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The Anglo-Italian Treaty:  
Australia’s imperial obligations to Italian migrants, 1883-1940  

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Between 1883 and 1940 Italian migrants’ rights were legally classified as equal to those of British subjects in Australia, whether naturalised or not. They were protected by international law under the 1883 Treaty of Commerce and Navigation between the United Kingdom and Italy (the Anglo-Italian Treaty). That the Anglo-Italian Treaty stipulated access by the “respective subjects” of both powers to equal “civil rights” within their sovereign territories, including “dominions and possessions” (Great Britain. Foreign Office 1931: 369, 372-373), proved contentious for the Australian government after 1901. In practice, the terms of the Treaty for reciprocal rights to travel, residency and property-ownership were frequently violated in Australia as a result of the fractured nature of the political and legal framework, influenced by Queensland’s colonial legacy. A series of negotiations over legal interpretations and power struggles punctuate the history of Australia’s imperial obligations to Italian migrants that lasted almost 60 years.

While nation-building from 1901 engineered the White Australia policy to target non-‘white’ peoples, the cultural landscape from the 1920s began to shift for European migrants. Certain groups of Europeans, including Italians, were cast as racially inferior to the more preferable British due to fears about an unemployment crisis,
which dovetailed with rising ultra-nationalistic attitudes. This led to immigration restrictions on Europeans, straining the federal government's obligations under the Treaty. But the disputes about the rights of Italians to purchase land and take up cane cutting jobs in Queensland made matters worse. In the context of the global economic climate and Australia's preferences for British migrants, a prolonged debate ensued over Italian migrants' legal entitlements. There was not only a conflict with the spirit and the letter of the Treaty but also with Queensland's legislation. Examining diplomatic correspondence from Australia's federal and state politicians, Italy's consular representatives, and British authorities reveals the extent of how Queensland contravened the Treaty. There were two influences here. First, wider community anxieties about foreign nationals in the sugar industry created difficult circumstances for negotiations. Second, the machinations of imperial politics intervened to resolve the conflict in a devious way.

The Treaty's erosion can be dated back to a "Gentlemen's Agreement" from the Queensland sugar industry in 1930, which had a powerful influence on the state government's legislative processes to resist bending to the Treaty's terms. This led to a decision within the British government in 1935 to resolve the dilemma, which effectively silenced the Italian Consul General's complaints while also duping the power of the Australian Prime Minister. Yet, while a profound deterioration of perceptions about Italians developed, Italian migrants had supporters, many of whom were influenced by the action that a small group of migrants took in defending their rights. This chapter focuses on Australia's imperial responsibilities to the British Empire and Italy that accidentally protected Italian migrants, charting the legal ramifications from international negotiations and the natural justice expected by Italian migrants. Tracing the history of the Treaty goes to the heart of the consistent injustices that Italian migrants experienced in Australia that culminated in the internments from
1940. To appreciate why negotiations failed to uphold the Treaty is, to a large extent, to comprehend the nature and degree of anti-Italian sentiment in Queensland.

The foundations of Australia's and Italy's imperial obligations
The Anglo-Italian Treaty was one of many agreements that European nations were sanctioning during the last quarter of the 19th century. It symbolised the traditional friendship between Great Britain and Italy but also spoke to the geopolitical context of imperialism. The contemporary British historian Leonard Woolf (1919:24) describes the general ambience of European relations from the 1880s as being “dominated by rival imperialism, colonial policies, spheres of influence, commercial treaties, markets, and tariffs”. From the mid-1870s, the British Empire was threatened by what Gaston (1982:318-319, 323) refers to as a “transitional period” in global trade terms, stemming from the rising industrial strength of Germany and the United States. Up to the 1880s, imperialism produced heightened diplomatic tensions between Britain, France and Italy over Tunis, and, by 1884, over strategic and commercial control of East Africa (see Woolf 1919:88-119, 156-157; Lowe and Marzari 1975:21-24). Britain was concerned about its colonial territories in Africa and the strains on its commercial markets. As such, the British Foreign Office directed its energies to clawing back the Empire’s export power through a number of agreements on free trade with European nations.

Italy was dependent on international agreements at this time. There was much to gain, including recognition as a great power. Industrial underdevelopment as well as the global agrarian crisis contributed to the need for international treaties (Lowe and Marzari 1975:10; Tosi 1989:787-788). From the 1880s, Italy developed imperial policies through a formal colonial program of aggressive expansion into the Mediterranean region and East Africa, and irredentism, and through informal economic ties across the diaspora (see Choate 2008:1-20).
Export power was central to Italy’s economic sustainability, which first expanded through Italy’s Chambers of Commerce abroad (Choate 2008: 82-83). In this light, the Anglo-Italian Treaty manifested an alliance to counter French imperial intentions to expand into East Africa while also aiming to protect British and Italian interests there and elsewhere. At a time when migration hardly factored into international agreements, it could not have been foreseen that Italian migrants’ rights would disturb colonial laws that Australia inherited when the Commonwealth was created in 1901.

