Federalism
Research
Centre

Australian National University

Discussion Paper

THE AUSTRALIAN TERRITORIES AND NEW FEDERALISM

Christine Fletcher

No. 13 March 1992

FEDERALISM RESEARCH CENTRE

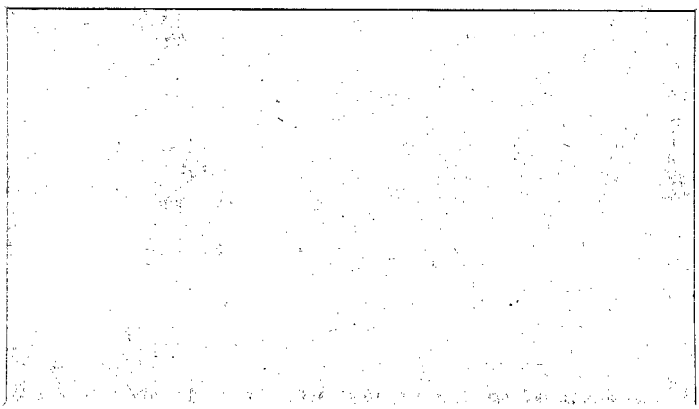
The Federalism Research Centre was established in 1972 with a special research grant from the Commonwealth (initially under the name Centre for Research on Federal Financial Relations). With effect from 1990, all States and Territories have agreed to match the Commonwealth's grant for an initial period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



FEDERALISM RESEARCH CENTRE
DISCUSSION PAPERS

THE AUSTRALIAN TERRITORIES AND NEW FEDERALISM

Christine Fletcher

No. 13 March 1992

ISSN 1036–8655
ISBN 0 7315 1358 4

THE AUSTRALIAN TERRITORIES AND NEW FEDERALISM*

Christine Fletcher

The Australian federal system has been operating successfully for almost a century but federalism at the local level is not always explicitly recognised and, consequently, the impact of localism on Commonwealth and State arrangements through which local governmental activities are actually filtered has been overtaken by debates over the division of government roles and responsibilities (see Wiltshire 1990, but note Chapman & Wood 1984; Chapman 1988).

Federally arranged aspects of governing in Australia embellish the system with its various similarities and differences. An example of this, in very simple terms, is the manner in which the Commonwealth locates, and attempts to integrate, its assorted government operations in different States. This creates a political checker-board. Commonwealth, State/Territory legislative agendas and the development of multi-government administrative structures in various regions give political expression to the States and Territories in Australia. The financial dimension of governments are among the most obvious elements of intergovernmental functions in the system, outside of the dominant institutional structures themselves.

At a more complex level, revenue collection, expenditure, program packaging and intergovernmental program delivery throughout the country influences the way bureaucratic activity is organised, including that of the Commonwealth *within* the different States and Territories and this, in turn, contributes to a type of diverse community political culture that emerges (see Elazar 1976).

The purpose of this paper is to explore some of the less familiar Territories in the Australian federal system to make some of these points

* Cliff Walsh encouraged this project with many helpful suggestions. I am particularly grateful to Clare Clark and John Uhr for their collective critique.

more clearly. The structural complexities of federal diversity in Australia, in particular, some of the lesser known administrative and political relationships between the Commonwealth and the States have developed around the delivery of goods and services. Australia's sovereign Territories were chosen because local Territory political demands are reflected in the responsive arrangements established by State and Commonwealth governments to deal with functions of administration and funding.[1]

Commonwealth and State governing processes in some of the 'small' Territories, particularly the Island Territories off the coast of Western Australia, are only now beginning to take take shape and these two Territories are attracting interest from mainland local government for the first time. The Shire of Wiluna, in Western Australia, with a predominantly Aboriginal population is watching with interest the emergence of intergovernmental financial developments with respect to refining the system of local authority in the Cocos (Keeling) Islands and Christmas Island Territories. Because of State and Territory differences, Aboriginal communities in Western Australia do not share the same degree of institutional support for land ownership or access to financial resources as the communities in the Northern Territory. Western Australian Aboriginal communities, particularly in remote areas of the central desert, want closer, more secure, access to State-local government resources as a corollary to the Commonwealth's political and financial support for Aboriginal community development.[2]

The two biggest or best known Territories are of course the Northern Territory (NT) and the Australian Capital Territory (ACT); both perform State-like functions and in a general sense, as part of the Australian system of States, they are incorporated into the operations of Australian federalism. There are differences, however, between State authority and

---

1 External Territories 'managed' by Australia in the past, such as New Guinea and Papua, and the Trust Territory of Nauru have not been included in this study. Politically, if not economically, these Territories were fiercely independent and, from a local perspective, they were never politically conditioned to be part of Australia's domestic federal system in the same way as Norfolk Island or other existing Australian Territories (for examples, see Miller 1964; Hudson 1980, 530).

2 According to both Greg Crough (1991) and Peter Jull (1992), this runs contrary to the politics of Aboriginal community development in the Northern Territory. Crough is critical of the potential impact of 'new federalism' on Aboriginal resources. Jull believes that Aborigines in Australia need to look at the overseas experience. He argues that Aboriginal people in Australia are not using workable 'experiences' to their own benefit (p. 2).

the authority of the Northern Territory, particularly in relation to Crown land and control over executive powers.[3]

Governing arrangements for the Territories are the result of a combination of factors; arrangements are generally produced from State, Commonwealth and Territory government coalitions organised into political communities for the purpose of governing a particular region (see Fesler 1949).

In some cases, the different local government systems of the States and the Territories provide role models for the development of local government systems in some of the 'off shore', or external Territories, such as Cocos and Christmas Islands.[4] The Commonwealth has a major role as legislator but some of the States, particularly those with interests in the Territories, enter into contractual arrangements with the Commonwealth. Some States, such as Western Australia, have produced 'models' of local government which, for all intents and purposes, encourages the Commonwealth to diversify, rather than unify, its functions. For example, the Cocos (Keeling) Islands are governed by a complex mix of local Island council administrative structures, Commonwealth government legislative arrangements and formal State (Western Australian) government advisory bodies. Other Territories, such as the Australian Capital Territory, have a powerful legislative base on which to perform a combination of both local and State-type government functions and some Territories, such as the Coral Sea Islands, are administered from Canberra. Commonwealth authority is limited at a local level and States such as Western Australia perform administrative and essential service functions for the Commonwealth on contract.

Local community governing processes brush against all the relevant pieces of State and Commonwealth legislation as local political circumstances arise and this leads to what we commonly term regional

---

3 The Northern Territory has not completed the transition to 'Statehood' and certain powers are beyond the jurisdiction of the NT government; power over Aboriginal land rights; uranium ownership; National Parks and Wildlife Conservation (see Warhurst 1990) Commonwealth powers are also ambiguous in relations to land. State land status been challenged recently in the High Court between *Gerhardy* v *Brown* and *Mabo* v *Queensland* (see Nygh 1990).

4 There are a range of different forms of 'local' governments in the federal system. Local authorities in States such as Western Australia are all incorporated within the one Local Government Act whereas local authorities in other States, for example, South Australia, function under different conditions. Some local authorities are incorporated as local government authorities and others are financially incorporated into a remote area trust. In the Northern Territory, there are local governments, community governments and town governments.

differences. Regional differences, as Harris (1982) has shown, occur as a result of a mixture of State decentralisation policies, Commonwealth financial arrangements and political localism. All of this has quite the opposite effect to uniformity.

It is at the level of the local/State community that many of the principles supporting Australian federal constitutionalism are actually 'shored-up'; this occurs through a confusing assortment of intergovernmental administrative arrangements which develop in response to local diversity.[5]

This raises questions concerning the emergence of diverse local political communities in Australia and the development of the historical significance of federal democracy, particularly in relation to people whose perceptions of the system are strong enough to be reflected in the way that intergovernmental administrative arrangements are organised.

