

been made, for if we want to grasp the real difficulties of the situation it would have been much better if this assemblage, instead of listening to the speeches of those whom I may call juveniles, had been favored instead with the ripe experience and matured thoughts of the leaders of the Convention of 1891. I think it would have been much more instructive if we had heard [start page 303] the views of the great leaders of the federal movement in these colonies. The matters upon which I wish to speak are few in number, and I shall endeavor to make my remarks concerning them as brief as possible. I am glad to be able to say that, although a number of members have spoken, only two of them have disputed the rights of the smaller States to equal representation in the Senate.

Mr. LYNE: Four.

Mr. CLARKE: Only two unconditionally have repudiated the right of the smaller States to equal representation in the Senate. One of these, Mr. Lyne-who, by the way, Tasmania has lent to the mother-colony-has denied the rights of the smaller States to equal representation, and he has promulgated a scheme under which the two larger colonies would have sixteen representatives between them in the Senate, while the three smaller colonies combined would have only thirteen-that is to say, the two larger colonies together would have a majority of three in the Senate and an overwhelming majority in the House of Representatives. That is a system which no doubt would very admirably suit New South Wales and Victoria, but it is a system which the smaller colonies would not entertain for one single moment. Mr. Higgins also has disputed our right; and when I heard these gentlemen denying in calm and deliberate tones the right of the smaller States to equal representation in the Senate, I began to ask myself: On what basis have we come to this assembly at all? The answer is that we come here as coequal States. Has there ever been a federal assembly in Australia at which the right of the colonies to be treated as equals was not recognised by each of them having equal representation in the assembly?

Mr. HIGGINS: We are not in partnership yet.

Mr. CLARKE: I know we are not, but we want to get into one. And when this great movement was put on a proper footing by an arrangement among the Premiers to take the people into their confidence, how were the colonies invited to take part in this federal gathering? Were we asked to send members here on the basis of population? If that had been one of the terms, do any of you think the representatives of Tasmania would be here to-day? No; but the invitation given to us recognised our right as co-equal States, recognised the right of Tasmania as a State equal in all the attributes of sovereignty to any of the colonies in the group. This brings me to a question put by Mr. Higgins. He asks why should 160,000 people in Tasmania have the same voice in the Senate as the much larger population of New South Wales? I shall tell him it is because Tasmania is a State just as much as Victoria and the mother-colony are States, and because she possesses in the same degree the same attributes of sovereignty. I do not propose to follow Mr. Isaacs into an historical discussion upon the Connecticut compromise. We can afford to leave out historical discussions at the present time. It is true that the proposal made at the Philadelphia Convention which secured for each State equal representation in the Senate has been known as the Connecticut Compromise; but whether various schemes of representation were proposed during those deliberations or not, the one which was ultimately adopted and embodied in the Constitution of the United States became, to my mind, one of the principles of that Constitution, and on this point I beg leave to differ from Mr. Isaacs when he says we cannot base our claim on any principle. At all events, if we cannot base our claim to equal representation upon any historical principle, we can be at least original enough to discover a principle for ourselves, and I think the smaller States can lay down this principle, that unless the right of equal representation is conceded, they will have nothing to do with any scheme of Federation.

Mr. BARTON: Is it not rather previous to say that?

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Mr. CLARKE: No; because I think it is the one of the vital principles of Federation. I should like to know from Mr. Lyne and Mr. Higgins, who have denied the right of the smaller States to equal

