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AUSTRALIAN FEDERALISM
YES OR NO

Brian Galligan
Cliff Walsh

No. 9

December 1991

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This paper was prepared originally in late 1989, well in advance of the Prime Minister's July 1990 announcement of his New Federalism Initiative, for delivery at the Conference on Australian Federalism Towards The Second Century, commemorating the Australasian Federation Conference, organised by the Melbourne University Law School, 5-7 February 1990, Parliament House, Melbourne. Delays in publication of the volume in which it is to be published (G. Craven, ed. *Australian Federation: Towards the Second Century*, Melbourne University Press, forthcoming 1993) have induced us to circulate it now as a Discussion Paper because it addresses many issues which recur in the federalism debates stimulated by the new federalism initiative.

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Before examining the debate about whether Australia should persist with its federal system of government, and the prospects of Australian federalism which is central to the debate but has often been misunderstood or misrepresented, it is worth posing that debate in perspective. Essentially the debate over Australian Federation 'Yes or No' has been a century and a half old that should now be considered closed. One hundred years after the 1890 Australasian Federation Conference endorsed a federal union of the Australian Colonies and called for the preparation of its subordinate scheme by a Federal Convention, Australian federalism is not seriously in question. That has been demonstrated in the most obvious and categorical way by the defeat of the 1988 referendums that proposed only minor tinkering with the system, but not with the most negative results of any proposed ever put to the Australian people. The 'No' case will be kept alive as a provocative teaching model within academia, and no doubt by unreflective public

¹ B. Galligan & J. R. Neuharth, *The Constitutional Commission and the 1988 Referendums* (1989).

AUSTRALIAN FEDERALISM YES OR NO

Brian Galligan & Cliff Walsh



A spirited debate over whether Australia should have a federal system or not has raged intermittently during the decades since federation. In the political arena this debate was sustained by the Australian Labor Party that until the 1970s was formally pledged to the abolition of federalism, and when in federal office, which was relatively rare until the 1980s, endeavored, usually with limited success, to centralize power at the national level. Periodically, national crises associated with wars and economic depressions and recessions have fuelled the debate, and occasioned major centralist responses either of a temporary or permanent nature. But as well there has been a steady growth of national sentiment paralleling the economic and social integration of the Australian nation that has prompted many to question whether a federal constitution drafted in the late nineteenth century could possibly be adequate for the unified nation Australia has become in the late twentieth century. This is the familiar 'horse-and-buggy' or 'short-pants' mentality that has produced such public fozzles as the Hawke Government's Constitutional Commission to modernize the constitution for the Bicentenary.

Before examining the debate about whether Australia should persist with its federal system of government, and the character of Australian federalism which is central to the debate but has often been misunderstood or misrepresented, it is worth putting that debate in perspective. Essentially the debate over 'Australian Federalism Yes or No' has been a twentieth century one that should now be considered closed. One hundred years after the 1890 Australasian Federation Conference endorsed a federal union of the Australian Colonies and called for the preparation of 'an adequate scheme for a Federal Constitution', Australian federalism is not seriously in question. That was demonstrated in the most obvious and categorical way by the defeat of the 1988 referendums that proposed only minor tinkering with the system but met with the most negative results of any proposals ever put to the Australian people.¹ The 'No' case will be kept alive as a provocative teaching model within academia, and no doubt by unreflective public

¹ B. Galligan & J.R. Nethercote, *The Constitutional Commission and the 1988 Referendums* (1989).

figures looking to float easy solutions to, or as a pretext for not coming to grips with, difficult issues of public policy.

The question for the 1990s then is not 'Australia Federalism Yes or No' but 'How well are the various parts of the federal system working?' and 'How, realistically, might it be improved for the second century of Australian federalism?' The twenty-first century promises to be the century of federalism internationally as well as nationally, just as the nineteenth century was the century of colonialism and the twentieth century of nationalism. Understandably [the establishment, growth and consolidation of national government has been the dominant theme in Australian political history during this century,] just as that of the states as autonomous colonies was for the nineteenth century. There has been a tendency, however, to overlook the fact that Australia was established and has been consolidated as a *federal* nation, with the states not only persisting but undergoing something of a renaissance in recent years. In the discussion of our hybrid constitutional system, parliamentary responsible government at the national level has tended to dominate over federalism and the states. But that is now changing.

