

## **‘THE HISTORY OF THE HASTE-WAGONS’:\* THE *MOTOR CAR ACT 1909* (VIC), EMERGENT TECHNOLOGY AND THE CALL FOR LAW**

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*[This article is concerned with the relationship between emergent technology and the legal response to it. The focus is on the making of the Motor Car Act 1909 (Vic). It is shown that notwithstanding popular anxieties regarding the new ‘motors’, the Act did not reflect those concerns through speed limits and restrictions. Instead, the Act established a regulatory scheme that was largely pro-motoring. This dissociation between the community’s concerns and the legislation is explained through emphasising other factors influencing the Act. In particular, it is suggested that the notion of progress through technology (legislating for the future) and the ideal of the regulative state (law as technology) went to the essence of the Act. The article concludes by suggesting that these factors are not just historical and particular to the motor vehicle, but can be identified in other legal responses to technological change.]*

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### I INTRODUCTION

This article examines the first attempts by the State of Victoria to regulate motor vehicles during the pioneering period of motoring (1897–1914). It is shown that there were anxieties within the Victorian community concerning these new machines, leading to calls for specific motor vehicle legislation. However, the resulting legislation, the *Motor Car Act 1909* (Vic), did not

\* Andrew Barton Paterson, ‘Overland to Melbourne on an Automobile — The History of the Haste-Wagons No 1’ in Tony Corp, ‘“Banjo” Paterson in Australia’s First Car Trial’ (1992) 30 *Canberra Historical Journal* 39, 39.

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correspond to the community's concerns; there were no red flags, fines were not excessive, and there were no speed limits. Instead, the Act established a regulatory scheme of registries, licensing and policing that was motorist-friendly overall.

This article suggests that an explanation for the perceived dissociation between the Act and the community's concerns lies in four other influences on the Act. Two immediate political influences were the availability of United Kingdom templates and lobbying by the Automobile Club of Victoria ('ACV'). However, these do not in themselves explain the permissive, centralised regulation provided for by the Act. Instead, it is suggested that two wider cultural factors influenced the Act: 'legislating for the future', concerning the linking of the motor vehicle to future progress; and 'law as technology', concerning common conceptions at the time as to what constituted rational good government.

The following is in four parts. Part II outlines the anxieties within the community concerning motor vehicles during the pioneer period. Part III looks at the scheme enshrined in the *Motor Car Act 1909* (Vic), noting a dissociation between the anxieties and the Act. Part IV offers an explanation for the identified dissociation. From reading through the parliamentary record, it is suggested that four other factors — the United Kingdom template, lobbying, 'legislating for the future', and 'law as technology' — were responsible for the *Motor Car Act 1909* (Vic). Part V suggests that these factors can be identified in other legal responses to community anxieties that surround other emergent technologies.

## II ARRIVAL OF THE MOTOR CAR 1897–1914

It can be said that a history of the motor vehicle in Australia has yet to be written.<sup>1</sup> Notwithstanding recent work by cultural historians,<sup>2</sup> the writing of the history of the motor vehicle in Australia has been given over to journalists and amateur historians who frame the events that led to the car's ascendancy

<sup>1</sup> Graeme Davison's recent cultural account of the motor vehicle in Victoria is a solid step towards an Australian history of the motor vehicle. Unfortunately, his work is limited to Melbourne and begins in 1945, leaving the first 50 years of motor vehicles in Australia to only a few paragraphs: Graeme Davison, *Car Wars: How the Car Won Our Hearts and Conquered Our Cities* (2004) 48–9, 114. It is arguable that such a project has been undertaken for the United Kingdom, Germany and the United States: see William Plowden, *The Motor Car and Politics in Britain: 1896–1970* (1973); Wolfgang Sachs, *For Love of the Automobile: Looking Back into the History of Our Desire* (Don Reneau trans, 1992 ed) [trans of: *Die Liebe zum Automobil: Ein Rückblick in die Geschichte Unserer Wünsche*]; James J Flink, *America Adopts the Automobile: 1895–1910* (1970); James J Flink, *The Car Culture* (1976); James J Flink, *The Automobile Age* (1988).

<sup>2</sup> John William Knott, 'The "Conquering Car": Technology, Symbolism and the Motorisation of Australia before World War II' (2000) 31 *Australian Historical Studies* 1; John William Knott, 'Speed, Modernity and the Motor Car: The Making of the 1909 *Motor Traffic Act* in New South Wales' (1994) 26 *Australian Historical Studies* 221; Georgine Clarsen, 'Difference and Technology: The Case of "Miss GWK"' in Patricia Grimshaw and Diane Kirkby (eds), *Dealing with Difference: Essays in Gender, Culture and History* (1997) 197; Georgine Clarsen, 'The "Dainty Female Toe" and the "Brawny Male Arm": Conceptions of Bodies and Power in Automobile Technology' (2000) 15 *Australian Feminist Studies* 153; Georgine Clarsen, 'Tracing the Outline of a Nation: Circling Australia by Car' (1999) 13 *Continuum: Journal of Media & Cultural Studies* 359. There is an established international literature on 'car culture': see Peter Wollen and Joe Kerr, *Autopia: Cars and Culture* (2002); John Urry, 'The "System" of Automobility' (2004) 21 *Theory, Culture and Society* 25.

according to a triumphant teleology.<sup>3</sup> This literature begins prior to World War I when the motor vehicle was a novelty,<sup>4</sup> moves through the expansion of ownership in the 1920s, to Chifley and Australia's Own in 1948,<sup>5</sup> to the 'Super-Car Scare', oil crisis and industry decline of the 1970s, and to the contemporary period of industry revitalisation and export.<sup>6</sup> In this literature the car is naturalised — its contemporary place within Australian society is portrayed as the inevitable outcome of historical events.

This article is concerned with the 'pioneer period' in Victoria from 1897–1914. This period is marked by five key events. The opening event was the arrival of the first motor vehicle on Victorian streets. Depending on the source, this vehicle was either the 'Thomson Steamer', a homemade steam-powered contraption that supposedly first chugged up New Street, Armadale, in May 1896, or the kerosene-powered Ridge-Austin machine developed for the 'Australasian Horseless Carriage Syndicate' that took to the streets around Fitzroy in February 1897.<sup>7</sup> The second event was the formation of the ACV on 9 December 1903.<sup>8</sup> The third event was the 1905 Sydney to Melbourne reliability run. The fourth was the arrival in 1909 of the Model T Ford. The Ford had two advantages over its European contemporaries: it was cheaper, and more robust in dealing with the poor roads of Australia.<sup>9</sup> The fifth was the coming into force of the *Motor Car Act 1909* (Vic) in January 1910.

The popular history literature links these events together by conceiving the pioneer period of motoring as a 'dark age' in which a vanguard of progressive motorists faced a hostile society of Luddites, horse-loving reactionaries, regressive law-makers and overzealous police.<sup>10</sup> This understanding of the pioneer period of motoring by the popular history literature seems to be supported by the primary sources, which reveal significant community anxieties concerning the new machines. As early as 1900, *The Argus* wrote:

The real truth is that when the motor comes into universal use life will not be worth living. ... [T]o live in a city when motors have superseded horses will be like living in a cotton mill, with a boiler factory on one side and a

<sup>3</sup> Knott, 'Speed, Modernity and the Motor Car', above n 2, 222. For examples of this type of scholarship, see John Goode, *Smoke, Smell and Clatter: The Revolutionary Story of Motoring in Australia* (1969); S A Cheney, *From Horse to Horsepower* (1965); Denis Martin, *Cyclists, Doctors and Others: The Introduction of the Motor Car to Queensland* (2001).

<sup>4</sup> Shane Birney, *A Nation on Wheels: Australia and the Motor Car* (1984) 42.

<sup>5</sup> See Cheney, above n 3.

<sup>6</sup> Harry Irwin, 'Communication, Technology Management, and Innovation: Holden's and General Motors-Holden's to 1948' (2000) 27 *Australian Journal of Communication* 1, 4–10.

<sup>7</sup> Keith Winser, *The Story of Australian Motoring* (1954) 15–16. However, most secondary writers support the Ridge-Austin in early 1897: Goode, above n 3, 2–3; Robert Haldane, *The People's Force: A History of the Victorian Police* (2<sup>nd</sup> ed, 1995) 133. Blainey dates the Thomson Steamer to 1899: Geoffrey Blainey, *Jumping Over the Wheel* (1993) 68. Alternatively, Knott refers to an imported Benz doing the rounds in Melbourne in late 1896: Knott, 'Speed, Modernity and the Motor Car', above n 2, 223.

<sup>8</sup> Susan Priestly, *The Crown of the Road: The Story of the RACV* (1983) 1–6. The Club was granted the prefix 'Royal' in 1916: at 38.

<sup>9</sup> See Blainey, above n 7, 80.

<sup>10</sup> Winser's 1954 text could be regarded as the archetype of this characterisation: Winser, above n 7. The prominence of that work as a source for later popular histories goes some way to explaining the uniformity of this characterisation: see Goode, above n 3, 30.

merry-go-round with a steam organ on the other. ... A horse does not like to run a man down if he can help it, but a machine of steel and brass will delight in killing people.<sup>11</sup>

In 1905, the ‘blood thirst’ of the motor vehicle prophesied by *The Argus* had come about, with the first recorded fatality occurring when a vehicle ran down and killed a cyclist.<sup>12</sup> In 1910, Sir Henry Weedon addressed the Legislative Assembly on a matter of ‘public urgency, namely the numerous motor car accidents occurring through reckless driving.’<sup>13</sup> Weedon told the Legislative Assembly:

Deplorable accidents ... have occurred, one as late as Sunday morning last, when an innocent man, going home quietly from his work, was mown down. ... They are happening in various parts of the metropolis, and motor cars are becoming a menace.<sup>14</sup>

Weedon was not alone in his concern about the motor menace. In 1912, Robert Solly said to the Legislative Assembly in a question to the Premier:

The other day a boy was knocked down in Fitzroy by a car, and the car went on without doing anything to aid him. Hardly a day passes without one seeing accounts in the press of serious accidents, and it is time that something was done to protect life against motor hogs. Every one can see cars rushing through the streets at speeds up to thirty miles an hour, and there seems to be nobody to protect the people against them.<sup>15</sup>

It seemed that the motor vehicle did not discriminate in its bloody desire. In 1908, one member of the Victorian Parliament complained that another member had nearly run him over.<sup>16</sup> Further, notwithstanding the *Motor Car Act 1909 Amendment Act 1914* (Vic), it again fell to Solly on 24 September 1914 to report to the Assembly that ‘[n]early every Monday morning we find reports in the newspapers of a number of motor accidents which have occurred during the week-end, by which people are maimed and ... killed.’<sup>17</sup> From these sources it appears uncontroversial that for the period 1897–1914, the motor vehicle’s undesirable consequences of turning people into ‘cold meat’<sup>18</sup> was a focus of public anxiety.<sup>19</sup>

<sup>11</sup> ‘Horse v Motor’, *The Argus* (Melbourne), 12 December 1900, 4.

<sup>12</sup> ‘Motor-Car Collision — A Cyclist Killed’, *The Argus* (Melbourne), 5 January 1905, 5. In the subsequent inquest the driver was found not to be at fault: ‘Motor-Car Collision — Verdict of Accidental Death’, *The Argus* (Melbourne), 12 January 1905, 5.

<sup>13</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 20 September 1910, 1230 (Sir Henry Weedon).

<sup>14</sup> *Ibid.*

<sup>15</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 10 October 1912, 1945 (Robert Solly).

<sup>16</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 July 1908, 291 (Edward Warde). The accused was Norman Bayles, the Member for Toorak.

<sup>17</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 24 September 1914, 1718 (Robert Solly).

<sup>18</sup> To use the endearing phrase of the Member for Bendigo East: Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1295 (Alfred Bailes).

<sup>19</sup> Although it must be kept in mind that the numbers of motor vehicle-related injuries and deaths were very low compared to the real killer on the streets of urban Australia at the time — the electric tram. In Sydney for the period 1903–14, there were 49 fatalities from motor vehi-

However, the motor vehicle's destructive nature was not the only cause of public anxiety. *The Argus*' prophecy also anticipated the noise of motor vehicles shattering urban calm. Again, by 1907 *The Argus*' concerns seemed well placed. In Sydney, *The Daily Telegraph* reported that on Sundays a 'procession of snorting and evil smelling motor cars ... regularly distort the features of the attendant worshippers'.<sup>20</sup> As early as 1902, noise was the cause of the first litigation in Australia involving a motor vehicle. An action was brought against a motorist in the Supreme Court of Victoria because his vehicle frightened a racehorse, causing the horse a fatal injury.<sup>21</sup> The folklore surrounding the case tells that at the close of the first day of sittings, Madden CJ stood on William Street and observed (and heard) a staged re-enactment of the incident. The Chief Justice agreed with the deceased horse concerning the noise of the machine, and the horse owner was awarded £250 in damages.<sup>22</sup>

Another anxiety that surrounded motor vehicles before World War I was that they were the preserve of the wealthy.<sup>23</sup> The 71 foundational members of the ACV comprised representatives of the elite and wealthy of Melbourne, along with members of the medical profession and representatives of the nascent motor vehicle industry.<sup>24</sup> Priestley's description of the ACV's first rooms could be that of any gentlemen's club from the era:

there was a reading and smoking room, a billiard room with two tables, a committee room and an office, a refreshment bar, a fine balcony overlooking Collins Street, and a cool well-lit luncheon room where a meal costing from six pence to two shillings could be had from twelve to two.<sup>25</sup>

In a period when Victorian society was sensitive to class politics,<sup>26</sup> the motor vehicle was a visible symbol of the well-off's contempt for the worker: 'To the cynic the car was just another rich man's toy. To the envious, it was an emblem

cle-caused accidents compared with 130 for trams: Knott, 'Speed, Modernity and the Motor Car', above n 2, 226. See also John William Knott, 'Road Traffic Accidents in New South Wales, 1881–1991' (1994) 34 *Australian Economic History Review* 80.

<sup>20</sup> *The Daily Telegraph* (Sydney), 22 June 1907, cited in Lester Hovenden, 'The Impacts of the Motor Vehicles: 1900–39' in Garry Wortherspoon (ed), *Sydney's Transport Studies* (1983) 139, 146.

<sup>21</sup> Madden CJ's judgment was not reported. However, the application for costs was reported: *Bloomfield v The Dunlop Tyre Company Ltd* (1902) 28 VLR 72. The accident happened on 30 August 1901. The vehicle involved was a De Dion Bouton, purchased by Dunlop for promotional purposes: Blainey, above n 7, 69–72. For an account based on the recollection of the driver, see Winser, above n 7, 56–7.

