OF PUBLIC CONCERN
ALSO BY PAUL R. WILSON

Australian Social Issues of the 70's
The Sexual Dilemma
The Policeman's Position Today and Tomorrow
   (with John S. Western)
The Police and the Public in Australia and New Zealand
   (with D. Chappell)
Crime and the Community (with J. W. Brown)
Social Deviance in Australia
Migrants and Politics
Australian Crime and Criminal Justice (with D. Chappell)
OF PUBLIC CONCERN
Contemporary Australian Social Issues

EDITED BY PAUL R. WILSON

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Preface

In an introduction to an earlier book of mine on social issues, former prime minister E.G. Whitlam remarked that "the Australian debate on social and economic issues has been enfeebled for many years by the reluctance of academics to enter the market-place of politics. This reluctance often stemmed from a pessimism, a feeling that even if universities were to proffer their ideas they would be ignored." In the five years since these words were written the situation has changed markedly. There is now some cross-fertilization between academics and politicians, and in a variety of commissions and public service inquiries Australian academics are playing a major role.

However, the academic industry generally and social science specifically have remained virtually removed from public issues. No systematic social theory and research currently illuminate key national issues on a continuing basis. Few university courses emphasize social issues or define the scope and limits of scientific effort in meeting social problems. As well, university lecturers rarely organize their courses around a multi-discipline perspective allowing students to benefit from eclectic and broadly based approaches to current social problems.

Of course the ethos of many social scientists in Australia works against a discussion of community social problems. Social scientists traditionally select research problems not primarily for their importance but for their scientific manageability. They also maintain a strict separation between the social scientist's responsibilities as a scientist and his moral and political responsibility as a citizen. It seems to me, and to an increasingly large number of other sociologists, that this dichotomy is not logically possible to maintain. However, attempts to maintain it have led to an obsessive preoccupation with the trivial and a neglect of important issues confronting the community.

This book does not attempt to broaden social science effort or to argue that the old distinctions between knowledge and action,
theory and practice, are artificially restricted—several recent books do this very well. Instead, it aims to present to intelligent men and women some of the major dimensions of vital social problems confronting Australia today.

Ten important issues are presented. Discrimination and crime and criminal justice are discussed from the point of view of how they affect the average Australian; privacy and equality from the point of view of whether they are valued in our society. The role of the media, the law, and unions in contemporary Australian society are critically analysed, and questions relating to poverty and consumerism, issues that directly or indirectly effect every citizen, are clearly put forward. In another provocative chapter the role of the helping professions—psychologists, lawyers, doctors, social workers, and so on—is raised. Do these professions spend most of their time helping Australians or helping themselves?

The object of this book is to focus attention on social issues that substantially affect the quality and style of living in contemporary Australia. The book is offered not-only to tertiary students but also to those intelligent men and women who are still concerned with improving more than the economic condition of Australian society.

Paul R. Wilson
November 1976

NOTES

1. P.R. Wilson, ed., Australian Social Issues of the 70's (Sydney: Butterworths, 1972)
DISCRIMINATION:
Dispersing the Equality Myth
John S. Western

For generations Australia basked under the myth of egalitarianism. However, in recent times it has become clear that the social inequalities found in the rest of the world are present in Australia also. These inequalities are shaped by the social context in which they are found, so as well as similarities with the situation elsewhere there are some features which are unique to the local scene.

Social inequalities are reflected in the differential distribution of benefits of a variety of kinds and in the patterning of social relationships; they may be individually or structurally based. Inequalities of the first kind, those of natural capability, to use Dahrendorf’s term (Dahrendorf 1968), are seen in differences in intelligence, aptitude, strength, and so on. Inequalities of natural capability do not in any significant way produce socially patterned groupings within society and will not concern us in this paper. Structurally based inequalities are our concern, for it is these which underlie the systematic and patterned disadvantageous position of certain social groups in society.

In Australia structural inequalities come from six major sources. Three are the classic class, status, and power, the fourth is sex, the fifth is ethnic origin, and the sixth race. These are oblique rather than orthogonal factors, of course, but for purposes of discussion it is useful to separate them out. In the sections that follow we will examine their significance for questions of discrimination.

CLASS, STATUS, AND POWER

In the Australian situation the three dimensions of class, status, and power are not closely correlated. Class, defined as occupational function, is the strongest of the three axes; power, especially in the
form of bureaucratic rule-making, is the second; and status in terms of occupational prestige the weakest, but is increasing in significance. As Encel suggests, "class, status and power interlock closely in the case of the professions, especially law and medicine, with high correlation between income, education, social role and educational prestige ... aura also extends to professionally qualified businessmen and otherwise, occupation, education, and income do not correlate as well as they appear to do in the United States, or in a different form in Great Britain" (Encel 1970).

Based on conventional occupational categories, the class structure of Australia is as set down in table 1 (Encel: 1970).

Table 1. Class and Occupation in Australia (1966)

<table>
<thead>
<tr>
<th>Class and Occupation</th>
<th>Percentage of Population</th>
<th>New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upper middle class (professional, technical and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>related workers; executive and managerial personnel)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Middle class (clerical and sales workers)</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Working class (craftsmen, production-process</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>workers, labourers, miners, quarrymen,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>transport and communication workers)</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Farmers</td>
<td>11</td>
<td></td>
</tr>
</tbody>
</table>

Self-report data for Australia shows 47 per cent middle class, 47 per cent working class, 5 per cent refusing to identify, and 1 per cent upper class (Encel 1970).

How does class operate in a discriminatory sense in the Australian situation? There are numerous examples. We will start with education. In 1962 S.B. Hammond observed of students at the University of Melbourne in the 1950s "the rather striking social reduction of the university intake in terms of "wastage" of ability ... very few full-time students are drawn from the unskilled manual groups". After noting that 50 per cent of the students had a close member of the family who had also attended university (whereas less than 1 per cent of the male work force at the time would have been university educated), Hammond concludes that the biased social composition is the result of parental attitudes and aspirations that are strongly class linked. More recently, data from a study of professional socialization (Anderson and Western 1970) shows that students in professional faculties (law, medicine, engineering, and teaching) at a cross-section of Australian universities come disproportionately from professional and managerial backgrounds, and students from working-class backgrounds are significantly under-represented. Indeed, in the university population as a whole, approximately 50
per cent are from managerial and professional backgrounds while less than one-fifth of the 45–54 age group in the population (age group from which fathers of students could be expected to come) can be so classified. Similar evidence is provided by Encel (1970).

The second example of class operating in a discriminatory manner has to do with occupational mobility. As Lipset and Bendix (1959) have suggested, actual and imagined rates of mobility in industrial societies often differ significantly and, typically, these societies seem to reach a relatively stable level of mobility once their economic development has passed a certain point. The conditions for mobility once this point has been reached are typically structural. An Australian study by Allingham (1967) shows how small the actual rates of mobility may be. In 1960, 29,328 marriages were registered in New South Wales. Allingham took a sample of 4,548 bridegrooms and compared their occupations with those of their fathers. The data reveal an increase in white collar and professional occupations, although this does not come about through mobility out of manual occupations. One’s class background in still an important determinant of the range of occupations available to move to.

A vast array of items is captured by the rubric “style of life”. There is not space to consider them all here, but four—housing, health, crime, and leisure—will be briefly considered and the discriminatory effect of class on them noted.

In Australia, private houses have always constituted the largest single sector of residential construction and investment. Typically the houses are conventional five-room detached cottages each on its own allotment of land, most commonly between 557 m² and 743 m² in area. Such typical development results in densities of about seven houses or about twenty-six persons per net residential ha (Clarke 1970). These figures mean overall densities of around four to eight persons per ha—around the lowest in the world. Not unexpectedly a high value is placed by the average Australian on “owning your own home” (Western, Mullins, and Gibbings 1972). But not all who wish to own their own home are able to do so. Increasingly in recent times, working-class groups have had to be content with government Housing Commission flats in high-density high-rise apartment blocks in areas adjacent to central city areas, and low-cost single-unit dwellings in outer suburbs not well served by public transport. Data from a variety of studies have also revealed marked class differences in number of occupants per housing unit, quality of possessions, nearness to public transport and other services and facilities: household densities are typically higher in working-class areas, where both public transport and services and facilities are also less adequate than in more affluent areas (Timms 1971; Jones 1969;
Although the discriminatory effects of class on housing are suggested by the findings cited above, too simplistic a view of the situation should not be taken. Bryson and Thompson (1972), describing an Australian public housing suburb, argue that residents respond to their dwelling and residential environment in a largely positive way. Clearly black and white conclusions cannot be drawn from the data, but the bulk of the evidence does suggest that with respect to questions of housing, working class groups in Australia, like their counterparts elsewhere, are in a socially disadvantaged position.

The data are scant, but what there are suggest a similar picture as far as health is concerned. Krupinski and Stoller (1971), in a survey of a Melbourne suburb, conclude that there is a correlation between low occupation, poor housing, low education, low income and neuroticism, excessive drinking in males, and psycho-neurotic disorders in females. A multiple regression analysis of the data revealed that neuroticism in both sexes was related to "low occupation" and "income under $3,000 annually". A carefully conducted study in Newcastle, a city of some 250,000, by Vinson and Homel (1972) suggests that notifiable diseases such as tuberculosis and infectious hepatitis are more common among working-class groups as are premature births and perinatal mortality.

The delivery of health care is another area in which we might expect to find class differences if the North American literature is any guide. Again the available data are meagre, but unpublished data from the University of Queensland's Department of Social and Preventive Medicine suggest social class differences in the evaluation of health care. Working-class women are more likely than their middle-class counterparts to report that their local general practitioner was unavailable when they wanted to see him, that the time of a consultation was "too short" and that they were "not happy" with the treatment they had received. A greater range of data would obviously be desirable, but what are available do suggest that with respect to matters of health and the delivery of health care, working-class groups are noticeably disadvantaged.

We are on somewhat better established ground when we turn to crime. Paul Wilson, who has written extensively on the criminal justice system in Australia, claims in a recent publication (Wilson 1974) that "while the class and social dimension of Australian criminal justice has been slightly reduced by the emergence of aboriginal legal aid services ... the class bias is still enormous". It has been well documented by the New South Wales Bureau of Crime Statistics and Research, for example, that persons from lower socio-economic backgrounds are far less likely than their middle-
class counterparts to have legal representation for many crimes, and as a consequence are far more likely to be convicted and receive relatively severe penalties (Bureau of Crime Statistics and Research, Sydney 1973). In addition, the very definition of crime itself has precluded from examination until quite recently a variety of activities which have come to be referred to as "middle-class crime". Included in this category are such activities as commercial bribery and kickbacks (i.e., by and to buyers, insurance adjusters, contracting officers, quality inspectors, government inspectors, and auditors), embezzlement or deliberate deception by lawyers, accountants, land salesmen, and company directors. The ease with which white-collar crimes have been committed in the past has only recently come to the attention of the Australian public. As Wilson puts it: 'Somewhat paradoxically police departments have, for example, well staffed 'vice squads' which utilize innumerable ingenious techniques such as informers and entrapment to discover prostitution and homosexuality or the distribution of pornography. But these same departments rarely have divisions for investigating crimes committed by corporations, such as price-fixing collusion, false advertising or charging excessive interest rates.'

Status or prestige is not as ubiquitous in its discriminatory effects as class, but they are still sufficient to leave an imprint on the structure of the society. In Australia, prestige operates importantly through the education system. In examining the relationship between education and society Encel claims: "The WASP character of the privileged classes in Australia is fostered, as it is in England and the United States, by a network of private schools" (Encel 1970). This small group of exclusive private schools contributes disproportionately to the recruitment of men into positions of wealth and privilege. Students from these schools join the ranks of the landed gentry, the prestigious professions of law and medicine, and the higher echelons of the public service and armed forces. Conservative prime ministers come invariably from them. An analysis of entries in Who's Who in Australia, perhaps the definitive statement of a prestige ranking, reveals that one-half of the state of Victoria's entries were products of the private schools in that state, and that these schools accounted for 10.5 per cent of all entries. Private secondary schools are a vehicle for movement into positions of prestige in the social structure whereas a secondary education in the state system militates against movement upward in prestige hierarchies.

Club membership is another method of legitimating one's position in a prestige hierarchy. The role of such institutions in Australia is similar to that of the London clubs, described in Anthony
Sampson's *Anatomy of Britain* (1962) or those in large American cities as described in E.D. Baltzell's *Philadelphia Gentlemen and the Protestant Establishment* (1958). Their criteria for membership are very similar to their counterparts', too: old established family background, wealth, Protestant religion, military rank, and senior position in one of the prestigious professions. The charter of the Athenaeum Club in Melbourne defines its purpose as providing "service and kindly intercourse between persons of kindred tastes and disposition, and to establish a common ground on which gentlemen of intelligence and character may meet together irrespective of class distinction and personal wealth" (Ellis 1961). Encel notes in passing that the last injunction is typically ignored (Encel 1970). The Athenaeum is not the only club of its kind in Melbourne, and a number of similar clubs exist in Sydney, Perth, Adelaide, and Brisbane. In all, membership is highly restricted to a social élite, and the clubs are an important feature of the structure of privilege existing in the society.

Questions concerning the exercise of power in Australian society have occupied the attention of Australian social scientists for some time, but like their American counterparts they have failed to come up with answers on which there is great agreement. R.W. Connell has argued for the presence of a ruling class (Connell 1973, 1974), and Encel, who has written widely on this issue, claims that "the bureaucratic quality of social and political organization in Australia colours the whole pattern of social relations" (Encel 1970). "The enormous and pervasive insistence upon authoritative action to deal with economic and social demands", Encel goes on, "is one of the pillars of the bureaucratic ascendency in Australian life". Since the turn of the century the characteristic style of decision-making has rested on a broad public willingness to delegate power to decide to rule-making bodies of an administrative or quasi-judicial character. J.D.B. Miller has called these bodies "organs of syndical satisfaction"; he sees them as having been set up to adjudicate and enforce the demands of organized interest groups which Miller describes as "syndicates": "people whose economic and vocational interests have induced them to band together for action for their common advantage" (Miller 1964). Trade unions would be examples of syndicates, as would associations of manufacturers, traders, farmers, graziers, and the like. Accordingly, the Australian political system is one in which "a variety of syndicates are struggling to enjoy the favours of government" (Miller 1964).

In the competition for scarce resources, then, individuals without strong interest-group backing would fall by the wayside. The aged, the poor, migrants, women, and Aborigines are such individuals. We will be considering the latter three in separate sections, as it has
been argued that structural inequalities patterned around them are, to an extent at least, independent of other factors. The plight of the aged and the poor on the other hand stems largely from the fact that they have been unable to exert sufficient influence on governments. We shall consider them together, as the aged are typically poor and the poor contain most of the aged. In the definitive study to date of poverty in Australia, Ronald Henderson (1970) suggests that across the total population around 5 per cent could be described as “in poverty”. This figure is remarkably low by international standards, but it is deceptive, as it hides the fact that among certain social groups the proportion is substantially higher. For example, among families headed by persons of pensionable age—males over sixty-five and females over sixty—poverty was three times as likely as it was among the general community; among families headed by other females poverty was around six times as common as in the general community. Typically this latter group comprised “fatherless families”. The circumstances of this group appear markedly more difficult than that of any other family type, for among them over 30 per cent were below the poverty line and a further 14 per cent were only marginally above it. Significantly, when the household head was gainfully employed poverty was virtually absent. The significance of these findings for Engel’s argument is obvious. The Australian industrial situation is characterized by a strong union movement intent on maintaining the working conditions of members. In Engel’s terms, therefore, employee groups have strong interest-group backing and hence have their causes appropriately considered by governments. The aged have no such backing and consequently in the struggle for scarce resources are seldom heard. The poor, who are a more inclusive group, suffer similarly. The consequences of this disadvantaged position are well summed up by Henderson, who suggests that “poverty is a cultural and social as well as an economic condition. The life style of the poor amounts to a self perpetuating cycle of impoverishment, indifference and ignorance.” It is a situation in which the availability of the goods and services of society, normally regarded unquestioningly, becomes problematic.

This completes our discussion of class, status, and power. Inevitably we have skirted certain issues of discriminatory significance because they are more appropriately discussed under other headings. However, it would appear from the examples cited that the situation as far as the classic dimensions of inequality are concerned is not very different from that to be found in most industrialized societies; the uniqueness of the Australian scene perhaps will become more apparent as we move on to consider sex, ethnicity, and race.
SEX

In their introduction to *Women and Society: An Australian Study*, Encel, Mackenzie, and Tebbutt argue that the "intellectual problems of relating sex differences to the general structure of social inequality are profound, not least because they demand the drastic revision of old-established and deeply entrenched frames of reference" (Encel, Mackenzie, and Tebbutt 1974). They then briefly review some of the recent feminist literature before providing a systematic account of the woman's position in Australian society. In doing so, a number of the discriminatory features of this position become clear. In the main they are found in three main institutional areas: education, work, and public life. In this section we will review the evidence they present together with what is available from other sources.

**Women and Education**

The problem of sex discrimination in education has become a matter of public concern only recently, and the evidence that is available, largely statistical, concerns enrolment trends, progression rates, and performance in certain subjects.

Despite the marked growth of formal education in Australia after 1945, the female pattern remained relatively unchanged for nearly twenty years. In 1954 11.8 per cent of males aged seventeen were attending secondary schools, a proportion which rose to 20.7 per cent in 1960; for girls the respective figures increased much more slowly, from 6.8 per cent to 10.7 per cent. However, by 1970 when the male ratio had risen to 31.7 per cent the female percentage had jumped to 23.7 per cent. So while school attendance among seventeen-year-olds is still less likely for girls the differences are not as great as they once were.

Discriminatory effects are still present, and the masculinity ratios in table 2 show how these increase with age. It is clear that the big difference comes between the age of sixteen and seventeen. While there is some tendency for girls to drop out of education more commonly than boys at all age levels, the big departure comes just before the girls reach seventeen.

The situation in universities and other institutions of higher education suggests a continuation of the trend. Although a detailed historical analysis of university enrolments in Australia is not possible, it appears that female students constituted approximately 20 per cent of enrolments at all Australian universities between 1918 and 1950. The proportion of women rose during the Depression years,
Table 2. Masculinity Ratios in Schools
(Number of Males per 100 Females)

<table>
<thead>
<tr>
<th>Age of Pupils</th>
<th>All Schools</th>
<th>Government</th>
<th>Non-Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>105.5</td>
<td>106.8</td>
<td>110.9</td>
</tr>
<tr>
<td>15</td>
<td>109.1</td>
<td>109.5</td>
<td>116.3</td>
</tr>
<tr>
<td>16</td>
<td>126.4</td>
<td>120.8</td>
<td>134.4</td>
</tr>
<tr>
<td>17</td>
<td>145.1</td>
<td>139.9</td>
<td>153.4</td>
</tr>
</tbody>
</table>


when male enrolments fell, and dropped during the post-war years because of the influx of ex-servicemen studying under a governmental re-training scheme. The trend of female participation since 1956 is shown in table 3.

Selectivity in enrolment is also apparent. The great bulk of women attending university (over 60 per cent) are enrolled in courses of the humanities type. Some do science (13 per cent), fewer medicine (4 per cent) and fewer still law. In 1971 an intrepid 96 were enrolled in engineering courses across all Australian universities. The female enrolment as a proportion of total enrolment in the different faculties is shown in table 4.

It is clear that women are in a substantial minority in all faculties with the exception of the para-medicals (social work, physiotherapy, and occupational therapy), arts (humanities and social science type disciplines), and education; and even in the latter they comprise a minority of the students enrolled.

At the post-graduate level the disparity between the sexes is even greater than it is at the undergraduate level. In Australian universities in 1958, 275 men received higher degrees but only 36 women did. In 1971 a total of 12,458 students were enrolled for higher degrees, of whom 2,143 were women; in the same year 1,784 higher degrees were awarded, and 247 (13 per cent) of these went to

Table 3. Female University Participation (%)

<table>
<thead>
<tr>
<th>Year</th>
<th>New Enrolments</th>
<th>All Enrolments</th>
<th>Graduates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1956</td>
<td>26.8</td>
<td>22.1</td>
<td>20.0</td>
</tr>
<tr>
<td>1961</td>
<td>28.4</td>
<td>23.3</td>
<td>21.6</td>
</tr>
<tr>
<td>1966</td>
<td>32.2</td>
<td>27.4</td>
<td>25.3</td>
</tr>
<tr>
<td>1971</td>
<td>36.1</td>
<td>31.5</td>
<td>28.6</td>
</tr>
</tbody>
</table>

Source: Commonwealth Bureau of Census and Statistics, University Statistics, 1971
women. In examining this phenomenon Encel, Mackenzie, and Tebbut (1974) claim: "Although there has been some increase in post-graduate study among women since 1961, the disproportion between the sexes remains large."

As we have already seen, access to higher education is closely linked to social class, and this means, as Juliet Mitchell has pointed out, that women are doubly oppressed in terms of educational opportunity, first through class and then through sex. The "privileged" girl who gets to university does not realize how underprivileged she is in reality (Mitchell 1971).

Australian studies confirm this general proposition. Girls tend to be particularly under-represented in those social groups which themselves are under-represented in the university. In a recent study of adult socialization, Anderson and Western (1970) have shown that among entrants to the faculties of law and education at Australian universities the proportion of women with working-class fathers was 7 to 8 per cent below that for males. Again, in law, which recruits quite small proportions from lower white-collar backgrounds, the proportion of women from this background is about one-third the proportion of men. When parental education is examined, much the same picture emerges. The fathers of female students typically have more education than those of male students. The mothers of girls also have more education than the mothers of boys. The situation among entrants to medicine and law is particularly instructive. Here there is a substantial difference between the proportion of mothers of boys and mothers of girls who have had university education, with the girls with university mothers outnumbering the boys by approximately three to one. The data sug-

### Table 4. Female Enrolment as a Percentage of Total Enrolment by Faculty

<table>
<thead>
<tr>
<th>Faculty</th>
<th>% female enrolment</th>
<th>Total enrolment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>19.3</td>
<td>1,650</td>
</tr>
<tr>
<td>Architecture</td>
<td>14.5</td>
<td>2,075</td>
</tr>
<tr>
<td>Arts</td>
<td>60.0</td>
<td>35,000</td>
</tr>
<tr>
<td>Dentistry</td>
<td>11.3</td>
<td>1,234</td>
</tr>
<tr>
<td>Economics/Commerce</td>
<td>13.2</td>
<td>14,950</td>
</tr>
<tr>
<td>Education</td>
<td>40.9</td>
<td>4,400</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Faculty</th>
<th>% female enrolment</th>
<th>Total enrolment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering</td>
<td>1.0</td>
<td>10,496</td>
</tr>
<tr>
<td>Law</td>
<td>16.6</td>
<td>5,880</td>
</tr>
<tr>
<td>Medicine</td>
<td>23.0</td>
<td>7,028</td>
</tr>
<tr>
<td>Science</td>
<td>28.0</td>
<td>17,925</td>
</tr>
<tr>
<td>Veterinary</td>
<td>16.5</td>
<td>1,009</td>
</tr>
<tr>
<td>Science</td>
<td>83.0</td>
<td>1,450</td>
</tr>
</tbody>
</table>


Note: “Other” includes social work, physiotherapy, and occupational therapy.
gest that a mother with a degree is a potent force in getting her daughter to the university, but that girls who lack university-educated mothers are substantially disadvantaged.

The data on education should not be interpreted as suggesting that deliberately discriminatory mechanisms are widespread, although of course the effects are discriminatory. There are certainly social pressures on women to end their formal education earlier than men, to select particular post-secondary courses to study if the decision is made to pursue higher education, and not to worry too much about higher degrees if tertiary education is being undertaken. But these pressures have grown up over time; in part they are reflected in general societal values which have tended to urge women to put marriage and a family before a career and in part they reflect in the socialization experiences women have had and the doctrines parents have laid down.

**Women and Work**

In Australia, as in most other Western industrial societies, work is expected to be a secondary activity for women; home, children, and husband’s career are all expected to come first. The situation is changing only very slowly, and the proportion of women and girls in the work force is little different today from what it was at the turn of the century (Martin and Richmond 1968). More significant changes have taken place in areas of employment. Thus during this century the bulk of female employment has moved from primary production and domestic service into industry, service occupations, lower white-collar jobs, and lower professional positions. This process, Encel, Mackenzie, and Tebbutt point out, has not been one of women taking men’s jobs, but of new jobs being created which are filled by women. In a large number of instances these jobs were seen as supportive, and essentially subsidiary to other jobs which were regarded as essentially the province of males. The intrusion of women into traditionally male employment fields when it has occurred is typically because of an inadequate supply of males and not because of a marked change in the attitudes, which still support the view that a woman’s place is in the home.

The general pattern of work-force participation by women is set down in table 5. From these figures women comprise around 31 per cent of the work force. There is a number of interesting differences. While the proportion of men and women employed in professional activities is roughly the same (indeed, the proportion of women in this category is slightly higher), there are marked differences when they are separated into lower or upper professionals. Thus the great
Table 5. Employed Population by Occupation

<table>
<thead>
<tr>
<th>Occupation</th>
<th>% of male work force *</th>
<th>% of female work force †</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional, technical and related workers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>) upper</td>
<td>10</td>
<td>4</td>
</tr>
<tr>
<td>) lower</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>Executive and managerial workers</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Clerical and sales workers</td>
<td>15</td>
<td>47</td>
</tr>
<tr>
<td>Skilled and semi-skilled industrial workers</td>
<td>39</td>
<td>11</td>
</tr>
<tr>
<td>Unskilled industrial workers</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Service workers</td>
<td>4</td>
<td>15</td>
</tr>
<tr>
<td>Farmers</td>
<td>10</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Australian population census 30 June, 1971.

* Total male work force: 3,362,053
† Total female work force: 1,572,459

[In this table percentages have been taken to the nearest full number.]

majority of women are lower professionals—schoolteachers or nurses—while the great majority of men are upper professionals—medical practitioners, lawyers, architects, engineers, and the like. Only a very small proportion of women hold executive and managerial posts. Overwhelmingly they are clerical and sales workers, the lower-middle-class occupations. A significant number also are service workers; these are the housekeepers, cooks, maids, waitresses, barmaids, caretakers, cleaners, and the like. It would certainly be true to say that “support” occupations characterize the woman's position in the work force.

In recent years, however, there has been some improvement in this position. Two factors have contributed. The first was an amendment to the Public Service Act to remove the “marriage bar” and the second was the “equal pay” legislation. Until the 1960s discrimination against women in the commonwealth and state public services was widespread. Before 1966 it was impossible for women to retain their status as permanent officers of the commonwealth public service on marriage and the same situation obtained in the Australian states. Following marriage women were automatically reclassified as temporary officers. This typically meant that they had no security of tenure, superannuation rights, or promotion prospects; many had no rights to recreation leave, sick leave, or long service leave. However, this situation has gradually improved, and while there are literally no women to be found in the highest echelons of both state and commonwealth public services, marriage no longer debars a woman from a permanent appointment.
DISCRIMINATION

There are several phases in the evolution of women’s wages in Australia. From 1912 until the passage of the Women’s Employment Act in 1942, women’s wages were normally set at 54 per cent of the male rate. There was next the period up to 1950 where the female rate in commonwealth awards was set at 75 per cent of the male basic wage. Though some states did not follow the commonwealth pattern precisely, there was general agreement. The third period began with the passage of equal pay legislation in New South Wales in 1958 and culminated in the equal pay decision of the Commonwealth Arbitration Commission in 1969. The arbitration decision did not automatically mean “equal pay for equal work” but it paved the way for a reduction in inequalities and resulted in an improvement in female minimum wages relative to men (see table 6).

Table 6. Minimum Wage Rates, 1966–71

<table>
<thead>
<tr>
<th>Year</th>
<th>Adult males</th>
<th>Index no.</th>
<th>Adult females</th>
<th>Index no.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>$43.05</td>
<td>152.4</td>
<td>$30.70</td>
<td>154.2</td>
</tr>
<tr>
<td>1968</td>
<td>$48.98</td>
<td>173.4</td>
<td>$34.85</td>
<td>175.0</td>
</tr>
<tr>
<td>1970</td>
<td>$54.06</td>
<td>191.4</td>
<td>$39.66</td>
<td>199.2</td>
</tr>
<tr>
<td>1971</td>
<td>$61.15</td>
<td>216.5</td>
<td>$46.55</td>
<td>233.8</td>
</tr>
</tbody>
</table>


Note: The index numbers are calculated with 1954 as the base (100). The figures represent weighted average minimum weekly rates, excluding overtime, as prescribed in awards, determinations and agreements. (From Encel, MacKenzie, and Tebbutt 1974)

Women and Public Life

Australian women were accorded the right to vote earlier than their counterparts in many other countries. The appropriate commonwealth legislation was passed in 1902, less than a year after Federation. South Australia and Western Australia had already given women the vote, and the other states followed the Commonwealth’s example, although not in all instances immediately. But the right to vote did not automatically confer on women the right to sit in parliament, and it was some years before they were able to do so. In relative terms, however, Australia was again in the forefront. Nevertheless, despite a comparatively long period of eligibility, few women have sat in parliament and very few have become cabinet ministers. Indeed from Federation (1901) until 1972, only forty-two women have been elected to state or federal
parliaments. The general lack of female participation in politics is most strikingly illustrated at the local government level. Competition for entry into local politics is not great, and the general standard of membership is poor. It is relatively cheap and easy to run for office and the duties can be fitted into ordinary family life. The concerns of local government are predominantly "domestic" and party affiliation is of little importance, yet the proportion of women in local government is no greater than at the state or federal level.

