

## Reconfiguring the Federation?

ANDREW PARKIN AND GEOFF ANDERSON

*Flinders University*

### Introduction

The first three terms of the Howard government had produced a somewhat mixed record in relation to Commonwealth-State relations. The implementation of the 'new tax system' in July 2000, with the entire yield from the new Goods and Services Tax thereafter dispatched to the States as untied revenue, had effected a landmark shift in fiscal federalism in favour of substantially greater State-level financial flexibility and autonomy. On the other hand, the first three terms had also provided insights into and rehearsals for what was to become, in the fourth term, a clear centralist orientation (see Parkin & Anderson 2007).

A key contextual factor was the extraordinarily polarised and extraordinarily stable intergovernmental partisan balance: for its entire fourth term (as indeed it had been for nearly all of its third term), the Howard Liberal-National Coalition faced entrenched Labor governments in every State and Territory. This can, however, only be a partial explanation for the notable centralist shift. A deeper explanation also needs to take seriously Prime Minister Howard's understanding of and commitment to a new conceptualisation of conservative nationalism.

In April 2005, six months into his fourth term, Howard evidently thought it timely to set out the parameters of this new conceptualisation, through an historical and philosophical interpretation of Australian federalism. 'I am', he said, 'first and last, an Australian nationalist', somebody who has 'never been one to genuflect uncritically at the altar of States' rights'. Some form of federalism, he conceded, was an entrenched Australian reality – 'the federal structure of our nation will remain' – but that entrenchment seemed to be its principal claim to legitimacy: 'if we had have our time again, we might have organised ourselves differently' (Howard 2005a).

This argument – both its vocabulary and its intent – was to become a familiar one. Here is Mr Howard explaining in late July 2007 his decision to proceed to seek an imposed Commonwealth regime on the Murray-Darling Basin: 'You'll only solve this problem if you effectively obliterate the state borders. This is something that transcends the parochial interests of the states. ... I mean, we are [a] nation, we are not a collection of states and the Australian people are tired, sick and tired of state parochialism on issues like this' (Howard 2007a). A month later, he took the argument a stage further. 'Aspirational nationalism' was his proclaimed goal, and a re-elected fifth-term Howard government office would be 'applying this spirit to the governance of the Federation'. While this would sometimes involve leaving policy areas entirely to the States, and sometimes would involve co-operative federalism, it would also on other occasions 'require the Commonwealth bypassing the states altogether and dealing directly with local communities' (Howard 2007b).

This articulation of 'aspirational nationalism' served at the time as a justification for the provocative intervention by the Commonwealth into Tasmania's health system to ensure that

Devonport's Mersey Hospital (in the marginal electorate of Braddon) remained open. To dismiss it as an expedient piece of rhetoric for short-term political purposes would, however, overlook its resonance with the kind of Commonwealth-led reconfigured federation that has been emerging during John Howard's decade in Prime Ministerial office. It was not the 'nationalism' element that was new in the 2007 version; this had been foreshadowed in the 2005 speech and elsewhere. Rather it was the complementary endorsement of 'localism'—the commitment to 'town and team, neighbourhood and network'—as, with 'nationalism', one of the 'two powerful trends in Australian society today'. There was apparently not much room for the middling level of the States in this world of 'nationalism' and 'localism': 'the old rigid state monopoly models for health, education, employment and welfare services have become increasingly obsolete' (Howard 2007b).

## **Issues and controversies**

Several key headline issues and controversies were important markers of the Howard government's fourth term. Four of these issues and controversies—industrial relations, education, health and the management of the Murray Darling system—are worth describing for the clear pattern that they provided of an increasingly interventionist Commonwealth government in the final stanza of the Howard era.

### ***Industrial relations***

The Constitution (Section 51(xxxv)) ostensibly limits the industrial-relations powers of the Commonwealth Parliament to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'. In practice, this meant that the Australian system had evolved via a two-level system of a national regulation (via, most recently, the Australian Industrial Relations Commission) covering certain national awards paralleled by separate State-based systems covering a raft of separate State awards. The single exception to this was Victoria, where the former Kennett government had unilaterally referred most (though not all) of its industrial relations powers to the Commonwealth from November 1996 (Gahan 2005).