<sup>22</sup> Blainey, above n 7, 70. While Madden CJ gave judgment against a motor vehicle in 1902, the vehicle must have left an impression, since he agreed to be the foundational President of the ACV in 1903: Priestly, above n 8, 9.

<sup>23</sup> Knott suggests that in 1905, an entry-level 'Argyll' would have cost 250 weeks' income at minimum adult male wages: Knott, 'The "Conquering Car"', above n 2, 7. This is only the purchase price. Hovenden suggests that in 1906 the weekly running costs of a motor vehicle were £5/7/3, at a time when £3/0/0 was considered a good wage for a tradesman: Hovenden, above n 20, 139.

<sup>24</sup> Priestly, above n 8, 159.

<sup>25</sup> *Ibid* 12.

<sup>26</sup> Frank Bongiorno, *The People's Party: Victorian Labor and the Radical Tradition 1875–1914* (1996) 58–61.

of class distinction and bloated capitalism owned by a snob who flashingly flaunted evidence of ill-gotten gains.<sup>27</sup>

Together, the dangerous speed, noise pollution and class status meant that some in the community did more than just write letters to the editor or Members of Parliament voicing their concern about the new machines. One parliamentarian suggested that, ‘considering the way the drivers of motor cars act, ... the British public ought to be allowed to carry arms and shoot some of the beggars at sight.’<sup>28</sup> There were no reports in Australia of this extreme response to motor vehicles. However, there were reports of motorists being abused, pelted with rocks, and the malicious arranging of sharp objects on roads to puncture tyres.<sup>29</sup>

Therefore, the primary sources from the period give voice to a public mood that displays significant anxiety, if not outright hostility, to the emerging motors. Indeed in 1905, the report on a meeting of the ACV tells that the pioneering motorists were concerned that a “wave of hysteria” had swept over the community on the subject of motoring.<sup>30</sup> As this wave of hysteria was contemporaneous with the first motor vehicle legislation, the popular history literature suggests that this law was a populist response, pandering to the anxieties and hostilities of the non-motorist majority through the introduction of low speed limits, exorbitant taxation and curfews.<sup>31</sup> For example, Birney articulates this linking of public antagonism with regressive law:

The first cars were seen as little more than toys both by those who owned them and those that did not. All manner of draconian laws were invoked to suppress the ‘maniacal’ urges of this lunatic fringe. Very low speed limits were fixed and police were encouraged to give close attention to the behavior of motorists ... In Melbourne any motorist who had the temerity to overtake a cable tram (speed about 12km/h) was dealt with swiftly and severely by the law.<sup>32</sup>

Birney is wrong. As will be shown, the *Motor Car Act 1909* (Vic) cannot be regarded as a regressive attempt at controlling a dangerous new technology. Even Birney’s reference to motor vehicles passing trams is wrong. In 1912, the Supreme Court of Victoria acquitted a convicted motorist who hit a child while overtaking a tram on the right.<sup>33</sup> Further, the *Motor Car Act 1909* (Vic) was not repealed and then replaced with a more workable scheme after the initial public anxieties had dissipated — the fate of much populist law enacted in response to

<sup>27</sup> J F F Reid, cited in Winsler, above n 7, 161.

<sup>28</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1212 (Alfred Outtrim).

<sup>29</sup> Priestly, above n 8, 22; Goode, above n 3, 35. On violence in Australia against motorists in the pioneer period: see Knott, ‘Speed, Modernity and the Motor Car’, above n 2, 230–1; Winsler, above n 7, 163. Violence against motorists was not unique to Australia. Emsley documents similar incidents in England: Clive Emsley, “‘Mother, What *Did* Policemen Do when There Weren’t Any Motors?’: The Law, the Police and the Regulation of Motor Traffic in England, 1900–1939” (1993) 36 *Historical Journal* 357, 365.

<sup>30</sup> ‘Motor Traffic — Meeting of Motorists’, *The Argus* (Melbourne), 10 January 1905, 5.

<sup>31</sup> See Birney, *A Nation on Wheels*, above n 4, 58–9.

<sup>32</sup> Shane Birney, *Australia’s Own: The History of Holden* (1985) 19.

<sup>33</sup> *Gillin v Malmgren* [1912] VLR 26, 28 (a’Beckett J). Birney is also wrong as to the speed of trams. Contemporary sources have the urban trams in Melbourne doing 12 mph, not the rather more sedate 12 km/h: Victoria, *Parliamentary Debates*, Legislative Assembly, 5 September 1905, 1350 (Henry Beard).

‘waves of hysteria’. Instead, the key elements of the Act, registries, licensing, prescribed norms, and policing, remain the cornerstones of contemporary motor vehicle regulation.

### III THE *MOTOR CAR ACT 1909* (VIC)

The *Motor Car Act 1909* (Vic) cannot be understood as a simplistic reaction to public anxieties about the new motor vehicles. Instead, it provided a sophisticated scheme for the regulation of such vehicles. A fuller understanding of the Act must begin with the pre-1910 regulation of motor vehicles and the Act’s own legislative history.

Prior to 1910, motor vehicles were subject to the established road rules. While the substance of the road rules had remained consistent during the 1800s, the key reform felt by early motorists was the emergence in the 1890s of police as the central traffic enforcement agency. For the control of motor vehicles before 1910, the police relied primarily on the offence of ‘furious or negligently riding or driving through any public place’ under s 5(17) of the *Police Offences Act 1890* (Vic). From a police and motorist perspective, this was an unsatisfactory approach. ‘Furious driving’ related to harnessed horses, and from the agitation, sweat and breathing of a horse, a police officer could generally tell if it had been driven furiously. Motor vehicles lacked such telltale signs, and as such prosecution of a motorist for furious driving relied primarily on the opinion of the police officer and any witnesses.<sup>34</sup> Prosecution became dependent on the competing credibility of the motorist and the police officer. Therefore, from an early point the police and the motorist were pitted at loggerheads, with claims of harassment and bribery being made by both sides.<sup>35</sup> Evidence of this conflict can be seen in the ACV’s decision in 1906 to set up a fighting fund to provide legal representation to members accused of furious driving.<sup>36</sup>

The Victorian Parliament first addressed the issue of motor vehicles as early as 1900. The *Traction Engine Act 1900* (Vic) excluded ‘motor cars and motor cycles’ from its reach.<sup>37</sup> In doing so, this Act followed its United Kingdom precursor, the *Locomotives on Highways Act 1896*, 59 & 60 Vict, c 36, which exempted light locomotives (defined as a self-propelled vehicle under three

<sup>34</sup> On the problems of the application of ‘furious driving’ to motorists, see Plowden, above n 1, 17; Emsley, above n 29, 363.

<sup>35</sup> ACV, *Automobile Club of Victoria Annual Report 1909–1910* (1910) 6; ACV, *Automobile Club of Victoria Annual Report 1910–1911* (1911) 5, 10. Even the Governor’s chauffeur was not immune from prosecution. It is reported that chauffeur Arthur Benning was fined 40 shillings for furious driving, having previously been fined 20 shillings for a similar offence: ‘Motor Traffic — Governor’s Chauffeur Again Fined’, *The Argus* (Melbourne), 24 January 1905, 6.

<sup>36</sup> Priestly, above n 8, 22. Here the ACV followed the establishment of a similar fund by the English Automobile Club: Plowden, above n 1, 19. However, the conflict between motorists and the police was not resolved by the 1909 Act. As early as 1910, the Commissioner of Police had to make public announcements defending the tactics and instruments used by the police in enforcing the Act: ‘Police and Motorists — Mr O’Callaghan’s Views’, *The Argus* (Melbourne), 17 November 1910, 10.

<sup>37</sup> *Traction Engine Act 1900* (Vic) s 3.

tonnes not used for haulage) from the restrictions placed on traction engines.<sup>38</sup> The first legislative attempt to regulate motor vehicles was in 1905, when the government of (later Sir) Thomas Bent introduced the Motor Car Bill 1905 (Vic) ‘to secure and preserve the lives and limbs, not only of persons who have the right to use the public highways ... but also to protect the lives and limbs of those persons who use these motor cars themselves.’<sup>39</sup> Like the *Traction Engine Act 1900* (Vic), the 1905 Bill was mostly a copy of an English law, the *Motor Car Act 1903*, 3 Edw 7, c 36. The core elements of the 1905 Bill were the licensing of drivers and vehicles, the provision of a new criminal offence of driving a motor vehicle negligently, and maximum speed limits.<sup>40</sup> It was proposed that local councils were to be given responsibility for licensing drivers and vehicles, while the police were to be responsible for traffic management and prosecution.<sup>41</sup> The Bill progressed mostly without controversy through committee with only minor amendments. However, the Bill did not become law. After committee had passed amendments to the Bill, the Labor opposition proposed the addition of provisions fixing an eight-hour working day and a set wage for drivers. Given the opposition’s unacceptable proposal, Bent decided enough time had been spent ‘on this little Bill’,<sup>42</sup> and it was discharged on 29 November 1905.<sup>43</sup>

Bent’s decision to withdraw the Bill seems unexpected. In 1905, Bent had the numbers in the Assembly to pass the Bill without support from Labor. Robert Haldane, in his history of the Victorian Police, suggests that the Bill was dropped because of concerted lobbying by the ACV, which opposed the Bill outright.<sup>44</sup> This oversimplifies the ACV’s position regarding the 1905 Bill. The ACV was supportive of the Bill, but was concerned that the speed limits and the powers proposed for the local councils could unreasonably prejudice motorists.<sup>45</sup> An

<sup>38</sup> The *Locomotives on Highways Act 1896*, 59 & 60 Vict, c 36 released both traction engines and motor vehicles from the red flag requirement. However, ‘light locomotives’ were subject to a blanket speed limit of 14 mph: s 4.

<sup>39</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 August 1905, 1146 (Sir Samuel Gillott, Chief Secretary). Bent was Premier from 1904–08. He succeeded William Irvine as Premier and as leader of the conservative free trade faction in the Legislative Assembly, referred to in the political history literature as ‘Ministerialists’: Geoff Browne, *Biographical Register of the Victorian Parliament 1900–84* (1985) vii. On Bent and his government, see Margaret Glass, *Tommy Bent: ‘Bent by Name, Bent by Nature’* (1993).

<sup>40</sup> Motor Car Bill 1905 (Vic) cls 6, 8, 9. Initially the Bill was introduced with the 1903 English limits of 20 mph generally, with local councils allowed to specify 10 mph in city streets. These were both increased in committee to 25 mph and 12 mph respectively: Victoria, *Parliamentary Debates*, Legislative Assembly, 5 September 1905, 1344–50.

<sup>41</sup> Motor Car Bill 1905 (Vic) cl 8. See the continual reference to police powers in the debate surrounding cls 6, 7 and 8: Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August, 1905, 1292–1309.

<sup>42</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 5 September 1905, 1358 (Thomas Bent, Premier).

<sup>43</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 29 November 1905, 3177.

<sup>44</sup> Haldane, above n 7, 133.

<sup>45</sup> The provisions of the 1905 Bill were discussed at length at the 1905 Annual General Meeting of the ACV, and a detailed list of amendments was recommended to the Chief Secretary. The amendments were of a minor character; for example, suspension of licence for only three to six months, and a mechanism for unlicensed people to be taught to drive: ACV, *Minutes of Annual General Meeting* (1905) 37–8.

alternative explanation for the abrupt discharge of the Bill can be found in Margaret Glass' portrait of Bent. She suggests that by the time Bent became Premier, he was suffering from mental deterioration that led to notorious bouts of unpredictability and flash anger.<sup>46</sup> Bent's discharge of the Bill in a moment of outrage seems consistent with this account of him.<sup>47</sup> Indeed, the ACV expressed surprise and disappointment that the Bill was dropped.<sup>48</sup>

Following the abandonment of the 1905 Bill, regulating motor vehicles was not raised until 1908, when the Bent government introduced a new Motor Car Bill 1908 (Vic) in October.<sup>49</sup> By 1908, Bent governed with the support of the 'Liberal' faction, and key Liberals, Sir Alexander Peacock and John Murray, were in the ministry.<sup>50</sup> The 1908 Bill differed from the 1905 Bill in two important respects. First, the police, rather than the local councils, were given responsibility over licensing drivers and vehicles in order 'to secure uniformity'.<sup>51</sup> Second, the Bill did not legislate for speed limits. In doing away with speed limits, the government was following the advice of the United Kingdom Royal Commission on the Motor Car, chaired by Lord Selby, which reported in 1906.<sup>52</sup> There were three arguments used in the 1906 report, which were adopted by proponents of the 'no speed limit' policy of the 1908 Bill. The first was that drivers tended to treat prescribed speed limits as absolutes, regardless of road conditions. The second was that it was difficult for a driver to know their speed when driving (this was before the development of dashboard-mounted speedometers), and third, it 'detract[ed] from the dignity of the police who are employed in trapping drivers of motor cars.'<sup>53</sup> Instead of a fixed speed limit, the Bill put the onus on the driver to drive responsibly, to be enforced through a new offence of reckless or negligent driving.<sup>54</sup> Like the earlier Bill, the 1908 Bill passed through committee with few amendments.<sup>55</sup> At third reading, the Labor

<sup>46</sup> It was Bent's unpredictability (and a series of questionable land transactions) that led the 'Liberals', rallying around John Murray, to leave the government and support the 1908 no-confidence motion against Bent: Glass, above n 39, 179–88.

<sup>47</sup> Bent's refusal to engage with the 'chauffeur question' was the explanation given for the abandonment of the 1905 Bill in an anonymous fifth year retrospective on the ACV: 'The Automobile Club of Victoria — An Historical Review' (1908) 1 *Australian Motorist* 53.

<sup>48</sup> ACV, *Automobile Club of Victoria Annual Report 1905–1906* (1906) 11.

<sup>49</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 July 1908, 368 (first reading); 14 October 1908, 1206 (second reading).

<sup>50</sup> The decision of the 'Liberals' to align with Bent in February 1907 was to compensate for Bent losing the support of some rural 'Ministerialists' and to avert a no-confidence motion that might have resulted in a Labor government: Glass, above n 39, 180. On the use of the term 'Liberals' to describe this group, see Browne, above n 39, vii.

<sup>51</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1208 (Sir Alexander Peacock, Chief Secretary).

<sup>52</sup> United Kingdom, *Report of the Royal Commission on the Motor Car*, Cd 3081 (1906).

<sup>53</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1210 (Sir Henry Weedon).

<sup>54</sup> *Ibid* 1206–7 (Sir Alexander Peacock, Chief Secretary). This clause was amended in committee by Sir Henry Weedon inserting the words '[h]aving regard to all the circumstances of the case, including the nature, condition, and use of the highway and to the amount of traffic': Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1326. This section made it into the 1909 Act. On its interpretation and application (in s 10 of the 1909 Act), see *Cham-men v Gilmore* [1914] VLR 455, 457–8 (Hodges J).

