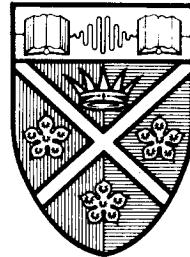


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*CALHOUN: A NEW PERSPECTIVE
ON THEORIES OF AUSTRALIAN
FEDERALISM*

Campbell Sharman

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CALHOUN: A NEW PERSPECTIVE ON
THEORIES OF AUSTRALIAN FEDERALISM

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Whether one takes constitutional structure, governmental organization or political reality, by any measure Australia has a federal form of government. Broad though the scope of central government has become, it is matched by lusty state governments with broad jurisdictions, and limited by the regionalized nature of partisan support, interest group activity and political elites. If the basis of federalism is the dispersal of power among central and regional governments, Australia qualifies as a vigorous federal state as it has done since its foundation in 1901.

Yet the persistence of federalism in Australia has created problems for those interested in comparing federal systems. In comparison with such otherwise similar federations as Canada and the United States, the relative homogeneity of Australia's component regions in socio-economic, linguistic, religious and ethnic terms and the lack of striking differences in political culture between states would seem to deny any sociological basis for the continuing dispersal of political power that federalism entails. The paradox of the persistence of a federal system with no apparent basis in social diversity is further compounded by another aspect of Australian political life. The country has no tradition either on the part of politicians or of commentators on the political system of a manifest and explicit attachment to federalism as an intrinsically desirable form of government. There is no Australian idiom relating to the virtues of federalism, no repertoire of political phrases, no recourse to utterances of the founding fathers, in sum, no rhetorical tradition to provide justification of a federal form of government other than historical convenience. This is not to say that, on occasion, there have not been those who advocated and

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defended federalism, but such justifications have been ad hoc in nature, overwhelmingly concerned with short term partisan gain and have not been framed in the context of any coherent political philosophy. In fact the reverse has occurred: Australia has a long and continuing tradition of forcefully argued attacks on federalism as an obstacle to the achievement of general social and political goals. One might well wonder with Riker 'why they bother with federalism in Australia'.¹

It is not the purpose of this essay, however, to attempt an answer to Riker's question nor will it examine the knotty problem of the nature and significance of such regional diversity as does exist in Australia.² Nor will the even more intractable problems concerning the measures and assessment of regional political cultures be addressed.³ Indeed, the focus of this study is not on the issue of the persistence of federalism at all, but rather on the lack of justifications of federalism in the Australian context. What is it in the Australian political tradition that has been so antithetical to the defence of federalism even though federalism has been a major component of the nation's political life since 1901?

The answer, it is argued, can be found in the works of Calhoun. Before the reader expostulates that the answer is bizarre, grotesque even, given the nature of the question, it should be explained that Calhoun provides the best defence of federalism as a form of political association which rests on the twin foundations of constitutionalism and the sovereignty of the constituent state political communities. As such, Calhoun is the epitome of all that Australia lacks in political idiom. To study Calhoun's

theory of politics is to highlight the anti-federal nature of Australia's dominant British derived tradition of government and, consequently, to explain why Australia has had no indigenous repertoire of justifications for federalism. Such an analysis also points to subtle changes in Australia's recent political perspective: not that the country is likely to spawn a clutch of neo-Calhounians but that current developments in Australia's political concerns have made Calhoun's basic assumptions about federalism more relevant than at any time in the past.

Calhoun: Constitutionalism and State Sovereignty

The political theory of Calhoun⁴ is in the mainstream of post independence American thought and, in both concerns and style of analysis is firmly in the individualist tradition that spans the period from Locke to Adam Smith.⁵ Calhoun is significant not because he introduced new concepts or changed the direction of political inquiry but because of the way he concentrated the current repertoire of political analysis on the role of a constitution and on the nature of federal union. In so doing he provided the argument, analysis and rhetoric necessary for a full fledged defence of state rights in a federation.

