

UNIVERSITY OF N.S.W. LIBRARIES
L/KM44/G8/1



>009386289

F

RESEARCH

Centre

Australian National University

LABOR'S RECONCILIATION
WITH
FEDERALISM

Brian Galligan
David Mardiste

No. 5

September 1991

L
KM44
G8
1

Discussion Paper

FEDERALISM RESEARCH CENTRE

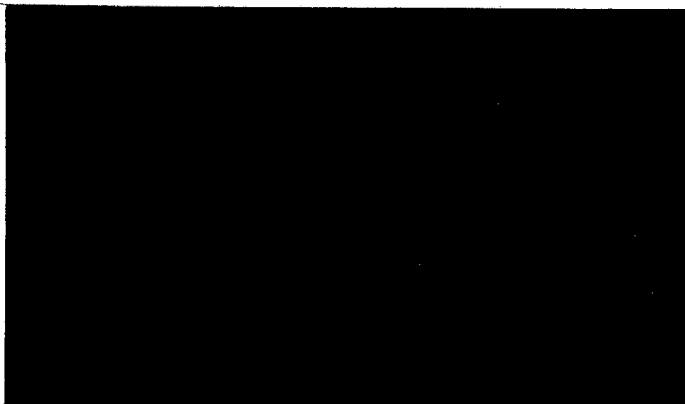
The Federalism Research Centre was established in 1972 with a special research grant from the Commonwealth (initially under the name Centre for Research on Federal Financial Relations). With effect from 1990, all States and Territories have agreed to match the Commonwealth's grant for an initial period of 3 years.

The Centre's research involves a focus both on fiscal issues and on the constitutional and institutional arrangements and operating conventions which shape federal financial, political and administrative interactions. It thus involves both 'fiscal federalism' and 'intergovernmental relations', and brings to bear perspectives from a range of disciplines, including economics, political science, public administration and constitutional law.

Information about the Centre's activities and publications can be obtained from

The Publications Officer
Federalism Research Centre
Research School of Social Sciences
The Australian National University
PO Box 4, CANBERRA ACT 2601.

Telephone (06) 249 3668
Fax (06) 257 1893



DON

CAW

**FEDERALISM RESEARCH CENTRE
DISCUSSION PAPERS**

**LABOR'S RECONCILIATION
WITH
FEDERALISM**

Brian Galligan
David Mardiste

No. 5

September 1991

L
KM44
G8
1

ISSN 1036-8655
ISBN 0 7315 1266 9

UNIVERSITY OF N.S.W.
01 NOV 1991
LAW LIBRARY

LABOR'S RECONCILIATION WITH FEDERALISM

Brian Galligan
David Mardiste

The Australian Labor Party (ALP) was founded in the decade of the 1890s when the Australian Constitution was also being drafted. These two institutions, which have influenced the pattern of Australian politics since then, had virtually nothing in common at the time of their establishment and have remained in tension throughout much of Australia's political history. So much so that in 1957, a leading Labor spokesman and future prime minister, Gough Whitlam, summed up more than half a century of the ALP's frustrating experience as 'The Constitution versus Labor'. As Whitlam expressed it:

the Australian Labor Party, unlike the British and New Zealand Parties, is unable to perform, and therefore finds it useless to promise, its basic policies. It has been handicapped, as they were not, by a Constitution framed in such a way as to make it difficult to carry out Labor objectives and interpreted in such a way as to make it impossible to carry them out (Whitlam 1977a, 16).

The ALP was pledged to the effective abolition of federalism and its replacement by a system in which the central government would have plenary powers and the states only delegated administrative responsibilities.

Just how much Labor has changed is evident in the Hawke's 'New Federalism'. A Labor prime minister, with strong support from the five Labor Premiers, has put in train a cooperative process of Special Premiers' Conferences and supporting reviews of the major areas of intergovernmental relations by teams of commonwealth and state officials. This Hawke initiative for 'Closer Partnership with the State' (Hawke 1990) ushered in a period of unprecedented cooperation between the Commonwealth and the states for the practical refurbishment of Australian federalism that will likely enhance the role of the states (Special Premiers' Conference 1990). Whatever the outcome — and it is too early to assess because the third and most significant Special Premiers' Conference is yet to take place in November 1991 — this goes well beyond anything envisaged in Whitlam's 'New Federalism' that was partly a disguise for old Labor centralism (Whitlam 1971, and 1985; Lloyd & Reid 1974; Sawyer 1977; Evans 1980; Button 1982; and selected papers in the special number of *Politics* 1977).

Labor's reconciliation with the federal constitution has occurred at two levels: first, at the formal one of party platform through successive amendments at biennial National Conferences; and second, by changes in the policy orientation of Labor governments. This article documents the ALP's gradual, and at times rather painful, process of changing its platform to fit the federal constitution during the 1960s and 1970s. Such change in official party policy was an important precondition for the subsequent seachange in the practical orientation of Labor in government that has taken place and is most apparent in prime minister Hawke's current initiative for closer partnership with the states for improving the practical working of Australian Federalism. The first section of this article sketches the extent of the transformation that has occurred in Labor's attitude to federalism, while the body of the article tracks the politics of platform change that was an essential prerequisite to Hawke's new Federalism.

From abolition to enhancement of federalism

The traditional tensions between the ALP and the constitution have been well documented in the literature (Whitlam 1977; Evans 1977; Sawyer 1977; Crisp 1978a; Jupp 1982, 117-20; Jaensch 1979, ch. 6). In fact there has been something of an obsession with the theme by Labor protagonists and commentators who shared Labor's commitment to the abolition of federalism (Galligan 1989). The constitution was often used as a scapegoat for Labor's practical blunders and ineffectiveness in implementing its policies, and painted as a negative restraint upon Labor's reformist aspirations and, more broadly, an obstacle to the full development of Australian nationhood by critics sympathetic to the goal of centralised government (Crisp 1978b, 55; Maddox 1985, ch. 5).

