Are We Kidding About Local Autonomy? Local Government in Australia

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INTRODUCTION

This paper will examine local government in Australia within a set of parameters which allows scope for international comparison. It will be in three parts. The first considers local democracy, the second concentrates on the question of local autonomy; and the third considers the relationship between them. In dealing with local government, I realise that I have not dealt with all aspects of the local state, although I consider the status and character of local government to be an important measure of the health of both the local state and the state as a whole. I hope that by using Australia and, within it, Victoria, as a case study, the absence of local autonomy can be demonstrated. The case I make can, I think, be applied to other countries’ systems. I will also argue that there is also an absence of local democracy in Australia. This might support the case for a connection between democracy and autonomy. I dispute this, however, by putting the proposition that in the only state where local democracy can be found, local autonomy is still absent.

The Commonwealth of Australia is the product of the federation, in 1901, of six colonies - New South Wales, Tasmania, Victoria, South Australia, Western Australia and Queensland - which became its constituent States. The Commonwealth constitution entrenches the States and their powers. The constitution can only be altered by referendum. To be successful, a majority of votes is required in the country as a whole and in a majority of the states. Further protection is provided to each state by the Senate, the second chamber of the Commonwealth Parliament, in which ten senators sit from each state, regardless of the relative size of their populations.

In formal terms, local government is not part of the Australian federal system. As in the United States and Canada, there is no mention of local government in the national constitution. Having failed to receive bipartisan support, a 1988 referendum proposal to recognise local government in the Commonwealth constitution, was unsuccessful. Constitutional recognition for local government, therefore, is left to the State constitutions, all of which contain certain relevant provisions.
LOCAL DEMOCRACY

There is no doubt that local governments in Australia consider themselves to be representative, accountable and democratic. At the National General Assembly of Australian Local Governments in 1997, they recalled the Worldwide Declaration of Local Self Governments and, in making their own Declaration on the Role of Australian Local Government, began by setting out the following fundamental principles:

Local Governments are elected to represent their local communities; to be a responsible and accountable sphere of democratic governance; to be a focus for community identity and civic spirit; to provide appropriate services to meet community needs in an efficient and effective manner; and to facilitate and coordinate local efforts and resources in pursuit of community goals.

These so-called fundamental principles are not supported by State constitutions, by the courts or by electoral practice.

Constitutional Provisions and Democracy

The Constitution of New South Wales states that local governing bodies must be duly elected or duly appointed. Queensland demands that they be “duly elected” South Australia requires that they be “elected”. The constitutions of Western Australia and Tasmania, while providing clarification about the source of power by stipulating that local governing bodies are to be elected in such manner as Parliament may from time to time provide, have no more to say concerning democracy than the others. Only one constitution, that of Victoria, inserts a democratic reference. There the State Constitution Act 1975 proclaims that the system of local government shall consist of democratically elected Councils.

This section of the Victorian Constitution does not mean quite what it says, however. Sections 74B(2) and (3) of the same Constitution provide for the State Parliament to dismiss or suspend a council for an unspecified amount of time and to make arrangements for the municipality to be administered without resorting to election. In *South Melbourne City Council v Hallam*, a then-existing local government (later dismissed) challenged the constitutionality of the *City of Melbourne Act 1993*. The Act provided that the City of Melbourne (another local government) ceased to exist.
and that its elected councillors ceased to hold office. It further provided that a new body corporate, the Melbourne City Council, be established and that, pending an election of councillors, it would be administered by commissioners appointed by the Governor in Council.

The Victorian Supreme Court determined that the general requirement to have democratically elected councils did not constrain Parliament from exercising its powers as it had done. More specifically, the Full Court insisted that the Constitution did not guarantee a system of local government comprising democratically elected councils. In the words of the presiding judge:

> What is provided for...is a system consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district. The only democratic criterion is for an election, and even then the franchise is as the Parliament prescribes...and even a democratic election may be withheld if the council is dismissed.\(^7\)

In effect, this means that the reference to democratically elected councils in Victoria means no more than is contained in the other State Constitutions.

