

Australia's Federation episode in international context

Richard Pomfret¹

Abstract

By the twenty-first century there can be few federal nations as centralised as Australia. The Canadian provinces have been much more successful than Australian states in retaining their power of taxation and their autonomy in areas such as education or health. Why has this happened when the Canadian constitution was explicitly aimed at limiting states' rights and the Australian constitution was intended to avoid the centralisation of the Canadian Constitution?

There is no fully convincing explanation of the divergence.

Introduction

Australian Federation was preceded by several experiences of nation-state creation in the nineteenth century, much of which was explicitly accompanied by debate over the merits of federal versus unitary states and of variations in federal structures. Australian Federation followed the US Constitution and Canadian Confederation, and to a degree presaged the European Union, in the explicit attempt to create a federal institution among previously separate entities, with political and economic rules set out in a formal agreement. There are also similarities to Italian and German

¹ University of Adelaide, richard.pomfret@adelaide.edu.au. This article benefited from discussion with William Coleman, Peter Phelps, Zac Gorman, Greg Melleuish and Henry Ergas. I am also grateful to Glenn Withers for constructive comments on an earlier draft, to Peter Abelson for sharing work in progress on his local government experiences in Mosman, New South Wales, and to an anonymous referee for helpful comments.

unification in the nineteenth century, although these created nations under the leadership of the King of Piedmont-Sardinia and King of Prussia. In each case, economic and monetary union was a concomitant of political union.

The two big examples of nation creation in nineteenth-century Europe were German and Italian unification. Both were responses to nationalist aspirations and in both cases the lead actor was aware of the benefits of federalism over imposition of a unitary state; in a large country with substantial regional variation, many public functions can be best addressed by decentralised policymakers. However, the outcomes were different, with German federalism lasting, despite challenges in the 1920s and 1930s, to today's Federal Republic of Germany, while Italy has had a centralised state that is only starting to be seriously decentralised in the twenty-first century. The different outcomes are best explained by the capacity of subnational units to self-govern, which was uniformly high for the times in Germany but varied substantially in Italy. A similar gap in competences helps to explain why new nations since the mid-twentieth century have tended toward centralisation even when the founding constitution created a federal state.

But for Australia, as with the US and Canada, the argument about competences does not resonate. After the introduction of responsible government in 1848, the British colonies in North America and Australasia led the world in socially inclusive political reform. However, the Australian and Canadian experiences differed in that the Canadian constitution incorporated greater centralisation while Australia's was more respectful of state rights. Paradoxically, the practice of federalism has been exactly the reverse as Australia became one of the most centralised federations in the world while Canadian provinces operated with significant independent powers in the century and a half after Confederation. The second section analyses why this happened. The third section draws some conclusions.

Germany and Italy

German integration was led by the *Zollverein* (customs union) established under Prussian leadership between 1828 and 1834. Was the *Zollverein* a first step towards German unification or were Prussia's motives economic, and only became political decades later?² Dumke (1976, 1994) emphasises the financial benefits of customs union among states with small populations and relatively long land borders at a time when trade taxes were an important source of public revenue. The *Zollverein* had no internal customs borders, a common external tariff and revenue redistribution. Its secretariat was small; customs posts remained national and tariff decisions were

2 Treitschke (1872) is a classic statement of the first position, while Taylor (1946) and Kitchen (1978) emphasise the evolution of motives. The standard English textbook by Henderson (1984) had a narrative of response to external events.

taken by a congress of states. The *Zollverein* treaties constrained public monopolies and producer taxes, harmonised weights and measures, and regulated currency acceptability. The *Zollverein* was followed by closer union in the 1870s, driven by Prussian military victories (and the era of nationalism), in very broad terms presaging the EU route through the European Coal and Steel Community and customs union in the 1950s and 1960s to deeper integration and closer union after 1986.