Part of the explanation for the ALP's earlier poor record in implementing its platform for abolishing federalism and the Senate was lack of political success in winning office and of political competence while in office. But more important than federal electoral factors were institutional ones of constitutional design and party structure with Labor being forced to work within the established constitutional system of federalism and bicameralism. The ALP's internal party structure was highly federal, even confederal, with powerful state branches checking centralist tendencies and at times dominating national party forums (Rydon 1988). Moreover, Labor's early and continuing success in state politics, especially in New South Wales, provided a substantial check to centralist aspirations at the federal level (e.g. Evatt 1940). As well, the representation of state parties in the Senate checked the unitary preference of the federal Labor caucus. Thus, by working within the system, the ALP was shaped by federalism and in practice reinforced what it was

pledged to abolish. The constitution was safe because it had federalised the Labor party and tamed its centralist drive.¹

Nevertheless, Labor's early abolitionist stance was soundly based in reasons of political theory and institutional design. The Australian Labor Party and Australia's federal constitution were each grounded in different presuppositions about democracy and political economy (Galligan 1981). The ALP was a disciplined party with strong trade union links and a reformist orientation in economic and social welfare issues. The appropriate institutional structures for such a reformist majoritarian party were those that Labor advocated: a unitary state with a unicameral system and a Westminster parliamentary form of democracy.² In contrast to this, the constitution incorporated federal and bicameral arrangements designed, negatively, to fragment democratic majorities and check popular government while, positively, promoting pluralist notions of democracy that are more congenial with individual rights and market freedoms.³

During the postwar decades, Labor has moved from centralist and dirigisme notions of economic management first to orthodox Keynesianism and then, under Hawke in the mid 1980s, to an economic rationalist position of deregulation and reduced government interference in markets. As a result, Labor was the preferred party of business for most of the 1980s (Galligan and Singleton 1991). The ALP's move to the right in economic and also social welfare areas has brought charges of hijack and betrayal from traditional Labor sympathisers (Jaensch 1989; Maddox 1989). However that may be — and electoral expediency and political sophistication are probably better explanations — Labor's practical policy reorientation has meant that it is no longer committed to doing things that go against the constitutional grain.⁴

But even more positively, the Hawke Labor government has embraced federalism in its initiative for 'a closer partnership with the states' announced in July 1990 (Hawke 1990), and put in train a cooperative commonwealth-states process of review and reform through Special Premiers' Conferences. Hawke's 'New Federalism' is driven by his

-
- 1 This is developed at length in Galligan (1987). For a comparable argument regarding the potency of federalism in the United States, see Lowi (1984).
 - 2 New Zealand has such a constitution, but this has been criticised by Palmer (1979), a constitutional lawyer who became Labour Attorney-General and briefly Prime Minister, as 'unbridled power'.
 - 3 See Lijphart (1984) for a systemic account of the two types of democracy, which he calls 'majoritarian' and 'consensus'.
 - 4 A partial exception was the original centralist attempt to legislate a national system for securities, but this had to be modified to a more federalist arrangement incorporating state interests after an adverse decision by the High Court in *NSW v Commonwealth* (1990, 64 ALJ 157).

government's quest for 'microeconomic reform' (i.e., deregulation and structural change within the public and private sectors) for which it is necessary to win the support of the state governments which have regulatory jurisdiction over much commercial activity and control key public infrastructure such as railways, electricity and ports. As well, there had been mounting pressure from state premiers over continuing fiscal restraint being forced upon them by Canberra which finally provoked the premiers into united, although ineffectual, opposition to the Commonwealth's offer at the May 1990 Premiers' Conference. Hence the states were receptive to Hawke's proposals for a more cooperative approach: in fact, Labor premier John Bannon of South Australia had made an earlier proposal for such a change (Bannon 1987) and the initiative was strongly supported by Liberal premier Greiner of New South Wales (Greiner 1990; NSW Cabinet Office 1990). Hawke called for 'sensible, practicable steps to get better cooperation within the framework of the Federal Constitution as it stands', as well as for 'a new approach to reform of the Constitution itself'.

The first of a proposed series of Special Premiers' Conferences met in Brisbane in October 1990 and was universally hailed as an outstanding success. It showed a new cooperative spirit among Commonwealth and state leaders and their officials which is to be carried forward through more consultative procedures governing annual Premiers' Conferences. It also set in place agreements and approved guidelines for major reviews to be undertaken by working parties of officials of fiscal federalism, 'microeconomic reform' of government regulatory regimes and trading enterprises (most notably, for electricity, rail and road transport), and of functional responsibilities and roles of Commonwealth, state and local government in the delivery of services (in such key areas as health, aged care, housing, labour market programs and child care), the provision of public infrastructure, the environment and industrial relations (Special Premiers' Conference 1990). The working groups were required to report to subsequent Special Premiers' Conferences scheduled for May, but postponed to July, and November 1991.

The second Special Premiers' Conference held in July 1991 served to facilitate discussions which would be concluded at the November 1991 conference. Decisions were made, for the most part, on the harmonisation of the different regulatory regimes, the operation of government trading enterprises, and statutory authorities and corporations involved in transport and electricity generation. Microeconomic reform issues dominated the agenda:

Discussions at this meeting focused on measures to increase national efficiency and international competitiveness and to move towards a single national economy. The focus was on micro-economic reform in the areas of regulatory reform; road and rail transport; electricity

generation, transmission and distribution; and reform of Government Trading Enterprises (Special Premiers' Conference July 1991, 1).

The harder and more complex issues of fiscal relations and the delivery of human services are to be finalised at the November conference.