The Howard government emerged from the election of October 2004 with the pleasing prospect of a Senate majority by July 2005. Initiatives otherwise likely to be blocked by a non-government Senate majority thus became more thinkable, and prime among these was industrial relations reform. '[W]ith the favourable outcome in the Senate', Howard noted, 'we are now in a position to drive the industrial relations reform process further in ways consistent with liberal philosophy' (Howard 2005a). The substantive arguments about the direction of this reform—further towards a deregulated system with weakening trade-union influence—is not the concern here except insofar as the substantive Coalition/Labor partisan conflict over this issue helps to explain why State and Territory Labor governments opposed the initiative. Rather, the concern here is with the rebalancing of Commonwealth-State relations that the initiative entailed. For Prime Minister Howard, a 'single set of national laws on industrial relations' was 'an idea whose time has come':

[T]his is not about empowering Canberra. It is about liberating workplaces from Colac to Cooktown. ... The current system of overlapping federal and state awards is too complex, costly and inefficient. ... [I]n the absence of referrals from the States, the [Commonwealth] Government will do what it reasonably can to move towards a more streamlined, unified and efficient system. (Howard 2005a).

The new Commonwealth industrial relations legislation passed through Parliament in December 2005. The States challenged the Act on constitutional grounds in the High Court. By a 5-2 majority, the Court ruled for the Commonwealth in November 2006. The Court majority's determination in this *NSW v Commonwealth of Australia* case, essentially finding that the Commonwealth's constitutional power over 'corporations' (Section 51(xx)) gives it a capacity to regulate a wide range of industrial-relations matters, constituted not just a significant confirmation but arguably also a significant amplification of the legal predominance of the Commonwealth within the federal system. The concerns of alarmed defenders of federalism were encapsulated in the pointed dissenting judgement from Justice Kirby, for whom

it would be completely contrary to the text, structure and design of the Constitution for the States to be reduced, in effect, to service agencies of the Commonwealth, by a sleight of hand deployed in the interpretation by this Court of specified legislative powers of the Federal Parliament. ... Such an outcome would be so alien to the place envisaged for the States by the Constitution that the rational mind will reject it as lying outside the true construction of the constitutional provisions, read as a whole, as they were intended to operate in harmony with one another and consistently with a basic law that creates a federal system of government for Australia. ... Why, for instance, bother to have State Parliaments, with significant federal functions to perform, if by dint of an interpretation of s 51(xx) of the Constitution [i.e. the corporations power] the legislative powers of such Parliaments could effectively be reduced unilaterally by federal law to minor, or even trivial and continually disappearing functions ...? (2006 HCA 52 at paras 543 and 549).

The Prime Minister greeted the decision with a characteristic mixture of reassuring calmness and unequivocal 'national interest' insistence:

We will not interpret this decision as being any kind of constitutional green light to legislate to the hilt. We have no desire to extend Commonwealth power, except in the national interest. I have no desire for takeover's sake to take over the role of the states. (Howard 2006)

## ***Education***

The Commonwealth has no direct constitutional jurisdiction over education and the public schooling sector has long been at the core of the business of State governments. Via indirect means such as conditional grants, however, the Commonwealth has over the past forty years increased its influence over aspects of the delivery of schooling (Lingard 1993, Dudley & Vidovich 1995). While the Commonwealth remains, in comparison with the States, a minor direct provider of funds to public schools (Harrington 2004a), this funding provides potential leverage to influence the content and management of the schooling services notwithstanding that the schools are ostensibly created by and owned by State governments. This became a particularly contentious theme during the Howard government's fourth term, initially under Brendan Nelson's continuing tenure as Education Minister and then, from January 2006, under his successor Julie Bishop.

The Howard government's education initiatives ranged from the symbolic to the substantive. The common thread was a growing insistence about greater national consistency (to address what Minister Nelson (2003) had earlier described as 'the national rail gauge problem' across the separate State-level education systems), better reporting by schools to parents about student

achievement, greater transparency about measuring and publicising school performance, greater autonomy to school principals (and by implication less authority both to State education bureaucracies and to professional teachers), and making the explicit recognition and teaching of appropriate 'values' a core part of schooling (Harrington 2004b).

