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# Globalisation: Perceptions and Threats to National Government in Australia

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## Major Issues

The term 'globalisation' refers to the spread of communication, commercial and transportation networks across the world and the increasing rapidity with which they can move people, capital and produce, and relay information. Multi-state organisations like the World Trade Organisation and the United Nations, transnational corporations like Mitsubishi and Pepsico, and an array of non-government organisations like Greenpeace and Amnesty International are occupying an increasingly significant role in international affairs.

Global transportation and communication networks have facilitated the globalisation of economic, political and social

forces. Nearly everyone who observes the global forces agrees that they affect national governments, communities and individuals. However, disagreement arises over the desirability of the consequences of globalisation and how national governments and communities ought to respond to the changing international environment. Globalisation is claimed to have brought new benefits and possibilities to national communities through opening markets and exerting pressure upon governments that violate human rights. However, it has also been claimed that globalisation disenfranchises national communities by compromising governments' ability to control domestic economic, political and social conditions.

The demonisation of globalisation by some has made it readily attributable as the cause of an array of complaints within national communities. Particular groups, such as those in occupations requiring low levels of skill, perceive globalisation as being responsible for their exclusion from economic benefits enjoyed by the wider community and their alienation from the political institutions through which they are governed.

The more a subject is demonised, the less distinct its character becomes. Debates about globalisation often travel just this path. Globalisation has ended up as providing a catch-all bogey that has the potential to be responsible, through varying degrees of removal, for almost every difficulty one might experience. In this incarnation, concerns about globalisation refer to the alleged power over national governments of an ill-defined constellation of reputedly undemocratic global institutions such as the World Trade Organisation, transnational corporations and international instruments such as the Statute of the International Criminal Court.

Globalisation has been denounced as increasing economic inequality within and between national communities and eroding the sovereignty of states and national identities.

Economically, it has been presented as generating a 'race for the bottom' between national governments as they attempt to attract investment by undercutting competition by offering regimes of low taxation and labour conditions. Together with the liberalisation of international trade, the race for the bottom is presented as contributing to a diminution of public revenue (traditionally raised through taxation and tariff) that limits the ability of national governments to provide publicly funded services to their most disadvantaged citizens.

Politically, the changing scope of international agreements has been instrumental in disrupting the traditional distinction between domestic and international affairs. Since World War Two international covenants such as the International Covenant of Civil and Political Rights have focused increasingly on the condition of domestic populations. The policies of national governments are also increasingly subject to scrutiny by institutions such as the World Trade Organisation. The new domestic focus of international instruments and organisations has given rise to claims that national communities have suffered a 'democratic deficit' in that governments are no longer responsible solely to their national constituencies but to the institutions of a wider international community.

Socially, increased population movements and the rapidity of communication of information have been held responsible for eroding established national identities. Those who feel economically disadvantaged and politically disenfranchised by globalisation may also feel isolated from their traditional communities as they are subject to increasing immigration and the images and products of transnational corporations.

For any one or combination of the above reasons, globalisation has generated determined and sometimes violent opposition, as is evident in anti-globalisation protests such as those of Seattle, Davos, Prague, Melbourne and most recently Genoa. Globalisation has also provoked anti-trade liberalisation blockades such as those by French farmers and attacks upon what have become global icons such as McDonald's outlets.

Other incidents may not refer directly to globalisation, but manifest a hostility to the increasingly cosmopolitan character of society that has come as a result of the increased movements of population across the world. Anti-immigrant and anti-immigration parties are enjoying relatively high levels of media attention and, in some cases, electoral success in Europe and Australia.

Because of its small population, its reliance on trade and foreign capital for development, its federal and parliamentary system of government, and perhaps its colonial history, the challenges accompanying globalisation affect Australia in a specific way.

Anti-globalisation sentiment has featured in the Australian political landscape with the rise of groups such as the Citizens Electoral Council of Australia, Australians Against Further Immigration and more recently Pauline Hanson's One Nation Party. Disillusionment with the way in which the Government has responded to globalisation was also among the reasons cited by Bob Katter (Independent, Kennedy) for his recent resignation from the National Party.

Concerns have been voiced in the Australian community about the economic, political and social affects of globalisation.

Foreign takeover bids of Australian owned concerns, and the ability of global suppliers to deliver what are considered satisfactory services to remote and rural consumers and provide adequate labour conditions, have raised suspicions in affected communities. The increased impact of treaties upon the domestic affairs of national states has not only given rise to the usual claims that they erode sovereignty, but have also generated concerns that treaty making has compromised the practices of responsible government and federalism in Australia. Australia's colonial history and its refusal, for a substantial period of its history, to engage with its region may have provided a tradition of cultural isolationism that further contributes to suspicions of globalisation.

Responses to the concerns of those who are hostile to globalisation need to show which concerns are not attributable to globalisation, and which concerns may involve globalisation. The responses need to explain the limits globalisation imposes on national governments and suggest strategies by which governments may maintain and promote national interests in an increasingly global world.

Governments can be candid in acknowledging that globalisation poses new challenges in avoiding disadvantages it might impose upon some industries and some sectors of the workforce as well as the danger of Australia being reduced to a 'branch office' country. However, they need to argue that Australia's disengagement from an increasingly global world is likely to create more severe problems than it solves. Community concerns about globalisation can be allayed by observing the necessity for Australia to keep abreast of the latest technological developments that are achieved through mergers of Australian and overseas concerns and a selective immigration program. Governments need to show that they are actively formulating and implementing policies that respond to globalisation, for example by encouraging a more highly skilled and educated workforce.

The most serious concerns about the effect of globalisation upon Australia claim that it erodes sovereignty and the ability of the government to represent the national interest. These claims are largely unsupportable. National governments are free to enter into and withdraw from international agreements and agencies such as the United Nations and the World Trade Organisation as they see fit. Participation in these institutions is itself an act of sovereignty.

More specific concerns have been raised in Parliament that entry into international treaties has compromised the practices of responsible government and federalism. However, these claims are subject to qualification. The passing of the *Administrative Decisions Act 1999* as well as the implementation of a number of procedural reforms to the practice of making treaties, such as the establishing of the Standing Committee on Treaties, has shown that the Commonwealth Government is committed to maintaining accountability to the Parliament. The threat posed to federalism by the implementation of treaties via the external affairs power must also be qualified by observing potential checks on the power of the government by the High Court, the Parliament and the federal character of Australian political parties.

Finally, concerns that globalisation erodes established national identities and results in tension between ethnic groups should be qualified by observing the past and continuing importance of immigration in Australia's history. Many of the concerns that arise from a perception a national identity under siege can be put to rest by observing that population movement is a principal means of gaining (as well as disseminating) skill in a global world.

This paper seeks to explain and address the sorts of concerns outlined above by setting out the character of the driving forces behind globalisation, the constitution and function of global institutions and their limits in relation to national governments. Explanations of what globalisation is and its affect on national governments and communities can begin by pointing out that it is not a new phenomenon (although contemporary globalisation has a number of distinctive features such as the emergence of institutions that support a global civil society). Presentations of globalisation as an entirely negative force can be qualified by referring to the advantages that flow to Australia from foreign investment, the liberalisation of trade and advances in technology and a society that is open to individuals enjoying new experiences and tastes.

## **Introduction**

This paper begins with perceptions. It does not attempt to give a comprehensive account of the benefits and deficits that accompany globalisation. Rather it explains (without seeking to explain away) some of the concerns that have been raised across the Australian community and within the Commonwealth Parliament about the challenges that globalisation poses to national interests, security and national identity and surveys possible responses to these concerns. These concerns are manifest in debates surrounding the limits that globalisation imposes upon governments' ability to represent the interests of national communities.

After outlining some of the perceived threats posed by globalisation to national governments in general, the paper investigates how global forces are presented as affecting Australia in particular. For instance, the problems that globalisation is presented as raising for a country with a colonial history, small population and large territory that possesses a federal system of parliamentary government.

Thus the inquiry begins with an examination of some of the perceptions of how globalisation has affected nation states in general and what might be called the 'external' side of Australia's sovereignty. However, the paper does not pursue questions of how Australia has fared as a 'middle-power' in the changing international and regional environment and what strategies might be employed to take advantage of (or at least not be disadvantaged by) globalisation. Instead, it considers the domestic implications of these global forces. In a forthcoming companion paper, to be prepared by Professor Stuart Harris, a fuller exploration of the effect of globalisation on the external side of Australia's sovereignty will be undertaken.

This paper identifies communities that perceive themselves, or are perceived by others, as disadvantaged by globalisation and explains how these disadvantages are attributed to globalisation. It concludes by setting out some of the limits that globalisation imposes on governments and the areas in which they can act in responding to concerns about the disadvantaged sectors of the community. It suggests that a national government in Australia's position cannot withdraw from the world but must engage with the world. However, governments need to re-assure communities by explaining why they are engaging with the increasingly global world in terms of the advantages that accompany engagement and the limits that engagement imposes on them.

## **Globalisation**

Before outlining the ways in which globalisation has been considered as posing a threat to national governments and the communities they represent, we need to be clear about the character of globalisation itself. Definitions of globalisation abound, constituting a seemingly interminable set of variations on a theme.<sup>(1)</sup> The variation in definitions of globalisation reflects differences in the range of phenomena covered by the term (that is, whether globalisation refers narrowly to economic forces or is extended to include social and political matters), and the attitude of the speaker to globalisation.<sup>(2)</sup> This paper employs a broad definition of globalisation that includes economic, social and political aspects.

