

When Quick Met Garran: the Corowa Plan

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The Corowa Conference came to a close ‘with cheers and congratulations at having really done something besides talk’, wrote Robert Garran many years later.¹ But, he added, not everyone who attended could have explained just what it was they had done. Like many achievements, Corowa’s was to be realised later, in a different forum. By the time of federation, Garran’s (and Dr Quick’s) account would enshrine the Conference as one of the key moments in the federation process; it was, Quick and Garran tell us, a turning-point where a stagnant federalist movement re-gained momentum and forged a path which was to culminate in federation’s ultimate success. The point of departure, and the key to Corowa’s triumph, was the ‘Corowa Plan’.

The Corowa Plan was, in essence, a resolution. It was moved by the representative of the Bendigo Australian Natives Association, Dr John Quick, towards the end of the two day conference. With much acclaim, the Conference resolved, unanimously:

That in the opinion of this Conference the Legislature of each Australasian colony should pass an Act providing for the election of representatives to attend a statutory convention or congress to consider and adopt a bill to establish a Federal Constitution for Australia and upon the adoption of such bill or measure it be submitted by some process of referendum to the verdict of each colony.

¹ Robert Garran, *Prosper the Commonwealth*, Angus and Robertson, Sydney, 1958, p. 105.

Sir John Quick, by Charles Nuttall

Only minutes before, both Garran (on behalf of the Central Federal League), and then Quick had moved resolutions. These amounted to a rather predictable affirmation of support for federation and a commitment to working for its accomplishment. The first resolution was passed, again unanimously and with much applause. Then, with the second, a debate ensued. No doubt elated by two days of intense discussion and the enthusiastic reception of senior politicians and statesmen, a desire for action had begun to grow in the participants. With it came a feeling of dissatisfaction that the Conference was to wind up with nothing but ‘words, words, words!’ As Garran later described the scene, the reader may imagine one of those moments where the desire to avoid anti-climax leads to bold initiative: ‘the dramatic moment of change from routine to inspiration’.² At the prompting of Mr Herbert Barnett, a small committee retired for some minutes, re-emerging with Dr Quick’s motion: the Corowa Plan.

Many years after the event, in a personal but colourless account Quick says simply that he and others prepared the Plan in consultation. Together, however, Quick and Garran identify its origins more closely with Quick’s authorship. There remains still some doubt as to the original source of the proposal. Alfred Deakin’s intimate account *The Federal Story* (1944) mentions that Mr Henry D’ Esterre Taylor, Secretary of the Imperial Federation League, had suggested the popular Convention and referendum to Dr Quick in the train going up to the Conference. But, Deakin adds, ‘the same idea had probably occurred independently’ to Quick.³ Someone else, almost two years after the Conference, thought it worth reminding others that Quick was not the author. In early 1895, the ‘Melbourne Correspondent’ of the *Corowa Free Press* wrote: ‘At the Corowa gathering, Dr Quick got the credit, but he is not entitled to it. The man who suggested the Federal Convention being elected by the people ... was Mr H. D’ Esterre Taylor. I am able to speak definitely on the matter.’⁴ The correspondent describes discussions he had with Mr Taylor beforehand and his own unfortunate inability to travel up with Taylor, who went to Corowa early to ‘work up a feeling in favour of his proposal’. Whether Taylor’s contribution, assuming it was such, was overlooked because of his own reticence, or because of his commitment to Imperial rather than national federation, or for any number of other reasons, the plan was henceforth always known as Dr Quick’s Plan.

This little mystery, with its intimations of not-quite-proper behaviour, need not have arisen, even in 1895, if the real originality of the Corowa Plan had been properly recognised. Like the ‘Melbourne Correspondent’, historical memory has focused on the idea that the people (rather than the parliaments) should elect the Convention and that the Constitution should be submitted to a referendum. But the genius of the plan was rather, as Quick and Garran themselves make clear (and Garran re-affirms in a later analysis of D’ Esterre Taylor’s claim), ‘the idea of mapping out the whole process in advance by Acts of Parliament—of making statutory provision for the last step before the first step was taken.’⁵ This meant that the colonial politicians were each able, if they wished, to set in train a definite and manageable process, one which rested upon a claim to popular support and was political

² *ibid.*, p. 103.

