did not, as it happened, develop to any appreciable extent, the participating colonies did decide to enlarge it after a

1. For the Amendments and explanation see, Derby to all Governors, 11 Dec. 1884, C 4266, p.3. Parl. Pap. 1884-5, LIV. The amendments are also set out clearly in C. of Aust. No. 99 C. 3. 851/6.

few years of operation.

In the draft no regular revenue was provided for the Council but Clause Twenty-Six somewhat vaguely stated that expenditure incurred by it should be contributed to by member colonies in proportion to their population. Derby's despatch proposed an additional sentence giving the Council a more definite right to specify in any legislation likely to involve expenditure that this should be paid by the colonies according to the principle already accepted. The main concern of the British Government with respect to the clause was that the council should not be crippled by lack of funds. If the approval of the parliaments of all member colonies were required for each separate piece of Council expenditure long delays were likely before legislation could be implemented. This was likely to be a major restriction on the usefulness of the Council, but there was little the Colonial Office could do beyond drawing attention to the fact.

Several of the brief list of powers contained in Clause Fifteen and assigned to the proposed Council by the Convention dealt with matters external to Australia or likely to involve the citizens of foreign countries, and these were naturally subjected to close scrutiny in the Colonial Office. The Governor of Victoria, Sir Henry Loch,

though he strongly supported the creation of a Federal Council, wrote to Lord Derby at some length in October 1884, suggesting limitation of the powers claimed over the relations of Australasia with the islands of the Pacific, and fisheries in Australasian waters beyond territorial limits.¹ It was eventually decided however, that these two powers and a third dealing with the prevention of the influx of criminals, should be allowed to come under the jurisdiction of the Council provided that all bills connected with any of them should be reserved for Her Majesty's assent, or submitted for prior consideration by Her Majesty's Government.

Some words in Clause Fifteen which purported to give the Council legislative authority over ships sailing between Her Majesty's Possessions in Australasia were rejected on the grounds that they were too imprecise. They were replaced however by a phrase added to Clause Twenty which extended the force of all Acts passed by the Council to "all British ships, other than Her Majesty's ships of war, whose last port of clearance or port of destination is in any such possession or colony". The change probably increased the Council's power and was accepted without demur, but fifteen years later the British authorities

1. Loeh to Derby, 3 Oct. 1884 C.O. 309/127, p.173 ff.

objected strongly to the same phrase when it was included in the draft Commonwealth Bill, and were countered by the argument that it was entirely of their own drafting.

A new subsection which was recommended for addition to Clause Fifteen gave the Queen in Council power to add new subjects to the list of matters over which the Council had legislative authority. Such a provision as this, Lord Derby argued, would allow for the easy addition of further powers to meet changing needs and circumstances. It is true that as well as the seven powers directly entrusted to the Council there was a secondary group which could be referred to it by any two colonies, but in such cases the Council legislation would apply only in those colonies which had requested it. This was not regarded as an adequate provision for the development of the Council's activities.

The last and most controversial of the amendments put forward was the new Clause Thirty-One, which provided that any colony could withdraw from the Council by resolution of its legislature, although all acts of the Council passed during its membership would continue to apply within it unless repealed by the Council. Clearly it was hoped that this escape clause would make membership of the Council more attractive to New South Wales and New Zealand. Though Derby did not say so in so many words, he justified his proposal by arguing that the Council was

to be in the nature of an experiment, the long term implications of which could not be foreseen, so that it was desirable that colonies be encouraged to co-operate in the experiment without an irrevocable commitment.

Lord Derby's despatch which was accompanied by, and in explanation of these amendments did not reach the colonies until January 1885. While it was in transit Germany's annexation in New Guinea became known and colonial dissatisfaction with British policy reached its height. Interest in the movement for a Federal Council which it was hoped would give the colonies a stronger hand in future negotiations with the British Government was thus maintained at a relatively high level. But as the imperial and colonial parliaments alike were in recess when the despatch arrived there was a delay of several months before it was answered by the governments of the colonies. The one exception to this was Western Australia, which replied on 29 January 1885, that it would be willing to accept all the proposed amendments.¹ As Western Australia was only a Crown Colony, economically backward and lacking responsible self-government, its attitude was not, however, of much consequence one way or the other.

Whilst the other colonies were considering the

1. Onslow to Derby, 29 Jan. 1885, C 4397, p.3. Parl.Pap. 1884-5, LIV.

despatch Earl Grey, now an old man, proposed in an article in the Pall Mall Gazette of 9 January 1885, the reconstitution of the old Privy Council Committee on Trade and Plantations as a Colonial Council to advise the Colonial Office. This Council would be based in London and composed of the official representatives of all the colonies whether they were Agents-General or High Commissioners. Coming as it did from an elder statesman with great experience in colonial affairs, the proposal attracted a good deal of attention, but was not viewed at all favourably in the colonies. The Government of New South Wales, which might have been expected to see merit in any alternative to the Federal Council, was very critical of Grey's plan,¹ largely because they considered that colonists from one part of the world would not be qualified to discuss matters arising in another. Eventually the plan drifted into obscurity, though similar proposals were periodically aired by the Imperial Federation League.

The four colonies which had been most consistent in their support of federation, Victoria, Queensland, South Australia and Tasmania, consulted each other extensively

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1. See C.O. 201/604, p.399 ff. Opposition to the plan was expressed by Governor Robinson of South Australia, 23 April 1885. C.O. 13/143, p.64.
 2. Stuart, Minute, May 1885. V. & P. (L.A. of N.S.W.) 1885 2nd. Sess., 11, pp.1083-4.

about Lord Derby's despatch during the first three months of 1885 and arrived at a joint understanding before they replied to it. This suggests that they may have learned something from their experience of the previous few years. James Service of Victoria remained the most forceful of the Premiers, but as the Federal Council replaced annexationism as the central question in Anglo-Australian relations, Samuel Griffith of Queensland came to the fore. In the negotiations that led up to the passing of the Federal Council Enabling Act and establishment of the Council, Victoria and Queensland consistently acted in concert, with Tasmania and South Australia as only slightly less consistent and determined allies.

Although the four colonies achieved a large measure of agreement on the amendments in the course of visits to other Eastern capitals by Griffith, and by Colston of South Australia to Melbourne, in January and February 1885, a reply was delayed in the hope that New South Wales and New Zealand might agree to join with them. Early in March, when Derby urgently requested replies to his despatch,¹ this hope was abandoned and the four colonies² jointly and severally answered in almost identical terms.

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1. Derby telegraphed Victoria which passed on the message, see Service to Griffith, 10 March 1885 (tele) V.& P. (L.A. of Q.) 1885, 11, p.1093.
 2. See Musgrave to Derby, 12 March 1885 (tele) C 4397, p.4, Parl.Pap. 1884-5, LIV; Murray Smith to C.O. 16 March 1885, Ibid.; Strahan to Derby, 17 April 1885, C 4481, p.1. Parl.Pap. 1884-5. LIV.

Some of the more technical amendments, such as those to Clause One and to the first line of Clause Twenty-Six were accepted, as were the amendments to Clauses Fifteen and Twenty which related to control by the Council of British ships sailing between Australasian ports. The new subsection at the conclusion of Clause Fifteen requiring all Bills in respect of the three Council powers which involved matters external to the colonies to be reserved for Royal Assent was also approved. This left five questions in dispute.

In Lord Derby's despatch it had been proposed that Clause Three, which conferred on Her Majesty power to make laws for the purposes specified in the constitution "by and with the advice and consent of the Council" should be omitted in its entirety. The reason given was that the legislative power which the clause purported to give would be adequately provided by Clause Fifteen.^{1.} The four co-operating colonies argued^{2.} that if legislative authority was conferred by Clause Fifteen (which was held doubtful) it

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1. Derby to all Governors, 11 Dec. 1884, C 4266. p.3. Parl. Pap. 1884-5, LIV.
 2. The most comprehensive exposition of the views of the four colonies may be found in Griffith to Musgrave, 16 March 1885, enc. in Musgrave to Derby, 8 March 1885. C 4407, p.3. Parl. Pap. 1884-5, LIV. The following summary is based on this source, except where otherwise indicated.

was conferred on the Council with the consent of Her Majesty; whereas the accepted constitutional practice in British colonies was that such authority should be conferred on the Sovereign with the advice and consent of the Council. If it would facilitate agreement the four colonies were willing to append the proviso - "subject to provisions herein contained in respect to the operation of this Act"^{1.} but they insisted on retaining the clause.

In three of the other disputed amendments the Secretary of State for the Colonies clearly had wished to make allowance for the future growth of the Council and its activities, while the fourth appeared to pave the way for its dissolution. Yet all four were greeted with suspicion. To some extent the colonists exhibited the attitude, much more marked when the Commonwealth Constitution was under discussion fifteen years later, that the Bill had been drafted in Australia and should be materially altered only in Australia. Both Griffith and Service stressed that the issues involved had already been extensively and carefully considered by the Convention.^{2.} To some extent also the pro-federal colonies hung back from changes which might strengthen the Council, from fear that the other colonies might be further alienated; any changes which were essential could

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1. See Murray Smith to C.O. 16 March 1885, C 4397, p.4. Parl.Pap. 1884-5, LIV.
 2. Ibid., (for the view of Service); and Griffith to Musgrave, 16 March 1885, C 4407, p.3, Parl.Pap. 1884-5, LIV.

be introduced once the Council was a going concern. There were also specific objections to each amendment.

The proposed alteration of Clause Five to empower Her Majesty to increase the number of representatives of each colony did not make it clear whether the representation of one colony could be increased to the exclusion of others, Griffith claimed. Moreover it would be possible under this provision for the British authorities to alter the composition of the Council without, or contrary to, the advice of the colonies. Similar objections were expressed to a similar innovation in Clause Fifteen which gave Her Majesty the right to confer upon the Council legislative authority on any subject. The proposed alteration of Clause Twenty-Six was even more far reaching than these two, for the draft constitution had provided finance only to meet the expenses of Council meetings but the amendment was intended to provide finance for the implementation of Council legislation. This was objected to by all the colonies, for if the Council were to authorise expenditure, Griffith pointed out, it must have not only a revenue but also an executive arm to supervise its disbursement. Such an amendment would therefore involve thoroughgoing revision of the nature of the Council as well as its functions. The new Clause Thirty-One which allowed for the withdrawal of

member colonies was described as potentially likely to bring about the dissolution of the Council, and certain to hamper its working.

Some weeks before the four federally minded colonies had issued this reply to Lord Derby's despatch of 11 December the Government of New South Wales had notified him, through Lord Augustus Loftus, that they felt unable to offer any opinion until parliament met.^{1.} Premier Alex Stuart was still absent from office through illness, and W.B. Dalley, the Deputy-Premier, was very much in favour of the Federal Council, but he informed the other colonies that since the Legislative Assembly had voted against the Federal Council Bill he did not feel able to speak authoritatively.^{2.} Stuart later admitted that his Government had thought it safe to remain silent till parliament met because they were sure that the British Government would not act without waiting for them.^{3.} The remaining colony, New Zealand, took the same stand as New South Wales, for its parliament had also shelved the Federal Bill. Sir

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1. Loftus to Derby, 14 Feb. 1885, C 4397, p.6. Parl.Pap. 1884-5, LIV.
 2. Dalley to Griffith, 11 March 1885 V.& P. (LA. of Q.) 1885, 11, p.1094.
 3. Stuart to Service, 17 Aug. 1885, V.& P. (LA. of N.S.W.) 1885 2nd Session, 11, p.1093.

Robert Stout was a little less non-committal than Mr. Dalley however, and suggested the further amendment of the Bill to allow member colonies to adopt or reject legislation rather than to make it apply automatically.^{1.}

The last of these replies was received in London towards the end of March 1885, and the Agents-General were called to the Colonial Office to discuss them further. Prior to the meeting Derby stressed to his officials that they should avoid making difficulties, for the Bill "concerns the colonists more than us".^{2.} In this spirit agreement was quickly reached on all but the Thirty-First Clause.^{3.} Instead of the deletion of Clause Three as proposed in Derby's despatch it was retained with the proviso suggested by Victoria, Tasmania, Queensland, and South Australia. The amendments to Clauses Five and Fifteen to empower Her Majesty in Council to increase the representation on the Federal Council and the powers of the Council respectively, were retained, but with a proviso in each case that such action should be taken only

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1. See Stout to Service, quoted in Service to Griffith, 5 March 1885, V.& P. (L.A. of Q.) 1885, 11, p.1093.
 2. Minute: 22 March 1885, on Murray Smith to C.O. 16 March 1885 C.O. 309/129, p.348.
 3. For a report of the conference, on which the following account is based, see Garrick to Griffith, 10 April 1885. V.& P. (L.A. of Q.) 1885, 11, p.1096.

in response to Addresses from the colonies. The amendment to Clause Twenty-Six with regard to finance was withdrawn by the Colonial Office. Mr. Murray Smith and Mr. Garrick of Queensland urged the deletion of Clause Thirty-One, but Sir Francis Bell of New Zealand not only defended it but stated that the recalcitrant colonies (his own and New South Wales) would be unlikely to accept the Bill without it. The crucial factor was the opinion of New South Wales but their Agent, Sir Saul Samuel, said that he was not authorised to give one. Under these circumstances Lord Derby indicated that he would include the clause in the Bill to be introduced into the Imperial Parliament, but undertook to print for Parliament any written submissions on the point by the Agents-General.

The readiness with which Derby compromised with the colonies over the proposed amendments adds weight to the belief that although the Colonial Office believed their suggested amendments to be worth making, they might well have refrained altogether from proposing them had the colonies been unanimously for the Bill. In going against the four united colonies on Clause Thirty-One Derby was almost certainly hoping to make the Bill more attractive to New South Wales and New Zealand.^{1.} Although New South

1. See Herbert's minute 21 March 1885, on Murray Smith to C.O. 16 March 1885. C.O. 309/129, p.348.

Wales had not officially expressed an opinion either way on the clause, it must have been obvious that they would prefer it, and Herbert had apparently heard this unofficially.^{1.} The desire to refrain from meddling was therefore outweighed by the desire to secure the participation of the reluctant major colonies.

iv.

In April 1885 the Bill to constitute a Federal Council of Australasia at last made its appearance before the British Parliament. As introduced by Lord Derby in the House of Lords it included only those amendments which had been agreed on at the meeting of 30 March, save that a new proviso was attached to the already unpopular Clause Thirty-One.^{2.} The effect of this was to enable the

1. See Minute, 2 March 1885, on Loch to Derby, 20 Jan. 1885. C.O. 309/129, p.8.

2. For a copy of the Bill, with this proviso, see V.& P. (L.A. of Q.) 1885, 11, pp.1101-3.

legislature of a colony which decided to withdraw from the Council to repeal, in so far as that colony was concerned, any Act passed by the Council during the period of its membership; under the original amendment such legislation would have remained in force in a seceding colony until repealed by the Council itself. The amendment was probably intended as a concession to the Government of New Zealand which believed that it would be pointless to enable a colony to withdraw from the Council if federal legislation continued in force within it, particularly since the decision to withdraw might well have been occasioned by the enactment of objectionable legislation.^{1.} This point of view had been strongly expressed by the Agent-General for New Zealand at the conference on the Bill of 30 March,^{2.} and although he received no support at the time the Colonial Office must have taken up the idea subsequently.

In moving the second reading of the Bill Lord Derby^{3.} did not conceal his view that the measure was a most imperfect one, and that the proposed Council would be a very limited body. However, the Bill came before the House,

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1. Memorandum, 22 April 1885, C 4481, p.3. Parl.Pap. 1884-5, LIV.
 2. Bell to Stout, 7 April 1885, A.to J. (H.R. of N.Z.) 1885, 1 Paper A+C, pp.50-3.
 3. Hansard, 3rd. Ser., CCXCVII, 434-8 (23 April 1885)

Derby said, with the "special recommendation that it is the scheme on which the Australian community has decided for itself."^{1.} Those portions of it of which this was not true, he explained; in particular much of his speech was devoted to the justification of Clause Thirty-One, on the grounds that it would remove an obstacle to the participation of New South Wales, the continued abstention of which colony might prove fatal to the Council. A more complete federation was desirable but not yet possible, Derby concluded, so that it was better to accept the present plan than to have no federation at all.

None of these propositions was contested in the brief debate which followed. The Earl of Carnarvon,^{2.} who was a former Secretary of State for the Colonies and who had recently visited Australia, accepted the Bill on behalf of the Opposition and reluctantly agreed that Clause Thirty-One should be retained in view of the experimental nature of the federation. The Second Reading was carried after only two more speeches,^{3.} and a week later the Bill passed through the Committee stage without amendment and with no further debate beyond an explanation by Carnarvon of a misunderstanding which had arisen out of his earlier

1. Ibid., col. 435.

2. Ibid., cols. 438-41.

3. Ibid., col. 441 (Lord Norton) and 442 (Viscount Bury).

1. speech. It is clear that though no members of the House of Lords bore any ill will towards the Bill, few of them felt much enthusiasm for it either. For even those peers who were interested in Australian federation were not able to feel very sanguine about the prospects of the Federal Council while New South Wales and Victoria remained unable to agree.

Meanwhile although the Bill was allowed to pass through the Lords without an amendment being moved, the colonies which objected to Clause Thirty-One were preparing to contest it in the House of Commons. On 23 April the Agents-General for Victoria and Queensland took advantage of Derby's offer to receive written objections to the clause.² Their joint memorandum suggested that if member colonies were enabled to secede at any time, their constant threats to do so whenever they disagreed with a bill would paralyze the Council's activity and keep it on the brink of dissolution. No such clause had been included in the Canadian Constitution, it was pointed out. Particular exception was taken to the newly added provision which would allow a withdrawing colony to abrogate Council legislation unilaterally. Such a provision, the Agents

1. Ibid., cols. 1083-4. (30 April, 1885).

2. Murray Smith and Garrick to C.O., 23 April 1885
C 4397, p.8, Parl.Pap. 1884-5, LIV.

asserted, would enable a colony to sponsor a policy and then sever its own obligations and leave the other members to carry the burden.

Between 8 and 11 May further messages condemning the new provision arrived at the Colonial Office from Victoria and Tasmania, Queensland, and South Australia.^{1.} The last named colony had never had any very firm objection to Clause Thirty-One but had opposed it for the sake of unanimity. In his new cable though, Premier Colston did not disguise the fact that although his Government strongly objected to the new abrogating provision, they would be prepared to accept the Clause as originally proposed.^{2.} The receipt of these messages prompted Sir Robert Herbert to suggest that as opposition to Clause Thirty-One now seemed to be concentrated on the last section of it, which had not been included in the original amendment, it might be a good idea to abandon this provision.^{3.} The Parliamentary Under-Secretary, Evelyn Ashley, enthusiastically supported the suggestion, and Derby gave his assent.^{4.} This meant a return to the Bill as it had stood at the conclusion of the conference between the Secretary of State for Colonies and

1. See C 4407, pp.7-8, Parl.Pap. 1884-5, LIV.

2. Blyth to C.O., 11 May 1885, Ibid., p.8.

3. Minute; 14 May 1885 on Garrick to C.O., 9 May 1885, C.O. 234/46, p.278.

4. Minutes by Ashley & Derby, 14 May 1885, on Garrick to C.O., 9 May 1885, C.O. 234/46, p.278.

the Agents-General on 30 March, although the decision to do so was not immediately announced.

During May 1885 the Bill also came under renewed discussion in Australia as a result of a memorandum adopted by the New Zealand Government on 23 April and sent to the other colonies as well as to Great Britain.^{1.} The main feature of the memorandum was its plea that legislation of the Federal Council should not take effect within any constituent colony until the legislature of the colony had approved it. In support of this plea it was claimed that any normal piece of colonial legislation had to pass through three stages in each of two Houses, giving ample opportunity for public opinion to be formed and brought to bear; Council legislation on the other hand, was to be decided at one stroke by a handful of people, only two of whom would be from their own colony. Such a procedure was completely unacceptable to New Zealand, the Ministers averred, but could easily be remedied in the manner they proposed.

Similar views had been expressed by New Zealand before^{2.} without much attention being paid to them, but on this occasion Samuel Griffith of Queensland responded sympathetically. On 16 May he cabled Sir Robert Stout to

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1. Memo. encl in Stout to Griffith, 2 May 1885, V.A.P. (L.A. of Q.) 1885, 11, p.1104-5.
 2. Memo. by Sir R. Vogel, encl. in Jervois to Derby, 6 Dec. 1884, C 4273, pp.79-80. Parl.Pap. 1884-5, LIV.

enquire whether it would meet his objection if the Bill were amended to allow any colony to specify that Council legislation should not apply within it until adopted by its legislature, without making this the standard procedure for all colonies.^{1.} Stout replied that it would indeed be satisfactory, if Griffith could induce the others to agree,^{2.} but this Griffith was unable to do. Service flatly rejected the proposal as tending to reduce the Council to the status of an intercolonial conference such as had been tried and found inadequate, and thus likely to negate the whole purpose of the federal movement.^{3.} In the face of this opposition from Victoria Griffith declined to press his proposal further,^{4.} but the Government of New Zealand had other ideas.

On 2 June 1885, the Agent-General for New Zealand, Sir Francis Bell, wrote to the Colonial Office bringing to their attention the suggestion made by Griffith and urging that it be incorporated in the Bill.^{5.} When the Queensland Agent-General cabled for instructions as to whether or not to support the proposal which New Zealand was putting

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1. Griffith to Stout, 16 May 1885 (tele) V.& P. (LA. of Q.) 1885, 11, p.1105.
 2. Stout to Griffith, 17 May 1885 (tele), Ibid.
 3. Service to Griffith, 19 May 1885 (tele) Ibid., p.1106, and see Service to Stout, 21 May 1885 (tele), Ibid.
 4. Griffith to Stout, 21 May 1885 (tele) Ibid., p.1108.
 5. Bell to C.O. 2 June 1885, C 4452. Parl.Pap. 1884-5, LV.

forward in the name of his premier, Griffith was placed in a most embarrassing situation, but he continued to act in concert with Victoria.^{1.} However the suggestion was received with favour by the Colonial Office, for in their eyes it had the big advantage that if each colony was allowed to adopt or reject Council legislation it would no longer be necessary to insist on the unpopular Clause Thirty-One. Herbert was sufficiently impressed to draft an amendment along the lines Bell had suggested,^{2.} and the Parliamentary Under-Secretary agreed with him.^{3.} Lord Derby was more reluctant to alter the Bill so radically after it had already been passed by the Lords, but he conceded the merit of the proposal and expressed his willingness to accept such an amendment if it were to be pressed on the Government in the House of Commons.^{4.}

Two days after Derby wrote his minute to this effect the whole issue was thrown back into the melting pot by the defeat of the Government in the House of Commons due to a switch in allegiance by the Parnellite Irish Members.

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1. Garrick to Griffith, 12 & 18 June 1885 (teles), and Griffith to Garrick, 20 June 1885 (tele), V.&P. (LA. of Q.) 1885, II, p.1109.
 2. Minute: 4 June 1885, on Bell to C.O., 2 June 1885, C.O. 209/245, p.461.
 3. Minute: 5 June 1885, on Bell to C.O. 2 June 1885, Ibid.
 4. Minute: 6 June 1885, on Bell to C.O. 2 June 1885, C.O. 209/245, p.461.

A day later, on June 9, Gladstone resigned his commission as Prime Minister. Control of colonial affairs and of the Australasian Federal Council Bill thus passed from Derby's hands, though not from those of his family, for when Lord Salisbury formed a conservative minority government fifteen days later, the Secretaryship of State for the Colonies was assumed by Colonel F.A. Stanley, Derby's brother and heir.

When news of the political upheaval reached Australia it was thought that the Federal Bill would be seriously delayed. There was no guarantee that the Conservatives would be prepared to take up the Bill in the shape that the Liberals had left it; the Government was in a precarious position and would have issues of more moment than Australian federation to worry about; new Ministers would have to be given time to feel their way into their jobs. These fears were soon proven empty however, for Colonel Stanley decided to proceed with the Bill as soon as possible, and the Second Reading was moved in the House of Commons on 9 July, little more than a fortnight after the new Government took office. Stanley made only a very short speech requesting the House to defer discussion until the Committee stage,^{1.} and after one or two members had made brief remarks his request was complied with.^{2.}

1. Hansard, 3rd. Ser., 1885, CCXCIX, 220-22.

2. Ibid., col.222.

On the following day the Agents-General for Victoria and Queensland learned from Sir Robert Herbert^{1.} that Stanley had decided to carry the Bill forward exactly as it had been passed by the House of Lords, except that he intended to move in Committee for the deletion of the final proviso in Clause Thirty-One enabling a withdrawing colony unilaterally to abrogate Council legislation. Clause Thirty-One itself was to stand. Colonel Stanley had also made up his mind not to amend the Bill to meet the wish of New Zealand that Council legislation could be made subject to adoption or rejection by any colony wishing to do so;^{2.} he had thus adopted the same attitude to the Bill as had been held by his predecessor immediately prior to the change of Government. In a later despatch to all colonies after the Bill had been enacted,^{3.} Stanley explained that he would have liked to reconcile the divergent views of the different governments before finalising the Bill, but that he had taken it over at such an advanced stage, and so late in the session, that it would not have been possible to do so without further serious delay. He had therefore judged it best to proceed with the Bill as quickly as possible, sticking to the original draft prepared by the Convention

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1. See Garrick to Griffith, 10 July 1885, V.& P. (L.A. of Q.) 1885, 11, p.1111.
 2. See Minutes of 9 July 1885, on Murray Smith to C.O. 7 July 1885, C.O. 309/129, p.358.
 3. Stanley to all Australasian Governors, 14 Aug. 1885, C 4582, Parl.Pap. 1884-5, LIV.

and the amendments already accepted by the colonies, with the sole exception of Clause Thirty-One.

The only important respect in which Stanley's approach to the question differed from that of Derby was that the new Secretary of State allowed it to be made known that although the Government had decided to retain Clause Thirty-One in the form which Derby had originally proposed in his despatch of December 1884, they would be prepared to continue the Bill without it if its omission were to be moved successfully in the House by a private Member.^{1.}

Victoria and Queensland had already found a member of the House of Commons, Mr. Goschen, who was willing to move this,^{2.} and they were hopeful that they would be able to secure enough support to have his amendment carried.

Before this could be put to the test the progress of the Bill suffered yet another setback. On 15 July the Government of New South Wales broke its long silence on the Bill by forwarding a new set of proposed amendments for the consideration of the Secretary of State for the Colonies.^{3.} Premier Alex Stuart, who had just resumed duties after his long illness, cabled that the Bill was distasteful to his

1. Garrick to Griffith, 10 July 1885, V.& P. (L.A. of Q.) 1885, 11, p.1111.
2. Ibid.
3. Samuel to C.O. 15 July 1885, enclosing Stuart to Samuel, 14 July 1885 (tele) C 4495, p.5. Parl.Pap. 1884-5, LIV.

colony in its present shape and that there would be more chance of their federating if the amendments he suggested were made, though he could not guarantee joining even then. The amendments requested affected five clauses, but the one to which Stuart attached most importance was the alteration of the last subsection in Clause Fifteen so that the consent of all member colonies, rather than of any two, should be necessary for the reference to the Council of additional powers from amongst the comprehensive list which might be so referred.^{1.} The other point on which Stuart was most vehement was that Clause Thirty-One should be included in the Bill. On the arrival of this message from New South Wales the Committee stage of the Bill in the House of Commons was temporarily postponed so that it might be considered.

The Governments of Victoria and Queensland were understandably irritated by the new turn of events. There had been ample opportunity for the Government of New South Wales to make their views known over the previous seven months; even now they did not guarantee to join the Council if their amendments were accepted. Moreover they had not asked the other colonies whether they would agree to the amendments, they had gone straight to the Imperial Government.

1. For a further expression of Stuart's views see Stuart's telegrams to Service, 17 & 18 July, 1885. V. & F. (L.A. of N.S.W.) 1885 2nd Sess., 11, pp. 1088.1089.

Service telegraphed to Stuart in surprisingly moderate terms however,^{1.} informing him that the four colonies which were acting in concert had long since agreed amongst themselves to accept Clause Thirty-One in the form which Lord Derby had originally proposed if this would secure the adhesion of New South Wales and New Zealand. The proposed alteration of the last subsection of Clause Fifteen was not acceptable to the other colonies, but Service suggested that such differences of opinion could be settled once the Council had been set in motion. After a few days of frequent and lengthy telegrams between the colonies,^{2.} Victoria and Queensland instructed their Agents to withdraw opposition to Clause Thirty-One and cancel their plans to secure its deletion in the House of Commons, though opposition to its final abrogating provision was maintained.^{3.} This was not enough to satisfy New South Wales, Stuart insisting that he wanted Clause Thirty-One with the abrogating proviso not without it as the others were prepared to offer, and that his proposed amendment to Clause Fifteen was even more essential.^{4.} At a meeting between Stanley and the Agents-General on 21

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1. Service to Stuart, 17 July 1885, V.& P. (L.A. of N.S.W.) 1885 2nd. Sess., 11, p.1088.
 2. See V.& P. (L.A. of Q.) 1885, 11, pp.1112-14.
 3. Griffith to Garrick, 20 July 1885 (tele), Ibid., p.1113.
 4. Stuart to Samuel, 20 July 1885 (tele) V.&P. (L.A. of N.S.W.) 1885, 2nd Sess., 11, p.1090

July the Secretary of State promised to press on with the Bill as it stood and to permit no alteration save the omission of the abrogating provision.^{1.} This decision ended whatever slim chance there may have been that New South Wales would become an original member of the Council, but under the circumstances Stanley had no real alternative.

Throughout this brief controversy the participants were influenced by the knowledge that the Imperial Parliament was again approaching the end of its session and that a pause for reconsideration might prevent the Bill's enactment. This fear recurred again before consideration of the Bill was resumed by the House of Commons. On 29 July Sir Robert Herbert suggested to the representatives of Victoria and Queensland that in view of the limited time available it might be prudent to pass the Bill as it stood and without removing the abrogating proviso to Clause Thirty-One as Stanley had previously agreed to do.^{2.} At this late hour the two colonies parted company for the first time in the negotiations; Service instructed Murray Smith to acquiesce in this course rather than run the risk of losing the Bill,^{3.} but Griffith instructed Garrick to continue to urge the "insuperable objections" to the abrogating proviso.^{4.} In the event the Queensland stand proved to be

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1. Samuel to Stuart, 21 July 1885 (tele), Ibid.
 2. See Service to Griffith, 31 July 1885 (tele) V.& P. (L.A. of Q.) 1885, 11, p.1115.
 3. Ibid.
 4. Griffith to Garrick, 1 Aug. 1885 (tele), Ibid.

justified, for Herbert and Stanley agreed to proceed with the amendment,^{1.} which was accepted by Parliament without demur or delay. For after all these vicissitudes the Bill passed safely through the Committee stage in the House of Commons on 4 August 1885.

The only member to offer any extended remarks on the Bill was the jurist, Bryce,^{2.} who was extremely critical of the rudimentary nature of the Council which was to be established, but willing to accept it as the creation of the colonists themselves, and as the first step to something better. It was interesting that Bryce saw the main value of the Bill as lying in the introduction of uniformity of legal process in several respects, the only powers over domestic matters assigned to the Council. His attempt to extend this by amending the Bill to give a power over bankruptcy to the Council was blocked by Stanley, who requested that no such amendments should be made but undertook instead to direct the attention of the colonies to the point.^{3.} This stand by Stanley was not of much importance at the time, but was cited by Chamberlain in 1900 as a precedent for declining to allow private amendments to the Commonwealth Constitution Bill. The only amendment to the Bill was thus Stanley's uncontested motion for the deletion

1. Garrick to Griffith, 7 Aug. 1885. Ibid., p.1116.

2. Hansard, 3rd. Ser., CCC,1120-23.

3. Ibid., col. 1123.

of the abrogating proviso to Clause Thirty-One.^{1.} The Clause in its original form was retained without challenge since the federating colonies had dropped their plans to oppose it, as a sop to New South Wales.

In general the debate was brief and quiet with few members showing any interest in the Bill and no one showing any confidence in the future of the Council. Following it the Bill was passed through all its final stages without further debate in either House. On 14 August the Federal Council of Australasia Act 1885^{2.} received the Royal Assent.

Of course this Act of the Imperial Parliament was only an enabling measure which was not to take effect until it had been adopted by at least four colonies. In a general despatch to the Australasian colonies which announced its completion, Colonel Stanley urged them all to do this promptly and bring the Federal Council into operation.^{3.} Lord Derby's stratagem of linking the Federal Council and Australasian interests in the Pacific was cunningly revived in the despatch, in an endeavour to induce New South Wales and New Zealand to participate:

1. *Ibid.*, col. 1124.

2. 48 & 49 Vict. (Ch.60).

3. Stanley to all Australasian Governors, 14 Aug. 1885, C 4582. Parl.Pap. 1884-5, LIV.

"It must be probable that the consideration of this country and the colonies with the Islands of the Pacific will be among the first subjects to which the Council, when constituted, will address itself. Her Majesty's Government would of course give their best attention to the separate recommendations of New Zealand and New South Wales on such a subject; but it is obvious, as my predecessor insisted with much force, that if the Colonies, not having consulted and acted together, do not unite in their recommendations, the power of Her Majesty's Government to advance British interests must be greatly diminished." 1.

Stanley could scarcely have given a more direct hint short of a threat or a command, but Australian interest in the Pacific was not as sharp as it had been and his words did not arouse much response.

The Government of New South Wales had said its last word on hearing that the Act had been passed without their amendments, Stuart cabling that New South Wales would be precluded from joining and that the "Bill therefore now a misnomer should be Federal Council for parts of Australia".^{2.} In subsequent correspondence with Service, Stuart suggested that it had been tactically unwise to deny the colonial parliaments any opportunity to amend the Constitution drafted by the Convention.^{3.} This had aroused much suspicion in his colony, Stuart said, and caused many people to oppose the Bill who might have supported it with

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1. Ibid.
 2. Stuart to Samuel, 6 Aug. 1885 (tele) encl. in Samuel to C.O., 6 Aug. 1885. C.O. 201/604, p.72.
 3. Stuart to Service, 7 Aug. 1885, V. P. (L.A. of N.S.W.) 1885 2nd. Sess., 11, p.1091.

a few amendments. In addition to the reasons Stuart gave it is clear that New South Wales was reluctant to enter a federation in which all colonies had equal representation, so that an alliance of small colonies could overrule the larger ones.

New Zealand also resisted Stanley's blandishments in this and a subsequent despatch,^{1.} its parliament resolving in September 1885 not to join the Council.^{2.} Sir Robert Stout pointed out to the Colonial Office that neither of the amendments to the Bill suggested by his Government had been accepted, that there were few supporters of federation in the colony, and that even they did not approve of the Federal Council.^{3.} New Zealanders generally did not feel themselves to belong to Australia, indeed many felt themselves to be closer to Britain, and imperial federation was frequently spoken of as more important than the colonial variety.^{4.} Moreover in New Zealand the implications of interest in the Pacific were different. Dreams were cherished of an oceanic

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1. Stanley to Jervois, 14 Jan. 1886, C 48+1, p.19. Parl.Pap. 1886, XLVI.
 2. Journals of the House of Reps. of N.Z., 1885, p.307.
 3. Stout to Jervois, 20 Nov. 1885 encl. in Jervois to Stanley, 5 Dec. 1885, C 48+1, pp.19-22, Parl.Pap. 1886, XLVI.
 4. See the debate of 7 Sept., P.D. (N.Z.) Vol.LIII, pp.528-45.

confederation embracing many of the island groups of the Pacific and with New Zealand as its centre, and it was feared that Australian federation might interfere with this.^{1.}

Naturally the colonies which were most interested in setting up the Council were those which had been pressing for the enactment of the Federal Bill, though curiously enough the first to complete an adopting act was Western Australia. Immediately after the passing of the Bill Victoria asked the Colonial Office to authorise the participation of Western Australia and Fiji,^{2.} but Herbert felt that these Crown Colonies should not be encouraged to join until the character which the Council would assume had clarified itself.^{3.} The energetic Governor Broome of Western Australia pressed ahead however, and on 14 September he cabled London for permission to include a provision allowing the Governor himself to represent the colony on the Council, in the adopting bill which he was about to introduce into the Western Australian Legislative Council.^{4.} Herbert advised Stanley that this would not be desirable although there would be no harm in leaving room

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1. Ross, New Zealand Aspirations, p.156.
 2. Murray Smith to C.O. 12 Aug. 1885. C.O. 309/129, p.391.
 3. Minute, 13 Aug. 1885, on Murray Smith to C.O., 12 Aug. 1885, Ibid.
 4. Broome to Stanley, 14 Sept. 1885 (tele) C 4841, p.8. Parl.Pap. 1886, XLVI.

for the Governor to attend the Council in special

1. circumstances. Governor Broome was therefore directed by cable to delete the Clause controlling selection of the colony's representative altogether, as this could be settled by resolution later.^{2.} At the same time despatches were sent by seemail to both Western Australia and Fiji acquiescing in their participation in the Council and proposing that each should normally be represented by a member of the local Legislative Council to be nominated by the Governor.^{3.} Broome partially disregarded the cable, and did not wait for the despatch; instead he revised the Bill to provide that the representative of Western Australia should be appointed by the Governor without any indication of, or restriction on, who might be appointed. By September 23 the Bill had been passed in this form,^{4.} and though Broome's precipitate action earned him a mild rebuke from Colonel Stanley,^{5.} it was allowed to stand. A month later, on the arrival of Stanley's despatch, Fiji passed an adopting ordinance.^{6.}

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1. Minute: 16 Sept. 1885, on Broome to Stanley, 14 Sept. 1885, C.O. 18/20+, p.526.
 2. Stanley to Broome, 19 Sept. 1885 (tele) C 48+1, p.8. Parl.Pap. 1886, XLVI.
 3. Stanley to Broome & Thurston, 9 Oct. 1885, Ibid., pp.8-9.
 4. 49 Vict. No. 24.
 5. Stanley to Broome, 21 Dec. 1885, C 48+1, p.15. Parl. Pap. 1886, XLVI.
 6. Thurston to Stanley, 18 Oct. 1885, Ibid., p.14.

In the meanwhile, Victoria and Queensland had continued to act in concert by jointly preparing an Adopting Bill, the actual drafting being mainly the work of Griffith, which they hoped would be uniformly enacted by all the other colonies joining the Council.^{1.} This Bill was introduced in the Legislative Assemblies of both colonies on 20 October 1885, and was in each case passed and assented to by early November.^{2.} In Queensland there was virtually no opposition to the Bill, but fear was expressed that the colony might find itself saddled with a federation of minor colonies such as Western Australia, Tasmania, and Fiji, if it joined the Council before any of the other major colonies had made up their minds. Griffith explained that he had at one stage planned to make Queensland participation conditional on any two of Victoria, New South Wales and South Australia joining, but had been dissuaded by Victoria.^{3.} However to meet the objection he accepted an amendment making Queensland membership of the Council conditional on one of these other three colonies deciding to join.^{4.} This condition was met shortly

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1. See Service to Douglas, 31 Aug. 1885 & enclosures, J. & P. (Fed.Co.) Vol.1, Paper 5, pp.61-3.
 2. For the second reading debate in each case see, P.D. (L.A. of Q.) Vol.XLV11, pp.1131-6; and P.D. (Vic.) Vol.49, pp.1512-44, & Vol.50, pp.1557-74, 1587-1612.
 3. P.D. (L.A. of Q.) Vol. XLV11, p.1133.
 4. Ibid., p.1397.

afterwards when Victoria passed the Adopting Bill.

Although the vote in favour of the Bill was also unanimous in Victoria, the tone of the debate was much more critical of the proposed Council. The changes made to the Constitution of the Council by the British Government were attacked by many speakers,^{1.} but this was probably only a reflection of the more critical attitude to federation which was developing as interest in the Pacific receded. If amendments to the Constitution of the Council had been possible at this stage it is likely that some would have been made. As it was, the only important amendment to the Adopting Bill^{2.} concerned the mode of representation, which varied a little from colony to colony but was generally confined to members of Parliament, to be appointed by the Governor in Council, and was in normal circumstances likely to be drawn from the Governments of the day.

Tasmania also passed an Adopting Act similar to those of Victoria and Queensland,^{3.} but in South Australia the critical attitude towards federation which had appeared in Victoria became even more noticeable. In the course of the Second Reading debate in the Assembly on

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1. P.D. (Vic.) Vol.49, p.1518 (Bent), pp.1522-8 (Pearson), p.1536 (Davies), Vol.50, pp.1558-60 (Smith), pp.1562-7 (Quick).
 2. P.D. (Vic.) Vol.50, p.1442.
 3. 49 Vict. No.10.

the Adopting Bill, Mr. Ward moved the omission of all words after "That" with a view to inserting "it is undesirable to proceed with this Bill at present"^{1.} The debate dragged on over many weeks with a series of hostile speeches being made,^{2.} and shortly before the end of the session the Government decided to withdraw the measure.^{3.} The Governor of South Australia, Sir William Robinson, told Colonel Stanley in a confidential despatch that he believed the Government to have been afraid of an adverse vote which might have cost them their position.^{4.} He added that he had "used every constitutional means to secure the success of the Bill and am personally much disappointed at the turn which events have taken". In the opinion of some members of the Assembly Robinson had used more than constitutional means, for he came under fire for making a public speech in favour of the Federal Council while the Bill was before the House,^{5.} and may indeed have done his cause more harm than good.

Despite this setback in South Australia, and the continued hostility of New South Wales and New Zealand to the Council, by the end of November five colonies had

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1. Proc. of Parlt. (S.A.) 1885, 1, p.263.
 2. P.D. (S.A.) 1885, Cols.1355-64 (Ward), 1364-5 (Burgoyne), and 1431-7 (Rees)
 3. Proc. of Parlt. (S.A.) 1885, 1, p.274.
 4. Robinson to Stanley, 4 Dec. 1885 C.O. 13/143, p.184.
 5. P.D. (S.A.) 1885 cols.1692 (Symon), 1695 (Ward).

adopted the Federal Council of Australasia Act initiated by the Convention of 1883 and enacted by the Imperial Parliament. On 1 December 1885, this Act came into operation and plans were at once begun for an inaugural meeting of the Council to be held early in the following year.

Between 1883 and 1885 the federal movement had thus been transformed by a sudden surge of interest in various questions relating to the islands of the Pacific, and the lack of sympathy shown by the British Government with Australian aspirations in the area. The creation of the Federal Council was almost entirely a consequence of this ferment about the Pacific and drew but little of its inspiration from former federal schemes advocated by Earl Grey, Deas Thompson, Wentworth, Duffy or Parkes, though these may have influenced its form. Nor was the Council to any appreciable extent a product of the socio-economic developments in Australia which were gradually creating conditions more favourable to federalism. It is true that the isolation and independence of the colonies were slowly being broken down by their increasing economic interdependence, by the growth of transport and communications between them, and by the evolution of "Australian" attitudes shared by people in all colonies to various social and political questions. But in the early

eighteen eighties these developments had not moved far enough, nor their implications become sufficiently obvious, to offset the traditional parochialism and mutual suspicion of the colonies.

In July 1883 when reporting on the completion of the Melbourne to Sydney rail link, and before the excitement about New Guinea had become very intense, Governor Loftus of New South Wales predicted that "a Federation of all the colonies, however eloquently and forcefully expounded at Public Banquets and however flattering to the national feeling will still remain for some time an ideal hope which will not be realised until external danger or the force of internal exigencies prove the necessity of a complete union"¹. Although the failure of successive intercolonial conferences to deal effectively with many common problems had demonstrated the weakness of this method, none of the internal problems of the colonies yet seemed pressing enough to convince the colonists that federation was necessary. It required the external threat which some colonial leaders discerned in European intrusion into the Pacific to bring about the formation of a Federal Council, and even then the limited nature of the threat was sufficient to evoke only a limited and

1. Loftus to Derby, 10 July 1883, C.O. 201/598, p.451.

incompletely representative Council. Most of the brief list of powers given to the Council related either to the Pacific itself or to other matters external to the colonies; no domestic powers of importance were among them.