Calhoun's analysis rests on two key sets of assumptions. The first is that a constitution is, in its nature, a negative force designed specifically to counter the activities of government. This restraining force is necessary because of the inherently self-serving tendencies of those in government, whether representatives or officials, and the consequent pressure for governmental power to be used to subvert the public interest rather than to further it. A limiting constitution is also necessary because

representative democracy does not in itself guarantee satisfactory government in the sense of a government that reflects the wishes of the community as a whole. In particular, a constitution is necessary to counter the claims of the numerical majority⁶ to a monopoly of power whereby minorities are exploited. Calhoun goes to some length to explain that the representatives of the numerical majority will inevitably come to represent only the interests of a minority of their supporters so that those acting in the name of the majority will in fact be no more than a small minority tyrannising over the bulk of the community.⁷ A constitution, Calhoun argues, is a mechanism through which all interests in the community can be balanced.

The second set of assumptions relate to the basic unit of a federal union. Calhoun sees federation as a compact between the peoples of the constituent states as sovereign communities. That is, the union of 1787 was based, not on the agreement of a single national aggregate of individuals but on a compact between the citizens of the thirteen constituent states, as instanced by the mechanism for the ratification of the United States constitution.⁸ The states, he stresses, preserve their identity, their distinctive interests and their existence as sovereign communities. As a corollary, there can be no such thing as a sovereign nation in a federal union. Sovereignty is indivisible and remains with the contracting state communities. Federation should, accordingly, be seen as a mix of powers reserved to the states and powers delegated by the states to the center. The central government is essentially an agency of the states with whom ultimate authority rests.⁹

Since neither level of government has the right to judge the extent

of the other's powers and the courts are merely the creatures of one level of government or the other, this stress on state sovereignty within the constitutional structure of a federal union generates the right of any state to veto central government actions if these threaten the fundamental interests of a state. This power of nullification is based upon the same argument that leads ultimately to the right of a state to secede from the federal union. Calhoun defends these drastic weapons on the grounds that they are both essential elements of the conditions of a federal union and the only constitutional mechanism that can compel representative governments to find a compromise between the interests of general majorities and particular minority interests. Good government occurs only when policies are supported by concurrent majorities¹⁰ as a result of compromise induced by a properly designed constitutional structure.

This brief summary of Calhoun's argument indicates the general thrust of his theory of federation but it does not do justice to the tightly argued nature of his analysis. It must be noted, however, that the subsequent treatment of his political thought owes more to its historical context than to its intrinsic merit.¹¹ He canvassed his views in the years preceding the Civil War and his theories are associated with the defeated claims of the South. Moreover, much of the literature on Calhoun is primarily concerned with controversies over his life as a politician and the motives for his various and sometimes contradictory policies. Nor does his fulsome defence of slavery make his name one that can fit easily into the pantheon of American heroes. Of greater importance is the fact that many of his concepts were held in common with other writers in the mainstream of

the United States tradition of political theory. This is particularly true of the idea of the constitution as a negative force and even the view that the states are separate communities is still within the rhetoric of current American politics. The bulk of his analysis has, in short, been absorbed largely unremarked into a major strand of the American idiom.

Both these factors -- Calhoun's historical context and the overlap of many of his views on government with other American theorists -- have meant that the current rediscovery of the virtues of federalism in America has not corresponded with a reexamination of Calhoun. Such writers as Ostrom,¹² for example, while taking the Federalist Papers as a starting point ignore Calhoun even though he provides a forceful statement of Ostrom's objections to centralising trends in American government. The explanation is that current justifications of federalism rely predominantly on the importance of diversity at the regional level and in institutional organization as a mode of enhancing responsiveness in government. Calhoun, in contrast, was interested in checking power and, in particular, denying constitutional legitimacy to the rights of national majorities to be the final arbiters of governmental policy. The arguments are similar but the stress is different. While Ostrom seeks to enhance the range and significance of individual choice on public policy through the existence of multi-level and multiagency government, Calhoun is concerned with the protection of the states as distinct communities against the decision of any broader level of government that threatens state interests. Both start from individualist premises, both stress the importance of protecting minorities and the virtues of solutions reached through compromise rather than coercion.

but the arguments diverge over the issue of the constitutional assumptions necessary to achieve similar goals.