At the symbolic end of the interventionist continuum was a requirement that all schools possess a functioning flagpole as a condition of receiving Commonwealth funding (DEST 2005). Later came an insistence that the teaching of Australian history—and specifically a sequential notion of Australian history emphasising key dates and events—should be given more emphasis, an idea that escalated from simply another values-infused symbolic incursion to a 2007 announcement that history should become a compulsory component of the curriculum (Howard 2007c). Other interventions included requirements for public schools to specify performance targets and performance measures, to ensure that student reports were plain-English in composition and reveal where a student ranked in his/her class, and to publish school performance information (DEST 2005). As explained by the Prime Minister, 'the incentives need to be right to ensure our schools perform at their best with high academic standards, good teachers, principals with real power and proper accountability' (Howard 2007d).

The adoption of effective nationwide curriculum standards was again placed on the agenda, framed from the Commonwealth perspective as a critique of the inadequacies of State-level educational governance (e.g. Ferrari 2006) notwithstanding manifest intergovernmental progress over recent decades in agreeing to national schooling goals and collaborative curriculum frameworks (e.g. MCEETYA 2006; Curriculum Corporation 2006). Minister Bishop claimed a 'victory' when the Ministerial Council comprising Commonwealth and State Education Ministers agreed in April 2007 to 'work together...to develop nationally consistent curricula' (MCEETYA 2007). The same meeting, however, refused to endorse Bishop's push for performance-based pay for teachers or a common school starting age, confirming that considerable residual power—not least the power of inertia—remained in the hands of the State negotiators in these intergovernmental forums.

Doubtless in recognition of this, the schooling sector became a venue for more direct Commonwealth action, via a process described elsewhere as 'parallel federalism' (Parkin & Anderson 2007) that bypasses the States altogether. In his 2004 Coalition campaign speech, Prime Minister Howard announced the establishment of 24 'technical colleges'. These were, according to Howard, to be 'the centrepiece of our drive to tackle skills shortages and to revolutionise vocational education and training throughout Australia' (Howard 2004). They were, tellingly, to operate independently of the State education systems, notwithstanding their explicit overlap with the business of State high schools and TAFE campuses. These Australian Technical Colleges proved to be more difficult to get established than first envisaged, but a number (well short of the 24 target) had become operational by the end of the fourth term (Lebihan 2007, DEST 2007a).

Prime Minister Howard also used the 2004 campaign speech to announce additional funding to an existing program to maintain and upgrade school facilities. However, he added, 'we're going to do things a little differently this time. We're not going to pay the money to the State Governments. We're going to deal directly with the parent bodies' (Howard 2004). Thus was set in train the Investing in Our Schools Program, in which projects were to be proposed not by, or even in consultation with, State governments but rather by direct application to the Commonwealth by 'school communities' (DEST 2007b).

Nearly all Australian universities are statutory creatures of the States, yet the significance of Commonwealth financial contributions, conditional upon university compliance in relation to

matters as detailed as course profiles and student service fees, means that even staunch federalists tend to concede the Commonwealth's de facto dominance (e.g. Craven 2006a; see also Craven 2006b, Norton 2005). Minister Julie Bishop sought to formalise this situation by proposing that the vestiges of University financial accountability to the States be removed, either by agreement or perhaps even via Commonwealth fiat via the same corporations power ascribed to the Commonwealth via the High Court's industrial relations decision (Bishop 2007; Garnaut and Crawshaw 2007). The States were not impressed (Healy 2007) and no progress in this direction was made.

## ***Health***

The Commonwealth has a firmer constitutional foothold in the health domain by virtue of its powers (arising from the 1946 constitutional amendment that produced Section 51(xxiiiA) of the Constitution) over the 'provision of ... pharmaceutical, sickness and hospital benefits [and] medical and dental services'. The intergovernmental regime that has evolved in practice sees a major Commonwealth role in the regulation of general-practice primary health care via the Medicare system and in partial funding of the public hospital system, while the public hospital systems themselves remain under State administration. This regime operates under the rubric of the Australian Healthcare Agreement, a formal Commonwealth-State compact that had most recently been renewed for a further five-year period in 2003.

