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Democratic Experiments

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Contributors

Ian Marsh is Professor at the Graduate School of Government, University of Sydney.

Ross McMullin is a free-lance historian whose most recent book is *So Monstrous a Travesty: Chris Watson and the world's first national labour government* (2004).

Jennifer Curtin is a lecturer in the Politics Program at Monash University.

AJ Brown is a Senior Lecturer in the Faculty of Law and Socio-Legal Research Centre, Griffith University.

Rod Rhodes is Professor of Political Science and Head of Program in the Research School of Social Sciences at the Australian National University, Canberra.

Elizabeth McLeay is Associate Professor of Political Science at Victoria University of Wellington.

Patricia Fitzgerald Ratcliff is an independent historian and author. Her major work, *The Usefulness of John West: Dissent and Difference in the Australian Colonies* was published in 2003.

Leslie Zines is emeritus professor of the ANU, and a visiting fellow in the Law Program of the Research School of Social Sciences at ANU and in the Faculty of Law at the University of New South Wales. He has published widely in constitutional law.

Greg Craven is Executive Director of the John Curtin Institute of Public Policy and Professor of Government and Constitutional Law at Curtin University.

Australia's Representation Gap:
A Role for Parliamentary Committees? *

Ian Marsh

Now it has a majority in both Houses, the Howard government will be able to pass all the measures it desires. Will this mean that the government can more effectively tackle difficult longer-term issues like salinity and water management, nursing home funding or lifelong learning?

In a new study, David Yencken and I argue that it will not. Preparing public opinion for action on longer-term issues requires a significant change in approach.[1] There are fundamental problems both in the way parliament and the executive works and in the density of the links between these institutions and the wider community. Basically, we argue the incentive structure that is at the core of our familiar two party, adversarial system hampers rather than facilitates the development of public opinion. We also argue the links between the political system and the community have weakened to a degree that jeopardises policy-making capacity. There is now a representation gap between the formal political system and the Australian community.

For evidence of both failings, we need look no further than the recent election campaign. The rhetoric and promises of the party leaders had almost nothing to do

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* This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 26 November 2004.

[1] *Into the Future: the Neglect of the Long Term in Australian Politics.* Melbourne, Australian Collaboration/Black Inc., 2004.

with the big issues that face the country. For example, the ageing of the population has wide-ranging fiscal and institutional implications. Who will pay for the hospital system, medical care, nursing homes and pensions as the baby boom generation passes into retirement? How will delivery systems be reconfigured to accommodate these pressures? How will the education system be reconfigured to allow re-skilling? Or take environmental sustainability. The Murray-Darling Basin is one of the most important water catchment and agricultural regions in the country. The problem of salinity has been recognised for years. In the face of continued inaction, it grows worse.

The gap between policy needs and political rhetoric has been recognised by a wide range of community organisations. These include the Business Council which last year conducted a major long-term review of Australia's outlook. It concluded much more needed to be done to prepare the community for the uncertainties ahead. The Productivity Commission has recently added its voice with its call for attention to challenges facing the health, education, nursing home and pensions systems as well as for a wider debate about Telstra privatisation and greenhouse issues.

Prime Minister Howard has himself acknowledged that there is a problem. After a leaked Cabinet submission thwarted consideration of higher education funding changes, he observed: 'We have got to have a capacity in this country to have a sensible discussion about long-term policy issues without everything being distorted and blown out of the water by misrepresentation.'[2]

What is the ultimate ground for effective policy making? We argue there is only one—an informed public opinion. Political processes should aid the development of a broad consensus if such is possible, at least on priorities and directions. The more an informed public recognises the significance and priority of an issue, the wider the range of actions available to governments and the better the outcome for the whole community. An informed public also allows governments to respond more rapidly and realistically to exigencies. Of course governments must sometimes confront their publics. But mostly they need to work by persuasion.

Why have our political leaders been unable to generate public understanding of longer-term issues? We argue the cause lies in the way the present system engages public opinion. The basic problem concerns the way longer-term issues come before the public. This happens through the parliament. When political leaders bring matters into parliament, fake adversarialism typically takes over. If the Government declares a contentious issue to be white, and public opinion is divided or uncertain, the Opposition almost invariably declares it to be black. Yet in government, the Opposition may often have supported a similar approach (e.g. both major parties on a consumption tax). This is not because the Opposition front bench is perverse or malevolent. It happens because, when public opinion is divided or uncertain, rewards accrue to leaders who champion contrasting alternatives, even if they are hollow or only manufactured for political impact.

The present political incentive structure is the culprit. It rewards sharp distinctions. This encourages the major parties to create differences even when they don't exist or

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2   *Sydney Morning Herald*, 16 October 1999.

to exaggerate them when they are minimal. Or it encourages parties to try to manufacture issues that shift debate away from matters of real longer-term significance towards those that offer most advantage in the struggle for office. Hence the rise of wedge tactics.

When Australia's political parties were divided ideologically, there was merit in an adversarial structure. It ensured that sharp distinctions in the parties' approaches would be clearly communicated to the public. Now there is overlap and convergence between the major parties. The political system has not adapted to this development.

One key problem concerns the transparency of the policy development process. Issues only come to the parliamentary arena after the government has decided what to do. This means that its prestige is implicated in the successful passage of its proposals. This encourages posturing and attention to electoral advantage. Electoral incentives invariably trump arguments based on merit and prudence. There is no setting for a prior phase of inquiry in the parliamentary domain where the scope for even partial consensus between the major parties could be explored. There is, in other words, no scope for a 'contemplative phase' in public debate.

This is despite the high degree of common ground between the parties about broad strategies. Take policy developments after 1983. The major changes introduced after that time all enjoyed bipartisan support. These included financial deregulation, floating of the exchange rate, an independent Reserve Bank, competition policy, tariff reductions and change to the IR system, although Labor did not go as far as the Coalition wished.

Tacit bipartisanship is not a base for effective policy making. On the contrary, it has perverse consequences. A gap between elite and public opinion creates a climate that is very congenial to populism, as exemplified in the rise and fall of One Nation. Populist surges introduce new pressures on the major parties. It encourages them to distort debate and to conceal important but difficult issues. As a result, opportunities are lost for building public understanding of longer-term issues such as the environment, Indigenous disadvantage, globalisation, or continued economic reform. Is it any wonder public opinion remains divided and uncertain about action on these fronts? Hansonism may have passed but the public uncertainty and distrust that provided the base for its mobilisation is alive and well.

For most of the twentieth century Australians were well served by the two party adversarial system. This reflected the social reality: a community in which socio-economic class was the primary determinant of political orientations and allegiances. But over the past couple of decades, these attachments have been overlaid by a variety of cross cutting influences. These include gender, attitudes to the environment, regional loyalties, religious affiliation and so on. The community is now much more differentiated and pluralised. Voters are also generally better educated. Via the media, they are subject to a wider array of opinions and images. As a consequence, political loyalties are much more fluid. But the formal political system has not changed to accommodate these developments.

As a result, a representation gap has opened up between the formal political system and the community that it nominally serves. A number of developments have combined to create a particular problem concerning longer-term issues. The major party *organisations* once contributed critically to their identification and resolution. Debates at party conferences were then real events. They provided the opportunity for new agendas to be promoted and for the leadership to connect with the party's activist vanguard. Since the dominant interest groups (trade unions with Labor and business with the Liberals) were closely linked to one or other of the major parties, their perspectives were also well represented. The major parties were also once critical linkage organisations. In the 1950s and 60s, mass memberships reflected the tie between the parties and their supporters. Mass membership was symptomatic of visceral voter loyalties.

All these conditions have now changed. Mass memberships have collapsed. Party conferences are stage-managed. Australians no longer have visceral political loyalties. Interest groups no longer link closely to either party. Activists join social movements not the major parties.

The federal election of October 2004 bucked the trend of a drift in voter support towards minor parties and independents. There were apparently some gross misjudgments by the Labor leadership. For its part, the Senate result partly followed the (temporary?) suicide of the Democrats. But no serious commentator or participant, not least the Prime Minister, regards this outcome as marking a durable shift in underlying public sentiment towards the major parties.

If we want to improve the management of longer-term issues, what is to be done? Political parties have historically been critical transmission belts for two-way communications between the community and the formal political system, particularly about long-term issues. Prime Minister Howard has lamented their diminished base in the community. Speaking at the centenary dinner of the Australian Women's National League, the Prime Minister commented: '(The political parties) are becoming too narrow ... they need to find ways of relating more comprehensively to community concerns.'

Reviving the major parties is not the solution to the representation gap. They played strong linkage roles in a very different social environment. Then, Australian society was broadly divided on class lines, and socio-economic class was the principal determinant of political attitudes and loyalties. These days have long since gone. They are unlikely to return. Economic status remains an important source of social cleavage but it is criss-crossed with all the other divisions noted earlier. Australian society is now much more diverse. This is a positive development to which the formal political system needs to adapt.

There are a number of steps that need to be taken covering research and technical analysis as well as public and interest group engagement. In relation to research and technical analysis, our report identifies a variety of institutions in other countries that focus on longer-term issues. For example in the UK, the Parliamentary Office of Science and Technology undertakes assessments of new scientific and technological developments and promotes parliamentary and public awareness and debate. Think of the debates here on stem cell research or genetically modified foods, or the current

discussion of abortion rates and hazards. Discussion of all these issues needs to be based in an understanding of the underlying scientific evidence. Of course, this will not and should not determine the outcome. But clarity about the factual base may limit or undermine the scope for wild and irrational claims. New Zealand has a Parliamentary Commissioner for the Environment who performs a similar role in this important policy area. Another example in a different issue area comes from the United States. Here the Congressional Budget Office (CBO) plays a role something like our old Economic Planning and Advisory Council. But there is a critical difference: the CBO reports to the Congress, not to the Executive. This is the right reporting relationship if technical analysis is to inform public opinion. An agency reporting to the executive will always be under pressure to conceal or obfuscate politically difficult findings.

There is a precedent in Australia for transparent reporting on longer-term issues—this is the basis on which the Productivity Commission now operates. The government has recently funded a defence-oriented think tank—the Australian Strategic Policy Institute. Again, a reporting relationship to parliament would add to the status of its reports and would aid their dissemination.

In general, we have well developed economic reporting arrangements in Australia but substantially under-developed social and environmental reporting. Other countries have quite well established systems, institutions and indicators. We need more extensive and transparent reporting frameworks in Australia where appropriate with the results disseminated through the parliament.

Research and technical analysis is an important part of the remedy. But perhaps the most important and most difficult aspect involves managing the politics of longer-term issues. In essence, a 'contemplative phase' in public debate is required. This would improve the chance for these issues to be considered on their merits. This phase would need to occur prior to the parties making their detailed policy decisions. There is only one institution in the political structure with the necessary formal standing and authority to create this capacity. This is the parliament. It is the only institution capable of achieving an immediate, comprehensive and direct impact on public, interest group and official opinion. It provides the only setting where the scope for political consensus can be explored.

Within the parliament, the Senate, the House of Representatives and the joint committees constitute a prime setting for routine review of strategic issues. Committees are the right institutions to introduce new strategic issues to the political agenda and to engage interest groups and the broader community in their consideration. They provide a forum where official, novel, sectional and deviant or marginal opinions can be voiced. Bureaucrats, ministers, interest groups and independent experts appear on an equal footing.

The parliament can also stimulate the formation of broader public opinion through its varied processes and deliberations. The theatre of parliament creates the cameo dramas that communicate the significance of these issues to a broader public. This is now mainly fostered through rituals such as Question Time and Urgency Motions that have

lost their original purpose. The political drama needs to be refashioned to contribute positively to the development of sectional and public opinion.

The present committee system provides basic infrastructure, but many of its features fall far short of what would be required. To amplify parliament's contribution to the broader policy making process, its committees would need to have enhanced standing, roles and powers. The present system is inappropriately structured: committees are insufficiently focused. The present committees work on a shoestring and their staffing is totally inadequate. The incentives for committee work are weak: those with ministerial ambitions may be fearful of taking an independent line. Finally, the use of latent parliamentary powers, particularly in the Senate, to gain attention for committee findings and recommendations is hugely underdeveloped.

Developing the role of parliamentary committees on longer-term issues would be a radical step, since it would involve new parliamentary arrangements outside the immediate authority of the government and the immediate influence of the major policy departments. Those used to adversarial approaches may find an attempt to explore the scope for even limited consensus between the major parties impractical or worse. The idea of routinely probing the scope for even limited consensus between the major parties, at least on guidelines and principles, might instinctively be rejected as giving too much away. Yet this is one key promise of these changes. Of course consensus will be limited, often partial and often unavailable. This is at it should be. But the notion that we are stuck with present ritual adversarialism staunches any possibility of imagining an alternative approach.

In sum, an assessment of the neglect of longer-term issues by the Australian political system is also a study of the way in which the present structure of politics is implicated in Australians' capacity to choose. The current political system does not provide the setting for sustained review and analysis of long-term trends. There are inadequacies in research, in technical analysis, and in public engagement and consultation. Australia needs to invest in each of these areas if it is to have the capacity to respond to new contingencies and persistent trends in an effective way.

An informed public opinion is the ultimate foundation for wise political choice. There is not now sustained concern for public education, involvement and debate. There is minimal capacity for constructive discussion of strategic issues in parliament. There is little capacity to make transparent the bipartisanship that is so patently present between the major parties. There is little capacity to engage interest groups in the consideration of strategic issues. The net result is a political structure at odds with our real situation and our real needs. The familiar competitive two-party system is now itself a principal obstacle to the capacity of Australians to exercise wise policy choice.

Question — Can you give us an assessment of the likelihood of any of the existing political parties adopting this idea?

Ian Marsh — Well that is the crunch issue. We do say in this study that it is just possible that enlightened self-interest, rational argument, could have some impact, although we are not too hopeful. But one can't rule those things out.

In their ultimate form, these proposals cut across the structure of power in a very fundamental way. Of course there are a number of steps short of the full development of these ideas that could be taken. There's no reason why committees shouldn't get to work on some longer-term issues and try to use this form of enquiry as a vehicle for building some understanding of interest group attitudes. But ultimately, in a fully developed form, the changes I have discussed would involve a shift of power from the executive to the legislature. This could only come about, if at all, when two conditions are met. First, a minor party or minor party coalition needs to recover a balance of power position in the Senate. Second, this party or party coalition needs to have a sufficient following amongst electors to be able to deny one or other of the major parties government in the lower House. In other words, the constitutional changes required to create a more democratic and participatory system will only result from a continuing drift of voters away from the major parties.

In this context, you could imagine a situation in which the minor parties trade a preference deal in the lower house for some kind of change in the structure of power. The last election put that kind of possibility some distance from us. And we are ultimately talking here about very significant constitutional change. But the power structures that are involved are determined by convention, not by the written constitution. The key conventions that underpin the two party system in its present form are confidence, ministerial responsibility and collective cabinet responsibility. All of these could be modified by votes on the floor of the parliament. But for this to occur you would need to have a change in the composition of the Senate and a continued drift to minor parties amongst electors.

The underlying conditions in the Australian community are right for that sort of development, but as the Australian people have shown time and again they will not tolerate parties that squabble internally. The outcome for the Democrats was disastrous in the last campaign. A very good political brand has been really seriously damaged. I don't know whether it's recoverable.

So, the short answer is, I don't put much store in wise judgement prevailing. I do think that there is a possibility that some steps in the direction of more open policy making might be taken. The Government does face some very difficult issues in the next wave of so called micro-economic reform. If you think about what's going to be involved in changing the health system, the education system and so on, these touch political sentiment on a very acute nerve. They are also surrounded by very strong interest group coalitions. So getting action in those areas is going to be much tougher that the first round of micro economic change, where there was bipartisanship and interest group support. As the emerging pressures crystallise, the Government may decide that it is in its interest to start moving to some degree down this path. But, as I say I don't have any expectation of the ultimate change occurring until some new minor party or some alliance of minor parties returns the Government to a minority position in the Senate.

Question — You've suggested one possibility for the form of a parliamentary committee system, but I don't quite have a handle on how you are envisaging that might happen. It seems as though you're suggesting that they would be more akin to independent enquiries. I'm wondering also how you would see the differentiation between Senate and House committees.

Ian Marsh — I did some work some years ago on the committees established by Mrs Thatcher in 1979, when she came to office in the UK. There was then a very significant revamping of the House of Commons committee system and I followed quite closely the work of those committees from 1979 to about 1986 or 1987, and I've kept an eye on the British development since. What was very striking about the work of those committees is that when you picked issues outside the immediate jousting between the parties; when in other words you picked longer-term issues, issues at the agenda entry phase if you like, issues like stem cell research or genetically modified foods, to take a couple of past ones, or like salinity, or the Hogan report on nursing home funding; you picked an issue that was not yet within partisan contest, parliamentarians were very good at coming to a consensus between themselves about what might be done. So I'm very optimistic that if committees were given inquiries in these areas, they would function very effectively in their approach and analysis.

I think one of the problems in this country is that there is a lot of overlap between Senate and House committees. We only have a very limited number of MPs. The House of Commons has 600, creating a much larger pool for setting up these kinds of activities. If you were seriously thinking about the committee system you'd be looking at perhaps some more joint committees or some at least tacit rationalisation of roles between the two houses. In the 1901–1909 period, this was how the system worked.

In terms of funding and staffing, in the UK there is a parliamentary commission that determines the budget of the parliament. The Treasurer or the Chancellor doesn't do that. It's most unlikely in the present climate that that would happen in Australia, but again things that seem most immutable under the pressure of events can change. The key point to make is that underlying volatility in the Australian electorate is very large. The underpinnings of the system are very loose and very volatile and very open to effective political entrepreneurs to move in and champion change. So I think we shouldn't take the last election result as a harbinger of the future world.

Question — I was wondering if you would like to comment on what might be the implications for the committee system, particularly in the Senate, of the recent election. It seems to me that there is a very important place for interest groups at the moment, while you don't have a great ideological difference between the parties. There seems a lot of potential for interest groups to engender interest among the public in their need to be better informed about crucial policy issues and maybe pressure coming from the electorate onto the parliament to do something.

Ian Marsh — If you think about the way agendas have developed in Australia in the last 20 or so years, there is a common pattern. The social movements have proved very adept at building public momentum, at creating events, at getting on talk-back radio, all that kind of thing. They build up sufficient pressure in the community sphere and finally press the major parties into adopting one of their agendas and moving it into the formal political system. That's been the pattern on women's issues, on the

environment, and across the whole slew of new policy developments over the last 20 or so years. Unfortunately, what that does is keep the advocates of new agenda at a very considerable remove from the formal political process. It's symptomatic of the disjunction between Australians and what happens in this building, which is the front edge of the formal political system. Allowing these social movements and interest groups some point of access to the formal system in a transparent setting is critical, and that's one of the roles that committees could play. If you look at the campaigns that the social movements and interest groups have run, they typically involve coalition building. This is how you build public momentum. We saw with Brendan Nelson's effort to change higher education arrangements in this country, the very considerable limitations on the ability of the present administrative and bureaucratic system to engage in that kind of tactic. Yet in a diversified environment, coalition building is a core tactic for effective policy-making. So we need to build capacities within the formal political system—to understand where interest groups stand on issues, to gauge if you need to redefine the issue, or if you could change their alignment if, for example, you provided compensation—there are a myriad of ways that politics enables accommodation to occur between actors who have different views about the way things should go. That's what needs to be opened up, and that's what needs to be given a much more structured base in the formal institutions of politics. And that I think is a critical role that parliamentary committees could play.

I think you mentioned the Senate in your question. The Senate in the Fraser years, when the government last had a majority, nevertheless was not a pushover for the executive. Whether the present batch of senators are as activist as some of their predecessors we will see over the next few months. I would like to make this point about the Senate. It is potentially a very very powerful house. It is co-equal with the House of Representatives. We had a visitor from the United States last year who did a study of the way voting patterns had gone in the Senate, and what particularly struck him was that in the House of Representatives, Labor and the Coalition threw these terrible epithets at each other and called each other every nasty name that they could lay their hands to. But in the Senate, most measures went through by bipartisan support between the government and the nominal Opposition, which was symptomatic of the extent of tacit bipartisanship there. But it also belies the very important capacity of the Senate to be a house of minorities and a very powerful house of review. If you look back to the 1901 to 1909 period, before the emergence of the two party system that is now familiar, that is exactly the role you see the Senate playing. It was the arena from which new strategic issues moved into the formal political system. The Senate's formal constitutional powers would enable it to renew that role, if only there was the will amongst its members.

Harry Evans — If I could add to that, to say that the pressure groups and interest groups and lobby groups around the country are already showing some signs of waking up to the fact that the people they now have to put pressure on are government backbenchers in the Senate on Senate committees, rather than the minority in Opposition parties. I think one of the directions of that pressure will be not to close off the avenue they have into the political system via committees. I think the various groups around the country value that channel they have into the political system and one of the pressures they'll be putting on government backbenchers in the Senate will be not to have that channel closed off or restricted. We will see.

Question — I would like to know whether you see a role for think-tanks in this new order of things. Let me say why I ask this. It seems to me that social movements are not the force they once were in defining the political agenda, but think-tanks are becoming very influential. For example, the Bush administration's decision to go to war was heavily influenced outside of the legislative system by a group of selected advisors with very strong positions in things like the American Enterprise Institute, and the Hoover Institution. I was wondering whether these think-tanks could contribute well to the new order.

Ian Marsh — We don't have the same activist think-tank environment in Australia that exists in the US, where the division of powers between the Congress and the Executive really create wonderfully fertile environment for them to develop. But even in the UK there has been an enormous flowering, and there are nine or ten significant think-tanks, that have budgets of a few million pounds are able to recruit staff and generally follow through on issues. We don't have that in Australia. I think one of the keys reasons is that we don't have a strong philanthropic sector that could be a funding source. The Australia Institute, for example, works on a shoe-string. The major organised think tanks in Australia are the new right group, the Centre for Independent Studies, the Institute of Public Affairs. There's no question, that think-tanks are playing a much more prominent role in contesting issues in the public space. The media are the main way they can feed views into the system. There is very little capacity in the formal system for these views to get registered or developed or exposed or explored in any depth. So yes, I definitely think this kind of committee infrastructure would provide a very important entry point for think-tanks to air their views. But that said, it seems to me the key issue here is not more research, not more rational analysis, but rather getting public opinion engaged and building public understanding and public willingness to move on longer-term issues. Public opinion plays the same kind of role in politics as money in market exchanges – it's like cash in a market. Public opinion is the coinage of exchange, and to my mind the central problem concerns the disjunction between the way the formal political system impacts on public opinion and what is really required to build public understanding of issues. So think-tanks are very important agents in providing some of the bullets in that process, but getting awareness of issues in the broader community and building momentum on issues is really to my mind the critical step in the equation.

Question — I was a little surprised at what I understood to be your pessimism about the prospects of parliamentary committees looking at long term wider issues. Can I put to you a different assessment, and that is that where a government has a majority in both houses, it may regard it to be to its political advantage to see parliamentarians working on less controversial long term issues, rather than short term issues, which are likely to embarrass the government, and are the sort of issues that are looked at when the opposition has control of the committee system. So in fact the prospects may be enhanced by the current political environment.

Ian Marsh — That's exactly the answer I should have given myself. That is exactly right. Let's hope that proves to be the case. Busy back benchers don't cause problems for ministers, so this could be a very useful stimulus to this kind of outcome.

First in the World:
Australia's Watson Labor Government[*]

Ross McMullin

Last year the ALP commemorated a special anniversary. When Chris Watson and his ministers were sworn in on 27 April 1904, they were forming not just Australia's first national Labor government. It was the first national labour government in the world.

We were leading the world. It might be hard to imagine now, but the advent of the Watson government confirmed that a century ago Australia was leading the world in progressive government, in pioneering measures benefiting the working class.

Remarkable as it may seem today, curious visitors crossed the globe to scrutinise this advanced social laboratory for themselves.

The Labor Party's rise was astonishing. Labor had only been formed 13 years earlier. Let's focus on that with some comparative contemporary context. Think about parties formed relatively recently, like the Greens or the Democrats or even One Nation, and the struggle they have each had to become anything beyond a minor party in the Senate, where the proportional representation system enables them to pick up the odd seat, or at best a few seats here and there. None of them have ever looked remotely like becoming, in the national parliament, anything other than a minor upper house party.

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[*] This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 25 February 2005.

The contrast with Labor's first years is stark. Here you have a brand new party, with not just different policies but a different look and feel, a different way of *doing* politics with novel features like party control of MPs and policy, caucus control of the parliamentary party, a pledge to enforce solidarity.

And this new party rose so swiftly that merely 13 years after its formation it was not just picking up a Senate seat or two, but actually forming a national government. And not only that, but doing so before any equivalent party overseas had become remotely close to doing so. For example, in 1904 there were 670 MPs in the House of Commons, but the number representing the British Labour Party was the grand total of four. In 1904 a British Labour government was still decades away.

The novelty of this first national labour government in the world under Chris Watson inevitably influenced what people thought of it. At that time the gaining of power through the democratic process by representatives of the working class was unknown.

It just didn't happen. The working class got hold of political power rarely, and only when it grabbed it by force.

This prompted some alarmist observers in 1904 to start thinking anxiously about precedents like the French Revolution. Analogies between Watson and Danton or Robespierre might well seem grotesque and ludicrous to us now, but just as we look back a hundred years to the Watson government, when Australians in 1904 looked back an equivalent period, a hundred years or so earlier, what some of them saw in their historical rear vision mirror was the French Revolution.

This is confirmed by what W.A. Holman, a prominent Labor MP in the New South Wales parliament, wrote: 'Cultured critics, confronted with the portent of a working-class Cabinet, were unable to shake their imaginations free of the blood-curdling associations of the Committee of Public Safety, and looked forward with a groan, if not to bloodshed, at least to all-round confiscation and outrage.'

The famous Sydney weekly, the *Bulletin*, denounced this hysterical nonsense in characteristically forthright fashion as it hopped into 'those lying papers and persons that always explained to the public how the first Democratic government would take office with a flaming torch in one hand, and a gory dagger in the other, and a newly-severed head trailing behind it at the end of a bit of string.'

But the *Bulletin* was greatly outnumbered, in fact swamped, by the barrage of sledging the Watson government endured from the conservative press. This started even before the government started. Even before it was sworn in, the press hostility was virulent. Some examples:

> '[The new government] will exist entirely on sufferance', sniffed the *Argus*, and 'has no claim on an extended life.'
> The Adelaide *Register* asserted that 'a year of unrestrained socialist government would be to Australia—and particularly to the working classes— a greater disaster than half a dozen droughts.'

Melbourne *Punch*: 'the extremists under Mr Watson … would do the country a tremendous amount of harm abroad, and put a sudden stop to the awakening spirit of investment and enterprise at home. We cannot afford to monkey with the Labour Party in this way.'

There was a sentiment in some quarters that Watson and his ministry were entitled to fair play and time to show what they could do, but the *Sydney Morning Herald* was having none of that: 'Why should he be given time?' it thundered in an editorial, adamant that the new government should be removed as soon as possible. Later that paper described the Watson government in a memorable phrase as a 'scratch team of untried extremists'.

The Sydney *Daily Telegraph* dismissed the Watson government as a 'curious political freak', and said a lot more:

> The names of the new Federal Ministry will not be a matter of very great interest to the community. In the caucus one man is pretty much the same as another, and the fact that it is a caucus Government formed by a pledge-bound Prime Minister under caucus direction renders its personnel of little or no consequence. … there is not one of them with any conspicuous fitness for the work of a Cabinet Minister. … It is wholly and solely an apprentice Government, [and] to allow a Government of political apprentices under the tutelage of a secret caucus which avowedly holds the interests of one section of the people paramount over those of all other sections to reign for a single day … goes too far beyond a joke.

But there was one newspaper that was in a class of its own, the *Maitland Daily Mercury*. Watson's ministry was 'such an unthinkable monstrosity of a Government', it fumed:

> To call the Ministry a Government is, of course, a flagrant misnomer, as in no respect can so grotesque and absolutely unique a body claim so distinguished a title. … To call this preposterous production a Government is ridiculous, and would be laughable were it not for the painful pitilessness of having *so monstrous a travesty* [in charge of this] great country.

We ended up choosing that phrase *So Monstrous a Travesty*[1] as the title of my book on the Watson government, to reflect in the title a flavour of the remarkable press hostility the government had to put up with.

The new government was not totally bereft of press support. The *Bulletin* greeted it positively:

> What it mostly wants is time to develop its policy, to show that a Labor Ministry isn't anything like a shindy of the larrikin sons of the upper classes at a university function, and that it doesn't drink or break things, or start

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[1] Ross McMullin, *So Monstrous a Travesty: Chris Watson and the World's First National Labour Government*, Melbourne, Scribe Publications, 2004. Quotations in this paper come from that book, which details source references in extensive notes.

revolutions, and that it has constructive ability; and to prove to the unthinking majority that the imaginary picture of it drawn by the malicious liars and crude perjurers of the daily press is just the lie that the thinking minority has always known it to be.

Some political context mightn't go astray here. In 1904, Labor was one of three parties of similar numerical strength in federal parliament. Besides Labor under Watson, there were the Protectionists under Alfred Deakin and the Free Traders under George Reid. Labor was closer to Deakin and his Protectionists, who were generally more progressive than Reid's Free Traders. Throughout the first decade of federal politics, no party had a majority in either the House of Representatives or the Senate. That significant fact underpins the whole historical context. From 1901 to 1910, no party had a majority in either chamber of federal parliament.

The Watson government of 1904 was a minority government. It had a dedicated band of Protectionist supporters, who could be relied on to support Labor rather than Reid's Free Traders in any significant parliamentary vote. This gave the Watson government almost a working majority in the House of Representatives, but it fell just a few votes short.

During the early days of the Watson government, newspapers hostile to it repeatedly urged the Protectionists and Free Traders to sink their differences over the tariff and respond cohesively to the greater need, which was, as far as these hostile newspapers were concerned, the removal of the new Watson government as soon as possible.

The *Bulletin* amused itself and its readers on this issue:

> There was a dreadful fear lest the Watson Government might do what the Tory papers professed to want most of all, [that is,] restore majority rule by presenting a programme that would attract a majority, and Deakin and Reid were urged in the name of majority rule to make dead sure that Watson wouldn't have a chance to re-establish majority rule. All the Tory party and the Tory press professed to be certain that Watson's programme would prove his hopeless incapacity, and that his administration would cover him with ridicule and disgrace—and at the same time their anxiety that Watson shouldn't have a chance to show his incapacity and cover himself with disgrace was pathetic in its intensity. The whole attitude of the Tory party and the Tory press was a disgrace to every principle of political decency and ordinary fairplay.

The composition of Watson's cabinet was interesting. Watson firmly believed that a prime minister should be able to choose his own ministry, and that's what he did in 1904. The Labor principle that caucus should choose the ministry was not then accepted practice, though it soon would be. When the second Labor government was formed four years later, caucus chose that ministry. But in 1904 Watson had a free hand. He made some interesting choices.

Notable in itself is the fact that his ministry included two future prime ministers in Andrew Fisher and Billy Hughes.

There was also Labor's Senate leader, the remarkable Gregor McGregor, a beefy, rough and tough former labourer and wrestler who was virtually blind. McGregor could distinguish objects only in the best possible light, and had to have documents read to him. Caucus colleagues had to shepherd him around parliament, saying mind the step, look out for the swinging door, and so on. McGregor got by because he had an extraordinary memory. He was able to buttress his speeches with heaps of statistics, and frequently amazed onlookers with his capacity to memorise them.

The other senator in Watson's ministry was Andy Dawson. He had already acquired a measure of fame as leader of the brief Queensland Labor government of December 1899, which was very short-lived because the reality of Labor in office prompted the anti-Labor groups to hastily settle the differences between them that had enabled Dawson to become premier. So he was premier for only a week.

In 1904 Dawson was Watson's Minister for Defence. He too was a fascinating character. A hard-drinking radical who had been orphaned in the most tragic circumstances, Dawson was an associate of John Wren, and his stint as Defence minister was dominated by his bitter feud in office with the autocratic British commander of Australia's defence forces.

What was implicit in the rabid press hostility that the Watson government had to put up with—and sometimes explicit—was the notion that people from genuine working class backgrounds couldn't run the country. And they did have genuine working class backgrounds. Watson the compositor, McGregor the blind ex-labourer, Fisher and Dawson both formerly miners, Billy Hughes the umbrella mender and odd-job-man.

Also in Watson's cabinet were two ministers with unique attainments. Ever since 1901 only one person has been a minister in an Australian federal Labor government without being a member of the ALP.

It came about because Watson had to find someone to be Attorney-General, the government's chief law officer, a position customarily held, with good reason, by a well-credentialed lawyer, and there was only one person in caucus in 1904 with a law degree. That was Billy Hughes, who was not normally a shrinking violet, but he had only just qualified as a lawyer after studying hard in the little spare time he had, and not even he was willing to take on a role that presumed a level of legal expertise that he knew he did not possess.

So when Hughes ruled himself out, Watson had to look beyond caucus for his Attorney-General. He chose H.B. Higgins, a middle-class radical who had aligned himself with Labor consistently in parliament without formally joining the party, and was later to become best known as the judge who delivered the Harvester judgment that resulted in the establishment of the basic wage in Australia.

The other minister in Watson's cabinet with a unique political record was Hugh Mahon. He remains the only MP ever to have been expelled from our federal parliament. We're not talking here about just being put in the sin-bin for 24 hours. He was thrown right out of parliament in a controversy that occurred well after he was Postmaster-General in the Watson government in 1904.

Mahon was an ardent Irish patriot, who had been gaoled in London with Charles Parnell and other Irish nationalists before he came to Australia. It was in 1920, when the 'troubles' in Mahon's beloved Ireland had never been bloodier, that Mahon made a passionate speech at a meeting of Irish patriots in Melbourne. He said the British government was 'a gang of false hearted hypocrites' who ruled over 'a bloody and accursed empire'. They had sent 'spies, informers and bloody cut-throats' to Ireland, and he had 'read with delight that some of those thugs' had been killed. The Prime Minister who expelled Mahon from parliament for making this speech was none other than Billy Hughes, Mahon's colleague in Watson's 1904 cabinet, who had in the meantime left the ALP during the party's bitter split over conscription in 1916.

As for Watson himself, Hugh Mahon wrote this insightful appreciation of Prime Minister Watson while a minister in his cabinet in 1904:

> He is taller than the average, athletic, full-bearded, good-looking, and under 40. Moreover, his tastes are largely those of the average man. He plays cricket and billiards, cycles when he gets a chance, enjoys a good story, and sings as well as appreciates a good song. He has neither the ostentation of a demagogue, nor the abstraction of a genius. … [H]is infallible instinct [for recognising] opportunity is his most notable gift. … With some men courage often merges into rashness. His party always confidently relied on the soundness of Mr Watson's judgment, for it was never formed hastily, nor on imperfect information. I have met many political leaders, some of them intimately, here and elsewhere. I remember none who excelled this self-taught Australian in the peculiar endowments essential to his task. … Though not an orator, Mr Watson possesses the gift of lucid and forceful expression. He rapidly assimilates facts, and easily sifts from a mass of detail the really salient points of a question. On all the vital issues within the scope of the national Parliament he is undoubtedly one of the best-informed men in either House.

There was another knowledgeable profile of Watson, in the *Bulletin* as he came to office: Watson 'always gives an impression of personal unselfishness, of considering the cause first and himself afterwards. … His ease of manner under all circumstances shows the man of self-reliance but of no vanity.'

While prime minister, Watson was also Treasurer, and a distinctly successful one. Contrary to the doom and gloom predictions in some quarters, the economy prospered while his government was in office. The values of Australian stocks in London actually rose while Watson was prime minister. He liked pointing this out.

When Watson was sworn in as prime minister, he had just turned 37. Australia has never had a younger prime minister. Watson was an accomplished party leader, and during his time in office he led the nation capably too. Yet he resigned the leadership three years later, and within a further three years he was out of parliament altogether. That is, one of Labor's finest national leaders relinquished the leadership when he was only 40.

This becomes more understandable when you consider Watson's routine as prime minister. Bear in mind that unlike other prime ministers, notably his immediate successor, George Reid, whose government spent months and months in parliamentary recess, there was no such let-up for Watson. Parliament kept sitting almost throughout the Watson government.

Malcolm Shepherd, who served a succession of prime ministers as their private secretary, was particularly impressed with Watson:

> He was a most popular man with all sections of the House and the main reason why he was not more popular outside Parliament was because of his retiring disposition, which amounted to real shyness. It was with the utmost difficulty he could be persuaded to attend social functions of any kind. I spent a lot of time trying to convince him that it was advisable to go everywhere he could to meet people because wherever he went he made friends. It was difficult not to like him no matter what you thought of his politics.

However, Watson 'had little time for social engagements', Shepherd acknowledged, especially while he was prime minister, when he was nominally residing in Sydney with his wife but spending far more time in Melbourne, where the federal government was located before the move to Canberra.

Shepherd provided an outline of a typical week for Watson as prime minister:

> Our week consisted of office all day Monday and sometimes nights as well; Tuesday morning office, afternoon and evening Parliament; Wednesday ditto; Thursday ditto; [on] Friday Parliament met in the morning and sat till 4 o'clock when there would be a rush for the Sydney train. … On arrival Sydney, to the Commonwealth Office where numerous callers would be waiting for interviews, the Press, and friends, which kept him busy till everyone else wanted lunch. He would then go home and on to a football match. I generally had to spend the afternoon getting rid of correspondence. Sunday morn there would generally be several more interviews, but the afternoon was mostly free, till train time and back to Melbourne. This routine was followed during the whole of his Prime Ministership, with the addition of a few Caucus meetings thrown in.

And there were cabinet meetings as well, which Shepherd neglected to mention.

Considering this punishing routine, Watson's capacity to remain unruffled was remarkable. Shepherd again:

> My association with Watson was very happy. To me he never uttered a cross word, notwithstanding sufficient provocation at times, and the occasions when he nearly lost his temper were very rare. He was an able leader and possessed real ability as an administrator. He was a good and lucid speaker with much resource in debate [and] he really was a great Australian.

I've included in my book some glowing assessments of Watson. In a discerning study of Australian prime ministers up to 1940, a top-level defence strategist named Alfred Buchanan wrote in that year that:

> [t]hirty years ago people wondered [about Watson's resignation,] and they still wonder. There have been a number of Labor leaders since Watson, but not one of them has shown the combination of qualities that distinguished him. He had poise, tact, foresight, firmness, judgment, and self-control. He had along with everything else a natural unforced dignity, which everyone recognised and respected.

Monty Grover reported federal politics while Watson was leader. He later became a renowned newspaper editor. Grover was looking back on decades of federal politics when he wrote in his memoirs that 'Watson was possibly the man with more qualities of leadership than we have ever had in the Federal arena. [His] battle tactics were sublime.'

Watson's leadership attributes were particularly suited to the first decade of federal politics, when there were three major parties and no outright parliamentary majorities. In this era of minority governments, when Labor had to pursue its objectives in concert with non-Labor MPs, Watson's amiable personality, his unflagging affability, his capacity to get on harmoniously with practically everyone, was an important factor in Labor's ability to negotiate desirable outcomes.

Despite Chris Watson's proficiency as a leader, his significance in his time, and his special place in history as Labor's first national leader and first prime minister, and as Australia's youngest prime minister, he is little known today. He long ago slipped into obscurity, and has remained there for decades. So much so that when he is mentioned these days, people sometimes refer to him inappropriately.

He *was* J.C. Watson, but *Chris* was his preferred first name, and he was known far and wide, universally, as Chris Watson. Yet these days you sometimes find him referred to as John Watson. One book purporting to be about him even names him as John Watson on the front cover. That is as incongruous as it would be to refer to one of his successors whose initials are E.G.W. as Prime Minister *Edward* Whitlam. We don't do that to Gough, and we shouldn't do it to Chris Watson either.

Since the book was published I've been asked a few times about parallels or lessons that might connect the Watson government's experience with present-day Labor. And I've had to say that not many spring to mind. The political circumstances in 1904 were so different, with three major parties and minority governments. And only one lawyer in caucus—fair bit of change there.

It's easier to find parallels on the other side of politics. In 1904 the main opponent of Chris Watson and the Labor Party was George Reid. Now I think a certain present-day equivalent to Reid does spring to mind, considering that Reid was a lawyer, from Sydney, of conservative views, an advocate of free trade but pretty flexible about nearly everything if it brought him closer to office, cunning, fond of cynical scare campaigns, a leader who played to and brought out the worst in Australians rather than their best.

On the Labor side there is a comparative snippet that has recently emerged. Watson remains the youngest federal leader Labor has ever had. The second youngest leader Labor has ever had is Mark Latham. Watson resigned from parliament at the age of 43. When Mark Latham resigned last month [January 2005] he too was 43.

But there is one parallel between present-day Labor and Watson in 1904 that has more substance.

In Watson's first speech in parliament as prime minister, he challenged the false 'impression [that] has got abroad in the past that the Labour Party are opposed to any adequate provision being made for defence.' In other words, the notion that Labor was soft on defence and national security was simply not true, as Watson himself proved by actions he took as prime minister.

So that furphy is over a century old. As long ago as 1904, it was already hackneyed and trite.

A decade later, when the First World War began in 1914, Australia was in the middle of a federal election campaign. Labor won that election, and a significant factor in that victory—and this is not understood today—was that Labor under Chris Watson and Andrew Fisher had a clearly better record on defence and national security than the conservatives.

In both Vietnam and the current fiasco in Iraq, Australia's national security has been betrayed by deceitful Liberal governments.

And in the Second World War, when our national security was imperilled as neither before nor since, Menzies was a failure as a war leader, Curtin rose to the occasion superbly, and after comparing their respective records the Australian people delivered what still remains the greatest triumph the ALP has ever enjoyed at a federal election in the proportion of seats won.

Moreover, when Curtin steeled himself to stand up to Churchill and insisted that Australia's soldiers had to be brought home to defend Australia, and Churchill wanted to divert them on a wild goose chase to Burma where they would have been slaughtered, Curtin's task was made much harder when Churchill's proposal was supported by no fewer than six men who at some stage held the office of prime minister of Australia on the conservative side of politics. There has been no greater dereliction of Australia's national security since Federation.

So it's no wonder that Labor partisans who know their history can get irritated by this furphy that the conservatives are fond of propagating, that only they can be trusted on national security. It's a furphy that Chris Watson was repudiating as long ago as 1904.

Also, while it's appropriate to emphasise the remarkable sledging the government had to put up with from conservative broadsheets, I did come across a different attitude from one newspaper that I thought retains resonance today. That newspaper was

Melbourne *Truth*. With Watson and his ministers about to be sworn in, *Truth* wrote this in April 1904:

> The political fight in Australia [is between] those who desire the welfare of the many, the enlightened progress of the Commonwealth, and the triumph of humanity, against those who only concern themselves with the interests of the wealthy, who regard the Commonwealth as a mere market-place for wholesale hucksters, and who consider human beings as mere pawns in a merciless war of commerce.

That seems a pretty useful analysis a century later.

So much for the search for parallels between the Watson government and the present day. What did the Watson government achieve?

The government remained under exacting pressure throughout its existence. Its opponents in parliament and the press were relentless. Parliament kept sitting, challenges kept coming, and crises kept recurring. But the government survived. Watson and Hughes had to scramble desperately at times and make unpalatable concessions, but the government stayed in office.

As days turned to weeks and then months, Australians realised that contrary to some predictions the sky had not fallen in. Riot, revolution and ruin had not eventuated. The government's administration, in fact, was distinctly impressive. This was an important achievement. By governing so competently, Watson and his ministers paved the way for future Labor governments, majority Labor governments with the parliamentary numbers to introduce substantial reforms.

Moreover, the Watson government was like a breath of fresh air in some respects. A hundred years ago there was a public servant, a very senior public servant, who was delighted by the advent of the Watson government. This was because he found that when he was in discussions with his new minister he was allowed to sit down. Remarkably, the previous minister, in the Deakin government that Watson and his ministers replaced, had such breathtaking self-importance that he required this senior public servant to stand respectfully beside the minister's table, even for hours at a time, until this pretentious Protectionist deigned to indicate that he had no further use for him. The incoming Labor minister ended this nonsense.

Eventually, with the Watson government approaching four harrowing months in office, a dodgy parliamentary stunt was used to remove it. The government, Watson and Hughes in particular, had tried valiantly to get pioneering national arbitration legislation enacted. Their opponents managed to whittle down the provisions in the bill relating to preference to unionists. In the end, when they proposed an amendment seeking to restrict preference further still, Watson said enough is enough and if this amendment is passed the government will resign.

The way it was done was highly unusual. Watson had moved in the normal way for the recommittal of a number of clauses of the contentious arbitration bill. The surprise tactic unveiled by Labor's opponents was to move the deletion of one of those clauses from Watson's motion. This manoeuvre in effect sought to deprive the government of

control of the House of Representatives, which was tantamount to a vote of no confidence, while preventing the kind of wide-ranging debate normally associated with a no-confidence motion. It also cunningly enabled the chairman of committees, a conservative known to be hostile to the concept of preference, to vote on the issue, whereas in the more orthodox procedure Watson had initiated he would have only had a casting vote in the event of a deadlock.

