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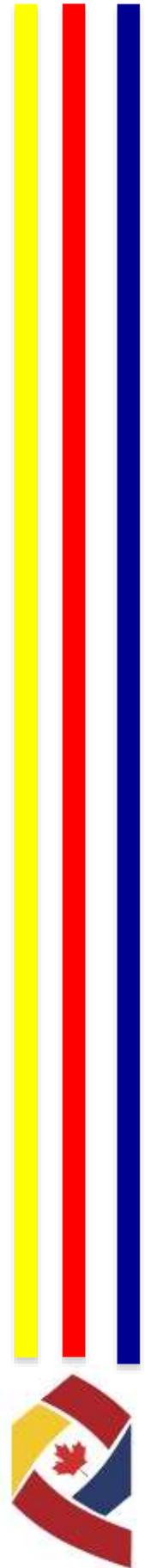
## **Federalism and Sub-National Protectionism: a Comparison of the Internal Trade Regimes of Canada and Australia**

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## **Introduction**

This paper examines the internal trade regimes of Canada and Australia. Starting in the 1980s, policymakers in both federations began to stress the importance of eliminating internal trade barriers. The paper will offer an explanation for why Australia has had greater success in eliminating internal trade barriers than Canada. Our explanation involves the following factors: a different pattern of judicial action in Australia, differences in the systems of executive federalism in the two countries, and the greater linguistic homogeneity of Australia.

Our conclusion that linguistic diversity makes it harder to eliminate internal trade barriers should be of interest to policymakers and academics in federal systems around the world, particularly those in emerging markets such as India that are currently working towards this goal (Bloomberg, 2015). Our paper does not imply that it is impossible to eliminate internal trade barriers in linguistically divided federal states or that efforts to eliminate such trade barriers are not worthwhile. It does, however, suggest that such efforts are more likely to require the use of greater political capital and the effective use of the institutions of executive federalism and collaborative federalism.

## **Literature Review**

Within federal systems, there is a well-documented tendency for sub-national units to drift into protectionism by creating trade barriers that protect local producers at the expense of producers in other constituent units of the federation (Breton and Salmon, 2001). The literature on internal regimes includes studies of such federal systems as the United States (Regan, 1986; Wiseman and Ellig, 2007; Drahozal, 1999; Zimmerman, 2004), India (Ebb, 1958; Das-Gupta, 2006; Srinivasan, & Jha, 2007), and Ghana (Kufuor, 2010). There is also a vast literature on the role of the courts in the elimination of internal trade barriers in such quasi-federations as the European Union (Barnard, 2013). The literature on internal trade regimes also includes studies of local protectionism and interprovincial trade barriers in China (Bai, Du, Tao, & Tong, 2004; Poncet, 2005; Chen, Goh, Sun, & Xu, 2011; Li, 2012) a non-democratic regime that is sometimes conceptualized as a type of federation (Montinola, Qian, & Weingast, 1995).

The academic literature on Canada's internal trade regime includes works such as Courchene (1984), Doern & MacDonald (1999), Berdahl (2012), and Beaulieu (2013). Australia's internal trade regime has been analysed by scholars such as Kiefel & Puig (2014), Painter (2009) and Twomey (2007). The literature that compares the evolution of the internal trade regimes of the two countries is limited to Brown (2002) and a report by a free-lance economist in Ottawa (Macmillan, 2013). Brown outlines the different approaches Australia and Canada have taken when it comes to breaking down intra-state or provincial trade but he does not offer a comprehensive and theoretically informed explanation as to why Australia has fewer internal trade barriers. This is what this paper will aim to do.

Comparing the evolution of the internal trade regimes of Canada and Australia is appropriate in view of the important similarities between the two countries. There is an extensive body of research on the evolution of these two federal systems (see overview in Sayers & Andrew, 2013). Moreover, the political cultures of both countries has been affected in the last three decades by neoliberalism, a worldview that is generally hostile to state interference in markets and which is therefore incompatible with interprovincial trade barriers. While there are many similarities between Canada and Australia, there are also important differences between their political systems. For instance, the electoral systems of the countries are somewhat different, as Canada has First-Past-the-Post and Australia has mandatory voting (Koop and Sharman, 2015). For the purposes of thinking about the evolution of internal trade regimes, the most relevant structural difference between the countries is the fact that Canada is a bilingual federation. In our view, Canada's greater linguistic diversity than Australia helps to explain why Canada has made less progress towards the elimination of internal trade barriers than Australia.

Courchene (1984) explored the political economy of Canada's internal trade regime by applying the lens of Public Choice. Public Choice theory has also been applied to studying interstate trade barriers in the United States (Kitch 1982; Craig & Sailors, 1988). Public Choice and other rational-actor approaches have been extensively critiqued for ignoring cultural and linguistic forces (Katznelson & Weingast, 2005) and for being "undersocialized," to borrow the term of Granovetter (1992). We agree with these criticisms and argue that Public Choice theory fails to capture all of the factors that influence the making of internal trade policy, particularly in culturally diverse federal systems. Following Berdahl (2012), we have integrated ideas, institutions, and interests into our explanation. Investigating these various forces has involved the consultation of a diverse range of data including court rulings, government reports, and press reports.

Within economics, there is an extensive debate over whether ethno-linguistic heterogeneity is a barrier to economic development (Montalvo & Reynal-Querol, 2005; Alesina & Ferrara, 2004; Habyarimana et al, 2007; Galor, 2011, 181). This paper will not attempt to resolve this ongoing debate, but we will note that the resulting economics research suggests that the mechanisms whereby different levels of ethno-linguistic diversity affect national economic institutions is very complex: ethno-linguistic heterogeneity may, in some circumstances, be a barrier to economic growth and efficiency but in other circumstance ethno-linguistic diversity can be a net asset for countries, not to mention cities and companies (Page, 2008). We would note that the world's most successful economies include multilingual nations such as Switzerland as well as linguistically homogenous ones. Similarly, the world's poorest nations include a mixture of monolingual and multilingual nations. For our purposes, the key point to take away from the literature on the relationship between ethno-linguistic diversity and national economic institutions is that while such linguistic heterogeneity does not necessarily make a country poorer, it is likely to produce economic institutions that differ in some respects from those of more homogenous but otherwise equivalent societies. The research presented in this paper is congruent with this finding.

### **1. A Comparison of the Current Internal Trade Regimes of Australia and Canada**

Journalists (Iverson, 2014) and economic consultants (Macmillan, 2013) have argued that Australia has a more comprehensive economic union than Canada. In this section of the paper, we will support the thesis that Australia's political system has indeed made greater progress towards the elimination of internal trade barriers since the mid-1980s, when the achievement of internal free trade became an important goal for policymakers in both countries. Table 1 shows the internal trade barriers that existed in Canada and Australia in the mid-1980s. It also describes the progress that has been made in the elimination of these trade barriers. Table 1 indicates that Australia has made greater progress to date than Canada in the elimination of internal trade barriers.

*Table 1: A Comparison of the Progress Towards Internal Economic Union, Canada and Australia, c. 1985 to Present*

Based on Doern and MacDonald (1999), Painter (2002), Table 4.1; Whalley (2007); Beaulieu (2013), as well as sources listed below.

