

## **The Art of Consensus: Edmund Barton and the 1897 Federal Convention\***

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Edmund Barton first entered my life at the Port Hotel, Derby on the evening of Saturday, 13 September 1952. As a very young postgraduate I was spending three months in the Kimberley district of Western Australia researching the history of the pastoral industry. Being at a loose end that evening I went to the bar to see if I could find some old-timer with an interesting store of yarns. I soon found my old-timer. He was a leathery, weather-beaten station cook, seventy-three years of age; Russel Ward would have been proud of him. I sipped my beer, and he drained his creme-de-menthe from five-ounce glasses, and presently he said: 'Do you know what was the greatest moment of my life?' 'No', I said, 'but I'd like to hear'; I expected to hear some epic of droving, or possibly an anecdote of Gallipoli or the Somme. But he answered: 'When I was eighteen years old I was kitchen-boy at Petty's Hotel in Sydney when the federal convention was on. And every evening Edmund Barton would bring some of the delegates around to have dinner and talk about things. I seen them all: Deakin, Reid, Forrest, I seen them all. But the prince of them all was Edmund Barton.' It struck me then as remarkable that such an archetypal bushie, should be so admiring of an essentially urban, middle-class lawyer such as Barton. I resolved that one day I would find out more, and that is an important reason for me to be writing Barton's biography many years later.

Not many Australians share my curiosity about Barton. Asked to nominate a hero of federation, most people would identify Alfred Deakin, and perhaps Kingston or Forrest if they live in the appropriate state, and then lapse into silence. A schoolteacher friend of mine twenty years ago tried the experiment of asking a class of Year 11 students to name the first president of the United States and the first prime minister of Australia. Most had heard of George Washington, none of Edmund Barton. He repeated the experiment in 1995, and was able to report a different outcome. Hardly anyone knew about Washington either.

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Now this contrasts with the prominence given to Washington in the United States, or Nehru in India, or even Sir John A. Macdonald in Canada, and it invites the question: was Barton really important? Hailed in his lifetime as 'Australia's noblest son', and cut down to size by John Norton in *Truth* as 'Tosspot Toby', Barton remains an ambiguous figure, partly because nearly all his surviving portraits show him in the public persona of an Edwardian statesman. In historical memory he lacks the picturesque flourishes of a Reid or a Kingston, and shows no signs of being troubled, as Alfred Deakin was, by a deep and complex spiritual life. Could it be that he was an affable, easy-going Sydney lawyer on whom more active and thus more controversial figures could agree as a figurehead, behind whom more purposeful statesmen such as Deakin and Forrest could devise and execute policy? To ask such a question is to enter the debate about the value and importance of biography. Most of us would agree with Berthold Brecht that 'Happy is the land that has no need of heroes', and it is certainly not my purpose to resurrect Barton as a Great Man in History. Barton suffers the disadvantages of having been an unashamedly Anglophile, white middle-class overweight male, and it is against the fashion to argue that such characters have anything to say to modern Australia. Yet he and his contemporaries achieved what most would agree was the constructive feat of knitting the six Australian colonies into a single political unit; and at the other end of the 20th century, contemplating the ease and speed with which divisions grow up in a community, the achievement of federation looks increasingly like a minor miracle. It is worth exploring the generation who worked this miracle and the individual whose leadership was acknowledged.

As yet the only full-length biography of Barton is nearly half-a-century old. Published in 1948 by John Reynolds, it has the advantage of access to sources who knew Barton personally, including Sir Robert Garran; but not all the members of Barton's family co-operated with the project, and many sources unavailable to Reynolds have since become accessible. Reynolds presented a favourable portrait of Barton, but depicted his performance as leader of the federal movement as sustaining a higher quality than the rest of his career. This sense of a quantum leap induced by the challenge of the federal movement is endorsed by Martha Rutledge in her admirable article in the *Australian Dictionary of Biography*, and by John La Nauze. It's an interpretation which goes back to Sir Robert Garran, who in old age wrote of Barton as '... a field kept fallow for a particular harvest ... he was set aside, dedicated for a special task. He devoted to that task all his pent-up energies; he completed it. What more can we ask of any man?'<sup>1</sup>

I would not seriously challenge this view. Yet it is difficult to leave it there, and the more closely one inspects Barton's career the more difficult it becomes to give a completely satisfactory explanation of this sudden lift in performance. What follows is accordingly to be taken as something of a work in progress report. In the completed biography I may possibly change my mind.

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<sup>1</sup> Sir Robert Garran to John Reynolds, 4 November 1940, Garran papers, MS2001/5/125, National Library of Australia.

## THE CONVENTION COLOSSUS

(*“Mr Barton is not only leader of the Convention—he IS the Convention.”*)

*ISAACS (sadly)—*

“Why, man, he doth bestride the narrow world  
Like a Colossus; and we petty men

Walk under his huge legs, and peep about  
To find ourselves of no account at all.”

