

Symbols of fractured nationalism: custom houses in colonial Australia

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Abstract

Customs duties were the first sustainable source of revenue for New South Wales, the colonies that hived off from it, and the other colonial settlements in Australia. From Sydney's original three-roomed customs house, with its wooden walls and bark roof, to the magnificent neo-renaissance palazzo of Melbourne, the neoclassical splendour of the Brisbane Customs House, to a Queen Anne confection in Albany, custom houses became symbols of the Australian colonies' growing economic power. Yet, unlike Anglophone Canada and New Zealand, which also engaged in practices of marginalising First Nations peoples and asserting exclusionary Britannic identities, the Australian colonies were parochial. They competed with one another for revenue and protected their own infant industries. Tariffs played an important role in establishing and maintaining this fractured nationalism; they were also instrumental in healing it. Federation was only made possible by the horse-trading over customs duties that is enshrined in the Australian Constitution.

Professor John Taylor's tax history practice included extracting uniquely Australian stories from the grand narrative of international taxation. This article seeks to pay tribute to that approach and investigates custom houses at the time of fractured nationalism as a story which, on the one hand is part of the greater British-heritage narrative of indirect taxation and related architecture, but, on the other hand, is specifically Australian.

Keywords: customs duties, custom houses, tax competition, architecture, Federation

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1. INTRODUCTION

Customs duties are levies ‘imposed by law on imported or, less commonly, exported goods’.¹ They are typically listed in a tariff.² According to Adam Smith, ‘The duties of customs are much more ancient than excise.’³ They seem to have been called customs, as denoting customary payments which had been in use since time immemorial’.⁴ In the Anglophone world, customs duties can be traced to the Roman introduction of ‘a portorium or transit tax into ancient Britain, where it developed into a system of customary dues’.⁵ English kings enjoyed an absolute prerogative to raise customs duties,⁶ which were first levied on leather and wool – both imports and exports, the latter to compensate the king for any duty lost through reduced imports. Later, wine became assessable by the ton (tun) – hence ‘tonnage’ and all other goods by the pound – hence ‘poundage’.⁷ According to Gautham Rao, ‘In the “fiscal-military states” of early modern Europe, sovereigns used customs duties to secure credit, service debt, finance governance, and bankroll military expeditions’.⁸ By the time Smith wrote *The Wealth*

¹ See *The Macquarie Dictionary* (online at 2 September 2024) ‘customs duty’ (def 1).

² The word ‘tariff’ appears to be derived from the Arabic word for knowledge. See Walter W Skeat, *An Etymological Dictionary of the English Language* (Clarendon Press, 2nd ed, 1893) 625. The otherwise reliable David Day asserts that ‘[t]he term originated from the ransoms demanded by the pirates of Tariffa’. See David Day, *Smugglers and Sailors: The Customs History of Australia 1788-1901* (Australian Government Publishing Service Press, 1992) xxxiv. This seemingly baseless claim has traction in Australia. See, eg, Museums Victoria, ‘Customs House’, *Immigration Museum* (Web Page) <<https://museumsvictoria.com.au/immigrationmuseum/resources/customs-house/>>. Perhaps the name of the island of Tarifa has the same root as knowledge.

³ *Macquarie Dictionary*, above n 1, defines ‘excise’ as a ‘tax or duty on certain commodities, as spirits, tobacco, etc, levied on their manufacture, sale, or consumption within a country’; ‘a tax levied for a licence to carry on certain types of employment, pursue certain sports, etc’. Excise duties compensate the state for reduced customs revenue caused by local production of imported goods.

⁴ See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Strahan, 1776) Bk V, Ch II, 493. Under the common law, ‘time immemorial’ identifies a legal norm that existed before 1189. See Jonathan Law (ed), *A Dictionary of Law* (Oxford University Press, 9th ed online, 2018). It is unclear whether Smith intended such precision.

⁵ See David McGill, *The Guardians at the Gate: The History of the New Zealand Customs Department* (Silver Owl Press, 1991) 7. On the Roman *portoria*, see Sven Günther, ‘Taxation in the Greco-Roman World: The Roman Principate’ in *Oxford Handbook Topics in Classical Studies* (Oxford University Press, 2014) <<https://doi.org/10.1093/oxfordhb/9780199935390.013.38>>.

⁶ Although Parliament ostensibly usurped this prerogative from Edward III in 1372, in *Bate’s Case* (1606) 2 St Tr col 371, which was decided at the time of assertion of Stuart absolutism, it was held that the suspension of the king’s prerogative only applied to Edward III himself. See John Snape, ‘The “Sinews of the State”: Historical Justifications for Taxes and Tax Law’ in Monica Bhandari (ed), *Philosophical Foundations of Tax Law* (Oxford University Press, 2017) 9, 16. It is not obvious why an absolute kingly privilege could be removed from a particular monarch and that monarch only.

⁷ See Smith, above n 4, 494. ‘Ton’ refers to a large barrel, not a unit of mass. ‘Tonnage’ may, therefore, also be referred to as ‘tunnage’. See ‘Custom House Quay and the Old Custom House’ in GH Gater and Walter H Godfrey (eds), *Survey of London: Volume 15, All Hallows, Barking-By-The-Tower, Pt II* (London, 1934) 31, available at: Institute of Historical Research and University of London, *British History Online* (Web Page) <<http://www.british-history.ac.uk/survey-london/vol15/pt2/pp31-43>>. For a detailed account of early English customs administration, see Michael J Braddick, *The Nerves of State: Taxation and the Financing of the English State, 1558-1714* (Manchester University Press, 1996) 56-59.

⁸ See Gautham Rao, *National Duties: Custom Houses and the Making of the American State* (University of Chicago Press, 2016) 4 (footnote omitted). A fiscal-military state is able to raise sufficient taxes to engage in prolonged warfare. See John Brewer, *The Sinews of Power: War, Money and the English State, 1688-1783* (Knopf, 1989) xvii.

of *Nations* in 1776, the focus of customs duties overwhelmingly lay with taxing manufactured or processed imports.⁹

In its precarious early years, New South Wales, the original UK settlement in Australia, had no plausible fiscal alternative other than to raise customs duties.¹⁰ ‘The Customs Service was the only revenue collector in an outpost of Empire struggling for economic survival.’¹¹ Discussing the similar reliance on the tariff of the fledgling United States, Rao observes: ‘Just as *oikos* – ancient Greek for “house” – was the root of the concept of the economy, so the custom house was a pillar of political economy, the early modern science devoted to increasing government wealth and power’.¹²

Originally, New South Wales alone constituted colonial Australia but, through a process of scissiparity, became just one colony of a (non)federation. (Western Australia was settled separately.) The colonies, which would become the constituent states of the Commonwealth, employed customs duties to compete with one another both for revenue and to protect their own infant industries.¹³ Indeed, on the Murray River, ‘[t]he ingredients existed for a fratricidal struggle between the colonies’,¹⁴ with the constabularies of New South Wales and Victoria coming close to open conflict over highly contested rights to levy duties on goods transported along the inland waterway.¹⁵

Within a federal state it seems prudent to prohibit internal customs duties, as the United States *Constitution* does,¹⁶ but pre-federation – and, of course, federation may not eventuate¹⁷ – contiguous colonies or states needed to decide whether to cooperate or compete over tariffs. The *Constitutional Act of 1791*, for example, created a customs union between Upper Canada and Lower Canada, although revenue sharing proved problematic.¹⁸ The *Zollverein* (customs union) formed in 1834 between German principalities not only demonstrated the possibility of a free trade area between affiliated territories, it is also generally thought to have constituted a major step towards unification.¹⁹ Such an arrangement among the Australian colonies might have brought Federation, which finally took place in 1901, forward by decades. As Davina Jackson

⁹ See Smith, above n 4, 495-496.

¹⁰ On the political background to the first New South Wales customs duties, see Stephen Mills, *Taxation in Australia* (Macmillan, 1925) 23-25.