A Labor supporter described this unusual tactic as a 'despicable trick' and a 'strike below the belt'. Billy Hughes felt intensely aggrieved that this devious device prevented the government from defending itself properly. Newspapers in 1904 routinely reported parliamentary exchanges in column after column of verbatim detail, which many readers scrutinised to familiarise themselves with political developments. But parliament's procedural rules ensured that this debate would be necessarily narrow. Hughes protested angrily:

> so far as I know, and, apparently, so far as can be gathered from honourable members, [this manoeuvre is] unique in the history of parliamentary government—unique, at any rate, in this country and in Great Britain. … [It] amounts to an attempt to prevent the Government, whose administration, whose policy, and whose very existence are challenged, from saying one word in their own defence.

It was a spirited debate. Even usually measured speakers like H.B. Higgins, Watson's non-Labor minister, were up in arms. Never before had Higgins identified himself with the Labor cause so wholeheartedly:

> We came into office without seeking it, and we shall go out without having disgraced ourselves. We came into office without cadging, and we shall go out without cringing. All that I can say is that our occupancy of office has provided a beneficial lesson for the country, which will see that a Labour Ministry has been displaced before it has committed any fault of administration, before it has proposed anything contrary to the programme put forward by its leaders at the outset. … [The truth is] that this Ministry, whatever its faults may have been, has acted honorably and above board, and has not been guilty of any underground engineering; that it has fought for its principles, that it has not sought office, and that it will leave it with a good record and an unstained flag.

The government lost the vital vote, 36 to 34. Watson advised the Governor-General that an election should be held, but the Governor-General rejected this advice. Watson then resigned. Many Labor supporters approved of Watson's willingness to relinquish office on a policy principle.

What especially annoyed Labor activists was Deakin's acquiescence in the shabby procedure that removed the government after he had promised it a fair trial. This prompted some vivid exchanges that have passed into Australian political folklore.

In parliament Hughes accused Deakin of an 'amazing' and 'treacherous change of front', and there was plenty more in similar vein. Moreover, on the day that the

Governor-General rejected Watson's request for an election, Hughes made a notable speech at Ballarat, in Deakin's electorate. He had a big audience. It was at Her Majesty's Theatre, and 2 000 turned up to hear him. In this speech Hughes reiterated the contrast between Deakin's assurance of fair play back in April and the 'dirty underhand trick' that had dislodged the Watson government. Hughes also ridiculed Deakin's denial that he had voted against preference to unionists in the crucial vote on 12 August (Deakin had asserted that he had voted in favour of preference, but against the way the government was proposing to implement it). According to Hughes, it was as if Deakin owed a debt of five pounds and repaid it, 'and then engaged a man with a knuckle-duster to get it back.' The capacity audience roared with laughter.

These barbs nettled Deakin. He had high personal standards about political behaviour. When the fray grew bitter, he prided himself on staying above it; he did not stoop to parliamentary sledging. But he made an exception in response to these stinging attacks from Hughes. His contribution to the climactic debate in the House of Representatives on 12 August had immediately followed Hughes's notorious attack:

> To the speech of the Minister of External Affairs I do not propose to make any more than an indirect reply. It happens sometimes to all of us, that as we pass along the streets of the city, we meet men engaged filling drays with dirt and garbage, and unless one is discreet some of that dust and refuse may drift upon him.

Later in that speech Deakin expressed 'regret' for replying 'too much in kind' and departing from his 'rule' that the 'best way to meet angry attacks is to answer in another manner'. But when Hughes followed up by venturing into Deakin's electorate to fire more salvos of personal invective, Deakin retaliated with a rapier thrust that passed into folklore. At the end of a routine speech he referred briefly to Hughes, and smiled to onlooking journalists as if anticipating their stunned reaction to the uncharacteristic remark he was about to make:

> I do not propose to reply to him except by saying he presents to you as undignified a spectacle as does the ill-bred urchin whom one sees dragged from a tart-shop kicking and screaming as he goes.

In conclusion, Watson and his pioneering government did well. Their administration was creditable, and so was the way they left office. Their performance ensured that Australia's Labor Party continued to progress much more rapidly than any equivalent overseas party.

We should remember Chris Watson, rescue him from obscurity, and it is appropriate that we have commemorated the recent centenary of his government, the first national labour government in the world.

Question — I was puzzled at your comments about Chris Watson going from Melbourne to Sydney by train for weekends. I would have thought he would have stayed in Melbourne, but am I not correct to say that he represented a rural seat that was actually on the railway line? The railway line passed through the rural seat. So why did he live in Sydney?

Ross McMullin — He and his wife lived in Sydney. I talked about Watson's early departure from politics as a relatively young man and it's been said that his wife's displeasure at the extent of his absences from the matrimonial home while parliament was in Melbourne contributed heavily to that early departure from politics. She wasn't happy.

Question — Can you enlighten us on the history of why the Labor Party when it came to choosing it's name, elected to chose the American spelling of 'or' and not the British spelling of 'our'. I always thought it must have been some precedent, but if they were the first labour party in the world and the labour party tends to be tagged as being anti-American compared to other parties, I was a bit surprised as to that being the case.

Ross McMullin — I happen to have written the official centenary history of the ALP, which came out in 1991, and this was something I had to grapple with for that project. I ended up putting in the preface that in my view it was a pretty haphazard sort of an outcome in that 'labor' and 'labour' were both used freely for at least the first decade. The main supreme decision-making body, now called National Conference, then was called Federal Conference. I ended up coming to the view that the way the spelling of 'Labor Party' was consolidated had more to do with the chap who ended up being in charge of printing the federal conference report than any other reason. I think in 02 it was 'or' in the federal conference report, in 05 it was 'our', in 08 it was 'our', in 1912 it was 'or', and from then on it was 'or', so the person who did the 1912 booklet won the day. That's all I've been able to come up with.

Question — Do you think the present ALP will ever change its name? You said that Watson was the first labour, or ALP, leader, but we were talking then about working-class people. When you consider that an ex-Labor prime minister is a multi-millionaire, do you feel that consensus is that the political ground has shifted?

Ross McMullin — Well clearly since 1996 there has been a big shift in relation to where consensus is and what is the middle ground, but as to the Labor Party, the marketing of politics has become more and more ubiquitous. We hear reference to 'the brand', and I would have thought there was a great deal of benefit to the brand of the party that is represented by the people we are talking about for them to retain the name 'labor'. So I don't think it's likely that it will change in the short term, no.

Just an elaboration on the first question. I agree that it's true Watson had a country seat in the NSW parliament before federation, but I think all the time when he was an MP, even when his electorate was outside Sydney, he lived in Sydney. Might not get away with it today!

Question — Would you like to comment on why Australian labour had achievement and prominence in the 1900s ahead of comparable societies, both federally and in the states?

Ross McMullin — Concerning the origins of the party, 1891 was a dramatic year. Earlier than that there had been some MPs elected to colonial parliaments with some sort of working class affiliation, but in 1891 there was a dramatic strike in Queensland involving bush workers and bush labourers, and the response to that by the Queensland government that represented the pastoral employers was so repressive and brutal that representatives of the labour movement decided that setting up in unions wasn't enough and that they had to have people in parliament. Other things were happening in other colonies, but that generated a lot of impetus to get Labor into the parliament. Compared to say England, which is the logical comparison, there's often a focus on the different class structure in England compared to here. Here it is more a case that Jack is as good as his master and I think that sort of sentiment came into it as well.

Question — You talk a lot about what has been the first Labor government in the world, but of course there were radical Liberal governments in countries such as New Zealand before that time. My question is, is there anything noticeably different about a Labor government being a party with a strong connection to organised labour, and the activities of the radical Liberal government, such as the government in New Zealand?

Ross McMullin — I think that once Australian labour had the numbers in parliament there was a difference. In 1910–13 the Fisher government did a lot. Watson by then was out of parliament. The ability of Watson in 1904 to do things legislatively was obviously limited by not having the parliamentary numbers. As for New Zealand, while there were some progressive initiatives introduced in New Zealand in the governments you are alluding to, I think that the Fisher government in 1910–13 had more radical credentials and achievements.

Independents in Federal Parliament:
A new challenge or a passing phase?[*]

Jennifer Curtin

'Politics just *is* the game played out by rival parties, and anyone who tries to play politics in some way entirely independent of parties consigns herself to irrelevance.'[1] The total dominance of Australia's rival parties has altered since Brennan made this statement. By the time of the 2001 federal election, 29 registered political parties contested seats and while only the three traditional parties secured representation in the House of Representatives (Liberals, Nationals and Labor) three independents were also elected.

So could we argue that the 'game' has changed? While it is true that government in Australia, both federally and in the states and territories, almost always alternates between the Labor Party and the Liberal Party (the latter more often than not in coalition with the National Party), independent members have been a feature of the

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[1]   G. Brennan, *The Paradox of Parties: Australian Political Parties in the 1990,* Sydney, Allen & Unwin, 1996: xv.

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parliaments for many years, particularly at the state level.[2] Over the last decade or so independents have often been key political players: for a time, they have held the balance of power in New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory. More generally, since 1980 an unprecedented 56 independents have served in Australian parliaments. In 2004, 25 of them were still there. This is more than six times the number of independents elected in the 1970s. New South Wales has been the most productive jurisdiction during that time, with fourteen independent members, and Tasmania the least, with only one. Size of state is not, however, of great significance. Six independents have been elected in South Australia since 1980—twice as many as have come from Victoria. A geographical pattern is clearly evident in the fact that between 1980 and 2003, no fewer than 33 independents (almost 60 per cent) won regional or rural constituencies.

Now Australia is home to more non-party independent parliamentarians than any other comparable Western country. This is curious since our political system has been characterised regularly as two-party dominant and highly stable. In the remainder of this paper, I explore this independent phenomenon, and seek to answer three questions: to what extent can this 'rise' in independents be thought of as something new on the Australian political landscape; what are the factors that have produced the change; and do independents constitute a significant challenge to the Australian party system?

An overview of independents past and present

Historically, independents have been more important than is generally recognised: two of them brought down a federal government in 1941 and from the late 1930s to the 1960s successive Liberal Country League governments in South Australia were dependent on independent support to stay in office. The very first federal election of 1901 saw Alexander Paterson chosen as an independent for the north Queensland seat of Capricornia; and the longest-serving independent, Tom Aikens, represented Townsville South in the Queensland parliament from 1944 to 1977.

When white women were granted the vote in federal elections in 1902, many were skeptical of political parties. While the party system was not fully developed until 1910, it was significant enough for a number of suffragists to respond with strong anti-party sentiments, regarding the system as being designed by men to support men's interests, leaving little room for women's interests to be adequately represented within party platforms. Vida Goldstein and Rose Scott, active campaigners for women's suffrage and political equality, expressed strong concern over the need to maintain a distance from party politics. This anti-party positioning was expressed in the newspaper *Woman Voter*, and within specific women's organisations that had been created to educate women on the power of their vote and how they might use it in a discriminatory manner.[3] Goldstein herself stood as an independent in 1903 for the Senate (and contested four more elections as an independent until 1917).

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[2]   *Rebels with a Cause,* op. cit.; J. Moon, 'Minority government in the Australian states: from ersatz majoritarianism to minoritarianism?' *Australian Journal of Political Science*, vol. 30, Special Issue, 1995: 142–163.

[3]   Anne Summers, *Dammed Whores and God's Police,* Ringwood, Vic., Penguin, 1994.

Even after the introduction of compulsory voting in 1925, women voters did not commit themselves whole-heartedly to the two- party system. At the 1931 and 1934 elections women's support for Labor reached its lowest levels ever (28 per cent and 26 per cent respectively), while at the same time, women's support for independent and non-major party candidates increased significantly. In the 1943 election, a record number of women nominated as candidates, 18 of whom stood as independents, while almost 20 per cent of women voters supported non-major party candidates.[4]

While women continued to stand as independents, both federally and at the state level, they were seldom successful. But in recent decades, this trend has changed, at least at state and territory level. Independent women have increased their parliamentary presence significantly: of the 40 independents elected since 1988, 11 have been women (27 per cent). The first, and to date only, woman elected to the federal parliament as an independent was Doris Blackburn who won at the 1946 federal election as an Independent Labor candidate.[5]

Like the suffragists, many in rural and regional Australia also believed the party system would favour a particular set of interests: in their view, those of the city; and so without 'independent' representation, rural needs and values would be overlooked. Instead of running as independents, the Country Party was formed in 1913. And either alone or in coalition governments, the Country Party was for a long time very successful in achieving its objectives. Yet as we shall see, it is the modern version of the Country Party, the Nationals, that has become most susceptible to the challenge of independents.

So while major parties have constituted the main game of Australian politics for a century, there has always been a strong anti-party mentality within sections of the community. As early as December 1904 the *Bulletin* magazine predicted that the satyr of Party Government would threaten the virtue of the fair maiden Federation[6] and in the 1930s there was an outbreak of what Peter Loveday termed 'anti-political political thought' contemptuous of both parties and democracy.[7]

Politicians of all parties currently suffer very low ratings for ethics and honesty and voters don't express great confidence in the parties themselves. According to opinion polls in Australia in 1999, less than a third of respondents felt that the Government was doing 'a good job', while almost half said they did not trust the current government.[8] While this level of distrust in government had declined by 2003,[9] politicians as an occupational group are ranked poorly by respondents. In 1998, only 7

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4   J. Curtin, 'White women and the Commonwealth vote: 1902–1949: challenging the idea of women's conservatism' in J. Chesterman and D. Philips, eds, *Selective Democracy*, Melbourne, Scribe, 2003.

5   *Rebels with a Cause*, op. cit., 2004.

6   B. Costar and D. Woodward, 'The Party and Electoral Systems' in J. Summers, D. Woodward and A. Parkin, eds, *Government, Politics, Power and Policy in Australia*, 7th ed., Frenchs Forest, NSW, Pearson Education Australia, 2002, p. 154.

7   P. Loveday, 'Anti-political thought', *Labor History*, vol. 17, Nov. 1970: 121–135.

8   Morgan Poll, Finding No 3280, 2000.

9   C. Bean, 'Is there a crisis of trust in Australia?', in S. Wilson, G. Meagher et al., eds, *Australian Social Attitudes. the First Report*, Sydney, UNSW Press, 2005.

per cent of respondents believed that Members of Parliament were of high or very high standards of honesty and ethics.[10] In terms of vote, trust in the major parties could be in decline if measured by the percentage of primary vote: at the 1987 federal election the two parties accounted for 92 per cent of the vote in the House of Representatives; by 2004 this had fallen to 84 per cent.

Inglehart has argued that the decline in support for established political parties reflects a broader decline in respect for all authority, which is a result of attitudinal change amongst much of the voting public. There is now a cohort, he argues, who take economic prosperity for granted and focus instead on politics and quality of the physical and social environment. These voters have become more critical of how governments manage quality of life issues.[11] In a comparative analysis, Inglehart argues that while there is decline in support for established parties, there is not a decline in political interest. Rather, established political parties have lost the capacity to mobilise a significant minority of voters.

While the Australian Democrats and the Greens are the target of much of this analysis, these parties have been largely unsuccessful in representation in the House of Representatives. Yet independents, who have seldom attracted academic attention, have proved successful, with eight elected to the federal lower house in the last 15 years (compared to 13 for the 90 years before that). Moreover, while almost half of those independents ever elected have only lasted one term, five of the eight recent federal independent representatives have had at least two terms, and three of the five have been elected by rural constituencies.

Why the recent change?

I suggest there are three broad reasons why independents have emerged as successful against the major parties in recent years. First, over the past three decades Australian governments have largely abandoned traditional rural policies and now require regional communities to take more responsibility for their own sustainability. Combined with a major restructuring of the rural economy, unreliable commodity prices and rising production costs, this shift has denied the benefits of an otherwise healthy national economy to some parts of rural Australia.[12] As the federal leader of the National Party, John Anderson, observed in 1999:

> The sense of alienation, of being left behind, of no longer being recognised and respected for the contribution to the nation being made, is deep and palpable in much of rural and regional Australia today.[13]

Although they earned him a public rebuke from the prime minister, John Howard, Anderson's sentiments have been echoed by many regional dwellers who expressed a

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[10] This had increased to 13 per cent in 1999 but it did not increase politicians' overall ranking of 23 out of 27 occupations (Morgan Poll, 2000).

[11] R. Inglehart, 'Postmaterialist values and the erosion of institutional authority' in J. Nye, et al., eds, *Whey People Don't Trust Government*, Cambridge Mass., Harvard University Press, 1997, p. 220.

[12] B. Pritchard and P. McManus, eds, *Land of Discontent*, Sydney, UNSW Press, 2000.

[13] J. Anderson, 'One Nation or two? Securing a future for rural and regional Australia.' Address to the National Press Club, Canberra, 17 February 1999.

distrust of political parties and politicians (though local politicians were often exempt from this negativism) and a willingness to vote for independents.[14] For example, since Anderson's 1999 speech, the National Party has lost two federal and six state seats to independents. Despite being the party of regional Australia for 90 years, the Nationals' primary vote in its rural heartland declined from 26 per cent in 1984 to 18 per cent in 2001. The electoral attractiveness of One Nation and non-party candidates, tempting voters to abandon their long-held political affiliations, is partly the product of a dislocation of the settled patterns of rural life and the feeling among some voters that 'their' parties have forgotten them.[15]

Second, while overall support for the major parties is in long-term decline, the control those parties seek to exert over their parliamentarians has rarely been greater. By adopting neo-liberal ideology and policies, the Liberal, Labor and National parties have rendered some of their local MPs—who, of course, are required to advocate often-unpopular party dogma—electorally vulnerable to independents that are free from any party discipline. This has been particularly difficult for National MPs who have been bound within a Coalition constantly dominated by Liberals, and which often precludes them from breaking ranks, particularly if they want to have a political career.

Successful independents are keen to attribute their successes to voter alienation from the two-party system. 'Independents are growing in numbers as a result of disillusionment with the party system,' according to Dawn Fraser, one-time Olympic swimmer and member for Balmain, 1988–91,[16] while Robyn Read, independent member for North Shore over the same period noted: 'people reject the traditional behaviour of party politics, with their secrecy and centralisation of decision-making.'[17] Bob Katter, a successful independent candidate at the 2001 federal election, was a former state minister who had been the member for the Queensland federal seat of Kennedy since 1992. Katter had resigned from the National Party four months earlier in protest at the leadership of John Anderson and the party's support for the sale of Telstra. There was strong local support for his decision, with one constituent describing him as 'one of the hardest-working politicians around and has always done the right thing by us.'[18] Yet even before his decision to become an independent, Katter was seen as being independent from party discipline:

> In the electorate he'd be the most popular person. All sides of politics would vote for Bob Katter because what he says is what he'll stand up and fight for until the next election, irrespective of the party machine and that will always keep him there, because he's getting votes from all sides.[19]

14   J. Curtin, *The Voice and the Vote of the Bush: the Representation of Rural and Regional Australia in the Federal Parliament,* Canberra, Dept of Parliamentary Services, 2004.

15   Ibid.; M. Goot and I. Watson, 'One Nation's electoral support: Where does it come from? What makes it different and how does it fit?' *Australian Journal of Politics and History*, vol. 47, no. 2, 2001.

16   D. Fraser, NSWLA *Parliamentary Debates*, 23 August 1988: 374.

17   R. Read, NSWLA *Parliamentary Debates*, 1 December 1988: 4296.

18   'Heartland won't bypass rebel' *Australian*, 9 July 2001: 2.

19   Curtin, 2004, op. cit.

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Thirdly, like Katter, most other independent electoral victories have occurred in formerly ultra-safe Coalition seats and have been the product of huge shifts in voter preferences. Tony Windsor, for example, won the National Party seat of Tamworth at the state level in 1991, with a swing of 40 per cent. In 2001, Windsor then stood as an independent in the federal seat of New England and received 45 per cent of the primary vote (58 per cent two candidate-preferred). Cavalier[20] has argued that these sorts of wins are possible because in order to win national majorities the major parties have to paint 'big pictures', which gives independent candidates the chance to win seats by appealing to the regionalism 'of the local borough'. Ted Mack was more brutal, arguing that the parties were vulnerable to independents such as himself because they had deserted their philosophies in a 'scuffle for the middle ground and power'.[21] Another successful independent, Peter Andren, has asserted that the big parties frame regional policies 'on marginal [city] seat mentality' and that this loses them support in the bush.[22] It seems that attempts to become 'catch-all' parties[23] may be accompanied by a risk of isolating the traditional and particular interests that once attracted voters, while analysis seems to indicate that voters get value for their vote in terms of better constituency service. Moon argues that independent representatives believe that 'extracting particularistic benefits for their constituency', is important their re-election prospects.[24]

In addition, and rather ironically, although it was designed by and for major parties, Australia's electoral system of compulsory, preferential voting in single-member districts aids the cause of independents. Those voters disillusioned with their traditional party of choice are compelled to vote; Labor and the Coalition are more likely to direct preferences to independents than to each other; and, unlike some proportional systems, electorates are small enough to allow a candidate without the support of a party machine to assemble sufficient primary votes to win.

Sharman and Sayers[25] have highlighted the importance of the federal system on the preferences of voters, in that it provides citizens with the opportunity to use state and federal elections to flag different sets of political interests. Moon's work has highlighted the number of independents that have been seen at the state level since federation, and their impact in recent years in terms of minority government formation has been significant.[26] This is yet to happen at the federal level, indeed may never happen to the same extent, since it is difficult for non-party candidates to become known around the sizeable rural electorates that exist at federal level, without being a 'local notable', a defector, or someone with a previous political career (which has been the career trajectory of the three current independents). However, it is possible that voters may learn from their (positive) experiences of voting in an independent at state level and transfer this experience to the federal level.

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[20]   R. Cavalier, 'Independents' Day' *Australian Left Review*, May 1990: 9 and 45.

[21]   T. Mack, NSWLA *Parliamentary Debates,* 10 November 1984: 392.

[22]   Quoted in *Rebels with a Cause*, op. cit., p. 18.

[23]   D. Jaensch, *The Australian Party System,* Sydney, Allen and Unwin, 1983.

[24]   Moon, 1995, op. cit., p. 148.

[25]   C. Sharman and A. Sayers, 'Swings and roundabouts? Patterns of voting for the Australian Labor Party at state and commonwealth lower house elections, 1901–96', *Australian Journal of Political Science*, vol. 33, no. 3, 1998: 329–341.

[26]   Moon, 1995, op. cit., p. 148.

Independents as challengers?

Ian Marsh once noted:

> The habits and practices of two-party politics are deeply ingrained. Those most ambitious for power have the deepest stake in current arrangements. The only hope is for new political forces outside the existing structure of party politics ... . The renovation of our present political policy-making system is a potential unintended consequence of the rise of independents.[27]

So are we in a period of transition where the traditional parties may be subsumed in a new, multi-party configuration, or at least be required to play the electoral politics game differently?

It is often argued that for independents to have any real impact, they need to hold the balance of power, as Senator Harradine did at several points in time during his 30 years as an independent senator for Tasmania. Hung parliaments or minority governments have often occurred at state level, with varying degrees of success. In the lead up to the 2001 election, media analysis suggested: 'there is growing evidence of a new mood in Australian electorates—one that sees voters prepared to elect Independents as their political representatives.'[28] In 2004, the rhetoric and speculation went further, with numerous assertions that a hung parliament might well result.[29] Not all of the commentary was merely speculative, with the *Age* referring to the possible Independents as 'King-makers', including a discussion of how the existing Independents would vote should a minority government result.[30]

Political history suggests a hung parliament in 2004 was an unlikely outcome. The closest Australia has come to this federally since 1940 was in 1961 when the ALP won 60 seats and the Coalition 62. Since then, the difference in the percentage of the two party-preferred vote won by the major parties has often been very small but the majoritarian electoral system has ensured the percentage of seats won is inflated. Despite this, the hung parliament outcome was canvassed on the basis that, in addition to the three incumbent independents being re-elected, three other non-party candidates might also win: Peter King in Wentworth; Brian Deegan in Mayo and Michael Organ (Greens) in Cunningham. At one point Prime Minister Howard also raised the issue by appealing to voters to choose either one of the major parties: 'we want a decisive poll … we don't want a parliament in the hands of Independents.'[31]

While independents have been better represented than minor parties in Australia's lower houses, history still shows that there have been very few of them. It remains very difficult for an independent to get elected not only because of the majoritarian electoral system, but also because the rules of the 'party system' more generally have

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[27] I. Marsh, 'Two-party politics and the welcome rise of the independents.' *Canberra Bulletin of Public Administration*, vol. 60, Feb. 1990: 24–27.

[28] ABC, 30 July 2001.

[29] ABC Lateline, 4 October 2004; A. Crabb, *Sunday Age,* 5 September 2004: 8; R. Fitzgerald, *Australian,* 16 September 2004: 13.

[30] *Age,* 9 October 2004: 11.

[31] J. Howard, *Weekend Australian,* 2–3 October 2004: 9.

been designed in such a way that privileges parties over individuals. Federally and in some states the electoral procedures discriminate directly or indirectly against independents in a number of ways: unlike their party counterparts, they are denied access to the electronic version of the electoral roll; the donations they receive are not tax deductible; and they may not run lotteries to raise campaign funds. Independent candidates do have access to public funding for electoral campaigning, but sometimes on terms less favourable than those enjoyed by the parties. In New South Wales, for example, independents do not have access to the quaintly named Political Education Fund, which between 1994 and 2003 allocated $12.5 million to the Labor, Liberal and National parties. These funds are not used for 'education' purposes, the *Sydney Morning Herald* reported on 25 May 2003, but 'by parties to finance their administration'.[32]

Independents may not constitute a significant, ongoing, challenge to the party system, there is evidence to suggest the Coalition, and particularly the Nationals, regard independents as serious challengers. A common tactic of major party leaders is to warn that a vote for an independent will be wasted because he or she will never be in government to deliver benefits to their constituents, and this rhetoric featured again in 2004.[33] That this strategy can be counterproductive was well illustrated in 2001 when, just before the election, Prime Minister Howard issued an 'impassioned plea' to voters not to support independents.[34] He delivered this speech in the New South Wales federal electorate of New England, where a week later independent Tony Windsor took the seat from the National Party.

Attempts to overcome Windsor's success continued prior to the 2004 election. Windsor maintained that Nationals leader John Anderson was being seen more often in the electorate of New England that in Anderson's own neighbouring electorate of Gwydir.[35] Then, during the campaign it was alleged that Windsor had been offered a diplomatic post as a means of getting him to leave politics. An official complaint by the Labor Party was lodged with the Australian Electoral Commission and Tony Windsor was ultimately re-elected with an increased majority of 13 per cent (71.2 per cent of the two candidate preferred vote).

The controversy over events in New England before the election escalated on 17 November 2004 when Tony Windsor rose in the House of Representatives Adjournment Debate and recounted details of a conversation with a Tamworth businessman, Greg Maguire, at 10.30am on 19 May 2004.[36] Maguire, claimed Windsor, told him: 'John Anderson was paranoid about me and the demise of the Nationals and the rise of Independents' and that government funding for the [Tamworth] Australian Equine and Livestock Centre would be withdrawn 'if I tried to get any credit for [it].' Most controversially, Windsor claimed that Maguire presented himself as an emissary of Anderson and National Party Senator Sandy Macdonald to

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[32]   For more detail on how our electoral rules favour parties over independents see J. Curtin, 'Getting elected as an Independent: electoral laws and party favouritism', *Democratic Audit of Australia*, May 2005. http://democratic.audit.anu.edu.au/CurtinIndependentsMay05.pdf

[33]   *Age,* 9 September, 2004.

[34]   J. Howard, *Herald Sun*, 5 November, 2001.

[35]   ABC Late Night Live, 21 June 2004.

[36]   *CPD*, House of Representatives, 17 November 2004: 103–4.

offer him 'a diplomatic post or a trade appointment' if he would not contest New England. Anderson, Macdonald and Maguire vehemently denied the allegations and on 22 November the Australian Federal Police announced that no charges would be laid in regard to the matter.[37] But when Senator Macdonald said of Windsor that 'I don't think that he's going to have very many ministerial doors open to him now,'[38] the Senate set up an inquiry into the probity of the funding of the Equine Centre (and other regional initiatives funded by the Regional Partnerships and Sustainable Regions Programs). Windsor has also allegedly been excluded from officiating at the opening of an aged-care facility in his electorate. Windsor tabled an email in parliament which claimed 'the Commonwealth Government has advised that its representative at the official opening of the Grace Munro Centre does not wish for you to be part of the official party or the official speeches.'[39] Thus, it seems evident that the Nationals felt sufficiently threatened by Windsor's electoral success to seek to undermine his credibility as an effective incumbent.

That the Nationals are right to be concerned about the incursion of independents into its NSW heartland was made clear at the by-election for the state seat of Dubbo, which was held on Saturday 20th November 2004, following Windsor's parliamentary revelations. Dubbo, which was once the Nationals' safest NSW seat, was won by independent Tony McGrane in 1999, whose sudden death in 2004 left the seat vacant. The National's candidate was local business woman, Jen Crowly, who was opposed by the Deputy Mayor of Dubbo, Dawn Fardell; the ALP did not contest the seat. Fardell won the seat with 53 per cent of the two-candidate preferred vote and, in doing so, become only the third independent in modern Australian history to directly succeed another independent.

In the 2004 campaign, the Nationals committed considerable effort and resources in their attempt to win back Katter's electorate of Kennedy. Anderson labeled Katter a 'noisy commentator who had achieved nothing', and some media suggested Katter's support was in substantial decline,[40] while Katter's stepmother became an adviser to rival National Party candidate James Doyle.[41] Ultimately these comments and actions had little traction with voters who returned Katter with a slightly reduced margin of 18 per cent. The Nationals increased their primary vote by over 10 per cent, while Katter's dropped by 3 per cent. However, the Nationals gain is no doubt partly a result of the significant decline in support for One Nation and the Democrats, and the fact that in 2004 no Liberal candidate stood.

However, the three independent candidates endorsed by Katter were not so successful. The two in Queensland campaigned on the impact of the Free Trade Agreement with the USA and other policies which threatened vital rural industries including sugar, pork, dairy and tropical fruits, as well as the sale of Telstra, but received only 12.9 per cent (Lars Hedberg in Wide Bay) and 6.9 per cent (Margaret Menzel in Dawson). The Katter-supported independent candidates who stood in the Queensland state election had suffered a similar defeat. The third federal Katter-candidate, Rob Bryant, stood

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[37]   *Australian*, 23 November 2004.

[38]   *Herald Sun*, 24 November 2004.

[39]   *Age*, 30 November 2004.

[40]   *Australian,* 9 September 2004; *Courier Mail,* 13 July 2004.

[41]   *Courier Mail,* 31 August, 2004.

against Sharman Stone in the Victorian electorate of Murray, and won 7.8 per cent of the vote. In all three seats the government achieved a positive swing, indicating there was insufficient discontent with the government to warrant a change of local member.

The government headed off another potential independent challenge in Victoria at the last possible moment. During the 2004 election campaign, federal funding for the Wimmera-Mallee pipeline was highlighted by the rural press as a significant issue for voters. With no funding commitments in the 2004/5 Budget, the local communities affected threatened to run high profile independent candidates in the two electorates through which a proposed pipeline would run (Wannon and Mallee). The electorate of Mallee incorporates the state seat of Mildura held by independent Russell Savage since 1996. One local mayor in the region was reported as saying 'obviously our sitting (National and Liberal Party) members are ineffective in getting (the $167 million) funds.'[42] While no federal funds were committed immediately after this threat was issued, the Coalition's water policy, which included monies for the Wimmera-Mallee pipeline, was eventually announced by the Prime Minister the day before the close of candidate nominations, thereby dousing any enthusiasm for independents. In the end, Nationals sitting member John Forrest came to national attention in his own right, by acting as a 'forceful and effective' advocate for refugees within the Coalition party room. Although he increased his margin, Forrest had acknowledged the potential challenge of independents even in an electorate as safe as Mallee.[43]

Probably the most successful contemporary independent representative is Peter Andren, who was first elected in 1996. He holds the regional seat of Calare in NSW by a margin of over 20 per cent, giving Windsor and Andren the largest margins across the state and the third largest nationwide amongst rural seats. Indeed Andren's win is rather historic, given this is now his fourth term as a parliamentarian, making him the most successful independent since Adair Blain (Northern Territory 1934–1949). Andren is most renowned for his ongoing campaign against parliamentary superannuation. Prior to the campaign in 2004, Mark Latham adopted Andren's position as an ALP policy, eventually prompting the Coalition to do the same. However, he also opposed the government's legislation associated with asylum seekers and the war in Iraq, and has more recently taken up the cause of a ceiling on campaign expenditure.[44] In addition, he has regularly drawn attention to the ways in which electoral laws disadvantage independent candidates and incumbents.[45]

Andren's high profile and solid constituency work meant he did not run any television commercials and ultimately spent less than $50 000 on his 2004 campaign. The Nationals spent considerably more on their campaign, and targeted Andren personally. The National Party candidate Robert Griffith's web page declared that 'A Vote for

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[42]   D. Argall in P. Hunt, *Weekly Times*, 12 May 2004.

[43]   P. Mares, 'Unfinished business' in G. Barker et al., eds, *A Win and a Prayer. Scenes from the 2004 Election*, Sydney, UNSW Press, 2004.

[44]   ABC The National Interest, 14 November 2004.

[45]   See P. Andren (2002), Submission to the Joint Standing Committee on Electoral Matters at http://www.aph.gov.au/house/committee/em/elect01/subs.sub80.pdf; P. Andren, 'Increased political donations—recipe for corruption', Democratic Audit of Australia, June 2005 at http://democratic.audit.anu.edu.au/AndrenIncreasedPolitical DonationsJune2005.pdf

Peter Andren is a vote for Mark Latham' (www.robertgriffith.net) and John Anderson claimed that Andren 'would join the Labor Party if he felt he would win the seat.' Griffith put the quaint view that, while the people of Calare supported the Howard-Anderson Government, they voted independent 'out of ignorance.'[46] Not surprisingly, Andren easily retained his seat and the Liberal candidate outpolled the Nationals (16 per cent to 12.9 per cent).

While Bob Katter did not increase his margin as did the other two successful independents, the fact that all three were able to easily retain their seats might suggest something about the relationship between incumbency and independents in the current era. Matland and Studlar[47] theorise that the ability of an incumbent to improve the (party's) chances of retaining a seat depends upon the degree to which s/he is able to attract votes based on personal appeal. This personal vote can be built on individual constituency case work, on the MP's visibility in the district, or ability to bring governmental services to the district. Moreover, in single-member district systems such as Australia's, where there is some evidence of a personal vote effect,[48] the incumbent has a greater incentive to do constituency work, deliver specific benefits to their electorate, and make themselves visible when they are the exclusive representative of an electorate. In the case of independents, this link between individual kudos and incumbency is heightened since there is no party to claim credit. It seems to be this link that the Nationals are intent on undermining with their criticism of the current independents, most clearly evident in the case of Tony Windsor.

In the final analysis, no new independents were elected to the federal parliament in 2004. Three of the four independent senators were up for re-election (Harradine retired), but their chances of winning were always slim and they were ultimately defeated. In seeking election for the Senate, candidates standing as individuals cannot be listed 'above the line' on the ballot paper, where 94 per cent of the electorate casts its vote, unless they group themselves with other independents or unless they are serving senators. In the 2004 election, Pauline Hanson attempted to resurrect her political career by standing as an independent Senate candidate in Queensland. Hanson admitted that she ran on a ticket with her sister so that voters could pick her group (listed only as a letter) from above the line, thereby improving her chances of success.[49] She was spectacularly unsuccessful in one sense, winning only 1.67 per cent of the vote. However, she stayed in the count almost until the end, being the second-best losing candidate (after the Greens Drew Hutton). The briefly high-profile 'Vote for Me' Senate candidates sponsored by TV Channel Seven were also unsuccessful. This was a 'reality TV' initiative which encouraged viewers to put themselves forward as candidates, with the winner from each state being determined by a viewers' poll. The prize was $10 000 for campaign funding and the obvious associated television coverage. The most high profile of those who ultimately stood for election was anti-child abuse activist Hetty Johnson, who garnered a paltry 0.18 per cent of the Queensland Senate vote.

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[46] ABC The World Today, 8 September 2004.

[47] R. Matland and D. Studlar, 'Determinants of legislative turnover: a cross-national analysis', *British Journal of Political Science,* vol. 34, no.1, 2004: 87–109.

[48] C. Bean, 'The personal vote in Australian federal elections', *Political Studies,* vol. 38: 253–268.

[49] L. Scott, *Australian*, 17 September 2004: 9.

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Two other independent candidates warrant a mention. The first, Brian Deegan stood against Alexander Downer (Foreign Minister) in the South Australian rural electorate of Mayo and ran on the issue of Australia's foreign policy. A magistrate whose son had been killed in the Bali bombing, his motives for standing reflected some of those independents who had been elected decades before, where moral issues rather than local issues prompted their candidacy. Deegan was a solid candidate, and ultimately received 15 per cent of the primary vote, and 38 per cent of the two-party preferred vote.[50] Peter King, the only city independent candidate with a considerable profile stood in a Sydney blue-ribbon seat against the wealthy ex-Australian Republican Movement President, Malcolm Turnbull. However, King stood because he had been the Liberal member for the seat and was ousted in a bitter pre-selection battle characterised, among other things, by a scale of branch-stacking that would have shamed the ALP. While there were some tense moments throughout the campaign for the Liberals and Turnbull, King's challenge was unsuccessful.[51]

Election analyst Antony Green suggests 'you cannot talk of a vote for *Independents*, merely a vote for individual independents'—a point reinforced in 2004 by the failure of the three 'Katter-endorsed' independents.[52] Yet it is worth noting that at the 2001 federal election, the vote share for independent candidates in rural electorates was higher than the vote for each of the minor parties. By contrast, in 2004, the overall vote for independents was halved (2.4 per cent), although it remained higher in rural Australia than in the cities (4.4 per cent). With the One Nation Party a mere shadow of its former self, the Nationals were able to shore up their vote in their traditional seats and stave off any further challenges from independents.

However, in the 2004 election campaign the Nationals were as anti-independent as they were anti-Green in their messages to voters. Independents are often good local candidates, and once elected make good local representatives, irrespective of the policy outcomes they do or don't bring directly to their constituents. By contrast, finding quality local candidates has been a concern for the Nationals in recent elections.[53] In addition, it has no doubt hurt the Nationals that two of the seats they have lost since 1998 have been to ex-National Party parliamentarians. Regaining Windsor's seat of New England, the traditional heartland of the Nationals, is particularly important to the party; winning it back is as much about the identity of the party as the need to increase their parliamentary representation.[54] Finally, every time an independent wins a rural or regional seat, the Nationals are forced to undertake a three-cornered contest with the Liberals to win back the seat. In 2001, the Nationals lost two seats to the Liberals, and in 2004 they lost one to Labor. Perhaps the long term trend will be that independents will contribute to the demise of the Nationals, and in doing so ensure the entrenchment of a two-party (rather than a two and a half party) system.

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50   Fraser 2004, op. cit., 88ff.

51   B. Evans, 'The Battle for Wentworth' in Fraser, 2004, op. cit., 15ff.

52   A. Green, Paper delivered to Independent's Conference, Canberra, 2001.

53   J. Curtin and D. Woodward, 'Rural and regional interests: the demise of the rural revolt?' in J. Warhurst and M. Simms, eds, *2001, the Centenary Election.* St. Lucia, Qld, University of Queensland Press, 2004.

54   E. Wynhausen, *Australian*, 13 September 2004: 8.

Conclusions

It is important to remember that Australia's two-party dominant system has survived sieges in the past: at the 1943 federal election the main parties won only 83 per cent of the vote, but by 1950 there were no independents in the House of Representatives, and there would only be one more elected between 1950 and 1990. Thus, competitive political parties have been the twentieth century's most significant contribution to mass democracy in Australia. They have served many positive functions, but their most important role has always been to be the 'buckle' between the governors and the governed, providing citizens with a level of access to governance denied in all previous regimes.

But can they survive a sustained challenge from independents (and the Greens perhaps—who are the ALP's current nemesis)? The conditions of their malaise are well known: party memberships are low and declining; many are destructively factionalised; what members they have are often manipulated by cynical power seekers; their candidates are often party hacks rather than local community members; large numbers of voters do not trust them; and ordinary party members have little or no input into policy making. Large and small parties as well as independents are potentially beneficial to political society, but dysfunctional parties are a danger to an inclusive democracy.

Political scientist Don Aitkin argued that in the 1970s the citizen's link with the parliament and the political system was through his or her party identification: 'the member of parliament is the party's standard-bearer, but not much more than that.'[55] The electoral fate of local representatives once rested not with their personal following but with their party's overall success or failure. But with party identification in decline and a shrinking number of 'safe' seats, the fortunes of local members have become more precarious. Ironically, excessively strong party discipline may ultimately undermine the reputation of the major parties in the electorate; they may be unknowingly sowing the seeds of their own destruction. If they are to survive, the major parties need to reconnect with their supporters. One way to do so would be to grant their parliamentary members a greater degree of independence; unless, of course, they are prepared to lose more of their safe seats to independents.

Question — My question is in regard to what you said about the major parties being in decline, and distrust of parties and party line. Yet, when I look around the political landscape in Australia at the moment, one thing that strikes me as almost unprecedented is that if you have trust in a political party and you vote for them in the lower house and the upper house, you're not putting a check and balance on them. You're trusting them in effect to have complete power. There's complete power in the federal government. There's complete power in the ACT government for the first time ever. Victoria, once again, complete power; Tasmania, Western Australia until May.

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[55] D. Aitkin, *Stability and Change in Australian Politics,* 2nd edn, Canberra, ANU Press, 1982, p. 282.

I'm not sure about NSW and the Northern Territory. It seems to me that we are placing trust in politicians in an unprecedented manner.

Jennifer Curtin — Well, it does look like that, yes, and certainly trust is a really difficult thing to measure empirically. There is a lot of work that looks at this, and some measure it as trust in government, and all governments have honeymoon periods when they're first elected and then they go into decline. If you measure it in terms of trust in politicians, we know that that's low, but then if you ask people about a local politician they really like, more often than not they still think their local politician is doing a good job virtually irrespective of the party.

I would say that the context of recent elections needs to be taken into account. If you look at the 2001 federal election book, and the one that's coming out on the 2004 election, you will see that an environment which is about national security and international security and the ways in which our borders have been challenged, counteracts the effect of distrust to some extent, and that people are voting for what they know and what they understand. My point is that you can't look at the vote necessarily across all electorates because independents are very localised examples and the same conditions or context may not necessarily apply across all electorates. So, I take your point, but I would still argue that the existing independents can do a good job despite being hammered by party machines. Part of the reason why we have ended up with the Senate make-up we will have from July is that the Democrats are in decline, and because of the Family First member, and partly the anomalies of the PR system. It's very difficult for independents to get up in the Senate and that's one of the anomalies of our system as well. So I take your point, but I would never expect to see a hung parliament for example at the federal level at least in the House of Representatives.

Question — Dr Curtin first of all thank you for a very interesting lecture. I did read your book with Brian Costar and you threw even more light on it today. I want to refer to a comment you made about increasing party discipline and toeing the party line because I wonder if, in what you've said today, there are any parallels within parties. One only has to look recently at Victoria at the ALP factions there, who are lining up to make sure that they exert discipline over independent-minded and spirited members, Gavin O'Connor in Corio, for example. And we see it also with people in the Liberal Party, such as Petro Georgiou, where we see the Prime Minister exerting his overbearing (from their point of view) influence. So I wonder if you could draw any parallels between what you said of independents being opposed by parties, and independent-minded people, those not in a faction, within parties.

Jennifer Curtin — I totally agree with what you're saying and I do think it has applied within the party as well and I think that's part of this increased party discipline that we're seeing. For example, if Brian Costar were here, he would say (and he's done more research on this than I have) that there used to be a lot less party discipline exerted on senators for example, in the committee process, and so there could be dissenting reports or dissenting opinions that perhaps didn't measure up to the party line. Probably the most those people can do now is abstain rather than actually write dissenting reports or cross the floor in the Senate. His argument would be that it's become much more difficult for senators to take positions that are opposite or different to the standard party line.

It also is reflected in the way in which campaigns are now conducted, and people like Ian McAllister have written about this. We are in campaign mode virtually two years out of three anyway and these campaigns are very centralised, very driven from the leadership. We had it in Victoria with Jeff.com, where all ministers were gagged and it was just Jeff who was going to win the 1999 election. Well ultimately of course he didn't. So there are some difficulties that go with centralising everything around a party line and not allowing independent voices to speak. What we would argue is that if parties don't let the Gavin O'Connors of this world, or in the case of the Victorian state election, a woman from out Ballarat way who is now an independent to make noise, there's a risk of isolating voters. Even though as the previous gentlemen pointed out, Victoria has a majority in both houses, it was only in 1999 that three independents did hold the balance of power in that state and they were all rural-regional type independents.

Question — I am from the Democratic Audit of Australia at the Australian National University and I want to congratulate you on a very fine and very informative lecture today, on a very interesting topic. At the Democratic Audit, we audit Australian political institutions against values such as political equality, and political equality flows on to the need for a level playing field for electoral competition. You've outlined some of the forms of discrimination against independents in Australian electoral competition, and that's a matter of ballot design in most jurisdictions except South Australia, and also a matter of not being able to receive tax deductible donations and so on. And there's also discrimination I'd suggest in Parliament, once you're there, in terms of parliamentary entitlements and so on. I think if I remember correctly the ACT is the fairest in terms of the additional resources needed by cross-bench members, whether they're independents or members of minor parties who don't have enough representatives to gain party status. This pattern varies across Australia, but overall I'm sure you are correct. There is considerable discrimination against independent candidates, and yet, as you said, we've got more independents in our parliaments than comparable democracies. So how would you sum up the overall effect of the discrimination against independents in our electoral systems?

