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ANTI-TRUST AND THE BOURGEOISIE: 1906 AND 1965

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The 1906 Act: Serving Australian Manufacturers

AN ASSUMPTION WHICH underlies much contemporary work in the sociology of law is that law, rather than expressing general social value, represents particular interests, frequently at the expense of other interests.[1] Whose then, are the favoured interests? The question is particularly intriguing in the case of anti-monopoly law. Monopoly interests are usually well organised and forcefully expressed and might be expected to resist vigorously the introduction of, from their point of view, unfavourable legislation. Yet such legislation has been enacted in a number of countries. How has this occurred? The answer, of course, requires a detailed examination of the circumstances in which such acts were passed.

A considerable amount of work has already been done on America's first anti-trust statute, the Sherman Act of 1890. Some writers have argued that it was a result of the convergence of a number of interests

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The trust was a legal device, popular in the United States towards the end of last century, by which rival firms eliminated competition among themselves. 'To form a trust, majority stockholders of a number of independent companies turned over their shares, carrying voting control over the affairs of their companies, to a single group of "trustees". They received in return trust certificates entitling them to share in the profits of their companies operated by the trustees as a group. The trustees could then run the formerly competing companies as a single enterprise, extracting whatever monopoly profits might be available'. (R. Caves, *American Industry: Structure, Conduct, Performance* [Prentice-Hall, 1967], p.57.)

The term 'antitrust' is loosely used to describe legislation not only against trusts but also against single firm monopolies, price rings (price agreements among competitions) and various other collusive and restrictive trade practices.

This essay consists of two papers on Australian antitrust law. *The 1906 Act: Serving Australian Manufacturers* and *The 1965 Act: Managing the Affairs of the Bourgeoisie*. These were written separately, the latter for presentation to a conference on class analysis held in Sydney in 1975. Their substance is to be incorporated in a more detailed study provisionally entitled, 'Regulating Capitalism: The Sociological Sources of Australian Monopoly Law'.

farmers, consumers and others—which, at least in the political arena and for the time being, proved more powerful than the trusts.[2] Others suggest that a close examination of the way in which the legislation was introduced reveals that it was not in fact contrary to monopoly interests. Nor was it even intended to be. It was simply a conciliatory and empty gesture designed to allay public hostility which had been aroused by the scandalous behaviour of the 'captains of industry' of the day.[3] The difference between these two accounts is perhaps more a matter of emphasis than of substance. Both recognise the existence of politically powerful anti-monopoly forces. the latter merely stressing that the monopolists organised their retreat in such a way as to minimise their losses.

In Australia, the Australian Industries Preservation Act. which contained sections directly modelled on the Sherman Act. was passed in the federal parliament in 1906. But the circumstances of its introduction were quite different. It is the purpose of this essay to explore the reasons for the advent in the Australian context of antitrust legislation apparently antagonistic to powerful monopoly interests.

Soon after the Australian states federated in 1901, the new federal government turned its attention to the problem of monopolies. Monopolies, or effective monopolies, brought about by agreements among competitors existed in a number of industries most notably, sugar, shipping, coal and tobacco and in 1904 a senate committee was set up to enquire into the tobacco monopoly.[1] Twice in 1903, and again in 1904, the government promised to legislate against 'rings and trusts'.[5] On the basis of such evidence, some writers have concluded that the 1906 act was simply the response of a democratic parliament to public concern about the growth of monopoly in Australia.[6]

But this is hardly an adequate explanation. In order to understand the apparent defeat of monopolistic interests entailed by the passage of the Australian Industries Preservation Act of 1906, we must examine in greater detail the genesis of the legislation and the interests which it in fact represented. To begin with, we need some knowledge of the political groupings in the early federal parliament.[7]

Prior to federation, the Australian states had protected their local industries to varying degrees by erecting tariff barriers against imports from interstate and overseas. Federation meant the end of tariffs between states but it also meant that the new parliament now had responsibility for determining tariff policy for Australia as a whole and deciding on levels of tariff protection for Australian industries which would be common to all states. This was the issue which dominated the early years of the parliament. On the one hand the protectionists, representing local manufacturing interests, argued for tariffs which would restrict overseas competition and allow the development of Australian industries. On the other, the free traders, who represented both commercial (more specifically importing) interests and farmers, concerned to buy their agricultural machinery in the cheapest market, argued against the

imposition of barriers to foreign trade.

The early parliament was divided into three roughly equal groupings: the protectionists, the free traders and the Labor party which, because of its concern for the jobs of workers in Australian industries, advocated a protectionist tariff policy. This identity of interests allowed the protectionists to govern with Labor support, and although the tariff issue was largely settled by 1905, the rather unusual political groupings to which it had given rise persisted until towards the end of the decade. In what follows, I hope to show that the A.I.P. (Australian Industries Preservation) Act of 1906 was an expression of this dominant protectionist philosophy rather than of any serious concern to strike at the anti-competitive practices of rings and trusts in Australia.

The 1905 Bill

The bill which became the A.I.P. Act was introduced in parliament in June 1906. It was, however, a substantially revised version of an earlier bill introduced in December 1905 following representations made to government by, amongst others, Mr H.V. McKay, Australia's largest manufacturer of harvesting machinery. McKay had, until 1905, been a party to a price-fixing agreement which included not only other Australian manufacturers of harvesters but also the huge American International Harvester trust and the Canadian Massey-Harris combine which were selling their harvesters on the Australian market. It was not the operation of this ring but rather its breakdown which prompted McKay's representations. With the breakdown of the agreement, International Harvester, which already claimed 90 per cent of the world market, decided to capture the Australian market. It made McKay an offer, which he refused, and thereupon set out to destroy him by lowering its prices and selling harvesters on the Australian market at a price which McKay said he could not afford to match. Evidence of the trust's intention to destroy McKay was given before a royal commission enquring into the harvester industry by a witness who recounted the following conversation with a travelling representative of the International Harvester Company:

> The representative said, 'The International Harvester Company is determined to get hold of the trade in harvesting machinery, and it's only a matter of a little time before we knock out all the local men'. I said, 'You can't beat McKay'. 'Yes', he replied, "We'll beat McKay. We have unlimited money behind us and even if we worked at a loss for three years we are bound to beat him...We don't care what money it costs, we shall secure the trade. McKay had an offer from us to buy him out, and he will live to regret the day that he refused that offer. We are going to close him up'.[8]

Not only was a native industry threatened but so also were the jobs of 150 of McKay's workers, a fact which he made sure was widely publicized.[9] The protectionists and their Labor supporters were thus convinced of

the need for government intervention and the A.I.P. Bill of 1905 was their response.