Recognising this, in an unprecedented event, a Victorian Local Government Constitutional Convention was held in November 2000. Under the auspices of their peak body, the Municipal Association of Victoria (MAV) and the Victorian Local Governance Association (VLGA) a local government and community-based advocacy body, delegates from Victoria’s local governments gathered to debate the constitutional status of local government in the State. Believing that the present State government had been elected, in 2000, on a platform which included providing more appropriate Constitutional provisions and guarantees for local government, they put forward a number of propositions. Although these are still to be further refined before being formally presented to the government, the opposition parties and the three independent members, the contents of the following communique were forwarded to all these parties and to the public:

*Local Government Constitutional Convention Communiqué, Thursday, 30\(^{th}\) November, 2000*

1. The Constitution shall provide that a democratically elected local government is, within the parameters of the Constitution, entitled to operate as a distinct sphere of government.
2. The Constitution shall make provision for democratically elected local governments to be accorded general powers which shall include and will not be limited to:
   (a) provide for the peace, order and good government of its municipal district;
   (b) facilitate and encourage appropriate development of its municipal district in the best interests of the community;
   (c) provide equitable and appropriate services and facilities for the community and ensure that those services and facilities that are managed efficiently and effectively;
   (d) manage, improve and develop the resources of its district effectively and efficiently; and
   (e) the right to raise revenue.
3. The Constitution shall provide that there shall continue to be a system of democratically elected local government, and that abolition of the system of local government requires the majority vote of the electors of the State by way of referendum.
4. The Constitution shall recognise each local government as a democratically elected governing body, primarily responsible and accountable to the citizens within its boundaries.
5. The Constitution shall recognise that while the authority of local government derives from its statutory base, local governments derive legitimacy from the fact that they are democratically elected to represent the needs of the community within their boundaries.
6. The Constitution shall recognise and protect the right of electors in each municipality to democratically elect its local government.
7. The Constitution shall recognise that local government within the State consists of individual local governments, which shall be referred to as 'local governments'.
8. The Constitution shall recognise the integrity of each local government.
9. The Constitution shall establish a process for determining the adjustment or restructuring of one or more municipal boundaries. That process shall observe the following principles:
   - A petition for adjustment or restructure of municipal areas may be initiated by:
     (a) electors within the municipality; and/or
     (b) one or more local governments; and/or
     (c) the State Government.
   - An independent process shall be established to seek submissions and otherwise consult and make recommendations.
10. The Constitution shall provide that the only ground for the dismissal of a democratically elected local government is when it is -
    - unable to govern; or
    - is acting unlawfully
11. The Constitution shall provide that if a local government is unable to govern, there shall be a period of not more than 3 months of mediation or other mechanisms of resolution (consistent with the Code of Good Governance). If its ability to govern remains in question then the responsible Minister shall recommend dismissal to Parliament.
12. The Constitution shall provide that a local government cannot be dismissed without a majority of both Houses of Parliament.
13. The Constitution shall recognise that on the dismissal of a local government:

- an election shall be called immediately;
- The responsible minister will appoint a caretaker;
- The election shall be held no later than three months after the notice dismissal.

Less than two months after the Convention, and following a sustained campaign by a popular metropolitan newspaper, the State government announced that the elected councillors of the Melbourne City Council would have their terms of office curtailed and that fresh elections would be held in August 2001. Since then, the government has announced its intention to alter the electoral arrangements and called for submissions about how this should be done from interested groups and the public. It is unlikely that this series of actions will be tested in the courts but there may be political ramifications once Parliament begins its autumn session. What is fairly clear, however, is that democratic provisions appear not to be on the government’s mind. This is evident from the document issued by the Ministerial Government Working Party charged with carrying out the City of Melbourne Representational Review which explains that:

*The Government’s main concern now is with what needs to be done to restore the lost confidence in the City of Melbourne, as a partner with the State, and as a commercial, cultural and financial city icon.*

In discussing the matter of electoral arrangements, it goes on:

*Broadly, the key elements are –*

- Balancing representation – business/residential/capital city interests*
- Ward/s – (subdivided or unsubdivided municipality), how many wards, how many councillors in each ward and what size wards
- Number of councillors

This exposes yet another source of democratic deficit as far as local government in Australia is concerned, that of electoral practice and, more specifically, the franchise.

**The Municipal Franchise and Democracy**

When compared with other OECD countries, Australian local governments are amongst the most financially self-sufficient. While this does not mean that there is

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* My emphasis
no issue of vertical fiscal imbalance, it does mean that the contribution of the Commonwealth and State governments to the income of local governments is relatively low. In 1997-98, Australian local government revenue sources were made up of a mixture of Commonwealth and, less so, State provided general and specific purpose grants – 23%; surplus from municipal trading enterprises – 4%; interest – 4%; other revenues (fees and charges) – 11%; and municipal property rates/taxes – 68%. While the picture varies slightly on a State by State analysis, generally speaking, local governments raise about 75% of their revenue from their own sources.

Such financial self-sufficiency might be expected to be a sign of independence or autonomy. In fact, it amounts to a very heavy dependence on municipal rates or property taxes, which are levied, according to varied methods, on residential, agricultural and commercial properties. This, in turn, appears to have anchored the Australian municipal franchise in the nineteenth century, when property-based voting was the norm. To this day, the common practice across all the states, except Queensland, is to admit degrees of property-based voting. Eligibility to vote is conferred upon non-resident owners of rateable property and, subject to qualifications about tenure, to occupiers. Corporations are treated as owners.

