

# Taxation in Australia up until 1914: the warp and weft of protectionism

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## ***Abstract***

This article offers an account of the taxing policies in Australia from 1788 up until the beginning of World War I, when the exigencies of the First World War forced the Australian government to reassess its tax policies. During the period from 1788 until 1914, Australia transitioned from being a collection of provincial colonies with their own economic objectives and taxing policies to a Federation with a centrally-directed taxing authority. Whilst this political transition was taking place there was also a transition occurring in government policy concerning the function of taxation in Australia.

Government no longer used taxation just for revenue-raising but began to use it more as an intrusive tool to modify the private behaviour of Australians to reflect its own economic policy of protectionism. As a result, a strong symbiotic relationship developed between taxation and protectionism and, by the end of the first decade after Federation, Australia had become almost uniformly Protectionist.

This article argues that at the same time taxation was taking on this decidedly protectionist character, the Federal government's policy of imposing high tariffs on apparel began, especially in the first three decades after Federation, to markedly resemble what Alan Hunt calls "a project" of sumptuary regulation. This meant that the Government, in effect, controlled what type and quality of clothing certain classes of people could wear.

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## 1 INTRODUCTION

The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but the power to keep alive.<sup>1</sup>

This article offers an account of the taxing policies in Australia from 1788 up until the beginning of World War I, when the exigencies of the First World War forced the Australian government to reassess its tax policies. During the period from 1788 until 1914, Australia transitioned from being a collection of provincial colonies with their own economic objectives and taxing policies to a Federation with centrally-directed taxing authority. Whilst this political transition was taking place there was also a transition occurring in government policy concerning the function of taxation in Australia. Government no longer used taxation just for revenue-raising but began to use it more as an intrusive tool to modify the private behaviour of Australians to reflect its own economic policy of protectionism. As a result, a strong symbiotic relationship developed between taxation and protectionism and, by the end of the first decade after Federation, Australia had become almost uniformly Protectionist.

This article argues that at the same time taxation was taking on this decidedly protectionist character, the Federal government's policy of imposing high tariffs on apparel began to markedly resemble what Alan Hunt calls 'a project'<sup>2</sup> of sumptuary regulation. This meant that the Australian Government, in effect, controlled what type and quality of clothing that certain classes of people could wear.

Following on from the introduction in Part 1 the second part of the article looks at the main source of taxation in the early Australian colonies. It also argues that at the time of the first white settlement there were some commonalities between these early colonial taxes and sumptuary regulation. Part 3 begins by providing some background to the taxation regime which came to be introduced at Federation. This part also suggests that the form of protectionism which developed in the first three decades after Federation had its roots in the colonial taxing policies implemented in the first three decades of white colonial settlement in Australia.

Part 4 describes the move from an Imperial-administered colonial taxing regime to one where the colonial governor was in a position to impose local customs duties. It shows that it was not until each colony had its own representative government that it was in the position to implement its own taxation policy. Part 5 briefly explores how the original revenue-raising role of taxation in the colonies morphed into a combined fiscal and protective device which was then used by colonial governments to promote their social and economic objectives. Further, this part will also show that protectionist duties provoked a spirit of provincialism in the colonies which eventually became one of the main motivating factors behind the move towards Federation, which, it was hoped, would solve inter-colonial trade disputes.<sup>3</sup>

Part 6 deals with the shift of taxing powers from the colonies to the Federal Government. It details the emergence of a centrally-directed taxing regime which sought to provide

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<sup>1</sup> Quoted by Isaacs J, in *The King v Barger*, (1908) 6 CLR 41.

<sup>2</sup> Alan Hunt, *Governance of the Consuming Passions: A History of Sumptuary Law* (MacMillan Press Ltd, 1996).

<sup>3</sup> A J Reitsma, *Trade Protection in Australia* (University of Queensland University Press, 1960) 11.

funds to the States and to provide for the costs of the Federal Government. This part also illustrates that although most of the revenue collected during the first two decades after Federation came from customs and excise, these same duties had also quickly become highly protectionist in character. Part 7 examines the second Deakin government's attempt to attract labour supporters to its protectionist ideology by linking protection with the provision of 'fair and reasonable wages' for workers. Part 8 attempts to proffer some explanations why, by the end of the first decade after Federation, Australian politicians began to take on a more uniform approach to protectionism. This part also provides a brief sketch of the political discourse which was not only preoccupied with the potential effects of protection, but which also had adopted a more pro-protectionist advocacy and fervour. Part 9 briefly describes how government continued to increase tariffs on clothing after the failure of the 'New Protection' to link protection with 'fair and reasonable wages'. It also provides an overview of the functions of the Inter-State Commission which the Federal government established as part of its continued experimentation with trade protection.

## 2 THE NATURE OF EARLY COLONIAL TAXES-A FAINT SUMPTUARY PATTERN

This was the state of things in England at the time of the first settlement in Australia.<sup>4</sup>

Australia's earliest<sup>5</sup> colonial taxes on spirits, wine and beers,<sup>6</sup> were 'indirect' consumption taxes and took the form of customs<sup>7</sup> and excise duties. The fact that taxation took this form in the Australian colonies was not an unusual phenomenon. By the time of white colonization in Australia, most countries and colonies had taxation which tended to be indirect.<sup>8</sup> In 1925, when Mills published his iconic *Taxation in Australia*, these types of indirect taxes<sup>9</sup> were continuing to provide the largest single item of revenue for the Commonwealth of Australia.<sup>10</sup> Mills argues that the introduction of this type of 'impost'<sup>11</sup> during the early stages in the history of maritime countries such as Australia is '*a priori* probable'<sup>12</sup> because it was commonly the first form of taxation levied by a young community. This type of taxation historically also often reflected the need for royal or State protection in light of the real risks from piracy<sup>13</sup>

<sup>4</sup> Stephen Mills, *Taxation in Australia* (MacMillan and Co., Limited, 1925) 11.

<sup>5</sup> Mills, above, n 4, 24. Mills states that in 1791 Governor Phillip suggested the imposition of a duty on spirits; which the King afterwards imposed.

<sup>6</sup> Mills, above n 4, 22.

<sup>7</sup> Mills, above n 4, 4-6. Although Customs (*portoria*) existed at the time of ancient kings of Rome, it was during the reign of Augustus and his successors when the trade in riches and exotic merchandise from Syracuse, Carthage, Macedonia and Asia increased enormously, that customs and excise duties were then imposed on every kind of imported and exported goods. These same types of taxes were maintained in the British Isles after the Romans departed. It was commonplace for the English sovereign to impose import duties on luxuries including textiles such as lace, silk and scarlet and other dyed cloth, as well as export duties on items such as wool and leather.

<sup>8</sup> Woellner, Barkoczy, Murphy, Evans and Pinto, *2012 Australian Taxation Law* (CCH, 22<sup>nd</sup> ed, 2012) 1-040. It is suggested by the authors that by 1755 such taxes provided 82% of total English revenue. It is also suggested that the reason why there was the lack of any real broad-based system of taxation was the lack of the administrative infrastructure and expertise necessary for the efficient control of this type of tax system.

<sup>9</sup> Mills, above n 4, 3. Mills suggests these types of taxes had their roots in Roman and Medieval English taxing policy.

<sup>10</sup> Mills, above n 4, 3.

<sup>11</sup> Mills, above n 4, 5.

<sup>12</sup> Mills, above n 4, 5.

<sup>13</sup> Mills, above n 4, 5.

which importers and merchants faced with the transit of precious and rare merchandise, such as wine, wax and cloth.<sup>14</sup> This explanation hints at an interesting parallel between these early types of taxes<sup>15</sup> in Australia and early or pre-industrial sumptuary laws which prescribed how individuals and classes of people could spend their income, particularly on food consumption and extravagant and ‘unnecessary’ fashionable clothing. Both types of legislation depended to a large extent on the economic control and security of maritime spaces and territorial borders. This meant that it was often necessary, when protecting local industry, to regulate the ingress and egress of foreign domestic necessities and luxuries.<sup>16</sup>

There are a number of other commonalities between these early Australian colonial customs duties and sumptuary laws. Both were consumption-based and involved restrictions on the expenditure on dress, food and other items of consumption. They were also both based on a plethora of *ad hoc* and often inconsistent legislation and regulations.

At the time of the first white settlement in Australia, not only was the management and collection of customs revenue subjected to ‘incredible abuses’<sup>17</sup> but ‘[t]he Statute Book was crammed with innumerable Acts relating to the Customs, overlapping, chaotic, unintelligible.’<sup>18</sup> Mills suggests that it was this jungle of legislation, concerning the imposition and collection of Customs duties, which formed the basis of the tax system applicable at this time in Australia.<sup>19</sup>

### 3 COLONIAL TAXING POLICY, 1788-1819 - THERE WAS LITTLE NEED FOR TAXATION

Isolation begat provincialism, provincialism begat protection, and protection begat colonial envy, bitterness, and strife.<sup>20</sup>

For many decades, the colonies’ taxing policies were motivated by the need to raise revenue to supplement those often meagre funds which were provided by England to establish and maintain both a penal colony and a free settlement in a land which was not only isolated by vast distance from ‘the homeland’ but which also lacked any of those comforts and industries found at the time in England.<sup>21</sup> During this period, the British government provided food and clothing for most of the convicts, their guards, some civilians and Aborigines.<sup>22</sup> Some taxes, in the form of customs (tariffs) and excise duties, were also raised by the colony’s administrators to ostensibly supplement the official stipend which was aimed at mere subsistence husbandry.<sup>23</sup> It was expected that this stipend would continue to be provided by the British Government until such a time that each colony, with its cheap prison labour, could ‘keep itself’.<sup>24</sup> In fact, until 1824,

<sup>14</sup> Mills, above n 4, 5.

<sup>15</sup> Mills, above n 4, 8. Customs duties were at various times called ‘Aliens Duty’.

<sup>16</sup> Mills, above n 4, 8.

<sup>17</sup> Mills, above n 4, 10.

<sup>18</sup> Mills, above n 4, 10. According to Mills there were 1300 laws of Customs passed between the first and fifty-third years of the reign of George III.

<sup>19</sup> Mills, above n 4, 10.

<sup>20</sup> C D Allin, *A History of the Tariff Relations of the Australian Colonies* (Bulletin of the University of Minnesota, 1918)171.

<sup>21</sup> Margaret Maynard, *Fashioned from Penury: Dress as Cultural Practice in Colonial Australia* (Cambridge University Press, 1994) 28.

<sup>22</sup> Maynard, above n 21, 27.

<sup>23</sup> W K Hancock, *Australia* (Ernest Benn Limited, 1930) 11.

