

## Federalism or Centralism ?

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*As a matter of reason and logical forecast, it cannot be doubted that if the Union were inaugurated with **double** the number of present colonies, the growth and prosperity of all would be absolutely assured.<sup>1</sup>*

*Those who would stay free must stand eternal watch against the excessive concentration of power in government.<sup>2</sup>*

*Reform consists in taking a bone from a dog. Philosophy will not do it.<sup>3</sup>*

### Introduction

The maintenance of federalism is both a purpose of the *Australian Constitution* and supposedly a fundamental policy objective of the Nationals. The aim of this article is to “bell the centralism cat” so as to warn of the risks which unchallenged centralism brings to the relevance of the Nationals whose parliamentary representation has been slashed by 40 per cent in the last twenty years. Centralism is founded on the heresy that the Federal Parliament has a general power to make laws for the peace, order and good government of Australia.<sup>4</sup> Its powers are limited. The advancement of centralism has been to the detriment of the Nationals. It is contended that this ill can be cured by using the provisions of Chapter VI of the *Constitution* to establish New States. The aim being to devolve power at regional levels so as to push decision making down to the most local level possible.<sup>5</sup> Mention will also be made of the experience of the United Kingdom Parliament in creating and devolving power to the Scottish Parliament under the *Scotland Act 1998*, c. 46.

Federalism is based upon the duality of sovereignty between the Commonwealth and the six State Governments. Unhappily its observance has been studiously ignored. Simply put, this is a result of the Commonwealth raising more than 80 cents in the dollar of all Commonwealth and State taxes. Here the States have abdicated their responsibilities by putting the ‘telescope to the blind eye’. Their approach is sharply illustrated by Sir Robert Garran’s stanza:

*We thank you for the offer of the cow,  
But we can’t milk, and so we answer now,  
We answer with a loud emphatic chorus;  
Please keep the cow, and do the milking for us.<sup>6</sup>*

By its use of the grants power, s.96, the external affairs power and the treaties entered into under it, s. 51 (xxix), and the appropriations power, s.81, the Commonwealth has invaded fields of activity for which it otherwise has no responsibility. For example:- education including technical colleges, local government, natural resource management, sport and making grants for academic research.

Justice Sandra Day O'Connor who is soon to retire from the United States Supreme Court has noted that:

*The “dual sovereignty” of our national and state governments is a novel experiment. But like many ingenious and complex innovations, it is a fragile one. Today the forces of economic and technological modernization as well as the international climate, often suggest the expediency of the Federalist vision of a powerful national government. In the face of daunting economic and social problems, the sweep of federal power is sometimes alluring.*

*We must never forget, however, that the answers to many of our deepest national dilemmas may not lie in Washington D.C. (sic. Canberra) but in the American (sic. Australian) **spirit of ingenuity embodied in lawmaking authority closest to the people themselves: our state and local legislatures.***<sup>7</sup>

## The Challenge for the Nationals

The challenge for the Nationals is to redivide Australia into new types of **sovereign** states, provinces or counties. Because of the expansion of the Commonwealth powers begun during World War II, there is likely to be a need for a realignment of powers between the Commonwealth and the new states as suggested by J. B. Condliffe of the Stanford Research Institute in the early 1960s.

*It is possible to conceive of a double process of centralisation and devolution with increasing powers passing to the Commonwealth and a much increased number of States exercising more limited powers of local government in their respective regions.....The powers of the Commonwealth are bound to expand. **It would be logical to create new States and reduce the powers of existing States.***<sup>8</sup>

Condliffe's foresight on the increasing power of the Commonwealth has come to pass. What is missing are the new states administering exclusively, functions such as natural resource management, health and education. The boundaries for the new states could be fixed in a way which promotes sustainable environmental practices.<sup>9</sup> Here also there would be an opportunity to adopt a single court system<sup>10</sup> and to do away with the 'autochthonous expedient' of using State Courts to exercise federal jurisdiction, particularly in the criminal jurisdiction.

There would be much to be done. But the ultimate aim would be to reduce, if not eliminate, many of the differences, both actual and perceived, between city and country. The new states which could have populations the size of Tasmania would cause the requirement under s.24 of the *Constitution* for the number of seats in the House of Representatives to be twice the number in the Senate to be broken. Anomalies such as the present number of 12 Senators for Tasmania with a population of 477,000 compared with same number for NSW with a population of 6.7 million cry out for correction.

