



STATE RIGHTS AND THE CONSTITUTION OF THE SENATE

PREFATORY

There is no more important and vital clause or one more essential to the establishment of any true federation of self-governing States than Clause 7, Part II., of Chapter I. of the Constitution. It is as follows:—

“The Senate shall be composed of Senators for each State, directly chosen by the people of the State voting until the Parliament otherwise provides, as one electorate. Until the Parliament otherwise provides there shall be six Senators for each Original State. The Parliament may make laws increasing or diminishing the number of Senators for each State, but so that equal representation of the several Original States shall be maintained, and that no Original State shall have less than six Senators.”

This provision secured equal representation for each State in the Senate.

The following speech was delivered in the Convention on 10th September, 1897, in support of the rights of the States:—



AUSTRALASIAN FEDERAL CONVENTION.

Speech by J. H. SYMON, Esq., Q.C., on the Constitution of the Senate,
delivered in Sydney, 10th September, 1897.

(Reprinted from the Official Record of the Debates)

Mr. SYMON (South Australia) [11.5]
I make no apology for following the right hon. gentleman, who is on the same side as myself, and a representative of the same State as myself. Probably it will be difficult for any of us to speak at all on this subject if we wait until we find some preceding speaker taking the opposite view to that which has just been so ably laid before this Convention. I particularly feel that it is desirable that we should lay before the Convention, and before the people of Australia, our views on this subject, because it is the most vital question involved in the constitution which we are about to frame. It lies at the very root of the business on which we are engaged. The effort that was made to establish unequal representation at the Adelaide session met with little support. My belief is that it will meet with equally little support on this occasion; but, at the same time, I agree with what was so forcibly said by the hon. member, Mr. Carruthers, yesterday afternoon, that it is our bounden duty to make clear to the people of this country, particularly to those who may honestly differ from us in opinion, the reason for the faith that is in us, and our belief that whilst it may be a matter of expediency, whilst it is an absolute necessity in order to secure federation, and an early federation, it is also founded on what we believe to be right principle and just reason. I hold out no threat or menace of any kind. It would, I think, be idle to do so, particularly after the proclamation made by my hon. and learned friend, Mr. Isaacs, at the banquet at the Town Hall the other night of the banns of a possible union between Victoria and New South Wales. I am

quite sure that if that came about all of us would rejoice; we should say, "Bless you, my children." I do not know whether my hon. and learned friend had fixed the federal capital in this twinship of federation to be in Sydney; probably he had arranged that also, but whether that be so or not, I am quite sure that none of the smaller states are likely to disturb the serenity of any such federation if it were brought about unless upon the footing of equal representation in the senate. The Convention upheld during its Adelaide session the provision which is now being called in question, and on that occasion very few of us, indeed scarcely any, debated the question from the point of view that the smaller states take. At the same time I believe it would be a dangerous, and I think an unfortunate thing if we allowed it to be supposed throughout New South Wales and Victoria that we, in order to secure equal representation in the senate, were simply relying on the force of numbers. It would be disastrous. It might create a difficult, and a troublesome feeling to overcome, and in the interests of securing a sympathetic as well as a quick federation, we ought to submit our views, I think, in the fullest possible way. I do not quite agree with my hon. and learned friend, Sir John Downer, that equal representation cannot be defended on logical grounds or on principle.

The Hon. Sir J. W. Downer: I never said that it could not!

The Hon. I. A. Isaacs: It was Mr. Glynn!

Mr. SYMON: I was under the impression that it was my hon. and learned friend, Sir John Downer. The hon. and

learned member, Mr. Glynn, I know, put it that there was no such thing as political syllogism, or put it in some such shape as that. It appears to me, and upon that I accept the challenge of my hon. friend, Mr. Higgins, that equal representation in the senate, if you are establishing a federation, is founded upon a very sound principle. It appears to me that my hon. friend's speech illustrated, gallant as it was, a forlorn hope against the really impregnable fortress of equal representation; but I think it also exhibited rather the ludicrous side of the great task of framing a constitution. My hon. friend reminded me, in his arguments, of the American clergyman who had the misfortune to take a counterfeit \$20 note. He showed it amongst his friends, and they all commiserated with him and agreed that it was an excellent imitation and that it was very difficult to tell it from a genuine note. This clergyman was afterwards asked by a friend to produce the note to show the wonderful resemblance to the genuine article, and he replied, "Oh, I have passed it." "What!" said his friend, "passed it?" "Yes," he replied, "it was just like this: that note was so well got up that whilst on some days I thought it was bad, on other days I am hanged if I did not think it was good; and on one of the days when I thought it was good I passed it."

Mr. Higgins: Is equal representation to be passed like the forged note?

Mr. SYMON: My hon. friend must sometimes have misgivings about the argument he offers. Yesterday there was not that genuine and emphatic ring about his speech—although it was filled with chivalry and good nature—which we remember on the last occasion when the Convention met in Adelaide. I think he has occasional doubt—some misgivings as to the validity of his arguments; but there are times when he thinks them absolutely invulnerable, and then he passes them off upon us. For instance, my hon. friend is carried away by the phrase "one man one vote," and by what he calls the corollary. Even the Attorney-General of Victoria smiled yesterday when that was trotted out again—"many men many votes." That is a very fine antithesis. It was served up to us hot in Adelaide; yesterday there was a slight want of freshness about it.