	<b>Internal Trade Barrier, Canada c. 1985</b>	<b>Progress Made to Date in Eliminating the Barrier</b>	<b>Internal Trade Barrier, Australia c. 1985</b>	<b>Progress Made to Date in Eliminating the Barrier</b>
Barriers to Trade in Visible Goods	Quantitative Restrictions on Inter-provincial Trade in Agricultural Goods (Supply Management)	Restrictions on interprovincial movement of some commodities (barley, wheat) have been repealed. Supply Management otherwise in place	Different Product Standards By State	Mutual Recognition Accord
	Discriminatory Procurement Policies	Banned under the 1995 AIT but still in place in some cases		
	Different Highway Regulations	Still in place, despite harmonization agreements linking Ontario and Québec and Alberta and British Columbia, respectively (Council of Ministers Responsible for Transportation and Highway Safety, 2008, 25-6 )	Different Highway Regulations	Problem eliminated by the Federal Interstate Registration Scheme (FIRS)
	Discriminatory Pricing and Distribution of Alcoholic Beverages	Still in place. Some change in form of the Maritime Beer Accord.		
	Discriminatory Rail Freight Rates	Unknown	Lack of Integration in State Railway Systems	Improved (Bureau of Transport and Regional Economics, 2006)

	Discriminatory Pricing of Oil and Gas			
	Restrictions on Trade in Electricity	Still in place	Restrictions on Trade in Electricity	Lifted
	Restriction on Trade and Competition in Utilities Sectors	Still in place	Restriction on Trade and Competition in Utilities Sectors	Lifted
Services and Labour Mobility	Discriminatory Procurement Policies	Banned under the 1995 AIT but still in place in some cases		
			Restrictions on Interstate trade in banking, insurance and financial services	Ended
	Different Provincial Regulation of Professional Services	Partial progress: mutual recognition and harmonization of qualifications. However, interprovincial mobility barriers remain for certain occupations (Canadian Council of Directors of Apprenticeship, 2014, 8)	Different State Regulation of Professional Services	Process is ongoing (Koutsogeorgopolou, & Barbiero, 2013, 14; Bonig, 2013).
	Different regulation of non-bank financial sector	Issue not yet resolved	Different regulation of non-bank financial sector	
	Securities Market Not Wholly Integrated	Federal Attempt to create a national securities regulator blocked by Supreme Court (Kiladze et al, 2011).		
Capital Mobility	Lack of a National Securities Regulator	Barrier still in place (see above)	Banks owned by state government restrict capital mobility	Ended largely through privatization
	Restrictions on interprovincial investment in the resource sector	Partial progress		
	Restrictive investment policy for pension plans, sovereign wealth funds	Barriers still in place		

## 2. The Internal Trade Regimes under the Australian and Canadian Constitutions

There are many parallels between the constitutional histories of Australia and Canada (Norris, 1978). Both countries were formed by federating geographically contiguous British colonies. In both cases, the desire to eliminate inter-colonial trade barriers was an important motivation for federation. The founding constitutional documents of both countries are statutes of the British parliament. Both countries retained London's Judicial Committee of the Privy Council (JCPC), as their highest court of appeal into the second half of the twentieth century. The written constitutions of Canada (1867) and Australia (1900) both contain sections that explicitly provide for internal free trade within the federation. Despite the existence of these constitutional guarantees, a wide variety of internal trade barriers emerged in both countries.

*Table 2: Relevant Sections of the Canadian and Australian Constitutions*

Section 121 of the British North America Act	Section 92 Constitution of Australia
All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.	<p>On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.</p> <p>But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation</p>

In the legislative debates that preceded the federation of the British North American colonies, there were frequent references to the desire to eliminate trade barriers within British North America. John A. Macdonald (1865) made it clear that federation was the only way to bring about the long-discussed economic union of the British North American colonies. He declared: "if we wish...to establish a commercial union, with unrestricted free trade, between people of the five provinces, belonging, as they do, to the same nation, obeying the Same Sovereign... this can only be obtained by a union of some kind between the scattered and weak boundaries composing the British North American Provinces. (Cheers)." The words of the other supporters of Confederation, including Francophones, also support the thesis that desire to eliminate intercolonial trade barriers was a motive for the union of the colonies (see Galt, 1864, 10; Brown, 1865, 99; Cauchon, 1864, 31-2; Cartier, 1865, 60).

The creators of the Australian constitution expressed similar sentiments. In advocating a federation of the Australasian colonies, Sir Henry Parkes spoke positively about the free internal market that existed in the United States: "the whole of that great territory now possessed by the United States of America, is as free as the streets of Boston or the streets of New York." (Parkes, 1890, 43) He emphasised this point in the discussions surrounding a future Australian Federation: "Between any two of the states – indeed, from one end of the states to the other – the country is as free as the air in which the swallow flies... We cannot too fully bear in mind this doctrine of this great republic" (Parkes, 1890, 44; Kiefel & Puig, 2014, 35).

After federation, legislators in both countries created internal trade barriers that protected local producers from competitors in other jurisdictions. In both countries, economic actors disadvantaged by

these policies sought judicial redress. Here, an important difference between Canadian and Australian federalism emerged. Australian courts have often used section 92 to invalidate a wide variety of laws that created inter-state trade barriers and to shape economic policy more generally (Kiefel and Puig, 2014). Although the courts have not consistently sided with the principle of internal free trade, they have done so frequently.

Fox v. Robbins, the first important case involving section 92, was decided in 1909. It concerned a state law that taxed liquor made from fruit produced within the state at a lower rate than liquors produced with fruit from other states. Australia's High Court struck down this protectionist measures as unconstitutional (Aroney et al., 2015, 316). The JCPC endorsed this doctrine in James v. The Commonwealth in 1936. Other laws that appeared to limit free trade between the states were, however, upheld by the courts when they were challenged on the grounds they violated section 92. For instance, Australia's High Court held in 1978 that a law establishing a Wheat Board monopsony did not violate section 92. In the 1945 case of Australian National Airways Pty Ltd v Commonwealth, the High Court concluded that while the constitution allowed the government to establish a publicly owned airline, section 92 precluded the government from then giving this airline a monopoly on interstate air travel. As a result, Australia developed an aviation industry dominated by two main companies, only one of which was government-owned (Zines, 1990, 32).

The body of case law interpreting section 92, which now includes 140 High Court and JCPC decisions, contains various recognized principles for determining whether a given statute violates the spirit of section 92 of the constitution. Writing in 1958, judge Sir Robert Garran imagined that the case law related to section 92 was so complex a confused student might abandon law school for a comparatively easy subject like "nuclear physics." Since 1958, Australian judges have continued to add to the complexity of the legal issues surrounding the interpretation of section 92. Prior to the 1988 case of Cole v. Whitfield, section 92 was interpreted as limiting both federal and state power in the defence of the principle of economic *laissez-faire*. In ruling on Cole v. Whitfield, the High Court of Australia modified this doctrine by declaring that this law was limited to prohibiting measures that had either a protectionist purpose or effect. Australian courts now apply the so-called "Cole v. Whitfield test" in judging section 92 cases (Puig, 2011, 78).

In the 2008 cases of Betfair Pty Limited v Western Australia, the High Court ruled that section 92 gave Betfair, a gambling website registered and regulated in the State of Tasmania, the right to operate in Western Australia. This case is important both because it applied section 92 to an online industry and drew on the US Supreme Court jurisprudence related to the Commerce Clause in the US Constitution (Aroney et al., 2015, 332). In 2012, the courts decided that Sportsbet, a gambling company registered and regulated in the Northern Territory, was entitled under section 92 to install a terminal in a hotel bar in the State of Victoria. Since 2012, this decision has been cited in a further 21 cases.