¹¹ See Orwell and Peter Phillips Architects, *Conservation Management Plan: Sydney Customs House, Circular Quay* (2003) 16 <<http://heritagensw.intersearch.com.au/heritagenswjspu/handle/1/10112>>.

¹² See Rao, above n 8, 4.

¹³ See generally Peter Lloyd, ‘The First 100 Years of Tariffs in Australia: The Colonies’ (2017) 57(3) *Australian Economic History Review* 316 (‘The First 100 Years of Tariffs’).

¹⁴ See Day, above n 2, 426.

¹⁵ See *ibid.* See also GD Patterson, ‘The Murray River Border Customs Dispute, 1853-1880’ (1962) 2(2) *Business Archives and History* 122.

¹⁶ See *United States Constitution*, Article I, Section 10, Clause 2. Cf the Indian octroi which operated at a city level and was only abolished in 2010 with the introduction of goods and services tax. See Anita Rath, ‘Octroi – A Tax in a Time Warp: What Does Its Removal Imply for Greater Mumbai?’ (2009) 44(25) *Economic and Political Weekly* 86.

¹⁷ See, eg, the stalled federal project in the European Union.

¹⁸ See Gordon Blake, ‘The Customs Administration in Canadian Historical Development’ (1956) 22(4) *Canadian Journal of Economics and Political Science* 497, 503-504.

¹⁹ See, eg, WO Henderson, ‘The Zollverein’ (1934) 19(73) *History* 1. The abolition of internal tolls and customs duties in the Helvetic Republic also contributed to the eventual unification of Switzerland. See Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (Verso, rev ed, 2006) 136. Cf the difficulties faced in uniting Italy. See for example, Mark Dincecco, Giovanni Federico and Andrea Vindigni, ‘Warfare, Taxation, and Political Change: Evidence from the Italian Risorgimento’ (2011) 71(4) *Journal of Economic History* 887.

notes, the idea of Federation emerged with the formation of the Australian League in 1850,²⁰ but customs duties stood in the way of its realisation for half a century.

Customs duties, as a source of revenue for the modern state, have diminished considerably. In the first fiscal year of Federation, the tariff contributed 86.2 per cent of tax revenue,²¹ whereas, in 2020, ‘customs and other import duties’ raised just 4.4 per cent of Australian government tax revenue.²² Nevertheless, numerous custom houses still stand. These buildings did not simply act as colonial counting houses, they were also locations of control over immigration, hygiene, and morality. Today, they constitute some of the country’s most distinguished heritage buildings. Many have been repurposed as cultural centres. Despite this redemptive reuse, for tax and other scholars it is instructive to consider the symbolism of these buildings in their particular contexts.

In the centuries before World War I (1914-18) and its aftermath, when customs duties were by far the most important source of government revenue, custom houses were the principal edificial symbols of tax administration. Sir Christopher Wren’s neoclassical design for London’s Custom House (1671) was seminal.²³ The architecture of colonial-era customs houses in Australia, as well as perpetuating the tropes of neoclassical architecture,²⁴ is distinctly symbolic. The ideas these buildings conveyed include Crown assertion of authority over territories previously occupied and tended by First Nations, and aspirations for the formation of new Britannic group identities in the South.

Professor John Taylor’s tax history practice included extracting uniquely Australian stories from the grand narrative of international taxation.²⁵ This article seeks to pay tribute to that approach and investigates the symbolism of custom houses at the time of fractured nationalism as a story which, on the one hand, is part of the greater British-

²⁰ Davina Jackson, *Australian Architecture: A History* (Allen and Unwin, 2022) 151.

²¹ See Australian Bureau of Statistics, ‘Taxation During the First 100 Years of Federation’ (Web Page) <<https://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article472001>>.

²² See World Bank, ‘Customs and Other Import Duties (% of Tax Revenue) – Australia’ <<https://data.worldbank.org/indicator/GC.TAX.IMPT.ZS?locations=AU>> (accessed 31 August 2024).

²³ In London, Churchman’s Custom House (started in 1382) was designed for officials of the Great Custom on Wool and Woolfells – hence the use of the singular. Even when officials of the Petty Customs were accommodated in the building, the singular was retained. ‘From that day all buildings have been known as Custom House, despite housing Customs officers’: see Graham Smith, *Something to Declare: 1000 Years of Customs and Excise* (Harrap, 1980) 6. While the term ‘customs house’ has invariably been used in Australia, following the older tradition, this article uses the phrase ‘custom house’ unless the formal name of a building is ‘Customs House’.

²⁴ ‘Neoclassical architecture is characterized by grandeur of scale, simplicity of geometric forms, Greek – especially Doric ... – or Roman detail, dramatic use of columns, and a preference for blank walls’: see Encyclopedia Britannica, ‘Neoclassical Architecture’ (online, last updated 8 August 2024) <<https://www.britannica.com/art/Neoclassical-architecture>>.

²⁵ See, eg, C John Taylor, ‘The Negotiation and Drafting of the UK Australia Double Taxation Treaty of 1946’ [2009] (2) *British Tax Review* 201; C John Taylor, ‘“I Suppose I Must Have More Discussion on This Dreary Subject”: The Negotiation and Drafting of the UK–Australia Double Taxation Treaty of 1946’ in John Tiley (ed), *Studies in the History of Tax Law, Vol 4* (Hart Publishing, 2010) 213; C John Taylor, ‘The Negotiation and Drafting of the 1967 United Kingdom–Australia Taxation Treaty’ in John Tiley (ed), *Studies in the History of Tax Law, Vol 5* (Hart Publishing, 2012) 427; C John Taylor, ‘“Send a Strong Man to England – Capacity to Put Up a Fight More Important Than Intimate Knowledge of Income Tax Acts and Practice”: Australia and the Development of the Dominion Income Tax Relief System of 1920’ (2014) 12(1) *eJournal of Tax Research* 32; C John Taylor, ‘The History of Australia’s Double Tax Conventions’ in Michael Lang and Ekkehart Reimer, *The History of Double Taxation Conventions in the Pre-BEPS Era* (IBFD Publications, 2020) 623.

heritage narrative of indirect taxation and related architecture, but, on the other hand, is specifically Australian.

This article first provides a brief survey of the architecture of Australian custom houses.

Second, the general symbolism of buildings and tax administration infrastructure is discussed.

Third, custom houses as symbols of Crown authority are considered. Two aspects of the assertion of sovereignty over Australia are principally relevant – the assumption of control over First Nations' land, and control of immigration and goods entering the territory.

Fourth, the role of customs duties in ensuring fractured nationalism is outlined. If the separate customs systems operated by the colonies were a significant contributor to inter-colony rivalry, then the states' capital city custom houses, in particular, symbolised that antagonism.

Conclusions are then drawn.

2. A SURVEY OF AUSTRALIAN CUSTOM HOUSES

The first custom house in New South Wales 'was a three-room, bark roofed wooden hut with a brick chimney'.²⁶ Similarly, early customs infrastructure in Victoria typically consisted of no more than a basic gauging shed, boat shed and a bond store as part of its premises.²⁷ Yet, by 1855, the Victorian government started construction of the Melbourne Customs House as a magnificent palazzo.²⁸ To indicate how the custom houses developed from absolute basics to some of the most remarkable public buildings in the colonies, this section of the article briefly surveys custom houses built between the time of first European settlement of Australia and the start of World War I (1788-1914).

Richard Apperly and co-authors divide the selected time range into different periods, during which particular architectural styles were prominent.²⁹ Not all the styles Apperly et al identify are manifest in Australian custom houses. As Jackson notes, the most popular Victorian architectural styles were 'neo-classical, neo-Gothic, Filigree, Queen Anne and Romanesque'.³⁰ Some styles were specific to churches and houses; others were too fanciful to convey the message of reliability and respectability expected of a

²⁶ See Jackson, above n 20, 30.

