

## **Towards Federation: the Role of the Smaller Colonies\***

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As we approach the centenary of the establishment of our nation a number of fundamental questions, not the least of which is whether we should become a republic, are under active debate. But after nearly one hundred years of experience there are some who believe that the most important question is whether our federal system is working and what changes if any should be made to it. The answer to that requires an understanding of how the nation was created, and this paper deals with aspects of that.

I will examine whether federation or indeed any union was inevitable; why the first attempt to enact a constitution failed; and will particularly concentrate on the period of so-called hiatus between the 1891 and 1897 constitutional conventions. I will argue that the federal system is well fitted to balance localism and centralism, to reconcile national and regional interests, and to bind diverse economic and social entities distant from each other into a nation. In the 1890s the chief examples of the system, which had a great influence on the advocates of Australian federation, were Canada, Switzerland, and the United States of America. For many, both now and then, the geography, history, population and different levels of social and economic development of the various colonies on the Australian mainland and the islands to its south and east had made those federations exemplars for the proposed Australian nation.

So the Australian Constitution is federal. It was drafted with the powers of the central government spelt out; one of the Houses of Parliament in place to protect the rights of the states; an independent supreme court to interpret it; and a difficult amendment procedure to

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ensure that it was not altered on a whim, for reasons of passing fashion or enthusiasm, or by manipulation.

It seems to be a logical and inevitable structure. In practice over this century the balance of power has shifted from the states to the centre to a far greater extent than contemplated: the Senate has acted as a partisan rather than states house; and the High Court has had a profound effect on the balance of central and state powers—assuming a function beyond that which could be seen as mere interpretation. But this analysis undersells the achievement of those who founded the nation. The Commonwealth of Australia today retains its basic shape, is still united and the Constitution itself, having resisted significant amendment, remains virtually intact.

For many in the 1890s, federation was seen as neither logical, inevitable nor necessary. With hindsight we would regard the arguments in favour of creating a nation as self-evident and leading inexorably to its creation from the disparate colonies. But this ignores the fact that every argument in favour could be met by equally strong counter forces which suggested quite different outcomes were possible and even desirable.

A uniform electoral system across the nation could be seen as a sensible and desirable outcome of federation. But what if the separate colonies were applying different electoral laws, some of which were seen as far more progressive or overly radical by other colonies? Votes for women was an issue at the top of the list in the 1890s with only one colony, South Australia, having granted such a right at this time.

Intercolonial trade was obviously another strong reason to federate. The annoyance created by the border inspector and the customs duties together with the difficulty of moving around this large country between the various colonies made free and unencumbered trade between the colonies an attractive prospect. But equally, the colonial financial structure was based on the funds the colonies could raise from such barriers. There were major philosophical and policy differences, in particular between New South Wales and Victoria, over the questions of free trade which again suggested that it was not a simple matter of intercolonial trade without the barriers.

There were clear and unequivocal recommendations in various reports on Australia's defence that suggested the country needed to get its defence act together—that the colonies must, in fact, unite to do that. On the other hand, would that mean the removal of the imperial umbrella under which the colonies sheltered? Was there a danger that, if Britain were to protect a united nation rather than a group of colonies, Australia would have to pay a lot more or risk losing the imperial support that it needed? Did it have a capacity to pay for that?

White Australia, or a uniform immigration system, was one of the strong motivating forces for federation—a difficult issue when considering the needs of the different parts of Australia in terms of labour and practice. There were powerful commercial interests in northern Australia, especially in the sugar industry in Queensland, that looked favourably upon the use of indentured islander labour. Such practice, however, was viewed with disfavour by many colonists who advocated a white Australia. Also, Britain was demanding from Australia some support for its imperial obligations, particularly its treaty with Japan, which was causing concern with some, but not all, colonies.

THE HON H.M. NELSON, THE HON G.H. REID, MR J. ANDREWS, SEC., SIR EDWARD BRADDON, THE HON G. TURNER, THE HON C.C. KINGSTON, SIR JOHN FORREST

FEDERAL GATHERING AT HOBART—PREMIERS IN CONFERENCE

*Sydney Mail*, 23 February 1895, p. 387

The Honourable Charles Cameron Kingston, Premier of South Australia from June 1893 to November 1899, was a connecting thread between the colonial leaders.

*Daily Telegraph* (Sydney) 2 March 1891, p. 10

Transport was another matter where a national system could facilitate greater trade, communication and economy. But equally one had the problems of the respective colonies

raising revenue through freights; of the river Murray and the upstream users and their rights, as they saw them, which might be extinguished in a national policy; and so on.

Communications and legal uniformity were also strong linking factors, but again they cut across the provincial concerns and caused differences between the colonies.

And finally agriculture. Rabbits and other pests were no respecters of colonial borders but on the other hand, colonies felt they could do something about enforcing border divisions whether it be with a dog fence or entry restrictions on plants. One notable case concerned the wine industry in South Australia. That colony managed to protect itself from the scourge of the phylloxera disease which had swept not only the vineyards of most of the world, but virtually wiped out those of New South Wales and Victoria. Somehow the Phylloxera Board and the prohibition on moving vine stock between borders enabled South Australia to halt the phylloxera at its border—a good reason not to become part of a united nation, it was argued at the time.