*—Shakespeare Revised*

*Melbourne Punch*, 8 April 1897, p. 271

Let us recollect the outlines of Barton’s career. He was born at Glebe on 18 January 1849, the son of Sydney’s first stockbroker and a mother who juggled a career as a schoolteacher with the rearing of eleven children. A brilliant student at the Sydney Grammar School and the University of Sydney, he graduated MA in 1870, qualified as a lawyer, married in 1877, and in 1879 was elected to the New South Wales parliament. He served in the legislature until 1894, and again from 1897 to 1900, representing several constituencies in the Legislative

Assembly as well as two spells of nomination to the Upper House. Originally a Free Trader, he was Speaker from 1883 to 1887, shifted to the emerging Protectionist Party, and served two terms as attorney-general under (Sir) George Dibbs, once for a few weeks in 1889 and again from 1891 to 1893. He was acting premier for four months in 1892, and earned the mistrust of the labour movement for his handling of the Broken Hill strike. By this time he was becoming identified with the federal movement, but there was an element of luck in this, according to the conventional account. Elected a New South Wales delegate to the 1891 federal convention as one of the few sufficiently youthful lawyers in the Legislative Council, Barton was included at the last minute in the crucial drafting committee which during the Easter weekend fashioned the essentials of the federal constitution on Sir Samuel Griffith's steam-yacht, the *Lucinda*. He replaced Andrew Inglis Clark, laid low with an untimely influenza. A few months after Barton's good work on this committee there followed the famous episode when the weary Titan, Sir Henry Parkes, solemnly informed Barton that he must take up the leadership of the federal movement. To a generation familiar with the Old Testament, and no doubt to Sir Henry himself, there was more than an echo of the aged Moses, within sight of the Promised Land which he was not destined to enter, anointing the vigorous young Joshua as his successor; although, unlike Moses, Sir Henry later had undignified second thoughts. Thus fortified, Barton devoted himself to the cause, formed the Federal League in 1893, and by the beginning of 1897 was so widely perceived in the public mind as the apostle of federation that he handsomely topped the poll at the election to choose New South Wales delegates to the second federal convention.

Of course it wasn't as simple as that. Barton's family background, his education, his political career, even his recreations all shaped his particular talents not as an originator of policy initiatives, but as a superbly skilful mediator, able through temperament and experience to maximise consensus, to broker agreement, to reconcile conflicting opinions into a workable basis for the future. This mediating role was essential in steering the 1897–98 convention to a successful outcome, and it was once again essential in 1901 when a stable ministry was needed to launch the Commonwealth government. Rather than follow La Nauze, and Quick and Garran before him, in tracing the debates over the clauses of the constitution, I shall indulge in the biographer's privilege of exploring the influences which moulded Barton.

Let us begin with his family. His father William Barton—'the Governor' as Edmund called him—was fifty-three when Edmund was born. Emigrating to New South Wales as the newly-wed secretary of the Australian Agricultural Company in 1827, he soon quarrelled with his employers and spent the rest of his life in Sydney in a series of optimistic commercial and mining speculations, surviving one bankruptcy, never quite ruined and never prosperous. Mr Micawber comes irresistibly to mind, for William Barton shared some of Micawber's edgy gentility, as well as that air of being a Georgian survivor in an early Victorian ambience. Thirteen years younger, Mary Louisa Barton was a well educated woman not easily overwhelmed by her prolific domesticity; many years later hers was remembered as 'one of the most cultivated households in Sydney'.<sup>2</sup> Edmund was the youngest of four sons and seven daughters, a position which in itself must have been a schooling in diplomacy. Charm would have come easily to an intelligent little boy with several elder sisters. Perhaps also it was as the youngest in a large family that he developed that enthusiasm for his food and drink which was to be the most conspicuous weakness of the adult Edmund Barton. The family imprint also revealed itself in Edmund Barton's brand of nationalism. Unlike his father, who took

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<sup>2</sup> *Bulletin* (Sydney), 2 December 1882.

many years to accept that he would never return to England, Edmund Barton had not the slightest doubt of himself as Australian. Australia was his native environment, Sydney Harbour was his playground. As a young politician he laid emphasis while campaigning on his Australian credentials. But his ageing English father was always to be shown deference and respect, even though in practical matters he need not be taken too seriously. Here was foreshadowed the adult Edmund Barton's combination of rhetorical deference to the British connection with a tenacious but politely expressed insistence on Australia's separate interests.

At the University of Sydney the major intellectual influence on Barton was the classicist, Professor Charles Badham. Badham was an authority of international standing on Plato and Aristotle, the founders of European political thought. His particular strength was textual criticism, that searching analysis of nuances of language which has so much in common with the techniques of judicial interpretation and the drafting of laws and constitutions. Beyond his native Australia Edmund Barton carried with him for the rest of his life the resonances of Greek and Roman civilisation, just as a hundred years earlier the Virginians and New Englanders who framed the American constitution came to their task with a self-conscious awareness of classical precedent. Because of their tertiary education Barton and others of his generation such as Griffith and Deakin were enabled to act as Australians without becoming in any sense provincial.