²⁷ See John M Petersen, 'Customs Houses and Officers in 19th Century Victoria' (1992) *Australian Customs History Journal* 11, 12.

²⁸ For an image of the building, which is now the Immigration Museum, see Heritage Council of Victoria, 'Former Customs House', *Victorian Heritage Database* (Web Page) <<https://vhd.heritagecouncil.vic.gov.au/places/4689>>.

²⁹ See Richard Apperly, Robert Irving and Peter Reynolds, *A Pictorial Guide to Identifying Australian Architecture: Styles and Terms from 1788 to the Present* (Angus and Robertson, 1989) 21. These periods and styles are: the Old Colonial Period, 1788-1840 (Georgian, Regency, Grecian and Gothick Picturesque); the Victorian Period, 1840-1890 (Georgian, Regency, Egyptian, Academic Classical, Free Classical, Filigree, Mannerist, Second Empire, Italianate, Romanesque, Academic Gothic, Free Gothic, Tudor, Rustic Gothic and Carpenter Gothic); and the Federation Period, 1890-1915 (Academic Classical, Free Classical, Filigree, Anglo-Dutch, Romanesque, Gothic, Carpenter Gothic, Warehouse, Queen Anne, Free Style, Arts and Crafts, and Bungalow).

³⁰ See Jackson, above n 20, 155-156.

customs service. For example, whereas the Federation Academic Classical style communicates a ‘conservative expression of community aggrandisement’ and whose ‘[l]argeness of scale [is] befitting [for] public buildings’,³¹ Federation Filigree became the preserve of pubs and hotels,³² and Gothic was most commonly applied to grand churches and university buildings.³³ Nevertheless, Apperly and co-authors’ taxonomy is useful in tracing developments in colonial and national growth.

Projecting state and mercantile power, customs buildings were principally the counting houses of colonial governments,³⁴ and represented ‘civilising’ aspirations expressed in their typical neoclassical design. Within the colonies, port settlements competed with each other to host custom houses by lobbying government. ‘Customs houses were not only considered to be a reflection of the status and importance of a port’s condition, but as catalysts for future growth and prosperity through trade.’³⁵ Australia’s need for customs infrastructure was compounded by the absence of an inter-colonial free trade zone.³⁶

Melbourne’s custom house was built in two phases (1855 and 1876). ‘The architecture was based on an Italian Renaissance palace. In the Palazzo style, the ground floor is a storage area, and the main activity occurs on the piano nobile (noble level) on the first floor.’³⁷ The ‘Customs House is an outstanding example of a mid-Victorian colonial public building, the northern façade and Long Room being of particular distinction. The building was a symbol of the successful transition from a lawless colony to a respectable mature society’.³⁸

Brian de Garis reports: ‘In the centenary year of 1888 Australia enthusiastically celebrated its first hundred years of European settlement; colonial leaders vied with each other in a scramble for superlatives to express their past achievements and unbounded confidence in the future’.³⁹ Many impressive customs buildings were built around the time of the centenary and Federation. The Customs House Brisbane, for example, was designed by Charles H McLay, in the Victorian Free Classical style, and built between 1886 and 1889. The building, which is an architectural gem that links the Brisbane River (Meannjin) to the city, is distinguished by its copper dome, pillars, and extant long

³¹ See Apperly et al, above n 29, 103.

³² See *ibid* 108-111.

³³ See Celeste van Gent, ‘Edmund Blacket, Medievalism and the Gothic in the Colony’ (BA (Hons) Thesis, University of Sydney, 2020).

³⁴ The customs service had multiple functions, not the least of which was countering smuggling. But this article is most interested in what occurred in the custom house. The primary activity was collecting duty from goods importers.

³⁵ See Petersen, above n 27, 13.

³⁶ See Sam Reinhardt and Lee Steel, ‘A Brief History of Australia’s Tax System’ (2006, Winter) *Economic Roundup* 1. Cf New Zealand, which, as a unitary state, with few navigable rivers only needed custom houses at maritime ports.

³⁷ See Museums Victoria, ‘Customs House’, *Immigration Museum* (Web Page), above n 2, <<https://museums.victoria.com.au/immigrationmuseum/resources/customs-house>>. Geelong also hosts an impressive three-storey Georgian custom house, built 1855-56. See Heritage Council of Victoria, ‘Geelong Customs House’, *Victorian Heritage Database* (Web Page) <<https://vhd.heritagecouncil.vic.gov.au/places/18398>>.

³⁸ See Petersen, above n 27, 14.

³⁹ See BK de Garis, ‘1890-1900’ in FK Crowley (ed), *A New History of Australia* (William Heinemann, 1974) 216, 216.

room.⁴⁰ It is an extravagant classical statement, reminiscent in certain regards of a US state capitol.

On the central Queensland coast, Maryborough (1899),⁴¹ Rockhampton (1901),⁴² and Bundaberg (1903)⁴³ each hosted handsome custom houses, with Rockhampton's building being a particularly ostentatious example of the Federation Academic Classical style. Maryborough's custom house (and grand accommodation for the chief customs collector) is distinctive. Unlike other Australian custom houses, which tended to be built in some or other version of neoclassicism, its design followed the Arts and Crafts style, which referenced Medievalism, and was fashionable at the time but generally reserved for schools and private residencies.⁴⁴ Elsewhere in Queensland, heritage-quality customs houses were also built in 1902 in Mackay and Townsville.⁴⁵

In Tasmania, Launceston's 1885 custom house, which is extravagant and classical in style,⁴⁶ replaced the 1838 customs house, whose neoclassicism had been expressed in a more modest fashion.⁴⁷ Hobart's 1903 customs house⁴⁸ possesses '[a] forceful, richly modelled classical façade in sandstone'.⁴⁹

In New South Wales, the Wollongong custom house (used 1885-1904), which was originally a courthouse, is a modest building but is nevertheless in a conspicuous

⁴⁰ A 'long room' is '[t]he public room, often of grand design, in which merchants or their agents passed entries for imported goods and in which the other public business of the department was conducted. The original long room was in the London Custom House, built by Christopher Wren in 1671': see Day, above n 2, xxxiv. Stebbings omits discussion of Long Rooms which, after Sir Christopher Wren's design, were the principal feature of major custom houses in the UK: see Chantal Stebbings, 'The Architecture of Tax Administration: Function or Form?' in Peter Harris and Dominic De Cogan (eds), *Studies in the History of Tax Law, Vol 8* (Hart Publishing, 2017) 85. Long Rooms were also the central feature of custom houses in the capital cities of Australia.

⁴¹ For an image, see Queensland Government, 'Customs House and Residence (Former)', *Queensland Heritage Register* (Web Page) <<https://apps.des.qld.gov.au/heritage-register/detail/?id=600709>>.

⁴² For an image, see Queensland Government, 'Customs House' (Web Page) <<https://www.queensland.com/us/en/things-to-do/attractions/p-5ad58c36c69bc77c4e363f53-customs-house>>.

⁴³ For an image, see Michael Gorey, 'Bundaberg Customs House Symbolises Early Prosperity', *Bundaberg Now* (28 September 2019) <<https://www.bundabergnow.com/2019/09/28/bundaberg-customs-house/>>.

⁴⁴ See, eg, Harriet Edquist, *Pioneers of Modernism: The Arts and Crafts Movement in Australia* (Miegunyah Press, 2008); Kristyna Olsen Mizelle and Jim Kane, 'Evolution of a Movement: The Arts and Crafts in Australia' (2001) 14(4) *Style* 1900 40.

⁴⁵ See Queensland Government, 'Mackay Customs House', *Queensland Heritage Register* (Web Page) <<https://apps.des.qld.gov.au/heritage-register/detail/?id=600669>>; Queensland Government, 'Townsville Customs House', *Queensland Heritage Register* (Web Page) <<https://apps.des.qld.gov.au/heritage-register/detail/?id=600937>>. Custom houses were built in 1938 at Cairns and Thursday Island, as public works projects.