Australian federalism is probably more vital and assured today than at any period since the Second World War, with Labor, the dominant party of government and traditionally the main threat to federalism, now working comfortably within the federal system and championing the revitalization of state government.² With no realistic possibility of radical restructuring of a regime kind, and we would argue no need, there is an imperative for restating what Australian federalism entails and why it is to be preferred. That is particularly so because the flawed 'no' case has tended to dominate in the polemical literature. Also because of the spotty coverage and strong ideological and argumentative bent of much of the Australian writing on federalism, there is an obvious need for documenting and critically assessing how particular intergovernmental arrangements and processes are working. Although fine tuning in certain policy areas would presuppose such primary research, there are other major and well-documented areas of fiscal and constitutional federalism that are ripe for major overhaul. In these areas, the accretions of history, often in response to the economic crises and political forces of earlier decades, may not be appropriate for the continuing vitality of Australian federalism in the economic and political environment of the late twentieth century. Notable examples are the whole paraphernalia of centralized fiscal federalism and the *Engineers* interpretive method, along with some of the more extreme centralist decisions, of the High Court.

² J. Cain, 'Towards a Federal Reformation: the Renaissance of the Australian States', in M. Birrell (ed.), *The Australian States: Towards the Renaissance* (1977).

FEDERAL THEORY AND THE AFFIRMATIVE CASE

The affirmative case for federalism in Australia has never been prominent, in part because it was not made by those who drafted the federal constitution. The Australian Founders spent virtually no time at all debating whether Australia should have a federal system: they simply took that for granted and so did not articulate the advantages of federalism over a unitary alternative. That Australia would be federal was already assumed by the leading participants at the time the landmark 1890 Federation Conference met. The purpose of this preliminary Melbourne conference, as La Nauze sums it up, was 'not to frame a constitution but to debate the question whether it was worth taking pains to have one framed' at that time or, as Parkes put it in his opening speech, to test 'the feeling of the Conference as to the time being ripe for federation'.³ The Australians were familiar with the Canadian federal constitution adopted in 1867: in fact in proposing the Conference to his Victorian counterpart Gillies, Parkes said that 'the scheme of Federal Government, it is assumed, would necessarily follow close upon the type of the Dominion Government of Canada'.⁴ During the Conference, Deakin and Inglis Clark insisted that the American model, rather than the Canadian, was preferable, and made some reference to its underlying theory. Deakin recommended Bryce's recently published classic, *The American Commonwealth* (1888), as a 'text book for the philosophical study of constitutional questions' with which they were concerned, but the philosophical aspects were never to the fore.

For the most part, at this and subsequent conventions, the Australian Founders focused on the practicalities of devising an appropriate scheme of federal government that would be accepted by the people of the Australian colonies. Although the theoretical exposition of federalism and its advantages was virtually absent from the Australian debates, that does not mean that Australian federalism is devoid of both as some have assumed — only that we have to look elsewhere for their articulation. The appropriate place is not to Bryce who had a rigid view of federalism as a co-ordinate system of parallel machinery of government,⁵ nor to his intellectual successor K.C. Wheare who continued this arid tradition of defining federalism in terms of co-ordinate institutions. The 'federal principle', according to Wheare, was 'the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent'.⁶

³ J.A. La Nauze, *The Making of the Australian Constitution* (1972) 15.

⁴ *Ibid.*, 14.

⁵ Lord Bryce, *The American Commonwealth* (1888).

⁶ K.C. Wheare, *Federal Government* (4th edn, 1963) 10.

The theory of federalism, however, was best articulated by Madison and his colleagues in the *Federalist Papers*. Surprisingly, this definitive exposition of federalism by its American inventors was not well known to the Australian Founders, and only in recent times has become a primary source for exposition of Australian federalism that was largely copied from the American model. Since this has been developed in recent papers by Sharman⁷ and Galligan,⁸ only summary reference will be given here. The case for federalism follows directly from the key attributes of federal theory. These are: first, that federalism provides a robust constitutional system that anchors pluralist democracy; and second, that it enhances democratic participation through providing dual citizenship in a compound republic. If one values these two things, one ought to favour federalism. Australian critics who reject federalism usually do so because they prefer more direct and unrestrained democracy at the national level, and have little respect for the more localized democracy that state governments provide.