Mr. Higgins: My words were in answer to the misleading phrase, "One man one vote, therefore one state one vote!"

Mr. SYMON: May I suggest that a truer corollary of one man one vote than that put forward by the hon. member is one woman one vote. I commend that, at any rate, to the consideration of my hon. friend.

The Hon. I. A. Isaacs: Does the hon. gentleman think that will bring about federation?

Mr. SYMON: It may be that is the kind of union my hon. friend had in view in his great speech at the Town Hall the other night. At any rate, possibly we, coming from the more enlightened State of South Australia, may be a little prejudiced as to that form of antithesis, but as the matter is one of highly debatable politics, I will say nothing further about it. My hon. friend interjected with regard to one state one vote. I will ask him, Are the states, in his judgment, to be represented in the federation? Ought the states, as states, to be represented in the federation? I am discriminating between the people and the states, and I ask my hon. friend: Does he concede that the states, as states, are to be represented in the federation?

Mr. Higgins: Certainly not!

Mr. SYMON: Then he is not a federationist at all. My hon. friend—and I do not blame him, I do not reproach him for one moment—is going for a unification.

Mr. Higgins: It is a mere phrase, you know!

Mr. SYMON: It is not a mere phrase—at least, we do not think it is a mere phrase. We think it is a matter of very serious substance.

Mr. Wise: It obliterates a lot of human nature!

Mr. SYMON: What my hon. friend is going for is absorption. He is like that celebrated bird, the cassowary, which, it is said,

On the plains of Timbuctoo,
Ate up the missionary,
Body, bones, and hymn-book, too.

That is the position. He wants the larger states to swallow up the less populous. He wants absorption. Again, I say I do not blame him, for I am free

to confess that, if it were possible, I should like to see a unified Australia—

The Hon. S. Fraser: We had that years ago, and we did not like it.

Mr. SYMON: If it were possible, I have no theoretical objection to it. I say that in order to show I do not reproach or undervalue for one moment the contention of any hon. member or any person throughout the length and breadth of Australia, who believes in unification. All I say is that is not what we are going to do. If we are going to have a federation, and if the states are to be represented, then I say that a man who discriminates between one man one vote and one state one vote, when the states are to be represented, is doing violence to the principles of democracy, which underlie the one proposition as well as the other. Then my hon. friend had a patent way of turning a minority vote into a majority vote, by taking five from the majority, and so converting the minority into a majority of one.

The Hon. E. Barton: With the same success which attended Paddy when he increased the size of his blanket!

Mr. SYMON: I do not know what Paddy did with his blanket.

The Hon. E. Barton: He cut a piece off the top and put it on the bottom.

Mr. SYMON: I thought that a most astute way of getting over the majority, and the effect of it. The hon. gentleman also dug up precedent, not with great success, I confess; but my hon. friend, Mr. Carruthers, objected to precedent being dug up, and I do not wonder at it, if it were put to such base uses—base in the Shakesperian sense—as those to which Mr. Higgins put it yesterday. The way in which he treated the United States Constitution was almost a kind of sacrilege, to say nothing of the Swiss Constitution. He discriminated in the most singular way the Canadian Constitution and the Constitution of the German Empire. The hon. member dealt with the United States—the greatest of all federal constitutions—in a way which, I think, he will find the very greatest difficulty in justifying, either from constitutional writers in America or from the American public men of any standing who are willing to express an opinion.

We have had an example from the right hon. gentleman who has just sat down, as to what the view in America is with regard to the senate; and an illustration of that kind—of fact produced in that way—is worth pounds of mere declamation or assertion on the subject. But then my hon. friend, in addition to putting these so-called arguments, wound up by some utterly unsupported assertions, and called upon us to give reasons to the contrary. It was like a man who asserts that the moon is made of green cheese, and then calls upon all those who dispute it to prove that it is not. Even at the risk of accepting a position of that kind, it is, I think, my duty to point out to my hon. friend some of the authorities which should satisfy him—at all events, I am sure he will give them the weight of his acute mind—that equal representation in the senate is an essential of true federation, that it is a principle which we cannot ignore, and one which, though it may be departed from, still underlies the basis of any union of that kind. What we are doing is this: we are framing a “federal” constitution. We have no charge or duty to do anything else. The people of Australia may prefer unification.

An Hon. Member: They do not!

Mr. SYMON: I say they may prefer it. They may prefer a loose confederation. That is not what they have said.

The Hon. S. Fraser: They do not want centralisation!

Mr. SYMON: No, I am sure they do not. But if they want either the one or the other, that is not what they have said in the enabling act, under which they have sent us here, and by the authority of which we sit. We are here to construct a system containing the elements both of unification and of a confederation, if we can. It is to be a union of people and an alliance of states; it is to be federal; it is to be a national government with a federal union; and, in that respect, I wish to say that I do not agree with the proposition that federation is a compromise—not in the sense in which that expression has been used upon this particular question. I say that either equal or unequal representation is not a subject of compromise.

The Hon. H. Dobson: It is a principle!

Mr. SYMON: Federation is only a compromise in this sense; it is a compromise between unification and confederation; but, once you reach that, then there is no scope for compromise in the principles which underlie the system which you are seeking to establish. My hon. friend, Mr. Carruthers, put it perfectly well, only he put it in the alternative. He said, "Is it to be a union of states, or to bind the hearts of the people." It is to be both—it is to be a union of states and to bind the hearts of the people. That is the answer to my hon. friend's alternative proposition; and it is in order to secure that result that, if we have two chambers, we must have one chamber in which the hearts of the people—to use that phrase—are represented, and another in which the states are represented.

