Federalism in Australia:
How much have we learned from experience?

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Thank you, Brendan Donnelly and Jon Philp, and my thanks also to John Preston, Richard Laming and Federal Union for the suggestion that we have this discussion tonight and for the arrangements they've made. They suggested the term *conversazione*, which as an Australian with Italian grandparents is fine by me. But I also offer these comments tonight not as a specialist on federalism – a field dominated by constitutional lawyers and political scientists – but as a political historian with an interest in the question of how Australians have governed themselves, why their ways of governing have changed across a century or so, and what these changes might suggest about future directions in their own governance and in federal systems elsewhere. I'll have least to say on the last matter, mainly because I think it's best left for discussion, and for those with a broader and deep history of federalism internationally than me – which might well be most of those present.

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Let me begin by taking you back a little over a century. It's the Attorney-General's room in the Parliament at Westminster one day in the middle of 1900. Three men — all leading colonial politicians from the Antipodes — are solemnly discussing the draft of a constitution for a new nation with local officials. There's a hint of elation in the air, but everyone goes about their business calmly. The London negotiations between the colonials and the British Government have been difficult; Joseph Chamberlain, the Secretary of State for Colonies and the most powerful man in the government, is a hard bargainer. He's been particularly concerned that the interests of the British Empire — or, more particularly, British investors — would be harmed

by the proposed restrictions on appeals from the Australian High Court to the Privy Council in London. Yet now a compromise has been formulated, and the representatives of the colonial governments and their British counterparts are putting the finishing touches on the draft. When the three colonial politicians are finally left on their own, they seize each other's hands and dance 'hand in hand in a ring around the centre of the room to express their jubilation'. The participants in this spontaneous display of jubilation were Edmund Barton, a leading New South Wales federalist who would be the new nation's first prime Minister; Alfred Deakin, soon Attorney-General in his government and the country's second prime minister; and Charles Cameron Kingston, formerly Premier of South Australia, and Minister for Trade and Customs in the first government.

Over a century on, Australia's system of federal government probably causes few politicians to dance around the room in joy. Earlier this week, Australia's Minister for Finance and Deregulation, Lindsay Tanner, declared that

> Across Australia there is recognition that our federation is a mess. We have this system because of how we started: a collection of separate entities, joined together to form a federation. ... Overlapping responsibilities create incentives for cost-shifting, blame-game politics and interference in the affairs of other governments.

Many non-Australians would be surprised at the amount of commentary in Australia itself that is concerned, like Tanner's, with the problems and failures of our federal system of government. Just last week, the *Sydney Morning Herald* reported that the South Australian town of Lock, with a population of 290, now has a $60,000 (almost £30,000) toilet for its town hall, thanks to a grant from the previous Australian Government. Peter Hartcher, the journalist who reported on this expenditure of $206 (£100) a head for the facility, went on to comment:

> I don't mean to suggest that the ratepayers of Lock should not build a $60,000 toilet at the local hall. But I do have ... reservations about the way it was done. ... [I]t's not a responsibility of the Federal Government to build local government toilet blocks. It should concentrate of the big, uniquely national priorities that will give heft and help to the national future. ...

Hartcher surely has a point. What kind of federal arrangements could possibly result in a national government getting into the business of funding a country dunny – as we Australians would call it – for a town hall? Nevertheless, this is not an argument against federalism itself, but one for a more rational division of responsibilities between levels of government. (It's also an argument for a more transparent system of funding local projects, but that's another story and beyond the scope of my brief for tonight.) There's been an undoubted shift in the last half-century towards a

bipartisan acceptance of a federal system of government as best able to meet Australia's present and future needs. Tanner, for instance, a long-term member of the Labor Party's Socialist Left faction, recalled that in his maiden parliamentary speech in 1993 he advocated the abolition of State Governments. Now, he recognises that this would be neither 'practical' nor 'desirable'. Debate in Australia about federalism is mainly now about how to make the system work, not whether it should be superseded by some other system.