The low level of participation by women in politics is matched by a similar low level of participation in other areas of public life. On significant Australian government committees women are conspicuous by their absence. In 1970 there were about 140 boards and commissions at commonwealth government level with a total of fifteen women among their members. For years women's organizations have complained about this situation. Ministers responsible for making appointments indicate a general reluctance to treat the matter seriously. Encel, MacKenzie, and Tebbutt report one state premier as claiming that "women make more trouble if you put them on than if you leave them off", another assumed that boards should have one female member to put "the woman's point of view" but qualified this by adding that "if you just put one on she might get into embarrassing situations" (what these might be was never specified).

Another area where women are almost totally excluded is that of industrial arbitration and wage fixation, although women constitute one-third of the work force. Of all organized groups it is very probably the trade unions, however, which have been the most resistance to women. The Textile Workers' Union, with a female membership of more than 60 per cent of the total of 43,000, has a federal council of eleven—all men. Actors' Equity, with 45 per cent female membership, had four women on its twenty-five member council. The Australian Teachers' Federation, with women comprising more than half its 80,000 members, had seven women delegates out of thirty-six. Nevertheless, militancy is increasing and women are slowly coming to have a more important role in union affairs. There is still a long way to go, however, before their role approximates their work force participation.

Again it would be difficult to argue that the position of women in public life is a result of conscious processes of discrimination. It is a position that has emerged over time and reflects prevailing cultural attitudes. To the extent that these attitudes change, changes can be expected in the characteristics of the position.
ETHNICITY

I have made a distinction between ethnicity and race. Under ethnicity I will consider migrant groups, the majority of whom have come to Australia since the Second World War, and under race the Aboriginal populations of the country.

In 1945, at the end of the Second World War, 90 per cent of the Australian population was of British ethnic origin. Since that time there has been an addition of nearly three million settlers over half of whom have been of non-British stock. All of these with their children born in Australia make up a little over one-fifth of the total population. The history of this migration is still being written, but there is evidence available which is germane to the topic of this paper (Price 1963; Zubrzycki 1968; Borrie 1954; Appleyard 1964).

Migrants have come to Australia in one of two ways: assisted and non-assisted. Assisted migrants have virtually their entire fare paid by the Australian government and are required to remain in the country for at least two years. Non-assisted migrants pay their own fare or have it paid by voluntary societies of one sort or another. Paradoxically, perhaps, the better educated migrants and those with more in the way of work skills are those most likely to have been assisted, while the less well educated with little in the way of job skills are more likely not to have been assisted. As Charles Price notes, though "most northern and eastern Europeans have since 1949 been treated like British immigrants in receiving government assistance with passages, jobs and accommodation, only one quarter of southern Europeans have been so helped" (Price 1970). The financial burden of this latter group has been heavy, especially when many are saving to remit money back to families or to cover passage cost of bringing fiancée, wife, children, or aged parents to join them.

Eastern and southern European migrants, who number nearly one million since 1945, are typically unskilled; experience has shown that on first arrival they have little earning capacity to cover their heavy migration costs, even when taking second jobs and overtime. They also experience considerable language difficulties. They are, and continue to remain, at the bottom of the income hierarchy. As mentioned earlier, they figure prominently in Henderson’s poverty survey. In the mid-1960s for example, 30 per cent of Greek migrants were earning less than thirty dollars a week (either "very poor" or "poor" in Henderson’s terms), half, although married with children, were living in rooms and sharing bathrooms and lavatories; 98.5 per cent were uninsured under any medical or hospital scheme (the native Australian figure was 29 per cent). Italian migrants also were very exposed. Thirty per cent of them were earning less than thirty dollars a week.
dollars a week, 10 per cent were renting rooms, and 75 per cent were uninsured for health. In contrast only 15 per cent of UK migrants were earning less than thirty dollars a week, only 10 per cent were renting rooms, and only 26 per cent were uninsured. Certainly, the lack of job skills at entry was an important contributing factor to the migrant’s socially deprived condition. But there was more than that. The unwillingness of employers to accept migrant labour, the reluctance of governmental and other bodies to accept qualifications obtained elsewhere, and the lack of clearly defined policies for introducing groups to the Australian social scene all operated to disadvantage the new arrivals, as did their ineligibility for many social security benefits and ignorance of ways of applying for special benefits (Krupinski and Stoller 1974).

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G.W. Ford looks a little more specifically at the migrant role in the work force and makes a number of points (Ford 1970). In the initial stages of migration, migrants were often treated as conscripted cheap labour. They were sent to jobs which native-born Australians
regarded as unattractive and underpaid. Again, they provided the bulk of the labour force in isolated construction projects, in mass production and heavy industries, and in unpleasant industries such as tanning. They were frequently recruited directly into these industries before leaving home, or immediately after their arrival at the wharves or in migrant hostels. Frequently when they accepted the jobs they knew nothing about comparative wages or conditions of work in other industries. On occasions, too, migrants have been exploited by established migrant employers who took advantage of their cultural and language similarities.

The union movement has looked with some suspicion on migrants, and they have frequently not had the support native Australians would have taken as a right. Smith (forthcoming) documents a number of instances. The following comment by a one-time secretary of the Queensland branch of the Australian Workers' Union puts a not uncommon union position succinctly: "They are breaking down our conditions ... There would be 200 in Brisbane now with compensation for crook backs. If you shouted 'fire' they would move in no time. In one instance a car load of migrants who were refused jobs because they did not have a union ticket paid $28 for a taxi to Townsville (1000 miles) to get tickets ... it's time they learnt our ways". It's not surprising too, that, given such a climate of opinion, migrants are scarce in executive positions in the labour movement. Again, in the state and federal parliaments, their numbers are very small (Wilson 1973). It is interesting to note in this context that at the federal election in May 1974 a determined and successful bid was made to defeat the then minister for immigration, Al Grassby. Not a migrant himself, Grassby came from a migrant background and prior to the election was subjected to a campaign of vilification in which he was accused of being soft on migrants and preparing to open the floodgates of Asian migration, ultimately resulting in a chocolate-coloured Australia. Grassby had a rural seat where feeling was strong; it is unlikely that such a campaign would have had the same impact in a city electorate, but nevertheless the strength of feeling that can be generated in the community over the migrant issue cannot be denied.

Two migrant groups are particularly disadvantaged: women and migrant adolescents. The move to a new country typically places great stress on women, particularly when the environment she finds is totally different from that left behind and when no systematic procedures have been introduced to ease the transition. Significant-ly, however, signs of this stress do not appear until some years after arrival. Accounting for this situation Krupinski and Stoller (1974) observe: "While there are certainly many factors contributing to
breakdown, it is reasonable to assume that it occurs after the early stress of settling in is over, when the woman becomes aware that her usefulness is coming to an end and she is being left behind by her children and husband who are becoming more assimilated into the life of the general community." Perhaps more at risk than migrant women are the adolescent immigrants, the boys and girls in mid teens, too old to start an education in Australia, but too young to have learned much in their homeland. The immigrant adolescent is at a serious disadvantage in all respects; his family offers him less support than previously, employers have little interest in him, his social life has been abruptly curtailed, and the Australian adolescents he meets may view him if not with hostility then at least with some amusement. If the adolescent's life is not to be one of ignorance and poverty then strenuous efforts need to be made to acquire both a language and vocational skills in an environment which is perhaps not hostile but certainly largely indifferent.

We have focused so far on the structural conditions migrants encounter on their arrival in Australia, and we have argued that, as a consequence of their cultural background, educational level, and vocational skills, migrants have, in the Australian context, been socially disadvantaged. The evidence would suggest that the experiences of Australian migrants are in fact little different from the experiences of migrant groups elsewhere (Martin 1965, 1972; Thomas and Znaniecki 1927; Glazer and Moynihan 1963; Appleyard 1964; Price 1963, 1970; Johnston 1972), and of course this means the discriminatory processes which find expression in work, associational memberships, degree of afflence, and style of life which have been documented in the literature have their own expression on the Australian scene. We have briefly surveyed these above; what we have not examined and what we will now examine briefly is the reaction of the native Australian to the migrant.

These reactions have been the subject of a number of studies (Johnston 1965, 1972; Richardson 1957, 1959, 1963; Taft 1957, 1961, 1965; Connell 1973); they have been well summarized in Taft's *From Stranger to Citizen*. The differences in reception of different migrant groups is marked. Taft reports that in a major study carried out in Western Australia in the late 1950s it was found that while 86 per cent of Australian-born residents were in favour of British immigrants, the proportion dropped to 59 per cent for Germans and to 35 per cent for Jews and southern Europeans. Other studies suggest that about 10 per cent of the population is extremely prejudiced against non-British immigrants. The most prejudiced groups appeared to be middle-aged working-class males. Social distance attitudes reveal the same sort of pattern, suggesting some degree of
xenophobia and anti-Semitism on the part of many Australians. The situation is changing, however, and among young better-educated adults these attitudes are less prevalent. Nevertheless, data from studies of school children suggest that non-British children are clearly less popular than the Australians or the British (Doczy 1967, 1971). There are some interesting age and sex differences: boys were more hostile and girls more sympathetic; the younger teenagers were more hostile, the older more sympathetic (Connell 1973b).

Since the turn of the century until very recently, Australia enforced—although it has always been denied by governmental authorities—a "White Australia Policy". Migration of Africans, Asians, and other non-whites was a virtual impossibility. Clearly Australia has had a discriminatory migration policy in that permanent entry has been determined significantly on racial grounds, although the situation is currently changing and "distinguished and highly qualified Asians" can now be admitted for permanent residence.

For twenty-five years from the end of the Second World War Australia experienced a migrant inflow that rivalled in scope and rate the American experience of the last century. Over half came from Europe, and for the first time in Australia's history only a minority were native English speakers. Immigrants manned great national projects, they provided a great part of the labour force for new mineral enterprises, they worked in jobs the native born declined to enter, and they settled in the major cities, restructuring national customs and influencing by their presence and activity a remarkably homogeneous and at times suspicious Australian society (Borrie 1972).

In the process they encountered discrimination at both a structural and individual level. In the initial years the terms of their assisted passage required them to work compulsorily on government-designated projects, they were disproportionately represented in groups below the poverty line, and they found it difficult to move into positions of influence and responsibility in both the union movement and politics. At the individual level, in contacts with neighbours and fellow workers they were frequently reminded of their "lowly" status. It would not be true to say, however, that discrimination is so institutionalized a part of the system that change is impossible. Signs of discrimination are lessening; economic mobility does take place, positions in union affairs, politics, and other associational memberships are being assumed, and the attitudes of the native-born population are changing.
RACE

A Brief Historical Outline

Because of the exclusion until very recently of non-Caucasian migrants from the Australian continent, Australian Aborigines have provided the main possibility of racial diversification within the community. "However, as the joint product of ignorance, neglect, violence, disease and segregationist policies, the impact of the indigene culture has been restricted to the areas of imprints on ash trays, postage stamps, tourist posters and town and street names ..." (Stevens 1970).

There is evidence of human occupation in Australia stretching back some 25,000 years. Although the sources and methods of calculating population figures at the time of arrival of the First Fleet in 1788 are obviously inadequate, it is generally agreed that there were around 300,000 Aborigines in Australia at that time (Rogers 1973). The 1971 census indicates a population of 106,290 full and part Aborigines—less than 1 per cent of the total population.

The history of early contact is a history of conflict. The first European settlements made inroads into tribal territories typically forcing Aborigines from their sacred and hunting areas. During the period of "pacification by force" which came to an end in the 1880s, thousands of Aborigines on the Australian mainland were killed and the entire Tasmanian Aboriginal population was exterminated. The Aborigines reacted with passive resistance or with spasmodic guerilla warfare and stock killing. But the outcome was inevitable; it has been described in detail by Charles Rowley in the Destruction of Aboriginal Society (1970) and in Racism: The Australian Experience (1972), edited by F.S. Stevens. Traditional Aboriginal life ceased to exist in any significant degree over much of the south-eastern, middle-eastern and south-western areas of the continent. In the northern and central region, where contact with the white man was at a minimum, a form of traditional life was preserved.

In the first twenty or so years of this century it was believed that the Aboriginal population would gradually die out, and reserves were established in the late 1920s and early 1930s to accommodate what was believed to be a dwindling population. It was always difficult to make accurate assessments of the Aboriginal population, for until a constitutional change in 1967 they were not regarded as part of the Australian population and never included in national censuses. The early predictions about population decline were at fault, and a steady population increase has been seen over the past twenty years or so. Reserves proved to be unattractive to the Aboriginal population, and large numbers of them moved to fringe settlements around
the outskirts of country towns, where they typically lived in condi-
tions of abject poverty. Early in the 1950s some sought complete
withdrawal from the white population and a return to traditional life
styles.

More recently, two major developments are likely to prove signifi-
cant. A commonwealth conference in 1965 nominally redefined as-
similation policies by giving Aborigines a choice between an
Australian-European and an Aboriginal orientation. The trend
toward cultural and social assimilation has in fact proceeded so far
that in most areas such choice is unreal. But there are doors open in
a few areas where Aborigines still have an informed appreciation of
the value of their traditions. Such an area is the Cape York region of
northern Queensland, and in this area a return to traditional life
styles among rural communities of Aborigines is most marked. The
second major development has been an increasing uniformity
between commonwealth and state policies relating to Aborigines.
This has been partly a result of the federal Officer of Aboriginal Af-
fairs which provides economic aid and service in a co-ordinating
capacity. In this context it is worth noting that the government of
Queensland, the state with the largest Aboriginal population, has
declined to co-operate with the commonwealth government to co-
ordinating Aboriginal affairs. The state government’s attitude to
Aborigines is strongly paternalistic, and it is opposed to the com-
monwealth government’s attempts at encouraging self-
determination.

The last few years have seen the emergence of part-Aboriginal
groups in the south who insist on integration rather than assimila-
tion. They see such a strategy as enabling them to retain their
Aboriginal identity in a white society. This movement toward pan-
aboriginality has implications for all people of Aboriginal descent.
In the north the focus has been on questions of land control and
ownership, including demands for compensation for and a share in
the mineral exploitation that is occurring on Aboriginal reserves.
The commonwealth government has acted slowly in this area and in
some instances has been aligned with mining companies that oppose
such Aboriginal claims. At the present time there is widespread dis-
satisfaction with the rate of socio-economic development. There was
considerable optimism when the Australian Labor Party came to
power in the federal sphere in 1972, that the situation of the
Australian Aboriginal would improve markedly. However, this does
not seem to have been the case. Ward McNally in *The Angry
Australians* (1974) suggests that “Labor’s embarrassment over its
handling of Aboriginal Affairs hinges on its failure to make provi-
sions for adequate land rights and for its continuation of what
amounts to the same paternalistic control of black people as earlier employed by the Liberal and Country Parties Governments". And in 1973 the then prime minister, Gough Whitlam, in opening the Advancement of Aborigines and Torres Strait Islanders' Federal Council Conference, admitted that the federal government had not reduced significantly the problems faced by Aborigines: "The Government has done a great deal for Aborigines, but in no field of government are good intentions more easily subverted by practical difficulties and human failings".

**Work**

The position of the Aboriginal worker in the settled areas of Australia is that he has the same entitlements as any other members of the community. However, significant proportions of the Aboriginal population are engaged in seasonal work or on outback rural properties where payment is either geared to market prices or the conditions of employment are not policed carefully, or both (Rowley 1968).

Aborigines have traditionally provided the bulk of the labour force for the cattle industry in the tropical areas of Australia (Stevens 1966). However, their significance to that industry has frequently not been recognized by governments or employers. The latter continue to denigrate the Aborigines' skilled contribution to the industry; frequently, it is claimed to keep wages down (Kelly 1969). The great majority of the remainder of those at work are engaged as rural labourers for shire and municipal councils, on railway and road maintenance work, or as semi-skilled and unskilled labourers in urban areas.

A steady and assured income regarded by virtually every unionist in Australia as a fundamental right is the exception rather than the rule among Aboriginal Australians. The 1971 Australian census revealed that while less than 1 per cent of the white work force was unemployed, the figure for Aborigines was over 4 per cent. More specific data come from a survey of rural and country Aboriginal and part-Aboriginal households in New South Wales (Rowley 1968). Only 60 per cent of the males over fifteen years were in the work force; 13 per cent were on invalid or age pensions; and 20 per cent of those neither on pensions nor in school were unemployed—about ten times the proportion of the white population. More recently still a Queensland study revealed that among those between the ages of fifteen and nineteen about one-third had "no economic activity". The job of the males who were employed was, overwhelmingly, unskilled manual work (Brown 1974). Racial discrimination and lack of qualifications are mentioned most frequently as problems in finding work.
Several recent studies have suggested that Aborigines attempting to broaden their employment opportunities have been met by unimaginative, uninformed, and prejudiced personnel policies (Stevens 1969, 1970). As might be expected, this is particularly the case in some northern areas of Australia where isolation reduces public awareness of the treatment of Aboriginal workers, and so pressures are less likely to be exerted on government or trade unions to remedy the situation.

**Education**

There has been more progress in the field of education than in any other area of Aboriginal affairs in Australia. Before the Second World War it was common for Aborigines to be excluded entirely from the state education system or be subjected to a mediocre form of church or missionary education which had as its prime purpose the redemption of souls. Today practically every Aboriginal child of school age is within reach of state educational facilities.

Even given this improvement, while over 8 per cent of the total Australian population are in secondary school only around 2 per cent of the Aboriginal population are (Lippmann 1970). The discrepancy is bigger than it appears, since the proportion of Aboriginal children under fifteen years is substantially larger than in the white community. Even in the state of Victoria, which has a higher proportion of Aboriginal children in secondary school than any other state, only 10 per cent were above third form (average age in third form is about fourteen years), compared with over 30 per cent of the general population. In the Northern Territory there are still around 10 per cent of Aboriginal school-age children who are not in school.

Many Aboriginal and part-Aboriginal communities share many features of culturally deprived groups around the world, and their responses to formal education is the same—withdrawal from its institutions as being incongruent with home background and of little value for future life. The Aboriginal child from traditional communities is even further disadvantaged. He comes from a totally different culture: English, the only language of instruction until very recently, when a few pilot programmes using Aboriginal languages were introduced, is foreign to him as are its modes of thought. He is often so unaware of the nature of the general Australian society that its educational processes are meaningless to him.

At higher levels of education Aborigines are virtually non-existent. There would be no more than ten to fifteen part-Aborigines who have completed university courses, while there are no full-blood Aborigines at all who have done so.
Housing

In 1974 the Australian government’s Senate Standing Committee on Social Environment released a report entitled *The Environmental Conditions of Aborigines and Torres Strait Islanders and the Preservation of their Sacred Sites*. In this report they conclude that “it is perfectly clear to the committee that the availability of housing for aborigines falls lamentably short of needs in many areas and in all types of Aboriginal community”. Aborigines live on average about seven to a dwelling, almost twice as many persons per dwelling and almost three times as many persons per room as other Australians, irrespective of the size and construction of dwellings and rooms (Rowley 1968). A recent survey in Brisbane (Brown 1974) revealed overcrowding, high rents, dilapidated housing, and inadequate facilities. Many Aborigines reported to the investigators that the rents they were required to pay were frequently higher than those charged white Australians for the same dwellings. Many also complained about difficulties in obtaining accommodation and claimed that racial discrimination was at the basis of the problem. Figures released by Rowley in 1967 reveal a state of affairs that has not markedly changed in the intervening period.

Although Aboriginal housing in the capital cities is very depressed, the situation in country areas is considerably worse. The Senate standing committee reports that on pastoral properties housing for Aborigines is frequently non-existent, with the Aboriginal workers on whom the running of the property depends camping with their families in stream beds or other traditionally favoured situations adjacent to homestead or outlying stock camps. Where housing has been provided it is typically a one-room shelter surrounded by a wide veranda with no water or electrical connections. When toilets and ablution facilities are provided they are communal as are the cooking facilities.

On many Aboriginal reserves a continual supply of electricity is not available, and when available is in numerous instances only available for lighting. There is a fairly general tendency in most country towns for residential blocks provided for Aboriginal housing to be grouped together in least-favoured areas and segregated from the remainder of the town. The standing committee concludes that “this sort of approach ... militates against the successful integration of Aborigines into the general community and tends ultimately to produce ghetto situations, with associated social problems”.

Health

Because persons of Aboriginal descent were excluded from the census until 1967, particulars of births, deaths, morbidity patterns, and life expectancy trends are obscure and uncertain. However, this is not to deny that some fairly detailed statistical material exists. What does exist suggests that Aboriginal ill-health exists at virtual disaster proportions—at least by European standards. The data in table 7 need little comment except to condemn a situation which is appalling by any standards. Comparable infant mortality figures for Basutoland for 1955-60 are 181.0, for a rural sample of India (1958-59) 145.9, for Thailand (1959) 47.1, for New Zealand Maori (1958-60), 51.0 and for American Indians (1959) 47.0 (Stevens 1970).

Table 7. Infant and Second-year Mortality Rates for Northern Territory Aborigines, by Various Groupings, and Others

<table>
<thead>
<tr>
<th></th>
<th>Years</th>
<th>Infant</th>
<th>2nd year *</th>
<th>Total to 2 years</th>
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</thead>
<tbody>
<tr>
<td>Total full-blood population</td>
<td>1965-67(a)</td>
<td>130</td>
<td>40</td>
<td>170</td>
</tr>
<tr>
<td>Northern Division</td>
<td>1965-67(a)</td>
<td>110</td>
<td>30</td>
<td>140</td>
</tr>
<tr>
<td>Southern Division</td>
<td>1965-67(a)</td>
<td>168</td>
<td>47</td>
<td>215</td>
</tr>
<tr>
<td>Total missions</td>
<td>1965-67(a)</td>
<td>97</td>
<td>22</td>
<td>119</td>
</tr>
<tr>
<td>Total settlements</td>
<td>1965-67(a)</td>
<td>161</td>
<td>41</td>
<td>202</td>
</tr>
<tr>
<td>Total pastoral properties and others</td>
<td>1965-67(a)</td>
<td>144</td>
<td>63</td>
<td>207</td>
</tr>
<tr>
<td>Australia (excluding full-blood Aborigines)</td>
<td>1958-60(b)</td>
<td>21</td>
<td>2</td>
<td>23</td>
</tr>
<tr>
<td>New Zealand Maori</td>
<td>1958-60(c)</td>
<td>51</td>
<td>6</td>
<td>57</td>
</tr>
<tr>
<td>American Indian</td>
<td>1958-60(d)</td>
<td>47</td>
<td>†</td>
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* Calculated as deaths per 1,000 live births in the previous year(s).
† Not calculable from available data.

Stevens comments that "infant mortality simply reflects the environmental circumstances of Aboriginal existence. It is the continuing joint product of the lack of pre-natal and post-natal care, malnutrition, congested living conditions and a general breakdown in public health facilities". The figures from the Northern Territory
are also duplicated in studies carried out in Western Australia. The illnesses from which Aboriginal children died at a rate approximately 600 per cent higher than the rate for European children in that state are also clearly related to their impoverished circumstances.

The disadvantaged position of Aborigines is seen in other areas as well. Compared with the rest of Australia, the incidence of tuberculosis in the Northern Territory was four times as high. Compared with the total Northern Territory community the number of cases among Aborigines was approximately three times as great, although they represented only 25 per cent of the population. Malnutrition among Aborigines is also common. A study carried out in the northwest of Western Australia indicated that nutritional inadequacy reduced the growth of the Aboriginal child between six and thirty-six months (Senate standing committee: 1974). In addition, in rural areas an increasing number of babies with low birth weights are being born. The majority of those that survive, largely as a result of advances in medical care, are likely to be left with brain damage. Many that survive death from malnutrition, therefore, can look forward to a life of permanent physical and mental impairment.

Countless other instances could be cited. They would simply support the view that in both rural and urban areas the physical health of Aborigines is far inferior to that of white Australians. It is clear that this puts Aborigines at a socially disadvantaged position vis-à-vis the white population. The discriminatory effects of poor health in a variety of fields—education and work are two obvious ones—is clear. The extent to which this has resulted from conscious policies is of course far less clear, and indeed the likelihood of this being the case is remote.

Land Rights and the Law

Land rights are probably the most controversial issues of all. In traditional Aboriginal society each group of Aborigines had a close and permanent relationship to a clearly defined tract of land. This land was both a source of livelihood and a spiritual centre, "the land of their ancestors and the source of their social cohesion". (Lippmann 1970). One of the main causes of present-day Aboriginal poverty is the fact that no recompense was made for land when it was taken from them. This contrasts markedly with the situation of indigenous people in other countries. In India the land reserves of the Aboriginal people are inviolate; among Maoris the Treaty of Waitangi in 1850 ensured their right in New Zealand to "the full exclusive use and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties" (Lippmann 1970). In the
United States, Congress set up the Indian Claims Commission to settle claims by Indians against the United States arising from the resumption of tribal lands. The Canadian government too has set up a similar commission. With the coming to power of a Labor government in Australia in 1972, after twenty-three years of conservative rule, gradual improvements were seen. Even so the presence of valuable mineral resources in Aboriginal land still tends to tip the scales in favour of the developer.

The demands by Aborigines for the restoration of traditional tribal lands or for adequate compensation for land taken over are likely to increase in intensity over the next five to ten years. It would be a brave man who could predict the outcome, but increasing black militancy accompanied by an increasing awareness by government authorities of past injustices is likely to lead to a greater awareness of the legitimate claims of Aboriginal groups. It is most unlikely that this will mean the return of land to Aboriginal groups; it is much more likely that it will mean substantial monetary compensation.

There is a considerable degree of legal discrimination against Australian Aborigines. In Queensland, for example, Aborigines are anything but equal legally. Under The Aborigines and Torres Strait Islanders’ Affairs Act the director of Aboriginal affairs has considerable power over “assisted” Aborigines, a term applied to most people living on government reserves. If an Aboriginal wants to leave the reserve to travel to a nearby town, permission must be gained from the manager; if an Aboriginal wants to visit a relative on the reserve, similar permission must be obtained. The director can order an assisted Aboriginal not living on a reserve to do so and can, on the recommendation of an Aboriginal and Island Court, order assisted Aborigines to move from one reserve to another. If he believes it in the Aboriginal’s best interests, the manager of a reserve may take possession of, sell or otherwise dispose of the property of an assisted Aboriginal.

A similar paternalism is exhibited by the Australian government’s Department of Social Welfare, which until very recently had frequently paid child endowment, age, widow’s, and invalid pensions to “white authorities” of behalf of Aborigines. The money was frequently not freely available to the Aboriginal who had to make a “case” that it was proper for him to receive at least a proportion of it.

Aborigines get into jail in disproportionate numbers. The Australian government’s Senate Standing Committee on Social Environment found that in Western Australia, where the Aboriginal population is 2 per cent of the total—that is, 23,000 out of 1,070,000—it comprised 30 per cent of the prison population and 50
per cent of the inhabitants of community welfare institutions. The most common offence was the minor one of drunkenness or disorderly conduct. In the case of such minor offences a police officer could often exercise discretion whether a prosecution would follow. Discretion was held to be much more common if the offender was a European.

**The View from the Other Side**

The attitude of white Australians to Aboriginal Australians until very recently has been one of massive indifference, and in no small way this has contributed to the Aborigines' disadvantaged position. Associated with this indifference have been common stereotypes—the Aboriginal is dirty, lazy, shiftless, can't be relied upon, will never adjust to the white man's ways, and so on. Recent studies have shown that stereotypes are widespread as are a variety of attitudes which have their basis in the recently increasing visibility of the Aboriginal. Fay Gale (1964) for example, suggests that unfavourable attitudes towards Aborigines are more common in smaller country towns, among older and less well-educated people, and among those who are economically depressed; R. and C. Berndt (1964) describe the hostile attitudes that are prevalent in many country towns.