Globalisation exhibits five key features:

- first, globalisation is most usefully employed as a descriptive rather than a prescriptive term.<sup>(3)</sup> Whilst globalisation is often used as a prescriptive standard to indicate either approval or disapproval, this paper will use the term simply to describe what is happening. Thus, globalisation does not designate some desirable or undesirable end to be embraced or avoided. Instead, the term refers to a set of social, political and economic forces that have been more or less pronounced for as long as there has been international trade and the international exchange of ideas and cultural practices. These forces have become increasingly prominent over the latter half of the twentieth century.
- second, while the term 'globalisation' is relatively new, the phenomenon it designates is not.<sup>(4)</sup> Civilisations have understood themselves as occupying a stage of global proportions from the empires of China, Persia, Alexander of Macedon and Rome to the modern British, Spanish and French empires. These previous periods of globalisation have involved cultural imperialism and economic exploitation of one community by another. A distinctive feature that has accompanied globalisation since World War Two is the emergence of a global civil society consisting of

states and non-governmental organisations that is held together by a series of multilateral treaties.

- third, globalisation encourages and is facilitated by the emergence of institutions that transcend the authority and power of individual states. Global institutions do not represent states and, as institutions, they are held accountable by states sometimes only with great difficulty. So, in a global world, states are no longer the exclusive (and in some cases they are not even the primary) actors in international affairs. Other types of actors can be of equal and at times greater significance than states in the international arena. These include:
  - non-government organisations like the International Federation of Red Cross and Red Crescent Societies, Amnesty International and CARE
  - environmental movements like Greenpeace
  - transnational corporations like General Motors, Nestle and Unilever
  - ethnic nationalities like the National Council of Timorese Resistance, and
  - multi-state organisations like the European Union, Asia-Pacific Economic Co-operation forum and the United Nations.
- fourth, in a global world the performances of international and domestic actors affect a relatively large field of other actors because of the growing number of economic, political and communication networks. The fortunes of domestic economies are increasingly interdependent and subject to movements of international investment. The levels of international scrutiny of the condition of populations within states and the opportunities for international actors to influence domestic policy that affects these populations are greater than at any other time in the modern era. In addition, the increase of global communication and transportation networks has made national borders more permeable to the movements of persons, goods and information, and
- fifth, international relations are not only more expansive in a global world, they are also more intensive. There are not only greater numbers of actors and networks affecting one another but the impacts of these actors upon one another are qualitatively greater than in the past. For example, the permeation of Western culture into non-Western countries through global media networks and the products and images of transnational corporations, and population movements from non-Western to Western countries have changed fundamental cultural habits such as religion, leisure, cuisine and levels of technology.

The first and second of the above points identify globalisation as a phenomenon that demands a response-whether or not it is approved. Globalisation is a fact, and is thus neither a mere aspiration nor an illusory bogey. To proceed either as if global forces did not exist, or to accept them as an unalterable fate are equally untenable positions.<sup>(5)</sup> The third point recognises that in a global world, states share the international stage with other types of actors-international affairs are becoming less 'state-centric'. The fourth and fifth points refer to the unsustainable character of the traditional distinction between domestic and international affairs. Globalisation emphasises the international consequences of domestic policies and the domestic ramifications of international events. It entails 'the localisation of global forces and the internationalisation of domestic issues'.<sup>(6)</sup>

This paper focuses on the third, fourth and fifth characteristics of globalisation. It examines the validity of claims that the blurring of the distinction between international and domestic affairs has fundamentally altered chains of responsibility that extend between national communities and their governments.

## **Responses to Globalisation**

The blurring of the distinction between international and domestic affairs has been welcomed in some quarters as promoting world peace, human rights and prosperity, and rejected in others as constituting the principal threat to democracy, freedom and economic wellbeing. Those who welcome the changes that accompany globalisation may be described as adopting a 'cosmopolitan' position, and those who reject these changes may be described as adopting an anti-cosmopolitan position.

Both of these responses accept the first of the features of globalisation outlined above-it is a phenomenon that is, at least in part, capable of being responded to and requires a response. To assume that globalisation is completely beyond the control of national governments would be to deny that there is any point in forming a view of this phenomenon let alone responding to it. However, each of the responses differs from the other, both in the character it ascribes to globalisation and the replies they recommend be made to it.

### **Cosmopolitanism**

Advocates of cosmopolitanism argue that the most effective, and possibly the only, way of dealing with the problems of globalisation involves the building of, and participation in, global institutions. However, they disagree over precisely how far these global institutions ought to supplant the sovereignty of the state.

### **Unreserved Cosmopolitanism**

Those who welcome globalisation do not necessarily argue that all is well with the world or that the world is inevitably heading towards a global utopia. They acknowledge the existence of many of the problems identified with globalisation. For instance, they may accept that global economic institutions such as transnational corporations, the World Bank and the International Monetary Fund are powerful without being accountable to those whose lives they affect. They also accept that political institutions beyond the control of national communities can influence communities without being answerable to them, as has been the case in the European Union.

Unreserved cosmopolitanism argues that the problems attributed to globalisation actually occur as a result of having not fully accepted and embraced the increasingly global character of the world. It expresses suspicions at the identification of sovereignty with the interests of national communities, observing that representatives of states are among the worst violators of human rights, and it identifies the cause of large-scale poverty in corrupt political elites.<sup>(7)</sup>

Unreserved cosmopolitanism argues that transgressions against human rights and global poverty are most effectively

addressed as international institutions. These institutions must possess the necessary authority and power to police abuses of human rights and ensure the distribution of goods. The logical conclusion to this view is a world government that may rely on national governments to administer policies but which holds authority over states.<sup>(8)</sup> A world government would reflect and facilitate a world economy in which the movement of labour would be as little restricted as the movement of capital today.

Even well intentioned, national responses to global problems such as environmental degradation and resource management, poverty and population movements and the spread of disease are viewed as not being effective.

The futility of attempting to address global problems at a national level is, in the unreserved cosmopolitan view, perhaps most explicit in the case of resource management and environmental degradation. The argument is a variant of Hardin's famous 'Tragedy of the Commons'.<sup>(9)</sup> Hardin argued that where there is a common unpriced resource, individuals are motivated to unsustainable practices. This is so because for every unit of personal gain, an individual incurs only a fraction of the cost, which is collectively shared. The knowledge that other individuals are also rational maximisers only increases the urgency to exploit the common resource. Hardin concluded that privatising the commons was the only way of bringing collective costs to reflect individual gains. A system of global private property would require global legislative, administrative and judicial institutions.

An unreserved cosmopolitan response to the degradation of global commons such as the atmosphere, oceans and fisheries might propose strict controls on emissions such as those concluded at the Kyoto Summit in 1997. It might also note, however, that the ill-fated result of the Kyoto declaration typifies the inability of sovereign states to act collectively to address global problems. In this instance the United States withdrew from the agreement because the lack of emission restrictions applied to developing countries was construed as compromising its national interest. A world government is said to be the only institution capable of ensuring compliance to international standards by individual sovereign states. However, this point ignores some very significant international achievements without world government such as the Montreal Protocols of 1987, 1990 and 1992.

### **Cautious Cosmopolitanism**

By contrast, there is a version of cosmopolitanism that adopts a more cautious approach to globalisation. It welcomes some of the developments that accompany globalisation while rejecting others. Rather than embracing globalisation in all its facets, it distinguishes between desirable and undesirable aspects. However, there is no universal agreement on which aspects of globalisation are desirable and which are not. On the one hand, industry and business organisations that embrace the opening of markets as increasing consumer choice and lowering the price of commodities, may also express reservations at multi-lateral treaties subjecting their activities to international environmental standards. On the other hand, labour organisations that demand the recognition and adoption of international conventions on human rights as progressing social justice may deplore the global market's ability to take advantage of poor labour conditions.<sup>(10)</sup>

Cautious cosmopolitanism's qualified support of globalisation has made it vulnerable to charges of inconsistency. For instance, there have been a number of observations pointing to the paradox of attempting to establish a worldwide movement against globalisation.<sup>(11)</sup> The organisers of the so-called anti-globalisation demonstrations in Davos, Seattle Melbourne and most recently Genoa relied on global communications networks to exchange information and strategies all the while deploring global economic institutions. However, these paradoxes ignore distinctions made by significant sections of the demonstrators between elements of globalisation they found desirable and those they did not.<sup>(12)</sup>

The more pressing question for cautious cosmopolitanism is whether it is feasible to distinguish between desirable and undesirable elements of globalisation as if one could take the good without the bad. Is it reasonable to suggest that we could have global human rights without the same forces giving rise to a global market place, or vice versa?

Cautious cosmopolitanism differs from unreserved cosmopolitanism in arguing that states are important in maintaining national interests. However, while accepting the importance of the state, it argues that states need to cooperate with one another in addressing problems that occur on a global scale. Cautious cosmopolitanism tends to talk in terms of the importance of an emerging global civil society, consisting of states and non-government organisations that is held together by a framework of norms supported by international covenants and treaties, rather than world government.<sup>(13)</sup> States should be considered sovereign at the national or territorial level, but it is not unreasonable to exert pressure upon them to behave as good international citizens.

