The Centralization of Australian Federalism 1901–2010: Measurement and Interpretation

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As part of a larger comparative project, "Dynamic De/Centralization in Federations," this article studies the dynamics of Australian federalism since 1901. A constitution drafted in the 1890s left the majority of domestic governance responsibilities to the States. Within two decades, though, a process, continuing to this day, was underway whereby the financial power and the policy reach of the Commonwealth expanded in an apparently inexorable and irreversible fashion. This article charts those developments across both a broad sweep of policy domains and in respect of changing fiscal relations for the Australian case and attempts to provide a more systematic assessment of the extent, degree, and timing of change since Federation than previously attempted. It then relates the main patterns of change, over time and across policy domains, to the apparent mechanisms and, in turn, to a range of hypothesized causes.

The study of federalism is, in no small part, the study of how, why, and to what extent authority has shifted, or "migrated" (Gerber and Kollman 2004), between the orders of government over time. Some observers see oscillation (e.g., Chhibber and Kollman 2004, 160; Elazar 1987, 202); more commonly, others see an inherent centralizing tendency as federal systems succumb to pressures for uniformity and coordination associated with modernization (e.g., Corry 1941; Döring and Schnellenbach 2011; Oates 1972, 222–229; Sawer 1969, 64; Wheare 1963, 236–238). The latter may, however, be only a tendency. Perhaps the more interesting question is whether one can identify factors that resist or retard centralizing pressures, resist the tendency of central governments to "encroach" upon the prerogatives of the constituent units or for responsibilities to drift to the central government. Such possible factors range from socio-economic characteristics of the federation in question to the putative institutional "safeguards" of constitutional design. In broad terms, the alternatives here are between Livingston's (1952, 88) view that federalism "is a function not of constitutions but of societies" and the neo-institutionalist focus on political structures (e.g., Bednar 2009; Broschek 2012).

The best way to address these questions is via systematic comparison. This article is part of a larger comparative project mapping the evolution of the six

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long-established federations over their entire respective histories. Australia is widely perceived as having undergone a substantial and persistent degree of centralization since Federation in 1901 (e.g., Braun 2011; Craven 1992; Fenna 2007, 2012; French 2012; Galligan 2012, 320; McMinn 1994; Saunders and Foster 2014). Almost half a century ago, Australia's longest-serving prime minister (Menzies 1967, 25) was already writing of the "tremendous changes in the balance of power" that had taken place in Australian federalism and detailing many of the ways in which central power had increased. On the other hand, though, the most comprehensive existing assessment of comparative trends in the relative power of central and regional governments, the Regional Authority Index, shows Australia has having experienced a net *increase* in regional authority rather than centralization over the period 1950–2010 (Hooghe et al. 2016, 292, discussed below). Here, we seek to get a better fix on the evolution of Australia's federal system and to explore some of the operative dynamics.

Analytic Framework

Assessing the extent to which centralization or decentralization has occurred entails measuring change over time in a comprehensive and comparable way. Inspired by Riker's (1964, 52–83) early example, the project of which this paper is a part applies a seven-point scale to twenty-two policy areas and five fiscal dimensions over the entire history of each federation until 2010 (see Supplementary Online file). Assigning decadal scores to each policy area provides an overall sense of the direction, degree, and rhythm of change across the full range of government activities. It must be acknowledged, though, that the coding of qualitative assessments into quantitative scores leaves unavoidable scope for alternative readings of developments in any given policy domain. Two aspects of policy autonomy are considered: authority to *legislate* in any given domain; and authority to implement and *administer* policies and programs, recognizing that authority to administer may in itself provide some degree of autonomy. Complementary to this are five measures indicating the degree of fiscal autonomy enjoyed by the constituent units. Formal policy autonomy must be weighed against any resource limitations, whether those be constraints on borrowing; inadequate own-source revenue; and/or heavy conditionality imposed on transfers.

This framework differs from that of the Regional Authority Index (RAI) in examining a comprehensive range of policy domains; in distinguishing authority to legislate from authority to implement; and in accounting for the spending power. In its more ecumenical desire to span a wider range of political systems, both federal and unitary, the RAI may well compromise its ability to capture trends within federal systems alone. In further contrast with the RAI, the framework applied here focuses exclusively on "self-rule" and does not spend time measuring

"shared-rule." This is for the simple reason that, with the exception of Germany, shared rule—meaning the formal accommodation of the constituent units in central government lawmaking—is not a significant element of federal systems (Hueglin and Fenna 2015, 205–237).

In turn, these empirical findings about the direction, degree, and timing of change across the various policy domains and fiscal indicators provide material through which one can analyse the forces driving, and the factors resisting, change. The first step is to identify the instruments or mechanisms through which change has been effected—such as constitutional amendment, judicial interpretation, or fiscal inducement. The second step is to draw inferences about the factors that seem to have had most impact in determining the nature and direction of change. Overall, the project canvasses a wide range of causal variables that at one time or another have been adduced in the federalism literature (discussed below). While judgements about the relative importance of different variables are best drawn via comparison of the different cases, as is done in the concluding article of this study, preliminary inferences are drawn here from the Australian case and *ad hoc* comparison alone.

In the Beginning

After a series of constitutional conventions and ratifying referendums during the 1890s, Britain's six Australian colonies agreed in 1900 to federate as the Commonwealth of Australia, effective January 1, 1901.[1] All were semi-sovereign, self-governing, parliamentary systems with full manhood suffrage and the secret ballot for their lower houses, and indeed four of the six had been so for almost half a century (McMinn 1979). Motivating the union had been at best a vague perception of external threat, and more importantly, a clear sense of economic advantage and a spirit of emergent national identity (McMinn 1994, 97, 133; Hirst 2000). The slogan, tellingly for this comparative exercise, was "a nation for a continent" (Hirst 2000).

