

## **John Quick**

### **A true founding father of federation\***

*Sir Ninian Stephen*

John Quick arrived in Victoria late in 1854 as a little boy of two whose father, like many other Cornish migrants, had come to Victoria in search of gold. John was born near St Ives in the far southwest of England. His parents settled in gold rush Bendigo but his father died from typhoid fever soon after arrival. His mother later married again and John, after a very few years of schooling, went to work as a ten-year-old in a foundry, later in a mine and later still, while in his teens, in the printing room of a Bendigo newspaper.

He graduated from newspaper print room to junior reporter on local Bendigo newspapers, moved to Melbourne and matriculated in his twenties, in 1874. Then, with the aid of scholarships, he graduated LLB at Melbourne University at twenty five and in 1878 was called to the Victorian Bar, at the same time heading the *Age* newspaper's parliamentary staff. Quick was a studious man and a devout Methodist; a lover of literature, he planned and began a guide to Australian literature, which was completed after his death. A student of Shakespeare, he was also a great admirer of John Keats' poetry. Astonishingly, in 1882 he graduated LLD by examination at Melbourne University, a rare distinction for a practising lawyer, and the following year he married Catherine Harris.

---

\* This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House on 21 May 2004.

While still in his twenties he returned to Bendigo, became an active member of the Bendigo branch of the Australian Natives' Association and won the Legislative Assembly seat of Sandhurst (Bendigo) in 1880. That seat he retained for some nine years, at the same time practising law in Bendigo.

From the 1880's onwards Quick was an effective promoter of Australian federalism. He founded the Bendigo Federation League in 1893 and was for some years its president.

His great contributions to Australian law and lawyers were his two major works, the over nine hundred pages of the *Annotated Constitution*, which he and Robert Garran produced in 1901, and the study of the *Judicial Power of the Commonwealth* which he and Littleton Groom brought out in 1904. These two works were for many decades the outstanding legal texts on our federal system.

We have so long thought of ourselves as Australians, with over a century of nationhood behind us, that it is not easy to recapture the quite different colonial atmosphere of the Victoria in which John Quick grew up. The other Australian colonies then seemed distant indeed; only in 1883, when Quick was in his 30s, was the rail link from Melbourne to Sydney completed, and it was another 35 years before one could travel by rail all the way to Perth. Travel by road, before the days of the petrol engine, was slow and demanding and inter-colonial journeys were predominantly by ship. While the six Australian colonies shared language, loyalty and law, geography thus ensured relatively little communication between them. The colonies were initially more concerned with ensuring self-government for themselves and in pursuing conflicting policies of free trade or protection than with notions of union.

Earl Grey's early proposal in 1847 for a measure of Australia-wide cooperation in the enactment of laws for regulation of their common interests had met with indignation in Sydney, and when a subsequent committee of the Privy Council reported in 1849 on a proposed general assembly of the colonies with quite wide legislative authority, the colonial response was unfavourable and the proposal was substantially abandoned.

On into the 1850s and 1860s, during Quick's childhood, colonial proposals for some degree of federation had been explored, but met with opposition in Sydney and Brisbane. Henry Parkes, the then colonial secretary of New South Wales, advocated federation in 1867 at an inter-colonial conference held to consider postal communication overseas, and a federal council was proposed to that end but was abandoned. Even in the 1870s a union of the colonies remained a matter for much debate but little action; the fact that Sydney was resolutely free-trade and Victoria strongly protectionist did nothing to assist the progress of federation.

The federal movement did receive support in the 1880's, first through moves for agreement on uniform customs and excise duties, which, however, foundered on the conflict between free-trading New South Wales and protectionist Victoria; then more positively when, in 1883, concern grew in the colonies about German and French colonial activity in the islands to the north of Australia and, more generally, in what some saw as a threat of Asian invasion. These concerns led to a convention in Sydney of the governments of all the Australasian colonies and Fiji and to the enactment by

some of those governments of a Federal Council Bill. The British Parliament in 1885 enacted an enabling act and the resultant Federal Council first met in 1886; however, Sydney's abstention ensured lack of substantial progress for the time being towards federation. Over the next fifteen years the Council enacted several legislative measures but it lacked all executive power and the abstention of New South Wales substantially crippled it.