Italian unification followed a different path. It was essentially top-down, led by Piedmont with other parts of the peninsula being freed from foreign rule or papal control, rather than a union of independent states. Irresistible nationalist pressure for Italian unification led to a unitary state, albeit with strong traditions of local government. In the 1947 constitution, three regions (Trentino-Alto Adige, Friuli Venezia Giulia and Valle d'Aosta) were recognised to have distinct linguistic components, and the islands of Sicily and Sardinia had special status, but the other 15 regions were not recognised until the 1970s. The regions only gained greater autonomy after the 2001 revision of the constitution gave them control of functions that did not require a national level of administration.³

Ziblatt explains the unitary/federal divide not by the goals of the leading power but by the capacity of other units. In Italy, outside of Piedmont, absolute rulers had been restored after the 1848 revolutions with limited civil society support and poor administrative capacity, in contrast to the more modern and competent administrations of German states:

federalism is possible only if state building is carried out in a context in which the pre-existing units of a potential federation are highly institutionalized and are deeply embedded in their societies—and hence are capable of governance. (Ziblatt, 2004, p. 71)

Ziblatt quotes extensively from the correspondence of Bismarck and Cavour to show that both leaders would have preferred a federal system rather than trying to impose a unitary nation-state. However, in the void left by the overthrow of foreign or religious rule in Italy, a federal system among units of unequal administrative competence was impossible.

The unitary versus federal choice has varied since unification. In Germany the Social Democrats in the Weimar Republic and the National Socialists of the Third Reich promoted greater central power in order to push their agendas of change in the 1920s and 1930s and the German Democratic Republic (East Germany) had a unitary system from 1949 to 1990, but since 1949 the Federal Republic has explicitly left significant powers with the states. In Italy, centralisation was strengthened under

³ Only foreign policy, immigration, defence and the design of the welfare state were left with the central authorities (Zamagni, 2018, p. 48).

Mussolini, and the timing of the decentralisation of the early twenty-first century is consistent with the thesis of Ziblatt (2004, 2006), in that education levels and other civil society indicators in the less-developed regions had improved significantly.

Canada and Australia

The paths to nationhood in Canada and Australia were influenced by similar debates over the balance between central and provincial power but the debates took place in meetings among the constituent units, treated more or less as equals. Some (Upper and Lower Canada or New South Wales and Victoria) were clearly more equal than others, but no single colony would dominate the nation-building as Prussia or Piedmont did. Unlike in the US, the constitutions would not be of republics; in both Australia and Canada it was accepted that the British monarch would remain the head of state, but the sovereign was far away and would increasingly become a symbolic head of state rather than the national leader like the German Emperor or King of Italy.

In both Canada and Australia, military defence was an argument for unification under the British imperial umbrella. The British North American colonies had relied on the British army to repel invasion by the US in the War of 1812, and there was an ongoing threat of forcible or peaceful annexation. The US purchase of Alaska in 1867 emphasised the vulnerability of a nation that stretched to the Pacific after British Columbia joined Canada in 1871.⁴ For Australia, the Royal Navy was crucial for defence as tensions between Britain and Russia mounted in the second half of the nineteenth century and as Germany became more militarily threatening from its island colonies.⁵ However, this aspect had little impact on debates over the nature of federalism in British North America or Australasia.

The issue of whether the federating units were capable of self-government was moot insofar as all of the North American and Australasian colonies had effective self-government on the Westminster model, and in some respects (e.g. universal male suffrage and representation of women) were in the vanguard of nineteenth-century political reform. New Zealand's withdrawal from the Australasian Federation in part reflected concerns that its more advanced approach to race, labour and social

4 James Polk won the 1844 US presidential election against all expectations with the slogan 'Fifty-four forty or fight!' (i.e. that the northern border of the US Oregon territory would be Russian Alaska), although once in office he backed down from declaring war on Britain. The 49th parallel was established as the US–Canada border to the Pacific Ocean in 1872 after arbitration.