One of the strengths of federalism is that different governments have different priorities and this creates a resourceful administrative mixture for competition between local communities in the various regions. In a governmental sense, the competitive nature of local communities in Australia is fundamentally different to local communities in federal systems such as the United States or Germany (see Walsh 1992).[6]

Local diversity is a catalyst for the development of creative political functions and, also, for the regional distribution of federal administrative operations. One method for identifying the impact of local political regimes on the federal process is by examining some of the interesting institutional and administrative arrangements developed by the States and the Commonwealth (and, on some occasions, the Territories) for governing the Territories. The following section deals with these important issues and contrasts federal diversity with more recent standardisation policies enshrined in 'new federalism' policies.

Overview of the Territories

Three out of the total ten Territories, including the Northern Territory, the Australian Capital Territory and Jervis Bay, are part of the Australian mainland and, of these, one is midway to becoming a 'State', one is integrated into the national capital and the other, Jervis Bay, is a small

---

5 This is part of the federal process and contributes to, what Ljiphart (1984) terms, the consensus dimension of Australian federal democracy (see also Galligan & Uhr 1990).

6 Cliff Walsh's paper *Fiscal Federalism: An Overview of Issues and a Discussion of their Relevance to the European Community*, with Jeff Petchey prepared for the Commission of the European Communities, reflects, among other things, on variations in the fiscal federal structures in Canada, the United States and Europe.

area in New South Wales which has a defence profile and formal significance as Aboriginal land. Altogether, there are approximately half a million Australians living in the Northern Territory, and the Australian Capital Territories. The two Territories of Cocos (Keeling) Islands and Christmas Island, are also populated and are situated in the Indian Ocean over 2,500 kilometres off the coast of Western Australia. These are the only inhabited Territories on that side of the Australian continent. North-west of Darwin, and only 100 kilometres from the islands of Indonesia, is the Territory of Ashmore and Cartier Islands. These Islands are very small, covering an area of five square kilometres and they have a temporary population of petroleum personnel (DASETT 1991). On the eastern seaboard lies Norfolk Island Territory situated 1,676 kilometres 'east-north-east of Sydney'.

Norfolk Island Territory consists of a group of three islands; two, Nepean and Phillip, are uninhabited and Norfolk Island itself is the site of the Territory's administrative and political structures. (IITS 1991, 131). To the north-west of the Norfolk group is the Coral Sea Islands Territory, located off the coast of Queensland; the Coral Sea Islands are not inhabited, with the exception of meteorological staff at the station on Willis Island (see IITS 1991).

Further south are the polar Territories; the Australian Antarctic Territory and the Territory of Heard and McDonald Island. Australia has international treaty obligations in Antarctica and major interests canvased by Australia and other nations range from future resource potential assessments (minerals and fisheries) through land based biology, medical research (polar medicine), geoscience (ocean drilling), upper atmosphere physics, and a host of scientific programs including, of course, environmental protection and management programs. The populations of the polar Territories vary depending on the research programs currently underway and the focus of expeditions in the region. In 1990, for example, 88 people were 'wintered' at the various stations and another 309 individuals worked on programs in the Territories (DASETT 1991, 57). There was a total of 504 passengers shipped to and from Antarctica in 1990–91; some of these people may have been also participating in Territory programs, along with a number of others on a marine science cruise.

The Antarctic Territories have a high international profile compared to Australia's Territories elsewhere although there is an important strategic defence-related component to Cocos and Christmas Islands. The Coral Sea Islands, scattered throughout a 780,000 square kilometre area of ocean, are also significant in terms of sovereignty, extending Australia's maritime jurisdiction and providing, what is termed, a 'base point' for agreements, or disputes, over delimitation with other countries in the Pacific (IITS 1991, 107).

The Northern Territory

The Northern Territory is, geographically, the largest of the Australian Territories. Aboriginal communities, together with the mining and defence industries, affect the organisation of government in the Northern Territory. Aboriginal affairs affect the passage of financial transactions between the Northern Territory government and the Commonwealth and a significant component of these financial transactions fuels administrative operations over a plethora of policy areas. The Northern Territory resembles a State over a range of legislative powers, however, the Northern Territory has not yet achieved statehood and, as a consequence of the Territory's status, the collection of mining royalties and other revered functions normally performed by a 'State' are limited by Commonwealth legislation (see Gibbins 1988).

When the Commonwealth Constitution was framed, the Northern Territory had been part of South Australia for almost forty years (Warhurst 1990). In 1911, the Northern Territory came under Commonwealth jurisdiction emerging with a form of 'home' rule in 1978 (see Lumb 1989). In terms of planning powers, the Northern Territory has authority characteristic of a 'local' government and yet, because of the Commonwealth's own footprint in the region, other areas of policy normally considered by State governments as part of their own jurisdiction, such as Aboriginal land tenure, have been largely determined by Commonwealth legislation prior to self-government. The Northern Territory has an elected Legislative Assembly and the Chief Minister obtains most powers, through the authority of the Crown rendered by *The Northern Territory (Self-Government) Act 1978* (see also Section 122 of the Commonwealth Constitution). Unlike the States, the Northern Territory obtains its own legislative authority through Commonwealth legislation whereas, constitutionally, the States have direct links to the Crown through the *Australia Act 1986*.[7]

Government authority in the Northern Territory is exercised under a Memorandum of Understanding between the Commonwealth and the Territory and there are *de-facto* State-like financial arrangements between the Commonwealth and the Northern Territory, with equal treatment on taxation, trade and the legal status of Territory residents guaranteed under Sections 51 (ii), 92, 117 of the Commonwealth Constitution (TS 1986). However, many of the financial gains for the Northern Territory government have been formalised at Premiers' Conferences, particularly those concerning the access to the Commonwealth Grants Commission (TS 1986).

---

7 The *Australia Act 1986* recognises pre-existing constitutionalism.

The local government system in the Northern Territory is also diverse. There are six municipal councils and a number of Community Governments which are formed under the *Northern Territory Local Government Act* in addition to more than thirty local governing organisations which have governing features and which are now formally recognised as local governing bodies (see NTLGGC 1990). Most of these are grouped under either the *Northern Territory Associations Incorporations Act* or the *Commonwealth Associations Incorporations Act* (see Morton 1988) and, in 1990, the Northern Territory and the Commonwealth agreed to apply a 'one pool' principle for the distribution of funds (NTLGGC 1990, 4).

Administratively, the Northern Territory is as complex as any State bureaucracy. Because of the large proportion of Aboriginal people in the Northern Territory, there is an extensive Commonwealth presence in the form of the Aboriginal and Torres Strait Islander Commission and there are over 100 organisations with characteristics that strongly resemble local governments. These are 'special purpose towns, town camps, minor communities and other organisations providing local government services to Territorians'. (NTOLG 1990, 1). Some councils, such as Tangentyere, have developed sophisticated municipal functions rivalling those of the Alice Springs Town Council, simply because, historically, Aboriginal communities (now serviced by Tangentyere) did not receive adequate services from the non-Aboriginal council (Alice Springs) (see RCADC 1991, 167). These organisations receive funding from the Northern Territory government (along with many that receive Commonwealth grants); in the federal system, the same local community operating different programs receives grants from the different governments which effectively design the programs. In the case of Aboriginal Community Governments, the Northern Territory Local Government Grants Commission has a significant advisory function relative to its fiscal role.

In organisational terms, government in the Northern Territory is infused with the politics and administration of Aboriginal affairs and national defence. Defence activities industry alone accounts for a large number of Commonwealth personnel in the region (DAS 1990 also Cooksey 1988). Aboriginal affairs provides the Commonwealth government with a centralising platform for developing generic uniform legislation for use, essentially, within its own jurisdiction but which has constitutional implications for the jurisdiction of other governments. For example, the *Commonwealth Aboriginal Land Rights (Northern Territory) Act* is the model used for the *Aboriginal Land Rights (Jervis Bay) Act*. But generic legislation or 'copy cat' legislation is not particularly unusual in any political sense, either within the same level of government or among different governments; that is to say,

legislation which appears to be similar is often subject to different interpretation within the different value-laden legal regimes of the various States and Territories. Nelson's (1988) comparative study of legislative innovation in the Australian States highlights this point in the broad sense. Moreover, the Australia-wide structure of the Commonwealth's Aboriginal and Torres Strait Islander Commission has the potential for stronger centralising tendencies in terms of uniform practices than legislative enactments.

