



THE HENRY PARKES ORATION 2009

Great national questions and local matters: Australia's federation then and now

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Extract: In the 1890s Parkes and his colleagues, with the endorsement of the people, brought together six self-governing colonies of very different size, population and wealth into a federal partnership. Respect from the federal authorities for the nature and equality of that partnership has been under threat for the past 100 years, but it remains fundamental to the strength and coherence of the Commonwealth of Australia.

What a great commemorative time to be in Tenterfield. It is exactly one hundred and twenty years ago that at a banquet here Sir Henry Parkes, then Premier of New South Wales, delivered a speech, remarked on by those present but not widely noticed or reported at the time, that is now seen as a key moment in the making of the our nation, the Commonwealth of Australia. Sir Henry died seven years later, less than five years before the Commonwealth he had prophesied was inaugurated. That Commonwealth and its constitution has proved to be very resilient and over one hundred years after Sir Henry's death Australia now takes its place as a middle-ranked nation, dominant in its region and among the most prosperous twenty nations in the world.

My theme is taken from the words of Sir Henry himself.¹ He asked his audience to consider

whether the time has not now arisen for the creation on this Australian continent of an Australian Government, as distinct from the local Governments, and an Australian Parliament.

His answer to the question was unequivocal:

I believe that the time has come, and if two Governments set an example, the others must soon of necessity follow ... This means a distinct executive and a distinct parliamentary power, a government for the whole of Australia, and it means a Parliament of two houses, a house of commons and a senate, which will legislate on these great subjects. The Government and Parliament of New South Wales will be

¹ Quotations from the Tenterfield Oration are taken from the report in the *Sydney Morning Herald* of 26 October 1889. See facsimile with an introduction by John Williams in *The New Federalist: the Journal of Australian Federation History*, No. 1, June 1998, pp. 71-73. The quotes have been rendered in direct speech for this address.

just as effective as now in all local matters, and so will the Parliament of Queensland. All great questions will be dealt with in a broad manner, just as Congress deals with the national affairs of the United States, and as the Parliament of the Dominion of Canada deals with similar questions.

And he was not content just to talk about it – he had a clear idea of how it should be brought about:

... we must appoint a convention of leading men from all the colonies, delegates appointed by the authority of Parliament, who will fully represent the opinion of the different Parliaments of the colonies. This convention will have to devise the constitution which would be necessary for bringing into existence a federal government with a federal parliament for the conduct of national undertakings.'

In his formulation of the question Parkes defines the essence of federalism: that it exists to allow the big national questions to be dealt with while preserving local matters to the level of government nearest the people. If only Sir Henry knew it, he was describing the concept of 'subsidiarity'. This rather clumsy term is defined as the means by which government is brought as close to the people as possible. To put it more formally: responsibility for regulation and for allocation of public goods and services should be devolved to the maximum extent possible consistent with the national interest, so that government is accessible and accountable to those affected by its decisions.

The concept also recognises that while local interests are reasonably subsumed by larger matters in certain situations, nevertheless the case must be made before taking something to higher and necessarily more remote levels of government. It also acknowledges the culture and background of the components that make up a polity. In the case of Australia, what we know as the Commonwealth would not have been possible without a compact or agreement – in effect a treaty between separate self-governing colonies all of which looked individually to Britain to protect their interests and territorial integrity.

Each of the colonies, founded at different times under different circumstances from each other, had by the 1890s developed a different history and culture as well as robust institutions which allowed them to see themselves not unreasonably as 'nations' albeit under the aegis of the British Empire. The language they used mimicked that of the United Kingdom. Politicians would go to 'the country' to get a mandate for their policies; they talked of 'national interest', the term 'the people of NSW' (or wherever) was used to describe their populations. The head of Government was more usually called the Prime Minister; the two colonial Houses of Parliament represented the Commons and the Lords and followed their procedural precedents and standing orders; the judiciary was protected from political interference. From the 1870s each colony had developed its own military and militia structure. For instance a relatively small colony like South Australia even had a navy – admittedly of only one vessel, the torpedo carrying *HMCS Protector*.

Each colony's origin was separate – and it's worth briefly noting this in each case from the 1890s perspective.

- Tasmania established in 1804 was an island state like New Zealand. One of its first acts on attaining self-government was to change its name from Van Dieman's Land to remove the convict taint which still bedevilled its social relations in order to establish its national credentials.
- In the west, the Swan River settlement of 1829 had struggled to survive, even introducing convict transportation to assist that survival after the eastern colonies had prohibited it, which persisted until 1868. By the 1890s it had finally achieved self-government and in the midst of east coast depression Western Australia boomed following the discovery of

gold. It would be the hardest colony to convince of the merits of federation.