Introducing the bill to parliament, the minister responsible for it said the measure was needed to deal with 'rings and trusts (which) dump their various productions on our shores, with the absolute intention of destroying the industries of our country'.[10] He made much of the 'enormous octopus trusts' in the U.S. which were menacing Australia, a metaphor subsequently elaborated by one government supporter who warned that the International Harvester combine 'has fastened one of its long tentacles upon the heart of Australia and threatens the very existence of industries which have been established at considerable cost'.[11] Much of the minister's speech was devoted to the harvester issue and he referred to a rumour that 2,000 harvesters were, even as he spoke, 'on the water', bound for Australia. He added (although there is no authentic verification of this rumour): 'I have no doubt that a large number of orders have or will be given and that unless we pass this legislation, the machines will be here before next spring'.[12] Referring again to the harvester threat he said: 'this bill has been introduced to prevent the possibility of serious trouble occurring during the next nine or twelve months'.[13] Given this motivation it is not surprising that the principal provisions of the 1905 bill were designed to prevent overseas business interests, be they trusts or otherwise, from engaging in unfair competition with the intention of destroying Australian industries. These were the so-called anti-dumping provisions.

Though predominantly an anti-dumping bill, then, there were, as has been indicated, specifically anti-trust sections, modelled on the Sherman Act, which might have been used to deal with trusts of local origin. But the government was so little concerned with the activities of local monopolies that the minister in charge of the bill was unsure of whether it would even affect them. When challenged in parliament, he was doubtful about whether the shipping ring, perhaps the most notorious of the local monopolies, would come under the act. Similarly, the sugar monopoly, he thought, would be untouched.[14] Reading the debates one is left with the impression that the anti-trust sections of the bill were an after-thought, added for no more rational reason than that the unfair competition from overseas about which the government was concerned happened at the time to be mounted by trusts.

Further evidence of the government's lack of any serious commitment to an anti-monopoly policy can be gained by a closer examination of the anti-trust sections of the bill. Section 1 of the Sherman Act provides that:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal.

This was the model for section 10 of the Australian bill.[15] However, the Australian provision differed from the American in a number of ways. First, the American section applies regardless of who the parties to the

restraint of trade are; the Australian section applied only when at least one of the parties was a trust or its agent. Why this changed was made is not clear, but it does not seem to have been made with any deliberation because when it was pointed out in debate that the Colonial Sugar Refining Company, whose control of the market had often been criticized, was a single firm monopoly and not a trust, the attorney-general conceded that the section would not apply to it. When asked if it could be made to apply, he replied: 'Certainly, we can do that without any difficulty whatever. It can be accomplished by the insertion of a few words'.[16] The government did modify the bill accordingly, but its failure to insert these 'few words' in the first place, illustrates, its lack of interest in the issue of local monopolies.

A second departure from the American model was that in Australia restraint of trade was to be illegal only if it was 'to the detriment of the public', and if this detriment was 'wilful', that is, intentional. It was widely recognised at the time that this would make it more difficult to secure a conviction, and critics argued that the difficulty of proving intent, in particular was notorious. But the government was more interested in protecting those whom it felt ought not to be caught up in its legislation. As the attorney-general explained, it would be wrong to prosecute those who *inadvertently* restrained trade to the detriment of the public.[17] It was an important principle of law, he said, that a defendant was guilty of an offence only if he *intended* to commit it.

A final significant addition to the section was that it banned not only certain actions in restraint of trade, but also unfair competition by trusts aimed at destroying or injuring Australian industries. Since unfair competition by overseas trusts was already banned by the anti-dumping provisions, the function of this addition was to extend the prohibition to cover unfair competition by *Australian* trusts. Thus even this anti-trust section of the bill was made to serve a protectionist purpose. It was not so much the existence of or even the monopolistic profits extracted by local trusts but their occasional predatory actions against other Australian industries which roused the government's ire.

A second section of the Sherman Act copied in the Australian bill was its prohibition of monopolization. This, too, was weakened by modifications similar to those discussed above and need not be dwelt on here.

One other feature of the anti-trust sections of the 1905 bill deserves comment. The American constitution gives the federal government power to legislate with respect to trade and commerce between the states and with foreign nations; it does not permit the regulation of trade that takes place entirely within state boundaries. Hence the American anti-trust laws apply only to interstate and overseas trade. The Australian constitution gives the federal government similar powers and, in conformity with the American model, the Australian bill of 1905 aimed solely at interstate and overseas trade. However the Australian constitution also gives the federal government power to legislate with respect to 'trading or financial corporations formed within the limits of the

Commonwealth'. Although this power might appear to allow the government to control monopolistic practices engaged in by corporations within state boundaries, no attempt was made to invoke it in the 1905 bill. Since the majority of trade combinations which had given rise to public concern in Australia did not extend beyond state limits,[18] this oversight seriously restricted the effectiveness of the measure. The difficulty was drawn to the government's attention during the debate on the 1905 bill, and in the 1906 revision the relevant provisions were extended to cover the purely intra-state operations of corporations (although intra-state practices engaged in by unincorporated firms and individuals necessarily remained untouched).

This examination of the anti-trust provisions of the 1905 bill shows that the government was not motivated by any serious concern to promote competition. Although modelled on the rather stringent Sherman Act, the Australian provisions were altered in such a way as to render successful prosecutions most unlikely, and in addition, the government's failure to make full use of its constitutional powers meant that the majority of combines would, in any case, have been immune from prosecution. The fact that the government incorporated a prohibition on unfair competition in the anti-trust provisions of the bill is symptomatic of the philosophy of protectionism rather than of competition which underlay the measure.

The fundamentally protectionist character of the legislation infuriated the opposition free traders. One spoke of it as 'protection run stark staring mad'[19] Another argued that the departures of the Australian Industries Preservation bill from the Sherman Act made it quite opposite in its effects. The Sherman Act sought to promote competition, he said, while the Australian bill would diminish it.[20] From this it followed that the proposed legislation would encourage higher prices and was thus contrary to the consumer interest, which opposition members saw themselves as representing. In the words of one:

> We should pay some attention to...the interests of the general consumers, who have not been consulted in regard to this measure, although they comprise the great body of the electors. I admit that the manufacturers must be fairly considered, but the consumers who far outnumber them and particularly the consumers of machinery in connection with the primary industries, are entitled to be remembered.[21]

Sensitivity to the consumer interest led one free trader to ask why consumers were placed last in one of the bill's clauses which spoke of the need to have 'due regard for the interest of producers, workers and consumers' to which the minister replied: "One must come last—goods cannot be consumed until they are produced'.[22] This response was obviously lighthearted and no great weight can be placed upon it, but it is symptomatic of the producer rather than consumer orientation which lay behind the bill.