To judge by the diary which he kept intermittently during 1869 and 1870, the twenty-year-old Barton, while an able and very successful student, gave much attention to his outdoor activities; fishing—one of his regular companions was George Reid—rowing, and above all cricket. Cricket had a profound effect on his life, for it was on a visit by the Sydney University team to Newcastle that in April 1870 he met Jeanie Ross and immediately fell in love with her, although it was to be seven years before they could afford to marry. It was also as a member of the cricket team that he made his first journey outside New South Wales, a match with Melbourne University which led the *Argus* to comment prophetically that such sporting events must in time lead to closer links between the Australian colonies. Barton must have read this editorial. Although only a moderately useful middle-order batsman and a poor fielder, Barton was a devoted official of the cricket club. In 1876 when the graduates of Sydney University received the right of electing their own member of the Legislative Assembly, the younger generation objected to William Windeyer's assumption that he would be their representative, and the stalwarts of the cricket club led the push to nominate a candidate in opposition, Barton was their immediate choice. He polled 43 votes to 49 for Windeyer. It was a respectable debut, and cricket soon brought him further into the public eye. For in February 1879 he was one of the umpires when a visiting team of Gentlemen of England, captained by Lord Harris, played a notable match against New South Wales. At a critical point in the second innings Murdoch, the star New South Wales batsman, was declared run out by the other umpire, an inexperienced Victorian. A spectacular riot ensued. The New South Wales eleven refused to play while the offending umpire remained, and it took all Barton's diplomacy to persuade them that they might forfeit the match if they did not resume play; but the crowd took possession of the pitch, and the game had to be abandoned for the day. A few months later Windeyer was appointed to the Supreme Court. Barton again stood for the University seat, and this time secured an easy victory.

Although Barton did not take a very prominent part in parliamentary debate, within little more than three years he was Speaker at the unprecedentedly early age of thirty-four. For this he had to thank his streetwise friend and political ally George Reid. At a general election late

in 1882 Sir Henry Parkes, having been premier for over four years, lost ground. He resigned just before parliament resumed in January 1883 in the expectation that the opposition would not be coherent enough to form a new ministry. It was Reid who, overriding more cautious seniors, saw that the election of the Speaker provided an early opportunity for mobilising the Opposition. Within a few hours one morning Barton found himself nominated and elected by a four-vote margin over the incumbent, Sir George Wigram Allen. The *Bulletin* acclaimed his election as the first triumph of Young Australia coming forward to take the political helm. In a period of shifting political alignments the Legislative Assembly was going through one of its more turbulent phases, and required a vigorous presiding officer with skills honed in the management of Sydney sporting crowds. Barton was widely praised as a successful and impartial Speaker, mindful of the interests of the parliamentary staff. Again he was the umpire, the mediator. Eventually after a 56-hour sitting in 1886 he managed to antagonise Parkes, and resigned as Speaker when Parkes returned to office in January 1887. The strain of the position was affecting Barton's health, and Parkes in the event at once nominated him to the Legislative Council, and offered him a place in his cabinet, which Barton refused.

One aspect of Barton's speakership provokes speculation. Adolphus George Taylor, the rowdy, alcoholic, but well informed young member for Mudgee was, out of a wide field, probably the major trouble-maker in the Assembly. Barton, relying on standing orders inherited from his predecessor, suspended Taylor for a week; Taylor successfully challenged the ruling in the Supreme Court, then when the New South Wales government laid an appeal with the Privy Council Taylor travelled to London to argue the case himself, accompanied by his wife and mother-in-law and financing the journey by the sale of his stamp collection. Although an unknown colonial less than thirty years of age, Taylor was congratulated by the law lords for his presentation and the Privy Council upheld his complaint—whereupon Taylor declined to seek damages, as these would eventually have to be met by the taxpayer. This must have cooled Barton's respect for the Privy Council as a court of appeal, and a second case would have reinforced this coolness. When old William Barton died in 1881 it was found that some years earlier he had made over a large area of suburban land to the Bank of New South Wales in recognition of a debt. It was unclear whether he had transferred the land to the bank or merely lodged it as security, and in the meantime the land was increasing rapidly in value. Edmund as the legally qualified member of the family brought the matter to court, and a New South Wales judge found in the family's favour. Subsequently, however, the Supreme Court reversed the decision in favour of the bank, citing as its grounds a recent decision by the Privy Council; and when the family appealed to the Privy Council their plea was rejected without even a hearing. It should have come as no surprise that when the Commonwealth of Australia Act was before the British parliament in 1900 Barton was among the most determined opponents of appeals to the Privy Council.

Even by the undemanding standards of the Legislative Council Barton was a fairly inactive member between 1887 and 1890. Critics were already beginning to say that he was lazy. The truth seems to be a little more complex. Garran put it charitably but fairly: 'Barton's indolence was a disinclination to exert himself over things which did not inspire him with a passionate interest. It was coupled with a capacity for intense concentration upon things which did so inspire him':<sup>3</sup> in other words, a good sense of priorities. As early as 1876, during his first parliamentary campaign, Barton had to refute charges of indolence, which he indignantly denied. He was not a frequent debater during his early years in parliament, but

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<sup>3</sup> Garran to Reynolds, op. cit.

once Speaker, showed himself diligent and well prepared. After he resigned as Speaker he moved his growing family from Macquarie Street to an idyllic but relatively inaccessible address on a hillside west of Manly. He seems to have given priority to his family, to his practice, and increasingly to evenings at the Athenaeum Club. The company at the Club was agreeably civilised, and its visitors in those years included Mark Twain, Robert Louis Stevenson, and Rudyard Kipling; but it would seem that Barton spent more time in its dining-room than was good for him. The rowing man's stomach muscles turned to overweight. From the trim sixty kilograms of his student days he was now not far short of double that weight. As he was tall and his hair was prematurely grey, this portliness did not look undistinguished, but it could easily be seen as an index of easy living. Despite his devotion to the Club, all the evidence suggests that he was also remembered as a good family man. Something had to give, and it seems to have been his political activity. It would require a new challenge to galvanise his interest.