The current Hawke 'New Federalism' or Special Premiers' Conference initiative is the most ambitious attempt at the practical overhaul of intergovernmental arrangements that has ever been attempted in Australia's near-century of federation. It is as yet too early to assess the outcome while, increasingly, the process is being threatened by a series of adverse political events. These include the festering leadership crisis within the Hawke government, the electoral setback to premier Greiner in the recent New South Wales election, erosion of support for the tired and tarnished state Labor governments in Victoria, Western Australia, and South Australia, and a growing backlash from interest groups that are stakeholders in the existing policy arrangements. The point that concerns us here, however, is not the likely success of Hawke's 'New Federalism' but its significance in signalling the extent of Labor's practical reconciliation with federalism. The following sections of the article document and explain the more formal reconciliation that had already taken place in Labor's platform and was a precondition to this major attempt at enhancing the practical working of federalism.

Holding the line: the 1950s

The federal Labor party emerged from World War II with a renewed commitment to sweeping constitutional reform in order to centralise power at the national level of government. During the war, the Curtin Labor government was able to realise the kind of centralised rule to which Labor aspired by relying upon the Commonwealth's greatly expanded defence power. The carryover of enhanced Commonwealth power into peacetime was necessary, the Curtin government thought, not only for purposes of postwar reconstruction and the re-employment of hundreds of thousands of service men and women, but also to enable Keynesian-style management of the national economy to ensure full employment and stability and also to expand welfare state policies. However, in 1942 the Curtin government failed to secure the agreement of the states for the voluntary transfer to the Commonwealth of a list of powers over economic and social matters for five years after the war. Furthermore, the Curtin government failed to secure the same list of powers for the Commonwealth in the 1944 Powers referendum.

Despite such failures in achieving lesser goals, the ALP persisted with a bold abolitionist statement that was spelt out in the methods section of its 1948 platform:

3. Amendment of the Commonwealth Constitution—

- (a) The clothing of the Commonwealth Parliament with sovereign powers and with authority to create States or Provinces possessing delegated constitutional powers....
- (e) to abolish the Senate (ALP 1948).

The ALP was not entirely without regard for the potential danger to individual rights and freedoms that such concentration of power might pose. Attorney-General, and previously High Court judge, H.V. Evatt had included two of the key safeguards from the Atlantic Charter in the 1944 Powers referendum for precisely that purpose, as he explained at the time:

As a result of long struggles, freedom of speech and freedom of religion seemed securely established in the modern democracies: but the rise of twentieth-century dictatorships in Europe has shown that fundamental rights can be swept away and the consequences can be disastrous. In the Government's view the two freedoms — freedom of expression and freedom of religion — are fundamental to the whole idea of democracy. I have for many years felt that it would be wise to include them as specific safeguards in the Constitution (Evatt [1944]).

Evatt's worst fears over the infringement of basic liberties were soon realised with the Menzies Liberal coalition government's most illiberal bid to ban the Communist party and deal harshly with suspected Communists in the early 1950s. Now the leader of the federal parliamentary Labor party in opposition, Evatt successfully fought the Communist Party Dissolution Act in the High Court and helped defeat the Menzies' government's subsequent attempt to get its way by referendum (Kirby 1990). At Evatt's instigation, a new plank for a Charter of Rights was added to the ALP platform in 1951 as the first item in paragraph 3 of the methods section dealing with constitutional amendment. The new clause read as follows:

- 3. (a) To include in the Commonwealth Constitution a Charter of Civil and Human Rights (ALP, 1951, 53).

This strategy of linking the centralisation of power with countervailing protection for individual rights continued within ALP circles into the 1980s (Galligan et al. 1990), and was championed by scholars such as Geoffrey Sawer (1976, 104).

Even as the ALP held to its abolitionist stance in the 1950s, some leaders such as Evatt had real doubts about the feasibility of constitutional change. Evatt cautioned the ALP's 1953 National Conference, which reaffirmed the platform approved in 1951, that constitutional reform might not be possible: 'Labor has to recognise that its job must be performed within the limits of a federal constitution' (quoted in ALP 1953, 5). But the ALP, despite being out of office and

unable to achieve its main aims while in office, would not part with its dreams of a quick constitutional fix. The 1955 Conference reformulated the plank for restructuring federalism and juxtaposed this with the plank for the abolition of the Senate. The new section now read:

3. Amendment of the Commonwealth Constitution:—

- (a) To include therein a Charter of Civil and Human Rights.
- (b) (i) To clothe the Commonwealth Parliament with unlimited powers and with the duty and authority to create States possessing delegated Constitutional Powers; and
- (ii) to abolish the Senate

An additional optimistic plank was added to ensure subsequent regular updating of the constitution:

- 3. (b) (iii) pending the achievement of the aims set out in sub-paragraphs (i) and (ii) to remedy defects as they appear, to keep the Constitution abreast of changing conditions and to provide for Federal Prices Control (ALP 1955, 55).

At least for Evatt, the inclusion of a charter of rights was a necessary component of constitutional change. Such a charter was important in its own right, but was also necessary to add credibility to the other proposals for sweeping changes. As Crisp notes, Labor's attempt at expanding the Commonwealth's powers in 1942-44 never quite lost its 'meretricious and tricky air' (Crisp 1978, 253), nor did Evatt's reputation entirely recover from that grab for 'untrammelled power' (Bland [1951] [8]). In October 1955, Evatt was at pains to remind the participants at a conference on the creation of new states of the lessons that Labor had learned:

Certainly the people will be chary of establishing any New State unless its Constitution specifically guarantees fundamental human freedoms. Once upon a time that could be left to public opinion. But to-day, and indeed in every political generation the struggle for basic liberties must be fought for afresh (Evatt 1955, 75).