<sup>55</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1325–34.

opposition again attempted to add a provision regulating the pay and working hours of drivers, but this time the amendment was put to the vote and defeated.<sup>56</sup> However, the 1908 Bill also did not make it to the books. After being read a first time in the Legislative Council, ongoing tensions within the Bent government led to Legislative Assembly elections on 29 December 1908.<sup>57</sup>

The aftermath of the 1908 elections was a new ‘Liberal’ ministry under John Murray; with the Labor party again the formal opposition.<sup>58</sup> One of the first measures of the Murray government was to resurrect the text of the lapsed 1908 Bill as the Motor Car Bill 1909 (Vic). The Bill was introduced in the Legislative Council in July 1909.<sup>59</sup> The Council made amendments to the Bill concerning provisions for learner drivers, a regime for the temporary registration of interstate motor vehicles, and provisions for local councils to receive half of the fine revenue from prosecutions.<sup>60</sup> In the Legislative Assembly, the half fine revenue amendment was rejected and opposition attempts to introduce speed limits were also defeated, but an opposition amendment concerning the establishment of a wages board for motor car drivers was passed.<sup>61</sup> The Legislative Council rejected the wages board provision and the Legislative Assembly voted not to insist on it.<sup>62</sup>

The *Motor Car Act 1909* (Vic) became law on 4 January 1910. The Act prescribed norms regarding vehicles and driver behaviour — motorists were required to stop when there was an accident,<sup>63</sup> all vehicles needed lights and a bell or a horn,<sup>64</sup> all vehicles had to display a registration number,<sup>65</sup> all drivers had to be over 18<sup>66</sup> — as well as special motor vehicle-related offences.<sup>67</sup> Importantly, the speed of motor vehicles was regulated through a new offence of ‘driving recklessly, negligently or at speed’ that was to be determined through a subjective test having ‘regard to all the circumstances of the case, including the

<sup>56</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 24 November 1908, 1550–1.

<sup>57</sup> Controversial to the last, Bent’s response to the vote of no-confidence orchestrated by Murray in late 1908 was not the expected recommendation to the Governor to appoint Murray or Prendergast Premier, but rather to prorogue the Assembly: Glass, above n 39, 188.

<sup>58</sup> Murray was at one stage a member of the Labor Party. By 1909, he was leader of the ‘Liberals’, although he governed with the support of other non-Labor members: Bongiorno, above n 26, 81. Victoria’s first Labor government was formed in 1913 under George Elmslie for two weeks in December 1913: Browne, above n 39, 61.

<sup>59</sup> Victoria, *Parliamentary Debates*, Legislative Council, 7 July 1909, 100 (first reading); 20 July 1909, 256–68 (second reading).

<sup>60</sup> Victoria, *Parliamentary Debates*, Legislative Council, 3 August 1909, 506–18; 4 August 1909, 557–73; 10 August 1909, 632–40; 25 August 1909, 756–9.

<sup>61</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 16 September 1909, 1157 (defeat of half fine provision); 3 November 1909, 1963 (defeat of Labor speed limits amendment); 21 December 1909, 3501 (passing of wage board amendment).

<sup>62</sup> Victoria, *Parliamentary Debates*, Legislative Council, 23 December 1909, 3631 (Legislative Council agreeing to the Assembly’s amendments, with the exception of the wage board provisions); Victoria, *Parliamentary Debates*, Legislative Assembly, 24 December 1909, 3683 (at vote, the Assembly by a majority of three agreed not to insist on the wage board amendments).

<sup>63</sup> *Motor Car Act 1909* (Vic) s 14(2).

<sup>64</sup> *Motor Car Act 1909* (Vic) ss 12–13.

<sup>65</sup> *Motor Car Act 1909* (Vic) ss 4–5.

<sup>66</sup> *Motor Car Act 1909* (Vic) s 6(2).

<sup>67</sup> *Motor Car Act 1909* (Vic) ss 4(4) (offences relating to registration of vehicles), 8 (offences relating to licences), 19 (fraud on registration or licences), 25 (drink-driving).

nature, condition and use of the highway and to the amount of traffic'.<sup>68</sup> The Act established a state-wide registry of 'motor cars'<sup>69</sup> and a state-wide licensing scheme for drivers.<sup>70</sup> It conferred on the police the separate tasks of enforcing the norms, and the administrative responsibility for licensing. It gave wide power to the Governor to make regulations dealing with motor vehicle construction, Sunday traffic, signage of roads and licence qualifications.<sup>71</sup> The Act was not constituted by the simplistic or populist restrictions to motor vehicles that might be anticipated, having regard to the anxieties within the community or the characterisation of the first motor vehicle laws in the popular literature. The Act did respond to the public mood. Concerns about speed and danger were addressed by the reckless driving offence and the requirements that drivers be of a certain age and be issued with a licence, that vehicles be fitted with lights and that drivers stop at an accident, and that all vehicles be identified by unique number plates. While the Act imposed on motorists new and significantly more regulation, it did so under the guise of making the motor vehicle safer. The Act did not regressively attempt to restrict motoring; there were no red flags, no speed limits, no exorbitant taxation, nor blanket bans enforced by drastic criminal penalties. Instead, the lack of a speed limit, the reasonably affordable registration and licence fees, and the subjective reckless driving provision, suggested that, on the contrary, the Act was for motor vehicles and was motorist-friendly.

That the Act was, on balance, motorist-friendly can appear at odds with the statements of most parliamentarians during the pioneer period. The members who engaged in debate around the Bills generally professed a dislike of motorists and motor vehicles. For example, in 1905, Donald MacKinnon expressed: 'We have not a great many motor cars here, but we have, I think, developed one or two gentlemen who are what are called in the old country "road hogs" — who drive their cars furiously and ought to be stopped.'<sup>72</sup> Similar thoughts were offered by Richard Toutcher in 1908:

The motor traffic is becoming a very great menace in the city, especially to elderly people who have to cross the streets, and whose lives are in jeopardy from day to day ... Bicycles are bad enough, but it requires a great deal of alertness nowadays to dodge the motor bicycles and motor cars.<sup>73</sup>

In 1910, Donald McLeod remarked, '[i]t is scandalous to see the reckless way in which some motorists travel along the country roads ... The law should come

<sup>68</sup> *Motor Car Act 1909* (Vic) s 10.

<sup>69</sup> The term 'motor car' was defined in the Act as 'any vehicle propelled by steam, gas, oil, electricity or any mechanical power and used or intended to be used on a public highway.' Included in the definition were motorcycles. Excluded were trains, trams and traction engines: *Motor Car Act 1909* (Vic) s 2(c).

<sup>70</sup> This scheme charged 20/ for vehicle registration and 2/6 for a driver's licence: *Motor Car Act 1909* (Vic) ss 4, 6.

<sup>71</sup> *Motor Car Act 1909* (Vic) ss 15–16. The subsequent *Regulations under the Motor Car Act 1909* (Vic) came into force on 23 February 1910.

<sup>72</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 1905, 1268 (Donald MacKinnon).

<sup>73</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 July 1908, 291 (Richard Toutcher).

down so heavily on these offenders ... that they must respect the rights of others.<sup>74</sup> Even in 1914, William McPherson complained:

I have seen motor cycles, especially, going along Burwood-road [sic], Hawthorn, at a terrific speed. The speed has been so great that every one in the street has turned around and watched the vehicle ... it is high time that some regulation was made to bring such people to the scratch.<sup>75</sup>

The Act was not the regressive law that might be expected from this rhetoric, neither was it subject to much revision. Between 1910 and 1914, many members noted ongoing public concern regarding motor vehicles. For example, on 2 August 1911, Robert Stanley asked:

If, in view of the disregard for the safety of human life shown by some of the drivers of motor cars, the Government will introduce an amending Motor Cars Bill this session, in order to more effectively protect the lives of the people?<sup>76</sup>

The Acting Premier's response was that the 1909 Act was working well and only required minor amendments.<sup>77</sup> Two minor changes were made to the motor vehicle regime prior to World War I. The *Vehicle Act 1912* (Vic) made it an offence to take a motor vehicle for a 'joy ride'.<sup>78</sup> Further, the passing of the *Motor Car Act 1909 Amendment Act 1914* (Vic) allowed for the issuing of temporary vehicle registration for dealers, repealed the requirement for temporary registration of interstate motor vehicles and tightened the drink-driving provisions.<sup>79</sup> The success of the 1909 Act was even mentioned by the Chief Secretary in the second reading speech for the 1914 amendment: 'Upon the whole, one marvels, when one considers the matter, how fully the original Act has provided for the development of the motor car traffic which has since expanded to such a large extent.'<sup>80</sup> Indeed, the regime regulating motor vehicles in Victoria has remained remarkably consistent since the 1909 Act, with prescribed norms, licensing regimes and policing being the cornerstones of the current legislation.<sup>81</sup>

In short, notwithstanding community anxiety concerning motor vehicles, observations to the contrary in the popular history literature and declared hostility to the motor vehicle by many parliamentarians, the *Motor Car Act 1909* (Vic) did not impose regressive measures onto motorists. The Act responded to

<sup>74</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 20 September 1910, 1233 (Donald McLeod).

<sup>75</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 16 July 1914, 457 (William McPherson).

<sup>76</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 2 August 1911, 361 (Robert Stanley).

<sup>77</sup> *Ibid* (William Watt, Acting Premier).

<sup>78</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 20 November 1912, 2940–5 (Norman Bayles).

<sup>79</sup> *Motor Car Act 1909 Amendment Act 1914* (Vic) ss 2, 4, 7. This Act also gave the Governor-in-Council power to make regulations dealing with horns (s 6), and included motorcycles with sidecars in the definition of motor car (s 8).

<sup>80</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 16 July 1914, 447 (John Murray, Chief Secretary).

<sup>81</sup> See, eg, *Road Safety Act 1986* (Vic); *Road Safety (Procedures) Regulations 1988* (Vic); *Road Safety (Vehicles) Regulations 1999* (Vic); *Road Safety (Traffic) Regulations 1988* (Vic).

the community's anxieties concerning the danger of the motor vehicle, not with restriction and prohibition but through regulation and management. The anxieties and the Act cannot be regarded as a sealed hermeneutic. While the anxieties called forth the Act, the Act cannot be explained solely as a response to the community's concerns. There was a dissociation between the community's attitudes of hostility and restriction and the Act's regulative permissiveness. James Flink, summarising his review of the initial United States motor vehicle legislation, makes a similar finding that: 'contrary to the popular myth [of regressive laws reflecting hostile community attitudes] however, early motor vehicle legislation appears in retrospect to have been extremely reasonable.'<sup>82</sup> While Flink makes the observation, he does not offer an explanation for the dissociation. It is this task that is begun in the following section, through the identification of additional factors that influenced the *Motor Car Act 1909* (Vic).

#### IV EXPLAINING THE DISSOCIATION

The previous section suggested that there was a dissociation between the *Motor Car Act 1909* (Vic) and the historical anxieties about the motor vehicle. While the Act responded to the community's concerns of danger, speed and noise, it did not pander to the popular mood by unduly restricting motorists. This section develops an explanation for this dissociation through a closer review of the parliamentary debates on the Bills. Given the community's anxieties about the motor vehicle and that the motor vehicle was new technology that in important respects exceeded, and could not be regarded as analogous to, any of the existing transportation technologies (the horse, bicycle, railroad), it might be expected that the passage of the Bills would have been accompanied by robust debate and a wide spread of opinion about the motor vehicle and the appropriate legislative response. However, this was not so. While there was a spread of opinion about the utility of the motor vehicle and the morality of motorists, the split of opinion was not hardened along class or faction lines. Furthermore, although there were some members who suggested very different ways to control motor vehicles and govern motorists, these opinions were not taken up or debated by the Parliament.

Through focusing on the parliamentary debates, four factors that influenced the Act can be discerned: the United Kingdom template; the lobbying of the ACV; 'legislating for the future'; and 'law as technology'. It is argued that the first two factors do not, of themselves, explain how the Victorian Parliament responded to the motor vehicle with registries, licensing and policing. While these factors offer partial explanations for the Act, they in turn disclose deeper understandings of how the Act emerged to regulate motor vehicles. Common to these deeper understandings is a movement away from explanations of the Act as the product of pragmatic historical politics — dependency on England, or the actions of an influential lobby group — to the Act as the product of diffuse cultural positions on technology and governance that became crystallised through legislating for the motor vehicle.

<sup>82</sup> Flink, *America Adopts the Automobile*, above n 1, 166.

The explanation of the Act's motorist-friendly orientation through the lobbying of the ACV discloses the influence of narratives of 'progress' and the need to legislate for a certain desirable technological future. However, this factor in turn discloses yet another factor that moulded the Act. While 'legislating for the future' supplements the lobbying explanation to explain the motorist-friendly nature of the Act, it does not explain why the particular technics of registries, licensing and policing were adopted. This fundamental character of the Act is explained by a final factor: 'law as technology'. This factor sees the combination of law and technology recast. It is suggested that the Act regulated the motor vehicle through registries, licensing and policing because centralised executive action was considered the most rational and 'modern' mechanism for governing. In so doing, the law that facilitates this regulation, the *Motor Car Act 1909* (Vic), is revealed as technology itself.

#### A *The Parliamentary Debates*

The parliamentary debates that accompany the Motor Car Bills were, as might be expected given the public concern, full of rhetoric about the dangers and horrors of the motor car. However, some members praised the potential of motorised transport, if not motor vehicles directly. This diversity of opinion seemed independent of the factional or 'class' loyalty of the members.<sup>83</sup>

It is generally assumed that prior to the formation of modern non-Labor parliamentary political parties in Australia, parliamentarians had greater freedom in expressing opinions and the way in which they voted. The evidence often cited was the churning of short-lived governments, brought about by unstable coalitions of individuals. During the pioneering period of motoring, Victoria went against this trend, having a period of political stability.<sup>84</sup> One cause of this stability was that the Legislative Assembly was split into three clearly identifiable political groupings. The most visible group was the Labor party,<sup>85</sup> whose parliamentary members post-Federation were nearly exclusively drawn from the ranks of the union movement.<sup>86</sup> The non-Labor side of politics during the period was split between the Bent-led 'Ministerialists', who were a combination of rural members in conjunction with wealthy members with social conservative tendencies, and the smaller 'Liberal' grouping clustered around Sir Alexander Peacock, Donald MacKinnon and John Murray comprising the more socially progressive members of the wealthy elite.<sup>87</sup>

<sup>83</sup> Knott observes that the debates surrounding the regulation of motor vehicles in New South Wales during the pioneer period 'crossed party lines': Knott, 'Speed, Modernity and the Motor Car', above n 2, 236.