⁴⁶ For an image, see 'A Sense of Place: Launceston Heritage Walk', *Our Tasmania* (Web Page) <<http://www.ourtasmania.com.au/launceston/launceston-heritage-walk.html>>.

⁴⁷ For an image, see PocketSights LLC, 'Old Custom House Launceston Architecture A' (Web Page) <<https://pocketsights.com/tours/place/Old-Custom-House-37991:4457>>.

⁴⁸ Custom House was built between 1899 and 1903 and was occupied by the Customs Department and several other Federal Government departments during much of the twentieth century. The Australian Customs Service moved to new premises in 1990, and Custom House became part of the Tasmanian Museum and Art Gallery (TMAG): see Callum J Jones, 'Tas That Was – Custom House', *Tasmanian Times.com* (27 October 2021) <<https://tasmaniantimes.com/2021/10/tas-that-was-custom-house/>>.

⁴⁹ See Apperly et al, above n 29, 100.

position above the port and neoclassical in design. The Newcastle (New South Wales) customs house (1889) was built in the Victorian Renaissance Revival style.⁵⁰

In Fremantle (Western Australia), the 1908 customs house follows Federation Free Style.⁵¹ Being built in the eclectic Queen Anne style, Albany's is, perhaps, the most idiosyncratic Australian customs building.⁵²

What do these heritage buildings symbolise? The following sections of the article discuss two main themes – Crown authority, and fractured nationalism – but custom houses also symbolised other concepts and practices. The 'sin' tax aspect of customs duties on 'stimulants' (alcohol, but not necessarily beer) and 'narcotics' (tobacco and, later, opium) is a perennial symbol of disapproval, if not social control. The 'high and often prohibitive' duties levied on opium, first in Victoria and later in New South Wales, were undisguised attempts at social control; their purpose lay in discouraging Chinese miners from travelling to the Victorian gold fields.⁵³ Generally, the customs service was and continues to be engaged in public health matters,⁵⁴ and 'became ... a watchdog over goods, people and ideas coming into the country'.⁵⁵

3. CUSTOM HOUSES AS SYMBOLS

Rudolf Arnheim observes: 'Buildings are visible to the human eye. This would not necessarily have to mean that their appearance is purposively shaped and colored to convey a visual message. ... Man, however, rarely makes an implement with total disregard for the image it presents to the eyes'.⁵⁶ Seeing comes before language.⁵⁷ In addition to performing certain functions, buildings also act as signs: for example, the decoration of buildings can send important messages.⁵⁸ Semiotics, as the study of signs, may be applied to buildings. According to Geoffrey Broadbent, in the theory of Ferdinand de Saussure (1857-1913), the *signifier* is the 'building forms by which the sign itself is made physically manifest', and the *signified* is 'the concepts, ideas or other thoughts which the signifier actually "stands for"'.⁵⁹ Charles Jencks observes that

⁵⁰ For an image, see University of Newcastle, 'Customs House, Newcastle, NSW, [1930s]', *Living Histories* (Web Page) <<https://livinghistories.newcastle.edu.au/nodes/view/76499>>.

⁵¹ For an image, see Garry Gillard, 'Customs Houses', *Freetopia* (Web Page, 28 August 2015) <<https://freetopia.org/buildings/customshouse.html>>.

⁵² For an image, see Heritage Council, Government of Western Australia, 'Image Details – South Elevation (Rear of Building)' (Web Page) <<https://inherit.dplh.wa.gov.au/Public/inventory/Image/01790c70-370a-478f-8e42-900c491456b8>>.

⁵³ See Peter Lloyd, 'The First 100 Years of Tariffs', above n 13, 323. Australia prohibited opium as an import in 1906.

⁵⁴ See Maria Mamma and Demetrios A Spandidos, 'Customs Officers in Relation to Viral Infections, Tuberculosis, Psittacosis and Environmental Health Risk' (2019) 17(2) *Experimental and Theoretical Medicine* 1149.

⁵⁵ See Orwell and Peter Phillips Architects, above n 11, 75. The authors note (at 121): 'Customs was also responsible for moral purity and administered Acts prohibiting the importation of books and later films which might contain material perceived by Customs Officers and later by the Censorship Board as seditious, inflammatory, or pornographic'.

⁵⁶ See Rudolf Arnheim, 'Symbols in Architecture' (1977) 36 *Salmagundi* 69, 69.

⁵⁷ See John Berger, *Ways of Seeing* (British Broadcasting Corporation and Penguin Books, 1972) 7.

⁵⁸ See Stebbings, above n 40, 99.

⁵⁹ See Geoffrey Broadbent, 'General Introduction' in Geoffrey Broadbent, Richard Bunt and Charles Jencks (eds), *Signs, Symbols, and Architecture* (John Wiley and Sons, 1980) 1, 2.

‘*signifieds* of architecture can be just about any idea or set of ideas’ but argues they must not be ‘too long or complex’ if they are to effectively convey messages.⁶⁰

In his disquisition on the language of classical architecture, John Summerson observes:

Words, expressions, grammatical constructions have all at some time had to be invented to meet particular needs of communication. Those immediate needs are long since forgotten, but the words and their patterns will form the language we use for a thousand purposes ...⁶¹

Summerson, therefore, alerts us to shifting meaning. The classical architecture of ancient Greece and Rome,⁶² particularly as reborn as neoclassicism in Europe and the US from the 17th century, is a durable architectural symbol but its *signifieds* are not constant. As Broadbent observes, ‘Greece was seen as the “cradle” of liberty, of democracy, of philosophy, of mathematics, of sculpture, of everything that was good in civilization, including architecture itself’.⁶³ But he further notes that the dictatorships of the 1930s used ‘Greek orders to express not freedom and democracy, but power – the naked power, that is, of the totalitarian state’.⁶⁴

Chantal Stebbings emphasises ‘a physical expression of democratic values’ manifest in neoclassical architecture,⁶⁵ yet neoclassicism emerged first in France at a time of absolute monarchy.⁶⁶ A more stable meaning arises from the ‘careful proportions, aesthetic principles, symmetry, balance, and attention to scale’ which ‘evoked perceptions of order, control and power’.⁶⁷

While it is plausible that the architecture of the administrative buildings for general taxes in 19th century UK ‘demonstrated an appreciation of the inevitable tensions surrounding the visual communication to the taxpaying public of the sovereign power of the state to tax and reconciling it with the principle of consent’,⁶⁸ it is submitted that, in colonial Australia, the messages of order, control, power and, later, state wealth were most important. Stebbings adduces four reasons for architectural restraint in UK tax administration, including concerns for significant buildings becoming the focus of civil unrest.⁶⁹ This consideration does not appear to have influenced the designers of custom houses in Australia.⁷⁰ The closest Australia has come to a tax revolt was the Eureka

⁶⁰ See Charles Jencks, ‘The Architectural Sign’ in Geoffrey Broadbent, Richard Bunt and Charles Jencks (eds), *Signs, Symbols, and Architecture* (John Wiley and Sons, 1980) 71, 74.

⁶¹ See John Summerson, *The Classical Language of Architecture* (Thames and Hudson, 1980) 14.

⁶² For an argument that the principal influence on American neoclassicism in government buildings was Rome, rather than Athens, see Christopher Saint-Carter, ‘The Politics and Piety of Neoclassical Architecture: How Early American Elites Practiced an Old Religion to Subvert the New One’ (2023) 11(1) *Themis*.

⁶³ See Geoffrey Broadbent, ‘Architects and their Symbols’ (1978) 6(1) *Built Environment* 10, 23.

⁶⁴ *Ibid.* For a discussion of the relationship between power and violence, see, eg, Torsten Menge, ‘Violence and the Materiality of Power’ (2022) 25(6) *Critical Review of International Social and Political Philosophy* 761.