For the next two federal Labor Conferences, constitutional amendments were again under consideration. Labor's Old Guard, however, remained committed to socialist orthodoxy and concerned with educating the Australian public to see the light. The views of such stalwarts of the left as national president, F.E. Chamberlain, prevailed at the 1957 Conference. Chamberlain advocated changing people's attitudes rather than the ALP's socialist and centralist platform:

We should plan a continuing campaign directed towards informing the people, in reasonably detailed form, as to the type of legislation we require to give effect to our policy, and showing clearly where the constitutional barriers are created...

It is useless to talk of attaining the socialist objective by constitutional means unless we educate the Australian people on the fact that we cannot legislate in their best interest unless they will agree to grant the constitutional means ... (ALP 1957, 6)

Although relatively new to federal politics at the time, Whitlam had a rather old-fashioned view of Labor's purpose and the frustrations of the established constitutional system when he delivered the 1957 Chifley Memorial Lecture quoted at the beginning. The Australian Labor party was frustrated and demoralised, he then claimed, because it was prevented by the constitution from carrying out its objectives. In that speech, he went on, in typical acerbic fashion, to recommend a role for state Labor members:

Much can be achieved by Labor members of the State Parliaments in effectuating Labor's aims of more effective powers for the national parliament and for local government. Their role is to bring about their own dissolution (Whitlam 1977a, 38).

Whitlam was to change his mind in the 1960s and play a major part in leading the ALP around this constitutional dead end and, eventually in the 1970s, out of the political wilderness.

Already by the end of the 1950s the ALP's antifederal platform was becoming publicly untenable. This was evident from the inconsistent stance taken by Labor's team of representatives on the 1958–59 Joint House Committee on Constitutional Reform. The Labor representatives, who included Calwell, Ward, Whitlam and Senator McKenna, first insisted on spelling out the ALP's policy of vesting full legislative powers in the Commonwealth and restricting the states to delegated responsibilities. This was put in the committee's 1958 interim report, but dropped for the 1959 final report. There the Labor members supported a much milder set of recommendations for protecting the electoral process and, moreover, recommended against a constitutional bill of rights (Joint Committee on Constitutional Review 1959; and Richardson 1986).

Changing Labor's collective mind: the 1960s

The early 1960s were a time of ferment in Labor's constitutional thinking. The 1961 Conference made no changes to the planks for abolishing federalism and the Senate, although Senator McKenna, Labor leader in the Senate, circulated notes that questioned their feasibility. McKenna first reiterated Labor's clichés about the constitution being 'outmoded and ... a brake upon progress':

2. The Constitution prevents Labor carrying out basic items of its policy and leaves any Australian government with fewer powers than any other government in the world (ALP 1961, 86).

But he then noted that most efforts at constitutional change in Australia foundered on partisan opposition, and advocated that Labor endorse the recommendations of the Joint Parliamentary Committee on Constitutional Review because it had made proposals that were 'practically possible in the near future'. Moreover, in the lead-up to the 1963 Conference, Whitlam, who had become deputy leader of the federal parliamentary party in 1960, announced how reform could be achieved within the existing constitutional powers (Whitlam 1977a, 73-79). Also in 1963, Calwell, who succeeded Evatt as parliamentary leader in 1960, published *Labor's Role in Modern Society* which argued for the reform of the constitution in light of the recommendations of the Report of the Joint Committee (Calwell 1963).

This moderate position on constitutional change was argued at greater length in the 1963 National Conference. The 'Methods' Committee had been charged with preparing a plan for carrying into effect the plank for abolishing federalism. It had been claimed by some party diehards that it would be easier to implement the ALP's radical platform for sweeping constitutional change 'in one fell swoop' rather than the more moderate and piecemeal recommendations of the Joint Committee on Constitutional Review. This proposal for 'a unitary constitution' was categorically rejected as 'quite unreal' (ALP 1963, 90-91). Instead, the 'Methods' Committee recommended the 1961 McKenna position of leaving the abolitionist plank unaltered with the ALP only concerning itself in practice with the proposals of the Joint Committee.

More importantly, this Committee also made an additional recommendation for creating the conditions under which the centralist party platform might be further implemented. The detailed proposals involved the use of existing powers for strengthening the Commonwealth's position and the sense of nationhood, and creating regional planning and development organisations which might provide the infrastructure for eventual regional government. This approach echoed the regional planning policy of the Chifely government published by the Department of Post-War Reconstruction in 1949 (Department of Post-War Reconstruction 1949).

The proposals are worth quoting in full since they provide something of a blueprint for the development of Whitlam's New Federalism:

3. That a Labor Government should seek to create the conditions under which the platform could be furthered by endeavouring to strengthen the sense of Commonwealth and nationhood and by the creation of regional planning and development organisations which may provide the basis for county or provincial government at a later date.

Specifically we suggest the following means for these ends within existing powers:

- (i) The strengthening of Commonwealth institutions such as:

- (1) reviving the Interstate Commission and expanding its functions as recommended by the Constitutional Review Committee;
 - (2) creating Commonwealth courts to deal with all matters on which Federal jurisdiction can be exercised.
- (ii) Legislation extending Commonwealth spheres of activity:
- (1) by giving effect to matters contained in treaties (for instance, to I.L.O. conventions) under section 51(xxix);
 - (2) by use of the Commonwealth powers over matters of interstate trade, e.g. long service leave, workman's compensation, road hours and safety, rivers, interstate transport and the like;
 - (3) by the use of the Commonwealth power over matters of overseas trade—e.g. in controlling overseas investment.
- (iii) Legislative action by State Labor Governments:
- (1) to refer specific powers to the Commonwealth by agreement with a Commonwealth Labor Government;
 - (2) to refer territory to the Commonwealth under section III where the development of these areas is difficult or beyond the State's capacity.
- (iv) Use of financial power of the Commonwealth:
- (1) to achieve national policy by attaching conditions to the administration by the States of monies given in specific grants to the States under Section 96;
 - (2) similarly, to attach conditions to the use by the States of loan monies through the Loan Council under Section 105A (ALP 1963, 91).