In examining white attitudes to Aborigines in 1969 I was able to distinguish two major dimensions along which attitudes varied. The first referred to the stereotype mentioned above and was called the Aboriginal image dimension, and the second referred to questions of civil rights and was called the Aboriginal rights dimension. Significant differences were found between different groups on both these measures. Urban whites were more likely than rural whites to have favourable images and believe that Aborigines should be accorded the same rights they possessed themselves. Among rural whites favourable attitudes were more common among those who came from areas where there were no Aboriginal communities living. Detailed regression analyses elaborated this picture: favourable images were more likely among young, well-educated city people who had had personal contact with Aborigines. Unfavourable attitudes were more likely among older, less well-educated persons who lived in country towns with sizeable Aboriginal populations, but who had had little personal contact with Aborigines (Western 1973). Similar findings have been reported by Taft (1970) and Lippman (1972). The question of contact is an important one, and Lippman remarks that "the remarkable lack of contact between Aborigines and whites ... results from a lack of awareness on the part of the whites of Aboriginal existence ... on the other hand the expectancy of
Aborigines, based on long experience is to be despised and rejected or, what is even worse, ignored ....” (Lippmann 1972).

It is clear from the evidence that has been reviewed that the discrimination to which Aboriginal Australians are subjected has both structural and attitudinal sources. Of all the groups considered in this review it is likely that the Aboriginal group is that most likely to experience discrimination in day-to-day activities. The historical situation provided the initial conditions, and by apathy and indifference rather than by intentional exploitation, these have persisted. It is only now, following increasingly outspoken demands by Aborigines together with action by governments and private citizens, that the historical discriminatory structures and attitudes are coming under attack.

CONCLUSION

Ralf Dahrendorf (1968) has claimed that social inequality is ubiquitous. Some structural functionalists (Davis and Moore 1945; Parsons 1954) claim that a stratification system is functional for society. Social inequality and stratification are necessary but not sufficient conditions for the existence of discriminatory processes in social systems. It has been argued in this paper that in the Australian situation inequality exists in six major areas: class, status, power, sex, ethnicity and race. And as we have seen there are discriminatory effects of social inequality in each of these areas.

The argument throughout has been that these discriminatory effects are not so much the result of conscious design as the associated consequences of social action. Connell (1974) understands the situation well when he rejects the notion of a "conspiracy theory" in attempting to explain both the emergence and activities of a ruling class in Australia. This is not to say, of course, that there are no examples of conscious and intentional discriminatory activities carried out by certain groups pursuing their own interests.

For many years, for example, the profitability of the Australian beef industry in the Northern Territory and in north Queensland depended on an Aboriginal work force whose conditions of employment were appalling by any standards. There is no question but that this was conscious and intentional discrimination in the interests of large pastoral holdings, many of which were British based. The opposition women experience in attempting to move into certain occupational fields and the rejection over many years of the quest for "equal pay for equal work" were again conscious attempts to secure certain areas of economic activity for men. Migrant groups too have
been victims of conscious and intentional discrimination. But largely, the discriminatory effects of class status and power come about independently of the conscious actions of men in high places, as does much of the discrimination experienced by migrants, women, and Aboriginal groups.

This is not, of course, to say that persons in high places are not "responsible". Clearly there are groups with power and influences in society and groups which affect the life styles of the majority and have the sort of "hegemonic" influences that Marcuse and others identify. Nevertheless, as has been persuasively argued by Robert Merton (1968), these influences take the form of objective consequences of social action rather than the conscious intentions of particular men.

Discrimination, as with most social outcomes in the Australian context, is a consequence of social action, not an intentional product; intentional products are rare indeed no matter the stimulus conditions.

REFERENCES


The current bout of crime in Australia "is milk and water in comparison with the horrors that can be dredged from 19th century Australia's history." The rhetoric and public concern about crime in our society suggests that it is a relatively new phenomenon. But accounts of the activities of gang louts in the Rocks area of Sydney and the gang feuds immediately after both world wars amply verify the quotation above. Today's lawlessness is far from unprecedented in Australian life, far from unfamiliar to past Australian generations.

Despite statements by criminologists and others, there is a complete lack of understanding concerning the crime problem in Australia; we know little, but we misconceive much. Central to this lack of understanding is the failure of governments to provide accurate and reliable records of crime. In fact, until fairly recently there was every reason to be deeply distrustful of the criminal statistics produced by officialdom. For example, in 1963 police crime statistics from New South Wales and Victoria indicated that serious crime was apparently more than twice as prevalent in Victoria as it was in New South Wales. They also indicated that the highly efficient New South Wales police were able to solve almost double the number of crimes cleared up by Victoria's custodians of the law. Such an interpretation, however, is possible only if we assume that uniform recording practices were used in both states; no such assumption can be made. With crimes such as larceny, for example, there are enormous discrepancies between state police forces as to whether a complaint from a victim is even recorded as a crime, as well as discrepancies as to when an offence is deemed to be "cleared up".

Certainly the production of comprehensive uniform police statistics of serious crime would be a more reliable indicator of the growth of crime in this country. But the uniform statistics refer only

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to seven offence groups (homicide, serious assault, rape, fraud, robbery, breaking and entering, and motor-car thefts). And, as the Australian Statistician indicated recently, when these statistics show different rates between states it is not safe to conclude that they reveal underlying differences in social behaviour. They are likely to be caused by differences in the basis of the statistics stemming from different reporting and recording procedures in the states.2

Despite these shortcomings, the national figures that do exist seem to show an increase in serious crime over the past few years. For example, between 1964 and 1972 serious assault rose from a rate of 17 per 100,000 population to 31 per 100,000 population. For rape the corresponding figures for each year were 2.3 and 4.1; for robbery 5 and 18.5; for breaking and entering 320 and 850. Increases over this period were not due to statistical randomness, since graphing the offences reported to the police for each class of crime shows generally a steady rise in the relative rate of growth. However, no such definite trend is forthcoming in the cases of murder, attempted murder, or manslaughter. Figures for each of these tend to show a slight increase in the rate per 100,000 population, but the graph shows decreases and increases between 1964 and 1972 which do not support a clear argument for a steadily growing increase in these three serious offences.3

Speaking in May 1975 on the ABC Guest of Honour programme, Dr Tony Vinson, director of the Bureau of Crime Statistics and Research in New South Wales, reported on a comparison his department had carried out recently between the number of murders, attempted murder, and manslaughter cases in New South Wales in the five years 1950–54 and similar occurrences in the five years 1970–74. Taking into account the difference in population figures, the surprising conclusion was reached that the New South Wales homicide rate in the early 1970s (0.27 per 10,000 of population) was representative of a drop of 33 per cent in the rate found in the early 1950s period studied (0.40 per 10,000 of population).

But perhaps the most disturbing trend in major crime in Australia over the past few years has been the increase in a most frightening form of violence—motiveless assaults or street-bashings. It is too soon to say whether this increase is transient or long term, but the 20 per cent increase in this offence in Melbourne and the 17 per cent increase in Sydney, within a year, give cause for concern.

For what they are worth, the official statistics in Australia suggest that crime is increasing and, for some offences at least, will continue to grow at a rate faster than population increase. But does this make Australia a country rife with crime? The question can only be answered in relative terms and, relative to the United States, the
answer would be negative. The New South Wales Bureau of Crime Statistics and Research compared Sydney's crime figures with those of eight American cities and found a fairly clear pattern emerging. Sydney has a much lower rate of offences against the person—approximately one-quarter of the homicide, one-sixth of the rape, one-seventh of the robbery, and almost one-tenth of the assaults—than the average for the eight American cities. However, Sydney's burglary rate (breaking and entering and associated offences) was only fractionally lower than that of the American cities.4

Compared with the United States, we are not a criminal society. (Of course, America has the additional problem of racial conflict, which we don't have here.) But the trends in Australian crime are very similar. For example, the urban crime rate in Australia is nearly 2.7 times greater than that in country areas. Similarly, young people under the age of twenty-one are increasingly becoming involved in crime. People between the ages of fourteen and twenty-one are twice as likely as any other age group to be involved in most serious offences, and indications are that this figure could increase still further in the next few years. Although male offenders commit four out of five criminal offences, records maintained by police departments and departments of children services suggest the rate of female crime has doubled between 1969 and 1973 and that females are becoming increasingly involved in traditionally male crimes such as robbery, bank hold-ups, and breaking and entering.

Australia's migrants play a smaller proportionate part in the crime rate than non-migrants, although there may well be some political terrorism among certain New Australian groups. But for a great variety of crimes—violence, breaking and entering, fraud, and most other offences—all the evidence suggests that migrants have a substantially lower crime rate than have native Australians.

Court figures suggest that the crime rate among the adult Australian population is 520 per 100,000, while for migrants it is only about 385 per 100,000. This is perhaps not unexpected, given the fact that most migrants are utterly dedicated to working hard and saving enough money to buy a house, bring out a relative, or return to Europe. In short, both their motives for emigrating and their life style in Australia help to keep their involvement in crime remarkably low.

One final but extremely important aspect in crime needs to be discussed. Crime in Australia seems to be very much a class-based phenomenon. It has been shown fairly clearly in recent years that there are far more frequent assaults and petty and other crimes occurring in the lower socio-economic areas of our urban centres, which cannot wholly be explained by differential police or court ac-
tion towards juveniles or adults of varying backgrounds. What the New South Wales Bureau of Crime Statistics and Research has called “born-loser” areas—areas that have huge amounts of crime and at the same time high rates of physical and mental illness, infant death, unemployment, and general social disorganization—appear to contribute substantially to our crime rate.\(^5\)

By way of comparison, a résumé from Gilbert Geis of the University of California looks at statistics of crimes and trends in crimes in the United States and in other countries of the world.\(^6\) He indicates that the latest statistics concerning crime in the United States show conclusively that serious violations of the law will not decrease merely as a consequence of infusing large sums of money into law-enforcement efforts. From the statistics it could be inferred that crime is caused by fundamental characteristics of the society, and can only hope to be reduced when basic changes occur in people’s attitudes and in the social structure.

Geis traces the trends in crime through various countries of the world which we need to bear in mind in relation to developments in Australia. Of particular interest and relevance is the striking contrast between crime rates in Tokyo and those in New York City. The Japanese capital—with 11.6 million people the most populous city in the world—had 196 murders in 1973. New York, with a population of about 8 million people, recorded 1,680 murders in the same year—that is, nearly nine times as many as Tokyo. In New York there were 3,735 reported rapes; Tokyo had 426. And New York’s 82,731 reported car thefts contrasted with 3,550 in Tokyo. Writing in the New York Times, columnist Sydney Schanberg offered the following explanation for the vast difference in the figures: “The gun control and drug laws in Japan are severe, and they are enforced by an efficient police force. Public respect for law and authority is traditionally strong [in Japan]. Arrest is a deep disgrace both for oneself and for one’s family. The level of education is high. Unemployment is low. The country is ethnically and culturally homogeneous.” In addition, Schanberg observed that the Japanese people have developed an ability to deal with the stresses associated with dense population, and they have a deep respect for the privacy of their neighbours. Of particular importance, as an American visitor to Japan noted, “most Japanese agree on what is right and what is wrong. In America, different groups have different ideas about right and wrong.”

Foot patrols are characteristic of police work in Tokyo, and every few city blocks has a koban, or police booth, which is manned by from one to a dozen men who patrol the neighbourhood continually. Each koban policeman is responsible for about 150 households, and
is required to pay a visit to each of these households at least twice a year and to forward to police headquarters information on the occupants of the household and how they earn their living.

Returning to crime in the United States, more than $3.2 billion has been poured into law-enforcement efforts through the federal Law Enforcement Assistance Administration over the past six years. The failure of these subsidies to reduce crime rates was demonstrated in the most recent Uniform Crime Report, issued by the Federal Bureau of Investigation. The final figures for 1973, according to the report, showed a 6 per cent increase in serious crimes, which are defined as the total of all reported homicides, assaults, burglaries, robberies, larcenies of more than fifty dollars, and car thefts. This 6 per cent rise contrasted with a 4 per cent decrease in 1972, and it included a 16 per cent increase during the last quarter of 1973. Also, for the first three months of 1974, serious crime went up another 15 per cent. Commenting on these figures, Attorney-General William Saxbe said that they represent "failure of substantial dimension—harsh, bitter and dismaying ... We have lost our initiative and are back on the defensive" in the effort to control crime, a situation which he in part blamed on "too many grandiose promises and too much patchwork performance in Washington".

In addition to his observations about crime statistics, the attorney-general attacked conventional wisdom about crime and crime control throughout the year. In early October, for instance, he described rehabilitation by use of prison, probation, and parole programmes as a "myth ... We have been operating on a premise that we can't substantiate." The Wall Street Journal noted editorially that this view "seemed as shocking almost as if the Senate chaplain were to pooh-pooh the efficacy of prayer ... [none the less] there seems to be growing evidence in support of the Attorney-General's iconoclastic opinion", and it argued that "what many well-meaning people overlook is that despite occasional injustices the typical prison inmate is not some erring schoolboy but a hardened criminal who wound up in prison only after repeated violations, usually long after society would have been justified in removing him from the streets." It is time, the Journal editorial writer thought, that the individual, rather than society, be held responsible for antisocial conduct.

The attorney-general's outspoken views also took in the subject of white-collar crime, a hitherto neglected area of crime which has awakened considerable national concern in the wake of the Watergate scandals. Emphasizing that white-collar criminals must be put in prison because "they are no better than the car thief or the burglar or robber ... they are all members of the same fraternity", he continued that "the white-collar criminal, the price fixer, the in-
come tax evader have something in common—they mock the criminal justice system and they sneer at our most cherished values.”

President Ford, reiterating the same apparent frustration that led the attorney-general to look for new solutions to combat the rising crime rate, urged the International Association of Chiefs of Police to concentrate their efforts not on crimes in general but rather on taking “career criminals out of circulation”. He hypothesized that most crime is the work of a limited number of hardened criminals and indicated that it was necessary to make such persons comprehend that “swift and prolonged punishment will inevitably follow each offence”.

Ford continued that nearly half the victims of assault and robbery and 80 per cent of the victims of petty larceny fail to report these instances to the police. Ford’s figures were based on a survey conducted in the nation’s five largest cities—New York, Los Angeles, Chicago, Detroit, and Philadelphia—by the LEAA and the Census Bureau as part of a continuing $10-million-a-year project to measure levels of crime more precisely. The extent of unreported crime, according to Donald E. Santarelli, at the time the head of LEAA, conveys “a strong message of public apathy … toward criminal justice agencies … bordering on contempt”. The survey was based on questions to twenty-five thousand households and ten thousand businesses. Of those who did not report crime against their person, 34 per cent said that it was because of lack of proof or because they felt that nothing could be done about it. Twenty-eight per cent did not consider the crime important enough to report it, while others said that they did not want to be bothered, it was a personal matter, it was too inconvenient, or they were afraid of reprisal.

Among the more surprising findings of the five-city survey was that New York City, which carries the reputation as an extremely unsafe place, had less violent crime than any of the other four of the largest American cities. Experts have in fact argued that the New York reputation was exaggerated because crime figures in the other cities, and most notably in Philadelphia, were, among other things, sometimes falsified by political figures.

It must be noted that the surveys of unreported crimes did not include the offence of murder, quite obviously because, relatively speaking, few such events occur, and it would be presumed that most are reported to the police. A survey, however, on the probability of murder was completed in April by Arnold Barnett, a mathematician at the Massachusetts Institute of Technology, and forewarned some ominous conclusions about its incidence. Barnett says that a male born in 1974 in any of the fifty largest cities in the United States has a 3 per cent chance of being murdered during his
lifetime. Barnett noted, for example, that while approximately 250 residents of Atlanta were murdered in 1973, and that this total seems small compared with the nearly 500,00 persons not murdered, "few persons realize that, if the rate continues, homicide will be the cause of death of roughly one of every 27 Atlantans".

Crime statistics in America also indicate a disproportionate increase in serious offences by women, changing from the traditional illegal acts by females such as prostitution and shoplifting to armed robbery, grand larceny, and other so-called "masculine" crimes. In Denver, for example, the female arrest figures almost doubled between 1967 (with 2,391 arrests) and 1973 (with 4,308 arrests). A nation-wide trend during the past decade has seen the rate of female arrests for serious crime increasing about 250 per cent compared with an increase of about 90 per cent for men. The increase is most notable in property crimes, since freer divorce laws and the disappearance of restrictions on abortion have contributed towards a relative reduction of traditional kinds of female homicides and crimes of personal aggression. Gerald Caplan, the director of the National Institute of Law Enforcement and Criminal Justice, has described the rising crime among women as "the dark side of the women's movement. As women take on an enlarged and equal role in society as a whole it's not surprising that they show up more frequently on police blotters."

Moving away again from the American scene, and looking to trends in other parts of the globe, statistics indicate that an increase in crime is a world-wide phenomenon, although it is true that few countries have the kinds of rates that are recorded in the United States. In France, the minister of the interior in June 1975 began exhaustive street spot-checks on identity cards in a programme labelled Operation Fist. This plan was initiated in the face of the alarming incidence of twenty-eight times more hold-ups over the past ten years. The minister noted that "criminals in 1974 had all the sources of modern technology . . . efficient arms, fast cars and radios. They don't hesitate to take hostages, to murder and torture." A survey by a weekly news magazine, Le Point, found that most French citizens approved of the operation, with 68 per cent convinced that it would deter violence and theft; 89 per cent felt that the inconvenience to law-abiding citizens was either negligible or acceptable.

In the People's Republic of China, according to the Washington Post, there has been an upswing in "hooliganism" in Peking, said to be caused by resentment felt among youngsters about forced work in rural areas. This "hooliganism" has led to the formation of street patrols by groups of men and women carrying nightsticks and flashlights, intent on deterring a burgeoning wave of street crime.
Returning to the USA, by far the most sensational criminal event of 1974 (apart from Watergate) centred on the activities of the Symbionese Liberation Army, the terrorist organization operating in California. The kidnapped Patricia Hearst, daughter of multimillionaire newspaper owner Randolph Hearst, was apparently persuaded by her abductors to join with them in the daylight robbery of a Bank in San Francisco. Six of the SLA members died during a shoot-out with the Los Angeles police and federal law-enforcement officers in May 1974. A spate of similar abductions, though not with as spectacular an outcome as the Hearst affair, have been reported from various parts of the world, bringing a new dimension—or perhaps a revived dimension—into world crime.

It is seen then from Geis's report that in the United States public fear of crime has in some communities adversely affected what is popularly known as the "quality of life". People remain at home rather than go out, and avoid contact with strangers. They demonstrate their fear of "becoming involved" by reluctance to assist in many crime situations. The amount of crime in Australia, however, falls far short of that in the United States, although the degree of public concern about crime and violence appears to be about the same. I shall attempt to present an overview of the realities of the situation in Australia.

PUBLIC RESPONSE TO CRIME IN AUSTRALIA

In one major survey nearly half of the Australian public interviewed said that they were "paying attention" to the crime situation and, as with the United States studies, crime was the second major domestic problem about which respondents were most concerned. The same respondents demonstrated that people tend to think crime is increasing in their city and, more importantly, modify their social behaviour because of this. For example, about three-quarters of urban Australians said they took added care when locking up their houses at night. More significantly, perhaps, over half of the population of the major metropolitan areas stated that they drove rather than walked at night and the majority also said that they avoided talking to strangers. Those who were most likely not to talk to strangers and to take other precautions were the older people living in poorer suburbs. Clearly those whose social and personal life was most disrupted by fear of crime were those who were already disadvantaged in the community.

Dr Vinson reported in his ABC Guest of Honour talk that a recent small study had revealed that people on the average think there is
about four times the number of homicides in Australia as actually occur in one year, while one person in every ten surveyed put the figure at eight times higher.

Dealing with the topic of burglary, Dr Vinson said he believed that reported burglary in Australia has been increasing at an annual rate of 3.5 to 4 per cent over the past decade, after allowing for population changes, and changes in the recording of crime. The increase in serious assaults has been close to 6 per cent, with rape and motor vehicle theft both at 4 per cent. The annual increase in robbery offences over the past ten years has been much steeper, at around 19 per cent. Dr Vinson pointed out that while some may regard these figures as too modest and less calamitous than many figures offered by others, figures simply represented the best information available to him.

Until fairly recently, with the advent of better locking devices, the level of motor vehicle theft in New South Wales was seen by Dr Vinson as about to exceed that of many North American cities of comparable size. By comparison, the rate of assaultive offences appears to be very much lower, although offences of this kind, especially robberies, appear to be increasing at a fast rate.

Dr Vinson reported on work that his unit had done recently with police ballistics experts in New South Wales. They were now able to show scientifically that homicides are determined more by the lethalness of the weapon used than by the seriousness of the motive or intent of the attacker. It was found that if a gun should be within reach of the assailant then the victim is three times more likely to die than if a knife is used. The team is in little doubt that many lives would be saved each year throughout Australia if guns were less readily available.

The unit also found that more Australians were killed and injured accidentally with firearms in their own country than were killed and injured on the battlefields of Vietnam during Australia's ten-year involvement in that war. The accident victims were mainly young and inexperienced shooters who broke all fundamental rules in the handling of firearms, in many instances shooting themselves. The weapons involved were not the concealable firearms of the American gun debate, but rather .22-calibre rifles and shotguns. These are the types of weapons that are subject to only the loosest of controls in most parts of Australia, and are heavily implicated in gun suicides and homicides, which, together with accidental shootings, account for more than three hundred deaths each year in Australia.

The public response to crime is evident also in another way, which we shall explore in a later section of this article, where it will be shown that public respect for the police has declined markedly in
Australia. This decline is symbolized by the tendency of many Australians not to report crimes. In the Wilson and Brown survey, the head of every third household in a typical Brisbane working-class suburb and a typical middle-class suburb was asked whether he or any member of his household had been a victim of any type of crime in the last ten years and whether or not this had been reported to the police. In both suburbs 40 per cent of respondents stated they had been a victim of a criminal offence.

The study found, however, that fewer than half of the criminal offences were reported to the police. In the middle-class area people generally gave as their main reason for not reporting offences to the police, the (assumed) fact that "police couldn't do anything to help". In the working-class area there was a much stronger disillusionment with the police, and the view was commonly expressed that "police wouldn't be bothered about doing anything". Whether this attitude arises from differential treatment by the police or whether it is simply part of a general alienation of working-class people from what they see as the visible symbols of middle-class authority—the police—remains to be seen. But the fact is that until these people feel their complaints will be dealt with adequately they will not come forward to provide the co-operation and information needed by law-enforcement agencies.

If, as already is happening, the public feels that police cannot cope with crime, frustration will grow among those troubled by reports of criminal activity. Demand's for invidious repression and curtailment of civil liberties will grow. Pressure will increase for campaigns of political repression and violent enforcement of order against those seen as threatening the community. Recent attempts in Queensland and New South Wales to bring back the death penalty and to introduce flogging (or in the case of the sex-offender, castration) are clear indications that the fear of crime is substantially affecting the social climate more than is the crime itself.

The lesson, then, is clear. Eliminating the fear of crime without attacking its partial cause—crime itself—would leave society vulnerable to the disruption caused directly by crime. Yet to attack crime without a corresponding commitment to allaying popular fear is equally futile. While numerous attempts have been made to wage what is often referred to as a war against crime, little has been done to allay public fear of crime. Failure to recognize this fear is a large part of our current problem. We are fighting only half the battle and losing the war by default.

As a partial answer we could turn again to Dr Vinson's views on what he sees as an important but neglected means for preventing crime—the elimination of the opportunity for committing some
types of crime. It is known that more than a third of successful housebreakings are carried out by simply applying pressure to doors or manipulating door locks. Yet our community has set no design standards for the security of new homes and buildings being constructed. The simple requirement that exterior doors in new houses be secured with an auxiliary deadlock made of hardened material would add about twenty-five to thirty dollars to the cost of the dwelling, but would give the desired result of reducing successful housebreakings in those dwellings by 10 per cent.

POLICE RESPONSE TO CRIME

By English and most European standards Australian police forces are undermanned. But more importantly, police in Australia are required to perform one of the most onerous jobs allocated to any group of public servants and under conditions of employment that fall well below standards implicit in Australian traditions of wage and industrial justice. In these circumstances it is not surprising to discover that the police forces often fail to attract into a career in law enforcement men of sufficient calibre. In an ever more competitive job market, in which type and amount of education are key factors, the police force has been falling further and further behind as an employment choice.

There is no evidence to suggest that the quality of Australian policing has improved from the position outlined by Chappell and Wilson in a Current Affairs Bulletin in 1971. Indeed, survey findings would suggest that in one area at least—police-public relations—a significant deterioration in the level of public respect for the police has occurred. In 1967, for example, 66 per cent of a national sample expressed “great respect” for the police. In 1970 the figure had dropped to 39 per cent. Preliminary survey findings from a 1974 study suggest that this figure could even be lower today. Indeed, the intense major official inquiries in Victoria, South Australia, and New South Wales have, if anything, increased the gap between the police and the public in Australia. The failure of some states—for example, Queensland—to subject their force to intense public scrutiny in the face of widespread allegations of incompetence has not helped to reduce the ill will between the police and the public.

Lack of public respect for the police shows itself in a number of ways. To begin with, as we have seen, the public is less likely to report crimes to the police or to co-operate with law-enforcement agencies during the investigations of a crime. Equally importantly,
lack of respect for the police makes it difficult for police officers to convince the public that they should be voluntary witnesses during court proceedings.

The police response to crime in the area of manpower deployment is equally depressing. While the general allocation of manpower to uniformed and non-uniformed branches of the police varies from force to force, in each Australian force the uniformed force is much larger than the non-uniformed. Some indications of the total allocation of manpower to different areas of operation within Australian police forces can be seen from a recent study in Victoria. In a survey of man-hours devoted by police to various types of duties in the Victoria Police Force, Wilson and Western found that the investigation of crime occupies only 19 per cent of the force's time. On the other hand, 21 per cent of its time was devoted to traffic activities and the same amount to such work as compiling departmental records and statistics, the preparation of duty rosters and the like.

Insufficient allocation of police man-hours to crime prevention and detection is made even worse by the multiplicity of federal, state, and local authorities which demand police time. Some forces—Victoria's in particular—have made a real attempt to rid themselves of extraneous duties on behalf of government agencies. However, most forces still involve themselves in duties ranging from checking electoral rolls to issuing fishing and game licences, escorting wide-load trucks and equipment and serving summonses. All these tasks could well be performed by other government agencies or in the case of wide-load vehicles and equipment, by the private firms involved.

**PROMOTION BY SENIORITY**

Except for those in Victoria, Queensland, and South Australia, our police forces show a singular reluctance to improve the quality of some of their basic and in-service training schemes. One of the main reasons for this is the reluctance by most state police forces to drop the crippling system of promotion by seniority. While police expertise—gained either in the classroom or in the field—remains virtually irrelevant in any consideration of police promotion, training schemes will not be taken seriously either by rank-and-file policemen or by police administrators.

Subject to passing certain examinations at the various levels of rank, promotion in Australian police forces depends almost exclusively upon seniority. Most policemen entering the force can determine with reasonable accuracy the precise rank and position in
that rank that they will hold at the end of their careers. Clearly, promotional policies based on seniority should be abolished in favour of a system giving preference to ability.

In the areas, then, of police-public relations, training, promotion, and deployment of police officers, all the criticisms levelled by Colonel Sir Eric St. Johnston\textsuperscript{14} at the Victoria Police Force in 1971 remains generally valid for most of Australia's police forces. Victoria has made a serious effort to improve its force in these matters, but much more remains to be done. South Australia, with a force which has traditionally been the pacesetter in Australian policing, still retains its relatively high standards. Other forces, however, remain bound by antiquated and conservative procedures.

If the response on the part of Australia's police forces to crime in the 1970s is generally poor, there are, happily, some exceptions. A conscious attempt is being made, for example, to improve the ratio of police to public, although no mainland state police force has yet reached the figure of one policeman to every 530 citizens, which is generally considered to be a reasonable ratio.

Relations between state police forces have improved markedly since 1970, although most police administrators still view with some suspicion plans for a larger and more effective Commonwealth Police Force. Technological efficiency in Victoria, South Australia, and Queensland is increasing with the introduction of transistorized two-way radios, more motor vehicles, and better-organized communications centres. Experimentation with unit-beat policing\textsuperscript{15} and new methods of patrolling are being carried out in some states, although the development and evaluation of these innovations are still in their infancy.

Finally, although much publicity was given during the Labor governments terms of office to the proposed new-style Commonwealth or Australia Police (now unlikely to eventuate)—moulded like the American FBI or the British Regional Crime Squads—little has yet been done to reorganize the force so that it substantially improves the efficiency of policing in this country. The Commonwealth Police, however, are engaged in an active recruiting campaign, but moves to incorporate other federal law-enforcement bodies under its wing are likely to be resisted by the Liberal-Country party government. These developments may accelerate as existing weaknesses in state police forces become more apparent. Until this happens, the police response to crime in Australia looks bleak. On balance it would be fair to say that most police forces have failed to meet adequately the challenge of crime in the early 1970s.
DEFICIENCIES AND DEVELOPMENTS IN CRIMINAL JUSTICE AGENCIES

The nature and pattern of crime in Australia is clearly affected by the responses of criminal justice personnel and agencies to criminal behaviour. Legal aid, the courts and their sentencing procedures, and custodial and non-custodial forms of correction are activities which are generally subsumed under the heading of "the criminal justice system". In fact the word system in this context is completely inappropriate. System refers to a complex whole—an organized, purposeful, and considered set of principles of procedure. One can hardly describe Australian criminal justice procedures and agencies in these terms. In fact, criminal justice in Australia is made up of a random and somewhat bizarre collection of individuals and agencies without any organized or interrelated premises or directives. Rather than talking about a criminal justice system, we should be talking about a criminal justice Cloud-Cuckoo-Land—or to put it another way, the haphazard and irregular processes that we call criminal justice.

