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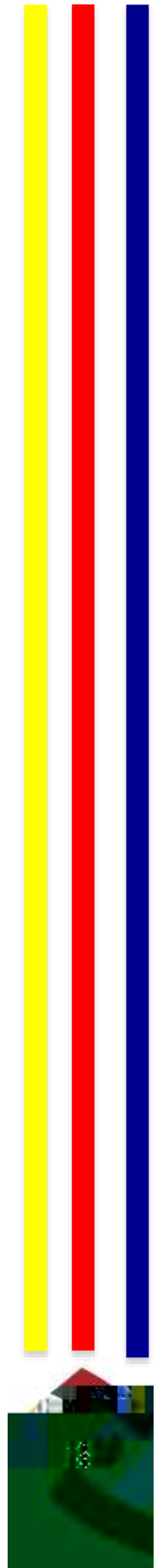
Federalism and Sub-National Protectionism: a Comparison of
the Internal Trade Regimes of Canada and Australia

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Smith, A. and Mann J. *Federalism and Sub-*

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 & Sallors, 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

Smith

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>

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.*

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 miniz

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Smith, A. and Mann J. *Federalism and Sub-*

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

Smith,

Smith, A. and Mann J. *Federalism and Sub-*

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 execu72.024 35 f1 0 0 1 384.07 289.73190

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.

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