I make these points as a reminder that it was not easy to put the nation of Australia together, no matter how compelling those arguments for federation might look. It is largely forgotten that the concept of Australian federation was extremely fragile and its achievement at the time and in the circumstances was something of a miracle.

Fortunately, there were people imbued with a spirit of nationalism. Among the causes I have noted above, I have not actually listed a national spirit as a motivating force. No doubt a spirit of federation—a spirit of unity—was alive and developing through the nineties. Whether that came on the back of these pragmatic arguments, or whether it led them, is a debate that has not been resolved to this day. It is fair to say that the Australian Constitution was forged not in war or revolution but very much as a sensible compact to try to make something workable which would add to the welfare and prosperity of all living in this part of the world. In that it is probably different from most other constitutions which have tended to arise from crises—the United States Constitution is a classic example of that. That does not mean that national feeling was not around. It is significant that in the nineties the test cricket series of England versus Australia really came into their own. The first modern series was in the summer of 1894–95; a very significant summer for federation as I will explain. It was then that all the colonies united together against a common foe. It is significant, that sport tends to be one of the few unifying factors when Australians look at themselves as a nation. This is true today as we approach the centenary of federation when it seems the chief celebration is going to be the hosting of the Olympic Games and not a celebration of that great achievement—putting this constitution and nation together.

The delegates, who had been elected or appointed by the parliaments of their respective colonies, met together in 1891 at the National Australasian Convention in Sydney. This group of men, all in suits, nearly all with beards, managed to put a draft constitution together; many elements of which we live under today. As well as being prepared for introduction in the colonial legislatures, the draft was forwarded to London to await advice from the colonies so that the measure could be introduced in the Imperial Parliament. Full of resolution, the delegates departed in April 1891 to go back to their separate legislatures to ensure that the draft constitution was given the force of law. Somehow or other, it did not actually happen.

There were major difficulties in each of the legislatures. There were many changes of government and parliamentary personnel in all colonies over the next two years as the great depression of the early 1890s rolled through Australia creating economic and social havoc, particularly in Victoria the prime mover in the federation cause. Unfortunately, despite the optimism of the delegates, the process stalled at this point.

Federation, however, was not only revived but accomplished by 1901. The process was one which included pressure group activity (the popular movement); government and parliamentary leadership; and democratic participation in the ultimate decisions of a kind that no previous constitution in the world had enjoyed. The form was federal, recognising the nature and interests of the vast Australian continent.

Victoria remained strong for federation, in part because of the Depression's exposure of its financial vulnerability. Committed to a protectionist policy to foster domestic manufacturing industry but impatient with the intercolonial trade barriers, it saw the role of federation in part as a counterweight to the economic dominance of New South Wales. Tasmania was keen, in large part because of its relationship with Victoria and its feeling of economic isolation which could only be overcome as part of a federation. Queensland throughout the decade tended to be influenced by the attitude of New South Wales. The most lively question was whether Queensland would be part of a nation as an entity or divided into two or three separate states. Western Australia, having just achieved representative government and then discovered itself to be the repository of vast mineral wealth was a most reluctant partner in discussion. The prevailing mood in New South Wales was now sceptical—federation on its terms which would include the maintenance of a free trade policy, or no federation at all. This left South Australia in a sense at the fulcrum. Its protectionist policy held no fears for Victoria, its size none for New South Wales. Its economic destiny was closely bound to its eastern and western neighbours. It had many reasons to be strongly pro-federation and its leading politicians and public figures, although bitterly divided on other issues, were at one on this. As a smaller colony, not completely in either the New South Wales or Victorian camp and with influence over Western Australia, it could play the honest broker.

In this context Charles Cameron Kingston, Premier of South Australia from June 1893 to November 1899, was a connecting thread between the colonial leaders. A delegate or participant in nearly every crucial meeting or discussion on the issue from 1887, his actions at critical times made sure that the process was revived and kept on the rails from 1894 until 1901. Of particular note is his role in the summer of 1894–95 in re-starting the process; as President of the 1897–98 convention; in the premiers' compromise and second referendum of 1899; and in London representing Australia's interests against those of the Empire in 1900.

Noting that the election manifesto of George Houstoun Reid, who was sworn in as Premier of New South Wales on 3 August 1894, had included a pledge to restore Australian federation 'to its rightful position of large importance and urgency', Kingston opportunistically wired him on 1 August saying that he would be prepared to negotiate on intercolonial free trade 'when your Ministry is formed'. Reid responded on 3 August: 'Just sworn in; hasten to reply ... invite further communication.' Kingston immediately offered to send a ministerial representative to negotiate.

The upshot was a considered and significant letter from Reid on 22 August, to all the colonies, which very soon found its way into the public domain.