Constitutional Design

The colonial delegates who drafted the Commonwealth Constitution were quite clear about their desire for a decentralized union where the States would retain the bulk of the extensive powers and responsibilities they had exercised as self-governing colonies (Zines 1986, 76–77; La Nauze 1972, 40). "The central purpose of most if not all of the founding fathers was the creation of a strictly limited central government" (Craven 1992, 51).

In pursuit of this goal, the framers put in place an American-style division of powers whereby the respective governments would have full responsibility for legislation and administration in their assigned areas of jurisdiction. On this basis,

the two orders of government were expected to function autonomously—in what K.C. Wheare (1963, 2) described as a "co-ordinate" fashion, or what Corwin (1950) characterised as "dual federalism" in the United States (also Sawer 1969, 64). "Generally, the Commonwealth and the States were seen by many delegates as independent entities, each carrying out its governmental functions within its own territory" (Zines 1986, 81). This was evident in the division of powers, which, although making only a few of the Commonwealth's powers exclusive and thereby creating a degree of potential concurrency, left the bulk of domestic governance responsibilities exclusively to the States.

Eschewing the Canadian example because of its apparently centralized nature, Australia's constitutional framers followed the U.S. model and adopted the single list approach to giving the division of powers constitutional expression. They saw the U.S. model as one "preserving state rights with the most jealous caution" (Deakin 1890; also Crawford 1986; Aroney 2009). The Commonwealth was assigned a limiting list of enumerated powers while the States were granted a broad "residual" power over anything not explicitly denied them. No mention was made of local government, and it was thus left as an "instrumentality" of the States, operating entirely on merely delegated—*viz.*, revocable and subordinate—powers.

The framers sought to establish a central government that could ensure a common market across the country and manage the country's external affairs. This was predicated, though, on the ultimately treacherous distinction between *inter*- and *intra*-State trade (Crawford 1986, 116). For those purposes, key powers such as the levying of tariffs, the coining of money, or the raising of a military force, were made exclusive to the Commonwealth. Notable innovations, though, were the granting to the new national government of a power over industrial relations in those cases spanning two or more States; an authority to provide old-age pensions; and a role in regulating marriage. The States retained an implicitly exclusive jurisdiction over all other areas of social policy; all types of education; health care; land use and environmental protection; infrastructure; agriculture; on-shore resources; policing; and criminal and civil law.

On the Figures

This intention to create a federation that was as decentralized as practicable is reflected in the scoring for the twenty-one policy categories considered here (table 1).[2] The modal score was 7, with seven fields identified as lying within the exclusive jurisdiction of the States. An additional four rated a 6, meaning that they were almost exclusive to the States. Meanwhile, only four rated a 1, or exclusively in Commonwealth jurisdiction. These were, predictably: citizenship; defence; currency; and external affairs. None rated a 2. The mean score was 5—not greatly lower than the mean of 5.9 for highly decentralized Switzerland half a century

Table 1 Australian federalism, net change 1910–2010

Field	1910 (Leg & Admin)	2010 (Leg)	2010 (Admin)
P1. Agriculture	6	2	4
P2. Citizenship & Immigration	1	1	1
P3. Culture	6	3	3
P4. Currency & Money Supply	1	1	1
P5. Defence	1	1	1
P6. Economic Activity	5	2	2
P7. Education—primary and secondary	7	4	6
P8. Education—tertiary	7	2	2
P9. Elections & Voting	4	4	4
P10. Employment Relations	5	2	2
P11. Environmental Protection	7	4	5
P12. External Affairs	1	1	1
P13. Finance & Securities	5	3	3
P14. Health Care	6	3	4
P16. Law—civil	6	5	5
P17. Law—criminal	7	5	5
P18. Law Enforcement	7	5	5
P19. Media Regulation	3	1	1
P20. Natural Resources	7	5	6
P21. Social Welfare	5	2	2
P22. Transport	7	3	4

earlier. As we would expect from the coordinate design, the scoring for legislative authority and administrative responsibility at the outset were the same in all fields.

Fiscal Follies

There were several weaknesses in this division of powers, perhaps the most significant of which was the fiscal constitution. Because one of the major purposes of Federation was to dismantle tariff barriers between the colonies and create a common market, one of the few powers made exclusive to the Commonwealth was that over customs and excise. Tariffs were, however, the most profitable and easily farmed tax base at the time and it was recognized that this would endow the Commonwealth with far more revenue than, in peacetime, the national government would require and would thus potentially debilitate the States. A number of transitional provisions were written into the Constitution to ensure an appropriate transfer of "surplus revenues" back to the States, but it seems that the

framers abandoned any attempt to find a longer term solution to the problem (La Nauze 1972, 215; Saunders 1986).

The consequence of this was that the States received considerably more in transfers than they were able to raise in tax. For some time, the impact of this was less than it might have been, for tax revenue was a minor contributor to State revenue in the early years, with the States relying to a much greater extent on "public works and services"—the various government business enterprises such as their extensive railway systems. As a consequence, for this decade the States were still able to raise 79 percent of their own revenue and thus coded as 6 for revenue autonomy (ABS 1911). No other restrictions were placed on State taxing powers at this time and transfers were entirely unconditional.

Little constitutional restriction was placed on the authority of the States to borrow, but it was realized at the time that practical limitations were considerable. The appetite of the States for investment capital was insatiable and their existing infrastructure debts substantial, but their individual borrowing power in London markets variable. One of the incentives for Federation was to reduce the cost of overseas capital.

The Evolution of Australian Federalism

Intentions and designs are one thing, experience is quite another; how have things worked out? Here we assess the degree and nature of change in the relative importance of the two orders of government over twenty-one substantive policy areas and five aspects of fiscal relations. The changes across the different policy areas are summarised in Table 1 and detailed in the Supplemental Online File. As explained in detail in the Introductory Article for this Special Issue, we seek to capture the degree and nature of change by breaking it down into four elements: direction, magnitude, timing, and form.