⁶⁵ See Stebbings, above n 40, 96 discussing the mid-Victorian era.

⁶⁶ See generally Wend von Kalnein, *Architecture in France in the Eighteenth Century*, tr David Britt (Yale University Press, 1995); Max Beloff, *The Age of Absolutism, 1660-1815* (Hutchinson’s University Library, 1954).

⁶⁷ See Stebbings, above n 40, 96.

⁶⁸ See *ibid* 107.

⁶⁹ See *ibid* 104-106.

⁷⁰ Stebbings notes that, with the magnificent exception of Somerset House, many tax administration buildings in the UK, including regional custom houses, were unexceptional private residences rented from

Stockade which took place in Ballarat in 1854. A principal cause of the uprising by independent miners was the exorbitant fee charged for a mining licence. When the dust had settled, the licence fee was replaced by a gold export duty.⁷¹

Caution should, therefore, be exercised when considering the transplantation of UK taxes to its colonies. While excise duty in the UK was an important tax that applied to a wide range of goods, the first excise in Australia was practically restricted to locally distilled liquor.⁷² New South Wales, which then included the areas of Queensland and Victoria (Port Phillip), introduced an excise tax on locally produced spirits in 1819.⁷³ Victoria (1851) and Queensland (1859) as independent colonies continued the excise. South Australia followed New South Wales in 1842 but, indicating the relative lack of importance of excise relative to customs duties, Tasmania did not introduce an excise duty until 1880 and Western Australia only in 1898.⁷⁴ In accordance with the Commonwealth Constitution, the *Excise Act 1901* (Cth) introduced a federal excise duty to replace the colonial excises.⁷⁵

According to Sam Reinhardt and Lee Steel, ‘excise duties provided much less revenue than customs duties, partly because of the limited amount of manufactured goods produced in the colonies’.⁷⁶ In contrast, excise duties historically contributed proportionately far more to UK tax revenue – as much as 50 per cent at the turn of the 18th century – than they did to Australian colonies’ revenues.⁷⁷ Consequently, excise duties and excise buildings do not appear to have attracted the degree of resentment in Australia that they may have attracted elsewhere.⁷⁸

According to Stebbings, ‘certain architectural forms were understood to have meaning, and, for example, domes, towers, columns and colonnades were accepted symbols of power’.⁷⁹ Furthermore, the materials used, and decoration were expected to convey ‘a message of wealth, power, majesty, authority and control’.⁸⁰ Certainly, the choice of building materials between, say, marble or brick in themselves can communicate messages about the ability to amass and spend wealth, whether for a temple, treasury,

their owners. See *ibid* 90. These offices could have been expected to have blended in with surrounding dwellings (although the private dwelling customs occupied in Berwick-on-Tweed is a Grade I listed building). While not all custom houses in Australia were originally built for that purpose – the Wollongong custom house, eg, was built as a courthouse – the impressive capital city custom houses were purpose built.

⁷¹ See generally Richard Butler, *Eureka Stockade* (Angus and Robertson, 1983) and specifically *An Act for Granting Duties of Customs upon Gold Exported from Victoria 1855* (Vic) (Assent 20 April 1855).

⁷² In 1851, eg, in New South Wales customs duties raised £201,501, whereas excise raised £7,210. See Mills, above n 10, 34.

⁷³ For a discussion of excise development in Australia, see Caroline Dick, ‘Taxation in Australia Up Until 1914: The Warp and Weft of Protectionism’ (2014) 12(1) *eJournal of Tax Research* 104.

⁷⁴ See Lloyd, ‘The First 100 Years of Tariffs’, above n 13, 49. The Tasmanian and Western Australian excise only applied to beer.

⁷⁵ For a discussion of the 1901 Act and its context, see Max Spry, ‘What Is an Excise Duty? *Ha and Hammond v NSW*’ (Department of the Parliamentary Library Research Note No 1, August 1997).

⁷⁶ See Reinhardt and Steel, above n 36.

⁷⁷ See Philip Brien and Matthew Keep, ‘The Public Finances: A Historical Overview’ (House of Commons Library Briefing Paper No 8265, 22 March 2018).

⁷⁸ On the sanguineous whiskey rebellion of 1784, see, eg, Kevin T Barksdale, ‘Our Rebellious Neighbors: Virginia’s Border Counties during Pennsylvania’s Whiskey Rebellion’ (2003) 111(1) *Virginia Magazine of History and Biography* 5.

⁷⁹ See Stebbings, above n 40, 96.

⁸⁰ See *ibid* 104.

business or private residence.⁸¹ But individual features, such as a cupola, do not in themselves communicate power. For example, ornate music halls, as they flourished in the 19th century, may have incorporated turrets and cupolas in ironic imitation of the edifices of power.⁸² What really matters is the overall impression a building gives to the observer in a particular context. A spic and span wooden structure in an elevated position with a flagpole flying the Union Jack, as early Australian custom houses often presented, could project an image of authority to boats approaching a settlement of people mostly living under canvass, as much as later grand neoclassical buildings would send messages of authority in rapidly developing cities. Indeed, whereas as Stebbings argues, in the UK, ‘even custom houses ... were characterised by a degree of architectural restraint’,⁸³ in Australia custom houses tended to reflect the meteoric economic growth of the capital cities.⁸⁴

Stebbing observes that the royal coat of arms, prominent on all UK custom houses, ‘signified the authority and position of the monarch ... It was an image legible to foreign traders unambiguously asserting the taxing authority of the Crown, and, thereby, the right of the customs’ officers to record goods entering or leaving the port and to collect the customs duties’.⁸⁵ Before Federation, Australian custom houses invariably incorporated that coat of arms in a prominent position, thereby conveying a similar message about the power of the Crown in its colonies.

In Sydney, the coat of arms was carved from sandstone; in Melbourne, the emblem is polychromatic; and, in provincial Maryborough, it was moulded in concrete. The Maryborough example is significant because the custom house was built in 1899. Queen Victoria conferred the colony of Queensland its own coat of arms in 1893 – the first British colony to be granted such an honour since Jamaica in 1661. It might reasonably be expected that the Queensland emblem, no doubt a source of pride for that colony, would have been used for the custom house but loyalty to the mother country appears to have prevailed.

The 1889 Brisbane Customs House is an exception with regards to coats of arms. Rather than the royal coat of arms, the façade incorporates a *sui generis* emblem that anticipates and yet is significantly different from the eventual Commonwealth coat of arms. Incorporating the motto ‘Advance Australia’, it hints at Patrick Dodds’ 1878 patriotic song, *Advance Australia Fair*, which ultimately became Australia’s national anthem.⁸⁶ The Brisbane emblem, therefore, points beyond fracture towards Federation.

4. CROWN AUTHORITY

Even the earliest, crudely constructed customs houses tended to be built in elevated places. John Petersen explains that ‘for reasons of prominence as well as permanence,

⁸¹ For an argument that architecture is generally determined by the energy available, eg, to bake bricks, see Barnabas Calder, *Architecture: From Prehistory to Climate Emergency* (Pelican, 2021).

⁸² Irony in architecture is today most commonly associated with postmodernism but, it is submitted that theatres and vaudeville music halls much earlier may have subverted the traditional symbol of formal power. See, eg, Robert Kronenburg, *This Must Be The Place: An Architectural History of Popular Music Performance Venues* (Bloomsbury Publishing, 2019).

⁸³ See Stebbings, above n 40, 104.

⁸⁴ The growth of Melbourne and its custom house, eg, surged during Victorian gold rushes two decades apart.

⁸⁵ See Stebbings, above n 40, 103.

