CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

INDEX

Abbott, Tony, 407
abolition of states, 66, 67, 71, 375–7, 381, 382, 387
Aboriginal populations. *See* Indigenous populations
administrative federalism, 20, 109–11
Advanced Cutting & Coring Ltd, R. v. (Canada), 245
Agreement on Long-term Healthcare Funding (Canada, 2004), 187
Akai, N., 350, 351
Alberta v. *Hutterian Brethren of Wilson Colony* (Canada), 238, 240, 247
amendment of Constitution by referendum, expense and difficulty of, 96, 108–9
The American Commonwealth (Bryce), 30–1, 38
American Insurance Association v. *Garamendi* (US), 150
Americans for Tax Reform (ATR), 177
Anderson, Geoff, viii, 21, 393
The Annotated Constitution of the Australian Commonwealth (Quick and Garran), 1
Appleby, Gabrielle, viii, 1
arbitral awards based on religious law in family disputes, 233–7
Arbitration Act (Canada), 233
Aroney, Nicholas, viii, 1, 16, 272
Arzaghi, Mohammad, 342
ASIC v. *Edensor Nominees Pty Limited* (Australia), 441–2
asymmetric decentralisation, 222
asymmetrical application of fundamental freedoms, 245–7
Austin, John, 216
Austin v. *Commonwealth* (Australia), 6, 37–8
Australia 2020 Summit (2008), 66–7, 72, 73, 391, 455, 457–8
Australia Acts 1986, 88, 453
Australian Competition and Consumer Commission (ACCC), 52, 54, 55
Australian Competition Tribunal (ACT), 54, 55
Australian Constitution, xiv
  Chapter III, 432, 459
  s 7, 2
  s 9, 458
  s 12, 458
  s 15, 458
  s 24, 2
  s 51, 3, 28, 46–7, 68, 98, 103, 110, 268
    (i), 3, 33, 39–40, 47, 58, 64, 77
    (ii), 47, 327, 336–7
    (vi), 8, 33, 330
    (x), 47
    (xiii), 35
    (xiv), 35
    (xviii), 33
    (xx), 8, 33, 47, 57, 64, 333
    (xxiiiA), 408
    (xxvi), 33, 454
    (xxix), 8, 33, 47, 64, 333
    (xxxi), 35, 47, 415
    (xxxii), 58
    (xxxiii), 58
    (xxxiv), 47, 58
    (xxxv), 33
    (xxxvii), 34, 47, 48–9, 51–2, 64, 417, 418–19, 429, 430, 442, 458, 459–61

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Australian Constitution (*cont.*)
(xxxviii), 47, 458
(xxxix), 7, 47, 55, 64, 333–6
s 52, 3, 28, 32, 46, 98
s 53, 3
s 61, 3, 7, 8, 47, 55, 333–6
s 64, 3
ss 71–7, 3
s 74, 100
s 77, 417, 458
s 81, 3, 327, 333–6, 451
s 82, 327
s 83, 3, 327, 336
s 88, 326
s 89, 326
s 90, 3, 77, 78, 105, 108, 326, 332–3
s 92, 47, 76, 77, 78, 103, 326
s 93, 326
s 94, 105, 327
s 95, 77, 327
s 96, 3, 47, 78, 105, 107, 109–10, 327, 331, 399, 417, 442, 450–1
s 98, 40, 47
s 99, 47
s 100, 39–40, 47
s 101, 397
s 105, 109, 327
s 105A, 109, 117, 428, 431, 458, 460
s 106, 3, 28, 46
s 107, 3, 28, 46, 98, 329
s 108, 329
s 109, 3, 29, 46, 54, 77, 101, 418, 419
s 120, 417, 458
s 122, 419
s 128, 3, 80, 84, 88, 108–9, 453
amendment, difficulty of, 96, 108–9
basis of, 2
division of powers under, 46–7, 68
doctrines of constitutional interpretation, 30–2
federal–state balance and, 28
federalism concept permeating, 67–8
fiscal federalism and, 325–8
infrastructure and natural resource usage and regulation testing flexibility of, 41
intergovernmental cooperation and, 416, 417, 431
preamble, legal status of, 88–9
reference power under, 48–9
secession by amendment of, 89
serviceability of, 66
state parliaments and, 28
supremacy of Commonwealth legislative power under, 28–30
US Constitution, influence of, 30–1, 32
Australian Consumer Law (ACL), 56
Australian diversity and federalism, 15, 272–99
1901, demographics and diversity in, 274–8
convict transportation history, provincial differences in, 277
demographic diversity, 273, 278–83, 294
ethno-cultural diversity, 273, 284–8
Indigenous population, 275, 287, 294
policy diversity, 274, 291–8
religious diversity, 286
rural–urban diversity, 273, 280–3, 294
socioeconomic diversity, 273, 288–91, 294
territorial and spatial homogeneity, appearance of, 272–3
White Australia Policy, 277, 284, 299
Australian federalism, 1–24
British colonial rule and, 253, 366
centralising trends in, 9, 66–74 (*See also* centralising trends)
division of powers, consequences of, 9, 96–111 (*See also* division of powers)
failure claims, meaning of, 10–11
federal–state balance, 8–10, 27–38 (*See also* federal–state balance)
federations defined and described, xiv–xviii, 11
fiscal, 17–18 (*See also* fiscal federalism)
infrastructure and natural resources, 8, 39–65 (*See also* infrastructure and natural resource usage and regulation, centralising trends in)
international influences and comparisons, 2, 10–14, 424–9 (*See also specific countries and federations*)

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

jurisprudential history of, 4–8
multi-ethnicity and multi-culturalism, xiv, 14–17 (*See also* diversity and federalism)
natural and political federation, interaction of, 256
original idea, practical and philosophical underpinnings of, 1–4
reform of, 18–24 (*See also* reform of federalism)
secession movement in Western Australia, 9, 75–95 (*See also* Western Australia, secession movement in)
Australian Institute of Health and Welfare (AIHW), 405
Australian National Railways, 58
Australian Rail Track Corporation Limited, 59
Australian Securities and Investments Commission Act 2001 (Cth), 51
Australian Securities Commission (ASC), establishment of, 50
Australian Securities Commission Act 1989 (ACT), 50
Australian Transport Council, 60, 61
Austria, 20, 105
Austro-Hungarian Empire, 253
Austro-Marxist 'national cultural autonomy' projects, 235
autochthonous expedient, 437–9

Bahl, Roy, 343, 346
Baier, Gerald, 187, 188
Baillieu, Ted, 324
Balfour Declaration (1926), 81
Bangladesh, 270
Bankruptcy Act of 1898 (US), 164
Banting, Keith, 185, 189, 193
Barnett, Colin, 85–6, 87, 324, 407
Barroso, José Manuel, 197
Barton, Sir Edmund, 329
Barwick, Sir Garfield, 101
Basic Law (German Constitution). *See entries at* German
Belgium, 183, 220, 225
Bell, Virginia, 335, 336
Bentham, Jeremy, 250, 259
Benz, Aurtur, 188, 190
Blackmun, Harry, 146
Boadway, Robin, xiv, 11, 17, 303
Bodman, Philip, viii, 18, 339, 342, 347, 350, 351, 358, 360, 361
Bonet, Jaime, 358
Boston Tea Party, 86
Bowen, Sir Nigel, 439
Bowtell v. *Goldsborough, Mort & Co. Ltd.* (Australia), 88
Boychuk, Gerard, 193
Boyd, Marion, 237
Brandeis, Louis D., 158
Brems, Eva, 244
Brennan, Geoffrey, 353
Brennan, Sir Gerard, ix, xviii, 66
Bretton Woods agreements, 260
Britain. *See* British Parliament; United Kingdom
British North America Act 1867 (Constitution Act 1867) (Canada), 98, 100, 229–31, 234, 304
See also Canadian Constitution of 1867 *and* Constitution Act 1867
s 91, 32, 98–9, 231
s 92, 98–9, 104
s 93, 230
s 118, 104
s 133, 231
British Parliament: devolution of powers to Wales and Scotland, 222, 223
Western Australia secession and, 80–2, 88, 92
Brown, A. J., ix, 21, 196, 365
Brueckner, Jan K., 356
Brumby, John, 324, 407
Bryce, James, 30–1, 38, 165
Buchanan, James M., 269, 353
budget balance, effect of fiscal decentralisation on, 356
budget deficit in Germany, 133, 135–7, 139–40
budget deficit restrictions in EU, 133, 135, 139
Bundestreue, 107
Burt, Sir Francis, 436