<sup>24</sup> Hancock, above n 23, 11.

public expenses for the Colony of New South Wales consisted chiefly of expenditure connected with the support and management of British convicts<sup>25</sup> and were borne almost entirely by the 'Imperial Government.'<sup>26</sup>

This form of financial assistance helped to shore up both Britain's need to establish and maintain colonies in which it could relocate surplus convicts<sup>27</sup> or 'human riffraff'. It also allowed her to continue to carve out colonial outposts where resources, both human and natural, could be regulated and turned to an advantage in building up the expanding Imperial Empire.<sup>28</sup> Britain not only 'owned' the new colonies and all their natural resources, but the Imperial government deemed itself to be in the best position to minutely regulate and guide the activities of all British colonial subjects. At the same time, it maintained public order and established a clearly defined hierarchical social order. During the transportation period, for instance, the British government regulated what clothing which most inhabitants could wear.<sup>29</sup> Early convicts were in most part identifiable by a uniform which was made distinctive by a coloured stripe.<sup>30</sup>

This form of paternalism,<sup>31</sup> where the Imperial Government was the universal provider, also created a widespread dependency which discouraged local enterprise and eventually fostered strong reliance on cheap ready-made imported clothing and accessories, particularly those of British origin.<sup>32</sup> The flood of ready-made clothing into the colonies not only became a boon to British manufacturing, but also provided colonial governments with an opportunity to alleviate economic insecurity by raising substantial revenue on such imported clothing.<sup>33</sup> These social and economic bonds and associations with Britain and the indefatigable crossing and recrossing of the oceans from one hemisphere to another in the transportation of convicts, government officials, free settlers and merchandise continued to ensure that there was a constant flow of goods which would attract customs and excise duties; particularly imported clothing and exported materials such as wool.<sup>34</sup> After the 1790s, there was also a vigorous private trade in fabric, leather, sewing accessories and low-cost readymade clothing for men and women<sup>35</sup> with British colonies, including India.<sup>36</sup> Not only did these goods supplement the supply of British made clothing but it also meant more money for the colonies' coffers.

However, the collection practices and value of these taxes were nothing more than an *ad hoc* exercise during a period when the Colonies' administrators had to deal with

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<sup>25</sup> Mills, above n 4, 26.

<sup>26</sup> Mills, above n 4, 26.

<sup>27</sup> Mills, above n 4, 20.

<sup>28</sup> Maynard, above n 21, 10.

<sup>29</sup> Maynard, above n 21, 10.

<sup>30</sup> Maynard, above n 21, 14.

<sup>31</sup> Maynard, above n 21, 27; Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1901, 0015, (Mr McColl). It is interesting to note that whilst Maynard refers to this type of economic protectiveness as a male-gendered 'paternalism', the connection between Britain and the Australian colonies and later the Federation of Australia was always discussed in nostalgic maternal language such as 'the Mother Country' or 'the Motherland'. Germans on the other hand refer to their homeland as 'the Fatherland'.

<sup>32</sup> Mills, above n 4, 26-27.

<sup>33</sup> Maynard, above n 21, 27.

<sup>34</sup> Reitsma, above n 3, 2. For example, there was, according to Governor King (who initiated the tariff system in New South Wales) a 5% duty on 'all wares and merchandise brought from any port to the east-west of the Cape'.

<sup>35</sup> Maynard, above n 21, 27.

<sup>36</sup> Maynard, above n 21, 27.

many exigencies: an uncertain economy, a disinterested British government, unrest and dissatisfaction of prisoners and settlers, the irregularity of shipments and the lack of local industries and businesses.<sup>37</sup> Harris suggests that the Colonies ‘did not have a great need for revenue during the first half of the 19<sup>th</sup> Century’.<sup>38</sup> Whilst most of the costs of transportations and the establishment and running of the penal settlements were borne during this period by the Imperial Governments, through the raising of funds from the London markets and the sale of public land to free settlers, local tax collection in the colonies was still significant. Not only did the added revenue help fill some of the gaps not covered by these fiscal procedures but it could be argued that this type of taxation became the foundation stone upon which the colonial tax regime and later the early Federal tax systems were built.

#### 4 COLONIAL TAXING POLICY, 1819-1859 - A MOVE TOWARDS THE FORMALISATION OF TAXATION POLICY IN THE AUSTRALIAN COLONIES

In 1819 the affairs of New South Wales received more than the usual amount of attention and publicity in England.<sup>39</sup>

In 1819, the British Parliament legalised<sup>40</sup> the collection of duties. The New South Wales Governor was thus authorised to impose customs duties of 10 shillings per gallon upon British spirits or British West Indian rum shipped from Britain; of 15 shillings upon foreign spirits; of 4 shillings per pound on tobacco and 15 per centum *ad valorem* duties upon non-British manufactures and upon the importation of all goods, wares and merchandise not being the growth, produce, or manufacture of the United Kingdom.<sup>41</sup> The first steps in establishing representative government were made with the passing of a British Act<sup>42</sup> in 1823, and whilst the legislators envisaged a colonial constitution and court system for New South Wales and Van Diemen’s Land, they did not consider expanding the colonial taxing powers.<sup>43</sup>

The colonial parliaments could only levy taxes or duties ‘as it may be necessary to levy for local purposes.’<sup>44</sup> Notwithstanding, these limited colonial taxes and duties, which were mostly on imports of alcohol and luxuries,<sup>45</sup> became very profitable and the revenue raised by import duties increased from £28,763 in 1824 to £195,080 in 1840.<sup>46</sup> By 1850, the European population in the colonies was less than half a million<sup>47</sup> and most of the tradeable goods were connected with primary production, whilst most manufactured articles, including clothing, were imported mainly from Britain.<sup>48</sup> By 1858-1859 the population in the colonies had increased to one million<sup>49</sup> and there was a very noticeable growth in the market for imported clothing and other domestic goods

<sup>37</sup> Maynard, above n 21, 27-32.

<sup>38</sup> Peter Harris, *Metamorphosis of the Australian Income Tax: 1866 to 1922* (Australian Research Foundation, Research Study No. 37, 2002) 201.

<sup>39</sup> Mills, above n 4, 29.

<sup>40</sup> Act 59 Geo. III., c.114.

<sup>41</sup> Mills, above n 4, 29.

<sup>42</sup> Act 4 Geo. IV., c. 96.

<sup>43</sup> Mills, above n 4, 29.

<sup>44</sup> Mills, above n 4, 31.

<sup>45</sup> K Anderson and R Garnaut, *Australian Protectionism: Extent, Causes and Effects* (Allen & Unwin, 1987) 40-41.

<sup>46</sup> Anderson and Garnaut, above n 45, 41.

<sup>47</sup> Anderson and Garnaut, above n 45, 40.

<sup>48</sup> Anderson and Garnaut, above n 45, 40-41.

<sup>49</sup> *Commonwealth, Australian Bureau of Statistics Yearbook Australia*, 2001, 2.

and luxuries.<sup>50</sup> This growth in imported items reflected the period of rising trade and the increase in economic prosperity of the colonies and the spending capacity of their populations. In New South Wales, for instance, the total amount of imported British-made clothing more than quadrupled between 1848 and 1853<sup>51</sup> and much of the colony's prosperity was generated by the rapid growth in exports of primary-produced tradeable goods.<sup>52</sup> There was also an enormous spike in the demand for imported clothing during the gold-rush period when 'a rising population of prosperous consumers'<sup>53</sup> spent their newly found wealth on all sorts of imported luxurious and superior ready-made fashion apparel, even though these goods attracted high customs duties.<sup>54</sup> This rapid growth in exports and the dramatic increase in disposable income in this period also soon resulted in a rapid expansion of banking and commerce.<sup>55</sup>

Colonial tariff policies continued to be controlled by 'the Mother Country' until self-government was granted to five of the six Australian colonies between 1855 and 1859.<sup>56</sup> From then on, and in a relatively short period, these colonies, albeit in different degrees, began to achieve some economic and political independence. In 1850 the *Australian Colonies Government Act, 1850 (Imp)*<sup>57</sup> was passed and provided for the formation of government in New South Wales, Van Diemen's Land, South Australia, and to Victoria as a colony separate from New South Wales. The Act also provided for future application to Western Australia.<sup>58</sup> New South Wales and Victoria subsequently achieved responsible government in 1855; Tasmania in 1856; and Queensland, which separated from New South Wales, in 1859. It was not until 1890 that Western Australia achieved responsible government.<sup>59</sup>

There was a high degree of economic and political tension and competition<sup>60</sup> between these newly formed colonies and their governments and Allin suggests that the history of the tariff relations between them can be read as 'a sorry record of inter-colonial jealousy and strife.'<sup>61</sup> One of the burning political issues in the colonies before Federation was centred on the fact that each of the colonies raised their revenue by not only imposing taxes on overseas imports but also on inter-colonial traded goods,<sup>62</sup> it

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<sup>50</sup> Maynard, above n 21, 122.

<sup>51</sup> Maynard, above n 21, 122. According to the Australian Bureau of Statistics the population increased to two million in 1877.

<sup>52</sup> Anderson and Garnaut, above n 45, 40. The Australian Bureau of Statistics (2009-10 Yearbook) states that the value of gold exports surpassed wool exports as Australia's major export during the 1850's and 1860's.

<sup>53</sup> Maynard, above n 21, 122.

<sup>54</sup> Maynard, above n 21, 122.

<sup>55</sup> Commonwealth, Australian Bureau of Statistics, *Year Book Australia, 2009-10*, 1.

<sup>56</sup> Anderson and Garnaut, above n 45, 40.

<sup>57</sup> Act 13 & 14 Vict. Cap 59.

<sup>58</sup> Reitsma, above n 3, 5.

<sup>59</sup> Reitsma, above n 3, 5. For each separate colony the English Parliament passed a 'constitution' act which gave each colony some measure of independence and self-government. However, the Colonial Office in London retained control over foreign affairs, defence and international shipping. Sections 2 and 3 of the *Colonial Law Validity Act, 1865 (Imp)* defined the relationship between the 'colonial' and 'imperial' legislation and gave the colonies the right to amend their own constitutions and the opportunity for them to enact legislation without necessarily applying English domestic law, provided that no English statute directly applied to the colony in question.

<sup>60</sup> Allin, above n 20, 1.

<sup>61</sup> Allin, above n 20, 1.

<sup>62</sup> Allin, above n 20, 1.

was their most 'elastic and most important source of revenue.'<sup>63</sup> The colonies, with their pre-federation rivalries had 'scattered Customs houses along their land frontiers.'<sup>64</sup> However, the great difficulty in the fifteen years prior to Federation was 'in working out exactly what would be the fair way(sic) and sustainable way'<sup>65</sup> to return revenue to the States once a future federal government acquired the sole power to impose customs and excise duties. Despite the passing of the *Australian Colonies Government Act 1850* (Imp), the colonies were slow in taking on national status. Not only were they 'small, isolated communities in the pioneer stage of social and political organization'<sup>66</sup> but each colony was oblivious to what was going on in 'the contiguous but far distant communities.'<sup>67</sup> Each colony was only focused on the development of its own resources and to the furtherance of their own immediate political and economic interests.<sup>68</sup> Their efforts were without the support of the British Parliament, which only took a spasmodic interest in the affairs of the distant colonies. Besides, the colonial office was 'to ill-informed to be able to supervise the policy of administration of the struggling settlements.'<sup>69</sup>

As the colonies became more economically self-reliant and idiosyncratic in their economic ideologies they also began to develop even more divergent social, political and economic policies and rivalries. For instance, the two major colonies, Victoria and New South Wales, had, for various reasons,<sup>70</sup> adopted radically different commercial and revenue policies. New South Wales had a steadfast adherence to Free Trade which was largely supported by the sale of public land,<sup>71</sup> whilst Victoria exhibited a 'doctrinal fervour'<sup>72</sup> for the theory of Protection.<sup>73</sup> Whereas New South Wales' consistent adherence to Free Trade policy was largely motivated by Sir Henry Parkes, who was 'for a long period was the most striking figure'<sup>74</sup> in Australia's political life, Victoria's obsessive stance on Protection, which resulted in very high tariffs, was fuelled by 'the

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<sup>63</sup> Sir George Turner, Commonwealth Treasurer, *First Commonwealth Budget*. Parl. Debates, 1901, 5 673 et seq.