Government members did not reject the opposition's characterization

of the measure as protectionist rather than antitrust. The attorney-general declared that both the anti-trust and the anti-dumping sections were designed to protect Australian industry. The bill as a whole was a necessary accompaniment of a protective tariff, he said, since tariffs alone could not deter foreign trusts which were prepared to suffer temporary loss in order to ruin a local competitor.[23]

But while the government could afford to ignore the protests of the free traders, it was obliged to deal more circumspectly with the Labor Party upon which it relied for its parliamentary majority. The Labor Party supported the legislation generally but was critical of the many weaknesses in the anti-trust provisions of the bill. It was concerned to make the bill effective against local combines and monopolies, particularly the shipping combine and the sugar monopoly.[24] Actually though, the very concept of American style anti-trust legislation was not particularly to Labor's liking; at its federal conference earlier in 1905, the party had adopted a policy of nationalization of monopolies.[25] Indeed, the earlier-mentioned senate committee of enquiry into the tobacco monopoly had been initiated by a short-lived minority Labor government in 1904 for the purpose of enquiring into the desirability of nationalizing the tobacco industry. But, out of government, the party was prepared to accept anti-trust legislation as a compromise and to work for the most effective such legislation it could win from the protectionists. Thus, it was largely Labor's obvious determination to strengthen the anti-trust sections of the measure that forced the government to defer action on its bill at the end of 1905 and to submit a substantially revised version in June 1906.

The 1906 Bill

The Australian Industries Preservation Bill of 1906 laid considerably more stress on the monopoly problem than did its predecessor. The anti-trust sections now preceded the antidumping provisions. They had been rewritten, moreover, so as to strike at single firm monopolies and at the purely intra-state activities of corporations. The minister saw the new bill as affecting the tobacco combine, the sugar monopoly and the shipping ring. In fact he announced the legislation was now urgently needed in order to deal with the shipping combine.[26]

But though it had been prodded into action against local monopolies the government still saw its task as one of protecting local enterprises against the predatory behaviour of monopolists rather than of promoting competition in the interest of the consumer. For example, the minister's principal objection to the tobacco combine was not that it raised the price of tobacco paid by the consumer (which it did), but that it imported its tobacco from overseas to the detriment of the local tobacco growing industry. 'I believe that the operations of the trust are proving injurious to the industry in Australia, and that they will ultimately destroy it', he said.[27]

And in the case of the shipping combination, the government's prime

concern was the high freight rates which the combine imposed on the various commercial and industrial interests which relied on the coastal shipping service for the transport of their goods and raw materials.[28] Particularly objectionable, from the point of view of a government committed to the protection of Australian industries, was the high price which industries in the southern states were forced to pay to have their coal shipped from the northern coal fields.[29] Moreover, the shipping ring was known to have forced out of business at least one ship-owner who had not joined the ring, which might have been expected to anger almost any government.[30] These concerns, then, coupled with the need to accede to Labor party demands for strong anti-monopoly legislation account for the apparently quite stringent anti-trust provisions of the Australian Industries Preservation Act as it was finally passed by parliament towards the end of 1906.

The Fate of the 1906 Act

The mere passage of anti-trust legislation does not in itself usher in an era of 'trust-busting' and enhanced competition. The subsequent fate of the legislation suggests that none of those responsible for the administration and interpretation of the act paid much more than lip service to the value of competition which the legislation, on the face of it, embodied.

Part of the reason for this lack of enthusiasm was that the government's original purpose in introducing the legislation, the protection of Australian harvester manufacturers, had been achieved by other means. Despite its earlier claim that tariff barriers were ineffective against foreign enterprises intent on dumping their products on Australian shores, the government proposed to parliament in 1906 a new form of tariff which was indeed sufficient to protect local harvester manufacturers against dumping.[31] Its interest in the legislation as a whole might thus have been expected to wane.

But with anti-trust legislation on the books and constant demands from the Labor party that it be enforced, in particular against the tobacco combine, and the restrictive practices engaged in by coal mining companies in association with the shipping ring,[32] the government did launch several investigations. It was hampered, however, by the difficulty of obtaining information on the activities of trusts which could be used as evidence in prosecutions, and in 1907 the government amended the act so as to allow it to compel companies under investigation to disclose information. Armed with this new power it sought information from one of the companies in the shipping ring concerning its coal trade. The company refused to provide the information and challenged the constitutional validity of the legislation on the grounds that its particular restrictive arrangements were on an intra-state basis and that, despite appearances, the corporation power in the constitution did not allow the federal government to regulate the purely intra-state activities of corporations.

Judges of the Australian High Court were generally more concerned to protect the rights of states against federal encroachment than they were to ensure the effectiveness of the government's anti-trust legislation,[33] and accordingly upheld the challenge, thus depriving the government of the ability to control the intra-state activities of corporations and severely restricting the scope of the act. Nevertheless the government went ahead with its investigations and, in 1909, in an effort to strengthen the act and simplify the procedures of proof, made further amendments specifying two new classes of offence. One was the use of rebates, refunds, discounts and other rewards to induce exclusive dealing and the other was the refusal to sell to a buyer for the reason that he did not belong to a ring or trust. Both these techniques were used by the shipping and coal combines to maintain their monopoly. But it was left to the Labor party, which assumed office in 1910, to begin the first substantive prosecution under the act, against the coal mining and interstate shipping firms whose various agreements had kept the price of coal higher than it would otherwise have been. The companies were convicted on charges of combining with intent to restrain the interestate trade in coal to the detriment of the public, and of monopolizing that trade with similar intent. Each company was fined, and injunctions were issued against the continuance of these practices. For a moment it appeared that, six years after the introduction of the legislation in parliament, Australia was finally to embark on an era of government-sponsored competition.

But that appearance was short-lived, for on appeal the convictions were overturned. The appeal judges were quite unconcerned about the preservation of competition. On the contrary, they pronounced on the evils of 'cut-throat competition', and argued that the agreements were necessary to prevent 'unlimited and ruinous competition'. The fact is, however, that there was no evidence of ruinous competition before the shipping and coal combination came into existence, leading one student of the judgements to conclude that 'if the Full Court found cut-throat competition, it was because a common law training had led its members to *expect* that all competition would be ruinous'.[34]

Moreover, the appeal judges tended to interpret the public interest as synonymous with the interest of producers. According to the same commentator:

> ...since in the court's view the only alternative to restriction and monopoly was the total dislocation of the industry by cut-throat competition, it followed that entrepreneurs who combined to guarantee themselves an income (and so ensure the survival of the industry), could not be regarded as acting with intent to injure the public. Even if the combination raised its prices, restricted its output, excluded new entrants and forced inferior coal on the consumer, the public was better off accepting such inconveniences than losing an industry altogether.[35]

In the face of this complete lack of sympathy displayed by the appeal court judges for the anti-trust principles embodied in the legislation, the government capitulated and made no further efforts to enforce the

act.