During the 1965 Conference, attention was switched to the need for reforming the structure of the federal party. Under the the first full time National Secretary, Cyril Wyndham, there was a conscious effort to grapple with the mismatch of the ALP's centralist platform and its internal confederal organisation. The existing party structure was not that of a national party, but rather a collection of state delegates, as Whitlam's address to the Conference in support of the Wyndham proposals made clear:

I have found uniform and strong support for the 'Wyndham' proposals because they will make it possible for our party to pursue organisationally the principles we pursue politically. Our Platform urges that Australia be organised on a national not on a state basis; our rules provide for our party to be organised on a state basis. ...

It is not possible to achieve our party objectives in organisation and propagation other than on a national basis (Whitlam 1965, 255).

The struggle over changing the ALP's internal party structure that crowded out considerations of its constitutional platform during the

mid-1960s was primarily about gaining greater representation for the parliamentary wing within key party forums. This in turn was closely linked with Whitlam's aggressive bid for leadership of the parliamentary party. In 1966 Whitlam brought matters to a head by challenging the authority of the Federal Executive to dictate Labor's policy on the sensitive electoral issue of state aid to Catholic schools. The Executive was dominated by state-based party bosses such as F.E. Chamberlain from Western Australia and Bill Hartley from Victoria whom Whitlam branded as extremist and nonrepresentative. Whitlam received a formal reprimand from a Special Commonwealth Conference of the ALP called in March 1966 (ALP 1966, which reproduces Whitlam's statements as Appendices), but he had clearly won the encounter by publicly demonstrating the inadequacy of the ALP's internal party structures if Labor was to regain office.

Whitlam won the leadership of the federal Parliamentary Party in February 1967, and the National Conference in August of that year gave greater representation to the parliamentary wing in key party forums. Conference endorsed the proposals giving the federal parliamentary leaders and all the state leaders the right to vote as delegates at the National Conferences. More importantly, to counter the 'thirty-six faceless men' jibe that had cost Labor so dearly in previous elections, the 1967 Conference also made the federal parliamentary leaders and deputy leaders full members of the Federal Executive. In his address to the party, Whitlam noted that this was a significant reform for the party and that it had been achieved by cooperation from the state branches (ALP 1967, 51-3). Ironically, in boosting parliamentary representation by adding state leaders, these changes had partly reinforced the federal character of the ALP.

At the 1969 National Conference there was an assault on Labor's plank to abolish the Senate with Murphy leading the charge by moving that the plank to abolish the Senate be dropped. As a Senator since 1962 and ALP Senate leader since February 1967, Murphy was influential in reviving that chamber's independent standing and review function. With the minority Democratic Labor Party holding the balance of power, he grasped the opportunity for the Senate to exercise real review over the Liberal Coalition government. Murphy's argument for retaining the Senate was supported by concerns about the need for checks and balances on central power and recognition of the Senate's review capacity. Murphy's proposed amendment was the subject of a heated debate that crossed factional lines and had the Tasmanians, who arguably had most to lose if the Senate were abolished, supporting the motion and Whitlam, among others, opposed. The debate was adjourned when Senator M. Holding moved that all the proposals be referred back to the Committee for further work and its deliberations reported at the next conference.

During the 1969 conference, Whitlam released details for a practical reorganisation of the federal system using existing constitutional powers. This was to involve an increased role for municipalities and a reduced role for the states. The Commonwealth's role was to be expanded in key policy areas such as health, education and urban services through tying terms and conditions to grants using section 96 of the constitution. Whitlam had drawn attention to this section as Labor's 'charter of public enterprises' back in 1961 (in Whitlam 1977a, 65), and through the 1960s had been developing a practical program of Commonwealth initiatives that a federal Labor government might implement using the section. Whitlam's 'New Federalism' mirrored the earlier work of himself and others in the ALP's internal committees and followed the strategy of using existing federal powers rather than seeking radical constitutional amendments (Whitlam 1971).

Thus, by the end of the 1960s, the ALP's thinking and strategy had changed to working within the constitution, rather than trying to abolish federalism. The old planks for abolishing federalism and the Senate remained in the platform, but were now virtually dead letters. New leaders with concerns for social rather than economic reforms were firmly in control of the federal ALP and intent on winning electoral office.

Changing the platform: the 1970s

With the Federal Labor party on the threshold of government, the 1971 Conference was devoted to formalising Labor's New Federalism by putting it into the party's platform. This was done in a new Constitutional Matters section instead of the old Methods section which perhaps suggested that constitutional amendment was no longer considered an imperative for achieving Labor's objective but rather an item on its agenda for change. In any case, the change had two parts: first, modifying the historic plank for abolishing federalism and second, adding an outline of what the New Federalism entailed. Labor's old masthead statement on constitutional amendment had required

one sovereign national parliament possessing unfretted powers to pass laws for Australia and the creation of subordinate provincial or state governments possessing delegated powers in the same way as local councils in the States now possess authority delegated from the State Parliaments (ALP 1963, 90).

This was replaced with a more qualified call

to clothe the Parliament of Australia with such plenary powers as are necessary and desirable to achieve international co-operation, national planning and the Party's economic and social objectives ... (ALP 1971, 3).

The plank for abolishing the Senate was left intact at this point, but sandwiched between two new planks that highlighted its incongruity. The additions called for synchronisation of elections for the House of Representatives and the Senate, and for direct election and equal apportionment of electorates for the House of Representatives and all Houses of state Parliaments.

A whole new section was added on 'administrative arrangements' that prefigured the practical agenda of the Whitlam government. This section called for

(b) Alteration of administrative arrangements —

- (i) to balance the functions and finances of the Commonwealth, State and Local Governments to ensure adequate services and development of resources:
- (ii) to entrust to the Inter-State Commission, the Commonwealth Grants Commission, the Education Commissions, the Hospitals Commission, the Conservation and Construction Commission and the Fuel and Energy Commission the functions set out else where in this Platform and to charge those commissions with the responsibility of making periodic reports to every Parliament; and
- (iii) to include on the Loan Council a representative chosen by local government and semi-government authorities in each State (ALP 1971, 3).