- South Australia, established as a Province by Act of Parliament, the convict-free ‘paradise of dissent’ settled since 1836 and from 1863 with the added responsibility to administer the Northern Territory, was feeling its economic vulnerability. Its vast hinterland had proved to be too arid and dry for productive settlement.
- Queensland had its hands full, governed from Brisbane in its far south eastern corner with tropical and subtropical centres springing up along its extensive coast. Just across the Torres Strait lay New Guinea, seen as a plaything of the European powers, which caused Queensland to make a unilateral declaration of accession on behalf of the British crown to protect its security.
- Victoria, small and compact in area but with a population and prosperity unprecedentedly increased by the gold rush was now finding times a little hard as the boom collapsed, and finally
- New South Wales, the convict settlement of 1788, now an established free self-governing polity, which was the key to any kind of united nation or federation. Its strategic location, its population and its economic importance would have made it impossible for Australia to unite or federate without it. It saw itself as the progenitor of European settlements – all the rest, except the remote New Holland in the west had been carved out of its original territory most recently for the establishment of Queensland in 1859. When the first major attempt at a statutory forum, the Federal Council of Australasia was established in 1886, it had refused to join (as did South Australia for all but two years) seriously jeopardising the effectiveness of that body.

This made Parkes’s intervention in 1889 more significant. The senior colony (or the mother colony as many preferred to call it) was also in recession but not suffering to the same degree as its southern rival. In any case if there was to be any talk of unification it was always with NSW as its centre. The only serious proposal for a United Australia, as opposed to a United States of Australia, came from NSW Premier George Dibbs, in 1894. He was attempting to define his difference from Parkes and others by suggesting a unification of NSW and Victoria. This was taken seriously by his Victorian counterpart James Patterson and the two Premiers began to negotiate. The scheme would have seen the other colonies initially isolated and compelled to apply to join the new entity on terms set by the big two colonies in their unified form. It failed to take off because both governments fell within months of it being explored.

The proposal was very much bound up in the belief that Australia needed NSW more than NSW needed Australia. Its most blatant manifestation was in the context of the centenary of the first fleet in 1888. Among other measures of celebration the Parkes government proposed to re-name the colony. Sir Henry introduced a bill to change the name of New South Wales to ‘Australia’.² The elder statesman, Sir John Robertson, supported him with the comment that ‘If this colony is not Australia I would like to know what is.’ The other colonies all objected and there was what is described as a ‘prickly’ correspondence between Parkes and the Victorian Premier Gillies. Representatives of the colonies gathering in England for the Imperial Conference were ‘vehement in their denunciations’ and there was even a protest from the Colonial Office.

² The following account is based on A W Martin *Henry Parkes* Melbourne University Press, 1980, pp. 368-370.

The Governor Lord Carrington subtly intervened by securing the GCMG for Parkes in honour of the centennial occasion on one condition. Carrington wrote 'He accepted with pleasure, promising to send me a letter abandoning the change of name.' Parkes claimed later:

Though I could easily have carried the Bill I think it had best be dropped...[although] the hasty hectoring spirit in which the other colonies have interfered has set my back up a little.

It is interesting to reflect that it could well be partly the reaction to his bill changing the name that made Parkes think more positively about federation as an inclusive process.

The big centenary celebrations in New South Wales included the dedication of Centennial Park and a grand banquet for leading citizens paid for by the Government. Asked what he would do for the poor and needy Sir Henry offered to distribute food parcels on the day. A radical Thomas Walker interjected 'Then we ought to do something for the aborigines', to which Parkes replied: 'And remind them that we have robbed them'. Although abandoning the name change, Sir Henry was unrepentant about the significance of NSW. At the banquet, his toast was not to his colony but 'To Australia: her trials and triumphs, her union and progress for the future.' Later while proposing a toast to the visiting colonial governors at a regatta Sir Henry remarked 'This city of Sydney at the present time must be the capital of Australia ...'³ This New South Wales attitude showed itself again later in its insistence that the federal capital must be within its borders if it was to enter the Commonwealth. Canberra is the result. Even today NSW is usually confident of its prime place in the federation and confident it can get its way.

So we must put aside thoughts that federation was easily accomplished. All the colonies had reason to be happy with and fiercely protective of their status powers and sovereignty. Factors such as population size, geographical area, wealth, or time and manner of founding did not create circumstances that led to an affinity to federate.

We have an accurate way of validating that statement by examining the voting for the referendums on the constitution. Four colonies voted in the first referendum in 1898, five in the second in 1899, and Western Australia voted at the last minute in 1900 to qualify as an original state.