³ Alfred Deakin, *The Federal Story*, Robertson and Mullins, Melbourne, 1944, p. 56.

⁴ ‘Melbourne Notes’, *Corowa Free Press*, February 15, 1895. I am very grateful to Dorothy Irving for bringing this to my attention.

⁵ John Quick and Robert Randolph Garran, *The Annotated Constitution of the Commonwealth of Australia*, Angus and Robertson, Sydney, 1901, p. 154.

without being obviously partisan. It is not, however, the sort of political achievement that is easy to recognise or admire.

In the political culture of the 1890s the ever-familiar character of intransigent party rivalries and public disdain for politicians as a type, were well-entrenched. The federal movement of the early 1890s was a politicians' movement. It had begun with great promise and had produced two conventions and a draft federal constitution. This constitution was to have been put before each colonial parliament for debate leading to adoption, but changes in the composition of governments, obstruction and conflict between politicians (especially in New South Wales), had seen the draft lie abandoned and the federal movement sullied by 'politics'. For federation to come about, it is certain that the parliamentary process would have to be avoided at least at the (new) beginning. This became obvious to many observers: 'The reception which the Bill of the 1891 Convention had received was sufficient warning that no merely parliamentary authority would be held sufficient to prepare a Federal Constitution', said Alfred Deakin.⁶ By the time of the movement's culmination in federation itself, it was the *democratic* character of the Constitution—meaning its endorsement by the people and not the politicians – that was fixed in the public mind. Against this claim to democracy Dr Quick's name was readily mentioned. Along with other leading figures of the federation movement, Quick received a knighthood for his services in the Queen's Honours on 1 January 1901.

If all that Quick had done was to move his (or another's) motion at Corowa in 1893, the attribution of achievement would certainly be misplaced. But a motion may remain no more than a motion. As Quick saw immediately, if anything were to come of it, more action had to be taken. The idea for the first step came, he tells us, from an editorial in the *Argus* soon after the Corowa Conference.⁷ Who, the editor asked, would draft the enabling bills for the colonial parliaments? Quick, both a former politician and a lawyer, took this upon himself. By early 1894 he had presented to the Central Committee of the Australasian Federal League his 'Australian Federal Congress Bill'. It was adopted, slightly modified, and Quick was to spend most of that year meeting with politicians and lobbying for his Bill. He made particular headway with George Reid, who was about assume the premiership of New South Wales and who had hitherto been unenthusiastic about federation, to the point of obstructing its progress in his colony. As everyone recognised at the time, the support of the premier of the 'Mother Colony' was crucial if federation were ever to be achieved.

Neither Reid nor Henry Parkes had attended the Corowa Conference, although they had been invited. Perhaps among their other reasons the desire to avoid each other may have figured in their minds. The two men were mutually and publicly hostile, and this hostility had at the very least contributed towards Reid's reluctance to support the earlier federation movement which was so identified with Parkes. Quick's approach represented not only a new start for the movement, but the chance for Reid to see it taken out of the hands of Henry Parkes at a time, said Alfred Deakin, 'when local reactions were rendering it possible for him to reappear as a popular leader.'⁸ While the Corowa Conference met, and then as Quick wooed Reid,

⁶ Deakin, *Federal Story*, op. cit., p. 55.

⁷ L.E. Fredman, (ed.), *Sir John Quick's Notebook*, Reg. C. Pognooski, Newcastle, 1965.

⁸ *Ibid.*, p. 56.

Parkes made one final attempt to regain the leadership of the movement. But it was too late. The Corowa Plan was on the table.