There is widespread recognition that the current cross-governmental arrangements can be problematic (Duckett 1999, Hancock 2002; Buckmaster & Pratt 2005) and various proposals for clarifying and rationalising the respective roles of the Commonwealth and the States have been promulgated over the years. On the other hand, many of the well-publicised troubles afflicting public hospitals—such as escalating costs, heightened public expectations and service demands, and the management of the health workforce—are likely to be inherent rather than necessarily affected by the intergovernmental regime.

Tony Abbott as Minister for Health publicly contemplated a total Commonwealth takeover of the public hospital sector on a number of occasions (For example see Saunders 2004 and Stafford 2005). A Commonwealth task force headed by Andrew Podger, former Public Service Commissioner and head of the Department of Health and Ageing, lent some support to this vision (Metherell 2005; see also a 2006, Podger 2006b). But, until 2007, Prime Minister Howard—seemingly aware of the inherent difficulties of health-sector management—consistently signalled that he did not envisage the Commonwealth assuming responsibility for public hospitals. He envisaged instead 'incremental change' towards 'finding practical options to improve the delivery of health services' (Howard 2005a).

At least that was the position until August 2007, when the pressure of an impending election and the need to defend the Coalition's hold on the marginal Tasmanian seat of Braddon induced a dramatic change of tack. Taking advantage of local community opposition to the plans by Tasmania's Labor government to rationalise hospital services, Prime Minister Howard pledged a takeover of Devonport's Mersey Hospital via a Commonwealth-funded local hospital board. While the election pressures influencing the intervention were obvious, Howard was careful to justify it within the new narrative of federalism—localism and nationalism, minus the states—that he was developing:

[T]here are certain responsibilities for the states, certain responsibilities for the Federal Government but the public increasingly looks to the national government to plug the gaps and to respond where state and territory governments aren't doing a

good enough job. ... [T]he public in Australia want services and they don't really care which level of government delivers those services and if they can be effectively delivered by the Federal Government going direct to a local community all well and good. (Howard 2007e)

Health-sector stakeholders were generally unimpressed by the implications of a Commonwealth government overturning carefully devised, though politically difficult, regional health management plans. The State President of the Australian Medical Association was reported as describing the intervention as a 'disaster' (Denholm 2007). Conservatives previously accustomed to a Coalition government defending rather than subverting federalism seemed particularly appalled by the Mersey Hospital episode. A 'betrayal of conservatism' is how Nahan (2007) characterised it, declaring that the Commonwealth's 'lack of service delivery expertise and sloppy preparation of the ... takeover to date' meant that 'better outcomes will be difficult to achieve'.

Prime Minister Howard was undeterred: 'Let's see how it works', he mused, 'and if it does, it can represent something of a model for other parts of the country' (Breusch 2007). Within a month or so, it was no longer necessary even to wait for the evidence: 'aspirational nationalism' linked with 'localism' was now the way forward (Howard 2007b).

The new orientation inevitably intruded itself into the ongoing, and unresolved, Commonwealth-State negotiations over the next Australian Healthcare Agreement (AHA) due to come into effect in 2008. Until that point, the main sticking point had been money. According to the States, the Commonwealth's financial contribution to public hospitals had fallen since 2000 from 50 to 45 per cent of costs, representing a shortfall of over \$1 billion (Health Ministers 2007). Minister Tony Abbott had dismissed the claim as ruse by the Labor States to 'give Kevin Rudd a leg up' (AAP 2007), though later—in the middle of the election campaign that ultimately saw the Howard government's defeat—the Australian Institute of Health and Welfare (AIHW) essentially confirmed the States' interpretation (AIHW 2007). Meanwhile, however, the new 'localism' and 'aspirational nationalism' tropes now provided Abbott and Howard with an additional point of attack. The next AHA, they declared, would require the States to establish Community Boards to directly administer each of the nation's public hospitals, bypassing State-level administrative and political control, or face the loss of Commonwealth funding (Coorey 2007; Tingle 2007).

