

Chapter Three

Anti-federal, anti-nation, anti-theory: 1840s-1880s

Oh, for a Washington, or a Franklin! – But we may sigh in vain.

Sydney Morning Herald correspondent on NSW constitution, 26 August 1853.

You gotta love this city for its body and not its brain.

T. Freedman (The Whitlams), 'You Gotta Love This City', *Love This City* (Black Yak/Phantom Records, Sydney, 1999).

3.1. Introduction

By the mid to late 1840s Anglo-Australian politics had come to know, but not necessarily recognise, two major groups of territorial ideas: first, a decentralist or Franklinesque form of federalism, in which territorial subdivision was pursued as a strategy of colonisation; and second, James Stephen's decentralised unitary model of government, pursued by the British government without success. The question for the crucial years before, during, and after the transition to responsible government, was which if either approach would inform Australia's long-term territorial foundations.

At the close of the last chapter, we saw that the failure of decentralised unitary model was dictating a reversion to the original strategy, freeing the way for formal separation of Port Phillip and other regions as colonies rather than mere 'districts'. In this chapter we will find that not one but both of the first two territorial approaches remained largely stillborn. So far we have seen little reason to believe that this stand-off was because federal and unitary ideas fell into direct political conflict, because even to the mid-1840s this had not yet occurred. Instead a third approach was at work, stemming from a NSW political leadership caught between federalist erosion of their territory on one hand and perceived British tactics for diluting their power on the other.

Between the 1840s and 1880s we see clearly how NSW leaders rejected both decentralist ideas in favour of a *de facto* centralised framework, and how this new body of ideas came to dominate constitutional practice in most Australian states. The first part of the chapter reviews the conventional assessment that Australia continued on a natural path of territorial subdivision, consistent with its later federal nature. Of course, this assessment has already been challenged, since that territorial path had already experienced a decade of turmoil until now unrecognised; and in this chapter we find more of the same. Port Phillip's separation took five more long years to achieve and new separation claims in northern NSW proved equally protracted, over three separate debates. Contrary to later assumptions, Australia's constitutional development was not accelerating but slowing, in a three-way conflict between decentralist federalists, the Sydney legislative elite and a British government washing its hands.

The second part of the chapter deals with common assumptions that the constitutional settlements of the 1850s, in which the first four colonies achieved responsible government, resolved Australian territory by entrenching a framework based on freedom and decentralisation. It finds these assumptions to be seriously misplaced, by reviewing how constitutional design dealt with a range of ideas about the territorial shape of Australian institutions, but settled around *de facto* centralised unitary forms – an institutionalisation of the centralist tradition to have major impacts on all future constitutional development.

The third part analyses how territory was specifically left unresolved by these debates. Under responsible government most colonial legislatures fell into line with the previous NSW approach, fighting off federal-style territorial change *and* major devolution to unitary-style local governments. However, Britain's partial exit from constitutional affairs meant that the three-way conflict continued, with both decentralist and centralist tendencies presided over by an umpire unprepared to act. It gradually emerged that the colonial territorial framework had indeed stopped in mid-development, but in theory and practice this was not a result obtained through decisive resolution or reconciliation of ideas, but rather a continually contestable default. Contrary to its otherwise vibrant political development, territorially Australia had become a frozen continent.

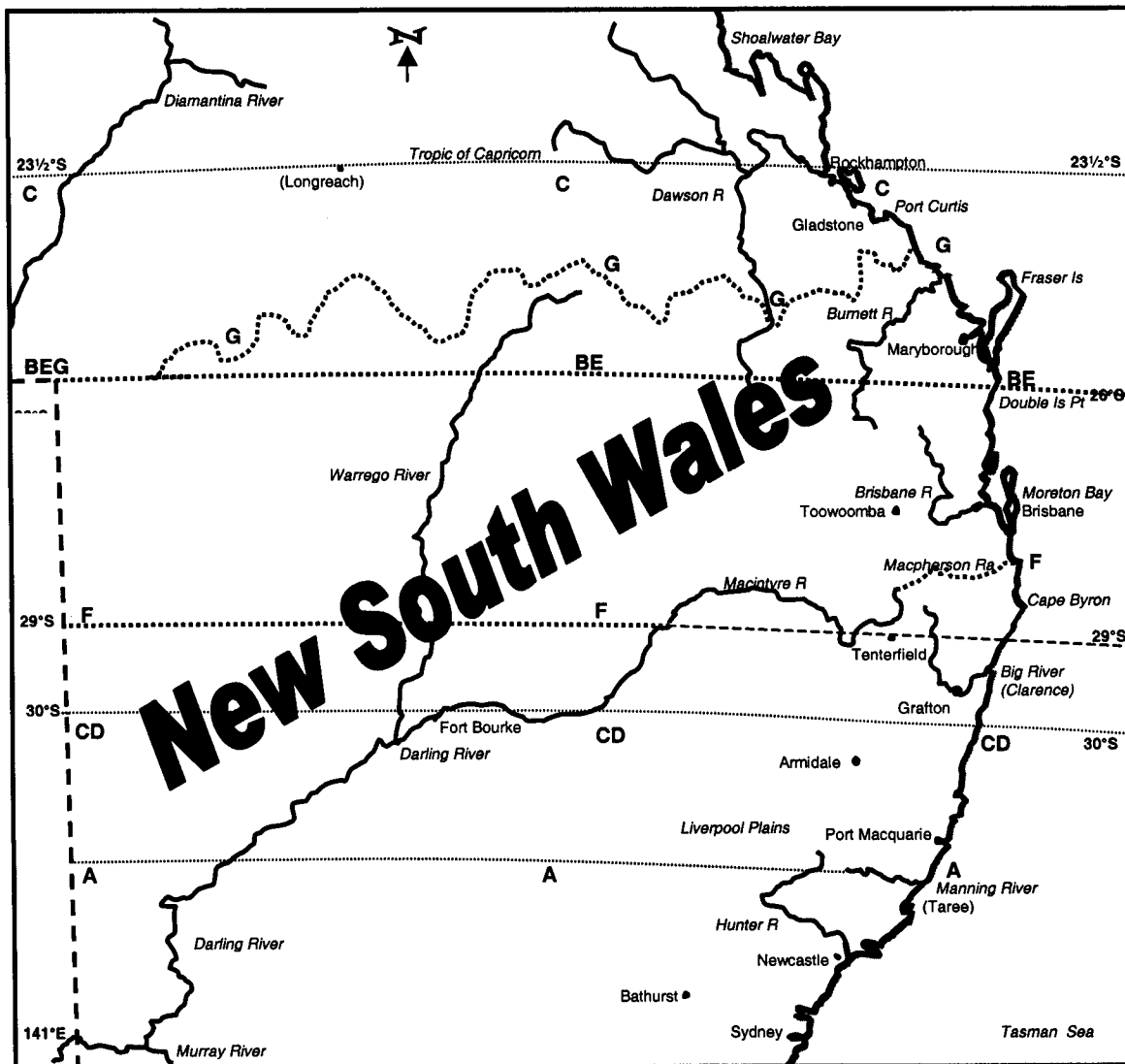
3.2. Great expectations: colonial subdivision 1846-1852

By 1846 the demise of Stephen's unitary model was indicating that official constitutional planning should return to its 1820s starting point, that of a systematic approach to colonial subdivision. The two options involved a clear choice: NSW Governor George Gipps advised that if the Sydney squatters heeded the warning of Port Phillip's separation and reversed their opposition to local government, further separation of NSW territory might be avoided; but if they didn't, Port Phillip would necessarily be just the first of "several small Colonies" into which NSW must be cut (quoted Melbourne 1963: 324, 337-8, 388; see also Ward 1958: 28; Baker 1985: 211). In 1850 with the decentralised unitary model clearly abandoned, the Privy Council Committee on Trade and Plantations took the same position, reporting that the "most cursory inspection of the maps and charts" dictated further subdivision of NSW, Western Australia and South Australia "into a greater number of distinct Colonies" (quoted Earl Grey 1853: 427-8). However, that was the theory; in political reality, a return to subdivision proved more problematic. Grey's July 1847 decision to proceed with Victorian separation took until July 1851 to be realised, as the British government wrestled to negotiate *any* agreed constitutional formula with the colonies. A new three-way conflict was playing out between the colonial office, NSW political elite and separationist communities, its dynamics demonstrated not only at Port Phillip but also in the first two debates over separation of the NSW northern districts in 1846-1848 and 1849-1852.

North Australia I (1846-1848)

The return of colonial subdivision – the formal separation of existing colonial territories into new smaller ones – came in February 1846 with the British government's gazettal of Australia's fifth colony. Contrary to later beliefs this was not Victoria (Port Phillip), which would only come five years later, but the vast 'North Australia', covering the entire continent north of 26°S and east of 129°E (**Figure 9, B**). Easily forgotten because it had a legal life of only 26 months, the colony was host for five months to an official settlement of over 200 convicts, soldiers and families at Port Curtis (Gladstone).

Figure 9. The Seven Boundaries of the NSW Northern Districts 1840-1870



Source: Drawn by author based on references below and in text.

