

# Meliorist piecemeal tinkering with federalism: recipe for disaster?

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Beyond Federation

A paper prepared for *Australian Federalism: Rescue and Reform*,  
Sir Henry Parkes School of Arts Museum,  
Tenterfield NSW, 23-25 October 2008

## Introduction

The organisers of this conference have asked three questions to be addressed at the Saturday roundtable of this conference:

- How can collaboration between all levels of government be made effective?
- Beyond collaboration - is there need to review and/or renew the basic framework of Australian governance?
- How do we get where we are going - what are the right processes for achieving and sustaining the necessary reform.

The starting point of this paper is that the federal structure of government should be abandoned. It is no longer appropriate. Many commentators would agree with that, even several senior major party politicians. However, some ALP State Premiers, and a number of conservative academics, argue that federalism still has much to offer and that the problems are rather imaginary and/or insignificant. Therefore, they claim, federalism can be 'repaired', 'saved', or 'rescued'.

A spectacular number of federal-state crises have emerged in Australia in major and minor public policy areas. This situation, thankfully, has prompted research about public attitudes by Griffith University. The results demonstrate that there is much dissatisfaction amongst the general public with federal-state relations. This concern was also became obvious during the *Australia 2020 Summit* in spite of the fact that several of the Government selected delegates could hardly be described as brain stormers for radical action. The outcome of the Governance Stream (9) pointed to considerable support for more radical change. Drummond, a co-convenor of *Beyond Federation*, has analysed some of the outcomes of the Summit. He found that of 790 or so people who entered submissions to the Governance stream, about 343 contained content that were at least partly relevant to *Beyond Federation* objectives, including about 134 that either explicitly called for the abolition of State governments

or called for reforms very close to State abolition. <http://www.australia2020.gov.au/> (Drummond, 2008)

I am a founding member of *Beyond Federation*, a loosely organised umbrella group for a number of community groups that have argued, jointly since 2002, for the replacement of the federation. The principal objective is just that: to expose the major shortcomings of the existing federal constitution and, therefore, its replacement. *Beyond Federation* does not support 'cooperative federalism'. However, in contrast, a recent conference *Making Federalism Work* - (ANSZOG 11/12 Sept, 2008), was mainly about that. Yet, the ALP love-in at COAG has already ended with the Coalition's victory in WA. More State Government losses seem likely. This would mean that the blame game could soon be back in town. This vicious circle should be broken, we say.

We need to ask first: What is the origin of a federal compact? When appropriate? What happens over time? How to change the federal constitution when no longer appropriate?

The second part of the paper deals with the primary need to unfreeze the Australian Constitution so as to make it possible to achieve major constitutional amendments, perhaps rewrite the entire Constitution. At present the Australian Constitution, as well as the political system, is frozen. Sawyer already remarked on this 41 years ago (Sawyer, 1967). The refrain of 'cooperative federalism' is like hearing an old gramophone record with the needle stuck in the groove. This part also stresses the frequently overlooked context of Australia's rigid federalism: the relationship between the single-member district electoral system and the difficulties in amending the Constitution. Unless the costly, increasingly ineffectual federation is tackled, a national disaster could be the result. The Murray-Darling problem is already indicative of that. The continuation of the states as virtual federal branch offices, as Peter Costello already described them, may be in the offing but superior solutions surely must be attempted.

## **A. Federation is the past - let's talk about alternatives.**

It is often difficult to promote a new paradigm. It is usually accompanied by a crisis. When that threatens defenders of the status quo will marshal all their intellectual capital to show that no radical solutions are required to address the problems identified. Vested interests come into full play. That's what is happening in Australia today. Machiavelli told us all about it in late 15th century Italy.

In research commissioned by the ALP State and Territory Premiers and Chief Ministers, Anne Twomey and Glenn Withers carried out a substantial statistical analysis which compares the economic growth rates of seven federal countries and 14 unitary countries since 1950 '*Australia's Federal Future - Delivering Growth and Prosperity*' (April 2007). On the basis of this analysis they claim that Australia could be \$86 billion a year better off (or about 10% of GDP) if it adopted 'best practice federalism' as practised by Germany, Canada and Switzerland. In stark

contrast, *Beyond Federation* calculations suggest that abolishing the States could save \$30 billion dollars a year – possibly more.