<sup>64</sup> Hancock, above n 23, 76.

<sup>65</sup> J Smith and N Warren, *Plucking the goose: a history of taxation in Australia*. ABC Rear Vision on ABC Radio National, 17 June, 2007, 2.

<sup>66</sup> Allin, above n 20, 1.

<sup>67</sup> Allin, above n 20, 1.

<sup>68</sup> Mills, above n 4, 20-199.

<sup>69</sup> Allin, above n 20, 5.

<sup>70</sup> F S Alford, *The Greater Illusion: A Critical Review of Australia's Fiscal Policy* (Marchant & Co. Ltd, 1934) 23.

Alford suggests that the reasons why Victoria turned shapely towards Protection after 1860 were that there was sharp decline in the output of gold which fell by one-half between 1856 and 1866; unemployment grew to a disturbing extent and the outlook for the Colony became grave. At the time David Syme (The Age) entered into a powerful advocacy of the adoption of a protective policy to enable industries to provide employment.

<sup>71</sup> Harris, above n 38, 166.

<sup>72</sup> Mills, above n 4, 201.

<sup>73</sup> Fred Perry, 'The Australian Tariff Experiment', *The Quarterly Journal of Economics*, 3, No 1 (October 1888) 92. Perry states that the number employed in woollen industry in Victoria (1886-1888) was considerably larger than in New South Wales. However, Victoria had not at that stage made the manufacture of woollens profitable. The Victorian industry was protected by duties ranging from 7.5% to 30%, whilst New South Wales woollen industry had no protection at this time. The manufacture of boots and shoes was also protected in Victoria.

<sup>74</sup> Mills, above n 4, 202. Mills argues that the 'phenomenon of Free Trade in one Colony among six, five of which had adopted Protection as their fiscal policy...is not readily explained.' He asserts that one cause of this phenomenon was that 'the spirit of Free trade was incarnate in the person of Sir Henry Parkes.'



continuous and passionate advocacy<sup>75</sup> of David Syme.<sup>76</sup> As the proprietor<sup>77</sup> of the Melbourne morning journal (*The Age*), he exercised powerful influence over local politics.<sup>78</sup> All these factors prompted, as between the colonies, the creation of contrary self-referential interests and conflicting fiscal legislation.<sup>79</sup> Each colony framed its taxing legislation with an aim to foster its own particular economic and social needs, with little regard to the interests of the other colonies.<sup>80</sup> This meant that each colony adopted ‘the easiest and readiest means of taxation without regard to economic principles.’<sup>81</sup> Consequently, this individualistic type of economic and financial policy throughout the colonies laid the groundwork for economic discrimination in the form of a variety of inter-colonial differential and preferential tariffs.

## 5 COLONIAL TAXING POLICY, 1860-1900 - THE BEGINNING OF ‘A STRONG SYMBIOTIC RELATIONSHIP’ BETWEEN TAXATION AND PROTECTIONISM<sup>82</sup>

It is true that a considerable number of Customs duties aim openly at revenue, but there is also an unmeasured and a very large return to the Treasury from duties which are intentionally, though clumsily, Protectionist.<sup>83</sup>

Before the 1860s, colonial duties were ‘nearly always mainly for purposes of revenue’<sup>84</sup> and whilst protective motives were not always absent, Reitsma argues that it would go too far to say that the infant colonies had established any commercial policy at all at that stage, particularly in relation to a preference for free trade or a structured tariff regime.<sup>85</sup> By the latter part of the 1800s this position had obviously changed substantially, for in 1883, Richard Twopeny,<sup>86</sup> whilst visiting the various colonies, makes the observation that ‘[p]rotectionist duties and heavy freights form an effectual sumptuary tax’ resulting in ‘first-class articles’ being ‘heavily handicapped’ and ‘a premium put upon the importation of shoddy.’<sup>87, 88</sup>

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<sup>75</sup> Mills, above n 4, 202.

<sup>76</sup> David H Plowman, ‘Industrial Relations and the Legacy of New Protection’ (1992) 34 *Journal of Industrial Relations*, 50. Plowman suggests that Syme was Deakin’s mentor and saw the state as an instrument of social change.

<sup>77</sup> Mills, above n 4. Mills says that Syme was ‘a man of strongly marked personality’.

<sup>78</sup> Mills, above n 4, 202; Alford, above n 73, 24. It is interesting that Syme, in his argument for a high enough tariff to enable Victorian manufacturers to pay workers a ‘fair, living wage’, foreshadowed the introduction of ‘New Protection’ and Justice Higgins’ basic wage determinations which are both discussed later in this article.

<sup>79</sup> Allin, above n 20, 5.

<sup>80</sup> Allin, above n 20, 5.

<sup>81</sup> Allin, above n 20, 5.

<sup>82</sup> This heading is a play on Hunt’s statement. He says that since 14<sup>th</sup> century ‘sumptuary regulation had existed in a close symbiotic relationship with protectionism’. See Hunt, above n 2, 324.

<sup>83</sup> Hancock, above n 23, 90.

<sup>84</sup> Reitsma, above n 3, 1.

<sup>85</sup> Reitsma, above n 3, 5-6. Reitsma argues that until the middle of the eighteen-sixties the various tariffs in the colonies were all free-trade tariffs. The local merchants favoured a simple revenue tariff because of its administrative advantages. Protection was not an issue for these merchants because they relied on imported goods rather than locally produced goods.

<sup>86</sup> R Twopeny, *Town Life in Australia* (Penguin Colonial Facsimiles, 1983) 110. Twopeny was the son of a South Australian archdeacon and was the editor of his own journal, the *Pastoral Review*. It seems that Twopeny wrote a number of letters for publication in an English periodical. His book *Town Life in Australia* is the unauthorised collection of these letters.

<sup>87</sup> Poor quality items; often where wool is adulterated with cheap cotton materials.

<sup>88</sup> Twopeny, above n 86, 110.

Just as sumptuary regulation from its earliest inception in the fourteenth century had existed in a 'close symbiotic relationship with protectionism',<sup>89</sup> in Twopeny's remark we see the same development of a close symbiotic relationship in Australia between taxation tariffs and protectionism. And just as the discourse of 'sumptuarism'<sup>90</sup> later became integrated within, and then submerged within the discourse of protectionism we can see the same integration and submersion of tariff discourse within the discourse of protectionism. It is also at this time that we begin to see within these protective policies the threads of the sumptuary impulse which were woven into the protective economic blanket which the Federal Government wrapped around clothing manufacturing industries in the 1920s.

From the 1880s Australian manufacturers and primary producers faced heavy competition from the massive increase in all forms of imported goods from Britain and Europe.<sup>91</sup> The first ostensible protectionist tariff introduced<sup>92</sup> in the colonies was presented to the Victorian Assembly in 1865 with the objective<sup>93</sup> of protecting new industries and overcoming the problem of expensive, but poorly made imported goods<sup>94</sup> being 'dumped'<sup>95</sup> on the Victorian market.<sup>96</sup> Reitsma suggests that the relentless force behind protectionism, particularly in Victoria, was the 'newspaper dictator' and ardent Protectionist, David Syme.<sup>97</sup> Even though protection had a popular following in Victoria, colonies such as New South Wales continued to embrace free trade which 'fitted in with pastoral and financial opinion'<sup>98</sup> in the colony. These diverging policies contributed significantly to 'the inter-colonial custom troubles that characterized the period'<sup>99</sup> and the often difficult debates plaguing the introduction of Federation.

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<sup>89</sup> Hunt, above n 2, 324.

<sup>90</sup> Hunt, above n 2, 325. This is Hunt's term.

<sup>91</sup> See Maynard, above n 21, 122. This competition continued well into the 1930s.

<sup>92</sup> Dorothy P. Clarke, 'The colonial office and the constitutional crises in Victoria, 1865-68', *Historical Studies: Australia and New Zealand* 5:18, 160-171. *The Tariff Bill* was attached to the annual *Appropriation Bill*. This mixed Bill was rejected by the Legislative Council (by 'laying it aside') on the basis that the Bill for raising revenue should not be 'tacked' onto the Bill for the appropriation of this revenue. This issue caused an enormous amount of controversy about the legality and constitutionality of this practice of tacking.

<sup>93</sup> Perry, above n 73, 86. Perry argues that '[t]he protective system is intended specially to diminish importation, and is also expected to prevent money from going out of the country.' These objectives are inherently sumptuary in nature.

<sup>94</sup> E O Shann, *An Economic History of Australia* (Cambridge University Press, 1948) 266. Shann states that such goods included apparel, textiles, boots, saddler and earthenware.

<sup>95</sup> Geoffrey Sawyer, *Australian Federal Politics and Law 1901-1921* (Melbourne University Press, 1956) 42. Sawyer says that manufacturers were constantly lobbying Parliament about the practice of 'dumping' goods on the Australian market to the detriment of Australian-produced goods. In response, the *Australian Industries Preservation Act 1906* (Cth) was enacted to penalise those who engaged in this practice. Often the 'dumped' goods were poorly made clothing lines (sometimes called shoddy) which were being produced in other countries, particularly Britain and Japan, at cost far less than Australian manufacturers could achieve.

<sup>96</sup> Reitsma, above n 3, 9. At the general election held in the colony of Victoria in November 1864, the McCulloch ministry was returned to power. On his campaign platform he had pledged a policy of protection to native industry.

<sup>97</sup> Reitsma, above n 3, 7. Reitsma even goes so far as to call him the 'father of protectionism'. He continued to exercise his political power through his newspaper, 'The Age' for the remainder of the century and until his death in 1908.

<sup>98</sup> Reitsma, above n 3, 9. Much of the impetus for the protective tariff in the colony of Victoria came from Syme, who argued that the 'naked competition' of free trade meant that manufacturer were prevented from making a beginning 'of opening up new sources of industry' in Victoria. See Shann, above n 312, 265.

<sup>99</sup> Reitsma, above n 3, 10.

By the end of the nineteenth century each of the six colonies had distinct tax systems which were almost entirely reliant on customs and excise duties.<sup>100</sup> Not only did Customs duties or tariffs underpin the newly emerging colonial economies, but they also acted as effective barriers against overseas imported goods and trade barriers between the colonies.<sup>101</sup> Reinhardt and Steel<sup>102</sup> suggests that one of the ‘significant results of Federation in 1901’ was the removal of all duties on goods traded between Australia states.<sup>103</sup> Federation was to be used as an effective apparatus of economic intervention to relieve the colonial governments’ intense rivalry and provincialism whilst at the same time providing a new paradigm of power relationships between the colonies.