### **Anti-Cosmopolitanism**

Anti-cosmopolitanism is by far the most vociferous of the responses to globalisation. It declaims globalisation as a threat to national identity, political sovereignty and national economic interests. However, within anti-cosmopolitanism there are degrees of views in the supposed character of the threats posed by globalisation and the proposed responses to this phenomenon. In its extreme forms, anti-cosmopolitanism embraces xenophobia and global conspiracy theory. Examples of the most extreme expressions of anti-cosmopolitanism can be found in:

- the blaming of an international conspiracy of Jewish financiers for Malaysia's economic problems by the Prime Minister, Mahatir Mohamad<sup>(14)</sup>
- the conspiracy theories about the threat posed to the sovereignty of states by a world government often embodied as the United Nations by individuals like Lyndon Larouche and various militia groups in the United States,<sup>(15)</sup> and
- the anti-immigrant policies of the National Front in France and the British National Party in the United Kingdom, and the pro-Nazi and allegedly anti-Semitic outbursts of the leader of the Freedom Party in Austria, Joerg Haider.<sup>(16)</sup>

More moderate expressions of anti-cosmopolitanism voice the same concerns as those of its extreme but deprecate overtly racist rhetoric and international conspiracy theory. 'Moderate' anti-cosmopolitanism supports protectionist economic policies on the grounds of national interest rather than international conspiracy, it is suspicious of agreements that place international obligations upon the state, and supports policies of cultural assimilation rather than racial exclusion as the foundation of national identity.

Both versions of anti-cosmopolitanism present a common view of globalisation as consisting of a set of dangerous and potentially uncontrollable forces that disempower communities by disabling the state's power to order its domestic economic and political arrangements and protect established national identities. In this incarnation, globalisation explains the circumstances of individuals who feel increasingly alienated from the economic and political institutions through which they are governed as well as isolated from civil society at the national level.

Rather than engaging with global forces in an attempt to bring them under some sort of control, anti-cosmopolitanism seeks to withdraw behind and reinforce a field of national barriers. On this understanding, building and participating in global institutions disempower the one institution that is capable of protecting the identity and interests of national communities: the national state.

The statements of anti-cosmopolitan groups are often grouped together and dismissed as outlandish and morally repugnant by using extreme forms to discredit its more moderate expressions.<sup>(17)</sup> However, the two versions of anti-cosmopolitanism should be distinguished. Attempts to conflate them, far from tarnishing moderate versions, may merely contribute to the impression among those who believe themselves to be disadvantaged by globalisation that they are misunderstood by an out of touch elite.

### **Perceptions of Globalisation as a Threat**

The following section outlines the rationale behind the views of those who understand globalisation as posing a threat. It has been argued that those who are hostile to globalisation have a far greater impact on the political landscape than those who are not.

A statement made in the United Kingdom by the Liberal Democrat spokesman on Trade and Industry, Vincent Cable, points to why voices hostile to globalisation require more urgent political attention than other views. Cable states that: 'The beneficiaries of globalization are likely to be much more numerous than those who are disadvantaged but perhaps less aware of the diffuse benefits they enjoy'.<sup>(18)</sup> This passage contains a two-part claim. First, the beneficiaries of globalisation are likely to be more numerous than those who are disadvantaged. Second, regardless of the overall numeric proportions of those who gain and lose from globalisation, those who are disadvantaged tend to experience more acute levels of decline (or at least feel their loss more keenly) than the levels of benefits accrued by those who gain.

Their constituting a smaller proportion of the community may compound the sense of loss experienced by those who feel themselves disadvantaged as their situation does not reflect the fortunes of the wider communities to which they belong.<sup>(19)</sup> Under these circumstances, those who believe themselves to be disadvantaged as a result of globalisation can be expected to have greater prominence in the formation of community views on globalisation than those who do not. Despite, or even because of, their smaller numbers, those who feel disenfranchised are likely to find the issue of globalisation more important than the majority who enjoy its benefits but hardly notice them. They also constitute a readily identifiable audience for those who may not feel themselves disadvantaged by globalisation, but disapprove of the changes they attribute to it.

The following section sets out the character of the perceived disadvantages of globalisation in greater detail and explains how these disadvantages are attributed to globalisation. The three areas in which globalisation has provoked the loudest condemnation are:

- compromise of national economic interest
- compromise of sovereignty, and
- compromise of national identity.

#### **Compromise of National Economic Interest**

Concerns about the compromise of national economic interest refer to the belief that in a global world the state is less able to represent the economic interests of the national community because of the liberalisation of trade, the financial strength of transnational corporations and the international mobility of capital. These concerns have generated demonstrations such as those by French farmers opposing the removal of protective tariff barriers, and claims such as those by the Australian Manufacturing Workers Union for 'fair' rather than free trade.<sup>(20)</sup>

Economic globalisation refers to increasing interdependence between domestic economies and a greater degree of dependence of these economies on investment from transnational corporations. Economic interdependence does not simply refer to increases in the volume of international exchange between states. It involves the raising of capital in one or more countries to support production in others, and the spreading of the production of commodities across any number of countries. The global character of investment and production reflects and has been facilitated by an increase in the international mobility of capital and trade liberalisation.

The increased international mobility of capital has been facilitated by a revolution in information technology that allows for immediate communication across the globe. The electronic revolution has allowed transnational corporations to establish operations with multinational bases, giving them the ability to transfer activities and resources across state boundaries on a large scale.

The ease with which capital can move across national borders opens the possibility that the benefits of investment will be lost if capital is withdrawn from one domestic economy to a more lucrative or promising site. The loss of investment results in unemployment and deprives governments of revenue from taxation. It is argued that in these circumstances national governments are encouraged to discard tariffs and implement regimes of low taxation on capital and flexible labour conditions in order to attract investment.

This situation is held responsible for generating a global 'race for the bottom' between national governments as each undercuts the taxation and labour conditions offered by others. As national revenue decreases so does the power of the state to provide assistance to its citizenry through the public funding of welfare, education and health programs. The diminution of public revenue caused by globalisation has been presented as one of the conditions contributing to the withdrawal of the state from public enterprises.<sup>(21)</sup> The state can no longer afford to provide services, inducing it to sell

public utilities.

The consequences of a global race for the bottom are alleged to contribute to an increasingly unequal distribution of wealth between and within national communities.<sup>(22)</sup> Globalisation encourages skilled labour to become more internationally mobile seeking out areas of high investment and reward-what, in countries that cannot sustain these conditions, has been called the 'brain-drain'. As governments seek to maintain the provision of public services while attracting international investment and skilled labour, the burden of taxation is shifted from mobile capital and skill to less skilled labour that is relatively immobile.

### The Compromising of Sovereignty

The second aspect of globalisation on which critics focus is the impact of global forces on the sovereignty of the state. The sovereignty of the state is claimed to be threatened by two developments associated with globalisation. The first is the emergence of global crime.<sup>(23)</sup> The second refers to the changing character of international law and instruments such as treaties and the increasing importance of non-government and multi-state organisations in scrutinising the domestic policies of national governments.

### Global Crime and the Integrity of Borders

Concerns have been raised that criminal networks stretching across the globe are involved in the illicit transportation of people, goods, money and information. These networks are becoming increasingly more sophisticated following advances in global communication and transportation networks.

These concerns are supported by Australia's direct experience of the results of the growth of people smuggling networks with the arrivals of illegal immigrants in particular from Western Asia and the Middle East on its north western coastline. The influx of new arrivals from increasingly far-flung countries of origin imposes greater burdens upon governments in protecting their physical borders. It also means that countries could find themselves attempting to establish regimes in the treatment of illegal arrivals that deter further arrivals.<sup>(24)</sup>

The problem of border security is also raised in relation to the transportation of goods. The amounts of contraband goods that gain entry undetected are difficult to estimate but an increase can be assumed as levels of detection rise. The movement of illegal narcotics from Central and South America to the United States has reached such high levels that it has launched offensives against drug cartels within the countries from which the illegal trade originates.

In addition to the organised smuggling of goods, it can be argued that national authorities are faced with a less deliberate threat to the integrity of their borders through the increase in the accessibility of international travel to greater numbers of people. In Australia greater movements of people increase the threat of disease such as HIV/AIDS being imported by travellers (both domestic and foreign) who tour high risk infection areas such as South East Asia. Also of concern is the inadvertent importation of agricultural disease such as foot and mouth (livestock), fire blight (apples and pears), black sigatoka (bananas) and white spot virus (prawns).<sup>(25)</sup>

The ability of governments to police national borders appears to have become increasingly difficult with regards to information transferral because of the electronic revolution. For example, the detection of world-wide paedophile rings who trade in images of child abuse have posed a major challenge to national governments.<sup>(26)</sup> Transmissions of pornography into European countries have proved to be beyond the ability of governments to control once they have allowed technology that will receive transmissions.

### Treaties

The second set of concerns about globalisation's threat to sovereignty refers to the increasing pressure on national governments to implement legislation that satisfies the international community. National governments are represented as being increasingly subject to attempts to impose standards set out in multilateral treaties, for example the failed Multilateral Agreement on Investment and various international declarations on human rights and environmental standards. They are also subject to increased scrutiny and criticism by international organisations such as the World Trade Organisation, the United Nations Human Rights Committee and Amnesty International.

On a traditional understanding of international relations, focusing upon treaties reinforces the centrality of states and national interests in international relations.<sup>(27)</sup> Treaties are made between states for the benefit of states. They seek to secure peace between states rather than provide the grounds for international criticism of states' domestic arrangements. In a state-centric world, treaties are a means of protecting sovereignty.

