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## Symbolism and Tokenism in Constitutional Reform of Australian Local Government

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*Abstract:* Support for a third attempt at constitutional recognition of Australian local government since 1974 is now bipartisan. Yet the desirability of reform, its eventual shape and its electoral viability all remain contestable. This paper argues that the debate on constitutional recognition of local government at the federal level has been hampered by a misconception over the nature of political symbolism, both with respect to constitutional recognition and in local politics more generally. Against the background of previous attempts at constitutional recognition, this paper examines current support for constitutional change, as investigated by Brown (2008). Our interpretation of Brown's analysis suggests that political symbolism as defined by Archer (1997) can perform an important role in encouraging Australians' further valuing of local government, thereby enhancing the possibility of constitutional recognition.

Keywords: Constitutional reform; local government; symbolism; tokenism

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## **1 Introduction**

Local government in Australia rose to increased prominence in the national arena under the Rudd Government. This was perhaps best exemplified in the establishment of the Australian Council of Local Government (ACLG), which held its inaugural meeting on 18 November 2008. Hosted by the (then) Prime Minister, it was described as the genesis of a 'genuine dialogue on a number of issues of concern to both levels of government', including 'local, regional and national infrastructure, local government efficiency, improving the liveability of our major cities, strengthening regional economies, adapting to climate change, housing affordability, tackling Indigenous disadvantage and improving community wellbeing' (ACLG 2008). In his opening address, Rudd confirmed his government's pre-election commitment to 'receive your input on ... the constitutional recognition of local government, rather than us simply imposing our view' (Rudd 2008).

The ACLG has subsequently met twice, on 29 June 2009 at a Plenary and on 18 June 2010. On both occasions the issue of constitutional reform was overshadowed by financial concerns. In 2009 the presentation by Rudd, 'Nation Building for Recovery', described Australia's position in relation to the Global Financial Crisis and the government's response compared to other countries (Rudd 2009). In 2010, the Minister, Albanese (2010), chose to focus upon the accumulated \$1.1 billion worth of extra funding to local government that the Commonwealth had announced at (rather than deployed through) successive ACLG meetings since 2008. This funding was aimed primarily at infrastructure renewal, alongside \$25 million for a 'Local Government Reform Fund'. Notably, eligibility for \$24 million was confined to states and territories, with the remaining \$1 million being reserved for 'activities... directly relevant to asset and financial management and/or collaboration', including initiatives to promote women and leadership in local government (DRARDLG 2010).

Commenting upon the creation of the ACLG, Anderson and Parkin (2010, 109) observed that 'it would be easy to dismiss these initiatives as merely symbolic', since the body would be too unwieldy to provide effective decision-making. Further, Anderson and Parkin (2010, 109) noted that the ACLG had not been mentioned in any

communiqué from the 10 meetings of the Council of Australian Governments (COAG) during Rudd's Prime Ministership. For these reasons, they asserted, this federal government initiative with respect to local government might well be regarded with some degree of scepticism.

Indeed, when relations between federal and local government are examined historically, there is good reason for scepticism. Local government has previously risen to prominence in the federal sphere in what Kelly, Dollery and Grant (2009) have termed 'three generations' of post-WWII Labor governments – a 'nation-building' phase under the Chifley Government, in which regional economic development, overseen by councils, was deemed necessary for national strategic interests; a 'paternalist' phase under the Whitlam Government, in which federal largesse spread to local councils with the goal of inter-regional equity; and a 'self-sufficiency' phase under the Hawke and Keating governments, in which local government was situated within a framework of regional economic development. Kelly, Dollery and Grant (2009) also indicated that these peaks of interest waned under subsequent conservative federal administrations. Further, they noted that, in reaction to the Chifley and Whitlam reforms, the local government sector demonstrated a pronounced suspicion of the specifically regional focus evident in these federal programs.

As such, while some may applaud the continuation of a federally funded, regionally focused development body, currently termed Regional Development Australia (see, for example, ALGA 2011), the success of earlier regional development initiatives can be interpreted as mixed at best, or even viewed as having threatened the legitimacy and institutional capacity of local government nationwide. For example, commenting on the Regional Development Organisations (RDOs) and Area Consultative Committees (ACC) initiated by the Keating Government in 1991, Kelly, Dollery and Grant (2009, 181) noted that 'the RDOs had no political constituency, organisational experience or reliable income beyond the lifetimes of their grants. *It is interesting to speculate whether local government, given the same opportunity, would have achieved more*' (emphasis added).

Against this backdrop, the prospect of a third attempt at constitutional recognition of local government, following the failed attempts of 1974 and 1988, has become more of a reality as both Coalition parties have recently fallen in step with their Labor counterpart and confirmed their commitment to the process (Robb 2010; Truss 2010). In his survey of previous attempts at constitutional recognition and prospects for future reform, A. J. Brown (2008, 437) reached what he termed ‘two primary conclusions’:

First, far more than *simply symbolic* constitutional recognition of local government is needed if any change is to prove either worthwhile or electorally viable. Second ... the process for determining the scope of any constitutional alteration needs to occur within a process of governance reform, rather than simply focussing on local government (emphasis added).

