

**Vanguard**

*Expressing the viewpoint of the Communist Party of Australia (Marxist-Leninist)*

# Federation, the Constitution, Taxes and our Future





**The Abbott government is using an out-of-date and unworkable Australian Constitution to advance a reactionary agenda designed to erode people's rights and freedoms and to increase the burdens already borne by the working class and other working people.**

It is relying on this Constitution to enable it to pass the funding responsibility for various policy areas to the state and territories. It means that those governments will have to raise their own funds. While leaving the rich free to continue their notorious tax evasion, it raises the prospect of austerity measures for the rest of us courtesy of state and territory governments being unable to raise required revenue.

The Australian Constitution emerged as the result of a three-way tussle for power between the British and the colonial elites on the one hand, neither of whom wanted to surrender influence and power, and the proponents of a federated parliament with the power and influence required for a new central authority.

The end product was a weak three-way compromise with some powers retained by the Crown, some by the governments of the colonies and some being passed to the Commonwealth.

It was inherently reactionary recognising neither the existence of Aboriginal and Torres Strait Islander

First Nations nor any definition of the rights and freedoms of Australian citizens.

It was, instead, a tedious, dry and cumbersome set of procedural rules for government at state and federal levels with a focus on trade, commerce, and fiscal relations. It is noted only for its complete unfamiliarity to the vast majority of those whose lives are governed and regulated by it.

The British retained the right to appoint state governors and the Governor-General, retained the power of the Crown to assent to or refuse Australian legislation, kept the British Privy Council as the highest court of appeal, and exercised control over Australian foreign policy. Some of these have since been modified or removed.

Section 51 defined the powers of the federal government. Anything not specified here remained the prerogative of the states. This included health and education.

Jealousies over power and influence

created stupid anomalies. Although rivers ran through states and sometimes defined their borders, and were thus a shared concern best suited to federal oversight, futile debates left the power for use of water in rivers with the states. This remains a problem to this day. Tim Cartwright, Victorian Deputy Police Commissioner appeared on the ABC's Q and A program on domestic violence on February 23, 2015, bemoaning the fact that an "archaic system" of state and territory responsibilities meant that Apprehended Violence Orders (AVOs) taken out in one state were next to useless in another jurisdiction. Probably better examples can be found, but they all point to the Constitution being out-of-date and not in the least bit fit for purpose if that purpose is defined as protecting the rights and interests of Australian citizens in a progressive and developing single nation state.

Not only is the Constitution an archaic obstruction of the interests of the Australian people, it is virtually impossible to change. Amendments only come into effect when they are carried by a majority of all Australian voters and by a majority of the states.

So what are Abbott and his cronies on about?

## **Preserving the right of Parliament to restrict and erode people's freedoms**

In essence, they have two major objectives. The first is to preserve the "sovereignty of the federal parliament" and its ability to make laws affecting the rights, freedoms and privileges of Australian citizens unencumbered by anything remotely resembling a Bill of Rights or as a result of obligations under international treaties. This extends to proposals for the recognition of ATSI peoples within the Constitution which is merely a blind for denying recognition of ATSI peoples' rights in a Treaty, and denying their rights to sovereignty and self-determination.<sup>1</sup>

The template for the current rush of Issues papers, Green and White papers, was the National Consultation on Human Rights established by the Rudd Labor government. It goes without saying that in their service to capitalism and loyalty to the interests of US imperialism there is no fundamental difference between the Coalition and Labor. The National Consultation included reference to "amending the Constitution to include a bill of rights" as an option on page 13 of the Background Paper; however, the terms of reference on page 16 conclude with the statement that "The

options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights”. When is an option not an option? When the rights of the people are being debated, it seems.

Again, the Australian Law Reform Commission, tasked by Abbott with leading a public Inquiry into the relationship between Commonwealth law and the exercise by Australian citizens of their traditional rights, freedoms and privileges, notes (p. 11): “Whether the introduction of a bill of rights in Australia is desirable is widely debated, but it is not the subject of this Inquiry”.<sup>2</sup>

Under no circumstances do the ruling class and its parliamentary parties want the Australian people to have a constitutionally-protected statement on their rights and freedoms. They want to preserve the situation whereby the Australian parliament may erode or restrict our rights, freedoms and privileges irrespective of traditional custom and practice or obligations under signed international treaties and declarations, providing it does so clearly and unambiguously.<sup>3</sup> Such is the definition of “sovereignty of the parliament”. In practice this means

no more nor less than the sovereignty of US imperialism over Australia exercised through its collaborator parties holding a “no holds barred” authority to act.