However, since the conclusion of World War Two as treaties have proliferated, so their scope has changed. Multilateral agreements, such as the International Covenant on Civil and Political Rights 1966 (ICCPR), have come to refer to the domestic conditions and affairs within states. Besides regulating diplomatic relations between states, treaties can impose domestic political, economic and environmental obligations upon states. Recent proposals to ratify the Statute of the International Criminal Court have provoked fears that national governments may even lose the right to judge service personnel in their armed forces where war crimes and abuses of human rights are alleged to have occurred.<sup>(28)</sup>

The changing character of international agreements, conventions and treaties is claimed to have been instrumental in the disruption of the distinction between domestic and international affairs. International law is 'no longer exclusively concerned with relationships between nations, it now penetrates formerly sacrosanct borders and concerns itself with domestic affairs and individual human rights within nation States'.<sup>(29)</sup> Because of the increased impact of treaties upon domestic affairs, the practices of signing, ratifying and implementing treaties and other international agreements has become a subject of some controversy.

The new focus of treaties on the domestic policies of states has given rise to claims that communities suffer a democratic deficit when their national governments enter into treaties.<sup>(30)</sup> Claims of a democratic deficit charge treaties with disrupting the chain of responsibility between democratically elected governments and their national communities by introducing powerful international communities of finance and diplomacy to which the governments are also responsible. Yet many international organisations, such as the World Trade Organisation and the International Monetary Fund to which governments become obligated, are not democratic institutions in that they are not elected by or representative of

national communities.

## The Erosion of National Identity

The third area of concern raised by critics of globalisation is that global forces erode the social cohesion that is essential to maintaining national communities. Two ways in which globalisation is claimed to place pressures on national identity are the increased mobility of populations across the globe, and advances in global communication networks.

### Population Movement

Major international movements of population are not new. The British colonisation of Australia was itself part of a greater migration of European peoples that occurred with particular determination and vigour from the seventeenth century onwards. However, contemporary movements of population are distinctive in both the increased numbers and increased distances that people can travel over a given period of time.

Movements of population in the contemporary world are claimed to have been stimulated by an increasing gap between the high standards of living enjoyed in Western or 'Northern' countries and the low standards of living in non-Western or 'Southern' countries.<sup>(31)</sup> Claims of higher standards of living in the West do not just reflect the economic affluence of the West, but the relative political stability of established liberal democratic states in the West as opposed to newer post-colonial states.

The increasingly multicultural nature of cities in Western European countries which have traditionally not perceived themselves to be countries of immigration has shaken notions of national identity and given rise to expressions of xenophobia and even outbreaks of racist violence. Public hostility to apparently unregulated (and apparently unstoppable) inflows into Western European countries has made it difficult for governments to gain public acceptance for the sorts of managed migration programs they now want to introduce to fill skills shortages.<sup>(32)</sup>

The increase in population movement has provoked concerns that communities that once possessed clear standards and accepted cultural practices and beliefs must now accommodate ever-increasing numbers of people with diverse cultural practices and beliefs. The rapidity of change encourages individuals to look introspectively to that with which they are familiar rather than establishing links of civility with new arrivals. Wider civil society can be disrupted as individuals form associations that are closed to those who do not share common cultural practices and beliefs.<sup>(33)</sup>

While extreme reactions to increased population movements may assume a tone of racial or, more commonly, cultural superiority, more moderate responses claim that new arrivals ought to forgo the practices and beliefs of their mother cultures and adopt those prevailing in their new place of residence. One example of this more moderate approach to multiculturalism can be found in Pauline Hanson's acknowledgment that Australia is 'a multiracial country. But multiculturalism will destroy us'.<sup>(34)</sup> It is argued that cultural conformity is necessary in order to maintain a clear set of community values. The alternative is anarchy.

The effects of globalisation on people movements are particularly interesting in the world's largest country of immigration, the United States. Large-scale irregular movements, especially across the Mexican border, have increased the United States' illegal population to an estimated 11 million, and are rapidly changing the demographic make-up of southern states like California and Texas. The United States is also a beacon for the sorts of internationally mobile, highly skilled business and professional people whose temporary movements are associated with economic growth, and for whom Australia, along with other Western countries, is competing.

### Advances in Communication Technology

The second area of concern about the erosion of national identity refers to the pressure of a homogenising (usually American) global culture. The move to a global culture has been promoted through technological advances in the communication of information, for example:

- in the Americanisation of spelling through educational programs such as Sesame Street, computer technology such as spell checks, and advertising
- the indoctrination of an American view of the world through services such as the Cable News Network, and
- the cultural homogenisation that accompanies the extension of a burgeoning American entertainment industry.

The compression of time and space is a phrase that is cropping up with increasing regularity in considerations of globalisation.<sup>(35)</sup> The phrase refers to the world becoming geographically and temporally a smaller place because of advances in the rapidity of transportation of people and goods, particularly in the area of the communication of information.

The electronic revolution in communications technology has provoked concerns about the changes that it brings to cultural practices. Whereas the disadvantages of global population movements have tended to emerge in powerful countries with high standards of living, concerns at the impact of the free communication of information tend to come from less powerful countries. In Western countries outside the United States globalisation is often equated with the homogenising power of American culture, and outside the English-speaking world there are moves to prevent the anglicisation of the French and German languages. Concerns about Western or American cultural imperialism have reached a fever pitch in some Islamic countries. Even commentators who embrace the idea of a global society, for example, Francis Fukuyama's somewhat premature celebration of the 'end of history' realised in the victory of liberal democracy on the world stage, have also lamented the passing of the 'last man'.<sup>(36)</sup>

### A Global Threat to Australia?

Concerns about the impact of global forces upon particular countries are as varied as the diversity of their specific geographical and historical conditions. Concerns at the impact of globalisation may vary because of differences in:

- the size of territory, population and resource richness
- the size and type of economy-whether primary, manufacture or service based, the levels of regulation of the



domestic market, and openness to trade and foreign investment

- the type of government-whether democratic or one-party, parliamentary or presidential, and federal or unitary, and
- history.

The following section outlines some specific features of Australia's geographical and historical circumstances that have shaped claims of globalisation's unfavourable impact upon the economy, political system and national identity.

#### Economic

The possession of a small population and resource-rich territory has meant that the development of the Australian economy has relied upon foreign sources of capital, either by loan or investment, together with trade, as a means to resource development. Because of this reliance and its small population some commentators have argued that Australia is in danger of becoming a 'branch office' country.<sup>(37)</sup>

Perhaps because of its small size, the Australian community is capable of exhibiting significant disquiet in the event of foreign takeover bids for companies that produce what have become iconic Australian brands such as Tim Tams and Toohey's. Takeover bids have generated 'Buy Australian' campaigns, such as that run by Dick Smith. Public pressure has also been brought to bear upon governments to block foreign takeover bids of Australian owned corporations such as that which prevailed upon the Howard Government's decision to block the attempt by Shell to purchase a controlling share of Woodside in April 2001. The obverse of foreign investment moving into Australia has also attracted public condemnation when Australian companies have moved their production offshore. This was the case when Pacific Dunlop, the manufacturers of brands such as King Gee, Yakka and Glo Weave, moved its operations to South Pacific states.<sup>(38)</sup>

A recent example of the Australian community's frustration at the inability of the government to secure what it considers a 'fair' price for an imported commodity has been expressed over the rising price of oil products. This frustration has been echoed on all sides of Parliament.

#### Political

### Global Crime

The pressures that globalisation places upon national borders are argued to be more keenly felt in a country that enjoys a high standard of living together with a large territory and a small population, such as Australia. Economic affluence and opportunity, and political stability have made Australia an attractive destination for populations with lower standards of living. Australia's high standard of living also provides a lucrative market in contraband goods such as narcotics.

Australia's small population and extensive landmass means that it has vast tracts of remote territory. This condition may appear to facilitate the entry of unauthorised persons as remote areas become accessible through advances in the global networks of crime organisations involved in people and drug smuggling. The smuggling of native species and archaeological relics out of Australia is also facilitated by these conditions.

### Treaties

Concerns about the way Australia enters into treaties and the ramifications of these treaties upon domestic conditions within Australia have been raised within Commonwealth and State Parliaments and across the wider community. Besides the concerns that treaties erode sovereignty that are general to all national governments, treaty making has provoked charges that it upsets two sets of relations which are definitive of the Australian political system: the practices of responsible parliamentary government and federalism.

#### Responsible Parliamentary Government

No constitutional or statutory provision requires Commonwealth governments to consult with the Parliament before signing, ratifying or acceding to a treaty. However, a signed or ratified treaty does not have the effect of law until legislation is enacted by Parliament. At first glance then, the procedure by which the Australian government makes treaties appears to be in line with the practice of responsible government.

Despite the above schema, concerns have been raised in the community and some quarters of the Parliament that the way in which Australian governments enter into treaties enables them to evade accountability to Parliament.<sup>(39)</sup> These claims become all the more urgent in light of the increasing influence that treaties can have upon domestic affairs.

This concern was brought to a head as a result of the *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 128 ALR 353.<sup>(40)</sup> In this case the High Court accepted that a law enacted by Parliament over-rides the terms of international agreements. However, the Court found that in the event that the domestic law is unclear or it is not clear which domestic law applies to a case, international agreements could be used as signalling the legislative intentions of Parliament. Thus, international agreements could enter into the common law without parliamentary authority in situations where the judiciary perceived a gap to exist in the law.