Presently 20 million Australians or 13 million voters are represented by 824<sup>11</sup> Commonwealth, State and Territory politicians (including 66 Nationals) which is roughly 24,000 persons per politician or 16,000 voters per politician. If the present State upper houses were abolished this would reduce the number of politicians by 157 to 667 and increase the above numbers respectively to 30,000 and 19,000. Whatever way these figures are viewed there seems to be a case for significantly reducing the number of politicians at the State level. In short, a dual process of reduction and reassignment is called for.

## Reasons for New States

There are several reasons why new States should be established. The first is to promote economic and population growth outside the State capitals. Roughly half of all Australians now either live in the Newcastle – Sydney – Wollongong axis or in the Geelong – Melbourne – Dandenong axis. Australia's population has just passed 20 million, with nearly 10 million living in these "city enclaves". This is a significant population imbalance. Strikingly also is that 84 per cent live within 50 kilometres of the coast.<sup>12</sup>

Second, a reversal of this imbalance might reduce the running costs of capital cities, where there is significant subsidization of train and bus fares. For the year ended 30 June 2002, Grants and Subsidies made by the N.S.W. Department of Transport were \$1.9 billion (excluding capital grants of \$305.8 million).<sup>13</sup> The question which demands an answer is whether these concessions are excessive or sustainable. Restoring Sydney's urban rail net work could involve spending over \$30 billion in the next twenty years.<sup>14</sup> Capital city residents will also be burdened with higher water, sewerage and power rates to finance the high cost of constructing new dams to overcome shortages, particularly for Sydney and Melbourne and to replace worn out or obsolescent gas, water and sewerage lines.

Third, the way in which the powers of government were distributed in 1901, now have little relevance to effective public administration. The way in which the State corporations powers were referred under s 51(xxxvii) of the *Constitution* to the Commonwealth to enact the *Corporations Act 2001* (Cth) is a good example. Significantly too, is the duplication of effort in bringing about measures to provide for the sustainable management and protection of natural resources.<sup>15</sup> The rehabilitation of land destroyed through excessive salinity is a prime example. These measures could be more effectively delivered on a regional basis.

*The division of power which exists in a true federalism is, while it lasts, almost a guarantee of democracy. At least it provides an effective check on governmental power. In the case of a nation which extends over a vast area as Australia does, the States are more likely to understand local problems and to respond to local needs than the more remote central government.*<sup>16</sup>

Fourth, the community has become more cynical of government through excessive centralization of administration. Decentralization of government invites more

participation in the political process. It will improve the understanding and working of the machinery of government. Many of today's social problems are likely to be better solved at the local level. For example issues in primary and secondary education, health and social security programmes.

*On the basis of democratic values alone, therefore, we should not allow the elitists to talk us out of federalism. Its greater opportunities for popular participation are a major political end in themselves. They foster a sense of responsibility and self reliance. They lead to better-informed public debate. And as Lord Acton said, they "provide against the servility which flourishes under the shadow of a single authority".<sup>17</sup>*

Fifth, more states would promote the idea of competitive federalism which is seen as an effective constraint on the ability of government to abuse its powers.<sup>18</sup> Brennan and Buchanan take the view *that tax competition among separate units rather than tax collusion* (eg the way in which the GST is administered) *is an objective to be sought in its own right.*<sup>19</sup> The Director- General Cabinet Office of the Government of New South Wales contends that:

*States really try to do things better than their counterparts. Why? A range of reasons. Most obviously, they get compared in performance by the public and the media. Less obviously, they are competing for business and employment – which may or may not be true. .... Nor should you underestimate the motivation and incentives to try new policies, to innovate, to subsequently adopt and copy the successful, to eschew the unsuccessful.<sup>20</sup>*

Finally, at least since the 1970s both State and Commonwealth Governments have abandoned any pretence of implementing policies of balanced development.<sup>21</sup> More states offers a way of reversing this situation. Unfortunately experience tells us that decentralization is a myth. It is folklore. The gulf between fact and fiction is shown by the rhetoric of the then Prime Minister, the Hon Malcolm Fraser, MP when he said:

*As our society becomes larger and more complex, it is imperative that local levels of government should be revitalised. Increasing the centralisation of government power in Canberra is positively dangerous. The more power is centralised the less it is subject to popular influence and control.<sup>22</sup>*

## Scottish Devolution –Australian New States

By the *Scotland Act* 1998, c.46 (UK), the United Kingdom Parliament authorised the establishment of the Scottish Parliament in Edinburgh and the Scottish Executive, comprising a First Minister and a Cabinet. The idea of reverting to rule from London is unthinkable. In Scotland the decentralist ball is rolling.<sup>23</sup> Can this impetus be imported to found the new state capitals of Armidale, Wagga, Mildura (Murray-Darling Basin), Townsville, Rockhampton and Port Hedland?

Briefly the *Scotland Act 1998* (the Act) provides a useful checklist of some of the matters to be taken into account in drafting a constitution for a new state. The Act defines what is in the legislative competence of the Parliament by reserving certain powers, subject to exceptions, for the UK Parliament and restricting other matters, see ss 28, 29, 30 and Schedule 5. This should not be of too great a concern in Australia as the *Australian Constitution* provides for the matters which the Commonwealth covers the field, but there are other powers which the new States may desire to refer to the Commonwealth under s.51(xxxvii) such as industrial relations etc. Australia already has convenient models in the single chamber legislatures of the Australian Capital Territory and the Northern Territory. Why the Scottish experience is useful, is because it is recent and relevant to the way in which the machinery of government in a new body politic works. Interestingly under s. 73 of the Act, the Parliament can vary the income tax rate by 3 percentage points in respect of individuals who under s.75 of the Act are residents of the United Kingdom and Scotland is part of the United Kingdom with which he has the closest connection during that year. It is noteworthy that the Act is silent on the taxation of corporations.

## Conclusion

No States or New States was the question Drummond,<sup>24</sup> asked long ago. It is still unanswered. To most it is put in the too hard basket. Yet the bringing together of the Australian colonies to form a federal union was also seen by many at the time as too difficult.

If the Nationals are to survive as a credible political force, the party needs to be able to form governments in its own right. The best opportunity of achieving this is in the establishment of new States. The policies implemented by executive governments formed by the Nationals dealing with agriculture, natural resource management, education, health and business are it is contended more relevant and in harmony with the wishes of local people. Such political arrangements will also deepen and sharpen our representation in the Federal Parliament, particularly the Senate.

The question is whether the party has the courage to embrace such a change. To fail to accept this challenge is to condemn the party to being no more than a 'tail attempting to wag the Liberal dog'.

Appendix I - Federal, State and Territory Parliamentary Representatives  
by Lower and Upper Houses - 2005.

Appendix II – Members of the Nationals in the Federal and State Parliaments by  
Lower and Upper Houses - 2005.

Appendix III – Members of the Nationals in the Federal and State Parliaments by  
Lower and Upper Houses - 1985.

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## Appendix I

Federal, State and Territory Parliamentary Representatives by  
Lower and Upper Houses -2005

	<u>State &amp; Territory</u>			<u>Federal</u>			<u>Total</u>
	<u>Lower</u>	<u>Upper</u>	<u>Total</u>	<u>Lower</u>	<u>Upper</u>	<u>Total</u>	
NSW	93	42	135	50	12	62	197
VIC	88	44	132	37	12	49	181
QLD	89	na	89	28	12	40	129
WA	57	34	91	15	12	27	118
SA	47	22	69	11	12	23	92
TAS	25	15	40	5	12	17	57
ACT	17	na	17	2	2	4	21
NT	<u>25</u>	<u>na</u>	<u>25</u>	<u>2</u>	<u>2</u>	<u>4</u>	<u>29</u>
	<u>441</u>	<u>157</u>	<u>598</u>	<u>150</u>	<u>76</u>	<u>226</u>	<u>824</u>

## Appendix II

Members of the Nationals in the Federal and State  
Parliaments by Lower and Upper Houses - 2005.