In some colonies, if not all, political vicissitudes and the stress of urgent local issues seem for a considerable period to have endangered the continuity of the movement ... the establishment of a federal compact is of commanding interest to every Australian state, for it is clearly impossible that any one of them can have full scope for the development of its resources until the whole continent is freed from provincial trade restriction.<sup>1</sup>

He went on to ask if they would join with him in placing the question of federation once more in the position of practical and urgent importance to which '... it is pre-eminently entitled'.

Not much action followed, and again it was Kingston who arranged for a strong pro-federation resolution to be passed in the South Australian House of Assembly which allowed him to urge his colleagues, and Reid in particular, to ensure the issue did not die again. Further telegrams followed over the months. Sir George Turner of Victoria and Sir Edward Braddon of Tasmania always responded promptly with strong endorsements of co-operation, but Reid, somewhat distracted by conflict with the upper house, was quite unresponsive until the end of the year, when he proposed the premiers meet in Hobart in January 1895 to discuss the matter.

The Federal Council of Australasia, a federal body that New South Wales had never joined and South Australia was prevented from remaining on after 1890 by its Legislative Council, was also scheduled to meet in Hobart at this time. This guaranteed the presence of the less enthusiastic federalists such as Sir John Forrest of Western Australia and Sir Hugh Nelson of Queensland. As it happened it also caused considerable tension, as the Council rightly saw that the premiers were seeking to upstage it and in the long run render it redundant.

In my view, by producing an acceptable and practical proposal for the advancement of federation with the political endorsement of the government leaders, this meeting marked the turning point for Australian federation. The critical meeting was on 31 January 1895. The six colonial premiers were in attendance with the host premier, Braddon of Tasmania, in the Chair. Reid and Kingston proposed that federation was the great and pressing issue and this was carried unanimously. A motion of Reid and Turner was carried, with Forrest dissenting, that a convention of ten delegates from each colony should be directly chosen by the electors. With Forrest and Nelson dissenting, it was resolved that there should be a direct vote of the electors of the colonies on the outcome of the convention. It was agreed unanimously that if three or more colonies adopted the proposals they should be sent to the Queen for assent. Forrest was the only dissenter from the proposition that each parliament should be presented with a bill to give effect to this scheme. Kingston was unable to get a seconder for a proposal that the Imperial Parliament should pass an enabling act prior to the constitution being framed so it would come into effect automatically on being adopted by the voters of the colonies.

It was agreed that Turner and Kingston should immediately draft a bill giving effect to the procedures for submission to the respective parliaments. (Forrest's agreement to this was conditional on a requirement that New South Wales must pass the bill before others were obliged to introduce the measure.) Arthur Searcy, a South Australian official accompanying

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<sup>1</sup> *Sydney Morning Herald*, 25 August 1894.

the Premier to provide secretarial assistance has given an eyewitness account saying that Kingston drafted the bill himself and that Turner, while getting credit for the draft, 'had nothing to do with its preparation'. Kingston began working on it at eight on the evening of 31 January and completed it eight hours later. According to Searcy the only help he had was Dr John Quick's pamphlet. It was adopted by all except Forrest who had left the meeting.

Previous conventions had demonstrated that with the best intentions in the world a group without the 'power of the people' in the form of direct election as delegates could not devise a constitution that would be regarded as an expression of the popular will. Equally, the means to put it into effect could not be found without the commitment and power of entrenched and confident premiers. Hence the need for what I have called the democratic deal, which, however, could only be successfully done by the premiers.

The outcome of the conference was generally well received both in Australia and overseas. There was one major exception—Sir Henry Parkes, who launched a scathing attack on some of the premiers and the enabling bill.

Every sincere friend of federation must see that the mockery of the "Conference of Premiers" is only a device to block the way to union ... What status had the self-constituted "Conference of Premiers" against this great historical Convention [of 1891]? Can the lesser over-rule the greater? Can a coterie of mice claim for itself the mastery over a gathering of lions?<sup>2</sup>

Reid, Kingston and Turner were 'three travelling lawyers'; Reid, a 'babbling lunatic ... having the reputation of never having read a book in his life, not even a law book'; and Kingston 'does not even comprehend the proprieties of the relations of the men in high political life'. The convention would be 'only a mob'. Reid responded more in sorrow than anger: he simply referred to Parkes's 'conceited pomposity'.

The seal of approval in the highest of places, the Imperial Parliament, was given on 12 February. The Hon. W. Redmond asked Under-Secretary for Colonies Buxton in the House of Commons if the Government would introduce an enabling bill arising from any Australian convention, and was told that 'under the circumstances mentioned the Imperial Government would be favourably inclined to assist in bringing the matter to a successful outcome'.