Notwithstanding the latter of Brown’s caveats, nor the importance that both he and others have attributed to revisiting the question of local government within the context of Australia’s federal system more generally (see, for example Brown and Bellamy 2007), our central concern in this paper is to examine the symbolic aspect of constitutional recognition evident in Brown’s(2008, 437) first statement, that ‘far more than simply symbolic constitutional recognition of local government is needed if any change is to prove either worthwhile or electorally viable’. In essence, we are interested in the relationship between what has most frequently been labelled ‘symbolism’ and the inclusion of local government in Australia’s Constitution, along with the electoral viability of proposed constitutional reforms. We argue that the debate about constitutional reform has been hampered by a lack of clarity with respect to what is meant by the idea of ‘symbolism’ in politics. With few exceptions, discussions of constitutional reform and Australian local government have juxtaposed what are commonly referred to as ‘symbolic recognition’ (or ‘mere symbolism’) of local government in the preamble of the Constitution against other forms of recognition.

The Australian Local Government Association (ALGA 2007) has proposed a useful tripartite taxonomy of recognition which illuminates this distinction:

A broad recognition of local government's role in the Federation (often referred to as Symbolic Recognition);

An acceptance of some principles relating to the existence and continuation of local government as an institution and local councils as democratic representative bodies (Institutional Recognition);

A streamlined approach to local government funding resulting from a more direct financial connection between local government and the Commonwealth Government (Financial Recognition).

While the ALGA (2007) emphasised that these options were not necessarily mutually exclusive, the debate, both historically and contemporaneously, has nevertheless juxtaposed 'Symbolic Recognition' in the preamble to the Constitution with 'Financial Recognition', most commonly defined as an alteration to Section 96 of the Constitution to guarantee direct federal government funding of local government (see, for example, Lake, in Dollery and Grant 2011, 14). Only recently has 'Institutional Recognition', involving the adoption of principles of local government in a separate chapter of the Constitution (see, for example, ALGA 2007; Williams 2010), emerged as an option.

The argument presented here by no means denies the importance of adequate funding for local government (see, for example, Byrnes et al. 2008), nor does it suggest that the case for 'Institutional Recognition' in the Constitution does not imply a broader role for symbolism at the federal level of politics. Nevertheless, we argue that the debate thus far has failed to take adequate account of the role of symbolism, as defined by Archer (1997), to prospects for constitutional reform. Indeed the term 'symbolism' is typically deployed to convey a negative meaning equating to 'tokenism' (Brown 2008). Moreover, this has also been the case in polling designed to test attitudes of the electorate toward constitutional reform, discussed below.

The paper is divided into six main parts. Following Archer (1997), Section 2 makes a qualitative distinction between symbolism in politics and tokenism in politics, asserting that symbolism, and more specifically the ideas of 'localism' generally and 'place-shaping' (Lyons 2007) in particular, have formed important elements of local government reform in other national settings, in particular English local government. Section 3 examines the two previous attempts at constitutional recognition of local government, and argues that the split between tokenistic recognition and substantive recognition has characterised these debates. Section 4 considers the more sustained conceptualisations of an ideal role for local government in the Australian federation recently advanced by the ALGA and some other bodies. Using the results of polling conducted by Newspoll in 2008 for Brown et al. (2008), Section 5 argues that the prospects for constitutional recognition would be significantly enhanced if proposed changes to the Constitution were conceived in politically symbolic terms rather than in either a tokenistic, or merely instrumental manner. The paper concludes in Section 6 with some brief final remarks that place the possibilities of continued reform to local government in the broader context of reform to Australian federalism.

## **2 Symbolism in Politics**

Archer (1997, 89) conceived of political symbolism as follows:

The place of myths and symbols in political discourse is hard to overemphasise. Both allow an audience to experience being part of a political message, and this experience is a necessary prerequisite for political action... A symbolic political message is affective. It strikes at the emotions of the audience to promote a sense of belonging that often becomes an ingredient of myth making. One could almost argue that the political culture of a political group is defined in terms of the capacity of its symbols and myths to explain the perceived political circumstances of the group... In the political arena rival ideologies contest symbols and myths while (in most cases) they profess to use only facts and rational argument.

In the Australian context, it may seem peculiar to argue that this kind of symbolism can have an important role to play in local politics. Arguably, Australians appear to associate this dimension of politics – involving the creation of myths and symbols as the ‘necessary basis for political action’ (Archer, 1997, 89) –with broader political questions such as nationalism and ethnicity, and indeed with politics of an unreasonably prejudiced nature. Nevertheless, local government in political systems comparable to Australia are characterised by a strong expression of ‘localism’ as a specific political form. Recently this has been the case in England, where the ‘place-shaping’ approach to local government reform, developed by the Lyons Inquiry (2007), incorporates a view of local politics that harnesses symbolism at the local level in Archer’s (1997) sense.

The Lyons Inquiry distilled place-shaping as a mode of local government reform into ‘eight principles’ or what Dollery, Grant and O’Keefe (2008, 484) have described as ‘prescriptive axioms’:

- Building and shaping local identity;
- Representing the community, including in discussions and debates with organisations and parts of government at local, regional and national level;
- Regulating harmful and disruptive behaviours;
- Maintaining the cohesiveness of the community and supporting debate within it, ensuring smaller voices are heard;
- Helping to resolve disagreements, such as over how to prioritise resources between services and areas, or where new housing and development should be located;
- Working to make the local economy more successful, to support the creation of new businesses and jobs in the area, including through making the area attractive to new investment and skilled workers, and helping to manage economic change;
- Understanding local needs and preferences and making sure that the right services are provided to local people through a variety of arrangements including collective purchasing, commissioning from suppliers in the public, private and voluntary sectors, contracts or partnerships and direct delivery; and

- Working with other bodies to respond to complex challenges such as natural disasters and other emergencies (Lyons 2005, 31)

This list incorporates the so-called ‘services to property’ and ‘services to people’ traditionally associated with Australian local government functions. However, Dollery, Grant and O’Keefe (2008, 485) stressed the non-instrumental character of some of the prescribed roles, including the construction of local identity, which is viewed as playing a key role in economic development while at once fostering community cohesiveness and inclusivity. Further, Grant, Dollery and Crase (2009, 864) argued that:

‘place-shaping’ ... calls for a re-politicisation of local government. Local government in the Lyons Inquiry embraces leadership, vision and contest at its core, despite the practical emphasis on financial devolution and enhanced accountability. The widespread conceptualisation of government as technique (i.e. as *governance*) is rejected in the *Final Report*...