Australia: Calhoun as Antithesis

If Calhoun's approach to government represents a divergent strand within a major theme of American political thought, his view differ radically from prevailing assumptions about government in Australia. Australia has no tradition of regarding a constitution as a desirable negative force in the sense of limiting government: the notion of the constitution as higher law does not square with ideas of the supremacy of parliament. The British tradition which was inherited by the Australian colonies in the nineteenth century has been concerned with the nature of representation. Through a process of evolution it is now assumed that once the powers of government are made responsive to popular wishes through parliamentary representation, the mechanism for desirable government is in place. The constitutional history of both Britain and Australia has been concerned not with the limitation of government but over methods of making existing monarchical institutions responsive to an ever larger fraction of the community. From this perspective, a constitution is merely a document setting out, to greater or lesser extent, the machinery for popular representation: the constitution has no special status and can be amended by the governmental institutions that it creates. The whole thrust of modern anglo-Australian parliamentary government is that, in spite of the persistence of institutions that predate modern mass politics, these institutions are never used to thwart the representatives of the numerical majority.

When coupled with disciplined mass parties, such an arrangement produces a great concentration of power in the executive branch. The idea of the supremacy of parliament as a form of limited government might have some plausibility if legislative majorities were always uncertain, but the propensity of parliamentary majorities to be fixed, partisan, and at the disposition of the executive creates what Beer has called a collectivist tendency in politics.¹³ Nothing could be less Calhounian than the representatives of the numerical majority using the trappings of monarchy to regulate the affairs of government unrestrained by constitutional limits.

Even though Australia relied heavily on the American model in the design of its federal union, the prevailing view of government was hardly challenged by federation. While it was true that the new Commonwealth Constitution was entrenched by popular referendum and was a negative force to the extent that it divided powers between national and state governments, the newly created institutions of the central government followed the British model. Indeed the British tradition was so fundamental to the founding fathers' view of government that its details were imported by implication, it not being felt necessary to spell them out in precise form. As a consequence, if the constitution was taken literally, executive and legislative powers were dominated by a governor-general acting in the name of the crown, no mention being made of way in which the mechanisms of representative parliamentary democracy were to work, this being imported by convention. Accordingly, as long as the Commonwealth government acted with the support of the numerical majority and within its legislative

jurisdiction, there was no constitutional mechanism through which its powers could be checked. The only exception was the role of the Senate, an institution borrowed from the rival American tradition whose veto power created a constitutional anomaly the full extent of which became apparent in the dramatic events of 1974-1975. Apart from the Senate, about which more will be said later, the founding fathers of the Australian federation aimed to create a system whose federal aspects were derived from the United States but whose mode of government was to follow British practice long established in the Australian colonies.

If the Australian style of parliamentary government denies one set of Calhounian assumptions, its treatment of the states denies the other. Since federation there has been little evidence that the states have been regarded as autonomous political communities.

While state governments and their bureaucracies may be political facts of life, their existence has been so taken for granted by both politicians and commentators as to make them largely invisible. They are assumed to be administrative agencies who have no role as indicators of the legitimate claims of state communities to express distinctive political priorities. Political rhetoric has been predominantly concerned with nationalism in the sense of nation building and economic development. Further, whatever the loyalties of Queenslanders or Tasmanians to their states, there is nothing in the constitutional structures of state governments to act as a focus for, or recognition of, the states as political communities. Unlike the American states,¹⁴ the constitutions of the Australian states are devoid of any expression of political

goals or philosophy of government, being little more than partial descriptions of the machinery of state government. The only exception is the mode of state representation in the Senate and in the mechanism for altering the Commonwealth Constitution, both of which treat the states as separate political entities distinct from the national aggregate.¹⁵

Since the second world war the growth of central government involvement in policy matters within the jurisdiction of the states has been matched with extended claims by Canberra to the voice of the public interest. The idiom of the national majority has been increasingly called upon to legitimate central government involvement in any area of political attractiveness to the Commonwealth government, irrespective of the constitutional division of powers. Over the same period, academic commentary on governmental affairs has been predominately concerned with politics at the national level, and the politics of class, partisanship and national uniformity has been investigated at the expense of the politics of groups, elites and regional differences. As a result, when the cry of states rights is occasionally raised by a politicians or the notion of state sovereignty is used by a state government, there is no political idiom to give the terms meaning and no Calhounian legacy to give them a political and theoretical context.