It is of some interest that while the case against the shipping and coal companies was in progress, the Labor government amended the act removing the need to prove *intent* to cause public detriment, and modifying the need to prove public detriment itself. Despite these amendements, the government proceeded with the case on the basis of the old legislation and thereby failed to maximise the chance of conviction.

But even had the government made use of its amended legislation, it is doubtful whether the final outcome would have been materially different. First, it is obvious from the reasoning of the appeal court judges that the question of intent was not the crucial factor in their decision, because public detriment itself had not been established. Secondly, while the amended legislation did specify some offences for which it was not necessary to establish public detriment, it seems quite probable that, given their belief in the evils of competition, the appeal court judges would have introduced some such a test at their own initiative. After all, although the Sherman Act banned restraint of trade and monopolization, without regard to whether in any particular case public detriment was involved, the United States supreme court modified the law in 1911 by adoping a 'rule of reason' which construed the statute as prohibiting only those restraints of trade and monopolies which were 'unreasonable'. Australian judges of the day might have been expected to follow this lead and modify the Australian legislation in a similar manner.

Nevertheless, Labor's failure to give the prosecution the best chance of success, and its subsequent failure to seek further amendments which might have strengthened the act, do provide evidence of its lack of enthusiasm for such legislation. As Labor's attorney-general expressed it, proceeding against trusts in this way was 'like trying to divert a cataract with a straw'.[36] The party's preferred policy of dealing with the problem of monopolies was to nationalize them, and even before the prosecution under the act began, Labor had initiated moves to change the constitution so as to allow nationalization. In 1911 and again in 1913, referenda seeking such powers were held but both were lost. There was thus an insuperable constitutional obstacle in the path of nationalization, and although Labor maintained its commitment to a policy of nationalizing monopolies, its initiative was spent. So ended an era of anti-trust in Australia.[37]

Conclusion

It is evident that the Australian Industries Preservation Act, though modelled in part on an act which gave expression to a philosophy of competition, was never itself intended to promote competition. Rather, the aim of the government which introduced the measure was to protect Australian industries against unfair competition engaged in by overseas enterprises, many of which were trusts, and to a lesser extent to protect certain Australian enterprises against victimization by other Australian businesses. There was little explicit recognition of the consumer interest, and the government certainly did not see the legislation as enforcing competition for the benefit of the consumer. The act was designed to regulate the affairs of business in the interests of certain sections of business.

The Labor party, upon whose support the government depended and at whose instigation the specifically anti-trust sections of the legislation were strengthened, was, paradoxically, never committed to the philosophy of competition which those sections embodied. It opposed monopoly in the interests of the consumer, and given its general hostility towards a system of private enterprise, it believed this purpose was best served by a policy of nationalization rather than enforced competition. Its support for an anti-trust measure modelled on the Sherman Act was necessitated by its minority position in parliament.

The passage of strong antitrust legislation through the early federal parliament was thus a result of political compromise. The act expressed principles of competition which neither party responsible for it endorsed. Moreover, as we have seen, the judiciary was generally antipathetic to the notion of competition. In the absence of any climate of opinion in favour of competition in Australia it was almost predictable that an act to enforce it would be ineffective. The fact is that anti-trust legislation was imported into Australia to serve a purpose for which it was not originally intended, the preservation of local industries against foreign competition. When it became evident that this purpose could be achieved by other means, interest in the legislation wained and, but for the equivocal efforts of Labor, the act would have become a dead letter even sooner than it did.

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The 1965 Act: Managing the Affairs of the Bourgeoisie

Watching the alternation in office of Liberals and Conservatives in the days before Labor appeared in the British Parliament, Marx and Engels concluded that, regardless of the party in power, 'the executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie.[38] Whether this statement still applies to the capitalist state, and if so, in what sense, is the central problem of two books, *The State in Capitalist Society* by Ralph Miliband[39] and *Political Power and Social Class* by the French Marxist, Nicos Poulantzas.[40] although these two writers differ on a number of points and have debated their differences at length in the pages of the *New Left Review*,[41] they agree that, properly understood, Marx and Engels' insight is as applicable today as it was then.

In the first place, the state is not simply the tool of a ruling capitalist class. The personnel of the state—its politicians and administrators—are frequently not themselves businessmen and are free to institute policies which may run counter to the particular interests of important sections of the capitalist class.

Moreover, this autonomy of the state from sectional capitalist interests

is vital to the survival of the bourgeoisie as the dominant class. The bourgeoisie is not a united group but consists of various 'fractions' (to use Poulantzas' term)—financiers, traders, industrialists, intellectuals and others--whose interests are frequently in conflict and whose antagonisms are surpassed only by the fundamental opposition between capital and labour. The bourgeoisie is normally incapable of united class action and sacrifices constantly its general class interest for narrow private gain.

> The state therefore takes charge, as it were, of the bourgeoisie's political interests and realizes the function of political hegemony which the bourgeoisie is unable to achieve. But in order to do this, the capitalist state assumes a relative autonomy with regard to the bourgeoisie... which allows the state to intervene not only to arrange compromises vis-a-vis the dominated classes or fractions; but also...to intervene against the long term interests of one or other fraction of the dominant class for the sake of the bourgeoisie as a whole.[12]

Miliband maintains that all this is implicit in the original formulation by Marx and Engels:

> For what they are saying is that 'the modern state is but a committee for managing the *common* affairs of the *whole* bourgeoisie: the notion of common affairs assumes the existence of particular ones; and the notion of the whole bourgeoisie implies the existence of separate elements which make up that whole. This being the case, there is an obvious need for an institution of the kind they refer to, namely the state; and the state *cannot* meet this need without enjoying a certain degree of autonomy. In other words the notion of autonomy is embedded in the definition itself and is an intrinsic part of it.[13]

But this autonomy is by no means absolute. Poulantzas emphasises that the state is constrained to operate within limits imposed by the capitalist mode of production. He does not specify what these limits are, but he certainly sees the state as not sufficiently independent of bourgeois interests to be able, for example, to initiate a transition to socialism. The point is that while the capitalist state is autonomous *vis-a-vis* the economic interests of specific fractions of the bourgeoisie it is not free to jeopardize the general class interests of the whole bourgeoisie. Its autonomy is therefore relative.