This was not always so. For about the first sixty years of its history, one of the major parties in Australian politics – the Labor Party – was less than enamoured of Australia's constitutional arrangements, and would have preferred a unitary system, or at least a much stronger centre and weaker States. Organised labour had been largely unrepresented at the major conventions that drafted the federal constitution in 1897-8 – there was just one delegate who could by any stretch of the imagination have been considered a representative of the Labor Party. Out of this initial sense of exclusion came an attitude that Australia's constitutional arrangements, especially to the extent that they embodied federal principles, were insufficiently democratic. Upper houses in the colonial parliaments had invariably been bulwarks of conservatism. It was assumed that the federal Senate, which was specifically designed to defend the rights of the States, would similarly uphold conservative policies. Moreover, when early judicial interpretation of the new Constitution struck down policies favoured by the Labor Party, it increasingly seemed that the system embodied particular biases against its socialist goals. Labor's early efforts to have the Constitution changed *via* referendum also failed, sometimes narrowly, so it also seemed that the provisions for bringing about what appeared to be necessary change were biased towards conservatism. More generally, the Labor Party's majoritarianism – a view that the views of a simply majority of voters ought to prevail in political matters – meant that it was unsympathetic to the more de-centralised distribution of power and authority found in federations.

In practice, of course, it was never quite so simple. Labor politicians who had made their careers in State politics were often more sympathetic to States' Rights and less enthusiastic about centralism than their counterparts in national politics. Eventually, from the 1960s onwards, the Labor Party largely abandoned many of the old aspirations that had been strangled by the Commonwealth Constitution and it began to recognise just how much scope existed for the implementation of its goals as a result of the central government's control over vast tax revenues and capacity to make grants to the States.

There were, in fact, very few advocates of a unitary system in the 1890s, when the key decisions were being made to bring about a new nation. It was almost universally accepted that if a national government were to be created, the separate sovereignties of the individual Colonies – later States – would have to be maintained. While there was nothing inevitable about a continental nation having resulted from the Federation movement, a new Australian Commonwealth was always going to be vast in its territorial mass. In these circumstances – and even allowing for the rapidly

improving systems of transport and communication – a system of government capable of protecting diverse local interests spread over a wide geographical expanse was seen as essential. People living in places thousands of miles apart, even if convinced that some matters should be turned over to a central government, also needed to be assured that on issues where a more local authority was better suited to decision-making, there would be scope for it to be exercised.

I recall interviewing a left-wing Labor Party member of my own local council in a northern Melbourne suburb over twenty years ago, and he commented perceptively that for most Victorians, Spring Street in Melbourne, the site of the State Parliament, was a rather less remote thing than the federal parliament and government in Canberra. My sense is that his observation would still be true enough, even in this age of the mobile phone, the world wide web and satellite television. There's certainly no evidence that Australian colonists of the 1890s believed they were creating a central government that would either immediately or even gradually supersede the authority of their own individual Colonies in most of the matters affecting their everyday lives. Rather, they were giving their assent to a Federal Government that would have responsibilities in areas of common 'national' concern, but would leave a massive field for activity by the States.

There has, moreover, been a great deal of research by historians in recent years which shows that each of the Australian Colonies had, by the late-nineteenth century, developed much of the paraphernalia – including a sense of national identity among it citizens – that we associate with modern nation-states. Colonists who were Tasmanians, or Victorians, or Queenslanders, or South Australians, or Western Australians, or – even allowing for the leading colonial politician Henry Parkes's desire that it simply be re-named 'Australia' – New South Wales, had a deeply entrenched set of *national* loyalties in which the focus of allegiance was a particular Colony understood as a self-governing community within the British Empire. Any new constitutional arrangements, if they were to be given the assent of such people, had to allow the continuing expression of these complex and firmly-held loyalties; they could not ride roughshod over them. Federalism, with its capacity both to express common identity and interest while accommodating difference, was uniquely placed to enable such a reconciliation to occur.