The great Australian debate over federalism might be summed up in institutional terms as liberal constitutionalism versus parliamentary supremacy, and in democratic terms as pluralist versus majoritarian democracy. The genius of the American Founders of modern federalism was in finding an institutional means of overcoming the tendency of democracy towards majority faction, and in enabling democracy to be extended to a large state. Until that time, it was thought that democracy was feasible only in small polities, and that it had a pathological tendency towards majoritarian faction, oppression of minority rights and consequent instability. The compound republic that the Federalists devised fragmented the popular will and provided the classic liberal constitutional system in which checks and balances by means of restrictions, competition and conflict were built into the system itself. As well, federalism provided the institutional means for extending democracy across a large territory and population, thereby multiplying factions and interests. As Madison explained in *Federalist* Number 10:

Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.⁹

⁷ C. Sharman, 'Parliamentary Federations and Limited Government: Constitutional Design and Redesign in Australia and Canada' (1990) 2 *Journal of Theoretical Politics*.

⁸ B. Galligan, 'Federal Theory and Australian Federalism: A Political Science Perspective', in B. Galligan (ed.), *Australian Federalism* (1989) 45.

⁹ A. Hamilton, J. Madison & J. Jay, *Federalist Papers* (1961 ed.) 83.

Thus federalism was both an integral part of the liberal constitutional means of stabilizing and refining democracy, but also provided the structural underpinning of modern pluralist democracy.

It is important to be clear about the purpose of federal constitutionalism especially as Brugger and Jaensch's recent text, *Australian Politics: Theory and Practice* (1985), while acknowledging the relevance of Madison and the *Federalist Papers* for Australian federalism, gets it entirely wrong. These authors claim:

For James Madison, the American federal scheme was part of a grand design in which powers would be separated and interests divided. This would allow the central government to direct policy in *the public interest* by selecting all that was best in the various private and regional interests which were represented at the centre.¹⁰

The American federal scheme was part of a grand design for fragmenting power and interests; but its purpose was not to allow the central government to direct policy in the public interest by prescribing some overall good. Rather, it was the opposite: to restrict governments from pursuing prescriptive outcomes or imposing 'best' solutions so that individuals and groups could define and pursue their own happiness and interests. Liberal constitutionalism generally and Federalist theory in particular are not about prescribing substantive outcomes but rather enshrining institutional processes. Their purpose is to guarantee citizens and groups the right to pursue their own happiness, and to restrict governments from legislating happiness schemes. No public good is presupposed, but rather a multiplicity of private goods; or put another way, the public good lies in ensuring toleration and pluralism. Hence Hamilton's claim that the American Constitution, because of its elaborate system of checks and balances, was 'itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS'.¹¹

The structure and purpose of federalism is to be contrasted with the 'parliamentary despotism' of modern English constitutionalism that unifies and consolidates political power in the popular house of parliament that is dominated by the executive. The comparison was forcefully made by that champion of parliamentary sovereignty, A.V. Dicey, in favourably comparing the English Constitution with its American federal counterpart:

In the principle of the distribution of powers which determines its form, the constitution of the United States is the exact opposite of the English constitution, the very essence of which is...the unlimited authority of Parliament....

¹⁰ B. Brugger, & D. Jaensch, *Australian Politics: Theory and Practice* (1985) 166.

¹¹ *Federalist Papers*, No. 84, op. cit., 555.

All the power of the English state is concentrated in the Imperial Parliament, and all departments of government are legally subject to Parliamentary despotism.¹²

In recent times the dominance of Parliament by the Prime Minister and Cabinet drawn from the ruling party has produced executive despotism, or 'elective dictatorship'.¹³

In both American and Australian politics, federalism has been a major structural component in reinforcing decentralized and pluralist politics.¹⁴ The ideological dimension of federalism has been recognized and deeply resented by generations of democratic socialists, radical progressives and Australian Labor party leaders and supporters. Majoritarian democrats and democratic socialists have painted federalism as a perverse and anti-democratic system because it hampers centralized reforms and frustrates the majoritarian national will. According to Gordon Greenwood's classic critique of Australian federalism which articulated the unitary preference of many post-war reformers, these are 'evil effects' that flow from the basic federal division of powers.¹⁵