Jennifer Curtin — I suppose it reinforces what Jeremy Moon wrote about independents in the 1990s. He said that the way in which electoral laws or regulations discriminate against independents means that you actually have to be a local notable or a defector, you must have some kind of personal profile in your electorate to be able to go out and raise funds and get people to give you money and give you resources and give you their time and help. It wouldn't work if someone like me stood as an independent, because I can't access those fundraising activities. So that does restrict who could consider themselves potentially successful in standing as an independent. I think that's part of the reason why we see so few women independent successes at the federal level; it is not just the discriminatory element, but the need to be a local notable or a previous political player, and we know that women often have different kinds of community profiles to men who are policemen or sports stars, or TV presenters in the case of Peter Andren, who will do well.

It's not only the formal entitlements, within a parliament that are difficult or less welcoming for independents, but also the culture. Anecdotally, a lot of the

independents get a terrible time from the other politicians from both major parties. They are seen as irrelevant. When Russell Savage was elected (that was before Jeff Kennett was tipped out) he was the only independent member of the Victorian Legislative Assembly. Jeff Kennett told all his members to make sure that they did not say one word to him. He had to eat dinner alone; he had to do everything on his own until the other two independent members arrived in 1999. I know that there are federal members who have had the same experience, where they have been totally ostracised once they have been elected, by virtue of being an independent. It's a tough road, both getting elected and then once you get here, I think.

Question — There are perhaps two types of independents, those who are independent from the very beginning, such as Peter Andren and Ted Mack, and those who became independent after they defected from major parties, like Shayne Murphy or Bob Katter. Is there any pattern that can be detected in the relative successes of those two categories?

Jennifer Curtin — I don't think I've done that level of analysis. Of ones that defected, there have been a couple of Liberals in 1996 who were elected as Liberals, and then became independents and then weren't re-elected from Western Australia. They didn't do so well, and that's partly because people voted for them as party members, and if you defect midway through your term, it's not necessarily going to guarantee that you will then get re-elected as an independent. Of course Peter King is another example of that. But I would have to have a look and see whether or not there was a correlation between length of term of service and whether or not they were an independent or a defector.

I think ultimately when we have enough of them to do a good quantitative analysis, it would be very much about individual incumbency and personal work within the constituency once they get elected. If they get re-elected for more than one term, then I think it comes down to the kinds of service that they're providing for their constituents, irrespective of the policy outcomes. Voters are not ignorant, as Rob Griffith would have us think, they are aware. I went to five rural and regional electorates and talked to many people in 2000 and 2001 about what they expected from their politicians. There is a solid recognition at least in rural and regional Australia that local MPs cannot give people everything they ask for, and that's not what is expected of them. They just expect to be told about the process, and informed about what's going on in exactly the way Peter Andren is so good at doing.

The Constitution We Were Meant To Have[*]

Re-examining the origins and strength
of Australia's unitary political traditions

A.J. Brown

Australians do not need state governments. In fact, we never needed state governments. If the French explorer La Perouse had arrived in Australia before Captain James Cook, we would not have had states at all. So for all those absolutists who think that states are essential to our future, I say that we only have them because of the fate of a breeze.[1]

More than a century after Federation, and 150 years since responsible government, Australians can be trusted to be positive about the fact they are a relatively liberal democracy. They can also be trusted to be satisfied that they are a nation, and probably that their national constitution is one which recognises more than simply one national level of government—that is, that their constitutional system assigns importance and permanence to what law-and-geography scholars call sub-national as well as national 'legal life'.[2]

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[*] This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 22 April 2005.

[1] Jim Soorley (former Lord Mayor of Brisbane), 'Do we need a federal system …' in W. Hudson & A.J. Brown, eds, *Restructuring Australia: Regionalism, Republicanism and Reform of the Nation-State,* Annandale, NSW, Federation Press, 2004, p. 39.

[2] N.K. Blomley, *Law, Space and the Geographies of Power*. New York, Guilford Press, 1994, p. 114.

Beyond these presumptions, however, it becomes difficult for political scientists to claim consensus about social satisfaction with the form of the Australian federation, or the specific political geography of Australian federal, state and local government. Instead Australians, commentators and political leaders alike, tend to adopt a certain fatalism or impotence regarding a political structure that we often admit to be inadequate, but with which we must resign ourselves to work because history has taken the matter out of our hands. Popular stereotypes abound regarding the unfortunate if not incompetent way in which colonial Australia was subdivided by British authorities between 1788 and the granting of responsible government in the 1850s, leaving us with a lop-sided group of colonies and subsequently a lop-sided federation. By 1901, 'the political history and geography' of these established self-governing colonies made it 'hardly surprising' that Australia became a federation,[3] but its specific structure is not something of which many seem proud. In 2002, Prime Minister John Howard told Australia's National Assembly of Local Governments that he was in no doubt that 'if Australia was starting over it would not have the same government structure', even if he also concludes that to worry about it now is 'an empty theoretical exercise'[4] or 'pure theorising'.[5]

Are we accurate in our assumptions about the twists of constitutional history that we now see as regrettable, or the notion that it is pointless to ponder on how things might be made better? This paper continues an argument begun earlier[6] that it is in fact vital to ponder these assumptions, because in many serious respects, our diagnosis of our own history has become quite inaccurate. For example, we now know to question assumptions that Australia's rough-and-ready colonial subdivisions were forced on British colonial authorities by dint of circumstance, reflected poor or non-existent European knowledge of the ground, and only later came to be part of an ex-post-facto federal idea. Instead we have evidence that British authorities probably launched the subdivision process, in the 1820s, with an ultimately federal dependent nation in mind. On this account, when joined by the evidence of colonial communities campaigning actively for colonial separations, and also still thinking nationalistically from an early stage, we develop a picture of earlier, but different styles of federalism embedded in our imported political culture than we often let on. Rather than Australian federalism developing later, in the late nineteenth century, we are now beginning to see that federalism arrived in the 1820s–1830s; and that far from creating a superficially perfect and natural federal union in the 1890s, our subsequent constitution-making

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[3] B. Galligan, *A Federal Republic: Australia's Constitutional System of Government,* Sydney, Cambridge University Press, 1995, pp. 32, 52–5; see also G. Sawer, *Modern Federalism,* London, Watts & Co, 1969, pp. 135, 179; J. Hirst, *The Sentimental Nation: Making of the Australian Commonwealth*, Melbourne, Oxford University Press, 2000; C. Saunders, 'Dividing Power in a Federation in an Age of Globalisation', in C. Sampford and T. Round, eds, *Beyond the Republic: Meeting the Global Challenges to Constitutionalism,* Leichhardt, NSW, Federation Press, 2001, p. 133.

[4] J. Hassan, 'Two tiers out of three ain't bad: Howard', *Government News,* December/January 2002.

[5] J. Howard, 'Reflections on Australian Federalism', Address to the Menzies Research Centre, Melbourne, 11 April 2005.

[6] A.J. Brown, 'One continent, two federalisms: rediscovering the original meanings of Australian federal political ideas', *Australian Journal of Political Science* vol. 39, no. 4, 2004: 485–504; and 'Constitutional schizophrenia then and now: exploring federalist, regionalist and unitary strands in the Australian political tradition', *Papers on Parliament* no. 42, December 2004: 33–58.

only succeeded in institutionalising the less dynamic and democratic of these underlying federal values.

Similarly, a deeper grasp of the history and unresolved conflicts between Australian federal ideas is only part of the key to understanding our ongoing constitutional dilemmas. Another body of ideas is clearly relevant: the theory that Australia would always have been better served by a unitary political system. In such a system, sovereignty is not divided between the national and state governments in the manner of a federal system. Instead, as in British traditions, the sovereign legislative power of the people would be vested in the national parliament without formal restriction; and in place of the states, alternative sub-national governments would exist at the provincial and/or regional and/or local level, of obvious great practical and political importance in the constitutional system but not claiming their own 'sovereignty' in a federal constitutional sense.

The earlier paper mounted a claim that to understand the structural and territorial dissatisfactions affecting Australia's constitutional system, we should place our history of these unitary traditions alongside those of our federal traditions, and can in this way discern a 'territorial trio' of traditions including a better view of the ideas—and problems—that dominate today.[7] (see Figure 1 below). This paper seeks to explain the history and importance of these unitary traditions in Australian constitutional debate and practice—not as an exhaustive guide, but as a demonstration that as with alternative bodies of federal ideas, the influence of unitary ideas is far more real, pervasive and abiding than recent political science or constitutional theory has often been prepared to admit.

The first part of the paper investigates the nature of the predominant unitary theories by tracking some of their major manifestations in Australian political debate. This background reveals unitary theories to be not the kind of marginal cross-current of political ideas that some defenders of federalism sometimes allege, but rather a deep undercurrent of our political practice of federalism that appears unlikely to ever go away. This historical review also provokes some basic questions similar to those posited earlier in relation to our federal theory: when did coherent notions of a national unitary political structure for Australia commence, and where should these stand in contemporary understandings about our original destiny? The second part of the paper answers these questions by locating 'the constitution we were meant to have': the Stephen model, a constitutional structure that British colonial authorities sought repeatedly to introduce to Australia over the decade from the late 1830s to late 1840s, before giving up and largely washing their hands of Australian constitutional affairs. This original unitary blueprint remains important today, not simply as an under-recognised historical event but because it resonates strongly with so many subsequent alternative theories, and correlates with what many may argue is a continuing trajectory of constitutional evolution. In conclusion, I argue that by better understanding our own history of ideas, we may have some better prospect of discerning the best of these traditions and giving them greater force in our constitutional development. The alternative seems to be a continuing, unrewarding, inefficient and potentially fruitless struggle to reconcile ourselves to a constitutional system that combines the worst, rather than the best, of our major traditions.

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[7]   Brown, 'Constitutional Schizophrenia …', op. cit., p. 40.

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Figure 1. Australia's Territorial Trio

	First Federalism (Decentralist)	**Unitary Traditions (Decentralist)**	**'Conventional' Centralised Federalism**
Period	**From 1820s**	**From 1830s**	**From 1840s**
Source and route of ideas	American federal experience, directly and via British colonial policy.	'Pure' British unification theory boosted by Canadian experience.	American federal, British unification and Canadian 'consolidation', via British colonial policy.
Politics	British progressive.	British universal.	British conservative.
Commencement locations	Hobart, Melbourne.	Adelaide, Melbourne? Sydney.	Sydney.
Mobilisational orientation (King 1982)	Major decentralization followed by partial centralization.	Decentralisation within centralised structure.	Partial centralisation.
Key manifestations	Colonial separation and new state movements; 20th Century Federal Reconstruction Movements.	Strong local government systems as alternative to territorial fragmentation; movements for state abolition.	Australian federation/unification movements generally.
Present at Federation?	Yes.	Yes (Unification).	Yes (Simple compact).
Balance achieved?	Arguably not yet (no substantial territorial decentralization since 1859).	No (credible local/ regional governments never allowed to develop).	Arguably not yet (decentralization demands remain unsatisfied by centralised surrogates).

Unitary theory in Australian politics

In recent decades, arguments for a unitary political system—often framed in terms of the abolition of state governments—have been distinctly out of vogue among dominant political groups, scholars and commentators. The last strong defence of the unitary alternative by a political scientist[8] came at an inopportune time. A majority of politics scholars instead became interested in the apparent revival of federalism, and an apparent consensus that federalism as we know it is now permanent, even if problematic—the challenges are to learn to finally make it work properly, after 100 years, rather than to keep whinging about its inherent conflicts and dysfunctions. As often happens, the Australian revival followed a similar one in North America and Europe, where federalism had previously been depicted as a transitory stage in the evolution of nations, destined either to disintegrate or mature into more integrated, unitary forms of government as 'primordial' territorial cleavages like ex-colonial states naturally faded away.[9] However by the 1970s we began rejecting this modernist vision and decided that such cleavages were destined to remain. If by nothing else, federalism's permanence was made explicable by the fact that territorially, it has its own powerful 'self-perpetuating dynamic'.[10]

This acceptance of federalism—or at least, this degree of acceptance of one interpretation of federalism—has nevertheless come at a cost. We seem at a loss to explain why a diversity of voices continue to proclaim the need for substantial structural and territorial reform of the Constitution, and in particular why such reform could validly be based around abolition of the States. Apparently satisfied that our current federal framework is the 'highest' constitutional form to which we need aspire, Professor Brian Galligan[11] had little time for the suggested revival of the unitary idea by former Fraser Minister, Ian Macphee;[12] nor for suggestions by the Business Council of Australia that Australia should ultimately aim to restructure its constitution—whether federal or otherwise—from three tiers of government to something closer to two.[13] Other popular expressions of such views, such as Rodney Hall's book *Abolish the States!* (1998) pass completely under the radar of serious analysis. Yet there seems to be at least as much permanence to this under-current of opinion as to current ideas of federalism. What's more, the idea of major constitutional restructure around unitary principles is not simply an elite or expert phenomena, but seems deeply ingrained in

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[8] G. Maddox, 'Federalism: or, government frustrated', *Australian Quarterly* vol. 45 no. 3, 1973: 92–100.

[9] M.A. Schwartz, *Politics and Territory: the Sociology of Regional Persistence in Canada*, Montreal, McGill-Queen's University Press, 1974, p. 2.

[10] B. Galligan, 'Federalism's ideological dimension and the Australian Labor Party', *Australian Quarterly* vol. 53 no. 2, Winter 1981: 128–140.

[11] B. Galligan, *A Federal Republic: Australia's Constitutional System of Government,* Sydney, Cambridge University Press, 1995, pp. 61, 198.

[12] I. Macphee, 'Challenges for 21st century Australia: politics, economics and constitutional reform', *Griffith Law Review,* vol. 3, 1994: 245; and 'Towards a model for a two-tier government', in *Australian Federalism: Future Directions, Structural Change,* University of Melbourne, Centre for Comparative Constitutional Studies, 1994.

[13] Business Council of Australia, *Government in Australia in the 1990s: a Business Perspective,* Melbourne, Business Council of Australia, 1991; and *Aspire Australia 2025,* Melbourne, Business Council of Australia, 2004.

popular attitudes. Galligan accepts that 'so long as Australia has a federal system there will probably be critics calling for its abolition',[14] while Glyn Davis[15] has described calls for abolition of one tier of government as not just strong but 'likely to get stronger.' The Constitutional Centenary Foundation found considerable evidence that serious reform remained an issue, particularly among young people and local government; while empirical evidence in 2001 pointed to belief by a majority of Queensland adults that the constitutional structure should and probably would change in a major way.[16] In practice, particularly with the federal government and all State governments being of different party-political persuasions, much public debate continues to be conducted with a reliable degree of hyper-criticism of the value, behaviour and relevance of the states.

What are the origins of these broad veins of constitutional dissatisfaction? In addition to dissent based on Australia's original decentralist federal traditions, do these apparently anti-federal ideas rely on a preferred unitary theory, and if so, what do they contain and when did they commence? As with federal ideas, the need for a complete history is growing. At the close of the 20th century, one sympathiser seemed to believe that popular ideas of state abolition were relatively recent, almost embryonic.[17] Another frequent assumption is that debate 'for and against the states' has only been occurring 'on and off' since Federation,[18] as if unitary ideas have had their main life as a reaction to federalism, only relevant since Federation itself.[19] Yet another frequent assumption is that unitary ideas as opposed to federal ones, or 'Unification' as an alternative to 'Federation', are based in an inherently centralist, socialist model of government, the Australian Labor Party having adopted this as a constitutional platform from 1919 to the 1930s, and kept it on the books until the 1960s, with resonances into the 1980s and 1990s.[20]

There are clear reasons to question all these assumptions, and look for some of the more abiding characteristics of unitary theory over time. Certainly, Labor's attacks on the states elevated anti-federalism to the highest levels of political debate, not least in the Unification platform, symbolised by the map at Figure 2.

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[14]   *A Federal Republic*, op. cit., pp. 61. 92, 122.

[15]   G. Davis (ed.), *The Future of the Australian Constitution,* Brisbane, Griffith University, 1996, p. 14.

[16]   A.J. Brown, 'After the party: public attitudes to Australian federalism, regionalism and reform in the 21st century', *Public Law Review,* vol. 13 no. 3, 2002: 171–190; and 'Subsidiarity or subterfuge? Resolving the future of local government in the Australian federal system', *Australian Journal of Public Administration,* vol. 61, no.4, 2002: 24–42.

[17]   G. Jungwirth, in G. Patmore and G. Jungwirth, eds, *the Big Make-Over: the New Australian Constitution,* Sydney, Pluto Press, 2001, p. 135.

[18]   B. Galligan, 'State policies and state polities', in B. Galligan (ed.), *Comparative State Policies*, Melbourne, Longman Cheshire, 1988, p. 291.

[19]   S.R. Davis, 'The state of the states', in M. Birrell (ed.), *The Australian States: Towards a Renaissance,* Melbourne, Longman Cheshire, 1987, p. 21; G. Craven (ed.) *Australian Federation: Towards the Second Century*, Melbourne, Melbourne University Press, 1992, pp. 67–8.

[20]   L.F. Crisp, *The Australian Federal Labour Party 1901–195,*. Sydney, Hale and Iremonger, 1978, pp. 23ff.; Galligan, *A Federal Republic,* op. cit., pp. 91ff.

Figure 2. Labor Party map 1920
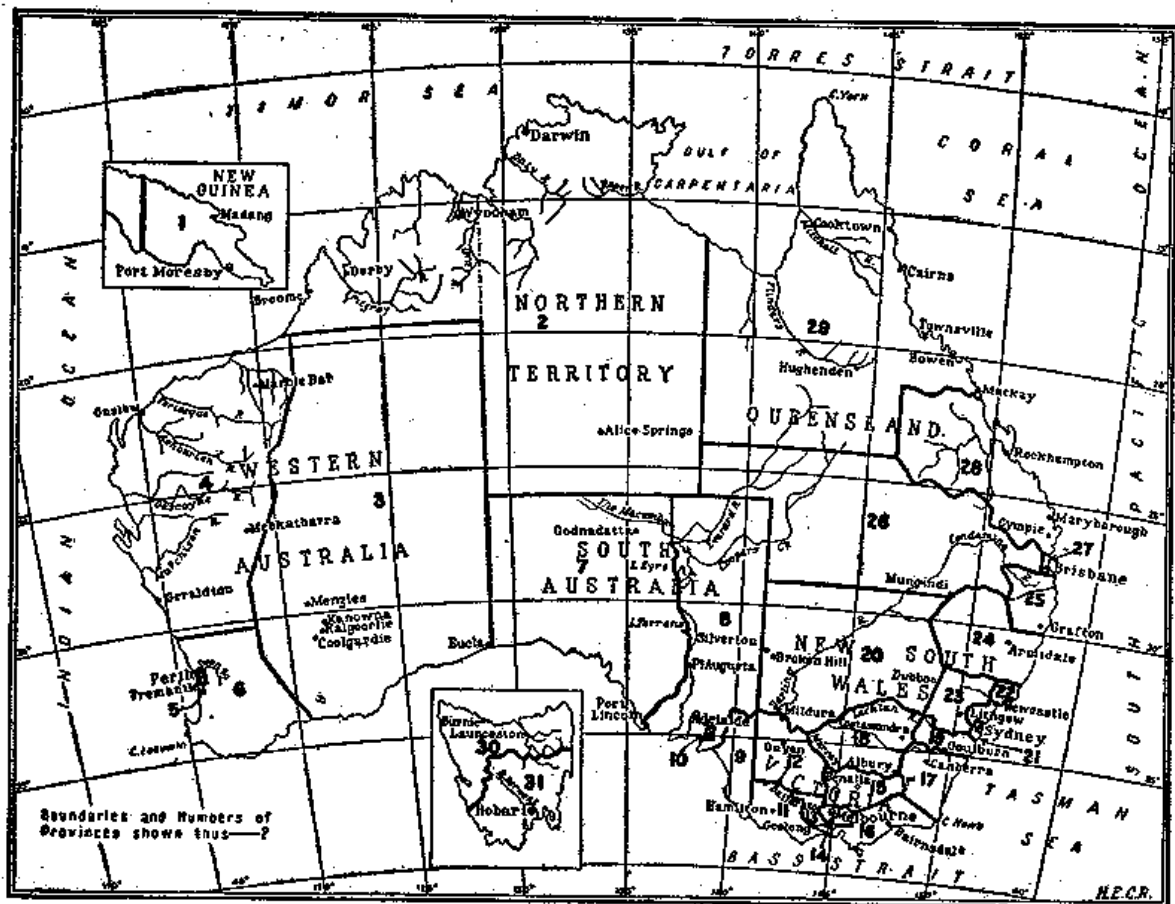
The Labor party scheme of 1920 proposed the subdivision of Australia into the 31 provinces shown in the map.

Source: U.R. Ellis, *New Australian States.* Sydney, Endeavour Press, 1933.

However, it is vital to note that Labor was not the sole force of twentieth century centralism, and in the early twentieth century, certainly not the sole force nor the originator of unitary constitutional plans. The clearest counterpoint is that Labor was almost beaten to its unitary platform by the founder of the Country Party, and lead 'new state' activist, Earl Page.[21] Page's 1917 'plea for unification' denounced Australia's 'bastard constitution' even before this became fashionable in the Labor Party.[22] Signficantly, Page's assault was not leftist and clearly sought at least as much *de*centralisation as centralisation, in the form of new 'provinces … big enough to attack national schemes in a large way, but small enough for every legislator to be thoroughly conversant with every portion of the area.'

In order to understand why such sentiments existed, and how deeply they ran through Australia's political and constitutional fabric, we would need to review the entire state of federalism's development and dysfunctions at the time. More simply, for present purposes, we can also measure the relative strength of these ideas through some of the

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21   See A.J. Brown, 'Can't wait for the sequel: Australian federation as unfinished business', *Melbourne Journal of Politics,* vol. 27, 2001: 47–67.

22   Earle Page, 'Plea for unification: an address', 13 August 1917.

major reactions to those dysfunctions. A first example is the 1927–29 Peden Royal Commission on the Constitution, appointed by the Bruce–Page Commonwealth Government as the first major general evaluation of the systems of government established at and since Federation. Of the seven members, five (Peden, Colebatch, Bowden, Abbott and McNamara) were federal and state parliamentarians chosen to represent the party interests of the time, with additional representatives from the union movement (Duffy) and employers (Ashworth). The wider strength of the idea that Federation should evolve into Unification was demonstrated by the minority report to this effect by three of the seven Royal Commissioners (McNamara, Duffy and Ashworth), criticising the state divisions as 'not planned in accordance with any principle'; 'mere historic accidents' that 'are not natural'.[23] Particularly telling was the fact that Ashworth, invited onto the Commission as the Government's representative capitalist, opposed the Government's own representatives and sided with labour on this fundamental issue.

A second example of the strength of unitary values, from the same period, is the famous turn taken by the High Court of Australia in 1920 in its approach to interpretation of the Constitution's attempted division of legislative power between Commonwealth and states. In the *Engineers' case* (1920), a court dominated by its second round of appointees, Henry Bournes Higgins and Isaac Isaacs, overturned the various attempts by the original Griffith court to quarantine state legislative power from erosion by the Commonwealth through the doctrine of state 'reserve powers'. Higgins and Isaacs had, of course, been part of the substantial minority of 1890s Federation delegates who consistently pushed for larger federal powers than ultimately agreed in the 1901 constitutional text. However just as important as the fact they finally had their way in 1920, is the extent to which their reasoning was explicitly opposed to federalist principles of divided sovereignty, and based instead in British-styled unitary constitutional values, as demonstrated by the lead judgment delivered by Isaacs:

> The <u>Constitution</u> … recited the agreement of the people of the various colonies, as they then were, 'to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland …'. 'The Crown,' as that recital recognises, is one and indivisible throughout the Empire. Elementary as that statement appears, it is essential to recall it, because its truth and its force have been overlooked, not merely during the argument of this case, but also on previous occasions. Distinctions have been relied on between the 'Imperial King,' the 'Commonwealth King' and the 'State King'. … The first step in the examination of <u>the Constitution</u> is to emphasise the primary legal axiom that the Crown is ubiquitous and indivisible in the King's dominions. Though the Crown is one and indivisible throughout the Empire, its legislative, executive and judicial power is exercisable by different agents in different localities …. . [But nevertheless] The <u>Commonwealth Constitution</u> as it exists for the time being, dealing expressly with sovereign functions of the Crown in its relation to Commonwealth and to States, necessarily so far binds the Crown, and laws validly made by authority of the <u>Constitution</u>, bind, so far as they purport to

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[23]   J.B. Peden, *Report of the Royal Commission on the Constitution,* Canberra, Government Printer, 1929, p. 247.

do so, the people of every State considered as individuals or as political organisms called States.[24]

While perhaps inevitable as an interpretive approach, the direction taken by the High Court since 1920 has often been credited with assisting a trend of centralization in the federal system, given that from this time the Commonwealth tier of government could be validly characterised as a unitary system in its own right, overlaid on the existing unitary systems of the states, whose legislative powers were truly unlimited provided they held to their enumerated subject matter (all capable of broad definition). From the 1940s, this interpretive method combined with expansive use of the defence and taxation powers, enabled the Commonwealth to begin dominating the federal system in ways that certainly cured many of the uncertainties of the early post-Federation period, and which many regarded as necessary if not vital if Australia was to build the type of integrated, national industrial-era economy desired in the 1950s–1960s. The ascendancy of unitary values in this process is well recognised, even if also lamented by many, as captured in 1954 by the economist S.J. Butlin:

> [I]n most, but not quite all, functions of government we have an effective unification within a nominal federalism … . To deplore the departures from what the Founding Fathers designed is perfectly legitimate; to see dangers of centralisation and overgovernment in trends away from … federalism may be completely justified. But it is not sensible to believe that it is practical politics to secure in this country a reversion towards federalism and less of the near unitary state we have reached. The clock will not go backwards.[25]

The clock has certainly not gone backwards since 1954. Australia's species of 'federalism via double unitary centralism' has led to a uniquely centralised form of constitutional system, especially in its structure of public finance. In 1999 the introduction of a New Tax System was rationalised and defended on the basis it would deliver all the proceeds of the federally-collected Goods & Services Tax (GST) to the states. However this only extended the previous 'vertical fiscal imbalance', as noted by Canadian political economist Stanley L. Winer's query about fiscal centralization being 'so pronounced in Australia that one is tempted to ask if an initial constitutional division of powers imposes any constraints at all on the actual effective assignment of policy instruments.'[26] In March–April 2005, the eventual realisation that state governments have no more enforceable constitutional right to the proceeds of the GST than to any other federally-collected taxes, has borne out the lone voices who earlier identified the GST as a 'stealth missile' for the states.[27] Constant arguments for the inherent virtues of uniform legislation in almost every area of public policy, and the need for this to be pursued by cooperative negotiation in the few areas where the Commonwealth cannot already achieve it by legislative or financial force, emphasise the extent to which Australia has, in many respects, a unitary system.

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[24] *Engineers' case* 1920, per Knox CJ, Isaacs, Rich and Starke JJ. *Amalgamated Society of Engineers v The Adelaide Steamship Company Limited and Others* (1920) 28 *Commonwealth Law Reports* 129.

[25] S.J. Butlin, 1954, quoted in W.G. McMinn, *A Constitutional History of Australia*, Melbourne, Oxford University Press, 1979, p. 169.

[26] S.L. Winer, *Political Economy in Federal States: Selected Essays*, Cheltenham, Eng., Edward Elgar, 2002, p. 96.

[27] A. Wood, 'Stealth missile for the States: the rise and rise of Federalism', in Waldren (ed.), *Future Tense: Australia Beyond Election 1998*, Sydney, Allen & Unwin, 1999, p. 215.

To fully understand these unitary trends, we still need to know where they came from. Clearly their ascendancy is not owed mainly, or particularly, to any subterranean victory of socialism through Labor's 'Unification' policy – many of the most important and longest periods of Commonwealth centralization and consolidation have been under supposedly 'federalism-friendly' Conservative governments. Nor does it any longer seem plausible that Labor's endorsement of Unification resulted primarily from its role as the major political group 'not a party to the original constitutional compact' of the 1890s, as widely believed even by Labor historians.

Figure 3. Provinces and territories of a unitary Australia

J.B. Steel, 1908–1913
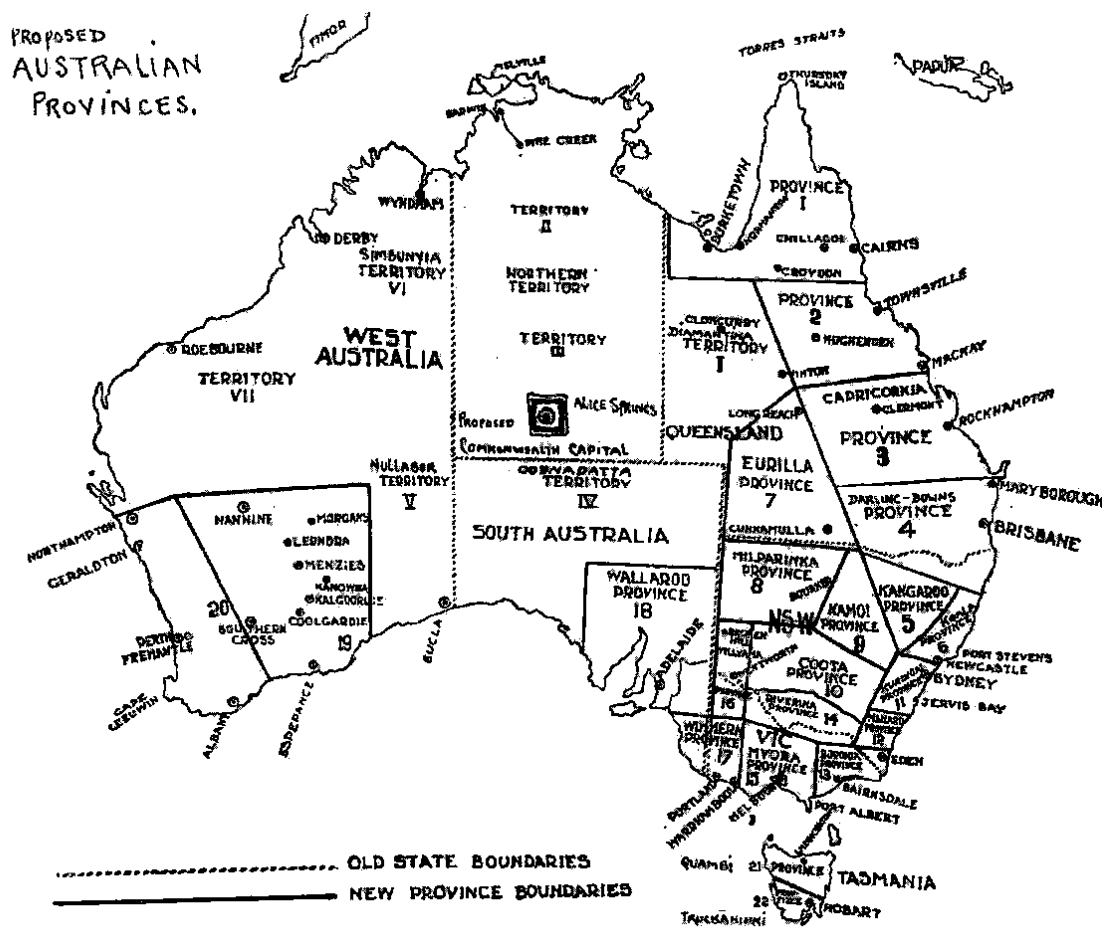
Source: John Boyd Steel in Albert Church, *Australian Unity*, Sydney, Australian Paper Co., [1913], p. 191.

At least three further bodies of historical evidence point to the entrenched nature of unitary values as a feature of the Australian popular-political psyche, well ahead of the events of the 1920s. The first is the evidence that neither Page nor Labor invented these alternative constitutional ideas, any more than federalist 'new state' ideas were invented at this time—rather they adopted them out of an existing populist debate in which the reputed qualities of 'unification' transcended the early left-right divide in national politics. The first 'homegrown' map of an alternative, post-colonial territorial structure under a unitary Australian constitution apparently surfaced in 1913, drawn by

an eclectic group of utopian Victorian-era nationalists led by John Boyd Steel (Figure 3).[28]

A second critical body of evidence comes from the fact that ideas about Unification did not simply postdate Federation, and all its early teething problems, but had circulated as a discrete alternative to Federation since before the latter occurred. Prominent examples include the 1894 plan of NSW premier George Dibbs,[29] while as early as 1879, Henry Parkes had also assumed that British unity was the right template for union, with separate jurisdictions amalgamated under one legislature.[30] Even if Dibbs' or Parkes' original ideas are dismissed as maverick or driven by short-term expedients, they clearly are not explained by socialism, Labor's role in Federation, nor any twentieth century economics and party-politics.

Nor is it necessarily safe to assume that these unitary theories were marginal to the theory or politics of Federation as it was ultimately achieved. A third body of evidence indicates that to a significant extent, the concept of Unification—entry into nationhood in the form of a unitary political system, with a national parliament to act in place of the Imperial one—underpinned and energised the concept of Federation itself. In many ways this is not surprising, since we know that popular political demand for unity must have been strong to force such independent colonial legislatures to surrender *any* of the autonomy that clearly had to be sacrificed in any union. However the key to understanding just how strongly the popular sentiment ran, seems to lie in the extent to which Australians and their leaders liked to liken the value of territorial union not simply to American precedent, but more directly to the notion of territorial union embedded in their vision of the United Kingdom. Britannia ruled because it had managed to consolidate itself into one nation out of four: England, Scotland, Ireland and Wales. And of course, Britain had done so not via a federal union, but a legislative unification in which just one parliament reigned supreme, representing all within a singular sovereignty so glorious in its conceptual ubiquity and indivisibility, as well as its geopolitical power and economic success.

According to Christie, the concepts of political unity that flowed from this vision of the Mother Country were positively reified in British colonies in the late nineteenth century.[31] In Australia, where the superiority of British political precedent was rarely subject to question,[32] we see this reification in the convictions regarding the cultural, religious, racial and political homogeneity of the colonies, that so explicitly underpinned arguments for union. We also see it in the language of British-style 'Unification' used by a range of leading unionists. For example, Western Australia's John Forrest argued Australia met the conditions for British-style unity so well there was simply no further need for 'imaginary lines drawn on a map, which in a great

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[28]   A. Winckel, 'Vision of unification: John Boyd Steel's Constitution', *New Federalist,* no. 6, 2000: 26–33.

[29]   L.F. Crisp, *Federation Fathers*, Carlton, Vic., Melbourne University Press, 1990, 68ff.

[30]   Ibid., pp. 49ff.

[31]   N.J. Christie, 'Evolution, Idealism and the Quest for Unity: Historians and the Federal Question 1880–1930', in B.W. Hodgins et al., eds, *Federalism in Canada and Australia: Historical Perspectives 1920–88*, Peterborough, Ontario, Trent University, 1989, p. 353.

[32]   B. Kingston, *Glad, Confident Morning: Oxford History of Australia Volume 3, 1860–1900,* Melbourne, Oxford University Press, 1993, pp. 57–9.

many instances are drawn haphazard'.[33] After editing the first official draft Constitution, Queensland premier Samuel Griffith publicly described the goal of this union as 'unification', a means of overcoming colonial divisions that were mostly 'imaginary lines'. For all his admiration of America, Tasmania's Andrew Inglis Clark, of loyalist Scottish descent, took as his primary territorial reference the 'entire and perfect Union' created when Scotland and England joined in 1707.[34] Popular cartoons depicted the 'happy federal family' not preserving but 'clearing away' colonial boundaries.[35] This public political logic, as opposed to that with which the constitutional text was negotiated, discloses some of the distinctly unitary underpinnings of Australia's national rationale. Another example, from four decades earlier at the time of responsible government, comes in the form of the Shoalhaven petition of 1853, calling for a national union in Australia on the basis that the 'great study and aim of all practical British Statesmen' had always been 'not only to have and preserve *one* British Constitution, but also to assimilate the local laws of England, Ireland, Scotland, and Wales …'.[36]

Finally, in tracking Australians' unitary predilections back to this somewhat sentimental, colonial-era ideal of British national unity, we find a further key feature common across our experience of unitary traditions. This is the extent to which models of Unification have been based not simply on the presumed benefits of national unity, but on *decentralised* unitary principles in which—notwithstanding the undivided sovereignty of the national parliament—much of the real work of government needed to be carried out by sub-national political authorities of various kinds. Such was the true nature, of course, of British rule in which local and county government had always still been taken for granted. In Australia's case, in fact, unification proposals such as Dibbs' 1894 plan, the Steel-era plans, and even the ALP 1919 plan presumed a written constitution in which the legislative power of the national parliament was indeed comprehensive, but in which the territories and powers of the sub-national units (typically provinces) were nevertheless still also constitutionally protected. The mysterious way in which Earl Page held to both unification and new states as a goal, therefore, also becomes less cryptic as we appreciate this intersection of principles. Just as Federation had unitary underpinnings, so too Australian ideas of Unification had already internalised many fundamentally federal principles.

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[33] *Western Australian Parliamentary Debates*, vol. ix, 1896: 850.

[34] T.C. Just, *Leading Facts connected with Federation: Compiled for the Information of the Tasmanian Delegates to the Australasian Federal Convention 1891*, Hobart, Government of Tasmania, Hobart, 1891, p. 34.

[35] *Quiz* (Adelaide), 1900.

[36] 'Constitution Bill: Petition from Shoalhaven', *New South Wales Legislative Council Papers* vol. 2, 1853: 3.

Figure 4. Regional states of a Renewed Commonwealth—

Chris Hurford (1998, 2004)
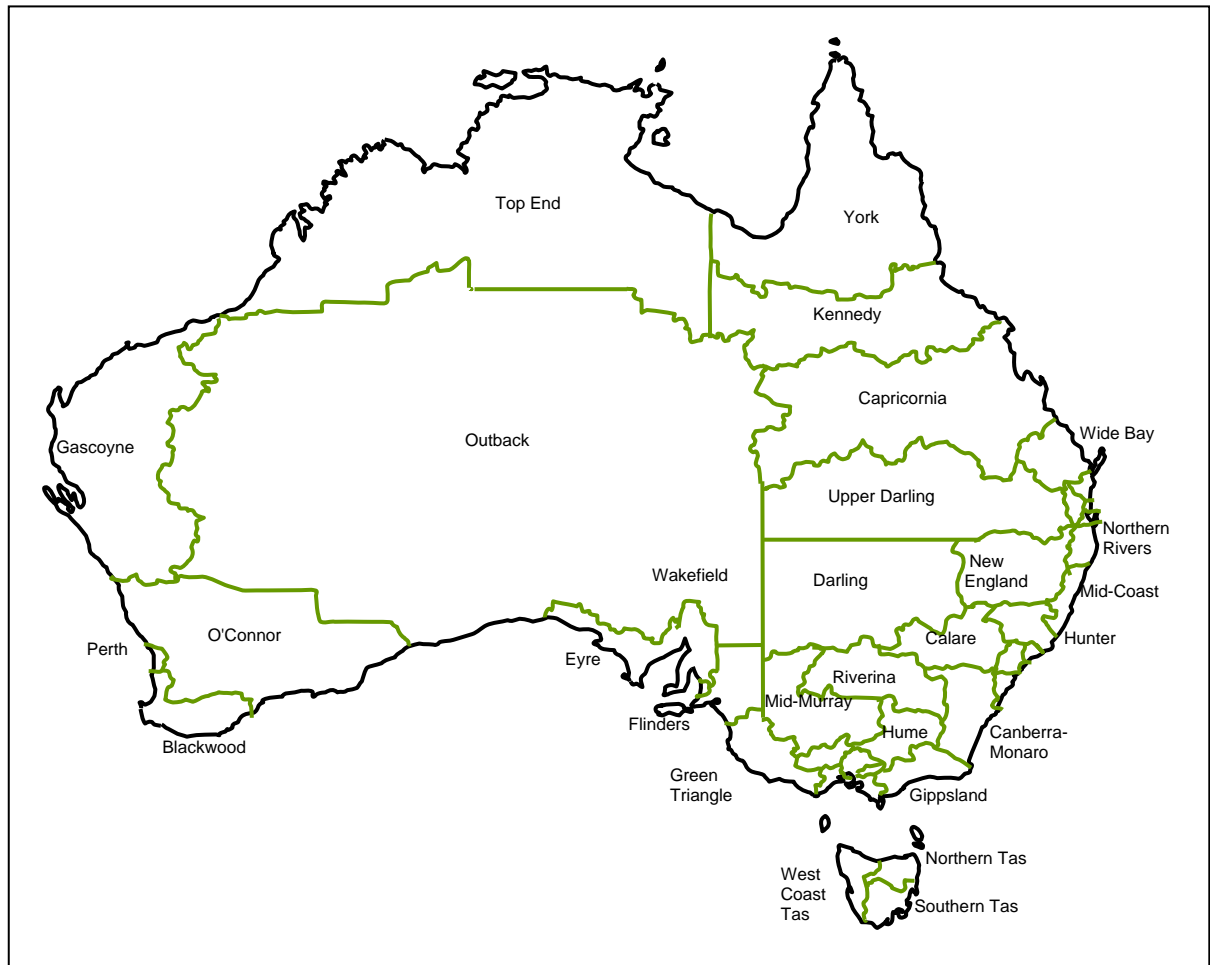
Source: C. Hurford, 'States, regions and citizenship: constitutional changes we need to make.' Weaving the Social Fabric Public Lecture Series, University of South Australia, 1998; and 'A republican federation of regions: reforming a wastefully governed Australia', in Hudson & Brown, *Restructuring Australia* op. cit.

If we leap back to the present day, we find further evidence of this overlapping in one of the more recent constitutional alternatives to emerge, advanced by former Labor Minister Chris Hurford (figure 4). Hurford's plan resonates strongly with unitary traditions, not least in its proposals for a similarly decentralised political structure. However this unitary-style plan is also presented explicitly as an endorsement of, and not derogation from, the principles of federalism, possibly for the first time ever in Australian public debate, and certainly since that crucial period in the 1920s when our present federal and unitary stereotypes began to ossify. One of the most visible and crucial features of our unitary traditions, therefore, is that they have sought to institutionalise both national and sub-national 'legal life', but to formally enlarge the former and to reconstitute the latter at a spatial level closer to that which we would today regard as 'the regional'. This is also the essence of federal theory as endorsed by Australian scholars, even if not Australian federal practice.

Do we have a constitutional tradition, then, in which we have sometimes combined the best of both these original veins of constitutional thought: our original decentralist

experiences of federalism, and our British-style unitary values? If so, we might also ask how this potential for overlap compares to the type of reconciliation we have achieved in practice in the present day. But before concluding with these questions, we have two further historical mysteries to resolve. When was the idea of a unitary constitutional structure *first* mooted as a coherent option for Australia as a continental entity? And in particular, if some Australian colonists quickly came to see the logic of a national constitutional structure using these principles, how confident are we that British colonial authorities didn't also do so?

Figure 5. Vetch's Map
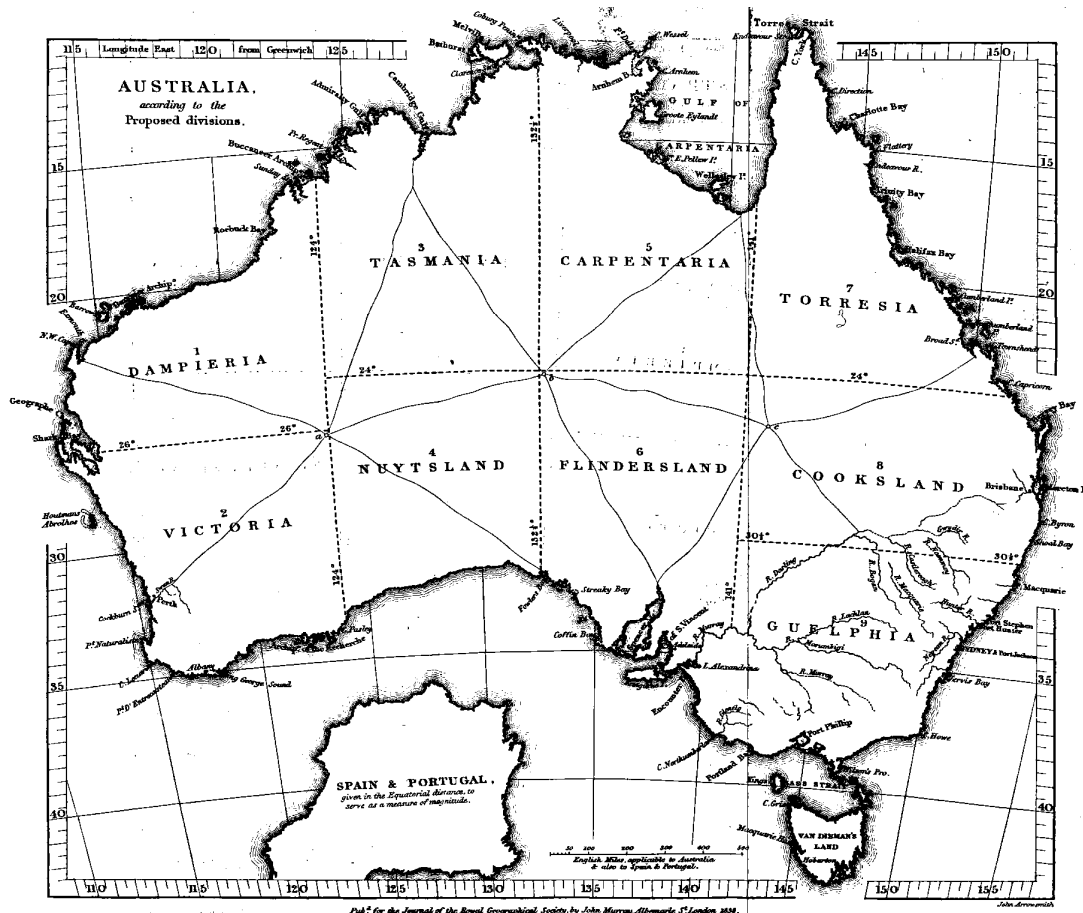
Source: James Vetch (Captain), 'Considerations on the political geography and geographical nomenclature of Australia', *Royal Geographical Society Journal*, vol. 8 1838: 157–169. My thanks to David Taylor and Nigel Rockliffe for drawing this map to my attention.