The Hon. J. H. Carruthers: Suppose inevitable conflict occurs, what then?

Mr. SYMON: I do not know exactly what conflict my hon. friend is alluding to, but very probably I will have something to say a little further on as to what I think is in his mind. What I want to do now is to refer my hon. friend, Mr. Higgins, especially, to one or two authorities, which should satisfy him as to equal representation being a principle in a federation. The learned editor of the latest edition of "Freeman's History of Federal Government" says:—

The object both of ancient and modern federation was to provide that both each state as a whole and each citizen individually should have a voice in the federal assembly.

Mr. Higgins: Who says that?

Mr. SYMON: A most learned gentleman—Mr. Bury. I have no doubt that my hon. friend is aware of that, though he may have forgotten the name.

Mr. Higgins: Can we learn what our federation ought to be from that book?

Mr. SYMON: Where is my hon. friend going to learn what federation is unless he learns it from authorities on the subject? I can understand that he wishes to evolve some kind of federation out of his own inner consciousness.

The Hon. Sir W. A. Zeal: There is no precedent for the view of the hon. member, Mr. Higgins.

Mr. SYMON: As the hon. member,

Sir William Zeal, says, there is no precedent for the view of my hon. friend, Mr. Higgins.

Mr. Higgins: And there is no precedent for equal representation with responsible government.

Mr. SYMON: Now my hon. friend is putting his finger on a matter of the greatest importance as though it were a new discovery, but which in Adelaide we threshed out as exhaustively as we could, and which my hon. friend, Sir Richard Baker, now in the chair, dealt with thoroughly, probably long before my hon. friend, Mr. Higgins, considered the subject of federation very much. But, at any rate, if you concede—and I commend this to my hon. friend; I will deal with responsible government at the proper time—if you concede that in a federation each state as a whole and each citizen individually is to have a voice in the federal assembly, you concede the whole contest—there is an end of it as a matter of principle, because, as regards citizens, the representation must be according to the number of individual citizens, each having the same power—one vote. That, of course, is not always achieved, because one individual one vote to be perfectly scientific, ought always to have one value; but you get as near to it as you possibly can. Then, as regards the states, the representation must be according to the number of individual states. That principle of state equality was established centuries before the United States Constitution was ever dreamt of. I do not propose to deal with the matter academically for more than one single moment; but it is a most fascinating and interesting subject to trace the history of the early federations in Greece and their remarkable similarity to the United States Constitution. Since Mr. Freeman wrote his book—and this is the only academical quotation with which I shall trouble hon. members; but I do think that we ought to make it clear to the people of the country that there is some foundation for this, and it is from that point of view that I take the liberty of occupying the attention of hon. members with this—since Mr. Freeman wrote his book, some further discoveries have been made which have thrown a flood of light upon the principle involved in this question. At page 247 of the latest edi-

tion of his work on the history of federal government, there is this footnote:

In the Achaean Assembly, each city, great or small—

because in those days it was, of course, a federal league, not of districts or of countries, but of cities—

each city, great or small, had one vote.

Mr. Higgins: It was merely a league.

Mr. SYMON: My hon. friend is talking without knowing anything at all about this particular subject. I wish to enlighten him if he will allow me; we are all capable of enlightenment:

In the American Senate, each state, great or small, sends an equal number of senators; but the votes are not taken by states—

That is one of the great safeguards of the larger population—

the two senators of a state may vote on opposite sides of a question like the two members for an English county or borough.

And upon this, at page 249, Freeman says:

Probably no two constitutions, produced at such a distance of time and place from one another, ever presented so close a resemblance to each other as that which exists between the Constitution of the United States, and the Constitution of the Achaean League.

But there is more than that. After the lamented death of Mr. Freeman, further investigation was made, and the learned editor discovered that not only in the Achaean League, but also in the Aetolian League, which was a federal league representing the people in the primary assembly, and representing the states in the senate—

Mr. Higgins: What about the Lycian League?

Mr. SYMON: Perhaps the hon. member will allow me to proceed. I dare say he is familiar with Greek.

The Hon. J. H. Carruthers: Before the flood.

Mr. SYMON: I am not going so far back as that.

The Hon. A. Deakin: Before the flood of democracy.

Mr. SYMON: The learned editor says:

This being so, certainly for the Aetolian, and probably for the Achaean Senate, a parallel and contrast may be drawn between the federal assemblies of these old leagues and the federal assembly of modern Switzerland. The object of both the ancient and the modern federations was to provide that each state as a whole, and each citizen individually should have a voice in the federal assembly.

The doubt was whether the senators were elected by the assembly in those

early days or whether they were elected by the particular states. Since Mr. Freeman's death it has been discovered from an old Greek inscription that they were elected by the particular states just as we propose that our senators should be elected. In the appendix, page 651, we find these words:

We can say definitely in the case of the Aetolian League what could only be put forward tentatively in the case of the Achaean, that the senate consisted of representatives chosen by the states.

The Hon. J. H. Carruthers: What became of those leagues?