The Debate Over the Merits of Australian Federalism

From the foregoing it would be correct to assume that the debate over the merits of federalism in Australia has been curiously one-sided and incomplete. In the years leading up to federation in 1901 there was general agreement among the delegates to the federal conventions that some form of

federal union was desirable.¹⁶ But the stress was on the virtues of union rather than any special attachment to federalism as such. The characteristics of the Canadian, Swiss and United States systems were discussed with some sophistication but they were seen as providing a source of techniques for federal union rather than as manifestations of differing philosophies of government. Whatever the mix of commercial, defence or nationalist considerations that led the Australian states to federate, the style of constitution making was strictly utilitarian and pragmatic. Theories of government were not discussed except in so far as they bore upon a few particular issues of political controversy.

The three areas of greatest dispute involved tariff policy, the distribution of funds between the levels of government, and questions of the representation of the states in central government institutions. Only in the last of these was the issue of federalism raised directly. The present design of the Senate bears witness to the insistence of the four less populous states that there should be a powerful second chamber in the national government which would represent states equally, senators being chosen directly by the electors in each state voting as a single district. This device was designed to counter the dominance that New South Wales and Victoria would have in any chamber based on representation by population alone. The Senate, in so far as it is an explicit check on the power of national majorities, runs directly counter to the tradition of British style parliamentary government elsewhere imported into the Commonwealth Constitution. While there was some disquiet about the consequences of mixing American and British traditions, it was submerged in the recognition

that the Senate was the price that the large states would have to pay for the smaller states to join the federation at all. In the event, the first seventy years of federation saw the anomalous position of the Senate masked by a variety of factors chief among which was the growth of strong parliamentary parties operating in tandem with those in the lower house, the House of Representatives.

Once the federation was in place the major theme of the debate over Australian federalism began to emerge. This was, as it has been to the present, that a more complete form of union should have been adopted in 1901. Following from the criticism of federalism outlined by Dicey,¹⁷ the Australian federation was accused of promoting weak and ineffective government, of being legalistic and unnecessarily complicated and, above all of being undemocratic.¹⁸ By this was meant that the representatives of national majorities were limited in carrying out their preferred policies by the division of legislative powers between two levels of government and by the very existence of powerful state governments which were perceived as being unduly responsive to the interests, of locally entrenched minorities. The national interest, so it was argued, demanded that at the very least more power should be ceded to the central government to enable more effective management of the nation's affairs.

This theme was augmented after the second world war by those convinced of Laski's assertion that federalism was obsolescent for economic reasons alone.¹⁹ The decline of regional particularisms to form a national economy, the growth of the large corporation, and the increasing concern with social welfare and redistributive policies all meant that the

nineteenth century underpinnings of federalism were inappropriate to twentieth century problems. The failure of government in the depression and the success of wartime planning by central governments were both used to argue that federalism had failed in Australia and that the nation deserved a unitary government, albeit with some decentralization.²⁰

These views have not only been espoused by many academic observers over the years but have been adopted in their entirety by the national level of the Australian Labor Party.²¹ It has been convincingly argued by Galligan²² that the basic political and social goals of the Australian Labor Party have been inherently at odds with the assumptions necessary to sustain a federation. While learning to cope with the system, the largest partisan grouping in Australia is committed to its substantial modification if not its abolition.

The response to this barrage of criticism has been sporadic and limited. While Australian voters have consistently voted against increasing the scope of the central governments economic power in national constitutional referendums²³ and have denied office to the Australian Labor Party for most of the period since federation, neither politicians nor academic observers have put up much of a defence. The Liberal Party, the National Country Party, and their precursors have had a continuing attachment to federalism but more as a statement of vague commitment than as an expression involving explicit policies. Both the non-Labor parties when in government have followed interventionist policies and, in spite of their formal commitment to states rights have presided over central governments which have steadily increased their involvement in areas of state jurisdiction. Until recently, federalism has been raised as issue more as a way of

embarrassing the Australian Labor Party than as a positive good in itself. In this sense federalism is shorthand for opposition to Labor governments at the national level and for countering the bogey of socialism. Local political groups of all kinds have come out in favour of federalism whenever the issue of greater central government regulation of economic matters has been raised. Federalism, in short, has been seen as instrumental in protecting economic interests and regional parochialisms against particular policies initiated by left leaning central governments.