Precisely why it was that in the early eighteen eighties the colonists suddenly became so agitated about European activities in the Pacific and anxious to secure the various island groups to themselves, it is a little difficult to explain. The highly vocal missionary interest which feared exclusion from territories falling into foreign hands was certainly important in Victoria. The desire of the plantation interests to protect the sources of their coloured labour carried some weight in Queensland. In a country which had successfully fought for the abolition of convict transportation well within living memory, there was a genuine horror that the Pacific might become a receptacle for the dregs of Europe, and among some classes at least there was an encompassing desire to preserve their new world from the social and political evils of the old one. The hope that the Pacific might be reserved as an exclusively Australian field for trade and investment was another important factor, though this is difficult to reconcile with the relatively moderate attitude of New South Wales on which most of the existing

trade was centred, and with the paucity of investment in New Guinea both before and after this period. The major argument advanced by the colonists was the strategic need to prevent any great power securing a foothold in the vicinity of Australia. There was certainly widespread apprehension about this, and the oft expressed fears were eventually vindicated by Germany's annexation in New Guinea, but it is doubtful whether Bismarck had decided upon this step, let alone that the colonies had reliable evidence of it, at the time when Queensland attempted its preventive annexation. Undoubtedly the young colonial communities enjoyed the opportunity to make their presence felt in the wider world without the hampering responsibilities of more mature countries, and some politicians played up to an appreciative audience. However from the point of view of the federal movement the significant thing is not so much why the colonies became aroused about these matters at this time, but the simple fact that they did so; and although Service, McIlwraith and Murray Smith were often extravagant in their claims and their language, there is ample testimony that whatever the reasons, feeling in the colonies did run high.

Even then the activities of France and Germany in the Pacific might not have been enough to bring about the

formation of the Federal Council had the matter been handled differently by the British Government. The unfortunate Derby again and again was torn between distaste for the demands of the colonists and reluctance to alienate them and risk the possible loss of the colonies by rejecting their demands. His usual solution was to delay decisive action as long as possible and refer everything to the Cabinet - a Cabinet which was chronically divided within itself, pre-occupied with Ireland and Egypt, and dominated still by a Prime Minister who was completely out of sympathy with the emergent imperialism of the colonies. Thus even when Derby had reconciled himself to assuming control of the whole of New Guinea, the opposition of Gladstone and other senior Liberal Ministers, reinforced by the false conviction of the Foreign Office that no other power was interested in the island, delayed a decision long enough to let Germany in. Once Germany's claim to North Eastern New Guinea had been made, the exigencies of the European situation demanded that it should be accepted. Even where the British Government did its best to act in the interests of the colonies it did not bother to keep the colonists adequately informed of what was being done, and showed little awareness of the strength of their feeling. To some extent the colonists must share the responsibility for the limited extent to which they were able to achieve their goals in the

Pacific. All too often the major goals of annexing New Guinea and securing the cessation of French transportation were obscured by demands for the complete exclusion of all other countries from the South Pacific, which alarmed the British Government and gave them an excuse to do nothing at all. Different spokesmen for different colonies contradicted each other, or at best stressed different questions, and despite the efforts of Service and Griffith at co-ordination, Australasia as a whole did not present a consistent and coherent case.

The combination of neglect and apparent indifference of Britain towards Australasian aspirations in the Pacific, and an awareness in the colonies that they had weakened their position by failing to speak with a united voice, together with the direct hints given by Lord Derby and his advisers that greater unity among the colonies would improve their prospects of achieving their aims gave the movement for the Federal Council such strength as it had. Although Her Majesty's Government did not, as has sometimes been suggested, deliberately oppose Australian ambitions in order to provoke the colonial leaders into federating, their action did have this effect. Many of those who sponsored the Federal Council legislation in different colonies did so because they believed it to be a necessary preliminary to Pacific

annexation. In addition the widespread dispersion of public enthusiasm for such annexation meant that for once people in all colonies were thinking about the same subject at the same time and in much the same terms. For once a national rather than colonial attitude to a major issue could be discerned, and the events of this period thus helped to stimulate the growth of a genuine Australian nationalism which was essential if any more ambitious plan for Australian unity was to succeed.

It should be noted though, that although this public agitation was to some extent able to carry the Federal Council on its back, it was as yet only an agitation about Australia and the Pacific, and not about federation. There was little public interest in federation for its own sake, and this was immediately reflected in the decline of enthusiasm for the Federal Council once the New Guinea and French recidivist issues neared settlement. This was not recognised by many contemporary observers, but the Times pointed out in a brilliantly perceptive leader of 9 December 1885, which hailed the adoption of the Federal Council Act by five colonies, which meant that the establishment of the Council was certain, that :

"The French Assembly did an unkind act to the unborn Federal Australasian Council in mitigating the more menacing aspects of the transportation measure. Lord Derby was unkind still in the compromise he concluded with Prince Bismarck by which Great Britain and Germany divided the more accessible portions of New Guinea. A primary consequence has been that before the late Parliament had passed its enabling Act Australia ceased to feel any very lively concern for the union the measure licensed."

Australian excitement about the Pacific lasted long enough to bring the Federal Council into being, but subsided too soon to give it a fair start.

Chapter Three.FEDERAL DEFENCE AND THE CONVENTION of 1891.

Each of the five colonies which had passed adopting legislation was represented at the first meeting of the Federal Council, held in Hobart during January and February, 1896. The three self-governing colonies each sent their premier and one other minister, which meant that Service and Griffith, the chief architects of the Council, were both present, Service being chosen as first President of the Council. Western Australia's representative, by direction of the Colonial Office, was J.G. Lee Steere; from Fiji came William McGregor, Chief Medical Officer and Acting Colonial Secretary.

At this opening session much time was taken up by generalised speeches about the federal movement and prospects for future development of the Council. Standing rules and orders were established, and various machinery measures related to the working of the Council itself were passed, so that an appearance of busy-ness was created and the paucity of subjects on which the Council could legislate was partially disguised.^{1.} In addition, two useful Acts were passed under those powers which the Council did

1. See J. & P. (Fed. Co.) vol.1.

have, one to authorise the service of civil writs issued by the Supreme Court of any member colony within the boundaries of any other member colony, and the other to provide for the enforcement of the judgments of the Supreme Court of any member colony within any other colony^{1.} belonging to the federation.

Of the various issues related to the Pacific which had been so directly responsible for the creation of the Council, only the future of the New Hebrides was still a matter of controversy at the time it met. Since 1878 there had been an understanding between France and Great Britain that neither power would interfere with the independence of the Group, but whilst the Council was in session reports were received from London of a new Franco-German colonial agreement which included a provision that Germany would do nothing calculated to prevent France^{2.} occupying the New Hebrides. Although the British Government had, in the previous year, pledged itself not to entertain any such proposal without consulting the colonies^{3.} and securing conditions acceptable to them, this report

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1. Australasian Civil Process Act, 1886; Australasian Judgments Act, 1886.
 2. Murray Smith to Service, 3 Feb. 1886 (tele), J. & P. (Fed.Co.) 11, Paper 5, p.11.
 3. Hansard, 3rd Ser., CCXCV, 971. (Ashley, 12 March 1885) & Derby to Loch, 18 May 1885, C 458+, p.136. Parl.Pap. 1885, LV.

caused great alarm. The Council at once passed an Address to the Crown praying that further steps might be taken to secure the New Hebrides against foreign acquisition.^{1.}

The Colonial Secretary replied that the Franco-German agreement did not affect the Anglo-French understanding,^{2.} but while the matter was in the air the French Government made fresh overtures for the revision of that understanding. Freycinet, who succeeded Jules Ferry as Foreign Minister, offered to terminate all types of transportation to the Pacific, and possibly to cede the island of Rapa, in return for a free hand in the New Hebrides.^{3.} The Colonial Office was mildly attracted by this proposition but failed to carry the colonists with them. Once again the new federal machinery was invoked, for although the Council delegates had dispersed before the French offer was communicated to the colonies, a Standing Committee under the chairmanship of Griffith had been appointed to handle Council business between sessions. After some consultation with other governments Griffith informed the Secretary of State for the Colonies that all colonies represented in the Council, except Fiji which could not be communicated with, were opposed to the New Hebrides falling into French hands even under the new

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1. J. & P. (Fed.Co.) I, pp.37-8. (5 Feb. 1885).
 2. Granville to Strahan, Feb. 1886, J.& P. (Fed.Co.) II, Paper 5, p.13.
 3. W.P. Morrell, Britain in the Pacific Islands (Oxford, 1960) pp.201-3. See Murray Smith to Service, 24 Feb. 1886 (tele), J.& P. (Fed.Co.) II, Paper 5, p.16.

conditions offered. If France could not secure new territory in the Pacific, he said, she would probably have to stop sending prisoners there anyway, because New Caledonia had reached saturation point.^{1.}

Of the three colonies outside the federation only South Australia unequivocally endorsed Griffith's reply.^{2.} The Government of New Zealand also expressed opposition to French annexation of the New Hebrides,^{3.} but in uncertain and ambiguous terms which encouraged the Colonial Office to believe they might be won round. Only in New South Wales did the Government definitely favour acceptance of the French offer,^{4.} and their decision was endorsed by the Legislative Assembly which overwhelmingly defeated three condemnatory resolutions moved by Parkes.^{5.} The Colonial Office staff were somewhat exasperated by the refusal of the other colonies to accept this chance to secure the abolition of the French transportation about which they had complained for so long.^{6.} Earl Granville, Colonial Secretary in the new Liberal Ministry which was formed in February 1886 following the defeat of the Salisbury Government at

1. Griffith to the C.O., 19 March 1886 (tele), forwarded by Garrick, 22 March 1886. C.O. 234/47, p.432.
2. Downer to Gillies, 16 March 1886 (tele), J.& P. (Fed.Co.) II, Paper 5, p.24.
3. See Stout to Gillies, 5 & 7 March 1886 (teles), J.& P. (Fed.Co.) II, Paper 5, pp.27-8.
4. Carrington to Granville, 25 March 1886 (tele), C.O. 201/605, p.50.
5. P.D. (L.A. of N.S.W.) First Ser., XIX, p.1375.
6. Herbert, Minute, 24 March 1886 on Murray Smith to C.O. 22 March 1886. C.O. 234/47. p.432.

the General Election late in 1885, was bound by the promise of his predecessors that the wishes of the colonists would be adhered to. However New South Wales was given such support as was possible,^{1.} and it was pointed out to the other colonies that if the French offer were refused it would be difficult to continue protests about transportation.^{2.}

Any hope there may have been that the attitude of the colonists could be softened was lost a few weeks later, when a party of French troops was despatched to the New Hebrides from New Caledonia to restore order following the murder of several French citizens. This action aroused fresh protests in Australia, particularly from the Standing Committee of the Federal Council,^{3.} and eventually led to a new Anglo-French Agreement that the interests of both countries in the New Hebrides should be protected by a mixed Naval Commission. Although this solution was accepted in principle by all parties by October 1886,^{4.} there was a further long delay whilst France considered the proposed Convention, during which her troops remained in the islands.

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1. See Minutes on Samuel to C.O., 30 March 1886, C.O. 201/605, p.462 ff.
 2. Bramston to Agents-General, 22 April 1886, J.& P. (Fed.Co.) II, Paper 5, p.53-4.
 3. Report of the Standing Committee, J.& P. (Fed.Co.), II, Paper 1, p.4.
 4. Morrell, Britain in the Pacific Islands, p.203.

At a secret session of the Colonial Conference held in London in 1887, Lord Salisbury, Prime Minister again from August 1886 following the defeat of Gladstone's Home Rule Bill and the consequent general election, apparently revived the idea that France might be allowed the New Hebrides in return for a cessation of transportation. However vigorous opposition led by Alfred Deakin of Victoria quashed the plan again,^{1.} in favour of the proposed Convention. As this had still not been concluded in August 1887, the Victorian Government complained once more,^{2.} and Sir Henry Holland, Salisbury's Secretary of State for Colonies, asked the Foreign Office to back up the colonial protest with a threat that British troops would be sent to the New Hebrides if France did not withdraw her own and finalise the agreement.^{3.} By the end of the year the New Hebrides Convention had been signed,^{4.} and the joint naval control it established remained in force until 1906. This solution was not an ideal one so far as the colonies were concerned but it did put an end to the uncertainty about the future of the New Hebrides. France continued to send

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1. A. Deakin, The Federal Story (2nd. Rev. Ed. Melbourne, 1963) pp. 21-3.
 2. Clarke to C.O., 26 Aug. 1887, C.O. 309/131, p.659.
 3. Minutes, Herbert, 28 Aug. 1888 & Holland, 30 Aug. 1888, on Clarke to C.O., 26 Aug. 1887, C.O. 309/131, p.659.
 4. Copy of the Convention, J. & P. (Fed.Co.) II, Paper 10.

convicts to New Caledonia until 1897, including some recidivists, but apart from a further Address of complaint passed by the Federal Council in 1888,^{1.} this issue also ceased to attract attention in Australia. Indeed it is doubtful how much the public at large was still interested even in 1888.

Although the Standing Committee of the Federal Council had been active in 1887, the Council itself did not hold its second meeting until January 1888. The number of member colonies had not increased during the two year interval despite the efforts of Sir William Robinson to induce his Government in South Australia to pass the necessary legislation.^{2.} Only one Act was passed at the Second session, the Queensland Pearl Shell and Beche-de-Mer Fisheries (Extra-territorial) Act,^{3.} an ingenious measure which used the Council's power to control fisheries in Australian waters outside territorial limits, in order to extend Queensland's control of these industries. This Act, plus the Address complaining about French transportation, and a decision to ask the Standing Committee to find means to secure the adhesion of those colonies which had not joined,^{4.} added up to a meagre achievement for the session.

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1. J.& P. (Fed.Co.) II, p.11.
 2. Robinson to Holland, 18 Nov. 1886, C.O. 13/144, p.274.
 3. No.1 of 1888.
 4. J.& P. (Fed.Co.) II, p.8.

To many people it looked very much as though the Council was dying on its feet, and this impression was confirmed by the fact that the main question of intercolonial and imperial interest at issue in 1888 was settled quite outside the Council framework. This was the question of Chinese immigration into the colonies. Since the large influx of Chinese into Australia during the gold rush decade, 1850 to 1860, there had been periodic outbursts of anti-Chinese feeling, and discriminatory legislation had been passed by most colonies at various times. This had culminated in the early eighteen-eighties in the enactment by all colonies of approximately uniform^{1.} legislation to restrict the entry of Chinese. In 1887 the Chinese Government protested about this discrimination against their people, and in January 1888 Lord Knutsford, as Sir Henry Holland had become, enquired about the situation in a circular despatch to the Australian^{2.} colonies.

Knutsford's despatch arrived in Australia just as the colonists were becoming excited once again by the arrival of a large number of Chinese through the Northern Territory, and by alleged evasions of the existing

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1. For details of anti-Chinese sentiment and legislation before 1888 see, M. Willard, History of the White Australia Policy (Melbourne, 1923) Chs. 2 & 3.
 2. Knutsford to Australian Governors, 23 Jan. 1888, C 5448, p.2. Parl.Pap., 1888, LXXIII.

restrictions. The actual number of Chinese in Australia had increased only slightly since 1881, but the presence of even a small minority group was repugnant to the developing Australian nationalism. Each of the colonies requested the British Government to negotiate with China a treaty which would prevent the entry of Chinese to Australia,^{1.} but before this could be done public opinion in Melbourne and Sydney was brought to fever pitch by the arrival of four ships bearing Chinese immigrants far in excess of the permitted quotas, many of them with fraudulent naturalisation papers.^{2.} Sir Henry Parkes, Premier of New South Wales once more, refused to allow them to land, in contravention of the existing law, and hastily introduced a new and more severe excluding Bill. Unfortunately a false rumour had gained currency in Sydney that Her Majesty's Government was not prepared to negotiate the treaty requested, and although Knutsford specifically denied this when appealed to by the Government of New South Wales,^{3.} he dallied for over a fortnight before making the denial. Moreover although Knutsford briefly indicated on several occasions that Her Majesty's Government was considering the various messages which had

1. Ibid., pp.2, 14-15, 21-2.

2. See Willard, White Aust. Pol. pp.84-8.

3. Carrington to Knutsford, 26 April 1888 (tele), Knutsford to Carrington, 11 May 1888 (tele), C 5448, pp.11,20. Parl.Pap. 1888, LXX111.

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 been received on the subject from the colonies, several months elapsed without any definite indication being given as to what action it proposed to take.

This prolonged silence on the part of Knutsford allowed the feeling to develop in New South Wales that Britain was not interested in its problems nor concerned about its welfare, and encouraged the Government to proceed with its drastic emergency legislation. It is probable that the British authorities did not realise at first how strong colonial feeling was on the matter, but the delays were occasioned mainly by the need to wait for seaborne despatches before there was enough information available for action to be initiated. Lord Knutsford was able to defend himself convincingly in the House of Lords against the charge of indifference to the wishes of the colonists, and promised that Her Majesty's Government would negotiate with China as soon as they were in full possession of the facts,² but by this stage the Chinese Restriction Bill had been passed by the Assembly and was through its second reading in the Council. In the course of debate upon it many members had spoken bitterly of British apathy and opposition to the colony's interests, and none more so than

1. e.g. Knutsford to all Australian Governors, 18 May 1888 (tele), *Ibid.*, p.27.
 2. Hansard, 3rd. Ser., CCCXXVI, 1513-17. (8 June 1888).

Parkes himself, who declared with a flourish, "neither for Her Majesty's ships of war, nor for Her Majesty's representative on the spot, nor for the Secretary of State do we intend to turn back from our purpose, which is to terminate the landing of Chinese for ever"^{1.} Much of this was unnecessary bombast, but there is little doubt that Parkes genuinely feared the consequences of Chinese migration, or that he had the population very solidly behind him. As he pointed out in a letter to Lord Carrington,^{2.} the sympathetic Governor of New South Wales, many Legislative Councillors disliked the Restriction Bill, but they had allowed it to pass without a division because they were aware of the vehement support for it that existed in the community.

As a result of Parkes' action in preventing the newly arrived shiploads of Chinese from landing, and the co-operative attitude of the British Government which had at last become apparent, excitement in the colonies abated from June, 1888. An intercolonial conference met in Sydney and agreed that the most desirable method of excluding the Chinese from Australia was by diplomatic negotiation between Great Britain and China, but that in the meantime local legislation should be tightened up.^{3.}

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1. P.D. (L.A. of N.S.W.) First Ser., XXX11, p.4787.
 2. Parkes to Carrington, 8 June, 1888. (Carrington Papers)
 3. For a summary of the Conference see, Carrington to Knutsford, 14 June 1888 (tele), C 5448, pp.43-4. Parl. Pap. 1888, LXX111.

The bill which was drafted for uniform enactment by all colonies was more restrictive than any previous laws on the subject, with the partial exception of that pending in New South Wales, but was more tactfully framed so as to make it less offensive to China. Following the conference Knutsford arranged for discussions about a migration treaty^{1.} to be opened with the Chinese Government, but they came to nothing, largely owing to a lack of co-operation from the colonies. Most of the colonies passed Acts along the lines suggested by the Conference however, and were thus^{2.} adequately protected without a treaty.

In the short term, the colonies had been able to settle this problem fairly well without need of a federation, and by the end of 1888 the immediate excitement about Chinese migration had died away. In the long term however, the question was just as important for the federal movement as the comparable excitement about Pacific annexations a few years earlier; for the desire to preserve Australia for the Australians was a most important element in the nationalism which was developing in the colonies. Certainly the failure of the Federal Council to participate in the handling of the question is indicative of the failure of that body to find a place for itself in the mainstream of

1. Salisbury to Walsham, 22 June 1888, Ibid., pp.49-50.
 2. See Willard, White Aust. Pol., pp.91-4.

Australian political life.

However the third session of the Council, held in January 1889, partially rehabilitated its reputation. Late in the previous year South Australia had at last passed an Adopting Act^{1.} which enabled it to be represented for the first time, so that only New South Wales of the genuinely Australian colonies still remained aloof. Moreover in the course of the session it was resolved to increase the size of the Council by relating the representation of each self-governing colony to the size of its population;^{2.} at the extremes of the proposed scale a colony of less than 100,000 people was to have two representatives, a colony of more than 700,000 was to have six. The alteration was expected to increase the influence of the Council and make it more attractive to New South Wales since there would be less possibility of the small colonies dominating the large ones. This revision of the basis of the Council was never actually carried out, the British Law Officers holding that it could not be done by Order in Council as hoped and would require amendment of the original Act,^{3.} but in 1889 it seemed that the position of the Council was improving. Whilst the general business transacted at this third session was not spectacular, it was at least equal to

1. 51 & 52 Vict. No.440.

2. J.& P. (Fed.Co.) III, p.24.

3. Law Officers' Opinions, 1884-91, No.171. Misc. C.P., No.52, C.O. 885/13.

that of the previous two sessions, and there was an air of buoyancy to the debates.

It was at this point that New South Wales, in the person of its Premier, Sir Henry Parkes, attempted to reclaim the federal initiative. Parkes had of course long been interested in federation, but he had been strongly critical of the establishment of the Federal Council and had declined to take New South Wales into it. It has often been claimed, probably with some truth, that the timing of his new move was directly prompted by the fear that the Council, despite the abstention of the senior colony, was about to make itself into an effective body.^{1.} Certainly the Federal Council had no place in Parkes' plans, and the new phase of the federal movement which he initiated, though not itself ultimately successful, put paid to any prospect there may have been that full federation would develop through the Council.

The key to this new phase was the need to federate for defence reasons. This was the major reason given by Parkes for re-opening the question, and his move was associated with the release of a report by a visiting officer of the Imperial Army in which the federation of the defences of the colonies was recommended. Federation of

1. A. Deakin, "The Federation of Australia", Scribner's Magazine, 1891, p.555; and, The Federal Story, p.17.

defence forces meant federation of the colonies, Parkes argued, federation of a much more thoroughgoing type than was provided by the Federal Council.

Professor Jenks in his The Government of Victoria (Australia) published in 1891, suggested that there had always been a link between interest in federation and concern about defence. The three previous efforts towards federation, he said, were in 1856 (Select Committees in New South Wales and Victoria), 1870 (the Duffy Royal Commission in Victoria), and 1881-3, and these had coincided with the Crimean War, the Franco-Prussian War,^{1.} and alleged aggressive activity by France in the Pacific. The last link cited by Jenks has already been emphasised, but the other correlations, though accurate, are possibly misleading. It is not clear for example, that the federal initiatives of 1856 and 1870 were any more significant than those of 1860 and 1867. Neither is it clear that the wars of 1856 and 1870 were responsible for the interest in federation in those years, the Franco-Prussian War in particular, being of little concern to Australia. On the other hand the Gavan Duffy Royal Commission was connected with the final withdrawal of the Imperial garrisons from

1. E. Jenks, The Government of Victoria (Australia), (London, 1891) p.373.

the colonies, and in a general way it is undoubtedly true that the two questions of federation and defence were related.

Following the withdrawal of imperial troops which had been commenced by Earl Grey in the 1850's and was complete by 1870, each of the colonies had undertaken responsibility for its own defences.^{1.} However the initiative of the Victorian Government in the 'sixties in inducing the British Government to give them a ship to be manned and maintained by the colony for defence of local waters was not sustained, and the colonies continued to rely on the Royal Navy for protection outside their boundaries.^{2.} The coastal defence works and volunteer forces of the various colonies were completely unco-ordinated, and varied considerably in scope and character.

During 1876-7 these forces were inspected by Colonel Sir William Jervois assisted by Major Peter Scratchley, who unofficially suggested to the several governments that military federation was necessary for the efficient defence of the continent.^{3.} Following their visit

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1. See Cambridge History of the British Empire, Vol. 11 (Cambridge, 1940) Ch.XXII.
 2. See B.A. Knox, "Colonial Influence on Imperial Policy, 1858-66. Victoria and the Colonial Naval Defence Act, 1865", H.S., Vol.11, No.41, (1963), pp.61-79.
 3. C.K. Cooke, Ed. Australian Defences and New Guinea (London, 1887) p.105.

improvements were made to the colonial defences, but they remained unco-ordinated. However both men remained in Australia, Jervois as Governor of South Australia, and later New Zealand, and Scratchley as Commissioner of Defences, so that they had a continuing influence. In July 1880 for example, following a speech by Governor Jervois on colonial defence, the South Australian Register noted that,

"In this respect the need for confederation receives most forcible illustration. Indeed it is important that upon this subject, even if upon it alone, there should be practical unity of action." 1.

Interest in defence was further quickened in both Britain and the colonies by a Russian war scare in 1878. In Britain a Royal Commission was appointed in 1879 to examine the defence of British trade and possessions abroad; three reports were presented in 1881-2 but their contents remained secret until relevant sections were revealed to the Colonial Conference of 1887. The Commissioners hinted that the Australian colonies might contribute to the cost of naval defence, and, while praising their land forces, suggested that they should be co-ordinated². In Australia the Intercolonial Conference at Sydney in 1881 which narrowly failed to adopt Parkes'

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1. South Australian Register, 9 July 1880, Cutting forwarded with Jervois to Kimberley, 10 July 1880, C.O. 13/138, p.158.
 2. Summary of the Reports of the Commission, p.15. Misc. C.P., No. 47. C.O. 885/5.

plan for a federal council requested the Imperial Government to expand the Naval Squadron in Australasian waters.^{1.} The colonies were not prepared to contribute to the expenses of maintaining or increasing the Squadron however, though in the course of the early eighteenthies several colonies acquired small gunboats which they agreed to place under the Royal Navy in wartime.^{2.}

The defence resolutions of the 1881 Intercolonial Conference had met with a cool reception from Lord Kimberley, Secretary of State for the Colonies at the time, who would not accept the suggestion that the Australasian Squadron should be increased at the expense of the British treasury.^{3.} His attitude was endorsed later by Lord Derby who took advantage of the anxiety of the colonists about European activity in the Pacific to suggest in 1883, and again in 1884, that they should combine to meet the cost of increasing the squadron.^{4.} Nothing came of these overtures, and when Rear Admiral George Tryon assumed command of the Australian Squadron in 1885, he took with him orders to

1. Minutes of the Proc. of the Intercol. Conf. held at Sydney January 1881, p.5. V.& P. (L.A. of N.S.W.) 1880-1, I, p.337.
2. See "Correspondence on an Australian Naval Force, 1867-1885", Misc. C.P. No.110, C.O. 881/6.
3. Kimberley to Normanby, 11 May 1881. V.& P. (L.A. of Vic.) 1881, II, Paper No.5, p.53.
4. Derby to Palmer, 11 July 1883, C 3691, pp.22-4. Parl.Pap. 1883, XLVII.
Derby to all Aust. Governors, 9 May 1884, C 3839, pp. 34-5. Parl.Pap. 1884, LV.

negotiate with the colonies with a view to securing a naval agreement. The plan which was put to the colonies was for the addition of seven vessels to the existing squadron, the costs of construction and maintenance to be met by the colonies and the ships to become their property^{1.} after ten years.

A second Russian War scare in 1885 served to remind the colonies of their vulnerability, and most colonial governments were prepared to make some sort of contribution to naval defence to improve their own security, but they were rather suspicious of the imperial proposals and the manner in which they were put forward. The idea of imperial federation was enjoying a vogue in Britain at this time and there was also talk of imperial defence; both concepts were anathema to many colonists who were jealous of their political and military independence. Any contributions made by Australia should be used for the defence of Australia, and not for the empire at large, it was insisted.^{2.} The proposal of the British Government that a conference of premiers and governors with Admiral Tryon should be arranged to discuss naval defence was rejected

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1. The negotiations are well summarised in a "Colonial Office Memo on Australian Squadron". C 5091, pp.213-6. Parl.Pap. 1887, LVI.
 2. R.A.Shields, "Australian Opinion and Defence of the Empire. A study in Imperial Relations, 1880-1890" A.J.P.H. Vol. X No.1 (1964), pp.43-6.

by New South Wales and New Zealand as extra-constitutional.^{1.}

Instead, a meeting eventually took place in April 1886 on board H.M.S. Nelson between Tryon and the Premiers of New South Wales, Victoria, and Queensland. The result of this meeting and subsequent negotiation with other colonies was that New South Wales, Queensland and Tasmania offered to maintain the vessels and to pay 5% interest and sinking fund on the cost of construction, which was to be met in the first instance by Britain. Victoria was willing to pay only for maintenance, and New Zealand offered £20,000 per annum if they could have a separate naval station of their own.^{2.} At this stage the question was referred to the Colonial Conference held in London in 1887 so that a direct exchange of views between the imperial and colonial governments became possible.

Some of the Australian delegates made it clear that in their opinion the main purpose of the Australian squadron was to protect shipping, and that as most of the shipping was British any contribution made by the colonies would be an act of grace.^{3.} Victoria and South Australia were insistent that they would not pay for ships over which they had no control unless it was guaranteed that

1. Ibid.

2. Admiralty to C.O., 25 Feb. 1887, C.O. 201/606, p.392.

3. Proceedings of the Colonial Conference of 1887, p.34 (Downer, S.A.), p.37 (Deakin, Vic.) Parl.Pap. 1887, LV1, C 5091.

the squadron would remain permanently in Australian waters. By the conclusion of the conference a Naval Agreement had been settled on these lines;^{1.} seven new ships were to be added to the squadron, the Imperial Government meeting the costs of construction and the colonies jointly paying the cost of maintenance plus five percent per annum for ten years to cover interest and depreciation on the initial costs. The ships were to remain in Australian waters in peacetime and even in wartime could be removed only with the permission of the colonial governments. Legislation in accordance with the Agreement was soon passed by all colonies save Queensland, which delayed until 1891, and the colonies began to contribute, in proportion to their population, to the cost of their own naval defence.

At one stage in the negotiations which led up to the agreement Admiral Tryon complained that the Australians spoke of a conference on the subject which he was trying to arrange as a 'trap to force federation'.^{2.} Although the Agreement was purely a naval one, it involved joint action by the colonies and was therefore regarded as a federal achievement; the Governor of Tasmania told Lord Knutsford in a private letter that he believed it would draw the colonies closer together and also cement their ties with

1. Proc. of Col. Conf., pp.506-10.

2. Shields, "Aust. Opinion & Defence", p.45.

Britain. The Secretary to the Admiralty congratulated Tryon on the success with which he had "dealt with the local objections of the different colonies to a federated defence of common interests"^{1.} Tryon's biographer suggests that the Admiral was well aware of the possible political significance of federalised defence; he writes,

"He also encouraged - while carefully avoiding any semblance of dictating - a spirit of unity amongst the various colonies, pointing out the many common interests, especially the interests of mutual defence, which he as an impartial looker-on was better able to discern than the popularly elected ministers, who held office by virtue of their opinions or administrative abilities concerning narrower and more essentially local matters." 2.

There is thus some reason to suppose that the imperial advisers of the colonies in both naval and military matters, though they were concerned primarily with federal defence, did their best to advance the cause of political federation as well.

The system of colonial subsidies towards the maintenance of a squadron of the Royal Navy in Australian waters continued into the twentieth century and settled the problem of the naval defence of the colonies. Their land defences continued to come under discussion from time to time, however. It is interesting to note that in 1887 the Commandant of the South Australian Forces, Brigadier-General

1. Quoted by C.C.P. Fitzgerald, Life of Vice-Admiral Sir George Tryon, K.C.B. (London, 1898) p.204.
 2. Ibid., p.202.

Owen, recommended to his government the federalisation of the defences of all colonies, and the establishment of a joint military college and a joint arms factory.^{1.} In the same year the New South Wales Commandant, Major-General Schaw, furnished Sir Henry Parkes with a memo on the possible organisation of a military federation.^{2.} At the Colonial Conference of 1887 the Secretary of State for Colonies listed organisation for military defence first amongst the subjects which might profitably be discussed.^{3.} His suggestion was taken up by Sir Samuel Griffith of Queensland, who proposed that an imperial officer should inspect the forces of all the Australian colonies with a view to increasing their uniformity and improving the co-operation between them.^{4.} The War Office agreed to supply a suitable inspecting officer,^{5.} but there was no immediate action because the colonies were unable to agree on the division of the costs of the inspection.^{6.}

The idea of an inspection remained in currency however. In an article published in March 1889, Lord Carnarvon, who had chaired the Royal Commission of 1879-82

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1. Agent-General for S.A. to C.O. 16 May 1887, C.O. 13/145, p.288.
 2. See Schaw to Carrington, 29 Aug. 1887 (Carrington Papers)
 3. Stanhope to all Australian Governors, 25 Nov.1886, Proc. of the Col. Conf. of 1887, p.vii.
 4. Proc. of the Col. Conf. of 1887, p.292.
 5. War Office to C.O., 6 June 1887, C.O. 201/607, p.255.
 6. See Knutsford to all Australian Governors, 17 June 1889, C 6188, pp.5-6. Parl.Pap. 1890, XLIX.

which recommended co-ordination of the defences of the colonies, pressed for an inspection along the lines^{1.} discussed by the Colonial Conference. A few weeks later the Secretary of State for War, Edward Stanhope, offered to the colonies, free of charge, the services of the commanding^{2.} officer in China, Major-General J. Bevan Edwards, to inspect and report on their defences. Since no expense to themselves was involved all colonies promptly accepted this offer, and General Edwards visited Australia between June and October 1889.

At the conclusion of his inspection Edwards made individual reports to the Governments of all colonies on the condition of their own defences, and also presented each with a copy of a plan for the organisation of the military forces of Australia as a whole.^{3.} In this general report, Edwards specifically recommended the creation of a military federation in which the forces of all colonies should be uniformly trained and equipped under the control of a single inspecting and commanding officer. These federated forces should be supported, he said, by a federal military college and a federal small arms factory, gun wharf, and ordnance store. It was also desirable that a

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1. "Australia in 1888", Fortnightly Review, March 1889, p.439.
 2. War Office to C.O. 5 April 1889, C 6188, p.3. Parl.Pap. 1890 XLIX.
 3. The Edwards Reports may be found at, C 6188, Ibid.

uniform railway gauge should be introduced to facilitate troop movements in an emergency.

On 15 October 1889, just a few days after he received a copy of General Edwards' Report, Sir Henry Parkes telegraphed his fellow premiers asking them to attend a consultation on these proposals for a military federation, and their wider implications so far as political federation was concerned.^{1.} His initial approach met with a largely negative response, but Parkes continued to press forward with his plans, and ultimately succeeded in arranging a federation conference in 1890, and a Federal Convention in 1891. Throughout the negotiations which led up to these gatherings great emphasis was placed on the urgent need for military federation evidenced in the Edwards Report, and the impossibility of achieving this without a more complete measure of political federation than was provided by the Federal Council.

These circumstances have led some historians to assume that Parkes' interest in federation, which appeared to have died since 1881, was revived by the Edwards Report.^{2.} A more recent and sophisticated interpretation well expressed by D.M. McCallum,^{3.} is that although talk of

1. Parkes to other Premiers, 15 Oct. 1889 (tele), V.C.P. (L.A. of N.S.W.), 1889, 2nd Sess. II, p.863.
2. eg. H.L. Hall Victoria's Part in the Australian Federation Movement 1849-1900 (London, 1931) p.53.
3. D.M. McCallum, "Sir Henry Parkes and Federation," J.R.A.H.S. Vol.34, part 1, p.42.

military federation was the basis of the federal movement in this period, the Report made by General Edwards was more the occasion of Parkes' initiative than the reason for it. This is a more accurate but an insufficient account of the background to the re-opening of the federal question and it is desirable to review the sequence of events in some detail.

One of the most important facts is that Parkes had actually requested Duncan Gillies, the Current Premier of Victoria, to co-operate in a new federal scheme in June 1889, five months before the Edwards Report was presented. The proposal then made by Parkes was for a federal convention to be attended by six delegates from each colony with authority to draft a constitution for a full federation.^{1.} Gillies delayed until August, but then replied with a firm no.^{2.} The best hope of a more complete federation, he said, was to make use of the existing smaller federation, and he urged Parkes to bring New South Wales into the Federal Council. The exchange of letters between the two Premiers was kept private, and following it Parkes bided his time until the Edwards Report provided a convenient opportunity to make another move.

1. No copy of this letter has been found, but it is summarised by Lord Carrington, Carrington's Federation Diary, 17 June 1889, p.1.
2. Gillies to Parkes, 12 Aug. 1889, (Copy) C.O. 201/610, p.290.

The diary kept by Lord Carrington, the Governor of New South Wales between 1835 and 1890, gives an interesting account of the origins of Parkes' first letter to Gillies. Carrington records that on 15 June in the course of conversation with Parkes,

"I remarked how different the position of Lord Knutsford is in Canada to what it is in Australia. 'That must be so', was the reply, 'until we federate'. Sir Henry then said, 'I could confederate these colonies in twelve months'. 'Then why don't you do it?' said I; 'It would be a glorious finish to your 1. life'. He smiled and said, 'There are difficulties';"

after which the conversation turned to other matters. Two days later, however, Parkes informed Carrington that without telling any of his cabinet colleagues, he had written to Gillies to propose a complete federation of the colonies.^{2.}

Although Carrington's few words were well chosen to appeal to Parkes' considerable vanity, and the conversation between the Governor and the Premier was presumably the immediate stimulus which prompted Parkes' letter, it is obvious that he must have been meditating a new bid for federation for some time. Perhaps there is some truth in Deakin's claim that Parkes was afraid that the Federal Council was on the verge of greater things; probably he was conscious that at the age of 74 he could

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1. Carrington's 'Federation Diary' 15 June 1889, p.1.
 2. Parkes to Carrington, 17 June 1889. (Carrington Papers).

not afford to delay much longer if he was ever to achieve his ideal of personally founding an Australian federation. The free trade government of which he was head had a majority of only two and was internally divided, so that Parkes may have felt the moment ripe for a display of leadership which might strengthen his position. Then again, although Sir Henry made his first approach to Gillies long before General Edwards made his Report, it is likely that the question of defence was partly responsible for it. The idea of a military federation had been current in Australia for at least a dozen years and was certainly familiar to Parkes. Indeed it was only two years earlier that Major-General Schaw had told Carrington that Parkes was "anxious to further the idea of a Military Federation amongst the Australian Colonies", and had asked for, and received, a memo on the subject.^{1.} Parkes' interest may have been in strengthening the defence of Australia for its own sake, though he probably also saw it as a useful lever with which to force political federation.

Another important factor in considering the relationship between federation and defence in this period is the attitude of General Edwards. Although the significance of his report for the federal movement has always been recognised the man himself has received little

1. Schaw to Carrington, 29 Aug. 1887 (Carrington Papers).

attention from historians. Major-General Sir J. Bevan Edwards was certainly not a simple soldier with no interests outside his profession. A few years after his visit to Australia he retired from the army and entered the House of Commons; in later life he was for six years President of the Royal Colonial Institute; he was a strong advocate of imperial federation from the beginning of that movement.^{1.} At the time of Edwards' inspection of the Australian forces he was denounced by radical politicians in several colonies as a "political tout" sent out to prepare the way for imperial federation.^{2.}

Edwards defended himself against these charges in an address to the Royal Colonial Institute in March 1891,^{3.} in the course of which he stated that he had concerned himself only with the military problems of the colonies, but that Sir Henry Parkes had perceived the political implications of his recommendations and consequently became the champion of federation. There are some grounds for treating this disclaimer with caution however. With his next breath General Edwards stressed that without federation the combination of the colonies for defence would be impossible,^{4.} and he must have been aware of this when he

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1. E. Salmon, "Lieutenant-General Sir J. Bevan Edwards, K.C.B., K.C.M.G.", United Empire, Vol. 13, (1922), pp. 508-11.
 2. Proc. of R.C.I., XXII, 1890-1, p. 196.
 3. Ibid.
 4. Ibid., p. 197.

drafted his report. In the same address to the Royal Colonial Institute Edwards further stated:

"When I was in Australia I had the privilege of meeting many of the leading people - among others, that eminent statesman, Sir Henry Parkes, the Premier of New South Wales. I gathered that there was a consensus of opinion favourable to federation, but that the realisation of some common need is required to bring it about." 1.

The evidence suggests that in discussion with the leaders of the colonies, and in his final report, Edwards did his best to show that there was a "common need" and thus to strengthen the hand of the statesman he admired.

In July 1889, whilst Edwards was inspecting the defences of Queensland, the Governor of that colony, Sir Henry Norman, mentioned in a letter to Lord Carrington his fear that Edwards would arouse antagonism by appearing to push for federation and by giving the impression that the Imperial Government wanted it.² Several months later, after the General's Report had been published and Parkes had begun to campaign for federation on the strength of it, Edwards himself wrote to Carrington from Brisbane to report that he had discussed the federation movement with Moreshead, the Premier there, and had found him very favourably inclined towards it. He had also written to Parkes, Edwards said, to suggest to him a compromise with those colonies which belonged to the Federal Council,

1. Ibid., p.196.

2. Norman to Carrington, 15 July 1889. (Carrington Papers).

which might help the movement forward; "the game is alive and should not be allowed to drop"^{1.} A few days afterwards Sir Henry Norman wrote,

"Edwards went down to Moreton Bay to join his ship on Sunday last. He seemed to have enjoyed himself much but to have gone seriously mad over federation. I do not think he ever conversed with any one here on any subject for five minutes without pointing a moral in the direction of federation.... However it all came right and I think he went away perfectly pleased and believing that he has not only done much to form an Australian army...but that he has also brought about federation of the Colonies!"^{2.}

Even after his departure from the colony General Edwards continued to take an interest in the federal movement. One of his letters which became public and caused a mild political storm in New South Wales further illustrates his attitude. Edwards wrote that he had been urging the Admiral in command of the magnificent ships of the Chinese Imperial Squadron to show his fleet in Australian ports, and added, "Would not this help your federation?"^{3.} This suggestion by an imperial officer that a foreign navy should be used to intimidate or coerce the colonies into federating was strongly criticised,^{4.} though it was presumably meant in a light-hearted way.

These various letters provide some basis for the belief that both before and after he made his report, General Edwards was alive to the political significance of

1. Edwards to Carrington, 20 Nov. 1889. (Carrington Papers).
2. Norman to Carrington, 27 Nov. 1889. (Carrington Papers).
3. Edwards to Parkes, 24 Jan. 1890 (copy). Carrington's Federation Diary, 17 Feb. 1890, p. 35.
4. P.D. (L.A. of N.S.W.) First Ser., XLIV, pp. 192-3, 453-4.

his recommendations in favour of military federation, that he supported political federation, and that he did his best to help those who hoped to secure it. It is not suggested that the Report itself was shaped primarily by political considerations - that was not necessary, for the military case for federation of the defences of Australia was strong and in any case the idea was not new. The inspection had been requested originally with a view to increasing the co-ordination of the defences of the various colonies, and most of the proposals for this contained in the Edwards Report had already been suggested by previous military advisers. However in some points of detail and stress, such as the emphasis that the combination for defence was impossible without full military federation, the Report probably reflects Edwards' enthusiasm for political federation. In addition, his forceful advocacy of federation to the many colonial leaders whom he met while preparing and after presenting his report, must have had some effect.

Once the Report of General Edwards was made public Sir Henry Parkes lost no time in inviting the other colonies to confer on the Report and its federal implications, and he quickly followed this up with a personal visit to Brisbane. Moreshead, the Premier of Queensland, was ill, but Parkes was able to discuss defence and federation with the other

principal men including Sir Samuel Griffith and felt confident that their views were closer to his own than to those of Gillies of Victoria.^{1.} On his way back to Sydney Sir Henry stopped for a banquet in his honour at a small town named Tenterfield, a few miles on the New South Wales side of the border, and delivered there a major speech on the federation question. As none of the correspondence on the subject earlier in the year had been made public this speech, which quickly passed into legend as the 'Tenterfield Oration', was the first signal to Australia as a whole that federation was again in the air. The significance of the speech has often been exaggerated,^{2.} for it was poorly reported and received a mixed reception. Nevertheless it contained all the basic points which Parkes was to stress again and again in the ensuing months; that the urgent problem of unified defence was a question with which the Federal Council was not competent to deal; that what was needed was a popularly appointed convention, representative of all colonies and authorised to create a national Australian government and parliament.^{3.}

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1. Parkes to Carrington, 25 Oct. 1889. (Carrington Papers)
 2. For example, B.R. Wise, The Making of the Australian Commonwealth 1889-1900 (London, 1913) Ch.1. For a recent assessment see, L.E. Fredman, "The Tenterfield Oration: Legend and Reality", Australian Quarterly, Vol. XXXV, No. 3 (1963), pp.59-65.
 3. J. Quick & R.R. Garran, The Annotated Constitution of the Australian Commonwealth (Sydney, 1901) p.118.