Despite quite different systems of criminal justice operating in the various state and federal jurisdictions, deficiencies in legal aid and sentencing and correctional procedures are commonplace across the continent. In the field of criminal legal aid, for example, gross inadequacies persist despite moves by some state governments and the federal government to improve legal assistance in civil matters. Even in trials many accused still go unrepresented, although one would have thought that governments would provide legal representation in all cases, even if only to ensure the efficient operation of the courts—by preventing, for example, abortive trials. In the vast majority of committals from magistrates' courts to higher courts for trial, defendants still go unrepresented. In addition, legal aid is not usually available for committal proceedings, in situations where indictable offences are tried summarily, or in cases of simple offences. Certainly, the class and social dimension of Australian criminal justice has been slightly reduced by the emergence of Aboriginal legal aid services, but the class bias is still enormous. As the New South Wales Bureau of Crime Statistics and Research has shown, people from lower socio-economic or working-class groups are far less likely than their middle-class counterparts to have legal representation for many crimes and, as a consequence, are far more likely to be convicted and receive relatively severe penalties. A scheme whereby all offenders are entitled to free legal advice before their court appearance, regardless of their means, is badly needed. (Such a scheme operates already in Scotland and could easily be
emulated in Australia.) While poorer people are being denied their legal rights simply because they do not have the financial resources needed to obtain advice about these rights and have them presented competently to the courts, justice becomes a piece of rhetoric devoid of any substantive meaning.

Similarly, sentencing procedures in all courts reflect an empiricism which is typical of Australian criminal justice procedures. Judges still consider that sentencing skills are innately learned or inherited and that there is no need for them to obtain feedback about the general and particular effectiveness of their sentences. Despite attempts by the Institute of Criminology at Sydney University and the Australian Institute of Criminology to involve judges in seminars on sentencing, virtually no adequate attempt has been made systematically to engage the judiciary in regular discussions on the aims and effectiveness of criminal sentencing. In certain jurisdictions in the United States, participation in regular sentencing seminars is mandatory for judges. This practice should be adopted in Australia. But while, according to Justice McClemens, a state of "judicial isolation" exists between magistrates, District Court judges, and Supreme Court judges, such a situation is hard to foresee in the immediate future.

The apparent diversity of punishments given by different sentencers to individuals with similar backgrounds and convicted of similar crimes makes it essential that both in the training of magistrates and judges and by means of legislative guidance, more rationally is developed in the sentencing process. At the moment sentencers receive little, if any, legislative guidance about what is thought to be an appropriate penalty for many types of offences. Instead, we find statute books remaining replete with crime and penalties created in an era when property rights were often regarded as more worthy of protection than human lives. For instance, in New South Wales cattle-stealing remains an offence punishable by a maximum of ten years' imprisonment, while causing the death of a person in the course of driving a motor car in a dangerous manner carries a maximum penalty of five years' imprisonment. Absurd anomalies of this type tend to create little respect for the criminal law in general and certainly do not help judges fulfil their sentencing function.

If one of the main aims of sentencing is to reduce recidivism by way of an appropriate sentence, then our haphazard sentencing procedures fail. So, it appears, do the non-custodial forms of correctional services currently available throughout Australia. Rehabilitation efforts through non-custodial correctional processes such as probation and parole are a viable alternative to imprisonment for
some offences and a practical way of attempting to reintegrate of­
fenders into the community. But the number of trained and
qualified probation and parole officers is far too small and case-loads
are far too heavy to permit constructive help to the individual. Further, the concept of parole as a correctional method varies wide­
ly between different states, and legislative and administrative
restrictions on parole are incompatible with the concept of parole as
basically a rehabilitive and social defence mechanism. This situa­
tion, unfortunately, applies to probation as well as to parole.
Moreover, state variations in these services lead to disturbing
anomalies in the number of offenders sentenced to probation or
granted parole. In Queensland, for example, only about 130 people
a year are generally granted parole. In Victoria, on the other hand,
the figure averages out at well over 1,000 a year.

The failure of governments to provide adequate resources for
probation and parole services is mirrored by their failure to develop
enlightened penal philosophies and practices. Every day Australia’s
thirty prisons, accommodating eleven thousand prisoners, lock up
men and women for protracted periods of time in cellular condi­
tions, engaging them in meaningless, repetitive employment. The
extent to which imprisonment is used as a form of punishment varies
from time to time and from state to state. In Western Australia in
1959/60 the daily average of people in prison per 100,000 of popula­
tion was 88.7, but in 1970/71 this figure had climbed to 133 per
100,000. Western Australia has, in fact, an imprisonment rate well in
excess of all other states and twice as high as the rate in Queensland.

**RANDOMNESS OF JUSTICE**

The extraordinary variations between all states in imprisonment
figures bear absolutely no relationship to the prevalence of crime in
any given state, the quality or quantity of state police forces, or the
provision of parole or probation services. Again the randomness of
Australian criminal justice is emphasized. One would think that in
this pattern—or, more correctly, lack of pattern—alone would lie
the seeds of questioning attitudes on the part of the administrators
of criminal justice into such areas as the wisdom of spending
something like $30 million on prison institutions.

The wisdom of such institutions has of course been severely
questioned by the inmates of Australia’s custodial dwellings, as the
recent riots at Grafton, Pentridge, Brisbane’s Boggo Road, and, par­
ticularly, Bathurst prisons demonstrate clearly. Their questioning, it
seems to me, has been based on some valid premises. In
Queensland, Victoria, and New South Wales the three largest prisons were designed and built in the nineteenth century. As well as being hideously ugly they are grossly overcrowded—often with two or three prisoners to a cell. With one or two exceptions, the bulk of prisoners are not engaged in any meaningful work beyond laundering or making uniforms for governmental agencies.

More damaging perhaps is the rigid set of prison regulations, often dating back to the middle of last century. These regulations range from those which dictate the number of showers and changes of clothing a prisoner is allowed to the more harmful ones which restrict—severely—the number of letters or visits a prisoner may receive. The process is capable of producing men and women who are "prisonized"—perhaps to the extent that prison is the only social and physical environment in which they can survive.

Given these conditions, it is difficult to see how prison either deters or rehabilitates its inmates. It is even more difficult when one considers the characteristics of the prison population. Some 75 per cent of prisoners serve sentences of less than six months; 80 per cent come from unskilled occupations and have little education; and from 50 to 60 per cent are under the age of thirty-five. One wonders how, given the present work and discipline procedures, a short period of imprisonment can "rehabilitate" people with few occupational or educational skills.

Granted there have been developments in prison reform. Victoria has its well-planned Ararat and Queensland its "release-to-work" scheme and weekend detention. Other states have similar reforms operating. However, the developments in criminal justice procedures and agencies are minor in comparison with the enormous deficiencies and injustices inherent in Australia's response to the problems of crime and punishment. From legal aid through to sentencing, from probation through to prisons, state and federal authorities lack coherent, rational philosophies about how our community should respond to crime in the 1970s.

However, a ray of light is beginning to appear at the end of the gloomy corridor of criminal justice. Increasingly, governments are recognizing the need for more information both on the state of crime and on the effectiveness of present criminal justice procedures and practices. In this regard, three recent developments deserve mention.

The Australian Institute of Criminology was established by an act of Federal Parliament in 1972. The institute aims to organize training sessions for police, judges, prison officers, and others engaged in the criminal justice field as well as providing an information service to state and federal authorities on the state of crime and criminal
justice in Australia. The institute will initiate its own research projects and oversee projects funded by a federal-state grant-giving body called the Criminology Research Council. However, recent criticism of the activities of the institute indicate that it will have to do more than simply hold conferences if it is to justify its existence.\(^{19}\)

New South Wales has an equivalent to this institute in its Bureau of Crime Statistics and Research. So far the bureau has confined its role to producing reports which analyze crime patterns in New South Wales and has not, as yet, initiated experimental programmes in criminal justice procedures. The reports from the bureau are models of lucidity and comprehensiveness and have attracted wide media publicity. Whether the research from the bureau and the consequent publicity about that research will change the philosophies and practices of the relevant administrators and legislators in New South Wales remains to be seen.

Finally, in a rare example of state government initiative, the South Australian attorney-general created the Criminal Law and Penal Methods Reform Committee to examine what changes should be effected in the substantive law of the state, in criminal investigation and police procedures, in court procedures, rules of evidence, and penal reform. Chaired by Justice Roma Mitchell, the committee has produced a comprehensive and pioneering first report on sentencing and corrections.\(^{20}\) The document presents, for the first time, a state government with a set of proposals and recommendations which would substantially alter the course of sentencing procedures and custodial practices. If these measures are implemented they will be the most important and probably most effective ever taken to control crime in this country.

It remains to be seen whether these and subsequent developments in criminal law and criminal justice change the course of crime and justice. That substantial changes are needed cannot be in doubt, for up to this time Australia, a former penal colony, has not moved far from its beginnings. With very few possible exceptions, Australia must have the most antiquated, directionless, unimaginative, and inefficient criminal justice machinery of any country in Western industrialized society.

**PRIORITIES IN CRIME CONTROL**

Given the shortcomings in Australian criminal justice agencies, it is perhaps remarkable that the criminal justice structure has not collapsed under the strain imposed by the current state of crime. If any future increase in the crime rate is substantially greater than it is at
the moment, such a collapse is not only possible but highly likely. It is essential, therefore, that we look at the question of crime control in a broad context and not just within the limited confines of discussing such issues as improving the technological and professional capacities of police forces.

In blunt and uncompromising terms Australian criminologists Norval Morris and Gordon Hawkins have suggested that the first principle for “curing” crime is to strip off the moralistic excrescences on our criminal justice structure so that the prime function of the criminal law becomes the protection of our person and property.\(^{21}\) Morris and Hawkins argue that effective crime control is at present almost impossible because the criminal law does not concentrate on protecting people and their property but instead invades the areas of private morality, thus placing increased strains on police, courts, and correctional services.

Evidence for their claim can be seen from the fact that both in Australia and the United States between a third and a half of all arrests are on charges of drunkenness, disorderly conduct, vagrancy, gambling, and minor sexual deviations. They consider as I do,\(^{22}\) that not only does this criminal law “overreach” render effective crime control impossible, but it leads directly or indirectly to organized crime, encourages further crime, and invites police corruption. In order to “clear the ground for action” for essential crime control, Morris and Hawkins suggest that such criminal laws as relate to drunkenness, most forms of narcotics and drug abuse, gambling, homosexuality, prostitution, and pornography be repealed.

The persuasive law reform programme of Morris and Hawkins has been accepted by most academic criminologists and a number of law-enforcement officers. Yet in Australia few “honest politicians” have been willing to implement such a programme. With the important exceptions of abortion law reform in South Australia and homosexual law reform in the federal territories, most of the reforms suggested by the two Australians remain bogged in a morass of pressure-group activities. Yet until the criminal law is streamlined so that it concentrates on our person and property, it is hard to see how any of the changes in the criminal justice structure will make substantial advances in crime prevention and detection.

**NEED FOR LAW-REVISION BODIES**

That Occam’s Razor should be brought to bear on the jungle of criminal laws and penalties there can be no doubt. But who should do it? While most states have their standing criminal law-reform
committees, few have attempted to deal with the substantive task of considering the fitness of the criminal laws in fulfilling social needs generally and evaluating the effectiveness of criminal justice agencies and innovations in controlling crime specifically. As a priority in crime control, I suggest that all states should establish law-revision bodies which would attempt these tasks. They should have a broader base of objectives and personnel than exist in present committees—the group of academic and practising lawyers who currently serve on such bodies represent the most conservative and reactionary views in the criminal justice field.

The proposed committees should include social scientists capable of designing studies which would consider such matters as the effectiveness of new sentencing procedures; the standardization of bail applications and procedures; the effectiveness of unit-beat policing; the extent and efficacy of legal-aid services; the degree to which probation and release-to-work programmes could be substituted for existing penal programmes; and many similar matters demanding a range of skills and professional training different from that received by lawyers and quite outside their field of competence. Hopefully, the Australian Institute of Criminology could provide both the personnel and the technical skills capable of assisting the states in this task of revising substantially the criminal law and structure of criminal justice agencies.

Such committees must keep continually in mind the prime function of the criminal law—to protect persons and property. While the recognition of this function will necessitate repealing many existing laws, it will also involve the creation of many new ones. In particular, laws relating to what is popularly known as "white-collar" crime need serious examination. In this context I refer to crimes committed by people in the course of their work and who, operating inside business, government, or other establishments, violate their duty of loyalty and fidelity to employer or client. Included in this category are commercial bribery and kickbacks—i.e., by and to buyers, insurance adjusters, contracting officers, quality inspectors, government inspectors and auditors—and embezzlement or deliberate deception by lawyers, accountants, land salesmen, or company directors.

Recent events in Queensland and New South Wales show the ease with which white-collar crimes are committed and the problems of detecting them. In many cases such activities are not considered as crimes, or where they are, state departments of corporate affairs and federal and state law-enforcement agencies have insufficient powers and personnel to apprehend white-collar criminals. Somewhat paradoxically police departments have, for example, well-staffed
"vice squads" which utilize innumerable ingenious techniques involving informers and entrapment to discover prostitution and homosexuality or the distribution of pornography. But these same departments rarely have divisions for investigating crimes committed by corporations, such as price-fixing collusion, false advertising, or charging excessive interest rates. (The recent inquiry into organized crime in New South Wales demonstrates the point. One policeman admitted he was not equipped to investigate the activities of some New South Wales clubs.)

These last activities substantially damage people and their property and contribute to the class nature of crime and justice which makes effective crime control very hard to achieve. It will be difficult, for example, to obtain co-operation from working-class people in crime-control programmes when they see the criminal justice structure ruthlessly pursuing "blue-collar" criminals—those who break into and enter a house or those who are charged with public drunkenness, for example—and not the rich and powerful. Embezzlers, pyramid-sellers, finance-lending organizations that milk the poor, and businesses that prey on the ignorance or powerlessness of the underprivileged create a "let's cut corners" and "anything goes" philosophy about life which hardly engenders respect for the law or criminal justice personnel and procedures.

**NEED FOR REFORM**

The enforcement of legislation aimed at controlling white-collar crime will obviously fall on the police—a body already singularly ill-equipped to deal with traditional crime. Effective crime control by law-enforcement agencies will not only require changes in the promotion, training, and manpower-deployment procedures but also a more radical restructuring of the whole direction and control of Australia's police forces.

There is, for example, a great need for regular reviews by a federal body—perhaps along the lines of the British Home Office Inspectorate of Constabulary—of the organization and efficiency of all state police forces. Such reviews would serve the dual function of keeping the various police forces aware of the relative effectiveness of various measures operating in other police agencies while simultaneously keeping the public informed of the performance of their state police and police administrators. Such checks would not take away the right of the states to direct their own police forces. However, one would hope that in areas such as executive training, information storage and retrieval systems, and technological and
forensic developments the Commonwealth would play a major role in directing nation-wide policy guidelines.

Similarly, although few would quarrel with the practice of appointing chief commissioners of police on professional rather than political grounds, one would hope that state governments would regularly inject new ideas into their police forces by following the precedents set by Queensland and South Australia in appointing as commissioners men from outside their own police forces, rather than appoint men from within their own force on the basis of seniority.

In these days of relatively poor police-public relations and communication it seems imperative that citizen participation in police affairs be accentuated by the formation of non-partisan police review committees. Such bodies should include politicians of all parties represented in state parliament together with citizens from business, trade union, and other community-interest groups. These review committees would provide broad guidelines for police policies and constantly monitor police practices and procedures.

Finally, police agencies should give serious consideration to dividing police functions, personnel entry, and promotional lines among three kinds of officers: the police agent, the police officer and the community service officer. The police agent, in this system, would perform whatever police tasks were most complicated, most sensitive, and most demanding. Such men could be recruited directly from universities or colleges of advanced education and would undergo extensive courses in the various aspects of police science.

The other two types of policemen would have lower salaries and in-service status than the police agent but would be able to become police agents when they had acquired and displayed the necessary skills and knowledge. The police officer would respond to calls for service, perform routine patrol, render emergency services, and make preliminary investigations. On the other hand, the community service officer would have as his major responsibility the maintenance of close relations with juveniles and would be alert to crime-breeding conditions with which other agencies had not dealt. Working as a member of a team with the police agent and the police officer, the community service officer would typically be under twenty-one years old, might not be required to meet conventional educational requirements, and could work from a store-front office.

Although this three-tier proposal would create a class distinction among Australian policemen, flexible recruiting and promotion policies should ensure that the system would gain acceptance by police officials. A system on those lines, it seems to me, is perhaps the only way of breaking down the reluctance of police departments
to change rapidly enough to meet changing crime and social conditions. Such a system has, too, the added advantage of dealing directly with a major growing source of crime—the proportion of young people in the population engaging in criminal activities.

It is with young people that our basic priority in crime control should be concerned. For no matter how much we change prison, probation, and parole, no matter how much we demystify and streamline court and legal procedures, no matter how many legal aid centres we set up, crime will not be substantially reduced. The history of psychology and its various attempts to modify human behaviour demonstrates the futility of believing that correctional systems will substantially change a man’s personal and social life. Crime control essentially means crime prevention, and measures associated with such prevention must take place in the social areas that breed the people we label as criminals and delinquents. As a substantial amount of work in Australia and the United States has unequivocally demonstrated, these are the very areas with high rates of physical and mental illness, infant death, unemployment, and general social disorganization.

Dr Vinson, speaking on the Australian scene, emphasizes the necessity of developing more positive strategies of crime prevention, especially when examining the distribution of crime problems throughout the community. In one large Australian city his department has found that a small number of neighbourhoods, representing 5 per cent of the population, contained 2½ to 3 times their share of crime and delinquency. Significantly it was also found that those same areas contained high rates of infant death and illness, unemployment, family breakdown, economic hardship, and infectious disease. A similar but more comprehensive state-wide study produced similar conclusions.

Studies which his department made of criminals passing through the courts and prisons revealed remarkably consistent patterns among the characteristics of those who are called the criminals in our society. The offender was found to be invariably young and ill-educated and came from an unskilled work background. Many had additional emotional handicaps related to family breakdown or parental death. Dr Vinson concludes that such evidence demands that we extend our concept of “corrections” to include such efforts to improve social services and social planning in areas with intolerably high levels of crime and other social problems. He is very aware that criminological research must not remain indifferent to questions of social justice.
SOCIAL REFORM PROGRAMMES

The interrelatedness of crime and other social and physical problems within the same social areas amply demonstrates the need for general social welfare measures for any new attempt at controlling crime. Clearly we must explode the myth once and for all that to prevent crime we need specific crime prevention and not more general social reform programmes. In this respect questions of welfare facilities, educational systems, public and private housing developments, and leisure and recreational facilities will more heavily influence both the extent and control of crime in Australia than questions relating to the technological efficiency of law-enforcement agencies or the calibre of correctional institutions.

Unfortunately the vested interests of people in the criminal justice field ensure that a narrow crime-prevention and social-welfare approach dominate our attempts to control crime. Lawyers remain firmly locked in a conservative mould cast for them by centuries of English tradition. The profession is generally not concerned with questions of inadequate legal aid schemes, overcrowded prisons, and haphazard and random court and sentencing procedures, let alone broader questions of social policy for crime-producing areas. The same profession is of course quick to speak out when the financially lucrative fields of divorce, conveyancing, and car-accident litigation procedures are criticized. Auxiliary workers such as probation and parole officers, social workers, and policemen are generally firmly under the public service thumb and have few outlets to express radical views about social policies in crime prevention or changes in criminal justice procedures.

Academic criminologists cry loudly for reform, but politicians and the judiciary often retaliate with stereotyped retorts referring to "armchair detectives" or "ivory tower theorists". Unfortunately, academic criminologists have failed to involve themselves in the type of social-action research which would allow them successfully to parry the politician's charges of intellectual impracticality.

The result of this criminological castration is that few pressures arise for radical reform within or across the criminal justice field. Consequently this "system" designed to judge the behaviour of men becomes itself effectively beyond judgement. Perhaps, then, the first priority in crime control should be for criminal justice personnel to look carefully at themselves and their policies. Up to now Australian criminal justice personnel have been singularly inept in doing just this. The time for serious introspection is now due.
NOTES


2. Proceedings of the Australian Institute of Criminology Conference, Australian Institute of Criminology (Canberra, 1973). A full account of the limitations of Australian statistics relating to crime, together with examples of such statistics as do exist, can be found in this report.

3. Graphs showing increases in major offences reported to police in Australia can be found in Proceedings of the Australian Institute of Criminology Conference, pp. 113-27.


8. Ibid., pp. 12-27.

9. A.A. Congalton and J.M. Najman, *Unreported Crime*, New South Wales Bureau of Crime Statistics and Research (Sydney, 1974). Based on a survey in Sydney, it revealed that 26 per cent of all households included a victim of a crime committed in the year preceding the survey. Further, 46 per cent of victims had not reported the crime to the police. Of these, 34 per cent had not reported it because "police couldn't do anything about the matter" and 24 per cent because "police wouldn't want to be bothered about such things". See *Current Affairs Bulletin* 50, no. 8 (January 1974).

10. D. Chappell and P.R. Wilson, "Police in Australia", *Current Affairs Bulletin* 47, no. 7 (December 1971).


12. In 1973, fourteen people were killed as the result of a firebomb in a Brisbane night-club. The Commonwealth Police Force and a well-known Brisbane journalist publicly declared that they had warned the Queensland Police about the impending disaster. Despite this, the Queensland Government has refused to hold a royal commission (or any other public inquiry) into the affair.


15. Unit-beat policing is a system of police patrolling whereby cities are divided into specific areas with each area being supervised by a resident constable. A network of mobile patrols supplements his work, which is usually carried out on foot to maximize citizen-police contacts and establish close local ties.


17. A most comprehensive review of parole in Australia can be found in a report entitled *Parole in Australia*, prepared by C.L. Mitra for the Churchill Fellowship Trust. The report is reprinted in Chappell and Wilson, *Australian Criminal Justice System*, pp. 681-717.

18. A detailed examination of imprisonment rates can be found in the article by


20. First report of the Criminal Law and Penal Methods Reform Committee of South Australia, Sentencing and Corrections (Adelaide: Government Printer, 1973). Roma Mitchell is a justice of the Supreme Court of South Australia. Other members of the committee were Professor Howard, professor of law at the University of Melbourne, and David Biles, senior lecturer in criminology at the University of Melbourne.


CONSUMERISM:  
Who’s Concerned?  

Roland H. Thorp

THE HISTORICAL BACKGROUND

Consumer associations are the bodies primarily responsible for the development of consumerism as a major feature of our modern society. The first association was formed in the USA in the early 1930s and quickly split into two as a result of philosophical differences between those who were guiding the initial organization, concerning the standards of “purity” or independence such associations should adhere to.

The need for consumer organizations arose from the development of mass production of consumer goods and the progressive return of affluent living after the First World War. Before this, goods were made in the community to which they were supplied, and it was most unusual for their distribution to be spread over large distances except where a singular attribute or quality of a product forced mail-order sales to develop. A consequence of this was that the manufacturer, seller, and consumer were very often a closely knit social group this enabled direct criticism and discussion to take place and effectively prevented the continued or successful pursuit of malpractices of sale or the production of low-grade goods in other than the lowest price ranges.

The goods and services supplied to the consumer were almost without exception capable of ready assessment at the point of sale as to quantity, quality, and fitness for use. Foods were sold as their individual components, as pre-packaging had not then been discovered. The housewife received good training in wise buying either from her parents or from working “downstairs” in a wealthy household. Tools and machines were simple and easily understood by an intelligent person, and it did not require laboratory evaluation to assess their performance. The success of the T-model Ford was probably due in no small measure to its simplicity and ease of repair, usually within the scope of the owner or local handyman. Advertisements also were mainly simple and descriptive. Exaggeration and hyperbole had yet to play the dominant role they do today.
Against such a background the ability of machines to produce goods in a fraction of the time previously required brought in its train the spreading of market areas to districts in which the personalities were no longer in any way interrelated and no fear or reprisals for the sale of inferior goods existed. Competition became widespread and prices consequently fell. Quality had to suffer as a consequence. The early consumer associations were thus an attempt to establish by collective endeavour a system of assessment of value for money in the purchase of goods not amenable to ready evaluation at the point of sale.

In America, the Consumers' Union and Consumer Research were outstandingly active before the Second World War, but there were no similar organizations in Europe. During the Second World War goods were so scarce, particularly in Europe, that choice could play no part. In Britain people laid up their cars for "the duration", some bought the newly developed television sets for a song, hoping that the discontinued transmissions would shortly resume, and at one stage even the primitive government-approved radio set was only available to a restricted range of customers, such as those about to set up home for the first time.

After the war, recovery was at first slow but developed exponentially so that by the early- to middle-fifties the need for consumer organizations once more became highly apparent, this time on a much wider scale than before. The remoteness of the manufacturer was now complete, and personal involvement for responsibility in mass producing units was clearly without significance. The organization of factories producing consumer goods from the skeletons of the munitions industry led to the production of goods not only on a national scale but internationally as well and required the seller to make use of every advertising trick and gimmick the Madison Avenue experts could devise to create new markets.

Rapid changes of style and rapid obsolescence stemmed from cost-cutting production methods necessary to keep pace with the market and led to dishonest practices such as planned obsolescence and limited-life production. All this was a gradual process which inexorably moved forward with little or no effect upon the consciences of those involved. A few manufacturers of high-quality products were able to continue, but their market was small and many were forced to close down from lack of sales.

In Britain the Consumer Association was formed in 1956. It was an immediate success, because it did for every buyer the one thing he wanted to do himself but was incapable of undertaking: the comparative testing of a more or less complete range of brands of any particular product. Wide coverage of goods clearly would take time,
but the consumers were quick to catch on to the idea of the collective strength of value assessment. To this day the Consumer Association has not deviated from this as its main objective.

THE AUSTRALIAN SCENE

A summary of progress in Australia, "Chronology of Consumerism", is given at the end of this chapter, but it is appropriate to comment on some of the most important features of this history.

The scene had been prepared, as so often happens in Australia, by developments overseas; already a substantial number of subscribers to Which? and Consumer Reports existed here. To most Australians, however, the concept of a consumers' association was a new and exciting one.

In 1959 a group of enthusiasts met together in Sydney and formed the Australian Consumers' Association and at the outset made a number of vitally important decisions, of which the prime was that the association should be entirely self-supporting and independent. All its funds must come from its membership alone, and no financial assistance would be accepted from any other body except possibly from allied organizations with identical aims. Such aid in fact proved unnecessary. The founders of the association appreciated that it would have a major impact on manufacturers and perhaps eventually an effect on government policies, so it was decided that under no circumstances could it accept any sort of link with any political party or manufacturing organization. These decisions remain as true today as they were sixteen years ago. Membership grew at an astonishing rate, although for the first few years almost all the work of testing, writing reports, and the publication of Choice was done by voluntary effort.

As early as 1960 an international organization, The International Office of Consumer Unions, was formed. ACA, the Consumer Association of the UK, Consumers' Union of the USA, the Consumentenbond of the Netherlands, and the Association des Consommateurs of Belgium comprised the founders of IOCU. The membership now comprises a hundred associations of which the largest number, fifteen, are Australian. Many of these are "correspondents", which means that they are organizations having limited voting rights since their financial commitment is smaller or their constitutions or details of organization do not align completely with the rigorous independence of an "associate" of IOCU.

Originally IOCU was set up as a clearing house for test methods used by consumer associations, but it has developed a much wider
CONSUMERISM

scope of activity over the years. It now has consultative or liaison status in many international agencies such as ECOSOC, UNICEF, UNESCO, FAO, ISO, IEC, ISCA, CEPT, UNIDO, and the Consumer Protection Committee of the Council of Europe. Its impact is probably greatest at present in providing assistance of an expert nature to developing countries, which are wide open for commercial exploitation, have been so exploited in the past, and continue to be. There were other very important developments in Australia which are similar in general but function rather differently from their overseas counterparts. Foremost among these were the development of consumer groups, government recognition of the consumer, and the relationship between consumerism and the media. In all of these endeavours ACA has played a key role, and these developments warrant detailed discussion.

CONSUMER GROUPS

In the UK consumer groups developed rapidly to supplement the work of the national association, CA, publishers of Which? in comparative testing. They deal with local problems and provide consumer panels which help the national body in user tests and survey work.