For this reason the greatest outpouring of writing on federalism occurred in 1940s in response to an electorally successful and self confident Labor government in Canberra which intended to use its wartime powers to demonstrate the benefits of central planning. By and large, this literature was concerned with the dangers of too much government intervention and saw federalism as a restraining influence.²⁴ Once the Labor government was defeated in 1949, the interest in federalism waned. When the Australian Labor Party eventually won national government again in 1972-1975, the initiatives of the Whitlam government corresponded with a renewed interest in federalism and a more explicit commitment to the preservation of federalism on the part of the Liberal Party than had ever been the case before. In spite of this, the succeeding Fraser governments have not translated this commitment into any substantial modification of the federal system in the direction of enhancing state autonomy or the reduction of central government involvement in state jurisdictions.²⁵ Nor have the states themselves argued forcefully for greater powers except to the extent that they resent the bureaucratic interference of national government in

state affairs that is a consequence of the states' acceptance of central government financial transfers. Over the same period the academic response to federalism has been to recognize the underlying importance of a federal structure for an understanding of Australian politics and to note the resilience of the states as political agencies.²⁶ But there has been no discovery of the virtues of federalism as such, and the basic arguments attacking federalism continue to remain unanswered.

Calhounian Elements in Contemporary Australia

The analysis above has stressed the British style collectivist idiom of Australia's politics in spite of the country's federal governmental structure. Both of Calhoun's basic elements for the defence of federalism would seem to be absent since there is no tradition either of regarding the constitution as a negative force or of seeing the states as being the basic political communities on which the federal union is built. Yet, notwithstanding the trends of the past eighty years there are some recent indications that more of the elements of a Calhounian defence of federalism are now present in Australia than at any time since 1900.

The first of these is a discovery of constitutionalism in the American sense. This has coincided with a variety of factors, some deriving from long term changes in intellectual climate, others stemming from idiosyncratic local factors. Chief among the latter has been the effects of the constitutional crisis of 1975 in which the role of the Senate and the Governor General were involved in major political controversy. The details of the crisis are less important than the responses which it has engendered. The first reactions were vehement arguments for broad constitutional change

designed to bring Australia's constitutional structure completely into line with the British collectivist idiom, that is, to remove the veto power of the Senate and to prevent the Governor General from acting on anything other than the instructions of the popularly elected majority in the lower house. As a counterreaction those who wished to resist such changes have been forced to examine what it is in the constitutional structure that they wish to preserve, and to articulate such values as the desirability of the separation of powers and the inherent virtues of limiting government.²⁷

This constitutional debate coincided with other trends raising similar issues. Post war optimism about the possibility of wholesale, benign governmental engineering to solve social and economic problems has given way to a certain disillusionment with the activities of government and interventionist policies in general. Articulate groups can now be found arguing for greater scope for market forces and questioning the actual benefits of policies based on majoritarian assumptions. These arguments, when coupled with a focus on the self-serving tendencies of politicians and bureaucracies have led to demands for formal restraints limiting the scope of governmental action. Within the context of parliamentary government, the shortcomings of executive dominance of the legislature are now broadly conceded and even the virtue of the simple two party dichotomous choice that was claimed to provide the democratic control of government is now seriously questioned. Interest is now focussed on a battery of devices that force governments to be more responsive to citizen preferences through the modification of the electoral system, the party system, and upper houses and by the adoption of popular referendums

and initiatives, and constitutionally entrenched limitations of government activities. In sum, the assumptions about representative democracy in the existing parliamentary framework are being questioned in a way which, while familiar in the United States, is new in Australia and Britain. There is a scepticism about the claims of governments to represent the general interest and a corresponding concern with constitutional and institutional engineering to limit government.²⁸ Both of these elements are squarely in line with a Calhounian view of constitutionalism.

This is not to say that these themes have become the dominant ones in Australian political and academic debate - they are by any measure a minor strand within a hostile tradition. But they represent the emergence of an alternative view of government which has previously been absent. These views lead both to a broad concern with constitutionalism and provide a basis for a reworking of the analysis of Australian federalism.