Nor is this general relationship between the state and the bourgeoisie much affected by the particular party in power. Many writers have pointed out that though England was governed by aristocrats during the 19th century, government was on behalf of the bourgeoisie and the period was one of thriving capitalist enterprise. And despite the advent in the 20th century of social democratic or Labor governments supposedly hostile to the bourgeoisie, the state continues to function in the interests of the bourgeoisie.[14] This last point has been stressed by Miliband in particular. He argues that though a government may be concerned to improve the operation of the economy rather than to serve

the interests of the bourgeoisie, in a capitalist economy capitalists stand to gain most from any improvement effected in it.[15] Moreover, even a government concerned specifically to promote the interests of workers is nevertheless at the mercy of businessmen, for if the business community experiences a 'loss of confidence', recession follows and the whole society suffers.[16] There have been at least two dramatic demonstrations of this in Australia recently. First, by late 1974 the Labor government's policy of price control had reduced profits to levels which business found unacceptably low; the result was a slow-down in investment. To counteract this trend, the Prime Minister found it necessary to issue a request to the prices justification tribunal to take into account company needs for adequate profit margins when determining applications for price increases.[17] Secondly, in early 1975, local car manufacturers were faced with declining sales and threatened to lay off a number of workers. The government remonstrated with the managements but in the end could only persuade them not to carry out their threats by reducing sales tax on cars thus assuring the companies of the volume of sales and the profit they required.[18] These instances demonstrate the inherent bias of the capitalist system in favour of bourgeois interests and the inability of any government attempting to operate within that system seriously to threaten those interests.

While Miliband and Poulantzas are no doubt correct in claiming that the capitalist state operates in the interests of the bourgeoisie regardless of the party in power, there are I think important differences between the state under conservative party management and under social democratic managment. Social democratic governments are to varying degrees inadvertent protectors of bourgeois interests; conservative parties are deliberately involved in the protection of those interests. Moreover when it comes to a detailed analysis of the way in which the state acutally functions in the interests of the bourgeoisie, the composition and attitudes of the party in power become important variables, so much so that a separate analysis is required for each case. In this paper I wish to narrow the focus and concentrate on the ways in which conservative parties manage the affairs of the bourgeoisie.

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Much of the Miliband/Poulantzas analysis of the state can be applied with minor modifications to the role of conservative parties in government. Indeed, approaching the matter from a rather different perspective and without reference to the capitalist state or the writings of Miliband and Poulantzas, Parker has analysed the relationship between conservative parties and business interests in Australia in strikingly similar terms.[19] He argues that although conservative parties in Australia are the parties of capital, the relationship is complicated by the fact that there is not a single capitalist class but rather a variety of capitalist groupings—importers, wholesale traders, retailers, private banks and insurance companies, farmers and others. 'Except on broad issues involving the

rights of property and of emplyers, there is not the same homogeneity of interests among these groupings ...as there is among wage earners as such.' Indeed so divergent are these interests that manufacturers have, on issues like the tariff, been allied with organized labour against commerce and primary industry. Parker goes on to argue that the effectiveness of Australian conservative parties in representing the long term interests of capital (more concretely, their ability to gain and hold office) has depended on their freedom from financial dependence on any particular interest group. Only under these circumstances have they been able to make the compromises and adopt the policies necessary to win majority electoral support. The electoral failure of the United Australia Party prior to 1945 was a result of public dissatisfaction with the party's close association with and financial dependence on outside vested interests. Only after the reorganization of conservative interests as the Liberal Party, with a fund raising organization of its own such that it could no longer be held to ransom by individual backers, were conservatives able to win office.

While Parker demonstrates both the fragmentation of the capitalist class and the necessity for conservative parties to achieve a degree of independence from all fractions of the bourgeoisie if they are to govern, he does not discuss the way in which conservative parties in government manage the affairs of the bourgeoisie. A clear understanding of the role of conservative parties in this connection depends upon a close examination of their actions on specific issues. The remainder of this paper is an examination from this point of view of the Trade Practices Act introduced by the Liberal-Country Party government in 1965. I shall aim to demonstrate three things: first, that a variety of interests existed within the bourgeoisie in relation to this act; second, that the act served the long-term interests of capitalism; and third, that the government acted autonomously in relation to the specific business interests which sought to influence it. In the process I shall hope to achieve two interrelated purposes: to clarify the management role of conservative parties and to provide some understanding of the function of this particular legislation.

The Fractionation of the Bourgeoisie

On first investigating the attitudes of various vested interests to the introduction of trade practice legislation one gains the impression that business was able to present a remarkably united front. When the government presented to parliament an outline of the intended legislation in 1962, four major organized business lobbies found themselves sufficienty in agreement to be able to produce a joint submission opposing many of the fundamental features of the proposed legislation. The groups concerned—the Associated Chambers of Manufactures of Australia, the Associated Chambers of Commerce of Australia, the Australian Council of Retailers and the Federal Chamber of Automotive Industries—represented a wide range of manufacturing, importing,

wholesale and retailing interests. In addition to this submission and the continuing representations made by these four organizations, a number of other influential groups and individuals stated their opposition to the proposals, among them, the Manufacturing Industry Advisory Council, the Metal Trades Employers Association, the Hardware and Allied Trades Association, the NSW branch of the Institute of Directors and the Victorian, South Australian and West Australian Liberal party governments.[50] At first glance, then, it would appear that on this occasion business exhibited the kind of unity which is usually called forth only when governments threaten the foundations of the private enterenterprise system, as for example when the Labor government tried to nationalize the banks after World War II.[51]

Business unanimity might have been expected if all sections of the business community benefited from the restrictive trade practices in question; but they do not. According to its initiator, Sir Garfield Barwick, the legislation was in part intended to protect small traders who were sometimes discriminated against or even forced out of business by the predatory or exclusive practices of other business groups. So it is not surprising that a number of organizations expressed themselves as being in favour of trade practice legislation. Among these was a variety of retailer organizations which felt that their members were victimized by distributors, for example the Queensland Retail Traders Association, the NSW Retail Tobacco Traders Association and the Victorian Automobile Chamber of Commerce (motor industry retailers). Individual retail companies also supported the legislation. Franklins, a food chain store, expressed the hope the legislation would break up a price agreement among chocolate manufacturers which had forced the store to pay high prices for the chocolates it retailed.

Another block of interests which supported the proposals was the farming lobby which had what amounted to a consumer interest in the legislation. Grazier, stockowner and various other farming organizations all favoured legislation against the price agreements among manufacturers which kept the price of farm machinery higher than it would otherwise be.

Further support came from government authorities and local governments aggrieved by the collusive tendering practiced by companies supposedly competing for government business.