Legend (Letters above indicate location of each boundary, as listed below)

A	May 1840	Proposed official northern land district of NSW (not proclaimed)	Nthn limit of location, Manning River	(Melbourne 1963: 254, n.4)
B	1842	Official minimum NSW boundary, NSW Constitution Act	26°S	
	1846	Boundary of Gladstone's North Australia	26°S	
C	1847	Proposed boundaries of 'Cookslan' (inc. sthn limit 'Leichardstlan'), Dunmore Lang	30°S to Tropic of Capricorn (23½°S)	
D	1849-50	Official southernmost possible new colonial boundary, Earl Grey's Constitution Act 1850	30°S	
E	1853	Proposed restored minimum NSW boundary, draft NSW Constitution Bill	26°S	
F	1856-59	Final NSW-Queensland boundary	McPherson Ra, McIntyre R, 29°S (McLelland 1971: 678-9)	
G	1860s+	Proposed boundary, Central Queensland and South Queensland		

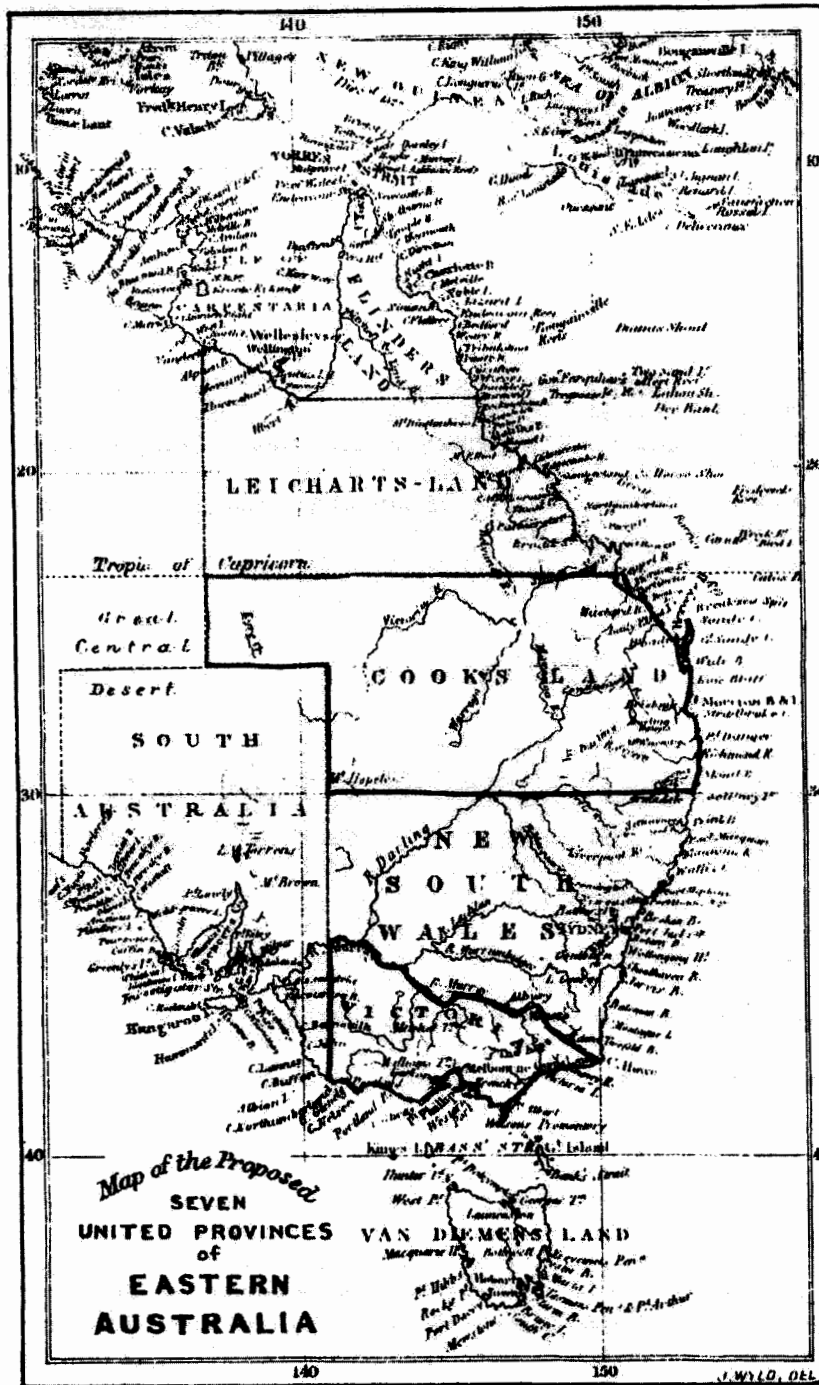
The first step in the long road to Queensland's separation, North Australia was also the last ever colony proposed entirely from London. The brainchild of William Gladstone, secretary-of-state for the colonies from December 1845 to July 1846, it was conceived as a new convict colony to relieve the prison overcrowding generated by the 1840 termination of transportation (Bell & Morrell 1928: 299; Melbourne 1963: 357-8; Golding 1966: 34). To achieve this, Gladstone merely had to rename the territory north of 26°S something other than 'New South Wales', using the 1842 *Constitution Act*, and transportation could resume without changing any royal orders or legislation. North Australia was only terminated, and Port Curtis abandoned, after the colonial office passed back to Whig control in July 1846.

For a shortlived, 'top down' project, North Australia had major unanticipated effects, particularly in its triggering of a real separation debate. In 1840 the Whigs had flagged the possibility of separation as far south as the Manning River near Newcastle, but these districts were still so sparsely settled that the question was academic. By 1846, although pastoralists had spread from the New England tablelands all the way to Port Curtis itself, this was a slow overland flow. Neither of the major coastal towns, Grafton on the Clarence or 'Big River' and the Brisbane area only recently made 'free', were yet acting as major gateways of settlement (Knox 1971: 564-7; Fitzgerald 1982: 78-94; Johnston & Gregory 1989). North Australia triggered a new debate about the north's constitutional future. 'Gladstone' immediately seemed destined to be the development hub of the north, provoking jealous criticism of the project by the *Moreton Bay Courier*.¹ Gladstone's cancellation equally quickly reopened new possibilities. Pastoralism spread rapidly into the 'new' territory, with Maryborough emerging as an embryonic alternative capital north of the 26°S line, and Ipswich, Brisbane and Cleveland as southern competitors (Roberts 1924: 211-7; Ellis 1933: 46; Johnston & Gregory 1989: 246-7). Nor should Grafton be ignored, argued Dunmore Lang, mounting a case

¹ See Fitzgerald (1982: 93), Huf et al (1993: 272). The probability that Gladstone would be a major northern hub had been rumoured for many decades, Port Curtis having been described by Matthew Flinders as a natural port in 1802 (two decades before John Oxley located the Brisbane River in 1822, on his return voyage from inspecting Port Curtis), and the idea of a convict post on the site had been revived in 1838 (Fitzgerald 1982: 62-3, 86, 93). 'Gladstone' was only officially occupied under Lieutenant-Colonel Barney from December 1846 to May 1847, and 'North Australia' formally degazetted in April 1848 (Bolton 1963: 12; Melbourne 1963: 277-8, 358; Golding 1966: 35; McLelland 1971: 673-4).

for the line to be shifted south to 30°S, to create the first of three northern colonies: 'Cook'sland', followed by 'Leichhardt'sland' north of the Tropic of Capricorn and 'Flindersland' on Cape York Peninsula (Lang 1847; Ellis 1933: 45; Melbourne 1963: 373; Baker 1985: 245-9; McKenna 1996: 2; Figure 10).

Figure 10. John Dunmore Lang's eastern Australia 1840s-1850s



Source: J. D. Lang's *Freedom and Independence for the Golden Lands of Australia* (1852), as reproduced by McKenna (1996: 2). Note this postdated Victoria's separation and accepts the 1851 Victorian boundary, but predated Lang's support for a separate Riverina and New England.

As Figures 9 and 10 show, this debate opened up not one, but a multitude of possible northern frontiers. In London in 1847-1848 the last iteration of Stephen's unitary model was being framed and abandoned, but in Australian politics the actions of the British government had unintentionally given the instinct to colonial separation a further boost. Against these events, the idea of any territorial strategy *other* than colonial subdivision never gained traction. However as the next phase of the debate showed, nor did the realisation that British ideas about subdivision now had less to do with long-term colonial theory and policy, than with fixing short-term political problems.

North Australia II (1849-1851)

The second debate over northern separation followed close on Grey's abandonment of Stephen's unitary model. Like Gladstone's plan, it was triggered by the need to find a short-term solution to the convict problem. Indeed, Grey set out to capitalise directly on the previous unintended debate by deliberately provoking a new wave of separation agitation, a tactic widely suspected of having been politically disingenuous but until now not fully understood. In mid-1849 two things happened to Grey. First, his own plan to resume what was now called 'exile' transportation to Sydney and Melbourne was met with near-rebellion against convict ships such as the *Hashemy* (Bell & Morrell 1928: 311; Hartwell 1955: 69; Melbourne 1963: 362-4, 407-9; Travers 1992: 50; McKenna 1996: 44-7). Second, Grey received fresh representations for a new colony from New England north, not initially directly requesting convict labour, but already prominent in his mind as regions that had willingly accepted the 'exiles'.

Grey's response in late 1849 was to include a clause in the then draft Constitution Bill, inviting all "inhabitant householders of any such of the territories... northward of the thirtieth degree of South latitude" to petition for "a separate colony or colonies" (1850 Act, s. 34, see Bell & Morrell 1928: 129; Lumb 1991: 15, 34). Mere word of the clause had the desired effect, provoking towns and pastoral communities from all points north to petition for separation, led by the convict-seeking New England and Darling Downs squatters and backed up by coastal centres seeking separation without convicts (Ellis 1933: 48-51; Melbourne 1963: 407-11; Farrell 1997a: 9). Despite having deliberately incited this debate, and receiving legal advice that the petitions met the statutory

requirement, Grey determined in late 1851 that separation was not warranted. Mysteriously he lost office again in 1852 having taken no further steps, despite the most intense, optimistic debate to date (Ellis 1933: 50, 56; Fitzgerald 1982: 108).