The legitimacy of this \$86 billion estimate was challenged by Dr. Mark Drummond who stated:

The comparison Twomey and Withers rely upon to establish this \$86 billion figure is something of a mismatch in which seven wealthy federations (Australia and six of the most locationally advantaged countries in the world: the USA, Canada, Germany, Austria, Belgium and Switzerland) are pitted against 14 diverse unitary countries (Denmark, Finland, France, Greece, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden and the United Kingdom) which include some of the poorest and most remotely located OECD countries, such as Portugal, Greece, Finland and New Zealand. This \$86 billion estimate would probably be very different if unitary China (with its stunning economic growth in recent decades) and federal Russia (with its mixed and generally poor economic performance), for example, were included in the analysis. (August and Woldring, 2007).

Another claim of the Report is that federalism is fashionable again as evidenced e.g. by the devolutionary trends in the UK, federal moves in Belgium, the new Russian federation, some devolution in Spain and, of course, the European Union. Such reasoning should include an assessment of specific local historical developments and the question of appropriateness of federalism for different societies and nations at different times.

The Report also considers the controversy over how many levels of government are desirable or appropriate. They note that many countries have three levels and this doesn't seem to be much of a problem. Two levels for Australia, as advocated by some critics of federation, are rejected as not enough. However, while three levels may not be excessive Australia's third level, local government, as a subsidiary level of a state government, is and has long been in a particularly vulnerable position. The Whitlam Government tried to overcome that (1974) but the proposal was rejected by the Coalition on the grounds that it would infringe the federal principle.

*Beyond Federation* is open-minded on the question of what particular model should replace federation. Two options are favoured (1) a national government and a substantial number of autonomous regions OR (2) national and local government plus a mezzanine level of voluntary regional councils (as already exists). A widespread public debate is required. The deeply conservative Australian media should be more forthcoming with publishing a variety of views rather than adopting the role of gatekeeper.

Leaving aside the self-interest of the ALP Premiers, the Twomey-Withers Report acknowledges the atrophy in our federal system, the gross fiscal imbalances, political dysfunctions, inflexibility and stagnation. We say that federation is very costly and now entirely inappropriate. Australia needs a new political structure and Constitution. Current State ALP party political considerations to maintain state rights, e.g. in respect of IR legislation and education curriculums, should not

stand in the way of long overdue reforms. In 2007 this ALP position could perhaps be explained as a defence mechanism against the Howard federal government policies but it has clearly continued after the Rudd Government took office. This represents a shift in direction of 180 degrees as compared to, say, 40 years ago.

The Report doesn't clearly define what federalism is or explain why federations are formed. The scholar best known in this subject area, K. C. Wheare, (1963), is not mentioned. Wheare demonstrated why such (political) bargains/compacts are struck and that afterwards a process ensues which may or may not render federal government appropriate. Over time the prerequisites for federal government to succeed and be meaningful may in some cases. This is what has happened in Australia. Wheare also explains and emphasises the essence of federal government which is the division of sovereignty between the federal government and the component states. There is always a written constitution which lays down the terms of the compact and establishes a constitutional court that guards over the compact.

The appropriateness of continued federalism, according to William Livingston (1956), depends not so much on the constitutional structure as on the society itself. The diversities should be territorially grouped. If they are not so grouped a society is not federal, he argued, and if the initial reasons for striking the federal bargain disappear over time, a different arrangement should be negotiated. It cannot even be claimed that the Australian society is federal in that sense although the former WA Law Professor Greg Craven (now a Vice-Chancellor), a confirmed federalist, has done his best to make it appear that way. Surely state loyalties in sport cannot be regarded seriously as evidence. West Australians today, as I have experienced just recently during a tour of WA from north to south, are Australians first and foremost and West Australians second. They also have major state problems to deal with, e.g. city vs. region imbalances, as the recent state election demonstrated.

The Report ignores the fact that the vast majority of advanced countries are unitary states many of which achieve effective decentralisation through provincial and local government, often embracing the much praised European Union principle of subsidiarity. It also understates the extent of centralisation at the state level in Australia, which has short-changed local government, the regions and rural Australia for decades. Is this not where the real problem of centralisation exists in Australia? The state governments stand in the way of effectively applying the principle of subsidiarity. In many ways they behave like metropolitan city governments - that is what they should be transformed into.