Moreover, although many organizations expressed a single view to government on its proposed legislation there was by no means complete unanimity within organizations as to what that view should be. For example, while the South Australian Chamber of Manufactures opposed the legislation, one of its members, a firm of manufacturing engineers, supported it because of a price agreement among the ball-bearing distributors from whom it bought ball-bearings. Again, a Queensland manufacturer of footballs, though a member of the Chamber of Manufactures, supported the idea of legislation because he was excluded from the Victorian market in footballs by that state's Sports Goods Federation.

Finally, the NSW branch of the Employers Federation decided neither to oppose nor support the legislation because it recognized that there was a divergence in attitude among its members.

It is evident, then, that despite the unanimity of leading national business organizations, there was considerable disagreement within the business community on the desirability of legislation against restrictive trade practices. It should also be recognized that while various groups spoke forcefully both for and against the legislation, most businessmen paid little attention to the matter. In 1971 when tougher legislation was being discussed, the NSW Chamber of Manufactures surveyed its members on their attitudes to such legislation. Only 3 per cent responded to the questionnaire mailed to them. There is no reason to think that the general level of concern among businessmen would have been dramatically different prior to the introduction of the 1965 legislation.

Any attempt to characterize the business interests which supported the legislation is fraught with difficulty. Both Prime Minister Menzies[32] and Attorney-General Barwick[33] saw it as benefiting small businessmen, as did some small businessmen themselves. However, in some circumstances, trade practice legislation favours large corporations at the expense of small and medium businesses because large corporations can stand alone, whereas it is often in the interest of small businesses to act collectively to restrict competition. The Franklin chain was one large business which obviously stood to gain. And in 1971 a discount chain store, Sydney Wide, was able to use the legislation to force a distributor to supply it with Mikasa china ware. These examples suggest that perhaps it was retailers who as a group were the principal beneficiaries of the legislation. But again this is inaccurate. While a number of specialized retailer organizations supported the legislation, the major such organization, the Australian Council of Retailers, did not. The fact is that the legislation aimed to keep the competitive arena open to new entrants and to prevent established businesses from organizing their business environment in such a way as to exclude new or aspiring competitors. It is thus probably nearest the truth to say that it was the new or expanding business which had most to gain from the act, be it a large discount retailer or a small football manufacturer. In as much as new business ventures usually start small, it was the small man who stood to benefit, not simply because he was small but because he was a newcomer obstructed by the 'orderly marketing' arrangements with which established business protected its interests.

Even if valid, this characterization can at best summarize the diversity of attitudes which various segments of business took to the legislation. The act itself was exceedingly complex with different sections affecting different interests. Indeed a given business might stand to benefit from some sections and lose from others, making it impossible to characterize the business as, in any simple fashion, for or against. What emerges then is that on this specific issue, as on almost all, business was divided and unable to speak with a single voice. There was no business lobby

promoting the interest of capitalism as such. Even the national umbrella organizations, ACMA, ACCA and others, which claimed to speak for business as a whole, represented in fact specific elements within the bourgeoisie. Only the Liberal party, standing above specific capitalist interests, was in a position to see and pursue the general interest of the bourgeoisie.

The Liberal Party and the Defence of Capitalism

It can be argued that, potentially, the over-arching function of the act was to protect the free enterprise system as it existed in Australia from various factors which might endanger its stability. Several of the government's reasons for introducing the legislation were consistent with this function. For example, one argument which Attorney-General Barwick relied on in speaking about the need for such legislation was that restrictive trade practices tended to suppress the incentive to efficiency and enterprise, thereby hindering the development of the economy.[34] A sluggish economy was in itself undesirable, he felt. But the argument can be extended. If the economy stagnates and fails to deliver the goods in ever increasing quantities, the legitimacy of the system itself might well be called into question. Legislation which promotes economic growth thus serves to safeguard the system against radical social change.

Again, one of the more obvious functions of the legislation was to protect individual traders who fell victim to the restrictive practices of others. For some government members this was its principal purpose. Traders subjected to collective boycotts suffered an injustice and, in the name of justice, deserved protection from the practices concerned. But it can also be argued that preventing such injustice protects the free enterprise system against potential social disruption. The allegiance of voters to free enterprise parties depends in part on their belief that the system is one in which an individual with initiative can succeed. If small traders trying to establish themselves are squeezed out by the unfair practices of those already established this belief might be called into question and the system itself threatened. This argument was put very clearly by one supporter and subsequently administrator of the legislation who wrote as follows:

> If monopolists or other commercial interests are allowed to prevent other citizens from entering trade and commerce, they perpetrate a major social injustice; widespread injustice leads to widespread discontent, and to disillusionment with free enterprise as a socio-economic system. From then on, social and political changes can be needlessly sudden and ill-considered.[35]

Members of the Liberal Party were well aware of this system-preserving function of their legislation. They recognized that long-term changes were taking place in the economy and society and that intervention in more and more areas of the economy was inevitable. The choice was not whether to intervene but how and in whose interests to intervene.

Either the government imposed some restrictions on business in such a way as to ensure the viability of the capitalist system or that system would be replaced by socialism. Here are words of Billie Snedden, Attorney-General at the time of the legislation's enactment:

> As the twentieth century has unfolded, and has developed the concept of control within reason, it has become crystal clear that untrammelled liberty cannot be allowed to disadvantage the majority. Democracy must protect itself to survive. *Laissez-faire* will be replaced either by socialism or control within reason...The surrender of absolute freedom in the commercial field, which restrictive trade practice legislation involves, is no more than 'control within reason'...The alternative is socialism, which appals me...Were the Labor Party to draft legislation it would undoubtedly be criminal in nature, absolute in terms and extreme in penalty.[56]

And a future Prime Minister, Malcolm Fraser expressed the following view:

> [The Labor Party's] solution to the problems the government is trying to tackle would be diametrically opposed to the kind of solution the government would hope to achieve. I believe it would be their intention to let abuses develop until they had an opportunity to build up a case for either nationalization, if that were permitted under the constitution, or a socialist cure of one kind or another which would bring industries much more directly within government control. That is something we certainly do not want to see and something which I believe industry should not want to see. Industry should understand and appreciate the government's motives from this point of view.[57]

These statements leave no doubt that the defence of the capitalist system was one of the purposes the government hoped its legislation would achieve.