It was significant and critical to the achievement of federation, that five of those six premiers were to remain in office for the next four crucial years covering the convention, the referendums and the premiers' conferences which saw a bill sent to London. Even the odd man out, Nelson of Queensland, held office until April 1898. This could not have been anticipated—the average 'life' of a premiership from the advent of responsible government until 1893–94 ranged from twenty-five months in Queensland to eleven months in South Australia. It was an unprecedented period of governmental stability in the colonies. Even more remarkably, as Professor L.F. Crisp has noted, there was an 'epidemic' demise of premiers between September and December of 1899, with four of the five all leaving office, but by then the die was cast and federation virtually secured. Interestingly, the one who did

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<sup>2</sup> Henry Parkes, *The 'Mandate of the People' and the Reid Fraud*, Turner and Henderson, Sydney, 1895, pp. 15–17.

not survive to 1899 was the Queensland Premier whose colony did not attend the 1897–8 convention. All the others were delegates to the convention, not *ex officio* but, except for Forrest of Western Australia, by popular election. All were together in London for the Queen's Jubilee in 1897 between the Adelaide and Sydney sessions of the convention. All but one were at the critical Premiers' Conference of January–February 1899 which agreed on amendments to be put to a second referendum, thus rescuing the process from disaster again. And finally five of them were destined to be members of the first House of Representatives, four of them becoming federal ministers and one a prime minister.

There were, however, major hitches to be overcome along the way. The key to further progress was to be the introduction and passage of this enabling bill in each parliament. All but the absent Forrest agreed that New South Wales should take the initiative. When the enabling bill had passed the New South Wales Parliament they would take complementary action. With the unsatisfactory outcome of the 1891 convention in mind the premiers, in contrast to the understanding following that conference, made a conscious decision to wait on New South Wales and to insist on it passing the bill. The problem was that the next few months saw New South Wales in political uproar over Reid's fiscal policy. An examination of the correspondence shows that, with almost six months having elapsed since the Hobart Premiers' Conference and the Reid Government having been returned at the election, Kingston again took the initiative. On 2 August 1895, just twelve months after his first round of telegrams to Reid, he advised Reid that in order to speed the process he had given notice of a bill in the South Australian Assembly. While explicitly making clear that he was not seeking to usurp New South Wales's essential role, he was implicitly trying to keep maximum pressure on the senior colony. 'We are still impressed with the importance of New South Wales taking the lead', he told Reid. 'Cannot this be arranged for at an early date or is an almost simultaneous and general federal advance on the Hobart lines more practicable?'

The other premiers were advised at the same time. Turner questioned whether it was desirable to proceed without New South Wales but in his reply Kingston emphasised that while he still believed that New South Wales should take the lead, he was 'not waiting for Victoria but propose[d] to push on with our Bill if early Sydney action cannot be arranged for ... and [we] will be pleased to do everything in reason to bring this about'. It was an interesting choice of words signalling that the South Australian move was really only tactical and aimed at getting action from New South Wales which was to be 'arranged' by Kingston. Nelson of Queensland responded very positively on 7 August. He would like to see South Australia take the initiative if New South Wales was not able to do so. For Forrest it was understandably 'not a pressing question for this colony'. The important endorsement, however, came from Reid who did 'not object to you going on with the Federal Enabling Bill first'.

The South Australian bill was temporarily put on hold when it became apparent that Reid was ready to move. But by December Kingston became concerned that time was running out again. On 11 December he telegraphed Reid asking for a progress report, saying that he was anxious to pass the bill as soon as he had heard from New South Wales and was keeping the parliament in session but could not hold on for much longer. There was a hold-up in New South Wales as an amendment deleting a provision for the payment of representatives was made. Kingston was most concerned about this, seeing it as undermining the principle of payment of members. As well as complaining to Reid, and letting him have the details of the South Australian proposal on payment, he asked for the views of Turner and Braddon. The measure passed the New South Wales Parliament on 12 December 1895, and on 16



December Kingston was able to advise Reid that his bill had passed without amendment and he hastened to bring it into effect. The South Australian bill was the first to receive assent on 20 December 1895, followed by New South Wales on 23 December, Tasmania on 10 January 1896 and, when the Premiers next assembled on 4 March 1896 for their annual conference, assent in Victoria was only a few days away on 7 March.

The next Premiers' Conference, chaired by Reid in Sydney on 4 March 1896, was not the powerfully representative group that had met in Hobart thirteen months before. A number of ongoing matters were on the agenda, including defence, immigration and quarantine—but the most pressing intercolonial matter, federation, was not. It was added by agreement at the instance of Kingston and the following significant resolution carried:

The deliberations of this conference have made the urgent necessity for a federation of the colonies more than ever apparent. Enactment by NSW, Victoria, SA, and Tasmania of the Federal Enabling Bill drafted at the Hobart conference of 1895 constitutes a substantial advance on a satisfactory basis. It is an additional source of satisfaction to learn ... that the Queensland Government intends to introduce a similar Bill after the meeting of the new Parliament.<sup>3</sup>

Voting for the new Queensland Parliament was to take place from 21 March to 11 April 1896 and any further federal action there needed to wait on the result. By June 1896 Kingston's concern about yet another block to the progress towards federation was apparent. On 12 June 1896 he telegraphed his Victorian and Tasmanian colleagues that he 'viewed with great apprehension the vehement probability of Queensland making no attempt to pass the Hobart Enabling Bill', but seeking representation by ministerial or parliamentary nominees. This cut directly across the chief advantage of the Hobart agreement embodying direct consultation by the people in all the colonies and the framing of the constitution by real representatives of the people. He urged his two colleagues to object to Queensland's approach and said he had a real fear that New South Wales would agree to it. It was the opening shot in a campaign which at its end saw Reid reluctantly concede that the convention could be held without Queensland. In its course over the remaining months of 1896 Kingston flattered, pleaded, threatened, postured and did anything else to try to ensure that the convention delegates would not only be representatives of the colonies, but representatives of the people as well.