By late 1894 George Reid was ready to put the Plan into action. He took advantage of the sixth session of that rather worn and lame body, the Federal Council, to be held in Hobart in late January, 1895. This meeting would bring together, among others, the premiers of the four member colonies. Although NSW did not belong to the Council, Reid's own presence could of course be guaranteed and the remaining premier Charles Kingston, from South Australia, was sympathetic to the plan. Indeed, Kingston and Reid stopped off in Melbourne on their way to Hobart and, with the Victorian Premier George Turner, addressed a large meeting of the Victorian Federal League. The Premiers' Conference, although relatively informal, was scheduled to overlap with the Federal Council and it immediately overshadowed the latter. The intrusion did not go unnoticed. Mr Byrnes, the Queensland Attorney-General, was particularly strident in his views; he and others, he said, 'had come a long distance to do business, and not to be thwarted or overshadowed by a meeting of individuals elsewhere. He ... declined to turn the discussions in the Council to suit the Premiers.'⁹ Speculation about the Federal Council's purpose was expressed in the press; would the Federal Council raise the topic of federation or would they attempt to avoid it?

They had almost certainly not intended to debate federation but they eventually did, beginning with a motion that the dormant 1891 draft Constitution be put before the colonial parliaments as soon as possible. The motion caused a stir, especially with the Victorian delegates who were convinced that it was intentionally antagonistic to the Premiers' Conference. No doubt they were right. But if the principal aim of the Federal Council was to circumvent the popular process envisaged in the Corowa Plan, they were too late. The premiers, already armed with Quick's draft Bill, concluded with a resolution themselves. They would pass enabling acts in their respective colonies, so that ten delegates each could be chosen to meet in a Convention, draft a federal constitution, have it considered separately by each colonial parliament, re-convene the Convention to consider proposed amendments, and have it put to the people before submitting it to the Crown.

This resolution followed the Corowa Plan almost exactly, except for the commitment to individual parliamentary scrutiny of the draft constitution in the middle of the process. This extra step (borrowed from the Federal League) represented a stroke of further political ingenuity; arguments that the original Corowa Plan did not allow the separate colonies to consider a proposed federal scheme in the light of their own distinct interests, could be met. Despite Henry Parkes' view that it was 'preposterous to talk of a mob of people making a constitution' the plan took off.¹⁰

The popular involvement it inscribed was twofold. First, the people would elect the delegates; the draft bill would then be put to a vote in a popular referendum. It should be noted in passing, that the abstract idea of 'the people' referred almost exclusively to male people; women had gained the vote in South Australia between the Corowa Conference and the Premiers' Conference, but their absence from the category of 'people' in all other colonies does not appear to have excited contemporary comment.

⁹ *Courier* (Brisbane), 1 February 1895.

¹⁰ *Daily Telegraph* (Sydney), 4 February 1895.

Critics such as Parkes aside, there was a widespread conviction expressed in four colonies at least that it was both necessary and right for the people to choose the delegates. And although the Brisbane *Courier* raised the question of whether the ratifying authority for a Constitution should be each parliament or ‘the foreign expedient of a referendum’, it soon decided that the referendum was not so foreign after all (it was found to have been used in ‘other Anglo-Saxon countries’) and it was suited, it seemed, to this exceptional case.¹¹

But we must not overlook the two colonies where the first role of the people was not embraced. This at least puts into perspective the homage so readily paid to the Corowa Plan and to its democratic offspring, the elected Convention. In Hobart, the Queensland Premier Hugh Nelson was placed in an awkward position, with his Attorney-General leading the attack on the Premiers’ Conference and the Corowa scheme from the Federal Council meeting. Nelson prevaricated, denied any conflict between the two meetings, expressed vague doubts about the value of the referendum, but did extract an agreement from the other premiers that each colony would be free to choose its Convention delegates as it wished. John Forrest, the West Australian Premier, was unequivocal. He was at first unwilling even to attend the Premiers’ Conference and then, having decided to come, remained immovably opposed to the popular election of delegates.