The need for something by way of joint action for adequate defence of Australia as a whole had been felt ever since the 1870s, with proposals mooted for a colonial fleet of cruisers and gunboats. By 1891 all the Australian colonies and New Zealand had legislated for this, confined however to naval defence—nothing was achieved for the meagre colonial land forces—the colonies each had their own separate military forces and inter-colonial defence cooperation was lacking.

In 1889 Sir Henry Parkes, concerned about the inadequacy of colonial defence measures and judging that the time had come for some definite action on federation, proposed a convention of the colonies to consider 'consolidating the Australias into one', following the model of the Canadian Dominion. From this initiative came the Melbourne Conference of 1890 at which all the colonies, including New Zealand, were represented by premiers or leading ministers. Sir Henry Parkes spoke there of how 'the crimson thread of kinship runs through us all' and urged a union of the colonies in place of the ineffective Federal Council. The outcome was the calling of the first National Australasian Convention, to meet in Sydney in 1891. When it met its drafting committee, for three days aboard the Queensland government's paddle steamer, the *SS Lucinda*, hammered out the substance of our present Constitution and federation became a real prospect.

There were by the 1890s economic factors favouring a union of the Australian colonies. By then it was felt that, especially in Victoria, federation—with its assurance of a common market within the Australian colonies—would assist in overcoming the economic depression of that decade; this was a sentiment especially strong in the towns along the River Murray. A wider view of the virtue of federation was expressed by John Quick when he wrote in 1898 that federation 'will transform a number of small states into a great nation.'

It had long been of real concern to Quick that there then existed between the colonies what he described in 1894 as 'a feeling of alienation—rapidly developing in each colony against persons coming from other colonies—regarded as strangers and intruders.' This was coupled with the acute rivalry between Sydney and Melbourne.

Yet in the mother colony, New South Wales, the quest for federation faltered; the union which federation contemplated was in that free-trading colony compared to a teetotaler contemplating keeping house with five drunkards.

It was not until mid-1893, at a conference in Corowa, on the Murray, that a plan of action emerged that led to federation. Quick was the author of that plan; as he said at the time, the aim was that the cause of federation should be achieved by the citizens of Australia and not merely advocated by politicians. As president of the Bendigo Federation League Quick was attending the 1893 Corowa Conference as a delegate from the Bendigo branch of the Australian Natives' Association. That association had,

in Victoria, become a powerful advocate for federation and in towns along the Murray Australian federation leagues were also formed to urge prompt action towards federation. It was at their invitation that the Corowa Conference was held, with strong representation from Victorian branches of federation leagues.

It was at the Corowa Conference that John Quick made his name as one of the outstanding fathers of federation; there too he first met Robert Garran, later the co-author with Quick of their *Annotated Constitution of the Australian Commonwealth*. Much later Garran described the experience of working on that volume with Quick, some fifteen years his senior, as being 'the junior partner of a steam-roller'. Quick he described as being 'like the mills of god grinding slowly and exceedingly small'.

At first the Corowa Conference had followed an all too familiar form, with the passing of resolutions in favour of federation but with little by way of action. It was only towards the convention's conclusion that John Quick, in response to cries of 'Can't we do something?' called A.J. Peacock and others aside and, after discussion, emerged with a plan of action which proved the true initiation of positive federalism. Sir Robert Garran later described Quick's proposal as 'like the striking of flint with steel to produce this new spark of inspiration.'

Quick's plan was for the election of representatives to a convention to draft and adopt a bill to establish a federal constitution which would then be submitted 'by some process of referendum to the verdict of each colony.' This plan the Corowa Conference unanimously adopted and Quick then lost no time; he drafted an Australian Federal Congress Bill on his return to Bendigo, and it became the basis for the enabling acts in each colony, which ultimately resulted in federation.

The key to Quick's plan was that the people of Australia 'should be asked to choose for themselves the men to whom the task' of establishing a federal constitution should be entrusted; the cause of federation should, he said, be 'advocated by the citizens and not merely by politicians.'

