
I N T R O D U C T I O N

Imagine Australia in 2001 if Federation had never happened. The states would be separate, independent nations in their own right, with their own defence forces, postal services, passports, currencies, and national TV stations. Visitors from interstate would need to pass through immigration and customs before going on their way. The Premiers would be Prime Ministers; the Governors, Governors-General. Each of the states would have to raise its own revenue, and the smaller ones would have no grants or subsidies from a common 'national' pool. Some, most likely, would be poorer than they are now, and the gap in services and the 'social wage' between the larger and smaller states would be greater.

The Australian states would be to each other as New Zealand is now to Australia: attached by co-operative schemes and a shared history, but no more than this. Would such a scenario be feasible in the late twentieth century? There is no reason to suppose that it would not. Federation — the joining together of six colonies (as the states were known before 1901) under a common, national Parliament and thereby the ultimate creation of a nation-state — was not inevitable, although it may now appear to have been. It was talked about for decades before it was achieved. When it became a real possibility in the late nineteenth century, the processes were difficult, complex and hard-fought. There was a good deal of opposition to overcome, both to Federation in principle and to the particular federal scheme that was adopted in the Constitution of the Australian Commonwealth.

New Zealand might have been part of this scheme. Its representatives participated in the early conferences and the 1891 Federation Convention at which the first draft Constitution was produced. It was invited to be part of the final processes, and many in the other colonies continued to hope that it would join them as the seventh state. But New Zealand did not think Federation inevitable, and it chose instead to develop independently as a nation. In late 1900 its government set up a Royal Commission into the desirability of joining the Australian states, and (after the completion of the processes in Australia), concluded against taking such a step. New Zealand, the Royal Commissioners wrote, 'can herself supply all that can be required to support and maintain within her boundaries a population which might at no distant date be worthily styled a nation'.¹

Western Australia, in contrast, agreed to join, but only at the last minute, after the Constitution had already been passed as an Act of the Imperial (British) Parliament. It too had conducted inquiries; its parliamentary Select Committee of 1899 reported that the impact of Federation on Western Australia would be to reduce customs revenue and, at least for a time, raise prices; that it

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would not benefit industry; and that it could lead to domination by the eastern states. For all that, the Committee (trying, it said, to be positive) concluded that federated Australia 'will occupy a higher plane in the world's opinion' and that, provided the Constitution were amended along certain lines, Western Australia should 'take the risk of joining the Commonwealth'.²

Subsequently, on several occasions, the people of Western Australia have regretted ever taking that risk, and have seriously contemplated reversing it. In the early 1930s, matters went as far as a popular referendum in Western Australia in favour of secession and a genuine attempt to break away. This was defeated not by lack of will in their state, but by legal and constitutional constraints outside it, both in Canberra and in London. Even though five colonies were quite prepared to go ahead in 1901 and federate without Western Australia, once it had joined, the decision was irreversible. The Australian Commonwealth was, as the Preamble to the Constitution put it, 'indissoluble'.

How had such an indestructible thing been created, when only a few years earlier, it had seemed so distant and so precarious that proponents wondered if it would ever happen at all? In the 1890s and in 1901, the metaphor of marriage was commonly invoked to describe Federation. The colonies, it was said, would come together as man and wife, joined in a voluntary, but permanent, union. In 1901 divorce was not impossible, but it was difficult and scandalous, and its general availability was still relatively recent. People thought of marriages as sacred and lasting. The parties, free to choose before the ceremony, were not free to withdraw once the knot was tied. But, despite the knot, marriage was not bondage. It was a matter of affection and common purpose, and this more than anything else was meant by the nuptial metaphor for Federation.

How then did the colonies come to care for each other enough to want to enter the indissoluble federal Commonwealth together? It was a long, slow courtship, which began with the colonies' formation as separate units. New South Wales was founded with the arrival of the First Fleet, in 1788. Western Australia, the 'Cinderella Colony', was then claimed in its own right as a Crown Colony in 1828. But the five others, originally part of New South Wales, broke from the 'Mother Colony' over the first six decades of the nineteenth century: Van Diemen's Land in 1825 (its name changed to Tasmania in 1853); South Australia in 1836; New Zealand (only formally attached to New South Wales in early 1840) in late 1840; Victoria in 1851, Queensland in 1859. With these Acts of separation, the colonies became fully independent of each other. Then, as they gained 'responsible government' (between the years of 1855, for New South Wales, and 1890, for Western Australia), they became practically, if not entirely, independent of Britain. The cultural and political differences which existed between them were encouraged to grow and flourish. By the second half of the nineteenth century, these differences were significant enough to be a real obstacle to achieving Federation.