The particular characteristics of these Australian colonies, with their nearly four million peoples, made federalism even more necessary. There were two populous ones, with capital cities that were large by late-nineteenth century international standards: Victoria, with 'Marvellous Melbourne' as its capital; and the 'mother colony' of New South Wales, with the city of Sydney nestling on its vast and beautiful harbour. The four other colonies which were to be founding members of the Federation were, taken together, massive in territorial extent, but small in population. As a result, in any system where numbers mattered – and wasn't democracy ultimately founded on the idea of 'one vote, one, value'? – the less populous States could be dominated by Victoria and New South Wales. Politicians from the States with small populations and those they represented needed

reassurance that there would be sufficient checks and balances in the system, and that the distribution of power would be sufficiently de-centralised, to prevent domination.

So what kind of federation did they create? The usual way of understanding the arrangements is that they combined a British-derived system of responsible government with a United States-inspired system of federalism; the Swiss referendum, minus the provisions for popular initiative, was then added for good democratic measure as a mechanism for modifying the Constitution. The Federal Parliament would comprise two houses. First, there would be a popularly elected lower-house or House of Representatives, more or less based on a principle of 'one vote, one value'. It was assumed, if never really articulated in the founding document, that the Westminster principle by which the party or parties capable of mustering a majority in the lower house would form government. The Constitution did provide that ministers had to be members of parliament within three months of their appointment, and so gestured strongly in this manner towards responsible government rather than the more radical separation of legislative and executive power found in the United States (US) Constitution. There would also be an upper house, called a Senate (as in the US), to which each of the states would send an equal number or representatives – it was six each originally; it's twelve each today, plus two from each of the territories since the 1970s. The Constitution provided that these Senators, unlike in the US (at least until the early-twentieth century), would be directly elected; that is, they would represent the people of the States directly, not the parliaments of the States. In this way, voting for both houses did, to a large extent, embody the principle of popular sovereignty. What it did *not* do was embody 'one vote, one value'; it could not do so without undermining its federal credentials.

The Senate was designed to act as a States' House, to ensure that the smaller States, in particular, could not easily be over-ridden by the larger. Accordingly, it was clothed with very substantial powers, almost equal to the House of Representatives. Only in relation to money bills did it have less power than the House of Representatives. Appropriations could not be originated in the lower house, nor could they be amended. But they could be rejected or deferred. To a British audience – especially after the reductions in the power of the House of Lords following the crises of 1909-11 – the Australian Senate can seem like a very powerful chamber, and one whose powers are not easily reconcilable with Westminster principles, which tie executive authority and its financial basis more securely to the House of Commons or lower house.

The Australian system, then, was an eclectic mix, and some doubted that it could work. At least one delegate of the 1890s predicted – wrongly as it turned out – that either responsible government would kill federalism or vice versa. In fact, the system has mainly worked. Only once, in 1975, did it temporarily break down, and a key constitutional issue was indeed the impossibility of fully reconciling the Westminster and Federal elements in the system in the case of a major deadlock. As is so often the case, the major features of a system are easiest to see when things go

wrong, as they did in 1975. Some leading delegates at the constitutional conventions of 1897 and 1898 considered as far-fetched the possibility that the upper house of the Australian Parliament would cut off the money supply of a democratically-elected government. Yet, in an atmosphere of ministerial crisis, this was precisely what happened in 1975, when the conservative Liberal-National Country Party Coalition in control of the Senate voted to defer consideration of the Labor Government's budget, thereby effectively blocking supply. After a tense stand-off extending over several weeks, the Governor-General and Queen's representative under the Australian Constitution, Sir John Kerr, eventually decided to exercise his reserve powers to dismiss the government and commission Malcolm Fraser, the Leader of the Opposition, as Caretaker Prime Minister. Fraser would then secure passage of the budget before the money ran out and recommend a double dissolution of the parliament and an election. Whitlam already had an appointment to go to Government House because he wanted to recommend a half-Senate election in order to try to break the deadlock. When he arrived, Kerr handed him an envelope withdrawing his commission. Whitlam, no longer Prime Minister, went off and had a steak lunch. Kerr and one of his informal advisors, High Court Chief Justice Garfield Barwick – earlier a conservative politician – both later claimed that under Australia's unique system of federalism, a government had to maintain the confidence of *both* houses of parliament, which implied an ability to secure appropriations. Their critics maintain that such an understanding is unknown under Westminster systems of responsible government; that they were making it up as they went along.