### *Managing the Murray Darling*

The Australian Constitution is generally silent about State powers, relying instead on authorising the States to exercise powers not allocated to the Commonwealth. This silence, however, does not apply to the power to manage rivers; Section 100 states explicitly that 'the Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation'.

The Murray Darling river system—comprising Australia's premier river catchment area not just in terms of geographical magnitude but also in relation to economic, social and environmental impact—impinges on four States (Queensland, New South Wales, Victoria and South Australia) and on the Australian Capital Territory. The State-based governance and management of this system, in which upstream decisions have consequential downstream effects, has long been portrayed an iconic example of the difficulties encountered by federalist arrangements in producing appropriately integrated, coordinated, effective and sustainable results (e.g. Kellow 1991, Kellow 1992). Various intergovernmental arrangements have been instituted over the years (from the creation of the River Murray Commission in 1917 to the Murray-Darling Basin

Ministerial Council and associated Commission in 1985), but they have never managed to impose a satisfactory catchment-wide governance and management regime. There were longstanding complaints about alleged over-allocation to irrigators, inefficient and wasteful irrigation practices, deteriorating water quality and unsustainable environmental flows, and by the term of the fourth Howard government these had escalated markedly during what had become extended drought conditions.

In June 2004, the Council of Australian Governments (COAG) agreed to a new National Water Initiative. This established the National Water Commission to oversee another of the national intergovernmental regulatory regimes that has characterised the 'regulatory federalism' of recent decades (Parkin & Anderson 2007). The goal was the creation of 'nationally-compatible market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes' (Commonwealth and States 2004: 3). But progress was slow. In June 2006, the National Water Commission reported to COAG that 'there is still considerable distance to go to achieve sustainability of water management in practice', that 'water markets are still in their infancy' and that 'there is a need for governments to increase their commitment to the National Water Initiative' (National Water Commission 2006).

Progress was predictably particularly slow in relation to the Murray Darling, with all the continuing complexities and political sensitivities encompassing the multiple governments and multiple stakeholders. In his 2007 Australia Day address, Prime Minister Howard took on this issue via another dramatic intervention. He called for a referral by the four Murray Darling States to the Commonwealth of powers over water management, in return for which the Commonwealth would commit to be a \$10 billion expenditure program aimed at producing a more efficient irrigation infrastructure and a reduction in water allocations. The Prime Minister had in mind a reconstituted Murray-Darling Basin Commission reporting, in effect, only to the Commonwealth government:

Rivers do not recognise those lines on the map that we call state borders. ... In the final analysis ... the core problem is that the different states have competing interests. ... We must think and act as Australians and not as Queenslanders, Victorians or New South Welshmen (Howard 2007f)

By late February, after obtaining sufficient assurances about the water management regime being sufficiently based on scientific principles to insulate it from political pressure, three of the four affected States—New South Wales, Queensland and South Australia—had agreed in principle to refer their powers to the Commonwealth. Victoria, however, refused to agree, eventually declaring the idea 'dead in the water' (Mitchell & Marris 2007). Victoria claimed to have in place a sustainable water allocation system for its portion of the Murray Darling system, and it was not sufficiently assured of the superiority of the foreshadowed national regime, especially since most of the funds to be expended on buying back over-allocated water entitlements would necessarily be spent in New South Wales.

The Victorian position forced the Howard government to pursue an alternative strategy not dependent on the constitutional referral of State powers. Via legislation that passed the Senate in August 2007 with bipartisan support, a new Murray-Darling Basin Authority was established, alongside the ongoing Commission, with authority to set an overall cap on water allocation but without power to determine allocations to individual irrigators. The Commonwealth's \$10 billion expenditure proposal remained in place, though there was some doubt about how much of it would be spent in Victoria. The Prime Minister conceded that this was a suboptimal strategy: it did not produce 'the same level of commonwealth power that would have been achieved by a

referral of power. ... I would have preferred an alternative course but I'm left with no alternative' (Tingle, Burrell & Hughes 2007). He accused the recalcitrant Victorians of 'selfish state parochialism' (Morris 2007).