representation, what sort of an union it is they want. They say that 160,000 people in Tasmania are only entitled to the same voice in the Senate as 160,000 in Victoria. I join issue with them at once, and say their argument is bad, because we are not going into this Federation simply as so many units of population. We are to be treated as separate political entities, and not treated as so many units of population. In accordance with the scheme of Mr. Lyne, and the arguments used by him and Mr. Higgins, a man is simply a man wherever he is, and 160,000 people in Tasmania would have no more voice in the Senate than 160,000 in New South Wales. The argument used by these gentlemen blots out altogether our existence as a separate colony. It blots out our own separate sovereignty and our separate State life, and, if carried into effect, would establish not a Federation, but a unification of these colonies, and reduce the State Parliaments to the position of municipal bodies. I desire to say a word in reference to the election of the representatives of the Senate. In my opinion each State should be one constituency, and if we adopt this system we will do away with the possibility of gerrymandering that so disgraces public life in America, and has even found its way to Switzerland. If the various local Parliaments have the right, either in the matter of electing members to the House of Representatives or to the Senate, of cutting up the colonies into electoral districts, it will open the way to that political corruption which has taken place in America, and which has disgraced public life there-the system of gerrymandering. I am, therefore, in favor of making each colony one electorate for the Senate. I have listened with very much pleasure to the speech delivered by Mr. Deakin, and I heard him declare that he is in favor of the rule of the majority. I am in favor of the rule of the people. I do not want a majority of the population in any particular colony to return all the members for that colony. I want to see the wishes of the people take effect, and in order to carry out the wishes of the people, and make Parliament a reflex of the opinion of the people we must introduce some such system of election as the Hare system. Under that method of election the views of the minority are taken into account, and it would be a fatal mistake-as we are establishing a Federation and want to establish it on proper lines-if we do not introduce some system by which the opinions of the minority would be respected to some extent. I therefore think that the Hare system of election ought to be adopted, both in reference to the Senate and the House of Representatives. Under the Commonwealth Bill of 1891 it was proposed-in reference to the House of Representatives - to give power to the local Parliaments to cut up the colonies into various electorates. I think that the Federal Parliament, however, ought to retain control over this matter, because we know the same power was given to the local Legislatures in America, and in the course of time the corrupt system of gerrymandering grew up, under which the various local Legislatures cut up the States from time to time into electorates to suit their own political purposes. The Federal Parliament ought therefore to retain control over this matter, so that at any time it could step in if the local States attempted to do any wrong. As to the franchise, I consider there ought to be a uniform franchise for both Houses. I recognise the great difficulties which have been pointed out in reference to this subject during the course of the debate. If we put into the Federal Constitution a provision that adult suffrage shall be the suffrage on which both Houses shall be elected it is possible that some, like my friend Mr. Dobson, whose conservative speech on Friday last seemed to many members like an echo of the olden [start page 305] time might find it very difficult to accept Federation on such terms. On the other hand, if we leave it to the Federal Parliament to frame a federal franchise it is quite possible that the women of South Australia would be running a great risk. On the whole, I am in favor of Mr. Isaacs' suggestion that manhood suffrage should be adopted as the federal franchise, with a proviso that in any colony where women have a vote for the local legislature they should not be deprived of their vote for the election for the Federal Parliament. With regard to the powers of the Senate, I think that it ought to have power to amend Money Bills except the annual Appropriation Bill. Members of this Convention seem to be greatly taken with the distinction drawn here last week between the different kinds of Money Bills. If they would only take the trouble to look at the debates of 1891 they would find that the very distinction which evoked so much praise here a few days ago was drawn by that very able statesman, Sir Samuel Griffith. Members of the Convention who object to give the Senate power to amend Money Bills are yet in favor of giving the Senate power to reject them *in toto*. The opinions of Sir Samuel Griffith are so weighty on this point that I would like, with the permission of the Convention, just to read a passage from the speech delivered by him on March 17th, 1891. Sir Samuel said:

As far as the ordinary Appropriation Bill is concerned, I do not think that the matter is worth fighting about. Most of the argument used has been made to apply to Money Bills generally-a class which none can describe in a few words, for almost any sort of Bill can be made into a Money Bill. Most of the argument has been applied to these in order to show that the ordinary machinery of government could not go on if the Senate could interfere with Money Bills. Why? If that means that the ordinary machinery of government could not go on, if the Senate interfered with the Appropriation Bill, I could understand the argument. But it must be remembered that it is not proposed to deny the Senate the power of veto. Surely if the Senate wanted to stop the machinery of government the way to do that would be to throw out the Appropriation Bill. That would effectually stop the machinery of government. I, for my part, am much inclined to think that the power of absolute rejection is a much more dangerous power than the power of amendment; yet it is the power that must be conceded. We all admit that; and in a Federation there is much more likelihood of that power of rejection being used than there is of the power of amendment being used. It is said that the Upper Houses in the Australian Colonies are coerced by putting things in the Appropriation Bill. So they are in the United Kingdom. Why? Because they are part of the same community, living in the same place, and elected by or chosen from the same class of people; but let it be borne in mind that in the Federal Constitution the members of the Senate would come from different parts of Australia, and be charged with the duty of protecting the rights of their own States, and if they saw that those rights could be protected only by rejecting a measure absolutely, and not by any smaller or milder action, I am sure that they would not hesitate to reject it and take the consequences.