Separate and different they might have been in population size, history of settlement, types of industry, religious and ethnic mix, and policy on tariffs. But the colonies could not ignore the fact that they were geographically

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clustered and also very distant from their shared centre, the Colonial Office in London. Matters of common concern drew them together as soon as they had separated. Discussions quickly began, as it made sense to do, aimed at co-operative policies on issues such as tariffs, lighthouses, quarantine, postal services and the control of rivers flowing across two or more colonies. Inter-colonial meetings commenced in the mid-nineteenth century, continuing up to and past Federation. On the subject which occupied almost half of all meetings — postal and telegraphic services — there was early success in reaching agreement. On rivers and tariffs, intercolonial treaties were forged and just as quickly broken.

But for some, even had they all been successful, these *ad hoc* intercolonial forums were not enough. Proposals for Federation began to circulate from the mid-century, and there was never a decade after 1840 when a federal scheme was not suggested somewhere in the colonies or Britain. Their early appearance is notable, but it is unsurprising; not only were there issues on which the colonies might profitably co-operate, but the great American federal experiment had just begun as the First Fleet touched the shores of New South Wales, and its vicissitudes continued to fascinate Australians for the rest of the century.

As early as 1842, an article published in the *South Australian Magazine* entitled 'Union of the Australasian Colonies into a Governor-Generalship' advocated a 'general confederacy' of the colonies.³ But the author was anonymous and the proposal aroused no official interest. Then, four years later, there was a flurry of proposals, resolutions and schemes. They coincided with the moves to write an 'Australian Colonies Government Act', to separate the Port Phillip District from New South Wales, and then to write a constitution for responsible government in New South Wales. First came problems created by the Legislative Council of Van Diemen's Land, which decided to abolish its customs preferences to New South Wales in 1846. There was alarm at the prospect of increases in prices and prohibitive tariffs on exports to Van Diemen's Land. The Governor, Charles FitzRoy, acting (it is assumed) on the advice of the New South Wales Colonial Secretary, Edward Deas Thomson, wrote to the British Colonial Office, with a proposal for 'a superior functionary' in the colonies, to whom matters like tariffs should be submitted for approval before the individual colonies could adopt them. If it was far from a scheme for 'Federation', it was at least an expression of discontent with colonial divisions.

No 'superior functionary' ever appeared. But one year later, in London, British Secretary of State for the Colonies, Earl Grey, sketched a plan for the independence of the Port Phillip District. It included the proposal for the colonies to share a 'General Assembly', authorised to deal with tariffs, postal services and intercolonial roads and railways. In 1849, a Privy Council report on these schemes filled in more detail: the General Assembly would consist of a Governor-General and a 'House of Delegates'. Its members would be elected by the colonial Parliaments and it would have authority over the matters identified by Grey, with, in addition, the power to establish a 'Supreme Court'. One

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interesting further addition was the Assembly's proposed power to make laws on any other matter, if requested by the colonies. This original, and constitutionally unique, proposal was to make its way down the decades, through to the Federal Council of Australasia Act of 1885, and into the final Constitution, where it reappeared as section 51 (xxxvii): the Commonwealth power over 'Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States'.

Regardless of this useful provision, regardless of the fact that the Australians themselves agreed that tariffs, postal services, rivers, and such like, needed a co-ordinating body, both Grey's and the Privy Council's proposals were rejected. When Grey's 'federal' scheme appeared, it had in fact been singled out by New South Wales Legislative Councillor, William Wentworth, as worthy of some examination, but while a committee was appointed to consider it, nothing transpired. More widely, Grey's total proposal for the colonies' separation and government had been so badly received in Australia, that the 'General Assembly' was lost sight of in the storm of protest and indignation. By the time of the Privy Council report, the Australians were disinclined to embrace any constitutional proposal which they themselves had not initiated, or at least upon which they had not first been consulted.