Although, as previously mentioned, each colony initially framed their tariffs primarily for revenue purposes, gradually protective characteristics became more pronounced.<sup>104</sup> Despite enormous protests from their ‘sister colonies’ about the ‘growing evil of inter-colonial duties’<sup>105</sup> and the passing of hostile, retaliating or ‘tit-for-tat’ legislation, each colony went on its merry way in exacting, often complicated inter-colonial duties as a ‘necessary’ measure for the protection of their local industries. For instance, even though South Australia was mainly dependant on primary industry and strongly in favour of inter-colonial free trade, the colony still remained protective of its clothing and woollen industries.<sup>106</sup> The result was this ‘strange melange of tariff anomalies’ which completely ignored the ‘general welfare of the Australian group and the empire.’<sup>107</sup> It would be many decades, and much political lobbying and vitriolic debates before Federation finally settled the question of inter-colonial tariffs.

It has also been argued<sup>108</sup> that the very isolation of the colonies engendered the spirit of provincialism. Not only were the colonies cut off from the outside world by ‘both time and space’, they had no external relations and no more than a passive interest in what was happening in Europe for they ‘lived in a little world of their own, a world with a distinct set of interests and problems from those of Europe or America.’<sup>109</sup> Even their relationships with other colonies were strained and far from intimate;<sup>110</sup> the Australian land mass was huge and there was great distance between settlements, with few interconnecting transport systems. The tariff, more than any other issue had ‘aroused the latent spirit of provincialism in all the colonies... [i]t was ‘the lion in the path’ of all federal measures.’<sup>111</sup> It was the major cause contributing to the failure of imperial and colonial governments in their attempts to improve the political and economic relationships of the colonies.

This provincialism meant that there was no unity of taxing policy between the various colonies until Federation when the Federal Parliament occupied the dominant position in Australian politics. Taxation policy had always been at the centre of the pre-

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<sup>100</sup> Perry, above n 73, 87. Perry states that ‘[e]ach colony is entirely satisfied with its own fiscal system.’

<sup>101</sup> S Reinhardt and L Steel, *A brief history of Australia’s tax system* (paper presented to 22<sup>nd</sup> APEC Finance Ministers’ Technical Working Group, Vietnam, 2006) 2.

<sup>102</sup> Reinhardt and Steele, above n 101, 2.

<sup>103</sup> See Section 92 of the Constitution. This section refers to free trade between states.

<sup>104</sup> Allin, above n 20, 10.

<sup>105</sup> Allin, above n 20, 11.

<sup>106</sup> Reitsma, above n 3, 10.

<sup>107</sup> Allin, above n 20, 13.

<sup>108</sup> Allin, above n 20, 167.

<sup>109</sup> Allin, above n 20, 167.

<sup>110</sup> Mills, above n 4, 201.

<sup>111</sup> Allin, above n 20, 170.

Federation debates<sup>112</sup> because the colonies were concerned that Federation would mean they would lose their major tax base when they were no longer able to impose tariffs on imported goods. The Constitution was designed to give the Federal Government the sole authority to impose customs and excise duties. However, the colonies were placated to some extent by drafters of the Constitution, who would allow the newly formed States to maintain their taxing powers in relation to other taxes such as income tax.<sup>113</sup> Finally, on 8 October 1901 the first Federal tariff was introduced<sup>114</sup> by the first Federal Parliament<sup>115</sup> and effectively ended inter-colonial tariff wars.<sup>116</sup> It was a compromise between the revenue tariff of NSW and the protectionist tariffs of Victoria<sup>117</sup> and was mildly protectionist by comparison with the level of protection existing twenty years later.<sup>118</sup>

## 6 FEDERATION - THE FIRST REMARKABLE MOMENT IN AUSTRALIA'S TAXATION HISTORY<sup>119</sup>

But the day of small things was passing away. A new Spirit of Australian nationalism was beginning to find lodgement in the hearts of the younger generation. New imperial problems come upon the scene. The political and economic life of the colonies gradually loses its purely local significance and begins to take on a true national character.<sup>120</sup>

To understand how the tariff grew so rapidly both outwards and upwards, one must first look at the sources of the Commonwealth's taxing power. This taxing power is contained mainly in s51 (ii) of the Australian Constitution;<sup>121</sup> it gives the Federal Government a general and unlimited power to raise taxes for the peace, order and good Government of the Commonwealth. Section 55<sup>122</sup> provides that laws imposing taxation shall deal only with the imposition of taxation. Section 90 not only removed certain taxing powers from the colonies but it provided the Federal government with the exclusive power to set and impose Customs and Excise duties.<sup>123</sup> This provision was to

<sup>112</sup> Julie Smith, *Taxing Popularity: The Story of Taxation in Australia* (Federalism Research Centre, Canberra 1993) 40.

<sup>113</sup> Julie Smith, above n 112, 40-41. Smith says that the states viewed 'the infant federal government as their child. And like most parents they expected to exercise reasonable control over their offspring.'

<sup>114</sup> It became known as the *Customs Tariff Act 1902 (No 14 of 1902)* (Cth).

<sup>115</sup> There were three parties in the new Parliament: the Free Trade Party, which drew much of its strength from New South Wales, the Protection Party and the Labor Party (which had no settled policy on protection), see Anderson and Garnaut, above n 45, 43.

<sup>116</sup> Athukorala, Prema-chandra and Satish Chand, 'Tariff-Growth Nexus in the Australian Economy, 1870-2002: Is there a Paradox?' July 2007, *Working Papers in Trade and Development*, Working Paper No. 2007/08, Division of Economics, Research School of Pacific and Asian Studies, ANU College of Asia and the Pacific.

<sup>117</sup> J Pincus, 'Evolution and Political Economy of Australian Trade Policies', in *Australia's Trade Policies*, Pomfret, Richard (Ed) (Oxford University Press, 1995) 60. Pincus said they were 'weakly' protective duties ranging from 5-25%.

<sup>118</sup> Alford, above n 70, 29.

<sup>119</sup> Smith and Warren, above n 65, 2.

<sup>120</sup> Allin, above n 20, 171.

<sup>121</sup> According to s 51(ii), the [Commonwealth] Parliament shall... 'have power to make laws with respect to...

(ii) taxation; but not so as to discriminate between States or parts of States.'

<sup>122</sup> Woellner, above n 8, 45. Section 55 limits laws imposing taxation to dealing only with the imposition of taxation and only one subject of taxation. Laws imposing duties of customs and excise must deal only with duties of customs or excise respectively.

<sup>123</sup> COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 90

**Exclusive power over customs, excise, and bounties**

have a significant impact on the taxing powers of the colonies; at the time of Federation, approximately 75% of colonial revenues came from Customs and Excise duties.<sup>124</sup> After Federation tariffs would only apply in the case of imports to Australia, and inter-State trade was thus free of tariffs, pursuant to s 92 of the Constitution.

At first, the scheme of Commonwealth finance was almost wholly based on the revenues to be derived from Customs and Excise duties.<sup>125</sup> To give support for this objective, s 88 of the Constitution required that ‘uniform duties shall be imposed within two years after the establishment of the Commonwealth.’ It was proposed<sup>126</sup> that stimulants and narcotics would raise the most revenue (£1,959,306) and they attracted the highest rate of duty (145.21%). It was expected that apparel and textiles would raise £1,441,863 with an average rate of 17.73% duty.<sup>127</sup> Jewellery and fancy goods were expected to raise £120,580 at an average rate of 21.03% duty.<sup>128</sup>

Section 86 of the Constitution gave the Commonwealth, as central government for the emerging nation state, the power to take control of the collection and administration of these duties.<sup>129</sup> For at least ten years after Federation the Commonwealth had to return to the States ‘three-fourths of the net revenue from Customs and Excise; one-fourth<sup>130</sup> only being available for Commonwealth expenditure’ (The Braddon Clause).<sup>131</sup> Not only was ‘the paramount object of Federation’<sup>132</sup> inter-State free trade with a uniform Tariff in the importation of overseas goods but the preparation of a ‘uniform’ Tariff became the ‘most urgent task of the new Commonwealth Government.’<sup>133</sup> The use of customs and excise duties, as the Commonwealth’s main source of revenue, proved to be a very lucrative means<sup>134</sup> of raising revenue and these taxes fitted in neatly with the growing nationalism<sup>135</sup> which spread throughout the colonies and later the Commonwealth.<sup>136</sup> These taxes were easy to exact. They could also be readily utilised to protect the interests of those local manufacturers, industrialists and farmers who were

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*On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.*

*On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.*

<sup>124</sup> Julie Smith, above n 112, 60. Most of this revenue came from customs duty. The remaining revenue generally came from Crown land sales, income tax, death duties, sale of gold and land tax.

<sup>125</sup> Mills, above n 4, 200.

<sup>126</sup> By C C Kingston who was the Minister of Trade and Customs.

<sup>127</sup> Mills, above n 4, 220. The rate of duty on apparel and attire ranged from 25% on wool and silk apparel down to 15% on cotton and linen goods.

<sup>128</sup> Mills, above n 4, 209. These estimates are set out in a table issued by Mr C.C. Kingston who was the Minister of Trade and Customs. The table can be seen in Mills’ book.

<sup>129</sup> Mills, above n 4, 200. Mills contends that the State tariffs remained temporarily in operation until the Commonwealth Government had established a uniform tariff. However, I was loss to find evidence to support this contention, except what is said in s 88 about uniform duties been imposed within 2 years.

<sup>130</sup> This was in accordance with s 87. This practice was reversed after the expiration of Clause 87 (Braddon Clause) on 31 December 1910.

<sup>131</sup> This was known as ‘the Braddon Clause’, named after its author, Sir Edward Braddon, the Premier of Tasmania.

<sup>132</sup> Mills, above n 4, 201.

<sup>133</sup> Mills, above n 4, 201.

<sup>134</sup> In 1901-1902 the Commonwealth’s total revenue £18 million was derived from Customs and Excise Duties.

<sup>135</sup> Allin, above n 20, 171.

<sup>136</sup> Hancock, above n 23, 89.

worried that their wealth and reputation would be endangered by the proliferation of cheap imported goods. They were also concerned about the ‘dumping’<sup>137</sup> of ‘end of season’<sup>138</sup> clothing by an ‘outside world which struggled for profit and cared nothing for Australia’s adventurous quest for justice.’<sup>139</sup>

Protection had gained popularity as an economic policy because it promised to be a policy of plenty.<sup>140</sup> The very word appealed to ordinary Australians because they believed ‘in their hearts that both their enjoyments and their existence need[ed] to be protected against extraordinary dangers.’<sup>141</sup> During the 1890s there had emerged a number of ‘extraordinary’ factors which had adversely affected the lives of most Australians and were subsequently instrumental in creating a general economic climate which favoured protectionist tariff policies. Labour turmoils, falling prices for agricultural and pastoral commodities such as wheat and wool, the failure of a number of banks and a decline in consumer spending all contributed to a widespread economic depression.<sup>142</sup> At the same time, the new labour movement began to seek a high wage economy. This would particularly affect those thousands of agricultural workers severely affected by ‘the worst and widest drought the white man had seen’.<sup>143</sup> These workers had been moving to the cities in large numbers in search of employment, in newly emerging manufacturing industries.<sup>144</sup> In the early years after Federation, trade unionists, who had at first held the balance between Free Traders and Protectionists, began playing what Hancock calls ‘the profitable game of ‘support in return for concessions.’<sup>145</sup> The unionists finally started to drift towards the Protectionist side which pandered to their fears that ‘the competitive strength of frugal Orientals’<sup>146</sup> might result in lower wages and conditions for Australian workers.