The historiography on the Treaty began with diplomatic historical interest from the late 1920s, which emphasised Australia’s desire for autonomy from Britain in governing its own foreign affairs. According to Bailey (1929: 190), Australia had more flexibility in negotiating commercial rather than political agreements prior to Federation despite legal obligations to 24 British treaties up to this time. There was a general understanding over the second half of the 19th century that Britain’s international negotiations required consultation with the colonies. Indeed, a precedent had been set in Newfoundland in 1855 when this colony declined to be party to an Anglo-French treaty (Stirling 1934: 28). Both Bailey (1929: 191) and Stirling (1934: 30) remark, however, on the exceptional case of the 1883 Treaty because of Australia’s inability to withdraw from it. The Australian government attempted to do so on two occasions before the First World War and on another in the early 1920s on the basis of the country’s commercial and immigration needs.

What made withdrawal so impossible? “Italy refused”, states Stirling (1934:30). Nicholson (1955:133) points out that this became “a source of embarrassment” for Australia not only due to the government’s lack of power in negotiating another agreement but also because of Australia’s reliance on trade with Italy. Indeed, Italy was one of the greatest importers of Australian products up to 1934 (Nicholson 1955:134). But the Treaty was also exceptional in that it was the only
commercial treaty that Australia had with a foreign power to survive the First World War (Nicholson 1955:24). The history and implications of the Treaty have since received surprisingly little attention with the exception of some references in Italian-Australian studies and Southern European immigration history (see: MacDonald 1958:126; Cresciani 1985:37; Langfield 1991a:5-6, 11; Douglass 1995:194-195; Dewhirst 2008:39-40). Although the political discrimination and racialisation of Italians posed a paradox for the Treaty’s effectiveness, the failure of the federal government to resolve the political agitation in Queensland marks Australia’s powerlessness in enforcing domestic cohesion and handling foreign relations.

Italy may have refused to release Australia from its Treaty obligations, but the peculiarities of Australia’s colonial politics and ‘race’ relations emerged as more pressing problems. On the one hand, this had to do with the federal government’s desire for autonomy from the British Empire, which was “ubiquitous” through economic, legal and patriotic ties (Macintyre 2001:125-126). On the other, the government had to manage what Macintyre (2001:113) terms the “obdurate independence” of the states and various sectors of society, inherited from the colonial days, for the benefit of national cohesion. Although the federal government oversaw trade and immigration, the states maintained the infrastructure, governing on matters of property, education, health, public services and moral behaviour (Macintyre 2001:95). It is notable, however, that these peculiarities proved to be legally impotent against the strength of the Treaty until the period between 1935 and 1940.

Little thought would have been given to Italian migrants in colonial Australia when British Ambassador to Italy Augustus Berkeley Paget met with the Italian Minister of Foreign Affairs Pasquale Stanislao Mancini in Rome on 15 June 1883 to sign the Treaty. Prominent in their minds was no doubt the reciprocal commercial ties and the means for securing trade between Great Britain and the Kingdom of
Italy. In less than a year, on 10 March 1884, the Treaty was ratified by the colonies of Natal, Newfoundland, New South Wales, Queensland, Tasmania, Victoria, Western Australia, and New Zealand. Later the Orange Free State and the Transvaal, the Irish Free State, India, Southern Rhodesia and Malta also acceded (see Great Britain. Foreign Office 1931:375). With Federation, the Australian government “fell heir to the treaty obligations of the States” and took responsibility for any communications on behalf of the five colonial signatories (Bailey 1928:176). When issues arose in 1908, 1912 and 1923 the government attempted to withdraw from the Treaty.33

The Treaty officially lasted until 1947, despite some confusion about whether it was in operation during the Second World War.44 Italy’s invasion of Ethiopia in 1935, which contravened the League of Nations Covenant, resulted in Australia passing the 1935 Sanctions Act although these trade sanctions were quite soft and lasted less than a year (see Nicholson 1955:136). When Italy entered the Second World War on 10 June 1940, the Treaty was suspended with all Italian consular staff setting sail for Japan by the end of the month (Nicholson 1955: 24; Cresciani 1980:86-87). This state of suspension lasted for the duration of the war until “Italy” was “deleted” from the list of Australia’s trading partners by proclamation in 1945 (Nicholson 1955:24). The Treaty was officially repealed six months after the 1947 Peace Treaty with Italy by the federal government’s decision not to reactivate it (Nicholson 1955:24-25).

**Australia’s “unconditional withdrawal”**

The significance of the 1884 colonial accords slipped from importance for Australia in 1901 as the duties of self-government took priority. It is not clear why Australia desired to withdraw from the Treaty in 1908. However, considerable anxiety had been expressed during the first decade of Federation about the arrival of Southern Europeans and Italians specifically. The Closer Settlement Acts from the 1880s
opened up the opportunity for the development of farms (Dewhirst 2008:33), which gained momentum after 1901. Between 1905 and 1908 the editors of the Italian weekly newspaper, L'Italo-Australiano, led a public campaign to explore opportunities for large groups of Italian migrant families to access agricultural settlement schemes in New South Wales and Queensland through the Closer Settlement Acts until after 1901 (Dewhirst 2008:33-40, 43). The Italian government was supporting a similar venture in Western Australia at the same time (see Zunini [1906] 1997:45). More is known about Australia’s attempt to withdraw from the Treaty in 1911-1912. What transpired here was that Italian migrants wanted to purchase land in Queensland. At this time there were officially only 6,719 Italians in Australia, 929 of them residing in Queensland (Census of Commonwealth of Australia 1911:129, 207).