With the constitution of 1855 granting responsible government to New South Wales completed, Wentworth tried again. A 'Memorial' describing the need for a federal authority was adopted at a meeting of the 'General Association for the Australian Colonies' in London. Wentworth, the Chairman, sent it on, accompanied by a draft Bill for a Federal Assembly, to the new Secretary of State for the Colonies, Henry Labouchère. Despite the fact that the Memorial did not request the British Parliament to enact the 'Assembly', but asked merely that it pass appropriate legislation for there to be a conference where the colonies themselves might commit to such an Assembly, Labouchère rejected the proposal. He had his secretary write to Wentworth that he did not 'think it at all probable that the several colonies would consent to entrust such large powers to an Assembly thus constituted, or to be bound by laws imposing taxation ... or in the appropriation of money'. And even if they did consent, the result in a short time would 'very probably be dissension and discontent'.⁴ He would not undertake such a thing unless he was satisfied that the colonies were likely to accept it. The experience of the Australians' rejection of Britain's schemes ten years earlier had not been forgotten.

Right from the start, the colonies themselves wanted maximum control of any federal process, and this remained a feature of the movement towards Federation up to the very end. Select Committees were established in the Parliaments of Victoria, New South Wales and South Australia in the same year as Wentworth's memorial. Victoria's report, coming first, was broadly endorsed in the other colonies. It began by pointing out that the interest of the colonies suffered, 'while competing tariffs, naturalization laws, and land systems, rival schemes of immigration, and of ocean postage, a clumsy and inefficient method of communicating with each other, and with the Home Government ...

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and a distant and expensive system of judicial appeal exist'.⁵ A Federal Assembly, it concluded, should be established, 'invested with the necessary power to discuss and determine all questions of an Inter-Colonial character'. Then, along the lines of all subsequent proposals, it recommended that a Conference of Delegates from each of the colonies should meet, and determine 'upon a plan of Union'.

South Australia, albeit insisting that the Conference resolutions should be no more than recommendations to the Parliaments, quickly took steps to appoint delegates. But New South Wales did not get around to doing so before its government changed at the end of the year. The Victorians tried again, with a second Select Committee in 1858, and Tasmania now proceeded to appoint delegates, but there was still no action in New South Wales. They tried a third time in 1860, and yet again, without success, with a Royal Commission in 1870. Explaining in 1870 why a new attempt was desirable, the Victorian Premier, Charles Gavan Duffy, pressed the defence argument. The American Civil War had recently shown how Australian exports might be afflicted by naval blockades in the northern hemisphere. Britain might still be 'mistress of the seas ... and able to protect her commerce and ours. But France and America have been making enormous expenditure and immense exertions for years past to be in a position to compete for this supremacy.' While the earlier moves towards a federal authority had not, he conceded, been prompted by 'manifest urgency', the circumstances now suggested that urgency. Finally, Gavan Duffy pointed out that not only would Federation give Australia full control of its own resources, it would also 'result in the creation of a national spirit — that spirit which has inspired some of the greatest actions in history'.⁶ These combined goals of efficiency and national greatness would characterise the Federation movement for the rest of the century. There is no reason to believe that either one was less sincere than the other.

But why did these early schemes fail? It was not simply that New South Wales did not co-operate, although the rivalries between it and Victoria remained an important obstacle. But even had New South Wales selected its delegates in 1857 and joined the other colonies at a conference in Melbourne, it seems unlikely that a full Federal Assembly to which they all adhered would have been the result. The story of the Federal Council of Australasia suggests the probable outcome. Three years before the Victorians made their fourth attempt in 1870, at an Intercolonial Postal Conference in Melbourne, the New South Wales Colonial Secretary, Henry Parkes, had proposed a 'Federal Council'. The time was not yet ripe, he said, for a full Federation, but had 'arrived when these colonies should be united by some federal bond of connection ... there are questions projecting themselves upon our attention, which cannot be satisfactorily dealt with by any one of the individual Governments'.⁷

The Conference adopted Parkes's proposal and, back in Sydney, it was successfully put through the Parliament. It then went off to Britain for the royal assent, but assent was not forthcoming. The proposal for the Council was

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acceptable, the British thought, but it was too closely tied to a particular postal scheme. The Federal Council idea then slumbered for another fourteen years, but it did not die. At another Intercolonial Conference, this time in Sydney in early 1881, Parkes reintroduced it, now as a free-standing scheme, and importantly as a transitional proposal on the way to full Federation. This time, however, except for agreeing that there should be an Australian Court of Appeal, the colonies' delegates were divided. The resolution was abandoned, but not the proposal itself.