Despite enormous promise, the Whitlam government fell far short of expectations in its performance. Plagued by political turmoil, administrative incompetence and inability to manage the national economy as it slid into recession, the Whitlam government was stymied by the Opposition-controlled Senate and finally dismissed by the Governor-General. Nevertheless, the Whitlam experience proved that the ALP's moderate social reform agenda could be implemented using existing constitutional powers. Whitlam subsequently acknowledged that the constitution was no longer the bogey he had made it out to be in 1957: 'the major obstacles against a program of reform are not constitutional but political. Even the Federal system itself, for all its restrictions, limitations, and frustrations, need not prevent reform.' (Whitlam 1978, 6) This was also the view of Labor's new generation, as Gareth Evans affirmed: "Labor had by then (before 1975) very much learnt to live with that Constitution: not to love it, certainly but to come to terms with it." (Evans 1976, 4)

The shock dismissal of 1975 raised a different set of constitutional issues to which Labor could switch its reformist propensities. If Labor could now work within the federal constitution, could it be sure of governing? In post-1975 politics, the new cries were for securing the right of a government enjoying the confidence of the Lower House to

remain in office. Accordingly, the 1977 Conference added a series of items to its platform for constitutional reform: to restore Parliament as 'the principal organ of democracy', to strip the Senate of its power over money bills, and to define and limit the discretionary powers of the heads of state 'so long as such offices remain'. (ALP 1977, 4; see also Evans 1976; Whitlam 1977b; Sharman 1988)

But as Labor's rage subsided, the pragmatists regrouped and led a successful assault on the ALP's venerable plank to abolish the Senate. This was the main item in the report of the Constitutional and Legal Affairs Committee presented to the 1979 Conference by Senator Button. The plank to abolish the Senate needed to be dropped because it was simply not attainable, he argued. The plank had been adopted in 1919 after Labor got 42 per cent of the vote and returned only one member of the Senate whereas at that election the National party got 45 per cent of the vote and returned 17 members. As Button explained:

Since that year, in 60 years of federal government in Australia, nothing has been done by any party — no attempts have been made — to abolish the senate. All that happened in 1975 was that in Labor Party terms the senate abolished us ... (ALP, 1979b, 12/13 on 16/7/1979).

The Conference accepted Button's proposal, but the platform retained reform and abolition of the upper houses of the states (ALP 1979a, 19).

At the 1979 Conference, the ALP thoroughly revamped its platform in a way that finally adjusted its formal aspirations to the established constitutional system. Constitutional matters were put in a new Constitutional and Legal chapter of the platform which was introduced with a preamble recognising federalism and the states:

Labor is committed to constitutional, legislative and administrative reforms for the purpose of achieving efficient and democratic government, a responsive national Parliament and an adequate and flexible division of powers between Commonwealth, State, and Local Government (ALP 1979a, 19).

This acceptance of federalism was reinforced by a detailed set of sub-proposals under the heading *Federalism* which called for:

14. Adjustment of the relationships among National, State, Territory, Regional and Local authorities to enable rational economic decision-making and resource allocation, effective provision of public services, recognition of local needs and aspirations, and maximum opportunity for participation in the decision-making process.
15. The interchange of legislative powers between the Australian and State Parliaments where appropriate.
16. Joint planning and co-operative development with the States of programmes of national significance, where the national government has insufficient constitutional power.

17. Provision to the States and Territories of sufficient funds to enable them to maintain effective services without resorting to inappropriate or inequitable methods of taxation.
18. Continued development of regional programmes and structures, utilising regional boundaries employed by the States wherever appropriate. The amalgamation and regional organisation of local government to be specifically encouraged (ALP 1979a, 20).

As well, there was a further watering down of the plank concerning powers of the Commonwealth: the 1971 formulation of 'plenary powers' was replaced by 'such powers as are necessary' so that it read:

To provide the Commonwealth Parliament with such powers as are necessary for national planning and the achievement of the Party's economic and social objectives (ALP 1979a, 19).

The leader of the Federal Labor party, Bill Hayden, articulated Labor's new spirit of accommodation with federalism and the states in the 1979 Ramsay Memorial lecture where he lamented:

Tragically in Australia, there is very little co-ordinating and co-operative machinery of even the most rudimentary kind. There is even less goodwill between the levels of government which engage in extremely bitter rivalries and divisiveness. (Hayden 1979, 867)

Hayden acknowledged the primacy of the states in key policy areas and the need for the Commonwealth to work with them:

The tragedy of the atmosphere of confrontation that has prevailed between States and Commonwealth in recent years is that the States can do so much to raise the living quality of every Australian. ...

The influence of the State is pre-eminent in so many areas — housing, land development, urban planning, education, health services, public transport, police, criminal and civil legal codes, mining, agriculture, basic community welfare. Reform and improvement in all of these areas is dependent either on State initiative or on a substantial measure of State co-operation with programs initiated and funded by the Federal Government. (Hayden 1979, 868)

Therefore the Federal government would need to work cooperatively with the States to make the system work properly.

Conclusion

By the end of the 1970s the ALP's platform regarding federalism had finally been brought into line with its realistic aspirations for moderate policies of social reform and a neoconservative approach to economic management (Johnson 1989). Instead of seeking their abolition, a federal Labor government would cooperate with the states to make the complex

system of federalism work more effectively. The modification of Labor's commitment to abolish federalism and the Senate was due partly to a more realistic sense of what was feasible and partly to a more sophisticated approach towards working the existing system. But as well, Labor's social and economic goals had been moderated to ones that were congenial to middle Australia and private enterprise.