Mr. SYMON: What has become of the United States? The United States has gone from small things to great until it has become one of the mightiest nations on the face of the earth under a federation including, as an essential part of its system, equal representation in the senate. What is the use of my hon. friend asking me, as implied in his question, whether these old Greek federations have not, like all things human, passed away? Of course they have. But they had elements of weakness which do not exist in a modern federation such as that of the United States of America. If my hon. friend puts the question to me, then I say to him, "Take the United States, and you have at any rate, a most valuable parallel, and you have the proposition, which I am seeking to establish, that from the earliest federation until the latest federation on true federal principles the states have had representation in what has been called the senate, and they have had equal representation per state. That is all I am contending for. But I want to go one step further. My hon. friend, Mr. Higgins, gave us the United States in support of equal representation. He would not give us Switzerland. My hon. friend, Mr. Glynn, has thoroughly disposed of his exception of Switzerland, and, therefore, it is unnecessary that I should travel over that ground. My hon. friend has shown that Switzerland, so far as equal representation is concerned, is identically on the same footing as the United States of America. But more than that—and this is the only observation with which I shall pursue the subject—the senate in Switzerland has what we have abandoned in the senate to be formed under our constitution. It has a voice in the choice of the federal coun-

cil, which is the governing body in Switzerland. We have not got that. It appears to me that we have reduced our senate under the proposed federation to the barest necessities of the case. Still, I do not pretend to be bound by precedents. I do not pretend that this convention is bound by precedents. We all represent what are really sovereign states—sovereign states in essence, if not in form—and we can strike out, if we please, an entirely new line. I thoroughly agree with my hon. friend in that. But it is instructive to have examples of other federations, and to fairly follow them, if we fulfil the federal theory, unless, of course, it can be shown that experience condemns them. Now, I have no slavish devotion to the Constitution of the United States. But what is said of that constitution in which equal representation in the Senate is a conspicuous feature? My hon. friend, Mr. Higgins, said it was not a success. Did he produce a single authority? Did he produce the considered judgment of a single constitutional thinker or writer to establish such a proposition? To follow such an example, he says, would be taking steps backward. Surely if it were bad in this particular respect we should have some one, some constitutional authority, to say so! On the contrary, we have the United States Constitution, containing this grave blemish, if my hon. friend's view is correct, spoken of by Lord Rosebery as "the matchless Constitution of the United States." We have it spoken of by Freeman, to whom my hon. friend pins his faith, at page 4, in this way:

The other two—

Meaning the other two federations of Switzerland and the United States—

one of them among the least, the other among the greatest, of independent powers, still remain, exhibiting federalism in a perfect, or nearly perfect form, standing, in the old world and in the new, as living examples of the strength and the weakness of the most elaborate of political combinations.

And at page 5 he says, again—and this is the last I shall quote from Freeman; there are scores of other passages, but hon. members would not thank me for reading them now:

The Achæan League, and the United States since the adoption of the present Constitution, are indeed the most perfect developments of the federal principle which the world has ever seen. Surely, sir, that is some authority upon

which we can go. Surely that is something which we can tell the people of this country is, at any rate, a fair foundation upon which our claim may rest. Putting Mr. Freeman aside, let us take what Mr. Justice Story says—probably one of the greatest constitutional writers who ever lived in the United States or any other country, and an authority whose value will not be questioned. He says:

The structure has been erected by architects of consummate skill and fidelity. Its foundations are solid, its compartments beautiful as well as useful, its arrangements are full of wisdom and order, its defences are impregnable from without, it has been reared for immortality.

If we find a constitutional writer so full in his judgment, and in his heart, of this great federal principle which we are now to some extent following, I think we may very fairly say that it is worthy of our imitation, as far as we can possibly adopt it. But it appears to me that the greatest tribute to that constitution embodying the principle of equal representation is that, though framed for thirteen states on the Atlantic seaboard with a population of something like 3,500,000, it has been found sufficient for forty-five states, with a population of more than 70,000,000 extending from ocean to ocean. It has been found sufficient to withstand the difficulties that arise in peace, and to resist the shock of the greatest civil war which the world has ever seen. Surely that is something on which we can rely. But in addition to that, the confederate states, as was pointed out by my hon. friend, Sir John Downer, yesterday, modelled their constitution upon that of the United States as a whole, and adopted the principle of equal representation in the senate.

Mr. Wise: Every South American federation has done the same.

Mr. SYMON: Yes, as my hon. and learned friend points out, every South American federation has done the same. But, what I want to suggest for the consideration of my hon. friend and others who fairly and honestly think as he does is, that we have the seceding states adopting the same principles upon which to construct their constitution, and the non-seceding or federal states retaining their constitution unaltered, or without any attempt to alter it in this particular, although to help them to scatter all difficulties in connection with the constitu-

tion to the winds, if they had chosen, they had not only the civil power, but the power resulting from the possession of a victorious army, and the conditions which always results from a great civil convulsion. They abolished slavery, which had existed under the constitution, and, if they could abolish slavery, difficult as it undoubtedly is to abolish these great evils once they are established, they could have abolished that principle in the constitution which, it has been stated, was the cause of the civil war—the equal representation of the states in the Senate. I deny that the cause of the war was equal representation in the Senate. Mr. Freeman lays special stress upon this particular aspect when speaking of the immortal work of Washington and Hamilton. He says:

The American commonwealth, with its manifest defects—

and which human constitution is without defects?—

still remains one of the most abiding monuments of human wisdom, and it has received a tribute to its general excellence such as no other political system was ever honored with. The states which have seceded from its government, which look with the bitterest hatred on its actual administrators, have re-enacted it for themselves in all its essential provisions. Nothing but inveterate blindness of party spirit—

I do not for a moment apply this to my hon. friend—

can hinder this simple fact from stopping the mouths of cavillers. Sneers at federal systems are simply proofs of ignorance and shallowness wherever found.

