

DEMOCRATIC ACCOUNTABILITY AND THE AUSTRALIAN FEDERAL SYSTEM OF GOVERNMENT

With better design, federalism can still bring government closer to voters, argues **Benjamin Herscovitch**

In 1897, Robert Randolph Garran, an active member of the Federation movement, published a book aimed at educating Australians about the soon to be established federal system of government.¹ In the 113 years since the publication of Garran's handbook of federal government, we have been slowly approaching a point at which an obituary of the system of government that he welcomed could be written. This steady erosion of the federal system is set to continue. Kevin Rudd has raised the prospect of a federal takeover of hospitals, while Tony Abbott has proposed federal control of the Murray-Darling river system.²

These bipartisan calls for centralising reforms reflect growing public dissatisfaction with the Australian federal system that can clearly be seen in opinion polls. A 2008 Australian National University poll found that '[c]ompared to the late 1970s, public opinion has moved very strong[ly] in favour of the federal government taking powers from the states.'³ The percentage of respondents who thought that the states should give more powers to the federal government has risen from 17% in 1979 to 40% in 2008, and the percentage of respondents who thought that the federal government has enough power already has dropped from 66% to 39% in the same period.⁴ Waning support for the state governments can also be seen in the 49% to 37% drop in the percentage of respondents who thought that the

federal government should provide more funds to the state governments, while the percentage of respondents who thought that the state governments have enough money has risen from 30% to 38%.⁵ This fall in support for the second tier of the Australian federal system is consistent with a 2005 poll that revealed a marked lack of confidence in the state governments.⁶

As with all polls of public opinion, one should be cautious in drawing conclusions from the results of these surveys. Indeed, a charitable federalist reading of these polls might find support for reforming only some aspects of the current federal system rather than abandoning it entirely. Notwithstanding the possibility of this interpretation, I believe these surveys demonstrate not only disillusionment with the current federal system but a more general lack of support for federalism. This can be seen in both the reduced support for greater funding of state governments and a high level of support for a unitary system of government with regional divisions.⁷

Benjamin Herscovitch is a PhD student in philosophy at the University of Sydney.

Normative theories of federalism

According to Daniel Weinstock, one of the few political philosophers to study the federal system, '[o]ne of the strongest arguments for federal restructuring is the presence of national and cultural divisions, particularly when they are based on relatively natural territorial delineations.'⁸ Australia does have many diverse cultural, linguistic and ethnic groups, but these groups are neither concentrated in particular regions nor desirous of their own states. Even though this diversity does not match Weinstock's primary justification of federalism, I maintain that we nevertheless have a good reason to not only retain but also strengthen our federal system.⁹ As James M. Buchanan observes, '[e]ven if the inclusive polity is made up of similar persons, there remains a normative argument for partitioning effective political sovereignty between central and state-provincial units of governance.'¹⁰ More specifically, despite appearing counter-intuitive in light of the woeful performance of many of our state governments, the federal system actually promotes democratic accountability.¹¹ Though it may be an overstatement to claim, as Wolfgang Kasper has, that 'genuine liberals around the world have always favoured federalist arrangements,' in light of the democratic accountability-promoting characteristics of federal systems of government, those who advocate liberal democratic values ought to be, all other things being equal, in favour of the federal system.¹² In short, to quote Buchanan again, the federal system serves to 'maximize the protected sphere of individual sovereignty' by ensuring that citizens are able to more effectively influence the legislative processes that affect them.¹³

Democratic accountability

Political philosopher Wayne Norman rightly argues that 'a federal system [of government] ... promote[s] both positive freedom (better quality democratic self-determination) and negative freedom (less tyranny from a powerful, remote central government).'¹⁴ The reason for this is that in a federal system, the influence of a citizen's political preferences on matters under their state's jurisdiction will be substantially less diluted because their individual vote will be mixed with a

relatively small number of votes.¹⁵ This compares favourably with a unitary system of government in which the influence of a citizen's political preferences is diluted because their individual vote is mixed with a much large number of votes. Admittedly, in a federal system the influence a citizen's political preferences will remain diluted in matters under the federal government's jurisdiction. Nonetheless, undiluted influence can exist in areas of fundamental importance such as health, education and law enforcement.