I think that the views of this veteran statesman ought to commend themselves to the members of the Convention.

Mr. LYNE: What class of Bills comes under the definition of Money Bills?

Mr. CLARKE: That is a thing I am not competent to say; neither do I think that any member of the Convention is competent to define what is a Money Bill. I am satisfied with the distinction drawn by Sir Samuel Griffith, and I think we could get out of the difficulty if the members of Victoria and New South Wales were to look at the matter in the same way as Sir Samuel Griffith, and give to the smaller States the power to amend Money Bills, except the annual Appropriation Bill. Mr. Higgins gave us an illustration of what happened in Victoria. He told us that the Government of the day introduced a Bill dealing with the imposition of an income and land tax, and that the Upper House in that colony was favorable to an income tax, but disapproved of a land tax. As it could not amend it, it was obliged to throw out the whole measure.

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The result was that subsequently a measure was sent up again, dealing solely with the income tax, and it was agreed to. I would like to suggest to Mr. Higgins, because I think he is a reasonable man-all lawyer's may not be reasonable, but I think an equity one ought to be reasonable-and I should like to put it to him whether it would not have been better if the Upper House in Victoria had had this power of amendment, because by a simple process they could have accomplished without delay the very same result as was brought about subsequently after the loss of much time, and after the expenditure, no doubt, of a vast amount of lung power in the Lower House. The same thing applies to the illustration given by Mr. Reid. In his case he sent up a Bill, which was objected to, and he appealed to the people. He then sent it up in a less objectionable form, and by wooing the members of the Upper House managed to get it passed. It might have been better if the Upper House had had the power of amendment, or if Mr. Reid, instead of appealing to the country, had, in the first instance, adopted the conciliatory course he adopted in the second. With reference to the question of deadlocks, I do not think there is any necessity whatever to introduce any provision into the Constitution to deal with the Subject. The members whom the people of Australia will send to the Federal Parliament will, I hope, be reasonable men, with a high sense of the responsibility of their position, and of the magnitude of the interests committed to their charge. We do not want at the present time to frame a thoroughly perfect machine of government. No constitution was ever yet perfect, and none ever will be. Mr.

Gladstone has written on the subject, and I cannot do better than read one or two sentences from his remarks. He says of the English Constitution:

More, it must be admitted, than any other, it leaves open doors which lead into blind alleys, for it presumes more boldly than any other the good sense and the good faith of those who work it.

Then he says:

If, unhappily, these personages meet together on the great arena of a nation's fortunes, as jockeys meet upon a racecourse, each to urge to the uttermost, as against the others, the power of the animal he rides, or, as counsel in a court, each to procure the victory for his client, without respect to any other interest or right, then this boasted Constitution of ours is neither more nor less than a heap of absurdities.

He goes on to say:

The depositories of power will all respect one another, will evince a consciousness that they are working in a common interest for a common end, they will be possessed together with not less than an average intelligence, with not less than an average sense of equity and of the public interests and rights. When these reasonable expectations fail, then it must be admitted the British Constitution will be in danger.

These reasonable expectations have never failed in the old country, and I hope they will never fail in Australasia. The representatives of Victoria want to introduce a system of referendum to the States and to the people.

Sir WILLIAM ZEAL: Some of them.

Mr. CLARKE: I should say some of them. This, to my mind, seems to be an admission that, in their opinion, the reasonable expectations to which Mr. Gladstone referred will not be found in these colonies, and that the men whom Australia will send to the Federal Parliament will be less qualified to guide the destinies of their country than their brothers at home.

Mr. ISAACS: There is a safety-valve in the British Constitution.

Mr. CLARKE: There is no safety-valve in the British Constitution like the referendum. However, if those representatives of Victoria who wish to insert this admission of inferiority into the Constitution insist on it, I am willing to concede it if they abandon their objection to giving the Senate power to amend Money Bills, with the one exception to which I have referred.

Mr. ISAACS: It is no concession at all.

Mr. CLARKE: If we adopt the system they want it will not bring us any nearer to a settlement.