There is evidence that the administrative organisation of Commonwealth and Territory bureaucratic activity in various Northern Territory policy areas is squeezed into the same administrative space. A prime example is the location and the combined operations of the Australian Electoral Commission and the Northern Territory Electoral Office in Darwin (correspondence with the author 1991). Both governments 'share' office space in Darwin and this extends into the field where the Commonwealth makes electoral officers available during Territory and local municipal elections (mobile polling and various other election arrangements). At this level, the shoring-up role of local political communities in maintaining diversity becomes significant.

Shared functions between the two governments in the Northern Territory result from historic circumstance in the development of the sparsely populated north but this does not detract from the strength of political conflict between Northern Territory and Commonwealth governments. The Territory government uses political competition as a symbol of its authority, particularly in attempts to assert power over the dual issue of mining royalties and Aboriginal land and, more recently, over the future of the Territory of Ashmore and Cartier Islands.

The Territory of Ashmore and Cartier Islands

Ashmore and Cartier Islands are situated north-west of the Northern Territory. The main piece of legislation supporting the legal regime of the Islands is the *Ashmore and Cartier Islands Acceptance (Amendment) Act 1985* (IITS 1991). Except for people associated with the petroleum industry, there are no residents on the Islands, however, there has been 'significant disagreement' between the various Commonwealth and Northern Territory Government agencies which administer the plethora of statutes regulating the petroleum industry's activity on the Islands. There is strong competition between the Commonwealth and the Northern Territory for changes to formal Commonwealth authority over the two Islands. According to the Commonwealth Departments of Primary Industries and Energy (DPIE), and the Arts, Sport, Tourism and Territories (DASETT) the administration is relatively smooth but, in a submission to the House of Representatives Standing Committee on

Legal and Constitutional Affairs (IITS 1991), the Northern Territory government complained that:

> with prevailing Commonwealth legislation in all areas of federal concern, it is illogical and in many respects unreasonable to cater for the domestic legislative requirements of the Territory with current Northern Territory laws, Northern Territory administration and the Northern Territory judiciary and yet for the Territory (Ashmore and Cartier) not to be part of the Northern Territory (p. 23).

From the Northern Territory government's perspective, local diversity is consistent with that government's desire for jurisdiction over the surrounding region. Shared arrangements with the Commonwealth are viewed by the Northern Territory, as:

> illogical — powers are exercised by a range of people. Some powers are delegated to the Northern Territory Minister, some are delegated to specific Northern Territory Government appointees, and others are retained by the Commonwealth Minister. The result is constant cross-referencing of authority (IITS 1991, 19).

In reality 'cross-referencing' is a federal phenomenon in Australia and in other federal systems.

Australian federalism has been built on debates over the desirability of 'central' government power over the States (Walsh 1991b). These are common elements of federal systems. In the German system, for example, 'the bulk of legislation is enacted at the federal level, while the Lander are constitutionally the main administrators' (Leonardy 1991). The American system favours the States more so than in the Australian system, however, power through, what Elazar (1991) terms, 'the velocity of government' (p. 65) is continually altering the balance between governments in intergovernmental competition.[8]

Theories of intergovernmental competition have a home in Canadian federalism through the interpretation of Breton (1987). Federalism, according to Breton, is more desirable if it is competitive, however, Breton favours a neater, less politically disparate system of government and he argues in support of formally institutionalising the authority of

---

8 According to Kincaid (1991), cooperative federalists in the American federal system are now more inclined to stimulate competition between governments 'by turning to state and local governments for reform' (p. 110). In the context of political debate, there is some tension between ideas supporting the concept of cooperative federalism and those supporting competitive federalism (see Breton 1987). Elazar (1991), on the other hand, argues that competitive federalism is a stable-mate of cooperative federalism and that the confusion lies not between different 'types' of federalism but between normative and operational theory.

'the smaller units' (p. 298). This might be fine for the Canadian system, where provincial governments have strong constitutional guarantees in support of local autonomy. In Australia, the Commonwealth relies on fiscal strength to make gains into local jurisdictions and this compensates the Commonwealth for the fact that local authorities operate under powers well entrenched in State/Territory legislatures. Relentless attempts by the Commonwealth to assert local control in the States could create a more powerful central authority and severely affect the local dimension of federalism.

Diversity in Australia is intertwined with localism: that is to say, local political communities organise their objectives to suit their own peculiar regional, economic and social needs. Diversity in the Canadian system might be also linked to localism, however, in that system, diversity tends to be recognised through cultural and linguistic differences whereas Australian political culture is less observable and held together by jurisdictional differences in the mix of legal regimes. There are economic inefficiencies in all three systems of government (see Wiltshire 1990). (Theoretically, single levels of government administrative structures are easier to control because of the hierarchical aspects but federal political institutions are multi-layered and mixed into a non-hierarchical matrix — see Fesler 1949; Elazar 1991).

Grodzins' localism thesis highlights some of the problems facing national governments; ideally, national policies are comprised of a collection of dozens of diverse local community needs. Grodzins' (1961–1963) essay on centralisation and decentralisation suggests, for example, that, in analysing the integration of policy in the federal process, the 'localness' of infrastructure construction might be as difficult to identify as the 'nationalness' of revenue distribution (p. 15). Intergovernmental arrangements are integrated into local political communities because in the Australian federal system, it is common for a number of different agencies to be involved in providing goods and services to Territory communities. Territories such as the Coral Sea Islands, for example, have only a small population but nonetheless, there is a complex interjurisdictional framework of various Commonwealth and Territory statutes and regulations which are applied to the Islands. Governments are attracted to new policy areas by virtue of expanding their jurisdiction.

The Coral Sea Islands Territory

The Coral Sea Islands are situated in a sea area of 780,000 square kilometres on the 'outer edge' of the Great Barrier Reef (IITS 1991, 103). The Territory was formally 'acquired' by Australia in 1969 under the Commonwealth's *Coral Sea Islands Act 1969*. Territory status is determined through the Australian Governor General's Ordinance powers

(for peace, order and good government) (IITS 1991).[9] Ordinance powers are complex and indeed it is the *Application of Laws Ordinance 1973* which gives authority to the Australian Capital Territory to apply some of *its own* laws to the Coral Sea Territory. On the other hand, just to ensure that the authority of the Coral Sea Territory legal regime is infused with the principles of federalism:

> Commonwealth laws which apply in the ACT (Australian Capital Territory - Canberra), and which do not either expressly or by implication apply in the Coral Sea Islands Territory, do not apply in the Territory by virtue of the Ordinance (IITS 1991, 105).

There is some uncertainty about which laws apply in the Coral Sea Islands Territory but the Territory's legal regime is built out of a combination of Commonwealth laws, Australian Capital Territory laws (after self-government), Ordinances, and laws which have yet to be identified. Overall, the Coral Sea Island Territory is constructed to resemble a 'local' government under the administration of the Australian Capital Territory. On the other hand, most of the administrative functions, involving the Islands' nature reserves, conservation policies (with the exception of the *ACT Nature Conservation Act 1980* provisos) and mining (petroleum) of the sea bed, are governed by Commonwealth laws and funded through the Department of the Arts, Sport, the Environment, Tourism and Territories (DASETT Territories Reform Unit 1991; IITS 1991, 107–109).[10]

While the Islands remain relatively free from domestic disturbances the mixture of laws are unproblematic at this point in time. Norfolk Island is the 'nearest' in terms of a judicial system. However, the Commonwealth anticipates that 'technical difficulties could arise if and when a Court of *Norfolk Island* applies a law of the ACT (Canberra) in respect of an offence committed in the Coral Sea Islands Territory' (IITS, 108). There are suggestions also that both New South Wales and the State of Queensland are likely to be involved in the future direction of the Islands as, in the spirit of reform, jurisdictional competition between those States and the Commonwealth intensifies (see IITS 1991; DASETT 1991). Moreover, the complexities of diversity in the Coral

---

9 Section 122 states; 'The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit'.

10 *National Parks and Wildlife Conservation Act 1975*, and *Petroleum Submerged Lands Act 1967* are the most significant Commonwealth laws.

Sea Island Territories underlines the extremely flexible federal dynamics of other Territories, such as the Australian Capital Territory and of course, the States themselves.