Grey's backflip is conventionally put down to colonial office advice that it might be better to wait (for what is not clear), and the complication that some pastoralists had petitioned for a boundary further south than the 30th parallel (Melbourne 1963: 408-10; Knox 1971: 568). These judgments, however, were apparently made without considering evidence of what Grey himself wrote at the time. The disingenuousness went deeper because Grey's whole separation tactic was a bluff. Grey revealed that he never intended to separate the territory, but rather to simply force local legislators to buckle to his demand for exile access to NSW as a whole. Indeed, had he really wanted to establish a new northern convict colony, Grey need not have cancelled North Australia. However, his new exile policy was different, aimed at releasing minor offenders and forced emigrants cheaply into areas of existing large population. The separation petitions were intended to use the risk of losing territory to put pressure on the NSW legislature to buckle. If they had, Grey admitted later, separation would not have been required; but when they didn't there was also no point to the separation because it did not solve his problem (Earl Grey 1853: II, 5-28, 53-5; cf Melbourne 1963: 364-5; Knox 1971: 566). The whole question had ultimately been a sham.

Grey's bluff had three major effects on Australian debate. First, it further heightened separation expectations through ideas that a specific constitutional precedent had been created – lifting the normal, unwritten right to petition for separation into a statutory 'right' of territorial self-determination. For over a century, separationists would plead that Grey's clause had transferred "the right to subdivide from the Legislature to the people concerned" (Ellis 1933: 47-56). Not just in New England, but across Australia, "inhabitants of any disaffected portion of a colony" would come to believe that all they had to do was ask, and the Crown was obliged to act (Doran 1981: 40; see e.g. QPD 1899: 35-6, 121; Rowley 1941: 227; Bastin 1955: 77, 80). No such 'right' existed, but the expectation was understandably massive.

Second, Grey's bluff encouraged Australians to believe that as well as being receptive to 'bottom up' demands, the British government had a comprehensive 'top down' plan for

continued subdivision. With Victoria separated under the same 1850 Act, it seemed these were not one-off, but coordinated processes. Similarly, the use of the 30th parallel in Grey's clause suggested his agreement with Lang's boundary and presumably its underlying logic (Ellis 1933: 45-7; Kidd 1974: 60; Farrell 1997a: 10-11). In fact it was a mere political device, and Grey officially regarded Lang as a charlatan (Earl Grey 1853: II, 5-28; Ward 1958: 131-3; Baker 1985: 252-375; McKenna 1996: 49-53). Whatever the appearances, despite British politicians' abandonment of the unitary plan, they were not motivated by any general replacement plan of multiple colonies.

Thirdly however, Australian separationist communities had only a limited grasp of the extent to which British political interest in subdivision was now being driven merely by short-term political. Whatever the theoretical preferences of the colonial office, Grey's treatment of the northern districts in 1849-1852 was an indicator that London authorities were now seeking to wash their hands of all but vital colonial political problems (McNaughtan 1955: 100). Grey's 1850 *Constitution Act* paved the way, and by late 1852 the influx of gold rush populations had allowed Grey's Conservative replacement, Sir John Pakington, to promise responsible government within months of taking office (Ellis 1933: 49-50; Melbourne 1963: 362-3, 372-3, 408-9; Fitzgerald 1982: 105-6). Pakington also ruled out northern separation, but with heightened public expectation of its inevitability, there remained broad faith that ultimately, when the time was right, the British government could be relied upon. A gap between perceptions and the reality of constitutional policy was opening within colonial politics.

The three way conflict

As we saw in the last chapter, when separation demands failed it was easiest for separationist communities to preserve their trust in British wisdom by placing the blame on a more immediate cause. Based on the Port Phillip experience, the obvious cause was Sydney political interference and opposition and this impression was perpetuated in northern assessments. In fact, by refusing to admit to Grey's exiles the majority of NSW legislators presumably expected the separation to follow, but the practice of blaming Sydney was now well-institutionalised, a natural progression from its old reputation for corruption and venality. On the eve of Port Phillip's separation, the ex-Sydney patriot

David Blair described Melbourne as a city abounding with "vitality in every department of human activity", compared to Sydney's "stillness of intellectual death" (quoted McKenna 1996: 92). Similarly in the northern districts in 1852-1853, and again in 1856 when the final separation boundary was moved to the McPherson Ranges, blame was placed permanently on the standard 'bogey': "Sydney intrigue at its worst", "insidious" and "sedulous" (Ellis 1933: 57-71, 89; see also Melbourne 1963: 445; Fitzgerald 1982: 112; Farrell 1997a: 9, 26).

While the anti-Sydney assessment was exaggerated, the NSW legislature was indeed vocal in its rhetorical opposition to separation, eager to use London's threats against it in the fight for responsible government. The result was that territorial principles since assumed to have been accepted between all parties, in fact remained highly contended. In 1850 the Privy Council Committee tried to express confidence that the NSW legislature had "gradually but effectually yielded to the progress of knowledge and reasoning" regarding Port Phillip's separation (quoted Earl Grey 1853: 427-8), but there was no evidence that it had. In a height of irony, the NSW legislators' unchallenged leader on constitutional issues, W. C. Wentworth, farewelled the people of Victoria in 1851 by accusing them of "a greedy and grasping disposition" (quoted Ellis 1933: 41). Similarly, the thrust of NSW rhetoric remained antagonistic even after Moreton Bay's separation was broadly accepted as inevitable, with solicitor-general John Darvall insisting in 1856 that "never was there so weak, so mischievous, so insane a measure" as the proposed "amputation" (quoted Ellis 1933: 61, 49; Parkes 1892: 100-1; Fitzgerald 1982: 112). In their criticism of the restored subdivision trend, senior NSW legislators also continued to directly associate it with a federal path of constitutional development, albeit now in an openly negative rather than implicitly positive sense. In August 1853 Wentworth dismissed northern separation by disputing the legitimacy of creating *any* new colonies, not just as an injustice to NSW but on constitutional principle:

[The northern representatives] assumed that the separation of the northern districts was a right, but he (Mr Wentworth) protested against the colony being split up into as many separate governments as people chose to imagine would suit their convenience. ... [He] thought they had too many separations already. The only result of this miserable policy would be that a series of petty, paltry, insignificant, states would be created which would necessitate the creation of a federal Government and end inevitably in the overthrow of the British throne. ... If he had had his way, that brilliant province of Victoria, which was growing up so democratic, would never

have been separated at all. ... Was this colony merely to be a sucking nurse to these young states till they could toddle alone, and take care of themselves, and then to part with them? (SMH 1853b; cf Ellis 1933: 54; Fitzgerald 1982: 112)

Having himself earlier toyed with republicanism as a political weapon, the increasingly conservative Wentworth was right in identifying that colonial subdivision was consistent with American-style federalism (McKenna 1996: 57, 68, 77). Whether or not bolstered by 'top down' British encouragement or still shaped directly by American influences, northern separationism showed that the frontier tendency to seek colonial autonomy was indeed self-perpetuating, pioneered in Van Diemen's Land (now Tasmania) and repeated at Port Phillip (Victoria). Just as importantly, Wentworth's dismissal of the idea showed an obliviousness to the positive logic of the Franklinesque federalism embedded over the last 30 years, presuming the answer to his 'sucking nurse' question to be 'no' when in fact, the whole purpose of subdivision on a multi-colonial model was that it was 'yes'.

By the early 1850s the three-way conflict between separationists, the NSW legislature and the colonial office raised both theoretical and practical dilemmas. First, although there were strong elements of political rhetoric in both the British and NSW legislative positions, making their theoretical positions hard to determine, there was now a serious question as to whether further constitutional development was to be informed by *any* recognisable theory of territory. If NSW legislators believed it should be neither the decentralised unitary model they had previously killed off, nor the original pattern of decentralist federalism, then what *was* it to be? Second, if the latter path could only be restored through heavy British intervention to overrule the Sydney opposition, how would subdivision be maintained in practice, if or when the British government made good its promise to grant responsible government? In the early 1850s these dilemmas meant Australian territorial ideas stood at a major crossroads.

3.3. Homegrown theory: territory and Australian constitution-making 1852-1856

Responsible government provided a crucial new opportunity for the enunciation of Australian political ideas, because under Grey's 1850 Constitution Act, its meaning was left to the four colonies themselves to define. Moreover this was to be done in a document or documents which brought Anglo-Australian constitutional principles into their first discrete written form. The result was four Constitution Acts, intensively debated in 1853 before being submitted and approved for Tasmania (1854), NSW and Victoria (1855) and South Australia (1856). Any northern separation was due to commence automatically with the same constitution as NSW, while 35 years later, Western Australia would adopt a largely identical model.

What was the territorial theory underpinning these fundamental laws? On later orthodox stereotypes, each colony now asserted its stature as an independent community, perhaps even ready to permanently go its own way. Yet as we saw in the last chapter, all four south-eastern territories had already grown up with interrelated expectations as different parts of a future British nation. In fact, in further contrast to later stereotypes, nor was the sense of national commonality jettisoned in 1853-1856 debate. In arriving at their new constitutions the legislatures necessarily confronted a range of territorial ideas, from the meaning of British institutions for colonial purposes, to national blueprints, to the likelihood of more colonies. Confronting each of these issues in turn, we find a specific result: a Sydney-led copy of British national institutions, unitary in nature but more centralised than any real or preferred British constitutional forms. This uniquely Australian body of ideas carried an important new theory of territory. However, this theory was implicit and by no means clearly resolved, because while questions of long-term national and provincial structure remained important, the answers were still presumed to be fundamentally imperial concerns.

British Constitutions: a new de facto centralised unitary tradition

Australia would ultimately have six constitutions based on the template developed by the first four colonial legislatures between 1852 and 1854. Although these first constitutions would involve significant variations in democratic process, their core institutions all followed the same basic precedent – unsurprisingly, that which emerged

from the battle for responsible government already spearheaded by the legislators of NSW (McNaughtan 1955: 105; Main 1957). For 20 years the NSW legislators' goal had been to maximise power in themselves. Complex problems of territorial policy had been important triggers for this campaign, but from at least 1840 the substance of each policy problem was collapsed into a common procedural solution – delegation from the British parliament to the local legislature of whatever power could be grasped, reasonably or otherwise. The NSW campaign for control became an end in itself, remarkable for its single-mindedness and openly scornful of theoretical objections whenever thrown up by British authorities (Clark 1962b: 105, 182-3; Melbourne 1963: 230-64, 324, 391; Irving 1964; McMinn 1979: 7-20, 40).