⁸⁶ See Australian Government, *Australian Symbols* (2022) 11.

representing Customs as a department controlled by the Crown, rather than an insubstantial colonial government. Potential offenders would be impressed by the importance of Customs and respectability of the officials inside the building'.⁸⁷ Elevation not only gave visual prominence and security from flood, it also allowed officials to observe and monitor dock activity.⁸⁸ In lawless places, some custom houses were fort-like constructions. The last surviving example of this type of building was built in 1849 and is located at Portland (Victoria).⁸⁹

The proliferation of customs houses symbolised the spread of Crown authority across the continent,⁹⁰ but arguably, the extant Sydney Customs House (construction started 1844), the site of the first assertion of customs-levying power is the most symbol-laden customs building. It is an imposing edifice off Circular Quay, allegedly built on the spot where the Union flag was raised by the First Fleet in 1788. Orwell and Peter Phillips Architects report:

This was an historical event which bears the same significance to the history of Australia as, for instance, does the site of the Mayflower landing to American history and that of the Roman invasion to Britain's history. ... The building's location is a physical reminder of the importance of Circular Quay as the original maritime and civic centre for the colony.⁹¹

4.1 First Nations

Without treaties with the numerous First Nations,⁹² but with the espousal of the pernicious doctrine of *terra nullius*,⁹³ indigenous people were marginalised, often through acts of great violence throughout the Australian colonies.⁹⁴

The infrastructure of large-scale import and export – ports, customs houses and bonded warehouses – would have obliterated and, thereby, denied the history of traditional indigenous places and patterns of food gathering and any trade activity. The creation of the harbour at Circular Quay was not done for taxing purposes, but, as Sydney's port infrastructure developed, the colony would need revenue. 'Gadi', the indigenous name for the area, was erased, and traditional gathering of cockles and oysters by the Gadigal

⁸⁷ See Petersen, above n 27, 13.

⁸⁸ See *ibid.* Cf Jeremy Bentham's Panopticon. See generally, Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford University Press, 1993).

⁸⁹ For an image, see Heritage Council of Victoria, 'Victorian Heritage Database Report: Customs House' (17 May 2005) <<https://vhd.heritagecouncil.vic.gov.au/places/64348/download-report>>.

⁹⁰ On the role of coats of arms symbolising Crown power in the colonies, see nn 59 and 60. It is not suggested that custom houses were the only buildings that symbolised Crown authority. Courts, eg, were also important signs. Later State Parliaments and Treasuries became critical symbols.

⁹¹ See Orwell and Peter Phillips Architects, above n 11, 74-75.

⁹² See generally George Williams and Harry Hobbs, *Treaty* (2nd ed, Federation Press, 2020).

⁹³ For a general discussion of the doctrine of *terra nullius*, see Colin Samson, 'The Rule of *Terra Nullius* and the Impotence of International Human Rights for Indigenous Peoples' (2008) 5(1) *Essex Human Rights Review* 1. For a review of the doctrine in Australia, see eg Stuart Banner, 'Why *Terra Nullius*? Anthropology and Property Law in Early Australia' (2005) 23(1) *Law and History Review* 95.

⁹⁴ See, eg, Asafa Jalata, 'The Impacts of English Colonial Terrorism and Genocide on Indigenous/Black Australians' (2013) 3(3) *Sage Open*.

people was prevented by the building of the dock.⁹⁵ The custom house became a prominent and symbolic presence on the quay.

Tariffs and the customs service intervened in the centuries-old trading relationships between the Macassars of modern-day Indonesia and First Nations on the northern coast,⁹⁶ who controlled Macassar sailors' entry onto their territory to harvest sea cucumbers (*bêche de mer* or *phylum Echinodermata*). David Day argues that, by exercising such control over ingress and takings, First Nations people operated a customs system, if not a customs service.⁹⁷

4.2 Exclusion

Imagining and creating a national community are necessarily exercises in both inclusion and exclusion.⁹⁸ Custom houses embodied, on the one hand, dispossession of indigenous peoples and, on the other hand, control of immigration. As noted, First Nations trade and tax-like traditions were extinguished. In the second regard, the so-called poll taxes,⁹⁹ which penalised Chinese efforts to settle or to sojourn,¹⁰⁰ were administered by customs officers based in some of the grandest public buildings in the colonies. The Department of Trade and Customs administered the *Quarantine Act 1908* (Cth) until responsibility was transferred to the Commonwealth Department of Health in 1921. Along with its enforcement of the *Immigration Restriction Act 1901* (Cth), its initial involvement with the *Quarantine Act* deeply implicated the customs service and its officers in the implementation of the nascent 'White Australia' policy (1901-1958).

5. FRACTURED NATIONALISM

From a Eurocentric perspective, custom houses were perhaps most potent in their symbolising the inchoate nationhood of settler Australia. According to Ron Palenski, New Zealand had forged a national identity by 1890, just 50 years after signing the Treaty of Waitangi Te Tiriti O Waitangi.¹⁰¹ In contrast, a distinct Australian national identity probably only cohered during World War I. This section of the article considers

⁹⁵ See, eg, Sue Jackson, Libby Porter and Louise C Johnson, *Planning in Indigenous Australia: From Imperial Foundations to Postcolonial Futures* (Routledge, 2018) 93.

⁹⁶ See Day, above n 2, 1. See also Kellie Clayton, 'An Historical Reassessment of the Maritime Southeast Asian Forest and Marine Commodities Trade and Its Implications for Archaeological Investigations of Asian Contact in Northern Australia' (2023) 89(2) *Australian Archaeology* 115.

⁹⁷ See Day, above n 2, 1.

⁹⁸ For a discussion of inclusion of political community members and exclusion of strangers, see Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Basic Books, 1983) 31-35.

⁹⁹ The first anti-Chinese immigration legislation was introduced in Victoria in 1855. An entry charge of £10 was payable by the master of any ship for a Chinese immigrant arriving at a Victorian port. Furthermore, only one immigrant was permitted per 10 tons of tonnage. See *An Act to Make Provision for Certain Immigrants 1855* (Vic) (Assent 12 June 1855). The legislation does not include the words 'poll' or 'tax'.

¹⁰⁰ For a general discussion of Chinese 'poll taxes', see Sue Yong and Rob Vosslamber, 'Race and Tax Policy: The Case of the Chinese Poll Tax' (2018) 20(1) *Journal of Australian Taxation* 147.

¹⁰¹ See Ron Palenski, *The Making of New Zealanders* (Auckland University Press, 2012) 18. Despite the Treaty, it is not suggested that 19th century New Zealand nationalism was bicultural in nature. As in Australia, indigenous people were marginalised, and non-European settlers excluded in order to forge a Britannic group identity.

how custom houses symbolised Australia's fractured nationalism before World War I,¹⁰² and how customs duties were also a key enabler of Federation.¹⁰³

5.1 Different colonial loyalties

Donald Horne observed in 1964:

Many people still living were born into an Australia where there were customs posts on the State borders and which, according to its official texts, did not achieve full status as a nation until 25 April 1915, when the Australian soldiers assisted in the Gallipoli landing by storming Anzac Cove. It was as if the whole process of achieving nationhood was so easy that it wasn't until men died ... that Australians felt they had earned their way into the world.¹⁰⁴

The absence of a unified nationalism before Gallipoli arose from governmental structures and a failure of the collective imagination. From a constitutional perspective, the British monarch 'was Australia's head of state and ... State governors and the Governor-General were British. As a self-governing colony in the British Empire, Australia had no national army or navy, and its foreign policy was determined by Britain'.¹⁰⁵

People failed to imagine themselves as members of an Australian nation.¹⁰⁶ They 'would refer to themselves as Australians in relation to Britain (for example, as Anglo-Australian or as Scottish-Australian and Britain was often referred to as "home")'.¹⁰⁷ This is perhaps understandable since 'British history was taught in schools. Professional standards in education, engineering, medicine and law were determined according to British standards'.¹⁰⁸

In the 1870s, separate colonial flags were adopted – essentially the British Blue ensign with the addition of each colony's badge. These flags would have been raised over prominent colonial government buildings, including custom houses. Flags are remarkably potent symbols of nationhood but, before 1901, there was no Australian national flag.¹⁰⁹ Robert Schatz and Howard Lavine observe:

Many ... accounts ... suggest that individuals' ties to national symbols often supersede their ties to the group that the symbols represent. The crux of these assertions is that expressions of national sentiment are directed toward national

¹⁰² Responses to the Covid pandemic, notably the closing down of most travel between states, indicated contemporary fractures in the national imaginary.