In New South Wales, the principle of one person, one vote is adhered to in each municipal area (though not the state, as a whole). As well, only 1 owner or occupier of property held jointly can vote in a municipal district. In other words, no matter how many properties may be owned, only one vote can be exercised. An additional requirement is that non-residents (persons wishing to exercise their vote on the basis of property-based eligibility) must apply for the vote. In a similar arrangement, South Australia also allows residents, ratepayers who own property solely, and one nominee from a body corporate or from a “group” of joint-owners or occupiers of a rateable property, to vote. In Western Australia, the treatment of property is more generous: property-based eligibility entitlements allow two joint owners or occupiers to vote where multiple ownership/occupation exists. As in NSW, both South Australia and Western Australia stipulate that a person may only exercise one vote in a municipal area.
Tasmania and Victoria are the states, which still allow plural voting. In Tasmania, although those eligible to vote on a property franchise must apply to be enrolled, it is possible for a person to exercise two votes in a municipality, one in their own right, and one as the nominee of a body corporate. The Act does not address the issue of the voting rights of joint owners/occupiers.

Victoria is the most extreme case. It was not until 1982 that residents gained the right to vote. Previous property-based entitlements continued to be recognised, however. Since the “reforms” of the 1990s, the nature of which I have discussed elsewhere, these property-based entitlements have been reinforced in a number of ways. The present situation is as follows.

One significant feature of the voting provisions is that the relevant sections of the *Local Government Act 1989*, refer to municipal subdivisions (wards or ridings) not to municipal units. As a result, the stipulation that only one vote can be exercised by an individual, applies only to the subdivision, not to the municipality. While this does not affect those with a residential voting qualification, it means that property owners with several properties dispersed throughout a municipality, may vote once in each ward where these properties are located. Since most Victorian municipalities are subdivided, there is a clear potential for multiple voting. A further multiplier of the property vote arises where property is jointly-owned or occupied. In such cases, two persons are eligible to vote and will automatically be enrolled. Additional joint owners/occupiers may also vote but must actually apply to be enrolled.

Corporations are another category of municipal voters. While generally they are able to nominate one person to vote on their behalf, in the City of Melbourne, special provisions exist requiring them to nominate two persons. In the City of Melbourne where, as in other financially important Australian capital cities such as Sydney, the property and business lobbies are both strong and active, property-eligible voters are compelled to vote. This is not true of the rest of Victoria where voting in municipal elections is only compulsory for residents.
Universal Postal Voting in Local Government Elections and Democracy

Universal postal voting for local government elections was introduced to Australia by Tasmania, following the example of New Zealand. The main argument presented in its favour was that, in systems where voting is voluntary and turnout figures can be embarrassingly low, it increases the vote. There are some grounds for arguing that this is only partly true and, in any case, there may be other and better ways to achieve this objective. Nevertheless, whatever its putative merits, its use has become quite widespread in Australia.

In Tasmania, where voting in local government elections is voluntary, and half-elections occur every two years, universal postal voting was introduced on a trial basis in 1993, and used for the first time in the 1994 and 1996 elections. Thereafter, the Tasmanian state government legislated to make it compulsory to use postal voting in local government elections. Western Australia and South Australia have both given councils the option to conduct elections by universal postal voting and, especially in South Australia, where there has been considerable encouragement for them to do so, most councils have adopted it.

In the states where voting in local government elections is compulsory - Queensland, New South Wales and Victoria - a divergent pattern has emerged. In New South Wales, universal postal voting is not allowed. In Queensland, it is allowed, subject to conditions, only in shires or towns which cover large rural areas. In Victoria, although universal postal voting is optional, almost all municipalities (about 80%) have adopted it, predominantly during the period when they were administered by state government-appointed commissioners. Its use was strongly advocated by the previous government and is supported by the Victorian and Australian Electoral Commissions which compete for contracts to run the elections and have invested considerable amounts on the necessary technology.

In a democratic electoral system, based on the principles of universal adult suffrage and one person, one vote, there may be a case for the use of postal voting. I do not accept this case, mainly because of my belief in the importance of active citizenship and the need to maintain meaningful political rituals as part of the vital set of linkages between local governments, elected representatives and the people in a municipality.
This is not, however, the issue I wish to deal with here. The issue here is that, where non-resident property-based voting is part of the electoral system, universal postal voting makes it easier for those property-based voters to vote.