During the first fifty years of the Canadian constitution, judges frequently used their powers of judicial review to disallow statutes that they regarded as unconstitutional. One of the results of the JCPC's enthusiastic use of section 92 was to make Canada's federal system much more decentralized than had originally been intended (Saywell, 2009). However, the courts proved unwilling to use section 121 of the constitution to strike down laws that create interprovincial trade barriers. Generations of Canadian judges have deferred to a Supreme Court ruling in the 1921 Gold Seal Ltd case, which dealt with a liquor merchant who had attempted to send alcoholic products across a provincial boundary. The Supreme Court ruled in that case that section 121 of the constitution should be interpreted narrowly and as precluding solely the imposition of actual tariff barriers at interprovincial borders. The court ruled that the sole aim of section 121 was "to prohibit the establishment of customs duties affecting inter-provincial trade in the products of any province of the Union." Other fetters on interprovincial trade, such as the ban on alcohol sales in some provinces, were according to the ruling, perfectly constitutional.

The decision in the Gold Seal case was extensively cited in subsequent JCPC and Supreme Court rulings on the constitutionality of non-tariff barriers to interprovincial trade. For instance, the JCPC cited Working Paper 2015 - 01

Gold Seal in ruling in 1943 on the case of the Atlantic Smoke Shops case: the JCPC ruled that a New Brunswick law that restricted imports from other provinces was constitutional (Blue, 2009, 365). The Supreme Court also followed Gold Seal in interpreting section 121 narrowly in the 1958 case of *Murphy v. Canadian Pacific Railway*, when it examined the constitutionality of a law that prohibited farmers from selling wheat across interprovincial boundaries. In deciding this case, the Supreme Court rejected a lawyer's argument that the Australian jurisprudence relative to section 92 of that country's constitution should be considered in evaluating section 121, since the Commonwealth of Australia Constitution Act of 1900 was fundamentally different from the British North America Act of 1867, "the Australian constitution is a federal scheme in the general acceptance of that expression; it is one in which autonomous states confer on their collective organization segments of their own legislative, executive and judicial powers, retaining their original endowment so far as it is not transferred and not otherwise withdrawn from them." Canada's constitution, in contrast, was one which the federal government had ultimate authority. Canada's Supreme Court thus concluded that the 1936 JCPC decision in the Australian case of *James v. The Commonwealth* was not relevant to the case at hand.

In 1971, the Manitoba government asked the Supreme Court use section 121 to strike down a law designed to protect Québec egg producers from competitors in other provinces (*Globe and Mail*, 27 March 1971; 29 June 1971). It might be noted in passing here that the law favouring Québec egg producers had been passed the previous year, in the tense atmosphere immediately prior to the October Crisis and the invocation of martial law. The Supreme Court upheld the law and the Gold Seal interpretation of section 121. The most recent attempt by an appellant to have an interprovincial trade barrier declared unconstitutional under section 121 was the 1978 *Agricultural Products Marketing* case. In this case, the appellants argued that a law prohibiting the shipping of Ontario eggs into Québec violated section 121. Following the Gold Seal ruling, the Supreme Court held that the restriction on the interprovincial trade in eggs was constitutional. For a generation after the Supreme Court's definitive ruling in 1978, Canadian lawyers essentially abandoned their attempts to use section 121 to fight interprovincial trade barriers. Not until 2013 was there another attempt to use section 121 to challenge an interprovincial trade barrier. This court case, *R. v. Comeau*, is still before the courts (*Canadian Broadcasting Corporation*, 2015).

The respective stances taken by the Australian and Canadian courts helps to explain the differences in the internal trade regimes of the two countries. However, it is not the only major factor. Notwithstanding the frequency with which Australia courts struck down internal trade barriers, Australia c. 1985 did indeed have many barriers to interstate trade. In that sense, the country's internal trade regime was similar to the contemporaneous internal trade regime of Canada. Since c. 1985, greater progress towards the elimination of internal trade barriers has been made in Australia for the reasons discussed in the next section.

### **3. Australian and Canadian Efforts to Eliminate Internal Trade Barriers Since the 1980s**

The aforementioned history of litigation about internal trade barriers shows that certain business interests in both countries have long expressed dissatisfaction with particular internal trade barriers. The comprehensive elimination of internal trade barriers did not, however, become a major political project in Australia and Canada until the 1980s. During this decade, observers throughout the Western world began to argue that the pace of globalization was accelerating due to a combination of new technologies and international trade agreements, such as successive GATT negotiating rounds. The term "competitiveness" (Sklair, 2000; Bruno, 2009), became strongly linked to the agenda of neoliberal reform. The advent of free trade between Canada and the United States after 1988 made the persistence of interprovincial trade barriers seem incongruous to many Canadians. Observers in both Canada and Australia were aware that the nations of the European Economic Community committed through the Single European Act of 1986 to the elimination of internal trade barriers.

In Canada and Australia, the elimination of internal trade barriers was seen as a mechanism for promoting economic efficiency and rationalization. In 1983, the report of the Royal Commission on the Economic Union and Development Prospects for Canada, had recommended that the country boost

productivity by negotiating free trade agreements with the United States and other foreign countries and eliminating internal trade barriers (Inwood, 2005, 163). The Report of the Royal Commission documented a wide variety of internal trade barriers. In particular it drew attention to the fact that “the costs of barriers to trade may be extremely significant for individual firms” (Report of the Royal Commission on the Economic Union and Development Prospects for Canada, 1985, 120). A survey of 651 manufacturing companies, carried out by the Canadian Manufacturers Association, determined that one-fifth had experienced problems in selling products as a consequence of provincial restrictions (Report of the Royal Commission on the Economic Union and Development Prospects for Canada, 1985, 121).

### *Australia*

In Australia, boosting productivity through the elimination of internal trade barriers was promoted by the Labor governments led by Prime Ministers Bob Hawke and Paul Keating. On 19 July 1990, Hawke gave an important address that asked the states and local governments to work together in a new atmosphere with the Commonwealth on a raft of reforms, a “new partnership” (Painter, 2009, 3). Hawke emphasised the “national interest” in his speech: “we share a commitment to a single national identity...Yet within this splendid unity, we have imposed on ourselves a burden of different rules and regulations and requirements which needlessly weighs against the tremendous advantages we can have as a nation-continent.” (Painter, 2009, 20) Hawke’s push to eliminate internal trade barriers contributed directly to the creation of the Council of Australian Governments (COAG) in 1992. The Commonwealth and State heads of government met in May of that year and agreed to establish COAG, to meet at least annually, to supplement the annual Financial Premiers’ Conference. Alongside a general directive to encourage “increasing cooperation”, the statement on its function referred to achieving “an integrated, efficient national economy and a single national market...[and] consultation on issues including international treaties and major items emerging from ministerial council deliberations” (Painter, 2009, 44).