The dismissal briefly raised the spectre of civil violence in Australia and is still the only serious constitutional crisis in the history of the Federation. Australians of a certain age remember where they were when they heard Whitlam had been dismissed. And Canberra itself, once described by British Labour politician Dennis Healey as like 'Milton Keynes with Wallabies', 'briefly lost its provincial air and seemed like the neurotic epicentre of the universe'. Or at least so thought a new Labor Senator. Gore Vidal, in Australia at the time, thought it might be the 'tip of the ice-cube'. In fact, there were many complicated issues at play in 1975: so many, in fact, that some commentators claim – rather dubiously, in my opinion – it could never happen again. But there was a basic tension at the heart of the events of 1975; the lack of a provision for the resolution of deadlocks between the popularly-elected lower house, and an upper house designed to represent the States but in reality one dominated by the usual kinds of party divisions. The efforts of the founding fathers to combine responsible government with federalism had left a problem at the heart of the system that took three-quarters of a century to be actualised and which has still not been resolved.

The other major way in which federalism is embodied in Australia's Constitution is *via* the division of powers between the different levels of government. This was another means by which the rights of the States would be protected from a potentially rapacious central government, for they would remain 'sovereign', assuming sovereignty to be divisible. Australia, like the United States but unlike

Britain, would have a written constitution and a supreme court (called the High Court) with the authority to interpret it. The Australian Constitution differed from the Canadian in defining the central government's powers, treating those left over or residual as belonging to the States. Partly as a result, Australia is a more centralised federation than Canada. Many of the powers defined in Section 51 of the Australian Constitution are concurrent: that is, shared between the States and the Federal Government. Some of them, such as the power to impose tariffs on imported goods, to regulate immigration, to mint coins, or to raise armed forces, are exclusive. But most are not. This has helped to produce a fairly dynamic situation over the last century, but one in which the federal government has progressively been clothed with greater power at the expense of the States. This centralisation of power has occurred for a complex range of international, social, economic and constitutional reasons about which I can at best provide hints tonight. But the process by which demands on government proliferated, along with a sense that members of a specifically *Australian* community had a common set of rights and obligations arising from their citizenship of the nation rather than a particular State or Territory, was undoubtedly critical as both *cause* and *consequence* of growing federal power. The Australian Constitution itself registers a much more expansive attitude to the possibilities of central government than if it had been drafted at, say, the same time as the Canadian Constitution in the mid-1860s. But the international and domestic challenges of the twentieth century would do much to expand its scope still further, to the extent that today there seem to be few effective limits on the power of the Federal Government relative to the States.

How has this happened? Certainly, the wording of the document has changed very little across the years. Much of it is still about as appealing as the kind of manual you get with your DVD player although, in fairness to our founding fathers, those parts added about thirty years ago are much worse. There have been a few successful attempts to change the Constitution *via* a referendum. This requires that a majority of electors *and* a majority of State (that is, four out of six) approve the changes proposed by the parliament. Of forty-four questions put to voters since 1901, only eight have passed. These have, for the most part, not involved substantial alterations in the power of the central government but have more commonly dealt with relatively minor matters. For instance, there was a successful proposal in 1977 that High Court Judges be required to retire at seventy. More importantly, a 1946 vote gave the Commonwealth greater, although still carefully circumscribed, power over social services, but the most famous 'Yes' vote was in 1967, which supposedly gave the Commonwealth greater power over Aboriginal Affairs. Recent historical enquiry has indicated that the constitutional significance of the 1967 changes, as opposed to their symbolic significance, were very insignificant indeed. In general, the prospects for major alterations to Australian federalism *via* the referendum provisions in the Constitution are slight. Unless there is fairly clear bipartisan support for change, it's very difficult to persuade both a majority of electors and a majority of States that a change is required. The last attempt at change, of course, was

the vote on the republic and a new preamble to the constitution put to electors in 1999, but these both failed to gain a majority of voters nationally, or even in a single State, let alone four.