Twomey and Withers briefly considered the alternative of abolishing the states and replacing them with a much larger number of regions, but reject this as impractical and costly. They gave no consideration to a decentralised unitary model comprising a new national government and stronger local governments, including (metropolitan) city governments. Existing regional organisation of councils could play a more significant role in assisting local government, facilitating improved subsidiarity. There are already 64 in place in Australia,

some of them providing excellent services to local governments. Also ignored are problems with the electoral system, the resulting archaic two-party system and the extremely rigid and now ossified Constitution itself.

The Business Council of Australia has also issued two major reports on Federal-State complexities and inefficiencies, e.g. the high number of taxes impacting on business. They estimated the cost of federation to be approx. \$9 billion a year (BCA, 2006). Still, the BCA also favours 'cooperative ('seamless') federalism'. Are they suggesting that the clock should be turned back? Did they look further than business interests?

The historical development of federalism – and its decline – has been predicted correctly by eminent Australia commentators as early as 1902 when Alfred Deakin, the second PM, said that the 'Commonwealth would increase in stature, in financial dominance, and in the determination of national priorities'. Gordon Greenwood (1942) later wrote that

Despite its achievements, the evidence points decisively to the conclusion that the federal system has outlived its usefulness, that the conditions which made federation a necessary stage in the evolution of Australian nationhood have largely passed away, and that the retention of the system now operates only as an obstacle to effective government and to a further advance.

Nevertheless, in a paper recently presented by Pincus, J. 'Six myths of federal-state financial relations' (CEDA, 2007) the 'new model of cooperation' to federalism by the Rudd government is welcomed.

Conservative federalists like Pincus, Twomey, Withers, Greg Craven and also former Westpac CEO, David Morgan cling to the old structures by arguing that the problem lies largely in the fiscal imbalance but that the situation can be rescued by fruitful cooperation and adjustments. The other theme running through their defence of federalism is that competition between the states is good and that, to the extent that it is not good, a body like COAG can solve that problem. Again, the contrary is more likely correct.

Perhaps the most questionable conservative defence is that a unitary state equals centralization of power. This almost sounds like a remnant of cold war thinking. Surprisingly, Pincus nevertheless points to France, which is politically highly centralized but administratively effectively decentralized. There are many other examples, which demonstrate that often unitary states are actually more decentralized than federal Australia.

What is also missing in the Pincus paper is a discussion of the dynamics of the two-party dominance in conjunction with the federal-state financial and constitutional problems.

In a section *Policy responses in a federal system* Pincus suggests that our Constitution has 'evolved' and 'gives the Commonwealth scope to choose between:

- excluding the States from policy determination and implementation

- co-opting the States, as agents of the Commonwealth
- cooperating with the states, as partners
- leaving matters entirely to the States'

Not mentioned here is the option to call a referendum to abolish the states altogether and replace the federation with a new structure of governance. Sure, this would need the concurrence of the states and therefore, in essence, major party concurrence nationally. Regrettably, the Australian Constitution has in fact demonstrably not evolved, to the contrary. We should remember also that it was a difficult compromise between the Westminster system and the American Federal system.

In welcoming the initial Rudd Government response to federal-state problems, that is to seek cooperative arrangements with the (then) six ALP state Premiers to first fulfill election promises, such as fixing the hospital crises, tackling the environment and water management, Pincus seems not to look beyond the exceptional situation that existed at the time of writing. Until recently Australia had wall-to-wall ALP Governments and cooperation could, perhaps, be achieved reasonably quickly. That situation has already ended.

Pincus's assertion that 'the Australian federal system must be judged as one the most successful in modern history' is a lofty patriotic statement but questionable (and not shared by Twomey and Withers). Pincus argues that the key to Australia's success is the 'evolution of Australian federal arrangements to assist Australians in achieving their aspirations'. The reality is that the fiscal imbalances, blockages and major party bickering have become one big headache. Alternative governance arrangements, if introduced much earlier, could have made Australia a much stronger, better decentralized country with more highly developed infrastructure and transport systems. Much of the huge natural resources of Australia have not been used to maximum effect as a result of lack of concerted national endeavour. The environment has been seriously damaged as a result of lack of national resolve. Decision-making on such important matters has often been extremely slow and inadequate.