These two positions translated into a part of the history of the Constitution’s evolution. Queensland never managed to get the Enabling Bill before its Parliament and thus remained unrepresented at the 1897 and 1898 Conventions. This was something of an irony since Samuel Griffith, former Premier and ultimately Chief Justice of Queensland, had been recognised as the principal drafter of the 1891 Constitution. While Griffith’s draft served as the point of departure for the Convention, no fellow Queenslander was represented during its transformation into the final Bill. The Western Australian Parliament chose its own delegates without reference to the people and agreed to hold a referendum on the Bill only at the last minute in 1900, after the British Parliament had already passed the Constitution Act. Behind their departure from the process adopted elsewhere, these colonies shared a particular problem. Both had significant regional tensions, with a large section of the colony outside the capital hostile to the incumbent parliamentarians. The premiers had good reason to fear that a popular election might produce a different result from that achieved by the choice of their parliaments.

The Premiers’ Conference and the Federal Council were not the only inter-colonial meetings in Hobart during that week at the end of January through to early February 1895. The colonial Postal Conference was in session as well, and an Australian National Association special meeting took place, addressed by Alfred Deakin, who was in Hobart as a member of the Federal Council. There, Deakin delighted his audience with his descriptions of existing intercolonial restrictions as ‘the crutches with which they attempted to walk after they had outgrown them’, and the 1891 Constitution as ‘a splendid attempt’, but like Robinson Crusoe’s canoe, ‘the largest that he built—when he built it the difficulty was he could not get it into the water.’¹²

Having recovered from the sea-sickness they had all experienced crossing Bass Strait, the various visitors and their Tasmanian counterparts got together for a picnic with the

¹¹ *Courier* (Brisbane), 29 January, 2 February 1895.

¹² *Mercury* (Hobart), 29 January 1895.

Tasmanian Treasurer at Fenton Forest on 5 February, and an evening ball at Government House. Whether or not they spoke about federation is not recorded. It was 'The Season' in Hobart, when members of Australia's middle class regularly made their way to Tasmania, to avoid the extremes of the mainland summer, and picnics and balls were abundant.¹³ Even then, it must have been a memorable week for Hobart, with the country's premiers, and other senior colonial politicians and public servants arriving together, filling available venues and sharing social functions. Dr Quick, although absent from Hobart, must have been gratified too. He had seen the Corowa Plan pass from an apparently impromptu resolution into an almost nation-wide political commitment in a matter of eighteen months.

Quick had also met Garran. Their later accounts of 'this memorable occasion', as Quick described it, are somewhat reserved and formal. More than sixty years after the Corowa Conference Garran was to write of Quick's dour and meticulous personality as if still in awe of the older man. 'I soon found out', said Garran, 'what it was ... to be the junior partner of a steam roller.'¹⁴ But their collaboration in the massive work of 1901, which bears their name, signals their mutual respect as well as the significance of this meeting. It also points to the greater force the federation movement must have gained at that time, with the combined strengths of these two men, one young and energetic in New South Wales and the other well-established and experienced, in Victoria.

When Quick was elected to the Federation Convention in 1897, Garran became secretary to the Convention's drafting committee. In that same year, Garran had published *The Coming Commonwealth*, a historical survey of the world's federal constitutions and Australia's federal prospects, which attracted much attention and was read extensively by the Convention delegates. This, along with his experience of the federal movement, qualified him to work with Quick on their *Annotated Constitution*, a book which every student and practitioner of law, of federalism and judicial review, knows to this day as the bible of constitutional commentary. Doubtless, as fellow members of the federal movement, Quick would have met Garran sooner or later. But it is another, lasting achievement of the Corowa Conference that they met sooner rather than later.

¹³ Henry Reynolds very kindly pointed this out to me.

¹⁴ Garran, *Prosper the Commonwealth*, op. cit., p. 137.