

Why the Commonwealth can't have its Cake and eat it too¹

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According to the Australian Council of Social Services, in 2014, 13.9% of people were living below the poverty line in this country (ACOSS 2014). More alarming, is the fact that 17.7% of all children were living below the poverty line this year, considerably up since 2010 and far above the OECD average. Thus poverty and social vulnerability, even in the midst of what is considered relative to world standards a pretty decent welfare system, continue to be important issues of public concern. The traditional response to managing poverty and social exclusion in Australia has been to provide welfare payments in the form of cash transfers such as age and disability payments, unemployment and sickness benefits, child endowment payments—now family tax benefits and new means-tested programs (Baum and Duvnjak 2013). However, the poverty gap, and the rate, plus the extent of social vulnerability, is not in decline. Therefore, particularly because 61% of the people below the poverty line in Australia depend upon social security as their main source of income, there is bipartisan support to end the passivity of the welfare state. The age old question therefore, made even more relevant by today's realities is how to lift certain groups (children, women, aboriginal people, and the unemployed) out of the vicious cycle of welfare dependency?

Enter the European inspired social investment perspective that has been embraced in both mature and developing countries around the world, including Australia. This new policy paradigm of moving towards an 'active welfare state' has been considerably developed and promoted by the OECD, and by social theorists such as Anthony Giddens (1998), Esping-Anderson (2002), among others (Morel, Palier, and Palme 2012). Its goals are to develop policies that promote lifelong learning that mitigate the new social risks associated to the changing roles of gender and to the composition of families, and to an ageing population. It is partly because of this goal to move from a passive welfare state to an active one, and partly because this paradigm itself rests on investing on human capital investments (particularly in education and

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health) and making good use of human capital (i.e. supporting female labour market productivity, vocational back to work training schemes, and labour flexibility), the idea of making welfare payments conditional on citizens efforts to invest in themselves through attending school, community health clinics, seeking vocational training and occupational counselling, is increasingly popular.

Welfare conditionality in Australia has been embraced since the late 1990s by conservative Coalitional governments and by successive Labour governments within various 'welfare for work' schemes. It has also been increasingly and controversially slipping into the conditions for extending disability benefits. Most notable however, it was the conditionality for cash transfers that was a major part of the "Northern Territory Intervention" and remains today, a key element of the current agenda to 'closing the gap'. This is viewed by most observers as the 'carrot and stick' approach to inducing behavioural change within certain groups of society in order to attain government stipulated 'closing the gap targets'. These targets fall within the areas of primary and preventive health, i.e. to halve the gap in child mortality within a decade, and most prominently within education, to have 95% of remote children enrolled in pre-school, and to halve the gap in Year 12 attainment by 2020 (Abbott, 12 February 2014).

Federalism and the Politics of Investing Socially

In the statement to the House of Representatives on the 12th of February 2014, Prime Minister Abbott highlighted how passionate he was to close the gap. He began his statement with numbers demonstrating how enrolment gaps were right on target, but he also mentioned that the life expectancy gap between Aboriginal and other Australians had not narrowed, that there had been little improvement towards having the gap in reading, writing, and numeracy, and indigenous employment has, if anything, slipped backwards over the past few year (Abbott 2014). The Prime Minister ends his statement by proposing a new target: namely to end the gap between indigenous and non-indigenous school attendance within five years and by promising greater performance reporting, transparency, and data arrangements. What the Prime Minister seems to have forgotten within this statement is that at its core, what the OECD refers to as an agenda for 'inclusive growth' and I refer to broadly herein as investing socially,

“...is a *supply*-driven policy attempting to furnish citizens with requisites needed for individual success” (Esping-Anderson et al., 2002, 5). Moreover, Australia is a federation where ideally its subnational levels of government are ‘sovereign in their own sphere’ and the majority of the *supply*-side inputs of an ‘inclusive growth’ agenda *ought* to fall within their spheres.

However, and is well-known, the 1946 referendum extended the powers of the Commonwealth parliament over a range of social services. Section 51 (xxiiiia) of the Constitution grants ‘benefits’ power to the national parliament for “ the provision of maternity allowances, widows’ pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services, benefits to students and family allowances”. In 1946 however, such cash transfers were part of a passive welfare system that was bent on “...‘repairing’ through passive income maintenance schemes after the risk has occurred” (Morel et al. 2012). Thus the delivery of such benefits became a consideration of national interest and fell within the responsibilities of the Commonwealth. Representing what Béland and Lecours (49, 2008) refer to in the Canadian context as a ‘step towards social policy centralization and another direct intervention of the [Commonwealth] in the everyday life of [Australian] families’. Similar to Canada, federal spending power made non-contributory welfare schemes possible from a fiscal standpoint, in contrast to Canada however, from a constitutional standpoint, those powers were additionally enshrined in Section 51 (1946).