The federal system has to be flexible enough to support a range of variations in local, State and Territory communities; among the most politically sensitive of the ten Territories in Australia is Norfolk Island. Norfolk has a checkered constitutional background as one of Australia's most interesting Territories and furthermore, the Island has the distinction of becoming the Commonwealth's first external Territory in 1913 (IITS 1991).

The Territory of Norfolk

There are three islands in the Norfolk group; two islands are uninhabited and Norfolk, as the main Island, has a permanent population of approximately 1,500 and, in the vicinity of 26,000 tourists each year (IITS 1991). The Island first came under the control of New South Wales in 1844 and then, in 1855, Island management was passed to the Van Diemen's Land Authorities. At that point the Island's future status was taking shape; the *Australian Waste Lands Act 1855* placed control of the Island with the Crown, through the powers of the Governor of New South Wales. Legislation was revised again the following year (1856) when the Pitcairn Islanders arrived and forty years later in 1897, when New South Wales had developed a strong administrative structure, Norfolk became a dependency of that colony. The dependency remained until 1913, although as a result of federation in 1901 Norfolk was a dependency of a 'State' prior to the Commonwealth gaining authority (IITS 1991, 132).

Norfolk's strong formal attachment to the British Crown remained intact throughout the 19th century. When jurisdiction over the Island was transferred to the Commonwealth in 1913, a declaration by the New South Wales Governor threw some doubts onto Norfolk's legal regime with 'principles and rules' of English common law under an 1828 statute (IITS 1991, 135). Ambiguities were resolved following the passage of an ordinance in 1960 and in 1979, under a new *Norfolk Island Act*, the elected Norfolk Island Council was replaced by a nine member Legislative Assembly.[11] Norfolk Island Territory residents have a political history of independence through appeals to the United Nations and Commonwealth inquiries; indeed, it was following the Report of the

[11] The Act was the *Norfolk Island Judicature Ordinance 1960* which followed the *Norfolk Island Ordinances Act 1957. The Norfolk Island Council* which preceded the establishment of the Legislative Assembly was initially set up under the *Norfolk Island Act 1963*.

Nimmo Royal Commission in 1976 that self-government under the 1979 *Norfolk Island Act* emerged (IITS, 231).

Essentially, Norfolk Island, while far from being self-contained, meets many of its own administrative needs. In legislative terms, the Commonwealth and the Legislative Assembly are negotiating for the transfer of powers to the Island's government which would, according to the President of the Norfolk Island Legislative Assembly and the Commonwealth Minister for Territories (Mr Simmons), hasten the Island's move towards 'local government type powers' along lines similar to those in the Northern Territory and the Australian Capital Territory (JS 1991). Until July 1990, Norfolk Island raised some of its own revenue through the Public Works levy which has subsequently been abolished and a Revenue Review Working Group is currently assessing the Territory's revenue options. The Commonwealth provides funds to the Territory through the Commonwealth Department of the Arts, Sport, the Environment, Tourism and Territories and in 1988–89, this was estimated at approximately $4.8 million (see DASETT 1991). Commonwealth equalisation grants, on Grants Commission recommendations, are not applicable to the Territory of Norfolk Island.

Although the Commonwealth has jurisdiction over the Island Territory, according to the Centre for Comparative Constitutional Studies, the legislative framework of the Territory is confusing. Norfolk Islanders are not Australian citizens (with the exception of Australian citizens who settled on the Island) and people of the Territory are not subject to taxation, nor are they entitled to vote in Commonwealth elections (DASETT 1991). This last point was the subject of controversy following a 1991 plebiscite on 'voting rights' for Australians on the Island and the Commonwealth's argument in support of extending voting rights was based on principles of human rights (see Simmons 1991).[12]

Territory of Jervis Bay

Often, the most conflictual dimension of federal-constitutional authority is the political value which underpins the interpretation. Aside from voting rights, many of the issues, involving constitutional connections between the Commonwealth and Territory/States, are those grouped with the resolution of disputes over land status and Aboriginal heritage. More

---

12 81.24 percent of people who voted in the plebiscite rejected the Commonwealth's offer of integrating Norfolk Island into the Australian Capital Territory and allowing Australian citizens, living on the Island, the right to vote in federal elections.

often than not, the conflict develops between the mining industry and Aboriginal land ownership groups (CLC 1991). Ultimately, political will is caste into 'principles' (see Libby 1989; The Australian 1990). This is reflected in issues with an international dimension, such as the environment and human rights. Probably the most familiar principles are those drawn from the United Nations Charter concerning self-determination and Australian Aboriginal people (see Fletcher 1992). Setting up formal, government structures in which to settle disputes over land ownership, has been possible in two out of the ten Territories; the Northern Territory and the Territory of Jervis Bay. Jervis Bay is, however, fundamentally different from any other Territory.

Jervis Bay covers 70 square kilometres. Established in 1908, under the Commonwealth *Seat of Government Act*, the area was initially set aside to provide sea access for functions of government in the Australian Capital Territory. In 1915, the status of Jervis Bay Territory altered and it gained formal Territory recognition through an agreement between the New South Wales government and the Commonwealth. However:

> all laws, ordinances and regulations (whether made before or after the Act) which are from time to time in force in the Australian Capital Territory shall so far as applicable apply to and be in force in the Territory so accepted *(Jervis Bay Territory Acceptance Act 1915)*.

Almost a third of the area is taken up with land owned by the Commonwealth government (the Australian Navy), private leaseholds and Aboriginal land (IITS 1991, 113). The other two thirds of the Territory is a classed as nature reserve. In population terms, Navy personnel range in number from 450 to 600; ACT government and Commonwealth employees contribute a further 100 people and there are approximately 150 Aboriginal people living at Wreck Bay. The Aboriginal community at Wreck Bay obtained title to their land under the *Aboriginal Land Grant (Jervis Bay) Act 1986*. The Commonwealth Department of Defence performs municipal service functions in the Territory.

Commonwealth Aboriginal land legislative provisions are generic and the Jervis Bay Aboriginal Land Act was modelled, conservatively, on the Commonwealth's design of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

All Commonwealth laws apply to Jervis Bay and, following self-government in the Australian Capital Territory (ACT), ACT laws also apply (IITS 1991, 118). For example, the Supreme Court of the Australian Capital Territory has legal jurisdiction in Jervis Bay and welfare and infrastructure services are provided by the Australian Capital Territory through the ACT Department of Health, the Housing and Community Services Bureau, the Department of Education and, Parks

and Conservation. All services are paid for by the Commonwealth.[13] Wreck Bay, however, has a different local status to the other communities at Jervis Bay. It is not part of the national estate and the Commonwealth has a responsibility to provide local government services to the Aboriginal people in the community. This is consistent with the Commonwealth's role in providing program grants to Aboriginal communities in other States and Territories (see RCADC 1991).

In terms of political representation, the people at Jervis Bay are disadvantaged. They have representation in the Commonwealth Parliament but there are no provisions for local government elections and no elected council and, despite their goods and services connection with the Australian Capital Territory, they have no voting rights in that Territory, or in New South Wales (IITS 1991, 122). According to the Commonwealth, there was some pressure from the House of Representatives for Jervis Bay to become part of New South Wales; 'the use of regional and NSW Government agencies to provide services in the Territory is being investigated' (Simmons 1991). As local political communities develop, they merge into the complex web of the federal process and, like situations supporting other local communities, goods and service demands can only be through by the formation of intergovernmental coalitions, rather than by a single level of government (see Miller 1985; Galligan, Hughes & Walsh 1991).

Generally, government coalitions vary according to the predominant political cultural mix. Administrative structures in the Northern Territory for example are influenced by Aboriginal and defence issues and, not least, the political arrangements of two or more governments. In Jervis Bay, however, outside of the Aboriginal regional council structure and the formal defence community, there is no direct formally instituted local or 'State' government.

Outside of the tradition of Aboriginal laws and land, there has been no international or foreign legal regime to further complicate the decisions of the law-makers in relation to Jervis Bay. This is true in most other Territories, with the exception of Norfolk Island and of course the two Indian Ocean Territories of Cocos (Keeling) Islands and Christmas Island. These two Territories were part of the Settlement of Singapore and, from the early 20th century to the 1950s the Island Territories were administered through the British colonial regime (Background Info. 1991). Not surprisingly, the political culture of these Indian Ocean Island communities has developed in part of the international legal environment which has a background quite different from that in Australia.