In early 1895 the six colonial premiers put Quick's plan into action. Meeting in Hobart, they resolved that federation should be regarded 'as the great and pressing question of Australasian politics'. Accordingly they determined that a federal constitution be framed and submitted to the electors; then, if accepted by referenda in three or more colonies, imperial legislation should be sought giving effect to federation accordingly. A draft bill was approved, the important concept of ultimate submission to the electors as a whole for their acceptance being adopted. It was passed in the South Australian and New South Wales legislatures in December 1895, in Tasmania and in Victoria by March 1896, and in slightly amended form in Western Australia in October of that year; only Queensland had failed by year's end to pass the enabling legislation.

Meanwhile, in November 1896, a well-attended people's federation convention was held in Bathurst which Quick attended; it received much publicity and served to inform the population at large about federation and how it might be attained.

With Queensland still standing apart, five of the six colonies in March 1897 proceeded to elect their conference delegates, Quick being the second of the ten Victorian delegates to be elected, preceded only by the premier. The momentous first meeting of the convention was subsequently held in March 1897 at which Quick was appointed to the convention's constitutional committee.

The convention, after lengthy debate in its committees, adjourned for some months to allow the colonial legislatures to consider the bill, after which the convention resumed in Sydney in September, considered the many amendments proposed by the various legislatures and again adjourned, Queensland still being absent, to sit again in Melbourne in January 1898. By March the convention had completed its task and was followed by referenda in the colonies. Quick composed and had published in a Melbourne newspaper a lengthy unofficial explanation of the constitution and partly thanks to it the constitution was approved by very large majorities in Victoria and Tasmania. It was also passed by a less substantial majority in South Australia and by a very slim majority in New South Wales, which, according to that colony's implementing legislation did not amount to acceptance of the proposal. A premiers' conference followed in 1899, which Queensland now attended. New South Wales conducted a further referendum, at which the proposed federal constitution was approved by an adequate majority, and Queensland finally joined the more southerly colonies.

Final voting for federation was passed in all colonies other than Western Australia between June and September 1899, the Commonwealth Bill was enacted by the imperial Parliament in the following year, Western Australia finally joining in the federation at the last moment and the Commonwealth came into being on 1 January, 1901. It was on that date that John Quick was formally notified that he had been awarded a knighthood in recognition of his services to federation and in particular as originator of the procedure adopted for the enabling legislation for federation, which he had initiated at the Corowa conference.

On the day of the inauguration of the Commonwealth Quick described the event as a great 'triumph of freedom and democracy'. At the first federal election John Quick was elected unopposed to represent Bendigo and continued in office as a federal member for a subsequent unbroken twelve years, including service as federal post master general. Subsequently and entirely appropriately, he was appointed to the bench of the Federal Arbitration Court in 1922, a court the creation of which he had originally urged in debate on the form of the constitution. He served on it as deputy president until his retirement in 1930. He died in 1932 in Melbourne and was buried in his beloved Bendigo.

John Quick was a considerable student of aspects of the law and published a number of notable works apart from the celebrated Quick and Garran and his work on the Commonwealth's judicial power. While still in his twenties he published a history of land settlement and policy in Australia and, later, a number of other significant legal texts, often in collaboration with another. However, his great achievement was his rescue of the long sought concept of federation from seemingly endless political debate and, by recourse to popular appeal, ensuring that on the first day of the new century the new federal Commonwealth would become a reality.

Alfred Deakin, who knew him well, wrote of him that: ‘too earnest in his feelings and too sincere in his loyalty to do himself justice in debate, [he] watched over the [federation] bill in its infancy as if it had been his own child.’ In fact he and his wife had no children and federation was his true child. He will long be remembered as one of that small band of true founding fathers of Australian federation.



**Question** — As Australia moved toward federation, what were the feelings in the British Parliament toward Australia’s federation? Were they supportive or otherwise?

**Sir Ninian Stephen** — I think Britain was quite content for federation to occur, but distinctly disinterested. The British government took no leading part at all in any movement toward federation. As we have seen, in the middle of the 1800s there was a gentle suggestion that trade at least should be governed by some sort of uniform laws within the continent, but other than that it was left very much to Australians to determine for themselves—although they didn’t really call themselves ‘Australians’ in those days—what the outcome should be. So it was essentially a home-grown movement, rather than one urged by what was then called the Home Government.