'The Constitution We Were Meant to Have': British unification policy 1830s–1840s

As indicated in earlier parts of this paper, Australians have often rooted the perceived dysfunctions of their federal system home to the British decisions resulting in a curious tapestry of colonial boundaries by the time of the *Australian Colonies Act 1861*. According to myth, the lop-sided nature of Australia's constitutional system can be blamed on the 'blind Whitehall clerk' supposedly responsible for these

misinformed subdivisions.[37] Such myths remain pervasive even among recognised political conservatives, despite also carrying the double-edged sword of a sense of destiny having passed out of our control—such as when Minister Tony Abbott reflects that it is 'important not to be sentimental about the States', 'accident as much as design' having made Australia a federation.[38] Yet we know the history has not been a matter of blind fate. Some of the most important divisions were fought out primarily in colonial political debate rather that originating in London. On a broader level, we also now know that official British thinking about the territorial dimensions of Australian constitutional development was not blind, but more comprehensive and oriented towards an eventual, inevitable nationhood. Figure 5 above provides a useful reminder of the reality that national blueprints were part of British thinking from an early stage.

We also know that British colonial authorities did not begin with a preference for a unitary (and centralised) political approach, only to be forced by local realities to grant the subdivisions that resulted in a federal system. Yet the fact remains that the process of federal-style subdivision that commenced in 1825 rapidly faltered. Three subdivisions occurred between 1825 and 1836, but the subdivision of Victoria was held up until 1851, and Queensland did not follow until 1859 – putting aside all the other demanded or possible subdivisions that never followed at all. This slowing and uncertainty all suggests a certain confusion, lack of interest or possible incompetence. Was colonial politics itself the only problem, in the form of resistance from local Sydney officialdom and the pastoralists dominating the fledgling New South Wales Legislative Council?

The answer to both the above questions—why the British plan of federalist subdivision faltered, and when did the first coherent plan for a unitary Australia appear—is the same. From the late 1830s, in a reverse trend to that commonly assumed, the experiences of the British colonial office led it to move away from federal-style subdivision as its first preference in constitutional design, *back* towards unitary theory. In this period the British colonial office developed the first coherent plan for an Australia with a constitution based on unitary principles. This 'constitution we were meant to have' was a decentralised unitary political structure capped off by a general (national) parliament but in which the bulk of government was effectively carried out by district (regional) councils. The new theory argued that while existing colonial groups should still be welded together into national dominions, colonisation and decentralisation need not be reliant directly on territorial subdivision, but rather pursued by devolving responsibility onto 'district councils' free of legislative trappings. On this plan, colonisation could be supported more flexibly and efficiently, while promoting a national legislative jurisdiction with an appropriate sense of unity, and allowing government to develop along something closer to a traditional British unitary lines. This plan was highly developed, pursued over a 10 year period through three phases of policy proposals. Only after these attempts were exhausted, in 1847, did the colonial office reluctantly re-endorse subdivision as a constitutional strategy, freeing the way for separation of Port Phillip.

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[37] See for example E.G. Whitlam, 'A new federalism', *Australian Quarterly,* vol. 43, no. 3, 1971: 6–17; and R.J.K. Chapman and M. Wood, *Australian Local Government: the Federal Dimension,* Sydney, Allen & Unwin, 1984, pp. 169–70.

[38] T. Abbott, 'A republican federation of regions: reforming a wastefully governed Australia', in Hudson and Brown, 2004, op. cit., p. 185.

The first step in understanding the rationale for this policy shift, and one of the reasons why it has gone under-detected in Australian history, is that it was galvanised not by events in Australia but in British North America. Whereas the 1820s saw considerable official interest in the colonial benefits of American federalism, by the late 1830s the problems of imitating a multi-colonial strategy in Canada were causing a major change of heart. As a single province, Canada was separated into two in 1791, but almost ever since, French-speaking Lower Canada had been a political problem. In 1836, the Gosford Commission was appointed to devise a new constitutional formula, but its mixed results were rendered out of date when armed revolts in Lower Canada in 1837–38 prompted a more decisive British reaction—the total reunification of the Canadas with a single colonial legislature, under the *Union Act* of 1840.[39] The Canada problem cemented the British consensus that it had been a mistake to separate the Canadas in the first place. Particularly when the problem was a territorially-discrete cultural minority, the experience provided a direct reminder that Britain's own constitution contained a territorial strategy for welding disparate populations into one powerful nation—the type of unitary legislature in which minorities could be represented but still contained by the national interest, the principle 'found perfectly efficacious in Great Britain'.[40]

In Australia, the resolution of the Canada problem was read not for its territorial implications, but for the principles of colonial responsible government set out in Durham's report. [41] In reality Durham's argument that a unified legislature was competent to exercise far greater power was part of the argument for territorial reunion, not necessarily a goal in itself.[42] Less directly relevant, and thus apparently less obvious to Australia's colonial leaders was the underlying shift in sympathy away from the idea of multiple colonies. Decentralisation remained an intrinsic goal of colonial development and the federal territorial path remained one alternative, but it was no longer preferred.

The alternative Australian plan, on more unitary principles, had already been evolving since 1836 in the mind of James Stephen, permanent under-secretary of the Colonial Office. The first of Stephen's three attempts to introduce his model began in 1838, and like the subsequent two attempts, it is most obviously tracked in the evidence of British attempts to introduce the cornerstone of any decentralised unitary system: a comprehensive system of local government. This was missing in all four Australian colonies, and was a cause of great consternation, partly because it provided no institutional platform for local development and partly because New South Wales' largely ex-convict free population was still considered politically immature to elect a full legislature. In response, Stephen negotiated a Constitution Bill for New South Wales which included a more powerful and representative legislature, but whose members were to be secondarily elected from a new, first tier of local councils. While

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[39]   G. Martin, *The Durham Report and British Policy,* Cambridge, Eng., Cambridge University Press, 1972; M. McKenna, *The Captive Republic: a History of Republicanism in Australia 1788–1996,* Melbourne, Cambridge University Press, 1996, p. 29.

[40]   Lord Durham 1839, quoted in Martin, op. cit., pp. 54–74; W. McMinn, op. cit., p. 36.

[41]   A.C.V. Melbourne, *Early Constitutional Development in Australia*, St Lucia, Qld, University of Queensland Press, 1963, pp. 261, 310–28, 383–6; McMinn, op. cit., pp. 31, 48; McKenna, op. cit., pp. 29–30.

[42]   Martin, op. cit., p. 69.

this Bill languished pending the decision on convict transportation,[43] the Colonial Office nevertheless began proceeding down this path in Western Australia, where Australia's first town trusts and councils were formed in 1838, and in Adelaide where, unlike in Sydney, a town council was incorporated a year later.

In the first phase, Stephen's strategy had mixed success. The Western Australians were struggling to survive and could barely support even the first local tier of government. The South Australians successfully established the first tier, but financial difficulties suspended debate about the second.[44] The NSW Bill remained in limbo, but in May 1840 the NSW Governor Sir George Gipps introduced a local government Bill into the still-appointed NSW legislature, then withdrew it amid conflict between those of non-convict and ex-convict background.[45] This led to Stephen's second and most major attempt. In the *NSW Constitution Act 1842*, the British parliament finally enacted a new constitution for a two-thirds elected Legislative Council, as is well known, but also a detailed system of District Councils as the new base unit of territorial organisation in the colonies. A multitude of council charters were issued and the system quickly showed signs of working at Port Phillip, but in the Sydney districts the attempt failed. By late 1845, all but one council was financially defunct, the new Legislative Council having used its power to deactivate the rating power on which the districts depended. The NSW legislators' mantra of 'no taxation without representation' now meant 'no taxation without responsible government', coupled with the obviously self-interested reasons why the major pastoralists opposed making any such payments.[46]

Not yet admitting defeat, the Colonial Office concluded in January 1846 that the mistake had been to break the legislature's electoral dependency on the 'municipal institutions designed to keep it in check'.[47] Sir George Gipps replied that there was now no alternative to separating the Port Phillip district as its own colony, even though this would offend the new policy of avoiding 'dismemberment of any colony which, like New South Wales, may be of a size hereafter to become a nation.'[48] Nevertheless, Stephen tried one more time. The third and final attempt saw Stephen revert to the 1838 plan and seek a secondary election nexus so that the existing legislatures became chosen by the District Councils. The 'Australian Charter' containing these principles was dispatched to the colonies by the secretary-of-state, Earl Grey, in July 1847, combining Stephen's scheme with Grey's new plans for a free-trade national union, and reclassifying each of the existing four colonies as 'provinces' whose secondarily-elected legislatures would then choose further delegates to a national assembly.[49] The end came when Grey abandoned the attempt in early 1848, after the Governor of New

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[43]   Melbourne, op. cit., p. 237.

[44]   D. Pike, *Paradise of Dissent: South Australia 1829–1857*, Melbourne, Melbourne University Press, 1957, pp. 39, 241.

[45]   Melbourne, op. cit., pp. 188–9, 231–56.

[46]   F.A. Larcombe, *The Development of Local Government in New South Wales*, Melbourne, Cheshire, 1961, p. 30; McMinn, op. cit., p. 37.

[47]   Stephen, quoted in Melbourne, op. cit., p. 319.

[48]   Gipps, quoted in Melbourne, op. cit., pp. 253, 337–8.

[49]   H.E. Egerton, *A Short History of British Colonial Policy,* London, Methuen, 1893, p. 284; J.M. Ward, *Earl Grey and the Australian Colonies 1846–1857,* Melbourne, Melbourne University Press, 1958, p. 23; Larcombe, op. cit., p. 12; Melbourne, op. cit., pp. 275–353; McMinn, op. cit., p. 92.

Zealand rejected an equivalent scheme for his colony sent seven months earlier, quickly followed by renewed Sydney attacks on the District Councils as 'cumbrous and expensive'.[50] Stephen retired from office, returning just once in 1850 to plead the case for District Councils as a member of the Privy Council Committee on Trade and Plantations, but the attempt was over.[51] In the *Australian Constitutions Act No. 2 1850*, the British Parliament gave up on the District Council alternative, and instead chose to finally allow the subdivision of NSW to produce Victoria, and the colonies to draft and submit their own separate constitutions.

Even the existence of the Stephen model has been poorly recognised in Australia, let alone its importance and underlying nature. Its various iterations are generally regarded as disparate attempts to introduce some scheme of local government into NSW; only a few even suggest the attempts were connected.[52] The dominant view, stated in Melbourne's *Early Constitutional Development*, is that the final Charter reflected Stephen's 'ideal system of colonial government', but that 1847 presented 'merely the first' chance for him to pursue it; earlier plans for local government are assessed as an unrelated 'sop' (1838) and the product of Gipps' genuine but 'academic' commitment to local institutions (1842).[53] Further, historical scrutiny of the 1847 Charter has been dominated by the assumption it was a 'federal' proposal, and therefore not possibly related to any alternative British constitutional theory—an assumption already questioned elsewhere.[54]

Revisiting Stephen's efforts in context, we find instead a coherent strategy for rebuilding Australian colonial structures on a constitutional path aligned less with federalism, and more with British unitary traditions. Figure 6 below sets out more clearly why this is the case. Although the Stephen model in its final iteration proposed a union of the four colonies, the cornerstone of the plan remained its attempt to reconstitute an alternative, non-federal base unit in the colonial political geography. This had multiple purposes, not least of which was to circumvent the need for more colonial subdivisions; and this fact, combined with the inevitably supreme role of the national or 'general' legislature once constituted, would have effectively confined the period of colonial subdivision to a relatively brief phase of Australia's development (indeed, less than three decades). Consistently with its preferred 'consolidation' policies in Canada and elsewhere, the official British intention was clearly to go as far as possible towards reunifying the original NSW into one colony, with one general legislature, while rolling out constituent District Councils as colonization proceeded. Under this model the four provinces (NSW, Van Dieman's Land, Western Australia and South Australia) may have continued to exist on paper, but would never have developed much functional or political importance in the constitutional structure.

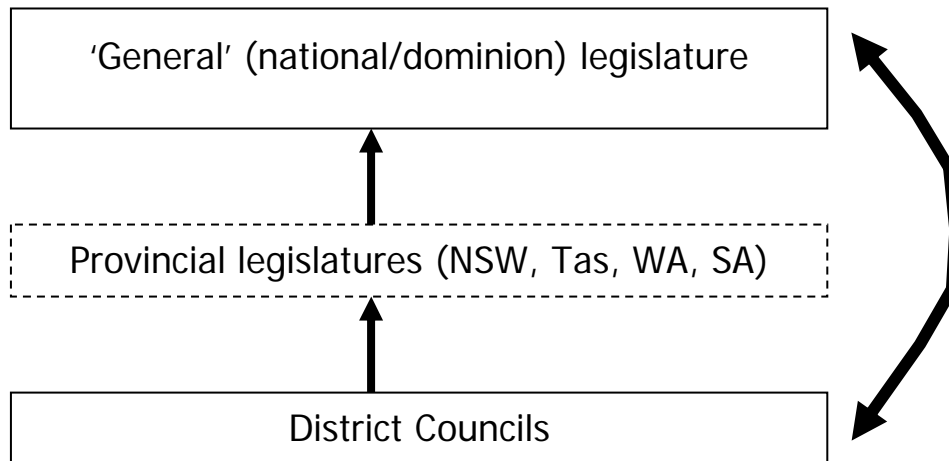[50]   Wentworth, quoted in Melbourne, op. cit., pp. 344–51.

[51]   Earl Grey, *The Colonial Policy of Lord John Russell's Administration,* London, Richard Bentley, 1853, pp. 317–23, 427–51.

[52]   Ward, op. cit., pp. 41–2; Larcombe, op. cit., pp. 25–6; McMinn, op. cit., p. 42.

[53]   Melbourne, op. cit., pp. 342–6, 232–6, 323.

[54]   Brown, 'Constitutional schizophrenia', op. cit., pp. 38, 50–51.

Figure 6. The Stephen Model

The failure of Stephen's model does not detract from its historical significance as the first truly national, but fundamentally unitary and decentralised constitutional plan for colonial Australia. Particularly in their 1842 iteration, the District Councils were destroyed by the resistance of Sydney leaders not because they could *not* work, as some have since assumed, but because it appeared they would probably work quite well, challenging the power of the existing legislators and fragmenting their demand for responsible government.[55] In principle, Sydney leaders recognised their constitutional legitimacy. James Macarthur, who had supported the original 1838 model, in 1841 gave further assurances that there could be 'no objection' to a strong system of local government if 'placed under the control of … a true legislature in the British sense of the word.'[56] It failed, in essence, because the horse had bolted, in two ways. The British authorities had already let the NSW pastoral elite develop too much power, backed by too much financial support within British politics itself, to institute an alternative political framework. Indeed in fighting to maximise its own position, the Sydney pastoral elite was of course now opposing both types of constitutional decentralisation, whether federal *or* unitary; but while this fed the Colonial Office's frustration, there was little ultimately that could be done about it. Similarly direct popular support for the Councils was limited, because communities such as Port Phillip and Moreton Bay—while they adopted the councils—already also had their own concept of greater regional self-government in the form of the colonial separation granted to Van Dieman's Land and South Australia. In the end, colonial policymakers could move neither forward nor back, and were forced to leave the problems of constitution-making to the colonists of the 1850s and beyond without ever resolving these first half-federal, then half-unitary efforts.

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[55]   Melbourne, op. cit., pp. 291, 297–301; McMinn, op. cit., p. 38.

[56]   Macarthur, quoted in Melbourne, pp. 258–9.

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Conclusions: Unitary Theory and Constitutional Debate Today

The rediscovery of Australia's first truly comprehensive constitutional blueprint, as well as some of the features of our decentralised unitary traditions more broadly, pose both positive and negative lessons for the present day.

The fact that unitary traditions are indeed relevant in the present day is fairly obvious, and not simply in the form of continuing advocacy in favour of constitutional reform or abolition of the states. The legacy of a constitutional system whose base unitary and federal values are inadequately reconciled is with us every day, in a variety of real policy senses: from continuing doubts over the ability of institutional frameworks to transit towards regional environmental and economic sustainability, to arguments over the respective role of federal and state governments in the roll-out of localised services such as health and education, to the renewed imperative for a national and not state-based system of industrial relations, to serious concerns over public infrastructure planning and spending, to pinnacle arguments over collection and distribution of the GST. The question is not whether the Australian federal system is in imminent danger of collapse, as much as whether we might possibly adopt a more informed and intelligent approach to its evolution, in the face of the particular economic, social and environmental challenges that stretch before us in the global era.

A first positive lesson of our earlier unitary traditions, alongside those of our first federal ones, is that whatever their differences, both were distinctive for their strong common focus on how nationalism might be married with decentralization. The problem this highlights is that our dominant understandings of our federal system today contain almost no coherent theory of how public power and resources might be more effectively devolved to the local and regional levels where they are most clearly needed. As reflected at the outset in Figure 1, the third tradition in our 'territorial trio', dominating today, is a centralised form of federalism probably unique to Australia, in which two unitary levels of government—state and national—continue to conflict as much as they agree on their respective roles, with at best only occasional indirect political gains at local and regional levels. Even when not keen to ponder this problem too deeply, Prime Minister John Howard recognises and endorses the basic position of those who favour some more lasting, structural solution:

> The dispersal of power that a federal system promotes, together with its potential to deliver services closer to peoples' needs, are threads of our political inheritance that I have always valued and respected. The trouble is that, in practice, there is often less to these arguments than meets the eye. For instance, the view that State governments have benign decentralist tendencies has always been something of a myth … . [57]

In short, despite the richness of our political heritage and diversity of imported and adapted traditions, Australia has not succeeded in capturing the best of each of the two major territorial traditions in our history. While federal and unitary traditions do inevitably now coexist in our constitutional structures in a variety of ways, such as the 'dual constitutional culture' built into the design of parliamentary and executive institutions,[58] it is another thing to regard these as fully reconciled in a particularly intelligent or satisfactory fashion. Rather we are confronted with the evidence that in

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[57]   J. Howard, '*Reflections on Australian Federalism*', op. cit.

[58]   Galligan, 1995, op. cit., pp. 46–51.

territorial or spatial terms, our mixture of constitutional design and adaptation has mainly succeeded in institutionalizing the worst of each vein of thought. Federalism has given us divided sovereignty, but locked in a spatial strategy in which this has limited practical benefits. Unitary traditions have given us nationhood and a platform for strong government in the Diceyan parliamentary tradition, but the decentralised elements of our unitary traditions have been marginalised and forgotten. No wonder our popular political psyche continues to hold such apparently enduring potential for contemplating the benefits of significant change.

Is change in the wind? Again, the signs are both positive and negative. One of the most promising indications of a revival of decentralised unitary values lies in the next likely phase of developments in Australian local government. Plans to bring local government yet further into the national constitutional system through the mechanisms of public finance, so that all three tiers have an agreed framework by which more federally-collected revenues might be allocated directly to locally-delivered public services, resonate favourably with the Stephen model and the decentralised unitary plans that came thereafter.[59] Similar hope might be held for developments in regional governance more generally, since so many federal and state programs are once again oriented—with the acceptance of each—to policy development and implementation at the regional level. United around 'triple bottom line' goals of ecological, economic and social sustainability, the sheer dollar value of such programs calls for a substantial reconsideration of the most capable and legitimate institutional platform for their long-term delivery, if only we can learn the lessons of a history in which the least sustainable aspect of such programs has usually been the programs themselves.[60] Without some serious grappling with the constitutional and legislative basis for overhauled local and regional governance structures, the great and logical fear is that such initiatives will again end up as short-term administrative exercises that wither on the vine, or fall victim to changing party-political agendas, even though we know their philosophy and urgency to be more enduring and long-term.

The final key, then, is political imagination—a willingness to re-interrogate our past for its positive lessons about possible reconciliation of our constitutional traditions, and a preparedness to articulate and pursue a constitutional vision that appeals to values above and beyond those typically targeted in three-year electoral cycles. Even when relatively satisfied with the status quo, many Australians seem capable of imagining yet better ways of governing their nation, and have history on their side when it comes to judgments about this exercise's importance and validity. What will serve us even better is an enlarged public discourse about how we expect our political systems to need to work and look in another 50 or 100 or 150 years, not because we can know with any precision what will then be needed, but because we know that in any event, our institutions cannot and will not ever stand still. Why admit

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[59]   House of Representatives Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: a Fair Share for Responsible Local Government,* Canberra, Australian Government Publishing Service, 2003.

[60]   A.J. Brown, 'Regionalism and Regional Governance in Australia', in R. Eversole and J. Martin, eds, *Participation and Governance in Regional Development: Perspectives from Australia,* Aldershot, Ashgate [forthcoming].

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constitutional defeat, when we have such rich traditions of constitutional debate to inform our collective destiny?

Question — This week Dr John Stone supported the concept of the unitary independence of the states as being the greatest bulwark that we have for the preservation of democracy: opposition to the Federal Government, balanced and continuous. Could you comment?

AJ Brown — I'd like to comment by saying that there is very little evidence that the states have done too much as bastions of democracy for quite a long period of time. In fact, if you look at the evidence as to those things which have acted as brakes on the power of the federal government to act in a unilateral way over the last quarter century, for example, it's very difficult to find any significant political institution in our system of checks and balances that has had that effect, other than the Australian Senate. There has been a reason for that, which has been that the government of the day hasn't held a majority in the Senate. Of course that is all about to change for the first time in some time.

When one stands back and looks at the different institutions which are supposed to act as checks and balances of that kind, the High Court because of its history of interpretation hasn't had that role in terms of many fundamentals, although it has done it a bit in terms of implied rights to freedom of communication and other things that were fairly unexpected. There is very little empirical evidence to suggest that the states really have had that benefit. Most people come back to the fundamental position that they are better than nothing. We wouldn't want it all in Canberra would we? Even Canberrans wouldn't want it all in Canberra. The problem is that it is better than nothing; but is that something that we need to settle for? The economic and environmental question is starting to become: is the fact that it is better than nothing something that we can afford to carry on with in this day and age of globalisation and all the pressures that are upon this country? Former Senator John Stone is of course entitled to his views.

Question — At one point in your lecture you mentioned the possibility that there may have been division on the basis of sustainability, and also you mentioned that the lines were relatively arbitrarily drawn in relation to the demarcation of states as they exist at the moment. Had any real consideration been given to the concept of sustainability as a point on which state borders should be drawn? If we look at things as they stand at the moment, there is quite a disparity between the resources which are available. Not only the resources, but the population distribution is perhaps dependent on the availability of resources. Would things have looked substantially different had such an approach been used?

AJ Brown — I think the answer would be yes. It would be completely different. The answer to the first part of your question is that sustainability as such was never a factor in the way in which boundaries played out. There is a very good history that will

hopefully be published soon by David Taylor from the NSW Department of Lands on the detailed history of Australian state boundaries, which will be invaluable because every boundary has a different history, especially because they were drawn at different times. In very few cases were they drawn entirely arbitrarily, and that's a myth that we can well afford to do away with, because it doesn't help our understanding of how they did come about.

For example, the concept that the Victorian and New South Wales boundary should be on the River Murray, which is something that we now regard as being ridiculous and one of the greatest sources of conflict and environmental problems, was in fact perfectly rational at the time. If you were going to declare a boundary which was partly to delineate where pastoralists should stop, whether they were still in NSW or whether they had passed into Victoria, then what did you use? You weren't going to be able to get surveyors out there onto the ground to draw a big white line. So for functional economic purposes at the time, you needed to use something which people knew was a boundary when they came to it, and a river was a perfect thing.
Similarly, in the case of other boundaries, the Queensland-NSW boundary was intensely debated over a long period of time and almost everybody had a view and expressed that view, and they were all processed and argy-bargied in the course of figuring out where the boundaries should go. It was by no means arbitrary, and it was largely determined by domestic colonial politics within Australia. The colonial office had very little to do with it.

The question is, if we accept the principle that sustainability should be a factor in the way in which we draw these boundaries, we are basically acknowledging that we've got a number of policy frameworks which have administrative needs, and different territorial needs, and how do we draw those? If we drew regional boundaries or provincial boundaries based on the fact that there should be one for every bio-geographic region of Australia, that probably wouldn't work too well either, because a lot of those bio-geographic regions don't necessarily have a lot of people in them. We're drawing lines for people, we're drawing lines for human communities, as well as for the sustainability of the resources upon which we all depend, and also those on which we don't depend. So we come back to a fundamentally political question: what recognition of political communities is viable and necessary and in our interests, as much as what framework might serve all these different policy purposes?

We will eventually evolve, and we are already evolving into a new political structure. These things don't stay static. The same way that the High Court changed its interpretative method and changed the balance of power, things change today. The roll-out of natural resource management agencies under the Natural Heritage Trust Plan; the sort of framework that New South Wales has had for highly autonomous area health boards, whether or not people think they worked, is something which is only likely to happen more nationally. It's highly likely that eventually Brisbane City Council will end up running hospitals in Queensland. If the Tasmanian government can run hospitals, why can't the Brisbane City Council run hospitals? Why can't Newcastle City Council run a hospital? These things are all going to change, and the critical thing will be the point at which we get to a stage where we reach a consensus that the time has come to consolidate our constitution around what is a changed political practice. The question is whether we want to take a really long time to get there, with lots of conflict and blundering around, or to what extent it's worth saying,

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let's do a bit of theorising and let's have a coherent plan for how this might unfold and see whether we can't build consensus around that plan, rather than putting ourselves through a very inefficient and expensive process over the next 100 or 200 years.

Question — You mentioned you were going to come back to the question of the difference between regional government under a unitary system and regional government under a federal system. It seems to me that, for example, the Stephen plan was essentially federal, in that the local area was going to be prime and in fact the national government was going to be very much indirectly elected. It's almost a confederal system as distinct from a unitary system. The question I want to ask is, when you talk about where we might go in the future, which direction are you looking at? Are we talking about a unitary system where sub-national governments are the creatures of the national government and can be abolished and changed, as Kennett did in Victoria with local government, or are we talking about a system where the rights of the lower levels of governments are built into the constitution and therefore always must be taken into account by the national government? That seems to me the crucial difference. We've tended in Australia, as you've rightly pointed out, to mix up the geographical question with the constitutional structure question, and they are in fact separate questions. A final comment: given that Britain is going away from the unitary system with devolution of Scotland and Wales, how does that affect the British-ness of our system?

AJ Brown — I was talking to a recent British expatriate who has just joined our university and is an expert in this area. He pointed out that what often happens in the colonies is that they take on values that they believe define the culture and the political system of their home country, and preserve them for a lot longer than they are preserved back in the home country. Australians have done this over time in an infinite variety of ways which are quite entertaining, and this is one of them. As you rightly point out, in fact the British passion for unity, the imperative of having a sovereign parliament where the English needed to be able to maintain control over the Scottish, the Irish and the Welsh, ended when the Irish problem was settled by Ireland becoming independent. It was no longer the political creed that it had been for the previous century or so, and since then Britain has been unfolding in different ways. With the reforms in the 1990s and the re-instatement of the Scottish Parliament and so on, we actually see something that is quite different. There is really no historical imperative, if one wants to be British, to hang onto something which has that particular constitutional passion.

The other question you raised is spot-on as well. One of the fascinating things about most of the major proposals for a unitary national system of government in Australia that would involve abolishing the states, is that they have still presumed the existence of a written constitution in which the existence of those provinces or whatever would be constitutionally guaranteed and that they would usually end up having far stronger powers than local government and often stronger powers than state governments over quite a lot of things. They would actually be protected, including the right to raise revenue and all sorts of things. When you break them down and see what's in them, many of our proposals for a unitary constitutional system have ended up looking a fair bit more federal than our existing federal constitutional system. That is a fact that has largely been lost in Australian political debate, especially once the cold war bit and we had a Labor government which was associated with a unificationist platform that

looked like the Soviet Socialist Republic, and then conservative parties who were happy to stick with the federal system. I think the answer is that what we have called the unitary option, once we have started to devise and reinvent it in our own language, still relies fundamentally on the best parts of federal principle, not the worst parts, and the natural constitutional psyche of Australians is capable of taking the best from both traditions. But we don't have that in the current system.

Question — Why didn't we have the republic of the Riverina? We can throw a stone over to the Murrumbidgee to where it was. They were stopped from having a republic of the Riverina, and its capital city was Albury. Would you like to comment on the republic of the Riverina?

AJ Brown — I don't think anyone was ever going to create a sovereign independent nation of the Riverina, but the proposals that the Riverina be its own colony or own state have occurred through history numerous times and have been extremely strong. There were two interesting things about that scenario. They firmly sit within the new state tradition, a very strong active decentralist federal tradition, and the Riverina would have been a very logical state. That's one of the reasons why it developed its own name. Dunmore Lang translated it from Spanish because there was a state of South America that was called Entre Rios, because it defined an area between two big rivers. He got the name from them and converted it to Riverina.

The interesting thing about the Riverina is that most of the stalwart supporters for the Riverina new state came around by the 1930s to saying: this has been a big furphy. What we need is a proper British system of local government. What we need is a constitutional system where we have greater local government, so we have a Riverina local government in effect, or a number of more powerful councils and that local government is actually beefed up or built up. If we had that, the state's relevance would continue to wither away and we would end up with a two-tiered system of government in effect, where you have the two important levels, British style: a national parliament and something closer to a local government. The Riverina new state proposals died out because most of its leaders came around to that line of thinking. It's a very interesting example of how these ideas have interplayed in the field in different parts of Australia.

The Court Politics of the Blair Presidency[*]

Rod Rhodes

Introduction

This talk focuses on the debate about the 'Blair Presidency'. I ask the deceptively simple question: 'How do we understand the relationship between the prime minister, ministers and the rest of Westminster and Whitehall?'

The lecture covers five topics. First, I document briefly the long-standing claim that post-war Britain witnessed expanding prime ministerial power and the growth of the UK presidency. Second, I turn to the most recent manifestation of this trend—the tales of a Blair Presidency. This story makes three main claims: that there has been a centralisation of coordination, a pluralisation of advice, and the personalisation of elections. I compare the several stories and show there is much inconsistency and contradiction. Third, I explore the governance paradox—even as people tell tales of a Blair presidency, they recount also stories of British governance that portray it as fragmented and multipolar. Fourth, I argue this paradox reveals the distorting influence that the Westminster Model still exerts on many accounts of British politics. Finally, I conclude that Blair is locked into the court politics of Westminster and Whitehall and to complex patterns of domestic and international dependence.

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The story so far

Presidential tales are not told of all prime ministers. Sweeping judgements about the standing of prime ministers invite disagreement but many would agree with most of Peter Hennessy's[1] judgements on post-war prime ministers. He treats Clement Attlee and Margaret Thatcher as the two great 'weather makers'. Edward Heath and Tony Blair are seen as 'system-shifters'. Winston Churchill and James Callaghan are seen as 'seasoned copers'. Harold Macmillan and Harold Wilson fall, into the 'promise unfulfilled' category, although post-Iraq many might move Blair to this box.[2] Alec Douglas-Home is a 'punctuation mark', John Major was 'overwhelmed' and Anthony Eden was a 'catastrophe'. So, of the twelve post-war prime ministers, only three have attracted the epithet 'presidential'—Harold Wilson (1964–70), Margaret Thatcher (1979–90) and Tony Blair (1997 to date), and with all of these three, judgements about their presidentialism varied while they were in office. This brief survey focuses on these three prime ministers.

When George Brown, Foreign Secretary, resigned from Wilson's government on 15 March 1968, he claimed that he 'resigned as a matter of fundamental principle, because it seemed to me that the Prime Minister … was introducing a 'presidential' system in to the running of the government that is wholly alien to the British constitutional system.'[3] Later memoirs and diaries lend support to Brown's view. For example, Richard Neustadt thought that Wilson 'means to take all decisions into his own hands'; he said Wilson 'wants not only to make ultimate decisions but to pass issues through his own mind, sitting at the centre of a brains trust … on the model, he says, of JFK.'[4] Denis Healey, who was Wilson's long serving Minister of Defence and then Chancellor of the Exchequer, comments 'this was all true', and 'no Prime Minister ever interfered so much in the work of his colleagues.'[5]

Of course, there were differing views about Wilson. On 7 October 1969 Tony Benn was invited to join Wilson's inner cabinet.[6] By 1 November 1974, Wilson was demanding written assurances that Benn accept collective responsibility—'the whole thing got very bitter and unpleasant.'[7] By 1 October 1976, Benn was writing 'thank god that man has gone.'[8] His view in 1979 was that 'the centralisation of power into the hands of one man … amounts to a system of personal rule.'[9]

[1]   Peter Hennessy, *The Prime Ministers*, London, Penguin, 2000, chapter 19.

[2]   P. Riddell, *The Unfulfilled Prime Minister: Tony Blair and the End of Optimism*, London, Politicos, 2005; and earlier, in 'Blair as Prime Minister' in A. Seldon (ed.) *The Blair Effect*, London, Little, Brown, 2001.

[3]   Lord George Brown, *In My Way*, Harmondsworth, Eng., Penguin, 1972, p. 161.

[4]   Cited in D. Healey, *The Time of My Life*, Harmondsworth, Eng., Penguin, 1990, p. 330.

[5]   Ibid., p. 332. This judgement was confirmed by Wilson's best biographer, Ben Pimlott, in *Harold Wilson,* London, Harper Collins, 1992, p. 563. See also Tony Benn, *Office Without Power. Diaries 1968–72*, London, Arrow, 1989, p. 2. Tony Benn was Postmaster-General 1964–66, Minister of Technology 1966–70, Secretary of State for Industry 1974–75, and Energy Secretary 1975–79.

[6]   Benn, 1989, op. cit., p. 206.

[7]   Tony Benn, *Against the Tide. Diaries 1973–76,* London, Arrow, 1990, pp. 254–55.

[8]   Ibid., p. 617.

[9]   Tony Benn, *Conflicts of Interest: Diaries 1977–80,* London, Hutchinson, 1990, p. 222.

If George Brown and Tony Benn complained about presidential tendencies, then Barbara Castle and Richard Crossman were criticising Wilson's style for lacking clear strategic direction—he was not presidential enough.[10] Wilson[11] refused to entertain the ideas of prime ministerial government. When he became prime minister for a second time in 1974 he claimed 'there would this time be no "presidential nonsense".[12] There were no cries of presidentialism during Wilson's second term. As his biographer Ben Pimlott concludes:

> 'He was in many ways a civil servants' Prime Minister,' says Peter Shore. 'He liked advice coming to him from different angles,' says an ex-official. Both were true. He was not, as Marcia [Williams] and other members of the political staff complained, swamped by Whitehall advice; neither was he, as some officials and politicians, and hence many journalists, often alleged, the creature of the kitchen cabinet, cut off from the wider world. Playing one off against another, he often frustrated both: and remained his own man. [13]

In short, opinions on Wilson's presidentialism varied between individuals, over time and with the personal standing of the minister with the prime minister.

The record is just as varied for Margaret Thatcher. Reg Prentice[14] concluded that 'the old idea that the Prime Minister was the first among equals has given way, step by step, towards a more presidential situation.'[15] As Kenneth Baker, Secretary of State for Education, observed, she relished the soubriquet 'The Iron Lady'.[16] Three of her senior colleagues resigned ostensibly because of the way she ran Cabinet. Michael Heseltine, Secretary of State for Defence, resigned over the Westland Affair, claiming he had been denied the opportunity to put his case to Cabinet.[17] Sir Geoffrey Howe, Foreign Secretary, criticised the way she ran her government, especially her 'roman intemperance' on European Monetary Union, which led her to criticise publicly her own government's policy. His cricket analogy has passed into parliamentary folklore: 'it is rather like sending in your opening batsman to the crease only for them to find,

[10]   Barbara Castle, *The Castle Diaries 1964–70,* London, Weidenfeld and Nicholson, 1984, p. 640; Richard Crossman, *The Diaries of a Cabinet Minister. Volume 1, Minister of Housing.* London, Cape, 1975, p. 582.

[11]   H. Wilson, *The Governance of Britain,* London, Sphere, 1977, pp. 12–24.

[12]   Cited in B.T. Donoughue, *Prime Minister. The Conduct of Policy under Harold Wilson & James Callaghan,* London, Cape, 1987, p. 47; see also Barbara Castle, *Fighting All the Way*, London, Macmillan, 1993, p. 452, and P. Walker, *The Cabinet,* London, Cape, 1970, p. 96.

[13]   Pimlott, op. cit., p. 347.

[14]   Under Harold Wilson, Reg Prentice was Minister for Education and Science (1964–6, 1974–5), Public Buildings and Works (1966–7), and Overseas Development (1967–9, 1975–6). In 1977, he defected to the Conservatives and served under Margaret Thatcher as a junior social security minister (1979–81).

[15]   Cited in H. Young and A. Sloman, *The Thatcher Phenomenon*, London, BBC, 1986, pp. 45–6.

[16]   Kenneth Baker, *The Turbulent Years. My Life in Politics*, London, Faber & Faber, 1993, p. 270.

[17]   Michael Heseltine, *Life in the Jungle. My Autobiography*, London, Hodder & Stoughton, 2000, p. 312.

the moment the first balls are bowled, that their bats have been broken before the game by the team captain.'[18]

Nigel Lawson, Chancellor of the Exchequer, was no more impressed.[19] He complained vigorously and often that there were two government economic policies, that of the Chancellor and that of the prime minister and her personal economic adviser. Such publicly expressed disagreements over the exchange rate were undermining both him and the government's policy, so he resigned. Perhaps Francis Pym, Foreign Secretary during the Falklands War, was most trenchant: 'I object to a system that deliberately pits Downing Street against individual Departments, breeds resentment amongst Ministers and Civil Servants and turns the Prime Minister into a President.'[20]

Other ministers disagreed. Peter Walker reports how Thatcher appointed him as Secretary of State for Wales knowing he favoured economic intervention and higher public spending.[21] She thought he was 'awkward', and she knew he would not tackle the Welsh economy as she would tackle it, but she backed him fully. Peter Carrington admired the way she allowed her 'highly intelligent head' to rule her 'natural impulses'.[22] Nicholas Ridley held several Cabinet posts. While acknowledging that Heseltine, Lawson and Howe all resigned because of the way she conducted Cabinet, he professed: 'I … have no complains to make about the way Margaret Thatcher ran her Cabinet.' He also observes that, in 1979, 'in many respects it was Willie Whitelaw's Cabinet which she first appointed.'[23] Only after the Falkland's conflict and the 1983 election victory was the Cabinet truly hers.

Again, in her later years, she lost the Cabinet to dramatic effect because when she needed their support in the leadership contest of November 1990, it was not forthcoming. Her pre-eminence was contingent on the support of the public, the parliamentary party, and the cabinet. It was not forthcoming. So, again, beliefs about prime ministerial power varied between individuals, over time, and with the personal standing of the minister with the prime minister.

Hennessy reports a conversation with one of Heseltine, Lawson or Howe:

> I talked about the coming Blair premiership … and agreed it would be on the command model. 'This would only store up trouble for him', I said, 'Yes,' replied X, adding ruefully, 'but you can get away with it for a very long time.'[24]

Given the chequered history of his presidential predecessors, I now turn to the questions of whether, and for how long, Blair 'can get away with it'.

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[18]   G. Howe, *Conflict of Loyalty*, London, Macmillan, 1994, pp. 661, 666.

[19]   N. Lawson, *The View from No. 11,* London, Bantam Press, 1992, pp. 955–56, 660–61.

[20]   F. Pym, *The Politics of Consent,* London, Hamish Hamilton, 1984, p. 17.

[21]   Peter Walker, *Staying Power,* London, Bloomsbury, 1991, pp. 202–03.

[22]   Lord Peter Carrington, *Reflect on Things Past. The Memoirs of Lord Carrington,* London, Collins, 1988, p. 276.

[23]   N. Ridley, *My Style of Government,* London, Hutchinson, 1991, p. 30.

[24]   P. Hennessy, 'The Blair style of government', *Government and Opposition*, vol. 33, no.1, 1998: 3–20.

Presidential Tales

Journalists have repeatedly described Tony Blair as presidential from the moment of his election as Prime Minister. In Britain, *The Independent* ran an article by Anthony Bevins entitled 'Blair Goes Presidential' on 6 May 1997. In the US, *The Washington Post* ran one by Dan Balz entitled 'Britain's Prime Minister Assumes Presidential Air' on 2 October 1997.[25] Political scientists too argue Blair has manipulated his personal resources and expanded his institutional power to achieve a degree of predominance unmatched in British history.[26] For my purposes the key point is that such views are shared by insiders. At the start, Jonathan Powell (No. 10 chief of staff) had famously warned senior civil servants to expect 'a change from a feudal system of barons to a more Napoleonic system'.[27] Blair's No. 10 aides claim:

> Cabinet died years ago. It hardly works anywhere else in the world today. It is now a matter of strong leadership at the centre and creating structures and having people do it. I suppose we want to replace the Department barons with a Bonapartist system.[28]

Blair's ministerial critics do not demur. Mo Mowlam, former Secretary of State for Northern Ireland, claims 'more and more decisions were being taken at No. 10 without consultation with the relevant Minister or Secretary of State.' She criticises 'the centralising tendency and arrogance of No. 10', especially 'their lack of inclusiveness of the cabinet, MPs, party members and the unions leads to bad decisions. Try as I might, I got no indication that their views or behaviour would change.'[29] Similarly, Clare Short talks of 'the concentration of power in No. 10' criticising Blair's 'informal decision making style' with 'his personal entourage of advisers' because it 'enhances the personal power of the Prime Minister and reduces the quality of decision-making'.[30]

However, 'President Blair' asserts:

> To my certain knowledge that has been said about virtually every administration in history that had a sense of direction. I remember that people said that back in the Eighties about Thatcher. Of course you have to have Cabinet Government.[31]

So, I assess the three main claims made to support the contention that Blair has transformed his role as prime minister into that of a president; namely, that there has

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[25]   See also A. Rawnsley, *Servants of the People. The Inside Story of New Labour,* rev ed., London, Penguin, 2001, pp. 292–4, 379.

[26]   For example M. Foley, G. Allen, R. Heffernan, P. Hennessy, D. Kavanagh and A. Seldon, A. Mughan, and S. Pryce. The most coruscating critic of all things presidential is George Jones.

[27]   *Daily Telegraph,* 8 December 2001, cited in A. Seldon, *Blair,* London, Free Press, 2004, p. 437.

Quoted in D. Kavanagh and A. Seldon, *The Powers Behind the Prime Minister. The Hidden Influence of Number Ten*, London, Harper Collins, 2000, p. 291.

M. Mowlam, *Momentum: the Struggle for Peace, Politics, and the People*, London, Hodder and Stoughton, 2002, pp. 356, 361.

[30]   C. Short, *An Honourable Deception? New Labour, Iraq and the Misuse of Power*, London, Free Press, 2004, pp. 272, 278.

[31]   *Observer*, 23 November 1997.

been a centralisation of coordination, a pluralisation of advice, and the personalisation of elections.

(i) Centralisation

Structural changes at No. 10 and the Cabinet Office are the way in which Blair has strengthened the centre of government. The Policy Unit mutated into the Policy Directorate when it merged with the Prime Minister's Private Office. From day one Blair surrounded himself with a network of special advisers. Their numbers rose from eight under John Major to 27 under Tony Blair.[32] Total staff employed at No. 10 rose from 71 in 1970 under Heath, to a 107 under Major to over 200 under Blair,[33] creating 'the department that-will-not-speak-its-name'.[34] Initially the focus was on improving communications with Alistair Campbell heading the Strategic Communications Unit (SCU). Latterly the emphasis fell on policy advice. The Cabinet Office was reformed to improve central coordination. Several new units were created: for example, initially, the Social Exclusion Unit and the Performance and Innovation Unit, latterly the Strategy Unit, the Office of Public Services Reform, and, most important, the Delivery Unit. As Hennessy observes: 'Number 10 is omnipresent,'[35] The Cabinet Office has always been a ragbag of functions bequeathed by former prime ministers. Now it groans under its own proliferating units posing the question of: 'who will coordinate the would-be coordinator?' Blair seeks to control government functions without bothering himself with too many operational details.