The resilience of Australian Federalism derives from its second main attribute of enhanced democratic participation that was also an important part of the original Federalist design. Federalism preserves the states as smaller democratic polities and establishes a system of dual citizenship or double democracy. Federalism enables the national strength of a large nation to be added to the enhanced participatory qualities of smaller democratic states: in Tocqueville's summing up, federalism combines 'the different advantages which result from the magnitude and the littleness of nations'.¹⁶ The average Australian exhibits a fairly robust appreciation of this. Citizens of the various states are attached to politics and political participation at the state level and tend to look primarily to their state governments for recurrent political needs.¹⁷ Canberra is not only geographically distant for most Australians; it is far removed from their sentimental attachments and needs.

¹² A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th ed. 1960) 139, 156.

¹³ Lord Hailsham, 'Elective Dictatorship', *The Richard Dimbleby Lecture* (1976).

¹⁴ T.J. Lowi, 'Why Is There No Socialism in the United States?' (1984) 5 *International Political Science Review* 369; and B. Galligan, 'Federalism's Ideological Dimension and the Australian Labor Party' (1981) 53 *Australian Quarterly* 128.

¹⁵ G. Greenwood, *The Future of Australian Federalism* (2nd edn 1976), ch. 4.

¹⁶ A. De Tocqueville, *Democracy in America* (1945) 168.

¹⁷ W.K. Hancock, *Australia* (1930) 64-5.

Because they are quasi-independent political communities, the states can and do play a major political and policy role. The character of the states' policy role varies among policy areas, depending on whether the states have primary jurisdiction, or have a shared input along with the Commonwealth, or are involved in a mediating role of delivering Commonwealth programs, or have an indirect impact through their control over related programs.¹⁸ As one might expect given the cultural homogeneity of the Australian people and the fiscal dominance of the Commonwealth, there are striking similarities in the policies of the various states. But there are also notable and persistent differences. While the policy differences are obvious manifestations of the independent character of the states as distinct political communities, the more pervasive similarities are not evidence to the contrary.

For even if the states produced identical policy outcomes, that would not constitute a good reason for not having them, as some might think.¹⁹ For the justification for states does not depend on their producing differential policy outcomes. It might simply be that all the state political communities have similar policy preferences. In no way does that derogate from the inherent value of enhanced democratic participation in the political and policy processes of smaller polities. In the same way, just because individuals or groups choose the same thing does not imply that they should not be allowed to choose. The justification for democracy at any level has to be primarily in terms of process rather than outcome. Democracy itself is defined and justified not in terms of policy results but in terms of the basic values embodied in its political processes. Since federalism both increases popular participation in politics and allows public goods to be more finely tailored to popular preferences, it can be said to enhance democracy. This enhancement of democratic participation through dual citizenship and multiple governments in a compound republic is undoubtedly federalism's most positive quality that largely explains its strength and resilience in Australia. It is perhaps ironical that the strong Australian democratic tradition which the anti-federalists so often invoke also sustains the states and the federal system which they attack.

ECONOMIC CONSIDERATIONS AND THE AFFIRMATIVE CASE

The support for federalism which comes from economic thinking has many diverse strands, but basically two inter-related dimensions. The first emphasizes the advantages of the decentralization of the provision of

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¹⁸ B. Galligan, (ed.), *Comparative State Policies* (1988).

¹⁹ For the contrary view, P. Self, 'Federal Theory and Australian Federalism: An Economic Perspective', in B. Galligan (ed.), *Australian Federalism* 69.

at least some public services in order to satisfy a more diverse set of preferences for service levels and standards. The second, more recently developed and articulated, suggests that *competition* within and between spheres of government can act as a mechanism both for restraining the inherent coercive power of government and for encouraging creativity and experimentation in policy making. In an important sense, the two dimensions are complementary, being strongly linked through the potential mobility of the citizen/voter (voting-with-the-feet) in securing preferred policy outcomes.