For NSW purposes, this single-minded campaign translated into one primary constitutional principle which British authorities could never deny, that of the executive Government's responsibility to the parliament. In reducing British constitutionalism to writing, only certain institutions were relevant – as Wentworth reported to the NSW legislature, "a form of Government based on the analogies of the British Constitution" meant the machinery that would deliver its maximised control, the "three Estates" of Sovereign, House of Commons and House of Lords (NSW Legislative Council 1853c; 1853b). Already out of date (McKenna 1996: 31, 75), this was a selective picture of Britain's institutional contents, deliberately elevating one element to a status that became representative of the whole. Among the many excluded institutions were the territorial principles underpinning the British system itself; the 'three Estates' became the only principle, capable of operating over any and every jurisdiction, thus leaving formal territory as a separate question. However, the NSW approach clearly copied only *national* institutions from the British constitutional heritage, and thus carried with it two important, implicit territorial effects.

The first effect of the selective picture was to place no constitutional value on the role of local institutions in a British system of government. None of the final Constitution Bills proposed a comprehensive system of local administration on *any* known tradition. Some analyses suggest this was mere oversight, the result of simple colonial ignorance about British local government since the average Australian legislator had "no training in English politics, or even in the work of local self-government by municipal councils" (Wood 1933: 192-3). In truth we know from the frequency with which NSW leaders

had actively killed off local government schemes over the previous 20 years that the 'oversight' reflected an active constitutional stance, in which no other institutions were to be permitted to erode the legislature's own power. Quite inconsistently with the colonies' geography and the already choked urban centres of the south-east mainland, just one of 30 circulating constitutional plans suggested a formal system of local government – and tellingly the suggestion was from the smallest colony, Tasmania (SMH 1853a). The outcome held a strong irony for all three ex-NSW colonies, their decentralist histories now realigning with a NSW tradition of "potent central authorities", "enfeebling" the prospects of any local government system comparable to America or Britain (Finn 1987: 2-3, 14; cf de Tocqueville 1835: 60-1; Rossiter 1953: 16). The new Australian precedent did not preclude the creation of local government by legislation, but it demoted any such scheme from 'constitutional' importance.

The second effect of the NSW disconnection of institutions from territory was a subtle redefinition of what a British 'unitary' system was all about. As we saw in the last chapter, the concept of 'unity' embedded in British parliamentary authority was explicitly territorial, relying on the 16th to 18th century construction of British nationhood through union of England, Scotland, Ireland and Wales. Even apart from local government, the institutions of British nationhood overlaid a further complex web of traditional territorial allegiances also disregarded in the Australian colonial copies. Indeed if one compared the union of four territories under the British unitary system and the four territories seeking new constitutions in Australia, then on an idealised view of British nationhood, the constitution each colony sought for itself was actually more applicable to the continent. Thus a farsighted group of Shoalhaven landowners even petitioned the NSW legislature in December 1853, suggesting an intercolonial conference "to prepare one Constitution for Australasia":

[I]t appears to your Petitioners strange and unstatesmanlike, as well as a most unseemly and untoward system of patchwork legislation, that Australasia, comprising but four Colonies, Dependencies, not far distant from each other, peopled by the same race, British subjects too... shall be doomed to have no less than four Constitutions. The great study and aim of all practical British Statesmen is not only to have and preserve *one* British Constitution, but also to assimilate the local laws of England, Ireland, Scotland, and Wales, as being most conducive to [inter alia] the social and political harmony of the people (NSW Legislative Council 1853a; Cramp 1914: 128-9).

The deafness of the NSW legislators to this suggestion highlighted that the importation of British precedent was a political device, not tied to the actual history, content or circumstances of the British constitution. In both these ways, the copying of only its central institutions, and neglect of its decentralist elements did not mean that the new constitutions had *no* territorial content. Even if anti-theoretical in rhetoric, the NSW campaign was far from atheoretical in nature and result, because the political history leading to this template was not accidentally centralist but deliberately so. NSW legislators had ended up following the example they were taught by British double-standards, that theories of devolution could be exploited, changed and disregarded at will in support of their own power (McNaughtan 1955: 134; Melbourne 1963: 385-8, 422). Australia was now seeing the birth of a new *de facto* unitary constitutional tradition, more centralised than the original. In some areas this centralising tradition lay over the top of an earlier decentralist consciousness, but for Sydney district legislators it remained a total blueprint in itself.

Unity via union: the 'limited' or 'classic' Sydney view of federalism

As we have just seen, the first homegrown constitutions inevitably raised the broader territorial question of Australia's destiny as a British nation. Indeed, it is frequently believed that such questions were now only emerging in Anglo-Australian politics for the first time and failed to translate into a constitutional plan because Australians were not yet prepared to think nationally (e.g. McKenna 1996: 59). That belief was challenged in the last chapter, which suggested that federalist and unitary thinking alike had assumed a national coherence since the 1820s, in both British and local politics. In the 1850s the assumption continued: Tasmanians directly argued that responsible government should include national as well as provincial structures (SMH 1853a), and the Victorians agreed that a federal union remained natural (Gavan Duffy 1857).

Importantly, these nationalist presumptions were also shared by NSW political leaders. Whatever their distaste for decentralist federalism and their disregard for the Shoalhaven petitioners' idea of an intercolonial conference, NSW leaders credited *themselves* with founding talk of a national constitution. In 1846 NSW colonial secretary Edward Deas-Thomson's suggestion of a Governor-General to enforce national free trade was to earn

him a later title as "*par excellence* the Father of Australian Federation" (Cramp 1914: 123-6; see also Wentworth 1956: 8-9; Irving 1999a: 3-4, 24, 357-8, 430). In 1848, 1850 and 1853 NSW legislators thrice supported a national assembly of the various Australian 'provinces', first when savaging Stephen's Australian Charter, then when Grey repeated the idea in his 1850 Constitution Bill and again when Wentworth's legislative committee recommended a final constitutional strategy (Earl Grey 1853: 317-23, 427-8; NSW Legislative Council 1853c: 121-2; Wentworth 1956: 7, 10; Melbourne 1963: 344-51). The *Sydney Morning Herald* maintained the call, condemning the "huckstering notions of statesmanship" reflected in four stand-alone constitutions, with each colony legislating and bidding against the others "like rival tradesmen competing for custom" (1857, see Ward 1958: 465).

Australian nationalism came to nothing for specific reasons. Had colonial delegates sat down to negotiate a national union and submitted their result jointly to the British parliament, there is little doubt it would have succeeded. However, Grey's process provided no avenue for direct negotiation about the issues involved and by the time the colonies received the opportunity to draft their own constitutions under his 1850 Constitution Act, its general assembly provisions had been struck out as a "rash and perilous innovation" by the House of Lords (McMinn 1979: 46-7). This result had more to do with British party-politics and European social upheaval than with Australia, but unless the British parliament imposed a union from on high, as Wentworth suggested in 1853, there seemed little prospect (NSW Legislative Council 1853c: 121-2). As the *Sydney Morning Herald* observed, Australia was short on Washingtons and Franklins.

Nevertheless, the Australian debate indicates how the territorial basis of nationhood was being conceived. The question provoking significant differences between Australians was not whether Australia should be one nation within the British empire, but what type of nation. Responsible government was regarded by some as consistent with either of the existing national ideas: decentralist federalism, including the ongoing benefit of a federal union for "more promptly calling new States into existence" (Gavan Duffy 1857); and the decentralised unitary model implied by Tasmanian suggestions for local government, and perhaps the Shoalhaven petition. However, once again the NSW legislators' position appeared to be based on a different type of nationalism. Just as the NSW preferred constitutional template was unitary but of a uniquely centralised nature,

so too their idea of federalism involved centralised territorial forms. Not only were these not Australia's *original* federal ideas, as shown in the last chapter, but NSW leaders appeared to recognise this fact by *not* describing their ideas as 'federal' at the time. Indeed, Sydney's prime goal of a free trade union was itself not necessarily federal at all, being concerned less with divided or shared authority, than with reversing the effects of territorial separation in order to restore Sydney's trading supremacy.

Similarly, when NSW leaders welcomed the British idea of a 'general' (not 'federal') colonial assembly between 1848 and 1850, its attractions appeared to lie precisely in its offer to assist a recentralisation of Sydney control. Grey's proposed assembly was to be constituted by the four provinces sending national delegates in proportion to population – at that time, promising that 'old' NSW would swamp Port Phillip's influence at the same time as the latter was supposedly granted territorial 'autonomy'. The proposed national powers were also massive by later standards, including not just trade and customs, but complete control over public lands, which to the South Australians defeated much of the purpose for their jurisdiction's existence (Pike 1957: 414-6; Ward 1958: 113-37, 179-82; McMinn 1979: 46-7). The problem was not these colonies' unpreparedness to think nationally, but rather their fear of what such a re-centralised structure in favour of NSW would achieve. Had Grey's proposal survived in its original form, it would have pushed the modern definition of federalism to its limit, instead coming close to simple territorial reunification of the original NSW.