The second set of assumptions on which Calhoun's view of federal union rests concerns the states as sovereign political communities, and a consequent denial of any right of dominance by national majorities. This, as has been sketched above has been an approach foreign to the Australian idiom of politics. In recent years, however, there have been signs of a subtle shift in attitude towards the states and their place in federal politics. The states have a long tradition of arguing for their special economic needs in their dealings with the central government over the allocation of tax revenue. This has been particularly the case with the smaller states in terms of population, whose feelings of resentment towards regional disparities and the unequal benefits of national tariffs have led to periods of substantial conflict between the levels of government amounting, in the case of

Western Australia, to the threat of secession from the federation.²⁹

But the style of complaint has been in terms of the rights of all Australians to an equal standard of living no matter where they might live. As the less populous states have also been the poorer ones, arguments for national equality have been sufficient to justify the transfer of resources from the center to the periphery. Nor have the larger and wealthier states, New South Wales and Victoria, demurred at such transfers as long as the reasonable needs of these states have also been met and the additional transfers to the smaller states have been perceived as coming from the central government's share of resources.

This situation is in the process of being modified from two directions. The first stems from the changing pattern of economic development in Australia in which the states of Queensland and Western Australia now view themselves as being potentially wealthy states whose export oriented mineral and agricultural wealth will be used to subsidize inefficient, tariff protected industries in other states. At the same time, the current world recession, national government stringencies, and the structural readjustment occurring in the more industrialized states have combined to reduce the tolerance of New South Wales and Victoria to the present pattern of distribution of national revenues. The result has been to sharpen the perceived differences between the states, to make these differences a political issue, and to change the idiom in which such differences are discussed. Hard economic times have not only encouraged economic entrepreneurship on the part of state governments but have fostered political aggressiveness and self-consciousness in seeking benefits for their states. The rivalry is not new but its extent and openness has brought state

interests to the public notice in a way that has not occurred before. State economic interests have become a major theme of state elections and the idiom is less that of national development than that of husbanding the resources of each state as a building block on which the economic health of the federation rests. At least in terms of economic interests the fact that the states are distinct communities is now taken for granted.³⁰

In another context, some of the events of the recent past have led to the states being seen as veto points in the federal system whose consent is necessary if national government goals are to be met. One of the paradoxes of the Whitlam government's term in office was that a determined move to influence policy in areas within the jurisdictional competence of the states had the effect of strengthening the political resources of the states. By putting high priority on achieving policy goals in such areas as health, education and urban development, Whitlam was forced to rely on state cooperation to implement such policies. Where joint action prejudiced the political interests of state governments, cooperation was either refused or granted at high financial and administrative cost to the central government. Moreover, to the extent that Canberra overextended its administrative resources in the Whitlam period, the manifest incompetence of some parts of the Commonwealth bureaucracy gave state administrations a new sense of self-confidence and bargaining power. The Fraser government has been more sensitive to these problems so that many areas of national development are talked about in a rhetoric that stresses joint endeavour, compromise and the need for, in effect, concurrent majorities.

The final area in which there are signs of changing perceptions of federalism is that of the Senate. Long a potential anomaly in the

Commonwealth constitutional structure, the rise of the Senate since the late 1960s has had a major impact on the style of national government. The reasons for the growth of the Senate's influence are complex but its immediate cause can be traced to the loss of government majorities in the Senate. The system of proportional representation by which senators are chosen has simultaneously reduced any disparity in representation between the larger parties and has made more likely the representation of minor party and independent candidates. The result has been to enable opposition parties in cooperation with minor party and independent senators to use the Senate's broad powers to counter the executive dominance of the lower house. While the dramatic events of 1974 and 1975 in which the Senate forced the government to the polls have taken much of the attention of commentators, the day to day activities of the Senate as a legislative and investigative body have greater long term significance. The Senate's power to veto legislation is increasingly being used to check the central government's monopoly of legislative initiative. While the Senate's power is only available to those interests which can win over a coalition of opposition, minor party, independent, and sometimes government senators to veto or modify government proposals, the notion of concurrent majorities is an increasingly familiar one in fact if not in name. The government, through the House of Representatives may propose measures, but the Senate's concurrence is required to dispose of them.

The critical question is the extent to which this change in the Senate effects views of federalism. Most of the commentary on the Senate stresses its power as a house of review and its role in this capacity certainly squares with the trend towards a concern with more limited

government. But this leaves open its role as a states house in a federation. As has been argued elsewhere,³¹ the Senate is not a states house in the sense that state delegations vote together irrespective of party affiliation, but its mode of election using states as electoral districts has the effect, in the Australian context, of making the Senate an avenue for the transmission of state concerns to the national government. To the extent that the states are the constituencies of the Senate, a senator's view of national politics is very much like Calhoun's view of politics in a federal union - the nation is no more than the sum of the constituent states.