	<u>State &amp; Territory</u>			<u>Federal</u>			<u>Total</u>
	<u>Lower</u>	<u>Upper</u>	<u>Total</u>	<u>Lower</u>	<u>Upper</u>	<u>Total</u>	
NSW	12	4	16	6	2	8	24
QLD	15	na	15	4	2	6	21
VIC	7	4	11	2	1	3	14
WA	5	1	6	-	-	-	6
SA	1	-	1	-	-	-	1
TAS	-	-	-	-	-	-	-
ACT	-	na	-	-	-	-	-
NT*	<u>-</u>	<u>na</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
	<u>40</u>	<u>9</u>	<u>49</u>	<u>12</u>	<u>5</u>	<u>17</u>	<u>66</u>

\* The Country Liberal Party (CLP) has 4 members in the Legislative Assembly; federally it has 1 in the House of Representatives and 1 in the Senate.

Source for Appendixes I and II: Dennis Trewin, *2005 Year Book Australia*, (ABS Catalogue No. 1301.0, Australian Bureau of Statistics, 2005), Tables 2.5-2.7, 2.11-2.12, at 43-46.  
<http://www.abs.gov.au> 13010\_2005.pdf [viewed 13 September 2005]

## Appendix III

### Members of the Nationals in the Federal and State Parliaments by Lower and Upper Houses - 1985

	<u>State &amp; Territory</u>			<u>Federal</u>			<u>Total</u>
	<u>Lower</u>	<u>Upper</u>	<u>Total</u>	<u>Lower</u>	<u>Upper</u>	<u>Total</u>	
NSW	15	6	21	10	1	11	32
QLD	43	na	43	8	4	12	55
VIC	10	5	15	3	-	3	18
WA	2	3	5	-	-	-	5
SA	-	-	-	-	-	-	-
TAS	-	-	-	-	-	-	-
ACT	-	na	-	-	-	-	-
NT	-	na	-	-	-	-	-
	<u>70</u>	<u>14</u>	<u>84</u>	<u>21</u>	<u>5</u>	<u>26</u>	<u>110</u>

Source for Appendix III: Ian Castles, *Year Book Australia, 1986* (ABS Catalogue No. 1300.0, Australian Bureau of Statistics, 1986), at 56.

#### Endnotes :

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<sup>1</sup> Sir Henry Parkes, *Fifty Years in the Making of Australian History, Vol 2*, (Longmans, Green and Co., 1892), at 366.

<sup>2</sup> Dwight D Eisenhower, US President (1953-1961), *Address to Conference of Governors, Joint-Federal State Action Committee Progress Report, No. 1*, (US Government Printing Office, 1957), at 17-22.

<sup>3</sup> John Jay Chapman, *Practical Agitation*, (David Nutt, 1900) Chp.7, at 140.

<sup>4</sup> Latham CJ in *The Lord Mayor, Councillors and Citizens of the City of Melbourne v. The Commonwealth* (1947) 74 CLR 31 at 47.

<sup>5</sup> Roger B. Wilkins, 'Federalism: Distance and Devolution', *Australian Journal of Politics and History* Vol 50, No. 1, (2004), at 97

<sup>6</sup> Sir Robert Garran, *Prosper the Commonwealth*, (Angus & Robertson, 1958), at 208.

<sup>7</sup> Sandra Day O'Connor, *The Majesty of the Law – Reflections of a Supreme Court Justice*, (Random House, 2003), at 56-57. See *Gregory v Ashcroft* 501 US 452 (1991) at 458; *New York v United States* 505 US 144 (1992); *Printz v United States* 521 US 898 (1997)

<sup>8</sup> John B. Condliffe, *The Development of Australia*, (Australian Development Research Foundation, Ure Smith, 1964), at 59.

<sup>9</sup> David Brunckhorst, Phillip Coop and Ian Reeve, *An Eco-Civic Regionalisation for Rural New South Wales- Final Report to the NSW Government*, (Institute for Rural Futures and Centre for Bio-regional Resource Management in the University of New England, 2004),

<http://www.ruralfutures.une.edu.au/resources/downloads/publications/ecocivic72dpi1-1.pdf> [viewed 13 September 2005]

<sup>10</sup> The Rt Hon. Sir Owen Dixon, 'The Law and the Constitution', 14 March 1935, in S.H.Z. Woinarski (ed), *Jesting Pilate and Other Papers and Addresses*, (Law Book Company, 1965) at 52-53. See too on 'Proposals for an "Integrated" Court System' in Leslie Zines, *Cowen and Zine's, Federal Jurisdiction in Australia*, (3<sup>rd</sup> ed., The Federation Press, 2002), at 150-152.