From the contrasting positions of the different colonies, it can be seen that although NSW legislators wanted a nation, there is little evidence they particularly wanted a federation. So too the British ideas they found so attractive differed from the Franklinesque decentralist federalism enlisted by British colonial policy 30 years before. Grey's 1847-1850 proposals were identical to options for Canadian union that he and Stephen had prepared 10 years earlier, before the revolt that instead opened the way to reunification (Ward 1958: 41-3; Knox 1971: 578; Martin 1972: 9, 43, 61, 71-4). This was a form of federalism whose goal was not decentralisation, as originally intended, but rather the reverse: consolidation which stemmed and reversed trends to territorial fragmentation. It demonstrated that depending on its structure, federalism could also function as a surrogate for the reestablishment of a unitary nation that existing colonial separations made so hard to achieve. This more limited form of federalism had a longer

history than American modern federalism, relying merely on a compact between existing jurisdictions to join together for some purposes, free of Franklin's theory of creating more jurisdictions as well. Territorially, it was much closer to the 'classic' covenantal concepts of federalism that European scholarship would later trace back, accurately or otherwise to the time of Ancient Greece (Freeman 1863: 72; Galligan 1981: 130; 1995: 39; Beer 1993: 223; Elazar 1997: 249).

NSW leaders' level of interest in this centralist federal idea, as they pioneered their *de facto* centralised unitary constitutions, provided even greater insight into the third body of territorial ideas now present in Australian constitutional thought. Just as decentralist federal and decentralised unitary ideas had not previously come into conflict, so too in Sydney thinking there seemed a basic compatibility between federal and unitary ideas of nationhood when combined behind comparable centralist goals. For now the path to nationhood itself was delayed and the colonial legislatures fell back on the empire as their primary constitutional bond; but it could already be seen that when the presumed national destiny returned, all three traditions were going to be important.

Queensland and new colonies

The third territorial issue of constitutional design was whether the decentralist federal tradition might continue to bring territorial development in practice, even though the new constitutions promised artificially centralised colonial frameworks. Constitutional orthodoxy by the late 20th century was that responsible government necessarily and transparently ruled this out. However, in the 1850s the political reality remained that colonial separation was the major form of self-government recognisable to new communities in Australian history, with the recent creation of Victoria confirming its momentum and further separation demands rising elsewhere. Just as nationhood was delayed pending a more conducive imperial climate, the number and shape of Australian provincial jurisdictions were not issues *directly* determined by the principles of responsible government: for two reasons.

First, while the new constitutions had intended territorial impacts like the transfer of public lands to colonial control, powers as fundamental as the determination, demarcation and protection of imperial territory itself were still generally presumed to

be higher order concerns, in which British authorities would continue to hold and demonstrate a valid interest. Second, at a technical level, the new constitutions seemed specifically *not* to halt all territorial destiny. Although the NSW legislature sought to ensure its new constitution marked a final territorial settlement, it failed to succeed. The NSW Constitution Act became law in July 1855, still governing territory all the way to Darwin, but one year later the colonial office announced a fresh decision to separate the north and three years later (1859) it took effect. Indeed, NSW leaders brought on this result, first by including a clause that sought to override the British law of 1850 by pushing the colony's minimum boundary back from 30°S to 26°S; and then, despite such militant reaction at Moreton Bay that even Wentworth was persuaded to concede (SMH 1853c), by proposing in the final NSW Bill that there be no alteration of imperial boundaries without colonial consent. The colonial office deleted this clause, explicitly preserved the 1850 power to separate "a colony or colonies" north of 30°S and promptly put it to use (Bell & Morrell 1928: 265; Ellis 1933: 55, 62; Melbourne 1963: 396-422). Legally, the British power to reallocate territory appeared unimpaired.

In reality these events told a more complex story. While Queensland's final separation was not as politically motivated as Grey's 1849 to 1851 debate, its urgency suggested an intimate connection with the constitutional transition. Permanent under-secretary Herman Merivale triggered it less than a month after the 1855 Act became law, confident the separationists were "wise to seek escape from the financial extravagance" likely to follow responsible government in NSW (quoted Melbourne 1963: 412; Knox 1971: 573). There was little evidence that the north was as ready as they claimed – with only 24,000 Europeans in December 1859, Queensland had less than 2% of the colonial population compared with Tasmania's 25% and Victoria's similar share at the time of their separations. Even including the Clarence district, figures had to be twisted to show a 5% surplus of revenue over expenditure, with the new colony possessing no railways, telegraphs or coastal shipping, nor even, apart from between Brisbane and Ipswich, any formed roads (see Ellis 1933: 49; Knox 1976; Finn 1987: 116). In July 1856 when secretary-of-state Labouchere announced the separation, he conceded this was "a community as yet in some respects immature" but said it was "better to run the risk" than to delay (quoted Ellis 1933: 62).

London's legal position masked a political intent far closer to that which Sydney would have preferred. What the colonial office knew, the NSW legislature hoped but regional communities at most only suspected, was that the British government was now withdrawing from its role as territorial arbiter. Responsible government was indeed a watershed for territorial development, but in its political implications rather than legal form. The colonies' new *de facto* centralised traditions remained at odds with the principle of colonial subdivision, and no other strategy had ever brought any coherent ideas of political decentralisation to Anglo-Australian soil, but if the latter remained reliant on London interference that was now unlikely to happen, there was potentially no constraint on the former. It was hard to see how the process of territorial development was ever going to continue, if as it seemed Britain's 1859 separation of Queensland was not a promise of ongoing stewardship but rather a parting gesture.

3.4. Destiny denied: Australian separation debates 1850s-1890s

Over the next 40 years the clash between Australia's newly constitutionalised centralised tradition and the decentralist federal trend to colonial subdivision resulted in a fundamental deadlock in Australian territorial ideas. Reading history in light of this result, the conventional mistake is that territorial change came to a smooth and relatively uncontentious end: Queensland's separation "completed the colonial mapping of the nineteenth century" (Irving 1999b: 2; similarly Macintyre 1999b: 97); an "administrative structure which had been evolving slowly" was now complete; there was "from time to time, talk of new colonies, but nothing came of it" (Kingston 1993: xiv). Clearly however, *something* came of this continuing talk. Generalised assumptions that the proposed territories proved unviable, or their advocates too politically incompetent to secure them, now simply provoke the question how the same talk had succeeded five times before. The idea that territory was suddenly 'settled' papers over the cracks of a far more vital, contested history.

Far from receding, agitation for territorial change continued to grow between 1855 and 1859. While the European population had grown almost forty-fold to 1.14 million between 1820 and 1860 and south-eastern political hubs were bursting to world-scale

size, the number of units of government had only expanded by six (Greenwood 1955; Schedvin & McCarty 1974; Patmore 1991: 43; Macintyre 1999a: 81). Pressure for more separations was significant. Indeed, contrary to orthodox history, Moreton Bay was not the last centre to mount a serious campaign for territorial change – it was one of four, alongside Port Curtis, New England and the Riverina, with pre-existing claims for official autonomy.² In all, six further major areas gave rise to separation agitation alongside and after Moreton Bay, including 11 politically discrete regions, or 13 including 'top down' ideas about new territories on the north and north-west coasts (**Figure 11**).

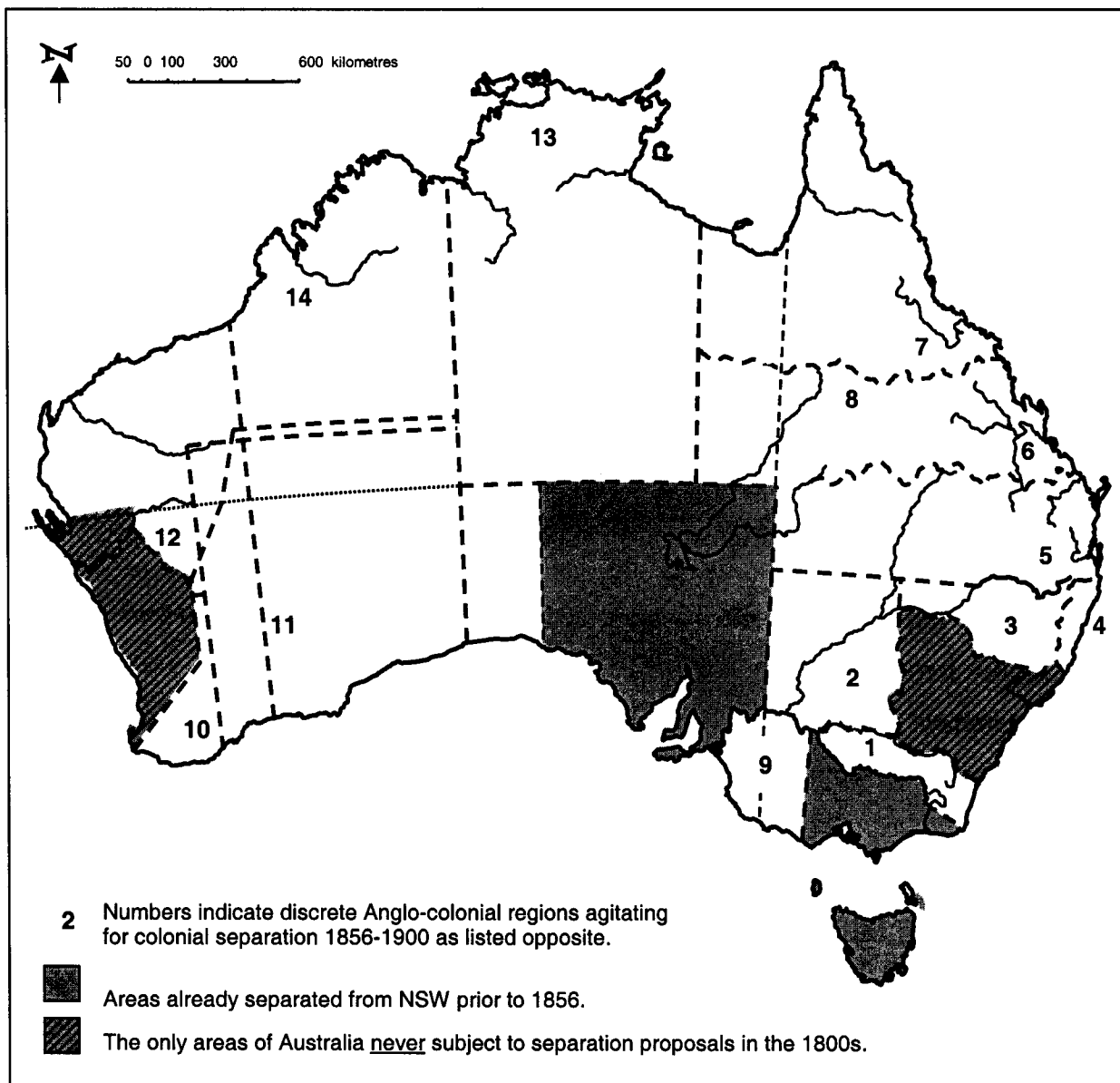
As political scientists have occasionally suspected, these movements were never simply "localised and parochial responses" to rural hardship or customs-related boundary grievances (Holmes 1986). While they continued to express such grievances and at times appeared triggered by them, the basic behaviour was not substantively different to that of the previous successful campaigns (Neale 1950: 12; cf Kidd 1974: 59-64; Doran 1981: xi; Prescott 1987; Farrell 1997a). If anything, the decentralist federal tradition embedded in separationist behaviour became progressively more sophisticated and basic to many regions' long-term political identity. The legal consequences of responsible government were very different to the political ones, which neither constrained nor satisfied demands for self-government in such places but rather encouraged them.