Only two years later, the matter of defence came to a dramatic head when the Queenslanders, fearing Germany's intentions, attempted to take New Guinea on behalf of Britain. Britain's colonial authorities, having repudiated Queensland's actions, suggested that the colonies should meet to discuss their plans for defence. This they quickly did, at an Intercolonial 'Convention' in Sydney in November 1883. There, faced with fears not only about Germany, but also about France's designs upon the New Hebrides, they agreed to push ahead on the Federal Council. Samuel Griffith from Queensland, who would eight years later be the principal draftsman of the first draft Australian Constitution, got some practice, by framing a Federal Council Bill. Five of the colonies adopted it, and in 1885 it went forth to England where it passed this time, as 'An Act to constitute a Federal Council of Australasia'. Each self-governing colony would have two members, and the Crown Colonies (Fiji and Western Australia) would have one each. It would have 'legislative authority' in respect of a range of matters: relations with the Pacific islands; the influx of criminals; fisheries; intercolonial legal proceedings and enforcement; and 'Any matter which ... the legislatures of the colonies ... shall think fit to refer to the Council.'

The Federal Council would have, in addition, authority over other matters referred by two or more colonies, including defence, quarantine, patents, copyright, weights and measures, marriage and divorce, naturalisation, and intercolonial recognition of corporations. These powers would turn up again in the final Commonwealth Constitution. But what was lacking was the framework of a federal Parliament. The Council was merely appointed, with no executive, or permanent secretariat, and no real authority other than the expectation that agreements forged at its meetings would be adopted by the colonial Parliaments. It met only every two years, for a matter of several days, and did not function in between meetings. In addition, not all of the colonies belonged.

New South Wales came close to joining, when its Parliament debated the Bill in 1884 and defeated it by only one vote. Over the years, that colony's determination to stay out did not diminish; if anything, it grew and strengthened. New Zealand did not join. All the other colonies did, although South Australia only joined in 1888 and left in 1890, and after the first meeting Fiji never attended again. The Federal Council did not die, however. Indeed some of the colonies (Western Australia and Tasmania in particular) adhered to it warmly. Its membership was expanded in 1891 and it continued to meet right

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up to the eve of Federation. From time to time during the 1890s, even within New South Wales, calls were made to reinvigorate the Council instead of attempting full Federation. While it did very little in the area of 'legislation', it provided a federal 'training ground' for colonial leaders, and a chance to rehearse some of the issues that would reappear in the Federation Convention debates of the 1890s. But, above all, the Council's ultimate lack of vigour showed that Federation was more than a matter of convenience, more than a practical arrangement where common concerns could be addressed in a co-operative framework. It involved Gavan Duffy's 'national spirit' as well as intercolonial mechanics.

Strictly speaking, Federation was not necessary at any time in the nineteenth century. No external pressure or imminent danger, or obstacle to the colonies' governing separately, ever arose to *require* Federation. The New Zealand alternative might have been adopted by any or all of the colonies. If the absence of an imperative helps explain the failure of early federal schemes, why then were they suggested in the first place? Were they simply a good idea, proposed because they would make colonial affairs more efficient or convenient? This may well have been the perspective of the British, having to deal with seven remote and separate political systems rather than a single authority. But for the colonies themselves, convenience was mixed with inconvenience. Getting their representatives to any federal 'centre', even after the extension of the railways, involved for most of them many days on carriages and boats, transporting not just themselves but their staff and their paraphernalia. The advantages of co-operation on certain subjects rubbed against concerns to protect colonial autonomy. In particular, the smaller colonies were fearful of being dominated by the larger ones.

Things might well have gone on just as they were, with the colonies continuing to grow independently, meeting together sporadically, when the need arose, taking advantage of expanding communications technologies — speedier trains, quicker postal services, the extension of telegraph lines, and soon, the telephone — to discuss things with each other, even more efficiently. But, around the same time the Federal Council got up and running, several things happened to make them change their independent course.