Direction

There is no ambiguity about the direction of change in Australian federalism; it has been centripetal. Not a single policy field registered any net decentralization between 1901 and 2010 and few have escaped centralization. Occasional fluctuation has occurred, the main example being own-source revenues, where the States experienced increasing fiscal self-reliance over the early decades of the twentieth century as the income tax came to displace the customs tariff in importance. However, that ended in 1942 and the overall trend in the fiscal domain has been centralizing.

Magnitude

While the direction of change has been consistent, the magnitude of change has varied significantly across fields. Three have experienced a *very high degree* of legislative centralization (down by 4 points or more). Those are agriculture (6 to 2); tertiary education (7 to 2); and transport (7 to 3). Seven have experienced a *high degree* of centralization (down by 3 points). These are culture (6 to 3); economic activity (5 to 2); schooling (7 to 4); employment relations (5 to 2); environment (7 to 4); health care (6 to 3); social welfare (5 to 2). Five have experienced *significant centralization* (down by 2 points). These are financial regulation (5 to 3); criminal law (7 to 5); law enforcement (7 to 5); media regulation (3 to 1); natural resource management (7 to 5). *Modest centralization* (1 point) occurred in civil law and *no centralization* occurred in elections and voting.

Four of the twenty-one fields (money supply; defence; citizenship; external affairs) were already fully or almost entirely under the control of the Commonwealth from the outset; no change has occurred in those areas.

Timing

Here, we are particularly interested in the timing of changes in the policy domains collectively and separately, since this points to links between outcomes and mechanisms. While averaged over the twenty-one policy areas and five fiscal criteria, centralization became evident in the 1920s and accelerated in the 1970s, the timing has varied significantly across policy areas. Expansion of the Commonwealth role in agriculture, media regulation and transport, for instance, started in the 1920s and 1930s. Expansion of the Commonwealth role in health and social welfare surged in the 1940s. Expansion of the Commonwealth role across a range of policy domains including economic and financial regulation, culture, transport, and environmental protection accelerated noticeably from the early 1970s. The Commonwealth's role in education gathered steam in the post-war years, accelerated dramatically in the 1970s, and increased again in the final decade. The Commonwealth role in law enforcement was only launched properly with the creation of the Australian Federal Police in 1979 and became truly established in the early years of the new century.

Fiscal centralization, meanwhile, began incrementally with broad judicial interpretation of the Constitution's prohibition against State taxes "of customs and of excise" squeezing the States out of indirect taxation. It took another step with the creation of the Australian Loan Council and the move toward Commonwealth supervision of State borrowing in the 1920s (Jay 1977). It was in this inter-war period that Australian government debt, carried by both orders, reached its highest level (Barnard 1987, 256). It took by far its largest step with the arrogation by the

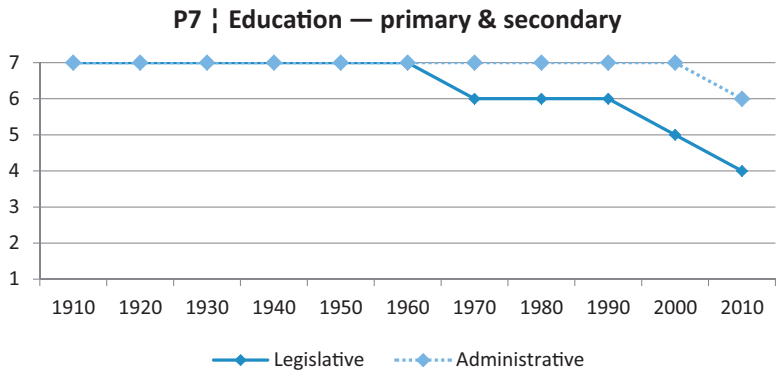

Figure 1 Centralisation trends in primary and secondary schooling.

Commonwealth of exclusive control over the personal and corporate income taxes in 1942. From that point on, Australia was a very different federation.

Form

The increase in the Commonwealth's role has been first and foremost in regards to the policy-making role or legislative authority. In some areas, that augmentation of legislative authority has been accompanied by the assumption of commensurate administrative responsibility. This has been the case in media regulation and law enforcement, for instance.

In six of the policy domains tracked here, the Commonwealth has been content to leave responsibility for administration with the States. The most pronounced case of this has been schooling (Hinz 2018; figure 1), but it has also been evident in hospital care and environmental protection. In this regard, developments support the view that Australia has become "a federation . . . of a more integrated kind" (Saunders 2013, 398)—a movement consistent with Sawer's (1969, 64) notion of a natural drift towards a more administrative division of powers. The emergence of a bifurcation between policy making and implementation may well have created opportunities for States to mitigate the effects of centralization through administrative non-compliance, as has been suggested by a number of scholars (e.g., Galligan 1989, 4; Holmes and Sharman 1977, 125; Parkin 2003, 107; Ramamurthy 2012). However, it is not possible to assess those arguments here, and very little of the detailed empirical work necessary to substantiate or test such a proposition has been carried out. Moreover, while operational resistance may well blunt the Commonwealth's policy instruments, it is unlikely to defeat them. The bifurcation has also meant greater reliance on processes of intergovernmental relations for coordination and sometimes collaboration (Anderson 2008; Fenna and Philimore 2015; Painter 1998).