The decentralization theorem was built on the notion that different sorts of public goods, or public sector services more generally, have different optimal sized consumption groups.²⁰ These are sometimes defined by geographical considerations, as for example in the case of environmental controls, and sometimes by exhaustion of the benefits of economies of scale in their provision, as in the case of public utilities. Although a perfect mapping of 'benefit regions' and political jurisdictions might not be possible, this at least suggested the desirability of having a structure of regional as well as national government. The national government is responsible for the provision of nation-wide public goods such as defence and foreign affairs, income redistribution and stabilization, and as well for mopping up any spillovers or inefficiencies arising from the imperfect correspondence between regional jurisdictional boundaries and benefit areas for the provision of different sorts of public services.

In its abstract formulation, it was never obvious that, taken alone, the decentralization theorem provided a strong case for *political* decentralization as opposed to administrative differentiation of service provision; and in any event, not all impure public goods have clear spatial boundaries. When applied as a rationale for genuine federalism in actual federations formed from pre-existing polities based on arbitrarily determined boundaries, it faces other possible objections. Clearly, there can be no presumption of a natural correspondence between benefit areas and arbitrarily determined political boundaries. Moreover, it is not immediately obvious that preferences for public services will be more diverse between political groupings of citizen/voters than within them. It is here, however, that the role of mobility plays a part. As initially suggested in the seminal work of Tiebout,²¹ at least within limits set by the costs of doing so, mobility could allow a sorting of citizen/voters into groups within which members have relatively homogenous preferences. Then differentiation of service levels between groups would


²⁰ W.E. Oates, *Fiscal Federalism* (1972).

²¹ C.M. Tiebout, 'A Pure Theory of Local Government Expenditures' (1956) 64 *Journal of Political Economy* 416.

be consistent with citizen/voter preferences being better served by a federalized than a unitary structure of decision-making.

This economic, or essentially fiscal, approach to federalism has had considerably more fire added to it by the recent emphasis on the advantages that can flow from political competition within federal systems. To an extent the economic advantages of federalism parallel and reinforce the political ones originally proposed by Madison and the American Federalists and sketched in the previous section. Federalism can better serve the diverse economic and political preferences of citizens as well as constraining the coercive power of government through competition. 

The most recent development of this line of thinking in the economics literature emanates from Brennan and Buchanan's examination of a model of purely exploitative government.²² In this context they observe that the coercive power of the public sector can be reduced by devolving functions to regional governments, both because this reduces the scope of the central government's scope and power and because the coercive power of regional governments is limited by the capacity of citizen/voters (or more generally their tax bases) to move to another jurisdiction.

While the full implications of competitive federalism have yet to be explored, it seems clear that this strand of the economics literature strongly intersects with the liberal-participatory strands of the political case for federalism. This intersection is emphasized by Breton in his minority report in the McDonald Royal Commission in Canada.²³ Breton particularly argues that competitive federalism considerably strengthens the 'checks and balances' contained in otherwise parliamentary systems of government (the Canadian and Australian cases, among others). He also emphasizes that the appropriate conception of competition associated with federalism is not the static treatment of neoclassical economics with its focus on prices and quantities and allocative efficiency, but rather the dynamic conception of entrepreneurial competition which focuses on both the encouragement given to innovation and creative policy making, as well as limitations imposed on the exploitative power of governments. 

Such a perspective gives a rather stronger positive case for federalism from economic thinking — a case which inter alia explains and justifies features of federalism that otherwise appear a puzzle or worse defects of the system. For example, from the competitive federalism perspective, the existence of 'concurrent authority' and of so-called overlap and

²² Geoffrey Brennan, & James Buchanan, *The Power to Tax: Analytical Foundations of a Fiscal Constitution* (1980).

²³ Albert Breton, 'Towards a Theory of Competitive Federalism' (1987) 3 *European Journal of Political Economy* 263.

duplication can be viewed respectively as necessary conditions for, and sometimes desirable features of, a system which reduces the capacity of governments to coerce and encourages policy creativity.

This perspective of competitive federalism provides the basis for a substantial critique of some of the central features of post-war fiscal arrangements in Australia that has been developed elsewhere by Walsh.²⁴ In particular, the extreme degree of centralization of revenue-raising power in the hands of the central government, and the associated extensive system of intergovernmental grants have the appearance, and the potential consequences, of a collusive arrangement. This tends to produce a fiscal club designed to reduce the political pain of revenue raising that would arise in a more competitive environment, but also reduces the incentive for innovation at the policy level.