In presidential tales, the prime minister's department in all but name allows Blair to remain on top of several projects if not in detailed touch. It checks the problem of prime ministerial overload. As Anthony Seldon observes: 'however distracted Blair might be by other events, domestic and international, the work of monitoring … went on regardless ("The [Delivery] Unit never sleeps", Blair was told).'[36]

(ii) Pluralisation

In the Westminster model, the civil service has a monopoly of advice and this advice is collated and coordinated by the Cabinet through its ministerial and official committees and the Cabinet Office. This neat and tidy picture has given way to one of competing centres of advice and coordination for which, allegedly, Blair is the only nodal point.

The Cabinet Office, which has been 'gradually brought into the orbit of Downing Street … serving as a part of a prime ministerial centre, rather than the cabinet collectively.' Blair cut back on collegial decision making, 'reducing most meetings of the Cabinet to just forty minutes of approving decisions already taken elsewhere, parish notices and short speeches either delivered by the Prime Minister or vetted by

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[32]   A. Blick, *People Who Live in the Dark: the Special Adviser in British Politics,* London, Politico's, 2004, appendix.

[33]   Kavanagh and Seldon, op. cit., p. 306.

[34]   P. Hennessy, *The Blair Revolution in Government,* Institute for Politics and International Study, University of Leeds, 2000, p. 6.

[35]   Hennessy, 1998, op. cit., p. 15.

[36]   Seldon 2004, op. cit., p. 630; and see P. Hennessy, 'The Blair style and the requirements of twenty-first century premiership', *Political Quarterly*, vol. 71, 2000: 386–95.

him in advance.'[37] Seemingly it is a commonplace that Blair rarely chairs cabinet committees. There are fewer committees, meeting less often and not always reporting to full Cabinet. Most decisions take place in 'bilaterals'—agreements struck in ad hoc meetings between Blair and ministers directly—a style favoured by both the Prime Minister and the Chancellor.[38] In his first three years of office, Blair held 783 meetings with individual ministers compared with John Major's 272 for the same period.[39] As Blair said: 'I think most Prime Ministers who have got a strong programme end up expecting their Secretaries of State to put it through; and you've always got a pretty direct personal relationship.' Also, he would not expect ministers to raise matters in Cabinet: 'look I would be pretty shocked if the first time I knew a Cabinet Minister felt strongly about something was if they raised it at the cabinet table'—'I would expect them to come and knock on my door.'[40]

The list of decisions never even reported to Cabinet includes: independence for the Bank of England, postponement of joining the Euro, cuts in lone-parent benefit, and the future of hereditary peers.[41] Robin Butler, former Cabinet Secretary and Head of the Home Civil Service, reports that 'during the late 1940s, cabinet met for an average of 87 times a year, with 340 papers being circulated; in the 1970s, 60 times a year, with 140 papers; and by the late 1990s, no more than 40 times a year, with only 20 papers.'[42] I might add, also, that Margaret Thatcher massively expanded the use of bilaterals as the primary means of decision-making. Nigel Lawson, a Chancellor of the Exchequer under Thatcher, recalled laconically: 'I used to look forward to Cabinet meetings as the most restful and relaxing event of the week.'[43] Nevertheless, both the frequency and content of Cabinet meetings are said to have diminished significantly under Blair. Bilateral agreements have replaced collective government, and Blair is the coordinating nodal point. According to Rentoul,[44] there is no 'trusted group of inner courtiers'. It would seem that Blair is the only person able to see all government functioning.

Blair is supported in this role by the new machinery of the centre and by sources of advice other than the civil service. Each Cabinet minister can have two special advisers but the total number remains small compared with 3,429 members of the Senior Civil Service. The civil service monopoly of information and advice was broken under Thatcher. The trend to more varied sources of advice has deep roots. Thatcher accelerated the trend. Blair took it further. He knows the general direction in which he would like government to move, but not how to get there.

The result is a frustrated civil service and special advisers. Derek Scott was Blair's economics adviser at No. 10 and he was clearly frustrated by what he saw as Blair's

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[37]   J. Rentoul, *Tony Blair: Prime Minister,* London, Little Brown, 2001, p. 540.

[38]   A. Rawnsley, *Servants of the People. The Inside Story of New Labour*, rev. ed., London, Penguin, 2001, p. 53.

[39]   Kavanagh and Seldon, op. cit., p. 279.

[40]   Cited in Hennessy, *The Blair Revolution in Government,* 2000, op. cit., p. 12.

[41]   Rentoul, op. cit., p. 540.

[42]   Cited in Hennessy, *The Prime Ministers*. 2000, op. cit., p. 5.

[43]   Rentoul, op. cit., p. 540.

[44]   Ibid., p. 542.

limited grasp of economics.[45] He argues that Blair paid less attention to his policy advisers and civil servants than to 'the occasional outsider or those members of his inner circle who had little grasp or real interest in policy.' Moreover, Blair's circle was not the only, or even the most important, source of advice on social and economic policy. Gordon Brown had his own coterie, and his pre-eminent consigliore was Ed Balls, Chief Economic Adviser to the Treasury and a key Brown supporter. So, pluralisation of advice also meant competing centres of advice and the competition between Blair and Brown's teams was intense.

(iii) Personalisation

Yet another theme in tales of a Blair presidency is their professional management of media relations and the use of spin doctors.[46] This professionalisation is harnessed to two bigger purposes—continuous electioneering and personalising that campaign, and indeed the government, by an almost exclusive focus on Tony Blair.

Andrew Rawnsley amusingly illustrates the point:

> when Blair was asked why the manifesto contained seven pictures of himself and not one of the Cabinet mutes sat behind him, Brown's features were a study in granite … the Deputy Prime Minister [John Prescott], wearing what his mother called his 'ugly face', looked like a man one provocation away from a detonation. [47]

Blair did not invent media management as a way of sustaining the pre-eminence of the prime minister. However, his 'public communications, from the designer leisure wear to the designer accent and the designer press conferences probably attracted more public interest than those of any previous British government.'[48] Managing the media, or 'spin', is a game of chance and Blair's gambler-in-chief, his 'spin doctor' managing the media, was Alastair Campbell, Director of Communications and Strategy. The key organisation was the Strategic Communications Unit, created in 1997. Its job was to monitor the news and provide a rapid response, expounding the government's position and, where necessary, rebutting any criticisms of government policy. Campbell was the prime minister's voice. His job was to ensure that the prime minister's voice was also that of the government. He was the spin doctor who used his daily lobby briefings to control government links with the media. Also, this prime ministerial centre extended its role to commanding the press relations of all ministers. Early in 1997 he even 'informed all departmental press chiefs that media bids for interviews with their

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[45]   D. Scott, *Off Whitehall: a View from Downing Street*, London, Tauris, 2004, pp. 14, 17, 206.

[46]   On the growth of the media and its impact on British politics see C. Seymour-Ure, *Prime Ministers and the Media. Issues of Power and Control,* Oxford, Blackwell, 2003. On its relevance to the presidential thesis see M. Foley, *The Rise of the British Presidency,* Manchester University Press, 1993, *The British Presidency*, Manchester University Press, 2000, and *John Major, Tony Blair, and a Conflict of Leadership*, Manchester University Press, 2002; and A. Mughan, *Media and the Presidentialisation of Parliamentary Elections*, Houndsmith, Basingstoke, Macmillan, 2000. On New Labour's 'spin doctors' see N. Jones, *Sultans of Spin: the Media and the New Labour Government,* London, Weidenfeld & Nicholson, 1999, and *The Control Freaks: How New Labour Gets Its Own Way*, London, Politicos, 2001.

[47]   Rawnsley, op. cit., p. 488.

[48]   Seymour-Ure, op. cit., p. 7.

ministers must be cleared first with him.'[49] In this way, Blair allegedly got an advanced news management service akin to that of an American president. Managing the media was also a central element in policy formulation. The strategy is called 'triangulation'. It involves packaging policies so they conflict with the left-wing of the Labour Party, thus winning support from the right wing press.

Blair's premiership is also said to have been marked by a significant increase in the personalisation of power. Present-day media create an environment in which a politician's ability to attract publicity is crucial to electoral success. Indeed, Blair's office helps to create this environment by personalising policy initiatives. For example, when Blair spoke of a rise in the rates of cancer, he publicly mentioned the death of both his own mother to throat cancer and his wife's aunt to breast cancer. Blair personalised policies with this public mix of sincerity and personal experience. As Seldon[50] documents, whenever Blair thought he was not getting the results he wanted, he took personal charge. He identified himself personally with policy initiatives in, for example, crime, education, health, immigration and transport. In the pungent phrase of the (then) leader of the opposition, Michael Howard, when he takes charge he has 'more summits than the Himalayas'.

Governance Stories

Even as journalists, political scientists, and practitioners tell tales of a Blair presidency, so they continue to recognise many limitations to Blair's ability to get his own way. Andrew Rawnsley[51] initially subscribed to 'the command and control' view of Blair. But by June 2003 he wrote of 'a prime minister who is not looking in the least bit presidential' at the head of 'a government displaying signs of drift.'[52] In similar vein, Riddell commented: 'If Mr. Blair has been a Napoleonic figure, he has been a frustrated rather than a commanding one.'[53] So, there is a second story that focuses on the problems of governance and sees Blair as perpetually involved in negotiations and diplomacy with a host of other politicians, officials, and citizens. He is cast as just one actor among many interdependent ones in the networks that criss-cross Whitehall, Westminster, and beyond. So, now I tell the story of the Blair government from the standpoint of Whitehall governance and governance beyond Whitehall.

(i) Whitehall Governance: Blair and Brown

Even political scientists who support the notion of a Blair presidency typically mention the Treasury, under Gordon Brown as Chancellor of Exchequer, as 'a great crag standing in the way of a thoroughly monocratic government.'[54] Brown and the Treasury have come to influence an ever-growing range of activities. In particular, Brown implemented a new system of Public Service Agreements (PSAs) that define and direct the activities of government departments by setting agreed targets and then

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[49]   *Independent*, 6 May 1997.
[50]   Seldon, 2004, op. cit., pp. 432–6.
[51]   Rawnsley, op.cit., pp. 292–4.
[52]   *Observer,* 15 June 2003.
[53]   Riddell, 2001, op. cit., p. 40.
[54]   P. Hennessy, 'The Blair government in historical perspective: an analysis of the power relationships within New Labour', *History Today*, vol. 52, no. 1, 2002: 21.

monitoring them. This control of public expenditure shows Brown's reach throughout government. Blair helped to increase the scope of Brown's authority by appointing him to chair the main economic committee of the cabinet—a post historically occupied by the prime minister.

Recognition of Brown's authority requires us to shift from tales of a Blair presidency to stories of at least a dual monarchy: 'Brown conceived of the new government as a dual monarchy, each with its own court.'[55] This notion has its roots in the 'infamous' Granita restaurant story—a meeting between Blair and Brown in Islington on 31 May 1994.[56] 'Brown believed that he had his wish granted to be the central figure over economic and social policy in the future Labour government.' There is much disagreement about, and little documentary evidence on, the degree of control ceded to Brown 'But there is no doubt that substantial if imprecise control was granted to Brown.'[57] James Naughtie believes command over economic policy and 'significant chunks' of social policy were conceded.[58] While there is no documentary evidence to support a deal on handing over the prime ministership to Brown,[59] there is some evidence on the policy deal. Michael White, Political Editor of the *Guardian*, concludes that 'Blair had effectively ceded sovereignty to Brown in the economics sphere.'[60] Rawnsley describes Blair as 'the chairman and Brown the chief executive'.[61]

There have been several occasions on which Blair has found his authority checked by Brown. Such checks have occurred most often and dramatically over Blair's European ambitions and the budget. For example, Brown frustrated Blair's wish to join the Euro.[62] Brown also controlled the budget by withholding information. As Scott comments: 'getting information about the contents of Gordon Brown's budget was like drawing teeth.'[63] And it mattered because 'Brown always put his "poverty" agenda above Blair's "choice' agenda."[64] Thus, Brown 'viewed the big increases he achieved in NHS spending as a huge moral victory against Blair' while he thought Blair's policy on hospitals was a 'distraction from his achievement in increasing

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55   Rawnsley, op. cit., p. 20.

56   R. Peston, in *Brown's Britain,* London, Short Books, 2005, pp. 57, 58 and 60, claims that: the key meeting took place on May 15 at the home of Nick Ryden in Edinburgh, two weeks before the meeting at Granita; Brown was promised 'total autonomy over the social and economic agenda', and negotiations continued over the next two weeks culminating in the Granita agreement.

57   Seldon, 2004, op. cit., pp. 193–4.

58   J. Naughtie, *The Rivals. The Intimate Story of a Political Marriage,* rev. ed., London, Fourth Estate, 2002, p. 71; and see W. Keegan, *The Prudence of Mr. Gordon Brown,* Chichester, W. Sussex, Wiley, 2003, p. 124; Peston, op. cit., p. 58, and Rawnsley, op. cit., pp. 20, 111.

59   Peston (op. cit., p. 73) disagrees. He cites Nick Brown, a Gordon Brown supporter and former Minister of Agriculture, quoting Gordon Brown immediately after the Granita meeting saying 'Blair promised that he would only fight two elections as leader' and that 'he would endorse Brown as leader when the time came.'

60   *Guardian,* 6 June 2003, cited in Seldon 2004, op. cit., p. 669; and see also Peston, op. cit., p. 67.

61   Rawnsley, op. cit., p. 143.

62   Peston, op. cit., chapter 6; Keegan, op. cit., chapter 12; Seldon 2004, op. cit., pp. 682–3.

63   Scott, op. cit., p. 24.

64   Seldon, 2004, op. cit., p. 688; on the choice agenda see T. Blair, *Tony Blair. In his Own Words,* London, Politicos, 2004, chapter 43.

expenditure'. Blair's policy on tuition fees for universities was also deemed a distraction from the real achievement of Brown increasing education expenditure.[65]

It may be accurate that in the second term 'while Blair aimed ... to limit Brown's authority over domestic policy, Brown fought to increase it.'[66] But the result was two men presiding over territory ever more jealously guarded. Brown was 'immovable', 'dominating his own territory' with 'jagged defences designed to repel any invader, including the Prime Minister'. Not only was Downing Street left 'wondering on the latest thinking about the Euro' but 'unthrifty ministers' found him 'unrelenting in his pursuit of his own strategy'. Brown's role was that of 'social engineer who was redistributing wealth'. So, 'they were not interested in submerging their differences in outlook, but in making an exhibition of them.'[67] It is a fine example of the politics of political space. Brown commanded most of the domestic political space forcing Blair almost by default into overseas adventures simply because of his inability to carve out some domestic political space.

Seldon speculates on how much more Blair would have accomplished between 1997 and 2005 'had not so much time, emotional energy and goodwill been consumed' by their deteriorating relationship. He opines: 'Brown's achievements were almost undimmed by the shadow the relationship cast, while Blair felt hemmed in and often unable to realise his ambitions'; 'Brown felt himself to be the loser but in the end, it was Blair who lost out far more.'[68] By 2005, their relationship had deteriorated to an all-time low. Their 'TeeBee-GeeBees' are a long-running soap opera in the media.[69] But Brown believed that Blair tore up their deal by standing for a third term. Brown was reported as saying to Blair that 'There is nothing you could ever say to me now that I could ever believe.' Brown was now 'the official opposition to Blair within the very heart of the Cabinet.'[70]

A key characteristic of the first two Labour parliaments is this shifting of fortunes, the contingency, of the court politics and the duumvirate.[71] Hennessy has conscientiously mapped Blair's inner circle and its changing membership.[72] Many commentators discuss its influence. I do not need to accept any account of life at No. 10 to make the observation that court politics are an important feature of the British executive.

Court politics were not confined to Blair and Brown. The barons still compete:

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[65] Seldon, 2004, op. cit., pp. 682–3.

[66] Seldon, 2004, op. cit., p. 627.

[67] Naughtie, op. cit., p. 352.

[68] Seldon, 2004, op. cit., p. 689.

[69] If 'heebie-jeebie' refers to a state of nervous apprehension, then 'TeeBee-GeeBees', formed from the respective initials of the two protagonists, refers to their state of apprehensive antagonism and their regular spats.

[70] Peston, op. cit., chapter 10, pp. 349, 13, 353.

[71] For the oestrogen-fuelled *Girl's Own* comic book view of life at the No. 10 court, see F. Beckett and D. Hencke, *The Blairs and Their Court,* London, Aurum Press, 2004, chapter 14; and P. Oborne and S. Walter, *Alastair Campbell,.* London, Aurum Press, 2004.

[72] Hennessy, *The Prime Ministers*, 2000, op. cit., pp. 493–500. Over the years, it included the likes of Alistair Campbell (Head, SCU), Jonathan Powell (No. 10 Chief of Staff), Jeremy Heywood (PM's principal private secretary), Anji Hunter (Special Adviser), David Miliband (Head of the Policy Unit) and Philip Gould (PM's pollster). Among ministers it included Charlie Falconer (Minister, Cabinet Office) and Peter Mandelson (various).

> Ministers are like medieval barons in that they preside over their own, sometimes vast, policy territory. Within that territory they are largely supreme. .. The ministers have their own policy space, their own castles—even some of the architecture of departments … reinforces the perception—and their own courtiers. The ministers fight—or form alliances—with other barons in order to get what they want. They resent interference in their territory by other barons and will fight to defend it.[73]

The rivalry between Brown and Mandelson is a constant: 'one of the great laws of British politics … is that any action by Mandelson causes an equal and opposite reaction by Brown.'[74] There have been other major, running conflicts: for example, between Brown and Alan Milburn, Secretary of State for Health, over Foundation Hospitals. Other ministers struggle to become heavy hitters. David Blunkett's frank if injudicious comments on the abilities and progress of his cabinet colleagues are a public example of a conversation that Westminster and Whitehall conducts all the time in private.[75] Such gossip is the currency of court politics and the judgements are markers in the endless ministerial jockeying for position and recognition.

Not only are Blair's presidential tendencies constrained by court politics but the tendencies are over-stated. It may come as a surprise to learn that cabinet and its infrastructure of committees continues. As Rentoul observes: 'a lot of the business of government continued to be done in cabinet committees.'[76] So, during the second term of government, there were some 66 cabinet committees and Tony Blair chaired 10 of them. Similarly, ministers play their traditional roles. David Blunkett rationed his contributions to key issues. He did not interfere in the affairs of other departments. However, he brought highly political issues such as introducing identity cards to Cabinet where they were fully ventilated. The policy was also run through cabinet and interdepartmental committees.[77] If the decline of cabinet government refers to the meetings of full cabinet, then that specific meeting is no longer the forum for policymaking, if indeed it ever was. If cabinet government refers to the cabinet system then it is still active, even thriving, and desuetude is not yet cabinet's fate.[78]

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[73] P. Norton, 'Barons in a shrinking kingdom: senior ministers in British government', in R.A.W. Rhodes (ed.), *Transforming British Government. Volume 2. Changing Roles and Relationships,* London, Macmillan, 2000, pp. 116–7.

[74] Peston, op. cit., p. 223.

[75] For example, Alan Milburn (Health) had 'grown in competence and ability', Margaret Beckett (Environment and Agriculture) is 'just holding the ring', Charles Clarke (Education) 'has not developed as expected', Patricia Hewitt (Trade and Industry) does not think strategically, and Gordon Brown throws his weight around. (S. Pollard, *David Blunkett,* London, Hodder and Stoughton, 2005, pp. 27–8). Of course his colleagues reciprocate. John Prescott (deputy prime minister) is said to hold Blunkett in a mixture of contempt and suspicion while others grit their teeth at his 'idiotic indiscretion' (*Observer,* 12 December 2004).

[76] Rentoul, op. cit., p. 544.

[77] Pollard, op. cit., pp. 26, 305–6.

[78] After the 2005 election, Blair reduced the number of cabinet committees to 44. There are 25 new committees, most mergers of existing ones. Their numbers will grow over the life of the government. Blair will chair 15 committees. The rationalisation was accompanied by the statement that 'government is a collective exercise and what you need to do is harness the collective responsibilities that different ministers have and also the collective experience they bring with them' (*Guardian,* 24 May 2005). Like Margaret Thatcher before him, Tony Blair has discovered that collective government is a useful security blanket. He just didn't leave it as late!

The phrase 'the core executive' always sought to broaden the notion of executive power beyond a narrow focus on prime minister and cabinet.[79] It stresses the interdependence of the *several* actors at the heart of government. The story of Blair and Brown, and their ubiquitous court politics, shows how misleading it is to focus only on the prime minister and cabinet. Political power is not concentrated in either prime minister or cabinet, but more widely dispersed. It is contested, so the standing of any individual, prime minister or chancellor, is contingent.

(ii) Governance beyond Westminster and Whitehall

The governance model of British government recognises the interdependence of prime minister and chancellor. It stresses the horizontal and vertical networks of interdependence in which the core executive is embedded. As the story of the rival courts of Brown and Blair demonstrates, the core executive can itself be seen as a set of overlapping networks. In this section, I focus not on the horizontal networks of Westminster and Whitehall but on the networks beyond Westminster and Whitehall. Government policymaking is all too often confounded by central fragmentation and the Blair reforms of the centre seek to impose the desired degree of coordination. Add the simple fact that service delivery is disaggregated to a multiplicity of networks and the explanation of the gap between rhetoric and reality is obvious. The implementation gap is ubiquitous. Unintended consequences are inevitable.

This argument is illustrated by the several studies of policy under Blair.[80] Of course, there are policy successes; for example, devolution to Scotland. Polly Toynbee and David Walker[81] confess that a 'deep-dyed cynic' would be impressed by Labour's commitment to a fairer society and conclude they have improved the lot of the poor. In other policy areas there has been little change or the results are unclear.

During the first term, changes in social security were incremental and they often recalled Conservative policy. It is the same story in housing policy. Health is a more complex tale, and it differs across the four nations of the British Isles. In England, there has been a clear shift to mixed public-private provision but it is too early to assess the effects of these changes. Clearly, there has been a massive injection of public spending, although by international standards the UK is still well down the league table of spending on health. The age-old contest between 'professional monopolists' and the 'corporate rationalisers' is still unresolved. There has been a similar injection of cash in education but again the long-term outcomes are uncertain.[82] There is a major emphasis on improving service delivery with ever more demanding performance measurement and evaluation. However, Tony Wright, Labour Chair of

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[79] R.A.W. Rhodes, 'From prime ministerial power to core executive', in R.A.W. Rhodes and P. Dunleavy, eds, *Prime Minister, Cabinet and Core Executive,* London, Macmillan, 1995; M.J. Smith, *The Core Executive in Britain*, London, Macmillan, 1999.

[80] D. Coates and P. Lawler, eds, *New Labour in Power*, Manchester University Press, 2000; P. Toynbee and D. Walker, *Did Things Get Any Better? An Audit of Labour's Successes and Failures,* London, Penguin, 2001; A. Seldon, 'The net Blair effect', in A. Seldon (ed.), *The Blair Effect,* London, Little, Brown, 2001; S.P. Savage and R. Atkinson, eds, *Public Policy Under Blair*, Houndmills, Basingstoke, Macmillan-Palgrave, 2001.

[81] Toynbee and Walker, op. cit., p. 40.

[82] See Seldon, 2001, op. cit., p. 593–600 for a preliminary balance sheet.

the Select Committee on Public Administration, commented perceptively: 'it is just not technically feasible, never mind desirable, to have that much centralization. If everything is a target, nothing is a target.'[83] The emphasis on greater choice form users of public services is welcome but, as Clare Short points out: 'public sector reform cannot succeed on the basis of headline-grabbing slogans.'[84]

Then there are the known domestic problem area—higher education, immigration and transport—that still wait for their 'solutions'. There are the cock-ups—for example, privatising air traffic control, the railways, tax credit payments, reform of the House of Lords, passports. There are the disasters that discredit governments. The examples include: the millennium dome, the Hutton Inquiry into Iraq and weapons of mass destruction, the Joe Moore affair over her claim that 9/11 was a 'good day to bury bad news', and the proposed referendum on the Euro.

Finally, there is the rest of the world. Events such as 9/11, Northern Ireland, Kosovo, the Afghan war, and Iraq divert prime ministerial attention from domestic policy. Over Iraq, for example, not only did Blair have to persuade international leaders on the case for war, which he conspicuously failed to do, he also had to maintain support at home, which he did but at the price of eroding his authority in the party and with the electorate. The war presented Blair with the embarrassing resignations of two of his Cabinet colleagues, Robin Cook (formerly Foreign Secretary, at the time Leader of the House of Commons) and Clare Short (Minister for International Development). The resignation of Cook and the ensuing fallout increased Blair's dependence on his Cabinet colleagues. John Kampfner[85] describes the extent of the opposition to the invasion of Iraq in the Parliamentary Labour Party. The rebellion by 139 Labour MPs was the largest ever and the public demonstration in London was the biggest in decades. Even the Cabinet was uncertain, verging on divided. In the understated phrases that are employed at times of stress and conflict, Cabinet support moved from 'rock solid' to 'broad' and 'fears were being expressed with uncharacteristic candour.'[86] Although a prominent critic of government policy, Robin Cook's assessment is judicious:

> Part of the political cost of Iraq was that it created in the public mind an image of their prime minister as preoccupied with fixing the world rather than running Britain. The irony is that this political damage to the Labour government was a self-inflicted wound. It could have been avoided by listening to the majority who were opposed to the war.[87]

All governments fail some of the time. All governments are constrained by world events. All prime ministers intervene. Few control and then only for some policies, some of the time. There is little evidence, for example, that James Callaghan's efforts to promote new policy initiatives in, for example, housing and education had much

[83]   Cited in Rawnsley, op. cit., p. 292.

[84]   C. Short, *An Honourable Deception? New Labour, Iraq and the Misuse of Power,* London, Free Press, 2004, p. 279.

[85]   J. Kampfner, *Blair's Wars,* London, Free Press, 2003, pp. 161–2, 225–6, 272, 277, 315.

[86]   Ibid., pp. 294, 255.

[87]   R. Cook, *Point of Departure,* London, Simon and Schuster, 2003, pp. 271–2.

success.[88] The test of success in politics is elusive and shifting. Maybe, as Enoch Powell said, all political careers end in failure. Maybe, as George Orwell said, 'any life when viewed from the inside is simply a series of defeats.' But Blair's failures stand in stark relief to the early promise, making the disappointment of his supporters more acute. The problems the Blair government shares with all others have been compounded by two problems of his making: conflicts at the centre and his management style.

Blair's initiatives have depended on Brown's support—for example, top up fees for students where Brown called off the dogs at the last moment.[89] Although improving public services lies at the heart of the modernising agenda, 'there were few signs that Blair was winning over his critics on public service reform.'[90] Blair's weaknesses included 'a tendency to embroider, to persuade, and then to forget'[91] and 'his lack of policy making and management skills.'[92]

> What he wants is results. He has a feel for policies but not how the results come. He finds it hard to understand why things can't happen immediately. There is a frustration in waiting for the pay-off and he doesn't have time. He comes back to this when one or other of the policy areas gets hot: education, then transport and now health.[93]

However, although 'the machinery of government was in a state of permanent revolution at the centre after 1977 … he never succeeded in finding a structure that suited him.' In effect, the reforms were a sign of weakness not strength.[94] So, Riddell talks of a 'beleaguered centre' and a prime minister weak on detailed policies. [95]

Westminster Smokescreens

I have told stories about the dependence of the prime minister on the court politics of the core executive and on the networks of service delivery. I have also pointed to the importance of party support, and the impact of political adventures in the international arena on domestic politics. To compare Blair pre- and post-Iraq is to see that prime ministerial pre-eminence comes and goes; to witness the transition from President Blair to the 'unfulfilled prime minister,'[96] 'in office but not in power.'[97] The Blair presidency exists at most, therefore, in the interstices between political rhetoric and reality.

Some of the claims about the changing pattern of political leadership in Britain are accurate. It helps to distinguish between the electoral, policy making and

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[88] B. Donoughue, *Prime Minister. The Conduct of Policy Under Harold Wilson & James Callaghan*, London, Cape, 1987, p. 124.
[89] Peston, op. cit., p. 55.
[90] Seldon, 2004, op. cit., pp. 634, 636.
[91] G. Wheatcroft, 'The tragedy of Tony Blair', *The Atlantic Monthly,* June 2004: 64.
[92] Seldon, 2004, op. cit., p. 692.
[93] Official cited in P. Hennessy, *The Blair Revolution In Government,* 2000, op. cit., p. 10.
[94] Seldon, 2004, op. cit., p. 694.
[95] Riddell, 2001, op. cit., pp. 38–9.
[96] Riddell, 2005, op. cit.
[97] Wheatcroft, op. cit., p. 68.

implementation arenas. First, personalisation is a prominent feature of media management and electioneering in Britain. If I must use presidential language, it is here in the electoral arena that it is most apt. Blair is the figurehead. But this statement must be qualified immediately because the court politics of the duumvirate fits uncomfortably with the notion of monocratic leadership. Brown played a pre-eminent role on the 2001 election.[98] For the 2005 election, Blair recalled Alan Milburn from his retirement to act as election supremo, playing the role that Brown played in 2001. But who stood beside Tony Blair in the first Labour Party electoral broadcast? Who else but Gordon Brown, the pair shot as a happy couple by Anthony Minghella, director of *The English Patient*. The economy was and remained Labour's master card. Milburn retired (again). It was simple. It was brutal. Blair needed Brown and Brown judged it in his interests to cooperate. The wags have it that the Conservatives toyed with the slogan 'Vote Blair, Get Brown' until they realised that is exactly what the electorate wanted! The rest of us wonder whether Brown still held firm to his view that there was nothing Blair could ever say to him now that he could ever believe and, if so, was the deal on leadership succession confirmed in writing?[99]

In the policy-making arena, there is some truth to the claim that Blair centralised policymaking on No. 10 and the Cabinet Office and eschewed cabinet government. However, this claim applies to selected policy areas only, with the equally important proviso that the Prime Minister's attention was also selective. The continuous reform of the centre speaks of the failure of coordination, not its success. The Prime Minister's influence is most constrained in the policy implementation arena, so it is conspicuous for its absence in most accounts of presidentialism. Here, other senior government figures, ministers and their departments, and other agencies are key actors. Similarly, although personalisation can affect implementation, that effect is intermittent. Too often, the presidential thesis treats intervention as control. There is much that goes on in British government about which the Prime Minister knows little and affects even less. And all these arenas are embedded in dependence on domestic and international agencies and governments, making command and control strategies counter productive.

So, we have a paradox. On the one hand, journalists, political scientists, and practitioners are telling tales of a Blair presidency characterised by centralisation, personalisation and pluralisation. On the other, the same people recount governance stories in which British politics consists of fragmented policy making and policy implementation networks over which a core executive maintains a fragile—and increasingly fraught—influence. I want to draw attention to two ways of interpreting this paradox.

First, all the chatter about a Blair presidency is a counter both in the court politics of the duumvirate and in wider party politics. So, it matters not that the presidential analogy is misleading because the game is not about empirical accuracy but about expressing hostility to Blair in particular and the Labour government in general.

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[98]   Seldon, 2004, op. cit., chapter 31.

[99]   Gordon Brown's key position in the government and the Labour Party is signalled by his return to the National Executive Committee (NEC) of the Labour Party, from which he was excluded in November 2003.

The critics have several specific targets. Foley[100] argues the epithet can refer to Blair's personal characteristics, to claims that he is too powerful, to the consequences of Blair's command and control style of government, to his international adventures and attendant disregard of domestic politics, to his flouting of constitutional conventions, to the influence of the USA on British politics, and to the failure to understand the shift from government to governance. So the term is a smoke screen behind which lurk several criticisms of Blair and the Labour government.

Conversely, when critics bemoan the demise of Cabinet government, what exactly has been lost? Weller[101] distinguishes between the Cabinet as the constitutional theory of ministerial and collective responsibility, as a set of rules and routines, as the forum for policymaking and coordination, as a political bargaining arena between central actors, and as a component of the core executive. Blair's critics single out cabinet's policy-making and coordination functions, yet it has been clear for over a quarter of a century that these functions have been carried out by several central agencies including but not limited to the cabinet. To suggest that Blair has abandoned the doctrine of collective responsibility is nonsense. Leaks are abhorrent. Unity is essential to electoral success. Dissenters go. To suggest that any prime minister in the post-war period has adhered to anything but a pragmatic view of individual ministerial responsibility is equally foolish.[102] In short, and again, key terms about British government act as smoke screens. But what are they acting as a smoke screen for?

Why do so many people who describe British governance as multipolar, nonetheless constantly talk about a Blair presidency? I argue the paradox arises because of the bewitching effect of the Westminster Model of British politics. In the need to preserve Westminster fictions, the tales of presidentialism are a smoke screen behind which we find a widespread acceptance of the governance story. If a commentator accepts any version of the governance narrative, with its stress on interdependence, then any tale of a Blair presidency will be undermined. Command and control mix with interdependence and cooperation like oil and water.

The interweaving of the two tales is obvious if I revisit briefly the accounts of Foley and Weller. Thus Foley's review of the uses of presidentialism encompasses the consequences of Blair's command and control style of government and the failure to understand the shift from government to governance. Both are core themes in the governance narrative. In a similar vein, Weller's account of the varieties of cabinet

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[100]   M Foley, 'Presidential attribution as an agency of prime ministerial critique in a parliamentary democracy: the case of Tony Blair', *British Journal of Politics and International Relations,* vol. 6, no. 3, 2004: 292–311.

[101]   P. Weller, 'Cabinet government: an elusive ideal?' *Public Administration*, vol. 81, no. 4, 2003: 701–22.

[102]   Ministerial responsibility is alive and well, although not quite in its conventional formulation. It is no longer the prime minister and the political standing of the minister alone that decide a resignation —but the media maelstrom (see R.A.W. Rhodes 'Is Westminster dead in Westminster (and why should we care)? Inaugural ANZSOG-ANU Public Lecture, Canberra 23 February 2005). David Blunkett, Home Secretary, had high personal political standing in the party and the full support of the prime minister but the pack brought him down (see S. Pollard, *David Blunkett*, London, Hodder & Stoughton, 2005, chapters 12 and 13,and D. Woodhouse, 'UK ministerial responsibility in 2002: a tale of two resignations', *Public Administration*, vol. 82, no. 1, 2004: 17. It would seem that only fox hunting among blood sports is to be banned.

government includes cabinet as a political bargaining arena between central actors, and as a component of the core executive. Again both are key notions in the governance narrative.

So how does the Westminster Model infuse talk of a Blair presidency? Of course, there is no agreed version of the Westminster model. There are at least three possible versions: Tory, Whig and Socialist.

Philip Norton is a Tory and a combative defender of the UK constitution against all comers.[103] He believes the Blair presidency is 'dangerous' because it centralises power in No. 10, adopts a principal-agent relationship with departments 'that is likely to be difficult to sustain', relies on goodwill for implementation 'that may not be forthcoming' and 'ignores parliament'. These problems are compounded by 'the lack of experience and, indeed, understanding of government by the prime minister and many of those around him' coupled with a 'leadership … obsessed with power' and 'no understanding … of relationships within the system.'[104] Underpinning this critique is a governance interpretation of British government:

> Interdependency is a necessary feature of government in the United Kingdom. This interdependency has enabled government to cohere and deliver programmes of public policy because each part of the political system has recognised its distinct role within the system. It has been an interdependency of defined parts … The more the prime minister and senior ministers have sought to centralise power in their own hands then perhaps paradoxically, the more fragmented British government has become. The glue of government has started coming unstuck.[105]

What to do? We need to end the 'institutionalisation of fragmentation' by returning to the 'party-in-government' as the body 'responsible for public policy' that 'can be held accountable by electors at a subsequent general election.'[106] In other words, Norton uses the governance narrative to urge a return to the eternal verities of the Westminster Model. He criticises the notion of the Blair presidency to resurrect the Westminster Model.

Hennessy is a Whig: 'history is a discipline that sobers up its practitioners.' He rejects the command and control model of the prime minister as chief executive for two reasons. First, 'command models sit ill with open societies.' Second, 'British political culture reflects the compost in which it is grown.' It is a parliamentary not a presidential compost. So he defends the 'deep continuities' of the constitutional side of the job—relations with the monarchy, accountability to parliament, collective government, and a career civil service. However, he too recognises that Britain must change to meet the challenges of an interdependent world. He foresees prime ministers ever more entangled in international affairs, an expanding 'hybrid arena' where international and domestic mingle, relentless media pressure, 'the avalanche of information', and a reconfigured British state because of, for example, devolution. In sum, he describes a world of complex interdependencies.

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[103]   See for example P. Norton, *The Constitution in Flux*, Oxford, UK, M. Robertson, 1982.

[104]   P. Norton, 'The presidentialisation of British politics', *Government and Opposition*, vol. 38, no. 2, 2003: 277.

[105]   Ibid., p. 276.

[106]   Ibid., p. 278.

To meet these demands, he envisages, for example, No. 10 distancing itself from the hurly burley and developing both a plurality of analytical capacities and a greater capacity to provide risk and strategic assessments. All such changes would be within the context of collective government. Or to rephrase, to meet the challenges posed by the governance narrative, Hennessy envisages a return to cabinet government with reinforced analytical and strategic support. His notion of the British presidency is less that it is dangerous, although it may well be, but that to institutionalise it is to plant an alien invention in British soil.[107]

The Socialist tradition in the guise of New Labour has its own conception of how British government should be run. In Peter Mandelson and Roger Liddle's[108] 'shadow' manifesto they argue that, to succeed, Blair needed 'personal control of the central-government'. They describe with approval Mrs Thatcher's 'focus on a clear set of goals' and 'strength of will', claiming it 'says a lot about leadership in government'. Tony Blair should follow her example 'in getting control of the centre of government'. In particular there should be a 'more formalised strengthening of the centre of government' so it can 'give much-needed support to the prime minister' and 'provide a means for formulating and driving forward strategy for the government as a whole'. So, the No. 10 Policy Unit should be 'beefed-up', and the Cabinet Office needs to be more 'pro-active'. When New Labour came to power, therefore, it should have been no surprise that 'there was never any intention of having collective Cabinet government.' Blair was 'going to run a centralised government, with a commanding Policy Unit which was solidly New Labour.'[109] There are two features of New Labour's approach worth noting. First, it is strongly influenced by the example of Margaret Thatcher's leadership style. Second, it consigned Labour traditions, many of which are more democratic, to the dustbins of history. The contrast with Jim Callaghan or Harold Wilson is marked:

> from time to time there is discussion about the need for a formal Prime Minister's Department … such talk frequently overlooks the instruments he already has. He is able to provide himself with his own sources of information, he can send up a trial balloon or fire a siting shot across a Ministerial bow without directly involving his own authority or publicly undermining that of the Minister; and has the necessary facilities to take a decisive hand in policy-making at any moment he choose to intervene.[110]

Deserting Labour traditions for Thatcherite dynamism had its costs. It provoked criticism for eroding the:

> traditional norms of democracy and administration in favour of a model that rested more on central diktat. His three predecessors as Prime Ministers, Attlee, Wilson and Callaghan, had governed collectively: no previous Labour leader, from Keir Hardie to John Smith, had adopted such

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[107] P. Hennessy, *The Prime Ministers*, op. cit., pp. 535, 539, 538.

[108] Peter Mandelson and Roger Liddle, *The Blair Revolution: Can New Labour Deliver?* London, Faber and Faber, 1996, chapter 10.

[109] Insider quoted in A. Seldon, 2004, op. cit., p. 437.

[110] J. Callaghan, *The Far Left in British Politics*, Oxford, UK, Blackwell, 1987, p. 408; On Attlee see H. Morrison, *Government and Parliament. A survey from the Inside*, Oxford, Eng., Oxford University Press, 1959, chapter 1; On Wilson, see H. Wilson, *The Governance of Britain,* London, Sphere, 1977, chapter 1.

a personal style of control, and in this respect, as in others [Blair] showed himself to be a leader lacking empathy with the traditions of his party.[111]

Yet Blair and his entourage consistently deny they have abandoned collective government, arguing their reforms are consistent with present-day constitutional conventions. In part, such a defence is mere conventional convenience. If policymaking is presidential, then only the president is to blame when things go wrong. However, when the government faced its many policymaking and implementation problems, it blamed those long-standing whipping boys of the Westminster constitution—the civil service—said to lack both ideas and drive.[112]

Others saw a problem with Blair's policymaking and management style and the mistaken belief that running the government was like running the Labour Party writ large. Such auto-critique was not on the central agenda.

Of course the government could see that policy success depended on others cooperating—hence the drive to 'joined-up' government.[113] The ubiquity of networks was drawn to the government's attention by its own think tanks.[114] They did not translate this recognition of dependence into a new leadership style. The governance narrative conflicted with their view of a strong centre. Command and control remained in vogue for running services built around many governments and organisations. But whatever the attractions of command and control, it did not work. New Labour's beliefs about the best way to run government positioned Blair between the rock of presidential critiques and the hard place of governance. Only the Westminster Model obscured the dangers of such a position.

Finally, there is one characteristic of the Westminster Model that is present in every tradition—it is inward looking. Once we look at the role of the prime minister beyond the confines of Westminster and Whitehall, any assessment of his or her presidentialism must be tempered. For Britain, the post-war years saw the end of empire and a loss of influence in the world. 9/11 and Iraq rubbed salt in to the wounds of dependence. British political leaders never ceased to hanker for a return to world prominence. So, parliamentary sovereignty and the Westminster constitution live on as emblems of a past age. The debate about presidentialism is a false debate, a smoke screen obscuring the frailty of the eternal verities of a tattered constitution.

Conclusion

When commentators focus on Westminster and Whitehall, the prime minister is indeed prime. When their focus shifts beyond Westminster and Whitehall, to the rest of the UK and beyond, then any presidential pretensions are a hollow crown. The inescapable fact is that Blair has to work in, with and through a complex of organisations, governments and networks with his power constrained by ever more pervasive and complex patterns of dependence. The more we look outside the Westminster Model, the more we find that centralisation, pluralisation and

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[111] A. Seldon, 2004, op. cit., p. 694.

[112] Ibid., p. 436.

[113] See for example *Modernising Government*, Cm 4310, 1999; *Wiring It Up*, Cabinet Office, 2000; and G. Mulgan, 'Speech to the Conference on Joined-Up Government', British Academy, London, 30 October 2001.

[114] See for example Perri 6, *Holistic Government*, London, Demos, 1997.

personalisation represent not a concentration of power, but an endless search for effective levers of control by a core executive less powerful than many commentators and insiders claim. While the core executive thesis can encompass the duumvirate, the prime ministerial power or presidentialisation thesis can not. I can think of no clearer example of how the language of Westminster obscures our understanding of trends in British governance. We live in a land where barons vie for favour in the court of a would-be president as dependent on them for support as they are on him for favours.

I have contrasted the Westminster and the governance narratives to show that recent trends in British government do not provide certain evidence of prime ministerial power. Tales of the Blair presidency can be retold as tales of the unfulfilled prime minister. There are two major limitations to the focus on presidentialism. First, when used as a smoke screen for attacks on the prime minister and government, the term is but a flag of convenience. Better by far to focus on the specific criticisms. If used as an analogy to identify leadership changes, it is potentially misleading because the differences between a parliamentary and a presidential system far outweigh the likenesses by some margin.[115] Better to talk of changing patterns of leadership. Second, a focus on presidentialism is too narrow, excessively preoccupied with Westminster and Whitehall.

If there are important changes in the British executive, we can explore them adequately only through decentered studies of the beliefs and practices of politicians and civil servants. Such an approach will necessarily lead us to look at the contingencies of political life and the ways in which individuals modify their inherited beliefs and practices when they confront the dilemmas of governance. If one conclusion is clear, it is that prime ministers vary in beliefs and practices. The office does not dictate their practices. The analysis of changing patterns of leadership should start here and not with misleading analogies with polities categorised as presidential. The aphorism that 'the prime minister is first among equals' only needs the addition of 'but often he is more equal than others' to capture life at the top.

Question — Accepting your thesis that it is presidential appearance, rather than substance, there still seems to be a lot of support for that being a good thing to have. Parties foster that and in fact the incumbents themselves do. Is that a case of success breeds a presidential style or does a presidential style breed success for a party?

Rod Rhodes — I think it is a recognition by parties that in an era of mass media, it's the most effective way of presenting yourself. I do think it is the politics of presentation. It would be very hard to persuade the media in either Australia or the UK to have an election campaign where they had to focus on five people. I tend to think the media is a bit like Gerald Ford. They can't walk and chew gum at the same time. If they had to actually understand three people's contribution to an election, they'd be in

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[115] R. Rose, *The Prime Minister In a Shrinking World*, Cambridge, UK, Polity Press, 2001, pp. 236–244.

serious trouble. I do think it's about the politics of presentation in a media age and that's what drives them. But I did concede that I felt the electoral arena is where the thesis has some power. If you go back through the opinion polls and through the data for the whole of the post war period, it is clear that elections have become more and more focused on the leaders of the two parties, with other senior figures pushed into the background. When we get into government, we're talking about policy-making and policy implementation and it is clear that the politics of substance is different from the politics of presentation.

Question — It is forty years since I've lived in your country, so things have probably changed, and the views I tend to get probably come through the *Spectator*, so that makes me a marked man. One of the things that you didn't address and probably a little bit outside your talk about the presidential style of politics is the relationship between Blair and the Lords, and what he's done to the Lords and Number 10 and the Palace. The views that we get is that these two areas are diminished political entities compared to what they were when he first came to power. Would you care to comment?