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Bush, George H. W., 146, 178
Bush, George W., 176, 178
Business Council of Australia (BCA), 411
BVerfGE 106, 62 (24 October 2002), 128
BVerfGE 111, 226 (27 July 2004) ('*Junior Professor* Decision'), 123, 129
BVerfGE 112, 226 (26 January 2005) ('*Student Fees* Decision'), 123, 129
Byrnes v. *R.* (Australia), 51, 420

Cairns, Alan, 180
Calhoun, John C., 90, 161
Callinan, Ian, 69–70, 434
Calwell, Arthur, 330
Campbell, Harry, 345, 350
Canada Health Act 1985, 188
Canadian Charter of Rights and Freedoms, 230, 243, 305
Canadian Constitution of 1867, 99, 100
Canadian diversity and federalism: Charlottetown Accord of 1992, 191
  Indigenous peoples, 98–101, 228, 234–7
  linguistic diversity, 228, 231, 245
  regional diversity, 183, 228. *See also* Québec; religious diversity and Canadian federalism
Canadian federalism, 13, 180–96
  Australian federalism influenced by, 2
  British colonial rule and, 253
  conflict resolution and consensus building, importance of, 188–9
  decentralisation of, 340
  distinctiveness of, 182–3
  division of powers in, 98–101
  Dominion Parliament, legislative powers of, 32
  exclusive model programmes, failure of, 193
  executive federalism, concept of, 183
  intergovernmental cooperation in, 424
  model character of, 195–6
  overlap of responsibilities, problem of, 192–4
  participatory democracy, reliance on, 192
  referendums in, 191–2
  reform, calls for, 190–2
  shared-cost model in, 193
  social and health care policy as example of, 184–8, 189–90, 192, 193
  strong provinces in, 97
  as 'treaty federalism', 182–4
  US support for federal political culture compared, 159
Canadian fiscal federalism, 17, 303–19
  challenges faced by, 313–19
  decentralisation, leveraging, 303–4, 311–12, 319
  harmonisation agreements, 307–8, 315–18, 319
  horizontal fiscal imbalance between provinces, 313–14
  institutional support for, 308
  key elements of, 304–8
  natural-resource revenues, importance of, 314–15
  post-war evolution of, 308–13
  transfers and equalisation payments, 306–7, 310, 312–13, 314
  vertical fiscal gap, 318–19
capital investment, effect of fiscal decentralisation on, 356–7
Carrio-i-Silvestre, Josep-Luis, 350
Castan, Melissa, 72
Catholic/Protestant divide in Canada, 229–32
centralising trends, 9, 66–74
  abolition of states, calls for, 66, 67, 71, 387
  Australia 2020 Summit (2008), 66–7, 72, 73
  cooperative federalism, instances of, 73
  competition law, 52–7
  Constitution, concept of federalism permeating, 67–8
  corporation law, 49–52
  division of powers contributing to, 10
  in fiscal federalism, 320–2, 327

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

High Court decisions, 68–71
natural constitutional development of, 38
public opinion regarding, 368, 384–8
in US, 158, 165. *See also* infrastructure and natural resource usage and regulation, centralising trends in
Centre for Public, International and Comparative Law, University of Queensland, xix
Chambers, Simone, 196
Charlottetown Accord of 1992 (Canada), 191
Chifley, Ben, 327, 329–32
child custody and maintenance, 73
Churchill, Winston, 70, 218
Citizens Insurance Company of Canada v. *Parsons* (Privy Council, Canada), 99
Civil War, US, 90–2, 99, 142, 149, 160–3, 269, 270
Clark, Andrew Inglis, 438
Cobden, Richard, 259
Cockburn, Sir Alexander, 102
coercive federalism in US, 13, 157–79
bi-communal character of early American federalism, 158, 160–9
centralising trend in US federalism, 158, 165, 169–73
Civil Rights era inaugurating, 169–73
criminal law, federalisation of, 176–7
elements of, 173
federal court orders, increase in, 177–8
grants-in-aid, 172, 173–4
intergovernmental cooperation, demise of, 177
intergovernmental institutions, demise of, 177
mandates, 174–5
New Deal period, 158, 166–9
pre-emption, federal, 175–6
Progressive Era, 157, 158, 164–6
social, political, and cultural forces driving reform, 158–9, 169–73
state and local taxation, constraints on, 176
Cole, Richard, 368
Colebatch, Sir Hal, 80, 92, 95
Collier, Philip, 79
colonialism, 252–3, 257
common law in Australia, xiv, 433–4
Commonwealth of Australia Constitution Act 1900 (UK), 2, 46, 80, 320, 453
Preamble, 77, 88, 217, 320, 453
s 3, 67
s 9, 453
Commonwealth Parliament:
characterisation, 'with respect to,' 34–6
definition of legislative power of, 30–4
intergovernmental cooperation, need for involvement in, 430
limitations on legislative power of, 37–8
reference power, 48–9
secession by amendment of Constitution and, 89
subject matter jurisdiction, 30–1, 32–3, 34–6
supremacy of legislation of, 28–30
communality in diverse societies, 225
Companies Act 1981 (ACT), 50
Companies Act scheme (1961), 50
Competition and Consumer Act 2010 (Cth), 56
Competition and Infrastructure Reform Agreement, 62
competition law, 52–7
Competition Policy Reform Act 1995 (Cth), 54
conflict management and federalism, 15, 188–9, 213, 217, 224–7
Congrès de la Paix (1851), 261
Constitution Act 1867 (British North America Act 1867) (Canada), 98, 100, 229–31, 234, 304
See also British North America Act 1867 *and* Canadian Constitution of 1867
s 91, 32, 98–9, 231
s 92, 98–9, 104
s 93, 230
s 118, 104
s 133, 231