This agreement was followed up with the establishment in 1997 of the Productivity Commission, an advisory body. Although the Productivity Commission was concerned with many areas of economic policy, it published a variety of studies about the problem of internal trade barriers. For instance, in 1998 it published a report that discussed Canada’s Agreement on Internal Trade (AIT) of 1995 (Productivity Commission, 1998, 611-623). The Productivity Commission had the resources to study and make authoritative recommendations about Australia’s internal trade regime since it is a well-resourced entity with 197 full-time employees (as of 2014), a large budget (A\$38m in 2014), and strong ties to academic researchers and to COAG (Productivity Commission, Annual Report, 2014). Between 1998 and 2013, the head of the Commission was Professor Gary Banks, an economist who had previously worked for the OECD, a prestigious think tank (Anzog Website, 2015). Banks was very conscious of the fact Australia’s federal system resulted in internal trade barriers and other inefficient arrangements. Speaking at an OECD conference in Paris (2005, 15), Banks remarked that Australia’s federal system had resulted in “productivity-sapping fragmentation. (The best (worst) example of this in Australia was the variation in railway gauges that for many years made a change of trains obligatory for interstate movements of people or goods.)”

One of the major successes of COAG in reducing internal trade barriers was the Mutual Recognition Accord of 1992, which was modelled loosely on the Single European Act of 1986. (Australian Productivity Commission, 2004, 2). At a special meeting of first ministers in October 1990 the premiers recognized that this regulatory reform was needed “in order to enhance the flexibility and competitiveness of the Australian economy”. To help achieve this, they endorsed a policy of mutual recognition of standards and regulations, relating to the sale of goods and to the qualification and experience requirements for occupational registration (Australian Productivity Commission, 2004, 3). On 11 May 1992, following a national consultation process, the Premiers and Chief Ministers of the Australian States and Territories signed an *Inter-governmental Agreement relating to Mutual Recognition*. The inter-governmental agreement set in train a process for the establishment of a mutual recognition scheme in Australia (Australian Productivity Commission, 2004, 3).

In 2003, the Productivity Commission noted that the Mutual Recognition Accord had resulted in substantial progress towards the elimination of barriers to the movement of goods, services, and labour between Australian states and between the Australian states and New Zealand, which had later signed up to the scheme. The report (p. XVI) distinguished the Australian Mutual Recognition Accord from the mutual recognition principle embodied in the Single European Act. In Australia, the principle of Mutual Recognition applies “only to the sale of goods and to the registration of occupations” and does “not extend to the manner of sale, transport, storage, handling, inspection, or usage of goods, or to the manner of delivery or the remote provision (across borders) of services” which is the definition of mutual recognition in the European Union. The report also noted that while Australia’s definition of Mutual Recognition was less comprehensive than that used in EU jurisprudence, it was stronger than under the 1995 AIT of Canada, “where mutual recognition is extended on a case-by-case basis.” In Australia, in contrast, “all goods and registered occupations are subject to mutual recognition unless specifically excluded.” The report justified Australia’s choice of an “opt-out” model rather than a Canadian-style “opt-in” model, on the grounds that it resulted in a “scheme that is not administratively burdensome and avoids extensive and protracted negotiations” (Productivity Commission, 2003).

Building on these earlier successes, COAG began working in 2006 on implementing a business-led initiative called “Towards A Seamless Economy”. The aim was to identify and remove all of the remaining barriers to internal free trade. The technical or regulatory barriers to trade identified included: railway legislation; occupational health and safety; chemicals and plastics regulation; national trade licensing; occupational health and safety laws; wine labelling; food regulation and consumer product safety; building codes; — environmental assessment and approvals processes; business registration. (Business Council of Australia, 2008, page 6). The goal was to eliminate these trade barriers by 2010.

A 2012 paper by the Business Council of Australia assessed the progress that had been made towards achieving the goals established in 2010. Independent academic research, such as the study of the harmonization of state Occupational Health and Safety regulations, corroborates that regulatory policy is trending strong towards convergence (Brown et al., 2008). Although the 2012 paper by the Business Council documented the positive steps that been taken in many areas of the economy it still identified six priorities that would lift productivity and enhance competition. These were lifting regulatory performance to lower costs to business and the community; streamlining environmental assessments and approvals; improving the efficiency of major project development approvals; improving development assessment processes for low-risk, low-impact development; removing unnecessary carbon reduction and energy efficiency initiatives; delivering energy market reforms to increase competition and reduce costs (Business Council of Australia, 2012, 2). This discussion paper argued that if these priorities were achieved than Australia would truly become one national economy, which would be extremely more competitive in the global economy.

### *Canada*

In Canada, the federal and provincial governments negotiated an Agreement on Internal Trade (AIT) in the period between March 1992 and June 1994. These meetings were chaired by a non-politician, Winnipeg businessman Arthur Mauro, which meant the bargaining rounds were not disrupted by replacement in 1993 of the federal Progressive Conservative government by a Liberal one. Prior to the 1993 election, Michel Wilson, Brian Mulroney’s Minister of Industry, energetically supported the AIT talks. After the election, Wilson’s Liberal successor, John Manley, applied his considerable energies to the talks.

The negotiations for the AIT took place against the backdrop of constitutional politics and an emerging national unity crisis. During his period as Prime Minister (1984-1992), Mulroney’s government had been preoccupied with the constitutional issue of attempting to satisfy the demands of the province of Québec for greater autonomy. In 1992, a First Ministers meeting had produced a package of constitutional reforms, Working Paper 2015 - 01

the Charlottetown Accord, that was designed to satisfy the demands of both Québec and other groups in Canadian society that wanted constitutional change (Doern and Macdonald, 1999, 28-30). The defeat of this accord in a popular referendum in 1992 contributed to the election in September 1994 of a Parti Québécois government intent on separation from Canada and the establishment of an independent country. A referendum on Québec independence was scheduled for October 1995. Québec's separatist leaders indicated that an independent Québec would continue to be linked to the rump of Canada through a common currency and some sort of free-trade agreement. After coming into office in September 1994, the Parti Québécois government opted not to rescind the support of the province for the AIT, which had been granted several months earlier by an anti-separatist provincial government.

The AIT, which formally took effect on 1 July 1995, established six general rules to guide future internal trade policy (Brown, 2002, 147). The rules, which were outlined in Part III of the agreement included reciprocal non-discrimination, right of entry and exit, and harmonization of standards. Considered in isolation, the general principles enshrined in Part III of the agreement would have provided for the elimination of many if not most barriers to internal trade in Canada. However, the spirit of these general rules was undercut by many of the provisions of Part IV of the agreement, which covered specific sectors of the economy such as agricultural goods and food, alcoholic beverages, natural resources, energy, communications, and transportation. Chapters in Part IV also covered procurement, labour mobility, and investment.

A close reading of these chapters shows that the AIT actually provided for the retention of many interprovincial trade barriers, notwithstanding the lofty general principles proclaimed in Part III. For instance, section 903, which concerns interprovincial trade in agricultural products, committed the country's Ministers of Agriculture to a mere "review" of the interprovincial trade barriers "governing supply managed commodities" such as the "dairy, poultry and egg industries." Section 903 did not commit the provinces to the elimination of the interprovincial trade barriers that underpin their systems of administered prices. The ambiguously worded Section 903 suggested that the review would lead to a national market for these products that was both integrated and a "sustainable orderly marketing system."