But perhaps is it not necessary to strain to distinguish between those characteristics which are federal and those which relate to the limitation of government. Both the role of the Australian Senate and the writings of Calhoun illustrate that the two concepts are so closely related in their origins and philosophical assumptions as to defy any neat separation. What is important is that the Senate, its potential long submerged, has become the clearest indication that Australia has inherited two traditions of government, the British and the American. The style of the British tradition is inherently hostile to notions of federalism for the same reasons that it is hostile to the formal limitation of governmental power through an entrenched constitution, and to the extent that this tradition has been dominated in Australia, it has precluded Australia from evolving its own concepts and justification of federalism. Once this dominance has been broken the way is opened for consideration of a wider spectrum of political views and for an investigation of the logic of the federal institutions which have been operating with greater or lesser success since 1901.

From this perspective Calhoun is important because his writings represent an extreme version of an American tradition of federal constitutionalism and,

as such, they provide a source of neglected questions for Australian federalism. To what extent, for example, and in what ways are the states political communities? Since many areas of policy involve Commonwealth and state cooperation, has not much of Australia's recent political practice in fact operated on the principles of concurrent majorities? And has not the state power of nullification in many areas of Commonwealth endeavour resulted in compromises reflecting broader consensus than unilateral coerced action by the central government acting in the name of the numerical majority? The answers to such questions are less important than the fact that they are asked. Only when such Calhounian issues are on the agenda can Australians begin thinking seriously about the nature and merits of their federal system. Fortunately, there are some signs that this is beginning to occur.

NOTES

- 1 W.H. Riker, Federalism: Origin, Operation, Significance (Boston: Little Brown, 1964) p. 113.
- 2 For a case that there are significant regional differences, see J. Holmes, and C. Sharman, The Australian Federal System (Sydney: Allen & Unwin, 1977).
- 3 Note the issues raised in R. Simeon and D.J. Elkins, 'Regional political cultures in Canada' Canadian Journal of Political Science 7 (1974) 397-437 and the debate generated by the analysis of D.J. Elazar which is surveyed in a special issue of Publius 10 (2) spring 1980.
- 4 A collection of Calhoun's writings on political theory can be found in John C. Calhoun, A Disquisition on Government and Selections from the Discourse, edited and with an introduction by C. Gordon Post (Indianapolis: Bobbs-Merril, 1953). John L. Thomas (ed.) John C. Calhoun: A Profile (New York: Hill & Wang, 1968) provides a survey of Calhoun's works and a collection of representative essays on his political and historical significance. Both the above works contain bibliographies.
- 5 But note P.J. Steinberger 'Calhoun's concept of public interest: a clarification' Polity 13 (3) 1981, 410-424.
- 6 This is Calhoun's phrase to describe the majority of all members of the political entity as opposed to majorities within particular interests on local communities.
- 7 His analysis is strikingly similar to those who have argued against the existing two party system in Britain: See, for example S.E. Finer (ed.) Adversary Politics and Electoral Reform (London: A. Wigram, 1975).

- 8 The Constitution of the United States, Article VII.
- 9 For an excellent analysis of Calhoun's logic of federal union see M. Forsyth Unions of States: The Theory and Practice of Confederation (Leicester: Leicester University Press, 1981) pp. 120-132.
- 10 Again, this is Calhoun's phrase for a situation in which there is a coincidence of support for a measure both by the general majority and a majority of the particular interest in question. As commentators have pointed out, the phrase is ambiguous on two counts, first because it does not indicate how relevant minority interests are determined and, secondly, because Calhoun does not explain what happens to the minority within the minority. This problem is not directly relevant in the present instance because, it is assumed that the relevant minority interests are coterminous with state interests. How these are to be ascertained is another issue. Note Calhoun's concern with concurrent majorities led to his discovery by pluralists and the rise of neo-Calhounians in the 1940s; see for example P.F. Drucker 'A key to American politics: Calhoun's pluralism' in Thomas (ed.) Calhoun: A Profile. For a vehement rebuttal of this line of argument, see R.N. Current, John C. Calhoun (New York: Washington Square Press, 1966) who sees Calhoun as little more than a racist and a reactionary; note however the balanced analysis of Steinberger 'Calhoun's concept of public interest' who sees echoes of European communalism in Calhoun's work.
- 11 See generally Thomas (ed.) Calhoun: A Profile.
- 12 V. Ostrom 'Can federalism make a difference?' Publius 3 (2) Fall 1973, 197-238.
- 13 S.H. Beer, British Politics in the Collectivist Age (New York: Knopf, 1965).