A further flaw in the paper is that there is little or no consideration of the constitutional blockages which have frozen the federal structure. Pincer's answer is that the financial relations can be adjusted such as the 1927 loan debt agreement. However both that arrangement and the 1942 income tax centralisation have strengthened the position of the federal government considerably and have therefore increased the scope of their concurrent powers. The GST collection further strengthens the federal government. The equalization grants, after 1933, have had the effect of redistributing funds to ensure comparable standards of living between the states, with some success, but mostly at the expense of some states to the benefit of others. The distortions of that system are obvious and today, the problem exists of a kind of dual economy because two states, WA and Queensland are doing well out of the mining boom while other states are struggling with a declining manufacturing base. Only if full taxing powers are restored to the states could it make some sense to continue with the federation but the role of the federal government has become of such great importance to Australia's future that this does not seem a viable strategy.

During the Australia 2020 Summit 'Federal-State Relations' was pushed high on the agenda by delegates but the Rudd Government did not offer 'replacement' as a topic for discussion. What came out of the discussion was the formation of the Federation Commission with the aim 'to fix' the Federation, a proposal that originated with David Morgan, former Westpac CEO. However, several former and practising politicians doubt very much that it can be 'fixed'. That much was admitted recently by Bob Carr, the former Premier on NSW, who wrote in the *Sunday Telegraph* 3rd August, 2008:

A 20-year plan is needed to transform the states, which are a dying institution as Canberra increasingly takes control of state matters. I am advocating a program that would see state governments accept the inevitable, with ministries reduced to five and state MPs serving on a part-time basis. There has been a devastating leaching of state government powers to the Commonwealth. I don't think it's a good thing but, sadly, it is irreversible. In the past 12 years, state governments have lost control of industrial relations and taxation on tobacco, alcohol and petrol, both as a result of High Court decisions. At the same time, the Howard government has asserted greater control in areas such as the school curriculum. Meanwhile, the national government has clawed indigenous affairs off the states and territories and might as well be making all the decisions in this area.

Carr is dealing with the situation as being 'irreversible', 'inevitable' AND deplorable. Why not take a positive, future-oriented approach: let's get out of this dysfunctional situation and go for massive re-organisation, the sooner we have the public debate about radical change the better. Australian Governments, federal and state, should all realise that the 'evolutionary' whittling away of state powers and effectiveness, and local government troubles as a result, is a messy and costly process, which Australia cannot afford. This surely means promoting pro-active strategies now, not in 10 or 20 years' time.

Recently both former NSW Premier Morris Iemma as well as former NSW Treasurer Michael Costa also made statements urging the abolition of states in Australia. Earlier the former Queensland Premiers Wayne Goss and Peter Beattie have expressed similar views. These revelations are like exit interviews, when former employees speak their mind, tell what they really experienced and think. What more do we need to hear?

Very positive views were expressed by Defence Minister Joel Fitzgibbon who made an impassioned plea to abolish the states when he delivered the inaugural Edmond Barton lecture at Newcastle University gathering (*SMH*, 4th July). It is equally encouraging that he has welcomed the Republic as a matter of urgency and spoke in favour of proportional representation to replace the polarising Australia single-member district electoral regime, the cause of much unpleasantness, lack of democracy and unnecessary expense. That is a most refreshing sound coming from an ALP Minister. Where Fitzgibbon could be wrong is that he believes that the people are too conservative to move towards such reforms. The real problem here is that they are not well informed. The education revolution? Surely, this is a specific area where proper education has been lacking almost totally.

In his maiden speech to the Senate -- the states' house in the federal parliament -- N. P. Senator John "Wacka" Williams said: "' believe that we should have only two tiers of government in Australia, a federal government and regional governments.' Federal Finance Minister Lindsay Tanner has also previously favoured the abolition of state and territory governments (*Australian*, 9th October 2008).