That interest was stimulated by the federal movement, but it is surprisingly hard to trace the evolution of Barton's commitment. He sat in on several of the meetings of the Sydney conference in December 1883 which decided on the creation of a Federal Council, but when the New South Wales Legislative Assembly rejected the scheme in August 1884 by one vote, Barton's opinion went unrecorded because he was in the Speaker's chair. However while campaigning in the 1885 elections he criticised the Federal Council as inadequate. So far I have found no sign of zeal for the federal cause during the next few years, but he must have been known as a sympathiser because early in 1889 Andrew Inglis Clark wrote to him from Tasmania, apparently out of the blue, discussing ways of revitalising the federal cause. When Parkes made his Tenterfield speech in October 1889, Barton was among the first to congratulate him, and there followed at least two meetings in which Parkes confided to Barton his hopes of achieving federation within the next few years, with Barton as ally, although they were by now on opposite sides in politics. After the 1891 federal convention, Parkes failed to secure the necessary resolutions of support from the New South Wales legislature before his fall later in 1891. Barton became attorney-general in the Dibbs protectionist ministry, with a free hand to promote federation despite his premier's doubts about the plan. But by the autumn of 1893 little had been achieved, and the onset of a major banking crisis confronted the governments of eastern Australia with problems more urgent than federation.

The next few years represent a critical period in Barton's life, and one which I have not yet succeeded in unravelling entirely to my satisfaction. It appears that he suffered through the financial crisis. After a period of relatively stable affluence between 1886 and 1892 his resources suddenly became more straitened for reasons not yet ascertained. Many years later, in making a will and setting a sum aside to provide his widow with an annual income, he stipulated that none of the money should be invested in mining shares, which suggests that he burned his fingers badly during the 1890s. His family had to move from their North Shore home and settled at Randwick. Financial need probably explains his rather inept decision to retain, while in the Dibbs ministry, a brief from a firm of contractors in a lawsuit against the railway commissioners. Acceptance of this brief could be attacked as incompatible with his duty as attorney-general and counsel for government instrumentalities. It was in vain that he argued that in eighteen months as attorney-general he had taken no new private practice, although entitled to do so. In December 1893 he and his friend and colleague Richard O'Connor, who was also involved, had to resign office after the Dibbs government was defeated on a motion censuring this conflict of interest. He returned to private practice but the

briefs came slowly. At the 1894 general election he stood for the Legislative Assembly seat of Randwick and lost, so that for the next three years he had not even his parliamentary salary. For a period in 1895 the family had to move to a terrace house in working-class Newtown. Barton still kept up appearances, installing a telephone in his office and retaining his membership of the Athenaeum Club, but it is from this period that the stories come of unpaid tradesmen and desperate financial expedients. A.G. Stephens in 1896 recorded a story of Henry Lawson entering the Athenaeum to seek subscribers for his latest book of verse. Barton promised ten pounds; but when he and Lawson had departed, George Robertson the publisher snorted that Barton was so deep in debt it had taken him two years to settle a bookseller's bill for three shillings and sixpence. Barton managed to avoid bankruptcy, but a man about whom such tales were rife must have seemed an unlikely leader for a great national movement.

In mid-1893 also Barton's health collapsed. Dibbs, with rough candour, attributed the breakdown to too much attention to his knife and fork and the good things which went with them. Yet it was in June 1893 that Barton at last moved on launching the Federal League, a body designed to muster public support for a cause which the politicians were laggardly in promoting. He may have been prompted by the realisation that the Australian Natives Association in Victoria, stirred by among others Dr John Quick, were turning in the direction of a popular movement, but he knew himself incapable of stumping the country in support of the cause, and his timing remains problematic. Jealousy prevented Parkes from participating, and the first meeting in Sydney was almost taken over by radical republicans, but by July 1893 the Federal League was launched. Shortly afterwards, Barton departed on his first overseas voyage, a sea trip to Canada ostensibly on official business, but in reality to recruit his health. He returned in September but missed the Corowa conference, which urged the election of delegates to a second federal convention, where the draft constitution might be reviewed before submission to referenda in each colony. Possibly the formation of the Federal League helped to strengthen the New South Wales presence there. But I have found little reason to challenge D.I. Wright's finding that the Federal League in its early years was an ineffectual body, and Barton's resignation of office at the end of 1893, and subsequent parliamentary defeat, left him without a power base in active politics. Presumably because of his straitened means he did not stand at the 1895 general elections, but, once more reconciled with Parkes, supported the veteran in his ill-fated challenge for George Reid's constituency. This was an ill-judged gesture suggesting a certain desperation on Barton's part, for Parkes was a broken reed. The last episode in their relationship followed a few months later, when Parkes authorised Barton to deny that he was intending to marry a third wife, only to take to his octogenarian bosom a twenty-three-year-old bride.