The central government can also acquire powers that are referred by the States. This process has occurred from time to time – for instance, when the Victorian Government handed over many of its powers over industrial relations in 1996 – but it has not been a major technique for the achievement of greater central power. States have not usually been enthusiastic about handing powers over to the Commonwealth – unless they have had a metaphorical gun pointed at their heads – and it's not hard to imagine the difficulties of achieving agreement between six States and the Federal Government on any but the least controversial matters.

A more important source of central power has occurred *via* judicial interpretation. The federal government was granted by the Constitution several powers that have provided the federal government with great opportunities to acquire power at the expense of the states. The Defence Power, especially in the circumstances of a hot war, has allowed the central government some very great accretions of power. Most significantly for the long-term history of the federation, in the first *Uniform Tax* case of 1942, the States were virtually required to hand over their authority over income tax for the duration. In theory, they could have re-acquired it after the war, as happened in Canada, but there were both political and constitutional barriers to them doing so. The issue of the States once again becoming involved in income tax collection has drifted back on to the agenda from time to time since the Second World War, but it seems most unlikely that it will ever happen. One result is that in 1942 the Commonwealth acquired a vast taxation power that gave it significant financial advantages over the States, a significance magnified by a High Court ruling of a few years ago that placed additional restrictions on the kinds of taxes that the States could levy. The States, it was agreed, would be compensated with grants in return for having handed over income tax revenue, but these Special Purpose Payments (as they are now called) would often have tied to them conditions imposed by the Commonwealth government. The result was undoubtedly a more centralised federation.

The Defence Power has naturally been less useful to governments in peacetime. The Menzies Government was prevented by the High Court – in a six to one decision – from using it to ban the Communist Party in 1951. But it appears that the threat of international terrorism is leading to a more expansive interpretation of the power. In a 5-2 decision in August last year, the High Court ruled that control orders on terror suspects were constitutional under the Defence Power. It seems likely that Australian federal governments might increasingly 're-discover' the usefulness of the defence power in the future in their efforts to counter terrorism.

Another significant source of Commonwealth power *via* judicial interpretation came via the External Affairs Power. The Commonwealth's control over External Affairs means that it can enter into international agreements, treaties and conventions on a virtually unlimited range of subjects, and then pass domestic

legislation that over-rides State laws in the act of upholding Australia's obligations under them. The use of the External Affairs power for this purpose was first upheld by the High Court in the 1930s, but it was the *Franklin Dam* case of 1983, when the Hawke Labor Government prevented the Tasmanian Government from building a dam in a wilderness area, that has provided the most telling illustration of the potential of this power. In a world where climate change, human rights and international terrorism – to name just three issues – are ever more likely to be the subject of international agreements, the External Affairs power provides a potentially significant source of centralised power. The combination of forces that is often marshalled under the term 'globalisation' may well encourage a growing dependence on this power.

There have been other fruitful sources of Commonwealth expansion. The Australian Constitution provided a very unusual power to the federal government – 'Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of an one State'. Accordingly, the parliament established a Commonwealth Court of Conciliation and Arbitration in 1904 that soon became the centre-piece of Australia's highly centralised system of industrial relations. The *Engineers Case* of 1920 was critical in expanding Commonwealth power under this heading, because it extended federal power to state railway employees (Australia's rail systems mainly being owned and run by State Governments). More generally, the *Engineers Case* initiated an interpretation of Section 51 of the Constitution that tended to favour an expansive view of central government power in a range of cases unrelated to industrial relations.

In 2006, the Howard Coalition Government used its temporary control of both houses of the Australian Parliament to pass industrial relations legislation in line with its anti-trade union political agenda, laws which shifted the balance in industrial relations in favour of employers. But it did so *not* under the Conciliation and Arbitration Power, but under the clause in the Constitution giving the Commonwealth power over 'Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'. The Howard Government was certainly not the first to recognise that this clause offered an ambitious central government many opportunities. The Whitlam Labor Government, for instance, used it in the 1970s for introducing a range of laws relating to the operation of Australian businesses. The High Court upheld the Howard Government's industrial relations legislation under the Corporations power after State Governments challenged it. The Australian people, however, did not, and they had their own remedy, which was exercised in November last.

