eJournal of Tax Research

Volume 10, Number 1 February 2012

Special Edition: State Funding Reform in the Australian Federation

given extensive responsibility for general policy frameworks but the States were left with responsibility for implementation and administration. A correlate of that approach has been constitutionally-defined revenue sharing of the main tax bases.

2.4 Tending to their own affairs

An implication of being assigned distinct policy domains was that the Commonwealth and the States would operate autonomously in their respective spheres. The reservoir

2. In 1926 the High Court agreed that s.96 meant exactly what it said and the Commonwealth could use its spending power to extend its control into areas of State jurisdiction howsoever it wished.[6] This authorised both the *directive* and the *prohibitive* use of 'tied grants'.

3. In 1942 the High Court agreed that Parliament's right to set terms and conditions extended as far as being able to force the States to abandon their most important revenue source, the personal and corporate income tax altogether.[7] This gave the Commonwealth a monopoly over the country's two most important tax bases.

4. NO ACCIDENT

Possibly the transformation of Australian federalism has been the result of design errors. The American single-list approach, though logical, was clearly ill-conceived; s.96 was a uniquely Australian innovation that could only be described, from a federalist point of view, as perverse; the drafting of s.90 was likewise culpable; being popularly elected, the Senate was never going to act as a States' house; the amending procedure, while it protected the States, inexplicably sidelined them when it came to suggesting changes (as did the High Court appointment procedure); and the Constitution laid down no meta-rules protecting its federal character.

But there is much more to it than that. The enormous changes that have occurred in Australian federalism, changes that have in many ways reversed the intended relationship between the Commonwealth and the States, reflect two particular realities to do with the underlying society on which the system was to operate.

4.1. Old ideas, new realities

First of all, the American model on which Australian federalism was based presupposed several essential facts that were soon rendered anachronistic by the great economic and social changes of the 20th century. It presupposed that tasks could be neatly allocated to one level or the other. It presupposed that the vast bulk of domestic governance responsibilities were local in their nature and had little or no spillover effects beyond State borders. It presupposed that social and cultural norms were in the first instance a matter for local communities, not the national community, to decide. It presupposed a world where business firms rarely spanned jurisdictions and trade and intercourse between the States was modest. And it presupposed a world without the redistributive welfare state or macroeconomic management.

In all these respects, the basis on which the American model was established was turned on its head by the rapid shift to modern industrial society. Those changes entailed a general migration of tasks from the subnational to the national level.

4.2. Federal systems and federal societies

This explains a powerful tendency common to federal systems, but it does not explain variations between them. The particular design choices made by the framers of the Australian Constitution may go some way to explaining that variation, but there is yet more to the story. The fact is that federal systems cannot help but be fundamentally

[6] *The State of Victoria and Others v The Commonwealth* (1926) 38 CLR 399.
[7] *The State of South Australia v The Commonwealth* (1942) 65 CLR 373.

shaped by the kind of society over which they preside and Australian society lacks any of the powerful regional differences that provide such an effective countervailing force to those centralising pressures in Switzerland or Canada. Western Australia may have its own sense of regional difference and grievance, but it does not have any of the kind of identity characteristics — language, religion, ethnicity — that would make it a distinct society within the Commonwealth.

It is also not surprising that the two most regionally homogeneous federations, Germany and Australia, are the two where horizontal fiscal equalisation is the most comprehensive. An absence of significant regional difference means that the logic of a single citizenship prevails. This does not mean that equalisation will be uncontested, but it does help explain why equalisation is implemented to the degree that it is. Equalisation presents real dilemmas for federal systems since it is simultaneously inherent and alien to federalism: inherent because federalism is about providing for collective security and welfare and a common destiny, alien because federalism is about respecting regional diversity and maintaining regional autonomy (Fenna 2011).

5. HOW DO THINGS LOOK TODAY?

The result of the way the Constitution was drafted, the profound changes that have occurred in economy and society, and the disconnect between a federal Constitution and an effectively unitary society is a high degree of centralisation and extensive practical overlap and entanglement of the two levels of government in Australia that is widely criticised (e.g., Warren 2006).

5.1 State revenue

Centralisation is evident in, and facilitated by, vertical fiscal imbalance. As early as 1942, Australian federalism had reached a high degree of fiscal centralisation. Despite the Constitution allocating a shared or concurrent jurisdiction over all tax bases except 'duties of customs and of excise', the Commonwealth had come to monopolise the most important ones. The *coup de grâce* was finally delivered in 1997, when the High Court ruled that various efforts by the States to levy some sort of sales taxes, in the form of franchise fees on tobacco and other substances, violated s.90's prohibition on excise duties.[8] Canada and the United States, the two federations most similar to Australia, also went through a process of centralisation in the 20th century, but these developments made Australia stand out as the only one of the three where the national government had achieved exclusive control over *either* the general sales tax *or* the personal and corporate income tax, let alone *both*. Under the Fraser government, the States were invited to re-enter the income tax field, but the Commonwealth made no move to create tax room and the offer was an empty one (Saunders and Wiltshire 1980: 358). Being so thoroughly excluded from the main tax bases has left the States scrounging for 'own source' revenue in a variety of places where they are regularly accused of imposrce'uCmp2 -1.153herosr.8iTJy .or TD.0886 Tw[the

delivery expenditures. The States must rely on transfers from the Commonwealth for close to half of their funding needs. Being so dependent on the Commonwealth has carried two disabilities: whether the quantum will be sufficient and what the terms and conditions will be. Since the explosion in conditional grants under the Whitlam government, 1972–75, transfers have been split roughly equally between general and

Fenna, Alan 2007a, 'The Division of Powers in Australian Federalism: subsidiarity and the single market', *Public Policy*, 2 (3), 175–94.

— 2007b, 'The Malaise of Federalism: comparative reflections on Commonwealth–State Relations', *Australian Journal of Public Administration*, 66 (3), 298–306.

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