In the meantime Mr. Gillies of Victoria had declined Sir Henry's invitation to a consultation on the Edwards Report, on behalf of the other colonies as well as his own, on the grounds that the Federal Council was the proper body to deal with the matter. "We are surely not required to create a new Federal Council for every new federal difficulty to be solved?" he cleverly asked, and recommended that New South Wales should join the existing Council forthwith.¹ The true issue was now fairly joined. Throughout the debate which followed no one questioned the value or urgency of unifying the defences of the colonies, nor was it questioned that this could not be done without some central political authority, but controversy centred on the fitness or otherwise of the Federal Council to fill the latter role. Parkes maintained firmly that although the Council's constitution allowed it to control "general defences" if the power were referred to it by the colonies, this provision did not cover anything so sweeping as the creation and control of a national army. Quite apart from the legislative competence of the Council or otherwise, Parkes further argued that it was incapable of carrying out General Edwards' recommendations because it lacked an executive. As to New South Wales joining the Council, Parkes

1. Gillies to Parkes, 22 Oct. 1889 (tele), V.& P. (L.A. of N.S.W.) 1889 2nd. Sess., 11, p.863.

protested that even if he wished to arrange that he would be unable to do so because feeling in the colony was so overwhelmingly against it.^{1.} Early in November replies began to come in from the other colonies but all of them tended to back up the attitude of Victoria; each of the premiers expressed his support for federation but suggested that the Federal Council should be the starting point of any new movement in that direction.^{2.}

For a time it seemed that deadlock had been reached, and this might well have been the case had it not been for the intervention of Lord Carrington and the governors of several of the other colonies. The powers of the governor in selfgoverning colonies such as these were strictly limited, but it was still possible for an able or experienced man to wield some influence in an unofficial way. Lord Carrington, with the advantages of birth, wealth, education, close acquaintance with all of the British Cabinet, and intimate friendship with the Prince of Wales, had had little difficulty in establishing himself as a confidant of Sir Henry Parkes and many other colonial leaders. Moreover Carrington was also on close terms with most of the other governors of the time, as a result of Lord Knutsford's recently

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1. Parkes to Gillies, 30 Oct. 1889, Ibid., pp.863-4.
 2. V.& P. (L.A. of N.S.W.) 1889 2nd Sess., II. Fysh, 12 Nov. 1889, p.866; Moreshead 12 Nov. 1889, pp. 866-7; Cockburn, 19 Nov. 1889, p.869; Frazer, 19 Nov. 1889, p.870.

introduced plan of sending influential young peers rather than professional governors, to major colonies. Thus Carrington, Lord Kintore in South Australia, Lord Onslow in New Zealand, and Lord Hopetoun in Victoria were all old friends, and several others such as Sir Henry Norman in Queensland, and Sir Henry Loch, Hopetoun's predecessor in Victoria, were exceptionally distinguished men who fitted into their circle fairly easily.

All of these governors were in favour of federation of the colonies, and Carrington in particular went out of his way to encourage it. Shortly after Parkes went to Brisbane Carrington visited Lord and Lady Kintore in Adelaide, and used the opportunity to discuss federation with the leading men of the colony. In a report to Parkes he held out some hope that South Australia might accept his proposals, but thought they were unlikely to take the lead in doing so.^{1.} Both Carrington and Kintore went on to Melbourne to participate in a grand farewell banquet for Sir Henry Loch whose term of office was at an end. All four governors present centred their speeches on the federal question, Sir William Robinson, who was on the verge of moving from South Australia to Western Australia, saying that he regarded it as his personal task for the next few

1. Carrington to Parkes, 31 Oct. 1889. Carrington's Federation Diary, p.6.

years to bring the most isolated colony into the movement for national unity.^{1.} Mr. Gillies also spoke in favour of federation though in a more guarded manner. Once again Carrington discussed Parkes' proposals with the colonial leaders,^{2.} as did Kintore who remained in Melbourne for a more extended visit. Lord Kintore also visited Sydney where he met Parkes frequently and mediated between him and his own Premier, Mr. Cockburn, with some success.^{3.}

The efforts of these men to persuade their governments to find a basis for compromise were almost wrecked when Sir Henry Loch sent a farewell letter to Parkes in which he suggested that New South Wales ought to join the Council in order to mollify his opponents.^{4.} Parkes answered the letter coolly,^{5.} but was indignant at this meddling. Despite the episode however, both Parkes and Gillies were gradually mellowed. On 13 November, Gillies suggested that if New South Wales would not join the Federal Council, perhaps she might send delegates to discuss the Edwards Report and federation with the members of the Council, with the latter acting not as Federal Councillors

1. Speeches forwarded to C.O. by Loch, C.O. 309/134, pp.504-5.
2. Carrington to Parkes, 4 Nov. 1889, Carrington's Federation Diary, pp.7-8.
3. Carrington's Federation Diary, 19 Nov. 1889. p.18.
4. See Carrington to Knutsford, 21 Nov. 1889. C.O. 201/610, p.281.
5. Parkes to Carrington, 6 Nov. 1889. (Carrington Papers).

but as "representative public men"^{1.} This proposition was at first received by Parkes with immense scorn,^{2.} but acceptance was urged upon him by Carrington, Kintore, Sir William Robinson, and Major-General Edwards.^{3.} The situation was accurately summarised by Robinson who was acting as Governor of Victoria in the interval between the departure of Loch and the arrival of Hopetoun, and while himself awaiting a ship:

"These five colonies will not throw over the Federal Council to the extent of giving it the go bye altogether but if Parkes will meet the Gentlemen who compose that body and have a talk, all may go well and with ordinary tact and management he will keep at the head of the movement and make himself master of the situation."^{4.}

Parkes was loath to accept this advice but was brought around to it in the end. On 28 November he concluded a long and argumentative letter by agreeing that New South Wales representatives should meet the members of the

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1. Gillies to Parkes, 13 Nov. 1889. V.& P. (L.A. of N.S.W.) 1889, 2nd Sess., II, pp.867-8. Two early historians of the federal movement attribute this letter to Carrington's influence on Gillies through Loch. This may well be true, but there is no conclusive evidence for it. See, T.A. Coghlan, Labour and Industry in Australia (Oxford, 1918) Vol.4. p.2338. & B.R.Wise, Making of Aust. Commonwealth, p.26.
 2. Parkes to Carrington, 16 Nov.1889. (Carrington Papers).
 3. Kintore to Carrington, 21 Nov.1889, Carrington's Federation Diary, p.19; Robinson to Carrington, 21 Nov. 1889, Parkes to Carrington, 23 Nov. 1889, Edwards to Carrington, 20 Nov. 1889. (Carrington Papers).
 4. Robinson to Carrington, 21 Nov. 1889. (Carrington Papers).

Federal Council as "representative public men" for
 preliminary discussions about a new federal body.^{1.}

From this point the only matters in dispute were whether or not the Federal Council should hold a formal session after the federation conference, and the traditional questions of where and when the conference should be held. The final decision was that no session of the Council would be held, and that the conference should meet in Melbourne from 6 February 1890. In addition to New South Wales and the five Federal Council member colonies (all of them save Fiji whose delegate did not arrive in time) New Zealand also arranged to participate in what was thus the most representative Australasian gathering since 1883.

Curiously enough the proceedings of the conference have been remembered less than the banquet which preceded them, for at the banquet two speakers coined striking phrases which caught the imagination of those present and still continue to be quoted. Mr. Service, the former Victorian Premier who had been the driving force behind the formation of the Federal Council referred to the tariff problem as the "lion in the way" which must either slay or be slain by federation.^{2.} Sir Henry Parkes

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1. Parkes to Gillies, 28 Nov. 1889, V.& P. (L.A. of N.S.W.) 1889, 2nd Sess., II, p.872.
 2. Report of Speeches, from the Argus, C 6025, p.10. Parl.Pap. 1890, XLIX.

appealed to all colonies to forget their differences and remember that "The crimson thread of kinship runs through us all"¹.

With the banqueting over, and after a few days delay due to the illness of Parkes, the conference got down to business on Monday, 10 February. Even then the proceedings were of a rather rhetorical nature for the main purpose of the conference was not to draft a federal constitution but to decide whether the time was ripe to do so. To this end Parkes moved the diplomatically worded resolution:

"That, in the opinion of this Conference, the best interests and the present and future prosperity of the Australasian Colonies will be promoted by an early union under the Crown; and, while fully recognising the valuable services of the Members of the Convention of 1883 in founding the Federal Council, it declares its opinion that the seven years which have since elapsed have developed the national life of Australasia in population, in wealth, in the discovery of resources, and in self-governing capacity to an extent which justifies the higher act, at all times contemplated, of the union of these Colonies, under one legislative and executive Government, on principles just to the several colonies." 2.

Each of the thirteen delegates, including Gillies who was elected President of the Conference, spoke to this resolution at length, and it soon became clear that all favoured federation, though some with qualifications and

1. *Ibid.*, p.12.

2. *Proceedings of the Federation Conference, 1890*; C 6025, p.23. *Parl.Pap. 1890, XLIX.*

provisos. Most of the major obstacles to federation which were to stir up endless controversy in later years were mentioned by speakers but only in a general way which evaded the real difficulties. Sir James Lee Steere of Western Australia who called for a more practical debate^{1.} was savagely attacked by Sir Henry Parkes, as was Playford of South Australia who doubted the sincerity of both Victoria and New South Wales in seeking federation.^{2.} Parkes was at pains to defend his own action in proposing a Federal Council in 1881, opposing it in 1883-4, and then proposing federation again in a new form in 1889.^{3.} Few of the other speeches were contentious.

The New Zealand delegates, Captain Russell and Sir John Hall, expressed great sympathy with the idea of federation, but declined to commit their colony to it. The 1200 miles of "stormy ocean" between New Zealand and Australia were, said Hall, 1200 reasons against such a federation.^{4.} At the suggestion of these delegates the word "Australian" was substituted for "Australasian" in the motion, which was otherwise passed without change and unanimously. Having thus implicitly excluded their colony from the resolution the New Zealand delegates then

1. Debates of the Conference, Ibid., p.64.

2. Ibid., pp.44-6.

3. Ibid., pp.101-7.

4. Ibid., p.90.

successfully moved that the "remoter Australasian colonies" should be entitled to admission to the contemplated union at any future time.^{1.} The door to New Zealand participation was thus left open. The only other motions passed by the Conference provided for the appointment by each colonial parliament of 7 delegates (4 from Crown Colonies) to a National Australasian Convention, which it was unofficially agreed should meet early in 1891, empowered to draft a federal constitution.^{2.}

Throughout the correspondence which had led up to the Conference great emphasis had been given to the recommendations of General Edwards and the need for new defence arrangements as the principal reasons for a new federation. Despite this, Parkes did not even mention the Edwards Report in his opening speech, and placed little stress on defence. Sir Samuel Griffith analysed the defence issue in more detail,^{3.} but a majority of the other delegates wasted no time on it at all. Only Deakin reminded the Conference that the questions of recidivists, France and the New Hebrides, and Chinese migration, could still flare up at any time and make defence a more urgent problem.^{4.} After the main business was concluded Deakin

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1. Proc. of the Conference, C 6025, p26. Parl.Pap. 1890, XLIX.
 2. Ibid.,
 3. Debates of the Conference, C 6025, pp. 38-9. Parl.Pap. 1890, XLIX.
 4. Ibid., pp.51-2.

suggested that as the adoption of a new federal constitution would take some time, it was desirable that the Federal Council should be used to arrange for united defence in the interim and that all colonies should therefore be represented on it.^{1.} New South Wales and New Zealand both rejected this proposal out of hand, and Deakin was prevailed upon to withdraw it.

The Conference had demonstrated that interest in federation in New Zealand had in no way increased since the colony refused to join the Federal Council in 1885, indeed at one stage it had been doubtful if representatives would be sent to Melbourne at all. Lord Onslow, the Governor, promised Lord Carrington that he would do his best to persuade the Government to send delegates,² and in the end they did. In January 1890, shortly before the conference met, Carrington himself visited New Zealand, discussed federation with all who would listen, and spoke about it at a banquet at Otago given by the Government of New South Wales and chaired by Mr. McMillan, the Treasurer of New South Wales. The banquet speeches were little reported,^{3.} Carrington informed Parkes, and he found the general level of interest in federation to be extremely low. After the conference the first attempt of the

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1. Proc. of the Conference, C 6025, p.26. Parl.Pap. 1890, XLIX.
 2. Onslow to Carrington, 4 Dec. 1889 (Carrington Papers).
 3. Carrington to Parkes, 20 Jan. 1890, Carrington's Federation Diary, pp. 27-8.

Government to secure endorsement of the resolutions was surprisingly defeated.^{1.} The time was an unpropitious one, for New Zealand was suffering from the backwash of major maritime strikes in Australia because the seamen and shipowners of the colony belonged to federated Australasian unions. Moreover some of those who had an open mind about federation were opposed to the expense of sending delegates. Once again Onslow told Carrington and Parkes that he would try to get the situation put to rights,^{2.} and a compromise was subsequently reached by which New Zealand sent three delegates only.^{3.}

In other colonies also the conference resolutions came under parliamentary scrutiny during 1890. In Victoria, Tasmania, Queensland and South Australia they had been adopted, in several cases with little debate, and delegates to the Convention appointed, by the end of July. In his own colony Parkes encountered more opposition however, and debate in the Legislative Assembly dragged on from May until September. The Leader of the Opposition, Mr. Dibbs, criticised the conference resolutions on the grounds that what was needed was a more comprehensive unification of the colonies,⁴ an attitude which was

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1. Journals of the House of Reps. of N.Z. Session of 1890, p.254.
 2. Onslow to Carrington, 11 Sept. 1890 (Carrington Papers)
 3. Journals of the House of Reps. of N.Z. Session of 1890, pp.283-9.
 4. P.D. (L.A. of N.S.W.) First Ser., XLIV, pp.403-15.

commonly regarded as a dodge for opposing federation without appearing to do so. Even within Parkes' own party support for federation was by no means wholehearted, for many free traders were less willing than he was to subordinate the fiscal issue to federation,^{1.} and some members of the Cabinet resented the fact that Parkes had not informed them of his negotiations with other colonies until after the Tenterfield speech. Parkes also created unnecessary difficulties for himself by omitting Dibbs from his list of proposed delegates to the Convention, and was forced to give way on this point. Eventually, however, the Conference resolutions were adopted and delegates (including Dibbs) appointed to represent New South Wales at the Federal Convention. The time and place of this meeting were subject to the usual bickering, but it was finally agreed that it should take place at Sydney in March, 1891.

The progress of the federal movement from the release of General Edwards' Report to the assembling of the Convention of 1891 was observed in England with interest and enthusiasm. Sir Henry Parkes took care to see that a copy of his letter to Gillies of 30 October 1889, in which his federal proposals were ably summarised, was forwarded to The Times, in which it was published on 4 November.

1. See for example, the speeches of Mr. J.H. Want, G.H. Reid, Ibid., pp.415-23, 579-97.

The Times itself hailed this despatch and the Tenterfield speech as marking a new departure in the attitude of New South Wales, which had hitherto impeded federation, but drew attention to the obstacles which remained to be overcome.^{1.} In the dispute between Parkes and Gillies over the fitness of the Federal Council to cope with defence the Times sided with Parkes, but suggested that he ought to be willing to meet the Council to discuss the question.^{2.} Within a few weeks, more than sixty other British daily or weekly papers had also devoted leading articles to the subject, some optimistic, others less so, but all in favour of federation if it could be accomplished.^{3.} One of the major reasons for this interest in and support for Australian federation was the widespread sympathy in Britain with the idea of imperial federation; local federation, it was thought, was an essential preliminary to wider union.

Immediately after the Melbourne Conference the Secretary of State for the Colonies, Lord Knutsford, expressed to the House of Lords his satisfaction with the progress of the federal movement and his conviction that

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1. The Times, 5 Nov. 1889.
 2. The Times, 19 Nov. 1889.
 3. Such articles were collected by the Government of N.S.W. and published as, United Australia (Sydney, 1890).

federation would be of great benefit to the colonies.^{1.}
 Lord Granville endorsed these views on behalf of the
 Liberal Opposition, as did representatives of both parties
 in the House of Commons.^{2.} When some backbench M.P.'s sought
 a more extensive debate on Australian federation Knutsford
 discouraged them however, to ensure that no indiscreet
 remarks were made which might upset the colonists and
 retard the movement.^{3.} He kept himself well informed however,
 through a confidential correspondence with Lord Carrington,
 whom he encouraged to promote federation where possible.^{4.}
 In November 1889 Knutsford also wrote confidentially to the
 Governors of Victoria and Queensland, to ask whether they
 thought it likely that their colonies would follow Parkes'
 lead.^{5.}

In December 1890, when copies of some of the
 correspondence which had preceded the Melbourne Conference
 arrived at the Colonial Office, contrasting views were
 expressed by various members of the staff. Mr. Fuller, for
 example wrote, "Australia must work out its own destiny",
 whereas Bramston, the Assistant Under-Secretary in charge
 of the Australian Department noted, "It will be necessary

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1. Hansard, 3rd. Ser. CCCXLI, 408.
 2. *Ibid.*, 408 (Granville), 888 (Commons discussion).
 3. Minute: 15 Feb. 1890, C.O. 418/1, p.166.
 4. Knutsford to Carrington, 24 Dec. 1889, 14 Jan. 1890.
(Carrington Papers).
 5. C.O. to Governors of Vic & Queens., 7 Nov. 1889,
C.O. 418/1 p.8+8.

somehow to bring the Imperial factor into play for they cannot work out Federation for themselves, but they are too far off to be brought home to confer as the Canadians did¹. The idea of imperial intervention was also mooted by the veteran Australian federalist, Sir Charles Gavan Duffy, in an article published a few weeks later. Duffy's proposal, an extraordinary one from such a longstanding Irish nationalist, was that the Imperial Parliament should send out Royal Commissioners to organise a federal convention in Australia.² This type of imperial intervention had been sedulously avoided by the Colonial Office since the time of Earl Grey, and in any case the colonists soon proved their ability to organise a Convention without direct outside help.

In so far as the "imperial factor" was involved in the federal movement of this period it operated through the influence of the imperial representatives on the spot. It is not easy to assess the importance of the pro-federal activity of Lord Carrington and some of the other Governors which has been noted. Carrington was very enthusiastic about federation and anxious to give the colonists all the help in this direction that he could; he had the advantage of encouragement from both the British Secretary of State

1. C.O. 201/610, pp.278 (Fuller), 281 (Bramston).
 2. Sir C.G. Duffy, "Road to Australian Federation", Contemporary Review, Feb. 1890, p.167.

for Colonies, and from his Premier, Sir Henry Parkes, who wrote to him in November 1889;

"Your Excellency may do much to help the great movement, now fairly started, in your intercourse with the other Governors, and in your communications with England, and I know you will gladly do anything you can." 1.

This charge Carrington attempted to fulfil in various ways; through speeches on official occasions which helped to keep federation in the public mind; through private discussion with political leaders in his own and other colonies; and by persuading his fellow governors to use their influence with their own governments.

Several of his Vice-Regal confères clearly believed that Carrington had done rather more than merely help Parkes. Shortly after the Tenterfield speech and the first public exchange of letters between Parkes and Gillies, Lord Onslow wrote to Carrington, "I am watching you and old Parkes with great interest and admire the way you have led the old fox on to plump for federation after he hotly opposed the Federal Council.."² A month later Sir William Robinson wrote in similar terms,

"What I wanted to ask was whether I could give any help to your Federal Scheme at home or whether there is anything you would like me to say to K (Knutsford) about it. I say 'your' scheme for after all the success of it so far is due to your skilful and sagacious management of old Parkes". 3.

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1. Parkes to Carrington, 1 Nov. 1889 (Carrington Papers).
 2. Onslow to Carrington, 15 Nov. 1889 (Carrington Papers).
 3. Robinson to Carrington, 9 Dec. 1889 (Carrington Papers).

This view that Carrington had an important influence on the whole federal movement of 1889-91 is supported by G.H. Wise, an early historian of the federal movement who was a friend of Parkes and a member of his free trade party in New South Wales. Wise emphasises not only Carrington's influence on other colonial leaders, but his role in maintaining Parkes' confidence and determination when the latter appeared to be discouraged and unwilling to go on with federation.^{1.} Parkes himself, Wise asserts, recognised his debt to Carrington in this regard, and his assertion is supported by the correspondence between the two men about federation which continued until Parkes' death, and by the dedication of a volume of Parkes' federal speeches to Carrington because of his personal and public support for the movement.^{2.}

Perhaps the most striking tribute to Carrington's influence however, was that which was offered in a more indirect form by the arch-opponent of federation in New South Wales, Sir John Robertson, who is reported to have said;

"What does Parkes mean by what he is doing? What does it all mean? The whole thing comes from England. That old Derby commenced it. Look at the number of boy-governors they are sending out here now, every one of them supporting Parkes'

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1. Wise, Making of Aust. Commonwealth, pp.23-4.
 2. See Parkes to Carrington, 27 May 1890 (Carrington Papers).

policy. The fools! They think there'll be Imperial Federation and they'll find a United States of Australia and separation". 1.

Robertson was exaggerating in this outburst of course, for there was certainly not a conspiracy organised from England to foist federation on Australia. And although Carrington may have prodded Parkes into action, and he and his fellow governors did their best to keep the federal movement going once it was launched, the idea of making a new bid for federation was obviously something that had long been in Parkes' mind. However the influence of the imperial representatives was certainly an important factor in bringing about the National Australasian Convention of 1891 which climaxed the federal activity which had begun around the time of General Edwards' inspection.

The first meeting of the Convention took place in Sydney on 2 March. Each of the Australian colonies had appointed seven delegates, and New Zealand three, so that the Convention included a formidable array of ability and experience. Western Australia had received responsible self-government just in time to qualify for full representation, though her delegates were some days late in arriving. Sir Henry Parkes, as Premier of the host colony, was elected President, and for most of the

1. Quoted by C.E. Lyne, Life of Sir Henry Parkes (London 1897) p.504.

Convention he remained in the chair, seldom intervening in debate. Between the Melbourne Conference and the Convention Parkes had suffered a broken leg, a serious accident for a man of his age, and he was no longer the driving force he had been. Nevertheless it was Parkes who launched the proceedings by moving two sets of resolutions, one concerning the principles to be embodied in the constitution, and the other the institutions to be established by it.^{1.}

These resolutions provided the basis for a prolonged general discussion about the type of constitution which it was desired to set up. All members of the Convention were personally acquainted with at least one colonial constitution and with the basic principles of British constitutional practice, in addition to which some members had expert knowledge of various federal constitutions, especially those of Canada and the United States. Ideas drawn from all these sources were thrown into the melting pot, and when debate was exhausted and a measure of consensus thought to have been reached, three sub-committees were formed. One committee on finance and trade, and another on the judiciary, were instructed to report to a third or constitutional committee which was

1. Official Record of the proceedings and Debates of the National Australasian Convention, March & April 1891, p.xvii. The resolutions were prepared by Parkes in consultation with other leaders.

asked to prepare a constitution along the lines discussed
^{1.}
 in Convention. The actual drafting was done in the main by
 Sir Samuel Griffith, with the aid of A.I. Clark, a
 Tasmanian expert on the American Constitution, and Edmund
 Barton (New South Wales) and Charles Kingston (South
^{2.}
 Australia), two of the younger delegates who were to be
 prominent in later federal activity.

From the earliest stages of the Convention three
 major problems singled themselves out. The first of these
 was the fiscal question, for the free trade versus
 protection controversy was not only the greatest divisive
 force between the colonies, but also the main political
 dividing line within several of them. From the time of his
 Tenterfield speech onwards Parkes, vehement free trader
 though he was, had consistently argued that future tariff
 policy should be left to the first federal parliament.
 Consequently, the preliminary resolutions introduced by him
 specified that sole power to levy customs duties should be
 entrusted to the federal parliament, and that trade between
 the colonies should be absolutely free. Although this
 solution was loudly queried by extreme free traders and
 protectionists alike, it was readily accepted by a majority
 of delegates. Since customs and excise duties had hitherto
 been by far the largest source of income in each colony, it

1. Ibid., pp. liii - liv.

2. Deakin, The Federal Story, pp. 49-50.

was regarded as essential that the central government should return some of this revenue to the colonial governments. The mode of re-distributing the surplus revenue was to be a stumbling block at the later conventions, but in 1891 it was not a major difficulty.

The second big question which confronted the Convention was that of striking a federal balance between the central government and the colonial governments, and between the larger colonies and the smaller ones. In this case Parkes' answer was that the powers, privileges and territorial rights of the colonies should remain intact except for those specified powers which would be conferred on the central government, a marked divergence from the Canadian pattern. This proposal was accepted almost without demur, as was the principle that all colonies should have equal representation in the Senate, but numerous difficulties arose concerning the respective powers of the Senate, where the smaller colonies would have a majority, and the lower House, which was to be elected on a population basis.

These difficulties were further complicated by the third important question under debate, the question of whether to retain the British system of responsible government, and if so, how to incorporate this in a federal constitution. The essence of responsible government was held to be that members of the executive should be members

of the legislature, usually of its popularly elected lower house, and should retain office only whilst they could command a majority in the lower house. However in a federation the upper house, since it represented the individual colonies or states, had co-ordinate authority with the lower house, so that the executive ought logically to be responsible to both houses; but it was difficult to see how this could be worked. The American method of separating completely the executive from the legislature had few supporters in the Convention, most delegates being anxious to retain the British tradition even though they did not know how. This was the basis of the famous dictum pronounced by Mr. J. W. Hackett of Western Australia, that "either responsible government will kill federation or federation ... will kill responsible government".^{1.}

In the end a slightly ambiguous formula was adopted which implied that cabinet ministers were to be members of parliament but left some room open for alternative practices.^{2.}

The problems of federalism and responsible government converged to make the powers which should be given to the Senate the most hotly disputed issue of all.

1. Official Record, p.116.

2. See Clause 4 of Ch.11 of the Constitution, Official Record, p.cxii.

The solution arrived at here, often referred to as the 'compromise of 1891', was to give the Senate co-equal powers with the House of Representatives except that money bills were to originate only in the lower house and could not be amended in the Senate, which could however "suggest" amendments or reject the bill outright.^{1.}

The constitution produced by the drafting committee was based on these principles and provided for a complete federal system of government with a bicameral legislature, an executive, and a judiciary. At the suggestion of Sir Henry Parkes the new federal state which was to be created was dubbed the Commonwealth of Australia, a name which was strongly criticised at first but which gradually won universal acceptance. The draft prepared by the sub-committee was discussed by the Convention in committee of the whole, and some amendments were made, but the constitution which was eventually adopted was substantially that which had been drafted by Griffith and his colleagues. In view of the future controversy which was to surround the right of appeal from the High Court of Australia to the Privy Council it is interesting to note that in 1891 this right was retained only in cases involving "public interests", and even this limited appeal was saved by a majority of only two votes.^{2.}

1. Ch.I, Cl. 55 of the Constitution, Ibid., p.cxi.
 2. Official Record, p.lxxxiv.

In addition to the distribution of surplus revenue several other bones of contention at the later conventions were at this stage overlooked or disposed of easily, including the questions of railways, rivers, and the site of the federal capital. The complicated compromise clauses thrashed out to settle these difficulties made the Constitution Bill of 1899-1900 a little more complicated than that produced in 1891, and the later bill was also the more democratic, but the main lines of the Australian Constitution were established by the Convention of 1891. At the close of its proceedings many delegates expected the new federation to come into being almost immediately, on the basis they had created, and were proud of their role as founding fathers of a nation to be. The last decisions of the Convention were that the Constitution Bill as finally adopted should be referred to the Parliaments of the colonies for "approval", and that once it had been so approved by a minimum of three colonies, the Imperial Government should be asked to establish the new federation.^{1.}

The federal movement had thus taken several decisive steps forward in the six years which had elapsed since the creation of the Federal Council. Due in part to

1. Official Record, p. ci.

the inherent limitations of its own Constitution, and in part to the continued boycott of it by New South Wales, the Council had remained a peripheral institution irrelevant to the main issues in colonial politics, and had failed totally to capture the popular imagination. Just when some expansion of the size and significance of the Council had seemed possible, it had been by-passed by a new movement for federation, and although it continued to meet biennially it was clear by 1891 that the main line of federal development would not be through the Federal Council.

On the positive side, the initiative in federal matters had reverted after 1889 to New South Wales, the senior colony without which no federation could be complete. The new bid for federation launched by New South Wales had led to the drafting of a fully developed federal constitution capable of being implemented as soon as the colonies were ready to do so. Federation was no longer just a subject for after-dinner rhetoric, it had been brought down to a practical level.

Whereas the federal movement in the first half of the eighteen eighties which had resulted in the creation of the Federal Council had drawn most of its impetus from the activities of foreign powers in the Pacific, and had been encouraged by the Imperial Government in London, the

federal movement in the second half of the 'eighties which resulted in the Convention and Constitution of 1891 was associated with concern about defence, and was encouraged mainly by imperial representatives on the spot. The naval defence scheme pressed upon the colonies by Britain, and the official reports and unofficial suggestions of various Imperial army officers, all drew attention to the need for federated defence organisation. As it was clear that this would be impracticable without a substantial measure of political federation as well, a convenient occasion was created and accepted for the revival of the federal movement. Once this had been launched by Sir Henry Parkes it was assisted by the governors of the various colonies to the limits of their constitutional ability.

Even when the sequence of events immediately before and after the release of General Edwards' Report are examined in detail however, it is difficult to state with precision how far the federal movement of 1889-91 was caused by defence needs. It is significant in this respect that although defence was emphasised in preliminary discussions, little attention was paid to it at the Melbourne conference. At the Sydney Convention defence was picked out by Sir Henry Parkes, together with tariffs, for special inclusion in the preliminary

resolutions as a subject which must be handed over to the federal government, and this was accepted without question by all other delegates. Once again little time was spent on discussion of the importance of federal defence -- though to some extent this may have been because it was taken for granted. It would almost certainly be true to say that Parkes, Gillies, Griffith and all the others sincerely believed that a federated defence organisation was highly desirable, but in the absence of any immediate military threat they could afford to treat it as a theoretical question, perhaps one which could be used for political purposes.

Nevertheless it remains true that serious and far-reaching steps towards a complete federation were taken in a period when the social and economic barriers between the colonies still seemed more important to most people than the social and economic reasons for union. Moreover the stress placed on nationally organised military and naval defence by the politicians, whatever their reasons, made a considerable impact on the public at large and gave added impetus to the development of Australian nationalism.

Chapter FourECONOMIC CRISIS AND THE RENEWAL OF THE FEDERAL MOVEMENT,
1891-97.

British observers of the Australian political scene who had become accustomed to hearing the colonists talk of federation without any action resulting were surprised and delighted to learn that the Convention of 1891 had adopted a new federal constitution. The Times hailed the event enthusiastically, and ventured the rash speculation that in the future of the English speaking race there might be few more famous dates than 9 April 1891^{1.}; the establishment of the Commonwealth, it assumed, should go forward immediately. A week earlier a leading article had examined and approved the draft constitution, though with the reservation that it would be wise to retain an unrestricted appeal to the Privy Council^{2.}

In the Colonial Office the news was received rather more cautiously. In reply to an anxious questioner in the House of Lords who had heard rumours that the colonies had based their new constitution on that of the United States and departed from British

1. The Times, 10 April 1891.
2. The Times, 4 April 1891.

traditions, Knutsford declined to comment until he had received a complete copy of the document.^{1.} When this arrived, towards the end of May, the Colonial Office staff were very conscious that the draft constitution had yet to be adopted by the parliaments of the colonies, and that there were likely to be delays before the Imperial Parliament was required to consider it. Nevertheless there was some discussion of the draft bill.

Mr. Mercer of the department responsible for Australian affairs concluded that there were two provisions to which Her Majesty's Government might object, the title of Commonwealth with its Civil War associations, and the limitation of appeals to the Privy Council.^{2.} His criticism of this last provision foreshadowed the violent controversy which was to be aroused in 1900 by a similar though less stringent clause in the later Commonwealth Bill. In view of this it is interesting to note that the main objection offered by Mercer was that the abolition of appeal in private cases might prove detrimental to British creditors or debtors with financial interests in Australia.^{3.} Mr. Bramston endorsed Mercer's objections to the Privy Council Appeal clause, but suggested that if this was what the Australians

1. Hansard, 3rd. Ser., CCCLII, 779 (17 April 1891).
 2. Minute of 25 May 1891, on Jersey to Knutsford, 20 April 1891, C.O. 201/612, p 37.
 3. Ibid.

wanted, it would have to be accepted. He also noted disapprovingly that treaties made by the Commonwealth government were to be binding on the states, and he objected to the system of numbering clauses used in the constitution.^{1.}

There was also some interesting speculation in the Colonial Office about the procedure which might be followed if the colonies did continue with the Bill. Bramston wondered what would happen if the House of Commons did not approve it, and whether the colonists would, as eventually proved to be the case in 1900, expect it to be passed exactly as they had prepared it.^{2.} Sir Robert Herbert suggested that it would probably be necessary for the colonies to send delegates to London to settle their own differences of opinion and to hear any imperial objections.^{3.} Curiously, although Herbert retired not long after writing this minute, he returned to the Colonial Office temporarily nine years later and had thus to participate in negotiations with the Australian delegates on the lines he had foreseen. However for the moment he discouraged any further discussion of the Bill with the cynical comment that

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1. Minute of 26 May 1891, on Jersey to Knutsford, 20 April 1891, C.O. 201/612, p.37.
 2. Minute of 17 July, on Hopetoun to Knutsford, 17 July 1891 (tele), C.O. 309/136, p.229.
 3. Minute of 17 July, on Hopetoun to Knutsford, 17 July 1891 (tele), C.O. 309/136, p.229.

1.

"..no chickens are hatched yet on the other side".

The cautiousness of the Colonial Office soon proved all too justified. Several of the colonies felt that as New South Wales had refused to join the Federal Council but rather had initiated the new movement for federation, it was up to that colony to set a lead in adopting the constitution. When the New South Wales parliament met, six weeks after the end of the Convention, Parkes attempted to forestall the opposition he knew was brewing by giving notice, before any other business had been dealt with, of his intention to move that the constitution be approved but that the House reserve the right to propose any amendments necessary.^{2.} Despite this ploy Parkes was tactically out-manoeuvred by a rising member of his own free trade party, Mr. G.H. Reid, who precipitated an immediate debate by moving an amendment to the Address in Reply to the Governor's speech, to the effect that although federation was desirable in itself, the proposed constitution was unjust in various important respects.^{3.}

Few aspects of the federal movement had aroused as much controversy as the part played in it by George

1. Minute of 17 July, on Hopetoun to Knutsford, 17 July 1891 (tele), C.O. 309/136, p.229.

2. P.D. (L.A. of N.S.W.) First Ser., LI, p.31 (19 May 1891)

3. Ibid., pp. 44-62.

1.

Reid. Both Deakin and Wise in their influential accounts of the creation of the Commonwealth labelled Reid an unreliable, self-seeking, opportunist who was never sincere about federation. According to their commonly accepted version of events, Reid's opposition to Parkes' Bill in 1891 was a treacherous and unjustified act of sabotage responsible for delaying federation by ten years. Recent attempts to rehabilitate Reid's

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reputation have stressed the constancy of purpose underlying his apparent opportunism, and in relation to this period have pointed out that in attacking the constitution he was a faithful representative of New South Wales, his haste to do so being justified by the danger that Parkes would rush the measure through on a wave of patriotic rhetoric.

Suspending judgment for the moment on the general question of Reid's motives, it may be said that he was able to make out a good case against the new constitution from a New South Wales point of view.³ Reid's main criticisms were that the retention of responsible government was not guaranteed adequately; that the Senate, and in consequence the small colonies, had too

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1. A. Deakin, The Federal Story (2nd. Ed., Melbourne, 1963) pp.53-6. B.R. Wise, The Making of the Australian Commonwealth 1889-1900 (London, 1913) passim, but esp. Chs. IX & X.
 2. W.G. McKinn, "G. H. Reid and Federation: The Case for the Defence", J.R.A.H.S., Vol.49, Pt. 4 (1963) pp.257-73.
 3. P.D. (L.A. of N.S.W.) First Ser., LI, pp.144-62.

such power over money bills, with no provision for the solution of deadlocks between the Houses; and that the arrangements for the control of rivers and railways were unsatisfactory. In addition, he was very uneasy about the subordination of free trade principles to the allegedly overriding need for federation. It is probable that Reid anticipated the support of a number of other unhappy free traders, and of the protectionist opposition, but when a division was held a substantial proportion of the protectionists voted with the Government and the amendment was defeated by a majority of 32¹.

The way now seemed to be clear for Parkes to proceed with federation on his own terms but strangely, and fatally, he hesitated; the Government announced that it would postpone further consideration of the federal constitution until a Local Government Bill and an Electoral Bill had been dealt with.² When Dibbs, the Leader of the Opposition, moved a motion of censure on the Government the federally minded protectionists such as Barton no longer had any reason to support Parkes against their own party, and as Reid and other dissident free traders also voted for the motion, the Government

1. P. D. (L.A. of N.S.W.) First Ser., LI, p. 185 (21 May 1891)
 2. Ibid., pp. 239-42.

was saved only by the casting vote of the Speaker,^{1.} and immediately afterwards secured a dissolution.

The elections which followed were contested by the Labor Party for the first time and as a result no single group was able to win a majority of seats. Although slightly more protectionists than free traders were returned, Parkes was able to govern for a further four months with Labor support, but he still did not bring the federal constitution forward for consideration. The price of Labor support during this period was an exclusive concentration on social legislation, but if, as Parkes claimed,^{2.} he disliked his dependent position and was eager to escape from office, it is difficult to see why he did not introduce the Constitution Bill and risk a glorious defeat on that, rather than await the ignominious end which eventually befell his Government on a relatively minor issue.

The explanation proffered by Wise^{3.} is that Lord Carrington's successor as Governor of New South Wales, Lord Jersey, dissuaded Parkes from resigning or unnecessarily risking defeat on a number of occasions, on the grounds that loan negotiations which were in

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1. P.D. (L.A. of N.S.W.) First Ser., LI, p.327 (28 May 1891)
 2. Sir H. Parkes, Fifty Years in the Making of Australian History (London, 1892) p.619. And see Parkes to Carrington, 1 Sept. 1891. (Carrington Papers)
 3. Wise, The Making of the Aust. Commonwealth, pp.160-1.

progress would be endangered. The financial situation, which was to become acutely critical in the following year, was already shaky in 1891, and Jersey, who himself was a partner in a London banking firm, is alleged to have been disturbed lest the credit of the colony in the eyes of the London money-market should be damaged by the defeat or resignation of Parkes who was known and trusted, and his replacement by a less well known man. As British credit to the colonies dried up almost completely not long afterwards it seems credible that Jersey may have expressed the views attributed to him by Wise, and Parkes' vanity would certainly have inclined him to accept them. However in the absence of any concrete evidence this explanation of why Parkes failed to press on with federation while he had the opportunity must be regarded as not proven.

The change of government following Parkes' resignation brought to power a predominantly anti-federal protectionist ministry under George Dibbs. Moreover Parkes had relinquished not only the premiership but also the leadership of the free trade group and this passed, after several senior members had declined it, to George Reid.¹ Thus by the end of 1891 both major parties were led by men with a record of opposition

1. Parkes to Carrington, 22 Nov. 1891 (Carrington Papers)

to the draft Commonwealth constitution, and the Labor Party which held the balance of power was increasingly hostile towards federation. It is scarcely surprising therefore, that during 1892-93 federation was seldom discussed, and although Barton and O'Connor succeeded in obtaining the approval of the two Houses for the main principles of the Constitution Bill,^{1.} detailed consideration of it was never completed. Barton, who had taken over the 'leadership' of the federal movement from Parkes despite their opposing alignment in colonial politics,^{2.} contented himself with preventing extreme fiscal legislation which would make federation more difficult, and turned increasingly to extra-parliamentary action. In December 1892 Lord Jersey was able to report to a new Secretary of State for the Colonies, Lord Ripon, that the federal cause had slipped back since the Convention and did not seem likely to reach fruition.^{3.}

Outside New South Wales a similar state of affairs prevailed.^{4.} Western Australia and Queensland

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1. P.D. (N.S.W.) First. Ser., LXI, p.30+6; LXVI, p.76+6.
 2. J. Reynolds, Edmund Barton (Sydney, 1948) pp.84-5. Parkes later regretted his hasty action in commissioning Barton to carry on where he was leaving off; see Parkes to Carrington, 6 March 1892. (Carrington Papers)
 3. Jersey to Ripon, (Private) 17 Dec. 1892 (Ripon Papers) B.M. Addit. MSS. 43560, f.10.
 4. The handling of the draft constitution by the other colonies is summarised by J.Quick & R.R. Garran, The Annotated Constitution of the Australian Commonwealth (Sydney, 1901) pp.146-7.

both declined to consider the Commonwealth Constitution Bill at all until it had been adopted by New South Wales. Tasmania began moves to refer the constitution to a popularly elected convention within the colony, but soon suspended action pending developments elsewhere. More progress was recorded in Victoria and South Australia where in each case the Bill was debated on odd occasions spread over many months, and various amendments agreed to, but in neither colony was consideration of the Bill completed. In New Zealand the constitution was not submitted to parliament and some vague resolutions relating to federation and imperial federation which were proposed by Sir George Grey, one of the three delegates to the Convention, were disposed of without a vote. In several long despatches to the Colonial Office Lord Onslow, the Governor, expressed the opinion that there was no possibility of New Zealand entering a federation with Australia as few of the benefits expected by the other colonies would apply to her, while the expense through loss of revenue would be very great.^{1.} Thus the federal movement which had seemed to be on the brink of success early in 1891, reached its lowest ebb for a decade in the two or three years which followed.

1. Onslow to Knutsford, 8 May, 21 Aug. 1891, C.O. 209/251, pp. 142ff., 232ff.

Apart from the changing fortunes of individual politicians there were more basic reasons for the disintegration of the movement for federation in the early eighteen-nineties. Although at various times during the 'eighties there had been considerable popular enthusiasm for the questions of Pacific annexationism and national defence which were associated with the federal movement, there was still little public interest in federation for its own sake. All of these related issues which appeared for a time to make federation necessary or desirable were shortlived in their effects; the future of the major Pacific islands was settled before the Federal Council was created to press Australia's claims to them; the defence scares which led to General Edwards' Report were forgotten by the time his recommendations were dealt with. The Convention of 1891 was essentially the product of, and a monument to, these issues of the 'eighties and the leaders involved with them. Even before it met new problems were in the air which made federation seem, for the moment, irrelevant.

As the prosperity enjoyed by the colonies for many years showed signs, after 1889, of waning, relations between unions and employers deteriorated. In August 1890 a maritime strike which paralysed some

of the country's major industries for months introduced a period of bitter and often violent industrial conflict which lasted for four years and ended in the crushing defeat of the unions.¹ There were few people in the colonies who were not personally affected by the strikes at some stage and it is not surprising that public interest in the comparatively abstract question of federation was low. The colonial governments also, were preoccupied with the need to maintain law and order as far as possible.

The failure of the strikes in 1890 and 1891 gave new force to the arguments of those within the labour movement who had been advocating a shift from direct to parliamentary action, and hastened the birth of the political labor party, the immediate success of which was highlighted by its capture of 36 seats and the balance of power in the Legislative Assembly of New South Wales in 1891. The traditional patterns of colonial politics were thrown into confusion and the resulting political instability was once again inimical to the progress of the federal movement. In its first platform Labor declared itself in favour of national though not imperial federation, but in practice most

1. R. Gollan, Radical and Working Class Politics. A Study of Eastern Australia, 1850-1910. (Melbourne, 1960) pp. 128-35.

labor members were unwilling to contemplate federation until they had pushed through their programme of social reform;^{1.} some were actively opposed to it and regarded it as an employers' plot to rob them of their newly acquired power.

Underlying these industrial and political distractions and of even greater significance for the federal movement was the onset from 1891 of a serious economic depression which affected all the Eastern colonies. World prices of Australia's major exports slumped, the inflow of overseas capital dried up, and unemployment spread rapidly. In 1892 the feverish land and building boom of preceding years collapsed overnight, and in 1893 a financial crisis followed in which thirteen of the twenty-five banks operating in the colonies closed their doors.^{2.} The challenge of these adverse conditions and the financial emergency left the colonial governments little time to spare for federation. Victoria, probably the most federally minded of the colonies, was the worst hit, for Melbourne had been the centre of speculative finance, and the colony did not have untapped resources like those of New South Wales or Queensland, to help it pull out of the slump. In addition, the Government of Victoria

1. Gollan, Radical and Working Class Politics, pp. 181-3.
 2. R.M. Crawford, Australia (Rev. Ed., London, 1960)p.138.

handled the crisis less adroitly than that of New South Wales.