Following a request by Australia’s Governor-General Lord Denman in 1911, Rennell Rodd of the British Foreign Office wrote to Italian Minister of Foreign Affairs Antonino di San Giuliano to enquire whether Italy would be prepared to discuss the withdrawal of “the self-governing dominions of the Empire” but “without impairing the Treaty as respects the rest of the Empire”. Britain offered to facilitate negotiations for one “such Dominion” to withdraw after the required 12-month period. This would allow discussions towards a provisional agreement for “reciprocal concessions of the most favoured nation treatment” to take precedence before Australia and Italy signed a new treaty. But the Italian government considered the idea of a provisional agreement to be “inopportune and complicated temporarily”, preferring the “logical and simple proposal” to move directly to negotiating the new treaty. As the Italian Minister emphasised, any withdrawal from the Treaty was solely to redraw a new treaty in order to support “the needs of produce, commerce and industries” between the two nations. While the Australian government’s circumstances were to change in 1912 – with a Navigation Bill for “conventional
tariffs with foreign countries” being tabled for parliamentary debate
– Italy’s response was not what the Australians wanted at all. Prime
Minister Arthur Fisher put it succinctly when he replied to Minister
di San Giuliano that Australia wanted “the unconditional withdrawal”
from the Treaty.66 It is worth considering the wording of Articles I,
XIII, XV and XX, which became the most contentious.

Article I specifies the means for “reciprocal freedom of commerce
and navigation” by permitting full access by the “ships and cargoes” of
Great Britain and Italy “to all places, ports, and rivers in the dominions
and possessions of the other” (Great Britain. Foreign Office 1931:369-
370). It explains that, “subject to the laws and regulations in force”,
both powers would expect “the same rights, privileges, liberties,
favours, immunities, and exemptions in matters of commerce and
navigation” as local subjects have, without any more taxes or duties
than these subjects pay. Article XIII outlines the particular privileges
of those foreigners who enter the other’s sovereign territory and
whose rights are conditional on “the laws of the country” through four
stipulations: first, their access to “full liberty, with their families, to
enter, travel, or reside in any part of the dominions and possessions”;
second, the authorisation for them “to hire or possess the houses,
manufactories, warehouses, shops and premises” to carry out their
work and livelihood; third, the approval for them to “carry on their
commerce either in person or by any agents”; and fourth, that “their
persons or property, or in respect of passports” or “commerce or
industry” will not be subject to greater “imposts or obligations” than
those “imposed upon native subjects” (Great Britain. Foreign Office
1931:372-373). Article XV states that each power’s subjects are to
have “full liberty to exercise civil rights, and therefore to acquire,
possess, and dispose of every description of property, movable and
immovable” (Great Britain, Foreign Office 1931:373). This extended,
“under the same conditions as national subjects”, to the “purchase,
sale, donation, exchange, marriage, testament, succession ab intestate,
and in any other manner”, and to their descendants accordingly. Article XX ends with the conditions for a 12-month notice for withdrawal (Great Britain, Foreign Office 1931:375). The latter clause did not appear to be misunderstood under the Fisher government but later governments queried it as a possible loophole.\footnote{77}

Since Italy was not partial to the idea of a provisional agreement, Prime Minister Fisher resolved the problem by having a clause inserted into the Commonwealth Leases to Aliens Restriction Act to clarify migrant rights generally but also suggesting the origins of the dissent:

Nothing herein contained shall prejudice the rights of any of the subjects of a foreign power between which and the United Kingdom of Great Britain and Ireland there is now subsisting, or shall hereafter subsist, any treaty of commerce whereby reciprocal civil rights of the subjects of such treaty Powers are reserved, granted, or declared, and to which treaty the State of Queensland has acceded or shall hereafter accede.\footnote{86}

The negotiation highlights that Queensland’s state laws were out of sync with both the Treaty and the rest of the Commonwealth. As would become clear, Queensland harboured a discriminatory culture against foreign nationals that clashed with the government’s legal framework as far as Italians and Maltese were concerned. The amendment would not save either migrant group from further discrimination in the 1930s. Queensland’s Premier and Governor would prefer to adhere to the state’s earlier colonial Aliens Act of 1867 and Real Property Acts, 1861-1929, and the more recent Lands Acts, 1910-1932.

It is worth pointing out that not all states had problems conforming to the Treaty’s articles as one case in New South Wales reveals. Two Italians, Domenico Piccoli and P. V. Trelfo, were successful in their application to buy agricultural land in 1914, in spite of being non-naturalised.\footnote{99} The purchasing of property was no doubt less
complicated in individual cases and in rural areas where there was little job competition. Greater numbers of Italians, however, were problematical. It took decades to address the legal inconsistencies between Queensland and the rest of Australia, which stemmed from intensified fears about job security, especially in the very profitable sugar industry in Queensland.

**Freehold rights “in all States but Queensland”**

The 1920s and 1930s marked a shift in Australia’s approach to immigration policy towards Europeans for a number of reasons. A sense of “widespread unease” that emerged has to be placed within the context of the flood of post-war migrants, the United States immigration restrictions of 1921 and 1924, and the generous land settlement schemes being offered (Langfield 1991a:1-3). Cole (1971:511) describes the period as characterised by a growing “ethnocentrism” based on British-Australian bonds and justified by the strength of racial, national and imperial ties dating back to the late 19th century. The “ethnic consciousness of being British” equated to “being white” but also “morally white” (Cole 1971:516). This meant that, although Europeans were officially exempt from the 1901 Immigration Restriction Act, cultural characteristics and practices disqualified many. Some people doubted the capacity of Jews, Southern Europeans, Eastern Europeans and even the Irish to be loyal and patriotic (Cole 1971:517). The question was how could they be relied upon to uphold the moral standards needed to defend the nation from a potential Asian invasion?