As such, combined with council’s prescribed role in fostering identity and belonging, place-shaping in local government explicitly incorporates symbolism as an ideational element of politics, as discussed by Archer (1997), alongside fulfilling a key role in economic development.

As a systematic program of policy, place-shaping has been the subject of recent criticism for being the handmaiden, not of the empowerment of local communities, but of an expedient devolution of political responsibility from central to local governments (see, for example, Grant and Dollery 2011). Nevertheless, despite these criticisms (see also Stoker 2011) in the discussion here we juxtapose the idea of symbolism entailed in place-shaping and politics more broadly against tokenism in politics, which we define as ‘a policy of making only a token effort of doing no more than is minimally necessary’ (Sykes 1982, 1126). The latter, ‘minimalist’ interpretation of symbolism is qualitatively distinct from what we can refer to as a ‘maximalist’ definition provided by Archer (1997). It is clear that the idea of tokenism has derogatory connotations – connotations still

associated with the idea of symbolism in the debate concerning constitutional recognition of local government in Australia.

### **3 Symbolism and Tokenism in History of Constitutional Recognition of Local Government**

Brown's (2008) synoptic history of the saga of constitutional recognition of local government in Australia contains several points of relevance to our discussion. Brown (2008, 438) provided a cautionary note for those seeking to draw direct comparisons between the Australian historical experience of local government and the experience of comparable systems. He argued that in other Anglo-American political systems, 'local institutions effectively developed as the first tier of government ... over which intermediate and national institutions were then built'. Conversely, in Australia 'centralised colonial structures provided the key machinery of public control and services from the outset'. Further, Brown (2008, 437–8) noted that, despite local government not being mentioned in the final federal Constitution, the subject of local government still formed an important element of the deliberations of the Constitutional Conventions used to construct the Constitution. As such, the subject of local government has shadowed (our word) Constitutional reform.

Brown (2008, 440–3) identified three historical episodes in the Commonwealth's recognition of local government. The first was local government's representation on the Commonwealth Grants Commission in 1973. At this time, while the possibility of direct funding of local government had appeal, at the same time it was regarded as 'undesirable, if not impossible' without amending the Constitution. As a consequence, the Whitlam Government initiated the first push for constitutional reform to recognise local government.

Brown (2008, 441) provided the detail of Whitlam's proposed 1974 amendments. '[T]he alteration would have inserted two new provisions in the *Constitution*, paragraph 51(ivA) and section 96A:

51 The Parliament shall, subject to this *Constitution*, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(iv) Borrowing money on the public credit of the Commonwealth:

(ivA) *The borrowing of money by the Commonwealth for local government bodies:*

...

96 During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

*96A The Parliament may grant financial assistance to any local government body on such terms and conditions as the Parliament thinks fit.*

Brown (2008, 441) argued that: ‘the proposed *Constitution Alteration (Local Government Bodies) 1974*, introduced in November 1973, would have given constitutional recognition both a *symbolic* and a *substantive* (functional and financial) purpose’ (emphasis added).

While it is clear that the amendments proposed in 1974 to both Section 51 and Section 96 would have addressed the current option for ‘Financial Recognition’ as defined in the three-part typology provided by the ALGA (2007) (or in Brown’s own parlance, ‘functional and financial’ recognition), the extent to which the proposed amendments represented any form of political symbolism following Archer (1997) is questionable. This would have involved both a differently proposed amendment and the prosecution of the case for constitutional recognition in ideational terms. By contrast, the proposed reform to the Constitution in 1974 can be likened to the ‘minimalist’ position put forward, for example, by Lake:

I don’t like to talk about constitutional recognition as just symbolism. I couldn’t care less if local government was or wasn’t in the Constitution if it’s *mere symbolism*. But to me the change that ALGA is pursuing is quite pragmatic; namely changing the substance of Section 96 to simply extend the current power of the Commonwealth to make financial grants to the states on whatever terms

the Commonwealth sees fit to enable them to do the same to local government’  
(Lake, cited by Dollery and Grant 2011, 14, emphasis added).

While the proposed amendments to the Constitution involved changes to both Section 51 and Section 96, the goal of this reform was to ensure direct funding of local government by the Commonwealth. As such, it hardly constitutes what we have denoted as a ‘maximalist’ account of symbolism.