So, whilst it seemed inevitable that the 1902 Australian Tariff would be of the Protectionist type<sup>147</sup> questions remained about how much money was needed to support local industry and how it was proposed to raise it. The Treasurer, Sir George Turner,<sup>148</sup> argued in the first Commonwealth Budget speech, that ‘neither the Free trader nor the Protectionist can have his own way entirely. *The Tariff is a compromise Tariff.*’<sup>149</sup> The objects of the first Federal Tariff were manifold. Policy makers such as Turner argued that the Tariff should be framed to raise revenue to fund Commonwealth obligations to the States so they could maintain their solvency, as well as to cover Federal expenditure. They also argued that the Tariff was meant to keep faith with the States by providing ‘for moderate protection, particularly avoiding unnecessary destruction of existing industries whose magnitude and suitability rendered them worthy of fiscal

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<sup>137</sup> Hancock, above n 23, 83; *Parliamentary Debates* (In Committee of Ways and Means) 17 November, 1910.

<sup>138</sup> This term was sometimes referred to as the ‘fag end of season’. See *Parliamentary Debates* 17 November, 1910.

<sup>139</sup> Hancock, above n 23, 83.

<sup>140</sup> Hancock, above n 23, 89.

<sup>141</sup> Hancock, above n 23, 89.

<sup>142</sup> Shann, above n 94, 328-348.

<sup>143</sup> Shann, above n 94, 386.

<sup>144</sup> Shann, above n 94, 328-348.

<sup>145</sup> Hancock, above n 23, 83.

<sup>146</sup> Hancock, above n 23, 83.

<sup>147</sup> Mills, above n 4, 201.

<sup>148</sup> He was a member of the Protectionist Party.

<sup>149</sup> Commonwealth, *Parliamentary Debates*: Budget Speech 8 October 1901; Editorial, *The Advertiser*, 9 October 1901. Emphasis added.

protection.<sup>150</sup> So whilst this first object of this early Federal tariff was revenue-raising, it is very clear that protection, at least for existing manufacturing industry, was also of high importance in the government's plan for the new nation.<sup>151</sup>

However, this 'compromise tariff' failed to please all stakeholders, mainly because it was not a compromise between those who supported Free Trade and those on the Protectionist side. Rather, it was only a compromise between what Mills calls 'the high' and 'moderate'<sup>152</sup> Protectionists. In addition, there was no 'Compromise Cabinet', because there were no 'free traders' in the Ministry.<sup>153</sup> The Commonwealth taxation policy, from the beginning of Federation, had 'been unmistakably Protectionist, and every subsequent dealing with the Tariff ... affirmed that policy, with a deeper emphasis each time.'<sup>154</sup> Some<sup>155</sup> believed the tariff was neither a compromise nor a moderate Tariff because 'the aggregate of taxation on the working man'<sup>156</sup> on his items of apparel, such as hats, woollens and boots, was 'enormous'.<sup>157</sup>

In the first year after Federation, the Commonwealth raised £8.9 million from customs and excise out of a total of £11.3 million and, in accordance with s 87 of the *Constitution*, £7.6 million was paid out to the States.<sup>158</sup> Under this 1902 tariff, duties were imposed on luxury items, such as furs, and necessities, such as blankets. However, it soon became apparent<sup>159</sup> that there were many anomalies and inequalities 'that bristled in the old Tariff'<sup>160</sup>; for example, for some time there was a lower rate of duty on furs<sup>161</sup> than on blankets.<sup>162</sup>

Some politicians<sup>163</sup> considered that protection meant the protection of the privileged class, as it did not advance the wages 'of the great industrial classes of the community one farthing.'<sup>164</sup> They considered protectionism socially distasteful. They likened it to the harsh interventionist sumptuary laws of the Middle Ages which authorised 'men in parts of London to cut the ruffle from women's dresses when they exceeded a certain length, and which also regulated the style of boots to be worn.' Some parliamentarians, particularly the Free Traders,<sup>165</sup> considered tariff taxation to be an overt method of regulating the affairs of the lower classes by 'depriving the poor man or woman of practically everything, except proved necessities.'<sup>166</sup> They questioned whether clothing

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<sup>150</sup> Commonwealth, *Parliamentary Debates*, Budget Speech, 8 October 1901, (Sir George Turner).

<sup>151</sup> Commonwealth, *Parliamentary Debates*, 8 October 1901, 5699.

<sup>152</sup> Mills, above n 4, 210.

<sup>153</sup> Mills, above n 4, 210.

<sup>154</sup> Mills, above n 4, 221.

<sup>155</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 1 October 1901, 0016 (Mr Winter Cooke).

<sup>156</sup> Commonwealth, *Parliamentary Debates*, above n 153, at 0016.

<sup>157</sup> Commonwealth, *Parliamentary Debates*, above n 153, 0016.

<sup>158</sup> Stuart Macintyre, *The Oxford History of Australia, Volume 4, 1901-1942, The Succeeding Age*, (Oxford University Press, 1986) 81.

<sup>159</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 5 December 1901, 0082 (Mr Kingston—he was the Minister of Trade and Commerce).

<sup>160</sup> Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 0027 (Senator Clemons).

<sup>161</sup> For furs valued at £4 000 or £5 000 only £39 or £40 in duties were collected.

<sup>162</sup> Blankets, as manufactured items, attracted a protective duty of 25%.

<sup>163</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 7 March 1902, 0006 (Mr Conroy). Mr Conroy was the Member for Werriwa in House of Representatives.

<sup>164</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 7 March 1902, 0006 (Mr Conroy).

<sup>165</sup> Mr Conroy was one of these Free Traders.

<sup>166</sup> Commonwealth, *Parliamentary Debates*, above n 158 (Senator Clemons).

and accessories were still necessities of life for the poorer classes.<sup>167</sup> High protective duties had even made socks<sup>168</sup> and hat pins<sup>169</sup> luxury items.

On the other hand, there were some ‘Protectionist’ members of Parliament who took a vastly different view as to the economic effect of these old laws.<sup>170</sup> They strenuously argued in favour of the value of the English protective sumptuary laws, which had compelled the wearing of English goods and prohibited the exportation of raw materials. They contended such laws were at the heart of England’s success in world trade and commerce under Queen Elizabeth I.<sup>171</sup> They argued that the imposition of a protective tariff along with rigorous navigation laws, which prevented free trade in shipping and compelled English colonies to trade in English ships, had made England ‘the great workshop of the world.’<sup>172</sup> Protectionists, such as McColl MP, argued that just as England was ‘built up under protection’, Australia’s manufacturing industries could prosper in the same way under ‘moderate, reasonable, and discriminating protection.’<sup>173</sup> Yet, they continued to object to any high protective duties which were ‘unreasonable and unwise’<sup>174</sup> because they would tend to discredit protection and could diminish the revenues of the States.<sup>175</sup>

Still, there continued to be some resistance<sup>176</sup> against protection, generally by those<sup>177</sup> in the Liberal or Labor<sup>178</sup> sides who advocated a free trade policy. There was also an ongoing contentious dialogue between various stakeholders about the issue of granting preferential tariffs to Great Britain.<sup>179</sup> Preferential treatment had been afforded to English trade by various Australian colonies prior to 1850 in accordance with the principles of imperial monopoly whereby colonial trade was directed and monopolised by England.<sup>180</sup> However, the *Australian Colonies Government Act* 1850 (Imp) abolished all preferences, even to Britain.<sup>181</sup>

It would not be until August 1906 that Sir William Lyne, then Minister for Trade and Customs, proposed a Tariff resolution in the House of Representatives<sup>182</sup> concerning approximately thirty British products,<sup>183</sup> with a view to giving Great Britain or ‘the

<sup>167</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 29 October 1907, 0092, (Mr Liddell); *Parliamentary Debates*, Senate, 20 February 1908, 0100 (Senator Millen).

<sup>168</sup> Commonwealth, *Parliamentary Debates*, Senate, 19 February, 1907, 0027 (Senator Findley).

<sup>169</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 28 February, 1902, 0032 (Mr Wilks). Mr Wilks pointed out that ‘[h]onorable members’ seem to run away with the idea that because jewellery is an ornament it is necessarily a luxury; but I am of the opinion that the daughters of the people have as much right to be adorned as their luckier sisters who can afford to buy high-class jewellery.’

<sup>170</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1901, 0015 (Mr McColl).

<sup>171</sup> Commonwealth, *Parliamentary Debates*, above, n 168, at 0015 (Mr McColl).

<sup>172</sup> Commonwealth, *Parliamentary Debates*, above n 168, 0015 (Mr McColl).

<sup>173</sup> Commonwealth, *Parliamentary Debates*, above n 168, 0015 (McColl).

<sup>174</sup> Commonwealth, *Parliamentary Debates*, above n 168, 0015 (Mr McColl).

<sup>175</sup> Commonwealth, *Parliamentary Debates*, above n 168, 0015 (Mr McColl).

<sup>176</sup> Mills, above n 4, 210.

<sup>177</sup> Mills, above n 4, 210. G.H Reid, for example. He was the leader of the Federal Opposition at the time. He became Prime Minister in August, 1904, and held office until July, 1905 (only in combination with a leading Protectionist, Allan McLean, who Mills says was, ‘equal in all things’ with the Prime Minister).

<sup>178</sup> This word was spelled ‘Labour’ before 1912. For consistency and to avoid confusion I have used the spelling ‘Labor’ throughout this article.

<sup>179</sup> Mills, above n 4, 211.

<sup>180</sup> Reitsma, above n 3, 3 & 44.

<sup>181</sup> Act 13 & 14 Vict. Cap. 59. Section XXXI.

<sup>182</sup> *The Brisbane Courier*, 31 August 1906.

<sup>183</sup> The items included ammunition, guns, bicycles, boots and shoes (sizes 30 and 40). For the proposed duties for British goods and for foreign goods;- a full list can be seen in *The Advertiser* 31 August 1906, 7.



Mother Country'<sup>184</sup> favourable or preferential treatment, as against similar products from other parts of the world.<sup>185</sup> The proposal was to leave the tariff untouched for these British goods and to increase, by ten per cent, the duties against all other countries. Such favourable treatment was conditional upon the goods being produced or manufactured solely in the United Kingdom and being imported direct to Australia in British ships.<sup>186</sup> As a result of hostile criticism from the Free Traders and the problems relating to the demand for amendment to the tariff bill by those who wanted the Bill to contain even stricter racially-based conditions<sup>187</sup> to be placed on these favourably-treated British goods, the British Preference was postponed.