Following the end of the First World War, the Treaty entitlements of Italians were initially respected in spite of some continued confusion. But the 1920s witnessed an “intense desire in many quarters to maintain a ‘white Australia’” by encouraging British immigration but applying “restrictions and regulations” on Europeans (Langfield 1991a:13). This approach first manifested in a reliance on the
mechanism of the dictation test. MacDonald (1958:132) states that 12 Italians were refused entry between 1902 and 1914, one on the basis of failing the dictation test, although Langfield (1991a:4) claims that two Italians who failed the test in 1913 and 1922 were accepted all the same. Their cases were similar to a number of Maltese who failed yet were permitted entry because of their British subject status (Douglass 1995:330, n.115). The administration of the dictation test was used increasingly to deny entry to Europeans from the 1920s, exacerbating “race” relations (Langfield 1991b:3-4). The government also took more stringent measures with specific countries to control “Australia’s racial purity” through passports, visas and landing permits (Langfield 1991a:5-6, 13).

Despite the extant Treaty, Italy and Australia cooperated with Australia’s need to curb immigration over the 1920s (see Douglass 1995:153-154). First, Italy agreed to reduce the approval of passports by a criterion based on proof of sufficient funds (Price 1963:88, 90, n.12). Then in 1923 the federal government attempted to withdraw from the Treaty again, only to abandon the idea “owing to the likelihood of reprisals on the part of the Italian government which would adversely affect the Commonwealth’s trade with Italy”. Italy’s fascist government was enforcing tighter administrative controls and cohesion over emigration (Cresciani 1980:10-11) by this time. However, in 1924, Australia began prohibiting all Europeans, including Italians, without a sponsor’s written guarantee or, alternatively, a landing fee of £40 to process arrival (Price 1963:88). A quota system increased the cost of landing permits for those without a personal guarantee and was universally applied to migrants of non-British birth (Langfield 1991a:4-5). This coincided with the unpleasant Royal Commission of 1924 into the impact of increasing foreign workers in North Queensland, which exposed Southern Europeans and Southern Italians in particular, to inferior racial stereotypes, endorsing racism. By 1928, the Australian government communicated with the Royal
Consul General of Italy about enforcing a cap on Italian arrivals, basically to reduce their annual numbers from 7,000 to 3,000, to which the Consul General agreed (Langfield 1991a:8, 12-13; Cresciani 1980:27). However, the protection of Italian rights to purchase land would be raised within a year, prompted by a gentlemen’s agreement in Queensland.

Between 1929 and 1935 Italy’s consular representatives approached the Queensland state government, the Australian federal government, the Italian government and the Italian Embassy in London about breaches against the Treaty rights of Italians to own land in Queensland. As the Royal Italian Consul in Townsville (Francesco Pascale) first pointed out to Queensland’s Premier Arthur Moore in 1929: “the Queensland legislation dealing with the rights of [Italian] aliens to own freehold property […] conflicts with the provision of the Treaty …” whereby the legislation only permitted Italians “to acquire a lease of realty for a term not exceeding twenty-one years”. This dated back to Queensland’s Aliens Act of 1867, but the Real Property Acts, 1861-1929, and the Lands Acts, 1910-1931, were also implicated. Queensland’s Aliens Act of 1867 conflicted with the Treaty on the basis that it:

… provides that every alien being the subject of a friendly State may hold personal property except chattels real as fully and effectually to all intents and purposes as if he were a natural born subject of the United Kingdom. The Act further provides that alien residents may hold lands for a term not exceeding twenty-one years.12

Queensland’s Lands Acts, 1910-1931, and Real Property Acts, 1861-1929, were similar in that:

… certain laws of the State of Queensland put disabilities on aliens, apparently including also Italians; thus the “Land Acts 1910-31”, Sections 59, 62 and 94 and Regulation 12, impose
certain conditions on aliens who desire to acquire or sublease selections and goes so far as to say that “all his rights, title and interest in such selection shall be forfeited if he does not become naturalized within 5 years.” And again, the interpretation given by the “Real Property Acts” of Queensland [...] is that “the applicant or his nominee must not be an alien”.13

Premier Moore was only prepared to consider changing the legislation if there was evidence of “mutual reciprocity” of freehold ownership in Italy, Great Britain and elsewhere in Australia. As the Department of External Affairs expressly put it in a press release several years later: “Out of the total British population of 6,800 in Italy very few are Australians, whereas at the last census there were over 14,000 Italians in Australia”.14 But the Queensland Premier had not understood the seriousness of the Treaty’s terms, which could not be measured by comparisons. In any case, as Sydney’s Acting Consul General Mario Carosi discovered and informed the Prime Minister, “foreign subjects have a right to freehold in all States but Queensland”.15 The Acting Consul General enclosed a copy of the 1884 proof that Queensland had acceded to the Treaty.