Against this pattern of often vibrant activity, there were two basic reasons why no further territorial change followed in the decades from 1860. First, each colonial government had its own natural self-institutionalising tendency, strengthened by responsible government, making resistance to territorial change inevitable even where

² At Port Curtis, objection was being raised by the early 1850s to a subdivision of NSW south of Moreton Bay, in case this reduced its own prior claim to statehood (Ellis 1933: 53-68; Golding 1966: 41; Knox 1971: 571; 1976: 66; Fitzgerald 1982: 94-10, 278; McDonald, 1981: 18-35, 540; Huf et al. 1993: 261). This contradicts a mass of assumptions that central and north Queensland separationism only arose after Moreton Bay's separation and indeed, only relatively late (Fitzgerald 1982: 288; Murphy 1990b: 226; Bolton & Waterson 1999: 95). In 1856, New Englanders' decision to stay out of the Moreton Bay separation was influenced by the idea of independent statehood at a later date, an outcome more likely if they stayed initially with NSW (Rowley 1941: 230-2; Farrell 1997a: 11-13). The 'Riverina Territory' christened by Lang in 1856 had been included in discussion about possible inland colonies since at least 1854 and was enjoying an active separation movement by 1857 (Ellis 1933: 71-72; Kidd 1974: 60; Frappell 1977: 2).

previously it was not. Second, the British government vacated its role as territorial umpire, even though it also perpetuated the territorial conflict by failing to decisively admit as much, instead often indicating the reverse. Together, these factors revealed a deep schism between constitutional tradition, colonial expectations and political and legal realities, only emerging over time.

Figure 11. Australian colonial separation agitations 1853-1900



Source: Drawn by author based on Figure 4, references opposite and in text.

Major Area	Region ¹	Key activity periods ¹		Federation	Additional references
		Responsible government:			
		Pre-	Post-		
Riverina	1. Central Riverina (Murrumbidgee & Murray valleys)	✓	✓ 1865	✓	(Frappell 1977)
	2. Greater Riverina (inc. Darling)	✓	✓		(Harris 1971; Kidd 1974; Frappell 1977)
New England	3. New England tablelands	✓	✓	✓	(Farrell 1997a)
	4. Northern Rivers		✓ 1860	✓	(Rowley 1941)
Moreton Bay	5. Brisbane River, Moreton Bay, Darling Downs	✓ 1851, 53	✓	-	-
Central Queensland	6. Port Curtis, Fitzroy River & hinterlands	✓ 1854, 57	✓ 1863, 67	✓ 1890, 93	(McDonald 1981).
North Queensland	7. Townsville, Bowen, Burdekin & hinterlands		✓ 1870	✓ 1885	(Bolton 1963; Doran 1981).
	8. Western Qld (Hughenden & Winton)			✓	(McDonald 1981: 548)
'Princeland'	9. Western Victoria (Portland & Mallee) & SE South Australia		✓ 1862		(Harris 1971; O'Donoghue 1984)
South Western Australia	10. Great Southern region (Albany)	✓ 1860s	✓ 1900		(Bastin 1955)
	11. Coolgardie / Kalgoorlie Goldfields		✓ 1898, 1900		", (Mossenson 1953)
	12. Murchison Goldfields		✓		"
North / NW Australia	13. Port Darwin		✓		(Duncan 1966; Bannon 1999)
	14. North-West WA (Victoria R, Kimberley)		✓		(Crowley 1960; Prescott 2000)

¹ Dates indicate year of significant separation petitions to the imperial government.

Institutional resistance to new colonies

Many features of the new colonial governments' resistance to territorial change were already easily predictable given the previous two decades of NSW defensive strategies. However, with every colony save Tasmania now going on to experience pressure for such change, there were new common factors as well as remarkable differences. The governments' parallel economic courses dictated that separation demands faced common hurdles. For example, as predicted, colonial governments entered a new competition for immigration, investment and trade in which talk of relaxing any grip on territory became regarded in central legislatures as tantamount to treason. With NSW threatening to confiscate or even sink Victorian riverboats by 1864, and fighting out its Murray River boundary in the Privy Council in 1872, there was little room for territorial flexibility (Patterson 1962; McLelland 1971: 678; Macintyre 1999a: 95; Hirst 2000: 47-51). In 1887 the same competitiveness caused Queensland's treasurer, future premier J. R. Dickson, to resign from Samuel Griffith's cabinet protesting that talk of decentralisation only encouraged northern regions to "trade outside the colony" (Doran 1981: 58; also Joyce 1984: 147; 1990b: 168-9).

Similarly, but even more fundamentally, colonial administrations hardened around the power and revenues that came from public lands. The structure of public finance depended on it, with even unsettled land having an anticipated revenue which shaped the terms of loans. In NSW the squatter legacy already meant that separation could not be mentioned without many legislators automatically seeing red, but similar issues crept up on other colonies: for example, British investment in Queensland land bonds climbed through the £16 million mark in 1885 to £28 million by 1891 (Doran 1981: 42, 48; Fitzgerald 1982: 295). Ex post facto separation of finances was technically possible but had already proved a political nightmare,³ bouying central and north Queensland calls

³ NSW claimed £3,534,530 from Queensland in public debt. With credit status a serious issue in colonial borrowing, both colonies passed Debt Adjustment Acts in 1862, but the process collapsed after NSW presented a further bill for £146,590 (Ellis 1933: 69-70; cf Fitzgerald 1982: 126). As Port Phillip's finances had been separated from the central district very early, this issue never arose for Victoria. Between 1860 and 1890, at least four Queensland governments mooted six different proposals for Financial Districts Bills aimed at preventing such problems (Doran 1981: 67, 112; Fitzgerald 1982: 288).

for financial separation as in interim step, but confirming that the more time passed, the more complex separation became.

Major variations between the colonies' responses, on the other hand, could be traced both to different timings and to different political attitudes. Before responsible government, divergences in constitutional tradition had very clearly determined the movements' prospects in different places. After 1860 NSW officials' attitudes continued to mark one extreme in the type of response, maintaining their antipathy to any organised theory of decentralisation but setting up a largely self-perpetuating, often self-defeating regional dynamic. By temporarily buying out their regions' claims with alternative concessions, but doing so repeatedly, NSW governments cemented their central dependence but simultaneously guaranteed such claims would recur (Ellis 1933: 63; Rowley 1941; Melbourne 1963: 408; Farrell 1997a: 12-15). The Western Australian government, being the only other administration never to have owed its territory to a previous one, appeared to learn from NSW experience by largely bypassing this dynamic, often rejecting its regions' claims more ruthlessly and decisively (Bastin 1955: 84-5; Crowley 1960: 129; Macintyre 1986: 41).

Victoria and South Australia provided middling but telling political responses to their territorial challenges (Harris 1971; Reece 1989). In 1861 the cross-border Princeland proposal saw the Victorian government react more positively than NSW, with political rather than simply economic concessions, yet consciousness of Victoria's own federalist origins was apparently weakening. As in NSW, separationism was ridiculed as merely a conservative pastoralist reaction to land reform (Rowley 1941: 243-4; Frappell 1977: 3-4, 19; O'Donoghue 1984; Travers 1992: 144). Even more importantly, the Melbourne *Argus* directly challenged the constitutional tradition that had delivered Victoria itself only a decade before:

This curious and rather sentimental species of agitation has been for some time a positive political disease at our end of the world.... Most assuredly [the Home Government] will not gratify an idle mania for geographic subdivision and subtraction, which must stop somewhere if every colony is not to be transformed into a congregation of rival Little Pedlingtons, and if legislation is not to be parodied in a score of vestry parliaments (February 1862, quoted O'Donoghue 1984: xxii-iii).