- 14 Note the contributions of D.J. Elazar, M.S. Lutz, and A.L. Sturen to the special issue of Publius on state constitutional design: Publius 12 (1) winter 1982. Elazar correctly observes that "The Australian states and the Canadian provinces are governed by constitutional statutes rather than true written constitutions. ... (s)tate fundamental law is of little significance." M.J. Elazar 'State constitutional design in the United States and other federal systems' Publius 12 (1) winter 1982, 1-10 at p.9.
- 15 That is the requirements that each of the original states be represented equally in the Senate, and that constitutional referendums must obtain both an overall majority, and majorities in a majority of states (four of the six states). See the Commonwealth Constitution, sections 7 and 128.
- 16 On the history of federation, see J.A. La Mauze, The Making of the Australian Constitution (Melbourne: Melbourne University Press, 1972).
- 17 A.V. Dicey, Introduction to the Study of the Law of the Constitution 10th edition (London: MacMillan, 1959) first published 1885.
- 18 See, for example, A.P. Canaway The Failure of Federalism in Australia (London: Oxford University Press, 1930).
- 19 H.J. Laski, 'The obsolescence of federalism' New Republic 3 May 1939, 367-369.
- 20 The most comprehensive statement of this position can be found in G. Greenwood The Future of Australian Federalism: A Commentary on the Working of the Constitution (Brisbane: University of Queensland Press, 1976) first published in 1946.
- 21 And, in particular, by Labor's most outstanding post-war politician: see E.G. Whitlam On Australia's Constitution (Melbourne: Widescope, 1977).

22 B. Galligan, 'Federalism's ideological dimension and the Australian Labor Party' Australian Quarterly 53 (2) 1981, 128-140.

23 For details see C. Sharman and J. Stuart 'Patterns of voting in national referendums' Politics 16 (2) 1981, 261-270.

24 See D.A. Drummond, Australia's Changing Constitution: No States or New States (Sydney: Angus & Robertson, 1943); and D. Maugham, P.C. Spender, D.H. Drummond and J.A. Bland Constitutional Revision in Australia (Sydney: Australasian Publishing Co. 1944). For a review of this period note G. Sawer (ed.) Federalism: An Australian Jubilee Study (Melbourne: Cheshire, 1952). As an exception to the general trend, note S.R. Davis 'Cooperative federalism in retrospect, Historical Studies 5 (1951-1953), 212-233.

25 See C. Sharman 'Fraser, the states, and federalism' Australian Quarterly 51 (1) 1980, 9-19.

26 This seems to have come as a surprise to some commentators: see P.D. Groenewegen, 'Federalism' in A. Patience and B. Head (eds.) From Whitlam to Fraser: Reform and Reaction in Australian Politics (Melbourne: Oxford University Press, 1979).

27 An excellent collection indicating the range of responses to the constitutional crisis can be found in G. Evans (ed.) Labor and the Constitution 1972-1975: Essays and Commentaries on the Constitutional Controversies of the Whitlam Years (Melbourne: Heinemann, 1977).

28 See, for example, M. James (ed.) The Constitutional Challenge: Essays on the Australian Constitution, Constitutionalism and Parliamentary Practice (Sydney: Centre for Independent Studies, 1982).

29 See G.S. Reid 'Western Australia and the federation' in R. Pervan and C. Sharman (eds.) Essays on Western Australian Politics (Perth:

University of W.A. Press, 1979). In comparative context note also G. Stevenson, 'Western Alienation in Australia and Canada' in L. Pratt and G. Stevenson (eds.) Western Separatism: The Myths, Realities and Dangers (Edmonton: Hurtig, 1981).

- 30 This has been reinforced by academic concern with the politics of resource development. See, for example, G. Stevenson, Mineral Resources and Australian Federalism (Canberra: Centre for Research on Federal Financial Relations, Australian National University, Research Monograph No. 17, 1977).
- 31 C. Sharman 'The Australian Senate as a states house' Politics 12 (2) 1977, 64-75.