Premier Moore no doubt felt relieved to resolve the problems by stating that Italians were entitled to “full liberty to become the full beneficial owners of freehold [as well as] ... leasehold land”.16 In fact, he instructed the relevant authorities to interpret the Real Property Acts quite liberally. And, he declared that the 25-year restriction of the Leases to Aliens Act in Queensland “was not to be made to apply in respect of Italian Nationals”. Nevertheless, property-ownership was conditional on a trustee system – “a Nomination of Trustees” – with a further condition being “that the Trustee was British born or naturalized”. Unfortunately, the Premier had not remedied the issue at all. But pursuing the continued violation of the Treaty proved untimely because of the global economic crisis. It took political changes in both the Queensland government and the Italian Consulate over 1932 and
1933 for the issues to reemerge. The debate from this time turned to a "Gentlemen’s Agreement" proclaimed in 1930 by the dominant players within Queensland’s sugar industry.

The “Gentlemen’s Agreement” and the Petition

The three most powerful bodies within Queensland’s sugar industry were alarmed by the impact of the economic depression and the number of foreign nationals employed on farms. The Australian Sugar Producers’ Association, the Queensland Cane Growers’ Association, and the Australian Workers’ Union organised a conference on 12-13 June 1930, which resulted “a Gentlemen’s Agreement”. This Agreement not only caused a number of Italian migrant workers’ particular grievances but also triggered debate in the federal government over the outstanding legal matters infringing on Australia’s imperial obligations. Based on parts of the Sugar Industry Award, the objective of the Gentlemen’s Agreement was to reserve jobs in the industry for “British cutters”. They were defined as “all those who are born in Australia” by whom it was meant Australian-born workers of British ancestry, thus protecting their jobs from “naturalized British subjects” and, in particular, “Maltese or naturalised Italians”. Ultimately, the three organisations put their weight behind ensuring that no less than 75 per cent of British-Australians held the most lucrative jobs – cane cutting – in most of the North Queensland mills.

The first of the Agreement’s 11 clauses reiterated the first part of clause 22(1) of the Sugar Industry Award; that:

... no person other than a financial member of the Australian Workers’ Union shall be employed, or continue in employment as a cane cutter or farm hand after the date of this agreement.

It neglected the second part of the Award, which stated: “... provided there are members of this Union willing, ready, and competent to perform the work to the satisfaction of the employer." Although
the Agreement allowed a small percentage of jobs to go to the non-British-born – largely as farm hands – wind of the move to deny them jobs angered a number of Maltese and naturalised British subjects who were paying members of the Union. Their voices mattered little at a time when the federal government was enforcing immigration restrictions due to the effects of the global recession.

By the end of 1930, the Department of Home Affairs requested a “very urgent” draft “Proclamation” from the Attorney-General’s Department in accordance with the Immigration Act of 1901-1930. This “Proclamation” declared a ban on the immigration of “any alien of an European nationality” because of “the unemployment conditions now existing in the Commonwealth” with the exception of temporary tourists, visitors or authorised permit-holders.20 But within four days of the initial request, it became apparent that the “Proclamation” might be in “breach of Article 13 of the Anglo-Italian Treaty” if it prohibited “entry into Australia of immigrants of any European nationality, including Italians”.21 Another question arose within the Department of Home Affairs which sought legal advice from the Attorney-General’s Department:

I shall be glad if you will also confirm the verbal opinion recently given that the restriction placed on the entry into Australia of a number of Italian migrants who failed to pass a dictation test applied to them under Section 3(a) of the Immigration Act, did not constitute a breach of the Article referred to.

The Acting Solicitor-General replied that a further definition of the kind of “prohibition” would be required: “In my opinion the unqualified prohibition of the entry into Australia of any class of person which included Italian would amount to a breach of Article XIII.” On the other hand, the Treaty would not be breached as far as applying the dictation test to Italians as – in the words of the Treaty – they had “to conform themselves to the laws of the country” they sought to enter.22
Prime Minister Joseph Lyons hesitated. What would the British government do? Did it consider there to be any violation against the Treaty in its own issuing of labour permits to Italian migrants? He cabled the High Commissioner’s Office in London to seek legal advice with the reply telegram reading:

Home Office advise permits required in respect of any aliens who desire to land in order to enter the service of an employer in the United Kingdom. Aliens not allowed to land for the purpose of seeking employment. There is general international understanding that appeal shall not be made to the terms of the commercial treaty against immigration control provided that it is applied to aliens of all nationalities alike.\textsuperscript{23}

The key here was not to be seen to be discriminating against Italians in particular so the Australian government could follow suit. However, 1933 marked a turning point with the influence of the sugar industry Gentlemen’s Agreement re-emerging.

It is significant that the percentage required in the Agreement for British cutters had crept up from 75 percent in 1930 to 86 percent by 1933.\textsuperscript{24} A dispute erupted in 1933 at the Kalamia Sugar Mill, described by the \textit{Townsville Daily Bulletin} as “racial feuds”.\textsuperscript{25} In May 1933 the naturalised British subjects of the Ayr district reacted to the move to reduce their employment quota by formalising a Petition to the Governor-General and the King about their exclusion from the sugar industry.\textsuperscript{26} Their Petition was forwarded to the Prime Minister, with whom they were able to speak when he visited North Queensland. The Petition drew attention up front to the fact that, “on renouncing the nation of our origin [we] have taken upon ourselves under oath all the obligations and duties which our new status of citizenship imposes upon us”, with “all the rights and protection” of the King.\textsuperscript{27} The petitioners argued that the Agreement had contravened its own terms firstly by increasing the percentage of British-Australians and secondly because they too were British cutters. They emphasised that
they were "excluded from the benefits granted to Britishers" and were "being systematically so excluded". They contested three new clauses being introduced to amend the Sugar Prices Acts, 1915-1931, which were "directed against the naturalised British subjects", quoting Mr Justice W. F. Webb, who was meant to ensure "no discrimination" and their protection from "victimisation": "I suppose if we do not insert the clauses in the award, we will be charged with going out of our way to protect foreign labour." And, they claimed "full loyalty to the Throne, to the Empire and to our new country of adoption", signing the Petition: "B. Tapiolas-Vila (farmer), P. Coppi (farmer), G. Granzotti (cane cutter), G. Capra (cane cutter), on behalf of the naturalised British subjects of the Ayr district." The Petition brought Italy’s newly appointed Consul General into the debate about Treaty violations.