Given Australia's relatively small number of States, small population and large geographical area, it is perhaps unlikely that mobility will be as potent a source of political competition in Australia as it might be elsewhere.²⁵ But our fiscal arrangements seem designed to ensure we destroy the potential advantages of competitive federalism. So, too, does the extremely limited role given to local government in the Australian federal system: the political, administrative and economic case for federalism is as much the basis of a case for a strong 'local government' structure as it is for preserving the fiscal independence of the States.

INTERGOVERNMENTAL RELATIONS AND MANAGEMENT: REORIENTING THE DEBATE

The Australian debate about federalism has been carried on typically in ideologically charged language and from set piece positions of being for or against federalism. Besides this ongoing polemic over 'Australian Federalism Yes or No', the study of federalism in Australia has been concentrated on fiscal and constitutional issues, and, to a lesser extent, political ones. The perspective has been primarily that of coordinate federalism, focusing on the divisions of powers and responsibilities, and the conflicts to which they give rise. The vast network of intergovernmental relations — administrative as well as political, fiscal and legal, and informal as well as formal — that underpins the day-to-day working of the federal system in a range of diverse policy areas has received relatively scant recognition.

²⁴ Cliff Walsh, 'Federalism Australian-Style: Towards Some New Perspectives' in G. Brennan, B. Grewal & P. Groenewegen (eds), *Taxation and Fiscal Federalism: Essays in Honour of Russell Mathews* (1988).

²⁵ Geoffrey Brennan, (ed.), *Constitutional Reform and Fiscal Federalism* (1987).

The revolution in the study of federalism in terms of intergovernmental relations (IGR) that swept the United States in the 1960s and the 1970s has been slow coming to Australia where the formalist paradigm of co-ordinate federalism remains dominant. American social scientists have focused much more upon policy processes and outcomes in their study of federalism, and on the management and implementation of shared programs. For some like Deal Wright, IGR is an alternative way of referring to the multiple, complex, and interdependent interjurisdictional relationships found in the United States, and preferable to the concept of federalism which has been debased by loose political discourse.²⁶ There has been nothing comparable to this view in Australia where, surprisingly, the new focus on policy studies that began in the 1970s and has increased greatly in the 1980s has often ignored federalism or assumed uncritically older prejudices that federalism is irrational and inefficient.

A couple of notable examples can serve to illustrate the anti-federal bias that has coloured much of the Australian discussion of federalism and public policy. In various formulations over a political lifetime, former Prime Minister Whitlam argued: 'It is possible to advance historical or geographical reasons for having a federal system in Australia; but it is impossible to deny that Australians pay for it dearly in delays and duplication'.²⁷ If Whitlam finally brought the federal Labor party to a formal reconciliation with the Australian federal system, he nevertheless sought, while in office, to assert greater central dominance over the states. A recent book by a leading group of Australian policy analysts echoes the Whitlam view that the federal system is incoherent and wasteful:

The complex division of powers ordained by federalism makes it difficult for any administration to implement coherent policy. Essential functions may be controlled by another level of government dominated by a rival party. How can a federal government formulate plausible macroeconomic policy, for example, when the constitution has been interpreted to deny Canberra power to set prices and wages, or the right to nationalize industries? Similarly, how can Australians expect cogent fiscal measures when the power to levy some taxes, such as personal income tax, rests with the federal government, but important state and payroll taxes belong to seven different states. When a government's power is fragmented then so, in consequence, will be its policies.²⁸

²⁶ D. Wright, *Understanding Intergovernmental Relations* (3rd edn 1988).


²⁷ E.G. Whitlam, 'The Cost of Federalism', in A. Patience & J. Scott (eds), *Australian Federalism: Future Tense* (1983) 28.

²⁸ G. Davis, J. Wanna, J. Warhurst & P. Weller, *Public Policy in Australia* (1988) 48.