Concerns have also been expressed at the late point at which Parliament enters into the process of acknowledging conditions set out in treaties. The Australian Democrats' Spokesperson on Foreign Affairs, Human Rights, Overseas Development, Immigration, Communications and the Arts, Senator Vicki Bourne, argued '[we] should accept as a fundamental democratic principle that a government must seek parliamentary approval *before* making a treaty binding upon Australia'. The late point at which Parliament enters into the treaty-making procedure means that its role is reduced to the implementation of detail rather than the formulation of principle.<sup>(41)</sup>

#### Federalism

In cases where federal constitutions specify the jurisdictional authority of provincial governments such as Canada, Germany and Switzerland, international instruments have less impact on the autonomy of the regional governments because the scope of the provincial government's jurisdiction is constitutionally guaranteed.<sup>(42)</sup> However, the Australian Constitution specifies areas of jurisdiction for the Commonwealth leaving residual areas to the States. In Australia

federal authority is not limited by the States' possession of constitutionally embedded areas of jurisdiction.

The authority to make treaties has an impact upon the relationship between the Commonwealth and the States via the external affairs power specified in section 51 (xxix) of the Commonwealth Constitution.<sup>(43)</sup> This clause has been interpreted by the High Court as supporting the extension of the Commonwealth's jurisdiction beyond areas expressly allocated in the Constitution when State legislation is found to be inconsistent with laws enacted to satisfy international commitments undertaken by the Commonwealth.<sup>(44)</sup> The judicial sanctioning of Commonwealth authority beyond its expressly allocated limits has been presented as a substantial threat to a healthy federal system in which the States maintain meaningful functions and responsibilities in ordering their own arrangements.<sup>(45)</sup>

From the early 1980s to the mid-1990s the Commonwealth used the external affairs power to legislate in matters beyond those expressly allocated including the management of land, industrial relations and criminal law.<sup>(46)</sup> The clause has the potential to extend Commonwealth power to other areas such as State electoral law.<sup>(47)</sup>

In a series of high-profile cases the High Court cited the external affairs clause as authorising the Commonwealth to enact its international obligations:

- *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168: The judgement upheld the Commonwealth *Racial Discrimination Act 1975*. The Act enacted conditions required by the International Convention on the Elimination of All Forms of Racial Discrimination 1966
- *Commonwealth v Tasmania* (Tasmanian Dams Case) (1983) 158 CLR 1: The judgement upheld the Commonwealth *World Heritage Properties Conservation Act 1983* that recognised Australia's commitments undertaken in the Convention for the Protection of the World Cultural and Natural Heritage,<sup>(48)</sup> and
- *Victoria v Commonwealth* (Industrial Relations Act) (1996) (with other states intervening) 187 CLR 416: The judgement upheld the amendments to the *Industrial Relations Act 1988* that enacted conditions required by the International Labour Organisation Convention no. 159, the so-called 'Termination Convention'.<sup>(49)</sup>

In each of these cases the Commonwealth argued that the external affairs power (in some instances in concert with other section 51 clauses such as the race and corporations powers) allowed it to legislate in areas that were not expressly allocated as lying within its provenance. The States responded by arguing that the encroachment of the Commonwealth beyond its expressly allocated limits compromised the viability of the States and thus undermined the federal character of the Constitution.

More controversially, the ratification of international agreements can be represented as placing the States directly at the mercy of an international non-government organisation. This situation appeared to arise in 1991 when a formal complaint to the United Nations Human Rights Committee (UNHRC) alleged that Tasmania's criminalisation of sexual relations between members of the same sex infringed an individual's right to privacy.

This complaint was based on the Commonwealth government's ratification of the ICCPR in 1980. Australian citizens still had no recourse to courts for alleged breaches of the ICCPR when the Commonwealth acceded to the First Optional Protocol in 1991. The First Optional Protocol allows individuals to take their grievances to the UNHRC if all domestic avenues have been exhausted in seeking redress of the infringements of rights. As there was no domestic recourse available to an Australian citizen, the complaint was able to proceed directly to the UNHRC.

The Commonwealth responded to the UNHRC's view that the Tasmanian anti-sodomy laws infringed the right to privacy with the *Human Rights (Sexual Conduct) Act 1994* that guarantees the right to privacy in matters of sexual privacy.<sup>(50)</sup> After initially challenging the laws in the High Court, the Tasmanian Parliament reformed its criminal code so that it was no longer inconsistent with Commonwealth law.

### The Threat to National Identity

Australia was a colonial country in which, like the United States, the indigenous population never experienced a post-colonial emancipation as was the case, for example, in Indonesia, Vietnam and India. The cultural practices and values of the primary colonising powers continue to be assumed by many as providing the foundation of social cohesion for the national community.

However, unlike the United States, the Australian population is not large. For a substantial part of its short history Europeans in Australia felt themselves to be in a similar situation to the Europeans in South Africa in being an island of European culture geographically isolated from the mother culture. These feelings of geographical apartness may have contributed to the Apartheid regime in South Africa and the White Australia Policy in Australia.

Some Australians have lamented the fact that the feeling of apartness from other cultures in its region has led to missed opportunities for creating a more prosperous and secure region. However, in terms of those who feel threatened by globalisation, Australia's early history of introversion and rejection of neighbouring cultures may be significant in providing those who feel themselves threatened and disadvantaged by the cultural changes that accompany globalisation with ready made traditions of nostalgia and cultural isolationism.

### Australia's Options

Thus far the paper has detailed arguments that support the views of those who believe globalisation poses a threat to national communities in general and the Australian community in particular. In this final section, the paper qualifies these perceptions. It assesses the validity of concerns that globalisation poses a threat to the ability of governments to represent the interests of their national communities and outlines possible disadvantages that follow from Australia refusing to engage with the world.

### Economic Responses

Perceptions of the threat posed by globalisation to the economic interests of the Australian community are in urgent need of attention. In some cases these perceived threats are simply not attributable to globalisation. In other cases the concerns of those who feel disadvantaged by globalisation can be assuaged or at least qualified by pointing to the far

greater disadvantages of not engaging with and participating in global institutions. In yet other cases the perceptions are sustainable and government can do little by itself to protect the interests of the national community.

### **Myths of the Threat of Economic Globalisation**

Three myths have been propagated concerning the threat posed by globalisation to Australia.

First, claims that powerful transnational corporations erode Australian sovereignty and the government's ability to represent the interests of the national community are not sustainable. There is no clearer evidence of this fact than the Commonwealth Government's decision to block the attempt by Shell to take over Woodside. The Government invoked the *Foreign Acquisitions and Takeovers Act 1975* that allows it to prohibit foreign takeovers that are adjudged to be against the national interest. Governments are certainly limited by economic prudence in the frequency with which they invoke the national interest to restrict foreign takeovers, a point made by the Treasurer, the Honourable Peter Costello.<sup>(51)</sup> However, prudential limits leave the sovereignty of national states intact.

Second, in answering claims that globalisation has inspired a global race for the bottom, it has been argued that investment by transnational corporations is not determined solely on considerations of low taxation and labour standards. A stable social and political infrastructure is also beneficial in attracting investment. Academic Linda Weiss has suggested that the importance of a stable political and social infrastructure may act as an impetus for good governance and possibly a renewed emphasis on the social welfare functions of the state.<sup>(52)</sup>

Third, claims that the gap between the wealthiest and poorest countries is increasing have been challenged on the grounds that the United Nations Development Program's figures used to substantiate these claims are flawed. In 1993 the Statistical Commission of the United Nations acknowledged this to be the case.<sup>(53)</sup>

### **The Disadvantages of Economic Isolationism**

In assessing the economic prudence of invoking the national interest to block foreign takeovers, governments must consider the possibility that such a decision would endanger the advantages, such as employment, that flow from foreign investment. A reputation for restricting international flows of capital may discourage further investment in Australia. Because Australia runs a current account deficit, it requires foreign capital inflows. Furthermore, restrictions on the movement of Australian capital offshore infringe the rights of Australian shareholders to dispose of their property as they see fit.

Claims that globalisation has caused an outflow of skilled labour need to be tempered with the observation that these population outflows are often temporary, and on return the labour has become more skilled for its international experience.<sup>(54)</sup> A case in point is the announcement to return to Australia by Nobel Prize laureate Dr Peter Doherty in July 2001.

Claims that Australia runs the risk of becoming a branch office country as the result of foreign takeover of Australian concerns have also been challenged. The primary argument for encouraging the merger of BHP with Billiton was the greater access to cutting edge technology that this would bring. Engagement with the world ensures that development in Australia keeps abreast of advances in the rest of the world.

Globalisation may contribute to a relative decline in living standards among the less skilled sectors of the labour force in Australia. However, governments have available a number of options in responding to this problem. These options range from direct intervention through the implementation of minimum conditions to the use of taxes and transfers, to assuage this relative impoverishment.<sup>(55)</sup> It has also been argued that globalisation provides an impetus to governments to change the paradigm behind the provision of aid to disadvantaged citizens.<sup>(56)</sup> Rather than direct welfare payments such as income support, governments are speaking of encouraging higher levels of skill in the workforce through education and training programs.

### **Global Limits on Government Activity**

Globalisation leaves significant areas of economic management to government such as determining the national interest and how to protect the most vulnerable members of the community. However there are some areas over which government has little control.