It "would be inconsistent with the spirit, if not the letter of the Treaty"
Royal Consul General of Italy Marquis A. Ferrante took up the Italian migrants’ cause when he wrote to both Queensland’s Premier and the Minister for External Affairs, suggesting that Queensland was still violating the terms of the Treaty. Ultimately, Consul General Ferrante wanted a similar clause inserted into Queensland’s Acts to the one that Prime Minister Fisher had authorised in 1912 in the Leases and Aliens Act. He pointed to the “evident contradiction” that required “remedial measures ... to restore the rights of the Italian citizen in Queensland”.

He was reacting to advice from Premier William Forgan Smith who had taken up office in 1932. In his own enquiries, the Premier discovered that his predecessor’s 1929 instructions, allowing Italians property-ownership via a trustee system under the Real Property and Leases to Aliens Acts, were still in place. However, as he explained to Consul General Ferrante, his predecessor had taken “no action” to amend the Queensland’s Aliens Act and Land Acts, hence “no finality appears to have been reached”. Yet, as the Premier soon confided in the Governor of
Queensland Sir Leslie Wilson, pandemonium would be unleashed if he were to adhere to the Consul General’s solution:

The introduction of such an amendment would be viewed with considerable hostility by all parties in the State, and would without doubt provoke anti-Italian feeling in the North, which is undesirable especially as such cordial relations exist at present.\(^\text{31}\)

More to the point, he was also reported to have warned that “North Queensland will be in danger of becoming in fact an Italian Colony secured by means of peaceful penetration” if Italians were “permitted to take up land on equal terms with British subjects” (cited in Douglass 1995: 195-196). He explained the paradox to the Governor, which presented a quandary not only for Queensland but for Australia as a whole:

... in many instances, Italians proposing to become naturalized give as their reason for taking such action the desire to comply with the law in order that they may acquire freehold titles to their lands. Obviously, if Italian Nationals could get all the advantages of British Citizenship without undertaking its obligations, the incentive to become naturalized British Subjects would be reduced.

The Consul General’s solution would instigate “considerable hostility” and lead to unnecessary complications over the naturalisation law. While the Premier waited for a response from the Governor, he announced to the Consul General that: “it has been decided in all the circumstances not to introduce any amendment of the existing law in the direction indicated”.\(^\text{32}\) Referring to problematic Acts and the measures taken by his predecessor, he stated that, after all:

... these laws were passed in their present form many years ago by a Parliament of which I was not a member and it is only within recent years that any claim has been advanced that they conflict with the provision ...
He claimed that there was “no impediment to non-naturalised Italians holding land in Queensland”.

In the meantime, the Consul General had paid Prime Minister Lyons a visit to discuss “the Italian question in Queensland”, a question that was becoming progressively public since the sugar industry’s Gentlemen’s Agreement. The Prime Minister then wrote to Premier Forgan Smith “to learn whether any action was eventually taken with a view to the amendment of Queensland legislation in the direction desired by the Consul”. At the same time, and acting no doubt in response to the naturalised British subjects’ Petition, the Attorney-General’s Department began examining the legalities of the Agreement. The Department’s Secretary, George Knowles, raised concern about the “racial limitation […] imposed” on cane cutter jobs. This was not a matter of interfering with the selection of workers by an employer. As Southern European migrants themselves had understood, the Agreement “infringes the rights acquired by them under section 11 of the Nationality Act” by which they had “all political and other rights, powers and privileges to which a natural-born British subject is entitled”, and thus equality in status with the “British cutters”. Even though the Attorney-General’s Department incorrectly noted that Queensland could legislate by excluding naturalised Italians from working as cane cutters, the fact was that Italian and other Southern European workers had joined the Union. As Secretary Mr Knowles put it:

One of the objects of the Australian Workers’ Union is to promote the general and material welfare of the members. In the preface to the Constitution of the Union reference is made to “the high and noble aim of the Union” and each member is urged to become an active unit in the Great Army of Reform – “active as an agitator and true to his comrades as a unionist always is – etc.” The treatment meted out by the union to certain of its members (who happen to be Maltese or naturalized Italians)
does not appear to be in accord with the aims of the union as set out in its Constitution. [Emphasis in original.]

The Department of the Interior agreed that the treatment of Maltese and Italian migrants as “inequitable”. While Mr Knowles concluded that the federal government had no power to intervene, within a few days the Solicitor-General asked: “Can a State by legislation affect the rights conferred by prior naturalization under the [Commonwealth] Act?” The answer was no. Yet, the Department of Trade and Customs drew attention to the fact that:

... various sugar agreements have been based on the principle enunciated by the Prime Minister in 1923 whereby matters of domestic interest [...] were to be the sole responsibility of the Queensland government or agencies under its jurisdiction unless expressly included in a sugar agreement. [Emphasis in original.]