This would seem an appropriate point to mention a major event involving the popular movement, which saw activity in particular by a number of Federation Leagues in various colonies. The Bathurst People's Convention of November 1896 is often cited as the high point of this activity. Certainly it was conceived with a view to getting some action on the "Hobart Principles". It was given high status at the time—and indeed was a remarkable feat of organising by the journalist and nationalist W. J. Astley (better known under his *nom de plume* as the writer 'Price Warung'), then resident in Bathurst. In his inaugural presidential address to the People's Convention, the local Mayor, Dr Thomas Machattie described those present as 'delegates from all parts of Australasia' and 'representative of the Australian colonies'. This, he declared has resulted:

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<sup>3</sup> Minutes of the Premier's Conference, State Records Office of South Australia, GRG 24 June 1896/280.

in a People's Federal Convention, national in character, whose deliberations will be carefully watched, not only by the hundreds of thousands in these colonies, but by millions of our own blood ... in the dear old motherland.<sup>4</sup>

This was certainly at odds with W.M. Hughes, then a Labor member of the New South Wales Legislative Assembly, who characterised the delegates as being the result of 'the diligent scraping of parochial nobodies from all parts of the colonies,'<sup>5</sup> or Haynes' description in the same debate of them as 'palpable schemers'.<sup>6</sup>

The official proceedings list around two hundred delegates as in attendance, including John Quick and Robert Garran whose presence could be responsible for the prominence given to it in their subsequent definitive description of the federation movement. There was a wide representation of organisations and interests, but almost half of the delegates were representing local government, the next largest group was from the Federal Leagues with fifty representatives. The Australian Natives Association sent fifteen delegates, and there was multiple representation from the Commercial Travellers, chambers of commerce and of manufacturers, progress associations and the Australia National League. The Labor Electoral League, the Republican Union, Single Tax League, Social Democratic League, Mechanics Institute, Citizens Committee, and Australian Order of Industry were there. The large proportion of local government representatives is not surprising as the Committee had made a major effort to attract them either in their own right or as the sponsors of federation leagues. Letters were sent to municipal and district councils in all colonies. The attempt to attract intercolonial delegates included the granting of free passes by the New South Wales railways.

The representation from the other colonies, however, left a lot to be desired, comprising only twenty-nine or less than 15 per cent. Of the twenty-nine, twenty-one or nearly 70 per cent, were from Victoria. The rest were made up of three South Australians, three Queenslanders, one Western Australian, and one Tasmanian. There was no New Zealander to allow the broader description of *Australasian* to be applied to the meeting.

To Quick and Garran there were two factors of more importance than the origin and number of the delegates. One was the widespread public interest in the people's convention. 'Its proceedings were', they claimed, 'reported at length by the press, and followed with interest throughout Australia'.<sup>7</sup> The other was the broad range of interests represented—all, of course, committed to the federal cause, but defining it in different ways. William Lyne, then Leader of the Opposition in the NSW Legislative Assembly, had drawn attention to this in his address to the convention, following Reid, on the fifth day, Friday 20 November. 'Conservatives, Liberals, ultra radicals, and even Republicans' had managed to conduct a 'creditable debate', he said.<sup>8</sup> The fact that this disparate group had unanimously agreed to

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<sup>4</sup> Address on morning of Tuesday 17 November, *Proceedings People's Federal Convention, Bathurst, November 1896*, Gordon & Gotch, Sydney, 1897, p. 78.

<sup>5</sup> *New South Wales Parliamentary Debates*, 11 November 1896, pp. 4986–7.

<sup>6</sup> *ibid.*, p. 4989.

<sup>7</sup> John Quick & Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus & Robertson, Sydney, 1901, p. 163.

<sup>8</sup> *Proceedings, People's Federal Convention, Bathurst*, 20 November 1896, p. 94.

focus their discussion around the text of the 1891 Commonwealth Bill had, in the view of Quick and Garran, helped ‘to dissipate the atmosphere of suspicion which ... had always hung round the Commonwealth Bill’. It was redolent of “ ‘Toryism’, ‘Imperialism’, ‘Militarism’, and other unpopular qualities”.<sup>9</sup>

This may well be correct, but neither high public interest nor the range of organisations represented support the claim of a truly national gathering. A much greater weight and intercolonial significance was given to the convention by the fortuitous presence of three non-New South Wales Cabinet Ministers, John Gavan Duffy (Victoria), John Alexander Cockburn (South Australia), and Edward Charles Wittenoom (Western Australia), who were in Sydney at that time to attend a pre-arranged meeting of Postal Ministers and officials. The invitation to Bathurst was in effect an opportune move by the organisers. Of them, only Cockburn of South Australia was much identified with the federal cause.