The early eighteen-nineties were thus a period of unusual economic and political upheaval in Australia, and it is not surprising that the federal movement went into eclipse for a few years. Not until 1895 did federation come under serious consideration again at the parliamentary level. Yet in a very real sense it was between 1891 and 1895, when federal activity of the old type was at a halt, that the ultimate triumph of the movement became assured. The federal movement which went into eclipse in 1891 was the old movement of the 'eighties; that which emerged in 1895 was a new movement with a wider base and deriving its impetus from new sources.

The economic reverses and stagnation of trade during the depression years, together with the strikes and industrial turmoil, clearly demonstrated the inefficiency of economic and political fragmentation. Flora Shaw, who toured Australia in 1893 as a special correspondent for the London Times, discerningly wrote:

"The strikes brought home the need of federation to both labourers and employers in regard to industrial questions, and the employer unions were the first to show how comparatively easy it was to ignore political boundaries for a common end. Employers' unions are now federated throughout Australia, and the labour unions are endeavouring to become so.

"In many departments of the export trade it is beginning to be felt that an amalgamation of interests between the various colonies would be mutually advantageous, and, if nothing else were acting in that direction, the financial history of the last two or three years would alone have demonstrated the need of establishing some common basis of action in regard to public borrowing." 1.

This account is not entirely accurate, for some of the major trade unions were organised intercolonially well before the strikes and Intercolonial Trade Union Congresses had met at intervals since 1879,^{2.} but it is certainly true that the strikes showed both labour and capital the advantages of national organisation, and the employers at least began to think it desirable that there should be a national government to regulate industrial conditions. The growing influence of the political labor party, though unfavourable to federation in many respects, served to convince some conservatives that it was desirable to create a federal parliament, less open to labor control than the colonial parliaments^{3.} appeared to be. The financial crisis convinced many that national control of banking, currency, public borrowing,^{4.} and commercial and bankruptcy law was long overdue.

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1. The Times, 2 Aug. 1893.
 2. Gollan, Radical and Working Class Politics, pp. 93-8.
 3. G. Black, A History of the N.S.W. Political Labor Party, (Sydney, 1926) Part 4, p. 24.
 4. A. W. Martin, "Economic Influences in the New Federation Movement", H.S. Vol 6, No 21 (1953), pp 67-70.

In the face of the depression even the tariff question became less the 'lion in the path' of the federal movement than it had traditionally been, and more of an incentive to union. The demand for a national market unhampered by border customs houses and differential railway rates at last began to outweigh attachment to extreme fiscal doctrines; an increasing number of both free traders and protectionists were prepared to take the risk that a federal government might opt for a tariff policy with which they disagreed, in order to gain the benefits of unity. At a meeting in Melbourne in 1893 speakers representing the Employers' Union, the Chamber of Commerce, and the Chamber of Manufacturers were all agreed on the need for customs union.¹

The outlook of the colonists had in a sense begun to catch up with the realities of their society, for the growth of intercolonial transport, communications, and trade, the evolution of a common Australian way of life, were such that by 1890 the colonies were already federated in many respects. At the very time when parliamentary interest in federation was at an ebb, a significant though still quite small proportion of

1. The Age, 21 June 1893, quoted in C.M.H. Clark, Ed., Select Documents in Australian History 1851-1900 (Sydney, 1955) pp. 502-3.

the colonial public became convinced that federation would serve their own material interests and a 'popular movement' for it was launched. After 1893-94 the old motives for federation, imperialism in the Pacific, defence against external threats, reaction against imperial policies, were of minor importance compared with the socio-economic motives generated within Australia itself. Whereas the federal movement of the 'eighties had been largely a chapter in imperial history, indirectly but strongly influenced by relations between Britain and the colonies, the federal movement of the 'nineties was to be a chapter in domestic Australian history.

During the same period in which the basis of the federal movement was thus shifting from external to domestic pressures, important changes were taking place in the character and strength of colonial nationalism, and the relationship between nationalism and federation. This was of great importance, for the efforts of the small groups of political activists who were working to unify the colonies under a federal constitution could not be crowned with success until the people of the colonies were ready to accept this. The early federal movements sponsored by Deas Thompson

Wentworth, Lang, and Duffy, had been fatally handicapped by the absence of any national sentiment which could be harnessed in support of the creation of an Australian national state. It is true that both Lang and Duffy were themselves strongly nationalistic, but they were far ahead of their time. Most colonists thought of themselves as Britons in exile rather than Australians; the anticipated destiny of Australia was that it might become, in Wentworth's words, "A New Britannia in another world".^{1.}

It is not surprising that the earliest stirrings of nationalism were of an anti-British character, in reaction against these prevailing attitudes. However the granting of responsible government and the cessation of convict transportation cut the ground from under the mid-century republican movement of the Rev. J.D. Lang. In the thirty years which followed Australian nationalism slowly developed in the colonies, still, in the main, in reaction against British attitudes, institutions, and policies, but not until the eighteen-eighties did it become prominent.^{2.}

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1. The last line of his celebrated poem, "Australia", W. Murdoch, Ed., A Book of Australasian Verse (Oxford, 1924) pp.1-2.
 2. For an analysis of Australian nationalism in the second half of the Nineteenth Century, see C.S. Blackton, "Australian Nationality and Nationalism, 1850-1900", H.S., Vol.9, No.36 (1961) pp.351-67.

By the 'eighties a substantial number of colonists had been born in Australia, had come to terms with their environment, and regarded it as 'home'. These native Australians were proud of their country, often exaggeratedly so, and resentful of the patronising attitude of many British visitors, the assumption that all things colonial were inferior, and even the implicit condescension in the use of the word 'colonist'. Sir Samuel Griffith undoubtedly struck a chord in many hearts when he told the 1891 Convention that he was tired of being called a colonist. At another level the egalitarian collectivists of the union movement were determined that the British class structure and unequal distribution of wealth should not be reproduced in Australia, and gave a firm "no" to the nationalist poet O'Dowd's question, "...are you a drift Sargasso, where the West in halcyon calm rebuilds her fatal nest?"^{1.}

As Lord Derby told the House of Lords in 1888, no opinion was so universally held in the colonies as that Australia belonged to the Australians.^{2.}

These basic social and cultural sources of nationalism were supplemented by a number of political

1. See his sonnet, "Australia", Poems of Bernard O'Dowd (Melbourne, 1941) p.25.
2. Hansard, 3rd. Ser., CCCXXVI, 1518. (8 June 1888).

or constitutional disagreements between Britain and the colonies. For even after the Eastern colonies became self-governing in the eighteen-fifties a few points of conflict between the colonial and imperial governments had remained.

Responsible government meant a substantial modification of the constitutional function of the colonial governor, but despite this the Colonial Office continued to issue exactly the same Instructions to Governors. This was not, of its nature, a matter which interested many, but some colonists led by George Higginbotham, Attorney-General of Victoria from 1863-68 and later Chief Justice of the Victorian Supreme Court, felt very strongly about it indeed.¹ Higginbotham contended that the Instructions were illegal because they conflicted with the constitutions of the colonies, and encouraged governors to meddle in domestic affairs; he further objected to the monthly reports on local affairs sent by the governors to the Colonial Office, and the advice they received in return. An unyieldingly correct but rather extreme man, Higginbotham once described governors to Sir Henry Parkes as "only the secret agents of an illegal and absolutely irresponsible authority, the English Secretary of State

1. E. E. Morris, A Memoir of George Higginbotham (London, 1895) Ch. XX.

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 for Colonies", and as late as 1887 he wrote to Lord Knutsford that the policy of the Colonial Office was "sinister and clandestine"^{2.} For over twenty years Higginbotham agitated for revision of the Instructions to Governors, and because he would not undertake to abide by them was passed over for the Lieutenant-Governorship, but his campaign was ultimately successful.

A specific instance of alleged interference by the Imperial Government in the affairs of Victoria which angered Higginbotham, was the Governor Darling controversy of the late eighteen-sixties.^{3.} Darling became deeply involved in a violent conflict between the Legislative Council and the Legislative Assembly and was eventually recalled. It was commonly though mistakenly believed in Victoria that he had been recalled because he had followed the advice of his ministers rather than that of the Colonial Office, and this, together with several tactless phrases in despatches from London, aroused much indignation. Further friction was engendered by the attempt of the Legislative Assembly to compensate Lady Darling for her husband's dismissal, and relations between Britain

1. H. L. Hall, Australia and England (London, 1934) p.188.

2. Morris, George Higginbotham, p.201.

3. D.P. Clarke, "The Colonial Office and the Constitutional Crisis in Victoria, 1865-68", H.S. Vol. 5, No. 18 (1952), pp.160-71.

and Victoria were strained for some years . In 1869 Higginbotham proposed in the Assembly five resolutions expressing a loyal desire that Victoria should remain in the Empire, but condemning in the strongest terms all imperial interference in the domestic affairs of the colony, or even the transmission of advice to the Governor from the Imperial Government on such subjects.^{1.} All five resolutions were passed by substantial majorities .

One of the most troublesome of the powers retained by the governors of the colonies in this period was the prerogative of pardon, which the governor was directed by his Instructions to exercise personally rather than on the advice of his ministers. This nagging source of Anglo-Australian friction came to a head in 1888 with what is usually known as the Kitt case . The Government of Queensland cleverly chose to make an issue of a case in which only a trivial crime was involved, the theft of two pairs of boots, so that the principle at stake was not obscured by the emotion which surrounded appeals for mercy in murder and rape cases. The Governor, Sir Anthony Musgrave,

1. P.D. (L.A. of Vic.) 1869, IX, p.2123ff.

firmly insisted that the prerogative was his alone to use, and he clung to his decision the more tenaciously because he knew the Government regarded it as a test case.^{1.} When the Ministry threatened resignation however, Musgrave was instructed by the Colonial Office to accept their advice, and a few years later the Secretary of State for the Colonies revised the Governor's Instructions on this point to meet the wishes of the colonists.^{2.}

Quite apart from these disputes about the powers of the governor, some of the Australian colonies were also restive about the manner in which their governors were appointed. In the late nineteenth century it became common for a government to demand the right to be consulted about a pending appointment, but such demands were always resisted by the Colonial Office. A few months after the Kitt case the Government of Queensland forced this issue to a crisis also, by refusing to accept the appointment of Sir Henry Blake to succeed Musgrave as Governor of the colony. The official reason offered was that Blake had had no experience in colonies with responsible government, and a hint was

1. Musgrave to Holland, 11 Sept. 1889, C.O. 234/49.

2. For the details of the case see, K.H. Bailey, "Self-Government in Australia, 1860-1920", Cambridge History of the British Empire Vol. VII, Pt. 1, (Cambridge, 1933) pp 400-1.

also given that Blake's early years as a Resident Magistrate in Ireland made him unacceptable to the large Irish minority in the colony.^{1.} In addition, it is probable that Queensland was piqued at not getting a peer as several of the other colonies had done, and that they wished to press the consultation issue. Both New South Wales and South Australia supported Queensland on the general grounds that the colonies ought to be consulted about appointments,^{2.} and a debate on the subject in New South Wales showed many members talking of separation.^{3.}

Because the dispute directly raised the general question of the future relations between the colonies and the Empire it attracted much notice in Britain. Her Majesty's Government refused to withdraw Blake's nomination, and insisted that the Governor was an imperial rather than a colonial officer and should not owe his appointment to any colonial party or government.^{4.} A solution was found only when Blake resigned his commission without having taken it up; the outstandingly experienced Sir Henry Norman was appointed in his stead

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1. Palmer to Knutsford, 15 Nov. 1888 (tele), C 5828, p.4, Parl. Pap. 1889, LV.
 2. Robinson to Knutsford, 21 Nov. 1888 (tele), C 5828, p.7, ibid.; Carrington to Knutsford, 22 Nov. 1888 (tele), C 5828, p.11, ibid.
 3. P.D. (L.A. of N.S.W.) First Ser. 1888-9, XAV, p.556 (Dibbs), p.579 (Walker), p.588 (Lyne).
 4. Hansard, 3rd. Ser., CCCXXX, 910. (12 Nov.1887)

and Queensland made no further demur, though The Times complained bitterly that the colony had been allowed to profit by its ill-founded obstinacy.^{1.} After 1889 the governments of the colonies were given prior notification of the names of new governors, though they were still not consulted about appointments.

Reference has already been made to the manner in which the right to levy differential duties was withheld from the colonies even after they had become self-governing,^{2.} and the effects of this prohibition on the development of Australian nationalism should also be noted. The ban on differential duties facilitated the growth of tariff barriers between the colonies of course, and in that respect fostered provincialism rather than nationalism, but on the other hand it also led to joint action by the colonies to persuade the Imperial Government to revise its attitude. The colonists' demand was in the first instance that they should be allowed to use differential tariff rates amongst themselves, and they were granted this in 1873 only after six years of sustained agitation. C.D. Allin, the historian of early Australian tariff policy, suggests that the very fact that differential

1. The Times, 1 Dec. 1888. The Times was very bitter on the subject, see the leading articles of 13, 26 & 28 Nov. 1888.
2. See pp. 17-21 above.

duties were prohibited made them attractive to the colonists and that this remaining vestige of "colonial tutelage" was irritating to the emergent national self-consciousness. Certainly when the colonies received the right they had been demanding, no use was made of it. The conflict over tariff powers had given some nationalists an opportunity to cut their teeth, but it was settled before any breach in imperial relations occurred. The additional right to levy differential duties on external trade was not requested until 1894¹ and was granted in the following year without question.²

All of these areas of Anglo-Australian friction were primarily of a constitutional nature of more interest to politicians than to the public; in the eighteen-eighties they were supplemented by questions of greater popular interest, especially the scramble for control of the islands of the Pacific, and the exclusion of Chinese from Australia. The immediate effects on the federal movement of the not wholly sympathetic attitude of the British Government towards the colonists' wishes on these questions has already been examined. In addition, Australian nationalism

1. C.D. Allin, Australian Tariffs and Imperial Free Trade
A Chapter in the Fiscal Emancipation of the Colonies.
 (Minneapolis, 1929) p.75.

2. J.A. La Nauze, "Australian Tariffs and Imperial Control"
 Part 2, Economic Record, Vol. 24 (1948) p.224.

was powerfully stimulated. George Black, a prominent republican radical of the period, is probably wrong in attributing the outbreak of republicanism in the 'eighties to the refusal of Great Britain to annex New Guinea,^{1.} for the Republican Union was not formed until 1888, and in any case many radicals did not support the prevailing wave of annexationism in the colonies. However many respectable members of the middle and even the propertied classes were moved to express violently nationalistic and separatist sentiments such as had previously emanated only from extremist sources. At the height of each of the several crises over Australia's annexationist demands the premiers of some of the colonies talked of secession from the Empire, and Lord Derby at least, was terrified that this might eventuate,^{2.} though some of his colleagues were more complacent. As a result of the controversies over the Pacific many colonists realised for the first time that they were now Australians, whose interests were not always or necessarily the same as, or even compatible with, those of Britain.

Though the British Government offered less

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1. G. Black, Hist. N.S.W. Labor Party, Part 1, p.20. cf. Mansfield, "The Background to Radical Republicanism in N.S.W. in the 1880's", H.S. Vol.5, No.20 (1953) pp.338-48.
 2. Derby to Gladstone, 31 July, 23 & 26 Dec. 1884, B.M. Addit. MSS. 4+142, ff. 65, 106-7, 108-9. (Gladstone Papers)

resistance to the colonists' anti-Chinese legislation than to their Pacific ambitions, the migration issue generated even more heat in the colonies and was probably an even greater stimulus to nationalism. For whereas the contest over the islands of the Pacific was an attempt to exclude alien peoples from Australia's corner of the world, the Chinese migration issue was an attempt to exclude aliens from Australia itself. On no question were the colonists and colonies so united; no attitude was more commonly shared than the belief that the Chinese, and other non-Europeans, were inferior, undesirable, and to be excluded at all costs. Much as the imperial authorities disliked the Australian policy they were not prepared to face the uproar which would have followed a direct veto, and contented themselves with advocating severe restriction rather than total exclusion, and general rather than specifically anti-Chinese legislation. Even these suggestions were condemned by the influential radical William Lane as insufficient, puerile, and typical of 'perfidious Albion'.¹ Before the Secretary of State for the Colonies had defined his attitude, the mere rumour that he was opposed to the wishes of the colonies was enough to

1. Boomerang, 16 June 1888. See Gollan, Radical and Working Class Politics, p.118.

provoke Parkes' celebrated boast that he would turn aside from his policy for neither "Her Majesty's ships of war, nor for Her Majesty's representative on the spot, nor for the Secretary of State"^{1.}

This was the temper of the times and it may reasonably be concluded that alien migration was the first great national issue in Australia. Despite the formidable barriers erected in 1868 its importance in fostering nationalism continued. Deakin, looking back after federation had been achieved, offered the opinion that "no motive operated more powerfully in dissolving the technical and arbitrary divisions which previously separated us than the desire that we should be one people, and remain one people, without the admixture of other races"^{2.} Once again, in the struggle to exclude other races, many colonists came to realise that they were Australians.

In the eighteen-eighties the anti-British and separatist element of Australian nationalism expressed itself in several different forms, of which the most clamant was radical republicanism.^{3.} A Republican League and later a Republican Union were formed, and various journals, including the Sydney Bulletin, the Newcastle

1. P.D. (L.A. of N.S.W.) First Ser., 1887-8, XXXII, p.478+.
 2. P.D. (Commonwealth) IV, p.480+. (12 Sept. 1901)
 3. On this subject see Mansfield, "Background to Radical Republicanism", H.S. 1953.

Radical, the Queensland Boomerang, and the Lawson family's Republican gave currency to separatist and republican sentiments. There was no organised republican movement however, and little enthusiasm for republicanism for its own sake; rather it was an expression of dislike of British policies and institutions, and as such, an extreme strand in the emergent nationalism of the colonies. Despite the pro-republican resolutions and toasts of some trade union gatherings, especially in Queensland,^{1.} it is doubtful whether republicanism was ever widely accepted even among the miners, bushworkers, and industrial workers who were the most radical groups of the time. Sir Henry Norman, Governor of Queensland at the end of the decade, perceptively advised the Colonial Office that the republicans were neither numerous nor influential and need not cause any alarm,^{2.} but many others over-estimated their importance because the republicans were so stridently articulate.

Many of those who professed republican sympathies, George Black and Robert Thompson for example, followed in the tradition of J.D. Lang by advocating federation as the first step to independence; Black's ideal was

1. Gollan, Radical and Working Class Politics, p.119.

2. Norman to Knutsford, 11 Nov. 1889, C.O. 234/50, p.395.

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"An Independent Federated Australian Republic". However most of the active republicans were writers, journalists, or union leaders, only on the fringes of politics and not in a position to influence the federation movement directly. George Dibbs, the leader of the protectionist party in New South Wales, had flirted with republicanism early in his career, but his views had altered by the time he was in a position to exercise authority.^{2.} In practice therefore, many of the radicals were suspicious of the conferences and conventions and other practical steps being taken towards federation, because they did not trust the men who were responsible for them. Black wrote in 1891, "Imperial federation, aye, and also federation of the Griffith-Parkes brand, means for us a share in England's quarrels, a share in her bloodthirstiness, and a share of the enmity that she has worked so hard to earn for herself."^{3.} Other radicals were more interested in excluding the British class system and capitalist organisation of society from Australia than in the creation of a political state.

Apart from the verbal fireworks of the republicans much of the federal activity of the moderate liberals,

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1. G. Black, Why I am a Republican or Imperial Federation versus Nationalism (Sydney, 1891) p.23; R. Thompson, Australian Nationalism (Sydney, 1888)
 2. C.H. Grattan, The Southwest Pacific to 1900 (Ann Arbor, 1963)pp.335-6.
 3. Black, Why I am a Republican, p.22.

or even the conservatives, who were in control of the colonies in the eighteen-eighties, was prompted by dissatisfaction with British policies and attitudes. Although men like Service, Griffith and Parkes were basically loyal to Britain and happy to preserve a close relationship with the Empire, each was driven at times to threaten separation. With one eye on the rising tide of nationalism in the country and the other on the full-blooded anti-British tirades of the radicals, even the moderates scrambled to outbid each other for the leadership of the nationalist movement. The Australian Natives' Association which by the end of the century had become a moderate group with a positive Australian platform offering strong support for a federated Australia with continued ties with Britain, was very anti-British in the 'eighties. Indeed it was largely concern about the apparent British indifference to Australia's aspirations in the Pacific which was responsible for the phenomenal expansion of the Association between 1885 and 1890, when the number of branches quadrupled and the membership increased^{1.} fivefold.

1. C.S. Blackton, "Australian Nationality and Nativism; the Australian Natives' Association, 1885-1901", Journal of Modern History, Vol. XXX, No. 1 (1958) p.38.

Eighteen eighty-eight was probably the highwater mark of the anti-imperial strand in the nationalist movement. In that year both moderate liberals and extreme republicans were at a high pitch of irritation with Britain; the failure to gain North-East New Guinea and the New Hebrides still rankled, controversy over the landing of Chinese was at a peak, especially in New South Wales, the Kitt and Blake affairs were current in Queensland, the Chief Justice of Victoria was in the midst of angry correspondence with Lord Knutsford about the Governors' Instructions, and there was also a strong reaction against imperial federation and the Colonial Conference and Naval Defence Agreement of the previous year.

The Colonial Conference held in London concurrently with the celebrations of Queen Victoria's Jubilee had been suggested originally by the Imperial Federation League, in itself a poor recommendation in the eyes of many colonists. The mere holding of the Conference was denounced by the Bulletin^{1.} and criticised or questioned in some colonial parliaments^{2.} because it was feared that Australia might be drawn back into the bondage of Britain. The Naval Agreement which came out

1. Bulletin, 7 May 1887.

2. P.D. (L.A. of Vic.) 1887, LIV, pp. 292-3 (Patterson), 306 (Woods), 328-9 (Jones).

of the Conference was even more unpopular amongst Australian nationalists. The most common objections voiced were that Australia was being duped into paying for the protection of British trade, the 'bondholders' interests' as the Radical put it;^{1.} that Australia had no say in the making of British policy and might become involved in European wars not of its own making;^{2.} and that the real purpose of this scheme of imperial defence was to draw Australia into an imperial federation.^{3.} The visit of General Edwards in 1889, another proposal of the Conference and one which was pressed by the British Government when the colonists did not take it up, aroused similar fears. The idea of imperial federation and especially the activities of the Imperial Federation League were objects of extreme suspicion in the colonies, and gave a great stimulus to Australian nationalism.

For a few years after 1888 vigorous condemnation of British policies and talk of separation from the Empire continued to be prominent constituents of the nationalism of the colonies, but by the mid-eighteen nineties, when the federation movement was revived, its

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1. Radical, 19 March 1887, & also The Bulletin, 7 May 1887.
 2. P.D. (L.A. of Q.) 1887, LIII, pp. 1634 (Palmer), 1638 (Norton), 1705 (Chubb); P.D. (L.A. of N.S.W.) 1887-8, XXIX, pp. 1534 (O'Sullivan), 1574 (Haynes).
 3. Sydney Morning Herald, 3 Dec. 1887; P.D. (L.A. of N.S.W.) 1887-8, XXIX, pp. 1550 (Walker), 1563 (Cameron), 1627 (Schey), 1719 (O'Sullivan).

importance had decreased markedly. Most of the issues which had engendered anti-British feeling in the colonies were no longer current. In 1892 Knutsford conceded that the prerogative of pardon should be exercised by the Governor in Council rather than by the governor personally; in the same year a revised set of Instructions to Governors, much more in accordance with the principles of responsible government, were issued. In 1895 the Australian Colonies Duties Act removed the last restrictions on the tariff fixing powers of the colonies, and the susceptibilities of the colonists were further gratified by the appointment of an Australian to the Judicial Committee of the Privy Council.¹ By this time too, the Imperial Federation League was disintegrating and had ceased to cause any alarm. The flush of indignation about Britain's unsympathetic and dilatory handling of Australia's schemes of annexation in the Pacific had subsided. Some disagreement about the form of the restrictive immigration legislation adopted by the colonies remained, but most of the heat had been taken out of imperial relations. The enthusiasm of the radicals was crushed

1. Under the Judicial Committee Amendment Act, 1895. The first representative was Sir Samuel Way, Chief Justice of South Australia. On this change in the character of nationalism in the colonies see, W.H. Moore, "Constitution Making in Australia", National Review, April 1898, pp.269-79.

by the strikes and the depression, and the labour movement turned to political action to protect its own class interests.

At the opposite extreme from republicanism, the movement for imperial federation also influenced Australian nationalism and federalism in the late eighties. The idea of a unified Empire was not a new one, but it came into prominence in Britain towards the end of the nineteenth century as an attractive solution to the problem of the future relations between Britain and her increasingly mature and independent colonies.^{1.} In August 1884 a meeting at the Westminster Palace Hotel in London formed itself into the Imperial Federation League,^{2.} to work for the closer union of the Empire. The founding group, Labilliere, Baden-Powell, Colomb, Young, Deniston Wood and Westgarth, was a mixture of former colonists retired to England, and Englishmen with colonial interests or experience. Branches of the League were subsequently formed in various colonies, but its main strength lay in Britain where many people were anxious about their country's future in a changing world and keen to maintain close ties with the prosperous

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1. J.E. Tyler, The Struggle for Imperial Unity 1863-1895 (London, 1938) gives a good account of imperial federation in its context of the general trend towards imperial unity.
 2. F.P. de Labilliere, "British Federalism; Its Rise and Progress", Proc. R.C.I., XXIV, 1892-3, p.111.

and still growing colonies.

The most tangible achievement of the League was the staging of the 1887 Colonial Conference. Although Her Majesty's Government, when it took up the League's proposals for a conference, specifically debarred discussion of imperial federation of a political character on the grounds that this would be premature,^{1.} eleven colonies were represented at the conference, the first of its kind, and many delegates appeared to favour closer union though in a rather vague way. Imperial defence was considered at length for Her Majesty's Government was anxious to retain control of the defence of the Empire but to secure financial contributions towards this from the self-governing colonies. The colonies, on the other hand, were anxious to secure imperial trade preferences - which was impossible unless Britain would modify her traditional free trade policy.

Differences over these questions of imperial defence and imperial trade eventually led to the dissolution of the League in 1893 without any practical scheme for political union ever having been formed,^{2.} but the idea of imperial federation continued to bewitch many English minds for more than twenty years afterwards. Although

1. Stanhope to all Governors, 25 Nov. 1886 (Proc. of the Col. Conf., p.vii), C 5091, Parl.Pap. 1887, LVI.
 2. Tyler, Struggle for Imperial Unity, p.178ff.

the actual membership of the League was never large many of the leading men in Britain, including some in both political parties, were sympathetic towards federation without any concrete idea of how it could ever be implemented.

It was in part the long term goal of a federated, or at any rate unified, Empire which made the federation of the Australian colonies a popular objective in Britain. For although one leading member of the League, Francis Labilliere, held that colonial federation was not an essential pre-condition for imperial federation, the more common view was that "until local federation is an accomplished fact in Australia and South Africa, it is hopeless to expect its consummation on a larger scale"^{1.} When the news that Sir Henry Parkes had re-opened the federal question in Australia in 1889 reached Britain, it was hailed by many newspapers as the first step towards imperial federation.^{2.} A large meeting of bankers, financiers, merchants and others in the City of London was held at the Mansion House under the auspices of the Imperial Federation League to applaud the Resolutions of the Melbourne Conference of 1890 in favour of Australian federation.^{3.} Indeed it was largely this

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1. The Daily Chronicle (Huddersfield), 5 Nov. 1889.
 2. The Times, 11 Feb. 1890; United Service Gazette, 9 Nov. 1889; Statist, Nov. 1889; Pall Mall Gazette, 4 Nov. 1889; Birmingham Post, 5 Nov. 1889; Aberdeen Journal, 5 Nov. 1889.
 3. Imperial Federation, Vol.V, No.54 (1890), p.136.

enthusiastic reaction in Britain which caused some
 Australians to regard the Convention of 1891 with
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 suspicion.

Lord Knutsford, who was Secretary of State for
 the Colonies from 1887 until 1892, gave clear expression
 to the imperial federationist attitude to the Australian
 federal movement in a letter to Lord Carrington in 1889:

"For my own part I heartily desire a confederation
 and Australian Dominion. Till the great colonies
 have federated Imperial Federation is an
 impossibility. Representation of many colonies,
 however important, cannot be effected; representation
 of Dominions seems quite feasible, although
 the settlement of the terms and conditions of
 such representation may require tact and
 judgment." 2.

Lord Ripon, who succeeded Knutsford and was responsible
 for the Colonies from 1892 until 1895, was not an
 imperial federationist perhaps, but he stated in a letter
 to another governor, Lord Hopetoun, that he was "willing
 and anxious to promote the unity of the Empire" if this
 3.
 was accepted in the colonies. In an endeavour to
 ascertain colonial feeling on the subject Ripon requested
 the governors of all colonies to forward to the Colonial
 Office any correspondence or press clippings about
 4.
 imperial federation. The yield was meagre, and demonstrated

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1. The Bulletin, 4 Jan. 1890; see Hall, Australia and England, p. 102.
 2. Knutsford to Carrington, 24 Dec. 1889 (Carrington Papers)
 3. Ripon to Hopetoun, 1 Jan. 1894 (copy), B.M. Addit. MSS. 43560, f. 135 (Ripon Papers)
 4. Ripon to all governors, 6 March 1893, mentioned in C.O. 234/56, p. 449.

that the Australian colonies at least were apathetic or often hostile. Nevertheless Ripon's successor, Joseph Chamberlain, who was Secretary of State for the Colonies from 1895 until after the federation of Australia was complete, was also interested in the problem of the relationship between Britain and the self-governing colonies and increasingly sympathetic towards imperial federation. The concept of a federated empire was thus of considerable significance in shaping the attitude of those in charge of British colonial policy in the most crucial period, in favour of colonial federation. The same factor was also one reason for the enthusiasm so many of the governors of the colonies showed for the federation of Australia, though Lord Carrington was a prominent exception who supported Australian but not imperial federation.

A branch of the Imperial Federation League was formed in Melbourne in 1885 and continued its operations, though not very actively, even after the dissolution of the parent body in London. A journal called Young Australia was launched to publicise the aims and activities of the League, and in 1889 the movement reached its height

1. C.S. Blackton, "Australian Nationality and Nationalism; The Imperial Federationist Interlude, 1885-1901", H.S. Vol.7, No.25 (1955) p.1ff.

with an Australian lecture tour by the Canadian imperial federationist, G.R. Parkin. However the appeal of imperial federation in Australia was very limited, and the movement for it has aptly been described as a "stuffed shirt affair"^{1.} By the eighteen-eighties only the wealthy who could afford to educate their children in Britain and make frequent visits there continued to think of Britain as "home" in any meaningful way. In consequence imperial federation was supported mainly by the squattocracy of Victoria and Tasmania, the planters of Queensland and Northern New South Wales, some wealthy financiers, and a group in and around the colonial universities.^{2.} The very fact that the League was backed by these wealthy and predominantly conservative groups was enough to make it suspect in the eyes of the working class. Moreover although some imperial federationists claimed to be as staunchly "Australian" as the next man, though with the added consciousness of a higher imperial loyalty as well, most nationalists regarded them as dangerous and hostile. The failure of the League to produce a workable plan for political federation meant that its aims were always very vague and woolly, and difficult to communicate to a sceptical

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1. K. Sinclair, Imperial Federation. A study of New Zealand Policy and Opinion 1880-1914 (London, 1955) p.24.
 2. Blackton, "The Imp. Federationist Interlude", H.S. 1955, p.6.

Australian public. Only the concept of imperial defence had any real attraction for the colonists. In the early eighteen-eighties some politicians, notably Duncan Gillies and Graham Berry in Victoria, W.B. Dalley in New South Wales, and P.O. Fysh in Tasmania were sympathetic towards imperial federation, others like Parkes and McIlwraith flirted with the idea at times; but by the end of the decade when it was apparent that the League had failed to attract a mass following, political support also dried up. By 1896 it was unmistakably clear that Australians were not interested in imperial federation.

This is not to say that the imperial federation movement had no influence in Australia however, for apart from the stimulus it gave to local nationalism, it also attracted the attention of its supporters to Australian federation. For the Australian adherents of the League, like their British counterparts, regarded local federation as an essential preliminary.^{1.} On the other hand they were much more aware of the danger that a federated Australia would be even less likely than the separate colonies to join a wider union, so that the issue confronted them with something of a dilemma. The inauguration of the Federal Council was hailed as a step

1. R. Christison, United Australia and Imperial Federation (London, 1888); Sir G. Berry, "The Colonies in Relation to the Empire", Proc. of R.C.I., XVIII, 1886-7, pp.2-39; H. Willoughby, Australian Federation: its Aims and Possibilities (Melbourne, 1891).

1.
 in the right direction, though a contemptuous reference
 to imperial federation by Griffith at its first meeting
 gave some cause for alarm.^{2.} When Parkin toured the colonies
 on behalf of the League it was noticeable that even when
 he was given a fair hearing the discussion at most of
 his meetings was quickly turned to local federation.^{3.}
 At a meeting in Sydney in June 1889, as soon as Parkin
 finished his lecture it was moved from the floor that the
 natural destiny of the colonies was federation to form
 a "free and independent nation" and when the Chairman
 declined to accept the motion, uproar ensued.^{4.} It was also
 as an immediate consequence of Parkin's visit to New
 South Wales that Lord Carrington prompted Sir Henry Parkes
 to take up the question of federation again. The League
 began to feel anxious lest their greater goal should be
 lost sight of but had no option but to support the new
 federal movement.^{5.}

After 1891 even the members of the Imperial
 Federation League recognised that under existing conditions
 they were wasting their time, and the League turned almost
 completely to encouraging Australian federation both

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1. Imperial Federation, Vol.I, No.1, p.20. (Jan. 1886)
 2. Imperial Federation, Vol.I, No.4, pp.113-14. (April 1886)
 3. eg. Imperial Federation, Vol.IV, No.44, pp.180-1, 189.
(Aug. 1889)
 4. Imperial Federation, Vol.IV, No.45, pp.200-1. (Sept. 1889)
 5. Imperial Federation, Vol.IV, No.46, p.235. (Oct. 1889) &
Vol.IV, No.48, p.271. (Dec. 1889)

because of its intrinsic value, and in the hope that it might improve the prospects of imperial union. At the conference of bodies interested in federation held at Corowa in July 1893 the Secretary of the Victorian Imperial Federation League, Mr. Henry D'Esterre Taylor, was associated with a proposal moved by Dr. John Quick for the future organisation of the federal movement which was later adopted to good effect by the governments of the colonies.^{1.} In September of the same year the League sponsored a public meeting on Australian Federation at the Melbourne Town Hall. The Chairman of the League, Mr. Justice Holroyd, explained that they had waited for a month after the Corowa Conference for a more directly interested body to take up the question, but nothing had been done. He expressed the hope that imperial federationists would now rally to the cause of Australian federation, and appropriate resolutions were duly passed.^{2.} In its Annual Report for 1895 the Victorian Branch of the League was able to note with satisfaction that an Enabling Bill along the lines proposed at Corowa had now been adopted by the parliaments of several colonies so

1. The celebrated resolution was moved by Quick, to whom the credit for originating it has normally been given. But there is evidence that Taylor had suggested a similar proposal in a speech earlier in the conference and would have been a co-sponsor of the motion had he not had to leave early. See, H.L. Hall, Victoria's Part in the Australian Federation Movement 1849-1900 (London, 1931) pp. 96-8.

2. C.O. 309/139, p.327.

that colonial federation was on the move again, and to congratulate itself gently on the contribution made by its members to this end.^{1.} As an official in the Colonial Office had remarked earlier, in Australia Imperial federation now meant colonial federation.^{2.}

The federal movement in the eighteen-eighties was thus supported, for opposite and incompatible reasons, by both the radical, anti-British, republican strand of colonial opinion, and the conservative, loyalist, imperial federation group. By the end of the depression though, both of these extremist movements had lost impetus and were elbowed aside by the steady growth of a broad Australian nationalism of a more moderate character. The nationalism of the 'nineties permeated all aspects of colonial life and manifested itself in literature, in art, in the development of a national ethos or mystique;^{3.} it was not necessarily of a political character nor friendly towards the federal movement. Furthermore, though there was no longer any question but that the loyalty of the average colonist was to Australia rather than to Britain, there remained a conflict between the claims of the individual colony and the claims of the continent as a whole. Yet to a considerable and ever

1. C.O. 309/144, p.362.

2. C.O. 309/139, p.327.

3. See V. Palmer, The Legend of the Nineties (Melbourne, 1954)

increasing extent the creative energy of the nationalist movement did carry over into the political sphere in support of a federated, independent Australian nation, and a continuing association with Britain on more equal terms. If there was still no overwhelming enthusiasm for federation, there was at least a climate of opinion more favourable towards it.

The organisation most closely attuned to the new spirit of the 'nineties was neither the Republican League nor the Imperial Federation League, but the Australian Natives' Association.¹ The A.N.A. had begun in 1871 as a Victorian debating and friendly society. By the eighteen-nineties the range of its interests and activities had vastly expanded, branches had been established in all colonies, and the Association had become a real force in colonial affairs. Two secrets of the A.N.A.'s success were that its membership was drawn from the rising class of young native born Australians who now, for the first time, constituted a majority of the population of the colonies; and that it adopted a neutral stance on the divisive questions of tariff policy and labour-capital relations, but wholeheartedly stood for restrictive immigration, Pacific annexation,

1. A useful article on the A.N.A. and federation is, C.S. Blackton, "Australian Nationality and Nativism", Journal of Modern History, 1958.

and preference for all things Australian. As a result of the controversies of 1883-85 over European expansion into the Pacific the A.N.A. threw itself behind the federal movement;^{1.} a special conference of the Association in January 1890 strongly urged the need for federation upon the politicians who were to meet in Melbourne a few days later.^{2.}

A majority of the members of the Natives' Association belonged to the commercial and professional classes whose interests were adversely affected by the depression and financial crisis, and their enthusiasm for federation was powerfully re-inforced. From 1892-93 the A.N.A. engaged in a vigorous pro-federal propoganda drive on its own account, and also encouraged the formation of Federal Leagues in the capital cities of the colonies and in border areas where the economic effects of disunion were particularly severe.^{3.} The claim is often made that this "popular movement" for federation was a sharp reproof to the politicians of the colonies and forced them to take the question more seriously than before. This is misleading for the movement was not altogether spontaneous;^{4.} much of the initiative for the

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1. Blackton, "Australian Nationality and Nativism", Journal of Modern History, 1958, p.42.
 2. Ibid. and see the Argus, 22-25 Jan. 1890.
 3. Ibid., pp.42-3.
 4. Martin, "Economic Influences", H.S.1953, pp.64-5. It was also confined largely to Victoria and N.S.W. The Governor of Queensland reported in September 1894 that he was not aware of any interest in federation since 1891. Norman to Ripon, 3 Sept.1894, C.O. 234/60, p.15.

formation of the Leagues came from Alfred Deakin in Victoria and Edmund Barton in New South Wales, who had turned, temporarily frustrated in the parliamentary sphere, to look for support outside. On the other hand it is true that the demonstration of public interest in federation did have some effect on other less committed political leaders such as George Reid.

A high point of the "popular movement" was an unofficial conference on federation held on 31 July 1893 at the small New South Wales town of Corowa, near the Victorian border, and attended by 74 delegates from the Federation Leagues, the A.N.A. and other interested bodies. The Corowa Conference has been remembered both as a striking demonstration of interest in federation, and for the Resolution moved by Dr. John Quick proposing that delegates should be popularly elected in all colonies to attend a new Federal Convention, the constitution drafted by which should be submitted to a referendum.^{1.} This proposal was discussed and elaborated within the Federal Leagues and the ANA in ensuing months, and then urged upon the governments of the colonies. Its outstanding features were that the public was to be more closely involved than heretofore, and that

1. Official Report of the Federation Conference held at the Courthouse, Corowa, on Monday 31 July and Tuesday 1 Aug. 1893. (Corowa, 1893); L.E. Fredman, "A Note on the Corowa Conference", J.R.A.H.S., Vol. 49, Pt. 4, (1963) pp. 301-4.

a single preliminary Enabling Bill was to set the machinery in action to carry a constitution right through to enactment. Once the process of constitution making had been started it would have to be completed or positively halted, it could not fade away through inertia. Although respectful tributes to the work of the Convention of 1891 were paid by the younger generation of federalists, it was implicit in their discussions that the draft bill would have to be thoroughly reconsidered.

George Dibbs, still Premier of New South Wales, showed no disposition to act on these proposals, rather he produced an alternative plan for complete unification of the colonies,^{1.} but in August 1894 the protectionists were defeated at a general election. George Reid became Premier, and at once invited the other premiers to confer with him on the federation question.^{2.}

Major-General Sir Edward Hutton, Commandant of the New South Wales military forces between 1893 and 1896, stated in a letter to Lord Hampden in 1895^{3.} when Hampden was on his way out to the colony to take up his commission as Governor, that Reid had called this meeting of premiers in consequence of a Report on Federal Defence, but that the conference had taken up the larger question

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1. Quirk & Garran, Annotated Constitution, pp.155-7.
 2. Reid to the other premiers, 24 Aug. 1894, The Times, 25 Aug. 1894.
 3. Hutton to Hampden, 5 Aug. 1895 (copy), B.M. Addit. MSS. 50082, f. 183. (Hutton Papers)

of political federation. Hutton later returned to Australia as first Commander-in-Chief of the military forces of the Commonwealth, and in 1915 in the course of correspondence with Barton, Reid, and Andrew Fisher the then Prime Minister, he re-iterated and elaborated this claim that the revival of the federal movement in 1894-5 had sprung out of his federal defence plans. To Fisher he wrote,

"This first practical step towards Federation was effected by means of the Report of a Military Conference held at Sydney on the 24th. October 1894 and out of the movement thus initiated evolved the creation of the Commonwealth which was consummated five years later." 1.

Barton challenged this claim and asserted that the defence scheme had nothing to do with the renewal of the federal movement which was brought about by "the voice of the people" who mostly knew nothing of the scheme.^{2.} Hutton retorted that he had determined to compass federation from the time of his arrival in Australia, and that his scheme "gave Mr. Reid a chance which he was quick to seize".^{3.} When Sir George Reid's autobiography was published in 1917 General Hutton was further distressed that Reid made no acknowledgment of the role of co-operation for defence in carrying forward the

1. Hutton to Fisher, 28 May 1895 (copy), B.M. Addit. MSS. 50082, f. 132. (Hutton Papers)
 2. Barton to Hutton, 12 July 1915 (copy), ibid., f.135.
 3. Hutton to Barton, 14 July 1915 (copy), ibid., f.138.

federal movement. In a private memorandum he bitterly attacked Reid and accused him of concealing the help he had received.^{1.}

It is plain that Hutton genuinely believed that his defence plan was central to the federation movement of 1894-96 and that he believed this not only in retrospect, but at the time, though his memories may have become more grand with age. Moreover he did not raise the matter in 1915 to claim credit for himself but as part of a plea for a pension for the widow of General Bridges, on the grounds that Bridges had helped Reid and himself "with federal defence and hence federation" in 1894-96, and was thus deserving of the gratitude of the Commonwealth.^{2.} It is undoubtedly true that General Hutton was responsible for reviving interest in federal defence, which had lapsed into obscurity since the visit of General Edwards, but there is little evidence to support his view that this was the reason for, or even the occasion of, Reid's federal overtures to the other colonies, except in a very marginal way.

In 1893, soon after he assumed command in New South Wales, Hutton formulated a detailed plan for the federal defence of the colonies but the Dibbs Government

1. Memorandum, 6 Sept. 1917, B.M. Addit. MSS. 50082, f.143. (Hutton Papers).
2. Hutton to Reid, 10 Feb. 1916, ibid., f.128.

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declined to take it up. When Reid came to power he was more interested in the plan, and a conference of colonial Commandants was arranged for October 1894. At the conference general agreement was reached on the principles of federal defence and a draft agreement was prepared for the governments of the colonies to consider.^{2.} However Reid's initial invitation to the other premiers was issued in August, well before the Commandants' conference had brought the defence issue into prominence again, and defence was not specifically mentioned in it. Subsequently the draft Agreement on Federal Defence was listed for discussion by the premiers, but little consideration was given to it and no decision recorded. At Hutton's instance Reid approached the other colonies again in 1895 with a view to implementing the scheme as an interim measure until full federation was achieved,^{3.} but nothing was done. A further Commandants' meeting in 1896 repeated the earlier recommendations but again no wider interest was aroused. By 1898 General Hutton himself had come to believe that no useful purpose would be served by pressing federal defence with full federation

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1. Memorandum, Nov. 1893, B.M. Addit. MSS. 50082, ff.203-4. (Hutton Papers)
 2. Report of a Military Conference in Sydney, Oct. 1894, C.O. 201/617, p.99. See also J.W. Niesigh, "The Prospects of Australia federating", United Services Magazine May 1896, pp.201-7.
 3. Reid to other premiers, 16 April 1895, C.O. 201/617, p.99.