In the case of setting limits on the price of imported commodities such as oil, the Australian government is as limited as any individual consumer in a far greater marketplace. Unilateral actions such as the adoption of policies of price capping and subsidies are counterproductive. Price capping may introduce constraints that make the distribution of products unsustainable as wholesale prices outstrip capped retail prices and subsidies deplete public revenue while returning only marginal relief to individual consumers. Both of these unilateral strategies would have only limited efficacy as they address symptoms rather than causes.

### **Political Responses**

Perceptions of threats posed by globalisation to the sovereignty of Australia and the constitution of its political system, like the perceived threats to its economic interests, have degrees of sustainability.

### **A Threat to the Integrity of National Borders?**

That the rise of global criminal networks poses a threat to the ability of the Australian government to police its national borders is indisputable. However, Australia does not have the resources of a large state such as the United States to police its borders.<sup>(57)</sup>

As with the challenges presented to governments by economic globalisation, the problem of global crime has been met by Australian security agencies through engagement with other national security agencies. National security agencies have changed the way in which they seek to secure national borders. Instead of expending resources unilaterally to police borders against external threats, governments are increasingly looking to support local education and policing programs in the countries from which the unwelcome persons, goods and information originate. Examples of this type of response can be found in the Howard Government's attempts to break people and drug smuggling operations before

arrival in Australia.

## Treaties

In responding to concerns that Australia's signing and ratification of treaties usurps national sovereignty, one may respond by reminding critics that it is national governments that enter into treaties. Thus treaty making constitutes an exercise rather than a diminution of sovereignty. This is as much the case with participation in international treaties and institutions that specify desirable domestic political conditions as it is with treaties and institutions that specify desirable domestic economic policy such as the World Trade Organisation.<sup>(58)</sup>

Furthermore, national governments may withdraw from treaties in the event that the conditions they proscribe are found to be no longer in the national interest. Once again there are prudential limits on a government's behaviour, however, prudential constraints do not constitute a compromise of sovereignty.

### Responsible Government

To the more specific concerns that the domestic focus of some international agreements has provided Australian governments with a means of avoiding their responsibility to Parliament, four responses can be made.

First, one might cite the reaction of successive governments to the Teoh Case that culminated in the passing of the *Administrative Decisions (Effect of International Instruments) Act 1999*. The Act specifies that international agreements do not provide the basis of an expectation of administrative procedures and decisions, and thus they do not provide the grounds for appeal. The Administrative Decisions Act seeks to restore to Parliament its role of enacting legislation to implement treaty commitments.

The government's response has been criticised as weakening Australia's record on human rights by organisations such as Amnesty International.<sup>(59)</sup> The Administrative Decisions Act has been criticised as giving the appearance of a government that ratifies treaties but 'only speak[s] to the world outside Australia and not to its own people also'.<sup>(60)</sup> While this may be a reasonable claim, the Act most certainly restores the lines of responsibility demanded by the Westminster model of responsible government—it is the Parliament, not the government, judiciary or the international community that is sovereign.

Second, one might refer to measures that governments have put in place to facilitate and encourage a fuller participation of Parliament in treaty-making. For instance:

- in 1961 the Menzies Government sought to increase the role of Parliament by introducing a procedure of tabling treaties twelve days in advance of their ratification when practically possible. However, there was no legal obligation upon a government to do so, and this practice was increasingly neglected from the late 1970s on,<sup>(61)</sup> and
- the Howard Government responded to concerns that Parliament was excluded from the treaty-making process by implementing:
- the re-introduction of the practice of tabling treaties, increasing the period in which treaties were tabled from twelve to fifteen days prior to their ratification
- the creation of a Joint House Committee on Treaties to consider treaties before ratification, and
- requiring that the Department of Foreign Affairs and Trade make available on the Internet details of all treaties entered into by the government. Copies of treaties were also to be made available to the public in hard copy.

Whilst these measures have been applauded, disquiet has been expressed because the provisions are procedural formalities rather than statutory obligations and thus (as occurred with the Menzies measures) susceptible to erosion over time.<sup>(62)</sup>

Third, the claim that the lateness of the Parliament's involvement in the treaty-making process curtails its ability to contribute to the process must be qualified. This view ignores the possibility that the Parliament might also influence government ratification of treaties by expressing dissent and embarrassing the executive if it undertakes undesirable treaty negotiations. Whilst a government may bring international pressure to bear upon Parliament, the Parliament may bring domestic pressure to bear upon the government and this situation is in keeping with the practice of responsible government.

Finally, one might counter calls for Parliament to be included in treaty negotiations prior to signing or ratification as being impractical. Treaty negotiations require a discipline and flexibility to manoeuvre that is among the advantages of cabinet government. The Parliament is a widely disparate body (precisely because it is representative). It can be argued that creating a greater role for Parliament in treaty negotiations is impractical in that it may diminish the appearance of the government's unity of purpose sending confused signals and giving a perception of weakness to the parties with whom the government is conducting negotiations.

### Federalism

The use of the external affairs power (section 51 (xxix)) by the Commonwealth to expand its jurisdiction into areas not specified in the Constitution has been represented as having the potential to eliminate the States as meaningful legislative and administrative entities from the Australian political system. However, this claim ignores limits on the use of the external affairs authority by the Commonwealth. These limits arise under four heads: legislative, judicial, political and administrative.

First, section 51 (xxix) provides an authority for the Commonwealth Parliament to legislate conditions that meet Australia's international commitments. Thus the government requires that enacting legislation pass through the Senate. While the Senate may no longer represent the interests of States because of the rise of disciplined political parties, the party forming government has held the balance of power in the upper house for only five of the last 40 years.

Furthermore, the Commonwealth cannot enact laws that over-ride its own constitutional limits. For instance, it cannot

impose a religion, deny trial by jury or enact legislation that prejudices a particular state.

Second, although there is no statutory or constitutional limit on the potential to extend the scope of the authority of the Commonwealth, a number of judicial limits apply. These limits are judicial rather than legislative because they stem from conditions that the High Court has placed on the Commonwealth's invocation of section 51 (xxix) rather than a constitutional or self-imposed, statutory limit upon the scope of the Parliament's authority:

- the treaty must be a bona fide agreement. The Commonwealth cannot enter into treaties for the primary purpose of extending its jurisdiction beyond the areas set out in the Constitution
- Commonwealth legislation must be substantial enough that its character as a measure to implement the treaty is apparent, and
- the Commonwealth cannot use section 51 (xxix) to enact aspirational declarations such as the Universal Declaration of Human Rights although the distinction between a statement of aspiration and a concrete obligation is far from clear.

Third, even though the Constitution does not grant authority to the States in any specific jurisdiction, the Commonwealth is unlikely to be able to exercise its authority beyond its express Constitutional scope for a prolonged period of time with political impunity. Even in the event of the High Court sanctioning Commonwealth action, the will to use the external affairs authority remains dependent on such variables as the stage of the electoral cycle and the mood of the electorate both federally and in the States.

Commonwealth governments that invariably control the Lower House of the Parliament are not only constrained by the electorate from encroaching too robustly beyond their commonly accepted jurisdiction. The structures of the political parties that form government reflect the federal character of the Australian polity. State branches have an interest in and ability to influence federal party policy when policy decisions begin to threaten their fortunes.

Fourth, in some federal polities the jurisdiction of the national government is restricted in what it can ratify because it cannot ensure that the provincial governments will enact legislation to implement the agreement. In Australia the Commonwealth has not always adhered to the practice of legislating conditions before ratifying international agreements. However, a number of practices encourage the maintenance of the States as constitutionally discrete polities.

The Commonwealth Government may include its State counterparts in two ways:

- delegates from the States with an advisory capacity have been included in delegations to negotiate treaties, and
- Premiers and Chief Ministers forming a Treaties Committee that convenes during Commonwealth Organisation of Australian Governments meetings and includes the Prime Minister and the Premiers and Chief Ministers of each State and Territory.

There are also provisions in some multi-lateral treaties allowing federal governments to enter reservations about particular requirements that might affect provincial jurisdictions. A number of multi-lateral treaties also contain federal clauses for governments which may possess the authority to sign and ratify the treaty, but not have the jurisdictional authority to implement fully the requirements of the treaty.

## Social Responses

Addressing fears that the influx of new arrivals and the increase in global communication networks have eroded an Australian national identity resulting in either anarchy or cultural homogeneity, the following can be observed. Australia has had a planned and managed migration program for 50 years, originally for 'nation-building' purposes, and in recent decades for economic, social (family reunion) and humanitarian (refugee) purposes. Australia's strong migration culture and tradition has encompassed the development and continual refinement of settlement services that assist new arrivals to participate in 'mainstream' life as soon as possible. For geographical reasons (including a lack of land borders), as well as its tightly controlled entry (including universal visa) systems, Australia has not experienced the large-scale illegal and asylum seeker inflows that have comprised the bulk of migration into Western European countries over the last decade.

Australians, have remained relatively 'relaxed and comfortable' about immigration.<sup>(63)</sup> The effect of globalisation on migration in Australia has been most apparent in the rapid increase-in size as well as economic significance-of temporary movements.<sup>(64)</sup> More people enter under skilled temporary categories for employment each year than the permanent migration program.

## Conclusion

The most significant impact of globalisation upon the domestic political landscape is felt through those who are hostile to it. In responding to perceptions that globalisation constitutes a threat, one must acknowledge that these perceptions have a rationale. They spring from perceptions of disadvantages that are attributed rightly or wrongly to globalisation, but they do not necessarily entail a resort to xenophobia or international conspiracy theory. Perceptions of globalisation as a threat can be most effectively addressed by showing an understanding of their underlying rationale.