¹⁰³ See generally C Forster, 'Federation and the Tariff' (1977) 17(2) *Australian Economic History Review* 95.

¹⁰⁴ Donald Horne, *The Lucky Country* (Penguin Books, 6th ed, 2008 [1964]) 159.

¹⁰⁵ See Rob Lundie and Joy McCann, 'Commonwealth Parliament from 1901 to World War I' (Parliamentary Library Research Paper, 4 May 2015) 4 <https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/3810416/upload_binary/3810416.pdf;fileType=application/pdf>.

¹⁰⁶ In Benedict Anderson's thesis, nations are essentially imagined by their members. See generally, Anderson, above n 19.

¹⁰⁷ See Lundie and McCann, above n 105, 4.

¹⁰⁸ See *ibid* (footnote omitted).

¹⁰⁹ In the 1850s, the Australian League astutely promoted symbols of nationalism, notably a national flag – 'five silver stars, in the form of a cross, on a blue background, with the Union Jack in the top left-hand corner'. See TH Irving, '1850-70' in FK Crowley (ed), *A New History of Australia* (William Heinemann, 1974) 124, 135.

symbols rather than to the nation itself and that such symbolism is infused with unique psychological meaning and political import.¹¹⁰

Other absent national symbols included a coat of arms, an anthem or particular Australian honours or medals.¹¹¹ In the terminology of Eric Hobsbawm and Terence Ranger, at the time of Federation, Australian national traditions had not yet been invented. Hobsbawm explains:

‘Invented tradition’ is taken to mean a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past.¹¹²

Even after Federation, according to Rob Lundie and Joy McCann:

The state governments still controlled much of what affected their everyday lives (for example, land, roads, railways and education). Loyalty was to their state, not federal, government. Parochialism predominated, aided by the concentration of the population in New South Wales (NSW) and Victoria and in the cities.¹¹³

Furthermore, despite the establishment of the High Court of Australia as the Federal Supreme Court,¹¹⁴ appeals to the Queen in Council continued, if with limitations.¹¹⁵

The settler people of the colonies, of course, shared similarities, notably their typical Anglo-Celtic heritage and the commonality of the English language.¹¹⁶ And so, from the early days, the colonists were seen as constituting new Britannic groups in an empty land. While Western Australia was unusual in accommodating immigrants of colour, notably Malay pearl divers, that appearance of enlightenment was attributable to chronic labour shortages. ‘This changed during the 1890s when gold discoveries led to a surge of white immigration from other colonies and the movement towards Federation of all colonies put pressure on Western Australia to join in a restrictive immigration policy.’¹¹⁷ Preceding Federation, from 1880, the Australian Native Association promoted through its magazine *The Bulletin* a vision of Australian nationalism that was ‘a racist, sexist and republican style of jingoism’.¹¹⁸ That vision faced the reality of customs rivalry.

¹¹⁰ Robert T Schatz and Howard Lavine, ‘Waving the Flag: National Symbolism, Social Identity, and Political Engagement’ (2007) 28(3) *Political Psychology* 329, 330.

¹¹¹ See Lundie and McCann, above n 105.

¹¹² See Eric Hobsbawm, ‘Introduction: Inventing Traditions’ in Eric Hobsbawm and Terence Ranger (eds), *The Invention of Tradition* (Cambridge University Press, 1983) 1, 1.

¹¹³ See Lundie and Joy McCann, above n 105, 4.

¹¹⁴ See *Constitution* s 71.

¹¹⁵ See *ibid* s 74. For a discussion on the limitations on appeals, see A F Mason, ‘The Limitation of Appeals to the Privy Council from the High Court of Australia, from Federal Courts Other Than the High Court, from the Supreme Courts of the Territories and from Courts Exercising Federal Jurisdiction’ (1968) 3(1) *Federal Law Review* 1. On terminating appeals to the Judicial Committee of the Privy Council, see *Australia Act 1986* (Cth) s 11.

¹¹⁶ Cf the difficulties of forging a national identity among, say, the multilingual Swiss. See Anderson, above n 19, 136.

¹¹⁷ See Day, above n 2, 359.

¹¹⁸ See Jackson, above n 20, 151.

No doubt class differences existed between, say, transportees and voluntary immigrants. Indeed, David Cannadine refers to the ‘stratification and Gothicization of the dominions’,¹¹⁹ by which he means, in the major colonies of the British Empire, the class system and architecture of Britain were replicated.¹²⁰ Nevertheless, an uneasy unity manifested against ‘the Other’¹²¹ – First Nations people, on the one hand, and potential non-British immigrants, on the other hand. The customs services, from their fine customs houses, played an essential role in this exclusionary process.

5.2 Protectionism

Smith commended the free flow of goods within the United Kingdom, and proposed an extension of uniform British taxation and free movement of goods to Ireland and ‘the plantations’ – in effect, an imperial customs union.¹²² In Smith’s view, Britain’s standardised customs system, and freedom of movement of goods within the country was ‘perhaps one of the principal causes of the prosperity of Great Britain, every great country being necessarily the best and most extensive market for the greater part of the productions of its own industry’.¹²³ This was not the model adopted in the Australian colonies before Federation.

John Stuart Mill, who otherwise promoted free trade, made an exception for infant industries in new countries which could be protected for a limited period of time to enable them to attain a competitive status.¹²⁴ From the time of foundation, Victoria adopted this exception enthusiastically. At the beginning of the 1860s, Victoria had half as many factory workers as New South Wales, and so was dependent on imports. There were constant shortages of goods, unemployment, and a lack of investment opportunities. Clearly this was fertile ground for protectionist policies. The 1865 tariff reduced duties on tea, sugar and that other staple, opium, and imposed an ad valorem import duty on other imports.¹²⁵ The tariff on imports was further increased in 1867. By 1871, the number of factory workers in Victoria had increased by about 300 per cent, whereas the number of New South Wales factory workers had increased by about 10 per cent.¹²⁶ Whether or not these differences are attributable to Victoria’s protectionist tariff, some causative relationship seems plausible. This outcome runs counter to the presumptions of the *laissez faire* orthodoxy that prevailed in the British Empire from the mid-1840s until World War I, when Britain reverted to mercantilist protectionism.¹²⁷

¹¹⁹ See David Cannadine, *Ornamentalism: How the British Saw Their Empire* (Oxford University Press, 2001) 34.

¹²⁰ Nicolas Pugin, who designed London’s Palace of Westminster (1801), ‘sought to revive not merely Gothic architecture but a whole imaginary civilisation behind it’. See Hugh Trevor-Roper, ‘The Invention of Tradition: The Highland Tradition of Scotland’ in Eric Hobsbawm and Terence Ranger (eds), *The Invention of Tradition* (Cambridge University Press, 1983) 15, 37.

¹²¹ See for example, Peter Benson, ‘The Concept of the Other from Kant to Lacan’, *Philosophy Now* (2018) <https://philosophynow.org/issues/127/The_Concept_of_the_Other_from_Kant_to_Lacan>.

¹²² See Smith, above n 4, 523.

¹²³ See *ibid*.

¹²⁴ See JS Mill, *Principles of Political Economy*, ed WJ Ashley (Longmans, 1909) 923 cited and discussed by Douglas A Irwin, *Against the Tide: An Intellectual History of Free Trade* (Princeton University Press, 1996) ch 8.

¹²⁵ See Irving, above n 109, 160-161.

¹²⁶ See *ibid* 161.