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Constitution Act 1867 (Qld)
s 2, 28
Constitution Act 1889 (WA)
s 2, 28
Constitution Act 1902 (NSW)
s 2, 452
s 5, 28
Constitution Act 1975 (Vic)
s 1A, 452
Constitution Act 1982 (Canada), 186, 235, 305
s 36, 104, 305
s 38, 186, 191
Constitution of Queensland 2001 (Qld), 452, 454
Constitutional Convention (1998), 82
constitutional courts, xv
constitutional interpretation, 4–8, 30–2, 106
constitutional reform, 22, 446–62
allocation of powers and functions to different levels of government, 457–8
cooperative federalism, 458–61
electoral and political party funding, 447–50
Indigenous population, constitutional recognition of, 451–4
local government, constitutional recognition of, 450–1
republic, proposal to establish, 455–6
Constitutional Values Survey, 366
Constitutions of specific countries. *See at specific country name, e.g.* Australian Constitution
convergence of federated states, 267–9
convict transportation history, provincial differences in, 277
Conyers, Diana, 343
Cooley, Thomas, 91
Cooley v. *Board of Wardens* (US), 144
cooperative federalism: as centralising trend, 73
constitutional reform incorporating, 458–61
dual federalism replaced by, 116
German federal reform of 1969 aimed at, 120
infrastructure and natural resource usage and regulation, centralising trends in, 41–2, 47–8, 49–52, 63–4
Rudd's commitment to, 411
in US, 116, 148–9, 167, 169, 172, 177. *See also* intergovernmental cooperation
Corporations Act 1989 (ACT), 50
Corporations Act 1989 (Cth), 50
Corporations Act 2001 (Cth), 51
corporations law, 49–52, 73
Council for Australian Federation, 73
Council of Australian Governments (COAG): centralising trends and, 73
communiqué on 'seamless national economy,' 45–6
Competition and Infrastructure Reform Agreement, 62
on competition policy, 52
intergovernmental cooperation, role in, 417, 420–3
international comparisons, 426, 427
policy diversity and, 292, 293
on ports, 61–2
public opinion on federal reform and, 381, 390–1
Rudd reforms, as vehicle of, 396–8, 402–3, 405–7, 411
work agenda of, 42–3
working groups, 42–3. *See also entries at* Intergovernmental Agreement
Council of Europe, 219
Court, Richard, 83–5
Craven, Greg, 337
Crennan, Susan, 335, 336
criminal law, US federalisation of, 176–7
cross-vesting, 50, 73, 440–2
Crucé, Eméric, 258
cultural diversity. *See* diversity and federalism
Cumo, Andrew, 149

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

customs and excise tax in Australia, 326–7, 332
Czechoslovakia, 183
Czech Republic, 201

Daley, Richard J., 171
Darby Lumber Co., US v. (US), 167
Davoodi, Hamid, 349
de Jersey, Paul, ix, 9, 66
de Mello, Luis R., 355
de Silva, Colvin R., 216
Deakin, Alfred, 30, 104, 328
Deane, Sir William, 73
decentralisation: asymmetric, 222
  public opinion regarding, 368, 384–8. *See also* fiscal decentralisation
  within multi-ethnic and multi-cultural states, 222–3
Declaration of Independence (US), 90, 143, 159
D'Emden v. *Pedder* (Australia), 68, 329
Descartes, René, 181
Dieterich, P., 139
distribution of powers. *See* division of powers
diversity and federalism, xiv, 14–17, 213–27
  accommodation of different identities within state, 222–3
  bicultural systems, instability of, 183
  communality, establishing, 225
  concepts and perceptions of federalism, 181
  conflict management, federalism as means of, 15, 188–9, 213, 217, 224–7
  decentralised states, 222–3
  fiscal decentralisation affected by level of diversity, 344–6
  France, introduction of regionalism in, 214
  in Italy, 214
  integration of and promotion of ownership by minorities, 220–2
  majority rule principle and, 214–16
  numerically smaller groups, exclusion and marginalisation of, 218–20
  percentage of UN member states with multi-ethnic societies, 215
  secession, preventing, 220
  self-determination principle and, 216–17
  spirit and soul of people, need for laws to reflect, 213–14
  terminological challenges of federalism label, 217–18
  two-chamber systems, use of, 225
  US, regional diversity in, 96, 158, 160–3
  value, diversity as, 226. *See also* Australian diversity and federalism; Canadian diversity and federalism; liberal theory of peace, ethnic regionalism, and federalism; regional diversity; religious diversity and Canadian federalism
division of powers, 10, 96–111
  administrative federalism, move toward, 109–11
  amendment of Constitution, difficulty of, 96, 108–9
  Canadian model, rejection of, 98–101
  centralising trend, contribution to, 10
  in Constitution, 46–7, 68
  EU-related matters in Germany and, 206
  explicit list of state powers, failure to enumerate, 98–103
  financial provisions, 3, 103–7, 108–9
  German federal reform and, 122–3, 127–9
  health reforms of 2010 and, 109
  infrastructure and natural resource usage and regulation, 46–7
  in US, 98, 141
  weak federalism in Australia, problem of, 96–7
divorce, federal jurisdiction in Canada over, 231
Dixon, Sir Owen, 107, 332, 433, 438
Dominion League, 78–82

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Doyle, Michael, 262
dual federalism, 116, 144, 148–9, 153, 340

earmarking, 174, 177
Ebel, Robert, 354, 356
Edensor (*ASIC* v. *Edensor Nominees Pty Limited*; Australia), 441
education: in Canada, 230, 316
  German education and research funding, 131, 138
  policy diversity regarding, 293, 296, 314
  Rudd reforms, 408–9
  universities, Commonwealth funding of, 72
  US No Child Left Behind Act of 2002 and, 152, 174
electoral reforms, 447–50
Eller, M., 350, 351
Ellicott, Robert, 440
Else-Mitchell, Rae, 435, 436, 439
Engineers' Case (*Amalgamated Society of Engineers* v. *Adelaide Steamship Co. Ltd*) (Australia), 4, 6, 7, 9, 29, 31, 68, 78, 81, 99, 101–3, 321, 328–9, 333, 337
estate federalism, 255
'eternity clause' *(Ewigkeitsgarantie)* in German Basic Law, 204–5
Ethiopia, 220
ethnic diversity. *See* diversity and federalism
European Constitutional Treaty, 199, 427
European Convention on Human Rights, 261
European Council, 427
European Court of Human Rights (ECtHR), xvii, 243, 261
European Court of Justice (ECJ), xvii, 14, 202, 261
European Union, 14, 197–210
  adoption of Treaty of Lisbon by, 199–200
  budget deficit restrictions, 133, 135, 139
  Canadian treaty federalism resembling council governance of, 184
  common consent by nation states to federation in, xvii
  federal nature of integration process in, 198–9
  German federal reform and, 12, 119, 123–4, 133–4, 135, 139
  intergovernmental cooperation provisions in Treaty of Lisbon, 427–8
  Maastricht Treaty, 202, 205, 210
  minority rights, Council of Europe on, 219
  natural and political federation in, 256, 261
  secession, right of, 94
  'United States of Europe,' concept of, 197, 210
European Union and German Constitutional Court's Lisbon Treaty case, 14, 200–8
  division of powers in EU-related matters and, 206
  effects on EU integration process, 208–10
  'eternity clause' *(Ewigkeitsgarantie)* in German Basic Law, 204–5
  Maastricht Treaty Case and, 202, 205
  Mangold case Germany, 198, 207–8
  ruling in, 202–7
  significance of decision in, 197, 200–2, 207
  state sovereignty concerns, 203–6
  ultra vires review powers, 207–8
executive federalism, 183, 417
Ezcurra, Roberto, 357, 358

Fair Labor Standards Act of 1938 (FLSA) (US), 167
family law: absorption of Family Court into state courts, 443
  arbitral awards based on religious law in family disputes, as non-territorial personal federalism, 233–7
  Canada, federal jurisdiction over marriage and divorce in, 231
  child custody and maintenance, 73