In the light of such views held by practising politicians surely the case for 'cooperative federalism' does look increasingly unconvincing. Replacing federation with an alternative, more effective structure of governance requires considering a number of alternative options. *Beyond Federation* has done that for the last seven years at thirteen different congresses, endeavouring to connect with the general public, academics and practitioners. Other commentators have written or edited books about one or more of these options like e.g. W. Hudson and A. J. Brown; the former ALP Minister Chris Hurford; and G. Patmore and G. Jungwirth. The recent Ph. D. by Drummond is a most authoritative statement on this issue.

The recent research conducted for the Federalism Research Project by A. J. Brown of the Socio-Legal Centre Governance at Griffith University, summarised in the *Week-end Australian* (26/27<sup>th</sup> July, 2008), suggests strongly that about two-thirds of the respondents do want to reform the federal system. However, it seems that it is not understood that some of the reforms suggested, e.g. 'Abolish state government' requires the replacement of the federal structure. Furthermore, it could well be that the dissatisfaction with local government is a direct consequence of the states' struggle to have a viable relationship with local government. What were the preferences of the 1200 respondents in 20 years' time?

Keep system the same	31.0 %
Reform the system	65.8 %
Don't know	3.2 %

<b>How to reform?</b>	* the options are not mutually exclusive.
Abolish federal government*	7.1 %
Abolish state government*	30.5 %
Abolish local govt*	32.7 %
Create more states*	8.7 %
Create regional government*	32.2 %

What does it all mean? How can it be interpreted? According to the *Australian*, the researcher A. J. Brown said 'most people seek a more effective federation, not less government'. The result can be read differently though. If few people did not want to abolish the federal government did that actually mean that they simply did not want to abolish a 'national government'? Given that one third wanted to do away with the states (part of a federal structure), another third with local government and still another third wanted to create regional government, however 'mutually exclusive', the existing federation seems to come off second best.

## **B. How do we get where we are going - what are the right processes for**

## achieving and sustaining the necessary reform?

### 1. The Rudd Government has pinned its hope on strengthening the Council of Australian Governments (COAG).

It is somewhat understandable that the Rudd Government has first opted for "cooperative federalism". The alternative of a complete constitutional overhaul looks daunting, risky and almost certainly more time consuming than seems warranted at this stage. Rudd is risk averse, especially in the first term, assuming that there is second one. Indeed there are also other major issues that require full attention such as climate change, now the global financial crisis and the Republic. So what has been achieved through COAG thus far?

Prior to the Rudd's Government coming to office COAG's record was insignificant. Since then, two decisions made at the first COAG meeting in Adelaide may be welcomed as the sensible removal of major bottlenecks that were a legacy of the Howard Government. To present them as a historic breakthrough for cooperative federalism is not credible though. The inclusion of Victoria in the \$10 b. Murray-Darling river system deal actually strengthens the hand of the federal government nationally. The flow of an extra \$1 b. to the states for their hospital management also is further evidence of the financial capacity of the national government to ease the frustrations of several states. Wall-to-wall federal, state and territory ALP governments may well have temporarily eased the huge number of tension areas between federal and state governments but it won't resolve the perennial financial imbalances. Apparent success could easily take the mind of the important objective to create a new decentralised structure of governance for Australia. Some ALP State Premiers have already flagged that they will jealously guard their diminishing state powers while voices from conservative quarters warn, as usual, against further centralisation in Canberra.

The second COAG meeting took place in Perth on 2nd October. The original agenda was substantially revised by the PM to concentrate of the global financial crisis, originating in the US. The Federal Government brought forward its \$20 billion infrastructure in order to assist the states and, particularly, to bolster the national economy against the global financial instability. A boom in projects is now expected which would stimulate employment. The meeting also agreed 'to hand over to the Federal Government responsibility for all remaining areas of consumer credit by June'. Mr. Rudd was reported as saying that 'Dodgy mortgage dealers, pay-day lenders, margin lending and financial counseling services would all be nationally regulated'. The next COAG meeting would be brought forward to November 17, 2008. The *SMH* reported all that under the telling headline 'Rudd's \$20 billion lifeline for the nation'.