When put to the people on 18 May 1974, the proposal failed, with the national vote being 46.9%, and a very slim majority (50.8%) being recorded in only one state, NSW. Brown (2008, 443–4) argued that the second step toward Commonwealth recognition came with the implementation of the Commonwealth *Local Government (Personal Income Tax Sharing) Act 1976*, later reiterated in the *Local Government (Financial Assistance) Act 1995*, both of which channelled more money to local government through the states, as well as the decision of the High Court in *Victoria v Commonwealth and Hayden (1975)*, which held that Section 81 of the Constitution could be used for the Commonwealth to ‘grant funds to agents of its own choosing’ (Brown 2008, 443). Further, with the Fraser Government’s introduction of an Advisory Council for Intergovernmental Relations (ACIR), Section 5 of the *Advisory Council for Intergovernmental Relations Act 1976* ‘set out the Council’s objectives of examining “the relationships that should exist between federal, state and local government”’ (Brown 2008, 444). According to Brown (2008, 444), this resulted in local government being recognised in all state constitutions except Tasmania and Queensland by 1986.

The ensuing Hawke Government then established both a Constitutional Commission to consider Constitutional recognition and an Advisory Committee on the Distribution of Powers in 1985. The Advisory Committee reported its findings in 1987, listing three reasons against pursuing constitutional recognition of local government: the inability of the local government sector to agree upon a model; the lack of an adequate explanation as to why recognition in state constitutions was not enough; and the argument that a third tier of government in Australia was unnecessary and would in any event ‘be in

competition with the States' (Brown 2008, 445). However, in contrast with these recommendations of the Advisory Committee on the Distribution of Powers, in its eighth report examining relationships between the tiers of government since its inception in 1975, the ACIR still recommended recognition of local government in both state *and* federal constitutions (Brown 2008, 445). This view aligned with that of the Australian Constitutional Convention held in Brisbane in 1985, which was assisted by the Constitutional Commission in proposing the *Constitutional Alteration (Local Government) 1988* reform, introduced in May 1988. This proposed inserting one new provision in Chapter V of the *Constitution*:

119A Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State (Constitutional Convention 1985, cited by Brown 2008, 446).

Describing the referendum conducted on 3 September 1988 as 'a spectacular failure' (with no state gaining a majority 'yes' vote and an average overall 'no' vote of 66.4%), Brown (2008 446–7) attributed the nature of the loss to the lack of bipartisan political support. Indeed, in the post-referendum parliamentary debates, some members of the Opposition criticised the proposed change to the Constitution for not encompassing anything sought by local government itself. Brown (2008, 447) summed up the reaction as follows: 'The symbolic value of recognition of this kind was dismissed, with some justification, as simply a "political...exercise" or an act of tokenism". Here, any qualitative distinction between symbolism and tokenism in politics appears altogether absent.

Brown (2008, 447–9) argued that the commencement of the third step toward constitutional recognition of local government was marked by the recognition of local government by federal parliament in 2006 following a recommendation of the House of Representatives Standing Committee on Economics, Finance and Public Administrations' 2004 Report *Rates and Taxes: A Fair Share for Responsible Local*

*Government* (Hawker Report 2004)<sup>1</sup>. Subsequent debate has seen a marked shift in the nature of the recognition being advocated, ‘not simply for “recognition”, but ... for a measure of constitutional “autonomy”’ (Brown 2008, 449). For example:

[I]t has become clear that the pressure for federal constitutional recognition is not about resolving *minor technical issues, nor mere symbolism, but about strengthening the political status of local government in its dealings with its own communities, State governments and the federal government ...* Chapman described local government as requiring *national recognition* ‘in order to provide the necessary status to be a full partner in the governing processes’, with State

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<sup>1</sup> This recognition was originally introduced by the [then] Minister for Local Government, Roads and Territories, Lloyd (Member for Robertson) on 6 September 2006. He proposed: ‘That the House:

1. Recognises that local government is part of the governance of Australia, serving communities through locally-elected councils;
2. Values the rich diversity of councils around Australia, reflecting the varied communities they serve;
3. Acknowledges the role of local government in governance, advocacy, the provision of infrastructure, service delivery, planning, community development and regulation;
4. Acknowledges the importance of cooperating and consulting with local government on the priorities of their local communities;
5. Acknowledges the significant Australian Government funding that is provided to local government to spend on locally determined priorities, such as roads and other local government services; and
6. Commends local government elected officials who give their time to serve their communities (Lloyd, 2006, in *Parliamentary Debates, House of Representatives*, 6 September 2006, 92-93).

In the ensuing debate, the Member for Grayndler (Albanese 2006, in *Parliamentary Debates, House of Representatives*, 6 September 2006, 96) stated: ‘Labor supports this parliamentary motion on local government. This motion is a step in the right direction towards recognition for the important role that local government plays in the delivery of services at the local level’. However, Albanese also argued that: ‘This motion is largely a symbolic statement’ and that ‘we need to go that step further than symbolism and have a practical impact, which enshrining local government in the Constitution would do’ (Albanese 2006, in *Parliamentary Debates, House of Representatives*, 6 September 2006, 97). Albanese’s proposed amendment – ‘to support a referendum to extend constitutional recognition to local government’ (Albanese, 2006, in *Parliamentary Debates, House of Representatives*, 6 September 2006, 99) – was subsequently defeated and the original motion was passed by the House of Representatives on 17 October 2006 (Commonwealth of Australia 2006a, *Parliamentary Debates, House of Representatives*, 17 October 2006, 38) and earlier by the Senate on 7 September 2006 (Commonwealth of Australia 2006b *Parliamentary Debates, Senate*, 7 September 2006, 6).

constitutional recognition unable to '*provide sufficient legitimacy*' to local government to bring about this shift ... (Brown 2008, 448).