Section 903 is just one example of provision of the 1995 AIT that was designed to permit the continuation of some forms of interprovincial protectionism. The wording of other sections of the agreement also makes it clear that the intention of the authors of the agreement was not to establish comprehensive free trade. Under the terms of the AIT, the rule the provincial governments should not discriminate against producers in other provinces in procurement was defined narrowly and only applied to procurement by provincial government ministries. The agreement thus allowed provincial governments to still impose protectionist procurement rules on enterprises owned by provincial government and on entities in the MASH (Municipalities, Academic, Social, and Health) sector, a significant part of Canada's GDP.

When the text of the agreement was published in 1994, many were disappointed because it provided for the continuation of many internal trade barriers and it lacked an enforcement mechanism (Coynes, 1994; Cohen, 1995). Indeed, the incumbent Prime Minister acknowledged that the AIT was a very modest measure, calling the new arrangement "just a little bit better" than the status quo (Globe and Mail, 20 July 1994). When the eighteen-month deadline for implementation for the AIT passed in 1997, many commentators observed that many of the modest commitments outlined in the AIT had yet to be fulfilled (Brown, 2002, 151). Indeed, as of 2015, this criticism is still valid. For instance, while Article 903 committed Canada's ministers of agriculture to meet to "review" the interprovincial trader barriers in agriculture, no such review has ever been reported in the press. Indeed, as of 2015 this particular class of interprovincial trade barriers still exists.

The agency established by the AIT, the Internal Trade Secretariat, was given a small budget and no powers of enforcement. As of 2015, it has just three employees, one of whom is clearly an administrative assistant (Internal Trade Secretariat Website, 2015). The Internal Trade Secretariat is located in Winnipeg, Working Paper 2015 - 01

which is distant from both Ottawa and the country's major financial centres. Moreover, as the legal scholar Katherine Swinton (1995) noted, the AIT does not provide for litigation, which means that persons who have been harmed by interprovincial trade barriers cannot go to the courts to seek a legal remedy under the AIT.

A survey of Canadian chief executives in 2004 indicated that the interprovincial trade barriers with the greatest impact on Canadian business were those relating to the movement of labour, agricultural products, investment capital, and public-sector procurement. One of the CEOs complained that Canada was "a collection of old time city states. We will never be a major trading partner until the Federal government uses its muscle to take control." Another unnamed CEO declared that with NAFTA, "we now have somewhat free trade within the Americas; but it is laughable to suggest that we have similar open and free trade within Canada itself" (Compas, 2004, 3). The 2004 survey suggests that a full decade after the negotiation of the AIT, internal trade barriers remained significant in many areas of the Canadian economy. In the decade since that poll was conducted, some progress has been made.

Between 1999 and 2009, only relatively modest changes to Canada's AIT were made (Sixth Protocol of Amendment, 2005). In 2009, however, some substantial progress towards the goal of the elimination was made. In this case, the breaking of the logjam can be attributed to the Global Financial Crisis of 2008-9, which increased unemployment in some regions of Canada and thus made interprovincial mobility a pressing goal for federal policymakers. The financial crisis also resulted in Stephen Harper, who served as Canada's Prime Minister from 2006 to 2015, in attending his first First Ministers conference: unlike other post-war Canadian Prime Ministers, who typically met with their provincial counterparts, on average, once every one or two years (Canadian Intergovernmental Conference Secretariat, 2015), Harper indicated when he gained office that he did not wish to participate in this tradition (National Post, 30 January 2015). Some scholars see the election of a new government in 2006 as marking the end of Canada's system of "collaborative federalism" and a shift to a more unilateral, top-down approach to federal-provincial relations (Simmons and Graefe, 2013, 27).

The financial crisis, which placed the Conservative minority government under intense political pressure, forced that government to temporarily depart from this unilateralist position. The November 2008 and January 2009 emergency First Ministers meetings on the economy dealt with the issue of interprovincial barriers to labour mobility. The wording of the joint communiqué of the First Ministers suggests that this issue was likely seen as a priority because a combination of an oil boom in western Canada and declining demand for central Canada's manufactured goods had resulted in skills shortage in one part of the country and a surplus of skilled labour in another (Prime Minister of Canada Website, 2009).

In the wake of the First Ministers' conferences held in the winter of 2008-9, three amendments to the 1995 AIT were agreed. Two of these amendments related to procedural matters, the structure of panels for adjudicating disputes or the mechanisms for consulting with stakeholders. A substantive amendment (Ninth Protocol of Amendment) which aimed to increase interprovincial labour mobility by simplifying procedures for workers in so-called Red Seal regulated trades, such as welders and electricians. Up to this point, workers in these occupations had found that their qualifications were frequently unrecognized when they crossed a provincial border. The amendment also sought to eliminate the practice of requiring a worker to establish residence in the province of employment before being offered employment. The amendment did, however, contain some caveats and thus stopped short of establishing full interprovincial labour mobility. Most obviously, the agreement specified that it would not apply to "Québec's measures pertaining to language requirements" for employment. This provision was likely inserted at the insistence of Québec's then Liberal government. Moreover, Article 708 stated that the agreement on internal labour mobility would not apply to measures that advanced "legitimate objectives." Despite a plethora of "reviews," "initiatives," consultation exercises, qualification harmonization study groups, and "national advisory committees" by the Red Seal Program there were still, as of late 2014, a failure to recognize qualifications in a variety of different occupations, including "Tower Crane Operator, Heavy Duty Equipment Technician, Ironworker

(Structural/Ornamental), and Ironworker (Reinforcing).” Without such mutual recognition, it becomes very difficult for a worker to find employment in his or her chosen trade in another province without costly re-qualification (Canadian Council of Directors of Apprenticeship, 2014, 8). Complaints from eastern Canadian welders unable to work as welders in the oil-rich provinces of the west continue to appear on Canadian social media as late as 2015 (Globe and Mail, 2015), which suggest the regulatory barriers to interprovincial mobility still constrain the hiring decisions of construction site foremen and other employment gatekeepers.

After the Canadian economy stabilized in 2009, the incumbent Prime Minister signalled that he would not attend another First Ministers conference. After he acquired a parliamentary majority in the 2011 federal general election, the likelihood of another First Ministers’ conference in the next four years became even more remote. The refusal of the Prime Minister to participate in traditional First Ministers’ conferences meant that federal-provincial diplomacy on the subject of interprovincial trade barriers would operate on the ministerial and sub-ministerial level and without the moral authority that comes when heads of government negotiated directly. Then, in 2012, Québec elected a nationalist provincial government, which meant that the likelihood of negotiating additional pan-Canadian agreements to eliminate internal trade barriers was further reduced. The emergence after 2009 of all of these apparent barriers to the achievement of a national agreement on internal trade barriers prompted several provinces to abandon multilateral or pan-Canadian approaches in favour of bilateral or trilateral agreements involving groupings of geographically contiguous provinces, such as the 2010 New West Partnership. Here we can make an analogy with the behaviour of nation-states after it became clear that the Doha Round at the WTO was unlikely to produce a worldwide agreement lowering international trade barriers: nations responded by focusing diplomatic resources on the negotiation of free-trade agreements with smaller groups of nations (Schwab, 2011).