Today, there is an ongoing debate about the need to reform Australian federalism. The impetus for these reforms however, should not be because “the Commonwealth has become, for various reasons, increasingly involved in matters which have been the responsibility of the States and Territories” (White Paper Issue Paper 1, iv, 2014), but also because there is now overwhelming global consensus over “the idea that social policy should aim at ‘preparing’ the population to prevent certain social and economic risk associated with changing employment conditions and family patterns, and to minimise the intergenerational transmission of poverty—particularly within certain vulnerable groups of society (Esping-Anderson et al., 2002, 5). The central goal of this commentary is to highlight the fact that within a *de jure* federal system, that federal government simply cannot go it alone in ‘preparing’ a population through providing services in health, education, housing and homelessness, transport

infrastructure, indigenous affairs, justice, disability, welfare services, settlement services, family and parental support, disaster recovery, environmental regulation, adult and community education and youth transitions, which is spread over vast geographical areas. Therefore, bringing the States and Territories back in as sovereign in their own spheres is justifiably at the forefront of the reform agenda. Its realization however, will also entail an acceptance for mutual credit-claiming in strategic social areas.

Such a reform, regardless of good intentions, is not easy given the fact that historically passive welfare benefits (centrally financed cash transfers) were a driver of Australia's national unity. Previous Coalition and Labour governments have been extremely bent on credit-claiming for the policy outcomes in areas of 'national interest' as well as directly inducing behavioural changes on Australians through increasingly supporting welfare conditionality that *ought* to fall outside of their sphere. For these reasons I fear, like Abbott, that 'we may be doomed to fail'. Unlike the Prime Minister however, it is not because the Commonwealth parliament cannot induce every child to attend school every day, but because the 'objectives' and 'issues' outlined in the Terms of Reference of the White Paper on Reforming the Federation (Commonwealth, 2014) do not coincide with an inclusive growth agenda (OECD 2014) or the terms of reference of an 'Active Welfare State'.

Reforming the Federation – Why the Commonwealth can't have its cake and eat it too.

Upon reading Issue Paper 1, "Reform of the Federation" (Commonwealth, 2014) and based upon the terms of references of the White Paper itself, it does not seem evident that there is any real intention or attention being given to actually distributing power to the States and Territories, and local governments, a transfer of authority that theoretically would motivate subnational government(s) "...to plan and manage investment and service-delivery 'at street level' (OECD report on inclusive growth cited in Issue Paper 1, 6). In fact, a real intention to re-invigorate a federal system that is about the States and Territories having 'sovereignty in their spheres' and to a lesser but some extent local governments is first, about decentralization, and second, about how to coordinate multi-level governance. First however, subnational units need to be governed as 'functional economies, rather than administrative units' (OECD, 2014).

The emphasis in the White Paper's terms of references however, is on pursuing a top-down reform effort that will clarify *who does what, to whom and how*, with all 'national interest considerations (of which include 'Closing the Gap', increasing and encouraging female labour market participation, improving youth transitioning to the labour market, immigration and settlement services, and generating regional employment opportunities) following a "a national approach ...in preference to diversity across jurisdictions" (Issue Paper 1, vi). Further, it highlights the Commonwealth's overarching concern for accountability, or should I say 'performance' and 'reporting' whereby subnational governments and regional councils will supply for example, "indigenous school attendance data as part of the next Closing the Gap report... which should also include data on work programme participation and data on communities without a police presence" (Abbott, Statement to the House of Representatives February 12th, 2014), yet these *de facto* 'administrative units' that are expected to report back, are provided almost no local flexibility in managing the policies and public programmes they deliver within their 'sovereign sphere' because they relate to 'national interest considerations'. It would seem to an outside observer that the commonwealth government wants to have their cake, and eat it too.

Regarding the term of 'subsidiarity', the recently released issue paper uses this principle to indicate that the lowest level of organization capable of performing a function is the family, then clubs, and social associations—using a trivial example of a cake stall, the reader is then assured the Commonwealth won't regulate "the nature of the cakes being sold". It then states, "Local governments are best placed to maintain local parks and organise waste collections. States and Territories are more likely than the Commonwealth to understand their communities' needs in a wide range of social services" (September 2014, 20). I am not sure how Calgary's current Mayor Naheed Nenshi, a candidate for 'World Mayor 2014', who along with *Calgary's Emergency Management Agency* has managed one of the world's most expensive natural disasters of 2013 (flooding), a high profile public security incident (University of Calgary shootings), and last week an electrical energy shortage (closing the downtown core for a week), would feel being told he was best placed with a federal system to 'maintain local parks'.

In the OECD's 2014 report which the issue paper claims is consistent with its views, it clearly states that 'cities' matter for inclusive growth. *All on Board: Making Inclusive Growth Happen* states:

National governments could inject more **local flexibility** in managing active labour market policies (OECD 2009b). Local employment agencies can have **more discretion in how interventions are designed, budgets are managed, performance targets are set and activities are outsourced**, within the limits set by accountability requirements. **Policies that improve access to education and training, transport and other essential services** can serve equity objectives, while also supporting growth in a particular place, and they require an understanding of **local conditions**.