In the 1880s, the colonies grew irritated with Britain. There was the matter of Queensland and New Guinea in 1883, and with it came a suspicion that Britain did not care sufficiently about Australia's defence concerns. There was also the issue of 'coloured' immigration; in these years, the colonies were adopting restrictive immigration Acts, aimed at drastically reducing the numbers of Chinese coming to Australia. Britain, whose Empire counted many millions of 'coloured' subjects, did not care for this policy. In addition, the greatly enlarged population of 'native' children, born in the gold-rush decades of the 1850s and 1860s, had now come to adulthood. Their sense of place and their loyalties were Australian. Most had never set foot in the Mother Country and they cringed, not at their own supposed inferiority, but at the attitude of superiority adopted by the British.

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In 1889, a British major-general, Sir James Bevan Edwards, came to Australia to look over the colonies' defence forces. His report in October that year was damning. The colonies were in a highly vulnerable position, Edwards concluded, almost entirely unable to defend themselves. Unless their military training and command were federated, they ran the risk of succumbing in the event of invasion. No doubt it was what they knew all along. They had attempted to show themselves part of the military might of the Empire in the despatch of troops to the Sudan in 1885, to assist Britain following the siege of Khartoum. But the war had ended before they arrived and, while it demonstrated their loyalty, the experience served at the same time to underline Australia's distance from the rest of the Empire. Defence was the major issue when the representatives of the self-governing colonies met at the first Colonial Conference in London in 1887, and there it was agreed that Britain would supply a squadron for Australia's waters. But Australia's colonies then squabbled over whether or not they should equally share the cost of its upkeep.

Henry Parkes, out of office at the time, had been a fierce opponent of the Sudan venture and then, back in office, at best a lukewarm supporter of the Edwards tour of inspection. But he now used the Edwards Report as a catalyst for invoking the 'national spirit' and promoting Federation. In late 1889, Parkes was already in correspondence with Victoria's Premier, Duncan Gillies, about a proposed Federation Conference, and he had gone to Queensland to talk to political leaders there. With the release of the Edwards Report, he found a new way to package some of the old rhetoric calling for Federation. In a speech to a former New South Wales electorate, just short of the Queensland border, Parkes gave what has become known as the Tenterfield Oration. He drew upon the Edwards Report, stressing the defence advantages of Federation, then turned to his trademark theme of national greatness. He called for a 'convention of leading men from all the colonies' to devise a federal Constitution. This speech was only one of the hundreds Parkes gave in his lifetime, and it was given at a small-town banquet, in the middle of a journey. But its report in the *Sydney Morning Herald* seemed to excite the incipient federationists of New South Wales, and their reception encouraged Parkes to persist in his negotiations. He was, before long, successful. All of the colonial Parliaments (this time) selected delegates, and sent them on their way to an 'Australasian Federation Conference' in Melbourne, in February 1890.

It was a remarkable event. It began with a now-legendary banquet, where the former Victorian Premier, James Service, warned the delegates that a 'lion' stood in the way of Federation, and that it must be killed or it would kill Federation. The lion was the good old intercolonial tariff, which had been a catalyst for federal proposals, and just as readily a cause of their defeat, for almost fifty years. This reminder might easily have killed the Conference. But Parkes had his turn at banquet speaking, and he told them not to think about it, that 'the crimson thread of kinship' ran through them all, and that they could have Federation first and kill the lion afterwards. Remarkably, the strategy seemed to work. Personal antagonisms were not absent from the Conference

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debates, and accusations of ‘un-federal’ conduct flew from one colony to another. But they concluded with much mutual congratulation and a unanimous agreement that there would be a further meeting — a real ‘Convention’ this time — ‘to consider and report upon an adequate scheme for a Federal Constitution’.

The choice of the name ‘Convention’ was significant. Seven years earlier the colonies had argued over whether to call their intercolonial meeting a Convention. New South Wales thought it inappropriate, and persisted for some time in referring to the ‘Intercolonial Conference’, but the Convenor, Victoria’s Premier, James Service (who had got the name from Queensland’s Premier, Thomas McIlwraith), defended it: ‘the occasion is one not within the lines of ordinary constitutional procedure, but is outside the sphere of domestic politics altogether . . . so far from being part of our Constitution, its very object is to lay the basis of another Constitution — a federal one’.⁸ The name had been used in British history, to denote parliamentary sittings of an extraordinary nature during the constitutional crises of the latter half of the seventeenth century. The Americans, of course, had convened the most famous Convention of them all, in Philadelphia in 1787, the fruit of which was the United States Constitution. The Canadians had held a Quebec ‘Convention’ as part of their constitution-making processes. For the Australians in 1890, seeking something that would necessarily transcend the routine and familiar parliamentary processes, the term Convention naturally suggested itself.