Rod Rhodes — I certainly think that Blair's policy vis-a-vis the Lords has been improvised and he's never been prepared to take the time and the trouble to fight through a coherent piece of legislation for them. So you get the usual problems of ad hoc policy-making on the hoof, compromises being struck to get legislation through, and that way of course you're getting the worst of all possible worlds. The theory is that they are going to do something serious about the Lords this time. We possibly don't share a common view on the virtues of the previous House of Lords. I would content myself with the comment that as an Englishman in Australia, up until the recent election, I was immensely envious of your Senate and its forensic ability to challenge the government of the day. It seemed to me to be a check and balance to be admired. It seems unfortunate that everything is now controlled by one party, and if I had to say one thing to my fellow countrymen on returning back there, it would be: can we have some checks and balances like the Australian Senate, please, because the House of Lords is not an effective check and balance; it's a random check and balance, which the government to the day can override when it chooses to do so.

You can't possibly expect me to comment on the monarchy, which seems to me to author its own misfortune to a degree which is quite staggering.

Question — My question relates to the British experiment with New Labour. I think we'd agree it's been successful, spectacularly so in capturing that broad middle base of the British constituency. In Australia, the Australian Labor Party is in a state where it's considering reforming to perhaps follow the British model. Do you have any opinions on what the Australian Labor Party might do to meet the success that its overseas counterpart has?

Rod Rhodes — That an Englishman should even attempt to answer that question, seems to be the height of folly. I had intended to leave here alive! That said, I think one of the lessons we have learned about elections from our Conservative Party is that, unless you go after the middle ground, your chances of getting a majority are slight. So I think most certainly in the first-past-the-post election system of the UK, the competition is for the middle ground.

There is a qualification to that, and it probably will be the kind of thing written into history books forevermore. Margaret Thatcher changed the definition of the middle ground. The middle ground before her and the middle ground after her are very different and the skill of Kinnock, Smith and Blair was to persuade a party that did not want to go there, that it had to adopt the middle ground, as redefined by Margaret Thatcher, and that took three elections and was a very tough road to follow for the Labour Party. So I suspect your Labor Party if it wants to go after the middle ground, might have to do something it has been very reluctant to do, and that is swallow some of the labour market reforms. The politics of the middle ground is a very uncomfortable place to be if you are in the tradition of the old Labor Party.

Question — You mentioned the first-past-the-post system and I'm constantly amazed that there seems to be no discussion about having a preferential system. Yet the Liberal Democrats are getting something in the order of 20 per cent of the vote and a very small number of seats, and so many people are disenfranchised in England because you get 60 per cent of the people voting and that 60 per cent split almost three ways, and yet only the two biggest parties have a substantial number of members. The Australian system of preferential voting does give people much more of a stake in the government selected.

Rod Rhodes — You should recognise that there are several elections in the UK and nowadays it's only the parliamentary elections which are fought on the first-past-the-post system. We have several other kinds of proportional representation for European elections, Scottish and Welsh elections, and local government elections. The reason they don't change the parliamentary elections is for one blindingly obvious and brutally simple reason, which is that the majority party of the day thinks it will win again on the first-past-the-post system, so it will not change it. It has got nothing to do with principles, nothing do with fairness, nothing to do with representing the British people, and everything to do with remaining in power. Moreover, the Conservatives, who are the main opposition party, believe that it is an electoral system that will get them back to power. So given that both major parties believe that it's to their immediate and direct advantage to keep the system, my prediction is that it won't change. I accept your point, I don't disagree with any of the comments that you've made, and it's just an observation on it.

Question — Would you comment on joining the European Union under Gordon Brown?

Rod Rhodes — The decision on whether to join the European Union under Gordon Brown will be an entirely pragmatic one. If at some point in time in the future it is politically and economically expedient to do so, then the economic tests will miraculously be met by a group of hand-picked economists that he happens to find lying around in the Treasury and we will join Europe.

There is a difference between Blair and Brown which isn't just about the politics of the leadership. They actually pursue different policies. Gordon Brown has pursued a redistributive policy. It's been covert, he doesn't publicise it, but in fact single parent families, children in poverty and the elderly are demonstrably better off under New Labour and it's entirely a function of Gordon Brown's policies. The shorthand phrase

we use is that Gordon Brown is the politics of redistribution while Tony Blair is the politics of choice. Here is a mildly scurrilous story to end on, about the new policy of choice. You can go to your doctor in general practice and say, I would like to go to hospital X, and you get your choice. This is the Blairite way, the New Labour way, of developing health policy, and in the first year of the policy they had a target of 205,000 patients booking the hospital of their choice through their GPs by December 2004 .How many actual referrals do you think there were? How near to the 205,000 do you think they got? According to the National Audit Office, there were a mere 63 bookings. The politics of choice is the politics of presentation, not the politics of substance. The substance is provided by Gordon Brown.

Democratic Experiments in New Zealand[*]

Elizabeth McLeay

Thank you indeed for inviting me to speak at one of the Senate's prestigious public lectures. I am honoured to be here.

Countries like ours—Australia and New Zealand—seem to go through periods of reform and renewal, years, or even decades, when citizens and elites look critically at their democracies, wondering how they can do better. Exactly what happens at these times, what galvanises people into critical appraisal and action, is not really understood, either by political historians or political scientists. In today's lecture I discuss some interesting New Zealand democratic initiatives, and attempt to go some way towards explaining why and how they have happened. I hope that I tell several good stories because, through story-telling, political science can arouse our curiosity about how societies create, maintain, and often destroy political order. More than this, though, political science identifies and explains political puzzles: why things turn out differently from expected, and so forth.

Like Australia, Aotearoa New Zealand has experienced times when social, economic and political changes have developed with great rapidity. Like Australia, New Zealand has a perception of itself as a country that is prepared to experiment and innovate. The 1890s and the 1930s are the most often cited periods of radical policy reform. These

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[*] This paper was presented as a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 1 July 2005.

years were marked by extensive changes to the involvement of the state in economic and social affairs. A similarly reformist period was the 1980s, although this time the changes went in the other direction from that which occurred during the earlier decades: towards shrinking the size and responsibilities of the state, not expanding them, and, in the process, privatising and commercialising many of its institutions. These public and state sector changes, unfortunately much more sweeping and rapid than were implemented here in Australia, are well-known and are not the subject of today's talk. But they are close relations to the democratic changes that also gained momentum during the 1980s. In short, the changes of the 1890s, the 1930s and the 1980s were experiments by and about the state: its shape, its scope, its reach into society. Indeed, a famous early book by William Pember Reeves (born in 1857) was entitled *State Experiments in Australia and New Zealand* (1923). I confess I stole this title for today's work, redirecting our attention not to the nature of the state but to its democratic control.

The five experiments, or stories, I want to discuss today are:

1. New Zealand's liberal notion of political citizenship;
2. the parliamentary representation of Maori;
3. citizen participation in parliamentary processes;
4. electoral system change; and
5. Citizens' Initiated Referenda (where I also comment briefly on campaign expenditure in general).

And how are these seemingly disparate stories interrelated? I believe they can contribute to our thinking about two important criteria for good government: equal participation for everyone, individuals and groups; and equality of opportunity to influence public policy. A sub-theme which pops up from time-to-time is that of restraining executive power and making governments accountable, but that is really a story for another day.

Political Citizenship

First, let us take New Zealand's liberal notion of political citizenship. Like Australia, men were enfranchised comparatively early. Women ratepayers could vote in local elections throughout the whole of New Zealand by 1876, and by the next year they also had the right to vote and stand for school committees and regional education boards.[1] In 1893, all women over the age of 21 gained the vote, but only after a hard-fought battle involving two nationwide petitions, the 1893 one containing 26 000 signatures, organised by Kate Sheppard and the New Zealand Women's Christian Temperance Union.[2] Maori as well as non-Maori women were involved in the battle for the ballot, but Maori women were fighting also for the right to vote and stand for the Maori Parliament.[3] Women could not stand for Parliament until 1919, however.

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[1] Neill Atkinson, *Adventures in Democracy: a History of the Vote in New Zealand,* Dunedin, University of Otago Press, 2002, p. 84.

[2] Patricia Grimshaw, *Women's Suffrage in New Zealand*, 2nd edn, Auckland, Auckland University Press, 1987.

[3] Tania Rei, *Maori Women and the Vote,* Wellington, Huia Publishers, 1993.

Today, all permanent residents of New Zealand are enfranchised: one does not have to be a citizen to vote in an election. This is of course unusual for democracies and oddly enough was an unanticipated consequence of our rather odd reluctance to take full independence when offered this status by the Statute of Westminster 1931. Formal establishment of New Zealand citizenship was not until 1949. But until 1975, the electoral law required electors to be 'British subjects', the situation since 1853. That phrase was deleted in the 1975 amendments to the Electoral Act, simply leaving the residency requirement to be eligible for voting. Today, as the Elections New Zealand website instructs, people are entitled to vote if they are 18 years or older, are New Zealand citizens or permanent residents, and if they have lived in New Zealand for one year or more without leaving the country.[4]

Citizens who have been overseas for more than three years (and who have not returned during that time), are disqualified from voting, as are permanent residents who have been out of the country for more than a year. Also disqualified are certain people detained for mental health reasons, those people who are serving life sentences in prison, a sentence of preventative detention or a sentence of three years or more; and those who have been found guilty of corrupt practices. As can be seen, these are relatively liberal provisions, although they are seldom discussed, let alone boasted about. Note, however, that full political citizenship is restrictive in that to be eligible for election for Parliament candidates now must be New Zealand citizens.

Incidentally, although New Zealanders must register on the electoral roll—registration is compulsory but compliance is not enforced—voting is voluntary. Despite this, historically New Zealanders have turned out in large numbers to cast their ballots, although in recent years the percentage of eligible-age voting has regrettably declined. Professor Jack Vowles from the University of Auckland has documented this trend.[5] So despite our liberal notion of political citizenship, New Zealand, like many other countries, has some problems with voters' apparent unwillingness to engage with the political process. This is a particular problem with young people, those between 18 and 25 years of age.

Maori Representation

The next democratic experiment that I wish to bring to your attention is the story of the political representation of New Zealand's indigenous people, the Maori. Why do I think that this is important? Because how countries treat their political minorities is a measure of the extent to which they fulfil the democratic criteria of treating everyone as equal and enabling everyone to have the opportunity to influence political decision-making.

To relate and explain this story involves looking back to a nineteenth century experiment that encapsulated a flawed, but influential, notion of what constituted fair political representation. In 1867, after debates on Maori male enfranchisement that ranged from the prejudiced and racist to the enlightened and liberal, Parliament

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[4]   http://www.elections.org.nz/enrolment/enrolling_detailed_faq.html
[5]   Jack Vowles, 'Civic engagement in New Zealand: decline or demise? Inaugural Professorial Address, University of Auckland, 13 October 2005, p. 7.
       http://www.nzes.org/docs/papers/Inaugural_2004.pdf

decided to create four temporary Maori seats. From 1867, all Maori men over the age of 21 could vote. Maori provided a challenge for the constitutional engineers of the 1860s, because land was owned communally. It had seemed that, in contrast to non-Maori men, either all or no Maori men would be enfranchised unless they owned land with individual titles (as a few did). The latter was unacceptable for several reasons, including the Treaty of Waitangi provisions, and the former would produce the equally unacceptable situation (for the settlers) where there would be more Maori than non-Maori voters.[6]

The four seats remained in place until 1996, although they were democratised in important ways, allowing Maori to choose which electoral roll to register on, for example. Maori voters in those four electorates predominantly voted for the Labour Party from 1943 onward, giving Maori an effective voice only when Labour was in government, and effectively cancelling out the Maori vote as a political weapon for Maori to employ at election time. But the impact of the four Maori seats has been of long-lasting historical and constitutional importance. Not least of its significance was that any reforms to the voting system—another of my democratic experiments—could not leave Maori any worse off that they were already: Maori, and the Maori culture, somehow had to be represented in Parliament.

The New Zealand Parliament after the 2002 General Election: Social Composition

	Women	Maori	Pacific	Asian
Labour	18	10	3	1
National	6	1	0	1
NZ First	1	6	0	0
Green	4	1	0	0
ACT	4	1	0	0
United Future	1	0	0	0
PCP	0	0	0	0
Total	34 (28.3%)	19 (15.8%)	3 (2.5%)	2 (1.7%)

Under MMP, the number of Maori seats depends on the number of Maori who enrol on the Maori register. After the 2002 general election, the third under the new electoral rules, there were seven Maori seats out of the total 120 seats in Parliament, comprising 51 list MPs and 69 electorate members. The Maori seats are superimposed over the general ones. The number and boundaries of all of the electorates are updated every five years after the census to take account of population changes; and at about that

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6   See: http://www.elections.org.nz/study/history/maori-vote.html

time Maori are asked to opt for either the Maori or general electoral roll. The choice, of course, is entirely up to them.[7]

As a consequence of the 2002 general election, the New Zealand Parliament had a more representative social profile than under the previous electoral rules. The new, proportional electoral system changed the face—or should I say the faces—of the New Zealand Parliament. But that New Zealand had achieved fair representation of its indigenous people by the end of the twentieth century was at least in part a consequence of those four Maori seats created in 1867 for somewhat shabby political reasons. Group representation had become an important democratic principle in institutional design.

I should also note at this stage that Maori MPs, along with many Maori activists, had protested about their treatment, especially their loss of land, language and culture, ever since the Treaty of Waitangi was signed between the chiefs and the representative of the British Crown in 1840. And a coalition of Maori MPs, Maori protest leaders and non-Maori leaders were to be instrumental in creating a device whereby redress for past wrongs could be achieved. This was the Waitangi Tribunal, a quasi-judicial body that has awarded Maori iwi and hapu substantial sums of money and grants of public lands in reparation of past injustices. This quiet revolution is ongoing. Further, the position of Maori in our polity is recognised in that, since 1987, Maori has been our second official language.

On to my next democratic experiments: parliamentary reform, electoral system reform, and the legislation enabling citizens to initiate referenda. Again, some history is needed to help explain the origins of these three experiments.

Parliamentary Reform and Public Participation

During the 1960s and 1970s, New Zealand saw a number of significant legislative changes implemented, such as instituting ombudsmen and enacting laws protecting human rights, the Official Information Act, and so forth. The culmination was the *Bill of Rights Act 1990*. Despite this series of reforms regarding the relationship between citizens and the state, the core Westminster institutions remained firmly in place. New Zealand's Parliament was dominated by the cabinet of the governing party. Then, as now, there were no formal countervailing powers to prevent the abuse of office by an overbearing government. New Zealand had no formal veto points, in political science jargon—either in terms of having a federal structure or an upper house. In that sense New Zealand was (and still is) a very different sort of democracy than is Australia. The equivalent of your Senate was abolished in 1950, with only a few constitutionalists regretting its departure. The courts had no jurisdiction over Parliament and cabinet: Parliament was supreme. The triennial elections meant that governments had to face the people relatively frequently, however, and there was a good deal of consultation over policy issues by governments, the saving grace for democratic health. Richard Mulgan has made this point most effectively.[8]

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7   http://www.elections.org.nz/electorates/n37.html

8   Richard Mulgan, 'The democratic failure of single-party government: the New Zealand experience', *Australian Journal of Political Science*, vol. 30, 1995, Special Issue, pp. 82–96.

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Meanwhile, however, social change was impacting on politics, with feminism, environmentalism, the peace movement, and Maori activism all lively developments that were challenging our understanding of the political and of what might constitute responsive, representative political institutions. And a particular prime minister called Robert Muldoon also challenged notions of civility and engagement through his authoritarian domination of politics and policy.

Under the leadership of David Lange, the Labour Party, out of power since its brief, single term in the early seventies, returned to government in 1984 with a clearly laid out 'Open Government' policy, and a much less overt set of plans to transform and modernise government and the economy. The first of these goals is not well known, despite its transparency. There were three main direct consequences of Labour's plans for democratic change and one indirect one. The direct ones were: the reform of Parliament; the revival of state responsibility for protecting and furthering the rights of the indigenous people, the Maori, an issue that I've already touched on, and, through setting up a non-parliamentary inquiry into electoral system reform, placing the possibility of that transformation on to the political and public agenda. The indirect consequence was the creation by Labour's successor, the 1990–1993 National government, of another democratic experiment, Citizens' Initiated Referenda.

Robert Muldoon's domination of government and Parliament had put parliamentary reform on Labour's agenda; and winning the nationwide vote but finding themselves with fewer seats than National not once but twice (in 1978 and 1981) made electoral reform seem desirable. Furthering Maori rights acknowledged Maori voting support for the party and was a further development of reforms initiated by Maori MPs and ministers during the 1970s. Labour's state and economic reforms were expedited through having the parliamentary numbers to drive change through very fast. The sense of national emergency engendered by financial and constitutional crises in the immediate post-election period also legitimised radical change. In 1990, after six years of breathtaking reforms, Labour was replaced by a National government intent on completing the revolution, including radically reducing the size and character of the welfare system and individualising industrial legislation. Both governments—Labour and National—were widely interpreted as having exceeded, or gone against, their electorate mandates. And this led voters to entertain the prospect of changing the electorate system to inhibit the actions of these sorts of high-handed governments.

So there we have the background to the three reforms I shall next outline. Let's go back a little in time and first briefly deal with the reform of parliamentary processes the least controversial democratic experiment, but one with far-reaching consequences, especially once MMP was in place.

The reforms instituted in the 1980s included the radical reform of the committee system. Thirteen committees were created, each shadowing particular policy areas and government departments, and each with several functions: legislation; scrutiny of the policy, administration and expenditure of government departments; and the power to initiate inquiries. The committees could (and do) rewrite legislation. All legislation except financial measures (and those bills pushed through under urgency) went to the relevant committee. As you can see, these were important provisions for my sub-

theme of today, increasing governmental accountability.[9] But importantly for my main theme of experimenting with democracy, citizen participation in the parliamentary process was increased. And this communication between citizens and MPs continued to develop after MMP was adopted. More MPs and more parliamentary parties made policy debate more arguable and contestable, giving added incentives for citizens to put forward their views and MPs to listen to them.

Today, written submissions on legislation are called for as a matter of routine.[10] Unlike in many other parliaments, although committees certainly call on experts and particular interest groups to make submissions, they also seek submissions from any individuals and groups who wish to be involved. Many of those who write submissions also present them orally, although this is up to the discretion of the committee chair. Most hearings of public submissions are held in public. Sometimes there are hundreds of submissions, occasionally even thousands (presenting committees with real logistical problems). These submissions do affect the final legislation. As far as committee inquiries are concerned, whether a committee will call for public submissions or not rather depends on the matter being inquired into. The norm is to do so. Gradually, the process is being modernised with submissions being put online and, also, videoconferencing being employed. At times, committees conduct hearings outside Wellington.

And the impact on New Zealand democracy? This is three-fold. First, from the evidence of my interviews on this topic, people who know something about a topic are indeed listened to by MPs. Thus citizen participation expands the knowledge of MPs and enhances public discussion of policy issues. Second, at the very least, reading and listening to citizens' views keeps political representatives in touch with voters. Third, the process familiarises voters with the parliamentary process—it is part of a public educational project, an exercise in active civics, one might say.

And MMP itself? It is high time we looked very briefly at the new electoral system.

Electoral System Change

The adoption of a proportional representation system to replace FPP (the first-past-the-post electoral system) has been New Zealand's most radical and well-known democratic experiment. In a referendum of 1993, New Zealanders voted 54 per cent to 46 per cent in favour of changing the electoral system to what we call MMP: the Mixed Member Proportional system. It is very similar to that used in Germany and, more recently, Scotland. In brief, we have two votes, one for our local electorate MP, who is elected by a simple majority, and one for our preferred nationwide party list. After the electorate winners have been decided, the remainder of the 120 seats are distributed amongst the political parties so that their total numbers of seats accords to their total shares of the nationwide, party vote. In order to be eligible for their parliamentary share of seats, parties must either win five per cent of the nationwide

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[9]   See Geoff Skene, 'Parliamentary reform', in Jonathan Boston and Martin Holland, eds, *The Fourth Labour Government: Radical Politics in New Zealand,* Auckland, Oxford University Press, 1987, pp. 72–88.

[10]   See http://www.clerk.parliament.govt.nz/Programme/Committees/PressReleases/17jun05.htm

vote or, alternatively, win one electorate. The details are easily obtainable from the Elections New Zealand website.

And has MMP improved New Zealand's democracy? In my view it has. Briefly:

- Minor parties are now present in Parliament representing voices hitherto muted by their lack of public presence, profile and authority. At present there are eight parliamentary parties. There are the two, traditional, large parties of the centre-left and centre-right, Labour and National. There are middling-sized parties that range across the political spectrum: the Greens, United Future, New Zealand First, and Act. And then there are two tiny parties: the two-man Progressives and the one-woman Maori Party MP.
- People from different social groups are now better represented. I have already pointed out that Maori representation has increased as a result of MMP. The representation of other ethnic minorities, and women, has also gone up, although both groups have still some way to go to achieve full proportional representation.
- Governments can no longer push legislation through the House, relying on their majority parliamentary support to do so (even though they were almost always elected on the basis of a minority of nationwide votes). Coalitions mean consultation; and the minority governments that we have had for almost the whole MMP period have meant that governments have had to negotiate with other parties and form informal coalitions in order to pass legislation. In my view, this is a good thing, in part of course because there is no upper house. Slower is better, as is consultation across parties, although there is an alternative viewpoint on this matter, nostalgia for the days when single parties in government could count on being able to enact their policies by holding on their own a majority of parliamentary seats.
- The larger House, with the wider range of parties, has meant that the select committees, already armed with substantial paper powers by the reforms of the 1980s, have the political numbers to amend government legislation, scrutinise government departments, and inquire into policy and administration.

There is a down-side to all these democratic gains, though: for the first two terms governments were less stable than they had been between 1935 and 1993, and there was much party-hopping. The last government, however, has endured since the 2002 election. There have been only two departures from their political parties: an Act MP, and Tariana Turia who left Labour over an issue relating to Maori rights. Turia formed the Maori Party which almost certainly will gain seats at this coming general election. Turia's formation of the Maori Party is in one sense a healthy development, with Maori using the new electoral rules to pursue their interests. In another sense, though, it shows that New Zealand still has a long way to go before there is a truly bicultural democracy.

And now to my fifth democratic experiment.

Citizens' Initiated Referenda

In 1993, an act of Parliament enabled citizens who collect a minimum of ten per cent of signatures in support of their petition to compel governments to hold a referendum on that issue. Supporters of a particular referendum have twelve months in which to collect their signatures.

No more than NZ$50 000 may be spent promoting petitions; and $50,000 is also the ceiling on promoting referenda. These constraints build on a good although imperfect tradition in New Zealand politics whereby expenditure on campaigning is limited by law. In general elections, for example, there is a limit of $20 000 (including GST) on the election expenses of every electorate candidate in the three months immediately before election day. And within 70 days after the election candidates must send a return of expenses and expenditure to the Chief Electoral Officer. This return must include substantial donations to the candidate. Further, registered political parties are limited in how much they can spend to promote their party and their party list. Parties can spend up to a million dollars, plus $20 000 for each electorate contested. Again, after the election, the elections expenses must be reported. Donations above $1000 for a candidate and above $10 000 for a registered party must also be disclosed. Thus the expenditure limitations for referenda are in tune with other legislation. But of course referenda and elections are rather different from one another since the latter are more competitive situations than the former.

Note that the results of the citizens' initiated referenda are 'indicative' only: they are not binding on Parliament or government. So this experiment is not so much about direct democracy as about the power of numbers to influence rather than compel decision-makers to do what is apparently desired by the majority of voters. The origins of Citizens' Initiated Referenda were in the National Party, many of whose supporters were dismayed by actions of the 1984–1990 Labour government, including measures such as decriminalising homosexuality. I should add that New Zealand has a history of referenda, but most were on liquor licensing (1911–1989). There were also constitutional polls, dating from the *Electoral Act 1956*.

Between 1993 and October 2002 there were 27 attempts to collect sufficient signatures to hold a referendum. Only three went to referendum:

- 1995: Should the number of professional firefighters employed full-time in the NZ Fire Service be reduced below the number employed on 1 January 1995? (Yes: 12.2 per cent; No: 67.6 per cent)
- 1999: Should the size of the House of Representatives be reduced from 120 members to 99? (Yes: 81.5 per cent; No: 18.5 per cent)
- 1999: Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences? (Yes: 91.8 per cent: No: 8.2 per cent)

At the moment, there is a petition to change our flag.

And what can be said of this democratic experiment? First, even indicative referenda have the potential to harm minorities. Second, complex policy issues cannot easily be

couched in yes/no terms: they need public debate and discussion. Third, when governments do not respond to indicative referenda (as with the 99 MPs referendum), then public disillusionment can increase. Fourth, money can defeat good arguments, even with our laudable spending limits on those who are pushing for policy change through public referenda. This is because there is no systemic way under our law for the opposing case to be funded, meaning that the arguments become asymmetrically advocated. In my view the Citizens' Initiated Referenda legislation is an unsatisfactory democratic experiment, and referenda should be reserved for constitutional issues.

All in all, New Zealand's recent experiments have been a mixed package.

Why and How

How can we explain the recent rash of democratic experiments?

It is tempting to explain periods of political and institutional change in terms of some kind of historical journey, perhaps, for example, using a train metaphor. The train leaves the station and travels along steadily, then it slows down, goes in fits and starts because the rails are buckling in the heat, races down an incline, only to come to a standstill at the next station. And so forth. Political systems are not quite like this. But there's some truth in the train metaphor, because democratic political systems move along historically determined tracks, and then for some reason change direction: the points shift. What are these 'points' (and note that we are not talking about actual derailment here, for example a revolution that turns a democracy into some kind of authoritarian state)?

Certainly some potentially far-reaching changes can occur incrementally and even pragmatically, as a series of quite small decisions that can add up to fundamental system change, as did the evolution of the idea of political citizenship and the institutionalization of Maori representation through the Maori seats, for example. Other, more immediately radical changes seem to occur as a result of a number of factors that come together. First, a democratic system exhibits some underlying problems—a marked disproportionality in election results, perhaps. Then certain events prove to be precipitating factors—a political scandal or rort, for example, or a government that is seen to be acting in an authoritarian manner. Even then, however, a remedy to the problem identified may not appear, because somehow the issue has to move from the public to the governmental and parliamentary agenda. It is at this stage that policy and constitutional entrepreneurs play a role, agitating in their own parties and governments, arguing that it is in the interests of their party to move on the issue. And so we get democratic change, although radicalism is often muted by compromises through bargaining and negotiation. It also helps to have an uncodified constitution because then there are a number of issues that are unprotected by constitutional bulwarks by having to be passed by referenda or be approved by three-quarters of all MPs (which even in New Zealand is required for some aspects of the constitution).

So New Zealand's democratic experiments can give us some idea of how democracies can change. But what of the consequences of those five experiments? How do we judge this mixture of large-scale and quite small-scale political experiments? On balance, I believe, they have made individuals, groups and political parties more equal with one another, and they have increased public participation in the political process.

Nevertheless, at the same time there are warning signs of disillusionment and a lack of interest in politics, as there are in all the 'old' democracies. It will be interesting to see how long it takes before the next democratic experiment begins.

Question — When you talked about the way New Zealand addressed the discrimination between British and non-British permanent residents in New Zealand, you were much too kind to mention the way Australia addressed the same problem. While New Zealand acted to create an inclusive political nation, Australia moved in the other direction, to make the political nation more exclusive. We took the vote away from all permanent residents unless they were already on the roll. So we got about 1 million people living as permanent residents in Australia who could not vote and so, yes, New Zealand is a much more inclusive political nation.

That's one point you were too polite to mention. Another is about the committee system and the extent to which that opens up the legislative process to community participation. In Australia as well, we advertise for submissions from the public, and we put the submissions up on the internet, and committees travel around Australia and take evidence from members of the public. But some senators simply cannot restrain themselves in such public hearings from behaving as they do on the floor of the chamber. Particularly if it's a politically sensitive inquiry, you get senators treating members of the public as though they are a member of the Opposition on the floor of the chamber, and this hardly encourages community participation, if at the end of a hearing they are absolutely bruised and battered from the experience. So I'd be interested if New Zealand manages to keep that community participation going in a friendly and non-adversarial manner.

The third point I'd like to make is simply to endorse your view that good government may well be slower government. In this country we've had governments of both political complexion (I shouldn't say both in the context of the Senate, when we have a multi-party system). Both the Coalition and Labor governments have expressed impatience with the Senate for holding up government through exposing legislative proposals to public scrutiny and to a process of negotiation for amendments and so on. This slows government down, and it's been said that this is totally inappropriate considering the context of the pace of decision-making in the global economy, and therefore we have to make government faster. We are all rather worried that government may become faster from today and that we will have a much less democratic and accountable process, but you may like to comment on that as well.

Elizabeth McLeay — The first point you have made very well. With regard to your second comment, from my observation of committees I have seen the occasional MP verbally put down a submitter, but it doesn't happen very often. There are quite strong guidelines for committee chairs and the chairs don't approve of that kind of behaviour. There is an ethos on the whole that you don't put citizens down and a recognition that it's a rather scary business for anyone to present a submission but particularly for people who are not fully acquainted with the parliamentary process. So I have seen it happen, but I haven't seen it happen very often. The group that I saw most put down

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were my colleagues who put forward an argument in favour of the Maori seats and an ACT Party MP was extraordinarily rude to them. On the whole it is a fairly congenial and relaxed atmosphere.

On fast government, one of the things that has happened under MMP is that governments have not easily been able to get the numbers to push forward measures under urgency, and if you look at a graph of the measures taken under urgency, it was very high and then went down after MMP was instituted. That was particularly so after 1999 because the Green Party is philosophically opposed to taking urgency and the government relied on the Greens for those motions. It has gone up a bit since the 2002 election because the United Future Party, which is now supporting the government although it's not in executive office with the government, is quite happy occasionally to use urgency. I think the answer is that a lot depends on party philosophies and views.

Your point about globalisation. If we look at most parliaments' measures we find that if there is a real national emergency they can get the numbers. I agree with you that the norm should be a deliberative, slow process—not rapid change, and to cite globalisation as requiring rapid decisions, is just an excuse for poor legislation.

Question — Professor, I was wondering if you were perhaps overly optimistic about the idea of coalitionist conversation. Although it is true it seems, from what I've seen, that the current prime minister manages the system extremely skilfully and well and will always get her legislation through, certainly that wasn't so with her predecessor, Jenny Shipley. It seemed looking from this side of the Tasman that she had to have 14 or 15 separate conversations with individuals to manage legislation, and there was a tremendous slowing of the business of government. There was a year where I think there were only five or six pieces of legislation that got through parliament. The question is, could this happen again with a National resurgence forming the lead role in government, and not being able to work MMP?

Elizabeth McLeay — Jenny Shipley had to negotiate with a number of MPs who were almost like independents, and we don't have a history of independents in New Zealand. It was a result of the New Zealand First Party splitting whilst in government with the National government. So for most of that term, it was actually pretty stable with a substantial amount of legislation passed and then after the New Zealand First Party split into two, yes, she did have to negotiate with more people for a limited period of time. Most of those people weren't re-elected. Electors are not stupid. I think it is always a possibility with proportional representation that you get a fragmentation of the House. For this reason I would like to change our electoral system a little bit. I would like to see the five per cent threshold dropped to four per cent, which on the face of it seems to allow more parties in. But I would like to see the one seat threshold go, because that allows very small parties to come into the House without even five per cent membership of the House. I would like to see that go, but of course all changes are now taken up only after full consensus, and there is no way that minor parties now would agree to that one seat threshold being dropped. But yes, I think fragmentation is a problem, but you can have a majoritarian system, which has certain advantages—it provides rapid government usually, but not always stable government, they [majoritarian systems] can get into trouble too. And then [with proportional representation rules] you have systems which put representation and

representativeness as primary critera. Finding that balance is always difficult in electoral system design and indeed all scholars say there is no perfect electoral system despite your enthusiasm for preferential voting.

Question — I was highly impressed with the last part, on the citizen initiative. The citizen initiative comes from Switzerland. It also has a recall of persons (and we've had one) and it has the recall of legislation. When do you think in New Zealand you'll complete the tripod: citizen initiative you've got, but you haven't got the recall of the person, and you haven't got the recall of legislation.

Elizabeth McLeay — There is no call for either of those. However to change the subject slightly, which people always do when they answer questions, there's much more likely to be a call for fixed term parliaments, as is happening with the states here. There's a lot of feeling at the moment that prime ministers have too much power, being able to call an election at their own time and at their own pace. So I think that's a more likely change, and I don't think we are likely to get any of those other kind of changes, because I don't think there is now a huge amount of enthusiasm for citizen initiated referenda, perhaps because they are not binding. Although, if they were binding we would get into all sorts of other problems. Some very silly stuff has gone on in the Californian situation.

Question — You mentioned campaign spending limits. Is that part of the changes, or has it always been the case in New Zealand? If it is a recent change, has there been any demonstrable impact on New Zealand's democracy as a result?

Elizabeth McLeay — There have always been some limitations and then when MMP was instituted those requirements were fine-tuned for the new system. It is really hard to tell what the impact is. There's been some dodging of the disclosure rules and some dodging in creating trusts, which always seem to advantage some parties against others. On the whole it is respected and no-one would want to change it, but I think further fine tuning is needed. I think all disclosure would make a big difference. It does have an effect, certainly at the constituency level, because $20 000 is not much to spend.

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The Australias Are One
John West guiding colonial Australia to nationhood[*]

Patricia Fitzgerald Ratcliff OAM

I acknowledge that we meet here today on the ancestral lands of the Ngunnawal people.

I thank the Australian Senate for this opportunity to stand before the original emblem of Federation, created in 1851, and to introduce to you its designer, John West, as one of the true founding fathers of the Australian nation.

The publisher's statement on the dust cover of my book, *The Usefulness of John West: Dissent & Difference in the Australian Colonies,* published a year ago, reads:

> There is a chapter missing from the story of Australia. Historical writing has recognised the contributions of convicts, governors, settlers and explorers, Anglicans, Roman Catholics and Scots Presbyterians, but the influence of the dissenting middle class has received less attention.[1]

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[*] This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House on 23 July 2004. When published in *Papers on Parliament* No. 42 (December 2004), the illustration of the Anti-transportation League flag on p. 115 was inadvertently omitted. It is republished, with apologies to the author, with the flag in place.

[1] Patricia Fitzgerald Ratcliff, *The Usefulness of John West: Dissent and Difference in the Australian Colonies,* Launceston, Tas., Albernian Press 2003 [hereafter *Usefulness*]. Front jacket flap.

John West was arguably the most influential of the middle class dissenters, a person of colossal intellect, a dynamic orator with a mellifluous voice. He was independently educated, classically literate, an educator, lecturer and essayist, a political activist who published his *History of Tasmania*[2] in 1852 when it was still the convict colony of Van Diemen's Land, under the patronage of another Independent dissenter, Henry Hopkins. His *History is* included in a recent list of 101 best Australian books.[3]

With fellow-dissenters he co-founded the *Launceston Examiner* in 1842. He was its chief editorialist, and his inaugural editorial remains the exemplar of responsible journalistic practice.

He wrote and lectured on the widest possible range of subjects: bread and water problems in the daily life of his adopted community, against exclusivity in education, about the civilising effect of art in colonial life, the separation of Church and State, the consequences of the French Revolution of 1848 for the troubled British nation and her colonies, and the significance of the world of Mahometanism—his name for Islam—in relation to Christianity, a subject not without significance today.

John West was born in 1808 in Britain, into a world of agitation for political reform at home, while the Imperial government engaged in the colonisation of distant places through the transportation of its so-called 'criminal classes' abroad—a time also when to be socially useful was seen to be virtuous. The son of Christian parents, William and Ann West, he took their Wesleyan trend towards non-conformity a step further when he was ordained a minister of the Independent (later known as the Congregational) Church.

This denomination, together with the Baptists, Quakers, and secessionist Scots Presbyterians, consisted of Christians who held that there was no need for a priest to interpose between God and the believer, and that worship did not need to take place in a consecrated building. They dissented absolutely from the authority of the Church of England, with its hierarchy of deacons, priests and bishops, and a sovereign as head of a church established by law as the true religion of the State.

Dissenters paid dearly for their beliefs; they were denied civil rights and public office, and could not take degrees from the universities of Oxford and Cambridge. The Pilgrim Fathers and Mothers who sailed across the seas in the seventeenth century and founded America were dissenting Christians. Roman Catholics were also in dissent, but for different reasons.

Independents were financially responsible for the construction of their own chapels, the supply of their own ministers, and creating their own schools with their own teachers. They also established services to the wider community, insurance companies, general cemeteries, breweries where the water supply was troublesome, immigration societies, mechanics' institutes and schools of arts which were sometimes the

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2   John West, *The History of Tasmania*, Launceston, Tas., Henry Dowling, 1852, 2 vols.

3   The *Bulletin* (Sydney), 19 November 1991: 100–104, selected by the National Centre for Australian Studies, Monash University.

precursors of other cultural institutions: museums, public libraries and art galleries, as well as charitable activities such as strangers' friends societies and city missions.

Many of the great institutions we take for granted had their genesis in the private enterprise and voluntary activity of people who were in no doubt that they were their brother's keepers, and who were their brothers and sisters, and they regarded the receipt of financial aid from the State for religious purposes as a compromise of principle.

To further educate the wider community in their particular set of social and political values, they established their newspapers.

So, what was the significance of John West's particular value system to the civic position in which he found himself in the police state that was Van Diemen's Land in the first half of the nineteenth century?

John West migrated in 1838 with his wife Narcissa and five children under the age of seven. He came to Hobart Town, 'the Botany Bay of Botany Bay' as he described the place in his *History*.[4] They travelled in the ship *Emu*, which also carried the news from the Colonial Office to the Governor that transportation was to cease, a decision that was not effected for another fifteen long years, until 1853, and in Western Australia not until 1868.

John West had many sources of political inspiration. His wide knowledge of history gave him access to the achievements of earlier British dissenters, from Cromwell and Milton, to the heritage of a famous body of memorialists for civil rights (a sort of parliament of lobbyists). They were known as the Dissenting Deputies.

An ecumenical committee of Christian laymen, it was founded in 1732 to lobby Parliament for the repeal of the Test and Corporation Acts, the repressive laws of Tudor origin that deprived dissenters of civil rights. One hundred years of faithful and persistent lobbying finally bore fruit in 1828, giving dissenters access to a limited democratic process.

John West's Independent Christian heritage was the fount of his democratic ideal. Independent or Congregational Churches were organised on democratic lines, being governed by their members who had an equal vote, whether minister or lay, man or woman. He wrote explicitly connecting Christianity to democracy in an editorial in the *Launceston Examiner* on 18 March 1854. This was the year he became official editor of the *Sydney Morning Herald,* the newspaper of his fellow dissenter and friend from their Warwickshire days, John Fairfax. Entitled 'Democracy', the editorial reads:

> Some ignorant, half-witted, and beclouded bigots are yet in the habit of quoting this term as synonymous with anarchy, though it only accurately describes that influence the people are entitled to exercise in the management of public affairs. In England and in every other constituted state, it is democracy that in the long run moulds and fashions every movement, but few seem to be aware of its origin.

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4   West, op. cit., vol. 1: 29.

In [James Aitken] Wylie's prize essay, democracy is placed in its true position. He says:

> It was through Christianity that the first democratic element came into the world. That principle was altogether unknown to the ancient governments which were either autocracies or in a few instances oligarchies. The people as such were excluded from all share and influence in government. Christianity was the first to teach the essential quality of all men, and the first to erect a system of government in which the people are admitted to those rights ... .[5]

He goes on to recognise that the Church 'abandoning her own idea, began to copy in her government and organisation, the order of the State', otherwise, 'ere this time of day, the world would have been filled with free and constitutional states.'[6]

It was John West's desire that a future union or federation of *the Australias,* the name he used for the antipodean colonies, would be conducted on democratic Christian principles, the principles he employed in his daily life. A miniature democratic community was set up in Launceston where nine women and nine men signed the Covenant which established their little Independent Church in St. John's Square. The equality of gender implied in the wording of the Covenant signifies the esteem in which each held the other. A small community of brewers, schoolteachers, newspaper proprietors, editors, carpenters, builders, and merchants, they became the fount of the local Christian social enterprise.

The greatest social issue confronting the colonial societies of pre-federation Australia was the problem of the moral, political, and economic consequences for all the antipodean colonies of the policies of the British government which had declared it expedient that Van Diemen's Land alone should be the *Empire's gaol.*

During the years of his governorship of Van Diemen's Land (1824–1836) the military Lieutenant-Governor George Arthur created a dependency in the free settlers on the assignment of a captive labour force to develop their sometimes vast estates. With the support of the Commissariat, they constructed their excellent houses, grew their crops and minded their sheep, while a police state with closed borders ensured a seemingly ordered society.

But all this changed with the conclusions of the 1837 Molesworth Select Committee of the House of Commons who found that transportation as a method of minimising crime in the British community had failed and therefore should be abandoned. The government did not abolish transportation but decided that the system whereby a prisoner by assignment became effectively the property of the settler, with most of the moral implications of slavery, would cease.

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[5]   James Aitken Wylie, 'The Papacy: its History, Dogmas, Genius, and Prospects', Evangelical Alliance Prize Essay, 1851. Wylie (1808–1890) was a Scottish protestant journalist, writer and historian.

[6]   *Launceston Examiner*, 18 March 1854.

There remained in Britain the need to deal with the numbers of convicted classes consequent upon the abolition of the death penalty for a wide range of crimes short of treason and murder. Transportation of these persons would continue to Van Diemen's Land, but under a new system devised by Lord Stanley, the transportees, to be called 'exiles', were subject to a system of probation which allowed them to climb ladders or slide down snakes according to their capacity for reform.

The free settlers of Van Diemen's Land were outraged at the decision to end assignment of labour. Public meetings of pro-transportationists in 1839 authorised and paid for an unsuccessful petition to Queen Victoria for the continuation of transportation and assignment. Transportation did continue, under the new system of probation whereby 'exiles', no longer assigned, were housed in government barracks and employed on public works. Only when they had concluded their probation period successfully would they be available as a colonial labour force, now free to work for wages, and thus to compete with the free labour force.

On mainland Australia, a new nation was forming—what was its real democratic potential?

John West did not stand idly by while Van Diemen's Land, a society divided between convicts and privileged settler classes sank into the civil and moral inequality inherent in its role as the Empire's gaol. Launceston, the town of his adoption, maintained and serviced and exploited the obvious appurtenances of convictism, the treadmill, the public gallows in Paterson Street, the stocks in Cameron Street, the Female Factory.

Limited freedom to pursue self-government had been granted to the other colonies, New South Wales to which transportation had ceased, South Australia, where transportation had been explicitly excluded from the beginning, and Western Australia, where convictism was rejected until after it was abandoned in the Eastern colonies. Victoria on separation inherited the freedom of New South Wales. New Zealand had never directly known the 'convict stain'.

The attractions of an easily exploited captive labour force remained, putting in jeopardy the prospects of free emigrant labour. In this setting, John West took up the task of injecting hope and expectation of a more just society into his hearers and readers. John West shared Anthony Trollope's faith in the power of the pen. 'We all know', claimed Trollope, 'That if anything is ever done in any way towards improvement, the public press does it.'[7]

He began his campaign for the Australias' emancipation from convictism in verse:

> There is a midnight blackness changing into grey,
> Men of thought and men of action clear the way!
> Once the welcome light has broken
> Who shall say
> What the unimagined glories of the day.
> Aid the dawning, tongues and pen,
> Aid it, hopes of honest men,

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[7]   Anthony Trollope, 1858.

> Aid it paper—aid it type,
> Aid it, for the hour is ripe
> And our earnest must not slacken into play:
> Men of thought and action clear the way![8]

John West had no illusions about the vast and powerful imperial forces gathered in the Colonial Office in Downing Street, Westminster, and he understood clearly that educated men of thought and action were needed to liberate the colonists from the thrall of convictism.

Writing with well-cloaked irony, he alerted colonists to the pitfalls of government from the Colonial Office. In his fourth essay on Union, he said:

> Downing Street is the celebrated seat of a colonial empire upon which, as has been said, the sun never sets. And Downing Street is the substitute for federation.

> The modesty of its designation, the simplicity of its aspect and the gentleness of its dialect, create no suspicion of tyranny … the homely, familiar, unpretending name which yet includes the sovereignty of nascent empires has nothing august, thrilling, or soul subduing; suggests nothing but friendly calls and punctual correspondence. Still, we know that it is in Downing Street 'the groans of Australia die away in silence'; there it is that despatches, which have run over half the world are couched in oblivion; while beneath in cellars of unfathomable depth, long-forgotten petitions that have prayed in vain, and memorials as dead as a man out of mind, lie deep in dust.[9]

The Colonial Office had come under the charge of Henry George Grey—Viscount Howick until he succeeded to the Earldom in 1845. George Grey, in the words of John M. Ward was 'a high-minded minister who sought to act wisely and rightly towards the Empire as a whole' and who 'made the most extensive and determined efforts to improve its system of government.' As an ardent free-trader, Earl Grey 'thought that the Australian colonies might be federated so that tariff barriers would not hinder their development' and proposed to provide them 'with some central authority to handle matters that concerned them in common.'[10]

But the inhabitants of Van Diemen's Land, bond and free, held little in common with the partly enfranchised citizens of the sister colonies. Her status as a penal colony would, if persisting, condemn all her inhabitants as social pariahs and preclude any possibility of their contributing to nationhood.