It is now time to expose and jettison the anti-federal assumptions about rationality and efficiency that inform this view but can no longer be taken for granted. There has been a reorientation in thinking about big government and public administration at the level of theory and of practice which questions the coherence and normative propriety of top-down, centralist 'solutions' for complex economic and societal problems.²⁹ At the practical level, attitudes have changed so that the proffered solution is less likely to be a bit more central direction or encroachment by the national government on the states' jurisdictional domain. The requirement for genuinely federal policy processes is reinforced on the one hand by the pervasive mood of fiscal restraint that has checked the postwar expansion of Commonwealth programs, and on the other hand by the administrative revitalization of the states.

Rather than continuing to dwell on the general case for or against federalism, students of Australian federalism need to move to a more fine-grained analysis of how federalism is working across the spectrum of policy areas and whether it can be improved on a piecemeal basis. There are likely to be differing answers for different policies or types of policies, or for particular aspects of policies such as planning, management, finance and delivery. Such reorienting of the study of Australian federalism requires both a focus on intergovernmental relations and management, and a conceptual framework that recognizes the goal multiplicity inherent in a federal system.³⁰ The efficiency and effectiveness of a *federal* policy process can only be properly evaluated in terms of how well it integrates the goals of both levels of government. Modern managerialists have been busy at both the Commonwealth and State ends of government, but so have not tackled the central issues of better managing a wholistic federal system. That is the real challenge for public managers today.

CONCLUDING REMARKS



In our view, the question facing Australian federalism as we approach its centenary is not 'Yes or No?' but rather 'How?' — that is, how can it be made to work more effectively to more fully secure the political, economic and administrative advantages that a federal parliamentary system offers.

²⁹ For example, L.J. O'Toole, 'Goal Multiplicity in the Implementation Setting: Subtle Impacts and the Case of Wastewater Treatment Privatization' (1990) *Policy Studies Journal* (forthcoming).

³⁰ A start has been made with B. Galligan, O. Hughes & C. Walsh, *Intergovernmental Relations and Public Policy* (1991).

We should make clear that in posing the question in this way we are not expressing an opinion that federalism in Australia is in a state of decay. On the contrary, despite the often repeated reference to Deakin's 'chariot wheels' prediction — a prediction which seems to have more-or-less corresponded with the preferences of the dominant post-war intellectual orthodoxy among Australian federal thinkers — we strongly share the view that now appears to be gaining ground that Australian federalism has sustained a fairly high degree of vitality against all odds. And we are strongly of the view that this is a good thing for Australia.

Despite the high degree of revenue centralization and financial power more generally in the central government, despite what we among others regard as frequently perverse judicial interpretations of the constitution, and despite seemingly weak support for federalism in Australia, if anything the last decade or so has seen something of a renaissance of the States — a reassertion of their role and an associated strengthening of the professionalism of their operations.

Although many alternative explanations are possible, it seems to us that one powerful reason for the failure of the Commonwealth's financial (and to an extent constitutional) dominance to translate into the demise of the States is that underlying political structures have proved less susceptible to centralization. The federal structure of the major political parties in the federal parliament, and the fact that those political parties generally have dominated at State level too, has constrained the exercise of the Commonwealth's potential dominance at least as effectively as a strong States-oriented Senate might have done in other circumstances.

Nonetheless, and even acknowledging that the formal appearance of Premiers' Conferences and the like can mislead one into ignoring the on-going mechanisms of intergovernmental communication, in our view it cannot be argued that the current level of revenue dependence of the States on the Commonwealth, or the current degree of their exclusion from debate and decision-making about so-called national policies is consistent with a healthy federal system.

An era of what is now somewhat euphemistically called 'fiscal retrenchment' has seen the Commonwealth impose substantial and arbitrary real reductions in its assistance to the States and NT; the need for economic restructuring and microeconomic reform has seen an increasing realization that many of the most vital reforms actually lie within State/Territory responsibility; and increasing internationalization of the Australian economy has increased the extent to which different States are subject to different sorts of economic pressures. All of these factors, among many others, suggest the need for a fundamental rethink of federal fiscal arrangements in Australia — arrangements which were shaped by periods of crisis in the 1920s, 30s and 40s, and which have changed only relatively slightly since despite significant changes in the

nature and structure of the Australian economy and in the professionalism of the States and their bureaucracies.