That is a quotation, and I hope it will be understood that it is within quotation marks. There is this further observation I should like to make. I do not say for a moment that the vast wealth and splendid progress which we have witnessed in the United States, with its unsurpassed enjoyment of peace and freedom, is due to its constitution, or to its form of government; but with all its defects, that constitution has been no hindrance to national prosperity. Therefore, I ask you, what warrant have you for saying that even if the equal representation of the states is provided for in our constitution it will impede the government, or for one instant, delay the prosperity of the people of Australia when they are united. My hon. friend said that the provision in the United States Constitution giving equal representation of states was a compromise. I have dealt with

that statement. He also said that it was adopted with misgivings. But we were not told on whose side the misgivings were. The misgivings were on the side of the smaller states. It is an extraordinary fact, although it is true, that the states, afterwards the United States, some years after the war, were in a state of disorganisation, and, in some parts, in a condition bordering upon anarchy; and that the Philadelphia Convention and the federal constitution were really the outcome of a desire to establish some better kind of trading system. Webster says that it arose in this way: The precise object of the appointment of the conference which took place at Annapolis, at the request of Virginia, in September, 1786, was

to take into consideration the trade of the United States, to examine the relative situations and trade of the several states, and to consider how far a uniform system of commercial regulations was necessary to their common interests and permanent harmony.

Hamilton was one of the commissioners, and the conference, or commission, recommended the general convention which assembled at Philadelphia. It is no doubt true that there were disturbances in some of the states at the time; but it is not true that equal representation of the states was brought about in consequence of the enemy thundering at the gates of the United States. I ask, again, upon whose side were the misgivings? On the side of the smaller states. Let me establish that by one quotation from a letter of the great Samuel Adams, who was a representative from one of the smaller states opposed to the confederation, Massachusetts. Notwithstanding equal representation, they were afraid to join the federation. As the last speaker asked, whose fears have we to allay? Not the fears of the larger states; it is the fears of those whom we coming from the smaller states represent, the fear that they will be liable to coercion. This is what Samuel Adams wrote:

I stumble at the threshold. I meet with a national government instead of a federal union of sovereign states.

He wrote again to his friend Lee:

I have always been apprehensive that misconstructions would be given to the federal constitution, which would disappoint the views and expectations of the honest among those who acceded to it, and hazard the liberty, independence, and happiness of the people. I was

particularly afraid that, unless great care should be taken to prevent it, the constitution, in the administration of it, would gradually, but swiftly and imperceptibly, run into a consolidated government, pervading and legislating through all the states, not for federal purposes only, as it professes, but in all cases whatsoever. Such a government would soon totally annihilate the sovereignty of the several states, so necessary to the safety of a confederated commonwealth, and sink both in despotism.

That is the only evidence I have been able to find of misgivings in connection with this matter at the time of the inception of the federal constitution in America, and these misgivings were on the side of the smaller states. It has been said that the federal powers and duties are no concern of the states as states; that upon these subjects it is a unification that we desire. Instances were given. Laws affecting marriage and divorce and other subjects were mentioned. The simple answer to that contention is this: We are not committing these subjects of legislation to a national or unified government; we are committing them to a federal government. If you do not give us equal representation in the senate and a true federation, we will not commit them. If we were prepared to commit them to a unified government, there would be an end to the matter; but it is of the very essence of the system we are seeking to create, and under which we are willing to come, that we shall have equal representation in the senate. Therefore it is begging the question to say that these are matters of common concern and proper to be dealt with by the national rather than the state government. Then there is the objection as to the disparity of the populations. South Australia has over 350,000 people or thereabouts, as against New South Wales with a population of 1,300,000. What is that? It is less than one-fourth. But if you look to the other countries that are now existing under a federal system, you will find in the Swiss federation, Berne with nearly 600,000 people, thirty times the population of Zug, with equal representation, nearly forty times the population of Zurich, with about 17,000. Take the United States. In the state of New York, you have 6,000,000, and you have Nevada with 45,000, and Delaware with 150,000.

Mr. Higgins: That is what they complain of!

Mr. SYMON: I challenge my hon. friend to find one constitutional authority who condemns it. Let him find one. My hon. friend, speaking yesterday afternoon, referred in mild terms to some wretched magazine or other, in which some bitter opponent of the particular party in power, or some person who is, or was, strongly in favour of the arbitration treaty, and of course ready to condemn any one who opposed it, expressed himself. It is all very well to indulge in the loose rhetoric of political denunciation in regard to those opposed to you. We know what that means. It must be all taken with a discount. I have been unable to find—and I have devoted some research to it last night, after my hon. friend's interesting speech, which stimulated my powers of research—I have been unable, I say, to find, although I endeavoured to do so, some constitutional authority who condemned this principle of equal representation in the senate. I have been unable to find one. In regard to this very arbitration treaty, the hon. member quoted some expression about rotten boroughs and that sort of thing. But he did not say that one of the states who voted against it was the immense state of Illinois, containing the city of Chicago—one of the most populous, prosperous, and powerful states of the union.