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8   *Launceston Examiner*, 16 June 1848: 46, concluding editorial on the French Revolution of 1848 (quoted in *Usefulness*: 364). Verse possibly by Narcissa West.

9   Patricia Fitzgerald Ratcliff (ed.), *John West's Union of the Colonies; Essays on Federation Published under the Psuedonym of John Adams,* Launceston, Tas., Queen Victoria Museum and Art Gallery, 2000 [hereafter *Union*], pp. 43–46; quoted in *Usefulness* at 160.

10   John M. Ward, *Earl Grey and the Australian Colonies 1846–1857: a Study of Self-Government and Self-Interest*, Melbourne, Melbourne University Press, 1959: v; *Usefulness*, p. 373.

The Rev. John West, ever the ardent supporter of political and religious freedom, persistently promoted the idea of people's democratic representation. As early as 1842, he wrote in the *Examiner* on the desirability of 'the only effective resource—a united effort to secure that form of legislation in which alone the voice of the people is heard, their interests understood—their wishes regarded.'[11]

However, by 1848, John West was obliged to argue against Earl Grey's federation for the Australias on the very clear grounds of the prevailing state of social and civic inequality of their citizens.

He looked to history for examples of other colonies dealing with the intransigence of British policy, and saw the Americas and their battle for representation. They had faced similar intransigence, their argument weakened by the distance of its voice. America created its own significant voice in London when Edmund Burke was appointed as their Agent on a salary of £500 per annum to plead their cause at the seat of Government. Van Diemen's Land would follow in their footsteps.

John West put together millions of words on colonial emancipation from convictism. Editorials in the *Launceston Examiner* and the Hobart Town *Colonial Times,* his pamphlet (following Thomas Paine) entitled *'Common Sense: An Inquiry into the Influence of Transportation on the Colony of V. D. Land',* (which was distributed as far afield as South Africa, and doubtless also to Great Britain), petitions, instructions to the London Agent, half a volume of his *History* (exposing in detail the process and effect of transportation), memorials and pleas, all were written to enable colonists to treat intelligently with Downing Street.

However, Britain was preoccupied with 'questions more important than a single colony'[12]—the potential war in the Crimea, the consequences of the famine in Ireland, rebellion in Canada, and paid little heed to the agitations from obscure agriculturalists, merchants and men of God who Lord Stanley regarded as deserving of their fate. In his opinion, the settlers knew they were migrating to a penal colony, and must accept the consequences.[13]

Hobart Town on the south side of the island was the seat of colonial government, while the northern side was the engine of private enterprise. Influential men of thought and action assembled there often at significant public meetings, and their proceedings and findings were faithfully reported in the *Launceston Examiner.* Colonists found their voice at the seat of Imperial government when they created their own London Agency Association.

John Alexander Jackson, former editor of the *Launceston Independent* newspaper, former Colonial Secretary and Treasurer of South Australia, was appointed their agent at £400 per annum for two years, the entire cost coming out of their own pockets. James Cox of Clarendon subscribed £25, while John West himself subscribed a modest one guinea, in addition to the liberality of the proprietary of the *Examiner.* South Australian residents added £130 annually, believing that 'Mr. Jackson's

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11   *Launceston Examiner*, 1842: 46; *Usefulness*, p. 365.

12   *Usefulness,* p. 375.

13   Ibid.

advocacy of their claims need not clash with the interests of their own country but be greatly benefited by his zealous energy.'

Jackson, under the guidance of a local committee, looked to John West whose most significant contribution he acknowledged to be the Letter of Instructions.[14]

The London Agency was the colony's instrument for change. The Canadian, C.D. Allin, in his history *The Early Federation Movement of Australia,* commented:

> The novel suggestion for the appointment of colonial agents in London who could co-operate in the advancement of Australian interests subsequently bore fruit in the creation of a corps of agents-general who have proved a most effective instrument for influencing the policy of Downing Street.[15]

Barbara Atkins tells us:

> The work of the Agents-General is, in a sense, an expression of nineteenth century Australian nationalism—they were the first ambassadors of an incipient Australian nation to a foreign country.[16]

Agents-General to the Crown Colonies already existed in London; Imperial public servants, their salaries were paid out of colonial funds, but they were criticised for lack of action. There was also the New South Wales and Van Diemen's Land Commercial Association to which John West recommended the London Agent, Jackson.

Economic prosperity and social emancipation accelerated on mainland Australia while tolerance of the distressing social conditions of an isolated Van Diemen's Land reached a dangerous and despairing ebb. Despite a despatch from Earl Grey in February 1847 that transportation was finally terminated, shiploads of convicts continued to arrive on her shores, creating 'an intolerable grievance'[17] for the community. Forty per cent of the population were now a bonded class of human beings, many housed in overcrowded and insanitary barrack accommodation.

Furthermore, New South Wales landowners and squatters, with the collusion of the Secretary of State in London,[18] hired some of Britain's so-called 'exiles', creating a broader demand for a labour force whose condition of inequality was seriously exploitable. The emerging nation of Australia was in great danger of having the existing class distinctions firmly entrenched by government policy.

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[14]   *Usefulness*, p. 381.

[15]   C.D. Allin, *The Early Federation Movement in Australia,* Kingston, Ontario, British Whig Publishing Co. 1907, p. 70.

[16]   Barbara R. Atkins, 'The Problem of Representation of Australia in England. The Origins and Development of the Australian Agents-General during the Nineteenth Century', M.A. Thesis, University of Melbourne, 1960.

[17]   *Union*, p. 6.

[18]   *Union*, p. 5.

Two years of representation and lobbying for emancipation from convictism by the London Agent achieved absolutely nothing, and it was now believed that Britain intended to revive transportation to New South Wales.[19]

The latest Governor of Van Diemen's Land was William Denison, the man who became Australia's first Governor-General. His salary of £2000 per annum was supplemented by another £2000 per annum to make the unhappy system of probation work.

The 1850s were the turning point in the civilising of Australia. The British Empire's pre-eminence was to be celebrated by a great exhibition in which the Empire's products and artefacts would invite favourable comparison with those of all other nations.

Governor Denison and the local Royal Society organised the transportation of examples of convict workmanship and the riches of Van Diemen's Land to London, to be exhibited in the great Crystal Palace in Hyde Park erected for the Exhibition of the Industry of All Nations, which became known as the Great Exhibition of 1851. No indigenous artefacts were sent.[20]

Seemingly, Britain was quite intransigent on the question of transportation. Lines were drawn in the sand as the protagonists for emancipation rallied their forces against those who desired continuation of the entrenchment by government policy of an inferior class of citizens. In 1850 a call of last resource was made to the Australasian colonies for colonial emancipation.

A letter was dawn up by John West, Frederick du Croz and Adye Douglas and signed by the Rev. Dr William Browne of the Launceston Association for the Cessation of the Transportation of Convicts. It put the case for a unity of colonial interests. It was sent to the chief magistrates, colonial secretaries and legislative councils of the Australian colonies and New Zealand, for while South Australia and New Zealand had been designated as destinations to which prisoners could not be transported, the continuing influx of emancipated convicts to those colonies evoked harsh discriminatory legislation against such arrivals.

The letter begins:

> As a last resource we turn to our fellow colonists who united to us by the strictest ties are   liable to the same wrongs … Her Majesty's ministers have taught the communities established in this portion of the Empire that their ultimate interests are One, that upon the public spirit, intelligence and virtue of each depend the happiness and prosperity of all.

The letter outlines in stark detail the facts and figures of transportation and its moral and social consequences. It concludes:

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[19]   *Usefulness*, p. 385.
[20]   Exhibition of the Industry of All Nations, 1851, Catalogue, Van Diemen's Land.

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> We submit to your humanity as a British fellow subject and to your discretion as a Christian magistrate, the case for this country. In the mutation of human affairs, the arm of oppression which has smitten us with desolation, may strike at your social well-being. Communities allied by blood, language and commerce cannot long suffer alone. We conjure you, therefore, by the unity of colonial interests—as well by the obligations which bind all men to intercede with the strong and unjust on behalf of the feeble and oppressed—to exert your influence to the intent that transportation to V. D. Land may forever cease.[21]

There was sufficient response to encourage the Launceston association to expand its aims into a national movement. New South Wales set up its own Association for the Prevention of the Revival of Transportation, and Victoria and the Geelong district each set up their own anti-transportation societies.

The *Sydney Morning Herald* believed that: 'The best way of dealing with this revival was that suggested by V.D. Land, the formulation of a great Australian confederation.'[22]

A common interest having been avowed by the continental colonies to liberate Van Diemen's Land, a decision was taken to form the first Australian intercolonial political association: the Australasian Anti-Transportation League. It embraced the colonies of South Australia, Van Diemen's Land, Victoria, New South Wales and New Zealand, and proposed to hold its inaugural conference in Melbourne, for geographical reasons.

However, New South Wales believed the suppression of transportation would be best achieved by the existing processes of correspondence and petitioning, and did not attend. Nor did South Australia, where it was believed that public opinion was not yet ripe.[23]

With no representation from either colony, the delegates from Victoria and Van Diemen's Land assembled in the Queen's Theatre, Melbourne, and on 1 February 1851, formed the League.[24]

The League, whose ends were to be achieved by moral means only, demanded a solemn Engagement that was drastic and absolute. Members would pledge not to employ any person hereafter arriving under sentence of transportation for crime committed in Europe.[25]

When John West denominated the Colonies as the Australias, he created for colonists a new identity, awakening a national sentiment.

He further expanded that sentiment with a symbol of nationhood, the Australasian Anti-Transportation League banner. He believed it was 'the beautiful emblem of

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[21]   Reprinted in full in *Usefulness,* Appendix Two, pp. 547–548.

[22]   *Sydney Morning Herald*, quoted in West, op. cit., vol. 1, p. 301.

[23]   *Geelong Advertiser,* 10 January 1851; *Argus* (Melb.), 13 January 1851; quoted in *Union*, p. 13.

[24]   West, op. cit., vol. 1, p. 307.

[25]   The Australasian League, reprinted in facsimile, *Usefulness*, Appendix Three, p. 549.

indissoluble union and that it would be the glory of Australasia that she would achieve victory by a moral force as fine as the spotless border which surrounds the standard to be hailed as the emblem of Federation.'[26]

The original banner, hand sewn in silk by the women of Launceston, was unfurled at the inauguration of the League at the Queen's Theatre in Melbourne on 1 February, 1851. It had the Union Flag in the canton, and a broad deep blue field with four stars displaying the Southern Cross. On the upper border in gold were the words 'Australasian Anti-Transportation League'; in the lower margin, 'Established 1851'.[27]

A second version of the banner (see illustration) was sewn by the women of Melbourne in twelve days, also in silks. Twelve feet by nine feet (360 cm x 270 cm), it has an added star for New Zealand, and in gold on the white border are the words, 'Australasian League—Tasmania—Instituted 1851'.

Banner of the Australasian League, 1851
Collection of Queen Victoria Museum and Art Gallery, Launceston

This banner was presented to the Van Diemen's Land delegates at a great gathering at St Patrick's Hall in Melbourne on 13 February 1851, and carried in triumphant procession when John West and his party returned to Launceston. It was copied, manufactured in bunting, displayed at rallies, flown from mastheads, and observed on ships as far afield as the United States.

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[26]   *Launceston Examiner*, 15 March 1851, quoted in *Usefulness*, pp. 409–410.
[27]   West, op. cit., vol. 1, p. 313.

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Subsequently John West and William Weston were delegated to visit the recalcitrant colonies and evangelise them in the cause. From March to May, 1851, New South Wales was being persuaded. The campaign culminated in success on May 10th. Under the conspicuous Victorian banner of the League, a grand conference dinner for 200 persons was held at Mort and Brown's huge Sydney warehouse. Charles Cowper presided, the New South Wales Association was dissolved, and the Australasian League adopted.[28]

John West successfully evangelised South Australia in September, and in October, Canterbury in New Zealand adopted the League's solemn engagement.

However, also in 1851, gold was discovered on Mainland Australia, and in the words of John West:

> Gold fields beyond the dreams of oriental vision unfolded while relations between labour and capital were entirely deranged—some considering their personal interests growing more earnest for convict labour. More generous spirits sympathised with the general aspect of a change promising to people a region as large as Europe. The strenuous resistance of transportation had cleared the character of the colonists and proved their feelings had harmonised with the universal and unchangeable convictions of mankind.[29]

By December, 1851, all the supplicating voices united with Van Diemen's Land against transportation. Five colonies answered to the stars of the Christian symbol of the Southern Cross.

One year later, in December 1852, transportation to the Eastern colonies was abolished.

The Anti-Transportation League had achieved its aims and was dissolved in 1854. Writing in the *Examiner* on 25 April, John West was able to comment:

> A lesson has been taught which will never be forgotten, it is that the Colonies isolated are powerless, united, invincible. It is on this account we are in favour of a strong federal government to regulate those affairs which are common to all, the tariff, land regulations, postal communications and defence from the attack of a foreign foe. This conceded, there would be no necessity for an organisation like the League, as a central authority on the spot would decide every general question. There is nothing to fear in the future progress of Australia; every temporary and trumpery obstacle fashioned by official fingers to stay her progress will be swept away as cobwebs by a breath of popular will.[30]

Eighteen fifty-four is the significant year for Australia, Van Diemen's Land, and John West. It was the year of the Eureka Stockade, and, the year an Act of the Imperial

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[28]   *Union*, p. 14.

[29]   *Union*, p. 18.

[30]   *Launceston Examiner*, 25 April 1854, quoted in *Union*, p. 20.

Parliament established a colonial parliament in Van Diemen's Land, which was renamed Tasmania.[31] And it was the year John Fairfax travelled to Tasmania and successfully persuaded John West to accept his invitation to be the first official editor of the *Sydney Morning Herald,* thus guaranteeing the continuing influence of dissenting middle class Christians in the affairs of state.

John West had already published 'Outlines of a new constitution: adapted to the circumstances of Tasmania or any of the other Australian colonies' in the *Launceston Examiner* in August 1853.[32] It was the work of another famous dissident, the 'revolutionary imperialist' Irish exile, William Smith O'Brien, who had previously written an impressive review of John West's *History of Tasmania.*

John West followed this with his seventeen essays on federation entitled 'Union of the Colonies', which he published under the pseudonym of John Adams—after the second President of the United States. Some appeared in the *Launceston Examiner,* and all in the *Sydney Morning Herald* from 30 January to 18 September, 1854.[33]

John West's campaign for educated and responsible political representation being under way, in October, he accepted John Fairfax's invitation to join him in New South Wales. He occupied that challenging position as the voice of the most influential newspaper in Australia at the time, with style and much erudition for nineteen years, until his death in office.

He republished six of his 'Union' essays in 1867 in a vain attempt to resolve the issue of narrow colonial protectionism, then as now complicating Australian affairs despite Section 92, a matter which had arisen by the introduction of a 'Tasmanian Act to Promote Intercolonial Free Trade'. He commented:

> At present we treat each other as foreigners—we are protected against each other—we are jealous of manufacturing or agricultural prosperity on the other side of any of the geographical lines which separate us from each other—and this kind of policy is commended as natural, as calculated to Advance Australia.[34]

For nearly thirty years in the fledgling nation that was Australia in the nineteenth century, John West's concern was for the competence of legislators. Conscious of the historical differences which marked each colony, and mindful of the immense moral power of the press, he sought to educate and enlighten colonists on the vicissitudes facing Australia on the path to democracy. In his essays he discusses the problems of other nations, Britain, the United States of America, the United Colonies of Canada, the Dutch Republic after 1648, the Swiss federation, Earl Grey's 'paper constitution' and other experiments for New Zealand.

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[31]   18 Vic. No. 7.

[32]   *Launceston Examiner,* 31 August 1853, reprinted as Appendix One in Richard Davies (ed.), *To Solitude Consigned: the Tasmanian Journal of William Smith O'Brien 1849–1853*, Sydney, Crossing Press, 1995. Richard Davies' biography of O'Brien is entitled *Revolutionary Imperialist: William Smith O Brien 1803–1864*, Dublin/Sydney, Lilliput Press/Crossing Press, 1998.

[33]   *Sydney Morning Herald*, 7 March 1867.

[34]   *Union*, passim.

In his first essay on federation, he stated:

> No system of government can or ought to be satisfactory which does anything for the people which they can better do for themselves or takes out of the hands of a town, a district or a Colony, affairs which are limited in their interest which vary according to every place, or such as may be properly left to the judgement or even the caprice of those concerned.[35]

A different level of decision-making was needed at each level of government: 'A young colony cannot furnish a considerable assembly without descending low in the scale of political intelligence' was his view.[36] Consequently, he recommended a hierarchy of elected authorities—voluntary organisations, local government, state government, federal government. Ultimately, his vision was for a world federation: 'It is conceivable that vast masses of mankind may conspire to set up one grand authority as the only security.'[37] A remarkable vision for a colonial journalist as nation states approached their apogee, and European powers grasped for empire.

John West believed that to suppress lower order democratic institutions was to prevent training and acculturation in democratic principles and practice. His arguable constitutional beliefs were for an educated one-person-one-vote democracy, and universal suffrage based on the practices of his own daily life—in Congregational churches, women had equal voting power.

He favoured a bi-cameral parliament with a lower house popularly elected and an upper house by the same electors, but with equal representation for each colony, recognising their different interests and sizes. In the manner of electing his proposed upper house, he was far in advance of the United States at the time.[38]

He promoted federation rather than amalgamation, under the existing connections with the Crown.

He was ambivalent about the site of a national capital, believing a separate territory would prevent the dominance of one state (New South Wales), but he was against it as being remote from the centre of population and thus separated in those days from the vital influence of the Press: 'It is certain that the geographical distance diminishes the effect of political demonstrations and creates a disposition to neglect and despise them.'[39]

He thought Governors-General ought not to have been state governors—the first Governor-General (his old adversary Denison) had been Governor of Van Diemen's Land and then New South Wales, creating a potential conflict of interest.

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[35] *Union*, Essay I, p. 29.

[36] *Union,* Essay X, pp. 67–68.

[37] *Union*, Essay VI, p. 51.

[38] US Senators were appointed by their state legislatures according to Article 1, Section 3 of the US Constitution until the XVIIth Amendment in 1913.

[39] *Union,* Essay IX, p. 63.

He favoured a conservative principle: 'if by that is understood whatever binds a nation together, whatever speaks with moderation and reasons with dignity, rallies round the principle of federation.'

John West led a movement which won emancipation for Van Diemen's Land, civic equality for all Australians and the nation's freedom from the Imperial government's policy that would have entrenched class distinction.

John West did not live to progress his deeply personal and well-informed dream of a liberal, prosperous and moral nation. He did not witness the culmination of his efforts in a federal ideal. He died in 1873.

The exclusion of the Reverend John West from the national roll of honour of those who fathered Federation remains a hole in the fabric of the Australian story and I, following the Launceston and Melbourne seamstresses whose needles created the first Australasian League banners, have endeavoured to mend it.

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Question — You mentioned that John West was editor of the *Sydney Morning Herald* for nineteen years, and you have given us some of his views, which appear to be quite advanced for the time, especially in relation to democracy. Yet the *Sydney Morning Herald* had a reputation in the nineteenth century for conservatism and for being the journal of the conservative ruling element of the population. Could you explain that?

Patricia Fitzgerald Ratcliff — I am not really familiar with the politics of New South Wales after 1854. I am conscious that the newspaper had the reputation for conservatism, and I understand it was a very different arena in politics. West confronted Henry Parkes of course, who was also from Warwickshire. Henry Parkes was not active in the Australasian League in its early days, at all. Henry Parkes and Lang and others had established the *Australian* League, which faded and disappeared before 1851, when Lang went to jail. The battle over federation and the transportation of convicts was not seen as so significant from New South Wales as it was by John West from Tasmania. That does not really answer your question, as I am not familiar with post-1854 New South Wales politics, only with John West's contribution before he went up to Sydney.

Question — You were speaking about the Governors-General of the time. My understanding is that the first one was actually Fitzroy, who was Denison's predecessor in New South Wales. I am referring to the 1847 ideas of Earl Grey on federation, which they attempted to establish by the appointment of a Governor-General, but only two, Fitzroy and Dennison were appointed, and then the office was abandoned because of opposition among the colonies. On another matter, the attempt by the British authorities in the Colonial Office to introduce some form of political association of the colonies is something that seems to be scarcely mentioned these

days. Of course it was a failure, because the newly created authorities in each of the separate colonies would have no part of it.

Patricia Fitzgerald Ratcliff — We must take that in two parts, because in 1847 when federation was initially mooted, Van Diemen's Land was still a penal colony and a police state and there were no civic rights whatsoever. The argument by John West from Van Diemen's Land about rights has been lost in the arguments from the other colonies, who had their own particular interests. Regarding Governor Dennison, he accepted a commission in 1852 on the same day to be both Governor-General and the Governor of New South Wales. It was my understanding he was the original, perhaps followed by Fitzroy.

Question — I noticed that in his list of 'Affairs Common to All', West did not identify Aboriginal issues. You said that he favoured universal suffrage and civil equality, so I wondered whether he included Aboriginal people in that. In his extensive writings, did he have anything to say about the treatment of Aboriginal people? If not, do you have any comment on why he didn't?

Patricia Fitzgerald Ratcliff — When John West was writing and during his time in Van Diemen's Land there were only a mere handful of Aboriginal people. They were referred to as the 'remnants of the race', and had been exiled offshore to Wybalenna on Flinders Island. They were not regarded as being capable of surviving as a race, and the Tasmanian Aboriginal community was seen at that time as a distinctive race of Aborigines. In my reading of history and newspapers of the time, there is scant reference whatsoever to Aborigines. So they were really not in the equation. I have seen a report from the London *Times* of 1863 which said that it was expected that the Aboriginal people of Australia would be extinct by 1900. That was the thought of the day.

John West wrote about the condition of Aborigines up until 1850, when he published his *History of Tasmania*, and it is harrowing reading because he spares nothing in relaying the facts. He saw them as being, by their nature, overwhelmed. He writes about the injustice, and about the fact that there were no treaties with them—he was very critical. But it is a sad reflection on our comprehension of the significance of Aboriginal communities, that John West had very little to say about them in his general writing. They were not mentioned in his writing to any great extent at all.

I once checked out the year books of the Tasmanian Government to see when the word 'Aborigine' or 'Aboriginal' disappeared out of the index. It disappeared in 1874, even though Truganini didn't die until 1876. By the time she died, she was not even called 'Aborigine', she was called 'Lalla Rookh'.[40] The word 'Aborigine' just disappears entirely out of Tasmanian government records until the 1960s, when it was brought back again.

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[40]   Lalla Rookh was the eponymous heroine of Thomas Moore's long poem, published in 1817.

Sir Robert Garran[*]

Leslie Zines

When Sir Robert Garran died on 11 January 1957, a month before his ninetieth birthday, there were many tributes from a wide variety of people: the Governor-General, the Prime Minister, government ministers and opposition leaders, judges and lawyers, heads and former heads of the public service departments, academics and university administrators, teachers, clergymen, artists, actors and musicians.

Before his death a chair of law, now in the Australian National University, was named after him (a chair which I had the honour of holding for 15 years). Later his name was given to a university hall of residence, a government office building, an annual oration and a Canberra suburb. He had knighthoods bestowed on him on three occasions; Knight Bachelor in 1917, KCMG in 1920 and GCMG in 1937.

How could all this happen in relation to a man who had spent nearly all his professional life—31 years—as secretary of the Commonwealth Attorney-General's Department and constitutional adviser to the Government? This is not seen as a position with a high public profile. The duties involved do not usually attract the excitement, or even the interest, of most groups in our society. The answer is that Robert Garran was not just any old departmental head or just any old constitutional

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[*] This paper is based on a lecture in the Department of the Senate Occasional Lecture Series at Parliament House on 9 September 2005.

lawyer. He left his mark on the nation, its institutions, its evolution and its law, and also on the educational, cultural and social life of Canberra.

Garran was born in Sydney in 1867, and he has left us a vivid description of growing up in the Sydney of the 1870s and early 1880s.[1] The family lived for a while in a terrace house on the western side of Phillip Street where Martin Place now joins it. They had a house cow which was milked in their backyard because Mother was (justifiably in those days) suspicious of what she called 'milkman's milk.' The cow would then, on its own, walk down Phillip Street to Hunter Street, turn right and go up to the Domain to graze. As a young schoolboy Robert would make his way left down Hunter Street to the office of the *Sydney Morning Herald* where his father Andrew worked as editor until ill health forced him to retire in 1885. It stood on the corner of Hunter, Pitt and O'Connell Streets and the *Herald* remained there until the late 1950s.

Andrew Garran was one of the first in New South Wales to publicly support the cause of federal union of the colonies. He used the editorial pages of the *Sydney Morning Herald* to that end and throughout the rest of his life delivered speeches and wrote articles emphasising the benefits of federation. It was, however, a cause which had many opponents and, more importantly, had to struggle with inertia and with suspicion in Sydney of the other colonies, particularly Victoria. In his memoirs, *Prosper the Commonwealth*, published a year after his death, Robert Garran described this provincialism when he was a boy. He wrote:

> From what a small boy in Sydney saw and heard and read, his interests and prospects lay pretty well within the borders of New South Wales. Victorians, inhabiting a "cabbage-garden" to the south, were, to the Sydneysiders, people to be mistrusted. They were guilty of the treason of seceding from New South Wales, they were addicted to the damnable heresy of protection, and seemed to be unaccountably and selfishly prospering by it; and they set covetous eyes on our Riverina. As to the other colonies, to the Sydneyite they hardly counted: distant wildernesses of sand, or saltbush, or banana groves, as remote as coral islands—romantic to read about, but outside the range of experience. That at least was how it struck a schoolboy; and perhaps to many grownups it did not look much different.[2]

There was not much intercolonial travel and most of it was by sea. The separateness and provincialism of the colonies is perhaps evidenced by the fact that when a conference was assembled at Sydney in 1883 to discuss the possibility of union (it was decided as usual that the time was not ripe) the Premier of Victoria saw Sydney Harbour for the first time in his life.

It is likely that Robert's later interest in federalism had its genesis in his father's journalistic activity and political aims. He was a pupil at Sydney Grammar School for eight years to 1884, finishing as Captain, and then went on to Sydney University where, gaining scholarships in classics and mathematics, and general proficiency, he graduated with a Master of Arts degree with first-class honours and the University

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[1]   In Chapter V, 'My Early Memories', *Prosper the Commonwealth*, Sydney, Angus and Robertson, 1958.

[2]   *Prosper the Commonwealth.* Op. cit., p. 88.

Medal in the School of Philosophy. He then studied for the law examinations conducted by the Barristers Admissions Board, there being no established law course at the University. After a year in a solicitor's office he became associate to Mr Justice Windeyer. In 1890 he was admitted to the Bar, mainly practising in Equity. The future he saw ahead of him at the age of 23 he described as follows:

> My expectation then was that I should lead a quiet and blameless life as an Equity barrister, in a world which, according to the Victorian belief, had finished with convulsions and was slowly but steadily progressing from good to better. But the Fates had other plans in store for the world, and for me.[3]

The year after Garran was admitted to the Bar, 1891, saw the convening of a conference of politicians of all the Australian colonies and New Zealand for the purpose of drafting a federal constitution. The convention was held in Macquarie Street, around the corner from Garran's chambers, in the NSW Parliament building. It was this assembly that sparked Garran's enthusiasm for the federal movement. As a young new barrister with time on his hands he frequently attended the parliamentary public gallery to observe the proceedings. He was fascinated.

That convention of 1891 was the first serious attempt to bring the ideal of a federal union down from the clouds and into the political arena and the everyday world. To most of the delegates it was a foreign system, but they learnt fast, debated, compromised, threatened to pack their bags and go home, and so on. Union seemed to them more and more a reality the longer they were together, broadening their understanding and knowledge of the problems, fears and aspirations of other colonies while pressing the claims of their own. Free trade versus protection, large colonies versus small colonies, arguments over the use of rivers for conservation versus navigation, the division of the proceeds of customs and excise duties among the colonies, imperial ties versus national aspirations, all went into the whirlpool of political debate and diplomatic negotiation. Committees were set up to deal with different aspects. Finally a drafting committee completed a draft constitution. Much of it was drafted on the Queensland Government yacht *Lucinda*, on which the Premier, Samuel Griffith, had come to Sydney. Many of the drafting sessions took place while they sailed on the Hawkesbury. Most of the draft was approved by the convention. Within a few months, to use the words of Garran, federation … 'from a vague aspiration was crystallised into a precise plan setting out the terms of a federal compact.'

The new constitution went to the various parliaments for further action. Most colonial governments waited for New South Wales, the colony with the most anti-federal feeling. But years passed and nothing happened. Federation was stalled by a series of circumstances including matters of provincial political concern, opposition to the constitution by the NSW opposition leader, George Reid, a staunch free trader who believed the new central government would be protectionist, and opposition by the new Labor Party, who believed it would be conservative because of the strong upper house dominated by small states. Some of them feared it was a document intended to oppress the working class.

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[3]   Ibid., p. 79.

Further, Victoria by reason of the ending of the land boom and the collapse, due to corruption, of its comparatively unregulated banking and financial institutions entered an economic depression that spread to the other colonies. All this was exacerbated by a drought throughout the continent that continued for many years and had a devastating effect on exports and therefore on all the colonial economies. Governments had difficulty meeting interest payments to London investors and commodity prices were falling.

As a result of all this, and more, federation was not uppermost in politics or in people's minds. There were a few, however, who continued to carry on the fight by endeavouring to arouse public interest. Edmund Barton resigned from government to devote himself to the federal movement, speaking at hundreds of meetings, planning campaigns, writing letters and pamphlets. Garran became one of the disciples who gathered about him to assist the cause. Among other things, he wrote for the *Bulletin* amusing verse attacking the anti-federalists in general and Barton's opponents in particular. For example, when Sir John Robertson, a leading anti-federalist, declared that federation was as dead as Julius Caesar, Garran penned some verse to the effect the 'antis' had forgotten Great Caesar's Ghost from whom the traitors' armies had fled at Philippi.

Federation Leagues were set up all over NSW, while the Australian Natives Association was doing similar work in Victoria. Garran was present in 1893 as a representative of the Sydney League at the historic conference of these bodies at Corowa which discussed how the movement could be got out of the doldrums. As Sir Ninian Stephen explained in a Senate Lecture last year, it was Dr John Quick of Bendigo who moved a portentous resolution which was to capture public imagination and eventually to receive public support in four of the colonies including NSW and Victoria. This was that each colonial Parliament should pass an Act providing for the election of representatives to attend a convention to consider and adopt a bill to establish a federal Constitution and upon the adoption of such a bill it be submitted by some process of referendum to the verdict of each colony. The process would thus begin with the electorate directly voting for delegates and end with the electorate approving or otherwise their handiwork. The parliaments, and more particularly the conservative upper houses, would be bypassed.

By 1896 New South Wales, Victoria, Tasmania and South Australia agreed more or less to that procedure. Delegates, largely pro-federal, were elected to attend a constitutional convention. Western Australia preferred to have its delegates appointed by Parliament and Queensland did not attend, being embroiled in a political and constitutional crisis of its own, as people in north and central Queensland pushed for the secession of those areas from southern Queensland.

During the years between the conventions Robert Garran took an active part, mostly behind the scenes at various conferences and gatherings pushing the federal cause. It was during this period that the University Extension Board at Sydney University had asked him to choose a subject and prepare a course of lectures. He prepared a course on federal government. No student applied to do it. He then used the lectures to produce a handbook with the prescient title of *The Coming Commonwealth*, published

in 1897, just in time for the elections to the Convention.[4] Nearly all politicians felt the need for such instruction and the book soon sold out. Garran found himself regarded as an authority (if a junior one) on federation.

It was at the Convention of 1897 that Garran's public career can be said to have taken off. The Convention met on 22 March 1897 in Adelaide. Barton was elected its leader. The Premier of NSW, George Reid, took Garran with him as his secretary. Garran discovered to his pleasure that everyone had read *The Coming Commonwealth* and complimented him on it. At the request of Barton, Garran was appointed secretary of the major committee of the Convention, the drafting committee. So he had a front row view of the inner workings of the Convention as well as helping it along. The last weeks of the Convention in Melbourne saw Garran working with Barton, O'Connor and Downer endeavouring to incorporate amendments approved by the Convention into the draft Constitution. They often worked at the Grand Hotel (now the Windsor) until 4 or 5 in the morning.

During the two referendum campaigns to approve the Constitution Garran became an active member of a New South Wales committee pushing for a yes vote. The 'antis', as they were called, were very strong in Sydney and their medium was the *Daily Telegraph*. The committee deluged the country press with pro-federalist literature, replied point by point to the antis in the metropolitan press and went around the State to make their points at meetings addressed by leading antis. Two of the anti leaders were Jack Want QC, who formally resigned as State Attorney-General for the campaign, and Dr MacLaurin, elder statesman and Chancellor of the University of Sydney. Garran summed up his activities at the time in this way:

> It was a great joy to us young graduates to trounce our revered Chancellor—
> who I fear agreed with Want that we were no gentlemen—and an equal joy to
> us young barristers to trounce our Attorney-general. Altogether, we found life
> very good.

Their efforts were of course ultimately crowned with success. Four colonies produced strong affirmative votes at the referendum of 1899. Western Australia for a while stood out but was forced to a referendum under threat of secession by the people in the goldfields of Kalgoorlie and Coolgardie, who were nearly all easterners. Queensland, although not present at the Convention, got its act together and by a rather narrow vote agreed to enter the Commonwealth.

When delegates of the colonies were invited to London to discuss the enactment of the Constitution Bill, Barton asked Garran to go with the delegation. But in the meantime Garran had agreed with Dr John Quick that they would produce a joint work on the Constitution to be published at the establishment of the Commonwealth. It was produced in 1901 and it is a most remarkable work of over 1000 closely printed pages. Although its formal title is *The Annotated Constitution of the Australian Commonwealth*, it is a classic study, invariably called simply 'Quick and Garran', and

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4   *The Coming Commonwealth: an Australian Handbook of Federal Government*, Sydney, Angus and Robertson, 1897.

referred to as an authority by counsel and judges to this day.[5] It covers the history of ancient and modern colonisation and the government of all the Australian colonies and New Zealand. It contains one of the best descriptions of the history of the Australian federal movement. It then comments on every section and sub-section and paragraph of the Constitution Act and the Constitution in the light of constitutional practice and legal decisions of Britain and the colonies, decisions of the Supreme Courts of the United States and Canada and Canadian decisions of the Privy Council. What it does not contain are any Australian High Court decisions on the Constitution because there weren't any, as the High Court did not come into existence for another three years. A number of people, including Law Lords of the Privy Council, expressed regret that Garran never revised the work or attempted to update it. Garran rejected this idea on the ground that it was a contemporary exposition of the Constitution at the time of its enactment. To include its later evolution would have altered its basic character.

The Commonwealth came into being on 1 January 1901. After a ceremony in Centennial Park, Sydney where the Governor-General Lord Hopetoun, was sworn in and then Prime Minister Edmund Barton and his fellow Ministers, there was in the afternoon a meeting of the Executive Council. It created seven departments and allocated portfolios. But of course there were no Acts to administer because there was no Parliament. Garran was appointed Secretary of the Attorney-General's Department, the first appointed public servant, and was for several days its only member.

Garran's first duty was to draft in his own hand the first number of the Commonwealth Gazette announcing the coming into existence of the Commonwealth of Australia and the appointment of the first Government. He then sent himself to the State Government Printer, who graciously printed it. When Barton, with Garran and others, went by train to Melbourne—the temporary capital—he carried with him all the files of the Commonwealth of Australia.

For the first several months Garran's tasks and opportunities were unique. Never again would the head of the Department experience the same circumstances. There was no Parliament for over four months, no High Court for nearly three years and during that period few expositions of the Constitution by state courts.

He had to advise on the holding of federal elections where there was no Electoral Act and sparse help from the Constitution, which merely provided that the state electoral laws should be applied 'as nearly as practicable'. The Ministers had all rushed to their electorates and Garran was instructed to answer all queries from state electoral officers in the Minister's name. He seems to have largely made it up as he went along. He said that 'if the defeated candidates had known of all our difficulties in trying to apply the inapplicable, there might have been quite a crop of disputed elections.' By 9 May 1901, however, there was a Parliament and Garran had the interesting and somewhat heady experience of opening a new statute book unencumbered by the heavy weight of past practice and precedent. He and his drafting officer, Gordon Castle, aimed at a lucid direct style, free of long clauses, qualifications and technical jargon. Existing Acts of other jurisdictions which might have been models were stripped bare of superfluity and honed down to the clear essentials. Such was the theory, and in fact the

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5   John Quick and Robert Randolph Garran, *The Annotated Constitution of the Australian Commonwealth,* Sydney, Angus and Robertson, 1901.

Commonwealth Acts were recognisable by their crisp appearance. Alas, those Acts can no longer be described in quite that way, not because the draftsmen are inferior to those who began the statute book, but because of the demands of a more complex society. Garran said that when the Commonwealth levied direct taxation for the first time in World War I their Income Tax Assessment Act was 'a thing of beauty and simplicity that would not have shamed Wordsworth or T S Eliot.' He then referred to the constant battle between big taxpayers and the Tax Office as having produced 'the literary monstrosity of today [i.e. the 1950s].' Today the Act of the 1950s seems almost innocent and naïve, and rather short.

The creation of the High Court in October 1903 may have cramped Garran's style somewhat. I recall coming across an opinion of Garran's which in reply to a question said something like this: 'As a result of the decision of the High Court in X v Y the answer to your question is "No". That decision is quite wrong, but until it is overruled we can do nothing but abide by it.'

Garran worked under eleven attorneys-general during his 31 years as head of the Department, from Alfred Deakin in the Barton Government to Frank Brennan in the Scullin Government. The Attorney he served for the longest time was William Morris Hughes, who held the office for terms aggregating eleven years. Hughes had a very high regard for Garran and seemed to want him by his side wherever he went. But in size, appearance and character they were as different as could be. Hughes was about five feet five inches in height with a fiery temperament, pugnacious personality and authoritarian manner, a born political street fighter. Garran was six feet four inches tall, calm, cultivated, charming and a loyal public servant. A former Crown Solicitor, Fred Whitlam, father of Gough Whitlam, said that there was about him 'a serene wholeness'.

Yet get on they did. Whenever a crisis or great difficulty occurred Hughes could be heard yelling 'Where's Garran?' From 1915 to 1921, while Hughes was Attorney-General he was also Prime Minister. The problems that engulfed him as a result of World War I caused him to look to Garran more and more for help, particularly in his Attorney role. The War Precautions Act had given broad powers to Government to make regulations on any matters related to the war. The High Court had accepted that many domestic matters, such as the price of food, had a relevant connection with the defence of the Commonwealth during wartime. The Act became a great legislative sausage machine as Ministers gave instructions for a steady stream of regulations on every conceivable topic. A famous cartoon shows Garran in overalls standing by a large War Precautions Machine and Hughes expostulating with him because two days had passed without the issue of new regulations.

The War Precautions Regulations gave many new powers to the Attorney-General over many aspects of life. In order to deal with this Hughes got Parliament to pass an Act to create the office of solicitor-general and appointed Garran to it. Under the Act Hughes delegated to Garran practically all his statutory powers as Attorney-General. As Garran put it: 'To all intents and purposes Magna Carta was suspended and he and I had full and unquestionable power over the liberties of every subject.'

As he was a public servant there is no way one can accurately determine what contribution Garran made to the formulation of government policy. One clue was

however, provided by the Governor-General. At the end of 1916 after the defeat of the first conscription referendum there were moves at a caucus meeting to obtain a resolution expressing no confidence in Hughes. In the middle of the meeting Hughes and 23 of his followers left and formed a new party, the National Labor Party. The Opposition Liberal leaders said unofficially that they would support Hughes so long as the new government confined itself to war measures. Hughes went to Government House, resigned his commission and asked for and received a commission to form a new government. In his report to King George V the Governor-General, Sir Ronald Munro-Ferguson, expressed the view that the new team was at least as strong as its predecessor, the real strength of which 'was limited to the hurricane force of the Prime Minister, the good character of Senator Pearce [the Defence Minister] and the trained mind of Mr Garran,' all of which were still available. That Garran should be put with the Prime Minister and a senior minister as one of three who provided the 'real strength' of the government is a most unusual tribute to a permanent public servant. It was made by a man who was very aware of the operations of government and the political scene.

In April 1918 Hughes was invited by the British Government to attend an Imperial Conference, and he took Garran with him. They did not return to Australia for about 17 months. That was partly due to the relatively sudden end to the war and Hughes's anxiety to be at the peace conference to influence British policy, retain for Australia German New Guinea and seek reparations. The result was that Garran played a considerable role at the Paris Peace Conference, where he became well known. Given the status of technical adviser to his Minister he had right of entry to the plenary conference and to the several councils when required by the Minister. He was placed on a number of committees of the British Empire Delegation and took part in discussions relating to the proposed covenant of the League of Nations. It was Garran who was chosen to convey the views of the British Empire Delegation to the Council of 'the Big Five'. He and Hughes did not arrive back in Australia until 24 August 1919.

Just as Garran had contributed greatly to the establishment of a new nation on sound constitutional and legal foundations, so in the 1920s and 1930s he took a notable part in the development of Australia and the other British Dominions towards full sovereignty. He attended, with Bruce, the Imperial Conference of 1923 and went with Scullin and Attorney-General Brennan to the Conference of 1930 after attending an assembly of the League of Nations. The 1930 Conference brought into effect the final settlement of the proposed Statute of Westminster based on the Balfour Declaration of 1926 affirming the equal status of the United Kingdom and the Dominions. Garran was attached to the Imperial Relations Committee which put the finishing touches to the Statute. At the same time he was chairman of a drafting committee which was concerned to ensure that despite the grant of full power to each Dominion to override Imperial Acts, the laws relating to merchant shipping would remain uniform. This position as chairman recognised, as he himself put it, that he was the 'doyen of legal advisers at the conference'.

During his spare time Garran had over the years engaged in translating the 'Book of Songs' by the German poet Heinrich Heine and other songs of Schubert and Schumann. Singers loved the translations and they became well known as a result of broadcasting. They were published by Melbourne University Press as a book in 1946.

He is generally recognised as having captured not only the meaning of the songs but, to a high degree, the spirit and rhythms of the German originals. On his death the secretary of the Sydney Schubert Society stated that those translations ranked among the finest existing and that it was gratifying that they achieved world-wide recognition in Garran's lifetime.

For many people, however, the respect and affection they had for Garran related not to his roles in national, British Commonwealth, or international affairs, but to his aim to make the young city of Canberra a cultured and civilised place in which to live.

When the first public servants were moved unwillingly from Melbourne to Canberra about the time of the opening of the Old Parliament House in 1927 there was much complaining. Most of them had no desire to be pioneers. They missed the conveniences of urban life in a metropolis and some missed parents or other relatives to act as baby-sitters. The bus transport system was primitive and many people in those days did not have cars. Many more grizzled and bemoaned their lot. Garran and his wife were not among them. They built their house and remained there for the rest of their respective lives.

When Garran retired in 1932 some people said that they were the only people in Canberra who were not forced to live there. Both of them went to great efforts to assist newcomers to settle in and to become part of the community. They took leadership roles in arranging events and organising amenities. Lady Garran's death in 1937 was generally regarded as a great loss to the people of Canberra.

Garran's longer lasting efforts were directed to the educational and cultural growth of Canberra, the breaking down of what Sir Kenneth Bailey, one of Garran's successors, called 'its provincial Babbittry'. He inspired some with the thought that Canberra should not be merely a city of government, but of culture, learning and research. Almost immediately he took a leading part in establishing the Society of Arts and Literature, of which he was the President. It later broke up into specialised parts. The first was the Musical Society, which provided an orchestra in which Garran was second clarinet. He also sang in the choir. Another off-shoot, the Drama Society, evolved into the Canberra Repertory Society.

Garran was head of a movement which resulted in the establishment in 1929 of Canberra University College, under the auspices of Melbourne University. He remained chairman of its governing body from its creation until about three years before his death. While the College was sufficient to provide classes to public servants (some of whom had begun them in Melbourne) and their offspring, Garran from an early date advocated a high- grade research university in the capital, which he saw as principally concerned with subjects that could be nurtured in a national capital and which were of direct concern to government. They included international relations, economics, Pacific relations, political science and public administration. The creation of the Australian National University fulfilled this aspiration and went further than he envisaged in coverage and expenditure, with research schools in physical and biological sciences and medical research, as well as the social sciences. He was a member of the interim council of the ANU from the beginning. In recognition of his long and persistent advocacy of such a university he was honoured with the degree of

Doctor of Laws and was thus the first on the roll of ANU graduates. Later he was appointed the first honorary fellow of University House.

During the 25 years between his retirement and death Garran performed many public services. He was appointed by the British and Indian governments in 1933 to be chairman of the Indian Defence Expenditure Tribunal to report on the apportionment between the two governments of the cost of British and Indian armies in India. In 1934 he was appointed to a committee to prepare a reply to the case for the secession of Western Australia from the federation. The reply was called the Case for Union, which apparently convinced the Joint Committee of the Westminster Parliament not to receive the petition of the Western Australian Government to take that state out of the Commonwealth.