The negotiation of these regional free trade agreements within Canada was not entirely unprecedented. For instance, in the early 1990s there was an informal agreement among the premiers of the three Maritimes provinces (Nova Scotia, New Brunswick, and Prince Edward Island) to create a free-trade area for beer. The so-called Maritime Beer Accord meant that national and multinational brewing companies were no longer required to operate breweries in each province as a condition of selling their products there: under the terms of the Atlantic Beer Accord, it is sufficient for a brewing company to manufacture in one of the three provinces for its products to be accorded “domestic” status in the other two provinces (Nova Scotia Liquor Corporation, 2007). Such domestic status considerably reduces the regulatory barriers involved in warehousing, marketing, and retailing beer (Canadian Broadcasting Corporation, 2015). Similarly, provincial ministries of transportation eased the flow of trucks across provincial borders through bilateral harmonization agreements covering vehicle regulations. For instance, Ontario and Quebec harmonized their rules with an important 2006 agreement, while Alberta and British Columbia concluded their own agreement, which had different rules defining what would be considered safe (Council of Ministers Responsible for Transportation and Highway Safety, 2008, 25-6).

The Maritime Beer Accord was, of course, a single-industry agreement covering three provinces with small populations. The 2006 Ontario-Quebec Cooperation Agreement on Transportation applied to just one industry (road haulage), albeit one that serves many other sectors of the economy. Such agreements were thus less comprehensive than the Trade, Investment, and Labour Mobility Agreement (TILMA) of 2006 which aimed to reduce trade barriers between British Columbia and Alberta. In 2010, TILMA was supplemented with the New West Partnership, an even more comprehensive agreement linking these two provinces along with Saskatchewan, which has a status equivalent to that of an associate member of the agreement. To serve as a neutral arbiter in disputes between companies and the governments of British Columbia and Alberta, the agreement provided for the creation of a Secretariat in Victoria, British Columbia. The Saskatchewan government opted not to subject its actions to the dispute-resolution process provided for in the New West Partnership.

Although the Maritime Beer Accord and the New West Partnership can be viewed as stepping-stones towards the reduction of internal trade barriers in Canada, they also risk Balkanizing the Canadian economy into regional markets. They might turn into stumbling blocks on the path to pan-Canadian free trade. The fact that Canadian provinces have continued to invest bureaucratic resources in negotiating such regional trade agreements with neighbouring provinces suggests that provincial policymakers believe that Australian-style federal action to achieve a comprehensive economic union linking all ten provinces is unlikely in the immediate future. To date, no pair or group of Australian states has attempted to negotiate a free trade agreement that would provide for the elimination of trade barriers between themselves but not with other Australian states. The fact that there is no analogue of the New West Partnership in Australia suggests that state governments are satisfied that the pan-Australian procedures associated with COAG are working satisfactorily.

#### **4. Differences in the Federal Systems of the Two Countries**

The fact that Australia has made greater progress than Canada towards the elimination of internal trade barriers is connected to various differences between the federal systems of the two countries. Over the course of the twentieth century, Canada's provinces gained greater power and more of the trappings of sovereignty, a process that has been spearheaded by nationalist governments in the Province of Québec (Turgeon and Wallner, 2013; Turgeon and Simeon, 2015; Criekemans, 2010, 1–2). The precise opposite trend took place in Australian federalism, which saw the gradual transfer of power from the states to the federal government (Galligan & Mardiste, 1992; Fenna, 2007; Fenna, 2012; Hollander & Patapan, 2007). By the early twenty-first century, Australia was measurably more centralized than Canada. For instance, federal revenue represents 45 per cent of all government revenue in Canada, while the equivalent figure in Australia is 67 per cent. The Australian federal government employs a greater proportion of the public-sector workforce: in Canada public sector workers are more likely to be employed by sub-national governments (Sayers & Andrew, 2013, 199). Australia is also more centralized according to the index of social-policy centralization developed by Leibfried, Castles, and Obinger (2005): Australia has a score of 5 out of 6 on this system, while Canada has a score of 2.5.

Another relevant difference between the Canadian and Australian systems of federalism relates to more powerful institutions of intrastate federalism in Australia. The institutions of cooperative and executive federalism are also more formalized, and therefore stronger, in Australia than in Canada. For instance, Australia's periodic meetings of the Prime Minister and state Premiers evolved into the Council of Australian Governments, a body that coordinates these annual meetings and which has a staff with a permanent secretariat. In Australia, it would be unthinkable for an Australian Prime Minister to fail to attend an annual meeting of COAG. In contrast, Canada's system of cooperative and executive federalism is less formalized, as there are no permanent institutions associated with the First Ministers' meetings. As was mentioned above, Canada's incumbent Prime Minister between 2006 and 2015 opted to largely avoid the annual gatherings of First Ministers, with the exception of the two crisis meetings held in 2008-9.

#### **5. Greater Linguistic Homogeneity of Australia**

In the above sections of this paper that described the evolution of the politics of interprovincial trade barriers in Canada, there were frequent references to ethno-linguistic conflict between English- and French-speakers and to debates about the place of Québec within the Canadian federation. In the early 1930s, some inhabitants of the State of Western Australia briefly supported a secessionist movement that envisioned independence from the rest of the country (Stevenson, 1981). Since then, there have been no sub-state nationalist movements in Australia. The fact that all of Australia's states have the same official language and are fully committed to remaining within the federation is perhaps the single most important factor that explains why Australia currently has fewer internal trade barriers than Canada. Although there are certainly some differences in political culture between different Australian states, Australia's states are culturally similar in other respects. In addition to the fact the overwhelming majority of Australians speak English, there is an added degree of linguistic uniformity in the sense that regional accents barely exist in Australia (Australian Voices Project, 2010). As a result of all of these factors, regional and state identities are less

pronounced than they are in Canada. In our view, these factors are important in accounting for the differences in how the internal trade regimes of the two countries have evolved.

## 6. Conclusion

We have advanced an explanation for why has Australia's internal trade regime provides for a greater degree of national degree of economic unity than that of Canada. We have shown that c. 1985, Canada had more significant internal trade barriers than Australia. In the 1980s, policymakers in both countries began to speak of the elimination of these trade barriers as a priority. However, as we have shown, Australia has done a lot more to eliminate internal trade barriers than Canada. We have suggested that this difference between these nations stems from a variety of factors, including the assumption of the different position by Australian judges, greater judicial activism in Australia, and differences in the systems of executive federalism in the two countries. We have also argued that the greater linguistic homogeneity of Australia may also help to explain why that country has made greater progress towards internal free trade.

What broader lessons can we derive from this study of two countries? First, the elimination of internal trade barriers in federal systems that are bilingual or multilingual is likely to be more difficult than in federations that link territories that are linguistically and culturally similar. This finding has implications for emerging markets such as India, a famously diverse country with twenty official languages. In that country, Prime Minister Narendra Modi is currently attempting to eliminate internal trade barriers (Economic Times, 2015). Our paper does not imply that it impossible to eliminate internal trade barriers in linguistically divided federal states or that efforts to eliminate such trade barriers are not worthwhile. It does, however, suggest that such efforts are more likely to require the investment of greater political capital.

Second, while national leaders cannot change the linguistic composition of the federal systems they lead, they can help to overcome the impediments to the achievement of internal free trade through frequent meetings with their counterparts at the sub-national level, as is the case in Australia. Some progress towards internal free trade was made in Canada under the governments led by Brian Mulroney and Jean Chrétien, two Prime Ministers who met frequently with their provincial counterparts. Between 2006 and 2015, federal-provincial relations in Canada moved away from this tradition. The apparent result of this change in the nature of federal-provincial relations was slower progress towards the elimination of internal trade barriers than would otherwise have been the case. If the elimination of the remaining internal trade barriers is an important *desiderata* for Canadian policymakers, a return to the tradition of cooperative federalism might be a useful mechanism for achieving this goal. Policymakers in federations around the world may wish to study Australia's COAG as a model for how to move towards internal free trade.