**Question** — You mentioned that New Zealand took part in some of the earlier meetings, and I have always found it strange that New Zealand didn’t join the federation, and that Western Australia did. To this day, if you want to fly to Sydney or Melbourne it takes far less time from New Zealand than from Perth. In those days, using sea transport, it would have been easier to get to New Zealand than going around to Perth. I wondered what John Quick thought of New Zealand joining the federation?

**Sir Ninian Stephen** — Even now, there are slight suggestions that the links between Australia and New Zealand should be closer than they are at the moment. During the 1800s, I think New Zealand felt rather superior to Australia. It wasn’t the home of convicts, and that was certainly a feeling that New Zealand cherished. Perhaps that was one of the reasons why New Zealand felt that it was quite capable of looking after itself—as indeed it has done successfully in all these years since. I don’t know what New Zealand would think today about joining the Commonwealth. I suspect that there would not be unanimous support for that. New Zealand has long established itself as a well-respected nation, and—certainly in the 1800s, and also in the 1900s for that matter—there was little urge on the part of New Zealand to join Australia.

**Question** — The Constitution has proved remarkably robust, and the number of times that it has had to be altered is very small. Recently there have been attempts to bypass the separation of the judicial and parliamentary powers, both at the federal level and perhaps soon at the territorial level here in the ACT in regard to the Gungahlin Expressway. I am concerned about attempts to choke off the right of appeal to judicial and quasi-judicial review by parliaments of both persuasions in Australia. This appears to be something that Quick may well have had a view about, and you might also have a view.

**Sir Ninian Stephen** — I am a strong supporter of the need to keep bureaucrats—if you can use that term, although unfortunately it tends to be a hostile description, and I don't intend it as such—within their statutory bounds, and that can only be ensured if you have the availability of recourse to courts. So I suppose my view is that that situation should be retained and encouraged. I am not aware of the intricacies within this territory, but I suspect that there are some moves to confine appeal to courts, and if that is so, it is to be deplored.

**Question** — Is anything known of Quick's personal motives or circumstances which compelled him so strongly to advocate federation?

**Sir Ninian Stephen** — What I have read of him reveals only a deep-seated feeling that he was more than a Victorian—that he recognised the entity 'Australia' as meaningful. That view wasn't necessarily common in the Australia of that time. It was not common because of the curious divergence between free trade and protection, and the rivalry that was felt between New South Wales and Victoria—the upstart Victoria, which the discovery of gold emphasised, and the much longer established state of New South Wales, the original colony. There was a distinct difficulty in relations between the two states which certainly was something that Quick not only opposed, but of course very effectively took action in relation to. He was one of those Victorian self-made men, of great industry and studiousness, and with extraordinarily modest origins. He worked his own way up intellectually and in every other sense. Perhaps the fact that he was a Cornishman helped.

**Question** — You would know there was quite a debate about where the separation of church and state would stand prior to federation in the 1890s. Could you comment on where Quick stood on this question and why he didn't favour the United States style of strict separation of church and state.

**Sir Ninian Stephen** — Was our model really so very different from that of the United States? Quick certainly regarded Canada as the preferred model, but I haven't come across any particularly close study by Quick of the United States. It was to Canada that he looked and I suspect that in the 1800s, when Quick was formulating his ideas, the United States didn't present such a warmly accepted model of federation as the fellow dominion Canada. I think perhaps that the American features in the Constitution came from other people, like Clark and Baker and others.

**Question** — I'm reasonably familiar with Bendigo, and the name Quick never seems to appear anywhere in the Bendigo legend, and I wonder why?

**Sir Ninian Stephen** — I'm told, and I didn't know this until I came here this morning, that there is a Mr Quick who is a Member of the House of Representatives.. So you don't have to look only at tombstones in Bendigo for the name Quick. It is still living, and still living in this Parliament. Other than that, I don't think that many of our notable founders of federation are known or revered in the cities from which they came within Australia. Certainly in Melbourne, we don't think very much about anyone who originated there. We thought more in the centenary year about federation, but as if federation is something that we accept so readily as being a god-given right that we have, without thinking of the human intervention that in fact brought it about.

**Question** — May I ask you to reflect on your own student days. If you were studying medicine, you got a copy of *Gray's Anatomy*, and if you were studying the law, you got *Quick and Garran*. Was it because it was the only text, or because it was a seminal text, or just that it was as boring as anything else and you had to look at it?