Garran was also briefed by the Commonwealth to argue before the High Court an important case on section 92 of the Constitution, which provides that 'trade, commerce and intercourse among the States shall be absolutely free.' Garran strongly believed, with much justification, that the High Court had made a complete mess of this provision. It takes up several parts of his memoirs.

For about eighty years from the creation of the High Court there were many twists and turns in the interpretation of section 92. By the mid-twentieth century the predominant interpretation was that of Owen Dixon, who held that it gave an individual right to engage in interstate trade, subject only to such regulations as were necessary for an orderly society, such as rules of safety and public health. Commonwealth nationalisation of banks and airlines were held to be in breach of the section, as were state Acts controlling interstate road hauliers and providing for statutory marketing schemes for agricultural products.

In his memoirs Garran said that he was musing over the judgments on section 92 'and frankly I want to burn the lot.' He suggested that all the judges and professors of constitutional law should go to a psychoanalyst and get their brains washed and then look with fresh eyes and virgin minds at the section itself as it was meant to be. He envisaged a law student making a summary of leading cases on the section. The student then 'closes his notebook, sells his law books and resolves to take up some easy study like nuclear physics or higher mathematics.'

It was not until 1988 that the Court, by and large, accepted what Garran had always said was the intention of the framers, namely that section 92 was directed to the prevention of discrimination against interstate trade, and the prohibition of the protection of the local trade and industry of a state against that of other states.

Garran's experience at the Peace Conference led to his interest in furthering the cause of international peace and international service. He was president first of the League of Nations Union and then of the Australian Association of the United Nations, the aims of which were to spread knowledge and understanding of the work of those organisations. But his chief devotion in the cause of international work and service was to the Rotary movement. He was responsible for the foundation of the Canberra Rotary Club and was enthusiastic in advancing the cause of Rotary International. In 1940 he embarked on a three-month Rotary visit to the United States, explaining

Australia to American Rotarians during a time when Britain and Australia were at war, but America was neutral.

His constant delight and interest in new experiences and in learning new things is well illustrated by a story Professor Geoffrey Sawer told. A little while before his death Garran asked Sawer to come to see him. He was ill in bed, but he had come across some articles in the journal *The Listener* about a school of legal theory known as American Legal Realism and he wanted to discuss its ramifications. It is referred to in the last section of *Prosper the Commonwealth*.

On his death Garran was given the honour of a state funeral, the first ever given to a former public servant. The Prime Minister, Robert Menzies, sent a message which said: 'What a man he was, and how grateful we all are for his life and his kind.'

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Question — I wonder if you'd like to comment on the definition of excise provision in the Constitution and Garran's commentary on that.

Leslie Zines — I'm sure Garran wrote a lot of opinions on that question. If you want to know my view, I think the High Court's made a mess of that.

Question — An obvious question is why Garran was not appointed to the High Court.

Leslie Zines — In a book published about 20 years ago there were various people who were asked about Garran. Leslie Dennis Lyons, who was a senior officer with the Attorney-General's Department, said to Garran's son that it was thought that he should

go on the High Court (and indeed I've come across several references of him being on short lists), but Hughes, who was the one who made most of the appointments of that period, felt he couldn't do without him.

I should say that the modern generation of students probably don't know much about Garran, but in Canberra law students have some connection with him. On the stairs in the Law Library, there is a rather fine sculptured head of Garran and it has a very shiny nose. The reason is there has to my knowledge for the last 40 odd years been a superstition among ANU law students that particularly around exam time it is very lucky to rub the nose of Robert Garran going down the stairs. Indeed on one occasion, I suppose about five years ago it could have been, I was coming down the steps and a student had run down the steps, stopped suddenly, quickly went back again, rubbed the nose and then proceeded, presumably into his examination room.

Question — This is not a question, but if I may just add another little bit of information about Garran's extra-curricular activities after his retirement. He was one of the founding fathers of the All Nations Club in Sydney in the mid fifties. I was abroad at the time, so I didn't have the privilege of meeting him them, although I had earlier, but the All Nations Club was founded in the fifties by a group of senior people. Garran was one of them—the Chairman of the ABC, I think it was Richard Boyer, was another, and also I think Charles Moses of the ABC and several other prominent, as we would call them today, CEOs. The buzz word of the time was of course assimilation, and Garran was concerned that prominent new Australians should be given assistance to become assimilated into the society. I thought that might be of some interest.

Leslie Zines — yes, it is, thank you. Of course he would have been in his late 80s then, because he was nearly 90 when he died in 1957. So he would have been pretty old and still getting about.

The New Centralism and the Collapse of the Conservative Constitution[*]

Greg Craven

Introduction

Moving rather indirectly towards my topic, it may be observed that some of the greatest epics in history have concerned the collapse of love affairs. We all remember the intense drama in the falling-out of Othello and Desdemona, Hamlet and Ophelia, Bob Hawke and Paul Keating.

There are relatively few epics in the field of Australian constitutionalism, and those that have occurred never have made it into Shakespeare. Yet it did strike me in preparing this lecture that when one does encounter an antipodean constitutional epic, it may well concern a shattered love. The reason I say this is that we are now witnessing in Australia the bitter falling-out between two of the great partners of our constitutional history—conservative liberalism on the one hand, and federal constitutionalism on the other. As we all are aware, the Howard government is in the process of leaving home to live in sin with that dreadful old tart, Canberran centralism, leaving a weeping federalism behind, and six wailing brats of states. Unappealing children, one admits, but desperately hungry.

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What I would like to do in this lecture is three things. First, I will attempt to trace the historic connection between Australian conservatism and Australian federalism. Second, I will consider the current attacks on Australian federalism, and the logical responses that may be made in its defence. Finally, I will examine in some detail the emerging rift between federalism and its traditional conservative supporters. The basic thesis of the lecture will be that, in turning their collective back upon federalism, Australia's liberals and conservatives are spurning a fundamental element of their own political philosophy and tradition.

Federalism and conservatism

It is important to begin with the reality that our Constitution, for all its virtues and vices, is very much a liberal-conservative artefact. The Constitution, as a matter of simple fact, was the favoured creation of Australian conservatives. This can be seen, firstly, in its classically liberal-conservative institutions: its bicameral parliament, its responsible government, even its contemporarily uncongenial constitutional monarchy. It can be seen, fundamentally, in the institution of federalism, a matter to which I will return at length. None of this can come as any surprise: our Constitution is, after all, a masterful fusion of the two great nineteenth century liberal-conservative constitutional traditions, those of the United Kingdom and the United States of America.

We also can discern the conservative lineage of the Constitution in the hands and faces of the people who wrote it. Our great Founders overwhelmingly were conservatives and liberals: Barton, Griffith, Deakin, Kingston, and Reid never attended a meeting of the Rooty Hill branch of the Australian Labor Party. Even the occasional radical delegate to the Conventions, such as Isaacs and Higgins, were hyper-liberals, not proto-socialists. Labor, for a variety of reasons centring on a disinclination to risk its strengthening position within the existing colonial structures, and a general suspicion of federalism as a form of government, effectively dealt itself out of the creation of the Constitution during the 1890s. The result is that the Australian Constitution is, in fact, the greatest public work of Australian conservatives. It hardly is surprising, therefore, that it historically has been defended by conservatives, and more or less consistently attacked by their opponents from the Labor side of politics.

Notwithstanding its self-evident conservative lineage, however, the most obvious feature of the Australian Constitution is its federalism. Indeed, the single word that most accurately describes our Constitution is that it is a "federal" constitution: the document breathes federalism. Indeed, if one compares federalism as a constitutional component with other significant conservative features of the Constitution—such as the monarchy—the comparison is between the iceberg and the penguin. Even the most hardened centralist is forced to concede that virtually every significant part of the Constitution is premised on federalism. From the composition of the Commonwealth Parliament, to the judicature chapter, through the powers of the national legislature to the existence of the States themselves, at the heart of Australia's governmental dispositions is a fundamental commitment to federalism.

This reality even is susceptible of proof by physical experiment. If one takes a Stanley knife to a copy of the Constitution and cuts out every reference to federalism and the States, one is left not with a Constitution, but confetti. The Constitution of Barton and

Deakin cannot exist without federalism, and this has specific logical consequences for Australian constitutional conservatism. Thus, it is not possible for an Australian conservative to claim to be a staunch defender of the Constitution—for example, in the context of the republican debate—but to repudiate federalism. It would be as silly as a purported conservative Catholic denying the resurrection, or a claimed Geelong supporter rejecting Gary Ablett. The conservative lineage of the Constitution is inseparable from its federal essence, and as we will see, this is entirely unsurprising. Those liberal conservative founders chose federalism as a form of government, not only as a politically convenient means of bringing the colonies together in the 1890s (which it was), but fundamentally because it reflected central aspects of their own political conservative philosophy.

I accept, of course, that the Constitution does not enjoy a current popular reputation that matches its historical credentials. Indeed, it is (quite wrongly) held in relatively low esteem. It is perceived widely as a 'British' document, and as such about as appealing as burnt kippers. We tend to think of it as having been cobbled together by intransigent colonial statesmen, too selfish to opt for a proper and full union, which would have abolished regrettable tendencies like Tasmania. We are sure that it is full of obscure language like 'heretofore' and 'thereinafter', and that it is utterly irrelevant to everyday life. Many of these criticisms are plain silly. I note, for example, that the Constitution is not in full of syntactical Victoriana and bad legal Latin. Indeed, any of you who have the slightest familiarity with modern legislation and who also have read the Constitution readily will testify that it is far more comprehensible than most contemporary enactments Yet the contrast between the low popular esteem of the Australian Constitution, and that of the United States, whose citizens seem to be able to recite it on or in defiance of demand, is striking.

There are various reasons for this, which I will not go into in detail. One is that our Constitution has committed the unforgivable sin of having an uninteresting history— no blood, no wars, no massacres, no guillotines or Czars—the sort of things that excite fourteen year-old boys and television producers. The other is that after one hundred years, we tend to see Federalism as having been inevitable, and therefore are profoundly unmoved by it. The reality is that when Deakin said that Federation was a miracle, he was speaking nothing more than the truth.

Yet against this lacklustre perception of our Constitution, we need to set a central, paradoxical reality: that both the Constitution and the federalism it so prominently enshrines have very genuine claims, if not to reverence, then to public respect. Central here is the character of the Australian Constitution, in the most modern sense, as a 'Peoples' Constitution'. This arises in three fundamental respects. First, the Constitution overwhelmingly was drafted by delegates elected by the peoples of the colonies for that purpose, and thus comprises a popular constitution in terms of formulation. Second, the Constitution was endorsed by democratically conducted referenda among the colonial populations, conferring upon it a popular legitimacy of adoption. Finally, the Constitution remains amendable only through referenda conducted under section 128, a truly popular method of alteration. No matter how down-at-heel our Constitution may be in how many respects, there is no other modern Constitution that has a comparable popular chain of title, and it is precisely that democratic ancestry that gives our Constitution its intense claim to democratic legitimacy. This is a claim which necessarily extends to the fundamental feature of

that Constitution: federalism. Conservatives, with their intense concern for legitimacy, have valued both the Constitution and its federalism accordingly.

The traditions of Labor regarding the Constitution are significantly different, as already has been noted. Having dealt itself out of the Federation decade, Labor never has had any particular sense of ownership of the Constitution. It also has had a particular distaste for particular elements of the Constitution—such as the monarchy— but most notably for its central feature, federalism. Indeed, it is not going too far to say that at the heart of the Labor Party's traditional hostility towards the Constitution is a deep enmity towards the notion of federalism.

The straightforward reason for this hostility is that Labor historically has been philosophically opposed to federalism as a form of government. Thus, Labor traditionally has seen itself as the party of change and reform, and understood that to effect change a party requires ready access to power. The most obvious repository of pervasive power in the Australian federation is the national government. Federalism, by dividing power, inhibits the exercise of power by the national government and it therefore follows that federalism is a threat to any party in favour of rapid reform and cohesive change. To a significant extent, reality has followed theory. In the period since 1900, many Labor initiatives in such areas as price-fixing and the nationalisation of banks have been frustrated by the federal character of the Australian Constitution. The result has been that hostility to federalism has become a major article of Labor faith, and has been expressed in a variety of forms: from Gough Whitlam's flirtation with regional governments as a means of undermining the States, to Bob Hawke's Boyer lectures proposing the abolition of the States. The fundamental point is that Labor's hostility to federalism has been based on a philosophical attitude toward power and change, and toward the power to effect change.

That attitude needs to be contrasted very clearly with the historic conservative defence of federalism. Obviously, conservatives always have been inclined to defend the Constitution and its federalism as their own handiwork, but they have also have defended federalism as a matter of principle. This has been on the basis of philosophical suppositions fundamentally opposed to those of Labor. Essentially, Australian conservatives have defended federalism because it is a characteristic of conservatives to be suspicious of power, to fear its concentration and misuse, and therefore to seek to divide and balance it. Two obvious constitutional manifestations of such suspicion are to be found in bicameralism and the separation of powers, but its greatest expression in an Australian context is federalism, with its comprehensive division of power between the spheres of the Commonwealth and the States.

This is classic United States constitutional theory, of which Founders like Barton and Deakin were deeply aware, and which underlaid their adoption of federalism as a form of government. The result has been that Australia's conservatives historically have understood and accepted federalism as a means of achieving their fundamental goals of dividing power, making power accountable, separating power, and limiting power. Consequently, they have been temperamentally supportive of federalism, even when they found it irritating. This has meant that, while conservative governments might on particular occasions succumb to the political temptation to violate federalism, they would struggle against doing so, and invariably would feel dirty in the morning if they

fell. That monumental compromise between federalism and pragmatism, Sir Robert Menzies, was a good example of this tendency:

All this being said, the central conclusion of this lecture will in fact be that the historic alliance between Australian conservatism and Australian constitutional federalism apparently is over, and that after a century of ideological convergence, we now face the spectacle of an ostensibly conservative government in Canberra waging war on federalism. In suggesting this, I am not naïvely asserting that Australian federalism has been in robust good health for the past one hundred years. We all know of the progressive decline of Australian federalism and the States. We all understand the implications of vertical fiscal imbalance. We all comprehend that the Commonwealth has made constant legislative incursions into the domains of the States, and the reasons this has occurred: the substantial failure of the Senate (despite occasional flashes of regional integrity) to operate as a States' House; the utter failure of the High Court to act as a neutral constitutional arbiter; and the inability of the Founders to secure an adequate federal financial settlement within the Constitution. We all acknowledge that, as a consequence of these factors, the States for at least four decades increasingly have operated as service deliverers for the Commonwealth, although they have not collapsed as institutions, and continue to command a significant popular allegiance from their citizens.

Noting this lengthy litany of federal woes, one might question whether yet another aggressive, predatory, hubristic Commonwealth government really was of any great significance, as opposed to constituting business as usual. Yet the ultra-centralism of the Howard Government—more correctly, its power monopolism—is in reality of enormous significance in Australia's constitutional history. This is because for the first time in that history, there is no Australian party of federalism, in the sense that there is no political party fundamentally, philosophically committed to federalism as a political ideal. Both major parties, it would appear, are psychologically opposed to the federal division of power, and this represents an extraordinarily dangerous period for Australian federalism. It is a time that requires us to think quite carefully about the sorts of arguments we traditionally bandy back and forth as to whether we should be a federation, whether federalism is a good idea, or whether its day in Australia is past.

Federalism: Attacks and Defences

That brings me very briefly to the whole question of the arguments against federalism, both traditionally, and as put forward enthusiastically today under the Howard Coalition Government. These arguments are very familiar in some parts of the country, less so in others. What is correct thought in Sydmelberra—that fashionable strip that runs from the North Shore, through the staff bar of the Australian National University, stopping a decent distance from Geelong—is social death in Perth. Certainly, such arguments reached a peak of popularity under the reign of Prime Minister Gough Whitlam, and the present incumbent seems to have inherited from his predecessor a filing cabinet full of useful material, which he is enthusiastically recycling. To live in Australia is to be familiar with most of these arguments, which usually are advanced as if there is no possible refutation. In reality, few are lay down miseres, and I will present them together with the more obvious lines of response.

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A common opening salvo is that the States are an historical necessity for which the reason has now passed: let us decently euthanise them as quickly as possible.

The obvious response is to observe, firstly, that too much is taken for granted here: there are potentially some good arguments for keeping the States that need to be examined. A second observation might be that if the federal bargain is to be dissolved, then let it be by democratic referendum, and not by creeping political thuggery. Almost invariably, centralisers have no taste for popular constitutionalism, as its results invariably are uncongenial to their cause.

Centralists next condemn federalism as complex and expensive, railing against plump State bureaucracies and obese State parliaments. A plausible response is that if federalism is complex, expensive and difficult, so is democracy. In both cases, the question is not simply how much it costs, but what you get for the money and effort you expend, which redirects the argument into a much more profitable line of inquiry. One might also politely wonder what would be more expensive: the existing governmental apparatus of the States, or the vastly inflated Commonwealth bureaucracy that would take over their functions in a unitary Australia?

On a similar tack, we constantly are told that we have too many levels of government in Australia. Yet again, the real question is not how many levels you have, but what you get for having them. Of course, in Western Australia—and occasionally in Queensland—protagonists of the States are tempted to agree with that proposition, and suggest that the dispensable tier of government resides in Canberra.

Perhaps the most popular argument of centralism, as recently reprised by the Commonwealth Minister for Health, Tony Abbott, is that federalism in Australia involves duplication and divided accountability in government. There is considerable truth in this argument. One of its dangers for centralisers, however, is that much of the difficulty in this context has occurred because the Commonwealth, through use of its financial muscle, has invaded State areas, such as education and health. Confusion of accountability and responsibility thus may be sheeted home to Commonwealth incursion, not State incompetence. In these circumstances, a reasonable State response might well be that if the Commonwealth is prepared to vacate the field and leave the cheque behind, the State would be more than happy to eliminate all elements of division and overlap.

One of the more condescending positions in the centralist Kama Sutra is that the States are entirely artificial, deriving their existence merely from marks on a colonial map. No-one claims that every detail of the State borders was writ by God. On the other hand, if you think that Broome might quite reasonably form part of Tasmania, you have serious difficulties that have nothing to do with constitutional disposition. Moreover, even if originally the Sates were creatures of cartography, New South Wales (for example) now has existed longer than the oldest French Republic. Is it not remotely possible that in the course of these two centuries, it may have developed some genuine element of personality, along with some degree of institutional legitimacy? A closely allied argument of centralism is that, whatever the reality of their geography, there is no real difference between the States, or at least none sufficient to justify their separate constitutional existence. This is a position extremely easy to believe in Canberra looking towards Sydney, but miserably implausible in Cairns looking towards Fremantle.

A rather more silky claim is that it is not so much that one has anything against the States, as that regional governments would be so very much better. They would be even more local, even more responsive and even more community-based. Best of all, they would have no constitutionally independent existence and therefore would be incapable of seriously resisting any incursion from Canberra. Whereas a disheartened State Premier can still say 'No' (or at least 'I'd rather not'), all a regional gauleiter will be able to manage will be 'Yes—how quickly?'

In the final analysis, therefore, the classic articulations of the arguments against federalism from Whitlam to Hawke to Howard are at best debatable. The real question is what, if any, are the counter arguments for federalism, and how persuasive are they? These arguments rarely are considered explicitly in Australia. In Canberra, their very existence is ignored, while in Brisbane and Perth, their conceptual lines often are blurred beneath the tub-thumping rhetoric of States Rights. What is most notable about the federalist case, when it is articulated, is the extreme clarity of the connection between federalism as a constitutional philosophy, and federalism as a conservative philosophy embedded in a constitution.

Thus, many of the most significant arguments for federalism go directly to that defining conservative obsession with the dispersion of power. Such arguments are familiar to any Beginners' Class in American Constitutional Law, if not to the average Australian Prime Minister, and begin with simple proposition that federalism divides power, ensuring that no one government has power over everything, everywhere, at the same time. The high expression of this is that Australian federalism prevents a Sydney Napoleon. The low expression is that no Australian Prime Minister ever will have quite the degree of power he feels he deserves unless his government simultaneously controls the price of dingoes in Darwin and the incidence of post-modernism in Melbourne, and under federalism, this never will happen. In this sense, federalism has a strong analogy with the separation of powers, a term invented by the late Sir Joh Bjelke Petersen. Just as separation of powers divides power analytically, federalism divides power geographically, but to the same end: protecting liberty of action.

The second line in the defence of federalism is that it balances the powers of governments, one against the each other. This is a substantially different point to that relating to the division of power. By creating a Commonwealth and six state governments, Australia's federal Constitution ensures seven competing policy discourses and critiques on virtually every important subject, with the result that our political system generally is programmed not to let things go through to the keeper without discussion. An obvious case in point is that whereas recent anti-terrorism legislation passed through the Federal Government, Opposition, House of Representatives and Senate virtually untroubled, and it was the exigencies of federalism and the States that forced its deeper debate and reassessment.

The third basic federal proposition is that federalism brings government closer to the people. It allows the people of the States to make decisions about what happens in their state, a right particularly valuable the further you move from Canberra and the less conditions in your backyard resemble those in Manuka. The problem with this concept is that it has something of a marketing difficulty in Australia, where it is

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marketed under the distinctly unappealing trade name of 'States Rights', thus conjuring up visions of red-necked Western Australians culling rare wallabies for profit. In Europe, it is sold under much more euphonic name of 'subsidiarity', which brings up visions of Tuscans sipping locally-drawn mineral water and eating regionally denominated olives. The principle, however, is the same, from Fremantle to Florence: so far as possible, locals should make local decisions.

The fourth proposition flows logically from this: just as federalism recognises the rightness of local decision-making, so it accepts its effectiveness. Federalists believe as an article of demonstrable faith that federalism promotes better policy decisions in divergent locations by matching local expertise to local problems. The reality again is that, in Australia, this proposition becomes markedly more apparent the further you move from the eastern seaboard and the more it dawns upon you that Australia is a vast nation with vastly different conditions applying in its widely separated states. On this basis, it is an at least plausible suggestion that decisions might be better made people who actually know something about the conditions in which they will apply. In this context, hard questions need to be asked: for example, precisely what does Canberra know about indigenous education in the Kimberly, or environmental planning for far North Queensland; and would it not be better if health planning for Adelaide was determined by someone who had once drunk its water?

A fifth proposition, very American in style, is that federalism promotes policy innovation. In other words, where one has a single national government, one necessarily has only one single national policy arena, and the opportunity for experimentation is correspondingly limited and crude. The effect is that a monolithic national policy in any given area either will get things comprehensively right (uncommon, but not impossible) or unremittingly wrong (not inevitable, but depressingly common). By way of contrast, where you have a national government and six states each experimenting with different policy possibilities, the logic is that a range of different policy possibilities will be tested: those proving effective will be generally adopted, while those which fail will be discarded. The great example of this tendency always cited is the introduction of compulsory seatbelt legislation in Victoria, an initiative which subsequently swept not only the Australian federation, but the developed world.

Policy diversity also is a potent obstacle to overall policy disaster. If an omni-competent national government accidentally devastates, say, the school education system, recovery in a policy environment of nation-wide scorched earth will be slow and painful. In a federation like Australia's, the school education system can never be comprehensively put to the torch, and if pockets of it are sacked, there always will be surviving neighbours from which lessons for recovery may be drawn.

The final proposition of federalism is this: it promotes diversity as a given good. It is a peculiarity of Australians that although we have learned to love multiculturalism, in the sense that we embrace cultural difference drawn from outside Australia, we are much more ambivalent towards difference arising within Australia. Consequently, we admire Italian cooking and the Irish sense of humour, but if one dares suggest that a Tasmanian is different in any way from than any other Australian (except in being inbred) you will be greeted with absolute incredulity. One advantage of federalism is

that it does take the different quirks, the small things that make our State populations vary from each other, and actually celebrates, rather than represses them.

Strung together like this, with its obsession for the division and balancing of power; its insistence that regional difference be recognised and preserved; its belief in local decision-making and capacity; and its contempt for centralised policy apparatus, federalism breathes the philosophy of liberal conservatism as much as our Constitution breathes federalism. It is no great wonder, then, that when a very aged Sir Robert Menzies was asked to name his greatest mistake, that sometimes chequered federalist replied that it was his creation of a plausibly national capital in Canberra. With the sordid requirements of day-to day power past, Menzies was free to talk not as a politician, but as a liberal conservative.

One more point general point should be made about Australian federalism, before returning at greater length to its relationship with conservatism. This concerns the perplexing tendency of Australians to be ashamed that their country is a federation, as if this simply were not 'best world practice'. The reality is that federalism is not an intellectual constitutional pariah. On the contrary, federalism is a perfectly acceptable fashion accessory on the streets of places like London and Paris. To begin with, it is not an aberrant from of government: around forty per cent per cent of the world's population live under some form of federal government, and these include some of the most advanced democracies in the world, such as the United States, Canada, Germany and Switzerland. Secondly, and contrary to the view of many Australian economists and federal politicians, there is absolutely no necessary correlation between being an economic basket-case and a competition cesspool, and a federation. Again, just as countries such as the United States, Canada, Germany and Switzerland are stand-out democracies, they also are stand-out economies.

Indeed, the current world movement is, if anything, towards rather than away from federalism. As we watch devolution in the United Kingdom, with the creation of Welsh and Scottish legislatures; the inexorable moves of the European Union toward becoming a quasi-federation; and the increasing federalisation of unitary states as diverse as Belgium and Spain in an attempt to accommodate diverse political pressures, we appreciate very much that federalism is a rich, world phenomenon, and that it is the crude, uncritical centralism of the sort currently being promoted by the Howard Government that is deeply outmoded.

The Collapse of the Conservative Constitution

The depth of the link between federalism and conservative thought makes its current repudiation by Australian conservatives truly remarkable. That repudiation is clearly evident in at least two contexts. The first is rhetoric, where the voice of the present Commonwealth government is raucously anti-federal. Probably the best exposition of this type of rhetoric is comprised in Prime Minister Howard's speech to the Menzies' Research Centre in Melbourne earlier this year. Essentially, his argument was that federalism in Australia was to be seen as an eccentric and regrettable impediment to good government, not to be maximised, but rather determinedly to be minimised. Mr. Howard did not actually advocate the abolition of the States, although from the tone of his speech this manifestly was a matter of political and constitutional expediency, not policy desirability. Nevertheless, he made it clear that, given the unlikely opportunity,

he certainly would consign the States to the midden heap of history. Similar comments repeatedly have been made by other members of the Howard Cabinet, such as Minister for Health, Mr. Tony Abbott.

The second expression of the conservative Howard Government's utter disdain for federalism comes in concrete form in its programs. Here, the reality quite simply is that the Commonwealth government is now pursuing the widest and most intense attack on the States and federalism since the Second World War. One merely has to consider the fronts upon which the Commonwealth is advancing: industrial relations; hospitals and health; a possible national certificate of education; Commonwealth technical colleges; possible control of universities; ports; overall infrastructure planning; uniform defamation law; and aspects of State taxation. It is a remarkable list, and one that comprises the sort of general constitutional surge that would bring a smile to the faces of those two historic proponents of unfettered centralism, Edward Gough Whitlam and Attila the Hun.

The genuine conservative critique of this mutant conservative constitutionalism is a bitter one. It begins by noting that Howard's Canberran monopolism is opposed to every principled element of the Australian liberal conservative tradition. From Deakin to Menzies, federalism uniformly has been asserted as a fundamental conservative constitutional value. That position of principle now has been discarded in favour of the transitory opportunities of power.

Secondly, as already has been suggested, Howard's disdain for federalism is deeply inconsistent with any professed devotion to the Australian Constitution. Numerous members of the Howard Cabinet are fond of professing their love for the Constitution, and proclaiming it the 'best constitution in the world', particularly in the interest of defending the monarchy. In the mouths of deeply pragmatic centralists, these testimonials are mere humbuggery and rank constitutional hypocrisy.

Thirdly, the current attack on federalism is fundamentally opposed to conservative philosophy. This is because it is aimed purely towards the aggregation and enhancement of government power, and is directly opposed to the dispersion and division of government power embodied in all real conservative philosophy. Indeed, in its determination to conglomerate, to centralise and to enhance power in Canberra, the imperatives of the Howard Government have nothing to do with the traditional conservative thought, but rather are deeply consistent with the philosophical positions of the old Labor power addicts, who must be chuckling in their political graves as they watch an ostensibly conservative party do the anti-federal work that they were never able to carry out themselves.

By way of brief digression, it may be noted that there have been some flailing attempts to re-write conservative philosophy in a manner more congenial to Howard's monopolist agenda. One of the more amusing is to be found in the suggestion, sometimes made in the context of industrial relations reforms, that it is consistent with conservative principle for a government to preside over a massive centralisation of power, so long as that power will be used for the purpose of conferring greater individual liberty. Probably the most apt response is to mourn that Benito Mussolini, that master of expediency, died without the opportunity to savour such a position. In the first place, it is never permissible to subvert fundamental constitutional principle to

attain a particular "good" result, because constitutional principle then becomes nothing more than the doormat for the "good" idea of every passing prime minister. Second, as true conservatives always have understood, once power is concentrated for a supposedly benign purpose, it can just as easily be turned to malevolent ends.

This leads on to the fourth basic inconsistency between conservative thought and Howardite monopolism, which is that while conservatism always has taken a characteristically far-sighted view both of history and the potential for the misuse of power, the latter is miserably short-sighted. Thus, the unthinkable thought that has to be kept in mind as the Howard administration amasses its vast power in such areas as industrial relations and education is that one day, like Ozymandias, even John Howard and his government will pass away. When this occurs, as inevitably it must, a Labor Government will inherit the prodigious legislative artillery created by Howard and his fellow power enthusiasts, and these great guns will be turned upon precisely those weak-minded conservatives who created them. This is the whole point of conservative philosophy. By dividing power, conservatives accept that they will not get it all their own way, but guarantee the same of their opponents. Howardite monopolism is a constitutional mug's game of double or nothing.

Moving briefly from the realms of principle, it is worth noting that pragmatism also looks askance at elements of the Howard centralist manifesto. Put simply, why on earth does the Commonwealth want some of these areas that it is eyeing so covetously? Why does it desire schools and hospitals? These are the Vietnams of Australian public administration, and out of their jungles no minister emerges alive, as any State incumbent will testify. The prospect of a Commonwealth government that actually has developed a taste for running schools and regulating bed-pans is one of the great and improbable marvels of a new century.

All of this naturally raises the interesting question of Labor's position on federalism in a fallen conservative world. Perhaps unsurprisingly, Labor is showing considerable confusion at the sight of its opponents tearing up their own constitutional birthright. The pragmatics of political opposition would suggest the opportunity for an unlikely assault in defence of federalism, but long-standing inclination seems to demand grudging support for this act of conservative constitutional suicide.

In fact, there are a number of reasons why Labor might begin the arduous process of rethinking its position on federalism. One is because the entire supposition of Labor being endemically opposed to federalism was based on the notion that Labor was the party of radical change and policy innovation in Australia, and therefore needed access to unqualified repositories of power. Anyone who still believes Labor is the party of policy radicalism needs swift and effective counselling. In truth, Labor now stands for the preservation of a wide range of social features—from trades unions to a high-impact social welfare system—all of which are under serious policy assault from the genuinely feisty forces of the Right. In these circumstances, a constitutional philosophy based upon the division and balance of power, and that is protective of social consensus, starts to make solid sense.

A second factor concerns modern Labor's professed wariness over misuse of governmental power. In such contexts as the war against Iraq and the treatment of refugees, Labor talked a great deal of late about the need for checks and balances upon

power, the undesirable concentration of power in too few unresponsive hands, and the need for enhanced accountability in government. If any of this actually represents serious positions, as opposed to political point-scoring, it is deeply consistent with federal values. So is Labor's general obsession with 'community'. Maybe the time has come for the Labor Party to consider whether or not there might be possibilities in federalism that have hitherto been ignored. More pragmatically, a Labor approaching its second decade in opposition needs weapons platforms, and it no longer commands the Senate. The States comprise a weapons platform par excellence, and Labor needs to think hard about their place in its political thought.

Of course, there is one other player to be taken into account in this constitutional comedy, the one referred to with no sense of irony during the Federation debates as 'the keystone to the federal arch'. Much of the success of the Howard Government's strategy of power monopolisation will depend upon the attitude of the High Court. Historically, it is a truism to say that the High Court has been no friend to the States, with the Commonwealth-appointed Court basically playing undertaker to Canberra's hit-man. Yet, remarkably, the Howard government does have some little reason to worry about the anti-federal reliability of the present Court. One is that the government has worked hard to create what often is referred to as a 'capital-C conservative' High Court. The problem with capital-C conservatives is that they are not only politically conservative, but are also constitutionally conservative, and so (for all the reasons canvassed above) tend to be federalists. It will be very interesting to see how some of these judicial conservatives react when they are confronted with the most determined attack on Australian constitutionalism in half a century.

The second factor is that the High Court does not like being taken for granted. The last time the Commonwealth blithely assumed the complicity of the Court was in the early 1990s, when it was attempting to assume complete control of the corporations law. It boasted that it would have a wonderful win in the High Court, but in the event, the Commonwealth lost the *Corporations case* in a humiliating six-one decision. Now, everyone in the Howard Government is saying that the Justices are in the bag, and that this specially-crafted High Court will deliver. I wonder. It is interesting to note the latest appointment to the Court, Justice Susan Crennan: a woman of markedly independent mind; of conservative temperament, but without obvious political commitments; and possessed of a distinct acquaintance with Catholic social justice theory. This is not an obvious recipe for constitutional compliance, and Sir Humphrey Appleby might well have characterised it as a courageous appointment.

Conclusion

The obvious question is: 'Where do we go from here?' The answer of the Prime Minister quite simply is that we go away from Federation, away from the liberal, conservative, federal constitution of his political ancestors, and towards an Australia unitary in thought, if not in constitutional structure.

What is beyond dispute is that we face a sea change in Australian constitutional and conservative theory. Until recently, Australian federalism from the point of view of the States had reached what might be referred to as a balance of horror. On the one hand, the States were brutalised and financially humiliated by the Commonwealth. On the other, things really could not go much further. The reason for this painful equilibrium

was that the States already had been reduced significantly to the status of convenient service delivery agents for the Commonwealth, while their prime areas of power—horrors such as schools and hospitals—were not objects that any sane Commonwealth would covet. On balance, why would Canberra fight its own grudging servants for possession of a poisoned chalice?

Today, we face a Commonwealth impatient of even its most compliant servants, and prepared to invade legislative domains never before contemplated by Canberra. This is a Commonwealth government that quite overtly has not the least interest in the preservation of federalism or the States. If you could ask a Howard power monopolist whether there was any policy area that could not be handled better by Canberra than the States, the answer would be a curt negative, although some matters—sewerage and sex offenders come to mind—presumably would be beneath the dignity of Capital Hill

What all this means is that the States are facing what used to be referred to as the "Cornwall scenario". Cornwall is that long English peninsula jutting into the Irish Sea where every hopeless, displaced British tribe ends up before it makes the final decision either to hold or be driven into the sea. This is the decision for the Australian States, as they and the federalism they embody battle for life against a constitutional vision of power that will brook neither rivals nor dissent. It is the supreme irony of this crisis that it has been brought about, not by wicked communists or foolish socialists, not by the schemes of Jim Cairns and Gough Whitlam, but by feral conservatives who are sworn to defend precisely the federalism they are trying so assiduously to undermine.

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Question — Have you discovered any moves among the federal government to take over urban railways?

Greg Craven — Is this a loaded question? I do think that maybe the answer is the point that I made right at the end, about asking the federal government if there is anything you don't think you know more about than the states, to which the answer would be no. So I don't see why urban railways would be any different to anything else. I said in a speech somewhere else that the Commonwealth, in its present bullish mode, reminds me rather of that very obnoxious person you end up next to at a pub every now and again, and you say: 'I've got a parrot that talks' and he says: 'I've got a parrot that's an anchor for a major television show on the ABC.' No matter what there is, we can go one better. So it's quite possible.

Question — Thank you for a very interesting summation of your analysis of the current state of Australian politics from a right-wing perspective. I'm speaking as a Pom, as you may have gathered from my accent. I was a Pom up until 17 years ago and I'm now what I call a Pom Aust because I was neutralised and became a citizen of Australia 17 years ago. Your speech reminds me of a speech I heard by Anthony Wedgewood Benn, that great left-wing intellectual of the Labour Party in England, who was speaking in the House of Commons when Margaret Thatcher and her extremely right-wing government were trying to dismantle all local government in the

UK. My question is, given that that happened 20 years ago or so, and the current Howard government is trying to emulate that, is it still true that Australia lags behind England by some 20 years or so?

Greg Craven — I think that's an enormously useful question because it reminds me of one of the great parables of federalism. In the early 80s when I was at Melbourne University Law School, we used to get every now and again various visiting English academics, including constitutional lawyers. The thing I remember most about them (apart from the guy who flew to Tasmania to escape the bushfires in Melbourne in 1984 because he thought he was going to be burnt, which was pretty funny) was the constitutional lawyers who would turn up and would talk to us about federalism in the most condescending terms and laugh at this as a quaint little Australian invention and gosh, you were sold a bill of goods by the Americans weren't you? When we would venture to suggest that maybe it does serve useful purposes in dividing power, they would pat us on the heads and say that's why we in Britain invented local government, and you will see that that will prevent Mrs Thatcher from doing any of these dreadful things. Two years later those same academics were coming back saying: now that 'f' thing again, how does that work? I would have thought from a left-wing, right-wing or Callithumpian perspective, that capacity of federalism to balance, and the direction that it went in England, is a potent warning against eristic governments of the right or the left. It's just that governments of the right are meant to be better at this than governments of the left, and we sadly are not seeing that.

Question — You say the conservatives wrote the Constitution so that certain powers couldn't happen, but in fact they did put in the corporations power, they did put in the industrial relations power. And although we've got to remember that it was done at the time of the Empire, and Australia wasn't going to have any external interests, there is an external affairs power, which is also quite reasonably being used because the states can't do it and if we didn't have that external affairs power, we couldn't belong to things like the United Nations. The third one they did put in was that the Commonwealth could make advances to the states or pay the states and so on, and obviously under those circumstances the Commonwealth has had the money power for a long time and has used it. So it's not quite straightforward that the Constitution is pure as far as federalism is concerned. The other thing is that it did lay out very definitely those areas where the states could not intrude in the things that the Commonwealth has exclusive power over.

Greg Craven — They are all actually very good examples. If you take the corporations power, and actually look at what Section 51 (20) says, it's the power over foreign corporations and trading or financial corporations formed within the limits of the Commonwealth. It's a narrow power. The founding fathers (and we can read this in their debates), meant that to be an incredibly narrow power, and its width comes not from the Constitution but from the High Court: a High Court appointed by the Commonwealth executive. If you take the external affairs power, that was never intended to mean that you could implement treaties in areas within the competence of the states. The Commonwealth's power to implement treaties was always going to be very narrow. And Section 96 is part of the failure of the financial settlement.

I think that the High Court may be less compliant than the Commonwealth government thinks for two reasons. I suspect the Court may be troubled by this

overwhelming direction; if this is the Cornwall scenario, then the High Court may think, gee, this really is the end. They might even think, gosh, we're out of business if this goes off. If our life has been beating up the states, we are finished if there are no states. That's one reason. The second reason is indeed the corporations power. How far is the High Court going to push that power? If you come to the view that it allows you to do really anything that roughly has anything to do with a corporation, which is pretty much the view being put by the Commonwealth, then it means you can do pretty much anything. If you read the cases of the Court on this, there is some reason to say there is pre-existing nervousness about the scope of the corporations power. The High Court has probably been signalling now for 10 years: 'We're a bit worried that we might have pushed this too far open.' I'm not saying what the High Court will do: my degree of cynicism for the High Court is matched by none. I think the last lecture I gave in this series was called *The High Court of Australia: an unfaithful servant*. So no-one can accuse me of being excessively optimistic. I just publicly wonder.

Question — Thank you for the lecture. It was enormously important and useful to have all those things said about the current political landscape. I've got a question for you concerning some of the reasons why the Commonwealth is advancing on all fronts and it relates to the regional level you mentioned. I'm wondering whether one of the reasons why this has been an issue in recent times is dissatisfaction with the highly centralised nature of state government, particularly in NSW. Health and education, and another big area that you could add to your list would be environmental management, natural resource management, water for example, are all areas where the Commonwealth is also making a big push. I'm wondering whether you could give us some sense of whether you think there is answer to that, whether that's a pressure that is ever going to go away, given the spatial configuration of the states. Is there a long-term constitutional solution beyond just the question of whether the High Court would draw the line next time and whether the push-me pull-you will continue? Is there an evolution in the federal system which could see federal principles reinvigorated, re-institutionalised in a way which deals with the highly centralised nature of the state; for example constitutional recognition of local government, or other ways of fixing the effects of vertical fiscal imbalance in a way which achieves some decentralisation, meaning that the Commonwealth doesn't become subject to these political pressures to interfere in lower level of government activity?

Greg Craven — There are a number of ways of answering. I think the general point would be that I don't see of any way of solving it for the simple reason that to solve it would require co-operation of the Commonwealth and I don't see why a Commonwealth government would ever co-operate in a solution because the problem is so very very congenial. The reality is that the Commonwealth has, what's the old quote from Kipling: 'power without responsibility, the prerogative of the harlot throughout the ages'. If the Commonwealth wants to take something over it can, if it wants to leave something it can, if it wants to make political capital out of the trains in Sydney it can, if it wants to sheet the trains in Sydney back home to Bob Carr or whoever the other man running NSW happens to be, it can. Why on earth would you give up a job like that? So I don't see the slightest chance of that.

Underneath that there is another thing you are saying, which is: do the states in have clean hands in their own houses? They are always talking about subsidiarity and responsibility. What are they like with local government? I think that is a real issue. I

think that in a way the states have talked divided power accountability rhetoric when they've wanted to but haven't applied it to local government. I have to say I'm a new convert to this position. I've always looked at local government and found horrible things that I don't really want to contemplate. The reality is, you can take the rhetoric further and we should be looking at that, but arguably you could say that the existence of the federal system is terribly destructive of local government because where you have three layers of government, one of them is going to lose out. Where you've got a fight going between states and Commonwealth, the reality is that local government is going to be shunted aside.

What I wouldn't accept is that the Commonwealth present mood is prompted by noble sentiments of wishing to solve dreadful problems in the interests of the citizen. I don't discount decent altruistic policy motives, but there's an awful lot of politics going on in this type of debate. I wouldn't analyse it that the only reason the states are in trouble is because they can't get their house in order, and therefore the Commonwealth needs to send in constitutional peace keeping troops. I think that would be excessively generous.

Question — What, if any, constitutional philosophy do you detect in the words and actions of Senator Joyce, and what's your assessment of that philosophy?

Greg Craven — I think Senator Joyce is running a somewhat crude—that's not a pejorative term, I mean crude as in hewn roughly—version of federal theory. I think that he sees himself as a senator for Queensland and I think there's something in that. I think that he sees himself as being accountable to a constituency in the state that elected him and that in doing that, he is acting in a way that would not have surprised a lot of people who wrote the Constitution. You could ask whether Senator Joyce also saw the necessary national elements of his role, and there are national elements of the role of a senator as well as state elements. I mean, the presentation I've made is not a state's rights presentation—I am not a states' righter and that might be the difference between the line that I have sketched and Senator Joyce's. The philosophy that I've sketched is a conservative philosophy of federalism. It works for conservative federalists. It doesn't work for states' righters—they're on a completely different power trip at one end of the spectrum, the same way that the federal government is at a power trip at the other end of the spectrum. So that's probably where I would see Senator Joyce.

Question — Are you perhaps being a bit romantic about what's possible for federalism these days? I'm thinking of the anti-terror laws and the way in which the state premiers managed to combine with the federal parties so that they never got to a situation where they were balancing different approaches to things. They could perhaps get local or state benefits out of going along with the Prime Minister, so that we've had no real debate about the substance of those issues. We won't get it in the Senate by the sound of what's going to happen. At least in the UK there are elements in the Labour Party over the last few years that have been prepared to cross the floor or at least work very hard to ameliorate things. So federalism hasn't worked very well in that regard.

Greg Craven — I think that's a fair point, although admittedly I was out of the country when a lot of these things were happening. I think the question is probably

worth asking: will you get more or less debate because you're a federation? And I think that the inevitable reality will be that with seven parliaments passing legislation, there will be much more debate than there would be if there was only one parliament. It might not be enough, but it will be significantly more. As time goes on, it's much harder to control seven parliaments in relation to legislation than to control one. I would expect that debate to resurface, and when it does, I think the federalism element will be significant. We have to remember that Australia has had many potential disasters in its history. Two great disasters we can look back in retrospect and say were averted. One was the nationalisation of the banks. Let's face it, that would have been a disaster. The other one was the attempted dissolution of the Communist Party by the Menzies Government. Both of those things substantially were stopped by Australia's federal structure. Not a bill of rights, not any other glories of our wonderful politics, but the fact that the federal structure made it virtually impossible for those two things to happen either directly or indirectly. So I think it does operate. I don't think I'm romantic, but I do take your point about it.

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