<sup>84</sup> During the period 1905–08, there was only the one change of government, from Bent to Murray after the 29 December 1908 Legislative Assembly elections. Bent succeeded Irving as Premier and 'Ministerialist' leader in 1904, while Irving came to power in 1902: see Kathleen Thomson and Geoffrey Serle, *The Biographical Register of the Victorian Parliament 1859–1900* (1972) 16, 101.

<sup>85</sup> Prendergast was leader of the Labor party from 1904–13: *ibid* 168.

<sup>86</sup> Bongiorno, above n 26, 74–81.

<sup>87</sup> Browne, above n 39, vii. Browne's use of these terms of description for the non-Labor factions has been taken up in the historical literature: see Bongiorno, above n 26; Glass, above n 39.

From this identification of discernable class differentiation between Labor and non-Labor members, it might be expected that the class prejudice surrounding the first motor vehicles would have manifested in Labor members voicing strong anti-car sentiment and opposing motorist-friendly provisions.

Robert Solly, first elected to the Legislative Assembly as representing the railway workers and later as the Member for Carlton, conforms to this expectation.<sup>88</sup> The union organiser and bootmaker<sup>89</sup> seemingly took delight in documenting to the House another bloody accident:

A terrible accident occurred at St Kilda a little while ago. A man was driving a car at an enormous speed, and a young woman was killed. [Interjection — He drove the motor car up a telegraph pole.] He must have been driving at a very great speed. The woman [who] was sitting in the car with him was thrown out and killed.<sup>90</sup>

However, Solly's simple position of opposition was not shared by his parliamentary leader George Prendergast, the Member for North Melbourne.<sup>91</sup> Prendergast's initial comment concerning the 1905 Bill was that 'some of the clauses are much too stringent',<sup>92</sup> and in the committee debates of that Bill he appeared to be taking up the Chief Secretary's invitation to assist the government in passing a 'measure which will not unduly or harshly interfere with those who have these vehicles at their command.'<sup>93</sup> To this end, Prendergast orchestrated the reduction in licence and registration fees,<sup>94</sup> and supported a government amendment allowing a driver 48 hours to present to the police their licence, on the ground that Prendergast 'wished to protect the drivers of these cars from the over-officiousness of any policeman.'<sup>95</sup> Concerning the 1908 Bill, Prendergast professed that 'I do not believe in taking exception to every car in the street',<sup>96</sup> although he was alarmed at the absence of speed limits and unsuccessfully

<sup>88</sup> See above nn 14–16. See also Victoria, *Parliamentary Debates*, Legislative Assembly, 16 September 1909, 1152 (Robert Solly). A short-lived reform of the Irving government was the provision for direct representation of the public service in the Assembly through having four seats exclusively for the public service. It lasted from 1904–06: Bongiorno, above n 26, 75.

<sup>89</sup> Bongiorno, above n 26, 6.

<sup>90</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 3 December 1909, 2741 (Robert Solly, interjection by John Billson).

<sup>91</sup> There might be an argument that the difference of opinion between Solly and Prendergast could be explained by regarding bootmaker Solly as true working class, while Prendergast, who was a printer by trade and had also been a journalist before becoming the organiser of the Trades Hall-affiliated Typographical Association, possessed bourgeois intellectual leanings: Thomson and Serle, above n 84, 168; Browne, above n 39, 197. However, Bongiorno, in his history of the Victorian Labor party for the period, does not document any criticisms of Prendergast as not truly representing 'the people': Bongiorno, above n 26.

<sup>92</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 1905, 1268 (George Prendergast, Leader of the Opposition).

<sup>93</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 August 1905, 1149 (Sir Samuel Gillott, Chief Secretary).

<sup>94</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 1905, 1272–3 (George Prendergast, Leader of the Opposition).

<sup>95</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1301 (George Prendergast, Leader of the Opposition).

<sup>96</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1218 (George Prendergast, Leader of the Opposition).

attempted to introduce them.<sup>97</sup> In 1909, he complained about the dust stirred up in his own street by motor vehicles and described the noise from motor cycles as being ‘like that of a battery of artillery’,<sup>98</sup> but also supported the ACV’s position that the half fine revenue clause had to be removed or else ‘owners and drivers of motor cars [would] be subjected to penalties for the mere purpose of providing revenue to the municipalities.’<sup>99</sup> By 1913, Prendergast’s concern regarding motor vehicles had become purely acoustic. In debate regarding the amendment of the regulation power in the *Motor Car Act 1909* (Vic) to provide for the standardisation of horns, Prendergast suggested: ‘I think it would be very desirable if in regulating these sounds we could obtain a sound that was not only suitable for its main object but was also euphonious.’<sup>100</sup>

Similarly, non-Labor members were not uniform in their opinions concerning motor vehicles. The Member for the western rural seat of Lowan, Robert Stanley, often voiced anti-motorist sentiments, notwithstanding his association with the governing ‘Ministerialists’.<sup>101</sup> He told the House how his ‘blood boils on reading the death and destruction to children and the aged by the motor car ... I am greatly surprised ... that not one of these [motorists] has been hanged.’<sup>102</sup> During the third reading of the 1908 Bill, Stanley moved an amendment that would deem a driver liable for damage arising from any accident involving motor vehicles. He justified the amendment in the language of radical class politics: ‘I want it to apply everywhere, and especially the Hamilton district, where the swagmen have to get on the other side of the fence to get out of the way of the squatter kings.’<sup>103</sup> The ‘Liberal’ John Murray, Member for Warrnambool and Premier from 1909–12, initially shared with Stanley a class analysis of motoring. Responding to the 1908 Bill’s adoption of the Royal Commission’s recommendation against speed limits, Murray decried the Commission as biased. Having listed the experience, past offices and peerages of the members of the Royal Commission, Murray explained: ‘I thought I was going to ascertain that these gentlemen approved of the speed limit [but they do not] ... I suppose every mother’s son of them has a garage full of cars. Their sympathies were all with reckless driving.’<sup>104</sup> However, by 1909 and as Premier, Murray had changed his perspective on motor vehicles and he defended the no speed limit policy on the ground of the technical difficulty of detection and enforcement.<sup>105</sup> After 1909, Murray conformed to the expectation that the non-Labor members would support

<sup>97</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 3 November 1909, 1959–63.

<sup>98</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 16 September 1909, 1152 (George Prendergast, Leader of the Opposition).

<sup>99</sup> *Ibid.* Both Prendergast and Premier Murray supported the amendment in committee: at 1156–7.

<sup>100</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 29 October 1913, 2187 (George Prendergast).

<sup>101</sup> Browne, above n 39, 198.

<sup>102</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1331 (Robert Stanley).

<sup>103</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 24 November 1908, 1553 (Robert Stanley).

<sup>104</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1329 (John Murray).

<sup>105</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 3 November 1909, 1958 (John Murray, Premier).

motor vehicles. Not all non-Labor members needed the premiership to have the expected class attitude towards the motor car. During the pioneering period, Norman Bayles, the Member for Toorak, took upon himself to be the spokesperson for motor vehicles and motorists in Parliament.<sup>106</sup> It was Bayles who defended motor vehicles, spoke for the ACV,<sup>107</sup> became the personification of motoring in the speeches of other members, and introduced the joy-riding Bill.<sup>108</sup>

The diversity of opinion regarding motor vehicles, irrespective of class or factional loyalty, continued more remarkably in the Legislative Council. In Victoria during 1905–09, members of the Legislative Council had to possess over £500 in freehold property and represent an electorate that had either to own a minimum of £10 in freehold property, or lease property worth more than £15.<sup>109</sup> For Serle, these limits explained the class homogeneity of the Council and its obstructionism towards progressive legislation during the period.<sup>110</sup> Given the Council's class bias, it might be expected to be a pro-motoring chamber. However, motor vehicles and their regulation also provoked a split of opinions in the Council. Alfred Hicks attacked the elitism of motor cars, '[s]eeing ... that they were owned mainly by bloated capitalists, those who had them being nearly all millionaires.'<sup>111</sup> Yet many others members were favourable to motor vehicles and the Bill. Frederick Brawn suggested 'that the Bill as a whole would commend itself to honourable members'.<sup>112</sup> Some members thought that the utility of the motorcycle for farmers meant they should be excluded from the Bill,<sup>113</sup> while many agreed with the sentiment that 'there was no more unsafe vehicle used on the roads than the motor cycle.'<sup>114</sup> There was also clear disagreement between members who supported the Municipal Association's call for the local councils to directly receive an income from motor vehicles as compensation for the damage that motor vehicles did to roads,<sup>115</sup> and strong objections to this claim based on a different assessment of the impact of motor vehicles on road surfaces.<sup>116</sup> As in the Legislative Assembly, where opinions were not dictated by class or factional loyalty, the representatives of the property-owning classes in the Legislative Council were not unified in their opinions.

<sup>106</sup> Bayles was an early member of the ACV and active in its management: Priestly, above n 8, 21.

<sup>107</sup> Bayles was specially thanked in the ACV's 1908–09 Annual Report for his representation of the Club during the legislative process of the 1908 Bill: ACV, *Automobile Club of Victoria Annual Report 1908–1909* (1909) 6.

<sup>108</sup> See, eg, Victoria, *Parliamentary Debates*, Legislative Assembly, 23 July 1908, 290–1 (discussion in the Assembly of Bayles' driver being acquitted of dangerous driving).

<sup>109</sup> University graduates, barristers, medical doctors, the clergy, school teachers and military officers were franchised irrespective of their property holdings: Browne, above n 39, viii.

<sup>110</sup> Geoffrey Serle, 'The Victorian Legislative Council: 1856–1950' (1953) 6 *Historical Studies* 186, 200.

<sup>111</sup> Victoria, *Parliamentary Debates*, Legislative Council, 3 August 1909, 515 (Alfred Hicks).

<sup>112</sup> Victoria, *Parliamentary Debates*, Legislative Council, 20 July 1909, 266 (Frederick Brawn).

<sup>113</sup> Victoria, *Parliamentary Debates*, Legislative Council, 3 August 1909, 507 (Richard Rees).

<sup>114</sup> *Ibid* (Thomas Payne).

<sup>115</sup> Victoria, *Parliamentary Debates*, Legislative Council, 4 August 1909, 560 (Richard Abbott).

<sup>116</sup> 'Honorable members spoke about the damage done to the roads by motor cars, but a motor was like a man in slippers. How could a pneumatic tyre injure the road?': *ibid* 561 (Sir Edward Miller).

From this review of the diversity of opinions in the parliamentary debates concerning motor vehicles and motorists, it might be expected that the debates themselves were a lively affair, with strong opinions regarding the utility of motor vehicles translating into vigorous debates about the proposed scheme for their regulation. If the parliamentary discussion is examined in this light, it comes up looking decidedly ‘anaemic,’ as one member described the debate in the committee stage of the 1905 Bill.<sup>117</sup> There was very little debate concerning this basic issue. Nowhere was the prohibition of motor vehicles suggested. Nor was there any significant disagreement regarding the core elements of the regime for the regulation of motor vehicles; it was uncontroversial that the state should license drivers, keep a registry of vehicles, introduce unique motor vehicle offences and regulate for safety. During the debates on the Bills, the concern was with the details of these schemes, not the deployment of these techniques of regulation. For example, in 1905, some members questioned the need for owners to have a licence to drive their own vehicles on the grounds that an owner of a horse did not require a licence to ride it in public.<sup>118</sup> However, by 1908, no members raised this objection. Another was the spectre of the Eureka Stockade that haunted parts of the second reading speech in the Legislative Council during consideration of the power of police to demand production of a licence.<sup>119</sup> The solution, passed in committee, was not to remove the ‘licence on demand’ provision, but amend the time period for production of a licence from 48 hours to seven days.<sup>120</sup> This acceptance of the core elements of the regulatory regime can be seen in the spectacular lack of support for the few suggestions that proposed to regulate motor vehicles by different means. At several times, Prendergast proposed that as an alternative to police-enforced speed limits, motor vehicles should be shod with solid rubber tyres, his idea being that it would be impossible for anyone to remain comfortable and in control of a vehicle travelling over 20 mph on solid tyres.<sup>121</sup> Notwithstanding the regularity of Prendergast’s suggestion, it was not discussed or even mentioned by other members (including any from the Labor party).<sup>122</sup> Another alternative was suggested by John Grey, who thought that motor vehicles, like ships, could be

<sup>117</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1307 (Donald MacKinnon).

<sup>118</sup> Ibid 1292–3 (George Sangster). This aspect of the 1905 Bill prompted one letter of complaint by a motorist to the editor of *The Argus*: ‘The Motor Bill’, *The Argus* (Melbourne), 4 August 1905, 9.

<sup>119</sup> Victoria, *Parliamentary Debates*, Legislative Council, 20 July 1909, 262 (Richard Rees).

<sup>120</sup> Victoria, *Parliamentary Debates*, Legislative Council, 4 August 1909, 565–6.

<sup>121</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1218 (George Prendergast, Leader of the Opposition); 20 September 1910, 1232 (George Prendergast, Leader of the Opposition).

<sup>122</sup> Prendergast was not alone in advising the government of mechanical approaches to regulating the motor vehicle. On 16 October 1908, Joe Millar of Armadale wrote to the Chief Secretary suggesting that the Bill should include three restrictions on motor vehicles: large wheels (to reduce rotational velocity and the amount of dust disturbed by the wheel); that bodies be hung on straight axles (giving the vehicle a high centre of gravity, reducing stability and speed of vehicles); and narrow tyre width (reducing the quantity of dust disturbed): Letter from Joe Millar to J E Mackey (Chief Secretary), 16 October 1908 (PROV, VPRS 3392/P0 Unit 1100 File D7335 letter re certain suggestions for Motor Car Bill).

given legal personality and made liable in rem for damage.<sup>123</sup> However, like Prendergast's solid tyres, this alternative was ignored, and the debate sailed on.

The extent to which the form of the regulation of motor vehicles appears predetermined can be seen in the remarkable 1905 speech of David Gaunson. Gaunson was the only voice that disputed the need for legislation, and with it licensing, regulation and policing. Instead, he championed the common law:

Because a man is rich is he to be permitted to drive as if he were going head-long to the devil? Let him drive himself there if he likes ... I strongly protest against any legislation for the benefit of these gentlemen ... If the common law is applied to these offenders there is no necessity for this hare-brained, helter-skelter, ridiculous legislation, in passing which we are going at greater speed than the motorists do themselves.<sup>124</sup>

Gaunson was ignored. Nevertheless, it throws into stark relief the fact that for the Victorian legislators in the pioneering period, the issue of motor vehicles involved a surface debate reflecting the community's anxieties. This debate did not, however, ground a more basic contest concerning how Victoria should respond to this emerging technology. Instead, the conclusion to be drawn from the parliamentary debates was that during the pioneering period, it was mostly assumed that motor vehicles required state regulation through licensing, registries and policing. This does not, in itself, explain the dissociation between the text of the 1909 Act and the community's concerns, but suggests that there were other factors influencing the Act. The next section canvasses the influence of an immediately obvious factor, the United Kingdom motor vehicle law as a template.