Australia, geographically so vast, with its population generally either densely concentrated in the state capital cities or else very thinly distributed in country areas, provided a far less suitable environment for the development of consumer groups. In the cities there is class fragmentation and an intensity of living which rarely lends itself to active community effort, whereas in the country the sparse population is equally inhibitory.

It was expected that consumer groups might have developed in association with progress associations in suburbia or with the Country Women's Association in the rural setting. Neither has generally proved to be the case; the city dweller had a degree of affluence that tended to encourage careless spending; the CWA seemed to maintain a very staid outlook toward any form of innovation and confined its interest to the homely arts and crafts in a world of male dominance.

There was, however, one very appropriate area in which the first consumer group started and where it has flourished ever since—Canberra, the national capital. Canberra comprises a collection of publicly involved individuals often from very diverse backgrounds, brought together by their common employment. They also have undoubtedly a higher proportion of people who have progressed to
higher educational levels than has any other area in Australia. Perhaps it might be true to say that some also find their daily occupations insufficiently fulfilling and welcome the opportunity to become more involved in their community.

The Canberra Consumers group, formed in 1963, early did a remarkable job in countering the artificially high prices being asked for consumer goods, which, it was usually stated, were due to freight charges. The group had an immediate appeal when they produced shopping cards to guide members to buy groceries and household items to their best advantage. The book *Eating Out in Canberra* was a further praiseworthy effort, and their survey of fish-and-chip shops was certainly a grassroots project.

The Canberra Consumers did more than this, however, since they had eyes and ears in government departments and were able to take actions, or alert ACA to do so, in many important developments about which the consumers' view would otherwise have been overlooked. Other consumer groups have been formed in Brisbane, Melbourne, Hobart, and Goulburn, but the success of the Canberra group has not been matched elsewhere.

The formation of any consumer group requires a nucleus of enthusiastic workers who are prepared to devote a major part of their leisure time to this object. The initial effort required is so great that much more than average concentration is required until paid help can be employed. Yet paid help cannot be employed until a large enough membership, too large already to be handled by voluntary labour, has been reached. The alternative of a very substantial subscription rate is a sufficient deterrent to prevent most groups from becoming viable, since it seems that few social groups are prepared to pay adequately to achieve their aims.

The success of ACA was a direct result of making available comparative test reports in a fearless and impartial way, and that of the Canberra group by showing a direct saving in household costs to intelligent consumers in a cost-conscious environment. The returns in both cases were immediate, obvious, and real.

**RECOGNITION OF THE CONSUMER BY GOVERNMENT**

Consumers' associations have several different courses open to them to rectify injustices or malpractice. The most direct one is to publish the results of comparative tests. Although adverse reports create a stir at the time, their impact is brief. As one large retailer was overheard to remark, "We must hold the stock over for three months until the *Choice* report is forgotten." Repeated publications of
similar substance, however, could lay an association open to the charge of acting with malice rather than simply providing information.

Where the deficiencies discovered come within the scope of existing legislation or controls, whether of federal, state, or local government, it is clearly the responsibility of the associations to place the facts before these bodies and demand that they implement the strictures the legislation provides. Unfortunately this is only too often a failure for a number of reasons, of which bureaucratic inertia is the most predominant. Consumer associations have reported many quite serious breaches and have files of stock replies from the various tiers of government purporting to show that all is well: the matter is a storm in a teacup; they were aware of it already; or the attention of the appropriate committee will be drawn to the matter. Years may elapse in some cases before the organizational wheels can be set into motion. In many cases too there is an excessively close link between the authority and the manufacturer or retailer, which results in weak and ineffective action that purports to remedy the situation but in fact merely condones it. The extreme slowness with which any effective control of the distribution of flammable children's nightwear is being introduced is a good example of such buck-passing. The permitted sale of low-grade meat products and contaminated milk are likely also to be with us for many years before forceful control is effective.

The third and very important method open to consumers is direct appeal to government, either in response to an established enquiry or with the object of initiating such an enquiry. This is a very difficult task, since such enquiries involve the preparation of very detailed submissions and often these have to be prepared at very short notice. In the case of the Industries Assistance Commission, the subject industry would have marshalled its evidence and prepared its working papers long before the hearing was set down, but public objection was invited only within a few weeks of the set date. The magnitude of the tasks faced by the consumer in such matters can be realized only by appreciating that every industry, manufacturer, or retailer has an ultimate impact on the consumer, and therefore the latter should be submitting views and objections to almost every case. The manufacturer, however, has only his own product to consider, be it footwear, clothing, iron and steel, or contraceptives.

The consumer movement already has very many major achievements to its credit in Australia. In 1962 ACA made very substantial submissions to the Packaged Goods Inquiry at a time when all work such as this was, of necessity, a voluntary effort and much of the
costs came from the volunteers' pockets as well. ACA put a twelve-point plan to the board of inquiry which included all the simple and obvious features desirable in any packaged products. The success achieved was rewarding indeed, since substantial sections of the board's report were clearly recognizable as derived from the consumers' submission, although it was not until 1969 that uniform packaging legislation came into effect.

The idea that consumer protection and consumer rights should be considered at government level had been accepted for many years in the USA, but the first move in this direction in Australia was made by the state of Victoria, where the Consumer Protection Act was passed in 1964. It was, however, a strongly held view of the Australian Consumers' Association that this was one area in which federal action was essential, since the consumers' requirements were similar throughout the continent and manufacturers would find federal regulation less troublesome than multiple requirements differing slightly between the states. Differences in the regulations to the poisons acts in the various states had been a source of embarrassment for many years until uniform poisons schedules became effective in the 1950s and to a considerable degree simplified interstate trade and product distribution.

From the several state acts dealing with consumer legislation there was derived a two-tiered system in which consumer councils and consumer bureaux became established in each state after 1964. This system has generally been effective. The councils have an advisory function to the relevant minister, and their chairman is often a salaried public servant in the relevant department. The bureaux act in direct contact with the public, answering queries, providing consumer information, and taking up and investigating cases of sharp practice, misleading advertising, and deception.

One cannot say that this system has been an unqualified success, but it is certainly effective to a considerable degree. The council in New South Wales, for example, comprised strong consumer representation but in addition included representatives drawn from the manufacturing, retailing, and advertising areas as well. It was, in view of this, noteworthy that the annual reports of the several councils contain, for the most part, quite strong recommendations for the benefit of the consumer. There have been disappointments, however, since these recommendations have not infrequently been ignored, sometimes as a result of trade union or group pressures seeing perhaps a hazard to their members where none would exist when ethical standards prevailed. One such case was an early recommendation of the Consumer Affairs Council in New South Wales that taxi drivers be identifiable by a named photograph as is so often the
case overseas; yet here the opposition effectually nullified this recommendation.

Useful work of the councils has concerned door-to-door sales; a "cooling-off" period is now universal in all states. There has been more protection for the consumer against the "get rich quick" pyramid sales organizations, and used car sales are much more strictly controlled than would ever have been the case without their advice.

The commissioners or directors of governmental consumer organizations still have a major problem from the consumer who is ill-informed or poorly literate, as is often the case in strongly migrant areas. In their reports, instances are cited annually of purchasers paying ridiculous prices for used cars, signing documents which effectively remove their basic rights in law and behaving in a manner which is so irresponsible that the best protection system feasible could be of no assistance to them.

Relationships between governmental consumer organizations and local consumer groups or ACA vary substantially. In some states there is mutual collaboration with an intermingling of personnel, whereas in others the private organizations have accepted the role of the mosquito, provoking more effort and a less complacent attitude in the official body, which suffers its presence as irritating but inevitable.

Until 1973 no real effort was made by the federal government to become involved in the consumers' problems. The consumer, on the other hand, was becoming increasingly dissatisfied with the secrecy and off-handedness with which every inquiry was treated by the Liberal government in the early seventies. Information known to exist and known to be of value to the consumer was jealously guarded. Trivial excuses were put forward to prevent the consumer discovering any knowledge of comparative tests, such as they were, of goods assessed by government instrumentalities. The change in 1973 came about as a result of a decision of the cabinet of the Labor government to invite submissions from a variety of community groups, manufacturers, trade unions, and consumers, before the planning of the budget for the ensuing year. At this meeting it was clear that the Australian government had not given serious thought previously to the consumer as a group in society. From the outset the representatives from the participating groups realized they could not come up with a formula that would be vote-catching and inexpensive and would reflect favourably on the government of the time, but at least they could, and did, create an awareness that no longer could the consumer be ignored by the government. One outcome of this awareness was the passing of the Trade Practices Act of
1974, which is probably the most important piece of legislation for consumers ever passed in Australia and a direct result of consumer representation. It was a development from the Restrictive Trade Practices Act of 1966.

The Trade Practices Act of 1974 is very strong, giving the government wide powers to regulate a great many aspects of trade at all levels. It is divided into twelve parts, of which those most relevant to the consumer deal with restrictive trade practices (part IV) and consumer protection (part V).

Restrictive trade practices had been the subject of previous acts in 1971 and 1972, which the present act repeals, and the inclusion of this section is appropriate as it brings the legislation together under a single commission. This section outlaws contracts in restraint of trade, the use of monopolization to eliminate or damage a competitor or prevent competitive behaviour in the market, and applies particularly to corporations that have the ability to determine prices and control the production or distribution of a substantial part of the goods or services of a particular type. It outlaws exclusive dealing by corporations, which involves restricting the provision of goods and services to agents who agree not to acquire such goods to any significant extent from a competitor. Resale price maintenance, a practice the consumer associations had continuously and vigorously opposed, is prohibited in a simple and direct statement. Price discrimination and mergers are also the subject of detailed legislation.

It is however in part V—consumer protection—that the act gives the consumer assurances and strength never previously available. There are two major divisions in this part of the act; the first deals with unfair practices and the second with conditions and warranties in consumer transactions. Both are lengthy divisions. The first spells out all the varieties of unfair practices the consumer has been exposed to and makes it clear just how far a corporation may go and still remain within the law, but it commences with the statement that "a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive" (52 [1]), and nothing subsequent to this statement is to be taken as limiting this general implication. Next, the various forms of false representation are listed: that goods differ from their purported grade, quality, or type; that they are new when this is not so; that they have sponsorship or approval or uses or benefits which they do not have; that the corporation responsible for them has such sponsorship or approval; that statements relating to price reductions, service, spare parts, and guarantees are untrue. Another clause deals with the offering of prizes or gifts for promotion unless the prizes and gifts are really provided as promised. Advertising attributes, functions and use, bait
advertising, and referral selling are all required to be truthfully stated and capable of completion if the purchaser decides to follow up the offer made.

Accepting payment without the intention of supplying the goods as ordered and making misleading statements of the profitability or other aspects of home-operated business are both detailed, as also is harassment by door-to-door salesmen. Pyramid selling is dealt with in a large number of clauses (section 61 and its subsections) occupying nearly two pages. The act also describes conditions relating to safety standards and product information standards which may be detailed by regulations. Assertion of the right to payment for unsolicited goods or directory entries are dealt with, and the recipient of unsolicited goods is freed of liability to pay for the goods or any responsibility for them provided that he or she refrains from wilful damage or an unlawful act with respect to them within a detailed period of time and does not prevent the sender from recovering them in that period.

The second division of part V, which deals with conditions of sale and warranties, again is in considerable detail. None of the requirements detailed in this division represent any other than good practice which has been the custom in the past among companies adhering to a sound code of ethics in their dealings with the public.

The whole essence of the consumer provisions of the Trade Practices Act is in fact one of reasonableness and one with which any corporation would be expected to agree if its objects are to supply adequate goods and service to the public consequent upon truthful and informative advertising. It is required that such goods be suited to their proposed use and that the seller offers the buyer reasonable assurance of after-sales service.

There are undoubtedly many features of the act which cause disquiet among sellers, because the penalties for contravening provisions of part V are large—ten thousand dollars for a person or fifty thousand dollars for a corporation—and in the past many of the practices now illegal were in the grey area of caveat emptor. It is not unusual now to find magazines, newspapers, and journals that accept advertisements printing a notice to advertisers warning against infringement of the act and stating the penalties involved. It is suggested in the example mentioned that “in cases of doubt advertisers and advertising agents seek legal advice”.

In the Trade Practices Act we have now an example of the consumer impact on the social scene which over the last forty years or so has become an unfortunate necessity.
THE AUSTRALIAN FEDERATION OF CONSUMER ORGANIZATIONS

An outcome of discussions with the Labor cabinet was the development of the Australian Federation of Consumer Organizations—AFCO—which is an alliance of groups from all states which have an interest in consumer affairs. The stimulus for the formation of AFCO was undoubtedly the discovery that many groups were engaged in work on behalf of the consumer in quite diverse fields: ACA in the comparative testing of consumer goods; the Campaign Against Rising Prices taking quite literally a stand on price increases outside supermarkets in some of the densely populated suburbs; consumer groups such as the Canberra Consumers or the Consumers' Association of Victoria; the consumer affairs councils; and consumer groups concerned with housing and home making, to mention a few of the areas of interest of the thirty or so groups which have come together in AFCO.

AFCO had the blessing of W.L. Morrison, minister of science and consumer affairs at the time of its formation, and found in him an enthusiastic supporter of consumerism generally. With cabinet changes the portfolio came to Clyde Cameron, at first a somewhat disgruntled incumbent but soon to be won over to the consumers' cause. He found the aims of consumer groups straightforward, relevant to the less privileged groups which he felt needed help, and a very substantial voting force in the community. He also found in consumerism a buoyancy and liveliness he did not encounter in the other part of his portfolio.

On 1 August 1975 Mr Cameron addressed a meeting of leaders of independent consumer groups in Sydney and other people he considered to be allied to this interest. Fired with enthusiasm, he outlined a proposal for the formation of ACPA—the Australian Consumer Protection Authority—which was to take an even more vigorous hand in caring for the consumer. It was clear that very many aspects of this new consumer-oriented policy had not been thought through with care: neither was it realized by his advisers that IOCU had just held its eighth congress in Sydney and there were present in his audience many who were accepted as highly knowledgeable consumer leaders at an international level. The minister and his top advisers clearly had too simplistic a view of this complex and involved development. There was confusion between Nader-type exposures, comparative testing, and the exposure of marketplace malpractices. Time was pressing, since the minister and his adviser were leaving in the late afternoon to enlist the aid of consumer activists overseas to send help to guide us with the new
deal for consumers, so discussion was brief. But plan was not to be accomplished, owing to the events of the final months of 1975, which culminated in a change of government. This change presents an entirely new situation for consumerism in the future.

There is no doubt whatever that under the Labor government consumerism received recognition at the federal level which it had never had before. Some excellent legislation was achieved. Some jolts and vibrations were administered to many long-established institutions, such as the Standards Association of Australia and CSIRO, making them more aware of a consumer orientation in their work. The future could bring a return of the pre-Whitlam inertia, or the gains of the period could be consolidated and realized. The errors of the Labor government in the consumer field were the result of impetuosity and excessive enthusiasm. We need now to encourage the manufacture and provision of consumer goods and services in accordance with the spirit of the Trade Practices Act without increasing its complexity with more committees with new acronyms. There are enough provisions and principles already established to keep regulatory authorities busy for several decades.

CONSUMER STANDARDS

One of the most significant discoveries of the consumer society has been that standards can be set for consumer products. This is a direct result of comparative testing and the revelation in the early sixties that such standards as there were related almost entirely to safety and dimensions. They were really manufacturers’ documents designed to limit the degree of competition within any range of goods, so the standard had to be one acceptable to those who controlled the market; a type of lowest common denominator was too often the result.

During the three years 1973–75 substantial funds were made available from the federal government to the Standards Association of Australia to use for the benefit of the consumer. A Consumer Standards Advisory Committee was established, and this has met a number of times. Consumer representation is there, but the spirit of working whole-heartedly together has yet to develop. The first meetings were ones in which the consumer representatives were a passive audience and their suggestions were considered too difficult or likely to be unacceptable to the industry. The consumer representatives were too passive themselves, partly because they did not, and do not, often have enough expertise, and partly because they are hesitant to state their views and beliefs unequivocally. The Stan-
dards Association asserts that there are far more opportunities for consumer representation on its many hundreds of technical committees but has not given recognition of the great cost which has to be borne to bring about such representation.

Closely allied to this problem is the representation of consumers’ interests before inquiries such as the Prices Justification Tribunal or the Industries Assistance Commission. This opens up a very difficult and highly controversial area, namely, the extent to which tariffs and industrial protection are in the interest of the consumer on the one hand and the employee on the other; the support of an inefficient industry provides employment, thus enabling the purchase of locally made goods or imported goods at somewhat similar prices. The opinion of the consumer in these matters is valuable because submission to the Industries Assistance Commission would otherwise be unilateral. The preparation of consumer submissions requires diligent research and is beyond the means of any but the most enthusiastic amateurs. To have such work done professionally is very costly.

As recently as August 1975 ACA made a submission on “white goods”—the trade term for refrigerators, air conditioners, washing machines, and clothes driers. The task was made somewhat simpler by the fact that, since these goods have been the subject of comparative test reports in Choice periodically over the last few years, the background data at least had already been obtained. This report was commissioned by ACA and was submitted both in written form and by personal representation.

The conclusions were that these appliances fall into five groups:

1. Appliances in which all brands (or effectively all) are locally made (e.g., stoves), where there is little or no competition and hence tariffs can hardly be justified.
2. Types of appliances in which all brands are imported (e.g., freezer-fridges), where we consider that tariffs are simply an unfair tax on the consumer.
3. Appliances in which the imported types are clearly technically superior to the locally manufactured types (air conditioners and large chest freezers are good examples), for which tariffs subsidize local inefficiency and incompetence.
4. Appliances in which there is a difference, albeit slight, in function between the locally made and imported device (e.g., washing machines), where some types need to be specifically exempted when the difference is recognized.
5. Types in which imported goods and locally manufactured appliances are equivalent and in this case protective tariffs are justifiable provided they are not excessive.
From this inquiry it emerged that the consumers' representation was received with great interest by the commission and that further submissions should be made in other cases. The consumer representatives concluded their submission in this case by stating that the tariff system was disadvantageous in many ways and should be replaced by a policy of direct assistance to efficient local manufacturers of good quality merchandise.

One of the reasons why the consumer needs to become involved in matters such as these is that the manufacturers' submission often fails to show the extent to which imported components go to make up a device labelled "Made in Australia". Similarly, manufacturers may also be importers of finished goods subject to the imposed tariff, thus benefiting both ways to the detriment of the consumer-employee.

There are some who would argue that, to present a tariff policy, a consumer organization is acting in a manner contrary to its policy of demonstrating the best way to utilize members' purchasing power. In spite of this, the matter cannot go by default, and considerations given to tariff policy lead us to believe that consumers should pay the lowest practical prices for the goods they buy. In order to buy goods the Australian consumer must have money; accordingly, a tariff policy which puts a significant percentage of the population out of work cannot be recommended either. It is necessary, therefore, that tariffs be based on comparative testing of quality and performance and they should be selectively geared to these values.

**THE CONSUMER, HEALTH, AND THE ENVIRONMENT**

The more advanced our technology becomes, the greater become the risks to health and the environment. Consequently, consumerism has become closely linked to these areas of study.

The consumer is continually using resources which are limited and creating waste which requires disposal. Nevertheless it is his inherent right that what he uses should be safe and free from hazard as far as possible. It is conceivable that an all-wise and powerful regulatory authority could act to prevent dangers to health and legislate against exploitation of resources in a needless manner. Certainly this has not been experienced in the past. Regulatory authorities act as a result of international information, as a result of a serious position having been created, or as a result of continued and steady lobbying from interested parties either for or against the best interest of society.

Consumerism must take an objective and scientific stand in the
matters under consideration. The degree of investigation and the credibility of the results reported by consumer groups and associations must be related to the size of the readership or audience the group can command. It is quite appropriate for an activist group to take extreme positions, and this is exemplified by the work of Nader-type PIR groups.

Ralph Nader recently resigned from the board of Consumers' Union, a move which is almost certainly a recognition of the need for both types of activity. In his role of a public advocate, he draws attention to defects in the society and occasionally defends its rights. He does not attempt to provide a balanced objective analysis of matters of public concern. A comparative testing organization such as OCA or CU must take a more conservative approach—referred to sometimes as fuddy-duddy—otherwise its sensationalism will soon result in loss of credibility with its members, governments, and manufacturers—the very people for whom such credibility is vital.

If we condemn the fluoridation of water, the evidence before us at present shows that we shall be doing a disservice to the community. If we advocate organic gardening instead of the use of chemical fertilizers and pesticides, we may be depriving millions of people of nutritious food free of pest damage and giving a high yield. If we make a sensation about the possible harm from the use of aluminium cooking utensils, we shall be hailed as cranks. We do, however, want governments to be more concerned about heavy metal pollution which may quite probably leave far less healthy individuals to succeed us in a far less pleasant environment. We do want governments to take seriously the low quality of basic food items and not delude themselves that paper legislation is more than a paper tiger to unscrupulous producers. The points the consumer has made over the 1973–75 period have been heeded because our credibility is high, but it was appropriate politics then to recognize the individual. What the future political environment will do for the consumer remains to be seen. Will the gains of recent years be consolidated or will they just deteriorate to the point where the consumer groups, big and small, must take more vigorous action to aid their members in the direct ways that motivated their formation?

THE CONSUMER AND THE MEDIA

Probably the biggest help the consumer has had in Australia is support from the media, and this aspect is worth considering with some care.

Australia is fortunately a free society, and it is also a country with
a high degree of literacy and affluence. It also has a tradition of sensationalism in its newspapers that few other countries equal. As a consequence, few people indeed are inaccessible to one form of publicity or another, at work or play. In the car in the street ready listeners abound, and in spite of the high cost of newsprint, the daily papers are thrown with vigor into millions of house frontages. Consumer organizations have ready access to the media in all its manifestations, particularly at first for the novelty of frankness and sensationalism.

More recently, regular features have been developed in which the basic theme is consumer information: "To Market to Market", "Check-out", and the experimental access programmes come readily to mind. The popular telephone "talk-back" broadcasts command a vast listening audience, and with the opening up of the FM band, further opportunities are certain to come on radio.

Whether commercially sponsored or not, stations have been willing to let the consumer be heard, and no conflict of interests has seriously resulted. This is encouraging, but it is only an incomplete achievement, because the whole basis of effective consumer awareness depends upon education and the ability to evaluate for oneself the rival claims of manufacturers with their perpetual advertisements before one's eyes or ringing in one's ears. There is still a real need for more informative presentations on the audio-visual media, especially in multilingual forms.

The newspapers and magazines have seen in comparative consumer reports a good way to boost their readership, and a good deal of superficial journalism is appearing in this form. The potential purchaser of cars, hi-fi equipment, and sporting items can buy special publications which at least list the characteristics of the goods on the market. Where they purport to do more, they immediately fail dismally, as must any publication affiliated in any way. They do, however, offer data, useful data, which has been the outcome of the rise of consumerism and the acceptance of data in more generally informative articles. This "dull" stuff would surely have been edited out a decade ago; now it sells magazines.

The success of the consumer movement in Australia has been one of the most remarkable developments of recent years, with universal recognition today. The work of the future must be consolidation, education of the adults of tomorrow, and the total implementation of rational behaviour among producers, advertisers, and sellers. When such a state is achieved, the effect of consumerism as an organized force will have been achieved.
A CHRONOLOGY OF CONSUMERISM

1959 ACA founded, originally as Australasian Consumers' Association Ltd.

1960 March/April—The International Office of Consumer Union (IOCU) was formed at the International Conference of Consumer Associations in Holland.
April—first issue of *Choice*; at that time ACA had fewer than five hundred members.

1962 First international test organized by IOCU, on watches. This was the first time in the history of the consumer movement that a comparative test was carried out on a global basis.
Packaged Goods Inquiry: ACA made substantial submissions. This was the first time in Australian history that the consumer spoke with an organized and united voice.

Second IOCU International Conference held in Brussels.

1963 Canberra Consumers group established and in May 1963 published the first issue of *Canberra Consumer*. This group was the first independent consumer group in Australia.
ACA's own testing station established and first technical officer appointed.

1964 Brisbane Consumer Group formed; produced a news sheet called *Counter Balance*.
Consumers Protection Act passed in Victoria, which established a Consumers Protection Council, the first move at government level in Australia to reinforce the efforts of private consumer organizations.
Third IOCU International Congress held at Oslo.

1965 ACA bought and occupied first of its properties in Chippendale, New South Wales.

1966 Fourth Biennial Conference of IOCU held in Israel.

1968 Fifth Biennial Conference of IOCU held in New York.

1969 The Consumer Affairs Council and Consumer Affairs Bureau of New South Wales were set up.
The Northern Territory Consumers' Protection Council was established under the Consumers Protection Council Ordinance 1969.
November—uniform packaging legislation came into effect.

An amendment to the Prices Act in South Australia gave the South Australian Prices Branch legal backing to its consumer protection activities and gave specific powers to the commissioner to initiate legal proceedings.
The Consumers Protection Council of Tasmania was established under the Consumers Protection Act 1970.
Sixth IOCU International Conference held at Baden-bei-Wien.

Amendment to Prices Act in South Australia gave the commissioner the title of the South Australian commissioner for prices and consumer affairs.
Consumer Protection Act, 1971, in Western Australia established the Consumer Affairs Council and the Consumer Protection Bureau.


1973 Small Claims Tribunal established in Queensland under the Small Claims Tribunals Act, 1973, the first state to introduce a small claims tribunal.

April—the Joint Parliamentary Committee on Prices was established. June—for the first time organizations concerned with consumer affairs were invited to make a submission to the government on budget matters. Six organizations were invited to attend the meeting in June. They were:
- Australian Consumers' Association.
- Campaign Against Rising Prices.
- Canberra Consumers Inc.
- Consumer Action Movement (Western Australia).
- National Council of Women of Australia.
- Women's Electoral Lobby (Victoria).

Consumer Affairs Council in the ACT came into being in August and the Consumer Affairs Bureau in July.

1974 February—a regional seminar of consumer groups from the ECAFE region was held in Singapore.

As a result of a request made in the seminar's plenary closing session, an IOCU regional office was established in Singapore. This office was to act as a co-ordinating centre for consumer organizations of some twenty countries in the ECAFE region.

February—the Australian Federation of Consumer Organizations, AFCO, was established.

February—the Small Claims Tribunal in Victoria set up under the Small Claims Tribunals Act, 1973, began operations.

Trade Practices Legislation—the most important piece of legislation for consumers ever passed in Australia.

June—Ministry of Consumer Affairs set up in Victoria and a director appointed.

Small Claims Ordinance in the Northern Territory passed, but not yet put into effect.

Small Claims Court established in the ACT under the Small Claims Ordinance, 1974.

Small Claims Tribunal established in Western Australia under the Small Claims Tribunals Act, 1974—the tribunal began operating in 1975.

Consumer Claims Tribunal set up under the Consumer Claims Tribunals Act, 1974, in New South Wales.

In South Australia an amendment made to the Local and District Criminal Courts Act relaxing the rules of evidence and procedure in the hearing of small claims.

1975 March—ACA hosted the eighth world congress of IOCU in Sydney; 200 delegates, forty countries represented.
March—first annual meeting of AFCO.
August—minister of science and consumer affairs announced plans to establish Australian Consumer Protection Authority ACPA.

THE SOCIAL IMPACT OF CONSUMERISM—A SHORT READING LIST

Submission by the Australian Consumers' Association to the Inquiry into Domestic Refrigerating Appliances, Air Conditioners, Washing Machines and Clothes Dryers held by the Industries Assistance Commission on behalf of the Special Minister of State. Sydney: Australian Consumers' Association, 1975.
PRIVACY:  
How to Retain it  

Jane Swanton  

Lawmakers in this country have been slow to acknowledge the importance of providing adequate legal safeguards for privacy. It is only in recent years that very much attention has been addressed to the question whether the law is in need of reform in order to give full recognition to this important human need. Of course, there have for a long time been rules which afford a measure of protection to the interest in privacy. Laws which prohibit such activities as interception of mail, phone tapping, and disclosure of information given to public authorities are all directed at aspects of invasion of privacy. And the interest in privacy is given some recognition by laws which make it a tort or civil wrong to trespass on another’s land or disturb him in the enjoyment of his land or defame another’s character or inflict mental distress. But until recently little consideration has been given to the possibility of creating a right of privacy in general terms.

It is clear that in many respects legal protection of privacy is inadequate in Australia, particularly because the advances of modern technology have posed problems with which existing laws are ill-equipped to cope. Recent decades have witnessed the invention of increasingly sophisticated aural and visual snooping devices, the computer with its ability to store and divulge immense amounts of information, and a proliferation of psychological, personality, and polygraph (lie detector) tests—all of these constitute new methods of intrusion and additional threats to privacy.