5 Australia's Federation debates also took place before a background of racial concerns, especially fears of being swamped by Chinese immigrants or worries about Japan's growing military and naval power in the 1890s. Novels about the yellow peril were popular and most influential of all was the quasi-scientific 1893 book *National Life and Character* by Henry Pearson, who warned that without preventative action the white races would be pushed aside by the more numerous inferior races, and saw Australia as the front line of defence. The first federal Act of Parliament was the Racial Exclusion Act.

relations would be compromised in an Australasian federation (Irving, 2013, p. 264).⁶ A stronger contrast is to British colonies achieving independence in the twentieth century, some of which had federalist constitutions or motives but lacked administrative capability in less-developed regions (see e.g. De Alwis (2020) on Sri Lanka).⁷

Canada

Central to debates bringing together the British North American colonies in Canadian Confederation in 1867 was a concern with avoiding perceived American errors. The idea that the US Constitution was basically flawed is easy to understand given the timing of the Québec Conference in 1864, when the US Civil War was still raging. The general criticism was that the US Constitution gave too much power to the states, which in many senses considered themselves sovereign. In particular, the principle that powers not explicitly granted to the national government remained state powers was considered to be flawed. Canadian leaders like John A. McDonald insisted that the national government must be more powerful and residual powers must accrue to the federal government and not to the provinces.

The drafters of the Canadian constitution also resisted US federalism in the design of the Senate. Although numbers were related to Canada's composition (24 each for Ontario, Québec and the Maritimes, with the latter's allocation divided 10 each for New Brunswick and Nova Scotia and 4 for Prince Edward Island), delegates were appointed and their role was conceived more as oversight along the lines of the British House of Lords than state delegates with real power as in the US Senate.

However, against this centralising view had to be balanced the concerns of the Québécois, who feared being swamped in a sea of Anglo-Protestantism. In particular, Québec insisted on retaining powers over education and health, which were crucial pillars of Catholic influence (although nowhere near as important in 1867 as they would become later). The Québec delegates resisted any feature of the British North America Act that could lead to future subjugation of Québec's power over education and health. In 1980 and in 1995, the government of Québec held referendums on loosening the association with Canada, to what they called 'sovereignty-association' and Anglophones tended to call secession. On both occasions, the proposal was defeated: 60 per cent against, 40 per cent in favour in 1980 and 50.6 per cent against, 49.4 per cent in favour in 1995.

6 Fairburn (1970, pp. 142–143) argued that recent experience of the abolition of provincial governments, which many associated with economic calamity, contributed to New Zealanders' wariness of the potential for centralisation in an Australasian federation.

7 The importance of state capacity is also emphasised by Bruszt and Campos (2019) in the context of EU enlargement in 2004 and 2007 to include some countries with weaker state capacity.

Apart from the original and more recent derogations to Québec,⁸ the framers of the Canadian Constitution were concerned to limit provincial sovereignty and ensure that residual rights accrued to the national government. However, it did not always work out as expected. When powerful provincial leaders rejected the role of a glorified local government official and stood up to the national government, they had authority. Smith identified ‘various and compelling reasons’ in the literature:

the strength and persistence of the autonomist tradition in Quebec, the internal dynamic of the political and bureaucratic institutions that comprise and sustain modern provincial administrations, and the role of the Judicial Committee of the Privy Council in developing constitutional doctrines favourable to provincial claims. (Smith, 1988, p. 462)

Ironically, the decision not to follow the US model of elected senators sitting in an upper house with real powers may have created the vacuum in which elected provincial leaders could exercise greater authority than US state governors.

Lecours (2019) argues that Canada’s overall ‘federal balance’ has remained largely stable since 1867. There has been decentralisation in some areas; in early years in the fiscal realm and a few policy fields—for example, finance and securities as well as employment relations, and more recently in areas such as agriculture, citizenship and immigration, and natural resources—but also centralisation in areas such as social welfare and language. The overall slight decentralist path of the Canadian federation occurred primarily through non-constitutional means, with court decisions playing a significant early role. More fundamental reasons why Canada has not centralised are the territorial diversity of the country, primarily but not exclusively nationalism in Québec, along with the original centralised nature of the British North America Act.⁹

Australia

The Australasian fathers of Federation were aware of the Canadian experience and the example of Canadian Confederation was ‘rejected, unequivocally, as too centralist and insufficiently federal’ (Irving, 2013, p. 253). Foreign policy would follow the British lead. Economies of scale in defence and in administration were centralising

8 Québec operates its own pension plan, while the other nine provinces are covered by the Canada Pension Plan, and Québec retains extensive authority over employment and immigration issues within its borders, matters that are handled by the federal government in all the other provinces.