### *B United Kingdom Template*

From 1905 onwards, it was made clear by the introducing Ministers that the proposed Bills were based on English experience, and further that the United Kingdom legislation was used as a template.<sup>125</sup> Indeed, the parliamentary debates suggest a commonly-held belief during the pioneering period that Victoria was a 'British' community, very much part of the Empire and inhabited by 'liege subjects.'<sup>126</sup> It is possible to argue that the dissociation identified between the community's anxieties and the permissive regulation of the Act was because the Bent and Murray governments slavishly followed the Imperial

<sup>123</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1332 (John Grey).

<sup>124</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 1905, 1271 (David Gaunson).

<sup>125</sup> 'This measure is based upon the experience that has been gained, not only in this and the sister States, but also in the Mother Country': Victoria, *Parliamentary Debates*, Legislative Assembly, 23 August 1905, 1146 (Sir Samuel Gillott, Chief Secretary); 14 October 1908, 1206–7 (Sir Alexander Peacock, Chief Secretary); Victoria, *Parliamentary Debates*, Legislative Council, 20 July 1909, 256–7 (James Brown, Attorney-General and Solicitor-General).

<sup>126</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1212 (Alfred Outtrim); 28 January 1914, 3413 (William Watt).

precedent irrespective of local conditions.<sup>127</sup> Reinforcing this argument was that the passage of the *Motor Car Act 1903*, 3 Edw 7, c 36 was surrounded both in Parliament and in the press by vocal objections to state-based regulation and the attendant surveillance and policing.<sup>128</sup> However, the *Motor Car Act 1909* (Vic) did not adopt the Imperial template, it departed from it in critical respects; there was no speed limit, the registration of drivers and vehicles was centralised and not the responsibility of the local councils, and provision was made for drink-driving.<sup>129</sup> There was strong evidence within the debates that the parliamentarians regarded Victoria not as an extension of England, but as a better England.<sup>130</sup> Rarely was the United Kingdom the ‘mother country’, but the more derisive ‘old country’ marked by crowding, archaic inefficiencies and racked by class conflict.<sup>131</sup> As such, Murray described the 1909 Bill as ‘better than the provision in the English law’ because of the perceived efficient centralisation.<sup>132</sup> For James Brown in the Legislative Council, calls to decentralise the registration of vehicles and the licensing of drivers were misguided:

It is not fair to compare this country with England, for the conditions were quite different. In England there were millions of people, and the local bodies or county councils who registered the cars had each more cars to deal with than we had in the whole of Victoria.<sup>133</sup>

The formal relationship between Imperial law and Australian law, and the level of local autonomy and innovation, is a contested point within Australian legal history scholarship.<sup>134</sup> While clearly the text of the final Act was based on a United Kingdom template, it was not an uncritical adoption.<sup>135</sup> This suggests that the Victorian legislature was not beholden to Imperial precedent, but was

<sup>127</sup> ‘I do not suppose that this measure will be very long in force. Probably before long we shall be engaged in imitating another English Act’: Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 1905, 1269–70 (Donald MacKinnon).

<sup>128</sup> Plowden, above n 1, 30–45.

<sup>129</sup> There was also the difference of the Victorian Act centralising prosecution, reflecting the differing institutional policing histories of Victoria and England: see generally Haldane, above n 7.

<sup>130</sup> This observation resonates with MacIntyre’s finding on the perspective of Australian leaders during the late colonial and early federal period: Stuart MacIntyre, *A Colonial Liberalism: The Lost World of Three Victorian Visionaries* (1991).

<sup>131</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 August 1905, 1147 (Sir Samuel Gillott, Chief Secretary); 31 August 1905, 1307 (Donald MacKinnon); 21 October 1908, 1330 (John Murray); Victorian, *Parliamentary Debates*, Legislative Council, 20 July 1909, 264 (William Evans).

<sup>132</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 September 1909, 1085 (John Murray, Premier).

<sup>133</sup> Victoria, *Parliamentary Debates*, Legislative Council, 3 August 1909, 511 (James Brown, Attorney-General and Solicitor-General).

<sup>134</sup> Rosemary Hunter, ‘Australian Legal Histories in Context’ (2003) 21 *Law and History Review* 607, 608. See generally Alex Castles, *An Australian Legal History* (1982) 445–70; Alex Castles and Michael Harris, *Lawmakers and Wayward Whigs: Government and Law in South Australia 1836–1986* (1987) 172–222; Bruce Kercher, *An Unruly Child: A History of Law in Australia* (1995) 176.

<sup>135</sup> Indeed, even in the wider community the Imperial Act was subject to criticism. As early as 1903, *Scientific Australian* published an article that was critical of the speed limits of the *Motor Car Act 1903*, 3 Edw 7, c 36: ‘Among the Auto-Mobilists’, *Scientific Australian* (Melbourne), 20 September 1903, 11.

prepared to depart from it when local conditions or sentiment called for it.<sup>136</sup> As such, the dissociation between the community's anxieties and the Act cannot be explained solely as reliance on the Imperial template that did not relate to local circumstances. The absence of speed limits and the centralised, rather than localised, registries were not features of the Imperial law. This suggests that local factors influenced the Act. The single obvious local influence was the lobbying of the ACV.

### *C Lobbying by the ACV*

During the pioneering period, the ACV was a persistent influence on the Bent and Murray governments' deliberations that resulted in the *Motor Car Act 1909* (Vic). It can be argued that the ACV's lobbying was successful and that this explains the dissociation between the public anxiety surrounding motor vehicles and the motorist-friendly provisions of the Act, but it does not explain why the particular regimes of licensing, registries and policing were adopted.

The international literature concerning the first motor vehicle laws suggest that the newly-formed automobile clubs were hostile to local, state or national attempts at regulation.<sup>137</sup> This hostility did not mark the actions of the ACV.<sup>138</sup> Indeed, a resolution to oppose the 1905 Bill at the ACV's annual general meeting was defeated.<sup>139</sup> The ACV during the pioneer period did not act defensively to fend off attempts at regulation, but can be seen as instead energetically pursuing its foundational object of 'securing rational legislation, and the formation of proper rules and regulations governing the use of motor-cars and motor-cycles in cities, towns, and country districts.'<sup>140</sup>

Between 1905 and 1909, the ACV sent repeated delegations to Premiers Bent and Murray and the various Chief Secretaries, as well as sending circulars to all

<sup>136</sup> Castles suggests that while commercial legislation tended to follow England, the Australian colonial and later state legislatures did innovate when it came to land regulation, mining and industrial relations: Castles, above n 134, 445–71. That said, Webb in 1892 reported that a significant portion of the legislation passed by the Victorian Parliament was a 'transcription' of provisions from Imperial statutes: Thomas Webb, *A Compendium of the Imperial Law and Statutes in Force in the Colony of Victoria Together with a Table of the Sections of Imperial Statutes Transcribed into Victorian Statutes* (1892) 79–107.

<sup>137</sup> Flink, *America Adopts the Automobile*, above n 1, 169; Plowden, above n 1, 29–36. In Australia, Knott has observed that the Automobile Club of Australia in New South Wales, if not outright hostile, did not actively lobby for regulation: Knott, 'Speed, Modernity and the Motor Car', above n 2, 234.

<sup>138</sup> 'Motor Traffic — Meeting of Motorists', above n 30; 'Regulation of Motor Speed — Discussion at the Automobile Club', *The Age* (Melbourne), 10 January 1905, 4.

<sup>139</sup> ACV, *Minutes of Annual General Meeting*, above n 45, 35.

<sup>140</sup> 'The Automobile Club of Victoria — The Organisation Formed — An Enthusiastic Gathering', *Australian Cyclist and Motor-Car World* (Melbourne), 17 December 1903, 21.

Members.<sup>141</sup> The effect of this lobbying was profound. In 1908, Sir Alexander Peacock concluded his recommendation of the Bill to the Legislative Assembly with:

I may mention that the Automobile Club have given me a great deal of information and assistance in connexion with this Bill, and they have circularised honourable members, intimating that if any honourable member wishes to have a run to see how the motor cars are worked they will be glad to afford every facility for the purpose ...<sup>142</sup>

There is evidence that a similar run organised by the ACV in 1905 swayed at least one member to support the 1905 Bill.<sup>143</sup> Indeed, throughout the debates the ACV is referred to not as a nefarious association drawn from the indulgent caste,<sup>144</sup> but an important stakeholder whose opinion needed to be respected.<sup>145</sup> At several stages the ACV was directly able to affect the final provisions. The ACV claimed that the removal in the Legislative Assembly of the fine revenue sharing provisions was a victory for the ACV's lobbying.<sup>146</sup> It also was invited by Premier Murray to participate in the drafting of the Regulations, and after several meetings with the Commissioner of Police it was reported that 'the main demands of the Club had been granted in the regulations which had just been issued.'<sup>147</sup> The ultimate evidence of the ACV lobbying was the coming into force of the Act with no speed limit. From 1906 onwards, this objective had been the central demand of the ACV.<sup>148</sup> The ACV congratulated Murray for introducing the 1909 Bill without speed limits, stating that this reflected the most modern

<sup>141</sup> See generally the correspondence from the ACV in the Chief Secretary file for the Motor Act: letters from Automobile Club of Victoria to J E Mackey (Chief Secretary) (PROV, VPRS 3992/P0 Unit 1143 File F9918); ACV, *Minutes of General Committee of the Automobile Club of Victoria* 1(1), 18 July 1905, 42; 31 July 1905, 45; ACV, *Minutes of General Committee of the Automobile Club of Victoria* 1(2), 7 August 1908, 39; 11 September 1908, 47; 1 July 1909, 104; 4 November 1909, 143; 'The Automobile Club of Victoria — An Historical Review', above n 47, 55; 'The Automobile Club of Victoria' (1909) 2(1) *Australian Motorist* 19; 'The Automobile Club of Victoria — Motor Car Bill' (1909) 2(3) *Australian Motorist* 147.

<sup>142</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1209 (Sir Alexander Peacock, Chief Secretary). Peacock was referring to the amended text of the proposed 1908 Bill that the ACV forwarded on 16 July 1908. Many of the recommendations suggested by the ACV are in the 1908 Bill: see letter from E L Holmes to W A Callaway, 16 July 1908 (PROV, VPRS 3992/P0 Unit 1143 File F9918 letter re Automobile Club of Victoria suggested alteration to Bill).

<sup>143</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1295 (James Boyd).

<sup>144</sup> To paraphrase the words of John Murray prior to his elevation to the Premiership: Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1330.

<sup>145</sup> See Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1294, 1304 (Sir Samuel Gillott, Chief Secretary); 23 July 1908, 291 (Norman Bayles); Victoria, *Parliamentary Debates*, Legislative Council, 4 August 1909, 571 (William Brown); Victoria, *Parliamentary Debates*, Legislative Assembly, 16 September 1909, 1153 (George Prendergast, Leader of the Opposition); Victoria, *Parliamentary Debates*, Legislative Council, 4 August 1909, 557 (James Brown, Attorney-General and Solicitor-General).

<sup>146</sup> 'The Automobile Club of Victoria — Motor Car Bill', above n 141.

<sup>147</sup> ACV, *Minutes of General Committee of the Automobile Club of Victoria* 1(2), 2 February 1910, 168.

<sup>148</sup> This policy objective was first declared in 1906 when a leading motorist was deputised by the ACV to attend the Municipal Conference and to 'express the Club's views that the Club is opposed to a Motor Bill and that it considered the law as it at present stands penalising for "driving to the common danger" is sufficiently explicit for the limit of speed': ACV, *Minutes of General Committee of the Automobile Club of Victoria* 1(1), 28 September 1906, 100–1.

thinking on motor vehicle regulation,<sup>149</sup> and the *Australian Motorist* commented that Labor's attempt to reintroduce speed limits during the final Legislative Assembly debates on the 1909 Bill 'was so utterly absurd that it was promptly laughed out.'<sup>150</sup>

From this record of close and active involvement in the formation of the Act, it could be said that the *Motor Car Act 1909* (Vic) was motorist-friendly because the ACV got the legislation that it wanted.<sup>151</sup> Indeed, H W Chenoweth, in the ACV's *Annual Report 1910–11*, praised the Act: 'The twelve months experience of our Victorian *Motor Car Act* has proved that with proper and fair administration it is a capable and effective one.'<sup>152</sup> This is not to suggest that the Act was entirely the product of the ACV. The ACV was disappointed in two areas. First, the ACV remained opposed to the general regulation-making power in the Act, and while it was placated by involvement in the drafting of the Regulations, it remained concerned that a 'motor-phobic' government could executively gazette repressive measures.<sup>153</sup> Second, the ACV calls for 'medical men' to be exempt from the Act did not make it into law.<sup>154</sup> However, these are minor. Overall, the Act was for the ACV, and enacted the ACV's preferred vision of what a *Motor Car Act* should be like. Sir Samuel Gillott makes this plain as early as 1905:

With regard to certain suggestions which have been made by the automobile clubs and others, I desire to say that there is no wish to pass an Act which will be unduly harsh against persons who now use these machines, which, as I said before have come to stay.<sup>155</sup>

The ACV's influence explains the orientation of the Act as motorist-friendly. However, this does not explain why the ACV's lobbying was so effective. The Chief Secretary's file on the Act reads as a competition between the ACV and the Municipal Association, each making submissions rebutting earlier proposals of the other.<sup>156</sup> Indeed, the ACV distinctly conceived its lobbying as a battle against the 'anti-motorist' Municipal Association.<sup>157</sup> An initial explanation could be that

<sup>149</sup> ACV, Interview with John Murray, Premier of Victoria (Melbourne, 7 July 1909) (PROV, VPRS 3992/P0 Unit 1143 File F9918 Notes of Minutes of Interview with Premier, 7 July 1909).

<sup>150</sup> 'The Automobile Club of Victoria — Motor Car Bill', above n 141.

<sup>151</sup> A similar conclusion was reached by Morton concerning the *Motor Car Act 1904* (SA): Julia Morton, *Motorists and Motor Legislation in South Australia 1900–10* (BA(Hons) Thesis, The University of Adelaide, 1962) 44.

<sup>152</sup> ACV, *Automobile Club of Victoria Annual Report 1910–11*, above n 35, 10.

<sup>153</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1333 (Norman Bayles).

<sup>154</sup> ACV, *Minutes of General Committee of the Automobile Club of Victoria* 1(2), 10 July 1908, 29–30. In calling for special treatment of doctors, the ACV was joined by the British Medical Association (Victoria Branch): Letter from British Medical Association (Victorian Branch) to J E Mackey (Chief Secretary), 10 July 1908 (PROV, VPRS 3992/P0 Unit 1095 File D5791 letter re request that medical men be exempt from Motor Bill).