Fortunately there is now a much greater awareness among legislators and the public of the trends which are tending to erode privacy in our society. The Standing Committee of Commonwealth and State Attorneys-General has been giving attention to invasions of privacy, and there has been legislative activity of various kinds in

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many jurisdictions. Moreover, one finds that attention is given to privacy problems by bodies reporting to governments on such issues as social welfare, rehabilitation of ex-prisoners, health insurance, and consumer credit.

However, there has not as yet been conducted in Australia any comprehensive inquiry into the need for law reform or the practical feasibility of various possible remedies. This has recently been done in Great Britain by the Younger Committee on Privacy, which published its report in 1972. The committee sought, by means of a public attitudes survey, advertisements to the public for submissions, and direct approaches to interested organizations, to determine the extent to which privacy is regarded as an important social value and the degree to which privacy is being eroded in modern society. At many points they found the law to be deficient and made recommendations; for example, for strengthening the law on breach of confidence, for banning surveillance by means of technical devices, and for conferring on a consumer who has been refused credit a right of access to information held about him by a credit bureau.

A similar survey directed to Australian conditions would undoubtedly be of immense value. However, there is one major defect in this approach and that is that such an inquiry is only an *ad hoc* measure designed to discover the extent of the threat to privacy at one point of time. The nature and extent of threats to privacy are likely to fluctuate greatly over short periods of time. Thus it has been suggested that it would be more satisfactory to establish a continuing body to keep under review the whole range of privacy-invading activities in the community. Its functions would include promoting and conducting research, undertaking educational activities, investigating complaints, encouraging the adoption of voluntary codes of conduct, and recommending legislation. The Privacy Committee Act, 1975 (NSW), established such a body for New South Wales.

Two questions in particular call for consideration at the present time: firstly, whether there should be established a tort or civil action for invasion of privacy in this country; and secondly, whether the right of privacy should be guaranteed by a bill of rights in the Constitution. Neither a civil right nor a constitutionally protected freedom can of course be conferred in absolute terms. It is always a matter of balancing interests in privacy with other social values and goals such as freedom of expression, enforcement of the criminal law, efficient government, and national security. Moreover, if privacy is to be safeguarded in these ways it will be necessary to define precisely what is understood by the term.
THE CONCEPT OF PRIVACY

"The right to privacy" is a catch-all phrase which, in colloquial speech at any rate, is capable of encompassing just about all the fundamental civil liberties. The question of definition has bothered many writers. Some have tried to formulate a succinct definition such as "the right to be let alone" or "the right to control over access to information about oneself" or "the right to inviolate personality". Such definitions are likely to be either too wide or too narrow.

Others have adopted a rather unwieldy approach which defines the right of privacy by enumerating the types of conduct that constitute an infringement of that right. Thus the International Commission of Jurists defined it as "the right of the individual to lead his own life protected against (a) interference with his private family and home life; (b) interference with his physical or mental integrity or his moral or intellectual freedom; (c) attacks on his honour and reputation; (d) being placed in a false light; (e) the disclosure of irrelevant embarrassing facts relating to his private life; (f) the use of his name, identity or likeness; (g) spying, prying, watching and besetting; (h) interference with his correspondence; (i) misuse of his private communications, written or oral; (j) disclosure of information given or received by him in circumstances of professional confidence".

Although most of the better-known formulations define a right of privacy rather than a state of privacy it is probably preferable to attempt to define the "condition" or "state of affairs" which the term privacy denotes. This is because it has never been suggested that there is an absolute right of privacy which exists even where the interests of others or of the state outweigh in importance the individual's claim to privacy. Lawmakers are therefore concerned with deciding which situations of privacy should be given the protection of the law so as to create rights of privacy. Defining privacy in terms of a right has a tendency to result in a failure to distinguish two questions: (1) whether invasion of privacy is involved in a given factual situation; and (2) if so, whether it is a justifiable intrusion.

There is, in fact, no general agreement about the particular social evils which can properly be described as involving invasion of privacy. An examination of the interests that have received the protection of the United States tort of invasion of privacy or of the Bill of Rights in the United States Constitution may be of some assistance. But there is a good deal of criticism in that country of the way in which the courts have defined the boundaries of the right of privacy.

It might be suggested that those concerned with ensuring respect
for privacy would be well advised to adhere to a narrow definition such as the "right to control over access to information about oneself". This is because otherwise there is a danger that privacy will come to be regarded as a vague and indefinite term encompassing freedom from any sort of outside interference. The right to privacy defined as "the right to be let alone" is virtually synonymous with the "right to liberty" or the "right to freedom". If privacy is to be a meaningful concept to which regard can be paid in legal and extra-legal policy-making, its bounds must be narrowly defined and its nature distinguished from that of the other civil liberties.

**A CIVIL ACTION FOR INVASION OF PRIVACY**

There is considerable support for the view that as the protection given to privacy interests by our law of torts is at present incomplete, the best way to fill the gaps is to establish by legislation a right to sue for damages for invasion of privacy. A brief look at the American tort of invasion of privacy reveals the points at which English and Australian law is deficient.

Since the publication in 1890 of an article entitled "The Right to Privacy" in the *Harvard Law Review* by Warren and Brandeis, the courts in most of the states of the US have recognized a civil action for invasion of privacy. It is commonly considered nowadays that there are four distinct types of wrongful conduct which are actionable under this head. The first consists of *intrusion* upon the plaintiff's solitude or seclusion such as by invading his home, searching his shopping bag, eavesdropping on his private conversations, peering into windows of his house, or persistently harassing him with telephone calls. *Public disclosure of private facts* is the second branch of the tort; the facts disclosed must be private and not public ones such as date of birth and marital status, and the disclosure must be to the public and not just to another individual or small group. The third type of wrong consists in placing the plaintiff in a *false light in the public eye*, for example, by publicly attributing to him some opinion or utterance or work not his own, or using his picture to illustrate a book or article with which he has no connection with the implication that such a connection exists. *Appropriation* of the plaintiff's name or likeness for the defendant's benefit or advantage, as where the plaintiff's name or picture is used without authority to advertise the defendant's products, is the fourth branch of the tort.

Although the courts in England and Australia have not evolved a
tort of invasion of privacy, certain types of intrusion may be ac­
tionable under other heads of liability. Thus the privacy of a man's
home is protected by the torts of trespass and nuisance; the former
lies for physical intrusion, the latter for disturbing a person in the
enjoyment of his land, e.g., by allowing noxious things such as noise,
fumes, smoke, or smells to escape onto it or by harassing him with
phone calls or even by setting up a brothel next door. These torts
between them would cover many of the "intrusion" cases.

The law of defamation protects a person's right to be free from
damaging imputations on his character or reputation. In some states
the action lies even for disclosure of true facts about a person, unless
it can be shown that publication was for the public benefit or relates
to a matter of public interest. Thus defamation would encompass
those of the "false light" cases in which the false imputation is
defamatory, i.e., reflects adversely on the plaintiff's character or
reputation or injures him in his profession or trade. But it can also, in
states where truth is not a complete defence, cover many of the cases
of "public disclosure of private facts" provided the facts disclosed
are defamatory. Defamation may be used in some "appropriation"
cases; thus an amateur golfer successfully sued a manufacturer of
chocolate who had used his picture in an advertisement, because the
court found a defamatory innuendo that the plaintiff had
prostituted his amateur status.

Other torts such as injurious falsehood and passing off, and the
jurisdiction of courts of equity to restrain breach of confidence,
breach of contract, and damage to property, have all been used to
protect some interests in privacy.

But existing common law remedies by no means cover the whole
scope of the American tort of invasion of privacy. The tort of trespass
for example is dependent on the plaintiff's occupation or possession
of land. There would be no trespass, for example, where a listening
device is installed on adjacent premises to overhear the plaintiff's
private conversation. Or there may be a trespass on premises which,
in the eyes of the law, are not in the occupation of the plaintiff, such
as where a listening device is planted in a hotel bedroom or a
boardroom. Similarly an action in the tort of nuisance is only
available to the occupier of land and not for example to his wife or
lodger. One notable deficiency in the law of nuisance is that it does
not prevent spying or overlooking. This was decided in a leading
High Court case where the defendant built a structure on land ad­
joining a racecourse in order to overlook the races and broadcast the
results. The claim of the owner of the racecourse in nuisance failed
and the court declined the invitation to create or recognize a new
tort of invasion of privacy.
Defamation is also limited in its application. It can only avail a plaintiff against a defendant who publishes true facts about his private life if the statements are defamatory, i.e., injure the plaintiff's character or reputation. It is not sufficient that the facts are embarrassing or humiliating. Similarly it is not unlawful to place the plaintiff in a false light in the public eye unless the false imputation is a defamatory one. No action lies in defamation for a false allegation that a woman has been raped or a false and colourful account of the plaintiff's treatment at the hands of escaped convicts. Finally, defamation will only rarely be available in "appropriation" cases. In the case mentioned above concerning the amateur golfer, clearly there would have been no remedy if the plaintiff had been a professional golfer. There would then have been no defamatory innuendo.

The common law is certainly capable of expansion and development by the courts to fill many of these gaps. It is unlikely that Australian courts would ever recognize a tort of invasion of privacy, since such a claim was expressly rejected by the High Court. But the torts of negligence, wilful infliction of mental distress, and passing off have the potential to cover some if not all wrongs involving invasion of privacy. It is also possible that the courts might expand the concept of "property" to include a person's right to exploit his personality, thus giving themselves jurisdiction to restrain misappropriation of his name or image. And the jurisdiction to restrain breach of confidence could be widened to prevent misuse of information obtained by surreptitious means.

But such developments must be, to say the least, slow and uncertain, and would be more effectively achieved by legislative intervention. This could take the form of piecemeal measures aimed at specific activities such as eavesdropping, misuse of name or likeness, or disclosure of private or confidential information. Alternatively, legislation could be introduced conferring a general right of action for invasion of privacy. The latter approach may be preferable because it would both close the existing gaps in the legal armoury and ensure that there is a sanction against new types of privacy-invading activity which may emerge in the future.

A private member's bill was introduced into the UK Parliament in 1969 seeking to establish such an action. The government did not agree to it, on the ground that, in view of the many diverse areas in which the problem of privacy arises and the extent to which it gives scope for controversy, it was by no means self-evident that the right way to solve the problem was through the medium of the bill as drawn. Instead the government announced the appointment of the Younger Committee. The committee in fact rejected a general right of privacy. They did so because of the difficulty of definition with
which the judiciary would be faced and the consequent uncertainty which would be introduced into the law, and because in their view it would extend the judicial role too far into the determination of controversial questions of a social and political character. They were also perturbed by the danger that such an ill-defined right might unreasonably interfere with the free circulation of information and inhibit the dissemination of truth.

But it should not be beyond the competence of skilful legislative draftsmen to overcome these objections. There need be no prejudice to the public interest in dissemination of truth if a defence of "newsworthiness" can be so framed as to strike a balance between competing interests in privacy and freedom of expression. Alternatively, the legislation could give a complete exemption to the press and other mass media and thus leave entirely unfettered the highly prized value of free speech. The difficulties with which the judges would be faced in delimiting the scope of the tort could be reduced if there was a full legislative definition of the interest which the right of privacy is intended to protect and the type of conduct which constitutes an infringement of the right. The main value of a tort of invasion of privacy would be its inhibiting effect on privacy-invading activities generally and the reinforcement it would give to community attitudes towards the importance of privacy as a fundamental human need.

So far bills designed to introduce a civil cause of action for invasion of privacy have been introduced into two state parliaments in Australia. Neither has been passed into law.

The South Australian Privacy Bill, 1974, declares that every person or body corporate has a right of privacy and that infringement of that right shall be a tort actionable of the suit of that person. The "right of privacy" is defined as—

the right of a person to be free from a substantial and unreasonable intrusion upon himself, his relationships or communications with others, his property or his business affairs, including, without limiting the generality of the foregoing an intrusion by

(a) spying, prying, watching or besetting;
(b) the overhearing or recording of spoken words;
(c) the making of visual images;
(d) the reading or copying of documents;
(e) the use or disclosure of
   (i) confidential information or
   (ii) facts, including his name, identity or likeness, likely to cause him distress, annoyance or embarrassment, or to place him in a false light;
(f) the use of his name, identity or likeness for another's advantage;
(g) the acquisition of confidential, industrial, or commercial information.
The bill then provides for certain defences. It is a defence to show that (a) the infringement was unintentional and without negligence; or (b) that the infringement was constituted by the publication of words or visual images, and that the publication was in the public interest; or (c) that the infringement was constituted by the publication of words or visual images and that the circumstances were such that had the action been one for defamation, there would have been available to the defendant a defence of absolute or qualified privilege or fair comment on a matter of public interest; or (d) the conduct of the defendant was reasonable and was incidental to the protection of the lawful interests of a person or the conduct of actual, contemplated, or apprehended litigation.

The Tasmanian Privacy Bill, 1974, is in different terms, but its substance is similar. It is declared that "no individual ought to be subjected to arbitrary interference with his privacy, family, home or correspondence" and that it is a tort to violate the privacy of an individual. The privacy of an individual is to be regarded as being violated when there is "substantial and unreasonable intrusion upon himself, his house, his relationships or communications with others, his property or his business affairs". The bill then spells out with more particularity the types of conduct which may amount to an unlawful intrusion and establishes certain defences similar to those in the South Australian bill.

It is interesting to note that in Canada two provinces have recently enacted statutes declaring a general right of privacy. The British Columbia Privacy Act, 1968, makes it a tort "wilfully and without claim of right to violate the privacy of another or to make use of a person's name or portrait without consent for the purposes of trade or commerce". The act declares that "the nature and degree of privacy to which a person is entitled in any situation or in relation to any matter is that which is reasonable in the circumstances, due regard being had to the lawful interests of others; and ... regard shall be given to the nature, incidence and occasion of the act or conduct and to the relationship, whether domestic or other, between the parties". Thus the legislature has left it substantially to the courts to determine whether a plaintiff's privacy is invaded in given circumstances. No guidance is given, as in the South Australian and Tasmanian bills, concerning the sorts of conduct which may be regarded as invading privacy.

So far only one action has been brought under the British Columbia statute. There the plaintiff became ill as a result of knowing that he was being watched and followed by a private investigator employed by his wife to find evidence of adultery. It was decided
that the defendant was not in breach of the act because the surveillance was "reasonable". The worry, apprehension, and emotional upset of the plaintiff were not regarded as relevant to the question whether his privacy had been invaded.

Manitoba also has a privacy act which came into force in 1970. The act makes it a tort "substantially, and unreasonably and without claim of right" to violate the privacy of another. Non-exclusive examples of privacy-invading conduct are given.

One criticism that may be made of all the legislative models referred to above is that they have left it entirely to the courts to strike the delicate balance between interests in privacy and in freedom of expression. The task of the courts in determining whether the media have exceeded the bounds of legitimate news-gathering would be an unenviable one. Arguably the legislature should give more guidance to the judges in this regard. From the point of view also of those engaged in collection and dissemination of news, more specific provisions would be desirable. There is a danger that legislation along the lines of the South Australian and Tasmanian bills might unduly inhibit freedom of the press because of uncertainty about whether methods of investigation or information published would unlawfully infringe privacy.

A bill introduced into the United Kingdom Parliament in 1961 by Lord Mancroft, designed to "protect a person from unjustifiable publication relating to his private affairs", was more explicit about the defence of newsworthiness. It provided that it should be a defence if the defendant proves

that at the time of the publication the plaintiff was the subject of reasonable public interest by reason of some office or position then held by him or by reason of some conduct of the plaintiff, and that the words published related solely to matters which, having regard to such office, position or conduct of the plaintiff, were the subject of reasonable public interest or were fair comment thereon; or that at the time of the publication the plaintiff was the subject of reasonable public interest by reason of some contemporary event directly involving the plaintiff personally, and

(i) that it was reasonably necessary to disclose the identity of the plaintiff, and

(ii) that the words published related solely to matters which having regard to the event and the position of the plaintiff were the subject of reasonable public interest, or were fair comment thereon.
A CONSTITUTIONAL RIGHT OF PRIVACY

The Australian Constitution has recently been under review, and the question whether we should guarantee fundamental freedoms by means of a constitutional bill of rights has been given consideration. A good case can be made for including a right of privacy among constitutionally protected fundamental freedoms, particularly in view of the provisions in article 12 of the Universal Declaration of Human Rights and article 17 of the United Nations Covenant on Civil and Political Rights, viz., that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour or reputation", and that "everyone has the right to the protection of the law against such interference or attacks".

The Human Rights Bill which was introduced into Federal Parliament in 1973 contained privacy provisions. The bill was designed to implement the United Nations Covenant on Civil and Political Rights and consequently contained a statement to the effect that "no one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation".

The bill then provided that an "unreasonable search or seizure is an unlawful interference with privacy". A search or seizure is to be deemed to be unreasonable unless lawfully made—

(a) pursuant to an order or a warrant for search issued by a court, or
(b) in response to circumstances of such seriousness and urgency as to justify immediate action without the authority of an order or warrant, or
(c) pursuant to a law authorizing inspection of property to ensure compliance with lawful requirements as to public safety, public health, safe construction, imports or exports, etc., or
(d) for the purpose of inspecting documents relating to the conduct of a business or trade or the affairs of a company, or
(e) for the purpose of inspecting property or documents in connection with the enforcement of payment of taxes.

Another privacy provision is that which declares that "where a person is in custody, he shall not be compelled to make any statement that may incriminate him".

The bill also contains enforcement provisions. An aggrieved person or the Australian human rights commissioner may institute a civil action seeking a declaration that an act or omission is in contravention of the Human Rights Act. The court may, on making such a declaration, additionally grant such other remedies as it sees
fit, including damages, injunctions, and orders varying or setting aside judgments, quashing convictions, or directing new trials.

The Human Rights Bill has not been passed into law, and even if this should occur there would be some doubt as to its constitutional validity. The Constitution gives to the Commonwealth Parliament power to legislate with respect to "external affairs" among other things. The legislation is alleged by its proponents to be a valid exercise of the external affairs power in view of the fact that it ratifies the United Nations covenant. Even if the act withstood constitutional challenge it would of course, like any other statute, be subject to repeal at any time. By contrast, in the United States, civil rights guarantees are of course entrenched in the Constitution itself and can only be altered by amendment to the Constitution.

It is useful to note that privacy has been recognized as one of the constitutionally protected freedoms in the United States. While there is no express guarantee of privacy in the United States Bill of Rights, many of the provisions in effect afford protection to privacy interests. For example, the first amendment, which protects freedom of speech and of assembly, has been held to embrace also freedom to remain silent, for example, about one's activities in connection with some political party. It was held to guarantee the right of "associational privacy" where the state of Alabama endeavoured to force the National Association for the Advancement of Coloured People to disclose its membership and officer lists. Interests in privacy are also protected by the third amendment's prohibition on quartering of troops in private houses during peacetime without the owner's consent, and the fourth amendment's guarantee of the "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures". It has now been held that the reach of the fourth amendment does not turn on the presence of a physical intrusion into any given enclosure or seizure of physical objects. Intangibles such as conversations can be the object of search and seizure, so the fourth amendment extends to the recording of oral statements overheard without any technical trespass. The fifth amendment privilege against self-incrimination also protects privacy. It states that "no person shall be compelled in any criminal case to be a witness against himself". This has been interpreted to mean that a conviction is improperly obtained and liable to be set aside if evidence introduced at the trial was extracted by coercive tactics by the police or even if the police have omitted to warn the suspect of his "right to silence".

But the most significant decision in the United States is a case in 1964 in which legislation prohibiting the use of contraceptive devices was challenged. The Supreme Court invalidated the legisla-
tion on the express ground that it violated marital privacy, thus ac-
cording separate constitutional status to a right of privacy. This right
was seen as a "penumbra" emanating from other specific provisions
of the Bill of Rights which create various "zones of privacy". The
court was not unanimous about which of the amendments justified
their decision, but the important fact is that a clear majority une-
quivocally recognized a right of privacy of constitutional dimension.

It has since been held in some of the lower courts that the same
principle was infringed by expulsion of a high school student for fail-
ing to comply with the school hair-length standard, by legislation
prohibiting the practice of sodomy, and by legislation requiring
public officials to file as matter of public record a statement of their
financial holdings and those of their immediate family; and the
Supreme Court has invalidated a prosecution for possession of
obscene movies. But the greatest triumph for the constitutional right
of privacy is the recent Supreme Court decision in which anti-
abortion legislation was struck down. It has been suggested that laws
which impose penalties for homosexual conduct and unnatural sex-
ual practices, employers' practices such as use of highly intrusive
questionnaires and psychological, personality, and polygraph tests,
the continuous surveillance and intrusiveness to which recipients of
social welfare benefits are subjected, and laws proscribing possession
of marijuana may ultimately be found to violate the US citizen's
constitutional right of privacy.

Though the decisions in these cases may be applauded, the
soundness of the reasoning may be doubted. It has been suggested
that the term privacy has been used in a loose colloquial sense rather
than in the strict sense in which it should be used in legal parlance.
It was the individual's autonomy (or his right to conduct his private
life without interference) rather than his privacy, on which these
statutes encroached. Privacy is an interest in freedom, i.e., in being
free from (such things as intrusion and disclosure of private facts)
rather than in being free to (conduct one's private affairs according
to one's own wishes). This argument is compelling and leads to the
conclusion that in order to ensure that the legislature is restrained
from interfering with private morality in Australia, entrenchment of
a constitutional right of privacy in a bill of rights may not be suf-
cient. It cannot be assumed that Australian courts would construe
the term privacy, whether in a statute or constitutional bill of rights,
in a similar way to that of the courts in the United States. In fact, in
view of the disconcerting degree of uncertainty and disagreement
regarding the meaning of the concept of privacy it might be better
to eschew use of the term altogether. Privacy might be more effec-
tively guaranteed by specific provisions directed against particular
types of privacy invasion rather than by establishment of a right of privacy in general terms. A good example of this sort of specific provision is the section relating to unreasonable search and seizure in the Human Rights Bill, mentioned above.

ASPECTS OF INVASION OF PRIVACY

Data Surveillance

Data surveillance is the collection, exchange, and manipulation of documentary information about individuals. An enormous amount of information is collected these days by various governmental and private organizations. Much of this data is obviously needed for the purpose of advancing worthy social goals such as crime control, health, revenue collection, education, economic regulation, national security, and social services. But concern is felt that many organizations indulge in excessive and unnecessary data collection, that confidentiality safeguards are sometimes inadequate, and that an individual may suffer if inaccurate information about him remains uncorrected.

Moreover, the possibility is envisaged with alarm that information held by various organizations may one day be collected in a central data centre. If this happens there will be available at the hands of the man who pushes the button a vast amount of information about every individual in the country and consequently a considerable power over the lives of citizens. Such a centre could include a record of convictions, psychiatric treatment, results of intelligence or personality tests, debt defaults, school reports, financial information, political affiliation, army records, and all manner of information which the individual may consider to be irrelevant, embarrassing, or simply his own business.

It is, of course, the invention of the computer which makes it possible to contemplate the establishment of such a centre. The computer poses threats to privacy because it has the capacity to eliminate many of the natural barriers to privacy invasion. Hitherto privacy was protected by the very inefficiency of record keeping, the scattered nature of the records, and the problems of time and economics involved in retrieving and collating information. On the other hand, if proper safeguards over input, storage, and output are incorporated, computer-based data banks can be more secure from unauthorized intrusion or disclosure than manual or other systems.

For the most part the law does not oblige any authority to reveal the existence of a dossier kept on an individual or restrict the
amount or type of information that may be collected or provide a
means whereby an individual can dispute the accuracy of the facts
in his file. There is a limited right to restrain publication of informa­
tion of a confidential nature, but often information will not have
been furnished by the individual himself, or if it is, it may not have
been given in confidence.

Suggested reforms include (1) legislation which obliges any
organization to notify a citizen when it intends to open a record on
him, to obtain his permission before divulging any part of the
record, and to allow him to inspect and correct the record; (2) crea­
tion of a public agency to review data-bank operations and provide
a source of appeal for wronged individuals; (3) alternatively, the
concept of an ombudsman could be extended to deal with com­
plaints against non-governmental organizations; (4) development of
writ of "habeas notae", which would enable any person who knows
or suspects that any type of record is kept about him in any data
bank to require a copy of that record to be supplied to him—the
courts would have power to oblige the other party to correct its
records or delete obsolete information; (5) legislation requiring
registration of data banks and controlling the type of data which
could be included and the persons entitled to access to it; (6) legisla­
tion prohibiting collection of certain designated classes of sensitive
data by any organization for any purpose.

Attempts have been made to introduce legislation to control data
banks. In the United Kingdom two bills have been introduced. The
first related to computerized data banks and provided for a register
on which would be listed the particulars in accordance with which
the data banks would be allowed to operate. The second applied to
all data banks and provided for a tribunal which would have power
to license data banks on such terms and conditions as it thought fit.
A bill introduced into the New Zealand Parliament in 1972 sought to
achieve similar objectives by appointing a preservation of privacy
commissioner with the functions of registering all computer installa­
tions in New Zealand. The Victorian Information Storages Bill,
1971, provided for registration of all information storages. Regula­
tions were to stipulate what security measures were to be taken in
respect of the information. The subject was to have a right of access
to his file and a right to request deletions and amendments on the
grounds that the information was irrelevant, inaccurate, out of date,
or misleading.

It may be that legislation attempting to regulate all data banks
would be too ambitious a project, and that a better approach would
be to introduce legislation to regulate the activities of particular
classes of data bank. The operations of credit bureaux have been the
subject of concern in recent times, and legislation has been enacted in many jurisdictions in the United States and Canada and was proposed by the Younger Committee in Great Britain. Two states in Australia have introduced legislation dealing with credit bureaux.

A credit bureau has been defined as any reporting agency that collects, stores, and disseminates information about creditworthiness or suitability for employment or insurance of individuals. Some bureaux sell information for profit; others are owned by members and divulge information to members only. Some agencies file information obtained from member merchants and public sources (e.g., judgment debts, bankruptcies, etc.) only, and others actively search for information or make "investigative" reports.

It is generally accepted that credit bureaux perform a vital and essential function in our credit economy, by helping to prevent consumers from over-extending their financial resources, detecting chronic debts defaulters, stimulating trade by facilitating ready granting of credit, and keeping prices down by reducing the bad debts carried by business. But there is a growing feeling that some legislative regulation of the credit-reporting industry is becoming necessary, primarily to protect the privacy of the subject of the report. The main concern is about the possibility that inaccurate or misleading information may be purveyed, such as information which results from a mistake of identity or information which is out of date. An erroneous impression may be conveyed by incomplete information also, e.g., where a report refers to a debt default but does not add that refusal to pay resulted from a bona fide dispute about the quality of the goods, or where reference is made to a judgment without the additional information that it was subsequently set aside.

The Queensland Invasion of Privacy Act, 1971, sets up a system of licensing of "credit reporting agencies" which are defined as "persons who are regularly engaged, in whole or in part, in providing credit reports to any other person whether for remuneration or otherwise" and provides that credit reports may only be furnished to prospective credit grantors. There is an obligation on the credit grantor, where credit is refused wholly or in part because of a credit report, to notify the consumer of this fact and of his right to inspect the information in his file. Information which is more than five years old must be deleted automatically, except where it relates to convictions for fraud or dishonesty.

Criminal penalties are imposed for failure to comply with the act, and, in the case of the credit bureau, there is the ultimate sanction of cancellation of or refusal to renew its licence. Protection against defamation is given to the credit-reporting agent, the user of the
report, and the supplier of the information, in respect of publication in good faith of defamatory matter. The act does not apply to information supplied directly between credit grantors, and the right of access is conferred only on “consumers”, i.e., individuals “seeking or obtaining credit to be used wholly or primarily for personal, family or household purposes”.

A similar scheme is established by the South Australian Fair Credit Reports Act, 1974. Its provisions are wider in that a reporting agency is required to disclose any information held by it concerning any person on the application of that person at any time. The consumer’s right to see and correct or object to information on his file is not limited to occasions where he has been refused credit. Moreover, the act places some restrictions on the type of information which may be stored. Information relating to the race, colour, or religious or political belief or affiliation of any person may not be furnished in a consumer report. Nor may unfavourable personal information based on hearsay evidence be furnished unless reasonable efforts have been made to substantiate it or the lack of substantiation is stated in the report.

Another type of data bank about which concern has been expressed recently is the sort of repository which contains medical histories or information about medical conditions and treatment. The Health Insurance Bill, 1975, relating to Medibank files contains extensive provisions designed to ensure the security of the medical records held by the Health Commission. It provides that a person has a right of access to his own medical records and can require correction of errors. It is an offence to divulge information concerning the medical records of another person to unauthorized persons, and medical records can only be compulsorily produced in court if the proceedings relate to an offence involving death or danger to life. Police officers can obtain access to medical records only if there are reasonable grounds for believing that the records contain information that may be relevant to an offence involving death or danger to life and if a warrant is issued by a magistrate. There is to be a privacy inspector whose functions are to investigate and report to the minister on the adequacy of the measures taken to ensure the security of the records and to recommend necessary changes.