So at the end of 1895 it must have seemed that Barton's star was in the eclipse. A failure in politics, financially in deep water, vulnerable to gossip, and presumably under some domestic strain, he was no longer a figure of promise. And yet in little more than twelve months he was to be returned in triumph at the top of the poll for the New South Wales delegates to the second federal convention. He was unanimously to be chosen leader of that convention, and used that opportunity admirably. What came right for him?

One part of the answer lies in the magnanimity of George Reid. Although since 1889 Reid and Barton had been on opposite sides in politics and had assailed each other at the hustings with considerable robustness, they had known each other for many years, and their long-term goals on the federation issue were closer than appeared on the surface. At the premiers' conference of January 1895 Reid committed New South Wales to the Corowa formula. He also extended patronage to Barton which must have been financially sustaining, appointing



him an acting judge for a few months in 1895, and finding him a long-running secondment as arbitrator in the McSharry case, a complex affair involving railway contracts and returning a stipend of twenty-five pounds a day. It was tedious work, but it probably explains how the Bartons were able to move from their Newtown terrace house to a spacious residence in Kirribilli.

It is as yet less easy to trace how it was that in those years Barton built up a national reputation as the indispensable advocate of federation. Whereas in 1894 the *Bulletin* was caricaturing his apathy in the cause, by the end of 1896, after the Bathurst conference, it was taken for granted that Barton would be one of the ten delegates from New South Wales, and he received about 10 000 votes more than the next candidate, Reid. Nor was his recognition confined to New South Wales. On the other side of the continent the *West Australian* reminded its readers that ‘Mr BARTON has been for many years among the most trusted and popular politicians in the mother colony ... is noted for the moderation of his views and the conciliatory policy in which those views are embodied, and above all is one of the leading exponents and advocates of the federation cause.’ In the hot and dusty goldfields of the interior the *Murchison Times* wrote: ‘It is a distinct tribute to sterling worth and ability that “Toby” Barton should have received nearly 10 000 votes more than any other candidate.’ He had become a national figure. Probably it was a blessing in disguise that he had been out of office for the preceding three years. Of all the colonies it was New South Wales, even more than Western Australia or Queensland, which had potentially most to lose by entering a federation. It was not just that it was the only free-trade colony among protectionist neighbours, so that as George Reid put it, federation would be like one sober character setting up house with five drunkards. New South Wales had been less hard hit by economic recession than Victoria, Tasmania, or South Australia, and felt the need to enter a common market less urgently. But it also fell to Reid to undertake the often devious practical negotiations required to keep the federation idea alive and practicable, so that in time he was to be known to posterity as ‘Yes-No’ Reid. Freed of these responsibilities, Barton could concentrate on the big picture, and could win recognition as the consistent advocate of the cause.

His pre-eminence at the 1897 convention was also helped because, more by accident than design, he was the sole survivor of the original group involved in drafting the 1891 constitution. Andrew Inglis Clark, possibly more than any other individual its original draftsman, for reasons never adequately explained, declined to nominate for the 1897 convention and instead took his family off for a trip to the United States. Sir Samuel Griffith, having eased himself into the post of chief justice of Queensland with an increased salary, had debarred himself from the political process. Throughout the 1897 convention he sat impatiently on the sidelines, willingly responding to every request for advice or information. Kingston, the other senior member of the *Lucinda* drafting party, realised that as the very active premier of South Australia he could not be seen as possessing the necessary impartiality to lead the convention, and consistently supported Barton’s claims. Of the more marginal participants in the 1891 drafting process, Sir Henry Wrixon of Victoria failed to secure election to the 1897 convention and Andrew Thynne of Queensland missed out because in twelve months of debate the Queensland parliament failed to agree on a method of selecting delegates, and thus took no part in the proceedings. This left Barton as clearly the most senior and experienced appointee to chair the drafting committee for 1897, and Barton chose as his two colleagues his staunch ally Richard O’Connor and Sir John Downer of South Australia, in whose North Adelaide residence most of the work of revision was accomplished. There was also little resistance to Barton’s appointment as leader of the convention with

responsibility for the management of day-to-day business. After Barton's death in 1920 a story was published claiming that George Reid wanted the position as premier of the senior colony, but this was sharply refuted by Sir Josiah Symon and there seems to be no evidence whatever to support the story.

My audience will be relieved to know that I do not propose to traverse the detailed process by which, during three sessions over the ensuing twelve months, Barton shepherded clause after clause of the draft constitution past the fifty delegates of the convention until, by the end of the Melbourne sitting in early 1898, the completed work was ready for presentation to the voters of the six Australian colonies. John La Nauze has already told that story.<sup>4</sup> It is, however, worth dwelling on one or two features of his performance. La Nauze argues convincingly that the critical moment of the convention came at its first session in Adelaide, when Sir John Forrest of Western Australia led a push to overturn the compromise reached in 1891, limiting the power of the Senate to amend financial bills passed by the House of Representatives. With Queensland absent, it seemed that Western Australia, South Australia, and Tasmania would have the numbers to gang up on New South Wales and Victoria to force through a formula which might irretrievably frighten the taxpayers of the two south-eastern colonies, and thus scuttle federation. When it seemed that the vote might be put late one evening, Barton reminded the convention that as its leader he should close the debate, but was unable to speak because of a bad cold; could the vote be adjourned until the following day? This 'providential catarrh' as Quick and Garran termed it, provided a breathing-space overnight during which enough delegates could be worked on to ensure the rejection of Forrest's motion by the narrowest of margins. Barton's reputation as a canny tactician was enhanced by this episode.

