BOOK REVIEW


This impressive book makes considerable progress towards filling an important gap in our knowledge. Trade practices have been the orphan child in the broader story of micro-economic reform, having been largely eclipsed by the extensive literatures on the winding back of tariff protection and farm subsidies. Moreover, as the authors note, more has been written about trade practices by economists and lawyers than historians. For most of us, the focal points of the history of trade practices are three pieces of legislation and snapshot judgements, the Australian Industries Preservation Act 1906 that failed, the Trade Practices Act 1965 that had been weakened in its passage through parliament, and its successor, the Trade Practices Act 1974 that had some teeth. How we got from one Act to another, and why the first two were seen as disappointments, was a mystery. This volume fills in the gaps and provides many new insights.

This ambitious book covers a grand sweep of Australian history from 1788 to present day. The authors argue that the long history of restrictive practices in the economy was shaped by a host of structural issues such as the extent and nature of the role of the government in the economy, the risks facing small farmers and manufacturers in the nineteenth century, and the combination of economies of scale and small markets that quickly gave rise to seller concentration. From the earliest days of European settlement, collusive conduct became habituated across almost economic activity. Trade associations were the most common institution used to organise businesses into cartel-like behaviours. They became increasingly prevalent in the twentieth century. The authors provide numerous tables and figures that from 1901 onwards exhaustively catalogue restrictive behaviours, especially cartels, and an equally exhaustive catalogue of the steps taken by both state and Commonwealth governments to investigate and control such actions.

The core narrative of the book is to explain when and how the complaints of those adversely affected by or concerned about a lack of competitiveness spurred governments to take action. The authors demonstrate that pressure for action grew from those parties directly disadvantaged, some of whom sort refuge in cooperatives, to a wider coalition of critics and reformers, including lawyers and economists. However, the path to reform was a long and winding one.
Governments were slow to pass legislation, judges continued to draw on British common law interpretations of ‘public interest’, and a series of High Court judgements paving the way for greater Commonwealth powers in this area occurred after the passage of the *Trade Practices Act 1965*. Perhaps the greatest challenge was to shift public opinion in favour of the rights of the consumer taking precedence above those of producers, and for allocative efficiency to be an overarching goal of public policy. The ebb and flow of the pressure for reform and the countervailing resistance to it are carefully traced out in the chapters.

The authors provide a great deal that is new. For instance, the Australian experience is placed in a wider comparative context through the examination of anti-restrictive practices legislation in many other countries. Bringing together all of the state and federal commissions, inquiries, and legislation provides overwhelming evidence of the extent of anti-competitive behaviour, and also identifies those industries which were recidivist offenders. The Register of Trade Agreements, part of the *Trade Practice Act 1965*, is fully examined in Chapter 7. These agreements, which are still secret, were so extensive and pervasive that Bannerman, the Trade Practices Commissioner, described them as an ‘astonishing web of restrictions’ (p. 194). Furthermore, our understanding of Barwick’s reasoning for the need for legislation is materially improved by the use of the minutes of the meetings in the early 1960s of the Standing Committee of Attorneys-General of the States and Commonwealth held in the National Archive of Australia.

For all the book’s virtues some questions remain. Apart from the scrappy postscript, all of the chapters have already been published as journal articles, two of which (chapters of the Coal Vend and the Register of Trade Agreements) were written in whole or part by collaborators of the authors. Consequently, there is some awkwardness in the flow of material. The book effectively concludes with its excellent discussion of the *Trade Practices Act 1974*. The next 40 years of equally important developments in trade practices politics and law are passed over in almost silence. While the passage of the 1974 Act was a key moment on the battle to curb restrictive trade practices in this country, it has not enjoyed complete success. There is evidence of continued back sliding on the part of business. Furthermore, business has lobbied and used legal advice to modify the construction and interpretation of the Act. Moreover, a key theme of the book is how public and political attitudes to competition were changed in response to pressure from the reformers. The end of that story is missing. Maureen Brunt famously wrote of the *Trade Practices Act 1965*: ‘what is the criterion of the ‘public interest’? Here is the fundamental defect in the Bill as it stands. There is none. . .consumers are just another interest group, and competition is just another end’. Compare her remarks with the clarion call of the *Report by the Independent Committee of Inquiry National Competition Policy* (Hilmer Review, 1993) that competition ‘seeks to . . . promote efficiency and economic growth’. A generation had passed before Australia embraced the Chicago School’s advocacy of efficiency as the sole goal of competition policy. My sense is that the bipartisan adoption of economic
rationalism owed more to the battles fought and won by economists in tearing down tariffs and subsidies than those taking place within the corridors of the Commission or in the courts. The new direction of trade practice policy was carried over the finish line with the help of outsiders.

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