<sup>155</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 August 1905, 1149 (Sir Samuel Gillott, Chief Secretary).

<sup>156</sup> Letter from C Teceadeu to A O Satche, 18 July 1908 (PROV, VPRS 3992/P0 Unit 1143 File F9918 letter re Municipal Association of Victoria suggested alteration to Bill); letter from E L Holmes to J E Mackey (Chief Secretary), 24 November 1908 (PROV, VPRS 3992/P0 Unit 1143 File F9918 letter re Automotive Club of Victoria suggested amendments to Bill).

<sup>157</sup> The Municipal Association was described as 'anti-motorist': 'The Automobile Club of Victoria' (1908) 1 *Australian Motorist* 164.

in bringing together the medical community, representatives of the emerging motor vehicle industry, the wealthy elite and Normal Bayles in the Legislative Assembly<sup>158</sup> — with the combined tactics of letters, circulars, offers of rides in motor vehicles and having ‘quiet chats’ with the Premier<sup>159</sup> — the ACV just out-lobbied the less dynamic Municipal Association, which primarily relied on flooding the Chief Secretary with letters of complaint from the local councils. However, this does not explain the actual form of the Act. It just shifts the focus of inquiry from parliamentarians to the ACV. The same concern arises as to why the *particular* regimes of licensing and policing in the Act were adopted. What was it that meant that the provisions of the 1909 Act were sufficiently ‘rational’, to use the term from the ACV’s objectives?<sup>160</sup>

The key to a fuller explanation of why the *Motor Car Act 1909* (Vic) regulated motor vehicles through licensing, registries and policing lies in the final words of the just-quoted closing statement of Sir Samuel Gillott, that motor vehicles ‘have come to stay.’

#### D Legislating for the Future

The parliamentary debates concerning motor vehicles during the pioneering period had a particular sense of occasion. The members spoke and legislated with a shared awareness that they were passing law for a radically different future than their horse-drawn and bicycle era.<sup>161</sup> This was manifested in two ways. The first was the oft-repeated — to the point of becoming a slogan — phrase that motor vehicles ‘have come to stay.’<sup>162</sup> This observation was more than a resigned recognition of motoring, for in it can be glimpsed a fundamental belief in ‘progress’. The parliamentary debates were not focused on the immediate regulation of the small number of motor vehicles in Victoria during the pioneer period, but were directed to an anticipated future where motor vehicles would become more affordable and widely used: ‘that the car that was owned by the rich man to-day might be owned by the business man to-morrow’;<sup>163</sup> and, ‘[a]s the patents run out the cars will come within the reach of

<sup>158</sup> Priestly, above n 8, 159. There were early concerns that the ACV as involving both motorists and the motoring industry might be too fractious an organisation to effectively lobby government. It seems from the ACV’s success that it managed to merge and adequately represent the various interests of its members: ‘Trade Influence and the Automobile Club’, *Australian Cyclist and Motor-Car World* (Melbourne), 28 January 1904, 15.

<sup>159</sup> ‘Having a quiet chat with the Premier’ was the description used in the ACV’s General Committee Minutes concerning the July 1909 interview with Murray: ACV, *Minutes of General Committee the Automobile Club of Victoria* 1(2), 1 July 1909, 110.

<sup>160</sup> The idea of rational law was a common phrase used by the ACV. On the abandonment of the 1905 Bill, John Lang wrote in the Annual Report: ‘It is to be hoped that at no very distant date rational legislation will be introduced’: ACV, *Automobile Club of Victoria Annual Report 1905–1906*, above n 48, 11.

<sup>161</sup> On the recognition that experience with horses meant little when it came to dealing with motor vehicles, see Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1295 (James Boyd).

<sup>162</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 23 August 1905, 1146 (Sir Samuel Gillott, Chief Secretary); 30 August 1905, 1269 (Donald MacKinnon); 5 September, 1905, 1347 (William Watt); 14 October 1908, 1210 (Sir Henry Weedon); 14 October 1908, 1218 (George Prendergast, Leader of the Opposition).

<sup>163</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1294 (James Boyd).

the man with moderate means, and we shall find twenty cars in use for every one that is in use at the present time.<sup>164</sup>

Underpinning the legislative agenda was this anticipated future of mass automobile transportation. While the immediate rhetoric of many Members was anti-motoring, there was also recognition that the motor vehicle promised a better society of more rapid and more reliable transportation: ‘while we all admit their convenience, it must be admitted that the traffic wants regulating.’<sup>165</sup> In 1905, several Members favourably compared the motor vehicle to horses.<sup>166</sup> Also in 1905, the government itself acquired its first motor; Bent justifying the decision on the basis that the vehicle’s speed would assist in good government through allowing Ministers to rapidly tour the State.<sup>167</sup> It is significant to realise that complaints about motor vehicles in the parliamentary debates were generally complaints about badly-behaved drivers, as John Murray makes clear in the second reading of the 1909 Bill:

It makes one indignant to see the careless way in which a car is occasionally driven, but I know that the great body of the motor car owners have no sympathy with those who drive in such a way as to endanger other people.<sup>168</sup>

Very few members adopted the Luddite position of cursing the ‘motor car ... [as] a fiend which ... should be hung, drawn, and quartered’.<sup>169</sup> Instead, it was the ‘road hog’ — the minority of inconsiderate, speeding, accident-causing, bad drivers — that was demonised.<sup>170</sup> That the properly-used motor vehicle was considered a positive addition to society and expected to become common and widespread goes some of the way to explaining the ‘anaemic’ nature of the debate.<sup>171</sup> It promised progress. These connections can be seen in the ridiculing of Norman Bayles by John Murray:

When with the cheapening of the costs of construction every poor person can drive a motor car it will, of course, become unpopular with very rich people. Then, instead of driving in a motor car we will find the honourable member for

<sup>164</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1332 (John Thomson).

<sup>165</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October, 1908, 1210 (Sir Henry Weedon).

<sup>166</sup> See, eg, Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1905, 1296.

<sup>167</sup> Priestly, above n 8, 8. Throughout the pioneer period, the government car fleet increased. In 1906, the Education Department acquired a motor vehicle: Victoria, *Parliamentary Debates*, Legislative Assembly, 12 July 1906, 279 (William Colechin). In 1909, an allocation was set aside in the budget for the building of a dedicated government garage: Victoria, *Parliamentary Debates*, Legislative Council, 27 July 1909, 392. By late 1909, Prendergast was accusing government Ministers of reckless driving in a trip made in a government car from Ballarat to Melbourne at a reported 40 mph average: Victoria, *Parliamentary Debates*, Legislative Assembly, 3 December 1909, 2740 (George Prendergast, Leader of the Opposition).

<sup>168</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 September 1909, 1086 (John Murray, Premier).

<sup>169</sup> Norman Bayles’ description of the position of Robert Stanley: Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1327 (Norman Bayles).

<sup>170</sup> See Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 1905, 1268 (Donald MacKinnon); 14 October 1908, 1215 (Norman Bayles).

<sup>171</sup> The linking of motor vehicles with progress was an opinion that was widely canvassed in ‘progressive’ magazines of the period such as *Scientific Australian*. See, eg, ‘Among the Automobileists’, *Scientific Australian* (Melbourne), 20 March 1904, 55.

Toorak not bothering our roads, but if he does threaten the lives of his fellow subjects he and his friends will do so flying on an aeroplane.<sup>172</sup>

Several writers have observed that Australian culture has been marked by an affirmation of material progress through technological change, and that motor vehicles in particular were to become an iconic embodiment of this linking of progress to technology.<sup>173</sup> It can be seen that this link was being forged during the pioneering period of motoring. Banjo Paterson gave voice to the cultural anticipation of the motor vehicle in his enthusiastic reporting of the 1905 Dunlop Sydney to Melbourne reliability run:

We outpace, we outlast, we outstrip.  
Not the fast-fleeing hare,  
Nor the racehorses under the whip,  
Nor the birds of the air  
Can compete with our swiftness sublime,  
Our ease and our grace;  
We annihilate chickens, and time,  
And policemen and space.<sup>174</sup>

Therefore, thought of prohibiting or even impeding the use of motor vehicles was antithetical to a fundamental cultural substratum that bound together technology and progress. Just after the tentative travels of the first motor vehicles in 1897, *The Age* anticipated:

The near approach of a time when the world is to be full of horseless carriages ... They will run on pneumatic tyres, without jolting, bumping or bolting, putting forth a giant's power at the turning of a screw, and resuming the tractability of a babe at the pressure of a child's finger. It cannot be otherwise than that machines of this character will be in vast demand.<sup>175</sup>

A reflection of this cultural acceptance of progress through modern technology can be seen in the responses of the horse and bicycle industries to the emergence of motorised transport. While the popular history literature suggests that these groups opposed the motor vehicle, the opposite seems evident from the trade journals of the period. Instead of defensively protecting the older transportation

<sup>172</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1331 (John Murray).

<sup>173</sup> Knott, 'The Conquering Car', above n 2, 7–10; Stella Lees and June Senyard, *The 1950s: ... How Australia Became a Modern Society, and Everyone Got a House and Car* (1987) 17–30.

<sup>174</sup> Andrew Barton Paterson, 'Overland to Melbourne on an Automobile — The History of the Haste-Wagons No 1' in Tony Corp, "'Banjo" Paterson in Australia's First Car Trial' (1992) 30 *Canberra Historical Journal* 39, 39. Paterson was so taken with the prospects of the motor car that in 1913 he published a humorous short story, 'Three Elephant Power', capturing the speed and male competition of the new machines: A B Paterson, *Three Elephant Power and Other Stories* (1917). The reliability trial was also covered extensively by the Victorian papers: 'Motoring — Dunlop Reliability Race', *The Argus* (Melbourne), 22 February 1905, 5; 'Motoring — Reliability Road Race', *The Argus* (Melbourne), 24 February 1905, 6; 'Motoring — Dunlop Reliability Test — An Inconclusive Finish — Deciding Test to Be Made', *The Argus* (Melbourne), 27 February 1905, 7; 'Motoring — Dunlop Reliability Contest — Deciding Test', *The Argus* (Melbourne), 1 March 1905, 9.

<sup>175</sup> Editorial, *The Age* (Melbourne), 12 January 1897, 4. The editorial follows two earlier articles in *The Age* that heralded the motor vehicle: 'Cycles and Motors — A New Industry for Melbourne', *The Age* (Melbourne), 8 January 1897, 5–6; 'The Future of the Horse', *The Age* (Melbourne), 9 January 1897, 4.

technologies, the motor vehicle was quickly adopted, as demonstrated by the inclusion of motor vehicles in journal titles.<sup>176</sup> By 1910, *The Argus* announced that there had been 2735 motor vehicles registered, 3204 driver licences issued (including 100 to women) in the first six months of the Act, and pronounced that: ‘The popularity of the motor-car has never been so great as now, and every week sees the trade increasing. Those interested declare that the day is not far distant when the motor industry will be one of the most important in the State.’<sup>177</sup>

This explains not only the lack of debate concerning how to regulate motor vehicles, but more significantly it explains the motorist-friendly orientation of the *Motor Car Act 1909* (Vic) because it went without saying that motor vehicles were the harbinger of a better future. Indeed, while the link between motor vehicles and progress was implicit in much of the ACV correspondence for the period, there did not seem to be the requirement to make it explicit. Arthur Sachse does give voice to the place of motor vehicles within the ambit of technology and progress belief:

the motor car was a vehicle that had come to stay with us, and one that would be of great future benefit. It was no doubt of great utility, and anything which promoted the scientific development of mechanical power should meet with the approval of the house ... [the] motor car had become a necessity of modern life; and, therefore, an institution which must facilitate the progress of the country.<sup>178</sup>

However, pointing to the place that the motor vehicle as modern technology occupied within the cultural substratum of Australian society does not, in itself, explain the *Motor Car Act 1909* (Vic). At best it explains the success of the ACV’s lobbying — as the representatives of progress in securing a motorist-friendly Act against the background of community anxiety. What remains unaccounted for is why the Act imposed centralised schemes of licensing, registries and policing; in the words of Madden CJ, why was the first motor vehicle law a ‘police Act’?<sup>179</sup>

### E *Law as Technology*

The *Motor Car Act 1909* (Vic) instigated a regulatory scheme of licensing and policing to regulate the future. As has been discussed, there was little active debate on whether state-centred regulation through bureaucratic registries and

<sup>176</sup> *Australian Cyclist* added ‘and Motor-Car World’ to its title in 1901: see *Australian Cyclist and Motor-Car World* (Melbourne), 21 March 1901.

<sup>177</sup> ‘The Triumphal Car — Victoria’s Motor Bill — Ten Years’ Progress — A Thriving Industry’, *The Argus* (Melbourne), 12 July 1910, 6.

<sup>178</sup> Victoria, *Parliamentary Debates*, Legislative Council, 20 July 1909, 259 (Arthur Sachse).

<sup>179</sup> *Parkin v Whithers* [1913] VLR 533, 537:

That Act requires the registration of motor-cars, and the payment of fees for the purpose of revenue and also ensures that drivers of motor-cars are competent persons, motor cars being highly dangerous to the public except when driven by reasonably careful and capable drivers. It also provides for the numbering of motor-cars; a ready means by which they can be identified. It is what I may call a police Act.

policing was the appropriate mode for this future governance.<sup>180</sup> The degree to which the Act was the product of a common conception on how technology should be regulated was highlighted by Gaunson's opposition to the 1905 Bill. In response to the Bill's regulatory scheme, Gaunson celebrated the common law's adjudicative mode of governing:<sup>181</sup>

I am altogether against this sort of legislation, for the common law will put these fellows in Pentridge [dangerous motorists in the notorious Melbourne prison] ... In fact some of them will be hanged yet. If a fellow drives at such a reckless pace as to kill an unoffending child, he deserves to be punished for murder as much as the man who shoots at random in the street, not caring a tinker's curse whether he kills or not. ... Leave the good old common law to deal with these gentlemen. Let them be sent up for trial before a jury of their country, and then they will find it is no joke.<sup>182</sup>

And at the same time, he degraded posited norms and regulative regimes established by legislation:

I am satisfied to rest with my feet firmly planted upon the common law, not upon your frisky, risky, befrilled, and rubbishy Acts of Parliament, which are absurd in their operation and cannot do a bit more than the old common law did in the first place.<sup>183</sup>

Gaunson was a lone voice in the parliamentary debates in criticising the motor Bills as providing for bureaucratic regulation of motor vehicles. Indeed, Gaunson's faith in the courts and the common law was in contrast to the rest of the legislature. During the pioneer period, when it came to motor vehicles the prevailing attitude was of 'court bashing'. The courts were routinely attacked for failing to convict motorists.<sup>184</sup> Also, the Victorian Supreme Court decision in *Gillin v Malmgren*<sup>185</sup> was subject to strong criticism. That decision interpreted the term 'vehicle' in the *Regulations under the Motor Car Act 1909* (Vic) to include trams; ruling it permissible for motorists to overtake a stationary tram on the right.<sup>186</sup> In Parliament, the decision was attacked because it contradicted local council by-laws that specified the overtaking of stationary trams on the

<sup>180</sup> See above nn 117–24 and accompanying text.