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in sight.

Like earlier imperial officers in Australia such as Jervois, Tryon, Schaw, and Edwards, Hutton was very alert both to the need for federation of the defences of the colonies and to the political implications of such proposals, but unlike his predecessors there is no evidence that Hutton's defence plans had any significant influence on the general federal movement. Reid appears to have been sympathetic towards Hutton's ideas but there is nothing apart from Hutton's opinion to show that they stimulated his initiative on federation or even were employed as an excuse for it. The basis of the federal movement is to be found in the "popular movement" for federation and the slowly changing climate of opinion in the colonies which Reid, a skilled politician, was astute enough to detect and act upon. In addition, it is probable that Reid had never been as hostile to federation as his opponents believed.

Reid's approach to the other colonies was received with great suspicion for New South Wales had not been forgiven for its previous erratic behaviour on federal matters. The Government of Queensland, where Griffith had retired to become Chief Justice, was particularly lacking in federal spirit and fell back on the old pretext of insisting that New South Wales

1. Hutton to Reid, 1 Aug. 1898, B.M. Addit. MSS., 50082, f. 108.
(Hutton Papers)

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join the still existent but moribund Federal Council. After months of delay however Reid was able to arrange a meeting of premiers in Hobart in January 1895, coincident with a Federal Council session. At this meeting it was resolved with two dissentients to proceed with federation along the lines proposed by Quick at the Corowa Conference.^{2.} The only important difference was that provision was wisely made by the premiers for a second Federal Convention to meet, 30 to 60 days after the first, to consider any amendments which the colonies might wish to put forward in the meantime. An Enabling Bill designed to initiate action along these lines was prepared by Kingston of South Australia and Turner of Victoria, and accepted by all the premiers present except Forrest of Western Australia who refused to commit himself. Nelson of Queensland, who had opposed the plan in discussion, was also a little guarded in his acceptance of the procedure.

The next step was for the colonial parliaments to pass enabling legislation on the lines agreed to at Hobart, and the other premiers intimated that they expected New South Wales to set a lead. Reid dallied

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1. Correspondence between Reid and Nelson, enclosed in Norman to Ripon, 12 Nov. 1894, C.O. 234/60, p.307.
 2. Minutes of Proceedings of the Conference of Premiers at Hobart. V.&P. (L.A. of N.S.W.) 1894-5, VI, p.1269ff.

for some months while he repealed the protectionist tariff schedule passed under the previous government, and brought down great wrath on his head from Parkes^{1.} and others, but in October 1895 he introduced an Enabling Bill and by December it had been passed by both Houses. All the amendments proposed were defeated by comfortable majorities and the debate was generally uneventful, perhaps because the anti-federalists underestimated the chances that the new bid for federation^{2.} would be more successful than its predecessors. South Australia, Tasmania, and Victoria soon followed the example of New South Wales and by March 1896 only Queensland and Western Australia lagged behind.

The way was now clear for the four colonies which had passed the necessary legislation to proceed with the election of delegates and the arrangements for a convention but once again Reid delayed in the hope, he said, that the other colonies would come in. In October 1896 Western Australia at last passed an Enabling Act^{3.} but in a very modified form; the Western Australian Convention delegates were to be appointed by parliament rather than by popular election, and the constitution

1. Letter to The Times, 5 July 1895; Sir H. Parkes, The Policy and Conduct of the Reid Ministry (Sydney, 1895)
2. Quick & Garran, Annotated Constitution, p.161.
3. Australasian Federal Enabling Act of 1896, 60 Vict. No.32.

when drafted was to be submitted to a referendum only if approved by parliament. This meant that Western Australia could participate in the convention but hinted that it might go no further. The Queensland situation was complicated by strong divisions within the colony; Northern and Central Queensland were anxious to secede from the main colony and favoured federation as a possible step towards this; the more populous South, on the other hand, was very lukewarm about it. Premier Nelson reluctantly introduced enabling legislation at much the same time as Western Australia, but following a clash between the two Houses over the method of appointing convention delegates, and despite a personal visit to Brisbane by Reid, he withdrew the Bill^{1.} completely.

Although some progress had been made it still seemed to many people that the federal movement was in danger of hanging fire again. In December Lord Brassey, the Governor of Victoria, reported to the Colonial Office that nothing appeared to be happening in regard to the question but that the "Governors certainly use (Colonial Office marginal note, 'lose') no opportunity of advocating the cause"^{2.} The other colonies made up their

1. Lamington to Chamberlain, 9 Oct. 1896, C.O. 234/63, p.457; 18 Dec. 1896, C.O. 234/64, p.39.
 2. Brassey to Chamberlain, 8 Dec. 1896, C.O. 309/143, p.538.

minds to act without Queensland however. After a brief period of canvassing for votes which brought federation more in the public eye than ever before, on 4 March 1897 Victoria, South Australia, Tasmania and New South Wales each elected ten federal delegates. A week later the Western Australian parliament hastily appointed delegates, and arrangements were made for the Convention to assemble in Adelaide on 22 March.

The stage had thus been set for what was to prove to be the first scene of the last act of the federal movement. At the time the participants in the drama could not be certain that their efforts would be crowned with success; many observers were still sceptical, many obstacles remained to be overcome. The extent of public enthusiasm for federation, though much greater than ever before, should not be exaggerated.

There had been great changes in the colonies since the apparent disintegration of the federal movement in 1891 however. The colonists had begun to realise that the barriers between them were of their own making and could as easily be removed, and that their fortunes were inextricably bound up together. The impulse towards federation was no longer dependent on direct encouragement from the imperial authorities, nor on the indirect effects of the friction and frustration often engendered by

imperial policies. Influential groups in all colonies had become conscious of the economic and commercial advantages which might be expected to accrue from federation. Able politicians in Barton and Deakin had chosen to subordinate their personal interests in local politics to the greater cause of federation; they were supported by a growing nationalism of a positive character rooted in "native drives towards the achievement of distinctive corporate personality"^{1.}

It was less and less necessary for colonial governors and Secretaries of State for the Colonies who wished to see Australia federated to encourage the colonists to unite. The emphasis in the Colonial Office shifted therefore to close scrutiny of the constitutional proposals under discussion in Australia, to ensure that the form of federation ultimately decided upon would be acceptable to the British Government.

1. Blackton, "Australian Nationality and Nationalism", H.S. 1961, p.365.

Chapter FiveTHE SHAPING OF THE COMMONWEALTH CONSTITUTION BILL, 1897-99.

Only seventeen of the fifty men elected to represent their colonies in Adelaide in 1897 had attended the Convention of 1891, and most of these had been junior members of the earlier gathering. The new bid for federation was largely in the hands of new men, and they quickly decided to make a new start on the business of drafting a constitution.^{1.} The Bill produced in 1891 was extensively pirated, but rather than using it as a starting point to which amendments might be made, the process of debating general resolutions and thus working towards a constitution was repeated. Edmund Barton of New South Wales was appointed 'Leader' of the Convention in charge of business, a role analagous to that played in 1891 by Sir Samuel Griffith who was now forced to remain on the sidelines by his elevation to the Queensland Bench. On the sub-committee responsible for detailed drafting Barton was assisted by Richard O'Connor of New South Wales and Sir John Downer of South Australia, several more obvious candidates being excluded by the

1. For details of proceedings see the Official Report of the National Australasian Convention Debates (Adelaide, 1897)

vicissitudes of personal and intercolonial politics.

The Adelaide session of the Convention lasted for four weeks and broke up on the 22 April to enable the premiers of the five colonies concerned to attend the Queen's Jubilee celebrations in London. There is little to be gained by discussing in detail the constitution as it stood at the end of the session for many of the more controversial provisions were destined to be revised by later meetings of the Convention, but the main lines of the eventual Commonwealth Constitution had been laid down, broadly following those of 1891.

The reconciliation of responsible government with federalism continued to be a difficulty. During the six year interval between the conventions opinion had hardened against the American separation of the executive and the legislature, and the 1897 draft specifically provided that no minister might hold office for more than three months unless he were a member of one or other of the Houses. As to whether the executive should be responsible to both Houses, as some small-colony representatives claimed that true federation required, or to the Lower House only, no direct answer was given. However the supremacy of the House of

1. Clause 63 of the draft Bill to Constitute the Commonwealth of Australia, Adelaide Debates, pp.1221-43.

Representatives on money matters was assured by the confirmation of the 1891 compromise by which the Senate could do no more than suggest amendments to money bills. It had seemed for a time that the smaller colonies would be able to muster a majority vote for equality of powers between the Houses but at the eleventh hour enough delegates from South Australia and Tasmania broke away from their colleagues to prevent this.^{1.} Thereafter, although many delegates fought zealously for the interests of their own colony, and for the rights of states as opposed to those of the Commonwealth, the Convention seldom voted in strict colonial blocs. The British traditions of responsible government and a dominant Lower House were thus engrafted onto a constitution of the American type. On many points of detail the Australian draft closely followed American precedent, and on other points it has been claimed that Barton and his fellows brought the Constitution of the United States up to date by utilising the fruits of a century of constitutional interpretation and elaboration.^{2.} Neither the American nor any other written federal constitution was slavishly copied however, for all the delegates had

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1. For an account of the circumstances of this decisive vote see, Sir J.Quick & R.R.Garran, The Annotated Constitution of the Australian Commonwealth (Sydney, 1901) pp.172-3.
 2. E.M. Hunt, American Precedents in Australian Federation (New York, 1930) p.18+.

a strong emotional attachment to the British type of parliamentary institution in which they had gained their experience. They also showed a characteristically British faith in their own ability, and that of those who would have to work the constitution, to find commonsense solutions to complex problems without overmuch reliance on theory.

At the conclusion of the Adelaide session of the Convention the draft bill as it then stood was referred to the colonies for consideration, and the six premiers sailed for England to do honour to Queen Victoria's Jubilee and attend the associated Colonial Conference. At the same time Alfred Deakin, who had done his most valuable work at the Convention as a conciliator and behind-the-scenes negotiator carried on this role in a wider setting. Evidently fearful that the smaller colonies would not accept the limitations which had been placed on the financial powers of the Senate, Deakin wrote to two former Governors of his colony, Sir Henry (now Lord) Loch, and Lord Hopetoun, now both resident in England, asking them to add to their previous services to the federal movement by exerting their influence to convince the premiers of Western Australia, Tasmania, and Queensland of the necessity for this arrangement.

1. eg. Deakin to Loch, 6 May 1897, Chamberlain Papers, 9/1.

Responsible government, Deakin argued, required the financial supremacy of the Lower House; unless this were assured the Conventions were likely to be a failure, and this, he felt sure, was "the last thing desired by the British Government or any well wisher of the Empire".

Loch and Hopetoun both forwarded Deakin's letter to Joseph Chamberlain, the Secretary of State for the Colonies, with strong recommendations that he should attempt to influence the premiers as Deakin requested^{1.} and offering their own help where useful. Even before Chamberlain received these letters the Colonial Office had been prompted by a despatch from the Governor of Western Australia, Sir Gerard Smith, to consider what use might be made of the visit of the premiers. In the previous year Smith had hinted that the only certain way to arouse enthusiasm for federation in his colony would be a personal visit by the Secretary of State.^{2.} The idea that Western Australia warranted a visit by Chamberlain was greeted with derision,^{3.} but Smith's later suggestion that the attitude towards federation of the Premier, Sir John Forrest, was swinging in the balance and would rest largely upon "the arguments you may be able to

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1. Loch to Chamberlain, 15 June 1897; Hopetoun to Chamberlain, 13 June 1897, Chamberlain Papers, 9/1.
 2. Smith to Chamberlain, 30 July 1896, C.O. 18/221, pp.269-77.
 3. Minutes by Anderson and Bramston, 22 Sept. 1896, on Smith to Chamberlain, 30 July 1896, C.O. 18/221, pp.269-77.

1.
address to him" while he is in London, was treated more seriously. Mr. Anderson minuted that he was doubtful of the value of putting pressure on individual premiers, but that some good might be done by emphasising to them as a group that their position was weakened by their disunity and lack of a strong central authority.

2.
Chamberlain did make occasion at the Colonial Conference to congratulate the Australians on the progress of the federal movement, and no doubt there were many unofficial discussions with them, but whether such efforts were effective is problematical; much though the premiers enjoyed the opportunities afforded by their visit to London to meet the leading men in Britain, they are as likely to have been irritated as persuaded by such pressures.

Though there was little the British Government could do to forward the federal movement at this stage, the suggestions of Deakin and Smith moved the Colonial Office to examine with some care the draft constitution produced at Adelaide. Of the several points about which doubts had been privately expressed in the Office in 1891, only the trivial matter of the numbering of clauses in the Bill had been improved materially by the 1897

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1. Smith to Chamberlain, 7 May 1897, C.O. 18/223, pp.129-55.
 2. Minute: 9 June 1897, on Smith to Chamberlain, 7 May 1897, C.O. 18/223, pp.129-55.

Convention. Moreover now that federation seemed a more practical possibility the constitution was scrutinised more critically than before; in a series of minutes numerous possible amendments were canvassed, but there was no agreement as to how these should be brought to the attention of the Australians.

Sir John Bramston, the Assistant Under-Secretary in charge of Australasian affairs, noted that prior to the passing of the British North America Act and the creation of the Canadian Dominion there had been a constitutional conference of colonial and imperial delegates held in London under the Presidency of Lord Carnarvon¹. It would be desirable to repeat this procedure, Bramston felt, "in order that the Colonial governments might understand how far they can go without infringing on the essential attributes of H(er) M(ajesty) and her Government here", but he reluctantly concluded that the great distance between England and Australia made the scheme impracticable. As an alternative he urged that a good constitutional lawyer such as Lord Herschell, Sir H. Jenkyn, or Sir Courtenay Ilbert, should be sent out to explain the views of the Imperial Government to the next session of the Convention. Unless some action along these lines was taken, Bramston warned,

1. Minute: 26 June 1897, C.O. 13/152, p.171.

there was likely to be trouble later when the constitution bill was sent 'home' for submission to Parliament.^{1.}

It is significant that the idea of a conference like that which preceded the confederation of Canada was not seriously discussed; quite apart from the practical difficulties involved, it is most unlikely that the colonists would have been willing to participate. Both the Permanent and Parliamentary Under-Secretaries, Sir Edward Wingfield and Lord Selborne, were impressed however with the suggestion that a constitutional authority should be sent out to the Convention. Wingfield proposed that the premiers should be sounded out whilst in England to ascertain whether this would be acceptable to them, and whether the colonies would be willing to meet the expenses of the mission.^{2.} The only alternative, he felt, was to embody the views of Her Majesty's Government in a despatch which might be laid before the Convention. Lord Selborne deprecated the idea that the colonies should be asked to bear the costs involved, and doubted the availability of Lord Herschell, but he warmly supported the plan to send out a representative and suggested Sir Robert Finlay, the Solicitor-General, as another possibility.^{3.}

1. Minute: 26 June 1897, C.O. 13/152, p.171.

2. Minute: 29 June 1897, ibid.

3. Minute: 29 June 1897, ibid.

All these proposals were weighed up by Chamberlain who concluded that the Solicitor-General could not be spared, and that in any case it would be useless to send anyone of lesser standing than Lord Herschell, the Lord Chancellor, and that he was unlikely to be available.^{1.} Nevertheless Chamberlain instructed his staff to prepare two memoranda, one expressing the views of the Colonial Office on aspects of the draft constitution which affected the Royal prerogative, the rights of the Imperial Parliament, and the unity of the Empire, the other containing any friendly suggestions it seemed useful to make towards the improvement of the constitution on matters which were of no direct relevance to imperial interests. These memoranda could then be given to the premiers or used as a brief for a delegate to the Convention, as seemed best. In either case, Chamberlain pointed out, even if the Australians did not accept the advice of Her Majesty's Government they would be acquainted with its views and prepared for argument if a protest was necessary subsequently.^{2.}

Following on from this series of minutes three memoranda were prepared by the Colonial Office with the advice of the Law Officers.^{3.} Memorandum A contained a

1. Minute: 29 June 1897, C.O. 13/152, p.171.

2. Ibid.

3. Three Memoranda on the Australian Federal Constitution Bill, C.O. 13/152, p.208ff.

list of suggested amendments to the draft constitution which were intended to meet imperial objections, Memorandum B gave reasons for these suggestions, and Memorandum C contained all the other criticisms of the Bill which had occurred to those examining it. However rather than employing either of the plans which had been under consideration for the use of these Memoranda, Chamberlain eventually handed them privately to Mr. G.H. Reid, the Premier of New South Wales, for Reid to make such use of as he saw fit. Chamberlain pointed out to Reid that the first two memoranda were the important ones so far as the Imperial Government was concerned and explained:

"I am anxious to avoid any friction hereafter. I do not think that any of the amendments are important from your point of view, and if so it may be possible beforehand to deal with them and so to prevent any questions being raised in the British Parliament.

Memorandum C contains what I may call friendly suggestions which have occurred to our draftsmen in the course of their examination of the Bill. They may be useful to you in repairing omissions, or making difficult points clear, but they are forwarded for your private and independent consideration and with no desire on our part to press you to adopt them if they do not need this to your own judgment." 1.

Chamberlain obviously hoped that Reid would personally be able to secure a fair proportion of the desired

1. Chamberlain to Reid (confidential) July 1897, (copy), C.O. 13/152, pp.206-7.

changes without the risk of imperial affront to colonial susceptibilities which a more open intervention would have run. The choice of intermediary was in some respects a clever one; Reid was the Premier of the senior colony and the immediate initiator of the Conventions, and he was thus in a position to exercise influence on the shaping of the constitution, but he was not a committed federalist of long standing who might be expected to resent British tampering with the Bill.

On the other hand the disadvantage of the procedure adopted of working confidentially through Reid was that the Convention as a whole, and the Australian public, were not made aware of the objections held by the Imperial Government to some provisions of the constitution. Chamberlain had previously noted the usefulness of preparing the ground for future protests, if such became necessary, by openly expressing the views of Her Majesty's Government now; the course of action he decided upon threw away this chance, and he paid the price in 1900. For although Reid was able to negotiate some of the amendments proposed in the memoranda there were still a number of points about which Chamberlain was not satisfied when the colonies forwarded their completed Bill to the Imperial Parliament, and his attempt to force further changes then fell like a thunderbolt without warning

upon most colonial leaders, and as such was fiercely resisted.

Possibly Chamberlain's decision to take Reid into his confidence was influenced by the fact that apart from the cumbersome and potentially explosive possibility of sending an imperial delegate to the Convention, the most obvious alternative was to act through C.C. Kingston, who was not only Premier of South Australia, but had also been elected President of the Convention. Kingston was a fiery radical and a strong nationalist however; a few years earlier Lord Kintore had warned the Colonial Office that "in dealing with Kingston you are dealing with an able but absolutely unscrupulous man. His character is of the worst; he is black hearted and entirely disloyal".^{1.} It is unlikely that Chamberlain would have relished the idea of asking a man about whom such an opinion as this was current in the Colonial Office to help the British Government influence the shaping of an Australian constitution.

Apart from the secret memoranda entrusted to Reid, Chamberlain appears to have made only one other serious approach to the premiers of the colonies about the draft constitution bill, whilst they were in London. In his opening statement to the Colonial Conference

1. Kintore to Meade, 24 July 1893, C.O. 13/148, p.150.

Chamberlain alluded briefly to the restrictions on appeals to the Judicial Committee of the Privy Council contemplated by the Adelaide session of the Convention, and urged that uniformity of law throughout the Empire ought to be preserved by an unrestricted right of appeal to this common tribunal.^{1.} His lead was not taken up until late in the Conference when Sir Edward Braden of Tasmania proposed that Privy Council appeals should be discussed.^{2.} Reid immediately countered with the opinion that any discussion of the subject by the Conference might be seen as an attempt to influence the Convention sitting in Australia;^{3.} his view prevailed and the discussion trailed off into an inconclusive debate about the possible re-organisation of the Judicial Committee. This argument comes strangely from a man who at much the same time as he expressed it, accepted a secret brief from the British Government to influence the course of the Convention, but clearly few of the Australian premiers were anxious to discuss the matter.

The general question of Australian federation was also discussed by the Colonial Conference in connection with imperial federation and the political

1. Report of a Conference between Rt.Hon. J. Chamberlain, M.P. (Her Majesty's Secretary of State for the Colonies) and the Premiers of the Self Governing Colonies of the Empire at the Colonial Office, Downing St. London SW, June and July 1897. Misc. Confidential Print No.111, C.O. 885/6, p.4.

2. Ibid. p.118.

3. Ibid.

relations of England and the self governing colonies. The movement for federation in Australia was applauded by Chamberlain though he disclaimed any desire to interfere unless asked,^{1.} and a resolution was passed in favour of the federal union of any groups of colonies which were geographically united.^{2.} To some extent however the possibility of impending local federation was used by the Australians, and by Laurier of Canada, as an excuse for avoiding outright condemnation of imperial federation. The union of Australia, it was said, must be consummated before any further progress towards union of the Empire could be made.

The three memoranda prepared in the Colonial Office and passed on to Reid represented a very thorough review of the Australian Constitution Bill as it stood at the end of the Adelaide session. In Memorandum A seventeen amendments were suggested to provisions in which the Imperial Government felt entitled to take an interest, though it is not always clear why some amendments were included here and others in Memorandum C. A few of the seventeen were of a wholly technical and non-controversial character, a few were designed to protect the prerogatives

1. Confidential Report of the Colonial Conference of 1897, C.O. 885/6, p.2.
 2. Ibid., p.99ff.

of the Queen and her representatives; others were intended to preserve uniformity of law and practice throughout the Empire, while in some cases the interests of private individuals and groups in Britain and in other colonies appeared to be involved. In most cases however an assortment of justifications was offered, and it is difficult to classify the various amendments by motive or effect.^{1.}

The first amendment suggested was the deletion of the provision that all treaties made by the Commonwealth should be binding on the courts and people of all states even where contrary to the laws of the states, from the seventh covering clause, which defined the extent of the operation of the constitution and laws of the Commonwealth. It was pointed out in Memorandum B that this provision had probably been copied from the American Constitution but was not applicable in British countries where treaties technically were made by the Crown rather than the State, and did not have the force of statute law unless specific legislation was passed. The last section of the same clause extended the operation of Commonwealth laws and treaties to all British ships "whose last port of clearance or whose port of destination"

1. The foregoing and following summary and analysis of the 17 amendments desired by the Imperial Government is based, unless otherwise indicated, on Memoranda A & B, C.O. 13/152, p. 208 ff.

was in the Commonwealth. Notwithstanding the fact that an almost identical provision had been inserted as an amendment in the Federal Council Act of 1835 by the Imperial Government itself, the omission of the provision was now urged on the grounds that British ships throughout the Empire were covered by the Imperial Merchant Shipping Act of 1834. The preservation of uniformity of shipping law was alleged to be a matter of great importance to all connected with the trade. Moreover it was argued that the Imperial Government was responsible for maintaining the privileges and exacting fulfilment of the duties associated with the British flag, and ought therefore to have legal control over all British ships.

The first amendment proposed to the Constitution proper, as distinct from the preliminary covering clauses, was the omission of Clause Two respecting the appointment of a Governor-General, on the grounds that this was adequately provided for elsewhere in the constitution. Not only was the clause unnecessary, and without parallel in the British North America Act it was asserted, but it was likely to arouse objections when it came before the Imperial parliament by purporting to give the Queen powers she already possessed, and to compel her to act constitutionally when she must already do so. The British

North America Act was also invoked in support of an amendment to Clause Eight, regarding the powers of the Commonwealth Parliament, which were to be equivalent to those of the House of Commons until such time as it declared its own powers. The Colonial Office Memoranda proposed that following the Canadian precedent words should be inserted in the clause to specify that even then the Commonwealth should not give itself greater powers than those possessed by the House of Commons at the time of the declaration.

A rather more important point was raised in connection with Clauses Fifty-Two and Fifty-Three in which the powers of the Commonwealth were enumerated. Clause Fifty-Two gave the Commonwealth full power and authority to make laws on thirty-seven different subjects, Clause Fifty-Three gave exclusive powers to make laws on four more; but included among these lists were several matters such as external affairs and treaties, or fisheries beyond territorial limits, which were still imperial concerns since the Imperial Government was responsible for the relations of the Empire with foreign powers. It was believed in the Colonial Office that the form of these clauses had been borrowed from the American Constitution and that their purpose was to specify the

division of powers as between the federal and state parliaments. However Australia, unlike the United States, was a part of the Empire and the use of words like "full" and "exclusive" in connection with powers over external affairs might be taken to limit the powers of the Imperial Parliament. To remove any possibility of confusion on this point it was recommended that the opening phrases of each clause should be re-worded to make it clear that the powers listed were conferred only as between the Commonwealth and the states. Implied in this apparently technical amendment was of course the assumption that the Imperial Government should continue to be responsible for the foreign representation of a federated Australia.

Another thorny constitutional problem arose in connection with the exercise by the Governor-General on behalf of the Queen of the power of Royal Assent to bills passed by parliament. There had been much debate between the British and Canadian Governments as to whether the Governor-General must always exercise this power on the advice of his ministers or whether in exceptional cases he might act in accordance with instructions from the Queen. The upshot of this was that the Governor-General of Canada did always follow the advice of the government but that as he was an imperial officer the door remained

open to instructions from the Queen. In the Australian draft bill however, the relevant clause, number Fifty-Seven, followed the British North America Act in the main but omitted the phrase which directed that the Assent should be exercised subject to instructions from the Queen. The Colonial Office scented in this alteration an attempt to make the Governor-General a local rather than an imperial officer, and proposed the addition of the appropriate phrase to make the Australian constitution follow the Canadian example. If the Governor-General could not be instructed by the Imperial Government to withhold assent from any proposed law, the more extreme and unpopular power of disallowance of Commonwealth acts would be used more freely, it was argued, and the risk of friction between the governments would be increased. For similar reasons an increase from one year to two years in the period during which a law assented to by the Governor-General might be disallowed by the Queen-in-Council was suggested. Otherwise the Imperial Government might be forced to disallow an Act where some other arrangement might have been reached had more time been available for negotiation between the governments.

The ninth and tenth amendments suggested in the Colonial Office Memoranda were of a largely formal character and concerned clauses Sixty and Sixty-Eight,

both relating to the powers of the Governor-General as the Queen's representative. In each case a change of wording was requested to make the clauses purely declaratory of the existing powers of the Queen and to avoid any inference that the ability of the Queen to exercise her powers through the Governor-General depended upon statute. With regard to Clause Sixty it was also submitted that the Clause as it stood created unnecessary confusion between the military powers of the Governor-General and of the General Officer Commanding; these were matters which would be better regulated through the Queen's commissions and instructions.

One important general aim of the draft bill was of course to transfer to the new federal government control over various matters which had hitherto come under the jurisdiction of the separate colonies. Hence in Clause Seventy it was provided that any powers regarding these matters which were vested in the governor of a colony with or without the advice of his council, should be transferred at the establishment of the Commonwealth to the Governor-General with the advice of the federal Executive Council. Here again there appeared to be an attempt to change the nature of the office of Governor for there was no provision for the Governor-General to act without the advice of his council. Yet if

the Governor-General was to be an imperial officer there clearly must be some occasions when he would have to do so, for example when dismissing a ministry. The Colonial Office therefore proposed the amendment of the clause to restore the Governor-General to a constitutional position comparable to that of colonial governors or to that of the Governor-General of Canada. "The constitutional rule that the Governor must, in almost all cases, act by the advice of his Council, is sufficient without a statutory enunciation of the rule"^{1.}, it was argued.

The twelfth and fourteenth amendments proposed in Memorandum A were relatively straight-forward suggestions that the words "public ministers, consuls, or other representatives" in Clauses Seventy-Three and Seventy-Seven should be replaced by "consuls or other agents", as the latter was a more correct description of those classes of foreign officials who were in the colonies. Though these were put forward as technical corrections requiring no further justification, they were once again based on the hidden assumption that Britain would continue to handle diplomatic matters for the Empire and that the character of overseas representation in Australia was therefore unlikely to change.

1. Memorandum B, C.O. 13/152, p.208ff.

Vastly more significant than these, and probably of greater significance than any of the other suggested amendments were the proposals for the alteration of Clause Seventy-Five regarding appeals from Australian courts to the Judicial Committee of the Privy Council. Chapter Three of the draft constitution provided for the creation of a Commonwealth High Court, competent to decide appeals from other federal and state courts. There had long been dissatisfaction felt in the colonies with the long delays and the expense attendant upon Privy Council appeals and the new court appeared to provide a convenient opportunity for ending these. After several close divisions the Adelaide Convention had thus resolved to abolish Privy Council appeals as of right, and to allow them only by special leave of the Queen, in cases involving the "public interests of the Commonwealth, or of any state, or of any other part of Her dominions". This change was quite unacceptable to the British Government and a completely re-drafted Clause Seventy-Five was proposed leaving open the possibility of appeals in all types of cases from the High Court, or any state or federal court from which there was an appeal to the High Court, by leave of the High Court itself or the Queen in Council. Even this would mean the end of automatic appeals to the Privy

Council, but it was a great deal less restrictive than the Australian draft.

In support of its amendment the Colonial Office quoted extensively from two earlier self-justifications prepared by the Privy Council in response to criticism of the appeal system in Australia in 1871 and Canada in 1875. The right of every subject of Her Majesty to approach the Throne for redress of grievances was stressed therein, as was the value of uniformity of legal interpretation. The role of the Privy Council as a tie binding the Empire together was also emphasised. In addition to the arguments used by the Privy Council itself, several new ones were advanced by the Colonial Office, notably that a continued right of appeal was a necessary form of protection to the investors of English capital in Australia against decisions influenced by "local prepossessions". With what reads as something almost like a threat, Memorandum B pointed out that:

"It cannot be for the benefit of the colonies to alarm those investors.

They are also very numerous and powerful and the amount invested is very large. They will no doubt oppose any proposal to abolish the appeal to the Queen in Council." 1.

It was also stressed that leave to appeal would be granted

1. Memorandum B, C.O. 13/152, p.208ff.

only in cases where there was an important issue of principle at stake, or where there were prima facie reasons to believe that there had been a miscarriage of justice.

Protection of the English investor was also a major reason for the amendments which were suggested to Clauses Eighty-Two and Ninety-Eight, regarding the transfer of Customs and Excise revenue to the Commonwealth. These duties had always provided the lion's share of the revenue of each colonial government and might therefore be regarded as the main security for their respective public debts. The Colonial Office therefore proposed that these clauses should be amended to ensure that despite the transfer of customs and excise duties to the Commonwealth the holders of the public debt of each colony should continue, if necessary, to have a prior charge upon them. The Memoranda contended that although there was little practical danger that the stockholders' rights would be impaired, it was desirable to protect the credit of the colonies by clarifying the point.

Finally, a very minor amendment was suggested to Clause One Hundred and Two which dealt with the powers which would be retained by the governors of the states after the establishment of the Commonwealth. The purpose

of the amendment was to avoid any confusion between the powers vested in a governor by the laws of a state and those vested in him by the Queen's Letters Patent.

These then were the seventeen amendments suggested in Memorandum A and explained in Memorandum B, all of them relating to provisions in the draft Australian Commonwealth Bill which Chamberlain and his advisers considered to be of imperial interest. In addition, Memorandum C contained criticisms of, or suggestions for the amendment of five of the eight covering clauses and seventy-five of the one hundred and twenty-one clauses of the constitution proper. A preamble to this Memorandum explained:

"The following criticisms are made on the draft Bill on the same lines as they would be made upon a Bill which had passed through a hard fight in the House of Commons and was beginning its course in the House of Lords.

Many points are no doubt the result of a fight or a compromise and cannot well be altered, and their effect must be left to the course of events.

In other cases, especially where the difficulties will arise before the Federal Government and Parliament are fully constituted, amendments are required." 1.

Very few of the criticisms or suggestions in this Memorandum directly concerned matters of policy or principle, almost all of them were intended to clarify the meaning of clauses in the constitution, or to improve

1. Memorandum C, Australian Federal Constitution, Criticisms on the Bill, C.O. 13/152, p.208ff.

the machinery which the constitution was to set up. Many examples of imprecise or inconsistent use of terminology were pointed out; some clauses, numbers Twelve, Sixteen, Twenty-Five, Forty-Eight, and One Hundred and Eleven for example, were alleged to contradict or cut across others. In covering clauses Seven and Clauses Eighty-Six, One Hundred and Eight, and One Hundred and Ten instances were discovered of phraseology borrowed from the Constitution of the United States which was technically inappropriate in its new context. Another common criticism, made about Clauses Six, Nine, Ten, Forty-One, Fifty, and Sixty-Three among others, was that many of the general arrangements covering different aspects of elections, ministries, and parliaments did not provide adequately for the special circumstances which might arise at the inauguration of the Commonwealth.

Perhaps the most important part of Memorandum C was its preamble in which the form in which the Constitution Bill should be presented to the Imperial Parliament was discussed. As the Bill stood at the end of the Adelaide session the first eight clauses were numbered separately from the clauses of the constitution itself; these were clearly intended for enactment by the Imperial Parliament

1. This summary is based on Memorandum C, C.O. 13/152, p.208 ff.

and defined some important terms used in the constitution, and described the character and purpose of the Bill, the extent of its operation, and its relationship with previous legislation. It was not clear however whether the constitution itself was to be a schedule to the Bill, in the manner of the Australian Constitution Acts of 1855 and 1890, or a part of the Bill in the manner of the British North America Act of 1867. The difference between these alternative procedures was of more than nominal significance for in the latter case every clause in the constitution would be open to amendment by the Imperial Parliament and some changes would almost certainly be made. However if the Bill consisted of the eight initial covering clauses with the constitution scheduled to it, it would be much more difficult for parliament to make amendments. The Colonial Office therefore recommended that further thought should be given to the form of presentation of the Bill.^{1.}

By the time the Convention assembled in Sydney on 2 September 1897 for its second session, the premiers had returned from London and the parliaments of the five participating colonies had considered the draft Bill and suggested amendments to it. Altogether some two hundred

1. Ibid.

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and eighty-six amendments had been proposed, and though many of these overlapped or cancelled each other out it was necessary to give due attention to them all so that none of the parliaments could feel neglected. Moreover many of the delegates had given further thought to some of the controversial clauses and wished to debate them over again. Almost at once it became apparent that the Convention could not complete its business in time for the Victorian delegation to return home for the general election which was pending, and arrangements were made for a third session to be held in Melbourne^{2.} early in 1898.

The Sydney session therefore confined itself to dealing with the amendments proposed on the first seventy clauses of the draft Bill, and to particular consideration of the composition and powers of the Senate and the solution of deadlocks between the two houses. An extensive general^{3.} debate on the financial clauses produced no firm decisions, and this and other important matters such as railways, riparian rights, and judicial appeals was held over until the Melbourne session. Prior to this last and longest

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1. The amendments suggested by each colony are conveniently set out in a parallel table in, Proceedings of the Australasian Federal Convention held at Parliament House Sydney, September 2nd to September 24th, 1897. (Sydney, 1897) pp.81-153.
 2. Official Record of the Debates of the Australasian Federal Convention, Second Session, Sydney 1897. (Sydney, 1897) p.986.
 3. Ibid., pp.35-222.

meeting of the Convention which began on 20 January 1898 and did not end until 17 March, the Queensland Government made another attempt to appoint delegates but the bid failed and Queensland remained unrepresented.^{1.} At the Melbourne session all those clauses which had been postponed at Sydney and the amendments proposed thereon were duly discussed in committee; the Bill as a whole was later re-submitted a number of times for further amendment of particular provisions, until at last finality was reached.

There is clear evidence that during the Sydney and Melbourne sessions Reid made some use of the Memoranda which Chamberlain had passed on to him, though a degree of mystery surrounds the matter. There can be no doubt that the Colonial Office intended their intervention in the constitution-making process to remain confidential, and in this they appear to have been successful. Reid when pressed during the Sydney session denied having discussed the constitution with Chamberlain;^{2.} C.C. Kingston, Premier of South Australia and President of the Convention though he was, claimed in 1900 that he had never heard of the Memoranda until a few weeks previously.^{3.} Few memoirs

1. Quick & Garran, p.193.

2. Sydney Convention Debates, p.242.

3. The Times, 17 May 1900.

or histories of the federal movement mention the Memoranda, none give details; where they are mentioned the writers generally seem to be referring to the single extract on the Privy Council appeal clause which the British Government was compelled to publish in 1900.^{1.}

In their comprehensive narrative of the federal movement Sir John Quick and R.R. Garran do note towards the end that in 1897 Chamberlain had given Reid a "confidential Memorandum of the criticisms of the Crown Law Officers which included an objection to the almost total abolition of Privy Council appeals"^{2.} and refer to the extract published in 1900. Quick and Garran further claim that the Memorandum was handed by Reid to the Drafting Committee and that as a result several amendments were made, the Privy Council appeal clause in particular being "considerably modified".^{3.}

Few could be in a better position to speak authoritatively than Garran, for he attended the Conventions as a private secretary to Reid who loaned his services to the Drafting Committee; but there are several surprising features about this account. Only one Memorandum is mentioned rather than three, and no indication is given

1. "Australian Federation. Extract from a Memorandum on the Draft Australian Commonwealth Bill, Adelaide, 1897, Communicated to the Premier of N.S.W. after the Conference with Colonial Premiers assembled in London in July 1897". Cd. 188, Parl.Pap. 1900, LV.
2. Quick & Garran, Annotated Constitution, p.229.
3. Ibid.

of its contents other than the objection to the abolition of Privy Council appeals about which an extract had been published by the time he wrote. Also the modification of the appeal clause is attributed to the Memorandum, which is almost certainly untrue. This clause was the subject of some of the fiercest battles of the Conventions, the chief protagonists being Sir George Turner, Sir Joseph Abbott, and J.H. Symon, rather than George Reid or the members of the Drafting Committee.^{1.} By the conclusion of the Melbourne Convention the clause was less restrictive than it had been after the Adelaide session, though still not acceptable to the British Government, but the change had come only through a series of amendments and counter-amendments and in response to strong outside pressure from commercial and banking interests.^{2.}

There are thus reasons for doubting whether Garran had much first hand knowledge of the Memoranda even if he is correct in stating that Reid passed them on to the Drafting Committee. In his autobiography, written many years after the joint work with Quick, Garran made no reference to the incident in describing the federal movement,^{3.} and Reid's autobiography is also silent.^{4.}

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1. See the Official Record of the Debates of the Australasian Federal Convention, Third Session, Melbourne 1898 2 vols. (Melbourne, 1898) pp.322-48, 2325-41.
 2. Twenty-eight petitions or letters on the subject were received by the Melbourne session from these sources.
 3. Sir G.R. Garran, Prosper the Commonwealth (Sydney, 1958)
 4. Sir G.H. Reid, My Reminiscences (London, 1917)

However an examination of the Convention Debates and of the changes made in the constitution suggests that Reid himself made use of Memoranda A and B, and that he may have given the Drafting Committee Memorandum C.

The first amendment requested by the Colonial Office, the deletion of the words "and all treaties made by the Commonwealth" from the seventh covering clause, had also been suggested by the Legislative Council of New South Wales and as a member of that House Barton formally moved it in the Convention, though without much personal enthusiasm. Reid then supported the amendment strongly and advanced in its favour precisely the same arguments as had been used by the Colonial Office.^{1.} The amendment was then passed without further debate. Later in the Convention Reid himself moved the amendment desired by the Colonial Office in Clause Sixty, a simple matter of substituting the word "exercisable" for "exercised" to make the clause declaratory in form, and secured this without debate.^{2.} Similarly, Reid was successful in amending Clause Seventy to enable the Governor-General to act with or without the advice of his Executive Council, rather than always with it as the Adelaide draft required, in exercising powers transferred to him from the governors^{3.}

1. Sydney Convention Debates, p.239.

2. Ibid., p.240.

3. Ibid., p.782.

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of the colonies.

More controversy was aroused by the second amendment to covering clause seven suggested by the Colonial Office, the complete omission of the provision extending the operation of the laws and constitution of the Commonwealth to all British ships visiting Australia. Reid moved this amendment and argued for it at some length,² although his understanding of the arguments put in his mouth by Memorandum B was somewhat imperfect and he was not well acquainted with the background to the clause. The main reasons he gave for the amendment were precisely those of the Memorandum, that shipping throughout the Empire was already covered uniformly by the Imperial Merchant Shipping Act, and that the phrase "whose last port of clearance or whose port of destination" was so wide as to require the application of Australian laws to a ship not simply whilst in Australian waters but throughout the whole of its voyage to and from Australia. Unless this clause was expunged, Reid assured an interjector, the Constitution would never be accepted by the Imperial Parliament.

Most members of the Convention found this claim very difficult to believe and one speaker after another reminded Reid that the clause he wished to delete was exactly the same as a clause inserted in the Federal

1. Sydney Convention Debates, pp.806-7.

2. Ibid., pp.240-2, 251-2.

Council Act of 1885 by the Imperial Parliament itself. Sir John Downer went so far as to suggest that as the Imperial Parliament had forced the clause upon the colonies in 1885, it was far more likely to object to the deletion of the clause than to its retention. In the course of discussion Reid was led into a revealing exchange:

"Reid 'May I tell hon. members that I do not speak idly in the remarks I am making. I hope hon. members will give me credit for making these observations knowing what I mean. I tell the Committee that these words will be a source of embarrassment in the consideration of the bill, that they conflict with the laws of the British Empire, and seek to establish a jurisdiction which we shall not get, a jurisdiction beyond our limits'.

Fysh 'We have got it already in regard to beche-de-mer fishing for instance!'

Reid 'I do not know whether beche-de-mer fishing comes within the limit of the general navigation law. It may be so. I have nothing more to say, except that I speak advisedly'.

Clarke 'Has the right hon. gentleman been talking with "Joe" (Chamberlain) ?'

Reid 'My hon. friend is entirely wrong; but I have taken advantage of my visit to the mother country to get all the information I can with reference to matters of this kind, and I shall tell the Committee advisedly that difficulty may arise if these words are left in the clause' ". 2.

It was an exasperating situation for Reid since he was unable to convince the Convention that he had correctly gauged Chamberlain's views short of disclosing that he had been briefed, and this he was not at liberty to do. When challenged directly he was forced into an oblique

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1. Sydney Convention Debates, p.242.
 2. Ibid., pp.241-2.

lie, but it is obvious that he had been using the Colonial Office Memoranda. Eventually Reid withdrew his motion to omit the entire provision and accepted amendments changing the application of the clause from ships "whose last port of clearance or whose port of destination is in the Commonwealth" to those whose "first port of clearance and whose port of destination are in the Commonwealth", and completely excepting naval vessels.^{1.} This compromise went some distance towards meeting the objections expressed in Memorandum B, but did not do so entirely.

Only a few hours after this incident Reid laid before the Convention the objections of the Colonial Office to another clause, number Eight, which allowed the future Commonwealth Parliament to confer upon itself powers greater than those of the House of Commons. This time however Reid was careful to avoid any suggestion that he had inside information, indeed he did not move any amendment but contented himself with pointing out the possibility of making a change.^{2.} This suggestion was ignored and the clause passed as it stood.

The other British suggestions and the arguments for them do not appear to have been brought forward

1. Sydney Convention Debates, p.253.

2. Ibid., p.256.

publicly by Reid. An amendment to Clause Fifty-Seven identical to that proposed in the Memoranda had been suggested by the Legislative Assembly of Victoria^{1.} but Reid remained silent when it was discussed, and the amendment was negatived. When Clauses Eighty-Two and Ninety-Eight were under consideration Reid not only refrained from putting the British case for giving the bondholders of the colonies a charge upon the customs revenue collected by the Commonwealth, but expressed views on the clauses incompatible with the wishes of the Colonial Office.^{2.} On the all important Privy Council appeal question too, Reid supported a position rather different from that advocated at such length in the Memoranda. At Adelaide he had been amongst those who wished to end appeals to the Privy Council altogether; at Melbourne he was prepared to leave with the Queen a prerogative right to allow appeals in special cases but appeared unwilling to create special machinery for this.^{3.}

The remaining amendments suggested by the Colonial Office were of a relatively trivial character, and in most cases the clauses concerned or the relevant parts of them were not discussed at all by the Convention. Nevertheless by the time the constitution bill was

1. Sydney Convention Debates, pp.778-9.

2. Melbourne Convention Debates, pp.1611-16.

3. Ibid., pp.336-7.

completed at the end of the Melbourne session several more of the amendments had been wholly or partially incorporated in it. This was apparently the work of the Drafting Committee which from time to time presented the Convention with long lists of small changes most of which were accepted without challenge by blanket resolution. In this way the words "public ministers, consuls, or other representatives" were replaced in Clauses Seventy-Three and Seventy-Seven by "consuls or other representatives", and Clauses Sixty-Two and Sixty-Eight were made declaratory, though other suggested modifications to them were not made. Clause One Hundred and Two, which the Colonial Office had claimed could be interpreted in a misleading way, did not appear at all^{1.} in the final version.