**Court Cases Cited**

Atlantic Smoke Shops Ltd. v. Conlon [1943] A.C. 550

Australian National Airways Pty Ltd v Commonwealth (No 1) ("Airlines Nationalisation case") [1945] HCA 41; (1945) 71 CLR 29 (14 December 1945)

Clark King and Co Pty Ltd v Australian Wheat Board [1978] HCA 34 (08 September 1978)

Cole v. Whitfield [1988] 165 CLR 360 2 May 1988

Fox v Robbins [1909] HCA 81; (1909) 8 CLR 115

Gold Seal Ltd. v. Attorney-General for Alberta [1921] 62 S.C.R. [Can.] 424

James v The Commonwealth [1936] UKPCHCA 4; 55 CLR 1; [1936] AC 578

Murphy v Canadian Pacific Railway Co. [1958] 4 DLR (2d) 443

Reference re Agricultural Products Marketing, [1978] 2 SCR 1198, 1978 CanLII 10 (SCC)

The State of Victoria v Sportsbet Pty Ltd [2012] FCAFC 143; (2012) 207 FCR 8

**Other Works Cited**

Alesina, A., & Ferrara, E. L. (2004). *Ethnic Diversity and Economic Performance* (No. w10313). National Bureau of Economic Research.

Aroney, N., Gerangelos, P., Murray, S., & Stellios, J. (2015). *The Constitution of the Commonwealth of Australia*. Cambridge University Press.

Ashraf, Q., & Galor, O. (2011). *The "Out of Africa" hypothesis, human genetic diversity, and comparative economic development* (No. w17216). National Bureau of Economic Research.

Australia. 1999. Official Record of the Proceedings and Debates of the Australasian Federation Conference, Melbourne 1890. University of Sydney Library.

Australian Productivity Commission. Productivity Commission. (2004). *Evaluation of the Mutual Recognition Schemes*. SSRN Working Paper Series.

Australian Voices Project. 2010. "Regional accents." <http://clas.mq.edu.au/australian-voices/regional-accents>

Bai, C. E., Du, Y., Tao, Z., & Tong, S. Y. 2004. Local protectionism and regional specialization: evidence from China's industries. *Journal of International Economics*, 63(2), 397-417.

Banks, G. 2005. *Structural reform Australian-style: lessons for others?* (p. 3). Productivity Commission.

Barnard, C. 2013. *The substantive law of the EU: the four freedoms*. Oxford University Press.

Berdahl, L. 2012. (Sub) national Economic Union: Institutions, Ideas, and Internal Trade Policy in Canada. *Publius: The Journal of Federalism*, pjs036.

Bloomberg News. 2015. India Wants a Nationwide Sales Tax. 5 November 2015. <http://www.bloomberg.com/news/articles/2015-11-05/india-wants-a-nationwide-sales-tax>

Bonig, R. 2013. Another brick in the wall: Towards a national legal profession. *Bulletin* (Law Society of South Australia), Vol. 35, No. 10, Nov 2013: 24-25

Breton, A., & Salmon, P. 2001. External effects of domestic regulations: comparing internal and international barriers to trade. *International Review of Law and Economics*, 21(2), 135-155.

Brown, G. (1865). 8 February 1865, *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*

Bureau of Transport and Regional Economics, Australian Department of Transport and Regional Services. 2006. Optimising Harmonisation in the Australian Railway Industry. [https://bitre.gov.au/publications/2006/files/report\\_114.pdf](https://bitre.gov.au/publications/2006/files/report_114.pdf)

Business Council of Australia. 2008. *Towards a Seamless Economy: Modernising the regulation of Australian business*. Business Council of Australia.

Business Council of Australia. 2012. *Discussion Paper for the COAG Business Advisory Forum*. Business Council of Australia.

Canada. Minister of Supply and Services. 1985. *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*. Ottawa: Minister of Supply and Services. Volume 3.

Canadian Council of Chief Executives. 2015. <http://www.ceocouncil.ca/news-item/business-alliance-welcomes-progress-new-internal-trade-deal>

Canadian Council of Directors of Apprenticeship. 2014. *Annual Review*. [http://www.red-seal.ca/docms/2014ar\\_eng.pdf](http://www.red-seal.ca/docms/2014ar_eng.pdf)

Cartier, G.E. 1865. 7 February 1865, *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*.

Cauchon, J.E. 1865. *L'union des provinces de l'Amérique britannique du Nord* (Québec: Imprimerie de A. Cote. Canadian Broadcasting Corporation. 2015. <http://www.cbc.ca/news/canada/new-brunswick/n-b-n-s-end-beer-fee-dispute-1.663867>

Chen, Q., Goh, C. C., Sun, B., & Xu, L. C. 2011. Market integration in China. *World Bank Policy Research Working Paper Series, Vol.*

Cohen, D. 1995. Internal Trade Agreement: Furthering the Canadian Economic Disunion, *Canadian Business Law Journal*, 25, 257.

Council of Ministers Responsible for Transportation and Highway Safety. 2008. "Harmonization of Transportation Policies and Regulations: Context, Progress and Initiatives in the Motor Carrier Sector" <http://www.comt.ca/english/coff-report.pdf>

Courchene, T. J. 1984. The political economy of Canadian constitution-making: the Canadian economic-union issue. *Public Choice*, 44(1), 201-249.

Coyne, A. 1994. "Federalism works! We have it on the highest authority" 25 July 1994.

Craig, S. G., & Sailors, J. W. 1988. State government purchases in a federalist economy. *Public Choice*, 56(2), 121-130.

Criekemans, D. 2010. Regional sub-state diplomacy from a comparative perspective: Québec, Scotland, Bavaria, Catalonia, Wallonia and Flanders. *The Hague Journal of Diplomacy*, 5(1-2), 37-64.

Das-Gupta, A. 2006. Internal Trade Barriers in India Fiscal Check-posts. *South Asia Economic Journal*, 7(2), 231-254.

Doern, G. B., & MacDonald, M. 1999. *Free trade federalism: Negotiating the Canadian agreement on internal trade*. University of Toronto Press.

Drahozal, C. R. 1999. Preserving the American Common Market: State and Local Governments in the United States Supreme Court. *Supreme Court Economic Review*, 233-283.

Ebb, L. F. 1958. Interstate Barriers in India and American Constitutional Experience. *Stanford Law Review*, 37-93.

Economic Times. 2014. Government plans to create unified national market. 12 November, [http://articles.economictimes.indiatimes.com/2014-11-12/news/56025583\\_1\\_market-commission-gst-inter-state](http://articles.economictimes.indiatimes.com/2014-11-12/news/56025583_1_market-commission-gst-inter-state)

Fenna, A. 2007. The malaise of federalism: Comparative reflections on commonwealth–state relations. *Australian Journal of Public Administration*, 66(3), 298-306.

Fenna, A. 2012. Centralising dynamics in Australian federalism. *Australian Journal of Politics & History*, 58(4), 580-590.

Galor, O. 2011. *Unified Growth Theory*. Princeton University Press.