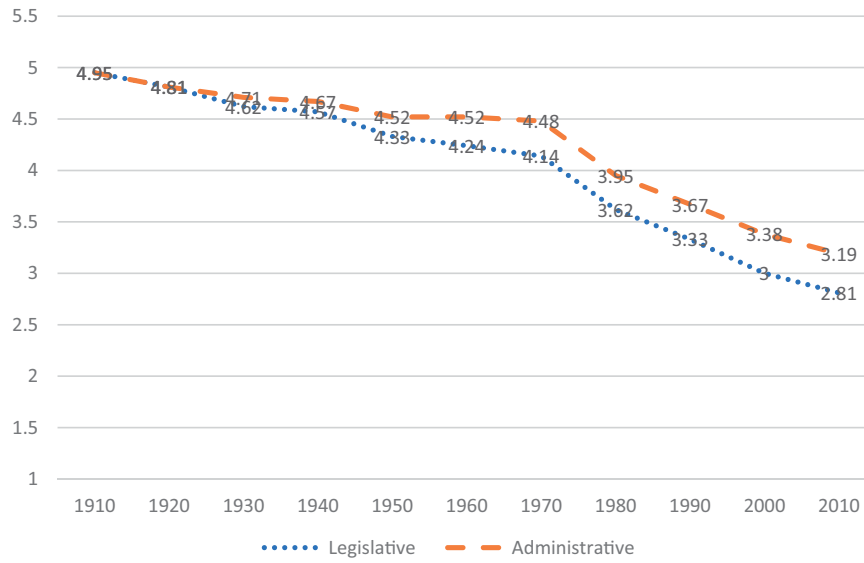

Figure 2 Mean de/centralization score.

The Situation Today

Whereas in 1910 more than half the policy fields were coded 7 or 6, meaning entirely or almost entirely within State control, by 2010 not a single field rated a 7 or 6. Five fields are now rated as a 1, and four as a 2—nine of the twenty-one considered—and the mean has dropped from 5 to 3.0 (Chart 1, figure 2). As we shall discuss below, there has also been fiscal centralization, as measured by both the increasing restrictions on the ability of the States to raise own-source revenues and increasing share of transfers that became conditional in one form or another.

Why are the findings here so much at odds with those of the Regional Authority Index (Hooghe *et al.*, 2016, 292)? In part, the answer is simply one of time frame: the RAI covers only the second half of the Australian federation's evolution. In the main, though, the answer would seem to lie in the blind eye the RAI holds to the actual exercise of constitutional authority by the constituent units in federal systems and its reliance on misleading fiscal indicators. Throughout the three periods examined there, covering 1950–2010, the RAI "self-rule" score for the States in "policy scope" was the highest possible. This ignores the extent to which the policy autonomy of the States was reduced by a combination of unfavorable High Court decisions and active use of the spending power. And the latter, in turn, draws attention to the inadequacy of a set of fiscal indicators that privileges borrowing autonomy while paying no attention to the coercive use of conditional grants.

The Instruments of Change

Centralization in Australian federalism has almost entirely been via sub-constitutional mechanisms and processes rather than formal constitutional change. Only three constitutional amendments have been passed that affected or altered the division of powers: the 1928 amendment, s. 105a, giving the Commonwealth a role in managing State borrowing (Saunders 1990); the 1946 amendment, s. 51.xxiiia, granting the Commonwealth authority to fund a range of social services; and the 1967 amendment, s. 51.xxvi, allowing the Commonwealth to make "special laws" for aboriginal peoples. The limited number of amendments was not for want of trying. Since Federation, parliament has put forty-four proposals to the people, many of which were attempts by the Labor Party to increase the ambit of the Commonwealth government and bring about a more centralized union. All but eight were rejected at referendum. Benz's (2013, 74) declaration that "attempts to amend federal constitutions end up succeeding more often than one would otherwise expect" scarcely applies to the Australian case.

In the absence of support for constitutional amendment, change has been effected in the largest part by: (i) coercive use of the spending power; (ii) centralizing constitutional interpretation by the High Court; (iii) coercive use of the international treaty power; and (iv) cooperation. The last encompasses a range of developments whereby States have voluntarily joined in schemes to pool, or even transfer responsibility for, certain policy responsibilities to the Commonwealth.

Vertical Fiscal Imbalance and the Spending Power

It is difficult to overstate the significance of financial relations in the dynamics of Australian federalism. The Commonwealth has enjoyed a substantial financial advantage in the federation and, particularly since the early 1970s, used that to great policy advantage. This fiscal dominance derived originally from the Constitution's grant of exclusive power over the customs tariff, as noted above. Subsequently, it has come from the Commonwealth's success in monopolizing both the sales tax and the corporate and personal income tax. It was aided substantially in this by a cooperative High Court (as discussed below). This centralization did, it would seem, solve a significant tax competition problem: differential State tax capacities; and sharing the field between the two orders of government (Smith 2015).

As the income tax rose to public finance prominence and was increasingly exploited by the States, the financial position of the States improved. By 1939–1940, they were collectively raising £33.5 million in income tax—double the £16.4 raised in parallel by the Commonwealth (ABS 1941). They were "the senior tax

gatherers" (Mathews and Jay 1972, 122) in regard to the tax base that was rapidly becoming the most lucrative. As a consequence, State tax revenue changed from being considerably less than the transfers they received from the Commonwealth to being five times what they were getting and they were raising 90 percent of their own revenue.

It is not difficult to see why, with the onset of the Second World War—which involved direct attacks on Australian soil and the possibility of retreating from the top half of the continent—the Commonwealth moved to appropriate the income tax. By 1949–1950, the Commonwealth was raising £292 million in various forms of income tax alone, while the States raised a mere £36.4 million in all their remaining taxes and were dependent on transfers for twice as much as they raised in own-source taxation. State financial self-reliance plunged as a consequence and diminished further from there, staying in the 50–60 percent band from 1970 onwards, as their traditional non-tax revenues declined (ABS 1951).