The OECD alongside other influential international organizations emphasizes the need for 'place-based approaches' in governance. Urban areas like Sydney, Melbourne, Brisbane, Adelaide, and Perth, where 64% of Australian citizens reside, require public services with a distinct spatial component. It is not just the 'delivery of services' that need to be localized—it is also their design. Again, this would require a *decentralization* of decision-making to the subnational levels, not just 'a clearer allocation of roles and responsibilities' that are more accountable to Canberra. The complete absence of 'cities' and 'local government' within the terms of reference, the first issue paper, and the forums to date, bypasses altogether the idea that cities and municipalities are the interface between citizens and higher levels of government. Where are the principles and values regarding citizen participation, community engagement, or, the idea of co-production, where public services are better designed and delivered in partnership with citizens?

In particular when it comes to the *supply*-side inputs of an active welfare state in the areas of health, education, and employment; flexibility and a place-based approach to public services are fundamental to success. Thus while the Commonwealth appears very interested on using conditionality to induce behavioural change (the carrots and sticks approach), alternatively, local service providers could use conditionality as a mechanism to zoom in on what the *demand*-side impediments are to genuine social inclusion within their jurisdiction. Why can't people find a job? What skills are missing in certain areas and what are the barriers to obtaining those skills in that area? What local factors drive user non-compliance or produce barriers to compliance? Why don't

aboriginal children want to go to school? The federal government cannot go it alone in answering these questions.

Therefore, in asking which level of government is to be responsible for a stronger regime and a better use of the conditions that are increasing an integral part of an active welfare state, we need to ask if the decentralization of certain government functions could empower the States, Territories, and Capital Cities, to better meet the needs of Australians facing new social risks. It is not 'the elimination of multiple levels of government involved in the delivery and funding of public programs that needs to be resolved', rather, it is how to operationalize a 'whole-of-government approach' in a federal system whereby various levels of government have sovereignty in their own spheres. The Commonwealth government may need to first acknowledge that this may require that sovereignty of the States, Territories and Local Governments be fortified, and their spheres (political, fiscal, and administrative) be expanded. Only then, can institutional and financial incentives for intergovernmental cooperation be created through national leadership.

It would seem that the current proposal to reform the federation is intended to transform Australia from 'marble cake federalism' whereby governing responsibilities are shared and levels of government cooperate to achieve common objectives to 'layer cake federalism' where each level of government has clean lines of responsibility with no overlap. The commonwealth however should realize that it cannot have its cake and eat it too. If the States and Territories are to have 'clean lines' of responsibility where there is no 'overlap' with the Commonwealth, then it will have to relinquish some of its power in Section 51, xiiia. Canberra can certainly continue to spend at will in social areas of national interest such as family allowances, child endowments, and unemployment benefits, however, what it cannot do is to set the conditions attached to this expenditure when they fall within subnational spheres. You simply cannot have your cake and eat it too. A choice between the two federal models has to be made: either reduce national involvement in social policy design and delivery all together, or, increase the welfare conditionality attached to national welfare payments (read: in 'layer cake federalism' there is no national day-care plan, no national regulation of pre-school, and no *close-ing* the gap—rather federal monies, unconditional, block or matched grants, are transferred to the States and Territories to *close* the gap, to provide

Early Childhood Education and Care, and to create community health services/social assistance within their own sovereign spheres.

Alternatively, there is another option within a federal system to pursue national interest considerations in social areas that seems even more remote to Australia. This is to transform local governments and municipalities into the prime agents of the federal government in key social areas, which makes them responsible for both promoting and monitoring the conditions that are attached to national policy objectives. This is referred to as the *federalization* of social policy as opposed to either centralization or decentralization. Within this governing scenario, the central government bypasses the States and Territories who become alleviated from being responsible for conditional welfare and instead forge direct national-local collaboration requiring fiscal and political incentives. Such a three level strategy has real potential in allocating roles and responsibilities; however, it does require local government recognition, along with increasing their authority in certain areas such as family and community services, preventive health and community clinics, and social assistance—an agenda that is clearly absent in the reform of the federation's current terms of reference. Currently, local, regional, and rural councils in Australia have almost no power or autonomy to meet the increasing demand for improved access to public services (Hearfield and Dollery 2009).

Thus bottom line is that both the States and Local Governments need more autonomous discretion over the supply-side inputs of a conditional welfare state. This would allow directly elected subnational executives to autonomously confront the demand-side impediments to achieving greater social inclusion using a place-based approach. Thus it is *decentralization* and the distribution of power downwards within a federal system that leads to greater innovation in policy design and service delivery, not subsidiarity *per se*. At present, within the renewing federalism debate, the principal of subsidiarity is being used as a justification for offloading some of the Commonwealth's functions through a political-judicial debate over 'roles and responsibilities' rather than invigorating a real debate over the relative powers of citizens, Local Governments, States and Territories, and Commonwealth institutions. It is not 'subsidiarity' that will reduce the Commonwealth's benefits powers (Section 51, xiiia) and result in increasing the accountability of premiers and mayors to their voters—not to the Commonwealth.

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