---

[13] DASETT estimated the cost at $4 million for government services (IITS 1991, 118).

The Cocos (Keeling) Islands

The Malay Muslim population in the Cocos (Keeling) Islands Territory was originally part of the colonial British regime in Singapore. In the past decade, the Cocos (Keeling) Island community has successfully developed a working relationship with both the Commonwealth and the Western Australian governments to accommodate the community's diverse political requirements.[14]

Prior to 1984, the limits of administrative functions in the Territory's colonial regime were more or less established by the governmental standards set by the enterprising Clunies-Ross family. The Clunies-Ross family virtually controlled the Islands from 1886 onwards for the next century following a British Crown indenture (IITS 1991, 70; DASETT Policy Overview 1991). The complex history of the Islands is reflected in both the current legal regime and in the sophisticated level of Territory, State and Commonwealth government political arrangements developed to provide services to the Island population.

In statutory terms, the Islands are governed by:

> a mixture of Commonwealth Acts extending (either expressly or impliedly) to the Territory; Cocos (Keeling) Islands Ordinances made by the Governor-General since 23 November 1955 under Section 12 of the Cocos Act; and ordinances in force in the Colony of Singapore on 31 December 1957 (some of which have been amended by Cocos (Keeling) Islands Ordinances) that are applied by virtue of the *Singapore Ordinances Application Ordinance 1979* (IITS 1991, 73).[15]

The enabling statute for the Australian Territory status of the Island is the *Cocos (Keeling) Islands Act 1955*.

According to Commonwealth Grants Commission reports (1986 and 1989) following Self-Determination in 1984 (under United Nations supervision) the legal regime of the Territory appeared to lack many of the liberal democratic principles and values commonly found in the Australian federal system consequently, the Cocos Malay population did not appear to have experienced the virtues of government enjoyed by Australian political communities. However, like other Territory communities, the people of Cocos Island signed a Memorandum of Understanding with the Commonwealth (Prime Minister Hawke) in March 1991 and levels of municipal services and social conditions,

---

[14] In 1957, the Malaysian federal system emerged and Singapore remained as a unit of the system until 1965 (Hickling 1991).

[15] Over 200 Commonwealth Acts currently apply to Cocos. However, administrative functions under the legal regime of the Territory derived, in part, from the Singaporian regime. Arrangements in the past appear not to have encouraged healthy political development.

presently determined by the Cocos (Keeling) Islands Council and the Cocos Islands Cooperative Society are expected to reach 'comparable mainland standards' by 1994 (DASETT policy overview 1991).

The Cocos (Keeling) Island Council has municipal ('good order') government powers under the *Local Government Ordinance 1979* and there is a body of Commonwealth and Western Australian State government departments and agencies supporting the administrative functions on the Island which cut deeply into the organisation of the federal system itself (IITS 1991, 77).[16] Formal Australian government interests range from Commonwealth Defence, through to the Western Australian Department of Education which provides services on contract to the Commonwealth (PM 1991; Cooksey 1988). Cocos (Keeling) Islands electors are, however, enrolled in the Northern Territory.

Formally, the Territory is administered and funded by the Commonwealth Department of Territories but Commonwealth funding considerations arise out of the recommendations of both the Commonwealth Grants Commission and the Western Australian Local Government Grants Commission in Perth (corresp. 1991). The final government 'model' planned for the Cocos (Keeling) Islands is currently based on Western Australia's system of local government and, in part, the Western Australian legal regime. According to the Commonwealth:

> It is proposed that the Western Australian based legal regime will be applied as Commonwealth law, under amendments to the Commonwealth's Cocos (Keeling) Island Act 1955 and Christmas Island Act 1958 (PM 1991).

The Commonwealth's objective is to create a local legal regime which looks, for all the world, like it belongs to the State of Western Australia (see CGC SR 1989). There are suggestions that the Commonwealth will then 'contract' out many of the administrative functions which stem from Territory laws to the State government; Christmas Island Territory will be deliberately caught up in this process.

Christmas Island Territory

The Commonwealth exercises its authority in this small Territory under the Christmas Island Act 1958. Christmas Island laws have been described in a report by the House of Representatives Standing Committee on Legal and Constitutional Affairs (1991) as 'outdated, anachronistic, incomplete and not readily identifiable' (p. 195). Christmas Island is one of the more populous external Territories; most of the inhabitants are Chinese and Malays. The Territory covers an area of strategic

---

16 Tourism is currently a growth industry in the Indian Ocean Territories of both Cocos and Christmas Islands (see RHRSC 1990).

significance in the Indian Ocean to the north of Perth with the Islands in the group situated only 300 kilometres from Indonesia. Until 1987, the Island economy was based largely on phosphate mining with a large portion of the Island held as national park (RHRSC 1990, 11).

Prior to 1957, and, as a colony under the *Straits Settlement (Repeal) Act 1946* and the *British Settlement Acts of 1887, 1945* the Island was 'governed' by the British parliament and 'the 95 Ordinances of the Colony of Singapore' (IITS 1991, 34, 194). Criticism of the Island's current regime is levelled at confusion surrounding the applicability of English domestic laws amid a regime created out of a bundle of laws which may, or may not, have been repealed (IITS 1991, 36). To complicate matters further, Christmas Island was occupied by the Japanese for three years during World War II following which the *Singapore Colony Order in Council 1946* decision classified Christmas and the Cocos (Keeling) Islands as a dependency of Singapore and, as such, Christmas Island became part of the 'Colony of Singapore' (IITS 1991, 33).

According to the Territories Reform Unit (Canberra), the political and administrative bodies in Christmas Island are quite separate. The Local Assembly is a product of the legal regime of the Territory itself and, after a checkered history and various amended Ordinances, the last Assembly was elected in December 1990 (IITS 1991). Almost all public administration services and infrastructure functions are carried out through the Christmas Island Services Corporation (*Services Corporation Ordinance 1984*).

With a limited electoral base and, in political terms, a relatively weak resource base, the Territory's best options are to be found within the institutional guarantees of the federal system itself. The Territory is already partially immersed in Australia's democratic process through the administrative operations of the Commonwealth and Western Australian governments; education in the Territory is provided through the Western Australian Department of Education. At present, like Cocos, Christmas Island is funded through DASETT and there are various intergovernmental agreements covering arbitration, consular activities (immigration and foreign affairs) and social security (Background Information 1991). Agreements cover everything from the protection of migratory birds from China (CAMBA), international endangered species agreements (CITES), through to agreements on the Wild Animals and Birds Ordinance 1968 through to tourism development agreements between the Commonwealth, the Christmas Island Assembly and the hotel industry.

To complicate the intergovernmental process further, as for Cocos, there are also arrangements for Northern Territory and the Commonwealth electoral officers to allow Christmas Islanders to enrol and vote in federal elections within the Commonwealth Division of the

Northern Territory (Background Information 1991). But, probably the most complex aspect of Christmas Island's introduction to federalism, and one which underlines the liberal democratic features of Australian federalism, is the Christmas Island judicial 'system'. According to DASETT:

> The courts exercising jurisdiction in the Territory are the Supreme Court of Christmas Island, the District Court, the Magistrate's Court, the Coroner's Court and the Children's Court.
>
> The Hon Mr Justice J.F. Gallop, a Judge of the Federal Court of Australia and a Judge of the Supreme Court of the Australian Capital Territory, presides as Judge of the Island's Supreme Court.
>
> By arrangements with the Western Australian State Government, a Stipendiary Magistrate of Western Australia, holds office as a Special Magistrate under the *Magistrate's Ordinance 1958* of the Territory. This Magistrate is available to visit the Territory as required to deal with more complex cases in the Christmas Island Magistrate's Court. Seven Special Magistrates have been appointed from the Christmas Island community' (Background Information 1991).