This high degree of vertical fiscal imbalance (VFI) in turn enabled the Commonwealth to exercise the spending power in whichever policy domains it chose and thereby circumvent the constitutional division of powers. Conditional, or "tied," grants have been a powerful instrument of centralization in Australian federalism; L. F. Giblin's (1926, 145) remark that "financial relations ... are the chief determinant of the character of the Federation" certainly had truth to it. As State reliance on transfers increased over the twentieth century, so did the share of those transfers coming with strings attached. When the first tied grants (for roads) where introduced in the 1920s, they made up 1 per cent of total State and local government revenue. That rose to 13 percent by 1970 then to 23 per cent by 1980. Today, transfers contribute roughly 45 percent of State revenue and conditional grants over half of that.[3]

Recent developments have ameliorated that situation somewhat. In 2000, the Commonwealth introduced a national value-added tax, the Goods and Services Tax (GST), hypothecating the entire net proceeds to the States. The GST payments replaced an annual round of Financial Assistance Grants as the source of general purpose funding the States receive.[4] This removed the highly discretionary element of the previous grants regime; however, it did not materially improve the fiscal position of the States or replace any of the conditional funding. In addition, it exacerbated divisions between the States by increasing the visibility of Australia's high level of fiscal equalization.[5] Then, in 2009, the Commonwealth rationalized a large number of conditional grants into a handful of large block grants, reducing their directive nature (Fenna and Anderson 2012; Treasury 2009). Proposals to address VFI in a more fundamental way are periodically floated but make little headway (Fenna 2017).

Judicial Decisions

The High Court served as a brake on centralization in the first decade after federation, invalidating a number of Commonwealth initiatives on the basis that they trenched upon the implicit jurisdiction of the States (Galligan 1987, 81–90). However, it ceased applying a federalism test of that nature in 1920, with a landmark doctrinal change being made in the *Engineers* case (Galligan 1987, 96–101, Menzies 1967, 26–48).[6] There are few who would dispute that "constitutional constraint on central government in Australia has been severely undermined by the High Court" (Galligan 1989, 7). From 1920 onwards, permissive High Court rulings, justified in terms of a "devotion to legalism" (Goldsworthy 2006), have facilitated expansion of the Commonwealth's role in areas of State jurisdiction and of the Commonwealth's power vis-à-vis the States except for some of Labor's more ambitiously socialising ventures in the late 1940s. The post-*Engineers* indifference to the position of the States has been evident in a range of cases from the Court's peremptory dismissal of objections to the spending power in the 1926 Roads case through to its expansive interpretation of the Corporations power in the 2006 Work Choices case.[7]

In particular, the High Court contributed significantly to the growth and use of the Commonwealth's fiscal power. By imposing a broad interpretation of the Commonwealth's exclusive authority over "duties of customs and of excise" (section 90) the High Court has prevented the States from levying sales taxes.[8] And, in 1942, by authorizing coercive use of the section 96 spending power in what Menzies (1967) described as "the strange story of how the Commonwealth's power to give money to the States led to the Commonwealth's monopoly of income taxation," the High Court allowed the Commonwealth to monopolize the most lucrative tax base.[9]

From the 1970s on, though, the dominance this created was reinforced by the High Court's broad interpretation of certain key enumerated powers, notably those over trade and commerce (section 51.i) and corporations (section 51.xx).[10] These opened the way, respectively, to assumption by the Commonwealth of much greater roles in business regulation and employment relations among other things.

The Treaty Power

In its list of enumerated powers, the Commonwealth was granted authority to legislate in respect of "external affairs" (section 51.xxix). The degree to which the Commonwealth could impose its commitments made pursuant to that head of power on the States was unclear until High Court decisions of the early 1980s that essentially granted the Commonwealth *carte blanche*.[11] Those rulings, coupled with escalating international commitments in the latter decades of the twentieth century, laid the basis for a potentially unlimited expansion of Commonwealth

encroachment on State jurisdiction. While far from its only application, the most salient use of the external affairs power to augment the role of the Commonwealth has been in environmental protection.

Legislative Change and Voluntary Cession

Those instances of sub-constitutional change have all had a coercive character and thus represent classic instances of encroachment by the Commonwealth on the States. However, there have also been changes of a very different nature. "Centralization is not always the result of unilateral Commonwealth action" (Saunders 2005, 22). In several areas, a consensual process has been at work where the States have cooperated in national schemes or voluntarily transferred responsibilities to the Commonwealth. One of the earliest examples was the decision of the States in 1923 to pool their public borrowing with the Commonwealth and establish the Australian Loan Council (Jay 1977; Saunders 1990). The consensual nature of this move was evident in the success of the constitutional referendum of 1928 to formalize the arrangement.

A half-way house was the 'mutual recognition' process of regulatory harmonization among the States, but this was a one-off event (Carroll 1995). Sometimes this abnegation of responsibility by the States takes the form of a simple handover, as in the case of tertiary education. In others, it takes the form of elaborate collaborative schemes, as it did with establishment of a national curriculum and testing regime (Savage 2016). At its most formal, voluntary centralization involves a quasi-constitutional re-assignment of responsibilities, as it has done with financial regulation and aspects of law enforcement. Section 51.xxxvii of the Constitution makes explicit provision for the States to "refer" (delegate) powers to the Commonwealth, and although not a frequently used provision, a number of references have been made in recent decades (Craven 1990; Lynch 2012; French 2003).

Explanatory Reflections

The data referred to above give us material to assess the explanations for federal dynamics canvassed in the introductory article to the special issue. While more robust conclusions about the impact of these different factors can only be drawn from systematic comparison across the six cases in this study, it is possible to draw some inferences about the dynamics of federalism relying primarily on this one instance. The following discussion considers the possible causal factors as they are grouped in this special issue's introduction: antecedent conditions; socio-economic trends; socio-cultural trends; economic and security shocks; political agency; and institutional properties.