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

establishment of Family Court of Australia, 440
state–federal jurisdictional dispute, potential for, 437
Farah Constructions Pty Ltd v. *Say-Dee Pty Ltd* (Australia), 433, 436
Fascism, 264
Fauteux, Joseph Honoré Gérald, 246
FD. *See* fiscal decentralisation
Federal Convention of 1891, 2
Federal Council of Australasia Act 1885 (UK), 67
Federal Court of Australia, establishment of, 439–40
Federal Financial Relations Act 2009 (Cth), 106
federal–state balance, 8–10, 27–38
centralisation, natural development toward, 38
characterisation, 'with respect to,' 34–6
Constitution, structure and function of, 28
definition of Commonwealth legislative power and, 30–4
High Court on, 27–8
laws impinging on state domains, passage of, 27–8
limitations on Commonwealth legislative power and, 37–8
supremacy of Commonwealth legislative power, 28–30
'federal theory of peace'. *See* liberal theory of peace, ethnic regionalism, and federalism
federalism: current number of federal systems in world, 180
defined and described, xiv–xviii, 11, 250
dual federalism, 116, 144, 148–9, 153, 340
federation distinguished in political theory, 253
historical origins of political states, 251–3
naturally evolved versus deliberately designed, 254–6
perceptions of, 180–2
terminological challenges of, 217–18. *See also* Australian federalism; Canadian federalism; coercive federalism in US; fiscal federalism; *entries at* polyphonic federalism; reform of federalism
Federalist Papers, 2, 217, 253
Fenna, Alan, ix, 21, 195, 196, 393
Ferguson, Adam, 251, 256
feudal federalism, 255
First Uniform Tax case (*South Australia* v. *Commonwealth*) (Australia), 5, 107, 329–32
fiscal decentralisation, 18
budget balance, effect on, 356
in Canada, 303–4, 311–12, 319
capital investment, effect on, 356–7
diversity affecting, 344–6
driving factors, 342–7
economic growth and, 349–52
economic volatility and business cycles affecting, 346–7
income distribution, effect on, 357–8
income levels affecting extent of, 344
inflation and stability, effect on, 352–3
macroeconomic conditions, effect on, 347–60
public sector, relationship to size of, 353–5
size of country and population affecting, 344
fiscal federalism, 17–18, 320–38
amendment of provisions, difficulty of, 108–9
centralisation in Australia, 320–2, 327
Commonwealth grants, 321
Commonwealth overreach, problem of, 322–5
constitutional provisions, 325–8
division of powers regarding financial arrangements, 3, 103–7, 108–9
High Court cases tending toward centralisation of, 328–37
monopolisation of taxes by Commonwealth government, 329–32

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

fiscal federalism (*cont.*)
Pape and, 7
percentage of taxes collected by Commonwealth versus state and local governments, 5
reform, prospects for, 337–8
socioeconomic diversity in Australia, 273, 288–91
in US, 142, 154–6, 176
VFI (vertical fiscal imbalance), 318–19, 327, 341, 393
Western Australia secession movement and, 85–7. *See also* Canadian fiscal federalism; fiscal decentralisation; German fiscal federalism
Fleiner, Thomas, ix, 15, 213
Foedus Pacificum. *See* liberal theory of peace, ethnic regionalism, and federalism
Ford v. *Québec (A.G.)* (Canada), 243, 245
Fornasari, Francesca, 356
Forrest, Sir John, 39, 76
framework legislation: German elimination of, 129
intergovernmental cooperation in Australia and, 419–20, 430
uniform Companies Act scheme (1961), 50
Uniform Shipping Laws Code, 61
Uniform Tax cases (Australia), 329–33
US Uniform Law Commission, 429
France: a-cultural citizenship in, 219
colonies, economic arguments in favour of emancipation of, 259
regionalism, introduction of, 214
secession movement in, 220
secularism in, 240
Fraser, Malcolm, 327
Fraser government, 110
free trade, 258
Freitag, Markus, 356
French, Robert, ix, 6, 8, 39, 336, 433, 434
Fried, Morton, 251
Friedrich, Carl, 255
Gageler, Stephen, x, 8, 27, 334
Galligan, Brian, x, 17, 181, 185, 320, 365, 385
Gandhi, Indira, 267
Garcia v. *San Antonio Metropolitan Transit Authority* (US), 146
Garran, Sir Robert, 1, 68
Garrett, Geoffrey, 346
Gaudreault-DesBiens, Jean-François, x, 16, 228
Gaudron, Mary, 433
Gene Technology Act 2000 (Cth), 423
General Agreement on Tariffs and Trade (GATT), 260
Georgia (country), 220
German Basic Law, 197, 202–3
ch 4, 425–6
Article 20(2), 107–8
Article 23, 123–4, 133–4, 204–5
Article 30, 115, 425
Article 37, 425
Article 38, 204
Article 70, 115
Article 72, 115, 118, 122–3, 127–9
Article 73, 115, 127, 129
Article 74, 115–16, 122, 127–9
Article 74a, 128–9
Article 75, 116, 120, 122, 123, 129, 131
Article 79(3), 204
Article 83, 110
Articles 84–5, 130–1
Article 91a, 116, 120, 131
Article 91b, 116, 120, 131–2
Article 93, 122
Article 104a, 120, 132
Article 104b, 132, 137
Article 104c, 132–3
Article 106, 104–5, 107–8, 118
Article 109, 133, 135–6, 139
Article 109a, 135–6
Article 115, 135–6, 139
Article 143d, 135–6
German federal reform, 12, 115–40
blockade politics, problem of, 119, 129–31
cooperative federalism, 1969 amendments aimed at, 120

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

description of existing federal system, 115–18
dissatisfaction with current system, 118–19
division of powers and, 122–3, 127–9
EU and, 12, 119, 123–4, 133–4, 135, 139
Federalism Commission of 2003–4 on, 124–5, 126, 133, 138, 140
framework legislation, elimination of, 129
goals of, 127–34
Grand Coalition agreement (Federalism Reform I of 2006), 125–7, 137–8
poorer *Länder*, problems of, 12, 115–40
tension between *Länder* powers and uniform living conditions, 115–16
territorial reform after unification (*Neugliederung*), 120–1. *See also* German fiscal reform
German fiscal federalism: budget deficit, 133, 135–7, 139–40
division of financial powers, 104, 106, 107–8
education and research funding, 131
federal grants-in-aid to *Länder*, 132
Federalism Reform II of 2009, 134–7, 139–40
joint or mixed financing, reduction of, 131–3
'Politikverflechtung', as example of, 117
reforms of 1994 and 2001, 121–2
German fiscal reform: of 1994 and 2001, 121–2
budget deficit, 133, 135–7, 139–40
education and research funding, 131, 138
Federalism Reform II of 2009, 134–7, 139–40
joint or mixed financing, reduction of, 131–3
Germany: administrative federalism in, 20, 110, 118
amendment of Constitution in, 107–8
decentralisation of court structure in, xv
description of federalism in, 115–18
fiscal federalism in. *See* German fiscal federalism
intergovernmental cooperation in, 425–7
neo-liberal ideology in, 190
'Politikverflechtung' in, 117–18
unification of, 120–2. *See also* European Union and German Constitutional Court's *Lisbon Treaty* case
Gibbs, Sir Harry, 440, 444
Gillard, Julia, and Gillard government, 19, 195, 324, 398, 408, 409, 413, 446, 450, 452, 455, 459, 461
Gleeson, Murray, 73
Global Financial Crisis of 2008 and Rudd reforms, 401–3, 410, 446
Gonzales v. *Raich* (US), 147, 178
Goods and Services Tax (GST), 86, 87, 106, 109, 323–5, 332, 395, 406–7
Grady, Henry, 163
grants-in-aid, federal: Australia, tied grants or SPPs (Specific Purpose Payments) in, 321, 393, 399–401, 408, 411
in Germany, 132
in US, 172, 173–4
Great Britain. *See* British Parliament; United Kingdom
Greene, Wilfred, 81
Greenwood, Ivor, 439
Griffith, Sir Samuel Walker, 88, 329
Grosser, Alfred, 197
Grossman, Philip, 355
Gummow, William, 335, 336, 433
Gunlicks, Arthur B., x, 12, 115