Of the seventeen amendments advocated in the first two British memoranda Reid had argued for five, with complete success in three instances and partial success in a fourth; five of the desired changes were introduced by drafting action. In three instances Reid expressed views tending towards incompatibility with British proposals, and four suggestions were neither mentioned in debate nor otherwise effected.

1. For a copy of the draft bill as it stood at the end of the Melbourne Convention, see, Melbourne Convention Debates, pp.2523-44.

On all the more important questions at least some concession to British wishes had been made and it is clear that the Memoranda were at least partly responsible for this.

The extent to which Reid communicated the views of the Colonial Office to the Drafting Committee as claimed by Garran is difficult to assess with certainty in the absence of positive evidence. During the debate on the powers to be claimed by the Commonwealth over merchant shipping, Sir John Downer, a member of the Committee, assured Reid that he must undoubtedly be wrong in suggesting that the attitude of the British Government was what Reid had written evidence for believing it to be.¹ It is scarcely possible that Downer could have made the speech had he been shown Memoranda A and B. Of the other two members of the Committee, Barton said that he did not much care what the outcome of the discussion was as the question was of small importance, and only O'Connor² appeared sympathetic to Reid's arguments.

Of course this debate occurred quite soon after the resumption of the Convention and it is possible that Reid did not approach the Drafting Committee until he had himself secured such amendments as he was willing or able to do. Or alternatively he may have minimised

1. Sydney Convention Debates, p.242.

2. Ibid., pp.244-5 (O'Connor), 247-50 (Barton)

the risk of publicity by confiding in his fellow New South Welshmen, Barton and O'Connor, but not in Downer. It is even possible that Reid mentioned some of the British suggestions to the Drafting Committee as his own ideas. However unless the Committee hit upon some of the proposals contained in the Memoranda by coincidence it seems certain that Reid passed them on in some way.

This conclusion is strengthened by an examination of the number of changes made at Sydney and Melbourne which were in accordance with Memorandum C. Virtually all of the comments, queries and suggestions contained in the Memorandum were of a technical character more suited to consideration by the draftsmen than debate by the Convention. Reid, who was not a lawyer and had a poor grasp of technicalities, does not seem to have brought any of these proposals before the Convention though on a few occasions members of the Drafting Committee did. For example, O'Connor successfully moved to extend from six months to a year the period after the enactment of the bill within which the Queen was to proclaim the establishment of the Commonwealth.^{1.} Twenty or thirty similar small changes were made by the Drafting Committee without challenge or discussion.

1. Sydney Convention Debates, p.228.

Many other suggestions contained in the Memorandum were not taken up; in particular the Australians were less concerned than the imperial authorities about the inapplicability of some general regulations to the inaugural period, Barton preferring to trust to the good sense of the first cabinet and High Court rather than to clutter the constitution with complicated special provisos. In some cases too, the Colonial Office and British Law Officers seem to have been wrong in their comments on the bill and these were naturally disregarded. However there can be no doubt that the number of amendments made which were in accordance with the three Memoranda is so large as to indicate that the approach made by Chamberlain had not been in vain.

In the course of the Conventions there were many developments in the constitution apart from those already outlined. Although an early decision had been made to confer financial supremacy on the House of Representatives, the Senate retained the power to reject money bills and amend or reject other legislation, and no provision was made for the solution of deadlocks between the Houses. Not until the last hours of the Convention was it agreed that where the Senate twice rejected, failed to pass, or unacceptably amended a bill the government could request a dissolution of both

Houses. In the event of further deadlock after a double dissolution the matter was to be decided by a three-fifths majority of a joint sitting of both Houses.^{1.} Settlement of the financial clauses was also delayed until the last minute; the necessity of entrusting the collection of customs and excise duties to the Commonwealth was unchallenged but the colonies were anxious that much of the money should be returned to them. The final arrangement was that prior to the establishment of uniform tariffs, and for five years thereafter, the Commonwealth should return to each State the revenue collected therein less the amount spent by the Commonwealth in that State and a proportionate share of general Commonwealth expenditure. Thereafter the Commonwealth Parliament would have power to determine the method of reimbursing the States, but as a guarantee that a reasonable proportion of the revenue would be returned the 'Braddon Clause' specified that the Commonwealth should spend no more than one quarter of the customs revenue and return the remainder.^{2.}

Another controversial question, control of rivers, was settled by giving the Commonwealth powers over navigation and trade but forbidding it to use these powers

1. Cl. 57, Melbourne Convention Debates, p.2533.

2. Cls. 87, 89, & 93, ibid., pp.2538-9.

in such a way as to deny any State or its residents "reasonable use" of the waters of rivers for irrigation or conservation.^{1.} Control of railways remained basically with the States but complicated provisions were written into the constitution in an attempt to guarantee that there should be no discriminatory rates.^{2.} As to judicial appeals, rather than prohibiting these except where public interests were affected as the Adelaide draft had done, the final version allowed appeals by special leave except in cases involving the interpretation of the State or Commonwealth constitutions; even in these cases, an appeal was possible if the public interests of some other part of Her Majesty's Dominions were involved.^{3.}

All of these provisions were contained in a constitution of one hundred and twenty-seven clauses arranged in eight chapters, dealing with the parliament, the executive, the judiciary, finance and trade, the States, new States, miscellaneous provisions and constitutional amendment. The constitution, together with eight introductory or covering clauses, was drafted in the form of a Bill to Constitute the Commonwealth of

1. Cls. 97, 99, Melbourne Convention Debates, p.2540.
 2. Cls. 97, 101, & 103, ibid.
 3. Cl. 74, ibid., p.2536.

Australia, ready for submission to the British Parliament.

Under the terms of the Federal Enabling Acts passed by the colonies in 1895-96 this draft Bill had now to be submitted to a referendum and New South Wales, Victoria, and Tasmania agreed to hold this on 3 June 1898, and South Australia on the day following. Western Australia, whose delegates had often seemed more like observers than participants at the Conventions, now hung back to observe the results elsewhere before deciding on its own course of action. Queensland and New Zealand, each of which had taken no active part in the federal movement since 1891, continued to hold aloof.

In the four colonies in which the referendum was to be held groups and individuals opposed to federation had begun to campaign for a "No" vote even before the Convention ended. Issue was soon joined by the federalists and there was more public discussion of federation in the three months before the referendum than at any other time in the history of the colonies. The "Anti-Billites", as critics of the measure came to be known, were of two types; avowed provincialists who opposed any form of union, and those who professed sympathy for the general goal of federation but considered that defects in the Bill proposed were so important as to

1. For a copy of the complete Bill see, Melbourne Convention Debates, pp. 2523-44.

require its rejection. Some critics of the latter type,^{1.} notably the Victorian radical liberal H.B. Higgins, and the New South Wales Labor Party,^{2.} were concerned mainly with constitutional issues, especially the undemocratic character and powers of the Senate and the difficulty of constitutional amendment. Higgins, one of the few members of the Convention who opposed the Bill, actually forwarded some of his speeches to Chamberlain in order that the latter might have both sides of the controversy before him.^{3.} The main opposition to the Bill came however from those who objected to its financial provisions. This was particularly true in New South Wales where the existing financial and tariff structure was likely to be most affected, though many critics of this type would probably have objected to any Bill.

In South Australia and Tasmania despite the fears of many that the position of the small colonies was inadequately protected by the draft constitution there was little organised opposition.^{4.} In Victoria the opposition was stronger but outweighed by the almost unanimous support of the press for the Bill and the

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1. H.B. Higgins, Essays and Addresses on the Australian Commonwealth Bill (Melbourne, 1900)
 2. See H.V. Evatt, Australian Labour Leader (Sydney, 1945) Ch. XV.
 3. Higgins to Chamberlain, 23 June 1899, C.O. 309/148, p. 826.
 4. For a good account of the campaign in all colonies see, Quick & Garran, Annotated Constitution, pp. 206-12.

vigorous campaign of the Australian Natives' Association. Only in New South Wales were the "Billites" and the "Anti-Billites" evenly matched and the equivocal attitude of the Premier accentuated this. Reid announced that as the immediate initiator of the federal movement and a member of the Convention he intended to vote for the Bill, but that as the Premier of New South Wales he must express doubts as to whether the interests of the colony were safeguarded adequately.^{1.} Federalists in all colonies were alarmed by Reid's declaration. The Acting Administrator of Victoria, Chief Justice Sir John Madden, cabled to Mr. Chamberlain the novel suggestion that the Colonial Office should ask the Premiers of Canada and South Africa to send the Premier of New South Wales their good wishes for the success of the federal Bill. "The Premier of New South Wales himself and the Colony are doubtful supporters, and it is believed that the cause both in New South Wales and elsewhere would be greatly helped by what I suggest", Madden cabled.^{2.} In the Colonial Office Mr. Anderson deprecated the idea of coercing Reid and New South Wales but felt that it would do no harm to pass Madden's cable on to the Governors of Canada and South Africa without any endorsement.^{3.} The

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1. Quick & Garran, Annotated Constitution, p.208.
 2. Madden to Chamberlain, 24 May 1898 (tele), C.O. 309/147, p.185.
 3. Minute: 25 May 1898, on Madden to Chamberlain, 24 May 1898 (tele), C.O. 309/147, p.185.

Permanent Under-Secretary, Sir Edward Wingfield, and
 1.
 Mr. Chamberlain accepted this suggestion and the message
 was duly passed on, though it does not appear to have
 evoked any response.

The result of the referendum was an anti-climax.
 The Bill was approved by overwhelming majorities in
 Tasmania and Victoria and by a smaller but still very
 large majority in South Australia. In New South Wales
 however, though there was a small affirmative majority,
 the total affirmative vote was 8,405 short of the
 80,000 minimum required by the Enabling Act if the colony
 was to federate.^{2.} The federalists were bitterly disappointed
 and blamed Reid for the result. The Governor of Tasmania,
 Viscount Gormanston, for example, accused Reid in a
 despatch to Chamberlain of insincerity in advocating
 federation, and laid the whole responsibility for the
 failure of the referendum at his door.^{3.} Gormanston excused
 this attack on the premier of another colony with the
 argument that the rejection of the measure affected other
 colonies as much as New South Wales. It is possible to
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 make a good case in defence of Reid however, for his

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1. Minutes; 25 May 1898, on Madden to Chamberlain, 24 May 1898 (tele), C.O. 309/147, p.185.
 2. For a summary of the results see, Quick & Garran, Annotated Constitution, p.213.
 3. Gormanston to Chamberlain, 31 July 1898, C.O. 280/401, p.112.
 4. See K.R. Cramp, "Sir George Reid's place in the Federal Movement", J.R.A.H.S. Vol.39, Pt.1 (1953) pp.23-41. W.G. McMinn, "G.H. Reid and Federation; The Case for the Defence", J.R.A.H.S., Vol.49 Pt.4 (1963), pp.257-73.

criticisms of the Bill were of points on which he had been overruled at the Convention and where he believed the interests of his colony to be affected. Despite the eagerness of the diehard federalists, little good could have come from rushing the colony into an unacceptable form of federation.

Furthermore Reid's contribution was not merely a negative one, for as soon as the result was known he asked the premiers of the other colonies to confer on amendments which might make the Bill more acceptable to New South Wales. This approach was rebuffed, but after narrowly winning an election in which both sides advocated federation, though on differing terms, Reid renewed his request for amendments and induced the other premiers to meet him in Melbourne in January 1899.

The premiers were welcomed to Melbourne by the Governor of Victoria, Lord Brassey, who enthusiastically supported federation and expressed complete confidence that it would bind Britain and Australia more closely than ever.¹ All those who attended the conference were in a mood to reach agreement and perhaps in consequence, they succeeded in doing so quickly and without fuss.

1. The Age, 27 Jan. 1899, cutting enclosed in, Brassey to Chamberlain, 2 Feb. 1899, C.O. 309/148, p.51.

Substantial concessions were made to New South Wales. The provision that a three-fifths majority must be secured at the joint sitting of both Houses which was to settle deadlocks was altered to require only an absolute majority; the operation of the "Braddon Clause" was restricted to the first ten years after the establishment of the Commonwealth, and a new clause was added to allow the Commonwealth to give special financial assistance to any State within this period; it was agreed that the federal capital should be located in New South Wales, though not within 100 miles of Sydney, on condition that parliament should meet in Melbourne until such a site was chosen; amendment of the constitution was facilitated by allowing a referendum to be held despite the dissent of one House of Parliament if a motion to that end was twice passed by the other House; and a guarantee was inserted that the boundaries of a State should not be altered without the assent of its electors at a referendum. Other proposals for amendment of the clauses governing rivers, money bills, and judicial appeals were rejected, but Reid professed himself satisfied and together with the other premiers undertook to submit the revised Bill to a further referendum.

1. "Minutes of a Conference of Premiers on the Commonwealth Bill", V.&P. (L.A. of S.A.) 1898-99, III, Paper 154.

Opposition to federation in New South Wales was still strong but the more positive attitude of Reid and his Government gave a fillip to the federalist cause. This time the referendum resulted in an affirmative majority of 25,000 and a total affirmative vote of 107,420^{1.} which comfortably met the requirements of the Enabling Act. New South Wales had committed itself to federation at last, and the other colonies were not slow to confirm that they were even more willing to federate on the revised terms than they had been before. In Victoria, Tasmania and South Australia alike the affirmative vote rose spectacularly and the negative vote fell at the second referendum.^{2.} By 27 July 1899 the four South-Eastern colonies had decided in favour of the establishment of an Australian federation on the basis of the draft Commonwealth Bill.

When the serious intentions of these colonies became apparent, interest in federation revived in Queensland. Until 1891 Queensland had been in the forefront of the federal movement, but in the 'nineties it was distracted by two other questions, North Queensland separatism and the Pacific Island Labour trade, both of which were also long standing thorns in the flesh of the

1. Quick & Garran, Annotated Constitution, p.223.
 2. Ibid., p.225.

British Government. These issues were largely responsible for the failure of Queensland to participate in the Conventions, though they were also connected with the ultimate decision of the colony to enter the Commonwealth.

Almost from the time Queensland became independent of New South Wales there had been sporadic talk of forming a new Northern colony, talk which quickened in the eighteen-seventies and culminated in the formation of a Northern Queensland Separation League in 1882.^{1.} The general complaint of the Northerners was that the Queensland Government, situated as it was in remote Brisbane, was indifferent to or ignorant of the needs of the region; the amount of government revenue raised in the North was alleged to be far in excess of the expenditure there. Since parliamentary representation was on a population basis both Houses were dominated by the more thickly peopled South, and the North was unable to secure redress of its grievances through the normal procedures. These factors together with the ambition of Townsville to become the capital of a new colony and the enthusiasm of a few individuals who fancied themselves as ministers in a new government, led to periodic requests that the British Government should intervene to separate

1. See R.G. Neale, "The New State Movement in Queensland. An Interpretation.", H.S. Vol.4, No.15 (1950), pp.198-213.

the North from the existing colony, but nothing came of these.

The major industry in North Queensland was sugar cultivation and from the eighteen-sixties the planters had become increasingly dependent on indentured labour imported from the Pacific Islands. The revelation of abuses in the labour traffic had frequently outraged public opinion in Britain and in the Southern areas of Australia including Southern Queensland; at last Premier Griffith decided that the only way to prevent these was to end the labour trade altogether and break up the big plantations into small holdings worked by Europeans.^{1.} In 1885 Griffith carried through the Queensland Parliament an Act prohibiting the importation of indentured labourers after 1890.^{2.} Naturally the sugar interests were up in arms at once and were more anxious than ever to separate from the South, for an independent North Queensland would be able to choose its own labour policy. Between 1885 and 1890 there were frequent petitions, protests, and parliamentary debates about separation,^{3.} still without much result.

In 1892 Griffith conceded that the sugar industry had failed to adjust to the new conditions imposed upon

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1. O.W. Parnaby, Britain and the Labor Trade in the Southwest Pacific (Durham, N.C., 1964) Chs. IV & V.
 2. 49 Vict., No.17.
 3. Correspondence on the subject may be found in, Confidential Print, Aust. No 114, C.O. 881/7.

it as quickly as he had hoped, and withdrew the ban on the importation of coloured labour for a further ten years. The greatest worry of the planters was temporarily eased, and their support for the separation campaign weakened, though to some extent the labour movement took over where they left off. The Queensland unions had been the worst hit by the strikes of 1889-91 and like those in New South Wales, turned from direct action to politics and were immediately successful in winning a few seats in the Legislative Assembly. The large groups of miners in North Queensland and pastoral workers in Central Queensland had thus some reason to believe that they might be able to dominate the legislature of a new colony.^{1.}

The efforts of the Northern Separation League were also supplemented from 1890 by a new demand for the creation of an independent colony in central Queensland.^{2.} The pastoralists in this region had much the same kind of grievance as the planters of the North except that the coloured labour issue did not affect them; Rockhampton was as keen as Townsville to be the capital of a new colony. The two movements were on uneasy terms, but in 1890 Members from both areas solidly supported a motion

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1. See McIlwraith to the Agent-General for Queensland, 14 Sept. 1893, C.O. 234/57, p.467.
 2. G.C. Bolton, A Thousand Miles Away. A History of North Queensland to 1920 (Brisbane, 1963) p.206.

in the Legislative Assembly for the tripartite division of the colony. When the motion was defeated by six votes due to the opposition of the Members from the South,^{1.} another appeal was made to the British Government.

All these approaches over the years were received most unenthusiastically by the imperial authorities.

Much to the relief of the Colonial Office the Law Officers ruled in 1885 that the separatists were wrong in contending that the Act which split Queensland off from New South Wales had empowered the British Government to subdivide the colony further; a fresh act of the Imperial Parliament would be required for this purpose.^{2.}

In 1887 they confirmed this opinion and added that it would be extremely undesirable, from a constitutional point of view, for the Imperial Parliament to legislate for the partition of Queensland unless this was requested by a majority vote of the Queensland Parliament.^{3.}

As an ex-Premier of Queensland, Sir Robert Herbert had little sympathy with Griffith's plan to exclude coloured labour, and he appears to have believed that separation might ultimately become necessary, but as Permanent Under-Secretary for the Colonies, Herbert was anxious not to encourage the separation movement,^{4.} and

1. P.D. (L.A. of C.) 1890, LXII, p.1092.

2. Law Officers to the C.O., 29 July 1885, C.O. 234/46, p.305

3. Law Officers to the C.O., 5 Nov. 1887, C.O. 234/48, p.452

4. Minute, 18 Jan 1885, on Davidson to C.O., 14 Jan 1885, C.O. 234/46, p.367.

his political heads felt the same way. When the question was raised in the House of Commons in 1885 Evelyn Ashley stated on behalf of Lord Derby that the matter was under consideration but that the Government would be extremely reluctant to take the action requested.^{1.} In 1887 Sir Henry Holland answered a similar question by saying that he would be willing to see a deputation from the Separation League but that until the initiative came from the Colonial Parliament, it would not be proper for the British Government to take any action.^{2.}

In 1890 another request for separation arrived at the Colonial Office shortly before the 1891 Federal Convention was due to meet, and at once the two issues became entangled. Herbert noted that:

"..if new colonies are now created out of Queensland new possible obstacles or difficulties in the way of Federation will thereby be created. It is, I think, a very important consideration that separation in Queensland at this moment would tend to interfere seriously with Australian Federation".^{3.}

Thereafter the progress of the federal movement was often cited by the British Government as a reason for deferring a decision on the division of Queensland. Griffith himself attended the Convention and virtually

1. Hansard, 3rd. Ser., CCCIII, 810. (15 March 1885)
 2. Hansard, 3rd. Ser., CCCXIV, 1663. (12 May 1887)
 3. Minutes: 10 Dec. 1890, C.O. 234/51, p.401.

drafted the constitution it produced, and his interest in federation apparently suggested to him a solution to the problems of his own colony. In 1892 he brought down a proposal to subdivide Queensland into three provinces linked together on a federal basis.^{1.} Each province was to have a small unicameral parliament of its own with limited powers, and representation in a central House of Representatives and Senate. The plan was a clever one but it did not become popular and when the Bill was amended to establish only a Northern and a Southern province, the Members from the central region obstructed it at every turn until at last it was thrown out by the Legislative Council.^{2.}

Shortly after Griffith's plan was announced Lord Knutsford relented so far as to tell a Central Separation delegation that if the plan was twice thoroughly thrashed out he did not think that legislation by the Imperial Parliament would be long delayed.^{3.} This long hoped-for undertaking was of little use however, for a change of government in Britain brought Lord Ripon to the Colonial Office before Knutsford could be held to his words, and in Queensland, Griffith retired from politics to the judicial Bench. The very able Governor

1. Norman to Knutsford, 24 June 1892, C.O. 234/53, p.253.
 2. Norman to Ripon, 28 Oct. 1892, C.O. 234/54, p.210.
 3. Delegation Report, V.&P. (L.A. of Q.) 1894, I, p.503.

of Queensland, Sir Henry Norman, consistently advised
 against separation,^{1.} and Ripon accepted his advice.^{2.}

In 1895 yet another separation petition was received by the Colonial Office at much the same time as the other colonies were passing Enabling Acts preparatory to the Federal Convention of 1897-98. The answer to it of yet another Secretary of State for the Colonies, Joseph Chamberlain, suggested that the many existing obstacles to separation would be removed if a federal union of the colonies was concluded, and stated explicitly that:

"Her Majesty's Government have noticed with satisfaction that the feeling in favour of such a union is progressing steadily, and that some of the Colonies have already taken practical steps in that direction, and if, as they earnestly hope, such a union is accomplished, and Queensland which has taken such a foremost place in advocating it, is included in the Federation, the extension of complete local autonomy in purely local matters will be comparatively easy, and the people of central Queensland will no doubt find the central Parliament when constituted ready to listen to any reasonable scheme which may be submitted to it".^{3.}

From the point of view of the Colonial Office this reply killed two birds with one stone for it not only put separation aside as a matter best left to the federal government when it came into being, but it also gave the separationists an incentive to work for federation.

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1. Norman to Ripon, 10 Oct. 1892, B.M. Addit. MSS. 43560. (Ripon Papers)
 2. Ripon to Norman, 22 Aug. 1892 (copy), B.M. Addit. MSS. 43560. (Ripon Papers).
 3. Chamberlain to Central Separation League, 15 Jan. 1896, C.O. 234/62, p.98.

To some extent the North and Central regions were impressed with this view that a federal government might be more sympathetic towards their aspirations than the Queensland Government; many Members from these regions supported the three unsuccessful attempts between 1896 and 1898 to arrange Queensland representation at the Conventions; in 1898 the representatives of the Central region sent a message of support to the Convention, and asked that provision should be made for the Northern and Central divisions to be admitted to the federation in their own right.¹ But the internecine conflict within the colony prevented it from participating in the federal movement. No method of selecting delegates could be found which was acceptable to all parts of the colony.

By failing to be represented at the Conventions Queensland deprived itself of the opportunity to influence the draft constitution, and in a last minute bid to make up for this the Premier, J.R. Dickson, decided to attend the Premiers' Conference which followed the first referendum. Dickson was able to secure one special concession for his colony, which it was hoped might make the constitution more acceptable to it, namely that whereas Senators from other States were

1. Melbourne Convention Debates, p.2171.

to be elected by the State as a whole, Queensland might, pending Commonwealth legislation, divide itself into smaller electorates for this purpose.^{1.} Dickson returned from the Conference committed to holding a referendum on the revised Bill and succeeded with some difficulty and delay in pushing through Parliament an Enabling Act for this purpose. The date for the referendum was fixed as 2 September, by which time four other colonies had already accepted the Bill.

Both the North, and the central pastoral areas, could expect to benefit from the unprotected markets in other colonies which federation would open up for them and therefore had good reason to support the Bill.^{2.} Contrary to Chamberlain's assurance that federation would make separation easier however, the constitution as finally adopted allowed the creation of a new State by separation from an existing State only with the consent of the Parliament of the existing State,^{3.} which meant that the dissident areas would be no better off. Furthermore there was little doubt that if Queensland entered the Commonwealth the federal parliament would terminate the importation of Pacific Island Labourers. Despite these

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1. "Minutes of a Conference of Premiers on the Commonwealth Bill", V.&P. (L.A. of S.A.) 1898-99, III, Paper 154.
 2. J.G. Drake, "Federal Prospects in Queensland", Review of Reviews, Australasian Edition, May 1899, pp.565-8.
 3. Cl. 123, Melbourne Convention Debates, p.2542.

mixed considerations the North, and to a slightly lesser extent the centre, were the most federally minded regions of the colony. The prospects of separation could not be lessened for as things stood the colonial and British governments were completely unhelpful. The Queensland Parliament was almost certain to abolish indentured labour if federation did not take place, and there was at least the prospect that the Commonwealth might, as it later did, compensate the sugar industry with a generous bounty if it were the one to effect the reform. The Amalgamated Miners' Association which had many members in these regions was strongly favourable to federation, and the itinerant pastoral workers were among the most nationalist groups in the country.

In Southern Queensland the situation was rather different, for there the impact of unrestricted intercolonial trade was feared rather than welcomed. The merchants and manufacturers of Brisbane and the farmers of the South did not look forward to the competition of New South Wales.^{1.} When the ballot was taken, every Northern electorate gave an affirmative majority as did all but three of the central electorates; the South and especially Brisbane were slightly against the

1. Drake, "Federal Prospects in Queensland", Review of Reviews, Australasian Edition, 1899, p.567-8.

Bill, but were carried into the Commonwealth by the North.^{1.}
 For once the outback areas of the colony had been able
 to impose their will on the metropolitan area.

Whilst Queensland, which had not attended the
 Conventions, was making up its mind to accept the
 Commonwealth Bill, Western Australia which had attended
 the Conventions, procrastinated. Sir John Forrest, the
 Premier, had supported the federal movement personally
 for many years but it seemed to him and many of his
 colleagues that Western Australia could not afford to
 enter the Commonwealth until it could join the other
 colonies on more equal terms.^{2.} The colony was small,
 separated from the Eastern colonies by such a vast
 desert that all contact between East and West was still
 by sea, and completely dependent on the customs revenue
 which federation would take from it; the infant
 industries of the colony could not be expected to survive
 the competition to which intercolonial free trade would
 expose them. One special concession had been granted to
 Western Australia by the Conventions, a provision that
 the colony could impose customs duties on goods imported
 from the other colonies on a gradually reducing scale

1. See the table given by G.C. Bolton, A Thousand Miles
 Away, p.210.

2. J.Bastin, "Sir John Forrest and Australian Federation",
A.Q., Vol.XXIV, No.4, 1952, pp.43-51.

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for the first five years after federation. But as the delegates had not really expected their colony to enter the Commonwealth as an original State, they had taken little part in the proceedings and hesitated to ask for further concessions.

The calculations of the Forrest Government were upset by the goldrushes of the eighteen-nineties which drew tens of thousands of new people into the colony, many of them from Eastern Australia and anxious that the West should be federated with their old colonies. The Western Australian Parliament, in which the goldfields were scarcely represented, and the Government, in which they were not represented at all, found it increasingly difficult to ignore the diggers. Alarmed by the possibility that Western Australia might be forced into federation earlier than he had anticipated, Forrest sought special amendments to the Bill at the Premiers' Conference in January 1899 but without success; he corresponded with other colonies asking for amendments again to no avail.^{2.} A Joint Committee of the two Houses of the colonial Parliament examined the Bill and recommended four amendments which would make it more

1. Cl. 95, Melbourne Convention Debates, p.2539.

2. See the Correspondence enclosed in, Smith to Chamberlain, 22 July 1899, C.O. 18/226, p.122.

1. acceptable, but an attempt to submit the constitution to a referendum either with or without these changes was blocked by the Legislative Council.^{2.} Late in 1899 when the other colonies were petitioning the Queen for legislation to establish the Commonwealth, Western Australia had made no progress towards adopting the Bill.

The other recalcitrant colony was New Zealand. Although the Conventions of 1898-99 followed that of 1891 in describing themselves as "Australasian" no New Zealand delegates were sent and the trans-Tasman colony made no attempt to adopt or even assess the Commonwealth Constitution Bill.

Despite these setbacks in the remotest areas of Australasia, the one separated from the colonies of Eastern Australia by 1500 miles of ocean and the other by an even greater tract of land, the federal movement had come a long way by the end of 1899. Addresses to Her Majesty, Queen Victoria, praying for the submission to the Imperial Parliament of the Constitution Bill for the establishment of an Australian Commonwealth were passed by the Parliaments of South Australia, Victoria,

1. Report of the Joint Select Committee of the Legislative Council and the Legislative Assembly appointed to consider the Draft of a Bill to constitute the Commonwealth of Australia, V.&P. (L.C. of W.A.) 1899, III, Paper A 10.
2. V.&P. (L.C. of W.A.) 1899, I, p.193. (6 Dec. 1899)

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New South Wales, Tasmania, and Queensland. The colonies had played their part and given the Imperial Government its cue; for the last episode in the federal drama, the scene shifted to London.

1. For copies of the addresses see, "Papers relating to the Federation of the Australian Colonies," Cd. 124, pp.18-24. Parl.Pap. 1900, LV.

Chapter SixTHE FINAL STRUGGLE IN LONDON, 1900

The early meetings of the Federal Convention attracted little attention in Britain even in those circles accustomed to taking notice of colonial questions, but as the Premiers' Conference of January 1899 and the second referendum brought Australia to the threshold of federation, there was a flurry of interest. All the leading newspapers and journals published articles familiarising their readers with the colonies and their draft Commonwealth Bill,^{1.} and Mr. Sidney Webb, lately returned from Australia where he had stayed for a time with Deakin, lectured at the London School of Economics on the character of the new constitution.^{2.} The Times, which had advocated federation consistently over several decades, received the news of its impending achievement with satisfaction but noted significantly that "The question of appeals, of course, is in part a question for the Imperial Parliament..^{3.}"

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1. eg. H.C. Batchelor, "The Australasian Colonies and Federation", Journal of Finance, May 1899; Lord Brassey, "Australian Federation", Nineteenth Century, April 1899; A.H.F. Lefroy, "The Commonwealth of Australia Bill", Law Quarterly Review, April & July 1899; W.B. Odgers, "The Federation of Our Australian Colonies", New Century Review Oct. 1898; "The Federation of Australia", Quarterly Review, Oct. 1899.
 2. The Times, 24 April, 1899.
 3. The Times, 3 Feb. 1899.

As reports of the proceedings of the Sydney and Melbourne Conventions arrived at the Colonial Office they were examined carefully by the clerks of the Department responsible for Australasia; variations from the Adelaide draft were noted, particularly in those clauses to which the British Government had suggested amendments. After the Sydney Convention John Anderson wrote approvingly, "They appear to be trying to meet us to some extent"^{1.} and on receipt of the proceedings of the final session he minuted, ".nearly all the vital amendments put before Mr. Reid have been carried - a strong proof of the commanding position acquired by him amongst Australians"^{2.} In October 1899 a Confidential Memorandum was prepared analysing the extent to which the objections made in 1897 were met by the final draft bill, and summing up the views of the Colonial Office at that stage.^{3.}

The prevailing tone of this document was one of restrained satisfaction. The covering clauses which had formerly contained the "most serious blots" were held now to be innocuous, only the latter part of Clause five, regarding the powers of the Commonwealth over British shipping, seriously being questioned. The partial improvement of this provision secured by Reid was judged insufficient

1. Minute: 3 Nov. 1897, C.O. 418/4, p.319.

2. Minute: 31 May 1899, C.O. 13/153, p.22.

3. Notes on the Commonwealth of Australia Constitution Bill, C.P. Australian No. 169, C.O. 418/6, p.409ff.

and further amendment was suggested. The memorandum also questioned whether the Colonial Law Validity Act would apply to Commonwealth Laws. Numerous doubts and queries were voiced about Clause Seventy-Four, the Privy Council appeal clause, but the final verdict reached was that the jealousy of the colonists towards imperial interference in local affairs made it useless to offer further objection.

A few other points were raised when the memorandum was considered by the senior officials. Sir Robert Herbert, brought out of retirement by the illness of Sir Edward Wingfield, suggested that Clause Three should be amended to prevent the Commonwealth Parliament from varying the salary of the Governor-General; Lord Selborne and Mr. Chamberlain both agreed until Anderson pointed out that the power in question had been given to the Canadian Parliament.^{1.} Chamberlain himself doubted the wisdom of vesting command of the armed forces of the Commonwealth in the Governor-General, a matter which had been queried in 1897, and in a marginal note on Clause Seventy-Four regarding appeals said that "The Act does not seem to carry out my views".^{2.} Herbert and Anderson hastened to re-assure the Minister on these points, but final decisions were postponed pending the reference of the draft Bill and

1. Minutes: 17,18,20, & 21 Oct. 1899, C.O. 418/6, pp.374-8.
 2. Marginal Notes, 20 Oct. 1899, C.O. 418/6, p.378.

other relevant material to the Parliamentary Draftsman and the Crown Law Officers.

The main contribution of Sir Courtenay Ilbert, the Parliamentary Draftsman, was the recommendation that for purposes of enactment by the British Parliament the covering clauses should constitute the Bill, and the constitution should be scheduled to them.^{1.} This procedure departed from that used for the British North America Act and also from that of earlier Australian constitution acts, and it differed slightly from the plans of the Colonial Office, but it was readily accepted. In other respects Ilbert's report was less helpful; on the shipping and appeal clauses he hinted at doubts but did not propose amendments, and his only positive suggestion was that a provision should be inserted definitely establishing that Commonwealth laws would be colonial laws within the meaning of the Colonial Laws Validity Act.

The Law Officers were more specific than Ilbert though not necessarily more helpful, for they suggested five major amendments but left it to the Colonial Office^{2.} to decide whether or not it was expedient to press these. The suggested changes were, the deletion of covering clause two, which stated that the Act should bind the

1. Sir C.I. Ilbert's Memorandum on the Commonwealth Bill, 17 Nov. 1899, C.O. 418/6, pp. 86-90.

2. The Law Officers' Memorandum on the Commonwealth Bill, 21 Dec. 1899, C.O. 418/6, pp. 101-15.

Crown; the deletion of that part of covering clause five which related to shipping; the insertion of a declaration that the Colonial Laws Validity Act applied to the laws of the Commonwealth; the limitation of the powers conferred on the Commonwealth over external affairs; and the complete revision of the judicial appeals clauses. The Law Officers did not restrict their suggestions for amendments to the covering clauses as the Colonial Office had been hoping to do, and this further complicated the position.

The process of examining the Bill proceeded at a leisurely pace throughout 1899. Though it was generally assumed that a few amendments at least might ultimately be insisted upon, no real thought was given to the procedure by which these might be made until the issue was pushed forward by correspondence from Australia. In mid-October a despatch was received from Sir Gerard Smith in Western Australia hinting that his ministers could be induced to federate by the amendment of the Bill to meet their wishes whilst it was before the Imperial Parliament.^{1.} A Select Committee of the House of Commons could be set up to examine the Bill, he suggested, as this would give the Colonial Government an opportunity to put its case. After

1. Smith to Chamberlain, 8 Sept. 1899, C.O. 18/226, p.192.

the Convention of 1891 Herbert had forecast in a minute that a Select Committee would probably be necessary to thrash out the details of the Bill,^{1.} but now the idea was rather unfavourably received.^{2.} No positive decision was taken about the procedure to be followed in dealing with the Bill however, as is indicated by Herbert's note on another file a few days later that it was important that the concurrence of the colonies in the Bill as finally prepared for parliament should be obtained "in some way or other".^{3.}

A month later a letter from the veteran federalist Sir Samuel Griffith, prompted further thought on the matter. Griffith had been a central figure in the federal movement between 1883 and 1891 but during the Conventions of 1897-99 he had been debarred from taking an active part by his position as Chief Justice. However as Administrator of Queensland for some months in 1899 and 1900 during the absence of the Governor he had an opportunity to influence events again, and used it to the full. Griffith wrote making some personal observations on the Commonwealth Bill, which he believed to be far from perfect, and said that the colonies would welcome any improvement of it by the British

1. Minutes: 17 July 1891, C.O. 309/136, p.229.

2. Minutes: Collins & Anderson, 11 Oct. 1899, C.O. 18/226, pp. 192-3.

3. Minutes: 17 Oct. 1899, C.O. 418/6, p.373.

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 Government before it was enacted. The Colonial Office was highly sceptical on this point but as some alterations to the draft were likely, consideration was given to the manner in which the agreement of the colonies could most easily be secured. Collins and Anderson each suggested that the colonies should be invited to send delegates to explain the Bill, and this plan was generally approved.^{2.}
 The big difficulty was that the Bill had been ratified formally by popular referendum and it was therefore possible that any changes in it would be held to necessitate a further reference to the people - for who else had the authority to accept amendments? Nevertheless Chamberlain proposed that any delegates sent by the colonies should be authorised to assent to alterations which did not touch vital points, if this could be arranged.^{3.}

In order to clarify the position Chamberlain cabled Griffith personally about the possibility of colonial delegates being sent to England to explain the Bill. Griffith's reply was that so far as he knew this was not planned, and that the idea was more likely to be accepted if proposed by the British Government rather than by one of the colonies.^{4.} A few days after Griffith's cable

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1. Griffith to Chamberlain, 19 Oct. 1899, C.O. 234/69, p.83.
 2. Minutes: 28 & 29 Nov. & 2 Dec. 1899, on Griffith to Chamberlain, 19 Oct. 1899, C.O. 234/69, p.83.
 3. Minute: 6 Dec. 1899, on Griffith to Chamberlain, 19 Oct. 1899, C.O. 234/69, p.83.
 4. Griffith to Chamberlain, 14 Dec. 1899 (tele), C.O. 234/69, p.247.

the Law Officers forwarded their critical report on the Bill, and after a conference with his officials Chamberlain decided on 21 December to broach the question of delegates with the colonial governments.^{1.}

The message to the colonies which followed this decision was far from candid about the intentions of Her Majesty's Government for it expressed the hope that it was true as reported that delegates would be sent to England "to assist and explain when Parliament is considering the Federation Bill".^{2.} Consultation between delegates and the Crown Law Officers on constitutional and legal questions might, it was stated, "avoid any protracted discussion and opposition on technical points in Parliament". Chamberlain did not directly invite or command the sending of delegates, nor did he give any indication that he was considering the amendment of the Bill, though naturally the colonists were suspicious.

Even before this Sir Charles Dilke, an erstwhile colleague of Chamberlain with an interest in colonial affairs and many friends in Australia, had warned Alfred Deakin that an attempt to amend the Commonwealth Bill was probable.^{3.} Deakin replied indignantly that if the British

1. Minute: 21 Dec. 1899, C.O. 234/69, p.247.
 2. Chamberlain to Beauchamp, 22 Dec. 1899 (tele), Cd. 124, p.26. Parl.Pap. 1900, LV.
 3. This may be inferred from Deakin to Dilke, 14 Sept. 1899, B.M. Addit.M.S. 43877, f.132. (Dilke Papers)

Government objected to any of the provisions of the constitution it ought to have said so while the Conventions were sitting, but it had not done so, unless Reid had referred to some such hint during debate on the shipping clause at Sydney. Deakin went on to say,

"Under these circumstances to alter our work after we have finished it (without giving us the opportunity of knowing of any objections and of meeting them as we probably should have done most cordially) by a mere exercise of overlordship would be an inconsiderate, impolite and offensive act of supremacy. There ought not now to be the least tampering with a measure which has run such a gauntlet of criticism and secured at last such an overwhelming verdict in its favour from our Parliaments and people". 1.

This outburst was typical of the reaction of the leading federalists of all colonies when Chamberlain's cable, guarded though it was, was made public. J.H. Symon, a South Australian Convention delegate who had had much to do with the shaping of the judicial appeal clauses, wrote to Lord Selborne, Chamberlain's Parliamentary Under-Secretary, to say that the suggestion that delegates needed to be sent was unfortunate and inopportune and that any amendment of the Bill would make another referendum necessary, and jeopardise federation.²

Despite the suspicions of the Australians it was obvious that delegates would have to be sent. The Victorian

1. Deakin to Dilke, 14 Sept. 1899, B.M. Addit. MSS.43877, f.132. (Dilke Papers)
 2. Symon to Selborne, 17 Jan. 1900, C.O. 13/155, p.399.

Government promptly appointed Deakin without reference to the other colonies, but later a Premiers' Conference decided that every colony should choose a delegate, each of whom should be commissioned to represent the federating colonies as a whole. The delegation selected in this way comprised Edmund Barton, C.C.Kingston, Deakin, J.R.Dickson of Queensland, and Sir Phillip Fysh the Tasmanian Agent-General, who was already in London. It was a strong group, Barton, Deakin and Kingston in particular being very able lawyers and the leading federalists of their respective colonies. Although they did not find it necessary to tell Chamberlain so, the Premiers instructed the delegates that they were to secure the passage of the Bill without amendment of any kind.^{1.} By mid-March 1900 the delegation had arrived in London.

With delegates on their way to London and the beginning of the parliamentary session near it became necessary for Chamberlain to decide exactly which of the amendments canvassed should be pressed, and how they should be effected. The conclusions of the three members of the Colonial Office most concerned, Collins, Anderson,^{2.} and Sir Robert Herbert, coincided closely. None of the three considered the objections of the Law Officers to

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1. A. Deakin, The Federal Story (2nd. Rev. Ed., Melbourne, 1963) p.108.
 2. Minutes: Collins, 28 Dec. 1899; Anderson, 30 Dec. 1899; & Herbert, 9 Jan. 1900, on the Memorandum of the Law Officers, C.O. 418/6, pp.92-100.

the provision in covering clause Two, that the Crown should be bound by the constitution, of sufficient importance to warrant its deletion. Each of them agreed that any doubts about the application of the Colonial Laws Validity Act to Commonwealth laws should be removed by the insertion of a declaration to that effect. There was also general agreement that the extension of Commonwealth jurisdiction to ships whose first port of clearance and port of destination were in the Commonwealth could not be allowed to stand. Herbert was particularly definite on this point for he feared that the intention of the colonists was to subject seagoing ships visiting Australia to local trade union and labour laws which were more radical than those of Britain. This view was endorsed by a legal opinion obtained by the Board of Trade, which recommended^{1.} the omission of the provision.

Doubts about the mode of fixing the salary of the Governor-General and the vesting of the military command in him were dismissed, as was the Law Officers' suggestion that the power of the Commonwealth over external affairs should be modified. This left the question of judicial appeals to the Privy Council, the issue most stressed in the secret memoranda of 1897. Although the Law Officers

1. Board of Trade to the C.O., 18 Jan. 1900, C.O. 418/7, p.122.

were very critical of Clause Seventy-Four, the clause in the Commonwealth Bill chiefly concerned, and most members of the Colonial Office also had reservations about it, Collins, Anderson, and Herbert all repeatedly stated that it should not be amended. The clause would probably be attacked, Anderson wrote on one occasion, but he hoped that it would not be by the Government.^{1.} Elsewhere he proposed that the clause should be allowed to stand because:

"It is undesirable to furnish these Gentlemen, who value their independence so highly that they are always standing upon it, with a text for denouncing Imperial interference, and the British Constitution is already so full of 'anomalies' that one more is not of much consequence."^{2.}

In similar vein Herbert wrote that although the clause had faults, he did not believe that they would prove material in practice.^{3.}

The general consensus of Colonial Office opinion was thus that only two changes should be made in the draft Bill, one to limit Commonwealth powers over British shipping to the strictly coastal trade, and the other to make the Colonial Laws Validity Act applicable to Commonwealth laws. It was agreed further that in the Bill to be introduced into the Imperial Parliament, the

1. Minute: 19 Feb. 1900, on Symons to Selborne, 17 Jan. 1900, C.O. 13/155, p.399.
2. Minute: 1 March 1900, on Tennyson to Chamberlain, 20 Jan. 1900, C.O. 13/154, p.16.
3. Minute: 9 Jan. 1900, C.O. 418/6, p.100.

constitution should be scheduled to the eight covering clauses, with a ninth clause to be added specifying that the constitution should be as set forth in the schedule. Anderson and Herbert were confident that if the changes to be made were confined to the covering clauses rather than the constitution proper, the Australians would not object to them. When the delegates were informed of the intentions of Her Majesty's Government they were likely to be agreeably surprised, it was thought.