**Sir Ninian Stephen** — Well, as a law student I certainly didn't have a *Quick and Garran*. My legal student days were spent as a five-year articled clerk. And the expense of a *Quick and Garran* would have been quite out of the question, but fortunately the firm I was with had at least two copies of *Quick and Garran*, and it was the universal bible for lawyers. That is no longer the case; I think it has been superseded. But it was an extraordinary manifestation of the dominance that *Quick and Garran* held for 70 years as *the* doctrine that one looked at on any constitutional matter. One of its great virtues was that it was uncontentious. Sir Robert Garran lent a great flavour to it—it was very far from Quick's sole authorship.

**Question** — Are you a federalist? A previous prime minister, Gough Whitlam, railed against too many parliaments in Australia. Do you revere our federal system, or not?

**Sir Ninian Stephen** — Yes, I think I revere it. I accept it. We've all grown up in a federal aura. We can all be from time to time irritated by state parliamentarians, but if we didn't have vigorous state parliaments, where would the federal legislature lead us? It's not a bad system. It has now worked, I think to general contentment, for a remarkably long time. We are one of the relatively few countries—there are maybe only three or four—that have constitutions as long-lasting as our own. That is, countries that have not changed to a new constitution. The fact that there have been relatively few amendments is an extraordinary tribute to the men of the 1890s and 1900s who established a workable basis for our federation. So, I'm content with our state parliaments. State parliamentarians look after our more local matters much more effectively than could be done from Canberra. And they need looking after.

**Question** — This is an observation on the first question, in relation to the extent to which England was encouraging or not encouraging towards federation. I recently read a book by Bill Hudson on Australian independence, in which it struck me that there was great agitation by England, especially since federation, to shake Australia off and tell it that it was independent, and a great reluctance on the part of many leaders in Australia to actually accept that. Can you comment on that?

**Sir Ninian Stephen** — In the years since federation, Australia has played a notable part when things have been looking grim as far as the UK is concerned. I am thinking of World War One and World War Two. I came originally from Scotland and only arrived here at the age of seventeen, but I think there is a very real feeling of affection—on the part of people in Scotland anyway—for Australia, because so many Scots have relatives here, and there are close links and connections. So I don't see any drifting apart, really. Australia has grown enormously of course, in world terms, in that period, and I would have thought Australia ranks much more significantly in English eyes than it did as a remote colony in the 1800s. It would be hard to determine or to analyse it, but I wonder whether the feeling towards Australia isn't as warm now, or whether it is warmer than it was in the 1800s.



**Question** — Do you see any sort of parallel between the events you have just described and what is now going on in Iraq?

**Sir Ninian Stephen** — No I don't. I don't see any of the symbols or any movement towards federation or anything of that sort. I don't think what I've been talking about really casts any light on the situation in Iraq, except of course for the fact that we have supplied a small number of troops in Iraq and that's a symbol of the fact our federation still has real links with Britain, but perhaps more interestingly, with the United States now, which is of course the dominant power in the intervention in Iraq.

**Question** — Why, when you go to Bendigo, is the name Quick not mentioned? And how far forward was Quick thinking, in relation to the strength of the position of the prime minister in England? There is no mention of the prime minister, the parties, or cabinet in the Constitution. In fact, the first mention of a party was following the referendum in the mid-1970s, which allowed that a retiring senator could be replaced by a member 'of the same party'. So can you comment on Quick's attitude to flexibility in the future for change, as well as his ignoring parties and prime ministers?

**Sir Ninian Stephen** — I think what you've been saying demonstrates a deeper knowledge of that particular question than I have. It is an interesting observation.

**Question** — Quick seems to have had a great deal to do with adopting the device of a referendum, which was quite alien to British customs, and was not much known in America either. The only place had referendums as a means of constitutional change was Switzerland. Was there something in his background that led him down that particular path?

**Sir Ninian Stephen** — I haven't come across any particular connection with Switzerland, but you are perfectly right—the appeal to the individual populous was well recognised as an appropriate device in Switzerland at the time when Quick was proposing a referendum in Australia. It seems a logical enough thing to do when you are seeking, from a relatively articulate populous, a new way of governing, and particularly governing within a federation where states would retain their individuality. How better than to ask the people whether they were content with this or not? And that is precisely what Quick did, and did successfully.