Mr. Wise: We have no evidence whatever that that treaty ever passed the House of Representatives?

Mr. SYMON: There is not. And it must also be remembered that there is a function on the part of the Senate there which would not vest in the senate here—which is peculiar to the Senate as constituted in the United States—an executive function. Epithets such as "rotten boroughs" applied to states of smaller numbers is no argument whatever upon this question. The solution of the difficulty as to smaller states coming in at a later date is either that they should not be admitted, or that there should be a minimum of population in them upon their admission. I am not justifying that, but those are some of the possibilities. You might either not admit them until they have a minimum of population, or you might admit them on terms, if it be thought just, which, while

conserving the principle at the heart of the federal system, would also conserve the interests of those who already belong to the federation. For my part, I confess—and I was pleased to hear the remarks just made on the subject by one who has been so recently in America—I have never heard myself—and I have been in America, I have travelled through it, and I took advantage of the opportunity to communicate with men in political life—I have never heard an American express condemnation of the principle of equal representation in the Senate, or attribute to that condition of things the evils which afflict America, and which afflict other countries as well, the evils incident to particular forms of civil government. I have been informed on this point, that some of the ablest senators who have ever been members of the United States Senate, have come from the smaller states.

The Right Hon. Sir G. Turner: They would have come all the same had there been no equal representation!

Mr. SYMON: I admit that equal representation does not necessarily bring good men; but my hon. friend's argument I understood to be that equal representation had a most deteriorating influence—that you could only get the best men by proportional representation, owing to the opportunities for greater corruption in the smaller states. Perhaps my hon. friend's argument did not go to that length, but that was the tendency of it. I do not wish to dwell on the instances given in support of the opposite view—that it is of no moment that there are exceptions to the doctrine that the true principle of federation is equality. There may be exceptions; there may be departures. You may constitute the senate on any basis you please. The German federation is no example for us to imitate. All the so-called states in the Germanic federation were dependent principalities. They were not independent commonwealths, and therein lies the great difference between the two positions. When the German states federated, as one hon. member put it in an interjection, they federated at the point of the sword. Prussia was the dominant monarchy, and was able to do exactly what she pleased. She dictated the terms which she thought

proper. Perhaps they were not just to the other states; but they were convenient and safe for herself. I remember hearing of a German colonel who, having had an argument with some one, on relating the incident to a friend, said, "I felt that the man was going to convince me, and so I kicked him down stairs." That was just the case with Prussia. What would have been the fate of the minor states had they expostulated?

Mr. Higgins: She took seventeen although entitled to thirty-six!

Mr. SYMON: It is true, as my hon. friend observes, that she took seventeen members; but she might have taken seventy-seven, and the other parts of the German federation would probably have had to give way, or get nothing at all.

Mr. Higgins: According to population she was entitled to thirty-six!

Mr. SYMON. But she did not take that number. She did not join the other states according to population; but she took what she pleased. It was the length of the Chancellor's conscience which meted out that particular amount of representation, the Chancellor being, of course, Bismarck. We come now to the Canadian federation. That is no federation for us to imitate.

An Hon. Member: They have equality!

Mr. SYMON: There was a kind of equality settled between two large states, and they gave equality to a certain group of states.

An Hon. Member: There was a common interest!

Mr. SYMON: Whether that be so or not, I do not suppose my hon. friend would apply the nominee principle to the senate of this country as it has been applied to the Senate of the Dominion. My hon. friend, Mr. Carruthers, in the exordium to his speech, dealt largely with the question of manhood suffrage and equal political rights. Those are not infringed in any way whatever. This question does not touch them. He asked whether they were expected to give up that for which they had been battling for years? "Never!" said he. "Are we to throw open the ports of this colony to influences degrading to our manhood and womanhood?" Who is asking you to do anything of the kind? That kind of

argument is all very well, but it really has no more relation to the subject with which we are dealing than Tenterden steeple has to do with the Goodwin Sands. My hon. friend then asked some questions. He asked the supporters of equal representation, "Why desire this particular representation?" Now, I do not share my hon. friend's objection to precedent. I like to dig up precedent. My own vocabulary is poor —

Hon. Member: Oh, oh!

The Hon. J. H. Carruthers: I do not like graveyards myself!

Mr. SYMON: I am not about to give the hon. member a musty precedent; it is quite a recent one—as recent as February of this year. I must say I have found it to be an authority most apt in expression, luminous in idea and succinct in its application. I do not use it for any controversial or polemic purpose, but merely to illustrate the argument I am addressing to hon. members, in order to answer my hon. friend's question much better than I could answer it myself.

The Right Hon. G. H. Reid: Is it Freeman?

Mr. SYMON: No, it is not Freeman. Freeman was a historian, but the quotation I am going to make is from one who is an orator as well as a historian. He says:

Great confusion existed in the matter of the treatment by candidates of the senate and state rights, and he preferred to deal with them as two distinct matters, namely—the rights of the states in the senate, and state rights versus the federal powers.

Now that is a very excellent way of dealing with the subject, and I say amen to it.

He was entirely in favor of equal representation of the states in the senate, and by popular election.

That is what we have got in the bill.

His reason for conceding this —

and this is the answer to the question—

was that at present each state had an equal voice in matters of federal concern—such as defence, tariff, posts and telegraphs, &c.; and they were only granting a continuance of power now existing by giving them an equal voice in the senate.