In matters of national and international law, however, the industry could not rely on a principle enunciated by a Prime Minister ten years earlier.

The existence of the Treaty then began to catch wider attention. Francis Michael Forde, then MP for Capricornia, Queensland, requested a copy of the Treaty from the Prime Minister’s Department because of a “complaint”. He was referring to a letter from Archbishop James Dubig who wanted Mr Forde’s “opinion on the position of the Italians in the North.” As the Archbishop had asserted: “You know the Treaty of 1883 between Great Britain and her Dominions and Italy has never been adhered to”. But the Queensland government was about to introduce a Bill to amend the Regulation of Sugar Cane Price Act which, in the words of Consul General Ferrante, would “be an attempt to prevent a naturalized Australian obtaining sugar land”. He wrote to the Minister for External Affairs about “the great discontent which has been created amongst the Italian community of Queensland” as a result of the Bill.
In late 1933 the Prime Minister requested a copy of the Bill from the Queensland Premier. But the Bill had already been passed. Not surprisingly, the relevant insertion in the state’s recent Act, as the petitioners had warned in May 1933, specified the approval of the Central Sugar Cane Prices Board as necessary for “the sale or lease of assigned land” and contingent on “a fit and proper person to hold the assignment”. Premier Forgan Smith “emphatically and definitely denied” any discrimination against any nationality, noting specifically that the section inserted had been “for the express purpose of protecting purchasers and lessors of assigned lands from exploitation, irrespective of nationality”. External Affairs set to work to examine the situation, finally articulating the crux of the problem: the Queensland government had made a mistake in acceding to the Treaty; the then colony had not been “in a position to give full effect to the Treaty” which it “apparently overlooked” in 1884.

With Queensland feigning Italian property-ownership through the trustee system and Premier Forgan Smith refusing to introduce any amendments to the Aliens Act of 1867 – instead introducing controversial Bills – the Prime Minister reminded the Premier in March 1934 of the Consul General’s view that all three of the state’s Acts “continue to apply to Italians in respect of the leasing of land.” But there was nothing more that the Premier would say. In fact, it would later be revealed by the British Representative in Australia, E. T. Crutchley, that the Colonial Office in London had not objected to Queensland’s Lands Act of 1910 and, in any case, “to remove the incompatibilities” would have been “a practicable impossibility.” Clearly, Britain had ‘overlooked’ the implications of its Treaty obligations with Italy as well. The only thing left for the Consul General to do was to alert the Italian government and the Italian Embassy in London.

Throughout the rest of 1934 correspondence travelled between Australia, the United Kingdom, and Italy. Queensland’s Governor Sir Leslie Wilson had already briefed the Permanent Under Secretary
of the Dominions Office, Sir Edward Harding, about the legal mess. As the Governor put it: "a somewhat difficult situation may arise in connection with the correspondence which the Premier has received from the Royal Consul General of Italy". The Governor explained that there were two situations. The first was that it was impossible, "from a political view", to amend Queensland’s Acts with a clause inserted in the manner of the 1912 clause in the Leases to Aliens Restriction Act. The second was that this was now a racial problem:

As you are doubtless aware, there has been considerable feeling on the subject of Italians in the sugar cane fields amongst Australian cane growers, and to attempt to put them on the same standing, as regards the acquisition of land, as is possessed by naturalised British subjects, would arouse keen resentment.

It took nine months before Under Secretary Harding could reply. His advice was to try to convince the Italian authorities that Queensland’s trustee system met the Treaty’s provisions with the only difference being a theoretical one. As he put it:

The question whether Italian nationals get what they are entitled to is one of fact, and provided that no breach of the Treaty occurred in practice, the fact that the terms of the law were not in conformity with the practice would not, we think, entitle them to protest, although of course the legislation itself does not constitute a fulfillment of the Treaty obligation. It seems, therefore, that, as things stand, the most satisfactory solution would be for the Italians to be persuaded that the trustee system described in your letter under reference does, in fact, for all practical purposes satisfy their treaty rights.

Two alternatives remained, according to Mr Harding: either “the Italians […] could presumably take the point to arbitration under the Protocol to the Treaty of 1883”; or the British Empire as a whole could denounce the Treaty since Queensland could not withdraw alone.
While the latter would not happen, the former needed to be avoided at all costs. Predictably, this kind of interpretation would not do for the Italian government. In London, Counsellor Leonardo Vitetti, who was the Chargé d’Affaires of the Italian Embassy, had received word from Consul General Ferrante. Just as the Consul General had argued, Counsellor Vitetti pressed for the insertion of a clause to amend Queensland’s legislation when he wrote to E. H. Carr of the British Foreign Office in late 1934. According to the Counsellor, such an insertion "would certainly be sufficient to remedy that which today would appear to be an infringement of art.15 of the Italo-British Treaty of Commerce caused by the […] Queensland Land Acts."\textsuperscript{20}