9 The British North America Act was an Act of the UK Parliament. The constitution was ‘repatriated’ and renamed in 1982 as the *Constitution Act 1867*.

factors. Federation would involve customs union, and trade policy would clearly be a central government competence; the tariff was the main topic of debate between free-trade New South Wales and protectionist Victoria.¹⁰

For South Australia, running the Northern Territory, for which it had taken responsibility in 1863, was causing problems. Attempts to create settlements had no success until 1869, when George Goyder, the Surveyor-General of South Australia, established a settlement of 135 men and women at Port Darwin. Construction of the Overland Telegraph led to more exploration of the interior and the discovery of gold at Pine Creek in the 1880s, but in general the territory was viewed as a burden in Adelaide, while the Overland Telegraph benefited all of the Southeast Australian colonies.

Post and telegraph services were an early example of centralisation. The six colonial postal services were replaced by a national post office with impressive buildings in state capitals. Measures, such as the *Wireless Telegraphy Act 1905*, which placed under government control the entire electromagnetic spectrum that had previously been in the public domain, reflected the centralising control of the federal government. On 1 January 1911, a decade after Federation, the Northern Territory was separated from South Australia and transferred to Commonwealth control as a result of the *Northern Territory Surrender Act 1908* in South Australia and the federal *Northern Territory Acceptance Act 1910*.

Despite these measures and High Court decisions that supported central competence rather than states' rights, the central government was often criticised in the early decades for not doing enough. After the 1914–18 war, for example, the major task of reabsorbing demobilised soldiers was at cost to the states, when many people argued that resettlement of returning soldiers should have been a Commonwealth responsibility. Nevertheless, court decisions starting with the 1920 *Engineers* case¹¹ continually broadened central government powers by rejecting restrictions on specific powers and deeming considerations of federal–state balance to be legally irrelevant.

The extent to which the Commonwealth would become a centralised state was underestimated. Most importantly, the Commonwealth assumed control over the main revenue sources, leaving the states with limited and diminishing powers. Initially the Commonwealth returned at least three-quarters of duties to the state where they were levied, but this proportion gradually shrivelled and in the First World War the Commonwealth kept all, as well as introducing a national income tax. A High Court decision in 1942 confirmed the Commonwealth Government's monopoly of the income tax. Today, the central government receives over four-fifths

10 Cashin (1995, n. 21), drawing on Wood (1968), Chan (1969) and Fairburn (1970), argues that one reason why New Zealand did not join the Federation was that only 14 per cent of its exports went to Australian colonies in 1890, and most of that was to free-trade New South Wales, so that a customs union including the more protectionist Australian colonies could lead to significant trade diversion.

11 *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd*, (1920) 28 CLR 129; HCA 54 (31 August 1920).

of all public revenues, about half of which it redistributes to the states, usually tied to conditions of expenditure.¹² Thus, even in areas of state competence and formal administration authority, the states have very limited control over policies.¹³

The High Court continued to rule in favour of central authority rather than state rights. In a 1983 Tasmanian dam case, for example, the court confirmed the primacy of international obligations as a means for the Commonwealth government to assert its powers over states; the state government was prevented from building a dam on a river protected by the World Heritage Convention that had been signed by Australia.