- In the first, both Victoria and Tasmania gave a substantial endorsement of over 80%. South Australia was less enthusiastic with a 67% approval. Although the yes vote narrowly won in NSW, with 52% it did not gain the number of votes in favour required by the legislation and failed. There was a belief by many that federation was dead.
- After negotiation and some concessions made to NSW, another referendum was held in 1899, and this time Queensland also voted. Every one of the four increased the 'yes' vote. Victoria and Tasmania again led the way, this time with an astonishing 94% in favour. South Australia was nearly 80% in favour. New South Wales and Queensland just managed over 50%. In the case of Queensland, Brisbane and the south voted 'no' and it was only the four to one majority in Far North Queensland that got it over the line.
- The Western Australian poll was forced on the Government by a threat of secession by the Goldfields. It voted in 1900 after the Bill had been proclaimed, achieving a majority because 80% of the Goldfields voted 'yes'.

The conclusion is that Victoria and Tasmania were enthusiastic for federation, SA very committed, but in New South Wales, Queensland, and Western Australia support was lukewarm, and in their capitals broadly hostile. This underlines the fact that federation

³ See A W Martin, op. cit., pp. 369-371.

was the only real possibility to unite Australia. If this was the case, what were the ‘great national questions’ and are they the same today?

For Parkes at Tenterfield it was primarily about defence. A British general had reported on the state of military arrangements in the Australian colonies. He had advised, Parkes told his audience in Tenterfield, ‘that the forces of the various colonies should be federated together for operation in unison in the event of war ...’

If we are to carry out these recommendations it will be absolutely necessary for us to have a central authority, which can bring all the forces of the different colonies into one army. ... I would like to know what is to become of an army without a central executive power to guide its movements? ... Believing as I do that it is essential to preserve the security and integrity of these colonies that the whole of our forces should be amalgamated into one great federal army ... and seeing no other means of attaining the end, it seems to me that the time is close at hand when we ought to set about creating this great national government for all Australia. ...

... One great thing to be accomplished is the massing together of their military forces, and this can not be controlled by any other power than one representing all the colonies.

The only other ‘great national question’ he mentioned was also linked to defence - the coordination of transport by the conversion of the railway system to standard gauge. ‘This subject brings us face to face with another subject. We have now, from South Australia to Queensland, a stretch of about 2,000 miles of railway, and if the four colonies can only combine to adopt a uniform gauge, it will be an immense benefit in the movement of troops. These, he said, are the two great national questions which I wish to lay before you.’

This did not mean, however, that there were no other questions that should be ‘laid before’ the electorate.

- Free trade between the colonies, the elimination of inter-colonial customs barriers was high on the list – as important for ‘free trade’ NSW as it was for ‘protectionist’ Victoria. There would need to be replacement of the revenue lost to colonial governments which were, except for NSW very heavily dependent on tariffs as a revenue source.
- Postal and telegraph communication would be nationally administered.
- Immigration was not stressed by Parkes as he was fresh from Queensland where it was a bitterly divisive issue. His government had taken part in an 1888 Premiers conference on the topic that resulted in the enactment of the Chinese Exclusion Bill. Queensland’s policies on indentured labour from the Pacific islands were undermining a national approach to the question and a cause of their reluctance to federate. It became one of the first laws enacted by the new Commonwealth Parliament.
- Foreign Affairs equally did not loom large but for different reasons. It was of course bound up with defence, but was still seen (and remained so until WWII, primarily for Britain to take the lead.)

The final constitution listed a number of other powers (mostly contained in what is now Section 51). They were specifically enumerated in an attempt to make clear what the ‘national questions’ were. Anything not so listed was to remain in the jurisdiction of the States. That is still the situation today.

And this indicates the nature of the relationship. We tend to be be-dazzled by the British system of government, and ill-informed about other models such as the United States and Canada. The supposed unfettered supremacy of Westminster is an aspiration of any government and parliament at the national level. Because our forms and procedures, our conventions and customs so closely follow the UK we tend to extrapolate and see our federal parliament and Commonwealth Government in the same all-powerful

light. We tend to equate our House of Representatives with the British House of Commons and the Senate with upper houses of review like the House of Lords or Legislative Councils. In fact they are modelled and structured like the United States Congress. The Senate is not simply a 'Westminster' house of review but a States House, with equal representation for the States irrespective of their population. It is a vital component of the federal system. And unlike Britain, our Parliaments at both national and state level can only exercise their respective powers in accordance with the Constitution. The Constitution in turn cannot be changed by the parliaments but only by vote of the people.

While this erroneous view of Parliamentary supremacy might have had some currency for most of the 20th Century there is little excuse for it now as the United Kingdom grapples with the reality of recognising regionalism, both within Britain and in Europe. Under the heading of 'devolution' there are massive internal changes taking place. The Scottish Parliament is now ten years old and generally regarded as a major success. The Welsh Assembly has had greater difficulty defining its functions and powers but is equally well-established. The peace process in Northern Ireland has resulted in the restoration of its parliament and domestic autonomy. The supremacy of parliament has been modified and the clock will not be turned back.