Chamberlain's final decision on amendments went considerably beyond the views of his advisers however. When the Australian delegates were formally welcomed at the Colonial Office on 15 March 1900, Chamberlain informed them that Her Majesty's Government had decided to ask only for changes which were regarded as essential. But in addition to objecting to the powers of the Commonwealth over shipping and asking that the application of the Colonial Laws Validity Act should be made explicit, he went on to propose the deletion of the phrase "This Act shall bind the Crown" from covering clause Two and the modification of the appeal clause.² Chamberlain spoke, Deakin has recorded, "in a manner which implied that he

1. Minutes: Anderson, 19 Feb. 1900; Herbert, 22 Feb. 1900, on Symon to Selborne, 17 Jan. 1900, C.O. 13/155, p.399.
 2. The amendments suggested may be found in Cd. 158, pp. 19-20, Parl.Pap. 1900, LV.

could not conceive of any refusal as warrantable or possible and though without arrogance, ..as a lord paramount or at least a predominant partner^{1.} The delegates pointed out in reply that their instructions were to accept no amendments, and they declined even to discuss these proposals until they had had an opportunity to examine them in detail.^{2.} What the other delegates did not know, though Chamberlain did, was that the Queensland delegate, Dickson, had secret instructions from his Government not to join in this resistance to the wishes of the British Government. Chamberlain had been informed of this by Sir Samuel Griffith, and he therefore had reason to expect a breach in the ranks of the delegates if he persisted in his demands.^{3.}

For two months following this meeting the Australian delegates and the Colonial Office were locked in a vigorous paper war, the first broadside of which was the lengthy Memorandum of the Australian delegates, 23 March, 1900^{4.} which jointly and severally rejected the amendments Chamberlain had suggested. The principal argument upon which the delegates relied was, as had been anticipated, that the Bill as it stood had been ratified by a referendum of the Australian people so that they had no authority to

1. Deakin, The Federal Story, p.142.

2. Ibid., pp. 142-3.

3. Griffith to Chamberlain, 2 Feb. 1900, C.O. 234/70, p.136.

4. Cd. 158, pp.13-18, Parl.Pap. 1900, LV.

accept alterations to it. Only on the basis of this Bill had the five federating colonies agreed to unite. The delegates also declined to admit that there was any difference between amendments to the covering clauses and amendments to the text of the constitution. The attempt to confine alterations to the covering clauses showed courtesy and kindness, it was conceded, but the practical effect would be exactly the same in either case.

Turning to the particular alterations proposed, the memorandum argued that there was already no room for doubt about the application of the Colonial Laws Validity Act to the laws of the Commonwealth, but that if nevertheless the British Government wished to make a declaration on the subject, it should do so by separate legislation. The extension of Commonwealth law to British ships "whose first port of clearance and whose port of destination are in the Commonwealth" was defended on the grounds that this was a more restricted power than that which the Imperial Parliament fifteen years before had conferred on an inferior legislature, the Federal Council. As to judicial appeals, the delegates contended that the constitution had been drafted in Australia and ought therefore to be interpreted there; Australian judges were as competent and impartial as the members of the Judicial Committee of the Privy Council and had the advantage of knowledge of local

conditions. On non-constitutional matters the existing provisions gave adequate scope for appeal, especially since the limitations which were placed on appeals applied only to appeals from the High Court; litigants at the State level still had the option of making an appeal direct to the Privy Council. The delegates concluded by reminding Chamberlain that in 1885 Colonel Stanley had regarded it as undesirable that the Federal Council Bill should be amended without the consent of the colonies, and suggested that this was even more true of the present Bill which had been more carefully prepared and more thoroughly ratified.

A week after the delegates forwarded this document the Colonial Office replied with an even more wordy counterblast, the Memorandum of the Objections of Her Majesty's Government to some Provisions of the Draft Commonwealth Bill,^{1.} the general tenor of which was that the referendum had given general approval to the Bill rather than sanctifying every detail. The claim of the delegates that there was no difference between the covering clauses and the constitution was hotly disputed and Barton's own words were devastatingly quoted against him. At the Sydney Convention he had said

"We do not expect that the Imperial Legislature will amend the provisions which are in the Constitution itself, although they are an endeavour to extend our

1. Cd. 158, pp. 22-8, Parl.Pap. 1900, LV.

autonomy; but these covering clauses are suggestions to the Imperial Legislature and it would be absurd to expect that, as regards these clauses, the Imperial Legislature will not make such amendments as they please". 1.

The powers of the Crown and of the Imperial Parliament and the interests of Her Majesty's subjects throughout the Empire were affected by these clauses, the memorandum argued, and these were matters on which the British Government must have the deciding voice.

The arguments of the delegates' memorandum regarding the Colonial Laws Validity Act and the powers of the Commonwealth over shipping were briefly contested; with regard to the former the Convention Debates were again invoked to good effect for it was shown that in contradiction to the assertion of the delegates, Richard O'Connor, a member of the Drafting Committee, had stated at Sydney that the Validity Act would not apply to Commonwealth laws.² The main weight of argument was reserved however, for the appeal question. In addition to rebutting each of the arguments of the delegates on this matter, a number of reasons were given for the opposition of Her Majesty's Government to Clause Seventy-Four. As the clause stood it prohibited any appeal to the Privy Council in cases involving constitutional interpretation except

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1. Cd. 158, p.23, quoting Sydney Convention Debates, p.249. Parl.Pap. 1900, LV.
 2. Ibid., quoting Sydney Convention Debates, p.252.

where the public interests of some other part of the Empire were concerned, but the memorandum pointed out that it was not clear what was meant by either "public interests" or constitutional interpretation. The many British investors in Australian government securities or private business undertakings would lose the security of appeal to an outside tribunal; without this protection the flow of capital to Australia was likely to dry up, it was alleged.

The memorandum also mentioned the possibility that the Judicial Committee of the Privy Council, to which colonial appeals were made, might in the near future be merged with the Judicial Committee of the House of Lords, which heard British appeals, to form a single Court of Appeal for the Empire. This possibility had been suggested to the Government by R.B. Haldane writing in the Juridical Review shortly before^{1.} Haldane suggested that to facilitate the change the three colonial members of the Privy Council Committee should be made life peers with seats in the House of Lords. The new tribunal would then be such an attractive body that all objections to appeals must fall to the ground. The suggestion had been very favourably received by the Colonial Office and was now spoken of as

1. R.B. Haldane, "The Appellate Courts of the Empire", Juridical Review, Vol.12, No.1 (1900) pp.1-14.

a likely development.

Finally, the British Government's memorandum stressed the value of an unrestricted right of appeal to the Privy Council as a link between the various parts of the Empire and concluded with the ill-chosen remark that the Bill in its present form would impede the cause of Imperial Federation. An interval of a few days followed the forwarding of this document whilst both sides marshalled their forces for a further conference.

While these preliminary skirmishes between Chamberlain and the delegates proceeded the two colonies which had not adopted the Commonwealth Bill demanded the right to participate in the discussions about it. In 1899 the federal movement had at last obtained a toe-hold in New Zealand with the establishment of branches of the Australasian Federal League in Auckland and Christchurch. The initiative behind these groups and the sole support for federation came from commercial interests who feared the loss of Australian markets, particularly those in New South Wales, if an Australian federation was formed from which New Zealand was excluded. The community as a whole was either uninterested in federation with Australia, or positively opposed to it, and there seemed little possibility in 1900 that the colony would adopt the

1. See, Report of Public Meeting of the Auckland Branch of the Australasian Federation League (Auckland, 1899)

Commonwealth Bill, but its energetic Agent-General, Mr. W.P. Reeves, was delegated to protect New Zealand interests in the negotiations.

On 30 March, Reeves forwarded to the Colonial Office a memorandum containing three amendments to the Commonwealth Bill which he said were desired by the Government of his colony.^{1.} These were, that New Zealand should be guaranteed the right to join the Commonwealth later on the same terms as the original States; that until such time as it did, litigants in New Zealand should have the right to take appeals to the Australian High Court if they so wished; and that New Zealand and the Australian Commonwealth should be empowered to form a combined defence force. In support of the first request Reeves pointed out that it was only very recently and after many years of discussion that the Australian colonies had made up their minds to federate; it was only fair that New Zealand, being physically separated from the other colonies and having many special difficulties, should be given more time. The other two proposals needed little justification since the reasons for them were self-evident and they would be relevant even if New Zealand did not federate. The memorandum naturally was passed on to the Australian

1. Memorandum for the Rt. Hon. the Secretary of State for the Colonies, Cd. 158, pp.30-1. Parl.Pap. 1900, LV.

delegates.

The Western Australian attitude to federation was more complicated. Despite the rejection by the Legislative Council of a proposal to hold a referendum on the Commonwealth Bill, Sir John Forrest continued throughout 1899 and early 1900 to press the other colonies to accept the four amendments suggested by a Joint Committee of the Western Australian Parliament. Of these the most important were the demand that the Commonwealth Parliament should be specifically authorised to construct a transcontinental railway, and that Western Australia should be allowed to impose its own customs duties on all imports, including those from other colonies, for five years after federation.^{1.} However the leading federalists in Eastern Australia not only declined to consider these amendments but collaborated with those groups in the colony who were prepared to accept the Bill without change, to make things as difficult for Forrest as they could.^{2.}

The only possibility which remained open to Forrest was that the Imperial Parliament might be induced to make the amendments he required while enacting the Bill, and in September 1899, as has been noted above, the Governor of Western Australia broached this question with the Colonial

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1. Joint Select Committee Report, V.&P. (L.A. of W.A.) 1899, III, Paper A 10.
 2. See Deakin to James, 4 Aug. & 28 Nov. 1899. (James Papers, W.A. Archives)

Office. John Anderson, the Assistant Under-Secretary, did not at first believe that the Western Australian Government had any thought of the Imperial Parliament "overruling the decision of Australia" on domestic matters of this kind, and attributed the suggestion to Sir Gerard Smith himself,^{1.} he being an eccentric figure who was recalled not long afterwards. Repetition of the request by Western Australia and by Sir Samuel Griffith of Queensland,^{2.} the one colony which was prepared to consider Western Australia's amendments, removed this misapprehension but achieved little else. The members of the Colonial Office were sympathetic towards Western Australia and critical of the shortsightedness of the Eastern colonies in refusing to comply with its requests, but they were not prepared to amend the Bill on behalf of one colony unless all colonies agreed, and were not necessarily convinced that it was essential for Western Australia to enter the Commonwealth as an original state.^{3.} Nevertheless in February 1900, Anderson devised a scheme whereby the amendments requested by Western Australia could be incorporated in a second schedule to the Commonwealth Bill so that after it had been passed by the Imperial Parliament

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1. Minute: 11 Oct. 1899, on Smith to Chamberlain, 8 Sept. 1899, C.O. 18/226, p.192.
 2. Griffith to Chamberlain, 25 Jan. 1900, C.O. 234/70, p.102.
 3. Minute: Herbert, 9 May 1900, on Griffith to Chamberlain, 25 Jan. 1900, C.O. 234/70, p.102.

the colonies could choose between the Act and schedule
 1.
 or the Act by itself. This original and ingenious suggestion
 was vetoed by Chamberlain however, on the grounds that it
 would give the impression that the British Government
 endorsed Western Australia's requests and this might
 2.
 annoy the other colonies.

On the other hand Chamberlain did intimate to the
 Agent-General for Western Australia that his colony should
 send a delegate to London to participate in negotiations
 over the Bill, and that he would do anything he could to
 assist Western Australia short of making amendments of which
 3.
 the other colonies did not approve. In response to this
 invitation Mr. S.H. Parker was appointed to represent
 Western Australia and he arrived in London in March 1900.
 Sir John Forrest was convinced that the other colonies
 would agree to Western Australia's amendments if they were
 sponsored by the British Government, and Parker was
 4.
 instructed to persuade Chamberlain to do this, but met
 with no success. By 30 March when Parker followed the
 example of the other delegates by issuing a Memorandum of
 5.
the Position of Western Australia, the colony had reduced

1. Minute: 5 Feb. 1900, on Griffith to Chamberlain, 2 Feb. 1900 (tele), C.O. 234/70, p.129.

2. Minute: ibid.

3. Wittenoom to Forrest, 9 Feb. 1900. Premier's Dept. File, 198/1900 (W.A. Archives)

4. V.&P. (L.A. of W.A.) 1900, I, Paper 1.

5. Cd. 158, pp.31-2. Parl.Pap. 1900, LV.

its demands to one point only, the need for five years tariff independence. As Parker pointed out in his memorandum, the Commonwealth Bill already allowed Western Australia to impose its own tariffs on imports from other colonies for five years, on a gradually reducing scale. All that was required was the extension of this provision to apply to overseas as well as intercolonial imports and to abolish the reducing scale. The other new feature of the memorandum was that the Government of Western Australia undertook to sponsor immediate legislation for a referendum on the Commonwealth Bill, and to do its best to secure an affirmative vote, if the amendment was granted. The memorandum, like that of New Zealand, was referred to the other delegates.

Parker was hampered in his efforts to secure favourable terms for Western Australia by the activities of the less cautious federalists in the colony, particularly those on the goldfields. By the late eighteen-nineties the goldfields population had become very dissatisfied with the Forrest Government and there were very frequent complaints about the disparity between the revenue spent on facilities for the metropolitan and agricultural areas, and that spent on the goldfields. The high customs duties levied by the colonial government on goods imported for the goldfields, and the high railway freight rates to

the 'fields were also major grievances, as were allegedly unjust mining regulations, and the inadequate goldfields representation in the colonial parliament.^{1.} In 1899 the diggers were seized with the idea that federation would put an end to all these grievances and this, together with the natural desire of the thousands of 't'othersiders', diggers who had come from Eastern Australia, to be united with t'otherside, made the goldfields a centre of enthusiasm for federation.

When Forrest began to seek amendments to the Commonwealth Bill the goldfields federalists unjustly believed that he was asking for impossible concessions as an indirect method of delaying federation. The miners therefore did their best to frustrate Forrest's efforts by asking the premiers of the other colonies to accept no changes, hoping that he would then be forced to refer the Bill to the people as it stood. When this hope was dashed by the rejection of the proposal for a referendum by the Legislative Council, an Eastern Goldfields Reform League was formed in Kalgoorlie with the intention of petitioning the Crown for separation of the goldfields from Western Australia so that the new goldfields colony could enter the Commonwealth as an original State.^{2.} This

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1. For a survey of goldfields grievances see, D. Mossenson, "Separation Movement on the Eastern Goldfields 1894-1904", J.W.A.H.S., Vol.4, Pt.5 (1953) pp.41-4, 47-51.
 2. Kalgoorlie Miner, 14 Dec. 1900. See Mossenson, "Separation Movement", p.54.

was the beginning of what became known as the "separation for federation" movement. It was a movement analagous in some respects to that in North Queensland, and the grievances of these two frontier areas were comparable, but whereas North Queensland wished to federate in order to separate, the Western Australian goldfields wished to separate in order to federate.

Mr. W. Griffiths and Rev. Fr. O'Gorman were briefed by the Goldfields Reform League as delegates to put its views before the British Government, and a London Branch of the League was formed with E.M.Kirwan, a brother of the editor of the influential Kalgoorlie Miner as its secretary.^{1.} The Colonial Office was also showered with letters and petitions from the League and from other individuals and organisations on the goldfields.^{2.} The separation for federation movement also had sympathisers in Britain, for enormous quantities of British capital had been invested in mining ventures in Western Australia and the investors were as unhappy about the Forrest Government as the miners. The high tariff and freight rates affected the importation of the machinery which was necessary for large scale mining, there was no effective security of tenure of mining leases, and a 5% levy on

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1. J.Bastin, "The Western Australian Separation for Federation Movement", A.O. Vol.XXVII, No.1 (1955), pp.76-88.
 2. Cd. 158, pp.5-12, 20-21, 28-9, 48-50, 54, 55-7. Parl. Pap. 1900, LV.

mining dividends was particularly unpopular. Hence there were many London capitalists who were so anxious that some of the powers of the Government of Western Australia should be transferred to the Commonwealth, that they were willing to give financial assistance to the federal organisations in the colony and to lend the support of their influence in London.^{1.}

The other colonies were naturally encouraged by these developments to believe that there was no need to accept amendments to the Commonwealth Bill to please Western Australia, because the government of the colony would eventually be forced to federate whether it obtained concessions or not. In fact the delegates from the other colonies went so far as to collaborate with the Goldfields Reform League. While on his way to England Deakin had conferred with the President of the League and agreed to do what he could to prevent the British Government amending the Bill to suit Forrest, and to put the case for separation if Western Australia as a whole continued to hang back from federation.^{2.} In March 1900, not long after his arrival in London, Deakin stated in a letter to Kirwan that he and the other delegates were pressing the position of Western Australia upon Chamberlain and had hopes

1. J. Bastin, "The West Australian Gold Fields, 1892-1900: The Investors and their Grievances", H.S. Vol. 6, No. 23 (1954) pp. 282-9.

2. Mossenson, "Separation Movement", J.W.A.H.S. (1953) p. 54.

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that he would intervene "in a friendly way". The Agent-General for Western Australia became alarmed by the rumours he heard that if the colony did not enter the Commonwealth the delegates would ask the British Government to separate the goldfields to form a new colony, and he was not reassured when Chamberlain declined to state what his attitude would be under these circumstances. The Western Australian Government and its delegate did not appear to be in a very strong bargaining position.

The various strands of the negotiations were drawn together on 5 April, when the Australian delegates attended a further conference at the Colonial Office with the Secretary of State, the Crown Law Officers, the Parliamentary Draftsman, and senior Colonial Office Staff. Parker of Western Australia and Perber Reeves of New Zealand were invited to attend at the start of the conference and were given an opportunity to speak to their memoranda and to answer questions put by the other delegates, but they did not participate in the subsequent discussion.

Parker was ill at the time and contented himself with emphasising the importance of making the Commonwealth continent-wide from its inception by conceding the one amendment which Western Australia now required. As the

1. Deakin to E.M.Kirwan, 15 March 1900. (Kirwan papers, W.A. Archives)

Bill was certain to be amended by the British Government in other and more significant respects, no additional difficulty would be caused by making this alteration, Parker argued.¹ On behalf of New Zealand Pember Reeves urged, as he had done in his memorandum, that his colony should be given more time to make up its mind about federation without losing the terms available to original States. Reeves frankly confessed that New Zealand had not believed the question to be urgent because it had not believed that New South Wales was likely to federate, but he claimed that serious consideration was now being given to the possibility of entering the Commonwealth; his intervention in the negotiations was not frivolous or meddlesome, but quite sincere.²

The delegates from the federating colonies virtually ignored Reeves, but they subjected Parker to a battery of critical questioning. Kingston referred to the goldfields agitation and sought an admission that the people of Western Australia were already in favour of federation and would accept the Bill as it stood if the Government gave them an opportunity to do so; Sir Phillip Fysh sought an admission that the amendment Parker desired would benefit a minority but harm the majority of

1. Minutes of Proceedings of a Conference of Australian Delegates, Cd. 158, pp.35-6. Parl.Pap. 1900, LV.
 2. Ibid., pp.36-8.

the population of Western Australia itself; Deakin made great play with the fact that Western Australian representatives in the federal parliament would have as much say as anyone else in the framing of federal tariff policy during the first five years even though their colony would not be subject to it.^{1.} Chamberlain, for his part, enquired whether there was any way in which the wishes of Western Australia could be met without a further referendum becoming necessary, and was told that the amendment could be effected through the covering clauses at least as easily as those the British Government was contemplating.^{2.}

After Parker and Reeves had withdrawn, Chamberlain told the other delegates that as the amendments requested by Western Australia and New Zealand were of a purely domestic character he would not force them upon the colonies, but he stressed the desirability of accepting them.^{3.} Turning to the other points at issue, Chamberlain re-affirmed the importance of guaranteeing the application of the Colonial Laws Validity Act and maintaining the appeal to the Privy Council; from this point the British

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1. Proc. of a Conf. of Aust. Delegates, Cd. 158, pp.40-2 (Kingston), 44 (Fysh), 43 (Deakin). Parl.Pap.1900, LV.
 2. Ibid., pp.38-9.
 3. The published report of proceedings ends with the withdrawal of Parker and Reeves, but an account of subsequent discussion is given by Deakin, The Federal Story, pp.149-52.

Government dropped its proposed amendment to the shipping provisions, and the delegates tacitly withdrew their opposition to the omission of the phrase "This Act shall bind the Crown" from covering clause 2. This meant that the only major dispute was now the appeal question, but conflict over this was as sharp as ever.

Even if the delegates had wished to make concessions to Western Australia and New Zealand it would have been impossible for them to do so without compromising their main argument against the amendments proposed by Chamberlain, namely that they had no power to accept changes of any sort. As it was, necessity and inclination coincided; the collaboration between the delegates and dissident elements in Western Australia to frustrate Parker's efforts has already been noted, and they were even more hostile towards Reeves whom they believed to be trying to delay or defeat federation.^{1.} Hence the delegates brushed aside the requests of the two reluctant colonies. So far as the appeal clause was concerned the delegates repeated and amplified the arguments of their memorandum and stated firmly that not only did they have no authority to accept amendments, but they were not prepared to ask their governments to give

1. Deakin, The Federal Story, pp. 144-7.

1. them such a power. Dickson was noticeably less vehement than his colleagues but did not oppose them. Formal and informal discussions lasting all day failed to solve the deadlock.

Following this further rebuff Chamberlain decided to go over the heads of the delegates to the governments of the federating colonies, and on the evening of the conference two cables were despatched to them. In the first of these the colonies were asked whether they were willing to accept the amendment regarding tariff powers in the first five years after federation requested by Western Australia, or to empower their delegates to come to an arrangement on the subject.^{2.} It was suggested in the cable that if the only objection to this was the danger that a further referendum might become necessary, a proviso could be added to the covering clauses to the effect that Western Australia might enter the Commonwealth on the terms it desired if resolutions to that effect were passed by the parliaments of all colonies. Chamberlain urged the colonies to make it possible for Western Australia to join as an original state, but he made it unequivocally clear that the decision was theirs to make and that he would not interfere further. The cable was not

1. Deakin, The Federal Story, p.150.

2. Chamberlain to the Governors of N.S.W., Vic., Queens., S.A. & Tas., 5 April 1900 (tele), Cd. 158, pp.34-5. Parl.Pap. 1900, LV.

the firm endorsement of their amendment for which Forrest and Parker had originally hoped, but it gave Western Australia another chance.

In the second cable Chamberlain stated that Her Majesty's Government did not wish to delay federation or to interfere in any matter of exclusively Australian interest, but that strong objections were held to the restriction of appeals to the Privy Council contained in Clause Seventy-Four. Six such objections were cited, ranging from the importance of appeals as a link of Empire to the need to protect the credit of the colonies with banks and commercial institutions, and the probability that the Judicial Committees of the Privy Council and the House of Lords would soon be merged was mentioned. For these reasons, Chamberlain said, Her Majesty's Government must continue to press for the amendment of Clause Seventy-Four and to ask the colonies to authorise their delegates to discuss with him the most satisfactory way in which this could be done. Naturally the delegates lost no time in sending off a cable of their own to their premiers, asking for continued support. There was a good chance, they said, that if the colonies stood firm on the points still

1. Chamberlain to the Governors of N.S.W., Vic., Queens., S.A., and Tas., 5 April 1900 (tele), Cd. 158, pp.47-8. Parl.Pap. 1900, LV.

unsettled Chamberlain would give way on them as he had^{1.}
done on the shipping question.

There was a delay of several weeks before any reply was returned to the various cables, for the premiers of the federating colonies decided to confer and act jointly rather than making individual statements. In the interim the Governor of New South Wales, Lord Beauchamp, informed the Colonial Office that discussion with his premier led him to believe that the conference would probably follow the advice of the delegates and concede nothing in the hope that they might gain all.^{2.} This moved Chamberlain to send a further message to the premiers shortly before they were due to meet, stressing that if they were not prepared to concur in the amendments Her Majesty's Government desired they should at least authorise the delegates to negotiate about them.^{3.} A definite hint was given that the Government was prepared to make the amendments on its own authority but that the help of the delegates would enable them to be made in the least objectionable form.

On the eve of the Premiers' Conference yet another cabled passed from the Colonial Office to the colonies,

1. The contents of this cable are passed on in, Lyne to Forrest, 7 April 1900 (tele). Premier's Department File 198/1900 (W.A. Archives).
2. Beauchamp to Chamberlain, 13 April 1900 (tele), C.O. 201/627, p.307.
3. Chamberlain to the Governors of N.S.W. Vic., S.A., Queens., and Tas., 16 April 1900 (tele) Cd.158, p.57. Parl.Pap. 1900, LV.

this time relating to the position of New Zealand. After the meeting of 5 April, Chamberlain had informed Reeves that as the delegates of the federating colonies were not willing to accept the amendments requested by New Zealand he did not feel justified in taking the matter any further, though the government of the colony could, if it thought fit, approach the other governments directly.^{1.} Reeves was annoyed, perhaps because Chamberlain had pressed Western Australia's case but would not do the same for New Zealand, and claimed that his main suggestion had not been properly considered, and could be carried out without any risk that a referendum would become necessary. At last Chamberlain partially gave way, and notified the colonies concerned that New Zealand was anxious that a proviso should be inserted in the covering clauses allowing it to enter the Commonwealth on the same terms as the original states at any time within seven years, and that he would be prepared to consider the change if they wished him to do so.^{2.}

Meanwhile there was a good deal of correspondence between the colonies in preparation for the conference, particularly from Sir John Forrest who was not to attend. In response to his pleas Premier Philp of Queensland

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1. Cox to Reeves, 10 April 1900, Cd. 158, pp.50-51. Parl.Pap. 1900, LV.
 2. Reeves to Colonial Office, 11 April 1900, 17 April 1900 (tele), Cd. 158, pp.52-3, 57. Parl.Pap. 1900, LV.

intimated that he was prepared to concede Western Australia the five year tariff autonomy it desired now that the government had guaranteed to press the Bill in return, and Neil Lewis, the Premier of Tasmania, indicated a similar attitude.^{1.} It also became known that both these premiers were prepared to accept the alteration of the Privy Council appeal clause.^{2.}

At the Conference however, the premiers of South Australia, Victoria and New South Wales were able to persuade the other two not to undermine the position of the delegates. Forrest and Chamberlain were unlucky in this matter for there is little doubt that left to themselves all of the premiers, except perhaps Holder, would have been prepared to accept amendments. Lyne of New South Wales, Maclean of Victoria, and Holder of South Australia were all men of considerably less political standing in their own colonies than their respective delegates, Barton, Deakin and Kingston. Moreover it was the delegates rather than the premiers who had been in the forefront of the federal movement and were regarded by the public as the makers of the Bill. Perhaps with one eye on the possibility of a career in the coming Commonwealth parliament or the first Commonwealth cabinet,

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1. Philp to Forrest, Lewis to Forrest, 7 April 1900 (teles) Premiers' Department File 198/1900. (W.A. Archives)
 2. Quick & Garran, Annotated Constitution, p.236.

none of the premiers was prepared to appear to tamper with federation over the heads of the delegates. Lyne informed Chamberlain privately through Governor Beauchamp, that he hoped Her Majesty's Government would amend the appeal clause,^{1.} but he would not say so in public. Thus the cable to Chamberlain agreed upon by the premiers did not accept the amendments which had been proposed nor empower the delegates to negotiate about them.^{2.}

On the other hand, the premiers' reply was by no means as strongly worded as the delegates would have liked. Barton had arranged that the draft of the cable should be sent to him and his colleagues first so that they might comment on it, but although this was done not all the alterations they suggested were adopted, for Philp and Lewis would not agree to them. The final version was slightly ambiguous on the main issue at stake, though it stated definitely enough that the premiers considered that the admission of New Zealand was already adequately provided for, and that Western Australia must be content with the concession already given to it in the Bill. The history of the appeal clause was briefly outlined to show that the question had been thoroughly considered, and the history of the Bill was outlined to show that even the

1. Beauchamp to Chamberlain, 23 April 1900 (tele), C.O. 201/627, p.319.

2. Madden to Chamberlain, 22 April 1900 (tele), Cd. 158, pp.59-60. Parl.Pap. 1900, LV.

premiers did not have authority to accept amendments. However in a very weak paragraph, the cable stated that if the only alternatives were the amendment of the Bill, or its postponement, the latter course would be "much more objectionable to Australians generally"^{1.} This reply was described by Deakin as a "poor performance" which weakened the delegates' position.^{2.}

On receipt of this cable it was agreed within the Colonial Office that nothing more could be done for New Zealand and Western Australia, and that these colonies had no claim to further special treatment.^{3.} Mr. Reeves was notified briefly that the premiers of the federating colonies had ruled that the admission of New Zealand was already adequately provided for, and that the Secretary of State did not feel justified in pressing further a matter best settled by the colonies without imperial interference.^{4.} In reply, the New Zealand Agent-General expressed great dissatisfaction with the efforts which the Colonial Office had made on behalf of the colony.^{5.} It was to be regretted, Reeves said, that Chamberlain had not allowed him to participate fully in the conference at the

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1. Madden to Chamberlain, 22 April 1900 (tele), Cd. 158, pp.59-60. Parl.Pap. 1900, LV.
 2. Deakin to Dilke, 19 April 1900. B.M. Addit.MSS. 43877, f.141. (Dilke Papers)
 3. Minutes: 23-26 April 1900, C.O. 418/8, p.346ff.
 4. Lucas to Reeves, 28 April 1900, Cd. 158, p.73. Parl.Pap. 1900, LV.
 5. Reeves to C.O., 1 May 1900, Ibid., pp.73-4.

Colonial Office, and that in his cable to the premiers Chamberlain had offered only to consider rather than to consider favourably the amendment requested by New Zealand if the premiers accepted it. Reeves was particularly seething about Chamberlain's statement that the matter was one which should be settled by the colonies, claiming that this was "manifestly impossible" since no one in the colonies had the authority to discuss or accept changes in the Bill. The Colonial Office staff were not much impressed by Reeves' protests and planned to dismiss them curtly; Chamberlain insisted that a more detailed explanation should be given, but he made no concessions,^{1.} and New Zealand played no further part in the negotiations over the Commonwealth Bill. A Royal Commission appointed by the Government of New Zealand in October 1900 to enquire into the question of federation endorsed what was already plain, that the colony had little or nothing to gain from union with Australia,^{2.} and no desire to do so.

In drafting a message for the Government of Western Australia Mr. Anderson of the North American and Australasian Department of the Colonial Office suggested that Sir John Forrest should be reminded of the danger that if he did not

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1. Minutes: 2-3 May 1900, on Reeves to C.O., 1 May 1900, C.O. 209/261, p.265. C.O. to Reeves, 7 May 1900, Cd. 158, pp. 82-3, Parl.Pap. 1900, LV.
 2. Report of the Royal Commission on Federation, and see, E.J. Tapp, "New Zealand and Australian Federation", H.S. Vol.5, No.19 (1952) pp.244-57.

take his colony into the Commonwealth immediately, he might be forced into it later on less favourable terms by the agitation of the goldfields.^{1.} Some hint of this may be detected in the cable which was despatched to the colony on 27 April. Chamberlain said that he could not press Western Australia's proposed amendment any further in view of the attitude of the premiers of the other colonies, and urged Forrest to "make a resolute effort to bring the Colony into Federation at once".^{2.} Unless Western Australia joined the Commonwealth as an original State, Forrest was reminded, it would lose the partial tariff concession given in the Bill, and in view of its small population might not be able to secure such generous representation in the Commonwealth parliament as it would gain as an original State. In what has often been held to be a significant and threatening paragraph, the cable continued, "Your Ministers will also, of course, take into consideration effect of agitation of the Federalist party, especially on goldfields if Western Australia does not enter as an original State".^{3.} If the Government did make an opportunity for a referendum on the Commonwealth Bill, Chamberlain signified his willingness to add a clause to it allowing Western Australia to be included as an original

1. Minute: 23 April 1900, C.O. 418/8, p.346.

2. Chamberlain to Onslow, 27 April 1900 (tele), Cd. 158, pp.71-2. Parl.Pap. 1900, LV.

3. Ibid.

State provided that the people of the colony had expressed their desire for this by the time that the Commonwealth was proclaimed.

Within a few days the Forrest Government decided that there was no hope left of securing any further concessions and that it would not be desirable to delay any longer. A special session of the Western Australian Parliament was therefore summoned for 17 May, and an Enabling Bill prepared providing for a referendum on the Commonwealth Bill similar to those held in the other colonies a year earlier. The Bill was accepted by both Houses after a few short delays, and the referendum was held on 31 July, resulting in a favourable majority of 25,000, including a large goldfields vote. Western Australia had at last thrown in its lot with its sister colonies, in time to ensure that the Australian Commonwealth should be a "Nation for a Continent" from the moment of its birth, as the federalists had hoped.

In his comprehensive history of Western Australia Dr. J.S. Battye explained Forrest's decision to hold a referendum and take his colony into the Commonwealth by reference to Chamberlain's cable of 27 April. This cable,

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1. Onslow to Chamberlain, 2 May 1900 (tele), Cd. 158, p.75. Parl.Pap. 1900, LV.
 2. For an analysis of the referendum results see, J.S.Bastin, "Federation and Western Australia; A Contribution to the Parker-Blainey Discussion", H.S., Vol.5, No.17 (1951) pp.47-59.
 3. J.S. Battye, Western Australia. A History from its Discovery to the Inauguration of the Commonwealth (Oxford, 1924) p.451.

and particularly the paragraph which referred to the agitation of the goldfields if Western Australia did not federate, Battye considered to have been a clear indication to Forrest that unless his colony joined the Commonwealth Her Majesty's Government would be prepared to accede to the goldfields request for separation. On considering this message Forrest became convinced, so the argument runs, that "separation was too high a price to pay" for the temporary financial advantages to be gained by remaining outside the Commonwealth. Battye's interpretation was enthusiastically endorsed by Sir John Kirwan, who had been one of the leaders of the Goldfields Reform League and was naturally anxious to believe that his campaign had been successful.^{1.} Thus the idea that Forrest was forced into federation by a threat from Chamberlain that unless he did so the goldfields might be separated became popularly accepted, and has been repeated by many other writers, one going so far as to say that the colony was "bludgeoned into the agreement by the aggressive Colonial Secretary".^{2.}

It is difficult however to find any shred of evidence to support this interpretation. At no time had

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1. Sir J. Kirwan, "How Western Australia joined the Commonwealth", J.W.A.H.S., Vol.IV, Pt.11, pp.21-5.
 2. C.Clark, Australian Hopes and Fears (London, 1958), p.104. See also, E.Scott, A Short History of Australia (8th.Ed. Melbourne, 1950), p.325, Mossenson, "Separation Movement" J.W.A.H.S. (1953) pp.54-5.

Chamberlain or his permanent staff ever given any encouragement or sympathy to the goldfields separatists; on the contrary the Forrest Government was consistently supported against them. In reply to the Reform League's favourite argument the Secretary of State refused to admit that there was any similarity between the position of the goldfields population in Western Australia and the "uitlanders" of South Africa to whose support he had gone^{1.} At the beginning of April 1900 John Anderson analysed the goldfields grievances in detail and concluded that they were unfounded, with the exception of the differential freight rates levied on the goldfields railway lines.^{2.} Sir Robert Herbert stated in the most definite terms, "Separation is politically and physically out of the question and it is desirable to avoid as far as possible giving this League a pretence for saying the question is under consideration".^{3.} "I agree", Chamberlain wrote, and added that if he were to see a representative of the League it would only be to state that he could not help them, and he would be careful to have a reporter present to avoid misunderstandings.^{4.}

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1. C.O. to E.M. Kirwan, 15 May 1900 (copy), C.O. 18/228, p.332.
 2. Minute: 2 April 1900, C.O. 18/228, pp.270-2.
 3. Minute: 4 April 1900, ibid.
 4. Minute: 4 April 1900, ibid.

It might be argued that even though Chamberlain did not intend to separate the goldfields, he may have dropped hints to the contrary in an attempt to force Forrest's hand, but once again the evidence is against this. In the context of the minute by John Anderson on which the cable of 27 April was based, the reference to the agitation of the goldfields was plainly meant not as a threat that Her Majesty's Government might accede to the request for separation, but as a friendly warning that in the long run the Government of Western Australia might not be able to hold out against the pressures for federation, and that the colony might not get such good terms as a late entrant¹ as it would as an original state. This was only stating the obvious. Clearly the goldfields agitation had a great deal to do with Forrest's decision to federate; with the Commonwealth Bill on the verge of enactment and all hope of favourable amendments gone, it would have been difficult for him to ignore the goldfields much longer. But although Chamberlain drew attention to this predicament, he did not add to it. Had he wished to bluff Forrest in this matter he would hardly have taken such pains to ensure that the Reform League could not even claim that its grievances were under consideration.

Confirmatory evidence is provided by J.S. Bastin,

1. Minute: 23 April 1900, C.O. 418/8, p.346.

who argues that although Forrest's opponents believed at the time that the premier had changed his mind about federation as a result of pressure from Chamberlain, they did not claim the cablegram under discussion as evidence of this.¹ Rather they suggested that there must have been a secret message which had not been published. No such message being found, a later generation of historians read into the cable a threat which was not there.

The attitude of the premiers had made it relatively easy to settle the position of New Zealand and Western Australia, but it was not so easy for Chamberlain to decide what to do about the amendments he himself desired. Since the premiers had accepted no responsibility and declined either to negotiate or to empower the delegates to negotiate, Chamberlain had either to act without further consultation and risk the possible repercussions, or to renew discussion with the delegates on the existing terms. However within a few days the matter was settled for him by the delegates, when they presented him with another long and argumentative memorandum on the appeal question.²

In its own memorandum the Colonial Office criticised the delegates for failing to discuss the proposed amendments on their merits, and the Times had also claimed in an

1. J.S. Bastin, "The Separation for Federation Movement. A Reply to the late Sir John Kirwan", J.N.A.H.S., Vol.V, Pt.IV, (1952) p.10.
2. Memorandum of the Australian Delegates (except Queensland) 27 April 1900. Cd. 158, pp.65-71. Parl.Pap. 1900, LV.

editorial that it was significant that no attempt to answer the Imperial Government's case had ever been made.^{1.} These statements were unfair and untrue, but after re-iterating their general argument that any alteration of the Bill would make a new referendum necessary and thus delay or endanger federation, the delegates now proceeded to remove any doubts about their ability to do so by countering every point which had been made against them.

Underlying most of the reasons given for the amendment of Clause Seventy-Four were the assumptions that any restriction on appeals to the Privy Council on constitutional matters would weaken the ties binding together the Empire, or injure the interests of subjects of other parts of the Empire. These assumptions were rebutted by the delegates, who contended that the unity of the Empire was far more likely to be harmed by imperial interference with Australian federation than by the consummation of that movement on the colonists' own terms.^{2.} It was pride in race and history, common blood and a common sense of duty which bound Australians to the Empire, the delegates said; "no patriotism was ever inspired or sustained by any thought of the Privy Council". Since appeals were still allowed even in constitutional matters

1. The Times, 26 April 1900.
 2. Memorandum of the Australian Delegates (except Queensland) 27 April 1900, Cd. 158, pp. 65-71. Parl. Pap. 1900, LV.

where the public interests of other parts of the Empire were concerned, the rights of British subjects everywhere would be safe. British investors who were prepared to lay out large sums in alien countries should have no qualms about the security of their capital in a British country where British laws would still apply. To suggest otherwise was to impugn the trustworthiness of Australian judges, the delegates hinted. As to the proposed Imperial Court of Appeal, this was a new suggestion which had yet to be enacted, let alone tested. The Australian colonies had been seeking a remedy for the disadvantages of Privy Council appeals for many years and now that they had found a solution which satisfied them it should not be discarded in favour of such an untried scheme. If the new court proved successful it would be open to the Commonwealth parliament to bring Australia under its jurisdiction later. The delegates regarded it as unlikely, however, that any alternative would ever be preferred to the interpretation of the constitution in the country where it had been framed and ratified, and would be operated.

For these and other reasons the delegates, while admitting the power of Her Majesty's Government and the Imperial Parliament to amend the Bill, asked that this power should not be exercised.

This memorandum was signed by only four of the

delegates, for Dickson of Queensland had decided that he could no longer support his colleagues. A few days afterwards Dickson wrote to the Colonial Office explaining that as he knew the people and government of his colony to favour an unrestricted appeal, and as he found the arguments of Her Majesty's Government in favour of this unanswerable, he was no longer prepared to oppose the amendment of the Bill. Dickson offered the further opinion that the message drafted by the conference of premiers should be read as acquiescing in this course, and that it was the other delegates who now were delaying and imperilling the establishment of the Commonwealth.^{1.}

This frank declaration isolated Dickson from the other delegates, and since there was no longer any dispute between him and Chamberlain, Dickson played little further part in the discussions. It was to Barton, Deakin, Kingston and Fysh that the final memorandum of the British Government was addressed on 4 May.^{2.} This reply to the delegates was very brief and simply stated that Her Majesty's Government could not agree that the ratification of the Commonwealth Bill by referendum had sanctified every detail of the constitution, nor could it accept the view that the Privy

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1. Dickson to C.O., 5 May 1900, Cd. 158, pp.79-80. Parl.Pap. 1900, LV.
 2. Memorandum in Reply to Memorandum of the Delegates of 27th April, ibid, p.76.

Council had been an unsatisfactory court of appeal for the colonies. Further written discussion of these matters did not seem likely to be profitable. The memorandum concluded significantly with the remark that Her Majesty's Government were confident that in their efforts to enact the Bill in a form which would be best for Australia and the Empire alike, they would have "the co-operation and the support of the Australian people". Chamberlain had been opposed in his desire to amend the Privy Council appeal clause by the majority of the delegates, and they had been backed up, lukewarmly, by the premiers of the colonies. But Chamberlain was confident that in this matter the delegates, and even the premiers, did not accurately represent Australia, and he set out to show that colonial opinion was in his favour.

Even before this the Colonial Office had received a considerable number of letters and petitions from individuals and institutions in Australia supporting the amendment of the Bill to restore an unrestricted right of appeal to the Privy Council. Like the protests received by the final session of the Convention on the same subject, most of these messages came from financial and legal groups. Barton, Deakin, Kingston, and their chief ally in Australia, J.H. Symon were all lawyers, but they were untypical of their profession. Perhaps most lawyers were conservative

and traditional in their approach to such questions, or perhaps, as some cynics alleged, they did not wish to deprive themselves of the large fees and expenses-paid visits to England involved in Privy Council cases, but certainly the Bar as a whole favoured the continuation of appeals.^{1.} Financial interests were even more vocal. The Bank of New South Wales, the Commercial Banking Company of Sydney, the City Bank of Sydney, and the State Savings Bank of New South Wales, prepared a petition praying for the retention of all existing rights of appeal, and asked Mr. Chamberlain to present it to the Imperial Parliament.^{2.} This he was not, of course, able to do, but the Senior Member for the City of London willingly substituted for him. Similar messages were forthcoming from the Chambers of Commerce of Sydney, Adelaide, and Brisbane, the Stock Exchange of Sydney, the Fire and Marine Underwriters Association, and other such sources.^{3.}

It is noticeable that much of this support for Chamberlain came from Sydney, and it may have been organised by a few individuals, perhaps even individuals who hoped that federation would be delayed if the Bill were amended. Certainly the delegates believed this to be

1. Beauchamp to Chamberlain, 4 May 1900 (tele), Cd.158, p.77. Parl.Pap. 1900, LV.
2. Petition and covering letter, 24 April 1900, ibid., pp.61-4.
3. Ibid., pp.65, 72, 77, 73, 83.

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 the case. Three prominent anti-federal politicians in New South Wales, Sir George Dibbs, and Messrs. J. H. Want and H. McLaurin cabled "on behalf of 82,000 electors" asking for the amendment of Clause Seventy-Four,^{2.} and they may have been behind some of the other messages. However even if this is true, it is probable that there was substantial public support for the case they were presenting.