Once it was finally recognised that the states could not be abolished, it also became obvious that they had primary or shared responsibility for major policy areas that were of vital concern to federal Labor governments. Hence cooperation rather than coercion was belatedly embraced as the appropriate federal strategy for the Labor party, as Hayden's 1979 Ramsey Memorial Lecture made crystal clear.

Labor's reconciliation with federalism both at the platform and practical policy level has been gradual and incremental. Indeed, some might see it as surprisingly slow. The above account has shown that Labor's antagonism to federalism persisted well into the postwar period because of a mixture of ideological and organisational factors. In the decades before World War II Labor was undercut by its own quasifederal structures and the federal constitution that shaped Australian politics. Ironically, the persistence of antifederal ideology in the postwar decades was also bolstered by the federal organisation of the Labor Party. Federal Parliamentary leaders such as Whitlam and Murphy had softened their views about federalism as they moderated the party's policy goals and strategies in response to electoral demands, but they had then to change Labor's collective views. That was difficult because the party's organisation was dominated by officials rather than parliamentary leaders.

State party secretaries like Chamberlain and Hartley put a break on change in the 1960s. Removed from immediate electoral pressures and committed to maintaining both Labor's traditional platform and their own position of powers, these entrenched officials exploited the federal structures of their party to slow the process of change. There is a good deal of irony in the fact that state officials used the federal party structure to hang onto a centralist platform, while the profederalist reformers had to streamline the party structure in order to push forward labor's reconciliation with federalism. The further important organisational change was the strengthening of parliamentary representation by adding federal and state parliamentary leaders to the National Conference and federal leaders and deputy leaders to the Federal Executive. In this way the stranglehold of Party oligarches was broken and more electorally palatable and representative views prevailed.

References

- Australian Labor Party 1948. *Official Report of Proceedings of the 18th Commonwealth Triennial Conference*, September, Canberra.
- Australian Labor Party 1951. *Official Report of Proceedings of the 19th Commonwealth Triennial Conference*, March, Canberra.
- Australian Labor Party 1953. *Official Report of Proceedings of the 20th Commonwealth Conference*, January, Adelaide.
- Australian Labor Party 1955. *Twenty First Federal Conference*, March, Hobart.
- Australian Labor Party 1957. *Official Report of Proceeding of the 22nd Commonwealth Conference*, March, Brisbane.
- Australian Labor Party 1961. *Official Report of the Proceeding of the 24th Commonwealth Conference*, April, Canberra.
- Australia Labor Party 1963. *Official Record of the Proceeding of the 25th Commonwealth Conference*, July, Perth.
- Australian Labor Party 1965. *Official Report of the Proceedings of the 26th Commonwealth Conference*, August, Sydney.
- Australian Labor Party 1966. *Report of the Special Commonwealth Conference*, March, Canberra.
- Australian Labor Party 1967. *Official Report: 27th Commonwealth and the Special Commonwealth Conference*, July, Adelaide.
- Australian Labor Party 1969. *Official Report: 28th Commonwealth Conference*, July, Melbourne.
- Australian Labor Party 1971. *Federal Platform & Policy: As Approved by the Commonwealth Conference*, Launceston. 1971
- Australian Labor Party 1977. *Australian Labor Party Platform, Constitution, and Rules as approved by the 32nd National Conference*, July, Perth.
- Australian Labor Party 1979a. *Platform, Constitution and Rules as Approved by the 33rd National Conference*, July, Adelaide.
- Australian Labor Party 1979b. *Transcript of the 33rd Biennial Conference*, July, Adelaide.
- Bannon, J.C. 1987 'Overcoming the Unintended Consequences of Federalism', *Australian Journal of Public Administration* 46, March, 1-9
- Bland, F.A. [1951]. *What the Federal System Means to You*, Constitutional League of Australia, Melbourne.
- Button, J. 1982. 'On Federalism', in *Labor Essays 1982*, G. Evans & J. Reeves, eds, Drummond, Melbourne.
- Calwell, A.A. 1963. *Labor's Role in Modern Society*, Lansdowne, Melbourne.

- Chamberlain, F.E., 1957. 'Presidential Address to the 22nd Biennial Conference Brisbane', ALP 1957, *Official Report of Proceeding of the 22nd Commonwealth Conference, March*, Brisbane.
- Crisp, L.F. 1978a. *The Australian Labor Party 1901-1951*, Hale & Iremonger, Sydney.
- Crisp, L. 1978b. *Australian National Government*, Longman Cheshire, Melbourne.
- Department of Post-War Reconstruction 1949. *Regional Planning in Australia*, Commonwealth Government Printer, Canberra.
- Emy, H.V. & O.E. Hughes 1988. *Australian Politics: Realities in Conflict*, Macmillan, Melbourne.
- Evans, G. 1976. 'Labor and the Constitution', *Meanjin* 1, 3-19.
- Evans, G. (ed.) 1977. *Labor and the Constitution*, Heinemann, Melbourne.
- Evans, G. 1980. 'The A.L.P. and the Constitution', in *Labor: Direction for the Eighties*, J. North & P. Weller, eds, Ian Novak, Sydney.
- Evatt, H.V. [1944]. *Temporary Alteration of the Constitution: Notes on the Fourteen Powers and the Three Safeguards*, Commonwealth Government Printer, Canberra (note: no date on document).
- Evatt, H.V. 1955. 'New States: Constitutional and Political Aspects', in *New States for Australia*, the Proceedings of the Australian Institute of Political Science, Spring Forum, Armidale, October 1955.
- Galligan, B. 1981. 'Federalism's Ideological Dimension and the Australian Labor Party', *Australian Quarterly* 53(2) Winter, 128-40.
- Galligan, B. 1987. *Politics of the High Court*, University of Queensland Press, St. Lucia.
- Galligan, B. 1989. 'A Political Science Perspective', in *Australian Federalism* B. Galligan (ed.), Longman Cheshire, Melbourne.
- Galligan, B., Knopff, R & Uhr, J. 1990. 'Australian Federalism and the Debate Over a Bill of Rights', *Publius: The Journal of Federalism* 20(4) 53-67.
- Galligan, B., & Singleton, G. (eds), 1991. *Business and Government Under Labor*, Longman Cheshire, Melbourne.
- Greiner, N. 1990. 'Physician Heal Thyself: Micro Economic Reform of Australian Government', Speech to the National Press Club, 25th July.
- Hawke, R.J.L. 1979. *The Resolution of Conflict*, The Australian Broadcasting Commission, Sydney.
- Hawke, R.J. 1990. 'Towards a Closer Partnership', Speech to the National Press Club, 19 July, Canberra.