Now, I assent to that. I submit that answers the question which was put.

Hon. Members: Author! Author!

Mr. SYMON: My hon. friends are a little impatient. I submit that that is a

complete answer to my hon. friend's question. The speaker then goes on to state most admirably the other view which we from the smaller states urge with all humility.

The alternative to granting this power would, he was convinced, mean that the smaller or less populous states, would refuse to federate, and by so doing they would keep that very power which some might protest against but not destroy. That is an excellent statement, and I owe

my hon. friend, Mr. Carruthers, a debt of gratitude for it. He is the author, and in that declaration he has conclusively answered his own question. I know that my hon. friend who delivered himself yesterday of a powerful speech on this subject will say, because the view of course has been indicated this morning, that there should be some treatment in connection with deadlocks. That is a matter with which, no doubt, we shall have to deal before this Convention is very much older; but the question of equal representation in the senate is one thing, while the treatment of possible deadlocks is quite a different one. I am not going to deal with the deadlock question now; but I only add this in one word before closing, that the senate has also to fulfil the functions of an upper house. That I also commend to the people of New South Wales and Victoria, who may properly and naturally take the view if they choose of the hon. members who have addressed us, that this is an upper house in a sense. It is also to be a check, as all upper houses are, upon the representative chamber.

The Hon. S. Fraser: They are both representative!

Mr. Higgins: That is why all the tories go in for it!

Another Hon. Member: —

Mr. SYMON: If I thought that the use of the expression "upper house" was going to cause such a subdued disturbance, I would not have employed it. I would have called it the second chamber. But, at any rate, if it is to be a second chamber in any sense of the term at all, one would think—and I merely offer this as a suggestion—there ought to be some different character about it in some way or other so as to differentiate it from the other chamber, otherwise what on earth is the good of having it?

Mr. Higgins: Just so; what is the good?

Mr. SYMON: There is the advocate again of absorption.

Mr. Higgins: The hon. and learned gentleman is using the most dangerous argument, one which will be used against his view!

Mr. SYMON: I always like my hon. friend to point out my danger; but, as I am reminded from my right, a different character is given to it, because it is representative of state interests; that is the reason for it.

An Hon. Member: —————

Mr. SYMON: Yes, it must exercise a revising function, and it is only because of that revising function that there seems to be an argument, and, I admit, a fairly strong argument, in support of something in the nature of a dissolution under certain conditions. I say nothing further about that now; but, at any rate, it is representative of state interests. It is the outward and visible sign of the autonomy of the states; that is what we are going to have unless this Convention breaks up federation by refusing to give it to us. Then it has been purged of every possible source of objection which exists to the senate of the United States. I believe, and I say this advisedly, that the bill, as it left the Adelaide Convention—there are matters which may have to be modified—but as it left the Adelaide Convention, the bill was the finest and most democratic instrument of federal government ever framed. We have taken from the senate their executive powers, their powers of dealing with treaties, and appointment to offices. All that I agree with. We have taken from them the power of dealing with money bills, and possibly this Convention may reaffirm its decision. When the time comes I shall intimate my own view, and I may, at any rate, say this much, that my view has undergone some change since the last convention, as to amending money bills. But we have also taken from it its voice in the choice of ministers which exists in Switzerland, and we have given to it that broadest of all, and best of all foundations, direct popular election. We must also remember that the senators are to vote in-

dividually and not as states. I think that is an immense safeguard. The six men who come from each state will exercise their individual judgment just as we in this Convention are exercising our individual judgment. I do not believe for one moment, I have not the least apprehension that there will be a combination of block votes of certain states against certain other states in this senate which we are about to create. I cannot conceive of matters which would bring that about. Slavery in the United States of America was a totally different thing; happily we are free from a bondage of that description.

Mr. Trenwith: Not quite!

Mr. SYMON: I do not want to go into another matter of that kind. I may entertain views which may or may not agree with those of my hon. friend, but I do not want to go into what is a debatable subject, as to the labour conditions in this country at the present moment. But at any rate never we hope, never we believe, never as long as we have life and breath to keep it out shall we admit anything into these free countries at all resembling the condition of African bondage in the states of America.

The Hon. S. Fraser: They will have to go to their constituencies every three years!

Mr. SYMON: What are we offered instead of it? We are offered proportional representation. I venture to say that that gives away the whole position. It is a bastard and alien method of dealing with this subject. It must be either equal representation or representation as in the lower house according to population in its widest sense. I admit with my hon. friend, Mr. Carruthers, that we must talk, no matter what the provocation may be, with calmness and moderation with regard to the debates in the legislatures all of which we most highly esteem. There have been expressions which were not very kind towards us from the small colonies. We have been told in some of these whirlwinds of rhetoric that we were deserts seeking to be represented and not human beings. All I can say is that South Australia occupies as good a position as does this state. She is proud of it. She has done

great public services. She has prosecuted gigantic national works out of her own pocket and at her own risk and responsibility, and if there is any colony which deserves to rank with the foremost states of this continent it is the colony from which we come. I have no indignation to express about it, but I think it is a pity that sneers are uttered against these smaller colonies, and when we are told that they do not represent individuals, and that the only centres of life and action in this country are Sydney and Melbourne ———

Mr. Higgins: Who said that?

The Hon. I. A. Isaacs: No one has said that!