<sup>11</sup> Dennis Trewin, *2005 Year Book Australia*, (ABS Catalogue No. 1301.0, Australian Bureau of Statistics, 2005), Tables 2.5 -2.7, 2.11-2.12, at 43-46.  
<http://www.abs.gov.au> 13010\_2005.pdf [viewed 13 September 2005]

<sup>12</sup> Graeme Hugo, 'Changing patterns of population distribution', in Siew Ean Khoo and Peter McDonald (ed), *The Transformation of Australia's Population: 1970-2003*, (University of NSW Press, 2003), at 186.

<sup>13</sup> N.S.W. Department of Transport, 'Annual Report, Year Ended 30 June 2002', *Parliamentary Paper* No. 371/2002, at pp 74-75. [ *City Rail's cost recovery fell to 62% in 2001... Sydney Buses cost recovery was expected to be 86% in 2003.... Sydney Ferries cost recovery in 2003 is expected to be 51% in 2003* per Report of the Independent Pricing and Regulatory Tribunal of NSW, 'CityRail and STA Buses and Ferries – Public Transport Fares from 1 July 2002', *Parliamentary Paper* 148 of 2002. at p 3.]

<sup>14</sup> Dennis O'Neill, *The Future for Australia Infrastructure*, paper delivered to the National Infrastructure Summit, The Australian Council for Infrastructure Development, 14 August 2002, <http://www.auscid.org.au/auscid/> [viewed 12 September 2005]

<sup>15</sup> The enactment of the *Environment Protection and Biodiversity Conservation Act* 1999 (Cth) is claimed to provide a framework for Commonwealth involvement in matters of 'national environmental significance'; per Productivity Commission, Issues Paper, *Impacts of Native Vegetation and Biodiversity Regulations*, May 2003 at 6.

<sup>16</sup> The Rt. Hon. Sir Harry Gibbs, 'Federalism in Australia', (1993), in Alan Gregory (ed), *The Menzies Lectures*, (The Sir Robert Menzies Lecture Trust, 1999), at 268.

<sup>17</sup> Geoffrey de Q Walker, 'Participation in government and the countering of elitism' in *Ten Advantages of a Federal Constitution*, Vol 10, Chp.11, ( Samuel Griffith Society), <http://samuelgriffith.org.au/papers/pdf/Vol10.pdf> ,[viewed 12 September 2005]

<sup>18</sup> Jeffrey Petchey et al, 'An Economists View of Section 90 of the Australian Constitution', in Neil A Warren (ed), *Reshaping Fiscal Federalism in Australia*, (Australian Tax Research Foundation, Conference Series No 20, 1997), at 52.

<sup>19</sup> Geoffrey Brennan and James M. Buchanan., *The Power to Tax – analytical foundations of a fiscal constitution*, (Cambridge University Press, 1980), 186; See too Cliff Walsh, 'Federalism Australian-Style: Towards Some New Perspectives' in Geoffrey Brennan et al (ed), *Taxation and Fiscal Federalism – Essays in Honour of Russell Mathews*, (Australian National University Press, 1988)

<sup>20</sup> Roger B. Wilkins, 'Federalism: Distance and Devolution', *Australian Journal of Politics and History* Vol 50, No. 1, (2004), at 97.

<sup>21</sup> Paul G. Collits, *A Question of Balance ?, The Fate of Balanced Development as a Regional Policy Objective in New South Wales*, Ph.D. Thesis (unpublished), (The University of New England, March 2002).

<sup>22</sup> The Hon. Malcolm Fraser, MP Address to the National Press Club on 8 December 1975, Tom Maniaty (ed), *The Power of Speech; 25 Years of the National Press Club*, Bantam Books , 1989, at 22-23.

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<sup>23</sup> Simon Jenkins, *Big Bang Localism –A Rescue Plan for British Democracy*, (Policy Exchange and Localis, 2004), at 82

<sup>24</sup> The Hon. David Henry Drummond MP (1890-1965), sometime Minister for Education, Deputy Leader of the Country Party and Member for Northern Tablelands from 1920, then Armidale in the Legislative Assembly of NSW from 1927 -1949 and then until his retirement in 1963 Member for New England in the House of Representatives. Publication : *Australia's Changing Constitution: No States or New States* (1<sup>st</sup> ed 1942).