<sup>181</sup> On the common law as a mode of governing, see W T Murphy, 'The Oldest Social Science? The Epistemic Properties of the Common Law Tradition' (1991) 54 *Modern Law Review* 182.

<sup>182</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 30 August 1905, 1270–1 (David Gaunson).

<sup>183</sup> *Ibid* 1271.

<sup>184</sup> *Ibid* 1268 (Donald MacKinnon); Victoria, *Parliamentary Debates*, Legislative Assembly, 20 September 1910, 1231 (John Murray, Premier); 28 January 1914, 3417–18 (John Murray, Chief Secretary).

<sup>185</sup> [1912] VLR 26.

<sup>186</sup> *Ibid* 26 (a'Beckett J); *Regulations under the Motor Car Act 1909* (Vic) reg 2(3). For precedent the Court relied on the English case of *Burton v Nicholson* [1909] 1 KB 397, 403 (Lord Alverstone CJ), 404 (Bingham J), 404 (Walton J); *Gillin v Malmgren* [1912] VLR 26, 29 (a'Beckett J).

left,<sup>187</sup> and more importantly it endangered the lives of tram passengers by allowing motorists to pass trams on the wrong side of the road, catching alighting passengers unaware.<sup>188</sup>

Hugh Collins has famously described Australia as a ‘Benthamite society’.<sup>189</sup> In ignoring Gaunson’s call to leave it to the common law, and in the attacks on the judiciary, the echo of Bentham’s rejection of adjudicative governance by lawyers, and the endorsement of legislation, regulation and policing by the executive, can be heard.<sup>190</sup> There is debate over whether Collins’ ascribing of ‘Benthamism’ to Australia is an adequate description of the ambit of political philosophy during federation and before World War I.<sup>191</sup> Nevertheless, common to Collins’ account of ‘Benthamism’, as well as alternative accounts that emphasise T H Green’s social liberal ‘evolution’ of utilitarianism, was a confidence and faith in legislation and the regulation of society through executive action.<sup>192</sup> This period provides some of the more celebrated and notorious examples of legislation not leaving it to the common law, and instead enacting regulatory schemes.<sup>193</sup> Most writers on social liberalism in Australia celebrate the conciliation and arbitration schemes that emerged contemporaneously with the pioneer period of motoring as clear examples of legislation providing for a rational scheme of centralised decision-making for the wider social good.<sup>194</sup> The Aboriginal protector legislation from the same period provides other, more notorious, examples of this law-making for governance.<sup>195</sup>

In short, it can be seen that, during the pioneering period of motoring, the regulatory Act establishing and authorising a centralised scheme of decision-making to achieve a desired end — industrial harmony or ‘protection’ of indigenous people — was increasingly common.<sup>196</sup> Indeed, such a form of law

<sup>187</sup> Victoria, *Parliamentary Debates*, Legislative Council, 6 August 1912, 562 (James Brown, Attorney-General and Solicitor-General).

<sup>188</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 28 January 1914, 3412–19.

<sup>189</sup> Hugh Collins, ‘Political Ideology in Australia: The Distinctiveness of a Benthamite Society’ (1985) 114 *Daedalus* 147.

<sup>190</sup> H L A Hart, *Essays on Bentham’s Jurisprudence and Political Theory* (1983) 21.

<sup>191</sup> Graham Maddox, ‘Australian Democracy and the Compound Republic’ (2000) 73 *Pacific Affairs* 193, 207.

<sup>192</sup> Gregory Melleuish, *Cultural Liberalism in Australia: A Study in Intellectual and Cultural History* (1995) 20; Marian Sawer, *The Ethical State? Social Liberalism in Australia* (2003) 32–6.

<sup>193</sup> See generally Paul Finn, *Law and Government in Colonial Australia* (1987).

<sup>194</sup> See, eg, Tim Rowse, *Australian Liberalism and National Character* (1978) 30; Sawer, above n 192, 50–67.

<sup>195</sup> Sandra Berns, ‘Regulating the “National Live Stock” — An Experiment in Human Husbandry’ (2002) 4 *University of Notre Dame Australia Law Review* 1.

<sup>196</sup> The Victorian Parliament passed 56 Acts in 1909. Out of this total, 10 Acts related to the budget and taxation, 11 were minor amendments of existing Acts, three were private Acts concerning the legal rights of individuals and one restricted words that could be used in company names (*Companies Names Act 1909* (Vic)). The bulk of legislation (23 Acts) concerned land. Most of this related to directing or providing for local councils, boards or trusts to deal with specific land in certain ways (see, eg, *Caulfield Land Act 1909* (Vic)), or was an enabling Act to facilitate the construction of public infrastructure (see, eg, *Eltham to Hurst’s Bridge Railway Construction Act 1909* (Vic)). Only a few of these land Acts modified existing land law (see, eg, *Landlord and Tenant Act 1909* (Vic)). Therefore, most of the Acts passed in 1909 involved small piecemeal changes to existing statutory or common law, were Acts directed to specific people or specific parcels of land, or facilitated state-sponsored development. Significantly, seven Acts (including

leading to ‘scientific’ government by the executive was considered modern. It was a sign of progress itself that ever-increasing aspects of social life were not left to the archaic common law with its divisive *laissez faire* tendencies, but were properly regulated by the state for the wider social good.<sup>197</sup> In this light, the specific regimes of licensing, prescribed norms and policing in the *Motor Car Act 1909* (Vic) are explained. As with not prohibiting motor vehicles, it just went without saying (except by Gaunson) that the motor vehicle must be regulated through state agencies keeping registries, licensing, and achieving compliance through surveillance and policing.<sup>198</sup> Indeed, for the ACV, the progressive character of the Act as a regulatory scheme was what satisfied the foundational demand for ‘rational legislation’.<sup>199</sup>

This is the second element of the cultural substratum that transformed the community’s anxieties and calls for law into the regulatory scheme of the *Motor Car Act 1909* (Vic); that state-based executive regulation was the appropriate and desirable way to govern this new technology. Evidence for this can be found in the regular praise in Parliament after 1910 for the police’s administration of the Act,<sup>200</sup> in contrast to the criticisms concerning the judiciary.<sup>201</sup> It is also found in the minor controversies that surrounded the passage of the Act. Both the Legislative Council’s attempts to decentralise revenue to the local councils, and the ACV’s objections to the wide power to make delegated legislation, anticipated criticisms of the regulative state — centralisation of power in the executive at the expense of regional autonomy and the problem of parliamentary supervision of delegated law-making. However, in the Legislative Assembly these objections were brushed aside. Centralisation, and with it uniformity and efficiency through larger resources, was celebrated as a virtue of the regime,<sup>202</sup> and in a statement resonant with Diceyan confidence in the cultural restraints on ‘English’ decision-makers, Premier Murray assured:

It is reasonable to presume that the Act will be administered with some intelligence, and that no oppressive regulations will be made ... I have no fear that

the *Motor Car Act 1909* (Vic) were framework Acts that established a bureaucratic decision-making regime to regulate diverse areas of social and economic activity such as sheep dipping (*Sheep Dipping Act 1909* (Vic)), access to water (*Water Act 1909* (Vic)), coal mines (*Coal Mines Regulation Act 1909* (Vic)), and traffic on the Yarra River (*Upper Yarra Traffic Act 1909* (Vic)).

<sup>197</sup> See Melleuish, above n 192, 40–2; Sawyer, above n 192, 9–14.

<sup>198</sup> Gaunson kept suggesting to the House to at least think more deeply about the regulation of motor vehicles: ‘[H]ow absurd it was to bring a Bill of this kind before a half-tired, a half-informed Assembly, when it should be put before a Select Committee for careful investigation’: Victoria, *Parliamentary Debates*, Legislative Assembly, 31 August 1910, 1299 (David Gaunson).

<sup>199</sup> ACV, Interview with John Murray, above n 149.

<sup>200</sup> See, eg, Victoria, *Parliamentary Debates*, Legislative Assembly, 28 January 1914, 3417 (John Murray).

<sup>201</sup> See above nn 184–8 and accompanying text.

<sup>202</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 14 October 1908, 1208–9 (Sir Alexander Peacock, Chief Secretary); 16 September 1909, 1156 (George Prendergast, Leader of the Opposition).

the power to make the regulations will be used in a tyrannical manner, but if it is, the House will be quite ready to bring the Ministry to task.<sup>203</sup>

Thus the *Motor Car Act 1909* (Vic) established a regulative regime of registries, licensing, and policing administered by the centralised police force. This was not because of the community's anxieties regarding motor vehicles, but rather manifested a pervasive cultural substratum common to the Victorian legislature (and also the pioneering motorists of the ACV) that this was the most appropriate way to govern this new technology. This leads to a significant observation concerning responses to emergent technology.

Philosophical accounts of technology see beyond the immediate materiality of technological objects, and suggest two defining characteristics of technology. The first is as a form of 'ordering', as a way of conceiving and organising the world; and the second is the inherent valuelessness of this ordering — that technology facilitates ends, but does not provide ends.<sup>204</sup> Under this definition, the *Motor Car Act 1909* (Vic), as posited state regulation, can be revealed, in itself, as technology. In contemporary times, legislation makes up the mundane bulk of what is law.<sup>205</sup> However, current familiarity with legislation obscures the historical drama behind the common law's grant to the legislature of law-making power and the form of that permission as sovereignty.<sup>206</sup> Legislation as an expression of sovereignty meant that both the subject of law and the form of law were freed from any substantive limitations. The sovereign could make valid law on any subject,<sup>207</sup> and, provided the law followed the formal 'recognition' test for valid legislation, the sovereign was unlimited in the form that this law could take.<sup>208</sup> In many important respects, 'modern jurisprudence' represented a working through of the anxieties disclosed when the authority of law was separated from its content.<sup>209</sup> In this light, law became a tool of the sovereign; what was legal or illegal became a matter of examining the historical record to determine what was provided for by positivist prescription at any given time.<sup>210</sup> At this formal level, the Act seems to be technological because it was legislation. The Act 'ordered the world' through imposing categories, rights and obligations that did not exist prior to the Act, and did so for an end — regulating motor

<sup>203</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 21 October 1908, 1333 (John Murray, Premier).

<sup>204</sup> Martin Heidegger, 'The Question concerning Technology' in Martin Heidegger (ed), *The Question concerning Technology and Other Essays* (William Lovitt trans, 1977) 3 [trans of: *Die Technik und die Kehre, Holzwege, and Vorträge und Aufsätze*]. On the importance of Heidegger when thinking about technology, see Bernard Stiegler, *Technics and Time: The Fault of Epimetheus* (Richard Beardsworth and George Collins trans, 1998) [trans of: *La Technique et le Temps*].

<sup>205</sup> See generally Marc Galanter, 'Law Abounding: Legislation around the North Atlantic' (1992) 55 *Modern Law Review* 1; Justice Michael McHugh, 'The Growth of Legislation and Litigation' (1995) 69 *Australian Law Journal* 37.

<sup>206</sup> Gerald Postema, *Bentham and the Common Law Tradition* (1986) 103.

<sup>207</sup> A V Dicey, *Introduction to the Study of the Law of the Constitution* (first published 1885, 10<sup>th</sup> ed, 1975) 43.

<sup>208</sup> H L A Hart, *The Concept of Law* (1961) 102.

<sup>209</sup> Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (2000) 110–11.

<sup>210</sup> Ronald Dworkin, *Taking Rights Seriously* (1977) 17.

vehicles for public safety — that was a value brought to the law. However, there was something more immediately technological about the Act than its legislative pedigree.

The freedom of the sovereign included the freedom to adopt any measure as law. The Act adopted a regulatory scheme of centralised registries, licensing, policing and delegated law-making. In other words, the Act provided for the regulation of motor vehicles through establishing a bureaucratic scheme of executive decision-making. Following Max Weber, this type of legislation establishing ‘rational’, hierarchical and procedural governing has been conceived as technology.<sup>211</sup> The analogy has been with the mechanised factory:

The fully developed bureaucratic apparatus compares with other organizations exactly as does the machine with the non-mechanical modes of production. Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs — these are raised to the optimum point ...<sup>212</sup>

The arrival of ‘mechanised’ law can be seen as the ultimate step in the long process of rationalisation of the law; from cultural practices to systemic codification, to it providing a procedural framework for rational, efficient bureaucracy.<sup>213</sup> Outside of the speed and the drink-driving provisions, the *Motor Car Act 1909* (Vic) did not provide for many substantive values that could be enforced in a court. Much of the content of the Act — qualification of drivers, safety and construction of motor vehicles, types and styles of licence plates — was to be filled in by the executive through regulation. The Act provided a framework, erected on the criminalisation of driving without a licence and driving an unregistered motor vehicle, through which bureaucratic organisation could regulate motor vehicles and motorists. Not only was the Act technological because it was legislation, but more immediately it was technological in establishing the ‘machine’ of government, providing the process for the active regulation of motoring by the state.

Therefore, the *Motor Car Act 1909* (Vic) was a ‘technical’ law that dealt with the emerging motor vehicle according to the conception at the time that good government involved centralised executive regulation through registries, licensing and policing. At times the technical nature of the Act was made explicit in the parliamentary debates. Acting Premier William Watt in 1911 resisted calls for amendments to be made to the Act to provide for speed limits on the ground that

<sup>211</sup> For a criticism of modern law made forcefully and dangerously by Carl Schmitt, see Carl Schmitt, *The Concept of the Political* (George Schwab trans, 1996 ed) [trans of: *Der Begriff des Politischen*] 69–79; Carl Schmitt, *The Crisis of Parliamentary Democracy* (Ellen Kennedy trans, 1985) [trans of: *Die Geistesgeschichtliche Lage des Heutigen Parlamentarismus*]. See also John P McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (1997).

<sup>212</sup> Max Weber, ‘Bureaucracy’ in Guenther Roth and Claus Wittich (eds), *Economy and Society: An Outline of Interpretive Sociology* (Fischhoff et al trans, 1978 ed) vol 2, 973 [trans of: *Wirtschaft und Gesellschaft: Grundriss der Verstehenden Soziologie*].

<sup>213</sup> Max Weber, ‘Economy of Law (The Sociology of Law)’ in Guenther Roth and Claus Wittich (eds), *Economy and Society: An Outline of Interpretive Sociology* (Fischhoff et al trans, 1978 ed) vol 2, 848 [trans of: *Wirtschaft und Gesellschaft: Grundriss der Verstehenden Soziologie*].