For the most part Barton's contribution lay in the unglamorous, often subtle, sometimes petty business of securing the maximum of agreement on the text of the constitution. His approach to the task blended the alert sense of textual precision instilled by Professor Badham's classical education with the skills of the umpire and the mediator in reconciling divergent viewpoints and persuading colleagues to accept modifications in their concepts of the acceptable. Sometimes this process led him to impatience with fine and perceptive intellects such as Isaac Isaacs. Sometimes it resulted in oversimplifications, which have since proved troublesome, such as the notorious Section 92. And by its deliberate avoidance of rhetoric, the constitution remains open to the charge that it is disappointingly short of those fine statements of principle which embellish the constitution of the United States—as well as those of some less obviously democratic nations. When all this is admitted, it remains the case that what emerged was a document open to change over time through thoughtful judicial interpretation, or—at least as important in the eyes of Barton and his colleagues—through majority vote at a popular referendum; but durable enough not to require frequent and sweeping alteration. If Griffith and Inglis Clark should claim the major credit as designers of that constitution, it was Barton who took the lead in making it a workable construction capable of lasting the 20th century.

Barton's performance at the 1897 convention transformed him from a New South Wales politician to a figure of national stature, and was the essential factor in determining that he would become the first prime minister of the federated Australian Commonwealth. Not that the road was plain and direct. After the convention, the immediate task was to ensure the

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<sup>4</sup> John La Nauze, *The Making of the Australian Constitution*, MUP, Carlton, Vic., 1972.

acceptance of the constitution by all six colonies. Victoria, Tasmania, and South Australia returned large 'Yes' majorities in 1898. But in New South Wales the margin of victory was too slender to meet a pre-condition calling for support by at least 80 000 voters. It would fall to the premier of New South Wales to undertake further negotiations with the other colonies to secure at least the cosmetic modifications to the constitution which would enable the New South Wales electorate to vote 'Yes' at a second referendum. Barton succumbed to the temptation of believing that he, rather than Reid, could steer these negotiations to a satisfactory conclusion. At the 1898 elections in New South Wales, he abandoned his candidature for a safe rural seat in order to challenge Reid in his own constituency. It was a hard-fought election, but Reid won, and his Free Trade party, although reduced in numbers, continued to hold office with the support of the Labor members. An obliging backbencher resigned the seat of Hastings and Macleay in order that Barton might contest the by-election and take over the leadership of the opposition and the protectionist party from William Lyne. Once back in parliament, Barton launched a motion of no confidence in the Reid ministry. Had it succeeded, Barton would have become premier of New South Wales and, if all went well, having secured acceptance of federation, occupied the obvious position of leadership when the time came for the choice of the first Commonwealth prime minister.

But the motion of no confidence failed. It was Reid's task in January 1899 to negotiate the necessary compromises with his fellow-premiers. A tougher and more seasoned bargainer than Barton, he was the right man for this kind of haggling. During 1899 it became increasingly clear that Barton was not sufficiently one-eyed to make a really aggressive Leader of the Opposition. Moreover, the Labor party, still resentful of the 1892 Broken Hill strike, was unwilling to change sides while Barton remained leader of the Protectionist party. In August 1899 he resigned in favour of Lyne, who almost immediately won the support of Labor and ousted Reid as premier. Meanwhile New South Wales and Queensland had both voted in favour of federation. It would be Lyne who sat in the Premier's office in Sydney when the day came to find a prime minister for the Australian Commonwealth.

Barton was uncertain of his next move. If the youthful governor of New South Wales, Lord Beauchamp, is to be believed, Barton thought of becoming agent-general in London so as to secure first-hand experience of a Britain which he had never visited. Instead it fell to Barton, together with Deakin, Kingston, and the unreliable Dickson from Queensland, to form the delegation who went to London early in 1900 to be on hand while the Commonwealth of Australia Bill passed through the British parliament. There they fought their battle with the redoubtable Joseph Chamberlain over Section 74 of the constitution restricting appeals to the Privy Council. Their task was impeded by the almost unanimous opposition of the anglocentric legal profession in Australia, and by some behind-the-scenes undermining by Sir Samuel Griffith, but the eventual compromise was seen as a minor triumph for Australian nationalism and enhanced the reputations of Barton, Deakin, and Kingston as effective spokesmen for that nationalism. Once again Barton's reputation was strengthened rather than weakened by being out of office.