Ha v. *New South Wales* (Australia), 5, 105, 332
Haas, Ernst, 193
Habermas, Jürgen, 182, 189, 242
Haldane, Viscount, 100
Hamill, David, 292
Hancock, Lang, 82
Hawke, Bob, and Hawke-Keating government, 323, 328, 411

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Hayek, F. A., 268, 269
Hayne, Kenneth, 335, 336, 433
Hayne, Robert, 90
health care: Australian reforms of 2010, 109, 361, 381
  Canadian federalism and, 184–8, 189–90, 192, 317
  Rudd reforms, 324, 404–7
  US reforms of 2010, 173
Henderson, Ailsa, 191, 195
Henderson, Vernon, 342
Henry Review on Australian tax system, 409–11
Heydon, Dyson, 336
Higgins, Henry Bournes, 329
High Court of Australia, xv–xvii
  centralising tendencies of rulings of, 68–71
  characterisation, 'with respect to', 36
  citation of authority from other jurisdictions by, xvii
  on competition law, 54
  constitutional interpretation, 4–8, 30–2, 106
  on corporation law, 50
  doctrines of constitutional interpretation, 30–2
  on federal–state balance, 27–8
  fiscal federalism, centralisation of, 328–37
  legislative action, power to review, 3
  right of secession, no rulings on, 91
  on shipping, 60
  Western Australia secession movement, decisions affecting, 78, 80, 84
Hilmer, Fred, 52
historical origins of political states, 251–3
Hobbes, Thomas, 251
Hodge, Andrew, 342, 347
Holmes, Oliver Wendell, 437
Holy Roman Empire, 253
Hourn, Geoff, 83
Howard, John, and Howard government, 21, 61, 292, 323, 325, 337, 393–6, 397, 404, 408, 451
Hueglin, Thomas O., x, 13, 180
Hughes, R v. (Australia), 51, 54, 415, 416, 420, 429, 459
Hugo, Victor, 261
Hull, Cordell, 259
Hulls, Robert, 434
Hume, David, 250, 251, 258

Iimi, Atsushi, 349
imperial federalism, 252–3
income tax: in Australia, 110, 327, 329–33
  in US, 154, 164, 168
India: under British imperial federalism, 253
  Constitution of, 265–7
  ethnic regionalism in, 258
  federalism in, 15, 217, 256, 258
  liberal peace theory and, 264–7
  separatist movements in, 267
Indigenous populations: in Australia, 275, 287, 294, 451–4
  in Canada, 98–101, 228, 234–7
Indonesia, 257
inflation, effect of fiscal decentralisation on, 352–3
infrastructure and natural resource usage and regulation, centralising trends in, 8, 39–65
  COAG, 42–3
  competition law, 52–7
  constitutional flexibility, testing, 41
  cooperative federalism and, 41–2, 47–8, 49–52, 63–4
  corporations law, 49–52
  division of powers under Constitution and, 46–7
  Infrastructure Australia, 43–4
  Murray-Darling River system, 39–40, 63
  NTC (National Transport Commission), 58, 59–60
  ports, 61–2
  rail transport, 58–9
  reference power, 48–9
  road transport, 57–8
  'seamless national economy,' COAG communiqué on, 45–6

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

shipping, 60–1
water, 62–3
Infrastructure Australia, 43–4
Infrastructure Australia Act 2008 (Cth), 43–4
Inge, William Ralph, 70
Instrument of Government of England, Scotland, and Ireland (1653), 254
Intergovernmental Agreement on Federal Financial Relations, 106, 400, 407, 414, 421, 422
Intergovernmental Agreement on Murray-Darling Basin Reform, 40, 63, 429
Intergovernmental Agreement on a National Water Initiative, 62–3
intergovernmental cooperation, 22, 414–31
COAG and other ministerial councils, role of, 417, 420–3
constitutional reform allowing for, 416, 431
current form and practice of, 416–24
extra-constitutional nature of, 416, 417
institutional framework, need to strengthen, 430
international comparisons, 424–9
judicial decisions and, 415
justification for, 414
Parliamentary involvement, need for, 430
reference power and, 418–19
'template' or framework legislation, 419–20, 430
International Covenant on Civil and Political Rights (ICCPR), 93
international influences on and comparisons with Australian federalism, 2, 10–14, 424–9
international law, principle of self-determination in, 93–5
Internet Tax Freedom Act Amendment Act (US), 176
interpretation, constitutional, 4–8, 30–2, 106
Interstate Commerce Act of 1887 (US), 164
Interstate Road Transport Act 1985 (Cth), 57
Isaacs, Sir Isaac Alfred, 101, 329
Islam, 233–7, 264
Italy, 214, 339

Japan, 339
Jefferson, Thomas, 90
Jihadism, 264
John, Thomas, x, 1
Johnson, Lyndon B., 168
Joseph, Sarah, 72
judicial reform, 22, 432–45
absorption of Federal Court into state Courts, 443–4
autochthonous expedient, 437–9
common law/national character of law in Australia, 433–4
cross-vesting, collapse of, 440–2
empowerment of state and Territory legislatures to confer jurisdiction on Federal Court, 442–3
exchange of judges, 434–5
Federal Court and Family Court of Australia, establishment of, 439–40
national intermediate-appellate court, 435–6
national judicial system, creation of, 444–5
number of judges, reducing, 436
state–federal jurisdictional dispute, potential for, 437
judiciary: cross-vesting, 50, 73, 440–2
funding, state versus federal, 72
intergovernmental cooperation and uniformity, spread of, 415
US, dual judiciary in, 438
US, judicial role in evolution of federalism in, 148, 168, 170, 176, 177–8. *See also* High Court of Australia

Kable v. *Director of Public Prosecutions (NSW)* (Australia), 433
Kant, Immanuel, 15, 250, 260–2, 263, 266–7, 269–71
Kappeler, Andreas, 357

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Katzenstein, Peter, 182
Keating, Paul, and Hawke-Keating government, 323, 328, 411
Kelly, Paul, 385, 408
Kelsen, Hans, 102
Keneally, Kristina, 407
Kennedy, Anthony, 176
Kiefel, Susan, 335, 336
Kincaid, John, xi, 13, 157, 368
King, David, 353
King, Preston, 253
Kirby, Michael, 69, 70, 337
Koch, Cornelia, xi, 14, 197

Laeken Declaration on the Future of the European Union, 199
Lange v. *Australian Broadcasting Commission* (Australia), 433, 454
Laski, Harold, 180
Latham, Sir John, 106, 331
Latham, Mark, 394, 396
Law Council of Australia, xix, 429
League of Nations, 259
Leeming, Mark, 434
legal positivism, 102–3
Legislative Instruments Act 2003 (Cth), 423
legislative power. *See* Commonwealth legislative power
Letelier, Leonardo, 342, 343
liberal theory of peace, ethnic regionalism, and federalism, 15, 250–71
  convergence, possibility of, 267–9
  ethnic diversity in modern nation states, 257–8
  federation and federalism distinguished in political theory, 253
  India as case study of, 264–7
  naturally evolved versus deliberately designed federation, 254–6
  origins of political states and, 251–3
  secession, possibility of, 269–71
  theory of liberal peace and its practical applications, 257–8
Linn, Johannes, 343, 346
Lipohar v. *The Queen* (Australia), 433
Lisbon Treaty. *See at* European Union
Liu, Zhiqiang, 354
local government, constitutional recognition of, 450–1
Locke, John, 160, 181, 182, 214, 215, 251
Lopez, United States v., 146, 151, 178