### **Restricting the scope of federal services and passing revenue raising back to the States**

Secondly, they want the states to be sovereign in areas like health, education and housing and homelessness, meaning that the Commonwealth would be absolved of the responsibility for funding these areas and therefore under no political pressure to raise the existing pitifully low tax requirements placed on the corporate sector and super-rich individuals.

The Prime Minister’s recent insulting gaffe about “lifestyle choices” and Aboriginal and Torres Strait Islander peoples in remote communities arises directly from this agenda. Federal funds for services to remote communities have been cut. WA, which has creamed royalties from mining on Aboriginal lands for years, has cried poor and said it cannot raise the funds for services to 150 communities which will have to be

---

<sup>1</sup> See The fraud of “Constitutional recognition”: <http://www.cpaml.org/environment.php?id=105>

<sup>2</sup> See CPA (M-L) submission to the ALRC enquiry here: <http://www.cpaml.org/statements.php?id=138>

<sup>3</sup> For the significance of the phrase “clearly and unambiguously” see Australian Law Reform Commission, Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (IP 46), Dec 2014.

closed. This is a foretaste of what is to come when states and territories have to find the funds for health, education and housing.

The federal government has far greater revenue-raising capacity than individual states and territories. This is referred to in the jargon as “vertical fiscal imbalance” (VFI). In 1933 the Commonwealth committed itself to assisting states and territories in the financing of their various governmental undertakings by distributing part of its revenue to them. In the jargon, this was referred to as “horizontal fiscal equalisation” (HFE). An equity principle underlay HFE: that whether an Australian citizen lived in a richer or poorer state, or lived in a major city or a remote community, all were entitled to the same level and quality of government services.

VFI increased in favour of the Commonwealth under the conditions of the war against fascism when states agreed in 1942 to transfer the power to tax income to the central government. This was driven by the national interest in financing the cost of the war.

Also driven by the national interest was the increasing involvement of the Commonwealth in the “soft” service delivery areas of welfare, housing, health and education. In 1945, a

federal Department of Education was established. In 1946 the social expectations that came with the post-war popularity of the “welfare state” carried a Constitutional referendum giving the Commonwealth responsibility for welfare benefits including maternity allowances and child endowment, unemployment payments, pharmaceutical, health, hospital and dentist services.

## **Revenue shortfalls and the austerity agenda**

In the conditions of expanding capital accumulation and growth in real wages, the federal government has two main sources of direct revenue (ie excluding loans, sale of bonds etc). They are taxes on business profits and on personal income. In the mid-1970s, as finance capital consolidated its domination over manufacturing capital, capital was increasingly diverted from investment in the growth of surplus value through manufacturing into speculative investments in the growth of fictional capital. This is not the place to detail that process; suffice it to say that a whole range of dodgy financial instruments was created to facilitate trades in non-productive assets leading to an explosion in the fictional value of derivatives, CDOs and so on.

The first sign in Australia that the federal government's revenue base was problematic was the demand for a broad-based consumption tax - the GST. This was because it was politically inexpedient to raise income tax at a time when real wages were entering a long-term decline and because manufacturing was also entering a long-term decline and unable to sustain the revenue base that was required for the totality of federal government expenditure. Introduced in 2000 under John Howard, the GST has been described as "arguably the single most important reform of the financial arrangements between the Commonwealth and the States since Federation"<sup>4</sup>. The GST provided the federal government with a large new source of continuous revenue. In a deal with the states and territories the GST became the funding pool through which HFE occurred, thus releasing other federal government revenue streams for national spending priorities. In other words, the bulk of the money that states and territories provided for health, education, housing and other "soft" services came through a new tax collected by the federal government and then distributed to the states under an agreed equity principle. The GST hit a number of small businesses very hard, and it was borne unequally

– low income earners lost a greater proportion of their disposable income through it than did the rich.