Due to the level of influence that citizens have over the legislative processes of state governments in a federal system, particular constituencies are less likely to be subject to legislation that does not reflect their political preferences. In a unitary system, a government could retain power without serving substantial regions of the country (e.g. Tasmania in a unitary Australia). By contrast, in a federal system, regions that would otherwise be at the mercy of a remote and potentially indifferent central government have their own representation in the form of state governments. This means that federal systems of government promote democratic accountability by being responsive to the varying circumstances of constituents in a way that unitary systems of government simply cannot.

Economies of scale in health, education, law enforcement, and other services favour state over smaller local or regional governments.

In principle, this argument justifies creating more powerful local or regional governments rather than stronger state governments. However, the economies of scale in health, education, law enforcement, and other services favour state over smaller local or regional governments. That said, in light of the population and size of states such as NSW and Queensland, and the population imbalance between concentrated population centres (e.g. Sydney and south-east Queensland) and the rest of these states, the economies of scale argument would not necessarily count against the division of a state like NSW or Queensland into

smaller states. Indeed, if one is to accept former NSW Farmers Association president Mal Peters' conclusion after years of lobbying politicians in Macquarie Street that 'country people could never get a fair hearing from "city-centric" state governments,' the option of dividing NSW into smaller states is likely to seem increasingly attractive.¹⁶

Competition between state governments

Federal systems of government further promote democratic accountability through the horizontal intergovernmental competition between state governments that they foster.¹⁷ When individuals and businesses in different states can move freely, the states must compete for population and investment.¹⁸ This means that, as Jonathan Pincus observes, 'just as competition between firms safeguards consumers against high prices and shoddy goods and services, so competition between governments can safeguard citizens against bad service delivery and bad government, and encourage good government.'¹⁹ For example, a state that taxes individuals and businesses to excess is likely to be punished by the emigration of its populace and, crucially, the relocation of businesses, resulting in a corresponding reduction in its revenue stream.²⁰ As Buchanan explains, '[t]he federalized structure, through the forces of interstate competition, effectively limits the power of the separate political units to extract surplus value from the citizenry.'²¹ This means that those states in which legislation does not reflect the political preferences of the populace will be punished, while those governed in a democratically accountable way will be rewarded.

When individuals and businesses in different states can move freely, the states must compete for population and investment.

It might be objected that though it is functional as an idealised theoretical model, a horizontally competitive federal system cannot be reconciled with insurmountable practical constraints. In particular, the costs associated with migrating

from one state to another are so prohibitive that a competitive federal system is unlikely to punish or reward state governments, which in turn means that it is unlikely to ensure that legislation reflects the political preferences of citizens.

The problem with this counter-argument is that demographic trends indicate that the theoretical model of a horizontally competitive federal system is, in fact, an accurate predictor of emigration from poorly governed states. For instance, NSW has experienced, by a wide margin, the largest amount of negative net interstate migration, which as a percentage of the population is only surpassed by South Australia.²² Though not all residents dissatisfied with the manner in which NSW is governed will be able to emigrate because of the high costs associated with migrating from one state to another, the fact that some can and will is significant. As Charles M. Tiebout points out, '[w]hile the solution may not be perfect because of institutional rigidities, this does not invalidate its importance.'²³ Though horizontal intergovernmental competition may not be able to guarantee that state government legislation reflects perfectly the political preferences of citizens, it does nonetheless ensure that legislation reflects these preferences more fully than it would in a unitary system of government.

Reforming Australian federalism

Though federalism can promote democratic accountability, reforms are required to ensure that the Australian federal system is able to have this salutary effect. Chief among the faults that need remedying are, first, the substantial Vertical Fiscal Imbalance (VFI) between state governments and the federal government, which makes state governments dependent on federal taxation, and, second, the lack of exclusivity in the division of responsibilities between the two tiers of government.²⁴

A stark reminder of the extent of the VFI in Australia is the fact that '[t]he centralisation of the income tax and GST means that the Commonwealth collects over 80% of all tax revenues, although it is responsible for about 60% of public spending.'²⁵ As a result, the provision of state services and the functioning of state governments are left, in part, to the discretion

of the federal government. Indeed, the fact that Commonwealth grants make up 40% of state revenue²⁶ seems to violate American founding father Alexander Hamilton's dictum that '[a] government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible.'²⁷ The VFI diminishes democratic accountability because it means that citizens need to seek funding from a federal government that is less sensitive to local political preferences for matters of regional concern. The VFI is additionally problematic because it undermines the benefits of horizontal intergovernmental competition. To put it simply, the federal government's ability to compensate states that lose population and businesses through poor governance means that states have a revenue stream not affected by whether legislation reflects the political preferences of citizens. Accepting the claim made by the American anti-federalist 'Brutus,' that 'a government without the power to raise money is one only in name,'²⁸ an appropriate reform option to rectify the VFI might be to make the GST a wholly state tax.²⁹ The result would be, first, that residents of a particular state would not need to appeal to a relatively distant federal government to fund matters of regional concern, and, second, that horizontal intergovernmental competition for GST revenue would induce reforms that better reflect the political preferences of citizens.