Similar features arrangements exist for Cocos with features that reflect sensitivity to Islam. Like Cocos, the strength of the Christmas Island political community rests, to a large extent, on the durability of governing practices in the Australian system itself; as Christmas Island attaches more firmly to Australia's federal institutions, the importance of governmental vitality derived from diversity will become paramount. Some characteristics of Australian federal democracy, for example Commonwealth parliamentary institutions, are clearly more observable in some areas than in others. Outside of State legislative arrangements, many the most familiar democratic symbols of national value are to be found in the Australian Capital Territory.

The Australian Capital Territory (ACT)

The ACT is the national capital and seat of the Commonwealth Parliament. Canberra has its own local Legislative Assembly which is quite separate from the Commonwealth, however, much of the national 'tone' and Commonwealth government administrative noise resonates out from Canberra along with various claims to national political successes and failures (see various eds. CBPA, AJPA, Miller 1964). Like national governments in the federal systems of Canada and the United States, the Commonwealth government is highly vulnerable to the effects of State and Territory politics and in fact the inequality of resources in the federal system amid the weight of geographic, demographic and political factors in Australia challenges the whole notion of 'national' government in the daily operations of the system (see Walsh 1991; Holland 1992;

Alexander & Galligan 1992). Nonetheless, the Commonwealth Government has a dominant presence in Canberra and Australians living elsewhere other than the national capital are likely to be more familiar with the Commonwealth's side to Canberra as the seat of the national government than with Canberra's own local Territory government.

Until 1988, the national capital was administered by the Commonwealth. Following the passage of the *Australian Capital Territory (Self Government) Act 1988*, most of Canberra, with the exception of the Commonwealth triangle, is governed by a confusing coalition of local political parties electorally organised into the local Australian Capital Territory Legislative Assembly through a complex single-member electoral system.

The Australian Capital Territory government powers are more wide ranging than local governments in Australia but there are natural limits to the Territory government's powers in relation the State governments. In terms of governmental units, the Territory itself is framed by interlocking laws and administrative structures but in reality the pattern of Commonwealth government political transactions cuts deep into the ACT. In the context of the federal system most of the country's revenue collection and public expenditure transactions at some point spin through the ACT and government operations in the Australian Capital Territory are firmly tangled into place in the federal fabric through variations in the local political communities of other States and Territories.

Canberra is also home to many of the trappings of collectivism; for example, the Commonwealth parliament links citizens and governments with the virtues of majority rule. The legislators themselves have a tendency towards promoting uniformity and standardisation in Australia (see SPC 1990).

In the wider federal process, legislative frameworks in the federal system are continually being tested for weaknesses by the demands of local political communities themselves. In relation to the Territories, for example, governments compete to extend their existing jurisdiction, or create new jurisdictions for a variety of reasons. Often, this means that politically ambitious government must enter into arrangements with other, equally ambitious, governments who already have a role in shaping the local community.

New Federalism and reform processes

Evidence of State differences in Australia has been given short shrift in the past and the reasons for this are varied but, generally, it can be argued that diversity tends to be seen by reformers as a somewhat bothersome part of the federal system (for example, SPC 1990; Wiltshire 1990, but note Walsh 1991a).

Recently, there has been recognition and a degree of formal acceptance of the significance of diversity in the context of State and Territory regulations. Different State regulations were the subject of discussion by Special Premiers' Conference working groups in October 1990, July 1991 and again at the Conference of Premiers and Chief Ministers in Adelaide, November 1991. In the 'spirit' of New Federalism, all the States, together with the Northern Territory and the Australian Capital Territory, agreed on a national approach to problems of regulatory differences but only if jurisdictional sharing between governments was written into the *Mutual Recognition (State) 1991 Act* (see the Agreement 1991).

The unequal distribution of economic and political power and market driven pressure combined tends to dominate public reform agendas (see Emy & Hughes 1991). This increases the pressure on Commonwealth and State governments to put more effort toward modifying the existing legal regimes to reflect more uniform regulations and standards. Uniform regulatory standards were focused on a wide range of goods and services; for example, interstate agreement on the the size of Northern Territory mud crabs sold in New South Wales, or, negotiating to reach consensus on national planning and building approvals. However, this type of regulatory reform is aimed at standardising consistency rather than centralising power and in one sense the federalism reform processes have acknowledged the system's diversity and this has underlined the political strength of federalism and the responsiveness of federalism as a system of government.[17]

As part of the federal reform processes, dozens of intergovernmental task forces negotiated their way through the regulatory and financial maze of federal relations with a variety of outcomes.The mutual recognition working group was one of many intergovernmental groups to recognises federal diversity although, at the outset of the October 1990 conference, some participants enthusiastically went about attempting to unify almost everything (see Communique 1990). This optimistic approach to reform helps explain our diverse views on the Australian system of government.

---

[17] The results of dozens of intergovernmental task force meetings which followed the Special Premiers' Conferences in 1990, June 1991 and, finally, the Conference of Premiers and Chief Ministers in November 1991, produced agreements between the Commonwealth and the States for uniform standards over a range of 'specific items', however, many policy areas targeted for reform proved too complex for agreement (for example, 'The Building Code of Australia' designed by the Australian Uniform Building Regulations Co-ordinating Council (AUBBRCC) — Communique 2 December 1991).

Conclusion

The Australian Territories are politically compatible with most administrative developments involving intergovernmental and inter-Territory transactions in Australian federalism. There are of course some conflicts between the Territories and 'mainland' governments, such as Norfolk Island's resistance to Commonwealth electoral manoeuvres. But conflict in a federal system is normal and the competing political aims of the Territories and other governments are absorbed into the system through a complex, though liberal, range of agreements.

Notwithstanding that, Australia's Territories are important for all the usual economic, strategic and political reasons of sovereignty. The existing development of governing agreements provide State, Commonwealth and Territory governments with a basis for organising models of local community governments. Governing the Territories requires administrative and legislative flexibility and, more often than not, the likelihood of competition between the Commonwealth and other Territory/State governments with an interest in sharing Territory jurisdiction, increases the level of intergovernment operations and this weighs in favour of diversity. It also means that local political communities are less vulnerable to centralised control. Local political variety is the touchstone of federal diversity and, on some occasions, a natural model for the organisation of good government.

REFERENCES

ACIR (Advisory Council for Intergovernment Relations) 1981. *Local Government Systems of Australia*, J. Power, R. Wettenhall & J. Halligan (eds), Information Paper No. 7, AGPS, Canberra.

Agreement 1991 between the Commonwealth of Australia, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory, the Northern Territory of Australia, Relating to Mutual Recognition, November.

AJPA (*Australian Journal of Public Administration*) (various editions).

Alexander, M. & Galligan, B. (eds), 1992. *Comparative Political Studies: Australia and Canada*, Pitman, Melbourne.

Background Information 1991. *The Cocos (Keeling) Islands*, Department of the Arts, Sport, the Environment, Tourism and Territories, September, Canberra.

Breton, A. 1987. 'Towards a Theory of Competitive Federalism', *European Journal of Political Economy*, Special Issue 3 (1+2), 263–329.

CBPA (*Canberra Bulletin of Public Administration*) (various editions).

Chapman, R.K.J. 1988. 'The Australian Advisory Council for Intergovernment Relations as a Moderating Institution', *Australian Journal of Public Administration* 47(2), 130–6.

(CCA) 1988. *The Constitution of the Commonwealth of Australia*, as altered to 1 January, AGPS, Canberra.

CGC (Commonwealth Grants Commission) 1986. *First Report on Cocos (Keeling) Islands Inquiry*, AGPS, Canberra.

—— 1989. *Second Report on Cocos (Keeling) Islands Inquiry*, AGPS, Canberra.

—— 1990. *Fifty-seventh Report*, AGPS, Canberra.

—— 1991. *Fourth Report* on Financing the Australian Capital Territory, AGPS, Canberra.

Chapman, R.K.J., & Wood, M. 1984. *Australian Local Government: The Federal Dimension*, Allen & Unwin, Sydney.

(CLC) Crough, G. & Pritchard, B. 1991. *Central Land Council, Infrastructure Provision in Remote Aboriginal Communities in the Northern Territory*, Report prepared for the Central Land Council, revised edition, August.