After his return to Australia, many took it for granted that Barton would be the first prime minister. Barton himself was sufficiently confident to sound out one or two colleagues about their readiness to take office in the first federal cabinet. But Lord Beauchamp—who, in the useful phrase of a 19th century novelist, was an ass without being a fool—recommended to Whitehall that the incoming governor-general, Lord Hopetoun, should as a matter of courtesy offer the prime ministership to Sir William Lyne, as premier of the senior Australian colony.

Lyne, according to Beauchamp, would decline the compliment and in a gentlemanly manner recommend that Barton should be commissioned. Here lay the genesis of the Hopetoun blunder. Hopetoun, as is well known, found that Lyne's sense of professional courtesy was not strong enough to withstand the prospect of becoming Australia's first prime minister; and it was only after a good deal of frenetic manoeuvring that Lyne was induced to stand down in favour of Barton. Lyne, Deakin wrote afterwards, was too narrow, too provincial, too lukewarm about federation for the statesmen of other colonies to accept him. But in those crowded days in December 1900, even Deakin at one moment was prepared to urge Barton to accept office under Lyne. Lyne's shortcomings were not the decisive factor so much as the knowledge held by the other potential members of the first federal cabinet—by Turner, by Kingston, by Forrest—that Barton had proved himself by his conduct of the 1897 convention to possess the positive virtues required in their leader. These were the public reputation and the public presence to appear a convincing national leader for the whole of Australia, and the private skills of conciliation and the creation of consensus required in a cabinet largely consisting of men who had themselves exercised authority as colonial premiers. It was this capacity to inspire trust which in the last resort persuaded his colleagues that Barton was the essential prime minister for Australia. Those qualities helped the Barton ministry to survive intact for the first two and a half years of the Commonwealth's existence, and thus provided the necessary stability while the machinery of federal government was put in place. The capacity to inspire trust, both among parliamentary colleagues and in the nation as a whole, remains the essential quality for an Australian prime minister.

Whatever his other shortcomings, Barton possessed that quality. He should not be forgotten.

**Questioner** — How different was the 1897 constitution from that of 1891?

**Professor Bolton** — Essentially the 1891 document is the one we still have. There were things added in 1897, such as old age pensions, and there were some reasonably noticeable shifts in detail, but the remarkable thing is that in that Easter weekend on the Hawkesbury River, Griffith and Kingston and Barton and Inglis Clark *in absentia* got it fairly right first time.

**Questioner** — My understanding is that Sir Samuel Griffith is regarded as being the man who really wrote the constitution. Do I take it that you are saying that Andrew Inglis Clark really wrote the 1891 constitution? If that is the case then the constitution was written by two men, neither of whom actually attended the 1897 convention.

**Professor Bolton** — Well certainly I would give Clark and Griffith the lion's share of the credit for what happened. In 1891 three or four people, notably Clark, Griffith, and Kingston, turned up at Sydney with draft constitutions of their own, and these had to be cobbled together. Griffith was the chairman of the drafting committee and it took place on his boat, and to that extent he imposed quite a lot of his thinking on it. In particular, although he had read Bryce's *American Commonwealth*, he would have steered it more in the direction of the main-stream of British tradition than perhaps Clark, who was greatly affected by the American federation. I think you are quite right, that by an irony those two were not present in 1897, and that is why Barton had the carriage of it.

**Questioner** — You mentioned that as state politician Barton left something to be desired, and as a prime minister he inspired trust. Can you elaborate a little bit more about his performance as prime minister?

**Professor Bolton** — Well, it is quite interesting. When he is appointed he has a full head of steam for the first I would say nine or ten months of 1901. He fights the election campaign and gets the numbers to form a government with Labor support. He presides over the Duke of York's opening of Parliament, they get through the legislation about immigration policy and the Pacific, he always remains interested in Australia's role in the South West Pacific, and then there is a period late 1901, early 1902, when he runs out of steam. It is the classic Barton pattern. He works eighteen hours a day and then just relaxes and goes off to the club and it is not much good trying to business with him after dinner. There is a fascinating diary by his secretary, Atlee Hunt, who worshipped the Chief but who was increasingly irritated by his unbusiness-like habits, and the fact that if he did come in he was likely to pick up the first piece of paper and deal with that, rather than take things seriously. So they shot him off to Edward VII's coronation and that was recuperative; moving among the great and the good from all over the British Empire had a good effect on Barton.

From that journey, I just want to say in parenthesis, there emerged what is going to be my favourite photograph of the whole book. It shows the Bartons and the Forrests in Venice, on a canal, in a gondola, and the gondolier with a face of profound melancholy that clearly says, 'Dear me, oh how did I get two such heavy-weights in the boat?'

On his return from the Empire Conference, he was back on form in 1902 early 1903, but I think the essential role is very much the rather Bob Hawke-like role of being the good chief of cabinet and the good public relations man, the person who is able to get all these prima donnas to agree on something and to communicate that to the public. Oddly enough, when the High Court is set up, right up to the last moment he is having what seem to be real uncertainties; should he quit politics and go on to the High Court, or is this deserting the cause? By this time Alfred Deakin has found that he can do the job and enjoys it and his colleagues persuade him that yes, Edmund, it would be alright if you quit now, and off he goes with this final magnanimous gesture of saying 'Well Sam Griffith is a better lawyer than I am, he should be the Chief Justice, I will be the number two'. But also, with that characteristic Barton thing of making sure that his mate, Richard O'Connor, was the number three.