Although the measures are necessary and opportune one can hardly deny the drift toward centralised federalism that this trend suggests. Another crisis presents itself on a national scale and the federal government has to intervene thereby demonstrating the weakness of the state governments. But centralised federalism is

not a desirable solution for Australia at all. This is not what *Beyond Federation* advocates.

Prime Minister Rudd has also announced of the establishment of the new consultative body called the *Australian Council of Local Government* (ACLG) in November 2008. Cr Paul Bell, President of the Australian Local Government Association (ALGA), welcomed the announcement. He said: 'The Council marks the beginning of the Federal Government building a stronger relationship with local government and local communities across Australia.' The P. M. and Minister for Local Government, Anthony Albanese, jointly announced that the Federal Government would convene the first meeting of the new Council in November in Canberra and would also invite all mayors and shire presidents to attend. The one-day meeting would address a number of issues including local infrastructure, the challenges facing major cities and steps towards the constitutional recognition of local government. All this is good news!

The realisation that local government should be actively recognised by the national government has been in the offing for some time. Constitutional attempts were made in 1974 and 1988, to no avail, but it was finally also accepted by the Howard Government, who appointed Jim Lloyd MP as Minister for Local Government, clearly a philosophical violation of the federal principle.

Should this development be seen as steps towards the replacement of the states? The NSW Local Government Association adopted a motion in 1994 to abolish the states. Recently the Shoalhaven Council called for a Constitutional Convention 'seeking the abolition of state governments and re-constitution of federalism'. Cr Bell has provided interesting information about the plight and growing role of local government in Australia at a Symposium held in May, 2006. His plea for stronger federal support, fair funding and constitutional recognition in a paper '*How Local Government Can Save Australia's Federal System*' makes informative reading. However, his analysis of the absence of regional government and the 'growing mismatch of inter-government regional arrangements that are largely ad hoc and lack any real cohesion' surely suggests the failure of federation. It also begs the question if Local Government is any position to 'save' federation even if it was to become a full partner in some kind of new triangular federal system. The obvious solution would seem to be a two-tier system in which local government is the second level, strengthened in every possible way and the constitutional basis for ROCs, possibly other regional adjuncts as appropriate. (Bell, 2006).

It is appropriate to list some of these 'regional government' constructs that are in use, if not a mismatch certainly a hotchpotch. (Brown, 2006)

- 85 biogeographic regions of Australia, identified cooperatively by federal and state government scientists since the early 1990s
- the 69 statistical divisions, based on agreed definition of a 'regions' and used by ABS

- 64 regions identified by the formation of voluntary Regional Organisations of Councils (ROCs)
- the 57 regions of the federal-state natural resource management regional bodies administering the Natural Heritage Trust and National Action Plan on Water Quality and Salinity, and
- the 54 regions of the nation's Area Consultative Committees administering Commonwealth regional development assistance funds

This list does not include administrative regions of Federal and State Departments. Those who advocate a two-tier structure of a national governments and several regions, like for instance (Mollison, 2007) and (Hurford, 2004). , without local government, have the serious task to match these with new constitutional regions. As some of the proposals envisage a different kind of federation (of semi-autonomous regions rather than provinces) one may well ask if that would really be an improvement.

## **2. The issue of constitutional reform in order to replace federal government.**

The archaic, sometimes undemocratic and often inflexible nature for Australia's Constitution has been described by law professors Cheryl Saunders, Helen Irving and George Williams, amongst others. In this paper that situation is taken as a given. As Saunders has argued there are also real limitations to the capacity of today's High Court judges to creatively interpret what the Founding Fathers may have implied in certain sections. There is also a limit to ingeniously circumvent or ignore the Constitution. Just how archaic the Constitution is has been demonstrated again at the start of the Iraqi invasion. The decision to commit Australian troops to Iraq was taken by the PM, without an electoral mandate, plebiscite, referendum, and vote in Parliament, a discussion in Parliament and in the face of massive popular opposition. This dictatorial behaviour was entirely constitutional apparently even though the PM is not even mentioned in the Constitution. Who is mentioned, as the Commander in Chief, is the Governor-General but his/her role is in reality symbolic.