Despite the difficulties of making an economic evaluation of the costs and benefits of Federation and the fact that this has become a non-issue as most Australians have accepted national identity, it is useful to recall that the referendums on Federation were closely fought and the benefits have been seriously questioned. The South Australian state parliament set up a Royal Commission to examine the financial effects of Federation for South Australia in 1927 and the Royal Commission's conclusion was unambiguous:

There can be little doubt that for South Australia Federation has proved a failure. The advantages gained have been slight, while the disadvantages have been material. (Committee on the Financial Effect of Federation on South Australia, 1927)

Particularly in Western Australia, secession has been a recurring issue.

Several decisions taken by Australia in the decade after Federation would not be in the country's long-term economic interest. The *Immigration Restriction Act 1901*, by introducing a dictation test in a European language, set the new country on a White Australia Policy for two-thirds of a century, which would reinforce isolationism and generate suspicion of non-Europeans in a globalising world. The political machinations of the first decade led to the Australian compromise of protectionism plus labour market regulation (with a 'living wage' legally justified by the 1907 Harvester Judgement). Australia's slide into protectionism, with one of the world's highest tariff rates (Anderson & Garnaut, 1987; Lloyd, 2008 and 2012) meant that Australia missed the opportunity to develop on the basis of a globally competitive manufacturing sector, or at least delayed the process by decades.¹⁴

12 The states account for just under half of public expenditures, and on average depend on transfers from the central government for half of their funds. About half of these transfers involve redistribution of the goods and sales tax (GST) as untied grants to the states and the other half of the transfers are tied grants to the states for specified programs in health, education, housing, infrastructure etc. However, even untied grants may be subject to observing rules set by the central government.

13 These limits continue to shrink. In recent decades, *inter alia*, disability insurance has been determined at the federal level and funds for road maintenance have become dependent on states observing national speed limit structures.

14 Canada showed in the 1940s that a protectionist policy could be reversed. During the 1950s and 1960s, however, Australia demanded exceptional status within the World Trade Organization's General Agreement on Tariffs and Trade, identifying its economic situation with poor commodity exporters rather than with other rich primary product exporters such as Canada (Pomfret, 2000).

A key aspect of Australian centralisation has been the concentration of tax power. This is not irreversible, for similar reasons to Bismarck's preference for federalism over a Prussian-dominated unitary German state. On two occasions, Australian central governments have come close to allowing states to levy income taxes. Malcolm Fraser was blocked in 1977 by lack of support from leaders of Western Australia and New South Wales. Malcolm Turnbull also considered state income taxes in 2016 but ran into difficulties with unrelated intra-party politics, as well as opposition from leaders of several states who were unwilling to accept the tax reform in return for assuming full responsibility over education.¹⁵ In sum, once overwhelming central control over tax revenue and limited independence of state governments had been established in the first half of the 1900s, it was difficult to create consensus for change by convincing all state governments to accept greater control over revenues and greater responsibility over decentralised policy areas.

The weakness of Australian states has implications for local government. Local governments in all countries provide local public goods and regulations and some welfare services; typically, they are the closest part of government to most citizens and the desirability of effective local government is widely recognised under the subsidiarity principle.¹⁶ The Australian Constitution does not recognise a third level of government; local governments are the creation of state government legislation and 'local governments overwhelmingly serve at the pleasure of the state legislatures' (Grant & Drew, 2017, pp. 183–184). Legislation in most Australian states empowers local government to do whatever is necessary for the wellbeing of the local population but withholds the means for independent action. The functions of local government vary due to differences in governance frameworks and geographical differences, but in all states the scope of local governments' activities has increased since the 1980s well beyond traditional roads, rubbish and rates, and at the same time the power of local governments relative to state governments has been eroded in all states.¹⁷ In parallel to their own declining authority relative to the central government, state governments increasingly micromanage local government activity and amalgamate local authorities to make them more efficient implementers of state policies (and to distance them further from the citizens that they represent).

Mayors of Australian cities have limited powers compared to mayors of North American or most European cities. South Australia is the extreme case: given the demographic preponderance of the Adelaide metropolitan area and minimal territory covered by Adelaide City Council (ACC), the state government takes over

15 The confusion of competence over education was highlighted in the March 2020 COVID-19 crisis when the federal government and the governments of New South Wales and Victoria held different views on the need for school closure.