The fourth major source of Commonwealth power is probably the most important and has already been alluded to. Under Section 96 of the Constitution, the Commonwealth 'may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit'. In the early years of the Federation, the Commonwealth's revenue streams were limited mainly to tariffs and whatever it might raise *via* postage, telegraph and telephone charges. As it acquired ever larger

and more elaborate streams of tax revenue, beginning with the imposition of a land tax in 1910, it also acquired ever greater potential to deliver services on its own behalf as well as influence the way in which the States operated on their own constituencies. Despite the conservative Liberal and Country Parties in Australia being avowedly committed to States' Rights, the Menzies Government used tied grants extensively in the years after the Second World War in a manner that increased Commonwealth power in line with increasing voter expectations in the age of affluence. Gough Whitlam was also deeply attached to Section 96, which he believed gave the Labor Party an opportunity to carry out its programs that had never been fully realised. He, too, extensively used tied grants. Not all grants to the States from the Commonwealth are tied, but the Commonwealth's vast financial resources and ability to provide grants for a massive range of purposes, helps explain why the federal government is so heavily involved in a range of fields where it seems not to have the authority to act.

No one, for instance, on reading the Australian Constitution, would imagine that education was a major field of Commonwealth activity. Yet the Commonwealth provides funding to both private and state schools at the primary and secondary level, and it is the major source of government funding for universities. And it uses its control of finance to influence – or coerce – State Governments and universities. In the tertiary education sector, the last government tied grants to the universities' complying with its preferred mode of industrial relations. Universities were forced to offer staff a certain type of individual workplace contract and to take coercive action against staff unions, or else they would have their funding reduced. In this way, the regulatory mechanisms for most Australian universities, which are located at the State level *via* legislation going back in some cases in the 1850s, are overlaid with a much more stringent and unstable regime in which the federal government offers funding in return for compliance. It is a more general criticism of Australia's system of federalism that it produces a 'maze of regulatory regimes' emanating from Federal, State and Local government which seriously undermine the performance of the economy. The Howard Government also tied schools funding to the establishment of proper systems of reporting by schools to parents, to the carrying out of desired curriculum reforms, and even – bizarre as it might seem – to the erection of flagpoles in schools by State Education Departments. In its last term, the government sought to produce a national curriculum in Australian History that was to its taste, and told State Governments that unless they complied, they would have particular education funding removed. The new Labor Government is clearly committed to using tied grants to enforce adequate standards of service delivery and desired reforms, even if in its rhetoric, for the time being, there is slightly more carrot than stick. The new government has adopted the principle, 'Regulate nationally, deliver services locally', and it says that it wants to permit States and Territories more freedom in determining how they will deliver services to their own communities. But it will still tie payments to benchmarks and desired reforms.

Health is another area where the federal government's power of the purse comes powerfully into play. Most public hospitals are run by the State Governments, but the Federal Government can impose all kinds of conditions to the grants it provides State Governments for public health and hospitals. In 2007, apparently facing electoral defeat, the Howard Government went one further and announced that it would directly take over a Tasmanian hospital in a marginal constituency that the local State Labor Government had, for economically rational reasons, marked for a downgrade of services and the transfer of key operations to a hospital in another town. The Rudd Labor Opposition responded that it would exercise a close monitoring over the performance of all public hospitals and then, if certain performance targets were not met, initiate a federal government take-over. Last week, it was announced that the hospital would be returned to Tasmanian State Government control. The Federal Government's *ad hoc* take-over in 2007, with its clear short-term political motivation, had been a failure, and the case is a standing argument for a more coordinated approach to federalism.

Temporary political circumstances also had a major impact on the efforts of the Howard Government to arrive at an agreement with the States over the management of Australia's most important river network, the troubled – some would say dying – Murray-Darling system. The Federal Government announced that it would spend 10 billion dollars on the system but Victoria, in particular, held out for a better deal, and no agreement was ever reached with the Howard Government. After the election, the Rudd Government was able to strike an agreement with the States in a major propaganda victory for it policy of cooperative federalism.