Apparently the association of the people with the general legislature in the Australian Constitution's amending procedure (Section 128) was borrowed from the Swiss constitution. On the face of it this it is democratic way of amending a federal constitution but the success rate of amending the Swiss Constitution as compared to the Australian Constitution has been significantly higher. There could be at least two reasons for this: In Switzerland 50,000 voters can initiate an amendment proposal and, probably even more significant, Switzerland has proportional representation as its national electoral regime. As a consequence it has a multi-party system, which is quite different from the two-party systems produced generally by the single-member district electoral regimes used in many Commonwealth countries, except Ireland, New Zealand, South Africa and Malta. It provides a different political cultural as compared to the adversarial Westminster system.

There is a direct connection between Australia's two-party system and its abysmal record of constitutional amendment. It is the two-party hegemony and the adversarial nature of Australia's system that usually torpedoes a constitutional amendment referendum (initiated only by politicians not by the people). Unless the major parties fully agree the referendum won't get up. The last time this disaster occurred was in 1988 (four referendum questions). These four proposals were put after a two-year study by the high-powered Australian Constitutional Commission to **update** the Constitution. Three of the proposals were initially supported by the Coalition, then in Opposition, but eventually they opposed them all and energetically campaigned against them. All questions failed, again. No further attempts were made since. Not surprisingly, major party politicians are less and less inclined to do something about it.

Proportional representation would create a greater diversity of parties that requires coalitions to be formed to create government. The adversarial culture would disappear. The aim of larger parties would be to form alliances with smaller parties in the Parliament - resulting in cooperation rather than the adversarial interaction common now aimed at finding fault with "the other side". There are of course very many other advantages of PR such as an end to pork barreling but these won't be discussed here. However, Australians should ask themselves why the status of politicians is so low if the Westminster system is so much praised.

The fusion of the political executive and the legislature, a major identifying feature of that system surely is undesirable. It reinforces polarisation and downgrades the functions of the legislature. It is also productive of functional amateurism amongst Ministers.

A new electoral system doesn't require constitutional amendment. It requires an amendment to the 1918 Commonwealth Electoral Act, perhaps its repeal and replacement. Any Government that proposes this change would be greeted with joy by most people who understand the importance of PR. Although the Hare-Clark variant of PR was actually co-invented by a former Chief Justice of Tasmania, Inglis Clark - and is used here - in Tasmania, the Senate and the ACT, it is cumbersome, lacking in transparency, and time consuming for administrators (thus costly). PR is used in very many countries but the Party List system as used in the Netherlands, all the Scandinavian countries, Austria and Argentina is by far the best and the simplest for both voters and administrators.

The second step would be to add to Section 128 a provision that will give citizens the right to initiate constitutional amendment referendums. That is one amendment that would very likely get majority support in a majority of the states. If introduced other constitutional amendments can be tackled with more success. The entire political culture would change. A proposal for this change has been formulated in legal detail as an addition to Section 128 by one of *Beyond Federation* constituent groups the *Foundation for National Renewal* based in Queensland (Mollison, 2007).

It is heartening that the Rudd ALP Government has embarked on Green Papers on

electoral reform. The Joint Standing Committee on Electoral Matters is also still receiving proposals, following the 2007 federal election.

There is a further measure that could clean up the sterile domination by the major parties of the Parliament: the introduction of an extra-parliamentary, collegiate style political executive. Treatises about political executives (in the English language) usually distinguish between parliamentary and presidential executives, in practice between the Westminster system and the US presidential system. The French system is then presented as a 'hybrid'. This categorisation is quite inadequate though. Parliamentary executives of most European systems are *extra parliamentary* but unlike the US system are based on a collegiate political executive (Cabinet). This separation between the Government and the legislature is not always specifically provided for in the constitution but one does find references such as that 'the Ministers are entitled to attend sittings of the legislature'. This implies that they are not normally part of it and don't have a vote as members of it. In some exceptional cases, such as Iceland and Denmark, Ministers can be either MPs or not. If they are selected from the Parliament they don't have to resign but they can if they wish to. In Norway and the Netherlands they would have to resign. In most cases there simply is the stipulation that a Minister, once appointed, cannot have any other occupation (which rules him or her out as an MP because such a person is a paid representative of the people and a full time legislator). In contrast, the Westminster system **requires** the Minister to be an MP who then has two functions. As such an MP, who represents a particular electoral district, as is the case in Australia, will have to divide his or her time to two full time occupations. This applies to about one quarter of the governing party's MPs in Australia.