Unfortunately the Queensland and Tasmanian ministers were not with them. There is particular significance in the absence of their Queensland colleague because one of the most pressing issues at the time, as George Reid attested in his address later in the week, was whether Queensland was going to join a federal convention on the Hobart lines. The fact that a minister from that colony did not think it worthwhile to go to Bathurst highlighted the already very meagre Queensland representation which consisted of two members of a local government board in Gympie and another from Croydon Council. Andrew Joseph Thynne was the Queensland Postmaster-General and had an interest in federation stemming from his membership of the Queensland delegation to the 1891 Convention. He had also represented Queensland at the Ottawa Colonial Conference of 1894.<sup>10</sup> But on this occasion he could not be induced to go to Bathurst. Not only did he think that ‘Federation is not a burning question in Queensland’, but, more ominously, that ‘ill-will has been created [there] by telegrams published to the effect that pressure was being put on Queensland by the other colonies’.<sup>11</sup>

At the convention, as well as in committee discussion, a set piece series of speeches were delivered on states rights, but the only speakers were from Sydney. Cardinal Moran was followed by Edmund Barton, Richard O’Connor, Reid, Lyne, Patrick Jennings, John See, and Daniel O’Connor before the convention adjourned to a garden party given by the Ladies Committee. The final day of the convention saw a flurry of motions put to the vote, again dominated by the New South Wales delegates. Delegate Wilkinson from Sydney spoke on behalf of the people of Queensland and it only remained for the vote of thanks to Barton and O’Connor to be carried to underline that, good intentions notwithstanding, the people of the Bathurst People’s Convention were really the people of New South Wales.

Nevertheless, with the participation of the first colony being critical to progress, its effect there was probably important, including the impression that it was truly intercolonial in composition.

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<sup>9</sup> Quick & Garran, *op. cit.*, p. 163.

<sup>10</sup> See article on Thynne, *Australian Dictionary of Biography*, v.12.

<sup>11</sup> *Adelaide Observer*, 21 November 1896, p. 11.

The pressure on Queensland mounted. The day after Kingston had communicated with Braddon and Turner—using a trademark tactic of ‘consulting’ in advance but not leaving enough time to be deterred from a course he had already decided on—he sent a confidential telegram to Nelson, Premier of Queensland, saying he was much alarmed.

If anything other than direct popular election of members of the convention is provided ... it will to our mind damn the whole thing, and South Australia for one will probably have nothing to do with the hybrid gathering which must result ... The fatal fault of previous federal efforts was the omission to consult the people in the first instance.<sup>12</sup>

This message was also sent to Turner and Braddon to reinforce his words of the previous day. The Queensland action, he told them, would be a fatal mistake.

There is no doubt that the contemplated departure from the Hobart agreement results from an appreciation of the fact that the popular choice might differ from the ministerial or Parliamentary selection.<sup>13</sup>

Kingston was prepared to contemplate a convention without Queensland although that ran the risk, if Western Australia did not attend, of the small colonies being dominated by the big two. In fact it is unlikely that he would have been so bold if Western Australia had not made a commitment, however half-heartedly, to attend. Forrest had secured the passage of a bill in October, which provided for parliamentary selection of delegates. Kingston’s failure to insist on the same conditions applying to them as to Queensland and his major effort to make sure Forrest would attend suggests that he was realistic enough to know that it was futile to try to get Western Australian participation on any other terms. As long as the western colony sent delegates, the small colonies would have the numbers, and whether the West eventually joined the Federation was not immediately critical. (The Western Australian bill provided that Parliament would decide afterwards whether a draft bill would go to the people.) Bearing in mind that at the 1895 Conference Nelson had joined Forrest in preferring parliaments to decide on how delegates should be chosen, Kingston’s strictures seem unfair, particularly in the light of his absolute rejection of any ‘hybrid gathering’. Kingston, however, believed that agreement to the bill, which he had drafted was the crucial decision and this allowed him to distinguish between Nelson and Forrest.

Forrest proved difficult indeed. On 23 December he wired the South Australian Premier through whom he dealt on such matters, that the days proposed were ‘most inconvenient as [a] general election will be going on in April/May’. He queried whether it would be possible to hold off until the end of the year, and suggested that the matter could be discussed in Hobart meetings scheduled for January 1897. All of the premiers would have been aware of the other constraint that year—the Queen’s Diamond Jubilee celebrations in London in June, to which they were invited. Forrest was prevailed on to agree to the original time table.

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<sup>12</sup> SA State Records Office.

<sup>13</sup> SA State Records Office.

It was assumed that such a prestigious event would take place in Sydney or possibly Melbourne, but on the last day of 1896 Kingston had cabled all his colleagues saying that the 'claims of Adelaide at which no federal gathering has yet been held should not be overlooked'. This was the first step in a clever campaign to be the host of the vital convention. And as with its eventual reluctant entry into the federation itself, the special if uneasy relationship geographically, economically, and politically between Western Australia and South Australia was the key. Although it had taken over two years, the convention did finally assemble in Adelaide in 1897.