These stories of recent developments, in both the political and judicial spheres, indicate that federalism in now very much a live issue in Australian politics. The wholly unprecedented political circumstances of recent years, in which a conservative Coalition Government in Canberra was faced with eight State and Territory Governments controlled by Labor, undoubtedly added considerable spice to the federal dish. There's probably a natural tendency towards blame-shifting in an Australian federal system where roles and responsibilities are far from clear-cut, and where the central government has vast financial resources but actual hands-on service delivery is often the role of the States. The situation has been called 'vertical fiscal imbalance'; there is a major mismatch between financial resources and spending commitments at both the Federal and State levels. The Federal Government raises more money than it can spend. State Governments raise far less than they need, with the gap theoretically being filled by Commonwealth grants. And it can lead to serious problems of accountability. Who is responsible when a hospital fails to perform: the supposed 'incompetent' State Government under whose Department of Health it is managed, or the supposedly 'penny-pinching' Federal Government accused of providing it with inadequate resources? But when to this is added a high level of political partisanship, the problems are undoubtedly magnified. The Howard Government, for instance, was apparently receiving advice from its pollsters during 2007 that one of its best options for being re-elected was to

campaign against State Labor Governments. To expect co-operative federalism in these circumstances would be naive. Moreover, the Howard Government was a very centralist government in word and deed and, in this respect, virtually abandoned the fig-leaf of States' Rights that most previous conservative governments had sought to maintain. Howard strongly emphasised national symbolism and decisive action on the part of a national government representing 'mainstream' Australia. Especially as the years went on, and the number of State and Territory Labor Governments proliferated, he showed very little sympathy with the idea of a dispersal of power. For Howard, in federalism as in so much of his thinking, the 'part' was seen to lack legitimacy, whereas the 'whole' – the nation – was the only truly authentic expression of the people's aspirations. Indeed, the only time in recent years he showed any open sympathy for the idea of dispersing power and 'checks and balances' was when he warned electors against removing him from office and thereby installing coast-to-coast Labor governments. The opportunism of this appeal from a government which had ruthlessly exploited its control of the Senate gained at the 2004 election was hard to miss. Nevertheless, Howard also appears to have genuinely believed in a strong and decisive national government, with the States being relegated to a decidedly subordinate role in almost every matter. He ultimately called his vision, if that's what it was, 'aspirational nationalism'. In other circumstances, the idea might have been taken quite seriously as a major philosophical departure for a political party that had traditionally retained a suspicion of excessive centralism. In the circumstances of the lead-up to the 2007 election, it was widely perceived as a euphemism for federal government pork-barrelling in marginal constituencies. One leading constitutional lawyer described it as 'a new phrase in the Australian discourse ... that means that the Commonwealth will do whatever it can, however it can, if it wishes to do so.'

Kevin Rudd and the Labor Party went to the 2007 election promising 'co-operative federalism'. There was, of course, a strong element of political opportunism here, too. After all, it's usually going to be easier to co-operate if the State Governments come from your own side of politics than from your opponents. But the Rudd Government also comes to power at a time when there are widespread calls for repair of the federal system. The recent 2020 Summit brought together 1000 Australians with the aim of 'harnessing the best ideas for building a modern Australia ready for the challenges of the 21st century'. The group considering the future of the Australian economy looked closely at federalism, and especially at how problems such as duplication of roles and functions between governments and the lack of clear lines of accountability, could be resolved. They recommended the formation of a new Federation Commission which would carry out an 'audit of the existing governance, management and financial arrangements applying to major areas of Commonwealth and state and territory and local government activities, including education, health, infrastructure, Indigenous welfare, and regulation'; and then '[m]ake recommendations on the priorities and changes required in order to

achieve efficient, effective, non-duplicating outcomes, with a clear definition of the role and responsibilities of respective governments and a true common market'.

Here is an ambitious agenda and, possibly – for both constitutional and political reasons – an unachievable one. Everyone wants to make the system work better, but it's a dynamic system that has been responding to a range of demands and developments over a century, and it's quite unclear to me how one produces 'a clear definition of the role and responsibilities of respective governments' in these circumstances. Interestingly, the 2020 Summit Report refers to 'the need to resolve the extent to which the Commonwealth should be able to direct or tie how the states and territories spend their money', but it seems unlikely that the Federal Government will do very much to wind back its influence over States *via* Section 96 grants. The Commonwealth will continue to use these payments to advance its objectives, under Labor as under the Coalition, although the objectives will sometimes be different and, at least for the time being, more palatable to State Labor Governments.