In an effort to strengthen his hand with additional evidence of Australian opinion, Chamberlain invited the Chief Justices of the colonies to communicate their views on the appeal question to him, and instructed the governors to inform him of the editorial attitudes of the leading newspapers of their colonies. The Chief-Justice of Queensland, Sir Samuel Griffith, had never made any secret of his wish that an unrestricted right of appeal should be preserved, and the Chief Justice of South Australia and Australian member of the Judicial Committee of the Privy Council, Sir Samuel Way, had circulated a confidential pamphlet in support of the same opinion. Their views were known, and Chamberlain's enquiry now revealed that the Chief Justices of Tasmania and Western Australia unreservedly

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1. See a letter from Barton to The Times, 8 May 1900.
 2. Dibbs, Want & McLaurin to C.C., 31 March 1900 (tele), cd. 158, p.33. Parl. Pap. 1900, LV.

1. agreed with them. Sir John Madden in Victoria was less willing to venture a public opinion on the matter, but reluctantly admitted that although he believed that an Australian appeal court as strong as the Judicial Committee of the Privy Council could be established, he thought it desirable that the amendment to the Commonwealth Bill proposed by Her Majesty's Government should be carried.^{2.} The reports forwarded by the governors were also encouraging to Chamberlain, for they indicated that all the major Australian newspapers supported him in his disagreement with the delegates over the appeal question, with the exception of the Adelaide Register which was totally opposed to amendment, and the Sydney Morning Herald^{3.} which favoured a compromise.

Whilst the Secretary of State sought support in Australia, the delegates were even more busily seeking support in England. The attitude of many Englishmen towards the delegates' mission was one of mildly patronising approval akin to the spirit of a Punch cartoon in the previous year which depicted a lion with a bat in the midst of a bevy of cricketing kangaroos, with the caption, "You've done jolly

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1. Onslow to Chamberlain, 6 May 1900 (tele), Gormanston to Chamberlain, 7 May 1900 (tele), Cd. 158, pp.81,82. Parl.Pap. 1900, LV.
 2. Madden to Chamberlain, 4 May 1900 (tele), *ibid*, p.76.
 3. For the cables on the subject see, Cd. 158, pp.78-9, 81-3. Parl.Pap. 1900, LV.

well by combination in the cricket field, and now you're going to federate at Home. Bravo Boys.^{1.} As La Nauze has observed, young nations were not in that generation born every day,^{2.} and London society hastened to do the delegates honour.

When the details of the disagreement between the British Government and the delegates were made public, The Times, which had advocated the federation of the Australian colonies in and out of season for many years, and had sided with the colonists in their disputes with Britain over such matters as the annexation of New Guinea and French transportation to New Caledonia, now came down very firmly on the other side. On 6 April it published a special article on the Commonwealth Bill which insisted on the right and duty of the Imperial Parliament to make amendments to the Bill and put forward an extensive list of possible changes which included all those favoured by the Government as well as a few others.^{3.} Between mid-April and mid-May the paper devoted a leader to the delegates and their Bill almost every other day, continually hammering at the theme that Her Majesty's Government had a responsibility to protect imperial interests, particularly in the matter of appeals to the Privy Council.^{4.} The Times

1. Punch, 28 June 1899, p.302.

2. J.A. La Nauze, Alfred Deakin, A Biography (Melbourne, 1965) Vol.1, p.192.

3. The Times, 6 April 1900.

4. eg. The Times, 19, 21, 26, 28 April, 3, 12, 15, 18 May, 1900.

was extremely well informed on every twist and turn in the negotiations, and may well have been kept briefed by the Colonial Office. Other British papers paid less attention to the question and were less dogmatic about it, but few of them gave the delegates much positive support.

Nevertheless the views of the delegates were well publicised for most of the leading papers reported a good proportion of the many speeches they made in favour of "the Bill, the whole Bill, and nothing but the Bill". A very full programme of social events had been arranged for the Australians, and as the controversy developed they were in demand for public and private dinners, luncheons, banquets and receptions and meetings of all types. Deakin, Barton, Kingston and Fysh accepted every invitation, and everywhere they went they made speeches, and lobbied, in favour of their cause. The Colonial Office had arranged in advance for some of the major dinners and receptions perhaps, as Deakin suspected,^{1.} with a view to attracting attention to its own activities, and rendering the delegates more susceptible to its wishes. Under the circumstances however, the delegates felt themselves to be under no obligation to the Colonial Office and made the most of every opportunity presented to them. In Deakin's

1. Deakin, The Federal Story, p.154.

words, the delegates "were to some extent the lions of the season and they roared their best for their Bill"^{1.} Few influential Englishmen can have escaped without a fair knowledge of the legal intricacies of Clause Seventy-Four.

The ebullient Mr. Kingston also waged a colourful campaign of his own in the correspondence columns of The Times. On 9 May The Times, which had consistently given prominence to any reports of support in Australia for Chamberlain's appeal clause amendment, gave an account of a speech by Lord Lamington, the Governor of Queensland. Lamington was reported as saying that the delegates had never been authorised to refuse all amendments, were out of step with public opinion in the colonies, and were trading on the gratitude of Great Britain for Australia's assistance in the Boer War. A few days later Kingston wrote to The Times protesting at this "Vice-regal intrusion into the public discussion of debatable politics", which he described as not only unseemly but unconstitutional.^{2.} Dickson defended the Governor of his colony, arguing that although federation had been hotly debated it had never been a party question so that the governors of the colonies were entitled to express views about it and had often done so. Kingston had not complained, Dickson justly pointed

1. Deakin, The Federal Story, p.154.

2. The Times, 14 May 1900.

out, when, in his presence, Lord Brassey had made public speeches in favour of federation.^{1.} Nothing daunted, Kingston wrote to The Times again a few weeks afterwards about a speech by Lord Beauchamp, the Governor of New South Wales, when he also criticised the delegates for resisting Mr. Chamberlain's amendment. This time Kingston's letter was even more strongly worded, referring to "vice-regal ineptitude" and demanding that Beauchamp and Lamington should be rebuked by the British Government.^{2.}

The opinions expressed by the Chief Justices of the colonies also aroused Kingston's ire, especially when Lamington cited them against the delegates and suggested that the judges were being notably unselfish in discouraging the establishment of a final court of appeal in Australia. This was far from the truth, Kingston alleged, for if Australian appeals to the Privy Council were maintained and the Judicial Committee reconstructed in the manner which had recently been proposed, some of the Chief Justices were likely to become life peers and Privy Councillors. The opinion of the judges could not, therefore, be regarded as disinterested. Kingston reserved his greatest wrath for Sir Samuel Way, who had prepared and circulated a pamphlet advocating an unrestricted appeal

1. The Times, 17 May 1900.

2. The Times, 22 June 1900.

to the Privy Council, but had declined to allow Kingston and the others to see it; this was referred to as an "extra-ordinary secret, extra-judicial agitation - I had almost said intrigue -"^{1.}

In the course of a speech on the Commonwealth Bill in the House of Commons the Secretary of State himself rebuked Kingston for these intemperate allegations, which he reasonably argued were incompatible with the emphatic statement made by the delegates that Australian judges were as able, high-minded, and impartial as their British counterparts.^{2.} Mr. J.H. Symon, a South Australian associate of Kingston's who had played a major part at the Conventions in restricting the appeal, now came to the delegate's aid. After asking Way for a copy of his pamphlet and being refused, Symon was able to say that the Chief Justice was being secretive; after making several inflammatory speeches on the matter he was able to say that it was being "spoken of" in strong terms. Symon then persuaded Premier Holder to transmit to the South Australian Agent-General a cable saying just these things, which Kingston was able to quote in a further letter to The Times as an official communication from the Government of South Australia.^{3.} Even when amended by Kingston

1. The Times, 14 May 1900.

2. Hansard, 4th. Ser., LXXXIII, 72. (14 May 1900)

3. For an account of these events see The Argus, 10 July 1900, cuttings from which may be found in C.C. 13/154, p.201.

before publication, this telegram read, in part,

"..Mr.Symon says he has applied to the Chief Justice for a copy of his pamphlet and the Chief Justice evades it. It seems evident that he fears to show the contents of it here. He claims that it is of a secret nature. It is an anomalous position for any judge if he honestly deals with public questions... life peerages at large salaries dangled before any intriguing Chief Justices spoken of here as being bribes". 1.

Such episodes presumably gained the delegates some publicity for their case but they are unlikely to have furthered their cause.

When Chamberlain criticised Kingston's remarks about the Chief Justices, the South Australian delegate was ready with fresh ammunition to fire at the Secretary of State. In the course of the controversy over the Bill Chamberlain was often criticised for not having used the opportunity afforded by the visit of the Australian premiers to London in 1897 shortly after the Adelaide Convention to make known the views of the British Government about the draft. Unseasonably last minute wrangling could then have been avoided, it was said. Following this criticism the secret trickled out that the Colonial Office had in fact prepared a memorandum on the draft Bill in 1897, and that Chamberlain had entrusted it in confidence to the Premier of New South Wales. A Member of the House of Commons

1. The Times, 17 May 1900.

2. See H.G. Parsons, "The New Australian Commonwealth and the Privy Council", Blackwoods, Nov. 1899, p.98; see also, Hansard, 4th. Ser., LXXIII, p.77.

asked that the memorandum should be tabled, and questioned Chamberlain as to whether there had been subsequent correspondence between himself and the government of any colony.^{1.} The latter question was answered by a simple "No", and those sections of the memoranda given to Reid relating to Clause Seventy-Four, but only those sections, were tabled. Because of his own position in 1897 Kingston was in an excellent position to exploit these revelations. He wrote to the Times...

"Will it be believed that I never saw or heard of this memorandum of July, 1897, till after I had left Adelaide on my present mission in February 1900? Yet not only was I premier of South Australia and so entitled to equal confidence with the premier of New South Wales, but I was also the President of the Convention and so entitled in some degree to be the channel of communication between the Imperial Government and the Convention." 2.

The claim was a just enough one, but the incident was too long past to interest many.

The effect of these fireworks let off by Kingston, and of the public campaign of all the delegates, is difficult to assess. The delegates certainly made themselves and their case well known, perhaps too well known for it to be possible for the British Government to override them without fuss, and Chamberlain must have become aware that they were determined men with whom he would eventually have

1. Hansard, 4th. Ser., LXXIII, 404.
2. The Times, 17 May 1900.

to come to terms. However it is also likely that the delegates irritated the Secretary of State sufficiently to make him more determined than ever to assert the primacy of the Imperial Government by amending the Bill. Until the last, some at least of the delegates continued to hope that this might be avoided, but on 8 May Chamberlain conferred with them once again, only to say that the Bill would be introduced in the following week with amendments to ensure the application of the Colonial Laws Validity Act and remove the restrictions imposed by Clause Seventy-Four on appeals to the Privy Council.^{1.} According to Deakin's account, the delegates had made up their minds to break off negotiations and return to Australia if this happened, but in his surprise and dismay^{2.} at the adverse decision Barton omitted to announce this. During one of the later speeches, Kingston gave the British officials a moment's alarm by interjecting that there was nothing left for the delegates to do but to pack up and go home, but otherwise the delegates neither made nor carried out this threat. Instead they remained in London to see what they could salvage of their Bill and to encourage the Liberal Opposition Party to defend their interests in Parliament, Deakin's friendship with Sir Charles Dilke

1. Deakin, The Federal Story, pp.157-8.

2. Ibid., pp.158-9.

1.
being particularly useful in this respect.

When the Bill was at last introduced by Chamberlain in the House of Commons on 14 May 1900, all the amendments he had foreshadowed at the final meeting with the delegates

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were included. The words "This Act shall bind the Crown" were deleted from covering clause Two; covering clause Six was amended to provide that laws made by the Commonwealth should be colonial laws within the meaning of the Colonial Laws Validity Act; and to covering clause Five were added the words, "notwithstanding anything in the constitution set forth in the schedule to this Act, the prerogative of Her Majesty to grant special leave to appeal to Her Majesty in Council may be exercised with respect to any judgment or order of the High Court of the Commonwealth or the Supreme Court of any State". The constitution was scheduled to the covering clauses, and although it had often been stated that amendments would be made only to these clauses, and despite the new proviso guaranteeing Her Majesty's prerogative, Clause Seventy-Four was omitted in its entirety, the last paragraph of Clause Seventy-Three becoming the new Clause Seventy-Four.

In his long and very thoroughly prepared speech the Secretary of State for the Colonies carefully traced

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1. See Deakin to Dilke, 1,8,9,12,14 May 1900, B.L. Addit. MSS. 43877, ff.145-53. (Dilke Papers)
 2. The Bill as introduced showing the amendments is set out in, Commonwealth of Australia Constitution Bill (London, 1900) pp.118-38.

the whole history of the federal movement in Australia from the mid-century scheme of Earl Grey, paying particular compliment to the work of Sir Henry Parkes, Sir Samuel Griffith, and Mr. Edmund Barton.¹ The main provisions of the constitution were outlined by way of a sustained comparison with the Canadian Constitution, which brought Chamberlain to the amendments he had made to the Bill. In this connection he argued at some length that the Australian people did not regard the Imperial Parliament as "merely a Court for the registration of their decrees"; a full discussion was called for, and if necessary, amendment. It would not be proper, Chamberlain ruled, for Her Majesty's Government and the Imperial Parliament to interfere with any aspect of the Bill which dealt with exclusively Australian interests and for this reason he had not been able to press the amendments of New Zealand and Western Australia though he regarded them as reasonable; on the other hand however, the Imperial Parliament had a duty to protect the interests of the Empire as a whole, and each of the amendments he had made was to this end. The individual amendments he then justified in much the same terms as in the written controversy with the delegates.

When the need for these amendments became apparent

1. For Chamberlain's speech, Hansard, 4th Ser., LXXXIII, 46-76.

Her Majesty's Government had invited the colonies to send delegates, Chamberlain said. Unhappily the delegates sent had found themselves unable to accept the amendments proposed, and the colonial premiers had declined to enlarge their powers - though Chamberlain suggested that the reply of the premiers was not altogether hostile to the alteration of the Bill. Fortunately however, Her Majesty's Government was convinced that the majority of the people of Australasia were willing that the desired amendment should be made. In support of this crucial contention Chamberlain argued that Queensland, New Zealand and Western Australia, three of the seven colonies, were in favour of amendment, as were the Chief Justices of all colonies, numerous commercial institutions and organisations, and the "enormous preponderance of newspaper opinion". Just before he came into the House, Chamberlain said, he had received a telegram from the Governor of Victoria who said that he had ascertained that "trustworthy persons of all classes" supported Her Majesty's Government.

In conclusion, Chamberlain alluded to Haldane's Proposal for the amalgamation of the Judicial Committees of the Privy Council and the House of Lords, and intimated that he anticipated that a bill to give effect to it would be introduced in the House of Lords within a few days.

The ensuing debate was relatively brief. Campbell-

Bannerman eloquently applauded the creation of the Australian Commonwealth on behalf of the Opposition, and rebuked the Government for their decision to amend a Bill which had been solemnly ratified by the people of the colonies. This decision he described, amid Conservative protests, as "an open rebuff to the Australian people". More detailed examination of the legal and constitutional issues would have to be deferred until the second reading, but in the meantime, Campbell-Bannerman gave notice that the Opposition would seek to amend the Bill in such a way as to counteract the Government's alterations to it.^{1.}

After a rather pedestrian maiden speech in support of the Government by an ex-Registrar for the Privy Council,^{2.} Sir Charles Dilke followed up for the Liberals with some biting criticisms of the alterations.^{3.} Dilke castigated Chamberlain for his reliance on newspapers, judges, and vice-regal gossip against the representations of delegates who were the recognised leaders of the federal movement, and of the premiers of the colonies. The three colonies which favoured the amendment, Dilke pointed out, were Queensland, which had entered the federal movement late, Western Australia which was still making up its mind, and New Zealand which showed no inclination towards federation

1. Hansard, 4th. Ser. LXXXIII, 76-80.

2. Ibid., 80-6.

3. Ibid., 86-95.

at all. In 1885 Colonel Stanley had asked the House to refrain from altering the Federal Council Bill because it had the special recommendation that it had been devised by the colonists themselves; the present Bill had the even greater recommendation that it had been referred to and accepted by the people for whom it was intended, yet the Secretary of State proposed to make amendments to it for which there was no vital necessity.

The only other feature of interest in the debate was the comment by Haldane that had the Government reformed the Judicial Committee a few years earlier the present difficulty might not have arisen. However as there were likely to be further delays before the reform could now be accomplished, the colonists should be allowed to set up their own appeal court.^{1.}

The introduction of the Bill with Clause Seventy-Four entirely omitted convinced the delegates that it was pointless to persist with their demand for "the Bill, the whole Bill, and nothing but the Bill"; for the first time they were willing to consider compromise. At a small private dinner after the debate given by Chamberlain with Arthur and Gerald Balfour and John Morley present as well as the delegates, a basis for agreement on the appeal

1. Hansard, 4th.Ser., LXXXIII, 97-101.

1.
 question was found. Within a few days a new Clause Seventy-Four acceptable to the delegates and to Her Majesty's Government had been drafted. The latter part of the clause remained as it had been before, but the first paragraph read,

"No question howsoever arising as to the limits inter se of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the constitutional powers of any two or more States, shall be capable of final decision except by the High Court, and no appeal shall be permitted to the Queen in Council from any decision of the High Court on any such question unless by the consent of the Executive Government of the Governments concerned, to be signified in writing by the Governor-General in the case of the Commonwealth and by the Governor in the case of any State." 2.

The range of cases on which the High Court was to be the final arbiter was thus narrowed from all those involving constitutional interpretation to those involving a conflict of powers between two constitutions, and in these cases there was still to be an appeal by consent of the governments concerned. This formula was cabled to the colonial governments, but as no reply had been received by the time the second reading debate on the Bill was due in the House of Commons, Barton, Deakin, Kingston and Fysh^{3.} formally accepted it on behalf of the federating colonies. A compromise was also reached with respect to the

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1. Deakin, The Federal Story, p.161.
 2. Quick & Garran, Annotated Constitution, p.245.
 3. Delegates to Chamberlain, 21 May 1900, C.O. 418/8, p.212.

Colonial Laws Validity Act; the doubts about the application of this were said to arise because of a definition of "colony" contained in the constitution, so rather than have a new proviso inserted, the delegates agreed to the omission of the definition.

At the commencement of the second reading debate Chamberlain was able to take the wind out of the Opposition sails by announcing that full agreement on these points had been reached with the delegates.^{1.} Western Australia and Queensland had intimated that they would prefer the Bill in the form in which he had introduced it, with full appeal, Chamberlain said, but the compromise was necessary to satisfy the other four colonies; the imperial interests about which he had been concerned, would be adequately safeguarded. The amicable arrangements which had now been made demonstrated that there had never been any serious conflict between Her Majesty's Government and the colonies, Chamberlain claimed.

Asquith expressed the gratification of the Opposition that discord had been averted so that the constitution could be enacted with fitting dignity and unanimity.^{2.} The objections to Clause Seventy-Four raised by the Government had been exaggerated, he said, and ought in any case to have been settled much earlier. The

1. Hansard, 4th Ser., LXXXIII, 757-65.

2. Hansard, 4th Ser., LXXXIII, 766-72.

remainder of the debate was then given over to congratulatory speeches from both sides of the House, and also from the Irish contingent, who contrasted the treatment meted out to Ireland and Australia but were pleased for their fellow countrymen in the colonies.^{1.} The only member to examine aspects of the Bill other than Clause Seventy-Four was Bryce, who described it as combining the most ancient and valuable principles of the British Constitution with good features from the Swiss and American Constitution.^{2.} This was a far cry from the Federal Council Constitution, which he had dismissed as a fragmentary and imperfect sketch.

For a time it seemed that all had been settled, but the complacency of those connected with the Bill at the London end was gradually eroded by critical reports arriving from Australia. The Government of Queensland was understandably irritated that Chamberlain had compromised after they had supported his original proposals, and they strongly attacked the new clause. Sir Samuel Griffith claimed that it was badly worded, would restrict rather than widen the scope for appeals, and confused the functions of the executive and judiciary in an undesirable manner.^{3.} On 24 May the Governor of New South

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1. Hansard, 4th. Ser., LXXXIII, 797-806, for the speeches of Redmond & Healy.
 2. Ibid., 78+ -91.
 3. The Times, 1 June 1900.

Wales had cabled on behalf of his government to say that New South Wales, Victoria, South Australia and Tasmania^{1.} concurred with the new clause accepted by the delegates, but on reflection these colonies also became less satisfied. The Chief Justice of Queensland was very highly regarded throughout Australia and his criticisms carried much weight, especially his objection to permitting governments to decide whether or not judicial appeals should be allowed. Complaints about the compromise multiplied, especially from those who had always advocated an unrestricted appeal, and these were given daily publicity in London by The Times.^{2.} Unofficial reports accumulated that the governments of several colonies had changed their minds.

Chamberlain delayed the committee stage of the Commonwealth Bill for three weeks after the second reading in the hope that a definite consensus of opinion would emerge, but in the absence of any clear instructions to the contrary from the premiers, he decided on 13 June to proceed with the Bill in the form agreed upon with the delegates. When Sir Robert Herbert regretfully minuted that it would have been better to ignore the delegates from the beginning, Chamberlain sourly wrote that at

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1. Beauchamp to Chamberlain, 24 May 1900 (tele), C.O. 201/627, p.412.
 2. See The Times news columns of 24, 25, 31 May, 1, 5, 6, 7, 9, 12, 13, 15 June 1900.

least they had always known their own minds and ought therefore to be supported against governments which had continually vacillated and equivocated; "no Australian politician dares call his soul his own", he said.^{1.} On the following day however, the premiers jointly cabled to Barton protesting against the compromise accepted by the delegates;^{2.} during the next few days several messages were received at the Colonial Office suggesting that federation might be delayed if the Bill was passed in the form proposed.^{3.}

At this stage it is possible that Chamberlain might have been successful if he had overruled the delegates completely and reverted to his former plan of omitting Clause Seventy-Four and restoring a full appeal, but he continued to negotiate with the delegates. The result was yet another version of the controversial appeal clause, along the lines suggested by Griffith. The main changes were that it was specifically stated that the restriction on appeals to the Privy Council in inter se constitutional cases was to apply only to decisions of the High Court, and that in such cases leave to appeal was to be given by the High Court itself rather

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1. Minutes by Herbert (12 June) and Chamberlain (13 June) on Tennyson to Chamberlain, 11 June 1900 (tele), C.O. 13/154, p.110.
 2. See Barton to Chamberlain, 14 June 1900 (tele) C.O. 418/8, p.249ff; and The Times, 16 June 1900.
 3. Lamington to Chamberlain, 16 June 1900, C.O. 234/70, p.478; Gormanston to Chamberlain, 16 June 1900, C.O. 280/403, p.145.

than the executive councils of the Commonwealth or the states.

This new arrangement was cabled to the colonies^{1.} for approval, and announced to the House of Commons on 18 June when consideration of the Bill was resumed.^{2.} As there had been no time for the colonial governments to accept or reject the change the Opposition pressed Chamberlain to adjourn the debate, so that there should be no further confusion about the matter.^{3.} Within a few days however all the colonies including Queensland had signified that the second compromise was acceptable to them, and the way was clear for the enactment of the Bill.^{4.} After some bickering between the legal experts of the two parties about the probable operation of the appeal provisions finally adopted,^{5.} the Bill was agreed to in committee on 21 June; the one amendment put down on the notice-paper by a private member was not moved. On Monday 25 June 1900 the Bill was read a third time in the House of Commons without debate.

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1. Chamberlain to all Governors, 16 June 1900, C.O. 418/8, p.255.
 2. Hansard, 4th Ser., LXXXIV, 333-41.
 3. *Ibid.*, 359-69.
 4. Beauchamp to Chamberlain, 20 June 1900 (tele), C.O. 201/627, p.490 (on behalf of N.S.W., Tas, Queens. & Vic.)
Tennyson to Chamberlain, 20 June (tele), C.O. 13/154, p.131 (for S.A.)
 5. Hansard, 4th Ser., LXXXIV, 642-4 (Haldane), 648-51 (Finlay), 651-3 (Bryce).

The result of all the confusing negotiations and last minute changes was thus that the Bill finally enacted was very similar indeed to the Bill forwarded by the colonies. Chamberlain withdrew several of the amendments which he had made before introducing the Bill, and apart from minor verbal changes mainly consequential upon the revision of the appeal clause and the admission of Western Australia, the only alterations were the omission of the definition of "colony" from covering clause Six, the omission of the words "This Act shall bind the Crown" from covering clause Two, and the amendment of Clause Seventy-Four as already described. The form of the Bill was also restored to its original condition by appending the constitution proper to the ninth covering clause rather than scheduling it to the Act.^{1.}

This Bill as amended and passed by the Commons was introduced in the House of Lords on 26 June by Lord Selborne, and was carried through all stages in less than two weeks. In some respects the debates on it in the Lords were more interesting than in the Commons. Lord Carrington delivered a far more incisive attack on Chamberlain's handling of the matter than anything which had come from his Liberal colleagues in the lower House, and the Law Lords discussed the legal provisions in

1. See the Commonwealth of Australia Constitution Act. 63 & 64, Viet. Ch.12.

detail and depth. However since there was no longer any thought of amendments more attention was paid to clauses *other* than number Seventy-Four by the peers, and the many ex-Secretaries of State for the Colonies and ex-Australian governors in the House were able to cast their minds back over the history of the movement for federation. On 5 July the Bill was read a third time; on 9 July it received the Royal Assent from Her Majesty, Queen Victoria. On 31 July the people of Western Australia voted to enter the Commonwealth as an original state, and on 17 September the Queen signed a proclamation declaring that the new nation should be inaugurated on 1 January 1901.

Thus on the first day of the new century, the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia were indissolubly united in a Federal Commonwealth under the Crown and under the constitution which had been so haltingly shaped during the preceding twenty years.

Two interesting questions arising out of this last stage of the federal movement remain to be considered. Why was it, firstly, that Chamberlain chose to make such an issue of Clause Seventy-Four, against the advice of his officials? For it must be remembered that although the restriction on appeals contained in the draft constitution

was universally condemned in the Colonial Office, all of the permanent officials considered that to amend the clause would cause more trouble than it was worth; the practical effect of the restriction was likely to be very small, Herbert had suggested.^{1.}

Some indication of Chamberlain's motives may be gleaned from an examination of the reasons advanced for maintaining a full right of appeal once he had decided to insist upon this. These were of three types - imperial, legal, and commercial.

On the first score, the role of the Judicial Committee as a "link of Empire" was stressed, as was its work in ensuring uniform interpretation of law throughout the Empire. The memorandum in which the case of the British Government was most fully argued concluded with the plea that an unrestricted appeal would facilitate the development of "a real Federation of the Empire"^{2.} This argument did not in the least impress the delegates or most other Australians, though Chamberlain was doubtless sincere in putting it forward. However it is difficult to believe that he could seriously have thought that a

1. Minute: 9 Jan. 1900, C.O. 418/6, p.100.
2. Memorandum of the Objections of Her Majesty's Government to some Provisions of the Draft Commonwealth Bill, Cd. 158, p.28. Parl.Pap. 1900, LV.

limitation on constitutional appeals to the Privy Council would be more harmful to imperial unity than a head on clash with the chosen delegates of the colonies. The value of Australian participation in the scheme for an Appeal Court for the Empire was also stressed, but this scheme emerged only during the negotiations and it disappeared soon afterwards. At the conclusion of the Commons debate on the Commonwealth Bill, Campbell-Bannerman enquired what had become of the appeal court measure which six weeks earlier was to have been introduced within a few days.^{1.} Chamberlain was evasive and said that there would have to be delays while the colonies were consulted;^{2.} the proposals then died a quiet death and an attempt to revive them a few years later failed. It seems fair to conclude that although Her Majesty's Government was genuinely enthusiastic about the proposed reform for its own sake, it was brought forward at the time it was as a move to oppose the Australian demands, rather than being the reason for that opposition.

On the purely legal side, the experience and expertise of the members of the Judicial Committee was emphasised, and it was claimed that constitutional decisions could best be made by an impartial, external

1. Hansard, 4th Ser., LXXXIV, 458.

2. Ibid.

tribunal far removed from local bias and political pressures. To this the delegates replied that Australians were as capable of interpreting their constitution as they had been of drafting it, and that for this purpose familiarity with local conditions would be a help rather than a handicap. The absurdity of thinking that a written constitution could best be interpreted 12,000 miles away from the country in which it operated was perhaps not as apparent then as now, but once again it seems likely that this was a justification for amending the constitution rather than a reason for it.

We are thus left with the commercial and financial arguments for maintaining an unrestricted appeal, and probably these were the most important to Chamberlain. In the cable to the premiers which summarised his reasons for amending Clause Seventy-Four Chamberlain stated:

"Important questions may arise as to the operation of Commonwealth laws on British Shipping, or generally as to whether such laws are ultra vires, which the Imperial Parliament can scarcely allow to be concluded by decision of the Australian High Court.

Commonwealth legislation on such subjects as fisheries may seriously affect the interests of subjects of other parts of the Empire, and in such matters Parliament could not expect them to submit to be deprived of appeal to an Imperial Court.

Banks and other financial institutions having large interests in Australia entertain very strong feelings against the limitation, and weighty representations 1. have been made on the subject to Her Majesty's Government".

1. Chamberlain to Governors of N.S.W., Vic., S.A., Tas., & Queens., 5 May 1900 (tele), Cd. 158, pp.47-8. Parl.Pap. 1900, LV.

In other words, British investors, shippers and traders were loath to put their capital at the mercy of Australian courts - exactly the same tone which is to be found in the series of leading articles in The Times, which encouraged the Government to insist upon an unrestricted right of appeal. On 28 April, for example, The Times warned the delegates that if they had their way capital would flow less freely into Australia from England because of the diminished security.^{1.} This may be the reason for the persistence and vehemence with which this paper pursued the question throughout the negotiations.

Certainly there can be no doubt that alarm was felt in commercial and financial circles in London about the enactment of the Bill in the form proposed by the colonies, alarm of which Chamberlain cannot have been unaware for not only did he receive "weighty representations", but he himself had substantial investments in Australia.^{2.} When the possibility was at one stage canvassed that the delegates might be permitted to appear at the Bar of the House of Commons to present their case against the amendment of the Bill, Sir Robert Herbert

1. The Times, 28 April 1900

2. A random check of three of the very numerous Australian land and finance companies registered in London in the 1890's showed that Chamberlain held stock in two of them to a total paid-up value of £8,000. See B.T. 31/14297 and B.T. 31/14604. No particular significance should be attached to this fact of course.

noted that he had heard that if this was allowed "some city institutions" would claim the right to be heard in reply,^{1.} another indication of the direction from which the strongest opposition to the restricted appeal came. In 1891 a member of the Colonial Office staff had objected to the total abolition of appeals to the Privy Council proposed in the constitution drafted by the Australian convention of that year because he felt that this would be to the detriment of English investors.^{2.} In 1900 another member minuted:

"It is not so much the question of Imperial (ie. public) interests that are involved in the question of maintaining the right of appeal to the Privy Council. The serious, and not altogether unfounded apprehensions are those of persons and corporations outside the proposed Commonwealth who have invested immense sums in the Colonial Government securities and in the banks and other enterprises, and who think their property is not safe unless they can have recourse to an independent high court of Appeal not subject to local influences."^{3.}

There can be little doubt that it was concerns and pressures of this type which induced Chamberlain to make the stand he did on the appeal question.

The second related question which arises is, who had the better of the negotiations over the Bill? During

1. Minute: no date, C.O. 418/7, p.4.
2. Minute: 25 May 1891, on Jersey to Knutsford, 20 April 1891, C.O. 201/612, p.37.
3. Minute: 7 March 1900, on Shotton to Balfour, 17 Jan. 1900, C.O. 418/8, p.548.

the committee stage in the House of Commons Chamberlain stated categorically that "each successive change has been in the direction of the view entertained from the first by Her Majesty's Government", and offered the mathematical illustration that if the Bill as forwarded by the colonies would have restricted the right of appeal in 9 cases out of 10, then the first compromise would have done so in 5 cases out of 10, and the last version would do so in only 1 case out of 10.^{1.} On the other hand the delegates were so certain that they had had the better of the negotiations that when they were left alone in the Attorney-General's room in the Houses of Parliament after concluding the agreement, it is reported that they joined hands and jubilantly danced in a circle round the room.^{2.} Even when allowance is made for the possibility that each side secured something from the agreement Chamberlain's confident assertion is scarcely compatible with the delegates' corybantic celebration. This cleavage of opinion has continued, for whereas Chamberlain's major biographer, Garvin, suggests that the Secretary of State secured that which was most important to him,^{3.} Egerton in the Dictionary of National Biography

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1. Hansard, 4th Ser. LXXXIV, 338-9.
 2. Deakin, The Federal Story, p.162.
 3. J.L. Garvin, The Life of Joseph Chamberlain Vol.111, (London, 1934) p.564.

describes the compromise as "'a confession of failure'^{1.}".

Certainly when Chamberlain first announced to the House of Commons that agreement with the delegates had been reached most of his hearers appeared to believe that he had been successful, although one or two well qualified critics such as Bryce and Haldane ventured to doubt whether he had gained as much as he claimed. The Times was not very impressed either, and attacked Chamberlain for having given way unnecessarily.^{2.} In the House of Lords some of the peers were very critical, but their doubts about the effect of Clause Seventy-Four were dismissed by the Lord Chancellor with the utmost confidence.

In view of all this confusion it is desirable to establish exactly what was gained and lost. It should first of all be noted that at a fairly early stage of the controversy Her Majesty's Government withdrew its opposition to the covering clause which extended the operation of Commonwealth law to ships whose first port of clearance and whose port of destination were in the Commonwealth. This later proved to be an important concession for the scope of the provision was held by the

1. Dictionary of National Biography, 1912-1921. (Oxford, 1927) p.114.

2. The Times, 19,22 June 1900.

courts to be very wide, and much of the legislation passed under it in the first fifteen years of the Commonwealth was distasteful to Britain. Another important point is that whereas Chamberlain deleted from the Bill at the time of its introduction into the Imperial Parliament a provision allowing the Commonwealth parliament to introduce further limitations on judicial appeals by legislative action, this was re-inserted as part of the bargain with the delegates.

The controversial paragraph of Clause Seventy¹ Four originally prohibited entirely appeals in cases requiring constitutional interpretation unless the "public interests" of another part of Her Majesty's dominions were involved. By the time the constitution was enacted the restriction had been narrowed from all constitutional cases to those involving the limits inter se of the powers of any two of the governments of Australia, but this narrowing was not as significant as Chamberlain claimed for in a federal system nearly all important constitutional cases involve inter se issues. A further apparent gain made by Chamberlain was that under the original clause appeals to the Privy Council were completely impossible in

1. See W.H. Moore, "The Australian Commonwealth Constitution, 1901-2", Journal of Comparative Legislation, New Ser. Vol.V No.1 (1903) pp.115-31; Cd. 2483, Parl.Pap. 1905, L1V; cd.3023, Parl.Pap. 1906, LXXVII.

restricted cases unless "public interests" were involved, but this was changed to allow appeals in any case by leave of the High Court. Thus appeals had been made possible where formerly they were not, it was said. But as Chamberlain's advisers ought to have foreseen, and Haldane and the Lord Chief Justice did,^{1.} the Australian court has been most reluctant to give such leave for an appeal against its own verdict, and has in fact done so only once in sixty years.^{2.} In return for this concession the old provision about "public interests" was deleted, and in this respect the delegates had not merely defended their position, but improved it, for imprecise though the phrase was it would certainly have made appeals possible in some cases where the High Court has declined to allow them. Once again however, those who suggested this at the time were brushed aside by Chamberlain and his legal advisers.^{3.}

The other direction in which Her Majesty's Government claimed to have extended the scope for appeals to the Privy Council was in respect to decisions of the Supreme Courts of the states, for the final version of Clause Seventy-Four applied the restriction on constitutional appeals only to decisions of the High Court.

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1. Hansard, 4th Ser., LXXXIV, 643, LXXXV, 45.
 2. This was the case of the Colonial Sugar Refinery v. The Commonwealth, 1912. Leave has been refused on many occasions.
 3. Hansard, 4th Ser., LXXXIV, 648-54, LXXXV, 29-33.

Even in cases involving inter se constitutional issues dissatisfied litigants in state courts were left with the right to appeal either to the High Court or to the Privy Council, though if the case was once taken to the High Court no further appeal would be allowed.

According to the British Law Officers this right of access to the Privy Council from the state courts had not been guaranteed by the original bill and was therefore a gain, but since the delegates had maintained^{1.} from the first that the right remained open, this is questionable. In any case the Commonwealth Parliament soon used the legislative powers it had been allowed to insist that all inter se constitutional cases should be heard by the High Court so that the possibility of appeals^{2.} from the state courts could no longer arise.

In the interim another of Her Majesty's Government's claims was disproved. During the debates on the effect of Clause Seventy-Four both Bryce in the House of Commons and Lord Russell of Killowen in the House of Lords, suggested that in view of the powers it had been given the High Court was unlikely to consider itself bound by decisions of the Privy Council in constitutional

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1. Memorandum of the Australian Delegates, 23 March 1900. Cd. 153, p.17. Parl.Pap. 1900, LV.
 2. Judicature Act, No.8 of 1907.

1. cases. The Lord Chancellor and the Master of the Rolls^{2.} scoffed at the idea, but within a few years of its establishment the High Court showed that it regarded itself as having a special relationship to the constitution which superseded the priority normally accorded to the Privy Council.^{3.}

From every point of view then, it is difficult to see that Chamberlain gained anything from his insistence on amending the Commonwealth Bill; certainly he did not gain enough to justify the trouble, delay, and irritation of the negotiations. If his main concern was to safeguard commercial interests Chamberlain may have felt that he had done this by narrowing the restriction on appeals to cases involving the limits inter se of two of the governments of Australia, though in practice this has still prevented cases of great commercial importance reaching the Privy Council. It is possible that the Secretary of State did not realise how much he was conceding to the delegates, for the legal members of the Government on whom he had to rely do not

1. Hansard, 4th Ser., LXXXIV, 652, LXXXV, 47.

2. Ibid., LXXXV, 586, 588-9.

3. See, 4 Commonwealth Law Review, Vol. 11, 1087, for the summing up of Sir Samuel Griffith, C.J. on the case, Baxter v. Commissioners of Taxation of N.S.W.

appear to have had any very sound grasp of the likely effects of Clause Seventy-Four. However his fiercest critic, Lord Carrington, was clearly convinced that Chamberlain had made a pretence of securing more than he had in fact been able to get. As part of the peroration to his picturesque but extremely able speech on the Bill this old friend of the federal movement said...

"The right hon. Gentleman performed a most extraordinary feat of political legerdemain. He took up this Seventy-Fourth Clause, which, he said, was doing away with the ties which connect the Empire, threw it up into the air and caught it again, turned it inside out, and then handed it across the Table as the Chamberlain compromise. It was done so rapidly that it took the House of Commons in, and especially Mr. Asquith, who got up and congratulated the right hon. Gentleman on having arrived at a solution which was honourable to both sides. The House of Commons evidently went home thinking that such an agreement had been arrived at. But there is a French proverb which says, La nuit porte conseil, and when the Members of the House of Commons came down to breakfast and read the Times they found there was no agreement at all, but a surrender." 1.

Whether this be so or not, it does seem that the delegates had rather the better of their tussle with Chamberlain.

1. Hansard, 4th Ser., LXXXV, p.23.

Concluding Note

It has not been the purpose of this study to show that the federation of Australia was brought about primarily by British influence, indeed its argument has often been in the contrary direction. Nevertheless the preceding chapters do reveal that the federal movement in Australia was continuously affected not only by the indirect influence of British policies, but by the aims and activities of many British statesmen and representatives in the colonies.

One of the interesting facts to emerge is the enthusiasm obtaining in Britain throughout this period for the federation of Australia. Of course this enthusiasm was limited to the very small group interested in and responsible for colonial policy and administration, but amongst this group it was widespread and sustained. Each of the four Secretaries of State who was responsible for the colonies for an appreciable length of time between 1880 and 1900, Derby, Knutsford, Ripon, and Chamberlain, was favourably disposed towards federation. The failure of Lord Grey's attempt to federate Australia was still remembered in the Colonial Office, and Carnarvon's abortive attempt to confederate South Africa in 1877

was fresh in everyone's mind, but certainly no opportunity was lost to encourage the colonies to think of union, and every movement in that direction was assisted in any way possible.

Not one of the many governors who served in the colonies during these twenty years seems to have been opposed to or uninterested in federation; most of them, from Sir Hercules Robinson and Sir William Jervois at the beginning of the period, to Lord Brassey and Lord Lamington at its end, actively supported the movement. In addition to the striking service to the federal cause of a man such as Carrington in New South Wales from 1885 to 1890, dozens of his predecessors and colleagues kept the goal of federation before the governments and people of their colonies. As Sir Anthony Musgrave in Queensland wrote to Carrington after a Centennial Banquet in Sydney at which a number of governors were present and all spoke in favour of federation, "people will read our remarks and they will bear fruit"^{1.} Although the role of the governor had been circumscribed by the granting of responsible government, the absence of a coherent and disciplined party system allowed many governors to exercise a surprising amount of political influence. In any case

1. Musgrave to Carrington, 4 Feb. 1888. (Carrington Papers)

federation was not usually a "party" question and thus the governors were able to speak about it freely.

Why was it that British opinion was so favourable towards federation? One pertinent factor was that from the early Nineteenth Century onwards British observers were impressed by the fundamental homogeneity and community of interest of the colonies. The population of each was almost exclusively British in origin, and in consequence they shared a common language, customs, and cultural heritage; all the colonies were dependent on similar basic industries, and had the same needs and problems; the political institutions of the colonies were almost identical. It therefore seemed natural that these colonies, situated as they were around the edges of the same island continent, should join together and obtain the mutual advantages to be gained from union. As Herbert wrote in the first of his many years as Head of the Colonial Office, "...great administrative and social advantages...must accrue to the Australian colonies whenever the time comes for their federation into a powerful state...". In Britain the benefits which federation would confer upon the colonies seemed self-evident, but the Australians, pre-occupied as they were with the

1. Minute: 6 Dec. 1871, C.O. 309/108, p.50.

differences between their colonies, were the last to see this.

The advantages of Australian federation would not only be felt by the colonies of course; as The Times remarked in 1890, it would certainly make life easier for the Colonial Office if they had one government^{1.} rather than six to deal with. Opinion in Britain on imperial and colonial questions in the late nineteenth century was divided and confused, but consolidationists and expansionists alike were able to agree on the desirability of federating the major groups of geographically adjacent self-governing colonies. This was reflected not only in the Australian case, but in the confederation of Canada in 1867, the unsuccessful attempts to confederate South Africa, and even in the federation of Leeward Islands. A federated group would be far more able to stand on its own feet than a single colony, and was less likely to involve Great Britain in expense and military commitments. For those with dreams of imperial federation, colonial federation was of course an essential preliminary.

Few of the British officials associated with Australian affairs in this period had any clear idea as to the likely future relationship between Britain and

1. The Times, 11 Feb. 1890.

the colonies following federation, but most expected some sort of link to remain. Evelyn Ashley, Derby's Under-Secretary in the Liberal Cabinet of 1882-85 was very much an exception when he noted, "I cannot get up any steam or enthusiasm for this confederation of the Australian colonies. It is much more likely to lead to separation from England than if they remain as they are at present"^{1.} Quite apart from the imperial federationists who hoped that federation would help draw the colonies into a closer organic relationship with the mother country, most of those concerned anticipated that the federated colonies would retain what Herbert described as "the intimate connection which is at present so satisfactory to this country and to the colonies"^{2.} As Lord Brassey said, as the establishment of the Commonwealth approached, had they not been confident that federation would in no wise lead to the dismemberment of the Empire, those who represented the Queen in Australia would not have been able to support the federal movement so enthusiastically.^{3.} Even the Gladstonians who were able to contemplate with equanimity the possibility that the colonies might some day choose new paths of their own, evinced no desire to hasten that day and did not expect

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1. Minute: 15 Aug. 1883, on Normanby to Derby, 9 June 1883, C.O. 309/125, p.202.
 2. Minute: 6 Dec. 1871, C.O. 309/108, p.50.
 3. Brassey, "Australian Federation", Nineteenth Century, April 1899, p.556.

federation to do so.

The influence of this settled British attitude, together with the often unintentional effects of British policy in such areas of Anglo-Australian relations as tariffs, defence, and territorial expansion in the Pacific, helped to keep the idea of federation alive in Australia until at last the colonists themselves were ready to make it their own.

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