Galt, A.T. 1864. *Speech on the Proposed Union of the British North American Provinces, Delivered at Sherbrooke, C.E.* Montreal: Printed by M. Longmoore & Co.

Globe and Mail. 1971. "Affects interprovincial trade': Tribunal rules Manitoba egg market scheme unconstitutional." 29 June 1971.

Globe and Mail. 1971. "Egg marketing appeal goes to Supreme Court." 27 March 1971;

Globe and Mail. 1994. "The nation-tinkerers versus the trade barriers." 20 July 1994

Globe and Mail. 2015. Readers Comment in response to A. Smith, "Interprovincial trade barriers are against the spirit of Confederation" *Globe and Mail* Sep. 14, 2015 <http://www.theglobeandmail.com/report-on-business/rob-commentary/interprovincial-trade-barriers-are-against-the-spirit-of-confederation/article26348116/>

Granovetter, M. 1992. Economic institutions as social constructions: a framework for analysis. *Acta sociologica*, 35(1), 3-11

Habyarimana, J., Humphreys, M., Posner, D. N., & Weinstein, J. M. (2007). Why does ethnic diversity undermine public goods provision?. *American Political Science Review*, 101(04), 709-725.

Hollander, R., & Patapan, H. 2007. Pragmatic federalism: Australian federalism from Hawke to Howard. *Australian Journal of Public Administration*, 66(3), 280-297.

Inwood, G. J. 2005. *Continentalizing Canada: the politics and legacy of the Macdonald royal commission* University of Toronto Press.

Ivison, J. 2014 “Australia shows how internal free trade deal might work in Canada” *National Post*, 29 May 2014 <http://news.nationalpost.com/full-comment/john-ivison-australia-shows-how-internal-free-trade-deal-might-work-in-canada>

Kiefel, S., & Puig, G. V. 2014. The Constitutionalisation of Free Trade by the High Court of Australia and the Court of Justice of the European Union1. *Global Journal of Comparative Law*, 3(1), 34-49

Kiladze, T., J. Gray, and A. Hoffmann (2011). "Bay Street pans legal ruling on market regulation". *The Globe and Mail*. 21 November 2011.

Kitch, E. W. (1982). Regulation, the American Common Market and Public Choice. *Harv. JL & Pub. Pol'y*, 6, 119.

Koop, R., & Sharman, C. 2015. National party structure in parliamentary federations: subcontracting electoral mobilisation in Canada and Australia. *Commonwealth & Comparative Politics*, (ahead-of-print), 1-20.

Koutsogeorgopoulou, V., & Barbiero, O. 2013. Boosting productivity in Australia. OECD Report. <http://www.oecd-ilibrary.org/content/workingpaper/5k4c0vt9xhf3-en>

Kufuor, K. O. 2010. Sub-state Protectionism in Ghana. *African Journal of International and Comparative Law* (2010), pp.78-91.

Li, W. X. S. 201). Local Protectionism and Inter-provincial Trade in China. *South China Journal of Economics*, 1, 009.

Macdonald, J.A. 1865. Speech of 6 February in *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*, (Québec: Hunter, Rose & Co., 1865). Macmillan, K. 2013. A Comparison of Internal Trade Regimes: Lessons for Canada.

Montalvo, J. G., & Reynal-Querol, M. 2005. Ethnic diversity and economic development. *Journal of Development economics*, 76(2), 293-323

Montinola, G., Qian, Y., & Weingast, B. R. 1995. Federalism, Chinese style: the political basis for economic success in China. *World Politics*, 48(01), 50-81.

National Post. 2015. 30 January 2015 “Trudeau, Wynne lambaste Harper for skipping another first ministers’ meeting” <http://news.nationalpost.com/news/canada/canadian-politics/trudeau-wynne-lambaste-harper-for-skipping-another-first-ministers-meeting>

Nova Scotia Liquor Corporation. 2007. <http://novascotia.ca/news/release/?id=20070716002>

Obinger, H., Leibfried, S., & Castles, F. G. 2005. *Federalism and the welfare state: new world and European experiences*. Cambridge University Press.

Page, S. E. 2008. *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*. Princeton University Press.

- Painter, M. 2009. *Collaborative federalism: Economic reform in Australia in the 1990s*. Cambridge University Press.
- Poncet, S. 2005. A fragmented China: measure and determinants of Chinese domestic market disintegration. *Review of international Economics*, 13(3), 409-430.
- Prime Minister of Canada Website. 2009. Prime Minister and Premiers agree on action for the economy". Prime Minister of Canada.gc.ca. 16 January 2009.
- Productivity Commission. 2004. Evaluation of the Mutual Recognition Schemes. *SSRN Working Paper Series*.
- Productivity Commission. 1998. State, Territory and Local Government Assistance to Industry.
- Puig, G. V., & Twigg-Flesner, C. (Eds.). (2011). *Boundaries of commercial and trade law* (No. 1). Walter de Gruyter.
- Regan, D. H. 1986. The Supreme Court and state protectionism: making sense of the dormant commerce clause. *Michigan Law Review*, 1091-1287.
- Schwab, S. C. 2011. After Doha. *Foreign Affairs*, 90(3), 104-117.
- Simmons, J. M., & Graefe, P. (2013). Assessing the collaboration that was "collaborative federalism" 1996-2006. *Canadian Political Science Review*, 7(1), 25-36. P.27
- Srinivasan, P. V., & Jha, S. (2007). On Freeing Interstate Food Grain Trade in India. *Indian Economic Journal*, 55(3), 3.
- Stevenson, G. 1981. "Western Alienation in Australia." In *Western Separatism: The Myths, Realities and Dangers*. Edmonton: Hurtig.
- Swinton, K. 1995. "Law, politics, and the enforcement of the Agreement on Internal Trade" in Trebilcock, M. J., & Schwanen, D. (Eds.). (1995). *Getting there: an assessment of the Agreement on Internal Trade* (No. 26). CD Howe Institute, 196-210.
- Turgeon, L., & Simeon, R. 2015. Ideology, Political Economy and Federalism: The Welfare State and the Evolution of the Australian and Canadian Federations. *Understanding Federalism and Federation*, 125.
- Turgeon, L., & Wallner, J. 2013. Adaptability and change in federations: centralization, political parties, and taxation authority in Australia and Canada. In *The global promise of federalism* (pp. 188-213). University of Toronto Press.
- Twomey, Anne. 2007. 'Federalism and the Use of Co-operative Mechanisms to Improve Infrastructure Provision in Australia.' *Public Policy* 2 (3) (2007), 211-226.,
- Whalley, J. 2013. Interprovincial Trade Barriers Towards Goods and Services in Canada: An Issues Paper for Industry Canada, John Whalley, University of Western Ontario, Working Paper, 2007-08 [https://www.ic.gc.ca/eic/site/easaes.nsf/vwapj/wp200708.pdf/\\$file/wp200708.pdf](https://www.ic.gc.ca/eic/site/easaes.nsf/vwapj/wp200708.pdf/$file/wp200708.pdf)
- Wiseman, A. E., & Ellig, J. 2007. The politics of wine: trade barriers, interest groups, and the Commerce Clause. *Journal of Politics*, 69(3), 859-875.

Zimmerman, J. F. 2004. *Interstate Economic Relations*. SUNY Press.

Zines, L. 1990. Federal constitutional power over the economy. *Publius: The Journal of Federalism*, 20(4), 19-34