Mr. Higgins: Who has sneered at the representatives from the smaller colonies, or said anything like that?

Mr. SYMON: Does my hon. friend put that to me as though I were making the statement without authority? Shall I quote my authority?

Mr. Higgins: It is a most unfriendly statement to say that any member of the Convention has sneered at South Australia!

Mr. SYMON: Really my hon. friend does not give that attention which he usually bestows on matters of this kind.

The Right Hon. Sir G. Turner: It is as well to clear up the misapprehension now it has arisen and to say where it was said.

Mr. SYMON: I do not think there is any misapprehension, if I may say so.

The Right Hon. Sir G. Turner: I think my hon. and learned friend's words were that he was referring to a statement made in this Convention!

Mr. SYMON: If my right hon. friend says that he was under that impression I will accept it at once. I did not think they were capable of that construction. They were not intended to have it; but if any member of the Convention thinks that my language was capable of the construction which is suggested, then I at once correct it as I have done. I was not referring to any member of the Convention, I was referring to a statement made ———

The Right Hon. Sir G. Turner: Outside the Convention?

Mr. SYMON: I was referring to a statement made elsewhere, and only because of the appeal which my hon. friend, Mr. Carruthers, very properly addressed to us, to speak with calmness and moderation, notwithstanding the provocation to which we might have been subjected by members of houses of legislature when dealing with this question. I am quite willing to be to their faults a little blind, and to their virtues very kind. Therefore, I merely indicate the unhappy line which was taken in some places, and I should be sorry, even in order to clear up a misapprehension, to mention any name.

The Hon. J. H. Howe: That is carrying out the scriptural injunction!

The Hon. A. Deakin: What does the hon. member know about scriptural injunctions?

Mr. SYMON: We always turn the other cheek.

An Hon. Member: Too much cheek!

Mr. SYMON: My hon. friend knows best whether he has too much cheek. Is it that you in New South Wales want the federal capital to be in Sydney—is that what is the matter? I have heard it said—it has been said to myself, "Give us the federal capital, and I will go for federation."

The Chairman: Does the hon. and learned member think that this has anything to do with the question of equal representation in the senate?

Mr. SYMON: I think so, sir; but if you, in that kindly way of asking me the question, really answer it yourself by putting it, I will not deal with the question of the federal capital, except to say this: that I do not wonder at it. I consider that Sydney—if my hon. friends opposite will not jump down my throat—is the metropolis of Australia.

The Right Hon. Sir G. Turner: After Melbourne.

Mr. SYMON: But it does not follow that it ought to be the federal capital. As far as I am concerned, though I hope this will not be considered final, I should be perfectly willing to have federation with the capital in Sydney, if we could not get it without.

An Hon. Member: ———

Mr. SYMON: It is a delightful place; but I do not deal with that aspect of it. All I venture to say is that I hope that the motives underlying the opposition to the contention that there ought not to be equal representation in the senate, are founded upon such grounds as were stated yesterday, which are really matters to be fully dealt with, as I am endeavouring to deal with them, and not upon indirect reasons. I thank hon. members for the attention they have so kindly given to me. I am sorry that I have trespassed so much on the time of the Convention ———

Hon. Members: No, No!

Mr. SYMON: But I have sought, and I hope my hon. friend, Mr. Higgins, will believe me when I say that I have sought to meet the challenge which he naturally and properly directed to those coming specially from the smaller states.

Mr. Higgins: It is the first real attempt to meet the challenge!

Mr. SYMON: I accept that as a compliment, at any rate, to my intention, whatever may be the success of my effort.

The Hon. E. Barton: I have spent seven or eight years in meeting it in New South Wales, and if that is not complimentary enough to my hon. friend it ought to be!

The Right Hon. Sir G. Turner: No wonder my hon. and learned friend is grey-headed.

Mr. SYMON: Possibly I may not be able to convince my hon. friend; at any rate, I have sought, as far as I could, to do so. My hon. friend, Mr. Carruthers, assures us, and asks us to accept the assurance, that his desire is for federation. Let me assure him that I have only one

political aspiration, and that is for the union of these great colonies of Australia. When the day of its accomplishment comes, I confess I shall walk with a prouder step on the soil which I love. To help to bring about that consummation, I shall concede much; I shall give way upon everything down to the bare essentials of our freedom and existence as a separate state, to which I humbly venture to think that equal representation is an essential. I ask my hon. friend, to register a like resolve, and I believe he will. As his heart is in the cause, let him remember that any serious check to this movement now must be fraught with the very gravest disaster. Every year, I feel, will put us further apart. Generations may come and go before we shall be so near to union as we are now. By that time the years will have told their customary tale upon most of us. The marks which are made by the "slings and arrows of outrageous fortune" may have deepened into fatal wounds. If we are still here, our eyes and our energies may be dim. But the cause will not die. It will live, and it will be accomplished. Others will come after us greater than we—as these colonies must inevitably be greater than they are now—perhaps wiser than we, possibly more earnest, and to them will belong the glory and the triumph. But, for myself, I would anticipate that triumph. Let us share the glory of what I conceive to be a godlike task. If we, assembled in this Convention, do our part I have no fear whatever, in spite of all apprehensions, that the people will do theirs. If we say "aye" the voice of the people will respond with a grand "amen" that will roll round the world, and so swiftly and surely will the harvest be reaped and the fruits gathered that the oldest man among us shall see it and rejoice.