Health and education are two particularly pertinent examples of the wrangling and inefficiency that result from the absence of a clear and exclusive division of responsibilities between state governments and the federal government. This undermines democratic accountability by creating doubt in the minds of citizens as to which level of government is responsible for the provision—or lack thereof—of particular services. The absence of exclusivity means that democratic accountability is further hampered by the federal government encroaching on the jurisdiction of state governments, thus reducing the areas of policy administered in a manner that is sensitive to local political preferences. A possible means of remedying this second chief problem in the Australian federal system is to

enshrine in the Constitution an exclusive division of powers between state governments and the federal government, as is found in, for example, the Constitution of India.³⁰ This would clarify for citizens which level of government should be held accountable for providing particular services, and also guard against the federal government taking charge of areas of policy that would be dealt with in a more democratic way if left in the hands of state governments.

If we value democratic accountability, we should not simply preserve but actually strengthen our federal system.

Conclusion

The Australian federal system is arguably at its lowest ebb. Given a substantial VFI and considerable ambiguity as to the division of powers between state governments and the federal government, it is hardly surprising that support is falling. Despite both the significant imperfections of the current federal system and the substantial challenges that stand in the way of essential reform, we should not institute a unitary system of government. Indeed, if we value democratic accountability, we should not simply preserve but actually strengthen our federal system.

The author would like to thank Duncan Ivison and Divya Sivakumar for their helpful comments on earlier versions of this article.

Endnotes

- 1 Robert Randolph Garran, *The Coming Commonwealth: An Australian Handbook of Federal Government* (Sydney: Angus & Robertson, 1897).
- 2 George Williams, 'Change will only come if leaders can agree,' *The Sydney Morning Herald* (2 February 2010), 9.
- 3 'Public Opinion Towards Governance: Results from the Inaugural ANU Poll,' (Canberra: Australian National University, 16 April 2008), 10.
- 4 As above.
- 5 As above, 11.
- 6 A survey conducted in 2005 by Griffith University and Charles Sturt University found that while 41% of NSW voters have faith in the federal government, only 34% have faith in local governments, and only 25% in the state government. See Mike Steketee, 'Unwanted, but state governments are here to stay,' *The Australian* (27 April 2006), 10. Asking respondents to rate the performance of the different levels of government yielded similar results: the federal government received an approval rating of 28%, local governments 26%, and the state government a mere 13%. As above.
- 7 In the aforementioned 2005 survey, 47% of respondents supported 'a two-tiered system, with a national government and new regional governments replacing the current state governments.' In contrast, only 12.5% were in favour of the present system, 10% were in favour of a four-tiered structure with new regional governments added, and 5% were in favour of the present system but with the creation of more states. As above.
- 8 Daniel Weinstock, 'Towards a Normative Theory of Federalism,' *International Social Science Journal* 53:167 (March 2001), 79.
- 9 Though the argument that follows is framed as a response to what I perceive to be growing disillusionment with the Australian federal system, even if my interpretation of the results of the surveys mentioned above is incorrect, the argument in favour of the federal system still stands.
- 10 James M. Buchanan, 'Federalism and Individual Sovereignty,' *Cato Journal* 15:2-3 (Fall 1995/Winter 1996), 263.
- 11 Though I will concentrate exclusively on the way in which the federal system promotes democratic accountability, I equally maintain that it effectively promotes what Isaiah Berlin called 'the negative conception of liberty,' which 'means liberty *from*; absence of interference.' See Isaiah Berlin, 'Two Concepts of Liberty' in Robert M. Stewart (ed.), *Readings in Social and Political Philosophy* (Oxford: Oxford University Press, 1986), 94(§1). More specifically, the division of powers between the levels of government in a federal system serves to guard against despotism. By contrast, there is no other powerful level of government in a unitary system to act as a bulwark against authoritarian tendencies.
- 12 Wolfgang Kasper, 'Reviving the Spirit of Federalism' in Robert Carling (ed.), *Where To For Australian Federalism?* (Sydney: The Centre for Independent Studies, 2008), 40.
- 13 James M. Buchanan, 'Federalism and Individual Sovereignty,' as above, 261.
- 14 Wayne Norman, *Negotiating Nationalism: Nation-Building, Federalism, and Secession in the Multinational State* (Oxford: Oxford University Press, 2006), 84 (Chapter 3, §3.3).
- 15 James M. Buchanan, 'Federalism and Individual Sovereignty,' as above, 262.
- 16 Mal Peters as paraphrased in Daniel Lewis, 'Reformers push for tiny states in two-tiered nation,' *The Sydney Morning Herald* (13 May 2006), 9.
- 17 Pincus argues that vertical intergovernmental competition between the tiers of government can have a similarly beneficial effect. See Jonathan Pincus, '6 Myths About Federal-State Financial Relations,' *Australian Chief Executive* (February 2008), 41. I dispute this on the grounds that vertical intergovernmental competition adds little to electoral competition. This is because citizens do not have the option of abandoning the federal government in the same way that they can abandon a particular state government when horizontal intergovernmental competition obtains.
- 18 Freedom of movement is essential for competition between states given that, as Tiebout points out, '[m]oving or failing to move replaces the usual market test of willingness to buy a good and reveals the consumer-voter's demand for public goods.' See Charles M. Tiebout, 'A Pure Theory of Local Expenditures,' *The Journal of Political Economy* 64:5 (October 1956), 420.
- 19 Jonathan Pincus, 'In Defence of the Status Quo,' in Robert Carling (ed.), *Where To For Australian Federalism?* (Sydney: The Centre for Independent Studies, 2008), 29.
- 20 Consider the example used by Pincus: '[u]nder Premier Bjelke-Petersen, Queensland reduced death duties in order to attract retirees from other states. It worked. Other states followed suit, and