Antecedent Conditions

The Australian experience is demonstrably consistent with the two hypotheses mooted in the introductory article about origins: early formation and voluntary union both predispose a federation to decentralized beginnings that, in turn, would be susceptible to substantial centralization. As a first-generation federation, Australia was formed when both the scale of economic and social activity and the role of government were far more limited than they became in the twentieth century; accordingly, a limited role was assigned to the Commonwealth. In addition, the fact that the six colonies entered into a federal union through a voluntary process of negotiation and popular consultation meant, in the absence of significant external threat, that a decentralized union was the default option.

Socio-Economic Trends

The Australian experience is demonstrably consistent with the socio-economic factors mooted in the introductory article as drivers of centralization in federal systems: increasing market integration and geographical mobility; technological change; and globalization (e.g., Corry 1941). Centralization went hand-in-hand in Australia with the growth of an industrial society, the rise of an integrated national market, with the emergence of new technologies of transport and communication, and the growing economic links and treaty obligations between Australia and the outside world.

At the outset, Australia had a very low degree of economic integration, effectively comprising six parallel economies focused on trading a similar range of products with the outside world rather than with each other (Mathews and Jay 1972, 18). The clearest manifestation of this was the much-remarked decision by each of the main colonies to use different gauges for their respective railway systems. Federation was intended to bring about a common market but not necessarily a single market (Sawer 1967, 175; also Machlup 1977). As pressure eventually built to establish transport infrastructure for a single market, the Commonwealth assumed a role in Australian rail transport, leading to the establishment of a standard-gauge network across the country. Over recent decades, economic integration has steadily increased. Walsh (2012, 13) estimated that in the years 2002–2005 alone, inter-state trade increased from 54 to 59 percent of GDP. From the 1980s on, big business increasingly pushed for the eradication of federal difference, culminating in their program for a "seamless economy" (BCA 2008; Carroll and Head 2010; Commonwealth of Australia and States and Territories 2008; Walsh 2012). Similarly, while for many decades crime was overwhelmingly a local matter, its trans-border character demonstrably increased from the early 1970s (Mark 1978; Hufnagel 2013), at which point the Commonwealth became seriously involved in law enforcement for the first time.

In a number of areas, Commonwealth intervention followed directly from technological change. The spread of the motor car led, for instance, to the first use of tied grants (road-building), while the coming of aerial transport led to the Commonwealth asserting its priority in regard to airports and creating a domestic airline (TAA). Likewise, the Commonwealth was drawn into broadcasting regulation with the coming of radio then television.

Contrary to the views of some commentators (e.g., Galligan 1996), centralization has been very much hastened by globalization. In part, this is because globalization has put a premium on national competitiveness, which has been driving such centralizing trends as a national curriculum and testing regimes across the State school systems as well as consolidation of the single market. But it has also hastened centralization by facilitating imposition of the national will in areas of State jurisdiction through the treaty power.

Socio-Cultural Trends

The Australian experience is clearly consistent with the propositions set out in the Introductory Article in this special issue about the implications of citizens' identification and citizen expectations about government, namely that centralization will be driven by identification with the federation as a whole and by the growing role of government in managing the economy; in redistributing wealth, providing social benefits, and protecting the environment.

The Livingstonian (1952, 88) tradition places causal primacy on the underlying societal characteristics of a federal system, specifically the existence of "territorial groups that are so different from the rest of the society that they require some instrumentality to protect and articulate their peculiar qualities." While Livingston was relatively catholic about the basis of such territorial identities, subsequent research has emphasized the particular impact of linguistic (Erk 2007) or ethnic (Braun 2011) difference. No such linguistic or ethnic differences have ever distinguished the Australian states from each other. There was some heterogeneity *within* the Australian colonies, notably sectarian differences, "but compared to each other, they were generally homogeneous" (Aroney 2010, 19). This was certainly the case by contrast, for instance, with Canada (Gibbin 1987). Recent developments may be creating greater diversity, but the consequence is limited to "subtly different policy emphases" (Aroney, Prasser and Taylor 2012, 274). Australia is, to use Gagnon's (2015, 13) terms, a polity "founded on a single *demos*," not on multiple *demoi*. While this does not necessarily make for "sham" or merely "vestigial" federalism, as some commentators suggest (Gagnon 2015, 17; Feeley and Rubin 2008, 125), it certainly makes for less vigorous federalism.

Observing how the absence of contentious cleavages made federation so much more straightforward in Australia than elsewhere, Brady (1958, 178–79)

prognosticated that their absence would also prove detrimental over the longer term: "the very success of the federal régime in welding the six colonies of 1900 into a nation will have the effect of shortening its own life. The growth in the sense of unity in turn facilitates the forces which centralize power, including that of judicial interpretation." The absence of such divisions was one of the features that made Australia rather a puzzle for Riker (1964, 113). "One wonders, indeed, why they bother with federalism in Australia," he mused. The exception that 'proves' (i.e. tests) the rule here was the regional discontent in Western Australia that manifested itself in a 66 percent vote in favour of secession in the State-wide referendum of 1933 (WA 1934; Musgrave 2003). That was, however, expression of an exclusively economic grievance and quickly—indeed almost mysteriously—subsided (Lecours and Béland 2018). Not having the linear geographical structure of Canada, Australia does not even have an equivalent depth of economic differences; "no Australian state or group is a region in the North American sense of the term" (Hodgins 1978, 7).

Much of the centralization in Australian federalism was driven or supported by an underlying nationalism (McMinn 1994, ch. 12). The growing "sense of national identity" would seem to have been integral to the High Court's expansive interpretation of Commonwealth powers going back to the landmark *Engineers* decision in 1920 (Saunders 2011, 125–26). It is this absence of regional identities that has underpinned the "utilitarian" (Gerritsen 1990) or "pragmatic" (Hollander and Patapan 2007) attitude toward the federal division of powers that has contributed so much to the erosion of that division (also Grube 2010). It has also been manifest in the absence of regional parties and helps explain the unusual degree of centralization that has occurred specifically in cultural policy and higher education in Australia.