## 7 THE NEW PROTECTION, 1905-1908—AN ATTEMPT TO LINK PROTECTION WITH 'FAIR AND REASONABLE WAGES' FOR WORKERS

The old protection contented itself with making good wages possible. The new protection seeks to make them actual.<sup>188</sup>

Between 1905 and 1908<sup>189</sup> 'The New Protection' permeated Commonwealth legislation.<sup>190</sup> Acts of Parliament,<sup>191</sup> such as the *Customs Tariff Act 1906* (Cth) and the *Excise Tariff Act 1906* (Cth)<sup>192</sup> encouraged and protected certain industries 'contingent upon fair and reasonable wages being paid.'<sup>193</sup> Deakin, an ardent protectionist, actively promoted<sup>194</sup> 'New Protection' by linking tariff protection to workingmen's wages<sup>195</sup> via providing assistance to the manufacturer to 'that degree of exemption from unfair outside competition which will enable him to pay fair and reasonable wages without impairing the maintenance and extension of his industry, or its capacity to supply the local market.'<sup>196</sup> The concept of 'New Protection' thus envisaged was that protection would walk 'hand-in-hand' with employers in protected industries. To avail themselves

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For boots and shoes the proposed duty for British goods was to remain at the current duty of 25% and for other foreign goods the proposed duty was to increase to 35%.

<sup>184</sup> Britain was sometimes also referred to as 'the old country'.

<sup>185</sup> Mills, above n 4, 212.

<sup>186</sup> Mills, above n 4, 212.

<sup>187</sup> Mills, above n 4, 214. Mills suggests that that most of these sought that the British ships bringing in the imported goods should be 'manned exclusively by British seaman', 'manned by 80 per cent white seamen', 'manned exclusively by white seamen' or the goods 'must be manufactured by white labour'.

<sup>188</sup> Deakin's government's policy declaration contained in Memorandum on 'New Protection', *Commonwealth Parliamentary Papers*, 1906, Vol 11, 1887.

<sup>189</sup> This period was the term of the second Deakin Ministry.

<sup>190</sup> Plowman, above n 76, 48. Plowman suggests that New Protection dominated much of the legislative work of the newly formed Commonwealth Parliament till 1912. He says that '[i]n essence it was major plank of that Parliament's social engineering platform. In common with other newly formed countries, the Commonwealth of Australia sought to determine the type of society it wished to be and to implement policies towards that end. The society envisioned was that of an affluent, white society.'

<sup>191</sup> These acts related to bounties, customs excise and manufacture.

<sup>192</sup> However, this legislation was challenged as being unconstitutional. The High Court declared the *Excise Tariff Act 1906* (Cth) to be invalid. See *Ex parte H.V. McKay (1907) 2 CAR 1* (Harvester Case) (Higgins J was President in this decision) and *R v Barger (1908) 6 CLR 41*.

<sup>193</sup> Reitsma, above n 3, 18.

<sup>194</sup> Plowman, above n 76, 48. Plowman says that this doctrine was articulated by Deakin in the Victorian Parliament as early as 1895. He also suggests that Syme used his newspaper (The Age) to popularise the term and notion of New Protection.

<sup>195</sup> Reitsma, above n 3, 16.

<sup>196</sup> Commonwealth, 'Explanatory Memorandum' in regard to New Protection, *Commonwealth Parliamentary Papers 1907-1908*, Vol. II, 1887-1889.

of the enormous benefits of protection policies, these employers had to provide superior conditions of employment, including higher wages to their employees.<sup>197</sup>

What were ‘fair and reasonable wages’ was to be decided by a Board of Trade<sup>198</sup> and once done, the Board would then be in position to determine, with some degree of precision, the question whether the measure of protection given to a particular industry was sufficient to pay those wages.<sup>199</sup> The government declared its intention to also protect the consumer against the charging of unduly high prices.<sup>200</sup> At the same time that this new centralised form of tariff and wage board were being proposed, Justice Higgins,<sup>201</sup> also began considering in the Arbitration Court, what was ‘fair and reasonable remuneration’<sup>202</sup> for ‘the normal needs of the average employee, as a human being living in a civilised community.’<sup>203</sup> In developing his principle of a basic ‘living wage’, which was to be based on frugal and reasonable comfort, he took into account the average worker’s needs<sup>204</sup> for basic commodities such as food, shelter and clothing.<sup>205</sup>

Reitsma suggests that this ‘New Protection’ was an attractive wage policy because it ‘caused the complete conversion of Labor to trade protection.’<sup>206</sup> The Labor Party’s newly found belief in the popular policy of protection, coincided with the basis of its co-operation with the Deakinites in passing the 1907-1908 tariffs<sup>207</sup> which projected increases in duty far in excess of the 1902 tariff. The increases were the result of recommendations of a Parliamentary Tariff Commission which took nearly two years to complete its reports.<sup>208</sup> This new tariff, known as the Lyne Tariff,<sup>209</sup> proposed that over 440 articles attract duties which very nearly double those fixed in 1902.<sup>210</sup> For instance, the rate on wool and silk ‘apparel and attire’ was set at 45% compared to 25% in the 1902 tariff.<sup>211</sup> The new Tariff schedules also contained much higher duties on woollen-piece goods.<sup>212</sup> The 1907 Tariff was to be ‘the first really protectionist tariff’<sup>213</sup>

<sup>197</sup> Anderson and Garnaut, above n 45, 46.

<sup>198</sup> The Board does not seem to have been established.

<sup>199</sup> Reitsma, above n 3, 17.

<sup>200</sup> Reitsma, above n 3, 17.

<sup>201</sup> Reitsma, above n 3, 18. It seems that it was as a direct result of the ‘New Protection’ policy.

<sup>202</sup> *Ex parte H.V. McKay* (1907) 2 CAR 1. It has been suggested that this activity was a direct result of the ‘New Protection’ policy.

<sup>203</sup> *Ex parte H.V. McKay*, above n 202.

<sup>204</sup> Plowman, above n 76, 52. Plowman says that Higgins’ own criterion was ‘what was necessary to satisfy’ ‘the normal needs of the average employee regarded as a human being living in a civilised community.’ His established a rate of seven shillings per working day or forty-two shillings per week for unskilled male workers.

<sup>205</sup> Reitsma, above n 3, 18. See also *Ex parte H.V. McKay* (1907) 2 CAR 1.

<sup>206</sup> Reitsma, above n 3, 17-18. This conversion helps to explain Labor’s strong stance on protection during the Tariff Board’s Apparel Hearings in 1925.

<sup>207</sup> This tariff called the Lyne-tariff included over 440 articles with rates nearly double those fixed in 1902.

<sup>208</sup> Mills, above n 4, 220. Mills says that the Commission was composed of equal numbers of Protectionists and Free Traders and in fact there were 2 reports as there irreconcilable differences of opinion between them on the mode of dealing with Tariff items. The Government treated the Protectionist section of the report at the report of the Commission, but in fixing duties the Government went beyond the rates recommended by the Commission in respect of many items.

<sup>209</sup> The Tariff was named after Sir John William Lyne, Minister for Trade and Customs. Duties were imposed on nearly 1000 items.

<sup>210</sup> Reitsma, above n 3, 18.

<sup>211</sup> Mills, above n 4, 220.

<sup>212</sup> At 35% compared to 15% under the 1902 tariff.

<sup>213</sup> Reitsma, above n 3, 18.

which sought to protect certain industries from ‘unfair outside competition.’<sup>214</sup> It was also the first Federal tariff which provided for preferential treatment for the United Kingdom.<sup>215</sup> However, its glory was short lived: the *Excise Tariff Act 1906* was challenged as being unconstitutional and the High Court declared it to be invalid.<sup>216</sup>

However, there was, a positive legacy for workers arising from this failed New Protection paradigm.<sup>217</sup> In the Arbitration Court, Justice Higgins<sup>218</sup> continued to develop and consolidate his rules relating to arbitration and wage determination. So whilst the new Protection failed to successfully link protection with the workingman’s wage, Higgins’ principles and methods for determining what was a ‘fair and reasonable remuneration’, with margins for skill,<sup>219</sup> became the bedrock for future legislation<sup>220</sup> and arbitration practices linking the minimum wage with the cost of living. This meant that protection, albeit without any statutory nexus, became a basis for Australian living standards.<sup>221</sup>

## 8 AUSTRALIA’S CONVERSION TO UNIFORM PROTECTIONISM-FINDING MORE SUMPTUARY THREADS

Consumers have always been a weak countervailing force against protection because of the free rider problem of collective action.<sup>222</sup>

By the end of the first decade after Federation Australian politicians began to take a more uniform approach to protectionism<sup>223</sup> and contemporary political discourse,<sup>224</sup> which was not only preoccupied about the potential effects of protection had also adopted a more pro-protectionist advocacy and fervour.<sup>225</sup> At the same time protectionist rhetoric had also begun to take on a more noticeable semiotic engagement with the language and concerns of sumptuary regulation.

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<sup>214</sup> Reitsma, above n 3, 16.

<sup>215</sup> Reitsma, above n 3, 16.

<sup>216</sup> *R v Barger* (1908) 6 CLR 41. The High Court comprising of Griffith CJ, Barton, O’Connor, Isaacs and Higgins JJ had the task of deciding whether the *Excise Tariff Act 1906* (Cth), which attempted to indirectly regulate the working conditions of workers, was a valid exercise of the legislative powers of the Commonwealth Parliament. The majority (Isaacs and Higgins dissenting) held that the Act was not in substance an exercise of the power of taxation conferred upon the Commonwealth Parliament by the Constitution; that the Act was invalid as being in contravention of S 55 (taxation laws only to deal with taxation) and even if the term ‘taxation’, uncontrolled by any context, were capable of including the indirect regulation of the internal affairs of a State by means of taxation, its meaning in the Constitution is limited by the implied prohibition against direct interference with matters reserved exclusively to the States.

<sup>217</sup> Reitsma, above n 3, 18.

<sup>218</sup> See *Ex parte H. V. McKay*, above n 202.

<sup>219</sup> This meant that an extra amount was added to the wage if the tradesman was skilled.

<sup>220</sup> MacIntyre, above n 158, 104. Within a few years three States had legislated for the judicial determination of a basic wage; Plowman, above n 76, 52. Plowman suggests that the complementary operations of tariff and wage tribunals resulted in the *de facto* operation of a New Protection wages policy.

<sup>221</sup> MacIntyre, above n 158, 104.

<sup>222</sup> Anderson and Garnaut, above n 45, 117.

<sup>223</sup> Reitsma, above n 3, 13-14.

<sup>224</sup> Hancock, above n 23, 89.

<sup>225</sup> Mills, above n 4, 201. Deakin did much to convince Labor that it should support protection when he argued that there could be a direct link between tariff protection and workingmen’s wages. This contention proved to be unsuccessful in the New Protection legislation, particularly the *Excise Act 1906(Cth)* which was ruled to be invalid.