¹²⁷ See William D Grampp, ‘The Third Century of Mercantilism’ (1944) 10(4) *Southern Economic Journal* 292, 302.

Despite Victoria's characterisation as highly protectionist, this position is relative to New South Wales.¹²⁸ In 1898, customs revenue per capita was £1 4s 1d for New South Wales, and £1 18s 0d for Victoria.¹²⁹ The other colonies, however, had higher per capita duties, and New Zealand's corresponding rate was £2 15s 2d.¹³⁰ Nevertheless, the Melbourne's custom house had great political significance as it was the 'functional and geographic focal point of Victoria's early protectionist policies which, at the time they were introduced in the 1860s and 1870s, gained for the colony an international reputation as economic heretic and potential destroyer of the British Empire'.¹³¹

5.3 Federation and customs compromise

De Garis observes that 'whereas the problem of reconciling different tariff policies had once seemed an immovable barrier to federation, some colonists now saw the need for this as an irresistible reason for federation'.¹³² Smith would no doubt have demonstrated the absurdity of nascent, contiguous colonies on a British-claimed island continent competing with each other through protectionist tariffs. But, in the absence of a unitary or federal state, competition may have seemed inevitable.¹³³ Day observes:¹³⁴

The wealth of the gold rushes underwrote colonial separatism, causing the mid-century talk of federation, or even an independent Australian republic, to slip from the political agenda as the colonies vied for their economic supremacy. Border Customs and differential tariffs were the weapons in this self-defeating war that only concluded under the combined pressure of colonial manufacturers seeking a national market and of fears that imperial competition in the Pacific and the rise of Asian empires might rob Australians of their emerging nation.

In accordance with the so-called 'Braddon Blot',¹³⁵ unification was dependent on the new federal government returning 75 per cent of customs revenue to the constituent states for the first 10 years after Federation.¹³⁶ Western Australia could only be persuaded to join the Federation by a promise of full reimbursement of customs duties for five years.¹³⁷ Dianne Heriot explains that three main causes underpinned Western

¹²⁸ See, eg, A Mahinda Siriwardana, 'The Impact of Tariff Protection in the Colony of Victoria in the Late Nineteenth Century: A General Equilibrium Analysis' (1991) 31(2) *Australian Economic History Review* 45. Unlike Victoria, 'New South Wales ... relied heavily on revenue from land sales and rent, which in 1875 contributed half of the Colony's revenue, and about twice that from all sources of taxation'. See Reinhardt and Steel, above n 36, 5.

¹²⁹ See TA Coghlan, *A Statistical Account of the Seven Colonies of Australasia, 1899-1900* (Gullick, Government Printer, 1900).

¹³⁰ See *ibid.*

¹³¹ See National Trust, 'Former Customs House', *Victorian Heritage Database* <http://vhd.heritage.vic.gov.au/search/natrust_result_detail/64956>. For practical explanations of protectionism, see generally Lloyd, 'The First 100 Years of Tariffs', above n 13, 316; Kym Anderson, 'Trade Protectionism in Australia: Its Growth and Dismantling' (Working Papers in Trade and Development 2020/10, Australian National University, 2020).

¹³² See De Garis, above n 39, 249.

¹³³ Various attempts were made by New South Wales, South Australia, and Victoria to cooperate over traffic passing along the Murray River, but tensions remained. See, eg, Adam Webster, 'A Colonial History of the Murray River Dispute' (2017) 38(1) *Adelaide Law Review* 13, 16, n 10.

¹³⁴ See Day, above n 2, 441.

¹³⁵ See Hon Sir E Braddon (Premier of Tasmania), 'The Case for the "Braddon Clause" in the Federal Bill' (1898) *Review of Reviews* 329, available at: <<https://nzetc.victoria.ac.nz/tm/scholarly/tei-Stout75-t28-body-d2.html>>.

¹³⁶ See *Constitution* s 93.

¹³⁷ See *ibid* s 95.

Australian reluctance to join the Federation: first, ‘the colony had only been granted responsible government in 1890’; second, ‘it was geographically remote from the eastern colonies with which its early settlers felt little affinity’; and, third, ‘almost half of Western Australia’s revenue derived from inter-colonial customs duties which would be abolished under the new Australian Constitution’.¹³⁸

Horse-trading over customs duties therefore played a major role in healing Australia’s fractured nationalism and continued after Federation. The *Customs Tariff Act 1902* (Cth) was inevitably a compromise, given the protectionist and free trade factions in the new federal Parliament.

After Federation, inland customs posts were no longer necessary, but regional ports typically sought to retain their custom houses and attendant bonded warehouses, as they were thought to facilitate efficient import and export. But the removal of the colonial era trade barriers made centralisation and cost-cutting attractive to the federal government, and, despite local opposition, many regional customs posts were decommissioned in the first decades of the 20th century. The ascendant role of income tax is also important here. In 1901-02, customs duties accounted for 86.2 per cent and excise 13.8 per cent of Commonwealth tax revenue. After the introduction of a federal income tax,¹³⁹ government tax revenue in 1918-19 for customs duties and income tax were roughly on par (35.3 per cent and 35.2 per cent respectively).¹⁴⁰ The neo-mercantilist postwar era saw a resurgence in customs revenue, as the world reverted to protectionism, which reached its peak in the 1928-29 tax year when revenue from customs duties contributed 52.4 per cent of government revenue, and income tax, just 17.4 per cent.¹⁴¹ Since then, the percentage of revenue from customs has steadily declined,¹⁴² as has the need for symbolic customs houses.

6. CONCLUSION

The central focus of this article lies with the symbolism of the architecture of pre-1914 Australian custom houses. Principally the Crown’s counting houses in its expansion of empire, these buildings, perhaps more than any others, symbolised the formation and development of Australia from a single, fiscally precarious settlement to a cluster of thriving and competitive colonies, to a federal dominion asserting its position of prominence in British empire.¹⁴³

The experiences of the Australian colonies, including customs duties, are shared and similar but also different. An overarching grand narrative is, nevertheless, the creation of Britannic offshoots in the colonies that would become the States and Territories of a unified dominion. These sub-nations needed funding, principally, from customs duties,

¹³⁸ See Dianne Heriot, ‘Western Australia: A State of Secession?’ *FlagPost* (Blog, 1 September 2017) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2017/September/WA_state_of_secession> (accessed 1 December 2023) (emphasis added). According to Day, above n 2, 362, ‘The new Commonwealth of colonies was left with the formidable task of integrating a poorly trained and badly housed colonial department into a nationwide department of Trade and Customs’.

¹³⁹ See *Income Tax Assessment Act 1915* (Cth).

¹⁴⁰ See Australian Bureau of Statistics, above n 21.

¹⁴¹ See *ibid.*

¹⁴² See *ibid.*

¹⁴³ Summerson, above n 61, 43 observes: ‘when you are in the Strand, just look across from there to the shop filled arches and arrogantly bedizened Doric column of Australia House’, built at the peak of Britannic imperialism (1911-18).

and the maintenance of Britishness required exclusion of indigenous people and non-Britannic immigrants.

In massive tracts of land that lacked the signs and protocols of nationalism, custom houses symbolised parochial colonial government.

Magnificent customs buildings no longer announce the colonies' and, later, the Commonwealth's unique power to control and tax entrance of people and things into Australia. The symbolic buildings identified in this article have been converted for other uses – mostly cultural centres, but also hospitality venues. In their typical neoclassical style, references were made to both an ancient authority to tax and military force. Customs buildings were, therefore, designed to symbolise the fiscal and military control of the colonies. It is unlikely that any contemporary government would celebrate its power to levy customs duties through the construction of splendid portside edifices. However, the change of the name of the Customs *Service* to the Australian Border *Force* draws aside an ostensible veil of service to reveal the potential for violence that informs the Crown's assertion of the power to levy customs duties, and to enforce who and what enters the country's borders.