In this passage Brown (2008) performed an important service for us. This is decidedly *not* that he juxtaposes the idea of 'technical issues' with the idea of 'symbolism' in Australian local government reform. Rather, it is that he juxtaposes '*mere symbolism*', or what he (Brown 2008, 444) referred to as 'token recognition' of local government in the Constitution with 'strengthening the political status of local government in its dealings with its own communities, state governments and federal governments'. Brown (2008) is arguing that in order for state and federal governments to view local government as an equal partner in federalism, or for it to achieve what he called a 'political upgrading' such that it would have 'sufficient political legitimacy' (Brown 2008, 449), constitutional recognition ought to be of the 'institutional' type suggested by the ALGA (2007). We now move to examine the ALGA's understanding of such recognition.

#### **4 Contemporary Rhetoric of Constitutional Reform**

Contrasting with the rhetorical split between tokenistic recognition and financial (or 'functional') recognition that (we have argued) has dogged the two previous attempts at constitutional recognition of local government, the ALGA has made their preferred option 'Institutional Recognition'. The ALGA argument has been set out in several documents. Key among these is the *2007–2008 National Agenda for the National General Assembly of Local Government*, which arose from the National General Assembly of Local Government (NGALG), a process conducted by ALGA since 1994. The *2007–2008 National Agenda* elucidated 15 'Principles of Local Democracy' (NGALG 2007, 55–6), including the statements (a) that 'variations in the structure and activities from place to place must ... be expected and valued as a strength of the system of government'; (b) that 'local government is the expression of Australia's commitment to community democracy'; and (c) that 'neither state nor federal government ought to interfere with the boundaries of local government without the consent of local government'. Herein lies the claim for constitutional autonomy identified by Brown (2008, 488). This stance was augmented in the *2007–2008 National Agenda*

(NGALG 2007, 55–6) with the inclusion of a ‘Declaration on the Role of Australian Local Government’ consisting of 12 prescriptive axioms which can be summarised as follows:

Australian Local Government:

1. Must be a partner in the federal system;
2. Will be responsible to the local community;
3. Will provide good local governance;
4. Must exercise local autonomy;
5. Will provide leadership and advocacy;
6. Will promote active citizenship at the local level;
7. Will foster local identity and civic pride;
8. Will secure community cohesion;
9. Will ensure local service delivery;
10. Will facilitate community development;
11. Will foster regional cooperation; and
12. Will adapt to change.

This list contains claims of an instrumental nature (to provide good governance and to be responsible and accountable to the community; to ensure local service delivery, for example). However, it also clearly incorporates a role for local government which accords with Archer’s (1997) definition of symbolism and Lyons’s understanding of ‘place-shaping’, including the imperative to exercise local autonomy, to provide leadership and advocacy, to encourage local identity and civic pride. Indeed, these 12 points share many similarities with the prescriptive axioms laid down in the definition of ‘place-shaping’ by Lyons (2007).

Also illustrative of the ‘Institutional Recognition’ approach articulated and advocated by the ALGA are documents that were generated by the Local Government Constitutional

Summit, held in Melbourne on 8–11 December 2008. In particular, the *Summit Declaration* LGCS, 2008a) stated, ‘we now declare our belief that constitutional recognition will assist the process of reforming the Australian Federation by:

1. **Correcting** the historical oversight of not recognising in Australia’s paramount political document the level of government that is closest to the people;
2. **Acting** as a driver for local government participants to act in a transparent, fair and accountable manner;
3. **Reinforcing** the belief that local decision-making will ensure the provision of services and infrastructure that best meet local needs;
4. **Reaffirming** the concept that individuals and communities have the right to engage in the democratic processes of their local government area;
5. **Advancing** the relationship between all three spheres of government within the Australian Federation; and
6. **Establishing** a clear capacity for the Commonwealth to provide direct funding to local government, so as to improve or provide the infrastructure and services to meet the legitimate expectations of all Australians, whilst ensuring the sustainability of the local government sector.

These represent strong principles of institutional recognition, taking into account rectifying the ‘historical oversight’ of not recognising local government in the Constitution, reinforcing the principle of subsidiarity (‘Recognising local decision-making will best meet local needs’ – see, for example, Brown 2002) and a strong statement supporting local democracy, as well as marshalling the concerns centred on funding and intergovernmental cooperation.

Taken together, these recent statements by ALGA and its ancillary bodies put forward an ideal form of the functioning and place of Australian local government, and so

present the case for 'Institutional Recognition'. This contrasts with the option of 'Financial Recognition' with respect to constitutional reform; that is, where the goal of any reform ought to be limited to securing direct federal funding of local government. The statements also contrast with the option of 'merely symbolic', or token recognition in the Constitution.

Whereas ALGA may be said to be performing its role as the peak advocacy organisation for local government in Australia, it is important to ascertain public attitudes to constitutional reform. It is to this question that the discussion now turns.

## **5 Public Support for Constitutional Recognition**

In seeking to address the question of how constitutional recognition of local government would fare, Brown et al. (2008) commissioned a survey of adult citizens and permanent residents in Australia (for details of the survey instrument, see Brown 2008, 449). Brown (2008, 436) summarised the results as follows: 'the base support for federal constitutional recognition of local government is currently barely enough to support such a change in a referendum'. Accordingly, in a contemporary referendum debate, 'any proposals similar to that of 1974 or 1988 would almost certainly be destined to fail' (Brown 2008, 451). Brown (2008, 436) offered three reasons for this conclusion:

- The symbolic or 'token' value of recognising local government has yet to be overtaken by proposals of sufficiently substantive or practical value to convince many Australians, *although there is significant potential for this to occur* (emphasis added);
- Many Australians have a negative opinion of the effectiveness and capacity of local government to function as a 'genuine' constitutional partner, although this is also clearly a 'chicken and egg' problem, rather than an absolute one.