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Mr. ISAACS: Why do you call it a concession?

Mr. CLARKE: Because you want the referendum, and I am willing to concede it on the condition I have stated.

Mr. ISAACS: I am not asking for it in the interests of Victoria alone.

Mr. CLARKE: I was much struck in reading the reports of 1891 with the speech that was made at that Convention by Sir Richard Baker. I think Mr. Deakin said to-day that Sir Richard Baker had changed his mind on the subject since the last Convention, but on referring to the debates of 1891 I

find that on the 18th of March he advocated the same principle that he advocated here a few days ago—the principle of the Swiss Constitution. His speech is reported on pages 465 and 466 in the report of the proceedings of that Convention, and it is a very able argument. It was very forcibly laid before the Convention of 1891, and I am glad to say that it was laid before us a few days ago with equal emphasis and lucidity. I appreciate the difficulties which Sir Richard Baker has pointed out. I admit that we must start with responsible government, but we must also have the system of two Houses co-ordinate in every respect, except with regard to the one matter to which I have referred. We cannot hope, as I said before, to frame a thoroughly perfect Constitution, but the genius of our people will, in the course of time, evolve what is necessary to make the principles of responsible government and of two almost co-ordinate Houses work well together. With regard to the matter of the Federal Supreme Court I think it is a very moot point whether we should permit appeals from its decisions to the Privy Council, and on that matter I shall reserve my opinion until we get into Committee. I think, however, that we should adopt a different procedure with reference to the establishment of a Supreme Court to that which is set out in the Commonwealth Bill. Instead of giving the Parliament of the Commonwealth power to establish a Supreme Court we should embody it in the Constitution itself, so that it should not be in the competence of that Parliament to establish a second Supreme Court if it thought fit. I agree to a large extent with Mr. Wise with regard to the manner in which the judges should be appointed, but, on the other hand, there is a danger in allowing the Federal Assembly to appoint the judges. This point is very clearly set out by Dicey in his "The Law of the Constitution," in which he says—

Judges, further, must be appointed by some authority which is not judicial, and where decisions of a court control the action of Government there exists an irresistible temptation to appoint magistrates who agree (honestly it may be) with the views of the Executive. A strong argument expressed against Mr. Blaine's election was, that he would have the opportunity, as President, of nominating four judges, and that a politician allied with railway companies was likely to pack the Supreme Court with men certain to wrest the law in favor of mercantile corporations. The accusation may have been baseless; the fact that it should have been made and that even Republicans should declare that the time had come when Democrats should no longer be excluded from the Bench of the United States tells plainly enough of the special evils which must be weighed against the undoubted benefits of making the courts rather than the Legislature the arbiters of the Constitution.

There is one matter to which my friend Sir Edward Braddon has alluded, and that is the question whether or not members of the Federal Parliament should be eligible to sit in the local Parliaments and *vice versa*. I consider the matter might be very well left to the local Parliaments. Let us leave it perfectly open for any man, who is of course qualified in a proper way, to become a member of the Federal Parliament, and if the local States at any time find, after experience, that it is inconvenient or wrong for a man to sit in both Houses it will be open to them to pass laws disqualifying him from sitting in the local [\[start page 308\]](#) Parliament. I think it could very well be left to the local States to deal with these matters should the necessity arise. I do not intend to say anything on the question of finance or the railways further than this, that, in my opinion, we ought to retain to the States as large a measure of home rule as possible; but while extremely anxious to do this, I wish to so frame the Constitution that the Federal Parliament should not be put in the position contended for by Mr. Holder. That gentleman, in his able and admirable speech, suggested a scheme of confederation which resembled in its utter inefficiency the system which was originally in vogue in America, and which it was found so necessary to alter. I do not propose to address this Convention at any further length, but I desire to compliment the various gentlemen who have spoken upon the admirable manner in which they have conducted this debate. They have shown a true appreciation of the difficulties of the situation, and a spirit of compromise as to many matters which, I hope, will result in the establishment of the great principle we all have in view. Let us cultivate this spirit more and more, and show the people who sent us here that we know the seasons when to take occasion by the band, and make the bounds of freedom wider yet.

Sir EDWARD BRADDON: Mr. President—With the view of shortening the debate, I wish to make a brief statement, and that is that my hon. colleagues, the representatives of Tasmania, who have not