If the advantages and risks that accompany globalisation, as well as the necessities that it imposes upon governments, are not clearly presented, governments and Parliaments risk alienating communities and subjecting themselves to the type of electoral backlash currently experienced in Australia. In diffusing the myths that surround globalisation three orders of response can be made to critics.

First, it can be pointed out that a number of concerns that are raised as globalisation issues are not attributable to global forces. Claims that globalisation has eroded the capability of states to represent and protect the interests of national communities and particularly the most disadvantaged sectors of national communities are simply not supportable. Global institutions such as the World Trade Organisation consist of national governments. While they may be accused of being a forum in which some have greater power than others, this situation is not new in international relations. In fact, scrutiny by non-government organisations may provide weaker members with extra (moral) leverage.

Critics of globalisation have also presented entry of national governments into treaties as constituting a democratic

deficit. However, treaties often set out minimum conditions for the more vulnerable sections of national communities and, at any rate, national governments are free to withdraw in the event that they adjudge the agreement to no longer serve the national interest.

The second order of responses to critics of globalisation observes the substantial disadvantages that follow from Australia not engaging with the world. If the national government discourages foreign investment and immigration, Australia stands to fall behind global economic and technological developments. For a country in Australia's circumstances foreign investment delivers funds needed by the national economy for resource development and the achievement of higher levels of employment.

The third order of response acknowledges that globalisation places constraints on the national government. The development of global transportation and communication networks and the emergence of global crime threaten border security. However, withdrawing behind one's national borders and attempting unilaterally to combat the increasingly sophisticated level of organisation of those seeking illegal entrance will be ineffective. In a global world, the security of national borders is best maintained by engaging with other national governments and security organisations.

Government needs to reassure those segments of the community that are most vulnerable to perceiving globalisation as a threat, that it maintains the will and the ability to protect their national interests within the limits imposed by globalisation as well as promoting these interests when opportunities arise. The ability of a government to promote the national interest in a world of global networks will depend on how it engages with the world.

## Endnotes

1. For some examples of the variation among these definitions see the appendix.
2. For variations in the scope of the phenomena encompassed by the term 'globalisation' see P. Alston, 'Reform of Treaty-Making Processes: Form over Substance' in P. Alston and M. Chiam, eds, *Treaty-Making and Australia: Globalisation versus Sovereignty*, The Federation Press for Faculty of Law Australian National University, Canberra, 1995, p. 2.
3. The importance of distinguishing between globalisation when used as a descriptive term and when as a normative term is taken up in D. Kerr, *Elect the Ambassador! Building Democracy in a Globalised World*, Pluto Press, Sydney, 2000, pp.7-8.
4. 'Globalisation' was first used in articles in the French newspaper *Le Monde* in the 1950s. The French term for globalisation is *mondialisation*. J. Ruggie identifies the period 1850-1910 as the last particularly intense period of globalisation before our own. See, 'Sustaining the Single Global Economic Space', *United Nations Chronicle*, 37(2), pp. 36-7.
5. M. Patterson, 'Globalisation, Ecology and Resistance', *New Political Economy*, (March 1999) and A. Sen, 'Globalisation Must Be for All', *The Age*, 16 May 2001.
6. B. R. Opeskin, 'International Law and Federal States' in B. R. Opeskin and D. R. Rothwell, eds, *International Law and Australian Federalism*, Melbourne University Press, Melbourne, 1997, p. 6.
7. For instance, S. Brown, 'Human Rights vs State Rights' in S. Brown, *International Relations in a Changing Global System: Toward a Theory of World Policy*, Westview Press, Boulder, 1992.
8. For instance, R. Falk and A. Strauss, 'Toward Global Parliament', *Foreign Affairs*, 80 (1) (January-February 2001), pp. 212-20. The World Bank is already using national infrastructure and government to distribute development loans and aid. This was a recurrent theme at the First Conference of the World Bank with Parliamentarians, 28-29 May 2000.
9. G. Hardin, 'The Tragedy of the Commons', *Bioscience*, 162, 1968, pp. 1243-8.
10. See P. Alston, 'Reform of Treaty-Making Processes: Form over Substance' op. cit, p. 7.
11. One example in which an anti-globalisation demonstrator had emblazoned on his tee-shirt 'World-Wide Campaign Against Globalisation' was mentioned in a seminar by C. Bell, 'The Enemies and Rivals of Globalisation', Department of International Relations, Australian National University, 10 May 2001.
12. For instance, B. Mitchell and M. Stevens, 'Wars of the World', *Australian*, 16 September 2001 and 'S. Long, 'Many Facets of M 1 Protests', *Australian Financial Review*, 4 May 2001.
13. See, for example, R. O. Keohane, 'Governance in a Partially Globalized World', *American Political Science Review*, 95 (1), March 2001, pp. 1-13.
14. For example see M. McKew in transcript of *Lateline*, 14 October 1997. While this particular incident exemplifies anti-cosmopolitanism, it would be incorrect to think of Dr Mahatir as an advocate of anti-cosmopolitanism more generally.
15. However their impact is not confined to the United States as is evident in the influence of Lyndon Larouche on groups such as the Citizen's Electoral Council in Australia. See, for example, L. Allen, 'Right-wing Groups Making their Mark', *Australian Financial Review*, 9 February 2001.
16. R. Soderlind, 'Haider Accused of Anti-Semitic Attack', *The Age*, 13 March 2001.
17. For example, C. Kukathas and W. Maley, *The Last Refuge: Hard and Soft Hansonism in Contemporary Australian Politics*, <http://www.cis.org.au/Issue%20Analysis/IA4.htm>
18. V. Cable, *Globalization and Global Governance*, Chatham House Papers, London, 1999, p. 39.
19. *ibid.*, p. 38.

20. For example, K. Murphy and M. Singer, 'Manufacturing Union to Challenge Parties on Jobs,' *Australian Financial Review*, 18 June 2001.
21. D. Kerr, op cit., p. 23.
22. For increasing gap between national communities see B. Potter, 'Action Needed on Inequality', *Australian Financial Review*, 12 September 2000. For increasing gap within Australia see S. Morris, 'Charity Warns on Wealth Divide', *Australian*, 15 May 2001; 2 April 2001, R. Manne, 'The Great Australian Divide: A Tale of Two Nations', *Age*, 2 April 2001; and B. Probert, 'Growing Underclass Demands a Fairer Australia', *Sydney Morning Herald*, 14 March 2001. I am not concerned with whether the claim can be substantiated but the very fact of the exchange indicates an on-going perception in the community that such a divide is opening.
23. D. Kerr, op cit., pp. 51-6. See also M. Findlay, *The Globalisation of Crime: Understanding Transitional Relationships in Context*, Cambridge University Press, Cambridge, 2000.
24. For an instance of such an allegation being made against the Australian policy of detaining illegal immigrants see *7.30 Report*, 19 June 2001
25. See, for instance, D. Macken, 'The Black Plague of Globalisation', *The Australian Financial Review*, 17 March 2001 and 'Stopping the Spread of Disease', *Mercury*, 16 March 2001.
26. See, for instance, 'Global Search for 1,200 Child-Sex Victims', *The Canberra Times*, 12 January 2001.
27. By a 'traditional' understanding of international relations I mean the school of thought called realist. The classic expression of realism can be found in H. Bull, *The Anarchical Society: A Study of Order in World Politics*, Macmillan, Basingstoke, 1995.
28. The United States has been most vocal Western opponent to the Statute. For an Australian reaction along these lines see J. Stone, 'Serious Questions', *Adelaide Review*, 207, December, 2000, p. 10.
29. B. R. Opeskin and D. R. Rothwell, eds, *International Law and Australian Federalism*, Melbourne University Press, Melbourne, 1997, p. v.
30. See Bill Hayden's view cited in Alston, op cit., p. 4. This view has been attacked in D. Kinley, 'The Implications of Executive Ratification of Treaties for Democratic Governance', also in Alston, p. 56.
31. See L. Miller, 'The Search for Economic Well-Being' in L. Miller, *Global Order: Values and Power in International Politics*, Westview Press, Boulder, 1994 and S. George, *A Fate Worse than Debt: A Radical Analysis of the Third World Debt Crisis*, Penguin Books, London, 1994.
32. For example in Germany and the UK. See, for example, Eurobarometer public opinion surveys, as described in Jeffrey Smith, 'Europe Bids Immigrants Unwelcome', *Washington Post Foreign Service*, 23 July 2000.
33. One occasion on which this view was put with great force and consequence was Enoch Powell's 'Rivers of Blood' speech delivered in Birmingham, 20 April 1968. For details see S. Heffer, *Like the Roman: The Life of Enoch Powell*, London, Weidenfeld and Nicholson, 1998, pp. 449-59.
34. P. Sheehan, 'Meanness of Hanson Menu Bound to Disagree with Most', *Sydney Morning Herald*, 23 May 2001. Pauline Hanson was elected to the House of Representatives as an Independent after resigning from the Liberal Party shortly before the 1996 poll. Her resignation came after she made inflammatory remarks about aboriginal people.
35. J. Camelliri, 'Globalisation: The Implications for Governance', Seminar, Department of International Relations, Australian National University, 3 May 2001. This phrase is not restricted to academic literature as is evident in Kevin Rudd's (ALP, Griffith) speech of 20 June 2000, *House of Representatives Hansard*, p. 17777.
36. F. Fukuyama, *The End of History and the Last Man*, Hamish and Hamilton, London, 1992.
37. D. Kitney, 'Woodside: The Verdict: Branch Office Shuts Up Shop', *Australian Financial Review*, 24 April 2001.
38. Verrender, 'Rag Trade's \$1bn Paradise', *The Sydney Morning Herald*, 15 February 2000.
39. See for example, N. Stephen, 'The Expansion of International Law: Sovereignty and External Affairs', *Quadrant*, 39(313), January, 1995, pp. 22-3.
40. See K. Magarey, 'Administrative Decisions (Effect of International Instruments) Bill 1999', *Bills Digest no. 100*, Department of the Parliamentary Library, Canberra, 1999-2000.
41. V. Bourne, 'The Implications of Requiring Parliamentary Approval for Treaties' in Alston and Chiam, op. cit., p.196 (my italics) and p. 198.
42. In fact, the constitutions of Germany and Switzerland allow Länders and Cantons, to enter directly into agreements with foreign powers.
43. S. Downing, 'Treaty-Making Options for Australia', *Current Issues Brief no. 17*, Department of the Parliamentary Library, Canberra, 1995-96, p. 3. For details of the history of the Commonwealth's gaining of an external affairs authority see A. Twomey, 'Federal Parliament's Changing Role in Treaty Making and External Affairs', *Research Paper no. 15*, Department of the Parliamentary Library, Canberra, 1999-2000.
44. This is distinct from the provision of Commonwealth legislation over-riding State legislation in instances when Commonwealth and State legislation is incompatible in an area of specified Commonwealth jurisdiction granted under section 109.
45. For a measured exposition of these concerns see P. Durack, 'The External Affairs Power', *Current Issues*, October