The second sign that the federal revenue base is problematic has been a growing chorus of reactionary voices demanding a review of federal-state fiscal relations only fifteen years after "the single most important reform" of these relations since Federation. Neither party has pursued the big end of town as a revenue base, so demands are raised for increasing the rate of the GST, or widening it to include currently excluded services. A whole host of other reactionary measures from medical co-payments to increased tertiary education charges and fees complement the GST debate. Reviews of the tax system by federal and state governments (South Australia for one) are announced.

The two policy areas that have sparked the latest demands for tax reform, changes to the GST and a shake-up in the operation of the federation are health and education. Health encompasses a major part of the federal government's budget. The ruling class and its servants are horrified by projections of the demographic implications for this area of spending, citing ageing

---

<sup>4</sup> Reform of the Federation White Paper: Issues Paper 1 p. 12, Commonwealth of Australia 2014.

(both increased longevity and the spiralling ratio of retirees and the elderly to those in the workforce), disability and Indigeneity as causes for a future inability of the federal government to pay for the health of Australian citizens. That same ruling class and its servants recoiled in horror when the Gonski Review of education revealed the massive funding increase required to address inequality and low achievement across the three education sectors (public, Catholic and private).

This is how Christopher Pyne, Minister for Education in the newly-elected Abbott government, reacted when criticised for cutting two-thirds of the funding promised for the Gonski reforms by the previous Labor government. “We want to treat the states like adult sovereign governments,” he said. “They run their own schools, they run their own hospitals, they need to find their own revenue measures if they believe they don’t have enough funds to do so”. When asked by journalist Sarah Ferguson where that money was going to come from, Pyne was dismissive: “Well that’s a measure for the state treasurers”<sup>5</sup>.

Tony Abbott was no less equivocal when releasing the terms of reference

of his White Paper on Reform of the Federation on June 27, 2014. Announcing them to a meeting of the Federal Liberal Council, Abbott said it was time to make every level of government “sovereign in its own sphere”. He proposed that Commonwealth funding should be limited to “core national interest as spelled out in the Constitution”. That was a reference to the Section 51 powers that exclude health and education from the responsibilities of the federal government. It was noted by at least one journalist, the ABC’s Louise Yaxley, that the White Paper can draw on the 2014 Audit Commission report which recommended that the states revert to imposing their own income taxes.

There is a secondary thread to the argument in favour of passing funding responsibility for health, education and housing to the states, and that is the neo-liberal view that competition is inherently healthy and removes inefficiencies (read “costs”) in service delivery. There are demands from the Right for a weakening of the equity principle underlying HFE, or for removing HFE altogether. Adelaide University academic Jonathon Pincus criticises full HFE as a disincentive for states to be efficient. He calls for a “balancing”

---

<sup>5</sup> Transcript of ABC’s 7.30 Report for May 15, 2014.



of equity against efficiency in HFE distribution and believes that there is a case for supporting the “unequal fiscal treatment of equals within a federation”. His is basically a cost-cutting approach rather than one focussing on the quality of service delivery. Efficiency occurs where states and territories vie to “provide goods and services at a lower cost”<sup>6</sup>. NSW academic James McDonald likewise sees HFE as a disincentive for states to “maximise their Gross State Product” (the sum total of business activity in a state or territory in a given period). He wants the GST raised in each state or territory to go directly to the government of that state or territory and to be combined with other state revenue raising (land tax, payroll tax, mining royalties and so on). He wants to make “HFE grants less desirable for state governments than GST earnings, differentiating the efficiency and equity layers of state funding.” State government ambivalence towards tied grants (grants in which the Commonwealth dictates where and how the money should be spent) should be used to “motivate them to prefer internal earnings”<sup>7</sup>. Needless to say, the jettisoning of equity from HFE is a door-opener for austerity measures at state and territory levels.

## **A free ride for the rich: turning back the wheel of history**

Far be it for a Communist Party to advise capitalism on how to make itself more sustainable. Nor can capitalism be made more democratic when political power in the state is held by a minority class whose interests stand diametrically opposed to those of the majority. By political power we mean more than just which political party of capitalism wins office through an election every three years. We mean that power which is capable of being exercised without interruption through organs of ideological and physical control: the education system, the mass media, the police, judiciary and armed forces. Workers understand this instinctively: their rights and their history are never taught or expounded in schools; they never receive support from the media when they fight for their rights and conditions; the police and other organs of state power line up with the big end of town. If there are ever exceptions they merely serve to prove the general rule of the class basis of actual state political and economic power.