Although fiscal arrangements may be the key area in need of review and reform to encourage a more healthy, competitive, innovative federalism, similar observations could be made about other aspects of intergovernmental arrangements in Australia. For example, the emergence over a number of years of a strong concern for environmental protection has illustrated both the advantages of a federal system in providing multiple access to governments for concerned groups, and the weakness of Australian governments in developing intergovernmental arrangements through which to expose, manage and control the different perspectives and pressures they bear. The long standing arrangements for the multi-State management of the Murray-Darling Basin stand as testimony to the weaknesses of intergovernmental relations and intergovernmental management in Australia. The new system that has been put in place shows the possibility of major innovation and, hopefully, of considerable improvement.

We suspect that the virtually continuous dominance of fiscal issues, arising from fiscal imbalance, and to an extent of constitutional issues, arising in part from a failure of the Court to develop an adequate notion of federal balance (has led to an undesirable overlooking of the importance of intergovernmental relations and intergovernmental management by both intellectuals and practitioners in Australia). Along with reforms to fiscal arrangements, greater attention to intergovernmentalism more generally in the 1990s would see the Australian federation enter its second century considerably stronger than it has been for some time — and possibly stronger than it was at its birth.

POSTSCRIPT, NOVEMBER 1990

Since the Melbourne Centenary Conference in February, there has been a major Commonwealth initiative for 'closer partnership with the states'. This was announced in a key speech by Prime Minister Hawke in July that took up an earlier proposal by Labor Premier John Bannon of South Australia and was strongly supported by Liberal Premier Greiner of New South Wales.³¹ Hawke called for 'sensible, practicle steps to get better cooperation within the framework of the Federal Constitution as it

³¹ Robert Hawke, 'Towards a Closer Partnership', Speech to the National Press Club, Canberra, 19 July 1990; John Bannon, 'Overcoming the Unintended Consequences of Federation', the 1986 Garran Oration, *Australian Journal of Public Administration* 46, 1987; Nick Greiner, 'Physician, Heal Thyself: Micro-economic Reform of Australian Government', Speech to the National Press Club, Canberra, 25 July 1990.

stands', as well as for 'a new approach to reform of the Constitution itself'. A special Premiers' Conference was scheduled to met in Brisbane at the end of October; a Secretariat to coordinate the initiative was established in the Department of Prime Minister and Cabinet; and various meetings and discussions were held to prepare the agenda for that conference.

The October Special Premiers Conference was universally hailed as an outstanding success. It showed a new cooperative and constructive 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, 'micro economic 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. The working groups were required to report, variously, to subsequent additional Special Premiers' Conferences scheduled for July and November 1991.

The agreed outcome of this 'first of a series of far reaching discussions with the aim of reforming intergovernmental relations' was set out in a lengthy communique that also included the agreed terms of reference for the joint review of Commonwealth-state financial agreements, and the frameworks for regulatory reform and for determining the roles and responsibilities of various levels of government in service delivery.³²

In our paper to the February Centenary Conference we argued that Australian federalism was both a good thing and, in any case, so well entrenched that it was [silly to persist with talk of abolishing it.] The issue for the 1990s, we claimed, was not whether Australia should have a federal system, but how well it was working in particular policy areas and how, realistically, it might be improved for the second century of Australian federalism. We pointed out the obvious need for documenting and critically assessing how particular intergovernmental arrangements and processes were actually working; and insisted, once again, that fiscal federalism was distorting the responsible operation of Australian federalism and was ripe for major overhaul. It seems that the Prime Minister and his senior advisors, as well as the key state Premiers, were coming around to similar views. An ambitious agenda has been set for

³² Communique, Special Premiers' Conference — Brisbane, 30/31 October 1990, Towards a Closer Partnership.

reviewing and improving intergovernmental relations in a genuine spirit of federal partnership, and practical process have been put in place.

Of course, only time will tell how successful the processes will prove to be when they are tested against practical realities. For one thing, in Premier Greiner's memorable words, 'the empires will strike back' including 'some of the Ministers, some of the bureaucracies and some of the private vested interests'. For another, the sustainability of achievements of the process may depend very much on whether the problem of fiscal imbalance is tackled in a fundamental way. Whatever the outcome, however, the very existence, as well as the form, of this review process is positive affirmation of the relevance, the vitality and the persistence of the federal system in Australia.

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