The preoccupation with protectionism can be explained to some extent by the national response to the sudden large increases<sup>226</sup> in import penetration<sup>227</sup> following the end of the ‘Great Drought’<sup>228</sup> when consumers displayed a greater demand and capacity to pay for imported goods. There is the suggestion that such increases in imports are generally more likely to trigger a protectionist response than gradual increases.<sup>229</sup> This triggering of a protectionist response is also historically often more likely if the domestic industry has a well-established lobbying organisation;<sup>230</sup> this was the case in Australia where various protectionist groups propagated the tariff, not merely as moral or ethical issue but also as a question of ‘business expediency’.<sup>231</sup> By the end of the first decade after Federation the Free Trade Party had given up on its anti-protectionist commercial policy<sup>232</sup> ‘of cheap goods, cheap money and the handling and not making of goods.’<sup>233</sup> The Party went on to align itself with the Protection Party in an anti-Labor coalition<sup>234</sup> which then adopted a pro-protection stance.<sup>235</sup> Anderson and Garnaut suggest that this consensus towards protectionism ‘allowed protectionism to be strengthened or at least maintained for half a century.’<sup>236</sup> Members of the Labor Party continued to support protectionism well into the 1920s because they believed that protection of Australian industries was intimately tied to increased wages and improved working conditions for workers.<sup>237</sup>

There are four main reasons why, after Federation, Australia became uniformly Protectionist.<sup>238</sup> First, the strong legacy of protection in Victoria, and less populated states such as South Australia and Tasmania, had created numerous vested interests who sought to maintain the protection which they had enjoyed up until Federation.<sup>239</sup> These interest groups, comprising of pastoralists and industrialists<sup>240</sup> as well as various Chambers of Commerce<sup>241</sup> wanted to avoid the type of free trade policies which New South Wales espoused and to ensure this they vamped up their demand for a continuation of this protection.<sup>242</sup> The voices of those who argued that the Tariff was only an artifice to ‘protect and coddle the local producer’<sup>243</sup> by placing the burden ‘on the shoulders of the consumer,’<sup>244</sup> were drowned out by the fervent rhetoric of

<sup>226</sup> See Hancock, above n 23, 89.

<sup>227</sup> Anderson and Garnaut above n 45, 117.

<sup>228</sup> Shann, above n 94, 388. Whilst Shann says the drought occurred between 1894 and 1902 there are others who suggest that it did not break until 1905.

<sup>229</sup> Anderson and Garnaut above n 45, 117.

<sup>230</sup> Anderson and Garnaut, above n 45, 117. See also Reitsma, above n 3, 18.

<sup>231</sup> Commonwealth, *Parliamentary Debates*, House of Representative, 30 May 1901, 0015 (Mr McColl).

<sup>232</sup> Sawyer, above n 95, 50-52.

<sup>233</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 30 May 1901, 0015 (Mr McColl).

<sup>234</sup> Anderson and Garnaut, above n 45, 43.

<sup>235</sup> Anderson and Garnaut, above n 45, 43.

<sup>236</sup> Anderson and Garnaut, above n 45, 44.

<sup>237</sup> Anderson and Garnaut, above n 45, 44.

<sup>238</sup> Anderson and Garnaut, above n 45, 47.

<sup>239</sup> Anderson and Garnaut, above n 45, 45.

<sup>240</sup> Anderson and Garnaut, above n 45, 47.

<sup>241</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 11 October, 1901, 0016 (Mr Winter Cooke). There was a concern that the protective Tariff would bring into existence, or keep in existence, throughout Australia a number of vested interests as well as the ‘very evil which has grown up in Washington—a profession of lobbyists, men whose time is spent in interviewing Members of Parliament, and influencing them when a Tariff is proposed to be touched.’

<sup>242</sup> Anderson and Garnaut, above n 45, 45.

<sup>243</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 27 Jun 1906, 0057 (Mr Bruce Smith).

<sup>244</sup> Commonwealth, *Parliamentary Debates*, above n 240, 0057.

protectionists.<sup>245</sup> The latter sincerely promised that a protective policy would provide a system which could regulate social conditions and was absolutely necessary to build up industries and ‘benefit equally every class of the community.’<sup>246</sup> The widespread political and media<sup>247</sup> support for protection, the diminution in support for the Free Trade Party and the successful lobbying of various interest groups all ensured that protection became more than a policy: it became ‘a faith and dogma.’<sup>248</sup>

Secondly, the Braddon Clause<sup>249</sup> meant that three quarters of federal revenue, raised by the imposition of customs and excise duties, would have to be returned to the States. To this extent the imposition of high import duties made it easy to introduce incidental protective effects into the current tariff regime.<sup>250</sup> The third consideration,<sup>251</sup> which also helps explain why protection became a widespread dogma, is that the exercise of ‘nation-building’ required economic and political compromise between the States.<sup>252</sup> The compromise, which was eventually nipped out between the States lay between the high level of protection provided in Victoria and the free trade policies followed in New South Wales.<sup>253</sup> When New Protection legislation was passed in 1906, the Free Trade Party had lost most of its appeal and was defeated decisively in the elections that year.<sup>254</sup>

Anderson and Garnaut argue that it was the fourth consideration which was decisive in the victory for protectionism.<sup>255</sup> Those who led the protectionist movement in Victoria turned out to be very skilful in ‘wooing’ the support of the Labor Party with the promise of a share in the material benefits and ‘happiness’.<sup>256</sup> This alliance proved to be an ingenious tool to align Labor with protection.<sup>257</sup> Until 1906, when New Protection was given legislative force,<sup>258</sup> Labor Party members in New South Wales and other states such as Queensland and Western Australia<sup>259</sup> repeatedly claimed that protection was only favourable to manufacturers in increasing their profits and that the burden of protection fell disproportionately on workers whose expenditure was in the main concentrated on mass consumption goods.<sup>260</sup> Labor also believed the only way workers could have improved working conditions and higher wages, which were needed by these workers and their families to face a significantly higher cost of living, was for the Federal Government to implement budgetary measures to effect a means of financial

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<sup>245</sup> Hancock, above n 23, 89. Hancock argues that behind this national fervour ‘there is the pressure of particular interests. These interests have to some extent created the fervour and to some extent exploited it.’

<sup>246</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 0027 (Mr Mathews).

<sup>247</sup> C M H Clark, *A History of Australia, Vol V: The People Make Laws*, (Melbourne University Press, 1981) 281.

<sup>248</sup> Hancock, above n 23, 89.

<sup>249</sup> See above, note 130.

<sup>250</sup> Anderson and Garnaut, above n 45, 45-46.

<sup>251</sup> Anderson and Garnaut, above n 45, 46.

<sup>252</sup> Anderson and Garnaut, above n 45, 46.

<sup>253</sup> Anderson and Garnaut, above n 45, 46.

<sup>254</sup> Anderson and Garnaut, above n 45, 47.

<sup>255</sup> Anderson and Garnaut, above n 45, 47.

<sup>256</sup> C M H Clark, above n 247, 285.

<sup>257</sup> Anderson and Garnaut, above n 45, 46.

<sup>258</sup> Part of the ‘New Protection’ was subsequently ruled by the High court to be invalid. See *R v McKay* above n 202.

<sup>259</sup> Anderson and Gaunaut, above n 45, 45. Anderson and Garnaut suggest that Victoria, South Australia and Tasmania were pro-Protectionist and had created ‘many vested interests which wanted continued protection after federation.’

<sup>260</sup> Anderson and Garnaut, above n 45, 46.

redistribution.<sup>261</sup> The promise of higher wages and better working conditions for workers in protected industries dispelled the concerns of the Labor members, and the Labor Party then effectively resolved its own divided position to become more united behind protection.<sup>262</sup> These government promises not only highlighted the rise in the relative importance of manufacturing in Australia since the 1890s but also reflected a direct correlation with rise of the Labor Party and its aim for a high wage economy.

During this period of socio-economic development, when protectionists were ‘wooing’ the working classes, protectionist rhetoric also began to take on an even more noticeable semiotic engagement with the language of sumptuary regulation. Politicians such as Millen<sup>263</sup> and Lynch directly spoke of a natural relationship between the Australian protective tariff and sumptuary regulation. For instance, during a debate on the protective duties imposed on floorcoverings, Senator Lynch suggested that this form of duty was ‘a sort of sumptuary tax.’<sup>264</sup> There were also numerous articles<sup>265</sup> in the press, either highlighting the similarities between the rise of protection and sumptuary regulation<sup>266</sup> or facetiously alluding to sumptuary law as a potential means to control extravagance and appearance.<sup>267</sup> Even advertisements<sup>268</sup> used sumptuary discourse glibly, and sometimes even perversely, to promote imported luxurious women’s apparel.<sup>269</sup>

During this period of intense tariff debate we begin to see more tension about the dichotomous relationship between the rich and poor and their respective consumption practices.<sup>270</sup> The language of tariff and ‘luxury’ were frequently coupled in Parliamentary debates<sup>271</sup> and in the press.<sup>272</sup> Often, the polemic was whether high tariffs, even in a prosperous period,<sup>273</sup> should impinge on the rights of the poorer classes to be able to enjoy the same luxuries as the rich, especially if these luxuries were now regarded by the poor as their ‘new necessities’.<sup>274</sup> Senator Clemons, in arguing against protection, stated that he ‘should like to bring some of the luxuries of rich... within easy

<sup>261</sup> Anderson and Garnaut, above n 45, 46.

<sup>262</sup> Anderson and Garnaut, above n 45, 47.

<sup>263</sup> Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 8262 (Senator Millen).

<sup>264</sup> Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 0100 (Senator Lynch).

<sup>265</sup> *The Register*, 9 August 1904, 4; *Western Mail*, 27 April 1907, 40-41.

<sup>266</sup> Commonwealth, *Parliamentary Debates*, above n 174 & n 175.

<sup>267</sup> ‘J S Mill on Dress’, *Barrier Mail*, 4 February 1908, 1.

<sup>268</sup> *Sydney Morning Herald* 22 March 1907 (furs); *Sydney Morning Herald* 22 August 1907 (veils); *Sydney Morning Herald* 18 August 1907 (silks); *Sydney Morning Herald* 29 February 1908 (damask).

<sup>269</sup> This is the text of an advertisement in SMH 22 March 1907:

Furs probably rank next to jewels in the affections of the gentler sex, and the pages of history indicate that ‘it was ever thus.’ Anne of Brittany, when married to Charles V 111. of France appeared in a robe ornamented with 160 sable skins.

In those days sumptuary laws prevented the ‘masses’ from gratifying their taste for furs, to say nothing of the prohibitive cost. But to such perfection has the dyeing and preparation of furs been brought that for rich or poor, the few or the millions, there are cosy AND BECOMING; FURS AT MODÉRATE PRICES.

FARMER’S FAR-FAMED FÜRS.

<sup>270</sup> Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 0027 (Senator Clemons).

<sup>271</sup> Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 0027 (Senator Clemons).

<sup>272</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 0029 (Mr Reid).

<sup>273</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 0027 (Mr Mathews).