46. A precedent for this use of the external affairs power can be found in *R v Burgess; Ex parte Henry* (1936) 55 CLR 608. The potential of the Court's interpretation of the external affairs power to threaten the federal system in this case was observed as early as 1961. R. Anderson, 'The States and Relations with the Commonwealth' in Else-Mitchell, ed., *Essays on the Australian Constitution*, The Law Book Co. of Australasia, Sydney, 1961, p. 127.
47. One example can be found in the unsuccessful attempt of the Hawke government to pass a Bill of Rights in 1985. The Bill was an attempt to acknowledge Australia's commitments under the ICCPR. However, concerns were raised in the Senate, among other issues, over Part II, Division 2, Article 6 (b) of the Bill, which made provision for universal and equal suffrage. Senators claimed that the Bill posed a threat to the right of States with malapportionment, specifically Western Australia and Queensland, to determine their electoral arrangements.
48. 'Senator Harradine introduced into the Senate the Treaties (Parliamentary Approval) Bill 1983 as a private member's Bill, following the High courts controversial decision on the scope of the external affairs power in *Commonwealth v. Tasmania*'. B. Opeskin, 'Constitutional Modelling: The Democratic Effect of International Law in Commonwealth Countries-Part II', *Public Law*, Spring 2001, p. 101.
49. For details of the Bill see B. Bennett, 'Industrial Relations and Other Legislation Amendment Bill 1995', *Bills Digest no. 19*, Department of the Parliamentary Library, Canberra, 1995-96.
50. For details see A. Purvis and J. Castellino, 'A History of Homosexual Law Reform in Tasmania', *University of Tasmania Law Review*, 16(1), 1997, pp. 12-21.
51. See P. Costello, 'Foreign Investment Proposal-Shell Investment Limited's (Shell) Acquisition of Woodside Petroleum Limited (Woodside)', Press Release no. 025, 23 April 2001.
52. This point is central to theories of globalisation that observe that it is not completely hostile to the maintenance of the state as provider of a system of rule of law and other features of good governance. Transnational corporations are willing to incur taxation costs for the benefits of a stable market. See L. Weiss, *The Myth of the Powerless State: Governing the Economy in the Global Era*, Polity Press, Cambridge, 1998. See also G. Garrett and D. Mitchell, 'Globalization, Government Spending and Taxation in the OECD', *European Journal of Political Research*, 32(2), March 2001, pp. 145-77.
53. See I. Castles, 'Let's Stop Using Shoddy Statistics', *The Australian Financial Review*, 2 June 2001.
54. See B. Birrell, I. R. Dobson, V. Rapson and T. F. Smith, *Skilled Labour: Gains and Losses*, Centre for Population and Urban Research, Monash University, July 2001.
55. A range of options was canvassed on *Four Corners*, 9 July 2001.
56. This point was made strongly by D. Soskice, 'The Institutions of Contemporary Capitalism', *Centenary of Federation Seminar Series*, Parliament House, Canberra, 28 March 2001. See also M. Latham, 'Stakeholder Welfare', *Quadrant*, 45(3) March 2001, pp. 14-21.
57. As pointed out earlier, the examples of the United States and Europe hardly endorse the success of policing domestic borders without support from the countries of origin. See pp.11-12.
58. See A. Oxley, 'GATS: The Good News', *The Australian Financial Review*, 29 June 2001.
59. *AM*, Radio National, 28 March 2001.
60. Shearer, 'The Relationship between International Law and Domestic law' in Opeskin and Rothwell, op. cit., p. 59.
61. For details see A. Twomey, 'Federal Parliament's Changing Role in Treaty Making and External Affairs', *Research Paper no. 15*, Department of the Parliamentary Library, Canberra, 1999-2000.
62. The most recent claim referred to the way in which the government appeared to pre-empt the Committee's consideration of the Statute of the International Criminal Court. See G. Milne, 'Government by Panic and Confusion', *Australian*, 6 November 2000.
63. See M. Goot, 'More Relaxed and Comfortable': Public Opinion on Immigration under Howard', and K. Betts, 'Immigration: Public Opinion and Opinions about Opinion', *People and Place*, vol. 8, no. 3, 2000, pp. 46-60 and 60-8.
64. Wood, 'Cap on Skills Inappropriate', *The Weekend Australian*, 28 April 2001.

## Appendix

Some commentators have given the broadest possible scope to the term 'globalisation'. For example, A. Prakash, 'Grappling with Globalisation: Challenges for Economic Governance', *World Economy*, 24 (4), April, 2001, p. 546 writes that '[g]lobalisation is a multi-faceted phenomenon impacting [on] economic, political, and social spheres of human existence'. The problem, with this type of description is that it tells us where to look for globalisation, but does not tell us what it is or what causes the phenomenon.

Others appear to think of globalisation as a set of phenomena that accompany one another with no aspect being more important or significant than others. For example, M. Wolf, 'Will the Nation-State Survive Globalisation', *Foreign Affairs*, 80 (1), January-February 2001, p. 179 writes that 'numerous factors distinguish today's globalizing journey from past ones ... The distinctions include more rapid communications, market liberalization, and global integration of the production of goods and services'.

In other accounts of globalisation commentators distinguish one characteristic of globalisation as giving rise to the others, or they restrict the overall reference of the term 'globalisation'. Some commentators locate the root of globalisation in the advance of global communications networks. These definitions usually extend beyond communications



technology to other areas such as economics and politics but they locate the foundation of globalisation in developments in this area. For example, M. Latham, 'Globalisation: Ending the Tyranny of Distance', *Quadrant*, 44 (12), December, 2000, p. 48 writes that '[T]he communications revolution has allowed ideas, information and cultural values to move seamlessly across national boundaries. These changes have produced new political tensions and controversies'. K. Hayward, 'The Globalisation of Defence Industries', *Survival*, 43 (2), Summer 2001, pp. 115-6 writes that '[g]lobalisation has accelerated with the advent of more rapid global capital flows, greater scientific and industrial collaboration, faster and more efficient transportation *and above all the information revolution.*' [Italics added.]

Other definitions of globalisation simply assume that the term refers solely to economic phenomena. For example, J. Pires-O'Brien, 'The Misgivings of Globalisation', *Contemporary Review*, 277, November, 2000, p. 267 writes that 'globalisation refers not to a fully interconnected world market, but simply to the increasing interconnections of markets of different countries due to the growing trend of liberalisation of trade, capital and services'. Or they find in economics the primary driving force behind globalisation. For example, M. Beesan, 'Mahatir and the Markets: Globalisation and the Pursuit of Economic Autonomy in Malaysia', *Pacific Affairs*, 73 (3), September, 2000, p. 336 writes that 'there is something about the contemporary era-particularly the way complex economic and to a lesser extent, political processes are organised.

Some commentators understand disagreements over the desirability of globalisation solely in economic terms, for example, S. Eslake, 'What is Globalisation? Fact Versus Fiction', *Policy*, 16 (1), Summer, 2000-01, p. 61 writes that '[t]o some, globalisation is synonymous with "the spread of free-market capitalism to virtually every country in the world" as Thomas Friedman put it in *The Lexus and the Olive Tree*. To others ... it means not only "free-market capitalism", but also environmental degradation, child labour, genetically modified foods and the spread of American culture ...' Others understand disagreements over the desirability of globalisation to reach across a broad range of phenomena. For example, Robert Samuelson's description cited in K. Rudd, 'Social Democratic Responses to Globalisation', *Sydney Papers*, 12 (4), Spring, 2001, p. 16 writes that '[a]t the edge of a new century, globalisation is a double-edged sword: a powerful vehicle that raises economic growth, spreads new technology and increasing living standards in rich and poor countries alike, but also an immensely controversial process that assaults national sovereignty, erodes local culture and tradition and threatens economic and social stability'.

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