- Many of those who do see a need for larger federal reform, even when they believe this should include political devolution, do not see the entrenchment of local government as the most logical means of achieving this reform.

Thus far our discussion has aligned itself with the first of Brown's observations, in that we have argued for the relative impotence of tokenism, or *mere* symbolism as a mechanism to assist obtaining constitutional recognition of local government, while recognising that potential exists for the further development of a substantive position, or 'institutional recognition' as articulated by the ALGA (discussed above). We now move to examine this and two other observations in relation to the survey work conducted.

*(i) Baseline support results*

In order to assess what Brown (2008, 449) referred to as 'base-level support among Australian voters for constitutional recognition of local government', the first of Newspoll's surveys commissioned by Brown et al. (2008) posed a 'dichotomous question':

At the moment, the [Australian] *Constitution* does not actually mention or officially recognise that local government exists in Australia. Which one of the following comes closest to your view?

'The existence of local government should be officially recognised in the *Constitution*'

OR

'There is no real benefit in making this change to the *Constitution*.'

It was in his examination of these results that Brown (2008, 450) deduced support for constitutional reform was 'barely enough to support such a change in a referendum'. In response to this question, four states showed a majority in favour of recognition, yet neither NSW nor Victoria did so. Further, at 52.8%, the majority in favour was scant, and would thus be unlikely to withstand any party-political opposition. Moreover, Brown (2008, 450–1) reasoned that 'base support is likely to be soft', with a subsequent poll of

532 persons who then worked, or had worked, in government revealing that only 53.9% of this more refined cohort supported constitutional recognition, with local government respondents as a component of this latter cohort registering only 65.2% in favour.

*(ii) Weak support for purely symbolic recognition*

Brown (2008, 451–2) hypothesised that the *type of recognition* being pursued is important, as reflected in his analysis of the proposed amendment in 1988. To test support for different forms of what he referred to as ‘substantive’ recognition, Newspoll asked respondents what Brown (2008, 452) labelled ‘five different recognition objectives or ‘options’ which were then ranked on a scale of 1 to 4. The results are reproduced in Table 1.

**Table 1: Support for Various Particular forms of Recognition**

	For the Constitution to ...				
	... make it harder to amalgamate local governments or change their boundaries	... give local government more roles and responsibilities	... state there must always be a system of local government in Australia	... set rules and standards of accountability for local government	... guarantee a reasonable level of funding for local government
1= strongly against 2= somewhat against 3= somewhat in favour 4 = strongly in favour					
Mean (SD)					
The existence of local government should be officially recognised in the Constitution (n = 7,895)	2.77 (1.00)	3.10 (.93)	3.61 (.68)	3.47 (.74)	3.69 (.58)
There is no real benefit in making this change to the Constitution (n = 6,362)	2.28 (1.08)	2.03 (1.00)	2.61 (1.06)	3.02 (1.09)	2.93 (1.07)
Neither/don't know (n= 694)	2.39 (.89)	2.63 (.97)	3.29 (.74)	3.45 (.74)	3.28 (.87)
<b>Total</b> (n= 14951)	<b>2.54</b> (1.06)	<b>2.63</b> (1.09)	<b>3.17</b> (.99)	<b>3.28</b> (.93)	<b>3.25</b> (.92)

Source: Brown (2008, 453)

Brown (2008, 453) made a number of observations with respect to these results. First, there was significant division over the issue of council amalgamation, or 'protective recognition' guarding against forced amalgamation. Second, the option of protecting councils from further amalgamation fared very badly amongst those opposed to constitutional recognition in the baseline poll, and even more so when constitutional recognition involved local government gaining more roles and responsibilities. Third, Brown (2008, 453) noted that with respect to the last two propositions – stipulating standards of accountability and guaranteeing a reasonable level of funding – support became significantly stronger *'even from those initially disinclined to support recognition'* (emphasis added).

This is an important point, suggesting that once an electoral cohort is faced with substantive recognition of local government, in the form of guaranteeing both accountability and funding, voters are far more likely to support change, even those initially opposed to constitutional recognition. Nevertheless, we can add to Brown's interpretation of the results presented in Table 1. First, what is also noticeable is the strong support for option 3: 'For the Constitution to state that there must always be a system of local government in Australia', with a mean score of 3.61/5 and an attendant, negative score of 2.61 (which was smaller, in fact, than that for both the accountability and funding options).

Second, if we reflect upon the relationship between Brown's five 'options' and the three types of recognition described by ALGA (symbolic, institutional, financial), we can note that support for recognition is *highest* with respect to reforms which correlate to *both* financial recognition (options 4 and 5) *and* institutional recognition (option 3). Third, it is important to note that option 3 is not merely symbolic, or 'mere tokenism'. For the Constitution to state that 'there must always be a system of local government in Australia' clearly implies 'Institutional Recognition' to the extent that it would demand a definition of 'local government' and, as such, its legal problematisation and defence. This is qualitatively distinct from the proposed change put in the 1988 referendum (119A 'Each State shall provide for the establishment and continuance of a system of local government...'). It is significant that respondents registered a strong positive vote for this option. It is significant also that the negative vote for this option was less than for both options 4 ('accountability') and 5 ('reasonable funding'). In other words, while Brown (2008) chose to emphasise support for financial recognition, we recognise support for both this and for 'Institutional Recognition' in ALGA's (2007) typology, which can be juxtaposed against the tokenism of the proposed reform in 1988.