The Autonomy of the Liberal Party in Relation to Business Interests

In December 1962 the then Attorney-General, Sir Garfield Barwick, presented to parliament his proposals for trade practice legislation. These required that certain restrictive agreements and practices be examinable by a tribunal and then declared to be unlawful in individual cases if found contrary to the public interests; certain other practices were to be prohibited outright. Barwick intended the drafting of actual legislation to be delayed by some months to give business time to express its views. In the event the legislation was delayed by three years. Moreover, the major business lobbies were successful in having substantial modifications made to the original proposals, the most dramatic of which was the virtual elimination of outright prohibitions. Various writers have seen this as a demonstration of the power of big business and the subservience of government to vested interests, in other words, of the lack of any real autonomy on the part of government.[58] But this interpretation is, I believe, incorrect. The government did not simply cave in under big business pressure; rather it invited business representations and was concerned to accommodate business objections as far as it possibly could without abandoning its objective of strengthening the free enterprise system. Probably the most successful pressure group was one which the government itself had brought into existence, the Manufacturing Industry Advisory Council. This group, consisting of a number of prominent industrialists, had been set up in 1958 by the Minister for Trade to advise him on matters affecting Australian manufacturing industry. The members of MIAC were thoroughly alarmed by the Barwick proposals and, in September 1963, met with the inner cabinet to express their views, views which according to Menzies 'were the most balanced and constructive that we had had presented to us'.[59] Other organized business groups were also invited to present their views from time to time, both to cabinet and to the attorney-general.

But business did not always have the ear of the government. Early in 1963 the federal president of ACMA asked the Prime Minister for a private discussion on the political aspects of the legislation; he was refused. Clearly, the government listened to business only on its own terms.

Moreover, business leaders rapidly realized that though the government was generally ready to listen sympathetically to their representations, it felt free not to act on them. ACMA's director, for example, recognized that there was no hope of persuading the government to abandon its intention to legislate against restrictive trade practices. 'Although we would, given the opportunity, reject outright the introduction of legislation', he wrote, 'our cognizance of the political situation of the government compels us to seek not a withdrawal but an amendment of the present government proposals'. The amendments initially proposed by ACMA were substantial. It argued amongst other things that no practice should be prohibited outright and that the tribunal which, in the Barwick scheme, would examine questionable practices and agreements and prohibit those which it found against the public interest, should not have this power to prohibit, but should be confined to reporting and making recommendations to parliament. However, ACMA officials soon concluded that the government was not receptive to this latter suggestion and so abandoned it, thereafter confining themselves to seeking amendments which were consistent with the basic Barwick framework.

A rather nice illustration of the independence of attitude of which the government was capable can be found in the reply of one government minister to a submission sent to him by the Perth Chamber of Commerce. He wrote:

> I have read this document and can hardly credit that a body such as yours comprised of responsible members in the Perth business community can genuinely subscribe to the ideas expressed in this document. A great deal of it is demonstrably false. Most comments are intemperate and irrational and it is hard to find any objective criticism. It largely consists of propaganda statements which to say the least are arguable.

That a government minister was prepared to reject business submissions in such derogatory terms suggests that those recommendations the government *did* accept it did so because it agreed with them not because it was forced to.

Of course the act as passed was a weakened version of the original proposals and in the event was largely ineffective, mainly because of constitutional difficulties and the very cumbersome enforcement procedures on which it relied. It was not until 1971 that the act really began to take effect with an order by the trade practices tribunal that a price-fixing agreement among frozen-vegetable processors be terminated. But it is obvious that were it not for the change in government and the new trade practices act, the Liberal legislation would have had an increasing effect on restrictive trade practices in Australia. Evidently, the Liberal government's trade practices legislation was contrary to a variety of business interests and the very fact that such legislation was enacted at all is a demonstration of the independence of the conservative Liberal Party government from the various segments of the bourgeoisie which sought to influence it.

Finally, a word on the relative or qualified nature of this independence. The Trade Practices Act did not bring the government into conflict with fundamental aspects of the capitalist system and so does not provide us with any insight into the limitations on the government's ability to act against the bourgeoisie. Since conservative parties are unlikely to want to challenge basic capitalist interests, the limitations on their freedom of action in this sense will usually remain theoretical rather than demonstrable.

Conclusion

We have seen that, at least potentially, the act prevented the bourgeoisie or fractions of it from taking action which might engender such widespread disillusionment with the capitalist system as to threaten it survival. In short, it served to restrain sections of the bourgeoisie in the interests of the bourgeoisie as a whole. Moreover, the government was well aware of this system-preserving function and regarded it as one of the purposes of the act. However I am not suggesting that the act can necessarily be *explained* in these terms. A complete understanding of the process by which the act came into existence requires a more detailed account than has been presented here.[60] The aim of this analysis has been more limited. It has sought to demonstrate the utility of notions such as 'relative autonomy' and 'class fraction' in understanding the role of conservative parties in the modern capitalist state and to use these notions to provide some insight into an important function of the Liberal government's Trade Practices Act of 1965.

NOTES

1 For discussions of this assumption see W. Carson, 'The Sociology of Crime and the Emergence of Criminal Laws', in P. Rock & M. McIntosh (edd.), *Deviance and Social Control* (Tavistock, London, 1974); and A. Hopkins, 'On the Sociology of Criminal Law', *Social Problems* 22,5 (June 1975).

2 e.g. R Quinney, *The Social Reality of Crime* (Little Brown, Boston, 1970), p. 74.

3 e.g. W. Chambliss & R. Seidman, *Law, Order and Power* (Addison-Wesley, Reading, Mass., 1971), p. 66.

4 This committee was subsequently converted into a royal commission and its report was presented in 1906.

5 *Commonwealth Parliamentary Debates (C.P.D.)* vol. 13, p. 6; *C.P.D.* 18, p. 9; W. Murdoch, *Alfred Deakin* (Constable, London, 1923), p. 230.

6 D.B. Copland & J.G. Norris, 'Some Reciprocal Effects of Our Antitrust Laws, with Special Reference to Australia', *The Annals of the American Academy of Political and Social Science* 147 (January 1930), p. 117; H.L. Wilkinson, *The Trust Movement in Australia* (Critchley Parker, Melbourne, 1914), p. 188.

7 The following information on the early federal parliament is taken from J. Jupp, *Australian Party Politics* (M.U.P., Melbourne, 1964); L.F. Crisp, *Australian National Government* (Longmans, Melbourne, 1968); L.C. Webb, 'The Australian Party System', in C.H. Hughes (ed.), *Readings in Australian Government* (Queensland University Press, Brisbane, 1968); J.A. La Nauze, *Alfred Deakin: A Biography* (M.U.P., Melbourne, 1965), vol. 2.

8 Report of the Royal Commission on Stripper-Harvesters, *Parliamentary Papers of the Commonwealth of Australia*, vol. 4, 1906, pp. 138-9.

9 *See C.P.D. 31*, p. 1097.

10 *C.P.D. 30*, p. 6820.

11 *C.P.D. 30*, p. 6989. Octopus imagery was frequently invoked during the debate. In one speech by an opposition member the following interchange took place.