Meanwhile externally the once supreme Westminster parliament is having to deal with the implications and constraints of federalism in the form of the European Union. We should have come to terms with these issues of shared power a century ago in Australia. Equally we should be looking more closely at the examples of the two great federations, the United States and Canada, on which our own was modelled. They have the same vigorous debate about what should be the appropriate powers for the levels of Government which should inform our own and similar disputes about tax sharing. But neither of them has replaced federation or seen a state leave the federal system despite, in the case of the USA, a bloody civil war, and in Canada the French separatist movement. The story of Canada has been one of new states joining it since the original confederation of 1867, including Newfoundland, which until 1947 was a Dominion in its own right. The federal system clearly has a lot going for it.

The centralising tendency of most federal governments cuts across the parties despite Labor's traditional commitment to centralism and Liberal's supposed commitment to states' rights. The unremitting propaganda of the press gallery in Canberra and the powerful and remote federal bureaucracy sets an agenda that says our problems could be solved by running our system centrally. Is this the case? Are there not significant matters that Parkes would call 'Local' that could best be handled near the coalface? My answer is 'yes' and I regret the tendency to assume that any controversial or difficult problem of the day needs central administration to overcome it. The Commonwealth government rightly has the dominant financial role and collects most of the tax to fund Government programmes. But it collects that tax on a uniform basis on behalf of all governments not just for its own purposes, and State and Local government should not have to go cap-in-hand as mendicants to get an adequate share to carry out their functions. The mechanism of the Grants Commission, and agreements on special payments should ensure that the tax income is fairly distributed and applied to programmes which match broad national priorities with local needs. Fortunately we have come a long way from the appalling annual haggle of the Premiers Conference and Loan Council but agreement will always be hard to reach if the States are required to simply beg for funds.

There are strong arguments for the federal system, strong when Henry Parkes and the colonial statesmen of the 1890s devised the Constitution, and strong in today's complex and globalised world. They include the way in which government can be made more participatory and accessible; the healthy competition between the States which

helps achieve best practice and ensure that development takes place throughout the continent and not just in corners of it; the diversity and flexibility which encourages experiment and allows their success or failure to be judged and adopted or avoided by other governments. Electoral reform, public health initiatives, minority rights, environmental protection, consumer protection, and many other reforms are achieved because of opportunities provided by federalism. The concerns of local communities can be addressed more readily.

I suggest there are three great fallacies which need to be confronted before we can make the federal system function better:

- Firstly, that the 'national interest' is the same as federal Government policy.

In a federation all governments have a role in defining and pursuing national goals. The whole community can benefit if all are involved, rather than Canberra attempting to enforce an outcome by edict without consultation or regard for the limits of its power.

- Secondly, that centralised service delivery is by definition the most efficient.

Large bureaucracies can be very wasteful and ineffective, slow to respond, and inflexible in a country the size of Australia.

- Thirdly, that 'uniformity' equals effectiveness.

It is often only by trying different approaches, local variations and pilot experiments that the best outcomes can be achieved. We must also recognise that communities have different requirements and priorities.

But even if all those arguments were rejected, there is a practical reason to ensure federalism is working. There are no real alternatives.

- Referendums to change the constitution are rarely successful – people like what they have, better than any alternatives that are proposed. These alternatives can only be generated from the Federal Parliament and usually involve extending Federal power and they are not supported.
- Referral of powers by the States can work in some limited cases, but this is not going to occur in any wholesale manner.
- The idea of re-drawing State boundaries or replacing States with a network of regions is not going to get off the ground. It has been tried a number of times without success. (Even here in New England.)

I came across a formulation of federalism the other day from a source that surprised me – it was a quote by Harold Holt, Sir Robert Menzies' successor as Prime Minister, who died in office in 1967. He spoke of

a co-operating democracy ... not trying to make Federation work by imposing authority from the centre or by so construing the Federal powers that the States were reduced to nothingness, but a true Federation based upon a spirit of cooperation rather than the strict definition of powers.⁴

This is a long way from the practice of the Liberal Party of Prime Minister Howard in Government, but strangely close to the approach taken by the Labor Government of Prime Minister Rudd so far. I hope we are moving to revive the concepts envisaged by Henry Parkes and the founders. The key I believe is to think less of 'levels of government' - a hierarchy - and more of the concept of power-sharing, a rational division of powers between partners which have a respect for each other. This will certainly match the vision articulated so eloquently in this place by Sir Henry Parkes 120 years ago.

⁴ Quoted in Tom Frame *The Life and Death of Harold Holt* Allen & Unwin, Sydney, 2005, p. 145.