Ma, Yue, 353
Maastricht Treaty, 202, 205, 210
Macdonald, Sir John A., 182
Mackell, Ottowa Roman Catholic Separate School Trustees v. (Canada), 231
macroeconomic conditions, effect of fiscal decentralisation on, 347–60
Madison, James, 2, 253, 368
Maioni, Antonia, 186
majority rule principle and diversity issues, 214–16
Mallory, O. T., 259
mandates in US, 174–5
Mangold case (Germany), 198, 207–8
Marchildon, Gregory, 91, 94
margin of appreciation doctrine, 243–6
marriage, federal jurisdiction in Canada over, 231
Marshall, John, xvii, 30
Marshall, Thurgood, 146
Martinez-Vazquez, J., 351, 353
Marx, Karl, and Marxism, 182, 264
Mati, Amine, 356
Maxwell, Edward, 91, 94
McCain, John, 172
McDonald v. *City of Chicago* (US), 178
McHugh, Michael, 433, 458
McLachlin, Beverley, 238
McLellan, Anne, 187
McNab, R., 351, 353
Melbourne Corporation principle, 449
Melbourne Corporation v. *Commonwealth* ('*State banking case*') (Australia), 6, 36, 37, 38
Menzies, Bob, 327, 330
Merkel, Angela, 125, 127
Mill, John Stuart, 259
Millet system in Ottoman Empire, 235

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

minorities. *See* diversity and federalism
Mitchell, James, 79
Moldavia: secession movement in, 220
Montesquieu, Charles-Louis de Secondat, Baron de, 213
Moore, Newton James, 77
Moore, Norman, 86
Moreing, Adrian, 80
Morgan, John, 80
Mormon polygamy in US, federal war on, 162
Morrison, United States v., 146, 151
Mortensen, Reid, 440, 443
Moss, Matthew Lewis, 80
Motor Vehicle Standards Act 1989 (Cth), 57
Multani v. *Commission scolaire Margeurite-Bourgeoys* (Canada), 240
multi-ethnicity and multiculturalism. *See* diversity and federalism
Murphy, Lionel, 440
Murray-Darling River system, 39–40, 63, 429
Musgrave, Richard A., 352
Muslims, 233–7, 264

Nath, Shayann, 343
nation states, origins of, 251
National Competition Council (NCC), 54, 55
National Competition Policy, 52–7, 396
'national cultural autonomy' projects, Austro-Marxist, 235
National Health and Hospitals Reform Commission (NHHRC), 405, 406
National Partnership Payments (NPPs), 398, 400
National Transport Commission (NTC), 58, 59–60
National Transport Commission Act 2003 (Cth), 59, 424
National Water Initiative, 62–3
nationalist movements. *See* secession
natural resource revenues in Canada, 314–15
natural resources in Australia. *See* infrastructure and natural resource usage and regulation, centralising trends in
Neugliederung, 120–1
New Deal period in US, 145, 158, 166–9
New South Wales v. *Commonwealth* (1976) (Australia), 60, 333
New Zealand: under British imperial federalism, 253
  decentralisation in, 339
  opportunity to join Commonwealth declined by, 76
Neyapti, Bilin, 353, 357, 358
Nigeria, 257, 270
Nixon, Richard, 170
No Child Left Behind Act of 2002 (US), 152, 174
non-territorial personal federalism, arbitral awards based on religious law in family disputes as, 233–7
'notwithstanding clause,' Canadian Charter of Rights and Freedoms, 243
Nozick, Robert, 251
Nugent, Amy, 188, 190

Oates, Wallace, 342, 343, 345, 349, 352, 353–4
Obama, Barack, 172
O'Connor, Richard Edward, 329
O'Connor, Sandra Day, 176
O'Donoghue v. *Ireland* (Australia), 416
Ottoman Empire, *Millet* system in, 235
Ottowa Roman Catholic Separate School Trustees v. *Mackell* (Canada), 231

Pakistan, 270
Panizza, U., 344
Pape v. *Federal Commissioner of Taxation* (Australia), 6, 7, 8, 18, 322, 333–7, 451
Parliament. *See* British Parliament; Commonwealth Parliament; state parliaments
Pascual, Pedro, 357, 358

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Patient Protection and Affordable Health Care Act of 2010 (PPACA) (US), 173
Peace of Westphalia (1648), 251
peace theory. *See* liberal theory of peace, ethnic regionalism, and federalism
Peacock, Alan, 346
Perpetual Peace (Kant), 260–2
personal non-territorial federalism, arbitral awards based on religious law in family disputes as, 233–7
Phillips, K., 349
Physiocrats, 259
Plessy v. *Ferguson* (US), 162, 169
political party funding reforms, 447–50
Politikverflechtung, 117–18
Pollock, Sir Frederick, 437
polyphonic federalism in multi-ethnic and multicultural societies, 226
polyphonic federalism in US, 12, 141–56
  advantages and disadvantages of, 150–2
  antebellum, Civil War, and Reconstruction eras, 160–3
  Constitution, role of, 141, 142–4
  defined and described, 148–54
  dual federalism and cooperative federalism compared, 148–9
  evolution of, 148
  fiscal issues, 142, 154–6
  judiciary, role of, 148
ports, centralising trends in, 61–2
positivism, legal, 102–3
post-modernism, 182
Prasser, Scott, xi, 16, 272
preamble of Constitution, legal status of, 88–9
pre-emption, federal: in Australia, 28–30
  in US, 147, 175–6
privatisation of religious identity, 232, 242
Progressive Era in US, 157, 158, 164–6
Prohibition in US, 165
Protestant/Roman Catholic divide in Canada, 229–32
Proudhon, Pierre-Joseph, 365, 366, 389
Prud'homme, Remy, 357
public opinion on federalism reform, 21, 365
  abolition of states, support for, 375–7, 381, 382, 387
  in Canada, 192
  centralisation versus decentralisation, 368, 384–8
  Constitutional Values Survey data, use of, 366
  constitutional values versus political preferences, 368, 380–4
  description of ideal system, 367, 372–80, 382, 384
  implications for reform planning, 389
  satisfaction with current federal system, 367, 368–72
  subsidiarity principle, agreement with, 368, 386
  variations between states regarding, 375
public sector, relationship of fiscal decentralisation to size of, 353–5
Pure Food and Drug Act of 1906 (US), 164

Qiao, Baoyun, 358
Québec: Charlottetown Accord of 1992 and, 191
  cultural and political distinctiveness of, 96
  division of powers in Canada and, 99
  fiscal federalism in, 306, 307, 313, 318
  historical Roman Catholicism of, 230
  Jehovah's Witnesses suppressed in, 232
  language laws, 231, 245
  marriage and divorce, federal jurisdiction over, 231
  Muslim private use of *shari'a* courts and political recognition of, 235–7