Support for this type of reform was reinforced when Brown (2008, 454) combined options 3, 4 and 5 into a single proposed form of change:

If the Constitution was changed as to state that there must always be a system of local government in Australia, set rules and standards of accountability for local government, and guarantee a reasonable level of funding for local government

The results for this option are presented in Table 2.

**Table 2: Indicative Support for Particular Substantive Constitutional Recognition (2008)**

	NSW (%)	VIC (%)	QLD (%)	SA (%)	WA (%)	TAS (%)	ACT (%)	NT (%)	Total (%)
Base support for constitutional recognition	46.9	46.8	66.9	58.8	55.9	59.5	47.4	35.4	52.8
Support lost (strongly against proposed form of change)	-3.5	-1.9	-2.4	-2.9	-5.4	-0	-0	-0	-2.8
Support gained (former non-supporters strongly in favour of proposed changes)	29.8	33.5	19.4	27	25.2	24.5	33.2	37.5	28
Total support	73.2	78.5	83.9	82.9	75.7	84	80.6	72.9	78
Opposed/don't know informal	26.8	21.5	16.1	17.1	24.3	16	19.4	27.1	22
Total	100	100	100	100	100	100	100	100	100

Source: Adapted from Brown (2008, 454)

Confronted with this proposition, the positive response across all jurisdictions increased by an average of 28%, with a majority in all states averaging 78% overall. This strong positive response was reflected when voters were asked to nominate their preferred source of legislative authority for local government resting at the state or federal level. In describing these results, Brown (2008, 455) also observed that:

The result indicates that many people may support constitutional change if the change in status is related to structural improvement to local government's place in the system in ways that make a positive, practical difference to the quality of local democracy.

It is notable that there is a significant change in results (i.e., for or against constitutional recognition) according to the kind of proposition put in a referendum. If the proposition involved not just financial recognition, nor 'mere symbolism' or, more accurately, tokenism, but what ALGA (2007) has described as 'institutional' recognition, which we have equated with political symbolism in Archer's (1997) sense, this symbolism would be a significant factor in forming the basis of a positive response to constitutional reform.

*(iii) Perceived local government ineffectiveness and capacity*

We contend that there is another role that political symbolism can play in the constitutional recognition of local government. Brown (2008, 456) also tested the *perception* of the *capacity* of each tier of government. When rating the performance of Australia's three levels of government in their own right, the federal tier scored highly (81.1% as 'good' or 'very good'), with local government on a par with the states (56.5% and 55.9%, respectively, with significant variation between states (Brown 2008, 457)). While 19.2% labelled local government the most effective, 35.9% labelled it the least effective (slightly higher than state government at 32.2%).

Brown (2008, 457) pointed out that 'these effectiveness ratings have their greatest significance as vehicles for understanding *why* citizens rate different levels as ineffective'. Of the three functional areas of government from which respondents could choose ('specific policy/functional areas', 'inclusion/representation', 'governance quality/capacity'), local government scored badly – almost 60% – in the latter category, as demonstrated by Table 3.

**Table 3: Summary of Reasons Given for Considering Each Level of Government to be Least Effective (per cent)**

Reasons given/problems	Level nominated as least effective			
	Federal	State	Local	Total
1. Specific policy/functional areas	25.4	54.8	25.7	36.9
2. Inclusion/representation	32.0	18.2	20.2	21.6
3. Governance quality/capacity	25.3	49.2	57.9	48.5

*Source:* Adapted from Brown (2008, 458)

Brown (2008, 458) reasoned that this poor result for local government with respect to ‘governance quality/capacity – further specified as poor for the categories ‘too much personal self interest/corruption’ and ‘inexperience/incompetence’ at a combined 37.9%, with ‘lack of resources’ at a significant, but surprisingly modest, 8.6% – was a result of the ‘chicken and egg problem’, a result of ‘local government’s historical and institutional weakness’. With respect to how this perception would influence voting for constitutional recognition of local government, Brown (2008, 458–9) observed that ‘citizens are attuned to voting “for” governments they believe to be effective, and “against” governments they believe to be ineffective. It is therefore electorally counter-intuitive to vote to [constitutionally] entrench or increase the political status of an institution they believe to be ineffective’. Moreover, he noted that ‘these results reinforce the indications ... that the path to securing support for any change most probably lies in forms of substantive recognition aimed at increasing the quality and capacity of local governance’.

In these observations Brown (2008) may well be correct. However, he did not stress that it was the *perception* of governance quality/capacity which was being sought in the poll, rather than the quality/capacity itself. While it is reasonable to assume that the two distinct phenomena bear a relationship to one another in that the perception in some way reflects the ‘reality’ of service provision, they are in fact different, and both are in any case defined differently. We are suggesting that, while improving local governance quality and capacity are indeed worthy and admirable policy goals, the possibility of

these reforms affecting support for constitutional recognition is significantly affected by (in turn) citizens' perceptions of these processes. Further, it is a mistake to assume that any improvement in performance – for example, a measurable increase in a particular efficiency – will necessarily be noticed to any extent at all. In all likelihood this will depend on the narratives generated around such an event.