### **The evolution of fiscal and regulatory federalism**

These issues and controversies over the years of the fourth Howard government relating to industrial relations, education, health and the Murray Darling reveal the strategies and tactics of a government increasingly comfortable with a more interventionist Commonwealth role and increasingly willing to articulate a rationale for it. It is worth reflecting upon what this has meant for the longer-term evolution of the Australian federal system.

The first Howard government inherited in March 1996 a system of Commonwealth-State relations with two important features. The first was a striking 'vertical fiscal imbalance' in relation to financial relations. The second has been described elsewhere as emergent 'regulatory federalism' in relation to policies and programs (Parkin & Anderson 2005).

After July 2000, the fiscal story revolved around the advent of the Goods and Services Tax (GST) with all revenues flowing unconditionally to the States. Though technically (as a new Commonwealth tax replacing some State taxes) this reform exacerbated vertical fiscal imbalance, the GST revenues are directly harvested from national economic activity rather than being dependent on Commonwealth fiscal policy decisions, making this a genuinely pro-federalist initiative. The Howard government claimed that the financial transfer to the States was substantially greater than would have otherwise prevailed had the previous system been continued. This was disputed—with contrary contentions pointing to these funds representing a lower proportion of GDP than under the pre-GST system (Robertson 2007; Twomey & Withers 2007: 26)—but the positive impact on State-level fiscal autonomy seems undeniable.

It is telling that, during the fourth term of the Howard government, Treasurer Peter Costello expressed retrospective regret about the GST initiative: 'I think this is one area, the most generous and one of the most fundamental changes, the allocation of a growth tax to the states, which has not proved successful' (Shanahan 2006). Costello alarmed State Treasurers at the March 2005 Treasury Ministers Conference by demanding the abolition of a further tranche of State-imposed duties under the implicit threat of some sort of renegeing of the GST deal. All States in due course (New South Wales and Western Australian most reluctantly) proceeded to announce an abolition or phase-down of the kind of duties to which Costello was referring.

The evolution of the 'regulatory federalism' story under the Howard government was more complicated. The story here really begins in the early 1990s when the Council of Australian Governments (COAG) began to oversee the development of new collaborative arrangements—that is, the creation of new regulatory regimes—to provide coordinated national governance over a range of transportation, financial and professional domains (Parkin 2007). The COAG-negotiated National Competition Policy, instituted in 1995, played a key role in forcing competitive or contested regimes on to monopoly State government utilities and other State-level policy domains. The COAG-centred process initially went somewhat into recess in the Howard government's first two terms, but it was vigorously resurrected in the third and fourth terms, debating and in some cases resolving a number of crucial national issues.

At times, COAG meetings seemed to be elevated to the status of esteemed national summits, with all leaders—both the Coalition Prime Minister and the bevy of Labor State and Territory Premiers and Chief Ministers—keen to be seen to collaborate to advance the national interest.

The politics behind this was probably a factor. For the Prime Minister, COAG meetings may have been a means (subliminal or otherwise) to marginalise both the national Labor Opposition and his own within-party occasional putative challenger, Treasurer Costello. For the Premiers, it was an opportunity for national prominence and favourable media exposure.

International events also served to elevate the role of COAG and the necessity, at least in some areas, for co-operation. The bombs set off in the London transport system in July 2005 dramatically changed attitudes in Australia to the prevention of terrorism. All governments recognised that a national strategy was an essential basis for an effective response. A special September 2005 COAG meeting agreed, after confidential security briefings, to grant increased detention and interrogation powers to police and intelligence services, though State and Territory leaders successfully insisted upon various safeguards and limitations. On this matter, the Commonwealth needed the States and so, to some extent, the States could flex some political muscle. As Prime Minister Howard explained

we cannot pass this legislation credibly without the support of the states, because we do not have the constitutional power. And that's why I approached the states ... In this country we have a written constitution that gives particular powers to the Federal Government and the residue of the powers stay with the states; that's the way the constitution works. And in some of these areas, particularly in the area of preventive detention, there's no constitutional power for us at a Commonwealth level acting unilaterally to detain somebody effectively for more than 48 hours. So if you're going to retain them for 14 days you need the States involved. (Howard 2005b)