Evidence that this has happened is available in the case of Victoria, where the Victorian Electoral Commission has drawn attention to the higher rate of participation achieved amongst non-resident voters. Similarly, in the City of Melbourne’s 1996 post-election review, it was noted that the participation rates amongst all categories of voters were now similar (residents – 66%; absentee owners – 61%; business occupiers – 61%; corporation representatives – 67%) representing a major turnaround on previous elections where non-resident participation was extremely low. It is a method of voting which is of far greater benefit to non-residents than to residents and, in consequence, further strengthens the anti-democratic bias of the system.

I would suggest, therefore, that Australian local governments, except in Queensland, are unable to satisfy the most basic criteria of local democracy.

**LOCAL AUTONOMY**

**Historical Background**

There is no doubt that local government in Australia has been shaped by its colonial origins in the nineteenth century, along with which went the demands of imposed by the opening up of a vast continent for the purposes, above all, of acquiring wealth. This does not imply that local governments have been uniform in their development. Indeed, in their monumental study for the Australian Council for Intergovernmental Relations (ACIR), Power, Wettenhall and Halligan identified two distinct local government types, the constitutionalist and the state interventionist, products of the diverging political histories of the states in the twentieth century. The former was used to describe stably structured systems which developed largely in response to local demand and provided a high degree of local autonomy, while the latter characterised local governments which were more malleable at the hands of Labor governments keen to use them as their agents. The local government systems of Victoria and South Australia, where “liberal” parties dominated state politics, were considered generally to conform to the constitutionalist type; New South Wales and
Queensland exemplified the state interventionist; and Tasmania and Western Australia were regarded as mixed types.\textsuperscript{19}

There is a considerable danger in assuming, however, that this typology corresponds with Kjellberg’s \textit{autonomous} and \textit{integration} models.\textsuperscript{20} As will be argued in the ensuing discussion, all Australian local governments are both integrated into and subordinated to the other spheres of government. Differences in the styles of state governments have produced variations in their local government systems but, on various possible measures, Australian local government fails the local autonomy test.

**Constitutional Provisions and Local Autonomy**

Each state’s Constitution Act provides that there shall be or continue to be a system of local government in the state.\textsuperscript{21} This does not mean, however, that the constitutions guarantee the continued existence of local governments. Every constitution expressly provides for the suspension and dismissal of individual councils and for appointees to perform the functions of local government. The Queensland and South Australian Constitutions go further by specifically providing for the abolition of their entire systems of local government. The Queensland Constitution requires that a proposal that the system of local government be abolished must be submitted to the electors of the state and supported by a majority.\textsuperscript{22} The South Australian Constitution requires only an absolute majority of the members of both houses to legislate the abolition of the state’s system of local government.\textsuperscript{23} The fact that the other states do not expressly mention system-wide abolition does not mean that their hands are tied.

In Victoria, for example, it is quite easy to change the constitution. Most parts can be altered by a majority vote in both houses. The remaining parts of the constitution, including the section referring to the system of local government, require only an absolute majority of both houses, a slightly more onerous provision but one which is generally available to governments with majorities in both houses. This has the same effect, therefore as the South Australian provision.

In the final analysis, however, the most telling factor is the general law-making power vested in each state parliament. This general power, like Dillon’s rule, subordinates
local government to the authority of state parliaments. It was referred to by Tadgell in the case of South Melbourne v Hallam, discussed above, when he cited the dictum that:

*Municipal corporations are mere instrumentalities of the State for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged or entirely withdrawn, at its pleasure.*

Legislated Powers of General Competence

Notwithstanding the constitutional subordination of local governments to the states and their dependence on state legislation for their powers, duties and responsibilities, some commentators have noted evidence of progress in the status and authority of local government during the 1990s. In both major books on Australian local government published in the latter part of the 1990s, several articles express optimism. To cite just one:

...there was a fundamental shift in the perception of local government’s roles and functions from ‘managing’ to ‘governing’...In most cases the states have granted councils more autonomy and responsibility for planning and managing their local areas. For example, in most states the changes to Local Government Acts have given councils general competence powers that enable them to do what is necessary to better meet local community needs and aspirations.

