

Australian Adam Smith Club (Melbourne)

President: Michael Warby, Editor: Regina Bron, P.O. Box 950, Hawthorn, 3122

The possession of property and the enjoyment of property are the pledges which bind a civilised people to an improved country.
Edward Gibbon (1737-1794)

Judge J. Clifford Wallace

U.S. Court of Appeals

on

Standing for Something

Ethics in the law and judicial integrity.

Is there a need to be worried about these issues in Australia?

**The Adam Smith Club will host a dinner meeting on Tuesday the 17th of June 2003,
at The Curry Club, 396 Bridge Road, Richmond.**

Judge Wallace is a Senior Judge, and formerly Chief Judge of the U.S. Court of Appeal Ninth Circuit. Judge Wallace has published, lectured and consulted widely on judicial administration, and has taken a particular interest throughout his career in the Asia Pacific region. Judge Wallace was one of a select group who attended the Fifth Worldwide Common Law Judiciary Conference in Sydney. His visit to Australia is sponsored by the J. Reuben Clark Society, an entity of Brigham Young University, the largest privately-owned institution of higher education in the United States.

Attendance is open to both members and non-members. Those desiring to attend should complete the attached slip and return it to the Club no later than Monday the 16th of June 2003. Tickets will not be sent. Those attending should arrive at 6.30pm for dinner at 7.00pm. The cost is \$35.00 per head for members and \$40.00 per head for non-members (PTO for explanation of arrangements).

**Enquiries to Ms Regina Bron, tel 9859 8277 (AH)
or Dr Tom Jellinek, tel 9706 7400 (BH)**



detach and return

The Secretary,
Australian Adam Smith Club (Melbourne),
PO Box 950, Hawthorn, Victoria 3122.

Please reserve place(s) at \$35.00 dollars per member andplace(s) at \$40.00 per non-member for the June 17th meeting of the Australian Adam Smith Club. I enclose the amount of \$..... in payment for the same.

NAME (please print):

ADDRESS:

.....

SIGNATURE: TEL:

LAISSEZ FAIRE ON THE WEB

This newsletter has a new address on the web: <http://www.economic-justice.org/asmith.htm>. The Institute for Economic Justice has been created by David Sharp a former president (and current committee member) and Timothy Warner the current Treasurer of the Club. As stated on the web site, 'The Institute has been founded to assist those who have been subject to economic injustice, and to increase both public and professional awareness of remedies available under the Law.'

REPORT ON THE MAY MEETING.

A good evening was had by all at the Curry Club Cafe, with a fascinating talk by Martin Cox of the International Chamber of Commerce on the work behind the Dawson Report on the Trade Practices Act 1974.

Martin started by outlining some of the activities of the ICC in facilitating meetings between the Review members and leading free market economists. He then went through some of the shortcomings of the submissions and a quick look at what the review did not discuss. He then asked Sarah Barker of Minter Ellison, to give a comprehensive analysis of the likely outcomes of the Report, and an explanation of some of the legal niceties of the Trade Practices Act as it stands. Our thanks to Sarah for attending at short notice to assist Martin in his presentation.

Tim Warner

Hon Secretary/Treasurer

Australian Adam Smith Club

WILL THEY EVER LEARN?

The recent discussion of the revenue being raised by the Victorian Government from Speed Cameras is part of a long tradition of querying the motives of taxes and charges.

What governments never fully appreciate is the cultural cost of their rapaciousness. If a law is a moral law, then people naturally obey that law, they support its enforcement and praise the penalties exacted.

All of these things encourage the culture of feeling that society is just and that its structures are necessary for safety and well being, the obverse of Hobbes 'nasty, brutish and short' commentary on a lawless land.

When a government starts setting fines and creating offences that the people do not hold to be just, then the Law itself becomes held in

contempt. This discourages the holding of authority and other, perhaps more moral laws being held in high esteem.

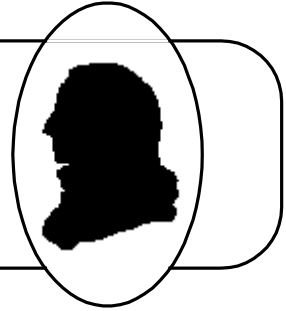
Casual regulation and legislation is the enemy of a law-abiding community. The person who breaks the law by speeding 3km/h (1.8 mph!) over the limit is not going to hold the Police, the Courts or the Law with any positive regard. TW

VENUE ARRANGEMENTS

In order to control costs the Club is attempting a number of new formats for our meetings. For the Curry Club, drink is not included in the price. You may bring your own drinks (no corkage will be charged) or purchase from the restaurant which is fully licensed. An upstairs room has been reserved for the dinner meeting. We hope these arrangements do not cause inconvenience and we welcome your feedback.

Laissez Faire

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PARTY POOPER

The Herald-Sun front-page headline of 29 May 2003 pretty well said it all; “\$100b Debt Binge”. Debt in Victoria has apparently soared to an historic high in the last decade. The average Victorian’s debt is now \$20,000. We are spending more than we earn. According to Goldman Sachs, Australia’s debt to income ratio was the worst in the Western world.