- eventually death duties were eliminated in all states. The mere threat of mobility can put pressure on governments to perform.' As above, 31. The fact that this tax might be 'regarded by many economists as relatively efficient' does not make its removal any less democratic. See Jonathan Pincus, '6 Myths About Federal-State Financial Relations,' as above, 42.
- 21 James M. Buchanan, 'Federalism as an Ideal Political Order and an Objective for Constitutional Reform,' *Publius: The Journal of Federalism* 25:2 (Spring 1995), 21.
- 22 ABS, 'Australian Demographic Statistics,' June Quarter 2009, Cat. No. 3101.0 (Canberra, Australian Bureau of Statistics, June 2009), 8.
- 23 Charles M. Tiebout, 'A Pure Theory of Local Expenditures,' as above, 424.
- 24 Pincus argues that the 'vertical fiscal imbalance ... is a false bogeyman' and that 'some degree of vertical fiscal imbalance actually benefits Australian fiscal federalism'. See Jonathan Pincus, '6 Myths about Federal-State Financial Relations,' as above, 44. Pincus' argument centres on concerns that the rectification of the VFI would require a decentralisation of taxation, which would in turn produce 'a tax "race to the bottom" [amongst the states] ... [that] would leave governments with revenues inadequate to satisfy reasonable expectations for public services'. As above, 42. However, this ignores the possibility of a uniformly enforced tax, such as the GST, whose revenue goes directly to state governments. Such a tax would both ensure that the states have fiscal autonomy, thus preserving the benefits of horizontal intergovernmental competition, and avoid a tax 'race to the bottom' that impoverishes the states. This is because the uniform enforcement of the tax would ensure that businesses and tax payers emigrate from states to register their dissatisfaction with the way the tax revenue is spent by particular states and not to escape the tax entirely.
- 25 Jonathan Pincus, 'In Defence of the Status Quo,' as above, 33.
- 26 Robert Carling, 'Overview' in Robert Carling (ed.), *Where To For Australian Federalism?* (Sydney: The Centre for Independent Studies, 2008), 8.
- 27 Alexander Hamilton, 'The Federalist No. 31' in Terrence Ball (ed.), *The Federalist With The Letters of Brutus*, (Cambridge: Cambridge University Press, 2006), 142–143.
- 28 'Brutus,' 'Letter V' in Terrence Ball (ed.), *The Federalist With The Letters of Brutus*, as above, 470.
- 29 This reform is advocated by Kasper. See Wolfgang Kasper, 'Reviving the Spirit of Federalism,' as above, 41.
- 30 The Constitution of India, Seventh Schedule, Article 246, (New Delhi: Ministry of Law and Justice, Government of India, modified 1 December 2007), 315–329.