It is true that for most of the twentieth century, local government legislation was proscriptive; any function not expressly granted was prohibited. It was also meticulously prescriptive, with every aspect of the council’s business set out in huge acts, generally amongst the most extensive in the statute books. As state governments left the era of public administration for that of public management and modernisation, their legislative tools were redesigned to assist in “steering not rowing”. Although, in Australia, this period may be seen to have begun in the 1970s and intensified in the 1980s, as far as local government “reform” is concerned, it reached its zenith in the 1990s. The conferral of powers of general competence, or the power to take any action not expressly forbidden, came with a veritable avalanche of other legislated and cultural changes, including far more rigorous reporting requirements and various forms of intervention, of varying degrees of intensity. Thus assumptions that these powers truly enhanced local governments’ autonomy or, calling to mind Clark’s
theoretical construct, offered local government the power of initiative, is somewhat naïve. 29

To begin with, these powers of general competence, consisted of the states (except New South Wales) giving local governments the general entitlement to provide for the “good government” of their districts. 30 In all cases, however, the states continue to support bureaux – offices or departments of local government – whose role is to oversee the operations of local governments and to formulate or implement policy concerning local government. Policy initiative is expected to come from the state and local governments are expected to respond. A particularly telling example is the state of Victoria.

- Realpolitik and General Competence
  This state’s Local Government Act 1989 was promulgated by a Labor government which used the slogan Greater Autonomy + Increased Accountability + More Public Involvement = New Local Government Act. In general, the government was fairly well-disposed towards local government and, in consequence, took certain measures to strengthen the institution. Its extension of the franchise to residents (including persons who were not citizens) was one such measure, as was the broadening of local government’s remit through the legislation. Yet, notwithstanding these moves, the legislation remained highly directive in a number of areas.

The procedure for making a local law, for instance, required giving notice, not locally, but twice (before and after) in the state Government Gazette and for a copy of a newly made law to be sent to the responsible Minister. 31 Each council was also required to provide to the Minister an annual report including a report on its operations and a financial statement. 32 Ironically, the power to provide for the good government of its district also became a general provision giving the Minister the right to recommend suspension of a councillor or a council to the Governor in Council. 33

Meanwhile, on the level of pragmatic politics, the same state government not only attempted to embark on a state-wide local government restructure, but it expanded its own planning powers, largely at the expense of local government. Plus, when given the opportunity to rationalise planning and policy in the arena of human service delivery by handing this power to local government, which was well-established and
had a long, admirable history in the field, the government refused to act, notwithstanding the general powers available to local government.\textsuperscript{34}

The successor government, a Liberal-National coalition government, elected in 1992 and led by Premier Kennett, from the dominant Liberal party, kept the 1989 Act, including its powers of general competence, but, with the aid of some significant amendments, radically re-shaped the state’s local government system. Even disregarding the fact that councils were dismissed and commissioners appointed to carry out local government functions while 210 councils were reduced to 78, there were interventions across the board, demonstrating the puny character of local governments. Every aspect of local government’s authority was undermined as the property franchise was invigorated, a regime of compulsory competitive tendering was enforced, rate capping was introduced and the role of councillors and management transformed. The power of unelected and commissioner-appointed Chief Executive Officers (CEOs), was enhanced and, at one point, the minister proposed that they might even become the responsible authority for planning matters.\textsuperscript{35} As well, the planning powers still residing with local government were thrown into chaos while a super Department of Infrastructure subsumed the previous departments of Planning, Transport, Roads and Local Government.

A period of minimally regulated property development occurred as a direct result of a drastic overhaul of the state planning system and privatisation of the building control system, previously a local government responsibility. With privatisation came a new centralised regulatory apparatus consisting of a Building Control Commission (BCC), a Building Practitioners Registration Board (BPB) and a Building Appeals Board (BAB). Under this apparatus, private surveyors were given authority to issue permits for buildings and for demolitions while the right to issue planning permits continued to reside with local governments. The regulatory gap allowed surveyors to issue permits for buildings inconsistent with planning permits and it appeared that councils might be liable for the actions of private surveyors. The result of these state government initiatives, which local governments were not able to resist, was the loss of heritage and other buildings of local value and their replacement by unsightly structures and/or overdeveloped sites which distressed neighbourhoods and diminished the quality of their built and living environment. Only the ballot box brought this saga to a conclusion.\textsuperscript{36}
The next and current state government, once more a Labor one, came to office promising to give proper constitutional recognition to local government with which it would work in “partnership” and to abolish compulsory competitive tendering (CCT). While inter-governmental relationships have certainly been better than with the previous government, the so-called partnership is a very unequal one. Compulsory competitive tendering was brought to an end but in its place there came Best Value legislation, clearly adopted from Britain. The Victorian Local Government Act 1989 now includes the following principles:

- All services provided by a Council
- must meet quality and cost standards
- must be responsive to the needs of the community
- Each service provided by a Council must be accessible
- A Council must achieve continuous improvement in the provision of services for its community
- A Council must develop a program of regular consultation with its community in relation to the services it provides
- A Council must report regularly to its community on its achievements in relation to the principles

When questioned about the need for this legislation, one backbencher and member of the ALP local government policy committee explained that, having abolished CCT, the government had to “put something in its place”. In effect, local governments could not be trusted to act in the best interests of their communities. Since then, a Best Value Task Force, which included nominees of local government, has deliberated and carried out a program of consultations. A key issue centred on how and by whom quality and cost standards would be established. As matters now stand, it appears that the Task Force has been disbanded without submitting a final report, the government having announced that it would establish a Best Value Commission to oversee implementation. Local government was not consulted about the personnel of the Commission and it is quite possible that they will be no more than a façade for the state bureaucracy. The approach to be followed is till unclear.