The primary basis of the skyrocketing increase in debt is the government-engineered housing boom. Interest rates kept low, generous home-loan grants and positive suasion on lending institutions has had the desired effect. The median house price in Melbourne in 1998 was \$198,000 and today is \$347,500. In 1998 mortgage repayments averaged 20.9% of Victorian household income whilst today it is more than 27%

Predictably enough, the major thrust of the Herald-Sun’s story was directed towards various individual accounts of hardship, exploitation and struggle. Greedy and irresponsible financiers, bankers, mobile phone providers and so forth came in for their fair share of criticism. Yet while the story hinted at the real problem it failed to spell it out.

The pleasure of estimating the

rapid increase in the value of one’s home and other property has tended to obscure the effect of what is happening and what has already happened. The accumulated capital of the country, particularly of Victoria, is being consumed. Much if not most of the increased debt has come about through borrowing by property owners increasing the level of debt on their properties. Effectively people have cashed in some of their profit in the increased paper value of their property. What they have overlooked is the truism that profits calculated on nominal increases in prices of existing assets are illusionary. If one borrows and consumes a part of that increased value, then regardless of whether the price subsequently changes or not, it becomes that much more difficult to replace that asset if and when it is desired or necessary to do so.

A simple example will suffice to illustrate this; if a property valued at \$100,000 balloons in value to \$200,000, then ignoring for the moment government and other imposts on its replacement, if the owner retains his equity he can replace it as and when required. If however the owner decides to celebrate his good fortune by spending half of his ‘profit’ on

say an extended overseas holiday or whatever, then he will have a \$50,000 debt and will be unable to replace the original asset since he will no longer have sufficient equity to do so. Even if property prices continue to rise he will still not have the full equity left in the original asset to replace it. However if, as is more likely following a property boom, property prices were to fall then the situation is starker. If the price falls back to \$100,000 the property owner would have consumed not a quarter of the replacement cost but a half.

The icing on the cake, so to speak, in all this, is of course, government; local, state and federal. Given an aversion to increased income taxes, governments are looking more and more to property as a source of revenue. They want to party as much as the rest of us and need a bigger share of the value of existing property assets in order to do so. Needless to say this results in the consumption of even more of the existing asset base and makes eventual replacement that much harder

Given all this, we really are having quite a blast. One would have to be an absolute party pooper to say otherwise. *DBS*

RENE RIVKIN - VICTIM OF AN UNJUST AND INEFFICIENT LAW?

With all the media *Schadenfreude* over the conviction of Rene Rivkin for insider trading in shares of Qantas, one must take one's courage in one's hands to make the case that he committed a victimless crime and that, far from doing wrong by the securities markets, Rivkin made those markets more informed, or less uninformed, about the value of shares in Qantas.

Who was the victim of Rivkin's supposed crime? Surely not the seller of the Qantas shares, who would have placed a sell order with no idea of who might place buying orders, or their reasons for doing so, or of the possibility that the buyer knew something that the seller did not. Conversely, Rivkin would have had no idea of the identity of the seller or of the reasons for placing the sale order, or of the possibility that the seller knew something that he didn't. Each party to such a transaction proceeds on the basis of at least some information unknown to the other.

What about the securities markets generally? Are they rendered less efficient by participants trading with the benefit of knowledge not possessed by, or readily accessible to, other participants? To answer those questions we must confront the problem which was posed by Hayek in his essay *The Use of Knowledge in Society*: the problem of the utilisation of knowledge which is not given to anyone in its totality. As Hayek demonstrates in that essay, one must see the free operation of the price mechanism as the means of communicating information to participants in a market whose knowledge is inevitably limited, different and unequal. Every purchase or sale of itself brings to the market a greater or lesser amount of new information.

Accordingly, to prohibit someone from trading in the securities market just because he or she possesses information unknown to other participants in those markets renders those markets less informed than they would otherwise have been.

Take, for example, the sudden collapse of HIH, which not only destroyed the stake in HIH of its shareholders, customers and creditors but also

brought about a crisis in the insurance market in Australia. Had the HIH insiders been free and willing to trade, their ever increasing sales over a period would have communicated to the world at large that all was not well with HIH. Whether the communication of the insiders knowledge would have prevented the collapse is inherently unknowable, but it would probably have made the collapse less of a disaster.

Two arguments are commonly raised in defence of prohibiting insider trading. First, it is supposedly unfair for people to trade in a market informed by knowledge not shared by other participants. That argument can be met by asking which would we prefer: a market which, however "unfairly" in the eyes of some, is the more informed by the use of information by those with more information than others, or a market which is inevitably less informed by prohibiting use of such information.

The second argument is that Australia's ever more stringent continuous disclosure obligations on public companies and their officers ensure that the securities market are as fully, but more fairly, informed as they would be if insider trading were permitted. The problem with this argument is in microcosm the problem confronted by Hayek in *The Use of Knowledge in Society*: how can any one person or body of persons in an organisation of the size of a listed company get to know and evaluate all the information in the possession all of those who are connected with the organisation in any way? For example, a problem with a company's production line may be known immediately to the relevant employees but may not reach board or senior management level until the point of disaster. Public disclosure at that point leads to the company's sudden collapse to the cost of suppliers and other creditors, customers, and most of all, shareholders, a collapse that could have been mitigated if not avoided had those with the relevant knowledge been allowed to sell their shares in the company, thereby communicating to the market-albeit in a non-specific way-that all was not well with the company. *TB*

It is with sadness that the Club notes the passing of Mrs Ettie Sharp on the 31st of May. Ettie, mother of our Foundation President David Sharp, was a regular attendee of Club functions and strong supporter of the Club's ideals.