I think it is a matter of being in a situation where his particular range of skills could be deployed to good effect. He was a good speaker, he was not a bad attorney general but as acting premier, he disliked conflict situations. He was not happy handling the Broken Hill strike. He did certainly, quite consciously, avoid some of the excessive force that was used by the Queensland Government against the shearers the year before, but it still did not make him any friends in the labor movement and I think that one has to read him as somebody who disliked too much confrontation, who did not have a lot of original policies that he himself wanted to push. His performance on women's suffrage is a case in point; he was in a paternalistic way not very keen on it, but if it was less trouble to pass it than to oppose it then by all means let us pass it. But when it was a matter of actually getting the show to work and arriving at a conclusion with which people could live happily, and which would be acceptable as policy, that was his particular skill. How you translate that into a hero for Australia I am not quite sure.

**Questioner** — Was his performance on the High Court bench in character with his earlier history?

**Professor Bolton** — Well again, it shows this very uneven application of effort. In the early years he is content very often just to assent, and agree, to whatever Griffith has said. This, some of my friends in the law tell me, is very sensible of him as it is a bad idea to confuse judicial interpretation by having more than one judge deliver the verdict. Others say, well, this is the old indolence asserting itself again, and certainly, there is a graphic description about how Griffith always had his judgements meticulously prepared whereas Barton often sat up all hours the night before getting his completed. The way I am reading it at the moment, and this is the bit that I have not concentrated on so much, in 1913, Barton had a spell as acting Chief Justice, and he decided that he enjoyed the job and that he could provide effective leadership for the team. That was the first thing. The second was, that with the coming of the First World War, there was a gradual divergence between Griffith and Barton. Up until that time they had seen themselves as the two original stalwarts who knew what the federal constitution was all about and had to resist innovating Victorians like Higgins and Isaacs, still more newcomers like Powers and Gavan Duffy. They were the old pros who had made the constitution. But during the war there is a divergence, with Griffith more and more wanting to go as they had been going before, and stick to the letter of the constitution and to resist change; and Barton coming to see that the pressures of the First World War do need to tilt things a bit in the direction of the Commonwealth and that maybe things should change. What we do not know is how he would have voted in 1920 in the *Engineers'* case when the tilt really went towards the Commonwealth.

At the end of the day, when Griffith retired, Barton very much hoped that he would have a short spell as Chief Justice and Griffith knifed him. Griffith was fearful that if Barton became Chief Justice and then died shortly afterwards, there might be a Labor government in power and they might invite, at best, Isaacs and possibly some completely radical upstart from outside. So, Griffith made sure that he was to be succeeded not by any member of the bench, but by an outsider, Adrian Knox, who was considerably younger. Ironically, when Knox resigned, he did so the next time a Labor government was in power, and Isaacs finally got his

**HON. EDMUND BARTON.**

“Gentlemen, I will yet carry Federation through.”

*Melbourne Punch*, 23 June 1898, p. 561

opportunity. Barton behaved very well; he greeted Knox, welcomed him on the bench, but that took the stuffing out of him and he was ill after that and then died within two or three months, in January 1920.

**Questioner** — John Norton was a major player at Bathurst. The image of ‘Tosspot Toby’ which he creates, is that from a period of the nineties or later?

**Professor Bolton** — It would certainly be from the period of the nineties. What we have to remember about Barton’s capacity for alcohol, which was pretty considerable, was that he was not a boozier in the sense of a man who would go to the pub just to drink. He drank with his meals; he drank the wine, called for another bottle, as Manning Clark says somewhere, he never replaced the cork. There is a lovely story from his High Court days of a dinner in Melbourne which in the end found Barton and Randolph Bedford walking home together. As they parted Barton turned to Bedford and said, ‘Ah, Randolph, dynasties rise and fall, civilizations crumble, but for us tonight there is only one tragedy, there is no more Chateau d’Yquem’. I think that Norton, at first, was on the same side as Barton, but Norton had this tremendous resentment at being incorrigibly out of office himself. He rather envied those who were getting the kudos and the adulation and he hated Barton for being all that he could never be and played up the ‘Tosspot Toby’ story, and had graphic tales of Barton appearing drunk on oratorical platforms. I think against that you have to put the testimony of Atlee Hunt, in his private diary, that he had often seen the Chief the worse for liquor but only once incapable.

**Questioner** — Were Griffith and Barton contemporaries at university?

**Professor Bolton** — They overlapped. Griffith was a couple of years older, and in fact the University of Sydney was very proud of the fact that the first three Justices of the High Court were all Sydney law graduates. They had an interesting relationship because it is quite clear that Barton admired Griffith’s intellect. It is also clear that Sir Samuel Griffith surely acted out of principle. As Munro Ferguson put it when he was trying to console Barton about not becoming Chief Justice, ‘he has as much regard for you as he is capable of having for any man.’ The differences are between, I think, a fairly cold personality, the disappointed idealist, and a fairly warmhearted and gregarious personality. On the whole they worked well together, but on two or three occasions Griffith’s conduct towards Barton was a bit sneaky, underhand.