This observation does not take into account any attachment to local areas – or what we earlier identified as 'localism' – fostered through ideational mechanisms, emphasised in the 'place-shaping' approach to local government reform discussed earlier, as a means to foster support for constitutional recognition. Indeed, the same point is made by some writers building upon the 'social capital' literature, who have suggested that a 'sense of belonging' and 'sense of place' are important for the sustainability of local government (see, for example, Dollery, Grant and Crase 2011). Brown (2008, 463) implicitly made this point in stating that while a slim majority of individuals in a previous poll supported the principle of subsidiarity ('It is better for decisions to be made at the lowest level of government competent to deal with the decision' – 51.4% against 41.3%), only a small majority of those supporting the principle (55.7% as against 46.3%) agreed that local government should be recognised in the Constitution. As Brown (2008, 463) stated: 'these [i.e., those supporting subsidiarity but *not* supporting constitutional recognition] are clearly the respondents in most need of *persuasion* that local government can become a fully competent level of government' (emphasis added).

## **6 Concluding Remarks**

Brown (2008, 465) outlined three possible scenarios for the future of local government reform. The first saw an abandonment of the question of constitutional recognition in favour of a 'practical overhaul', where 'the functional and financial position of local government is included as a more pivotal ingredient [in federalism] than has previously been the case'. Against this 'overhaul' approach, Brown (2008, 465) also suggested an 'incremental' approach to reform, which would 'begin to attack, at their root, the structural, financial and accountability problems that currently underpin low public

opinion of our lowest level of government'. In the event of such an approach Brown (2008, 466) suggested that success could be judged by a *decrease* in calls for constitutional recognition; by implication this would apply to the first scenario as well. Brown's (2008, 466) third option was to 'proceed with the development of a proposal for federal constitutional alteration'. Events now seem to have overtaken Brown's analysis, and this is the point at which we have arrived.

Our argument in this paper has been that previous attempts at constitutional recognition have been afflicted by a division between reform perceived as instrumental on the one hand and that which has been perceived as merely symbolic or tokenistic on the other. Furthermore, at the federal level, the current debate is still divided between reform consisting of 'mere symbolism' and reform centred on a realist claim associated with the options for financial and functional recognition. This paper by no means denies the importance of financial recognition, or the importance of policy debates surrounding the deployment of resources. However, we have argued that another interpretation of symbolism, one that understands its centrality in politics, conceived of as discursive and ideational, has been largely ignored in the debate surrounding constitutional recognition of Australian local government and indeed local government reform more generally.

The importance of understanding the role of symbolism in the debate on constitutional recognition is demonstrated most readily by our interpretation of the results of the polling commissioned by Brown et al. (2008). Brown noted that there was weak support for *tokenistic* recognition ('mere symbolism') of local government in the Constitution and that stronger support could be found for recognition based upon accountable and well funded local government. We have added to this interpretation of the polling, arguing that support for *symbolic* recognition of local government is just as strong. This was demonstrated when a discrete proposition was asked of respondents: 'For the Constitution to state that there must always be a system of local government in Australia'. This option was supported just as strongly as the two other options for accountability and adequate funding.

Brown (2008) also demonstrated that, when the option for symbolic recognition was combined into a general statement to include functional/financial recognition, support for constitutional recognition increased to an average of 78% with a majority in all states. It is noteworthy that support was significantly less than this when a discrete question concerning financial recognition was posed. In other words, it is the *combination* of options which produces the most support for constitutional recognition. While Brown (2008) chose to emphasise that the capacity of all governments affects their perceived legitimacy, the argument presented here pointed out that what was being asked for was a *perception* of capacity, and in this respect local government fared comparatively worse than both its federal and state counterparts. This by no means implies that local government ought not to be adequately financed to undertake its functional tasks. However, it does indicate that what Brown (2008, 458) labelled 'local government's historical and institutional weakness' can be countered at an ideational and symbolic level in the manner suggested by the place-shaping approach to local government reform, as well as by ensuring adequate funding.

In terms of prosecuting any case for constitutional recognition, these conclusions clearly point to what the ALGA (2007) denoted as the option of 'institutional' reform. These conclusions also suggest that the prosecution of such a case ought to bring to bear symbolic and ideational mechanisms. We have seen that the ALGA has developed the foundations of such mechanisms in documents generated by two deliberative processes. With support for constitutional recognition now bipartisan at a federal level, any attempt at recognition ought to fully embrace these mechanisms, rather than shy away from such a representation of local government, or be sidetracked by a debate over tokenistic recognition versus financial/functional recognition. Federal governments have historically enjoyed varying success in garnering electoral support for particular reforms, ranging from the Howard Government's advertising campaign for the introduction of the GST in 2000, to the disastrously unsuccessful attempt to introduce the mining super-profits tax in 2010. Bipartisan support for constitutional recognition, as well as the electoral support for institutional reform indicated above, suggests such a

program would be well received if the change to the Constitution was well designed around the ALGA option for Institutional reform.

Finally, we have argued that when conceived as an element of 'localism', or more specifically 'place-shaping', symbolism can be employed to increase the legitimacy of local government amongst its constituents. To understand this merely as the 'branding' of a locale for the purposes of attracting tourists, or to regard it as mere rhetoric which can be set against the 'real' business of local government, defined as service provision, is to fundamentally misconstrue the idea and reiterate the false dichotomy which, we have argued, has characterised the debate for constitutional recognition. Place-shaping may involve branding in a commercial sense but, as we have seen, it also involves much more, in particular the refiguring of local government as a valued and legitimate realm of political activity. In this sense, place-shaping can certainly assist with the last of A. J. Brown's (2008, 464) injunctions, namely, the 'the need to hasten slowly before committing to a reform proposal'. In the extremely volatile arena that federal politics in Australia has become, these words are sage advice indeed.

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