The central issue is what role, if any, State Governments will be able to carve out for themselves in these circumstances, and how much scope there will be for initiative and creativity on their part in a situation where they are so heavily dependent on an agenda directed from the centre. Yet the Victorian Government has shown considerable initiative in developing proposals for a so-called third wave of economic reform aimed at improving Australia's international competitiveness and dealing with a range of emerging problems such as more intense international competition, an ageing population and lower fertility rates. The Victorian proposal focussed 'on human capital, participation and productivity' and was accepted by the Council of Australian Governments – a body comprising representatives of the Commonwealth, the States and Local Government – as the basis for national action. Building on this initiative, Victoria has also developed a National Innovation Agenda that has, in many ways, smoothed the transition from Coalition to Labor federally, for the Rudd Government has adopted the Victorian initiative as the starting-point for a Commonwealth review of Australia's innovation system. Some recent commentators on Australian federalism such as the former premier of Western Australian, Geoff Gallop, have pointed to the way in which a living federal system of government can provide opportunities for a particular state to contribute to a national agenda in this manner, and in accordance with its own particular strengths and preoccupations. As the State that has traditionally been most dependent on a tariff-protected manufacturing sector, it's hardly surprising that Victoria should be especially interested in the development of an industry policy for a globalised economy. But the ability of the federal system to produce these kinds of outcomes depends on a reasonable level of mutual respect and desire for cooperation between different levels of government, even when they represent different sides of politics.

There is cause for optimism here, even if much of the commentary on Australian federalism perversely focuses on its failures. In fact, many of the key reforms and achievements in Australian government of the last quarter of a century

depended on effective cooperation between the Federal and State governments, from the formulation of a National Competition Policy aimed at improving the performance of the Australian economy, through to a coordinated response to the AIDS crisis, which won Australia international admiration for its success.

Once again, serious commentators are arguing the case for federalism, sometimes in terms barely heard for decades in public discourse. For instance, there is, once again, talk of subsidiarity, the principle that decision-making should as far as possible be devolved to lower bodies. It is barely an exaggeration to suggest that not since the voice of Catholic Action was heard in the land has this principle been advanced openly Australian political debate about the distribution of central and local power. That these ideas are being expressed by Labor or Labor-leaning thinkers is even more remarkable, in view of that party's traditional hostility to them. But those such as Gallop who defend federalism these days also point to the ways in which it allows voters the choice of placing different parties in power at different levels; its role in producing checks and balances; its capacity to facilitate variety and experimentation in policy and governance, including the testing of innovation in one jurisdiction before its application elsewhere; and its promotion of competition and therefore higher standards of performance. For instance, I presume that even in the building where I work here in the Strand, the offices of the various State Agent-Generals are each going out of their way to persuade British investors of the peculiar advantages of investment in their State. And, argues Gallop, to the extent that each succeeds, the benefits will in all probability spill over into the wider Australian economy. For Gallop, Australian federalism's 'multiple and autonomous centres of power' promote 'choice, innovation, diversity, competition and balance'.

That's the theory, in any case. I'm unable to suggest whether there is strong evidence to support this kind of argument. But it's probably a healthy sign that federalism is on the political agenda, and that there is some level of agreement about how it might be made to work better. It's fitting that Australia's problems should receive so little attention outside Australia itself, because they are so small compared to those being dealt with even by many other Western countries. It's true that Australia doesn't even face challenges seriously comparable in magnitude to those even of Canada; for instance, in dealing with issues arising from the relationship of Quebec to a federal Canada. Yet if federalism fails, for instance, in a field such as health, people are in fact more likely to die when they should not, even in a prosperous developed country such as Australia. Moreover, the solutions that Australia has devised, and continues to devise, to the challenges of operating a democratic and federal system of government may well have application elsewhere, particularly in circumstances where federalism comes into direct contact with responsible government. Perhaps, once again, Australia might re-gain the modest reputation it acquired a little over a century ago, as a social and political laboratory.

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