Collins, H. 1985. 'Political Ideology in Australia: The Distinctiveness of a Benthamite Society', S.R. Graubard (ed.), *Australia: The Daedalus Symposium*, Angus & Robertson, Sydney.

Communique, 1991. Attachment A — Specific items in the October 1990 Special Premiers' Conference, December.

Cooksey, R.J. 1988. 'Review of Australia's Defence Facilities', *Report*, AGPS, Canberra.

Crough, G.J. 1991. *Aboriginal Australia and the 'New Federalism' Initiative*, Discussion Paper No. 2, Australian National University, North Australia Research Unit, Darwin.

DAS (Department of Administrative Services) 1990. *Annual Report 1989–90*, AGPS, Canberra.

DASETT (Department of the Arts, Sport, the Environment, Tourism and Territories) 1991. *Annual Report 1990–91*, AGPS, Canberra.

—— 1991. *Policy Overview Cocos (Keeling) Islands*, Territories Reform Unit, Canberra.

Dixon, R.A. & Dillon, M.C. (eds), 1990. *Aborigines and Diamond Mining: The Politics of Resource Development in the East Kimberley Western Australia*, University of Western Australia Press, Nedlands.

Elazar, D.J. 1975. 'The Political Culture of Americans', D.J. Elazar & J. Zikmund (eds), *The Ecology of American Political Culture: Readings*, Thomas Y. Crowell, New York.

Elazar, D.J. 1991. 'Cooperative Federalism', D. Kenyon & J. Kincaid (eds), *Competition Among States and Local Governments: Efficiency and Equity in American Federalism*, The Urban Institute Press, Washington, D.C.

Emy, H.V. 1972. *The Politics of Australian Democracy*, Macmillan, Melbourne.

Emy, H.V. & Hughes, O. 1991. *Australian Politics: Realities in Conflict*, 2nd edition, Macmillan, Melbourne.

Fesler, J.W. 1949. *Area and Administration*, University of Alabama Press, Alabama.

Fletcher, C. 1991. *Responsive Government: Duplication and Overlap in the Australian Federal System*, Discussion Paper No. 3, Federalism Research Centre, Australian National University, Canberra.

Fletcher, C. & Walsh, C. 1991. *Intergovernmental Relations in Australia: Managerialist Reform and the Power of Federalism*, Discussion Paper No. 4, Federalism Research Centre, Australian National University, Canberra.

Fletcher, C. 1992. *Aboriginal Politics and Intergovernmental Relations*, Melbourne University Press, Melbourne (forthcoming).

Galligan, B. 1989. 'Australian Federalism: Perceptions and Issues', B. Galligan (ed.), *Australian Federalism*, Longman Cheshire, Melbourne.

Galligan, B. & Uhr, J. 1990. 'Australian Federal Democracy and the Senate', *Public Law Review*, 1 December (4), 309–28.

Galligan, B., Hughes, O. & Walsh, C. (eds), 1991. *Intergovernmental Relations and Public Policy*, Allen & Unwin, Sydney.

Gibbins, R. 1988. *Federalism in the Northern Territory: Statehood and Aboriginal Political Development*, Australian National University, North Australia Research Unit, Darwin.

Grayden, W. 1957. *Adam and Atoms*, Frank Daniels Pty Ltd, Perth.

Grodzins, M. 1966. *The American System: A New View of Government in the United States*, Daniel J. Elazar (ed.), Transaction Books, New Brunswick, NJ.

Hancock, W.K. 1930. *Australia*, The Jacaranda Press.

Harris, C.P. 1982. *Relationships Between Federal and State Governments in Australia*, ACIR Information Paper No. 6, AGPS, Canberra.

Hickling, H. 1991. 'Malaysia', in D. Butler & D.A. Low (eds), *Sovereigns and Surrogates: Constitutional Heads of State in the Commonwealth*, Macmillan, Basingstoke.

Hirst, J. 1978. 'The Pioneer Legend', *Historical Studies*, October, 18(71), reprinted in J. Carroll (ed.) 1982, *Intruders in the Bush: The Australian Quest for Identity*, Oxford University Press, Oxford.

Holland, K.M. 1992. 'The Case for a New Judicial Federalism: The Reserve Powers of the States in the Jurisprudence of Australia and the United States', paper delivered at Interest Group Seminar, Federalism Research Centre, Australian National University, Canberra, 15 January.

HRSC (House of Representatives Standing Committee on Environment, Recreation and the Arts) 1991. 'Tourism in the Indian Ocean Territories', *Report*, AGPS, Canberra, August.

Hudson, W.J. 1980. '1951–172', in F. Crowley (ed.) *A New History of Australia*, William Heinemann, Melbourne.

IITS 1991. Islands in the Sun. Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, March. *The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*, AGPS, Canberra.

JS 1991. (*Joint Statement*) The Hon. David Simmons MP, Minister for Arts, Tourism and Territories, and The Hon. David Buffett, MLA, President of the Norfolk Island Legislative Assembly, Norfolk Island, 9 December.

Jull, P. 1992. *A Guide for Australian Research into Northern Regions and Indigenous Policy in North America and Europe*, Discussion Paper No. 3, Australian National University, North Australia Research Unit, Darwin.

Kincaid, J. 1991. 'The Competitive Challenge to Cooperative Federalism: A Theory of Federal Democracy', in D. Kenyon & J. Kincaid (eds), *Competition Among States and Local Governments: Efficiency and Equity in American Federalism*, The Urban Institute Press, Washington, D.C.

Leonardy, U. 1991. *The Three-Level-System: Working Structures of German Federalism, Crossroads Unification*, paper presented to the International Political Science Association, Buenos Aries, July.

Lijphart, A. 1984. *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, Yale University Press, New Haven.

Lucy, R. 1985. *The Australian Form of Government*, Macmillan, Melbourne.

Lumb, R.D. 1989. *The Constitutions of the Australian States*, fourth edition, University of Queensland Press, St.Lucia.

Mathews, R. 1977. 'Innovations and Developments in Australian Federalism', *Publius*, Summer, 7(3), 9–19.

Miller, J.D.B. 1964. *Australian Government and Politics: An Introductory Survey*, Gerald Duckworth & Co. Ltd, London.

Miller, M. (Chairman) 1985. *Report of the Committee of Review of Aboriginal Employment and Training Programs*, AGPS, Canberra, August.

Morton Consulting Services Pty Ltd 1988. *Aboriginal and Island Local Governing Bodies*, Grants Determination Research Project, Brisbane.

MRDP 1991. *The Mutual Recognition of Standards and Regulations in Australia*, Discussion Paper, Special Premiers' Conference, July.

Murdock, W. 1947. 'On Pioneering', *72 Essays: A Selection*, Sydney.

Nelson, H. 1988. 'Legislative Outputs', in Galligan, B. (ed.), *Comparative State Policies*, Longman Cheshire, Melbourne.

NTLGGC (Northern Territory Local Government Grants Commission) 1990. *Report on Distribution of Funds Under the Commonwealth's Local Government (Financial Assistance) Act 1986*, Darwin.

NTOLG (Northern Territory Office of Local Government) 1990. *1990 Grant Programs*, Darwin.

Nygh, N. 1990. 'Implications of Recent High Court Decisions for State Laws Dealing with Aborigines and Aboriginal Land: Gerhardy v Brown and Mabo v Queensland', *Public Law Review*, December, 1(4), 329–37.

Ostrom, V. 1987. *The Political Theory of a Compound Republic: Designing the American Experiment*, 2nd edn, University of Nebraska, Lincoln.

PM 1991. *Correspondence*: Prime Minister Hawke and Western Australian State Premier Lawrence, provided by the Commonwealth Territories Reform Unit, Canberra.

RCADC (Royal Commission Into Aboriginal Deaths In Custody) 1991. *National Report*, Vol. 2, AGPS, Canberra.

Sharman, C. 1989. 'Governing Federations', in M. Wood, C. Williams & C. Sharman (eds), *Governing Federations: Constitution, Politics, Resources*, Hale & Iremonger, Sydney.

Sharman, C. 1991. *Reporting Federalism: The Press and Coverage of the Special Premiers' Conference 1990*, Discussion Paper No. 6, Federalism Research Centre, Australian National University, Canberra.