This strategy too seemed to work, for the ‘National Australasian Convention’ of forty-five delegates from seven colonies (including New Zealand), which met in Sydney from 2 March to 9 April 1891, wound up with a full draft Constitution for the Australian Commonwealth. It described two Houses of Parliament, one ‘popular’ and directly elected, the other consisting of equal representatives chosen by the Parliaments of each of the states. The powers of both Houses were to be identical in all respects except money Bills, which the Senate could neither initiate nor amend.

The Queen would remain the Head of State, with a Governor-General as her representative in Australia. On her behalf he would sign the Bills that had passed through Parliament, or ‘reserve’ them for British approval. The Commonwealth Parliament would have powers over a range of national matters, most of them ‘concurrent’ (that is, able to be exercised by the states as well as the Commonwealth): immigration, postal and telegraphic services, defence, naturalisation, and others. Trade and intercourse throughout the Commonwealth would be ‘absolutely free’. The imposition of customs and excise duties was to be exclusive to the Commonwealth and the apportionment of the Commonwealth’s surplus revenue was to follow a complex (and, it would turn out, temporary) formula for calculating each state’s share. The Parliament would have the power to establish a ‘Supreme Court’. Approval of constitutional amendments, proposed by the Parliament, would be the job of elected State Conventions. Although this provision, and many of the details in the others, would be altered or enlarged at the later Convention in 1897–98, the

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fundamental institutions and principles laid down in 1891 would endure. So too (despite protests) did the appropriate and beneficent name chosen for the Federation: 'Commonwealth'.

But the strategy worked only this far. The Convention concluded with the delegates' commitment to take the Constitution Bill to their respective Parliaments and for 'provision [to] be made . . . for submitting for the approval of the people of the colonies respectively the constitution of the commonwealth of Australia as framed by this Convention'. So soon as three colonies had adopted it, 'her Majesty's Government [should] be requested to . . . establish the constitution in respect of those colonies'. But nothing of the sort happened. Several colonies debated the Bill in their Parliaments, but that was all. It was 'put by'; the Federation goal, it seemed, had died just as inevitably as it had on every previous occasion.

But people had got their hopes up. An inevitability was attaching to Federation; the goal was growing bigger than the individuals who had brought it this far. Cultural forces were taking over, and the political processes would sooner or later have to follow. These forces were a combination of many things: disenchantment with the British authorities; the growth of an Australian nationalism; the shared goal of a White Australia; the experience of Australian sporting triumphs against the British; the desire for economic stability following the 1890s Depression; the emergence of political parties with cross-colonial identities; the numbers of 'native'-born in the population overtaking the numbers of British-born. When Henry Lawson wrote for the *Bulletin*, or Henry Searle won the English sculling championship in 1889, they contributed to the conclusion of the Federation story every bit as much as that other Henry, speaking at Tenterfield that same year.

Although ardent federationists felt they would grow weary waiting, it was in fact only two years before the next move was made. In 1893, Federation Leagues — pressure groups whose members were mainly 'citizens' — were formed in New South Wales under the central leadership of New South Wales MP (and former cricket umpire) Edmund Barton, and then the following year in Victoria, and eventually in all of the colonies. They sprang up in the first instance in the border region along the Murray River, where the experience of colonial disunion and frustration with different tariff regimes were especially telling. Their formation was assisted greatly by the Australian Natives' Association (ANA), a now-influential organisation of (white) men whose birthplace was Australia.

Together, the ANA and the newly formed Federation Leagues organised a conference in the border town of Corowa. Its result has become one of the most celebrated of the Federation events; on a motion of Bendigo ANA delegate, Dr John Quick, the conference resolved that there should be a new Convention. This time, however, its members should be directly elected, and the new Constitution that it would write should be put to the voters for their approval in referendums in each colony. Back in Bendigo, Quick then drew up a draft 'Enabling Bill' for a Convention along these lines, and with others, including