Victorian local governments still live in hope concerning “proper” constitutional recognition. Meanwhile a review of the Local Government Act is underway, with various committees of experts and, in due course, nominees of local government meeting to examine parts of the legislation. While local governments are generally
likely to welcomes the review and will have some opportunity to participate through their peak body, it is clear that the driving force is the state government and its bureaucrats. It certainly would not be happening purely to satisfy the wishes of local government.

- **Community and General Competence**

  As is evident in the Best Value provisions in Victoria (and most definitely so in Britain’s whole “modernisation” program for local government) legislators have seized upon accountability to the community and community participation as key elements of local government. This is something which local governments cannot be expected to have understood themselves, nor trusted to observe without the explicit legislative direction. All the Australian states include such instruction in their Acts, the terms becoming ever more detailed during the course of the 1990s. The most extreme case is the South Australian Local Government Act which is particularly astonishing because during the early 1990s South Australia had moved furthest down the path of “liberating” local governments from heavy-handed state government intervention. A Memorandum of Understanding had been signed between the government and the South Australian Local Government Association (SALGA). This was expected to result in the virtual dismantling of the local government bureau in the state administration, with SALGA, as peak body, taking on most of its research, policy and oversight functions. Changes of government meant that this never quite happened.

  The Act is strong on rhetoric. Notwithstanding the franchise (see above), one of its stated purposes is to enable councils *to act within their local areas as participants in the Australian system of representative democracy.*\(^4^1\) Rather more patronisingly, each council is also enjoined *to act as a representative, informed and responsible decision-maker in the interests of the community.*\(^4^2\) The tone of three lengthy sections, dealing with the roles and functions of councils, is even more paternalistic, listing ways in which a council needs to fulfil its responsibilities to its community. For example, a council is

  - to provide and coordinate various public services and facilities (the services and facilities are then listed)
• to develop community resources in a socially just and sustainable manner
• to provide for the welfare, well-being and interests of individuals and groups within its community
• to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards
• to manage, develop, protect, restore, enhance and conserve the environment and improve amenity
• provide open, responsive and accountable government
• be sensitive to the needs, interests and aspirations of individuals and groups within its community and
• encourage and develop initiatives within its community for improving the life of the community
• seek to ensure that council resources are used fairly, effectively and efficiently
• to provide infrastructure for its community and for development within its area
• to promote its area and provide an attractive climate and locations for the development of business, commerce, industry and tourism

Section 8, further instructs that a council must
• participate with other councils, and with state and national governments, in setting public policy and achieving regional, state and national objectives
• give due weight in all its plans, policies and activities, to regional state and national objectives concerning the economic, social, physical and environmental development and management of the community
• seek to coordinate with state and national government in the planning and delivery of services in which those governments have an interest

Worthy though these many injunctions may be, the imposition of a range of roles and functions which delineates community, regional, state and national expectations is so comprehensive that scope for local initiative and local design is almost non-existent. In the end, not only does the legislation spell out the character of the institution of local government but it also directly shapes the way councils interact with their communities. Local autonomy is doubly undercut, first through local government
directly and then through the limits placed upon communities to shape their own local governing institution and its functions.

**QUEENSLAND, LOCAL DEMOCRACY & LOCAL AUTONOMY**

The test case, in Australia, for the connection between local democracy and local autonomy, is Queensland. This state satisfies my basic test for local democracy. How does it rate with regard to local autonomy? There are some positive features. The Queensland constitution does not give carte blanche to the state parliament to abolish the system of local government. It demands a state-wide referendum to determine the matter. This is firmly democratic and a significant safeguard for the system of local government. It certainly goes much further than the other states.

Legislatively speaking, too, Queensland seems to be at the generous end of the spectrum. It is perhaps an important indication of good intentions that one of the objects of the Local Government Act is to allow a local government to take autonomous responsibility for the good rule and government of its area with a minimum of intervention by the state. Such good intentions are buttressed by the general competence provisions which, in contrast to several of the other states, do not give way to detailed lists or attempt to spell out responsibilities. Instead, the Queensland Act refers to local governments’ legislative and executive roles, enlarging on these as the adoption and implementation of policy, the performance of administration and the enforcement of local laws. The absence of fine detail provides fairly clear evidence of faith in the capacity of councils to determine how to exercise their powers and responsibilities.