The following are some examples of countries (14) with an extra parliamentary collegiate political executive: Austria, Belgium, Czech Republic, Denmark, Finland, Hungary, Germany, Italy, The Netherlands, Iceland, Norway, Romania, Sweden, and France. Further detail about this can be found in my 2006 book *How about OUR Republic?*

While, theoretically, Australia could adopt a new comprehensive (Republican) constitution as a total package by means of Section 128, this is both unlikely and undesirable. The people would have to be extensively involved in this. At present the knowledge of the Constitution, and its problems, is very inadequate amongst the general public. Preliminary steps need to be taken to educate and involve the people in constitutional issues and changes to the political system. It is the governing party and the universities that have this duty but an opposition can stimulate that task by asking questions what is being done about it.

The period leading up to the Republican referendum in the 1990s has shown up this lack of information, lack of ownership and alienation. The preference for minimalism by the ARM and the political parties to bring about a change in status was an error. Regrettably this attitude has not changed much thus far. This applies as much to the federation issue as it does to the Republic issue. The major parties do NOT have a strategic plan to unfreeze the Constitution. It is in the 'too hard basket'. There is also no strategic plan to move to a Republic and address other major constitutional

problems subsequently. Hudson and McKenna (2003) have compared the movements towards republicanism prior to 1900 with the republican campaign during the 1990s and came to this pertinent conclusion:

As this collection of documents has shown, nineteenth century republican thought, regardless of its particular political persuasion, was connected intimately to the political issues of the day - transportation, responsible government, immigration, taxation, land reform, federation and national identity. Later, in the 1970s, the dismissal of the Whitlam Government prompted a republican movement willing to call for a people's Constitution. Only in the late twentieth century did republicans seek to isolate the republic from the political context in which they operated. In this sense the republicanism of the 1990s can be distinguished clearly from its precursors.

The answer to this is to recognize that a strategic plan is required which, as a preliminary step, commences with **at least** two measures to facilitate constitutional amendment: (1) a change to proportional representation and (2) introducing CIR as an addition to Section 128.

After that a series of plebiscites and referendums can be scheduled beginning with the essentially minor step of a plebiscite and referendum on the republic and Head of State. Then the question of replacing federalism with another structure can be put on the agenda. These initial steps can be undertaken quite quickly. An approach of this kind I have termed the Maximalist Republic and it has been included in a reader on restructuring government in Australia (Hudson and Brown, 2004).

## Conclusion

This paper presents advocacy for a paradigm shift in Australian governance. There are some radical propositions here and why not? There is an urgent need for radical solutions in the area of governance in Australia. It is argued that further piecemeal tinkering would, in the longer term, result in continued stagnation and more trouble in federal-state relations. The arguments of conservative federalist scholars and other commentators are not helping the development of alternative futures in the areas of effective decentralisation and matching control over public finances with functional responsibilities. The federal-state fiscal imbalance is clearly growing. The state constitutions are increasingly undermined but a reversal of that trend is neither likely nor desirable. Recognition of that situation is required at the elite level to give direction and content to a new distribution of powers. The abolition of the states would save money and make the government system more effective. In times of stress, as can be expected, these are crucial reforms. A transitional plan could be drawn up to transfer state public servants to new institutions. There is no need for anyone to lose his or her job.

The need for education in this area of federal-state relations is urgent as is the need to involve the people in constitutional change, solve problems with the electoral regime and the political system. Many people have recommended this but it is not happening.

As to what is to be done to achieve a paradigm shift the paper advocates the development of a strategic plan instead of the continuation of the piecemeal tinkering of the last 108 years. As preliminary steps of such a plan Proportional Representation and CIR should be introduced in order to facilitate constitutional change. Further strategic changes, including the proposed replacement of the federal system, should be floated by means of plebiscites to assess the peoples' wishes and preferences, followed by binding referendum questions. The aim of a strategic plan and process is to connect the people with the major changes that need to be effected, so that at the end of that process the amended Constitution is owned by the Australian people.

## End Notes

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