Opp. Memb. : '...if Ministers only seek to clip the claws of a few large octopus combinations - '

Minister : 'An octopus would not have claws!

Opp. Memb. : 'To cut away the suckers of these octopus combinations shall I say; to cut away their grip,...' (*C.P.D. 31*, p. 991).

Again, according to one speaker, 'the Rockefeller trust is an octopus, and if we catch hold of its tentacles the responsibility is at once removed to another, and another, and yet another, until it is impossible to say where is the centre. In other words, if we get hold of a trust of this kind by one leg, as the saying is, it hops away on another' (*C.P.D. 33*, p. 3404).

12 *C.P.D. 30*, p. 6821.

13 *C.P.D. 30*, p. 6826.

14 *C.P.D. 30*, p. 6820.

15 Section 10 of the 1905 bill read as follows:

10. (1) Any person who wilfully -

(a) being a Commercial Trust makes or enters into any contract, or is a member of or engages in any combination to do; or

(b) makes or enters into any contract with or conspires or engages in any combination with a Commercial Trust to do; or

(c) as an officer member or agent of a Commercial Trust does or makes or enters into any contract to do any act or thing in restraint of trade or commerce among the several States or with other countries to the detriment of the public or any act or thing with the design of destroying or injuring any Australian industries by means of unfair competition with respect to such trade or commerce, is guilty of an indictable offence against this Act. Penalty: Five hundred pounds, or one year's imprisonment, or both.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

16 *C.P.D. 30*, p. 7013.

17 *C.P.D. 31*, p. 1006.

18 Wilkinson, *op. cit.*, p. 189.

19 *C.P.D. 31*, p. 349.

20 *C.P.D. 30*, p. 7020.

21 *C.P.D. 30*, p. 7018.

22 *C.P.D. 30*, p. 6822.

23 *C.P.D. 31* pp. 1086, 1018.

24 *C.P.D. 30*, p. 7031.

25 Crisp, *op. cit.*, p. 146.

26 *C.P.D. 31*, p. 671.

27 *C.P.D. 31*, p. 249.
28 *C.P.D. 33*, p. 3057.
29 *C.P.D. 31* p. 943.
30 *C.P.D. 33*, p. 3058.
31 *C.P.D. 33*, p. 3443.
32 *C.P.D. 38*, p. 2032; *C.P.D. 39*, p. 3684.
33 G. Walker, *Australian Monopoly Law* (Cheshire, Melbourne, 1967), p. 49.
34 *ibid.*, p. 33.
35 *ibid.*, pp. 33-4. The case actually went to two appeal courts—the Full High Court of Australia, and the Privy Council in England. The opinions expressed by the two courts were substantially similar. For a detailed analysis of the judgements see D.J. Stalley, 'Federal Control of Monopoly in Australia', *University of Queensland Law Journal* 3 (1958), pp. 258-89.
36 *C.P.D.* 59, p. 6042.
37 The Act remained a dead letter for more than fifty years until briefly revived in 1965 when the Attorney-General successfully prosecuted a number of wine wholesalers for engineering a group boycott of a retailer who had bought supplies from a price cutting wholesaler (Walker, *op. cit.*, p. 201; J.E. Richardson, *Introduction to the Australian Trade Practices Act* (Hicks Smith, Sydney), 1967, p. 23). The revival of the Act was, however, merely a prelude to its repeal to make way for the Trade Practices Act of 1965.
The antidumping provisions of the Act were completely inoperative, partly because the government was able to use protective tariffs to achieve its purposes, but also because the provisions required the government to demonstrate that the importer *intended* to damage an Australian industry—an almost impossible task (*C.P.D. 44*, p. 9720). In 1921, the government passed antidumping legislation of a somewhat different character-Customs Tariff (Industries Preservation) Act—making the antidumping provisions of the A.I.P. Act redundant.
38 *Communist Manifesto* (Harmondsworth, Pelican, 1967), p. 82. The whole sentence is taken, with modification, from L.F. Crisp, *The Parliamentary Government of the Commonwealth of Australia* (Longmans, Melbourne, 1949), p. 116.
39 Weidenfeld and Nicolson, London, 1969.
40 New Left Books, London, 1973.
41 Vols. 58, 59 and 82.
42 Poulantzas, *Political Power*, pp. 284-5.
43 Miliband, *New Left Review* 83, p. 85.
44 Schumpeter comes to a somewhat different conclusion. Noting the success of the bourgeoisie under aristocratic government in 19th century England and the subsequent apparent decline in its fortunes, he concludes that 'without the protection of some non-bourgeois group the bourgeoisie is politically helpless and unable not only to lead the nation but even to take care of its particular class interest'. He goes on to say that the overthrow of the feudal aristocratic superstructure has left capitalism unable to fend for itself and on this basis predicts the coming of socialism. See J.A. Schumpeter, *Capitalism, Socialism and Democracy* (Allen and Unwin, London, 1950), p. 137.
45 *The State*, p. 79.
46 *ibid.*, p. 150.
47 *Second Annual Report of the Prices Justification Tribunal 1974-5*, pp. 46-7.
48 *Age*, 29 January 1975.
49 R.S. Parker, 'Group Interests and the Non-Labor Parties Since 1930', in C.A. Hughes (ed.), *Readings in Australian Government* (Queensland University Press, Brisbane, 1968).
50 Information on business attitudes and actions has been taken from a variety of sources—newspapers, trade association files etc., and are not footnoted in detail in this paper.
51 R.W. Connell & T.H. Irving, 'Yes Virginia, There is a Ruling Class', in H. Mayer & H. Nelson (edd.), *Australian Politics: A Third Reader* (Cheshire, Melbourne, 1973).
52 Policy speech, November 1963.
53 G. Barwick, Trade Practices in a Developing Economy (Wood Memorial Lecture given at Melbourne University, 1963).
54 *ibid.*
55 G. Walker, *Australian Monopoly Law* (Cheshire, Melbourne, 1967), p. 4.
56 *C.P.D., Vol. H. of R. 36*, p. 422.
57 *C.P.D., H. of R. 49*, p. 3299. This line of thought was evident in the wider society as well. In the words of one newspaper editorialist: ' we need to find ways of protecting the public from unbridled free enterprise. The ultimate alternative is stultifying socialism' (*West Australian*, 22 May 1965).

58 For example, W. Pengilley, 'The Politics of Anti-Trust and Big Business in Australia', *Australian Quarterly* 45, 2 (June 1973).
59 Prime ministerial press release, 15 September 1963.
60 See my forthcoming book, provisionally entitled *Regulating Capitalism: The Sociological sources of Australian Monopoly Law*.