Even in Queensland, however, gestures towards granting degrees of freedom are gradually replaced by the iron fist. Local governments, as in the other states, and like other statutory bodies under the control of the states, are directed to produce corporate and operational plans and annual reports. These last are covered under provisions which specify that local governments must comply with ‘Local Government Finance Standards’ set by the Minister. Furthermore Queensland is the state with the most restrictive process for making local laws and depends heavily on ministerial approval. Local initiative is, therefore, seriously constrained. Queensland, for example, is one of
the Australian states which guides local governments through the provision of “model” local laws. The state bureaucracy prepares model laws to cover a range of local activities. Local governments may then adopt these laws for their own local purposes. Some states, like Western Australia, for example, provide model laws but also allow local governments to design their own laws, requiring the same procedure to be used in adopting either a model local law or a locally-designed local law.

In Queensland, while it is possible for a local government to design its own local law/s, the procedure is far more onerous than that involved in adopting a model local law. The only requirement for adoption of a model local law is the provision of public notice. If, however, a local government wishes to make a local law that is not a model local law, it must advise the Minister of the proposal and provide information on whether the proposed law satisfactorily deals with any state interest - mainly whether it contravenes anti-competitive provisions contained in the Act. If consent is obtained the council must then provide public notice and consider submissions. Should the council then decide to continue with the proposal, it must again advise the Minister and obtain approval before the local law can finally be made.

This is supported by the general power held in reserve by the Governor in Council who, by regulation alone, may revoke or suspend any local government resolution or intention which is deemed to be contrary to state interests. Last but not least, is the Act’s establishment of a continuous “independent” process of review of important local government issues, a reminder to local governments that the state neither rests nor sleeps in the performance of its onerous duty of government. For local governments in Queensland, too, democracy may provide the promise of local autonomy but not the performance.

LOCAL DEMOCRACY AND LOCAL AUTONOMY

I have argued above that there is little evidence in Australia that local government represents either local democracy or local autonomy. In doing this, it is evident that the picture I have offered is selective to the extent that I have made my case without discussing all parts of the legislation in the various states. The examples I have chosen have also tended to be more extreme ones. Certainly, as far as the experience of the
1990s is concerned, Victoria was the state where local government was most dismissively dealt with. The other states were much more circumspect in their dealings. Nevertheless, it is worth noting that, during the 1990s, other state governments were less secure than the Victorian state government (this has to do with the disarray in which the Victorian Labor government lost office in 1992 and the succeeding government’s ability to capitalise on this).45 It is also relevant that, even in these other states, reviews of local government were initiated by state governments, leading to considerable organisational change and, in South Australia, Tasmania and, even Queensland, to consolidations under at least some duress.46 Finally, the constitutional and statutory position of local governments formally guarantees that, in each jurisdiction, oversight, direction and intervention are part of the toolkit of the states. This guarantees, I would suggest, that local government is fully integrated into the state systems as a subordinate party.

I have also not touched upon the question of the Commonwealth government/local government relationship, largely because this is a separate story and does not naturally weave into the foregoing tale. Here I will settle for some passing comments to help round out that tale. The Commonwealth government’s significant involvement with local government may be regarded as having begun in the 1970s when, after 25 years out of office, a Labor government was elected to govern the country. This government had radical social policies as well as a desire to embark upon a massive program of urban and regional development. Almost throughout the country, however, it faced hostile state governments. Part of its strategy, therefore, became to foster regional institutions and to bankroll financially strapped local governments.47 A key development was the establishment of untied financial assistance grants to local governments, distributed on the principle of horizontal fiscal equalisation.

Notwithstanding changes of government, these untied grants have continued and been the major single source of non own-source funds available to local governments. Their impact has been significant, not only financially, but because they have ensured the continuation of a Commonwealth-local relationship (for some years now exemplified by the presence in Canberra of the ALGA, the national peak body for local government). Although the states are not by-passed, as in all federal systems, multiple sources of power can increase opportunities for exerting influence and for
power plays. For local government, this seemed to be happening during the 1980s but, by the 1990s, as party politics in Australia appeared to converge through the adoption of neo-liberal agendas and policy paradigms, local government came under pressure from the Commonwealth as well as the states.