Premier Forgan Smith and Prime Minister Lyons were still at loggerheads by the end of 1934. The Premier stipulated in a letter to Governor Wilson that the Queensland government was already substituting practice for theory.\textsuperscript{21} The Prime Minister, for his part, was still expressing concerns to the Premier in early 1935 about "the serious dissatisfaction which appears to exist in connection with discrimination against the classes" of Maltese British subjects.\textsuperscript{22} But a deal was about to be struck in London, involving British Representative Crutchley. After Counsellor Vitetti contacted Mr Carr about the only acceptable solution from the Italian government’s position, Mr Carr handed the matter over to the Head of the Southern Department, Owen O’Malley. Siding with the Queensland Premier, Mr O’Malley advised Counsellor Vitetti that, "for practical reasons which I explained to you verbally, the Queensland Government would very much depreciate anything being done to put them on a different basis to that on which they now stand".\textsuperscript{23} However, this was a "semi-official letter", based on an informal meeting between Mr O’Malley and Counsellor Vitetti, and to be finalised after Mr Crutchley confided in the Secretary of the Prime Minister’s Department, J. H. Starling. We gain further insight into these deliberations from the correspondence between these two men.

"My dear Starling", wrote Mr Crutchley, Mr O’Malley had relied
on Counsellor Vitetti’s own advice. According to Mr Crutchley, the Foreign Office had shared the draft reply with Counsellor Vitetti, who it was claimed, had advised that “it would be better to omit from the draft anything which would give the legal department in the Italian Foreign Office an excuse for writing argumentative minutes and drafts as the legal points involved were, in his opinion, susceptible of being argued almost indefinitely”. Mr Starling was thrilled, but had one piece of advice to polish the draft and rid the country of further recourse from the Consul General of Italy in Sydney:

    I think the matter is skillfully handled, and hope that it will now be allowed to drop. In this respect, however, I do not think the last paragraph of the reply would appeal to the Queensland Government, as it may give further opening to the Italian Consul-General, and it has been our experience that local consuls are apt to raise issues needlessly and on their own volition.

Thus, the British government sealed the matter once and for all.

Perhaps the stalemate between the Queensland Premier and both the Consul General and the Prime Minister could not have been resolved any other way. We can only ponder what might have followed had the British Foreign Office supported Italy and backed the Consul General’s solution. But, in the deal between Mr O’Malley, Mr Crutchley and Mr Starling, there was no mention of the wider context of the Gentlemen’s Agreement or the migrants’ Petition. Counsellor Vitetti’s disloyalty might also be questioned as being based on false representation. Ultimately, Queensland had managed to usurp the Prime Minister through his own department. Ironically, the federal government could inform a Brisbane legal firm, Tully & Wilson, in 1937 that the Treaty was “still in force”.


The "principle of equality of treatment"

The Treaty emerged one final time in 1938 over the cost of landing permits for the purpose of reducing Italian immigrant numbers in particular. The government wished to adopt a policy of ministerial discretion in order to allow exemptions for "a desirable type" of Northern European without appearing to discriminate against Italians because of their incapacity to assimilate. They would have to pay the increased cost.\(^7\) As the Acting Secretary for the Department of the Interior pointed out, there had been more than 3,000 arrivals from Italy over the past year but the less than 100 per year from Denmark, Holland, Norway and Sweden. He wanted to know whether "special concessions" could be given "to alien immigrants from Northern European countries without the government laying itself open to challenge for showing discrimination unfavourable to Italians". While the Solicitor-General from the Attorney-General’s Department confirmed that there would be no problem, he raised the point that the provision "departs from the principle of equality of treatment":

As it is well know that Italian migrants are by far the more numerous class of alien migrants to Australia in recent years, I think the Italian authorities would have grounds for invoking the understanding.\(^8\)

A scribbled piece of paper, headed "Mr Knowles" and noting "prepared by Mr Lyons", can be found in the National Archives of Australia. Its "Alternative Opinion" read: "In my opinion, the suggested rule would be inconsistent with the spirit, if not the letter of the Treaty, and it would also be inconsistent with the understanding referred to [by the Home Office in 1930]."

Australia's inability to withdraw from the Anglo-Italian Treaty before the 1920s speaks to the strength of global trade agreements made during the imperial age. Australia and Italy discovered mutual benefits in this respect. Increasing European immigration and
economic pressures from the 1920s posed new problems. The federal
government put in place measures that supported a rise in nationalist
and xenophobic feelings, which resulted in breaching Italians’ rights
under the Treaty in Queensland. When the federal government
attempted to mediate between Italy and Queensland, it became
embroiled in a conflict that challenged its imperial obligations and
political leadership. This was frustrated by two deceitful deals between
Queensland’s state politics and the sugar industry, on the one hand,
and between individuals in the British government and the Prime
Minister’s Department, on the other. There is no doubt that emerging
imperial tensions leading to the Second World War overshadowed the
Treaty. However, the Treaty’s history reveals a significant number of
perhaps unexpected supporters for the migrant cause, not least the
naturalised petitioners of 1933 themselves.

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4 MS, NAA: A432, 1938/1047, letter to the Secretary of the Department of External Affairs from the Secretary of the Attorney-General’s Department, 24 June 1943; letter to the Attorney-General’s Department from Jos. Francis, 25 October 1944.

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7 MS, NAA: A981, TRE358, letter to the Premier of Queensland from the Royal Consul General of Italy, 13 July 1933; copy of ‘Extract from Treaty of Commerce and Navigation between Great Britain and Italy. Signed at Rome, June 15, 1883’.

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52 MS, NAA: A981, TRE358, letter to the Premier of Queensland from the Prime Minister, 4 January 1935.


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