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

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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.[1]

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-

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 JRYHUQPHQW¶V DWWHPSW WR DWWUDFW ODERXU VXSS SURWHFWLRQ ZLWK WKH SURYLVLRQ RI µIDLU DQG UHD to proffer some explanations why, by the end of the first decade after Federation,

public expenses for the Colony of New South Wales consisted chiefly of expenditure connected with the support and management of British convicts[25] and were borne almost entirely by the µImperial Government. ¶[26]

7KLV IRUP RI ILQDQFLDO DVVLVWDQFH KHOSHG WR VKD maintain colonies in which it could relocate surplus convicts[27] RU µKXPDQLt U L I I U D I I 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.[28] Britain not only µwned ¶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. [29] Early convicts were in most part identifiable by a uniform which was made distinctive by a coloured stripe.[30]

This form of paternalism,[31] where the Imperial Government was the universal provider,

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.[37] Harris suggests that the Colonies ¡did not have a great need for revenue during the first half of the 19th Century ¶[38] 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

and luxuries.[50] 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[51] and much of the FRORQ\¶V SURVSHULW\ ZDV JHQHUDWHG -produced tradeable goods.[52] There was also an enormous spike in the demand for imported clothing during the gold-rush period when a rising population of prosperous consumers [53] 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.[54] 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.[55]

&RORQLDO WDULII SROLFLHV FRQWULEXWHG WR government was granted to five of the six Australian colonies between 1855 and 1859.[56] 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 Act011(ood)g448uu49ET0.0154Ca.(shor)-5(t)o80442(oni)BT1d7g448uu49ET46*

continuous and passionate advocacy

Just as sumptuary regulation from its earliest inception in the fourteenth century had existed in a µclose symbiotic relationship with protectionism ¶[89] LQ 7ZRSHQ\¶V UHPDLQHG we see the same development of a close symbiotic relationship in Australia between taxation tariffs and protectionism. And just as the GLVFRXUVH RI µlatex[90] VXPSWXDU 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.[91] The first ostensible protectionist tariff introduced[92] in the colonies was presented to the Victorian Assembly in 1865 with the objective[93] of protecting new

Federation debates[112] 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. [113]Finally, on 8 October 1901 the first Federal tariff was introduced[114] by the first Federal Parliament[115]

protection. ¶[50]

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

On the other hand, there were some µprotectionist ¶members of Parliament who took a vastly different view as to the economic effect of these old laws.[170] 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 RI (QJODQG¶V VXFFHVV LQ ZR commerce under Queen Elizabeth I.[171] 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 µthe great workshop of the world. ¶[172] Protectionists, such as McColl MP, argued that just as England was µbuilt up under protection ¶ $XVWUDOLD¶V PDQXIDFWXULQJ prosper in the same way under µmoderate, reasonable, and discriminating protection. ¶[173] Yet, they continued to object to any high protective duties which were µunreasonable and unwise

Mother Country ¶[184] favourable or preferential treatment, as against similar products from other parts of the world.[185] The proposal was to leave the tariff untouched for these British goods and to increase, by ten per cent,

of the enormous benefits of protection policies, these employers had to provide superior

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

However, there was, a positive legacy for workers arising from this failed New Protection paradigm.[217] In the Arbitration Court, Justice Higgins [218] continued to develop and consolidate his rules relating to arbitration and wage determination. So ZKLOVW WKH QHZ 3URWHFWLRQ IDLOHG WR VXFFHVVIX wage, +LJJLQV¶ SULQFLSOHV DQG PHWKRGV IRU GHWHUPI UHPXQHUDWLRQ¶ ZHUH[219] became the bedrock for future legislation[220] 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.[221]

8 AUSTRALIA ¶S CONVERSION TO UNIFORM PROTECTIONISM -FINDING MORE SUMPTUA RY THREADS

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

By the end of the first decade after Federation Australian politicians began to take a more uniform approach to protectionism[223] and contemporary political discourse,[224] which was not only preoccupied about the potential effects of protection had also adopted a more pro-protectionist advocacy and fervour.[225] 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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[214] Reitsma, above n 3, 16.
[215] Reitsma, above n 3, 16.
[216] *R v Barger* &/5 7KH +LJK &RXUW FRPSULVLQJ RI *ULIILWK &- 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 WD[DWLRQ DQG HYHQ LI WKH WHUP µWD[DWLRQ¶ XQFRQWUROOHG 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.
[217] Reitsma, above n 3, 18.
[218] See *Ex parte H. V. McKay*, above n 202.
[219] This meant that an extra amount was added to the wage if the tradesman was skilled.
[220] 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.
[221] MacIntyre, above n 158, 104.
[222] Anderson and Garnaut, above n 45, 117.
[223] Reitsma, above n 3, 13-14.
[224] Hancock, above n 23, 89.
[225] Mills, above n 4, 201. Deakin did much to convince Labor that it should support protection when he DUJXHG WKDW WKHUH FRXOG EH D GLUHFW OLQN EHWZHHQ WDULII proved to unsuccessful in the New Protection legislation, particularly the *Excise Act 1906(Cth)* which was ruled to be invalid.

redistribution.[261] 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.[262]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.

grasp of the poorer classes of the community. ¶

The Cook government set up this Commission and authorised it to formally investigate claims for increased tariff protection.[302] 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 ¡essening, 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. ¶[303] Shann suggests [304] 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.[305]

7 K H & R P P L Vscientific Qnvestigations proved that this anxiety was not without foundation.[306] 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.[307] 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.[308] 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. [309] The Commission recommended that the greatest assistance be given to those industries which used the greatest amount of skilled labour.[310]

In formulating their recommendations to government, the Commissioners took a practical and reasoned approach about the need for increased protection.[311] 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[312] industries because such encouragement might become more of a hindrance than an aid to the whole scheme of industrial development.[313] ' H V S L W H W K D W I D F W W K D W W K H & R P P L V V L R Lived.[314]

the same time they appeared to be fully cognisant of the possible repercussions of this new, more formalised method of ‘scientific protection.’[117]

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.