The Younger Committee preferred this type of piecemeal approach towards control of data banks. Although their terms of reference excluded government practices, they found some public concern existed in Great Britain regarding information held by banks, employers, educational institutions, doctors and medical institutions, and credit bureaux. But their recommendations consisted chiefly in suggestions for alterations in practices by various bodies.
Their only concrete proposals were for legislation concerning credit bureaux along the lines of the Queensland legislation referred to above, and for strengthening and clarifying the civil law with respect to breach of confidence to ensure that a civil action is available to a person who suffers damage because of disclosure or use of information which was given to another in confidence or which was obtained by unlawful means.

**Physical Surveillance**

Physical surveillance is the observation of a person's location, acts, speech, or private writing without his knowledge or against his will, often by means of optical or accoustical devices. Advances in the technology of audio-visual surveillance devices have raised the question whether and to what extent restrictions should be placed on their use. This involves balancing the individual's claim to privacy against competing interests in such things as crime control and national security. There can be no justification for allowing the use of technical devices where no other important value is in issue, e.g., for snooping by private investigators, journalists, and industrial spies.

The common law offers little protection against physical surveillance. The tort of trespass will be committed if, for example, an eavesdropper has entered on land occupied by the plaintiff without permission, to conceal a microphone or tape recorder. The law of nuisance may be applicable if the defendant unreasonably interferes with the plaintiff's use and enjoyment of his land, e.g., by systematic watching, besetting, or eavesdropping. Defamation would lie if information damaging to character or reputation was obtained by eavesdropping and published. What is required to give full civil law protection is a tort of invasion of privacy.

The criminal law has gone part of the way towards prohibiting undesirable practices. Commonwealth legislation bans wire-tapping, or "listening to or recording a communication in its passage over the telephone system". This means that no law enforcement agencies, state or federal, can employ wiretapping as a method of criminal investigation. But certain limitations on the scope of the act should be noticed. It would not extend to the situation where a microphone is concealed in a room to record the conversation of a person speaking on the phone; nor is it wrongful to attach a recorder to a phone to record a conversation by permission of one of the parties to it or to overhear a conversation by means of an extension attached to the phone of one of the parties.

The act contains an exception for interceptions by the Australian
Security Intelligence Organization where the security of the Commonwealth is at stake. It may be questioned whether this inherently objectionable practice should be sanctioned even in the interests of national security. Wiretapping must involve interception of all manner of communications which the listener has no right to overhear, and it is even doubtful whether it is more effective for obtaining intelligence than more orthodox methods.

In New South Wales, legislation makes it an offence to use a "listening device" to hear or record private conversations. But the act gives power to senior police officers to authorize any person to use a listening device for a period not exceeding twenty-one days where this is necessary in relation to investigation into any offence. These powers are perhaps unjustifiably wide in so far as they apply in respect of any offence, however minor, and the authorization can be given to any person and not only to members of the police force and apparently may be repeated indefinitely. Moreover, there is no obligation to disclose how often the power to use listening devices is employed by the police, in respect of what offences and with what results in terms of convictions. Similar legislation in Queensland allows the police to employ listening devices only with the approval of a judge of the Supreme Court. However, the Listening Devices Bill (Tasmania), 1974, exempts the police entirely from the ban on use of listening devices.

It can also be argued that the scope of such legislation is too narrow because it does not extend to visual surveillance. Devices exist which can photograph the contents of an envelope and or even penetrate a room and give a full television reproduction of the scene. Even commonplace cameras and binoculars can pose a threat to privacy if used improperly. If an individual has so placed himself that he can reasonably assume that no one can see or hear him, it should be regarded as an unwarranted invasion of his privacy to contrive to do so. The Younger Committee recommended the establishment of a criminal offence and civil cause of action for surveillance by means of a technical device. The former would extend only to surreptitious activities the latter would include overt surveillance. They used the term technical device in a wide sense meaning "electronic and optical extension of the human senses"; this would include surreptitious photography by the press or the situation where a subject consented to a photograph of himself but did not consent to the use of a zoom lens on the private correspondence he was reading.
**Psychological Surveillance**

Psychological surveillance is the use of oral or written tests, devices, or substances such as personality, psychological, and polygraph (lie detector) tests to extract from an individual information that he does not give willingly or does not know he is revealing. Indiscriminate use of these methods in circumstances where the subject has no real choice whether to submit to them or not—e.g., for screening employees or job applicants, in schools or as part of admission requirements to colleges or universities, or in selection of prospective immigrants—is indefensible. Not only do they constitute an offensive intrusion into private matters, but their validity and reliability for these purposes is not established. They were designed for clinical use and where employed outside this context may result in arbitrary selection decisions. Moreover, the existing tests are of very uneven quality; psychologists themselves are critical of some of the published tests. Additionally, it is essential that the tests should be administered by skilled persons, and even if this is done there is the danger that results will be distorted or misinterpreted by unqualified persons or used for unauthorized purposes.

**EMPLOYERS' PRACTICES**

In the United States almost all the various privacy-invading devices decried by journalists and others have been used by employers in dealing with employees.

Given that there are certain inquiries which might legitimately be made by an employer of a prospective employee, the difficulty is to determine at what point such enquiries become intolerably intrusive. A job applicant may fairly be said to have consented to an investigation of his qualifications. Even so it is doubtful whether such consent can be said to be given unless the applicant is aware of the type of background investigation that is commonly conducted. Moreover, some of the techniques used, particularly in the United States, for screening job applicants include polygraph (lie detector) and personality tests and extremely intrusive and irrelevant questionnaires. Questionnaires requiring information about an applicant's racial and religious designations, medical history, sexual habits, and other personal details relating to himself and his family are not uncommon. Also inquiries into the applicant's financial affairs, though perhaps justifiable with respect to some positions to prevent a conflict of interest, are carried through to applicants for positions in which no such conflict could arise. The services of organizations that sell data about prospective job applicants concerning dismissals, convictions, etc., are often employed.
Improper invasions of privacy include surveillance after hiring. Reliance on implied consent to justify encroachment in the hiring process does not automatically carry over to this situation. Some US employers are known to resort to such covert surveillance techniques as closed-circuit TV, one-way mirrors, hidden microphones, tapped telephones, and planting agents among the employees to report on their actions.

Many laudable and weighty reasons are advanced for such invasions of privacy, including national security, law enforcement, prevention of thefts, and efficiency and economy in government and private industry. Probably most methods can be justified in some circumstances, but what is objectionable is their use in an indiscriminate way.

In the United States employee privacy has been the subject of extensive congressional hearings and of a bill that sought to protect employees of the executive branch of the federal government in the enjoyment of their constitutional rights and to prevent unwarranted invasions of their privacy. The bill made it unlawful to require civilian employees to disclose their race, religion, or national origin or that of their forbears, to require employees to report on non job-related activities, to coerce them to make certain investments or donate to certain charities, or to elicit from them information concerning personal relations with relatives or spouses, religious beliefs or practices, sexual attitudes or conduct, and family financial matters.

If employers in this country use such techniques, legislation along the lines of the American bill, but applying to all employers, ought to be contemplated. However, it would seem more likely that, as in England, such malpractices are not widespread here; in which case a less formal approach such as that suggested by the Younger Committee might prove to be more appropriate and give greater flexibility. The committee suggested that the Code of Industrial Relations Practice, which had been issued in draft by the secretary of state for employment, was the proper context in which to deal with privacy matters in employment. The object of the code was to "set standards and given practical guidance on the conduct of industrial relations and the development of policies to improve human relations in all types of employment".

Even in the absence of specific measures to deal with employee privacy, some of the objectionable practices may be prohibited by legislation of a more general character, if, for example, a tort of invasion of privacy is established, or if restrictions are placed on the use of visual and oral surveillance devices or personality, psychological and polygraph tests.
ADMINISTRATIVE INTRUSIONS

The basic complaint here is about the wide powers of officers of government departments concerned, for example, with trade, transport, agriculture, labour, housing, education, and social services to enter premises. The submission is that all such officials should be required to obtain a warrant to enter premises forcibly except in the case of emergencies. The question is obviously one of finding a balance between conflicting interests in personal privacy and efficient government.

It may be that the solution to this type of problem could best be found in constitutional guarantees which would make it impossible for the legislature to confer sweeping powers of entry. But it should be noted that the fourth amendment in the US Bill of Rights which prohibits unreasonable search and seizure has been given a restricted interpretation in some cases. For example, though the Supreme Court has ruled that this provision requires health inspectors to obtain a warrant where entry is refused, a later decision held that there is no obligation on a caseworker administering social service or welfare programmes to obtain a warrant to enter premises. It is argued in the United States that in order to protect the privacy of the welfare recipient what is needed is not so much a restriction on entry without warrant but recognition of a constitutional right which limits the discretion of the caseworker once inside the home. It has been suggested that the Supreme Court may ultimately recognize a right of privacy in the welfare recipient which would protect him from continuing surveillance and questioning about his personal and social life and ensure his control over the management of his home and the raising of his children.

In Australia it may be true that public officials usually act with discretion and tact. But it should be noted that officers of health departments, agriculture departments, fisheries and wildlife organizations, and food-marketing authorities hold powers to enforce their acts which are far wider than those of state police. However, the Human Rights Bill specifically provided that a "search and seizure" should not be deemed to be "unreasonable" if directed towards a variety of lawful objects including the enforcement of safety, health, or construction standards or the regulation of trade or commerce. These are very wide exemptions and deprive the general prohibition on "unreasonable search and seizure" of much of its force.
CENSUS

There is no doubt that the census has the potential to become an obnoxious invasion of privacy, and there are those who consider that some of the questions asked constitute an unwarranted intrusion. However, it appears that census questionnaires have so far been kept within reasonable bounds and their framers have been sensitive to public opinion.

Information given to the census officials in Australia is strictly confidential. No names or addresses go from the census forms on to computer tape. Any officer who divulges anything from census forms is liable to a penalty under the Census and Statistics Act. The act provides that forms cannot be seen by anyone other than officers of the Australian Bureau of Statistics. The information is used only for obtaining the statistics that are essential for national planning with regard to such problems as housing, education, and welfare of the aged, widows, Aborigines, and migrants and are also of use to private individuals, the business community, and researchers.

There is an increasing need for social planning based on accurate information. Using the issue of privacy to prevent the gathering of such information may serve only to deprive the public of the opportunity for informed criticism of government and corporate policies.

THE PRESS

This is a most sensitive area because interests in privacy and in freedom of expression come into direct collision. There are those who take the view that the latter is of such importance that it outweighs in all cases the interest in privacy and that the press should be totally unfettered in carrying out their function of disseminating truth. Thus if a civil action for invasion of privacy is established it should exempt the press entirely.

Others point out that freedom of expression has never been regarded as an absolute value; otherwise there would be no law of defamation, perjury, or breach of copyright. Given that some restrictions are justified in order to prevent injury to others, it is argued that there is an area of man's life which he is entitled to keep to himself unless the public interest clearly requires intrusion into this zone of privacy. Advocates of this view would support the establishment of a tort of invasion of privacy subject to a newsworthiness exception. Careful drafting will be needed to ensure that the exception extends only to publication of material where it is in the public interest rather than to material which is of public interest, which
would give the press free rein to satisfy prurient tastes or idle curiosity.

A third view is that improper press practices can best be left to extra legal self-regulation by a body such as the Press Council in England, which adjudicates on complaints from the public about the conduct of the press. It is doubtful whether such a body—which consists of members appointed by the press, acts *ad hoc* without definite guidelines, and has no power to impose sanctions—has been or could be an effective curb on press excesses. The only sanction is the publicity given to an adverse adjudication and the moral pressure on the offending newspaper to publish a report of it; this is usually done but sometimes in an unobtrusive corner or with a counter-attack alongside.

The Younger Committee recommended no civil sanctions but only certain reforms in the constitution and procedure of the Press Council, viz., that at least half its membership should come from outside the press, that the offending newspaper should be required to publish an account of an adverse adjudication and give it at least as much publicity as the original item, and that the Press Council should endeavour to codify its adjudications on privacy in a form which would give readier guidance to journalists and the public.

The committee also rejected the suggestion that criminal sanctions should be imposed on publication of certain types of material. However, many states in America have legislation prohibiting publication of the names of innocent victims of crime, especially rape, and a good case can be made for prohibiting publication of such material as the details of wills and estates admitted to probate and the names of persons involved in heart-transplant cases. Matters of public record are not necessarily matters of legitimate public concern. Often the public's claim to be informed can be satisfied by reporting events without identifying individuals.

Because the individual is very much at the mercy of organs of the mass media and unjustifiable publicity given to his private affairs may have catastrophic consequences for him, it might be thought that controls of some kind ought to be imposed. Unlike other media such as television and radio, which operate under government licences, the press is subject to no external restrictions. Steps could well be taken to protect individual privacy in all three of the ways mentioned; by legislating for a civil remedy and criminal sanctions and by seeking the establishment of a body that can exercise a continuing supervision over press activities and publish and keep under review a code of conduct to which members of the press must adhere.
APPROPRIATION OF NAME, PERSONALITY, OR LIKENESS FOR PRIVATE GAIN

The appropriation of a person's name, personality, or likeness for private gain would seem to be totally indefensible. There is no suggestion here of any legitimate public interest which conflicts with the individual's right to exploit his own personality.

Although this type of wrong is actionable in the United States as an invasion of privacy, some writers have suggested that it is more aptly described as a violation of a "right of publicity" which entitles a person to prevent exploitation of his proprietary rights by others without his permission. The gravamen of the wrong, it is said, is not injury to the plaintiff's feelings as it is in the other branches of the tort. It may not be appropriate therefore to include these cases in the definition of a tort of invasion of privacy, but rather to legislate along the lines of statutes in some of the American states. A statute in New York, for example, imposes civil and criminal sanctions on the unauthorized use of a person's name, portrait, or likeness for advertising purposes or the purposes of trade.

UN_SOLICITED GOODS, LITERATURE, PHONE CALLS, AND VISITS

Solicitors and peddlers of goods and printed matter, market researchers, public opinion surveyors, purveyors of religious messages, and charity workers frequently disturb households in their repose, and the practice of sending unsolicited advertising material and even goods through the mail is becoming increasingly common.

These activities have resulted in recent legislation in Britain and most states of Australia which entitles a private individual to treat unsolicited goods sent to him as an unconditional gift once he has given notice to the sender that they may be repossessed and the sender has not collected them within a specified time. Legislation in the United States entitles a recipient of erotically arousing or sexually provocative material to cut off his household from all further mail from that source.

Other solutions to these types of intrusion could include a complete ban on all advertising material to private addresses or an obligation on distributors to indicate on the envelope the nature of the material. This latter suggestion might be sufficient in view of the findings of the Younger Committee, which indicated that what most people are concerned about is receiving unsolicited literature of a sexual nature.
There is a clear conflict here between the individual's claim to privacy and the communicator's claim to freedom of speech. The principle of freedom of trade is often involved also. It is arguable that because of the fairly minor inconvenience caused to householders by such unwanted communications and the strength of the competing interest, the law should be hesitant to intervene.

However, there is a related problem which may be a cause for greater concern. Often the reason why a householder is bombarded with unwanted literature is because his name has found its way on to a mailing list which has come into the hands of the communicator. A person's name may be on a mailing list because he has bought a house or a car, taken a holiday, subscribed to a magazine, or announced his engagement. If information is given to another for a limited purpose it is reasonable to take exception to that person's commercially exploiting the information for an unauthorized purpose. Trafficking in mailing lists is very common in the United States and evidently so here.

At the moment there is no legal right to object to such practices. This is another example of the absence of any right to control collection or dissemination of personal information about oneself. If the magnitude of the problem were thought to justify it, legislation could be introduced, for example, requiring registration of mailing list brokers and regulating their activities. Or the senders of unsolicited mass mail could be required to indicate clearly where they obtained the name of the recipient and the recipient could be given a right to have his name removed from specific lists.

**INDUSTRIAL ESPIONAGE**

Surveillance of business competitors has been found to be valuable, for example in the construction industry, where competitive bidding information can mean success in highly prized contract awards, or in the automotive industry, where information is sought about new models, specifications, and performance, and in other industries where trade secrets play a vital role, such as chemical, drug, design, and electronics industries. "Industrial espionage" encompasses such activities as wiretaps, use of recording or listening devices, planting spies, suborning employees, theft of documents, and impersonation.

Though the law prohibits some of these activities, the main gap in the legal armoury is the absence of a crime of theft of industrial or commercial information. A measure of protection is afforded by the civil law on breach of confidence, and this would be considerably strengthened if a general tort of invasion of privacy was established.
But this type of misappropriation should be prohibited under criminal penalties. The legislature would have to endeavour to define the sort of information which is susceptible of theft and to distinguish the criminal conduct from legitimate gathering of business information.

**INSURANCE COMPANIES**

Some of the practices of insurance companies are considered to be unduly intrusive. The argument that by taking out an insurance policy a person implicitly consents to an invasion of his privacy which may occur when he makes a claim ignores the fact that he is not forewarned that this will happen, and often the investigations are done without his knowledge. In any case no such implication can arise where the subject of inquiry has no contractual relations with the insurance company, such as where a widow suing for compensation for the death of her husband is subjected to investigation regarding her life expectancy, prospects of remarriage, etc., by the defendant’s insurance company. Finally, it might be thought improper for insurance companies to use the services of credit bureaux or other organizations that collect and sell information.

**CONCLUSION**

It is clear that discussions about the extent to which we ought to be entitled to enjoy privacy in this society involve very many controversial issues. This is because the claim to privacy clashes with other important objectives and goals. The whole problem resolves itself into a question concerning the points at which privacy should be subordinated to or should override other interests. There is a danger that in the pursuit of such positive objectives as efficiency in business and government, law and order, and material prosperity, the interest in privacy, being a negative value, may be downgraded. We must be prepared if necessary to sacrifice other ends to give full recognition to privacy. Loss of privacy involves loss of dignity, loss of individuality, and loss of the ability to control one’s destiny. The right to enjoy privacy is essential to the achievement of human happiness. It is important, therefore, that the value of privacy should be kept well in the forefront of the view of those who are in a position to affect the lives of others in major respects, be they legislators, judicial officers, educators, businessmen, newsmen, or as the case may be. Establishment of a general right of privacy such as was
sought to be introduced by the South Australian and Tasmanian privacy bills and the Human Rights Bill would have the salutary effect not only of providing concrete remedies in individual cases but of encouraging and reinforcing community attitudes of respect for privacy. The sort of continuing administrative machinery which has been set up in New South Wales would of course achieve the same result.
UNIONS:
Their Present and Future Roles

D. J. Murphy

Australia is one of the most highly unionized nations in the Western world. At the end of 1974, 55 per cent of all wage and salary earners belonged to trade unions. Breaking this down into male and female components, the Australian Bureau of Statistics reported that 61 per cent of male and 45 per cent of female wage and salary earners were members of trade unions. Trade union membership reached a peak in 1948 when almost 65 per cent of wage and salary earners belonged to trade unions. It was in that year that almost 70 per cent of male workers were union members, while the high peak of female union membership was reached in 1945 with almost 52 per cent of female wage and salary earners in unions. The percentage of total union membership held at the middle-to-high 50s throughout the 1950s and 1960, dropped to 50 per cent in 1970, but has climbed steadily since, probably owing to substantial increases in unionization among certain white-collar workers.

International comparisons of trade union membership are not always valid, e.g., some countries include government employees, others don’t. A recent study by Don Rawson, published in the *Journal of Industrial Relations*, provides the following comparison of union membership in comparable countries.2

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of Manual Employees in Trade Unions</th>
<th>Percentage of Non-manual Employees in Trade Unions</th>
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</thead>
<tbody>
<tr>
<td>Australia</td>
<td>64</td>
<td>41</td>
</tr>
<tr>
<td>United States</td>
<td>56</td>
<td>13</td>
</tr>
<tr>
<td>West Germany</td>
<td>42</td>
<td>24</td>
</tr>
<tr>
<td>Britain</td>
<td>53</td>
<td>38</td>
</tr>
<tr>
<td>Norway</td>
<td>65</td>
<td>58</td>
</tr>
<tr>
<td>Sweden</td>
<td>80</td>
<td>70</td>
</tr>
</tbody>
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Australian trade unions are the direct descendants of British craft and labour unions. Migrant workers coming to Australia during and after the gold rushes in the middle of the nineteenth century brought their trade unionism with them. They found in the Australian colonies an environment where unionism could survive and grow. Their unions were principally those of skilled tradesmen; later, unions of unskilled and semi-skilled workers such as miners and seamen were formed. Throughout Australia in the 1880s, "new unions" of labourers, shearers, carriers, and the like were formed, almost—but not entirely—among males, and they numbered their membership in the thousands, not in the tens and hundreds of the early exclusivist craft unions. However, as with the craft unions, these "new unions" were for white men only, not for Aborigines or Asiatics. It was to take until the middle of the twentieth century for unions to break out of the old White Australia attitudes.

Unions early exhibited two characteristics that were to develop more fully in the twentieth century: the desire for greater unity in the labour movement and for labour to involve itself directly in politics and be represented in the parliaments by its own class and not by middle-class liberals and conservatives. However, the combination of the failure of the maritime strikes, the greatest industrial dispute in Australia’s history, and the depression of 1890 almost destroyed unionism in Australia, and it was not until the middle of the first decade of the twentieth century that Australian unionism returned to its previous goals and growth. By 1911 there were as many working men and women holding trade union membership tickets as there had been at the height of union membership in 1890/91. By 1920, 54 per cent of wage and salary earners belonged to trade unions, though there was a large social gap and often a larger gap in attitudes to industrial and political action between the traditional "blue-collar", largely manual, unions and the newer "white-collar" and public service unions.

Why has Australia been able to maintain such a consistent pattern of union membership that is very high by international standards? The answer lies partly in the nature of society in Australia, where union membership was encouraged by liberal and even some conservative politicians, and where emerging unions were able to follow patterns being set in Britain while not facing the same social and political opposition as did their counterparts in most western European and English-speaking societies. Further, once unions had formed their own political Labor parties and these moved into government or were the principal opposition parties, it was not possible for employers or even foreign-owned companies to use the power of the state to inhibit the legitimate right of working men and women to form protective trade unions.
The factors that contributed to the regrowth of unions in the early twentieth century and the emergence of new white-collar and public service unions, and which were to hold the high union membership characteristic of the following fifty years, may be broadly listed as:

(a) The establishment of wages boards and arbitration courts where trade unions were legally recognized as the official spokesmen for employees

(b) The advances in pay achieved through the favourable decisions of Mr Justice Higgins in the Commonwealth Conciliation and Arbitration Court, and by other arbiters, and the impetus this gave to unorganized workers to become members of trade unions

(c) The insistence by state and commonwealth governments that decisions of wages boards and arbitration courts carried the full force of the law and were binding on all employees

(d) The success of unions, politically, through the Labour party in having laws passed that favoured the operation and development of unions and others that clearly provided security for working men and their families

(e) The provision of the right of public servants to seek higher pay and better conditions through the Arbitration Court and therefore to form free trade unions

(f) The insistence, as far as possible, by union officials on having preference-to-unionists clauses inserted into awards.

This spectacular growth of unionism was accomplished with comparatively little open combat between labour and capital or between workers and management. Indeed, it must be emphasized that Australian unions and Australian labour relations have been comparatively peaceful when compared with their counterparts in the United States. There was no need for an Australian John L. Lewis to threaten to bare his chest to National Guard bullets and bayonets and invite the state troops and armed strike-breakers outside the General Motors plant at Flint, Michigan, to shoot him first as he defended the right of workers in 1937 to form a union.

There have been violent attempts to suppress unionism in Australia, e.g., in the maritime and shearer's strike of the early 1890s, when armed troops were called out to cut down the strikers, and in the Brisbane general strike of 1912, when the police baton charge on 'Black Friday' became an infamous day in union history. But these had little effect in the long term in suppressing union growth or activity. Unions were subjected to police brutality and intimidation in other industrial disputes, such as the coal lock-out in New South Wales in 1929, the railway strike in Queensland in 1948, and the Mount Isa dispute in 1965, but none of these matched the armed violence against unionists that the United States has
recorded. Australian unions themselves have been notably peaceful and peaceable in their endeavours to recruit members and to act on members' behalf. Almost all the violence of Australian industrial relations has come from state governments.

While Australian unionism has a continuing record of high membership, it also has an extremely large number of individual unions. In 1974 the Bureau of Statistics estimated that there were 286 separate unions in Australia. It was only in 1973 that the bureau was able to report a drop below 300 to 294 unions, the first time the number of unions has fallen below 300 for over fifty years. Amalgamations and the disappearance of certain unions through changes in industries have been the main causes of this reduction. While the number of separate unions has dropped, the number of unionists has increased to 2.77 million, made up of 1.97 million males and 0.79 million females. Almost 80 per cent of unionists belong to unions affiliated with the Australian Council of Trade Unions (ACTU), and approximately 65 per cent to unions affiliated with the Australian Labor Party (ALP). Altogether, around 44 per cent of wage and salary earners are affiliated members of the ACTU and around 36 per cent are affiliated members of the ALP.

Although Australia has a very large number of individual trade unions, most unionists in fact belong to unions having ten thousand members or more. The basic pattern of Australian unionism, then, is a large number of small unions with few members, and a relatively smaller number of fairly large unions. This is more clearly illustrated in the analysis of trade union membership figures at December 1974 in table 2.

Table 2. Number and Membership of Unions

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Separate Unions</th>
<th>Total Union Membership</th>
<th>Proportion of Total Union Membership as a Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 2,000 members</td>
<td>175</td>
<td>102,700</td>
<td>3.7</td>
</tr>
<tr>
<td>2,000–5,000 members</td>
<td>39</td>
<td>123,200</td>
<td>4.4</td>
</tr>
<tr>
<td>5,000–10,000 members</td>
<td>22</td>
<td>179,000</td>
<td>6.5</td>
</tr>
<tr>
<td>10,000–50,000 members</td>
<td>34</td>
<td>870,900</td>
<td>31.5</td>
</tr>
<tr>
<td>Over 50,000 members</td>
<td>16</td>
<td>1,497,900</td>
<td>54.0</td>
</tr>
</tbody>
</table>

It is probably realistic to suggest that a union needs about ten thousand members in Australia to have the financial resources needed to conduct its businesses at the minimum level of efficiency. It will be seen from table 2 that—

(a) there are 236 unions having fewer than ten thousand members and only fifty having over ten thousand members;
(b) 404,900 unionists or 14.6 per cent of the total belong to unions having fewer than ten thousand members, while 2,368,800 unionists or 85.5 per cent belong to unions having more than ten thousand members.

While several unions having fewer than ten thousand members come to mind as being very efficient and effective organizations—e.g., the Seamen's Union of Australia—there is a real area of concern about the effectiveness of many small unions, particularly those with part-time officials only. Many of the small unions rely heavily on the arbitration system to provide "flow-ons" of wages and conditions for which other unions have expended considerable sums of money and industrial effort. They are not able to represent effectively their members' needs in other union areas. Most of the small unions are not capable of bargaining directly with employers and could not function outside the compulsory arbitration system.

In the four states where unions are required to register with the arbitral tribunals—New South Wales, Queensland, South Australia, and Western Australia—there are minimum membership requirements to form trade unions. But these are very small, ranging from fifteen members in Western Australia and twenty in South Australia to fifty in Queensland and New South Wales. These minimum requirements apply to unions whose members are covered by awards of the arbitration tribunals in those states only. For workers covered by the awards of the Commonwealth Conciliation and Arbitration Commission, the minimum size is one hundred employees. However, under the Public Service Arbitration Act, a union of fewer than one hundred members may be formed provided that three-fifths of those members are employed in the public service. The Australian Bureau of Statistics showed thirty-three unions at the end of 1974 having fewer than one hundred members. Between the publication of the first edition of A Handbook of Australian Trade Union and Employees' Associations by D.W. Rawson and Suzanne Wrightsen in 1970 and the second edition in 1973, the membership of the Industrial Arbitration Registrars Association leapt 20 per cent from five to six members! This is Australia's smallest registered union but is not exactly the clarion call to any Marxist rising of the working classes. Not is it a problem to the two largest unions, the Amalgamated Metal Workers Union and the Australian Workers Union, both having over 150,000 members.

Australian unions are more closely regulated than those of most comparable countries. In the four states where arbitral tribunals operate, and for Commonwealth Conciliation and Arbitration Commission awards, unions are required to register in order to
appear before these tribunals. In Victoria and Tasmania a system of wages boards operates which does not require union registration but which recognizes the right of employees to be represented at wages boards hearings by full-time trade union officials.\(^5\) In the commonwealth arbitration sphere, industrial awards are made for members of unions which are properly registered with the tribunal. However, a state arbitration court can make an award binding on all employees in an industry even though these may not be members of registered unions and their employers not parties to the case. This is called the "common rule".