16 The principle that public policy decisions should be made and implemented by the most decentralised competent level of government, operating as close as possible to the citizens affected by the decisions, is explicit in Article 5 of the Treaty of the European Union.

17 Abelson (2020) reports that New South Wales local governments now perform over 100 different services.

virtually all decision-making about the CBD, North Adelaide and the parklands (i.e. the ACC territory).¹⁸ One consequence is that it is easy to be elected to ACC (the last candidate to cross the line in 2018 had 298 first preferences and 516 votes at election), but the elections, including for Mayor, do not attract strong candidates. ACC meetings are characterised by low-quality debate and *ad hominem* bickering, which reinforces the state government's claim that it should take over decision-making, despite the mismatch between the mandate of a government elected over a geographically large state and the wishes of city residents on local matters.

The British dominions

The similarities of Canadian and Australian federalism were highlighted in the twentieth century by their status as dominions within the British Empire, and later the Commonwealth. To what extent can lessons be drawn from the other dominions? Unfortunately, the answer is very little. Responsible government was a thread from the 1839 Durham Report to the confirmation of dominion status in the 1931 Statute of Westminster, but its influence on the design of federalism or unitary governments was limited. By 1931 there were six dominions, but for varying reasons New Zealand, South Africa, the Irish Free State and Newfoundland never engaged in serious constitutional debate over how responsible government should be exercised in a federal state.

Largely for historical reasons, the dominions of New Zealand and South Africa were unitary states. The Colony of New Zealand became the Dominion of New Zealand on 26 September 1907; this involved no formal constitution (legislative practices are based on precedent and unwritten conventions) and no change from the unitary state in which regions and local government were created by the authority of the central government.¹⁹ The Union of South Africa was referred to as a dominion upon its creation in 1910 following the *South Africa Act 1909* that unified the Boer republics of Transvaal and Orange Free State with the Cape Colony and Natal. The Act was intended to forestall any independence by the republics that had been defeated in the Boer War rather than to create a union of equals. South Africa became a republic and left the Commonwealth in 1961.

Dominion status was never popular in the Irish Free State, where it was seen as a face-saving measure by UK governments unwilling to countenance a republic in Ireland. Successive Irish governments undermined the constitutional links with Britain until they were severed completely in 1949.

18 The estimated 2019 population of South Australia was 1.67 million and of metropolitan Adelaide 1.35 million. The City of Adelaide had around 25,000 residents.

19 All subnational government has only the powers conferred upon it by Parliament and these powers were fewer in New Zealand than in other dominions, e.g. the central government controls police and education.

Newfoundland was a colony of the United Kingdom until December 1931, when full autonomy was granted by the UK Parliament. However, the government of Newfoundland requested that application of dominion status be delayed, and self-government (and its status as a dominion) was suspended from 1934 until Newfoundland became a province of Canada in 1949. The reluctance to accept the rights and responsibilities of self-government has parallels to some Australian states' reluctance to accept income-tax-raising powers when offered in 1977 or 2016.

In sum, the concept of dominions as self-governing units under the British monarchy was a fleeting idea with limited real coverage. Canada and Australia considered themselves the senior dominions. The other four dominions exhibited no similarity in constitutional arrangements or political practice. The term gradually went out of usage in the second half of the twentieth century. The dominion experience underlines the lesson from the German/Italian comparison that the scope for comparative study of Australian federalism is limited by the small number of potential federations with the state capacity to make federalism work.²⁰

Conclusions

By the twenty-first century there can be few federal nations as centralised as Australia. Even in the United Kingdom, Scotland and Northern Ireland have greater independent power than Australian states. The Canadian provinces have been much more successful than Australian states in retaining their power of taxation and their autonomy in areas such as education or health. Why has this happened when the Canadian Constitution was explicitly aimed at limiting states' rights and the Australian Constitution was intended to avoid the centralisation of the Canadian Constitution?