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

nationalism and secessionism in, 220, 228, 345
as reason for adoption of federal system, 182
reasonable accommodation of religion in, 240–7
right of secession of, 93
secularism in, 243
social and health care policy in, 187, 188
state-funded denominational schools in, 230
Quick, John, 1, 68, 100

rail transport, centralising trends in, 58–9
Ratnapala, Suri, xi, 15, 250
Reagan, Ronald, 172, 174, 178
Real ID Act of 2005 (US), 175
reasonable accommodation of religion, 238–47
reference power, 48–9, 418–19, 442
referendums: amendment of Constitution by, expense and difficulty of, 96, 108–9
in Canada, 191–2
in Switzerland, 192
Western Australia, secession movement in, 78–82, 89
reform of federalism, 18–24
abolition of states, 66, 67, 71, 375–7, 381, 382, 387
administrative federalism proposals, 20
Australia 2020 Summit (2008) on, 66–7
in Canada, 190–2
fiscal federalism, 337–8
goals of, 23
regional governing bodies proposal, 19
US lack of, 157
Western Australia secessionist movement and, 87. *See also* constitutional reform; German federal reform; intergovernmental cooperation; judicial reform; public opinion on federalism reform; Rudd reforms
regional diversity: in Canada, 183, 228
in France, 214
in US, 96, 158, 160–3. *See also* liberal theory of peace, ethnic regionalism, and federalism
regulatory harmonisation under Rudd government, 398
Rehnquist, William H., 176
religious diversity and Canadian federalism, 16, 228
arbitral awards based on religious law in family disputes, as non-territorial personal federalism, 233–7
asymmetrical application of fundamental freedoms, 245–7
education, provincial control of, 231
historical Roman Catholic/Protestant divide, 229–32
margin of appreciation doctrine, 243–6
marriage and divorce, federal jurisdiction over, 231
oppression of religious minorities by provincial governments, 232
privatisation of religious identity and, 232, 242
reasonable accommodation of religion, 238–47
secularism and, 232, 243
religious diversity in Australia, 286
republic, proposal to establish, 455–6
reserved powers doctrine, 98–103, 167
Resource Super Profits Tax (RSPT), 409–11
Riker, William H., 168, 272
Rittel, Horst, 194
road transport, centralising trends in, 57–8
Rodden, Jonathan, 184, 346, 356
Roman Catholic/Protestant divide in Canada, 229–32
Roman Republic, Constitution of, 254
Romanow, Roy, 192
Roosevelt, Franklin Delano, 145, 158, 166–8
Roosevelt, Theodore, 164

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Rudd reforms, 21
COAG as vehicle of, 396–8, 402–3, 405–7, 411
constitutional reform, failure to pursue, 461
education, 408–9
electoral and political party funding reforms, 447, 448
federal elections of 2007, 394–6
fiscal federalism, Commonwealth overreach regarding, 323–4
Global Financial Crisis of 2008 affecting, 401–3, 410, 446
health care, 324, 404–7
Henry Review on Australian tax system, 409–11
Indigenous population, constitutional recognition of, 452
initial success of, 401
public opinion and, 380, 381, 391
regulatory harmonisation, 398
republic, proposal to establish, 455
Tax Bonus Act, 334–6
of tied grants, 399–401
ultimate failure of, 19
rural–urban demographics in Australia, 273, 280–3, 294
Russian Federation, 257, 270

Safe Work Australia Act 2008 (Cth), 422
Santow, Kim, 434, 443
Saunders, Cheryl, xi, 22, 326, 385, 414–31, 441
Scalia, Antonin, 176
Schapiro, Robert A., xii, 12, 13, 141
Scharpf, Fritz, 17, 180, 189
Schattschneider, E. E., 180
Schlesinger, Arthur, 157
Schönberger, Christoph, 203
Schröder, Gerhard, 125
Schumpeter, Joseph, 259
Schwarzenegger, Arnold, 149
Scotland, devolution of powers to, 222, 223
secession: Indian separatist movements, 267
liberal peace theory and ethnic regionalism, 269–71
in multicultural and multi-ethnic states, 220
Québec, nationalist and secessionist movements in, 220, 228
US Civil War, 90–2, 99, 142, 149, 160–3, 269, 270. *See also* Western Australia, secession movement in
Secession League, 79
Secession Referendum Act 1932 (WA), 79
Second Uniform Tax (*Victoria* v. *Commonwealth*) case (Australia), 5, 107, 331, 332
secularism: in Canadian society generally, 232
in France, 240
in Québec, 243
Seervai, H. M., 265
self-determination, principle of, 93–5, 216–17
separatist movements. *See* secession
Service and Execution of Process Act 1992 (Cth), 443
Shah, Anwar, 353, 356
Sherman Anti-Trust Act of 1890 (US), 164
shipping, centralising trends in, 60–1
Simeon, Richard, 184, 185, 188, 190
Simmons, J. M., 192
Skogstad, Grace, 189, 192
Smith, Adam, 251, 258
Smith, James MacCullum, 79
social contract, concept of, 251
Social Security Act of 1935 (US), 167
Social Union Framework Agreement (SUFA) (Canada, 1999), 187, 308
socioeconomic diversity in Australia, 273, 288–91, 294
South Africa: administrative federalism in, 20
intergovernmental cooperation in, 425
multi-ethnicity in, 220
under British imperial federalism, 253
value of diversity in Constitution of, 227

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

sovereign nation states, origins of, 251
sovereignty concerns in German ruling on Lisbon Treaty, 203–6
Soviet Union, 15, 257, 264–5, 269
Spain, 217, 222, 350
Specific Purpose Payments (SPPs) or tied grants, 321, 393, 399–401, 408, 411
Spitzer, Eliot, 149
Sri Lanka, 216
Stansel, Dean, 350
state parliaments: Constitution on, 28
  intergovernmental cooperation, need for involvement in, 430
  limitations on Commonwealth legislative power and, 37–8
  protection of legislative power of, 68
  supremacy of Commonwealth legislative power over, 28–30
state sovereignty concerns in German ruling on Lisbon Treaty, 203–6
states, abolition of, 66, 67, 71, 375–7, 381, 382, 387
Statute of Westminster 1931 (UK), 81
Stegarescu, Dan, 346
Stepan, Alfred, 181
Stewart, William, 255
Stoiber, Edmund, 125
Street, Sir Lawrence, 436, 444
subject matter jurisdiction: of Commonwealth Parliament, 30–1, 32–3, 34–6
  in US, 144
subsidiarity principle, 368, 386
Succession Act 1981 (Qld), 437
Sudan, 220
Sumner, William Graham, 259
supremacy of federal laws. *See* pre-emption, federal
Surface-Transportation Reauthorization Act of 2005 (US), 174
Switzerland: administrative federalism in, 20
  Australian federalism influenced by, 2
  'confederation', self-defined as, 218
  Constitution of 1848, 254
  deliberate constitutional design in Confederation of 1291, 254
  intergovernmental cooperation in, 425
  multi-ethnicity in, 15, 220
  referendums in, 192
  two-chamber system in, 191, 225

Taney, Roger, 144, 161
Tanzi, Vito, 342, 345
Tasmanian Dam case (*Commonwealth* v. *Tasmania*) (Australia), 5, 8, 9, 27, 32, 33, 37, 71, 333
Tax Bonus for Working Australians Act 2009 (No 2) (Tax Bonus Act) (Cth), 334–6
taxation, power of. *See* fiscal federalism
Taylor, Alison, xii, 16, 272
Taylor, Greg, xii, 10, 75
Tea Party, US, 157, 171
'template' law. *See* framework legislation
territorial reform in Germany after unification *(Neugliederung)*, 120–1
Texas v. *White* (US), 91–2
Thiessen, Ulrich, 349, 351, 357
Thomas, Clarence, 146, 176
Thomas v. *Mowbray* (Australia), 8, 419, 459
Thornton, John, 351, 352, 353, 356
Tiebout, Charles, 353
tied grants, 321, 393, 399–401, 408, 411
Tolksdorf, Klaus, xv
Tomuschat, Christian, 198
trade liberalisation, 258
Trade Practices Act 1974 (Cth) (TPA), 53–7
Trade Practices Amendment (Australian Consumer Law) Act (Nos 1 and 2) 2010 (Cth), 56
Treaty Establishing a Constitution for Europe, 199
'treaty federalism' in Canada, 182–4
Treaty of Lisbon. *See at* European Union
Treaty of Maastricht, 202, 205, 210
Treisman, Daniel S., 353
Tribe, Laurence, 91