First, through the state grants commissions, which were responsible for determining the distribution of the state’s allocation of commonwealth funds, data had to be provided to support a system of national comparative indicators. Secondly, a specific purpose item, providing special assistance to aboriginal communities, was inserted into the general purpose system. Finally, through the states and not directly connected with the financial assistance grants, local governments were made to comply with national competition policy, which was introduced to remove public sector “advantage” over the private sector in the production of goods or services. All of which implies, I would suggest, that Gurr and King’s analysis of the nation state’s relationship with the local state, as exemplified in the United Kingdom, may be applied to Australia as well. Even in federal systems, when the nation state comes under pressure or wishes to exert its authority, it, too, has the capacity to override the local. Of course, this is true in many ways, perhaps the least of which, in Australia anyway, is through its effects on local government.

This brings us to the next unexplored area, which is the question of access and networks. This is an enormous theme, which it will not be possible for me to do more than raise. Suffice to say that in countries where party systems penetrate into the arena of local government, there are more avenues for both access and networks than where parties are more restricted. In Australia, perhaps because local governments have not been important enough, party influence is patchy and, even where it exists, rarely overt or powerful. New South Wales is the one state where party lists can be used and the Australian Labor Party is, I believe, the only party to have endorsed candidates. This does not mean that there are no councillors who are members of political parties, although I would be surprised if their numbers rose to more than, say, 15% of the total. This percentage may have been higher in the 1970s, when it was probably at its peak, defying the commonly-held Australian view that party politics does not belong in local government.
Since the party avenue is not a major one, therefore, the scope for access and networking is limited. Peak bodies gain some access, as do wealthier local governments. In Victoria, the Municipal Association has close relations with rural municipalities, which need to operate collectively, but wealthier metropolitan municipalities see no reason to use the peak body because they can have direct access to the Minister. There are also professional networks, especially amongst engineers, planners and social workers. These flow through the state and local government administrations. On the whole, however, the flow of influence is far stronger from the centre than the other way.

This does not mean that local governments are powerless. Pressure can be exerted from the bottom up, especially when the political environment is unstable. There have been occasions when local governments within states or nationally have campaigned successfully on issues. A recent example has been … road funding, an issue where public opinion can easily be mustered. I would argue, however, that in political systems where constitutional and legislative power conceive of local government as a subordinate body, local autonomy is a chimera. This, I think, is shown to be true not only where democracy is also lacking but also where democracy can be said to exist.

1 Section 106 of the Australian Constitution
2 Section 51(1) Constitution Act 1902 (NSW)
3 Section 54(1) Constitution Act 1867 (Qld)
4 Section 64A(1) Constitution Act 1934 (SA)
5 Section 52(1) Constitution Act 1889 (WA); s 45A(1) Constitution Act 1934 (Tas)
6 Section 74A(1) Constitution Act 1975 (Vic)
7 South Melbourne v Hallam [1995] 1 V.R. 247
10 Australian Bureau of Statistics (ABS), Government Finance Statistics, Cat. No.55
The full story is well told in Lewis, M., *Suburban Backlash – the battle for the world’s most liveable city*, Bloomings Books, Hawthorn, 1999

37 Bracks, S. (Leader of the Victorian Branch of the Australian Labor Party) Speech to the annual conference of the Municipal Association of Victoria, Melbourne, 8 October, 1999

38 Victoria, *Local Government Act 1989, Division 3, Best Value Principles*

39 I am reporting a conversation which I had myself with this backbencher. The same viewpoint was later reported to me by others who had spoken with both ministerial advisers and senior bureaucrats

40 The MAV and VLGA (representing Victorian local governments) have just lifted a ban on transactions with the Minister and the Local Government Division. The ban was imposed as a response to the manner in which the Commission was established and the shortening of the term of the elected
council of the City of Melbourne. With the review of the Act proceeding apace, it was counterproductive for local government not to be at the table.

41 South Australia, Local Government Act 1999, S.3(e)
42 Ibid., S.6
43 Ibid., S.7
44 I have discussed elsewhere the local government reforms of the 1990s and the question of “community”, arguing that the consolidation programs, strategic management objectives and rationalising efforts actually weakened community structures. The paper is to be published in a forthcoming book edited by Helge Larsen and Jan Caulfield.
45 See Costar & Economou, op.cit., passim
46 Refer, for example, to Marshall & Sproats, op.cit., passim
47 For a general coverage of this period, see Head, B. & Patience, A. (eds) From Whitlam to Fraser: Reform and Reaction in Australian Politics, OUP, Melbourne, 1979
The study of central-local government relations presents a dynamic discourse into understanding political and administrative power dimensions and distribution between cen..Â Review Article Open Access. Central-local Government Relations: Implications on the Autonomy and Discretion of Zimbabweâ€™s Local Government. Chakunda Vincent S*. Department of Local Governance Studies, Midlands State University, 9055, Zimbabwe.