The successful outcome of the convention, following its three sessions held respectively in Adelaide, Sydney and Melbourne in 1897–98 did not guarantee ultimate success. The referendum gained a majority in all four colonies, but in New South Wales did not achieve a legislatively imposed threshold and consequently was declared lost. Reid was accused of saying he would vote for the measure while giving reasons why it should be defeated, earning himself the nickname 'Yes-No' Reid which he carried for the rest of his career. All the old suspicions of New South Wales; Victorian–New South Wales rivalries; and the fears of the small colonies were revived. The movement was in tatters again.

After a lot of negotiation and posturing the premiers, including the new Premier of Queensland, assembled again in Hobart in January 1899, and agreed to some amendments to meet the needs of New South Wales. A second referendum in all colonies gained even greater majorities. Western Australia did not participate.

The next task was to get the measure passed by the Imperial Parliament. Kingston joined Barton, Alfred Deakin, and Sir Philip Fysh in London for the crucial negotiations which nearly came unstuck. Pressure from the Colonial Office on the reluctant Forrest to ensure that Western Australia joined as an original member resulted in a referendum there which was carried in 1900. Attitudes on the goldfields, much fermented and encouraged from South Australia, were the key to Western Australia joining.

This brief summary of the period from 1897 to 1900 does not do justice to the drama and intricacies of the process. I have not tackled the great debates in the constitutional convention itself. The story will be told—but more importantly it should be taught and understood by all Australia as we try to make sensible decisions about the future, which can only be effective if they are based on an understanding of where we have come from. We ignore the state tradition and identity of the nation at our peril.

Any change to our constitution, which must be voted on by the people as it was in the 1890s, must also be carried by a majority of the states. So it is not a simple matter of saying let us argue a case through and as long as the eastern seaboard is in favour of it then it is right for Australia. Let us think seriously about the whole country and the balance of the nation in getting consensus and support for changes that a proposed people's convention at the end of this year might make. And in that context, let us learn that we ought to elect as many of the delegates as possible, if they are going to have credibility; and that we should ensure that there is balance between the respective components of the federation and not a huge weighting on a per capita basis if we are going to get it accepted in the smaller states and regions. Finally let us remember that anything that is decided there must ultimately be subjected to the wills and wishes of the people of Australia.

**Questioner** — I think the history of the federation movement and particularly of South Australia with the strong support given to federation by the intellectual and political calibre of the delegates from that colony is extremely interesting. Do you see something similar happening in the constitutional debate ahead of us, especially in relation to the republican movement? How would you see that blend of radicalism and conservatism that is so attractive in South Australia being expressed in the debates ahead of us?

**Mr Bannon** — It is probably true to say that the current debate has lacked, I think, a lot of the substance of the debate of the nineties. The people debating these issues then were extremely well read and were looking very actively at what we would now call overseas experience. A number of treatises and manuals and so on were circulated amongst delegates to ensure that they were familiar with what others had done in similar circumstances so that when they put together their model they could draw on the best of those experiences and avoid some of the mistakes. There was, in other words, a consciousness that in making the Australian nation we were basing it on an international context and experience.

I think our debate around these issues in contemporary times has lacked that context. It has been very much inward looking: far too much navel gazing. I suppose that is partly because a lot of the impetus for the republican cause comes from what you might call a nationalist feeling, but that does not explain it fully. I think we ought to be examining more closely, and familiarising ourselves with working federal systems; looking at those that have not worked, and there are a number, and seeing how we can apply those lessons here. That is point one. The second point is that the republican issue has dominated and the subplot of that is that it has tended to break into partisan argument. When any of these issues become polarised in terms of strict party lines, there is no real way of resolving them adequately as was done in the 1890s. Admittedly, the party system was not in place then in the way that it is today. The demarcation lines were not as clearly drawn so that made it easier. But there was nonetheless a real attempt to seek consensus across the political spectrum and not to allow the debate to become too polarised by either factional or political division. In a way we need to step back and do a bit of that in Australia today. There is no point in advocates saying that if one or other of the great parties adopts one or other of these attitudes that is good and that it is the end of it. Far better that the great parties actually talk between themselves and, as much as a people's convention can do something, I think a very good inter-party conference between party leaders whether public, private or whatever could aid this process enormously. One hopes that as the dust settles a bit this may indeed happen.

**Questioner** — This is a question on the viability of the small states such as South Australia and Tasmania in light of the squeeze by the Eastern seaboard states and the decadent wealth of the west. Because South Australia's population is relatively static and in another twenty years Queensland will be larger than the population of Victoria, where do you see the future of such states?