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Trudeau, Pierre, 183, 232
Trusts Act 1973 (Qld), 437
Turkey, 219, 220
Twomey, Anne, xii, 22, 341, 361, 385, 446

ultra vires review powers, 207–8
Unfunded Mandates Reform Act of 1995 (UMRA) (US), 174–5
uniform law. *See* framework legislation
unitary state: trend toward. *See* centralising trends
  Westminster model, problem of diversity for, 214–16
United Kingdom: asymmetric decentralisation in, 222
  colonial policy and development of Australia federalism, 366
  decentralisation in, 339
  devolution of powers to Wales and Scotland, 222, 223
  'federalism' in legal culture of, 217
  imperial federalism under, 253
  number of judges in England and Wales, 436
  unwritten Constitution of, 255. *See also* British Parliament
United Nations Charter, 93
United States: Articles of Confederation, 143
  Australian federalism influenced by, 2, 30–1, 32
  bi-communal character of early American federalism, 158, 160–9
  blockade politics in, 130
  Canadian support for federal political culture compared, 159
  centralisation, trend toward, 158, 165, 169–73
  citation of authority from other jurisdictions in, xvii
  Civil War, 90–2, 99, 142, 149, 160–3, 269, 270
  cooperative federalism in, 116, 148–9, 167, 169, 172, 177
  decentralisation in, 340
  Declaration of Independence, 90, 143, 159
  division of powers in, 98, 141
  dual federalism in, 116, 144, 148–9, 153
  dual judiciary in, 438
  evolution of federalism in, 148
  federal statutes largely structuring federalism in, 148
  fiscal decentralisation, macroeconomic effects of, 350
  fiscal federalism in, 142, 154–6, 176
  intergovernmental cooperation in, 429
  judicial role in evolution of federalism in, 148, 168, 170, 176, 177–8
  legal possibility of secession in, 90–2
  Louisiana Purchase, Americanisation of, 162
  Mormon polygamy, federal war on, 162
  New Deal period in, 145, 158, 166–9
  Progressive Era in, 157, 158, 164–6
  public opinion of federal government, events affecting, 380
  reasonable accommodation doctrine in, 239
  reform, social, political, and cultural forces shaping, 158–9, 169–73
  reform of federalism, lack of, 157
  regional diversity in, 96, 158, 160–3
  subject matter jurisdiction in, 144. *See also* coercive federalism in US; polyphonic federalism in US
United States Constitution:
  Article I, 142
  Article I, § 8, 32, 144
  Article I, § 8, cl 3, 145–7, 168, 178
  Article I, § 10, 428
  Article VI, cl 2, 175–6
  Second Amendment, 178
  Tenth Amendment, 167, 172
  Thirteenth Amendment, 142
  Fourteenth Amendment, 142, 162, 167, 169–71
  Fifteenth Amendment, 142
  Sixteenth Amendment, 154, 164
  Seventeenth Amendment, 157, 164–5
  Eighteenth Amendment, 165

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE

Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Nineteenth Amendment, 165
Australian federal–state balance and, 30–1, 32
bi-communalism of early America not reflected in, 161
direct election of state senators by voters, 157, 164
'federal' not used in, 218
federalism in US, evolution of, 141, 142–4
as first written federal Constitution, 254
income tax, federal power to levy and collect, 154, 164, 168
on intergovernmental cooperation, 428
as 'living document', 168
natural development toward centralisation and, 38
Prohibition, 165
reserved powers doctrine, 167
secession, legal right to, 91
women's suffrage in, 165
'United States of Europe', concept of, 197, 210
universities. *See* education
urban–rural demographics in Australia, 273, 280–3, 294
Usher, Dan, 345

Välilä, Timo, 357
Vatter, Adrian, 356
vertical fiscal imbalance (VFI), 318–19, 327, 341, 393
Victoria v. *Commonwealth* (Australia, 1926), 5, 78
Victoria v. *Commonwealth* ('*Industrial Relations Act* case') 32, 33
Victoria v. *Commonwealth* ('*Payroll Tax* case') 31, 32, 101

Wacando v. *Commonwealth* (Australia), 89
Wakim, Re, Ex parte McNally (Australia), 22, 50, 73, 415, 416, 419, 420, 429, 432, 441–2, 458
Waldhoff, C., 139
Wales, devolution of powers to, 222
Walker, Geoffrey de Q, 68
Wallis, J. J., 343
Walsh, Cliff, 181, 185
Waltz, Kenneth, 258
Warren, Neil, 341
Wason v. *Walter* (UK), 102
water, centralising trends in, 62–3
Waterford, Jack, 63
Watson, Keith, 79
Watts, Ronald, 253, 255
Waxman, Henry, 175
Wealth of Nations (Smith), 258
Webb, Stephen, 356
Webber, Melvin, 194
Webster, Daniel, 90
Western Australia v. *Commonwealth* ('*Native Title Act* case'), 27, 30
Western Australia, secession movement in, 9, 75–95
1906 secession attempt, 77–8
1921 inquiry into effects of federation on state economy, 78
1933 referendum and Dominion League, 78–82
1974 Westralian Secession Movement, 82
1988 Constitutional Convention and, 82
1993, Richard Court's arguments in, 83–5
1995 Western Australian Constitutional Committee on, 83
2010 controversy over federal mining super-profits tax and, 85–7, 95
British Parliament, secession by act of, 80–2, 88, 92
constitutional amendment passed by national referendum, secession via, 89
definition of secession, 75
geographic isolation of state and, 76
GST, control of, 86, 87
High Court decisions affecting, 78, 80, 84
initial reluctance to become member state at time of federation, 76–7
legal possibility of secession, 88–95

© in this web service Cambridge University Press & Assessment www.cambridge.org

CAMBRIDGE
Cambridge University Press & Assessment
978-1-107-00637-9 — The Future of Australian Federalism
Edited by Gabrielle Appleby , Nicholas Aroney , Thomas John
Index
More Information

Western Australia, secession movement in (*cont.*)
preamble of Constitution, legal status of, 88–9
reform of federalism and, 87
self-determination, principle of, 93–5
unilateral secession, 89–92
Western Australian Constitutional Committee (1995), 83
Westphalia, Peace of (1648), 251
Wheare, Sir Kenneth, 101
White, Margaret, xii, 22, 432
White Australia Policy, 277, 284, 299
Whitlam, Gough, and Whitlam government, 19, 82, 439
Wickard v. *Filburn* (US), 178
Williams, George, 95
Williams, Melissa, 182
Windeyer, Sir William John Victor, 101
Wiseman, Jack, 346
Withers, Glenn, 341, 385
Woller, G. M., 349
women's suffrage in US, 165
Work Choices case (*New South Wales* v. *Commonwealth*) (Australia), 5, 8, 9, 27, 28, 32, 36, 69–71, 98, 333, 337
Workplace Relations Amendment (Work Choices) Act 2005 (Cth), 70, 395
World Trade Organization (WTO), 260

Xie, D., 350

Yilmaz, Sergar, 349, 354, 356

Zhang, Xiaobo, 358
Zimmermann, Augusto, xii, 9, 75
Zou, Heng-fu, 349, 356

© in this web service Cambridge University Press & Assessment www.cambridge.org