Queensland presented a major contrast, its history, incremental growth and geographic scale making the federalist presumption of more colonies a continued article of faith. Consistently with Gladstone's claims of first entitlement to statehood, the vision of not one but three northern colonies played out as both an economic and political reality (Bolton 1963: 162-3; McDonald 1981: 544; Fitzgerald 1982: 264). Only the legal reality was different, but this left Brisbane no more than a nominal or default capital by comparison with other states (Johnston & Gregory 1989: 249). Early generations of colonial leaders were routinely separationists: Premier Charles Lilley (1868-70) had campaigned at Moreton Bay; Premier Arthur Palmer (1870-74) was a senior central Queenslander; and an array of immigrants married local expectations with their own sympathy for Scottish and Irish home rule. For example, future Labor premier William Kidston had been a British supporter of Gladstone, the Liberals and Irish Home Rule; arriving in Rockhampton in 1883, he became a supporter of Samuel Griffith, the colonial liberals and of central Queensland separation.⁴

The broad consensus that sooner or later Queensland would be three states did not suffer major attack until liberal concerns arose in the 1880s over the risk of imported Island labour turning the north into 'slave states' (McNaughtan 1955: 130-1; Bolton 1963: 143-4; Doran 1981; Joyce 1984: 105). However, contrary to orthodox wisdom, this did not significantly shake the consensus within the regions themselves – in 1886 Griffith came unstuck when he tried to challenge the legitimacy of a 10,000-signature petition for northern separation, but using all the resources of office could only muster a counter-petition of 1,442 signatures, fictional or otherwise (Bolton 1963: 183; Doran 1981: 20, 40-1; cf Fitzgerald 1982: 291-7; Joyce 1984: 106). No serious internal doubt appeared until the Labor Party's rise across rural Queensland in 1893, and after this decade-long shock, relative consensus returned (McNaughtan 1955: 130; Bolton 1963: 198-209;

⁴ See Murphy (1990b: 224), Gibbney (1990: 73) and Fitzgerald (1982: 288). McNaughtan (1955: 131) speculates that British authorities refused to act on separation in case it provided an arrow in the Home Rule quiver, but provides no evidence. Other Queensland leaders to demonstrate the connection included premier Thomas McIlwraith, colonial secretary John Macrossan and future premier Robert Philp, of Townsville's Burns Philp Ltd. Macrossan, an Irishman, came to prominence in 1871 for thrashing a mining warden who tagged him as, among other things, an agent of Irish sedition (Bolton 1963: 64; Bryan 1978: 94-5). In August 1886, seconding Macrossan's motion for separation, Philp drew the parallel to Scottish home rule (Bolton 1990: 200). See also Stephens (1893: 47), QPD (1899: 122-4) and McDonald (1981: 547) for various Gaelic connections.

Doran 1981: xiv, 14, 66-7, 82-3; Fitzgerald 1982: 296; Bolton 1990: 203-7; Murphy 1990b: 226). While the 1890s uncertainty came at a critical time for federal constitutional history, it was actually relatively brief against a much longer trend.

Finally, a major reason for the persistence of separation agitation was the centralised nature of the colonies' constitutions. Every jurisdiction but NSW proceeded to develop comprehensive local government systems. These involved significant variations and innovations, but they all suffered a common "chronic anaemia", more often emphasising rather than relieving territorial problems (McNaughtan 1955: 109; similarly Larcombe 1961: 33-5, 49; Harris 1978: 10, 36-8, 168-70; Bowman 1983: 166-82; Finn 1987: 118; Walmsley & Sorensen 1993: 27; McNeill 1997: 18-19). In NSW administration became more centralised; no comprehensive local government scheme materialised despite continuous promises; and by the turn of the century less than 1% of NSW's area was covered by a local council (Larcombe 1961: 33-57, 94; Finn 1987: 57; Hirst 1988: 243-65; Macintyre 1999b: 97). Although separation was instinctively resisted, the stature of the issue and the inevitability of its expression through 'civil society' movements increased due to the lack of capacity for substantial alternatives to unfold.

Institutional resistance to separation naturally grew, in some colonies faster than others, but it was by no means complete nor uniform. Nor did governmental responses ever succeed in actually quelling separationism in NSW, Queensland or Western Australia. In June 1890 the *Townsville Herald* despaired that a "decentralisation ghost" seemed doomed to walk north Queensland forever, with no means of being laid to rest (see Doran 1981: 67, 112). In fact, this was not just a northern but a continental problem, because the whole question of territorial strategy had become a conflicted, apparently unresolvable element of Australian constitutional development.

Departure of the boundary authority... or not

Both of the original decentralist traditions to have emerged in Australian constitutionalism, the decentralist federal idea embedded in separationist claims and the decentralised unitary ideas underpinning local government, were now running foul of the colonies' *de facto* centralised constitutional model. In the case of separationist claims there was really only one fundamental difference between the pre-1860 and post-

1860 outcomes. Where previously there had been six British policy decisions to separate territory, now there were none. Had it been clear from 1860 that the British government would never again intervene, separation debate would have been different – either more resigned, or more militant, or addressed more rapidly to alternatives. Throughout this period, however, whenever separationists were poised on this realisation, they received conflicting messages from British authorities.

The gap between reality and appearances in British handling of territorial claims had been evident at least since Grey's 1849-1852 separation bluff. As we saw earlier, Queensland's separation in the late 1850s was easily read as encouragement to separationists, and a range of other British statements continued to be read similarly. What later appeared to be a boundary consolidation under the *Australian Colonies Act 1861* at the time gave considerable licence for territorial speculation. A response to South Australian and Queensland bids in 1857 and 1860 to capitalise on NSW's isolated northern territory, the 1861 Act permanently granted South Australia's request for the Nullabor but presented the remainder to the two claimants simply 'on trust'.⁵ Answering NSW and Queensland queries in 1860 and 1862, the Duke of Newcastle explicitly reserved Britain's right to deal with "districts not yet settled, as the wishes and conveniences of the future settlers may hereafter require", predicting further separations when "growth of population or the circumstances" made it desirable (quoted Ellis 1933: 90; Holmes 1944: 16-18). Across northern Australia, new territorial plans were repeatedly raised from the time of responsible government through to the 1930s (**Figure 12**). In 1882 the colonial office suggested it still had a plan of its own when it refused a South Australian bid to permanently annex the Northern Territory (Bannon 1999: 174-5). In 1883 and 1887 Western Australia's Governor Broome similarly advised that the empire should retain future power to subdivide the colony. The British parliament almost withheld all areas north of 26°S when it granted responsible government in 1890 (Battye 1924: 377-95; Bastin 1955: 77; Crowley 1960: 92-4; McMinn 1979: 56).

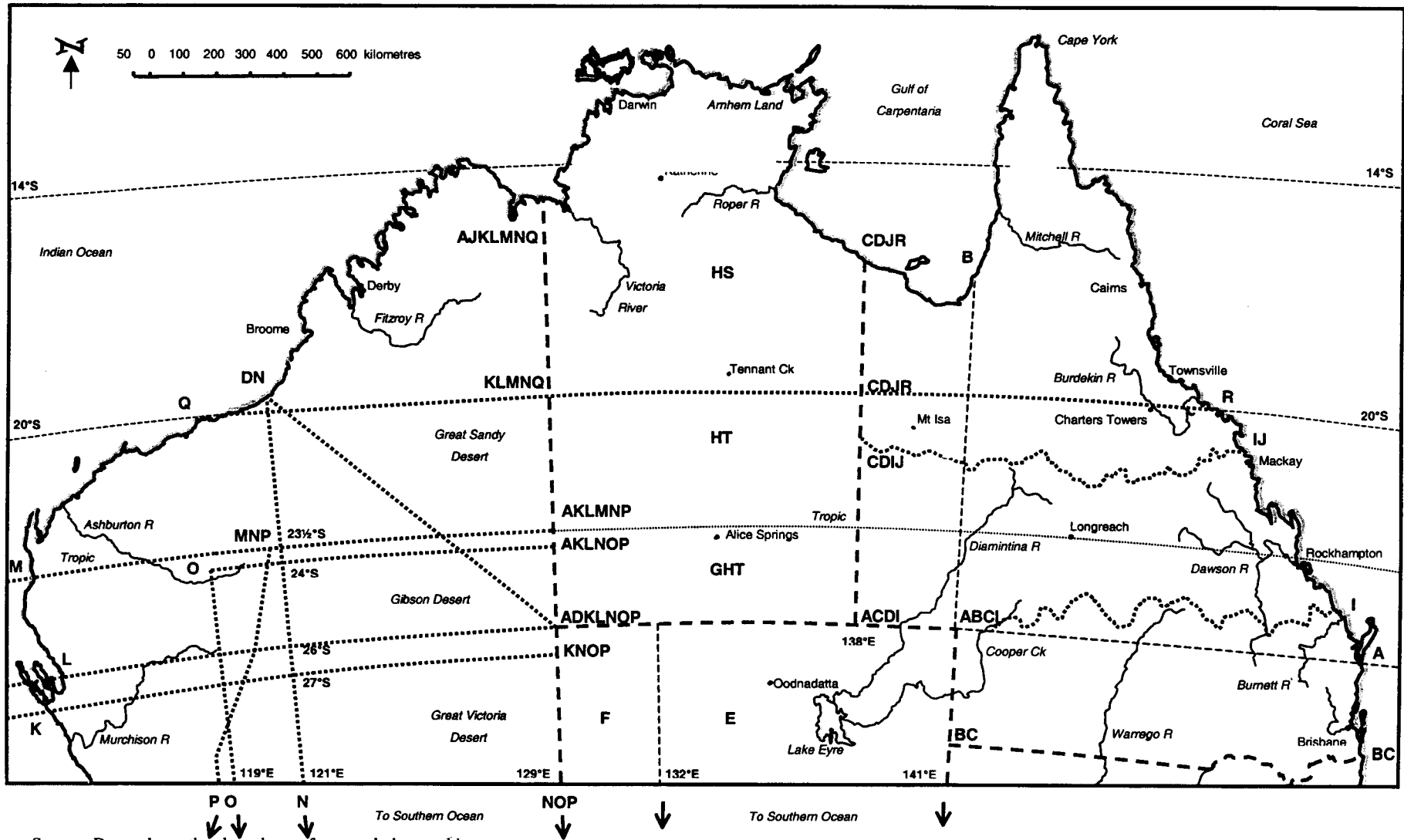
⁵ See NSW Legislative Council (1858); Knox (1976: 69); Baker (1985: 332, 343); Joyce (1990a: 31); Prescott (2000: 111); McLelland (1971). Queensland's portion of the Northern Territory (1862), between the 141st and 138th meridians, appears to have only passed legally into Queensland proper as a *de facto* result upon federation in 1901. South Australia's portion (1863) was delayed pending resolution of the Emigration Commissioners' argument that the territory should be divided at the Tropic of Capricorn and only the southern portion given to South Australia (Duncan 1966: 342).