This was one of five COAG meetings that took place during the Howard government's fourth term. Earlier, a June 2005 meeting had sidestepped anticipated conflict on industrial relations to reach cordial agreements on exploring a national apprenticeship system, mutual recognition of trade qualifications, a renewal of national competition policy, and some policy aspects of climate change. Later, the February 2006, July 2006 and April 2007 COAG meetings were principally focused on a new National Reform Agenda with three broad components—labelled as human capital, competition and regulatory reform (COAG 2006)—to replace the expiring National Competition Policy agreement. Pointedly, the Commonwealth successfully deflected State demands for a continuation under the National Reform Agenda of NCP-style compensation payments (COAG 2006).

'Regulatory federalism' also operates at a more micro scale at the program level. Across a raft of policy and program areas, there is evidence that, via a dogged insistence that it legitimately represents some sort of 'national interest' perspective and via some interesting managerial adroitness, the Howard government probably went further than any previous Commonwealth administration in more tightly binding the States via conditional grants. The strategies included tightening up on program compliance, insisting on more serious State contributions via matching funds, and insisting on specific attribution of credit to the Commonwealth for program outcomes. The education domain described above illustrates these tendencies.

Particularly controversial were Commonwealth-imposed grant conditions unrelated to the immediate policy or program at hand, especially conditions promoting the Howard government's preferred position on industrial relations. The so-called National Construction Code specified that State government agencies must not accept tenders and/or expressions of interest from contractors for Commonwealth-funded projects unless they are code-compliant, i.e. unless they 'facilitate greater flexibility and productivity' in workplace relations (DEWR 2006).

## Conclusion

Prime Minister Howard's articulation of a new conservative nationalism, particularly in its later guise of an 'aspirational nationalism' linked to a notion of 'localism', was a notable innovation both conceptually and pragmatically. Had the Howard government been re-elected for a fifth term, this could have proved to be its most enduring legacy. NSW Premier Bob Carr was reported in March 2005 as claiming that 'John Howard and Costello are turning the states into implementation agencies of a very powerful commonwealth' (Clark 2005). Tony Abbott in July 2006 anticipated 'the withering away of the states ... [to become] less like sovereign governments and more like branch offices of Canberra' (Lewis and Price 2006), and a week later Peter Costello likewise envisaged the States as 'moving towards the role of service delivery more on the model of divisional offices than sovereign independent governments' (Costello 2006). The explicit references to the notion of sovereignty—surely fundamental to the basic definition of an authentic federal system (Parkin 1996: 4-7)—are telling.

It is, however, a feature of Australian federalism that challenges from the centre tend to produce counterbalancing thrusts from elsewhere. The Whitlam Labor government of 1972-1975—the regime that, in this respect at least, the later Howard governments most closely resembled—stimulated a resistance from, and indeed a notable policy renaissance among, the States that in many ways left the States stronger and more vibrant than in the pre-Whitlam period. The States remain, notwithstanding four terms of the Howard government, entrenched political institutions with crucial policy and service-delivery responsibilities. The COAG process, notwithstanding its effect of potentially shifting key State powers to collaboratively-endorsed national bodies and protocols, continued under the Howard government to legitimise the States, and especially their leaders, as key actors.

The States also undertook some interesting moves to institute collaborative intergovernmental arrangements that bypass the Commonwealth. A new State-constituted Council for the Australian Federation—envisaged as a COAG without the Commonwealth—met in October 2006. Some promising proposals for genuine intergovernmental reform produced under the auspices of the new Council (Twomey & Withers 2007; States and Territories 2007), plus some others emerging elsewhere (e.g. Allen Consulting Group 2006), were key influences in shaping the noticeably pro-federalist stance adopted by the Rudd Labor Opposition in the lead-up to the November 2007 election.

It will be fascinating to observe whether the Rudd Labor government, led as it is by a Prime Minister with unprecedented experience at the State level in observing and managing Commonwealth-State relations, will turn out to be receptive to this pro-federalist stance. If instead it embarks on a more centralist course, it will be one of the ironies of Australian political history that its capacity to do so was enhanced by the nominally conservative Howard government that preceded it.

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