The magnitude of the Australia–Canada divergence is clear from Fenna (2019), the Australian counterpart to Lecours (2019) in a project to measure the degree of centralisation in federal systems. In this project, the degree of centralisation in 22 areas is measured on a scale from 7 (totally decentralised) to 1 (totally centralised). Canada's average score has changed little, from 3.8 in 1870 to 3.9 in 2010. Australia's average score fell from 5.0 in 1910 to 2.8 in 2010—that is, from a more decentralised starting point, the Australian system had become considerably more centralised than Canada's in 2010.

There is no fully convincing explanation of the divergence. Court decisions have played a role in both countries, but in different directions, which implies that, rather than separation of powers with an independent high court, the courts' rulings reflect

²⁰ Bruszt and Campos (2019) contains a review of the limited economics literature on economic integration and state capacity.

the opinions of the politicians who appoint them or the views of the community or some other influence.²¹ In Australia, the central government's power to appoint the High Court (technically through advice to the Governor-General) has produced a strong central bias in judicial interpretation, despite nominal consultation of state governments.

Québec exceptionalism has always been a force for provincial rights. Many commentators, including Lecours (2019), argue more generally that territorial diversity explains Canada's decentralisation, with particular focus on the resource-rich western provinces' discontent about how much they contribute to the federal budget and the extent to which their interests are misunderstood by policymakers back east. However, this description could equally capture disillusion in Western Australia or Queensland over fiscal arrangements and policymaking in Canberra. The existence of poorer regions (the Atlantic provinces in Canada, South Australia and Tasmania in Australia) and sparsely populated regions (northern Canada and the Northern Territory) is also remarkably similar. Regional affinities and accents are less differentiated in Australia than in Canada, but that seems a weak basis for explanation of the degree of centralisation.²²

Debates over the optimum size of nations and the appropriate level of centralisation in political and economic unions have revived in the twenty-first century. Alesina et al. (2000), and in more detail in Alesina and Spolaore (2003), argued that a more liberal international trade regime has been associated with an increase in the number of countries, as the economic benefits of size (notably for national security) are reduced, while Rodrik (2000) foresaw globalisation as a force for increased integration in the twenty-first century. Rodrik also predicted that these processes would cause discontent and revolt. Partly in response to the challenge of anti-integrationists, the European Union has explicitly included commitments to subsidiarity in its program since 1986 to create a single market. The experiences of Australian and Canadian federalism suggest that EU leaders will need to match statements of intent with continuous vigilance if they are serious in seeking optimum devolution of economic decision-making.

21 The issue of judicial oversight and, more fundamentally, who appoints the judges has emerged as a current issue not just in federal states such as the US, where appointment of Supreme Court judges became rancorous in the 2010s. Leaders as diverse as Donald Trump, Boris Johnson, Vladimir Putin and Recep Tayyip Erdoğan, whose authority is based on personal popularity with voters, have sought to restrict judicial powers that might limit their own untrammelled authority as the embodiment of the popular will.

22 A referee suggested that the difference between Canada's linear geography, in which most Canadians live within 50 km of the US along an 8,891 km land border, and the circular location of Australia's five main cities explains Australia's more inward-looking federalism and stronger inter-state integration. However, geographical similarities also exist; both national capitals are situated between the two largest states/provinces and roughly equidistant (200–400 km) from the two largest cities, while the most distant capitals are similarly far from the national capital (flying distance Victoria–Ottawa is 3,577 km and Perth–Canberra 3,086 km).

Australian federalism since Federation has distinctive features, most of which stem from the extreme centralisation of revenue collection and policymaking that evolved over the twentieth century. This has proved difficult to roll back even when the federal government has proposed reverting some revenue-raising powers to the states in return for the states accepting greater independence and responsibility in specified policy areas. A consequence has been that, as local policymaking has expanded in scope in recent decades, state governments have exerted ever stronger influence over local decisions to the extent that local governments' authority and responsiveness to their residents' wishes have been seriously undermined. These two consequences were not intended at Federation and are in contrast to public administration developments in North American and European countries.

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