Against this backdrop of continuing frontier possibilities, came also the more complex politics of more settled regions. Faced with the Princeland separation petition in 1862, the Duke of Newcastle responded that the British parliament would now only intervene in colonies' internal affairs in the event of "intolerable hardship, amounting to political necessity", directing separationist regions to use "ordinary constitutional methods" to persuade their legislatures to address their problems (quoted Frappell 1977: 7; O'Donoghue 1984: xxvii). Objectively, this advice was intended as a rejection, but it was taken as encouragement for two good reasons. First, debate in British parliament itself suggested intervention remained a possibility; in 1863 Grey once again purported to speak "very ably" for the petitioners from the luxury of opposition (O'Donoghue 1984: xxix). Second, Newcastle's advice was not substantially different to that given during the 1840s and 1850s to Port Phillip and Moreton Bay. In fact, it appeared to provide specific guidance, prompting separationists to follow earlier tactics down to the last detail. Public petitions were presented to the legislature as a "necessary formality" (Frappell 1977: 11), thereby prompting a motion for separation whose loss proved 'ordinary constitutional methods' had been exhausted and that intervention was a 'political necessity'. However, the result could still only go to London under executive minute, with the advice of the legislature, allowing ultimate blame for the British rejection to again be deflected onto the familiar 'bogey' of capital city manipulation.⁶

As this game played out over 40 years, its futility was most evident in separationists' attempts to pin down British platitudes about the type of population that might support separation. This alone offered some kind of objective threshold – but what was it? In 1859 Queensland's separation dropped the threshold to 24,000 people. Dunmore Lang advised Riverina residents to wait until they had at least 20,000, a figure supported by

⁶ Queensland separationists, relying on the reference to "colony or colonies" in the 1850 and 1855 Acts, followed a more drawn out path, sending petitions direct to London on the argument of Townsville's William Coote that the state legislature had simply "no authority" on the issue (Doran 1981: 52, 67; McDonald 1981: 543-9; Fitzgerald 1982: 294). Both governments were then accused of "collusion" and playing "cat and mouse" when the Colonial Office batted the petitions back for advice (Doran 1981: 67; McDonald 1981: 539, 561). Central and north Queensland came closest to separation in 1892, when secretary-of-state Lord Knutsford seriously considered intervening, but this was only due to a request from Griffith which was overtaken by the 1893 elections and Griffith's departure from office (Doran 1981: 51-66; McDonald 1981: 549-52; Joyce 1984: 173-5).

Figure 12. The Twenty Boundaries of Northern Australia 1846-1933



Source: Drawn by author based on references below and in text.

Legend (Identify each boundary above by following each letter as listed below)

A	1846	Boundary of Gladstone's North Australia	26°S and 129°E
B	1856-59	Final Queensland boundary	McPherson Ra, McIntyre R, 29°S, 141°E to Gulf of Carpentaria
C	1860-62	Queensland boundary with extension under 1862 letters patent (current)	As for B to 141°E to 26°S to 138°E to Gulf of Carpentaria
D	1860	Proposed new colony of 'Albert', Qld Governor Bowen when requesting C	138°E to 26°S to 129°E to NW coast (Prescott 2000: 111)
E	1834-36	Area of original territory of South Australia	141°E to 26°S to 132°E
F	1857-61	Area requested and permanently added to South Australia, <i>Australian Colonies Act 1861</i>	132°E to 26°S to 129°E
G	1860-63	Area proposed as South Australian extension under letters patent, Colonial Office	138/141°E, 26°S, 129°E to 23½°S (Tropic of Capricorn)
H	1863	Areas granted as South Australian extension under letters patent	138°E, 26°S, 129°E to Darwin (entire remaining northern territory)
I	1860s+	Proposed boundary, new colony/state of Central Queensland	
J	1870s+	Proposed boundary, new colony/state of North Queensland	
KLM	1880s	Proposed boundaries of North-West Territory to be reserved by Colonial Office from Western Australia	129°E north of 27°S, 26°S and 23½°S (Tropic) respectively (Prescott 1987)
N	1880s-90s	Proposed boundary of eastern Western Australian reserved territory / goldfields colony	Coast to coast, 121°E to 129°E (Prescott 1987)
O	1890s	Proposed boundary, Western Australian goldfields colony	119°E to 24°S to 129°E (Prescott 1987)
P	1890s+	Proposed boundary, Western Australian goldfields and southern colony	Cape Leeuwin to rabbit proof fence to Tropic (23½°S) to 129°E (Prescott 1987)
H₂	1907-11	Areas surrendered by South Australia to Commonwealth	138°E, 26°S, 129°E to Darwin (Northern Territory)
L₂	1925-26	Proposed boundary, new Commonwealth North-West Territory	129°E north of 26°S (Ellis 1933: 184-6, 266-8)
Q	1925-26	Revised proposed Commonwealth North-West Territory, and area of WA capable of joint management under <i>North Australia Act 1926-33</i>	Western Australia north of 20°S (Peden et al. 1929: 57-63; Ellis 1933: 184-6, 266-8; Crowley 1960: 224)
R	1926	Area of Qld capable of joint management, <i>North Australia Act 1926-33</i>	Queensland north of 20°S
S	1926	North Australia (Commonwealth territory), <i>North Australia Act 1926-33</i>	Northern Territory north of 20°S
T	1926	Central Australia (Commonwealth territory), <i>North Australia Act 1926-33</i>	Northern Territory between 20°S and 26°S.

Nevada's admission in 1864 as the 36th American state (Bryce 1889: xix, 556; Frappell 1977). However, Princeland had already claimed 60,000 and failed. In 1890 the colonial office was interpreted to suggest a threshold of 40,000, but central Queenslanders immediately petitioned they already had 46,000 and north Queensland over 80,000 (see Stephens 1893: 40; Adelaide Convention 1897: 409-10; Bolton 1963: 143-4; McDonald 1981: 547-9). The reality was that there was no official threshold, specific or general, because there was no intention to act.

Eventually historians would see that responsible government had indeed made even the 1860s movements "too late, by a few years" (O'Donoghue 1984: xxviii; also McNaughtan 1955: 131). However, this pinpoints the timing but still not the nature of the problem. Responsible government marked the point at which British authorities withdrew from territorial decision-making, but this reality never took hold in colonial politics, remained unsupported by any explanations in theory, and only incrementally took hold in law. The British government's role as territorial arbiter appeared to stand legally intact, supported by historical precedent, its own rhetoric, and the simple fact that colonial communities had no other authority on which to call. In fact, this was only one of various constitutional powers the British government allowed to atrophy, but few were as fundamental to the colonies' development, and so lacking in local alternatives.

3.5. Conclusions

On orthodox accounts, the subdivision of Australia into six colonies by 1859 represented both a triumph and natural endpoint in a trend to political decentralisation. The truth is the reverse – having experienced a troubled childhood in the 1830s and 1840s, constitutional decentralisation trends had remained stunted even in 1850s adolescence, before freezing altogether. From the 1840s into the late century the decentralist federal trend to more colonies continued, but without local appreciation of a widening gap between the political appearance that this might bear further fruit, and the policy reality that British authorities were walking away. Meanwhile, the type of decentralised unitary structures that the colonial office had previously tried to implement, in the form of local government, only gradually took shallow root and only in some jurisdictions. This lack of alternative was owed to the fact that under

responsible government, all colonies had unwittingly elected to follow the same new *de facto* centralised unitary constitutional structure developed in NSW.

By the late 19th century, these debates nevertheless described a political landscape in which Australia's major constitutional approaches to territory had now taken shape. Even if deadlocked, these ideas represented a wide range of political experience and reflected a unique collage of colonial constitutional theory. Three main territorial 'actors' or theoretical traditions had now emerged in the Australian territorial story:

- decentralist or Franklinesque federalism, which had informed successful and unsuccessful movements for new colonies within the Australian group but now stood politically and legally frozen;
- decentralised unitary concepts of British nationhood or 'unification', forming a crucial backdrop to constitutional debate since the late 1830s but only gaining limited institutional traction in the later years of the century; and
- homegrown *de facto* centralised unitary traditions, which came to define and dominate colonial constitutional practice in the 1850s, while also showing clear synergy with a second, more centralized approach to 'federal' union.

Most importantly for later theory, Anglo-Australian territorial traditions by the late 19th century were operating *across* rather than with a conceptual 'federal-unitary' divide. Both federal and unitary ideas had thrown up institutional approaches consistent with active decentralization of political control across the colonies, while the continent's *de facto* centralised tradition had shown that it too could engage with and utilise federal and unitary principles alike. However weakly, colonial political experience was now capable of demonstrating that either federal *or* unitary theory could produce centralised *or* decentralised constitutional outcomes depending on structure and configuration.

At the same time however, both the decentralist traditions were locked in a conflict with the third centralist one. The overall result was a process of territorial constitutional development marked by great theoretical potential but also frozen by theoretical confusion. The anti-theoretical manner in which the NSW leadership had shaped its selective copy of British institutions along with the political disingenuousness of British authorities meant that territorial debate was playing endlessly like a broken record,

without a clear understanding in colonial politics of when and how the mechanisms had ceased to work nor a clear approach for fixing them. Various ideas were at work but the decentralist ideas most critical to colonial development – the obvious tools for reviving a coherent territorial formula – had been pushed to either side of the task. Their relocation would hinge on the other great territorial question whose resolution had also been postponed: Australia's long-awaited construction as a nation.