---

<sup>6</sup> Jonathan Pincus, Examining Horizontal Fiscal Equalisation in Australia, University of Adelaide School of Economics Research Paper June 2011.

<sup>7</sup> See: [http://www.gstdistributionreview.gov.au/content/submissions/issues\\_paper/James\\_McDonald\\_additional%20supplementary%20.pdf](http://www.gstdistributionreview.gov.au/content/submissions/issues_paper/James_McDonald_additional%20supplementary%20.pdf)

However, we do have an interest in protecting, defending and extending the rights and freedoms that people have won in struggle throughout history. We have an interest in weakening the hold of imperialism over political power in Australia and in utilising contradictions between the various sections of the ruling class.

We are firmly of the belief in the desirability of the following:

1. A Treaty between the government of Australia and the Aboriginal and Torres Strait Islander peoples. It should recognise that the invasion and seizure of the lands of the Australian First Nations people was everywhere carried out by force and violence, or the threat of force and violence; that the foundation of the colonies and the subsequent proclamation of the Federation did not and will not wipe out the rights of ATSI peoples to self-determination and the exercise of sovereignty within the Australian state.
2. A Bill of Rights written by the people, defining and protecting their rights and embedded in a new Australian Constitution.
3. The replacement of the Constitution created by imperialism and the ruling

class with an anti-imperialist, republican and democratic Constitution. By anti-imperialist, we mean that it shall enshrine neutrality and independence in foreign affairs and not allow any foreign power to encroach upon the national sovereignty and territorial integrity of Australia. It shall also provide authority for nationalisation of foreign enterprises and complete regulation of their activities, if allowed, in Australia. It will annul unequal treaties and agreements and specifically cancel measures such as Investor State Dispute Settlement clauses which infringe on our sovereignty. It will be republican and democratic with provision for periodic review and change as circumstances may require.

Consistent with the above, we demand that all revenue raising for the use of Australian governments at federal, state and territory levels be vested with the federal government.

We demand that in relation to delivery of services the principle of subsidiarity, namely that responsibility for service delivery lies with the level of government closest to the delivery, be applied, but within national policy frameworks for each of the delivered services.

We demand that in the distribution of federally raised funds to the states and territories, full HFE be implemented. We demand that the GST be scrapped and income taxes be progressively reduced and abolished at the lower end of the income scale. We demand that major corporations making super profits (mining and banking are examples) pay a super profits tax; that a financial transactions tax be introduced; that transfer pricing and other loopholes allowing corporations to escape liability for taxes on profits made in Australia be closed; that superannuation, negative gearing and other loopholes that allow the rich and super-rich individuals to escape their tax obligations be closed.

## **Understand the issues, fight the attacks**

We call on all workers and community activists to challenge the reactionary agenda being developed through the ALRC's Rights paper, the Federal Reform White Paper and the White Paper on Taxation in Australia. These sit alongside Audit Commission reports, Productivity Commission reports, Competition Policy reviews as well as papers from peak ruling class bodies like the Business Council of Australia.

None of these are written to be easily understood by the people whose lives they affect. But understanding the

issues and fighting these attacks is crucial to our future, and to the rights and liberties of coming generations. We must circulate publications like this one to family and friends, to workmates and colleagues, raise the issues through our community organisations and unions and never leave the door open for the ruling class to do as it pleases.

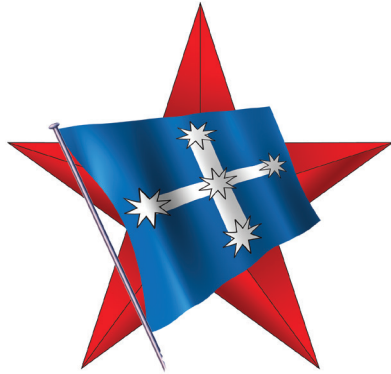
Without our organisation, understanding and opposition, a bleak future of austerity and erosion of rights and freedoms awaits us.

We are better than what they have in store for us.

If they want to look at change, then so do we. But change has two equal and opposite directions: either to go forward according to our own independent agenda, or to go backwards according to theirs.

Our agenda is coming into being.

The future belongs to us.



APRIL 2015