<sup>274</sup> Commonwealth, *Parliamentary Debates*, Senate, 20 February 1908, 0100 (Senator Millen); House of Representatives, 29 October 1907, 0092 (Mr Liddell).

grasp of the poorer classes of the community.<sup>275</sup> Further, it was claimed that under a policy of indirect taxation most of the revenue was provided by the poor;<sup>276</sup> for ‘it is the poor who have to pay the Customs duty.’<sup>277</sup> Others tried to placate these concerns by arguing that protection, although not ‘a panacea for all the ills of humanity,’<sup>278</sup> was absolutely necessary because it was linked to desirable labour conditions and had flow through benefits for the consumer.<sup>279</sup>

During this period there was also much moralising rhetoric<sup>280</sup> about the ‘evil’ of imported fashion apparel and women’s extravagance of dress,<sup>281</sup> fickleness in women’s fashion<sup>282</sup> and women’s desire and demand for ‘ever-changing fashion’ fabrics.<sup>283</sup> Some even argued that ‘the old [sumptuary] laws’ needed to be revived to address these issues.<sup>284</sup> The implementation of the ‘old laws’ was not necessary as the protective tariff was having the same effect as sumptuary regulation; but only for the poorer classes. Poorer women had to depend upon cheap imported apparel, including corsetry, because they could not pay for the locally-made item.<sup>285</sup> Yet, cheap apparel was denied to them<sup>286</sup> and they had few, if any, alternatives.<sup>287</sup> A working girl employed in a factory at a wage of 10s a week could not afford the luxury of a locally made pair of corsets, at prices which ranged from four guineas to thirteen guineas, with an additional charge of 6d for suspenders.<sup>288</sup> This was especially because of the strain of her work, which was so great that the corsets had no more than three months life. There was no relief for ‘the great masses of people’<sup>289</sup> who had a ‘natural craving for cheap articles.’<sup>290</sup> Tariff schedules specifically targeted many items of ‘lower end’ female apparel and accessories with high rates of duty, whilst ‘high end’ goods, such as velvets, silks, furs

<sup>275</sup> Commonwealth, *Parliamentary Debates*, Senate, 19 February 1908, 0027 (Senator Clemons).

<sup>276</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 9 July 1907, 0028 (Mr Thomas).

<sup>277</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 9 July 1907, 0028 (Mr Thomas).

<sup>278</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 0027 (Mr Mathews).

<sup>279</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 0027 (Mr Mathews).

<sup>280</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 0075 (Mr Wilks). Mr Wilks suggested that a ‘thumping big duty’ should be imposed on imported ostrich feathers. He says ‘[i]t is interesting to observe that whilst a duty of 40 per cent has been imposed upon apparel and attire-an item of great concern to the masses of the community-the honourable member for Fawkner considers that ostrich feathers used for the personal adornment of those who could afford to pay a high duty should come in free, because there is a feather-dressing industry in his constituency.’

<sup>281</sup> ‘In Fashions Realm: What to wear; Hints for Women’, *Western Mail*, 27 April 1907, 40-41.

<sup>282</sup> ‘The Coming of the Mammoth Hat’, *Albury Banner and Wodonga Express*, 16 August 1907.

<sup>283</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 12 November 1907, 0059 (Mr Edward).

<sup>284</sup> ‘In Fashions Realm: What to wear; Hints for Women’, *Western Mail* 27 April 1907, 40-41.

<sup>285</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 0050 (Mr Maloney).

<sup>286</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 24 March 1908, 0150 (Mr Thomas).

<sup>287</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 0029, (Mr Reid). Mr Reid suggested that with high tariffs on cheap articles of clothing, the poor could only choose between ‘shoddy and nothing at all.’

<sup>288</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 0050 (Mr Maloney).

<sup>289</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November 1907, 0029 (Mr Reid).

<sup>290</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 6 November, 1907, 0029 (Mr Reid).

and gloves, which were usually purchased by wealthier women, attracted lower duties.<sup>291</sup>

During this period of high protectionism, not only was there a widespread obsession with luxury and extravagance in women's dress, but other sumptuary signifiers also became evident. There was an increased hostility to the importation of alien products<sup>292</sup> and a preoccupation with the placing of a metaphorical 'ring fence around Australia',<sup>293</sup> that was to later become more pronounced, especially during the war years.

## 9 THE ESTABLISHMENT OF THE INTER-STATE COMMISSION-THE NEW SCIENTIFIC APPROACH TOWARDS PROTECTIONISM

There shall be an Inter-State Commission with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance of this constitution relating to trade and commerce and of all laws made thereunder.<sup>294</sup>

The Tariff was further amended in 1910, 1911 and 1914. Most of the 124 amendments in 1911 were to remove anomalies, assist in interpretation and remove difficulties of classification.<sup>295</sup> However, there would be no further general revision of the Tariff until 1920-21; although the schedules of rates, particularly in relation to preferences,<sup>296</sup> were varied regularly before then. The 1911 and 1914 tariff increases specifically targeted clothing.<sup>297</sup> The duty on felt hats (per dozen) in 1911, for instance, was increased to 16s (12s as British preferential rate) and in 1914, duties these hats were further increased to 20s per dozen (15s preferential rate).<sup>298</sup> The 1914 the tariff increases reflected the recommendations made by the Inter-State Commission which was established pursuant to s101 of the Constitution.<sup>299</sup>

It seems that the authors of federation feared that the exercise of its powers over trade and commerce would be so overwhelming and difficult that parliament would 'need an organ of adaptation to unforeseen changes, a board whose rulings might be more flexible than the decisions and precedents of the law-courts.'<sup>300</sup> By August 1913, the Inter-State Commission was appointed with functions which were similar to those later attached to the Tariff Board pursuant to the *Tariff Board Act* 1921. The only difference was that the Commission's recommendations were based on pre-war 'normal' circumstances, and these considerations became largely irrelevant in the greatly changed post-war situation.<sup>301</sup>

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<sup>291</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 28 August 1907, 0025 (Mr Hughes).

<sup>292</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 13 October 1907, 0027, (Mr Mathews).

<sup>293</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 27 June 1906, 0057 (Mr Bruce Smith).

<sup>294</sup> Section 101 *Commonwealth of Australian Constitution Act (The Constitution)*.

<sup>295</sup> F.G Tutor (Treasurer) *Parl Debates* lxxxii., 3 489

<sup>296</sup> Mills, above n 4, 225. During 1908-11 period there were, for instance, 237 tariff items which had preference of 5% whilst in 1914 there were 303 such items.

<sup>297</sup> Reitsma, above n 3, 19.

<sup>298</sup> Mills, above n 4, 226.

<sup>299</sup> Shann, above n 94, 409.

<sup>300</sup> Shann, above n 94, 409.

<sup>301</sup> Reitsma, above n 3, 19.



The Cook government set up this Commission and authorised it to formally investigate claims for increased tariff protection.<sup>302</sup> Not only did the Commission have the power to investigate any industries in urgent need of tariff assistance but it also had the power, which it did not ever exercise, to scrutinize the ‘lessening, where consistent with the general policy of the Tariff Acts, of the cost of the ordinary necessities of life, without injury to the workers engaged in any useful industry.’<sup>303</sup> Shann suggests<sup>304</sup> that the instigation of this Commission resulted from the natural anxiety of a government, having committed itself to protection, that industry would then take advantage of the consumer and that the lack of competition would result in inefficiencies.<sup>305</sup>

The Commission’s ‘scientific’ investigations proved that this anxiety was not without foundation.<sup>306</sup> The Commission found that the 1908-1911 Tariff prompted, amongst manufacturers, a widespread neglect of accurate costing, and a lack of attention to what their rivals in other countries were doing.<sup>307</sup> The Commission suggested that there was a waste of power, a waste of by-products, and a lack of applied science which could enhance the cost of manufacturing.<sup>308</sup> It considered that the failure to use efficient modern standards in manufacturing meant that higher duties were sought by inefficient industries and these duties were then being passed onto the consumer.<sup>309</sup> The Commission recommended that the greatest assistance be given to those industries which used the greatest amount of skilled labour.<sup>310</sup>

In formulating their recommendations to government, the Commissioners took a practical and reasoned approach about the need for increased protection.<sup>311</sup> Not only did they venture to remind Parliament that every burden of trade is paid for by someone, but they also predicted that it may be an economic advantage to withdraw Tariff encouragement from certain subordinate<sup>312</sup> industries because such encouragement might become more of a hindrance than an aid to the whole scheme of industrial development.<sup>313</sup> Despite that fact that the Commission’s term was short-lived<sup>314</sup> it appears that the Commissioners worked extremely hard<sup>315</sup> and took their role seriously<sup>316</sup> in determining the efficacy of increased protection for local industries. At

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<sup>302</sup> Sawyer, above n 95, 128. Three Commissioners were appointed: Mr A.B. Piddington, K.C (legal member), Mr G Swinburne and Mr N Lockyer.

<sup>303</sup> Reitsma, above n 3, 19.

<sup>304</sup> Shann, above n 94, 409.

<sup>305</sup> Reitsma, above n 3, 27. Reitsma argues that this Commission exerted little influence on tariff making.

<sup>306</sup> Shann, above n 94, 413.

<sup>307</sup> Shann, above n 94, 413.

<sup>308</sup> Shann, above n 94, 413.

<sup>309</sup> Shann, above n 94, 43.

<sup>310</sup> Reitsma, above n 3, 20.

<sup>311</sup> Shann, above n 94, 414.

<sup>312</sup> Shann, above n 94, 415. Shann suggests that manufacturing industries were subordinate, ‘in the sense that their prices must consort with such costs in the primary industries as enable the latter to make headway against their rivals.’

<sup>313</sup> Shann, above n 94, 414.

<sup>314</sup> It only continued into existence until 1920 when the Commissioners’ terms expired, the Commission lapsed and no other Commissioners were appointed. There was much legal and political controversy about the Commissioners’ terms of appointment and their role.

<sup>315</sup> We see the same dedication and hard work exercised by the members of the Tariff Board after its establishment in 1921.

<sup>316</sup> Reitsma, above n 3, 19. In 1916, a total of 663 applications were dealt with, resulting in 73 tariff reports and 70 appendices. Evidence was taken both in public and in private.

the same time they appeared to be fully cognisant of the possible repercussions of this new, more formalised method of ‘scientific protection.’<sup>317</sup>

## 10 CONCLUSION

This article argued that echoes of sumptuary regulation were evident in Australian taxes from the earliest colonial taxes through to the restrictive and onerous protective tariffs of the first two decades after Federation. The article began by showing that the early Australian colonial taxing regime had much in common with the sumptuary paradigm. Not only were they both consumption-based but they were, to a large extent, also both dependent on regulating the ingress and egress of foreign luxuries. Both legislative regimes were also based on a plethora of *ad hoc* and often inconsistent legislation.

The article also provides an overview of the move towards a more formalised colonial taxation policy, which was then followed by a shift of taxing powers from the colonies to the Federal Government. In the course of the transition to this centrally-directed taxing regime, there was an increased growth in the ‘strong symbiotic relationship’ between taxation and protectionism. This article also shows how Australia’s tariff policies after Federation became more uniformly protectionist. Not only did numerous vested interests seek to maintain the strong legacy of protection, existing in Victoria and other less populated states, but those who led the protectionist movement in Victoria proved skilful in ‘wooing’ the support of the Labor Party for their protectionist policies, by the promise of increased wages and better working conditions for workers. In addition, massive surges in imported cheap apparel triggered an increased protectionist response from the Australian government.

Whilst the government’s rationale for this response was the need to protect local manufacturers and the nation’s economy, this article illustrates how this protectionist response also placed an unfair burden on poorer consumers. Correspondingly throughout this period, protectionist and taxation discourse also began to take on an increased semiotic engagement with the language and objectives of sumptuary regulation. As a result, sumptuary threads began to be woven even more tightly into the fabric of taxation and protectionism.

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<sup>317</sup> Reitsma, above n 3, 20.