Political Agency

The Australian experience is also consistent with the propositions clustered under the heading of "political agency" in the Introductory Article in this Special Issue, namely the structure and orientation of the party system, and the direction of judicial review.

From the outset, Australian politics has been dominated by nation-wide political parties, which from 1909 were clearly divided on a Left–Right axis. There have been no regional parties to inject a centrifugal dynamic into Australian federalism. If it is the case that "the politics of federalism is always, as well, the politics of left and right" (Noël 2013, 167), Australia is archetypal. The Australian Labor Party (ALP) has consistently been a driving force for centralization and the Australian experience affirms the proposition that left-wing parties play a strongly centralizing role in federal systems. This is essentially for the reason that Croly (1909), and later Laski (1939) gave: effective regulatory and redistributive intervention can only be conducted centrally. Up until the early 1970s, "the

Australian Labor Party was pledged by its platform to the destruction of federalism" (Sawer 1976, 319), and its leaders have been prominent in deploring federalism and the role of the States. The most notable and determined of these was Gough Whitlam (e.g., 1977), but subsequent Labor prime ministers have not shrunk from recommending that the States be "scrapped" (e.g., RJL Hawke; see Bramston 2013). When, in 1910, it formed Australia's first majority government, Labor immediately set about a program of centralization (Mathews and Jay 1972, 93). The election of the Labor government in 1972 launched the most ambitious expansion of the Commonwealth's role in the history of Australian federalism (proudly detailed in Whitlam 1985) and helps explain the escalated centralization that began then—"the Whitlam revolution in Australian federalism" (Sawer 1976). With the conservative parties regularly resisting centralization but rarely rolling anything back, and sometimes contributing themselves, the result has been a ratchet effect.

This would seem to have been a significant driver of centralization in Australian federalism (Turgeon and Wallner 2013). In recent decades, Labor has become more pragmatic about the division of powers as the constitutional obstacles have been largely bypassed and the issue became less entangled with ideological battles (Galligan and Mardiste 1992; *cf.* Parkin and Marshall 1994). Reciprocally, the conservative parties have relaxed their commitment to federalism and engaged in a wide range of centralizing initiatives themselves (Hollander 2008). In response to Labor's collectivist centralism, Australia's main right-wing party, the Liberals, had long been a vocal supporter of federalism and States' rights—though inevitably their practice did not always live up to their rhetoric (Sharman 2001). This waned after the 1970s, and two successive Liberal prime ministers made clear that they saw federalism as obsolescent if not indeed obsolete (Howard 2005, 2007; Abbott 2009).

One of the great sources of frustration for the Labor Party in its centralizing ambitions was the alleged "rigidity" of the Constitution, with a number of centralizing amendments being knocked back at referendum. In Menzies (1967, 152) words, the court's "liberal interpretations" have served as "the great corrective" here. For some commentators, this judicial permissiveness has been a major contributing factor in the centralization of Australian federalism (e.g., Allan and Aroney 2008; Grewal and Sheehan 2004, 582; Hollander and Patapan 2007, 288–90). The other view is that the High Court has done nothing more than deftly respond to the "the development and consolidation of the Australian nation" (Galligan 2008, 632) and has "not otherwise had a dramatic effect on the federal balance" (Selway and Williams 2005, 468).

Institutional Properties

By contrast with much of the above, the Australian experience supplies little support for the view that institutional characteristics play a significant role in the

evolution of federal systems. Has the existence of a formal spending power in the Constitution contributed to centralization? It has certainly removed any doubt about the power; however, we know from other federal systems such as the United States that formal constitutional licence may be quite unnecessary. The proposition that centralization is less likely to occur when a federation is composed of only a small number of units is certainly not borne out by the Australian case, which has the fewest number of constituent units of any country included in this study. Being few in number does not seem in any way to have mitigated the collective action problem of the States vis-à-vis the Commonwealth. Evidence for this includes the fact that Australia has never successfully established a lasting mechanism for horizontal inter-governmentalism (Fenna and Phillimore 2015).

Has the assignment of residual powers to the States made a difference? The framers of the Australian Constitution saw this as part and parcel of decentralized union. In practice, rather the contrary seems to be the case; implicit powers are much more easily "eroded" than enumerated ones (Thorlakson 2006). Possessing only a vague residual power has been a source of vulnerability for the Australian States in constitutional jurisprudence, leaving little textual obstacle to broad interpretation of Commonwealth powers. "We can see with hindsight that the rejection of the Canadian scheme, intended to bolster State power, has had the effect, in the hands of the courts, of assisting the development of national power" (Zines 1986, 87). There seems no reason to cavil at Craven's (1992, 62) judgement that "the founders' evident belief that a general residue of power in the States would comprise a better guarantee of protection than a Canadian-style specific grant was miserably wrong." Unfortunately, there is no way to test the counterfactual here: a dual list design may well have been equally feeble in the Australian context.

Has Australia's legislative rather than administrative approach to dividing powers (Hueglin and Fenna 2015, 53–55) been an important variable? Some analyses see the implications of this fundamental design difference as being sufficiently long-lasting as to justify an historical institutionalist approach to understanding federal evolution, with dualistic systems being amenable to change and integrated ones not (e.g., Broschek 2012). However, this distinction provides no help in explaining major contrasts in the federal world, such as that between Australia's high level of centralization and Canada's low level.