[t]his morning [he] consulted with the Chief Commissioner of Police ... Commissioner said that he does not think that the Act needs strengthening. There are certain technical amendments which he considers it would be advisable to make, but he cannot advise the Government that the Act needs strengthening ...<sup>214</sup>

Like linking the motor vehicle to progress, the realisation that the *Motor Car Act 1909* (Vic) was law as technology was also made by Arthur Sachse: 'But the House would have to be perfectly fair, and not produce a sort of Frankenstein's monster that would suppress motor traffic altogether, nor should they place arbitrary power in the hands of officials.'<sup>215</sup> The use of Frankenstein's monster, the metaphor for technology in the 20<sup>th</sup> century,<sup>216</sup> was revealing. Sachse's citing of Frankenstein's monster was not used as might be expected, to characterise the ambiguous motor vehicle that promised human progress and also human destruction,<sup>217</sup> but to characterise the law itself.

#### V THINKING ABOUT EMERGENT TECHNOLOGY AND THE CALL FOR LAW

The *Motor Car Act 1909* (Vic) will soon celebrate its centenary, although unlike the recent centenary of the ACV, few will mark the event. The anticipated popular adoption of the motor vehicle has occurred and the motor vehicle has become so deeply engrained in Australian society that it has been suggested that it is:

an important feature in Australian governance ... significant for Australian identities, important for myths of cultural possession and future prosperity, essential for the demarcation of space and place, and often deployed to directly control individual bodies.<sup>218</sup>

This article's investigation of the *Motor Car Act 1909* (Vic) has suggested that law-making in response to emergent technology does not necessarily involve legislation pandering to the popular mood. In this specific example, while the popular mood called for law, the called-forth law reflected the influence of other factors ranging from the availability of templates and the lobbying of interest groups, to diffuse cultural positions concerning the intertwining of technology and progress, and common conceptions of what amounted to modern government.

The question of the legal response to emergent technology has been a consistent theme for the past century. A progression of emergent technologies has been popularly received as offering the potential to revolutionise received notions of

<sup>214</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 2 August 1911, 361 (William Watt, Acting Premier).

<sup>215</sup> Victoria, *Parliamentary Debates*, Legislative Council, 20 July 1909, 259 (Arthur Sachse).

<sup>216</sup> Andrew Milner, *Literature, Culture, Society* (1996) 162–7; Markman Ellis, 'Fictions of Science in Mary Shelley's *Frankenstein*' (1999) 25 *Sydney Studies in English* 27.

<sup>217</sup> See Langdon Winner, *Autonomous Technology: Technics-out-of-Control as a Theme in Political Thought* (1977), 307–35.

<sup>218</sup> Kieran Tranter, 'Mad Max: The Car and Australian Governance' (2003) 5 *National Identities* 67, 78. On cars and national identity, see Tim Edensor, 'Automobility and National Identity: Representation, Geography and Driving Practice' (2004) 21(4–5) *Theory, Culture and Society* 101.

humanity, society, social relations and identity.<sup>219</sup> However, it is possible to discern that, in common with the motor vehicle during the pioneer period of motoring, there has often been a dissociation between the popular call for law and the provisions of the resulting law. For example, it has been identified that the ‘Sputnik crisis’ of 1957 led to widespread calls for the legal regulation of space.<sup>220</sup> Barton Beebe has suggested that the specific provisions of the resultant international space law<sup>221</sup> reflected the influence of available precedents (maritime law), lobbying (American jurists concerned with their discipline’s status), the ambit of cultural belief in humanity’s manifest destiny in the stars, and the common mechanisms at the time for providing for registration, licensing and allocation of risk.<sup>222</sup> In other words, Beebe identified similar factors influencing the making of public international law from the 1950s to 1970s as have been identified in this article with respect to the making of the *Motor Car Act 1909* (Vic).

Similar observations can be made in respect of the recent widespread concerns in Australia regarding stem cell technology.<sup>223</sup> The called-forth Act, the *Research involving Human Embryos Act 2002* (Cth) established an executive agency, the Embryo Research Licensing Committee of the National Health and Medical Research Council, to license researchers and to police the licensing regime.<sup>224</sup> It grounded this regime on a series of embryo-related offences and also authorised the Governor-General to make regulations.<sup>225</sup> The Act provided for a permissive regulatory scheme of centralised executive decision-making that allowed researchers access to ‘surplus’ assisted reproduction embryos.<sup>226</sup> It is possible to determine that this Act did not reflect the concerns of many in the community regarding ‘science out of control’ and the horror at the potential devaluing of

<sup>219</sup> Lawrence M Friedman, *The Horizontal Society* (1999); Mike Michael, *Reconnecting Culture, Technology and Nature: From Society to Heterogeneity* (2000); N Katherine Hayles, *How We Become Posthuman: Virtual Bodies in Cybernetics, Literature and Informatics* (1999); Hubert L Drefus, *On the Internet* (2001) 1–7.

<sup>220</sup> Kieran Tranter, ‘Terror in the Texts: Technology — Law — Future’ (2002) 13 *Law and Critique* 75, 89.

<sup>221</sup> *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*, opened for signature 27 January 1967, 610 UNTS 205 (entered into force 10 October 1967); *Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space*, opened for signature 22 April 1968, 672 UNTS 119 (entered into force 3 December 1968); *Convention on the International Liability for Damage Caused by Space Objects*, opened for signature 29 March 1972, 961 UNTS 187 (entered into force 1 September 1972); *Convention on Registration of Objects Launched into Outer Space*, opened for signature 12 November 1974, 1023 UNTS 15 (entered into force 15 September 1976).

<sup>222</sup> Barton Beebe, ‘Law’s Empire and the Final Frontier: Legalizing the Future in the Early *Corpus Juris Spatialis*’ (1999) 108 *Yale Law Journal* 1737. For another account of the cultural narratives made law in international space law, see Tranter, ‘Terror in the Texts’, above n 220.

<sup>223</sup> Gina Kolata, *Clone: The Road to Dolly and the Path Ahead* (1998); Judith Thomson, ‘Legal and Ethical Problems of Human Cloning’ (2000) 8 *Journal of Law and Medicine* 31; Russell Blackford, ‘Thinking about Cloning: A Reply to Judith Thomson’ (2001) 9 *Journal of Law and Medicine* 238; Dianne Nicol, Donald Chalmers and Brendan Gogarty, ‘Regulating Biomedical Advances: Embryonic Stem Cell Research’ (2002) 2 *Macquarie Law Journal* 31.

<sup>224</sup> *Research involving Human Embryos Act 2002* (Cth) pt 2, divs 3, 4.

<sup>225</sup> *Research involving Human Embryos Act 2002* (Cth) ss 10–12, 48.

<sup>226</sup> Shih-Ning Then, ‘Stem Cell Technologies: Regulation, Patents and Problems’ (2004) 12 *Journal of Law and Medicine* 188, 191.

human life implied by the technology.<sup>227</sup> Although only a preliminary analysis, a similar set of factors can be identified that influenced the Act as were identified in Victoria during the pioneering period of motoring, and in North America during the ‘space age’. The Australian law was formulated with reference to overseas precedents, most notably the United Kingdom and the United States.<sup>228</sup> It was also the product of consistent lobbying by the medical community, who made the claim that a regulatory scheme allowing research was in the national interest and in the best interest of sufferers of currently incurable disorders.<sup>229</sup> Further, the parliamentary debate was characterised by members aware that they were legislating for the future. There was a shared belief that, whether they liked it or not, stem cell research was ‘here to stay’ and if managed properly could deliver social progress.<sup>230</sup> There was also little disagreement that the regulatory regime to be adopted should be a centralised bureaucratic scheme controlled by experts.<sup>231</sup> Although there were differences in the type of the technology (mass transportation compared with specialised medical techniques), differences in the subject of the legislation (motorists in general compared to the very small numbers of stem cell researchers), and a historical and cultural gap of 93 years, there appeared similarities in the factors that drove the *Motor Car Act 1909* (Vic) and the influences on the *Research involving Human Embryos Act 2002* (Cth).

This article, in examining the formation of the *Motor Car Act 1909* (Vic), emphasises that the process of moving from popular anxieties about emergent technology and the call for law to the actual law was mediated by other factors. In the midst of public concern about the danger, speed, noise and elitism of motor vehicles, there was enacted a permissive Act that regulated the motor vehicle through registries, licensing and policing. While two of the factors,

<sup>227</sup> These opinions are well documented in the several inquiries into the technology: Australian Health Ethics Committee, *Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings* (1998) Australian Government National Health and Medical Research Council <<http://www.nhmrc.gov.au/publications/files/e4res.pdf>> (note that this document no longer reflects the opinions of the Australian Health Ethics Committee); House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Human Cloning: Scientific, Ethical and Regulatory Aspects of Human Cloning and Stem Cell Research* (2001); Senate Community Affairs Legislation Committee, Parliament of Australia, *Provisions of the Research involving Embryos and Prohibition of Human Cloning Bill 2002* (2002). See also Christine Critchley and Lyn Turney, ‘Understanding Australians’ Perceptions of Controversial Research: The Influence of Social Trust, Religiosity and Anti-Intellectualism on Opposition to Stem Cell Research’ (2004) 2 *Australian Journal of Emerging Technologies and Society* 79.

<sup>228</sup> Brendan Gogarty and Dianne Nicol, ‘The UK’s Cloning Laws: A View from the Antipodes’ (2002) 9(2) *E Law — Murdoch University Electronic Journal of Law*; Bryn E Floyd, ‘Regulation of Stem Cell Research: A Recommendation that the United States Adopt the Australian Approach’ (2004) 13 *Pacific Rim Law and Policy Journal* 31.

<sup>229</sup> Patrick Carlyon, ‘The Clone Ranger’, *The Bulletin* (Sydney), 23 April 2002, 22–4; Bill Uren, ‘Potential Hazards’ (2002) 12(4) *Eureka Street* 19.

<sup>230</sup> See Commonwealth, *Parliamentary Debates*, House of Representatives, 27 June 2002, 4543–4 (John Howard, Prime Minister); 20 August 2002, 5242–3 (Simon Crean, Leader of the Opposition); Commonwealth, *Parliamentary Debates*, Senate, 11 November 2002, 5944 (Senator Meg Lees); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 August 2002, 6069 (Alexander Downer, Minister for Foreign Affairs); 22 August 2002, 5444–5 (Fran Bailey, Parliamentary Secretary to the Minister for Defence).

<sup>231</sup> This was the model suggested in each of the reports. See House of Representatives Standing Committee on Legal and Constitutional Affairs, above n 227, 127–68, 201–36; Senate Community Affairs Legislation Committee, above n 227, 65–104.

reliance on the United Kingdom template and the influence of a successful lobby group such as the ACV, are common political factors that have a general influence on law-making, the impact of ‘progress’ was significant. Emergent technology, whether motor cars prior to World War I, the rocket in the 1950s or genetic technologies in the new millennium, presented the promise of a better future of quick, efficient and personal transport, space age cornucopia, or the cures for the residual incurable killers. While some have observed a tarnishing of technology as progress in the West since the counterculture critiques of technology and technological civilisation of the 1960s and 1970s,<sup>232</sup> and iconic examples of the failure of technology such as Bhopal or the space shuttle *Challenger* explosion,<sup>233</sup> the lure of a progressive technological future clearly remains a significant factor in law-making for emergent technology.<sup>234</sup>

The final influence identified in this article, ‘law as technology’, suggested a more intimate relationship between technology and law at the point of legislating about technology. The *Motor Car Act 1909* (Vic), the substantive provisions of international space law and the *Research involving Human Embryos Act 2002* (Cth) all provided for centralised, bureaucratic decision-making structures that regulated the technology through registries and licensing. Each provided for rational management through a legal framework of technical law. This suggests an irony at the centre of the project to legislate for emergent technology; that at the very point that law regulates technology — to control the terrible power of Frankenstein’s monster so as to secure a progressive future — the law itself has become technology. Wolcher, drawing on Martin Heidegger, has recently suggested that technological thinking has come to constitute how the West engages with the world.<sup>235</sup> Tentatively, this article’s findings regarding the *Motor Car Act 1909* (Vic) coalesce with Beebe’s examination of international space law and the preliminary analysis of the *Research involving Human Embryos Act 2002* (Cth), to suggest that Wolcher’s proposition of the place of technological thinking appears manifest in the very attempts to gain a mastery over technology. In attempting to subject technology to the rule of law, law becomes subjected to the rule of technology. Where technology is dangerous, and requires the civilis-

<sup>232</sup> Herbert Marcuse, *One Dimensional Man: Studies in the Ideology of Advanced Industrial Society* (1964); Jacques Ellul, *The Technological Society* (John Wilkinson trans, 1964 ed) [trans of: *La Technique, ou, l’Enjeu du Siècle*]; Theodore Roszak, *The Making of a Counter Culture: Reflections of the Technocratic Society and Its Youthful Opposition* (1968).

<sup>233</sup> Paul Shrivastava, *Bhopal: Anatomy of a Crisis* (1987); Constance Penley, *NASA/TREK: Popular Sciences and Sex in America* (1997) 32–50.

<sup>234</sup> Kolata has suggested that the tarnishing of technology as progress in Western culture through the counterculture critique gave rise to bioethics and the modern ‘right to life’ movement: Kolata, above n 223, 73–85. This dilution of technology as progress can be seen in the existence in 2002 of an organised group within the Commonwealth legislature that opposed the technology outright, unlike 1905–09 where the members of the Victorian Parliament as a whole, even those expressing a negative view about contemporary motorists and their machines, admitted the positive potential for the motor vehicle. The cabal of anti-stem cell technology members in the 2002 Commonwealth Parliament was clustered around Tony Abbott and Kevin Andrews. See Commonwealth, *Parliamentary Debates*, House of Representatives, 21 August 2002, 5303–6 (Anthony Abbott, Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service); Commonwealth, *Parliamentary Debates*, House of Representatives, 28 August 2002, 6104–8 (Kevin Andrews, Minister for Ageing).

<sup>235</sup> Louis E Wolcher, ‘The End of Technology: A Polemic’ (2004) 79 *Washington Law Review* 331.

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ing harness of legal regulation, if law at the moment of regulation acts technically, then the danger of technology continues unabated. This poses a radical and challenging question: 'If emergent technology calls forth technological law then where is the place to think another way about technology?'<sup>236</sup>

<sup>236</sup> Martin Heidegger, 'The Turning', in Martin Heidegger (ed), *The Question concerning Technology and Other Essays* (William Lovitt trans, 1977) 36, 48 [trans of: *Die Technik und die Kehre*, *Holzwege*, and *Vorträge und Aufsätze*].