- Hayden, W. 1979. 'Alex Ramsay Memorial Lecture'. *Commonwealth Record* 4(25), 866-71.
- Jaensch, D. 1983. *The Australian Party System*, Allen & Unwin, Sydney.
- Jaensch, D. 1989. *The Hawke-Keating Hijack*, Allen & Unwin, Sydney.
- Joint Committee on Constitutional Review 1959. *Report*, Commonwealth Government Printer, Canberra.
- Johnson, C. 1989. *The Labor Legacy: Curtin, Chifley, Whitlam, Hawke*, Allen & Unwin, Sydney.
- Jupp, J. 1982. *Party Politics: Australia 1966-1981*, Allen & Unwin, Sydney.
- Kirby, M. 1990. 'Dr. Evatt and the Communist Party Dissolution Bill', Presented to the Evatt Conference, Bond University, 14-15 July.
- Lijphart, A. 1984. *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries*, Yale University Press, New Haven.
- Lowi, T.J. 1984. 'Why There is No Socialism in the United States? A Federal Analysis', *International Political Science Review* 5(4), 369-80.
- Lloyd, C.J. & Reid, G.S., 1974. *Out of the Wilderness: the Return of Labor*, Cassell, North Melbourne.
- Maddox, G. 1985. *Australian Democracy in Theory and Practice*, Longman Cheshire, Melbourne.
- Maddox, G. 1989. *The Hawke Government and Labor Tradition*, Penguin, Melbourne.
- New South Wales Cabinet Office 1990. 'Microeconomic Reform of Commonwealth/State Relations', discussion paper prepared for Premiers' Conference, Canberra, June.
- Palmer, G. 1979. *Unbridled Power: An Interpretation of New Zealand's Constitution & Government*, Oxford, Wellington.
- Politics 1977. Special Number on 'The Politics of New Federalism', APSA, Adelaide.
- Richardson, J.E. 1986. 'The Parliamentary Joint Committee on Constitutional Review', *Canberra Bulletin of Public Administration* 13 Winter, 154-6.
- Rydon, J. 1988. 'The Federal Structure of Australian Political Parties', *Publius: The Journal of Federalism* 18(1), 159-73.
- Sawer, G. 1963. *Australian Federal Politics and Law*, Melbourne University Press, Melbourne.
- Sawer, G. 1976. *Modern Federalism*, Pitman, Carlton, Vic.

- Sawer, G. 1977. 'Towards a New Federal Structure?', in *Labor and the Constitution 1972-1975*, G. Evans (ed.), Heinemann, Melbourne.
- Sharman, C. 1988. 'Constitutional Politics in Australia', in *Constitutions in Democratic Politics*, V. Bogdanor (ed.), Gower, London.
- Special Premiers' Conference 1990. 'Communique — Towards a Closer Partnership', 30-31 October, Brisbane.
- Special Premiers' Conference 1991. 'Communique', 30 July, Sydney.
- Whitlam, E.G. 1965. 'Address', *Official Report of the Proceedings of the 26th Commonwealth Conference*, August, Sydney.
- Whitlam, E.G. 1967. 'Address by the Leader of the Opposition', Appendix G in ALP, *Official Record 27th Commonwealth Conference and the Special Commonwealth Conference*, July, Adelaide.
- Whitlam, E.G. 1971. 'A New Federalism', *The Australian Quarterly* 43(3) September, 6-17.
- Whitlam, E.G. 1974. 'The Future of Australian Federalism — a Labor View', in *Intergovernmental Relations in Australia*, R.L. Mathews (ed.) Sydney: Angus & Robertson, 295-306.
- Whitlam, E.G. 1977a. *On Australia's Constitution*, Widescope, Camberwell, Melbourne.
- Whitlam, E.G. 1977b. 'Address to the National Conference for a Democratic Constitution', 23 September, Melbourne, In *Commonwealth Record* 2(38).
- Whitlam, E.G. 1978. *Reform During Recession: the Way Ahead*, University of Queensland ALP Club, St Lucia.
- Whitlam, G. 1985. *The Whitlam Government*, Penguin, Ringwood.

FEDERALISM RESEARCH CENTRE
DISCUSSION PAPER SERIES
ISSN 1036 8655

- No. 1 Christine Fletcher, *The Institutional Logic of Program Management in the Australian Federal Sprawl*, June 1991.
- No. 2 Cliff Walsh, *Reform of Commonwealth–State Relations: 'No Representation Without Taxation'*, August 1991.
- No. 3 Christine Fletcher, *Responsive Government: Duplication and Overlap in the Australian Federal System*, August 1991.
- No. 4 Christine Fletcher & Cliff Walsh, *Intergovernmental Relations in Australia: Managerialist Reform and the Power of Federalism*, September 1991.
- No. 5 Brian Galligan & David Mardiste, *Labor's Reconciliation with Federalism*, September 1991.
- No. 6 Campbell Sharman, *Reporting Federalism: The Press and Coverage of the Special Premiers' Conference 1990*, September 1991.