Simmons, D. 1991. Media Release, 'Norfolk Vote Does Not Alter Human Rights Principle', 4 December, *mimeo*.

Simmons, D. 1991. Media Release, 'New Legal Deal For Australia's Territories', 12 September, *mimeo*.

SPC (Special Premiers' Conference) 1990. 'Communique — Towards a Closer Partnership', 30–31 October, Brisbane.

TS ('Towards Statehood') 1986. *Northern Territory Ministerial Statement*, (Chief Minister on Statehood for the Northern Territory), 28 August.

The Australian, 12 September 1990.

Walsh, C. 1992 (with contributions by Jeff Petchey). *Fiscal Federalism: An Overview of Issues and a Discussion of their Relevance to the European Community*, paper prepared for the Commission of the European Communities, Brussels, Belgium, February.

Walsh, C. 1991a. *Reform of Commonwealth-State Relations: No Representation without Taxation*, Discussion Paper No. 2, Federalism Research Centre, Australian National University, Canberra.

Walsh, C. 1991b, 'States' Role Crux of Federal Fiscal Reform', *The Australian Financial Review*, p. 15, 9 October.

Warden, J. 1990. *Federal Theory and the Formation of the Australian Constitution*, unpublished Ph.D Thesis, Australian National University, Canberra.

Warhurst, J. 1990. *The Northern Territory's Intergovernmental Relations*, Australian National University, North Australia Research Unit, Darwin, monograph.

Wildavsky, A. 1984. 'Federalism Means Inequality: Political Geometry, Political Sociology, and Political Culture', R.T. Golembiewski & A. Wildavsky (eds), *The Costs of Federalism*, Transaction Books, New Brunswick, NJ.

Wiltshire, K. 1990. 'Barriers to Rationalising Commonwealth/State Overlap', *Towards a More Cooperative Federalism?*, EPAC Discussion Paper 90/04, AGPS, Canberra.

Wirt, F.M. 1991. 'Soft' Concepts and 'Hard' Data: A Research Review of Elazar's Political Culture, *Publius*, Spring 21(2), 1–13.

Wyman, W.D. & Kroeber, C.B. (eds), 1957. *The Frontier in Perspective*, The University of Wisconsin Press, Madison.

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.

No. 7 Cliff Walsh, *Fiscal Accountability, Vertical Fiscal Imbalance and Macroeconomic Management in Federal Fiscal Systems*, forthcoming 1992

No. 8 Brian Galligan, *The Character of Australian Federalism: Concurrent Not Coordinate*, forthcoming 1992

No. 9 Brian Galligan & Cliff Walsh, *Australian Federalism Yes or No*, December 1991.

No. 10 Neil Marshall, *Intergovernmental Managerialism: Appropriating the Universities*, December 1991.

No. 11 Nick Greiner, *That Obstructive Spirit of Provincialism Has Been Curbed*, January 1992.

No. 12 Cliff Walsh (with contributions by Jeff Petchey), *Fiscal Federalism: An Overview of Issues and a Discussion of Their Relevance to the European Community*, February 1992.

No. 13 Christine Fletcher, *The Australian Territories and New Federalism*, March 1992.

No. 14 Brian Galligan & Georgina Lynch, *Integrating Conservation and Development: Australia's Resource Assessment Commission and the Testing Case of Coronation Hill*, March, 1992.

No. 15 Taryn A. Rounds, *Tax Harmonization and Tax Competition: Constrasting Views and Policy Issues in Three Federations*, March 1992.

The South Australian government later calculated that Commonwealth payments to the States fell by 14 per cent in real terms during the period from 1986-87 to 1991-92 while at the same time the Commonwealth's 'own-purpose' outlays increased in real terms by 6.2 per cent, leading to the comment that 'the Commonwealth's mooted success in attaining fiscal restraint is largely at the expense of payments to the States' (SAFP1 1991, 97).

While property prices remained buoyant, State property-related taxes masked some of the effects on State budgets of the Commonwealth's strategy as well as underpinning the expanded loan portfolios of State-guaranteed financial institutions like the State Bank of South Australia. The severe downturn in property values from 1989 exposed the phantom and temporary nature of this revenue bonanza. All around Australia, State governments faced severe difficulties. As Walsh (1992, 102) later observed, '[w]ith the benefit of hindsight, the States now see the Commonwealth as having shifted its structural deficit on to them under the veil of their revenue boom: the collapse of the boom ... leaves State budgets with severe (structural) problems'.

PHASE ONE: COOPERATIVE REFORM

In the lead-up to the June 1990 Premiers' Conference, Prime Minister Hawke had foreshadowed that 'the States ... would have to show restraint' (*Advertiser* 11/6/90). Premier Bannon — the most senior of the State Premiers and also serving as National President of the Australian Labor Party — foreshadowed a different agenda. He wanted the Conference to provide more financial certainty to the States and to address the problem of vertical fiscal imbalance[1] (or, as he put it, 'redressing the imbalance between taxation revenue gathered by the Commonwealth and the States'). He argued that a five-year guarantee of Commonwealth funding to the States was essential and that the Conference needed to produce 'rational goals and nationally cooperative programs of reform and change' or else 'Australia is in trouble'. Bannon sought the support of other Premiers for his '11-point plan' (*Advertiser* 19/6/90, 21/6/90). Tellingly, he received strong public support from the Liberal Premier of New South Wales, Nick Greiner, who circulated to all Premiers a document prepared within his own Cabinet Office which urged a review of the 'unclear responsibilities, conflicting policies and blurred lines of accountability' between the Commonwealth and State levels of government (*Advertiser* 25/6/90; *Australian* 27/6/90).

---

1 The notion of 'vertical fiscal imbalance' is analysed in detail in Chapter 2 of this volume.

The Premiers' Conference turned out to be particularly acrimonious. The Commonwealth's financial offer, amounting in effect to a two per cent cut, was delivered to the Premiers in their Canberra hotel rooms at 7.30 a.m. on the morning of the Conference. When the formal meeting commenced, this offer was rejected by all Premiers, and press reports referred to the meeting being 'marked by a series of fiery clashes' and to have 'broken up with the abrupt exit of the Prime Minister'. Premier Bannon then chaired a joint press conference at which all Premiers expressed dissatisfaction with both the offer and the process (*Advertiser* 29/6/90). Premier Bannon's role is reported to have particularly irked Commonwealth Treasurer Paul Keating who reportedly described it as 'politically damaging to the Labor Party' (*Advertiser* 30/6/90). A counter-offer next day from the States was rejected by the Commonwealth, and the original offer stood as the unhappy Premiers left Canberra.

What distinguished this from previous unsatisfactory Premiers' Conferences, however, was the response of the Prime Minister a month later. In July 1990, Prime Minister Hawke proposed a major review of federalism in Australia. He called for a 'closer partnership between our three levels of government — Commonwealth, State and local' in order to 'improve our national efficiency and international competitiveness, and ... improve the delivery and quality of services governments provide' (Hawke 1990).

Bannon later explained Hawke's initiative in personal-political terms: 'Hawke had his own sense of history and desire for a landmark reform in his fourth term' and the 1990s, as the decade representing the centenary of Australian federation, offered reform of the federal system as such a landmark (Bannon 1992, 2). Bannon himself deserves some of the credit, as some later analyses discerned: it was Bannon's '11-point plan' of June which had 'raised the prospect of a new federalism' (*Canberra Times* 9/5/92); Bannon was the senior Premier and his positive involvement was essential; he had demonstrated a longstanding interest in a review of Commonwealth-State relations; and his non-ideological reputation as a careful manager (a reputation not yet affected by the performance of the State Bank) was helpful in building and maintaining a cross-State and cross-party alliance. Crucial to the same alliance was Premier Greiner from New South Wales, who led the only non-Labor government in office at the time and who was impatient with the 'conservative preoccupation with States' rights' which he claimed to characterise his own party (*Advertiser* 25/10/90). Other State leaders — Wayne Goss in Queensland, John Cain and then Joan Kirner in Victoria, Carmen Lawrence in Western Australia and Michael Field in Tasmania — made up the rest of what seemed to be an unusually cooperative group of Premiers. The serendipitous working of Federal and State election cycles meant that the