**Mr Bannon** — You have got to accept that there are considerable disparities in the system and to some extent they have increased, but that is part of the reason why we have a federal system. The concept behind it being, that without a nationally distributed mechanism amongst the entities, which in our case happen to be the states, we are not going to have any kind of orderly national development. It is all very well to see the growth of the west at the moment, which has been huge and fed by the mineral boom and so on, but that would not have happened without Western Australia being part of a federal system that redistributed

resources and installed infrastructure. The Northern Territory is another case in point. It has great potential to deliver for Australia. Interestingly, one of the reasons South Australia wanted federation was so it could rid itself of the Northern Territory which it saw as a financial incubus. The Territorians wanted federation in turn to rid themselves of South Australia and its neglect and to be part of the national entity. But, the argument for federation and for the acceptance of small as well as large states instead of some incredibly rational bureaucratic reworking of the map to balance the country is that it does ensure some decent regional development. The logic of not having a redistributive mechanism through a federation is that you will starve the poorer states, they will get poorer, and the population will actually decrease and Australians will abandon large tracts of the country over time, and concentrate in particular economic centres. This will invite those with perhaps not so much space, resources or whatever, to actually come in and squat down as well. In other words, the federal approach ensures that we have regard to all parts of the country and not just those with particular power in terms of population or wealth.

**Questioner** — What is your view on the legitimacy of the federal government engaging the external affairs power in regards to human rights chiefly in respect to the human rights sexual conduct legislation which overrides the laws of Tasmania?

**Mr Bannon** — My view is that one must not gainsay the Commonwealth government's right to operate for the whole nation at the international level, and you cannot put fetters on that. The Constitution makes it clear that foreign affairs is the prerogative of the federal government and that is one reason we came together. But equally, in a federation, there are certain powers that do reside with the states, and have done so traditionally. This is one of our strengths. Certain progressive or important developments in Australia have only taken place because they were able to take place within one or two state entities. If we had waited for the whole nation to act then it might never have done so—that is a question to one side. Where the foreign affairs treaty directly affects those constitutional state rights in some way, I believe the federal government has an obligation to ensure there is a mechanism for the states to be properly consulted and to be part of the decision-making process. Now there are many in Canberra who would say that is nonsense, 'foreign affairs is ours, the states can keep their noses out of it and these international treaties can override state laws'. I do not agree with that. While reserving the prerogative and right of the Commonwealth, at the end of the day, if the federal arrangements are being affected, if indeed our constitution, in a sense, is being overridden by this device, then there must be a mechanism to involve the states in the decision-making process. For people who say that is impossible, it will not work, I cite the International Labour Organisation. For some fifty years or more, Australia has been a leading member of that organisation. It has worked in it fulfilling international obligations, setting standards for the workforce in various areas by a tripartite mechanism, which not only involved consultation with employers and union representatives but ensured that the states sat side by side with the Commonwealth government in determining the direction and shape of those conventions. And it worked because there was a dual authority over industrial relations. The Commonwealth rightly said, fifty or sixty years ago, to be effective at the ILO we need the states with us as well. Now that worked very well. It may be outdated in contemporary practice—all I am saying is there are good precedents for states being involved in a consultation process where their powers will be affected by an international treaty and it ought to be instituted.

**Questioner** —To what degree was the issue of the navigation of the Murray River a catalyst for the people of South Australia, Victoria and New South Wales toward federation?

**Mr Bannon** — It was certainly one of the strongest forces that propelled South Australia into that area. South Australian delegates such as Patrick Glynn and Richard Baker had a particular interest in river navigation because as an end user of the river, South Australia felt particularly vulnerable to what happened upstream and they saw that the only way to deal satisfactorily with the matter was to put it under a national umbrella. The River Murray Commission firstly dealing just with the supply of water and now dealing with its quality has been an important commonwealth/state initiative. We needed a Commonwealth government to ensure that happened. The irony of the 1890s debate of course is that it concentrated mainly on navigability rather than the use of water for other purposes such as irrigation or indeed potable water in cities such as Adelaide and Whyalla where today the Murray water is essential to the size and viability of those cities. In large part because we were still in the era when there was river traffic, it was competing with the railways. Victoria and South Australia both felt they could get benefits from that and so navigability was very high on the agenda. In retrospect the argument should have been about irrigation, about quality, about conservation but that came much later in the period.

**Questioner** —You placed great emphasis on the People's Convention at Bathurst and what was involved at that convention. Do you discount the conference held in Corowa in 1893 completely? It seems to have been a very important event, together with the subsequent drafting of the enabling bill, reflected in the current popular ownership of John Quick as the father of federation by Bendigo itself. Quick representing the Australian Natives Association and Robert Garran who was a member of the Australasian Federation League, both of whom were not strictly political figures in the sense that the state premiers were, became very highly involved in the federation process. How important is Corowa?

**Mr Bannon** — That is a valid point and in not mentioning it I guess I am not according it the place that it is due. Not so much because of its size but most importantly because the concept of the democratically elected convention was raised at the Corowa conference and the election and referendum process was in fact put into a format there by Quick. Indeed in 1894, at the time Kingston in particular was trying to goad Reid into getting something off the ground and at about the same time as he eventually consented to call the premiers together in Hobart early the following year, Quick and New South Wales delegates from Corowa had actually called on Reid and put their proposal before him. So he was being assailed, if you like, from both sides with a very similar solution. In that regard Corowa does certainly deserve status and recognition in the story.