Finally, there is the question of Australia's provision for some limited degree of "direct democracy" in the form of section 128's referendum requirement for constitutional amendment. In a number of instances, this has indeed served as a brake on centralization. The low success rate has sometimes been seen as evidence of excessive rigidity in the Australian constitution (e.g., McMinn 1979, 121). This was the main reason Geoffrey Sawer (1967, 208) famously declared that Australia is constitutionally "the frozen continent." While the low success rate may be seen as a reflection of the ill-considered and unpopular nature of the proposals

(Galligan 1999; Miles 1999), the fact remains that centralization was held back on several occasions by the referendum requirement of section 128. However, the significance of this obstacle can easily be exaggerated given the ways in which it could be—and indeed was—circumvented. Once the potential that lay in the spending power had been realized, constitutional amendment became almost superfluous.

In Summary

Some factors, in particular some of the main institutional ones, seem then to have been of little or no consequence. Many of the other factors tend to separate out between distal and proximate, with the latter often functioning as partial or fully mediating causes in the large causal sequence, with minor independent significance (as *per* Mahoney et al. 2009). This is consistent with a "funnel of causality" interpretation mooted in the introduction and conclusion papers of this study (Simeon 1976, 556; Mazmanian and Sabatier 1980). Thus, the party system is a salient variable, but not necessarily an independently significant one, since it largely reflects underlying socio-economic and socio-cultural factors. This is consistent with the findings of the one major study of federalism and political parties, which concludes that party effects follow, and are secondary to, "broad processes of centralization and provincialization" (Chhibber and Kollman 2004, 227).

Decentralized beginnings created demand for centralization as modernization created new needs and expectations. These together were not, however, sufficient conditions for the degree of centralization that has occurred—as we know, for example, via a contrast with Canada, as discussed in the article in this Special Issue discussing the Canadian case. Comparing the Canadian and Australian experiences suggests that it is the absence of strong identity-based regional difference that allows centralizing pressures to be translated into centralizing changes.

Conclusions

The findings of this research substantiate but nuance the common view that Australian federalism experienced a great deal of centralization since it commenced operation in 1901. The Australian case provides no support for the idea that the relative positions of the two orders of government fluctuate over time in federal systems. Australian federalism was decentralized in design, as evidenced by the high number of policy fields left wholly, or almost wholly, in the exclusive jurisdiction of the States. However, it was transformed in the century following Federation by a persistent and pervasive expansion in the role of the Commonwealth. The pattern has been irregular, and varied in tempo across policy fields, but centralization has been substantial in many policy fields.

The centralizing trend became apparent in the interwar period, was accelerated with the Second World War, slowed in the post-war period, and accelerated and

became more widespread to become pronounced in the last forty years. Not all has been "encroachment"; some has been consensual and voluntary. In a few fields, centralization has opened up a gap between legislative control and administrative responsibility that has made Australia less of a classically dual federation. As a consequence, the original model of a coordinate federalism has given way to a much more entangled version with the States often maintaining their administrative responsibilities but obliged to do so under direction or intervention from the Commonwealth.

Fiscal dominance was the single biggest instrument, with the States losing access to the sales tax and the income tax and thus becoming increasingly reliant on transfers. Increasingly its "surplus revenues" allowed the Commonwealth to intervene almost at will in areas of State jurisdiction by means of conditional grants, particularly from the early 1970s on. The High Court has certainly been complicit in this through the pattern of constitutional interpretation it established from 1920.

The data also provide useful clues as to the reasons for the evident degree of centralization. In a majority of the substantive policy fields, Australia began as a decentralized federation and thus the direction of change was almost inevitably centripetal. Most importantly, Australia was a pre-industrial federation that faced transformative changes in the 20th century. Economic, technological and social modernization either opened up new tasks for government or changed the scope and nature of existing tasks. This is evident in the rhythm of centralization, reflecting the introduction of new modes of transport, media, the welfare state and the spillover of economic activity, environmental concern, and educational priorities. Australia has always been a mono-national society lacking regional identities that would resist centralization. These latter developments were reinforced by the existence of a party system organised around a classic Left–Right axis with a strong left-wing party committed to egalitarian policies and impatient with the obstacles thrown up by a system of divided jurisdiction.

Supplementary Data

Supplementary data are available at *Publius: The Journal of Federalism* online.

Notes

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1. Following passage by the British Parliament of the *Commonwealth of Australia Constitution Act*.
2. This project analyses twenty-two fields, but "language policy" is not applicable in the Australian case, so that field has been dropped.
3. Reforms in 2009 collapsed a large number of focused Specific Purpose Payments into a small number of block grants (Treasury 2009).
4. *A New Tax System (Commonwealth–State Financial Arrangements) Act 1999*.
5. Since, under the *Intergovernmental Agreement on the Reform of Commonwealth–State Financial Relations*, the GST revenues are distributed among the States "in accordance with horizontal fiscal equalisation (HFE) principles" and any extreme divergence between a State's nominal *per capita* share and its equalized shared can be provocatively transparent.
6. *Amalgamated Society of Engineers v. Adelaide Steamship* (1920) 28 CLR 129.
7. *Commonwealth v. South Australia* (1926) 38 CLR 408; *New South Wales v. Commonwealth of Australia* (2006) 231 ALR 1.
8. In a series of cases from *John Fairfax and Sons Ltd v. New South Wales* (1927) 39 CLR 139, through *Parton v. Milk Board* (1949) 80 CLR 229, and finally to *Ha v. New South Wales* (1997) 189 CLR 465.
9. The "Uniform Tax case", *South Australia v Commonwealth* (1942) 65 CLR 373. Section 96 allows the Parliament to "grant financial assistance to any State on such terms and conditions as the Parliament thinks fit" and this power was used to make receipt of further grants conditional on exiting the income tax field.
10. In, respectively, *Strickland v. Rocla Concrete Pipes Ltd* (1971) 124 CLR 468, and *New South Wales v. Commonwealth* (2006) 231 ALR 1 (the "Work Choices" case).
11. *Koowarta v. Bjelke-Petersen* (1982) 153 CLR 168; *The Commonwealth of Australia v. Tasmania* (1983) 158 CLR 1 (Tasmanian Dams case).

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