Registration provides certain legal protections for unions. It provides them with the machinery for enforcement of awards against bad or lax employers; it allows them to sue members for union dues and levies, a rare occurrence; and it may provide preference in employment for members of the particular union. Until recently, in Queensland, registration protected the union from being sued for financial loss suffered by an employer as a result of a strike. This same protection, which arose out of the British Trade Disputes Act of 1906 following the Taff Vale case, was not afforded to unions in other states or to unions under commonwealth awards.\(^6\) Registration, however, also provides for certain restrictions on internal union organization and government. Union rules are subject to approval by the particular industrial registrar; union elections must follow certain rules, and elections may be declared void; there are protecting clauses regarding expulsion of members (and therefore losing employment in those industries where by agreement between unions and employers, only union labour is employed). Some rules have been deliberately inserted by non-Labor governments to inhibit union growth and strength. For example, in the Commonwealth Conciliation and Arbitration Act there are forty clauses governing the methods by which unions wishing to amalgamate may legally do so. These were so framed that amalgamation—a simple process under state government legislation—has become extremely difficult for the larger interstate unions. Similar laws do not prevent business merges.

To the outsider, the state of Australian unionism therefore can be quite complicated. There are different laws in each state governing the form under which unions negotiate either directly with employers or before a tribunal. Quite apart from these, but impinging upon them, are the laws governing the actions of unions involved in industries that extend across state borders and therefore may come within the jurisdiction of the commonwealth tribunal. Most trade union officials and many employers are therefore forced to become intimately conversant with a range of both com-
monwealth and state awards and allied labour acts and with the different tribunals associated with these. About half of Australia’s unionists have become registered with the Commonwealth Conciliation and Arbitration Commission, but there are historical, geographical, and constitutional reasons for some unions or parts of unions to remain under state awards. The latest survey of awards published by the Bureau of Statistics was in May 1974. The figures in table 3 indicate that there has been a slight movement towards state awards.

Table 3. Percentages of Employees Affected by State and Federal Awards (males and females combined)

<table>
<thead>
<tr>
<th>State</th>
<th>Under Federal Awards</th>
<th>Under State Awards</th>
<th>Not Covered by Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>41.7</td>
<td>37.7</td>
<td>34.4</td>
</tr>
<tr>
<td>Vic.</td>
<td>56.3</td>
<td>52.0</td>
<td>50.8</td>
</tr>
<tr>
<td>Qld.</td>
<td>20.2</td>
<td>23.4</td>
<td>26.4</td>
</tr>
<tr>
<td>SA</td>
<td>51.4</td>
<td>50.1</td>
<td>44.4</td>
</tr>
<tr>
<td>WA</td>
<td>13.9</td>
<td>16.6</td>
<td>17.4</td>
</tr>
<tr>
<td>Tas.</td>
<td>48.2</td>
<td>42.7</td>
<td>45.0</td>
</tr>
<tr>
<td>Aust.*</td>
<td>42.5</td>
<td>40.1</td>
<td>39.2</td>
</tr>
</tbody>
</table>


* Excludes Northern Territory and the ACT, members of defence forces, employees in agriculture, and certain other very small groups of employees.

TYPES OF UNIONS

Although the term trade union movement is often used, it can be quite misleading. There is no monolithic organization which could be adequately described as the trade union movement. There is a range of ideological beliefs stretching from the far Left to the far Right, from Trotskyism to fascism, from the most intelligent democratic socialism to the most crass conservatism. There are many different unions which cater for a variety of occupations, incomes, and social classes. The medical practitioner at the general hospital is a member of a union usually having a name like ”Professional Officers Association”. There are unions such as the Association of
Professional Engineers of Australia and the Australian Federation of Air Pilots, which we might describe as being middle-class unions. Because they are associations of employees concerned principally with the negotiation of rates of pay and conditions of employment for their members (the definition of a trade union applied by the Australian Bureau of Statistics), these are legitimately parts of the trade union movement. So are the labourers who belong to the Australian Workers' Union, the lift-drivers who belong to the Federated Miscellaneous Workers Union and the female canner workers of the Federated Storemen and Packers Union of Australia. This latter group are more usually thought of when trade unions are discussed. When Mr Hawke speaks publicly about the trade union movement, he has in mind the majority of those 80 per cent of unionists who are affiliated with the ACTU and also some white-collar and public service unions.

As well as having differences in size and commitment to various traditional Australian union objectives, unions have different ways in which they organize themselves and see their role as the representative of their members. Broadly there are three categories of unions: national, interstate or federal, and single-state. However, there are other terms which are or were fairly commonly used, such as craft, general, industrial, white-collar, public service, isolationist, and "boss's" unions. While this second group has a historical basis, it no longer contains terms which are valid in their historical sense.

National Unions

National unions are organized centrally on a national basis—i.e., their governing body is the national executive or council, and the state, local, or district branches are subject to national policy and financing. Nationally based unions are found among Australian government employees and are such unions as the Federated Ironworkers Association. In this union, the branches are organized in those areas where the iron industry is significant, e.g., Newcastle, Port Kembla, and Sydney in New South Wales, and in Queensland, Victoria, and other areas. The national secretary is the most important official in this type of union organization.

Interstate or Federal Unions

Most Australian unions were originally organized in one state or colony or in one locality in a particular state or colony. With the coming of Federation in 1901, the Commonwealth Conciliation and Arbitration Court in 1904 (it was divided into the Commonwealth Conciliation and Arbitration Commission and the Commonwealth
Industrial Court following a High Court decision in 1956), and the favourable awards provided by the court's second president, Mr Justice Higgins, it became necessary for unions having members working in industries that crossed state borders to join together on a federal or interstate basis. While there was no problem joining federally, it often depended on the High Court's definition of the terms "industry" and "extending beyond the limits of any one state" as to whether the federal union could appear before the commonwealth tribunal.

In interstate unions, the greater power resides with the individual state branches. Here most of the funds are collected and spent, most of the full-time officials are employed, and most of the decisions are made. There is usually a full-time federal secretary and perhaps a full-time federal research officer. With around half of the unionized employees still under state awards, a great amount of time must be spent by union officials looking after the needs of these employees. Further, since many companies and employers decentralize some of their organization to the state level, local union officials must match this organization and keep an eye on the application of federal awards.

**Single-state Unions**

There are two categories into which single-state unions fall: (a) those unions which cover employees of state governments and which have been ruled by the High Court as being in employment which is either not constitutionally an "industry" or which is not interstate in character (e.g., police unions, teachers unions, and state public service unions; (b) those unions, often covering state government employees, which could belong to interstate organizations, but which register in one state only and which do not seek to federate or amalgamate with similar unions in other states (and often in their own state).

As table 4 indicates, most trade union members belong to unions that are interstate and national in character. The high union membership of single-state unions rests on the size of public service, teachers, and police unions.

**Craft Unions**

Craft unions were originally those unions of tradesmen or craftsmen in the nineteenth and early twentieth centuries who saw their union not merely as a protector of their own jobs and security but also as a body guarding the skills of the trade itself. They were small, sometimes isolationist, and often exclusivist unions much criticized
Table 4. Distribution of Unions among States

<table>
<thead>
<tr>
<th>Number of States in which Union Operates</th>
<th>Number of Unions</th>
<th>Number of Union Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>One only</td>
<td>146</td>
<td>167,600</td>
</tr>
<tr>
<td>Two</td>
<td>8</td>
<td>17,200</td>
</tr>
<tr>
<td>Three</td>
<td>7</td>
<td>98,900</td>
</tr>
<tr>
<td>Four</td>
<td>14</td>
<td>103,900</td>
</tr>
<tr>
<td>Five</td>
<td>21</td>
<td>202,800</td>
</tr>
<tr>
<td>Six</td>
<td>92</td>
<td>2,183,200</td>
</tr>
<tr>
<td>TOTAL</td>
<td>286</td>
<td>2,773,600</td>
</tr>
</tbody>
</table>


by some other unions for preventing the emergence of industrial unionism in order to protect their members' rights in employment. As a result of machines performing jobs previously done by tradesmen, the old craft basis of unionism has in effect died. Large numbers of semi-skilled "dilutees" were allowed into the craft unions during the Second World War. The Electrical Trades Union has now only about 50 per cent of its members who are qualified tradesmen.

**General Unions**

Unions that cover all workers irrespective of whether they are skilled or unskilled and which do not restrict themselves to one particular industry are called general unions. The occupations they cover are now largely governed by the decisions of arbitration tribunals and by agreements with other unions. The Australian Workers' Union and the Federated Miscellaneous Workers Union are the best examples of general unions.

**Industrial Unions**

The ideal for trade union thinkers has been to have only one union covering all the employees in an industry, whether these were manual or clerical workers, unskilled or skilled. Such a union, called an industrial union, would cut across craft exclusiveness and the status differences between clerical and manual workers and strengthen the hand of union leaders in negotiations with employers. It is still regarded as something of an ideal, and despite the early efforts to build industrial unionism, the ideal has not become the reality. The Australian Railways Union and the Australasian Meat Industry Employees' Union were attempts to form industrial unions.
White-collar Unions

Although there were unions of clerical and non-manual workers in the late nineteenth and early twentieth centuries, it was not until after the first World War that such employees dared form themselves into unions in large numbers. These unions—or associations, as many preferred to be called—were marked by their refusal to join in the main stream of trade unionism; hence "white-collar unionism" was meant to denote a degrading and lesser form of unionism. There was in fact a social as well as an economic and industrial difference, and the term white-collar designated unions that were distinguished and distinguishable from the blue-collar or manual unions.

Since the 1950s there has been a rapid decline in the notion that white-collar unions were inferior, as the white-collar unions have been increasingly moving into the main stream of unionism and using similar industrial tactics to those of other unions.

Public Service Unions

When unions were first being formed in Australia, colonial governments and then the government of the Commonwealth of Australia prohibited their employees from joining or forming unions. Employees in the railways and the post offices formed unions nevertheless. It was only after the Fisher (Labor) government specifically passed legislation in 1911 allowing public servants to have access to the Commonwealth Conciliation and Arbitration Court that unions were formed among commonwealth public servants. State public service unions followed as the states passed similar legislation. However, except when some Labor governments were in office, governments discouraged career-conscious public servants from affiliating with trades and labor councils, the Labor party, and other union bodies. Thus, public service unions, like their white-collar counterparts, kept apart from the main stream of trade unionism. Recent years have marked closer contact and closer cooperation between public service unions, particularly in the commonwealth area, and other trade unions.

Isolationist Unions

Unions that keep exclusively to themselves and do not affiliate with other unions in the Australian Council of Trade Unions, trades and labor councils, the Australian Council of Salaried and Professional Associations, or the Council of Australian Government Employee Organizations are often referred to as "isolationist" unions. Many are efficient unions, but they contribute nothing to the union move-
ment as a whole and are not available to assist other employees in their union affairs. There are about 120 such unions in Australia with a membership of around 130,000.

"Boss's" Unions

In the early twentieth century, when certain employers were resisting the attempts to have their employees enrolled in unions, the employers themselves formed unions for their employees and gave preference to these over legitimate unions. Some of these unions survived, tied to one employer, but most eventually amalgamated into legitimate unions or faded away, "unwept, unhonoured, and unsung".

IDEOLOGY AND UNIONS

Two-thirds of Australian unionists are affiliated with a union-based political party, the Australian Labor Party. Four-fifths are affiliated with the ACTU, which has as its objective "the socialization of industry and the utilization of the resources of Australia for the benefit of the people, ensuring full employment with rising standards of living, real security and full cultural opportunities". These immediately suggest that a left-of-centre ideology has some importance among Australian unions. There is certainly a deeper ideological affinity between Australian and British unions than between Australian and American unions. Australian unions would find it hard to accept that the militant John L. Lewis would have supported the Republican Thomas Dewey against Franklin D. Roosevelt in 1944 or that the president of the American Federation of Labor-Congress of Industrial Organizations could have supported, in 1972, a person with Richard Nixon's record.

Two broad ideological influences have been present in Australian unions throughout the past eighty years: syndicalism and social democracy. For a time in the 1940s and the 1950s, a Catholic European influence was evident. Throughout all the period, middle-class aspirations, the search for the small man's paradise, and sheer Australian philistinism have also been strong influences among union members.

Syndicalism was largely a European influence, though it came also through British and American sources. It was based on the thesis that unions should be organized only on an industrial basis; through the use of the strike weapon and direct industrial action, workers would be led to the general strike—i.e., when all labour
ceases work—and in that final general strike organized labour would confront organized capital, labour would win, and power would be wrested from the owners and controllers of capital and passed over to the workers. Syndicalists argued that unions should not be concerned with reforms here and now, but should concentrate their strength on industrial action with the ultimate goal of the One Big Union and the successful general strike. The syndicalist thesis of union action argued that unions should not become involved in day-to-day politics; they should not affiliate with a political party, and they should not deviate from their clear path by accepting reforms which were mere palliatives designed to reduce the workers' willingness to be involved in industrial struggles. It will be readily observed that, in its pure form, syndicalism could have little appeal to white-collar or public service unionists concerned for their promotion or careers, nor could pure syndicalism hold many blue-collar trade union leaders, whose very job demanded a great deal of pragmatism and working for day-to-day improvements, often by using the political processes. Syndicalism, at its height, influenced no more than about 10 per cent of Australian unionists. It found its outlet in some of the earlier socialist parties, in the Industrial Workers of the World before and during the First World War, in the One Big Union movement after the First World War, and in the communist parties and other small left sectional parties that have emerged.

Social democracy or democratic socialism, as it is often called, came through the British trade unions and labour movement, often with European antecedents. British trade unionism was to have the greatest outside influence on the Australian union movement. Social democracy taught that unions should involve themselves in achieving reforms as quickly as possible while keeping as their ultimate goal the changing of the basis of economic, social, and political power. Unions should involve themselves directly in politics and in their own political party. As with the syndicalists, the ideal was the industrial union, but being more pragmatic than the syndicalists, the social democrats accepted the inevitability of craft unionism. The social democratic ideology also saw the use of strikes as a legitimate union weapon to achieve industrial ends. It was to be this broad influence, plus a belief that Australia would produce an egalitarian society which produced the Labor parties as working men's reform parties. Though these were based on trade unions, they were never to be exclusively trade union parties. They were to be the parties that drew in all kinds of reformers.

Labor parties in Australia, Britain, New Zealand, Scandanavia, and recently Canada are characterized by having trade unions
directly affiliated with them. While there are times when the Australian unions and the Labor party have been in conflict, direct union affiliation has been beneficial to both. Schemes for employment, workers compensation, physical protection on the job, unemployment benefits, advances in the conciliation and arbitration structure, preference to unionists, and trade union training are some of the easily recognized benefits that have been gained by unions through political action. Australian unions have expected welfare programmes to be provided by state or commonwealth governments and have consequently directed their attention to the Labor parties in this area rather than to employers. The Labor party, on the other hand, has been prevented from being pulled into an "ordinary liberal" political position by its own social democratic ideals and by pressure from its affiliated unions. This often resulted in the appearance of a political party that was involved in one long, continuing, open political debate. This is annoying often to Labor party members, but is a lot healthier in a democracy than accepting the word from one single source.

It would seem to be unlikely that more unions will affiliate with the Labor party, though it is evident that as the white-collar and public service unions have merged into the main stream of unionism and the influence of the Democratic Labor Party-National Civic Council has lessened, these unions have found themselves socially and ideologically closer to the Labor party. They have little common ground with the Liberal and National Country parties.

Unlike the unions of Europe, Australian unions have not been divided on religious grounds. The Australian population has been largely 75 per cent Anglican and Protestant and 25 per cent Catholic. While Catholics have produced a higher proportion of political Labor leaders than this, such has not been the case in the trade unions. Apart from a strong freemason element among craft union leaders and among white-collar union leaders, there was no distinctively religious element in Australian trade unions until immediately after the Second World War, when the small Catholic group known as "the Movement" emerged. This group, organized by Melbourne Catholic lawyer B.A. Santamaria with financial support from Archbishop Daniel Mannix of Melbourne and other Catholic bishops, aimed initially at removing communists from trade union posts, but then continued to organize for the replacement of orthodox ALP union officials by those more closely allied to the political ideologies of the Movement. A highly secret organization, the Movement worked through an official ALP organization called the Industrial Groups, which consisted of anti-communist Catholics, Anglicans, Protestants, and agnostics. Few in the In-
Industrial Groups were aware of the organizing core of Movement men who acted as unofficial steering committees of the particular groups. With the disbanding of the Industrial Groups by the federal executive of the ALP in November 1954 and the withdrawal of official support of the Catholic hierarchy, the Movement changed to the National Civic Council (NCC), a wholly Catholic lay organization. Communist influence in trade unions had declined remarkably between 1948 and 1954; orthodox trade unionists were suspicious of the aims of the Movement and the NCC, and the influence of the latter declined through the 1960s. In recent years the NCC has been a problem for the white-collar unions by using its outside organization to gain secret control of the union executive. The ploy was to have elected to the executive apparently non-committed delegates whose NCC connections were unknown to the orthodox members.

Although it may be a gross distortion of the very term ideology, the other factor that has shaped the nature of Australian unionism has been the strength of the general aspirations of Australians for the comfortable middle-class existence. While the traditional belief in an egalitarian society fits uneasily with this notion, there has been no myth similar to that of the American society of the poor boy making good through hard work and becoming a Rockefeller or Carnegie. Australian workers have accepted that they will remain employees working for a boss or for a company or an office or a local council or a government department. The union has been a major feature in the path to the good, comfortable middle-class life, even for those who have refused to join a union but have readily accepted its financial and other gains. Since Australian unions have been generally peaceful and in support of the notion of the small man's paradise, there has not been quite the same fierce objection to unions among farmers or self-employed tradesmen as in some other parts of the world. Indeed, many are former unionists who continue to hold union tickets after they have ceased to be employees.

This aspiring middle-class ideology towards unionism has put more emphasis on the wages and conditions side of unionism and less on the brotherhood of man and the social democratic role. It has been the union leaders who have been most interested in the political side of unionism. Nevertheless, studies have shown that about 60 to 80 per cent of unionists in unions affiliated with the ALP accept that there is benefit to the union in such affiliation.\textsuperscript{6} Many rank-and-file members, however, believe the union should concern itself only with wages, hours, and conditions of work and nothing else, neither politics nor poverty, peace nor prices. These are the most philistine and often the least useful union members.

There is a mistaken belief that militancy—i.e., the willingness to
take direct industrial action and to use the strike weapon—is the characteristic of those unions having a strong syndicalist influence. Miners and waterside workers are usually singled out in this regard. Militancy does not mean simply left-wing attitudes in industrial and political affairs. Indeed, the Australian Federation of Air Pilots has shown that a group of highly paid, socially middle-class employees can be as militant in seeking their industrial demands as any union of miners, waterside workers, or metal workers.\(^9\) As the traditional lines of difference among blue-collar, white-collar, and public service unions blur and it becomes clearer that all employees have similar industrial problems (and similar social, economic, and political problems), there will be an increasing tendency for all types of unions to use similar industrial methods.\(^10\) In an environment where there is continuing economic uncertainty, levels of militancy can be expected to increase. In a society where an arbitration system sets minimum wages, it is possible for the stronger unions to fulfil their members’ desire for greater private affluence through industrial means, while the social democrats among them seek to overcome public squalor through political means.

**PEAK COUNCILS**

One of the earliest goals of trade unions was to produce a closer unity among workers and among their unions. “Workers of the world, unite!” and “The unity of labour is the hope of the world” were more than mere slogans. They signified a realization that, left to themselves, individual unions could be weak and unable to confront employers and governments, but with the moral and perhaps physical and financial backing of other unions, a greater strength could be achieved. The major question in such a union of unions has always been how much power should be given to central union bodies and how much autonomy should be retained by the individual unions. The answer has been to maintain most power with the unions themselves and to leave the central union organizations in a comparatively weak position. These have, therefore, become coordinating bodies rather than formulators of union policy.

**Trades and Labor Councils (TLCs)**

The first expression of the desire for closer unity among unions was the local council of tradesmen’s unions and labourers’ unions. The term *trades and labor council* is derived from this combination. In two states, Queensland and Western Australia, an attempt was made
to combine both political and industrial labour movements into one organization called the Australian Labour Federation, which functioned in Queensland until 1913 and in Western Australia until 1963, when it was divided into the Trades and Labor Council and the Western Australian branch of the Australian Labor Party.

There is one central trades and labor council in each state, together with a number of provincial councils based on the unions involved in the major industrial areas. Each state body has its own distinctive title: Labor Council of New South Wales, Victorian Trades Hall Council, Queensland Trades and Labor Council, United Trades and Labor Council of South Australia, Trades and Labor Council of Western Australia, and Tasmanian Trades and Labor Council. Not all unions in each state are affiliated with the trades and labor council or with the local provincial councils. Few of the white-collar and public service unions are affiliated. However, it is possible for one state branch of a union to affiliate with the TLC in its state while other state branches remain unaffiliated—e.g., the Australasian Society of Engineers and the Australian Workers' Union are affiliated with the state TLC in every state except Queensland. For a union to become affiliated with the ACTU, it must be affiliated with the TLC in at least one state.

There are seven principal functions of the trades and labor councils, which may be listed as:
1. Co-ordinating union activity throughout the state
2. Settling differences that arise among unions
3. Providing, through the TLC disputes committee, greater strength for any union involved in an industrial dispute
4. Acting on behalf of the affiliated unions as a whole or of any combination of unions, either with governments, employers, or major corporations
5. Examining the effect of parliamentary legislation, rises in prices or prosperity, changes in methods of work (e.g., through automation), as these affect the welfare of workers
6. Considering the need for united trade union action on questions of social, economic, or international importance
7. Acting as the state branch of the Australian Council of Trade Unions.

While these reflect the ideal, the ability of most trades and labor councils to give effect to all of these functions is severely limited by the absence of adequate finance and the overstretching of TLC full-time staff.
Australian Council of Trade Unions (ACTU)

It was obvious to unionists before 1890 that Australian unionism could not be contained in separate colonies, but would be inter-colonial in character. Similarly, it was evident to founding fathers like Henry Higgins and Charles Kingston at the constitutional conventions of the late 1890s, that interstate arbitrational tribunals should be inserted in the Australian Constitution. However, in trade unionism as in politics, there is often a substantial gap between the ideal and the reality; despite the obvious need and desire for a national trade union body, it was not until May 1927 that a meeting of 155 union delegates at the All Australian Trade Union Congress in Melbourne agreed to form the Australasian Council of Trade Unions (the term Australian was not adopted until 1947).

The ACTU was a relatively weak central union body until the close of the 1940s. While there was agreement among unions that there should be a central body like the ACTU, there was an even greater desire to maintain individual union autonomy. Besides this, inadequate funds were allocated to the ACTU by its member unions. Individual unions in Australia, apart from the Australian Workers' Union, the Waterside Workers' Federation, and now the Amalgamated Metal Workers Union, were and are financially poor; the trades and labor councils are poorer, and the ACTU the poorest. It was therefore not in a position to take a commanding role in Australian unionism. On top of this, the ACTU had only part-time officials until 1943 when the late Albert Monk was appointed as the first full-time secretary. He was subsequently appointed as the first full-time president in 1949 when the ACTU began to exert greater influence among Australian trade unions.11

Just as the Australian federal structure in government necessarily moved towards greater central authority during the 1940s, so the same occurred in the trade union movement. Prior to 1947, decisions of the ACTU congress had to be ratified by the state branches (the TLCs) before these could become official ACTU policy. This was deleted in 1947 and the biennial congress became the supreme policy-making body for its affiliated unions. This has, however, been a moral rather than a coercive authority. Trade unions are voluntary organizations which voluntarily join the ACTU and can also voluntarily leave (and take their affiliation fees with them). Though the ACTU constitution contains provisions for taking action against an affiliated union that breaks the rules (e.g., regarding the notification of a strike or the conduct of a strike once it has been placed in the hands of the ACTU), the overriding concern for the unity of the trade union movement inhibits any punitive actions. Nevertheless, it should be noted that the ACTU has acquired a position of con-
sizable strength among the trade unions, partly as a conscious policy of the unions which see the desirability of having a strong ACTU which can speak publicly on behalf of its affiliates. The capabilities of its two full-time presidents, its executives, and its research officers have added to its stature.

It would be wrong to see the ACTU as a simple harmonious body where all decisions were unanimous and all its constituent members thought along the same lines. The ACTU congress is usually a battle among the various communist parties on the left, the majority, traditional, almost wholly ALP union leaders at the centre-left, and the right- and ultra-right-wing unionists often with DLP and NCC associations. In all it makes for a healthy democratic institution. While debate, lobbying, and voting deals are carried on quite fiercely at the biennial congresses and between the congresses, there is a general consensus among affiliated unions that there is value to the individual unions and to the union movement as a whole in all these factions continuing to belong to the ACTU.

While the day-to-day business of the ACTU is handled by the president, secretary, assistant secretary, and industrial officer, the broad government of the ACTU is conducted by the executive, which usually meets four times a year and more if the president and secretary think this necessary. The present organization of the executive reflects the two features of the ACTU: it represents over 2 1/4 million unionists in a great variety of industries, and it is the national body in a federation where states' rights and state awards are still very important. Until 1957, the executive had four elected officers (president, two vice-presidents, and secretary) and two delegates from each state TLC. In that year, the executive was made more representative of the broad union structure by having one delegate elected from each of six industry groups (not to be confused with the former ALP industrial groups) and only one delegate from each of the state TLCs. When the Australian Workers' Union finally joined the ACTU in 1967, it was granted the status of a separate industry group.

The present industry groups within ACTU are:

- Building (carpenters, plumbers, etc.)
- Food and Distributive (meat workers, liquor trades, etc.)
- Manufacturing (clothing, printers, vehicle builders, etc.)
- Metal (engineers, electricians, etc.)
- Services (clerks, postal workers, storemen, shop assistants, etc.)
- Transport (railway employees, transport drivers, etc.)
- Australian Workers' Union.

The industry groups are not equal in size. When a new union affiliates, the executive recommends the group in which it should be placed and the congress votes on this.
Two functions dominate the ACTU's work: the national wage case and the settlement of industrial disputes. The first is the responsibility of the research officer and the second falls on the shoulders of the president and secretary and the disputes committee. The ACTU is involved in a small number of business enterprises: Bourke's store, ACTU—New World Travel Company, ACTU—Solo petrol retailing, perhaps housing finance, perhaps insurance. These in no way compare with the enterprises of the West German Trade Union Federation or the Israel Histadrut, which provided much of the inspiration. Despite some opposition within the trade unions to these, they were endorsed at the 1973 Congress. The ACTU appointed an education officer in 1969 with the daunting task of developing and organizing a union education course for over two million affiliated members spread all over Australia. His work has been substantially taken over by the Australian Council on Trade Union Training established by Clyde Cameron when minister for labour. However, this body can achieve only so much, and there remains a crying need for union education programmes, especially within individual unions, where the functioning of each union remains a mystery to most members and even to shop stewards.

The ACTU publishes an irregular Bulletin on matters of trade union concern; it puts the trade union viewpoint to the Australian government on the budget and on other matters; it selects the Australian workers' delegates to attend the annual International Labour Organization conference; it pays affiliation fees to the International Confederation of Free Trade Unions and co-operates with
the two major white-collar-public service union peak councils on issues of joint importance. Because the ACTU is restricted by its lack of finance and by the smallness of its staff, these have to take a lesser position.

Despite its position of authority within the trade unions, the ACTU is not able to provide a complete picture of the future organizational or other needs of the unions, or of the future changes in industry and commerce that will affect unionists greatly. It is not able to provide guidelines on the role of women in the work force and in the unions, of the special needs of Aboriginal and migrant workers. It is not able to study the changes in the work of its members through increased urbanization, the larger share of the Australian economy owned by or involved with multinational corporations, or automation. It is not in a strong position to establish Australian unions' place among the international union organizations or to provide a steady flow of information to its own affiliated unions on questions of worker participation in management, incomes policies, collective bargaining, arbitration and the like. It is not really able to proceed with any policy on economic enterprises on any significant scale. These are all matters of great concern with which the ACTU should be involved and for which it should have its own research centre staffed by a combination of experienced union personnel and those with other special qualifications.

It is not through any lack of enthusiasm on Mr Hawke's part that these are not being carried through. After his election as ACTU president, he expressed his attitude to the role of unions in these terms:

In the past, as I see it, there has been a tendency to draw a dividing line in unionism. On one side have been placed things that are traditionally union matters—wages, working conditions, but on the other side are placed issues that are not touched by unions. My reasoning is that there should be no dividing line. Anything that constitutes discrimination against our people—then in we go.'\textsuperscript{13}

The ACTU executive has sought modest but relatively substantial increased capitation fees from its unions, but has been unable to obtain congress approval for these. There are many unions in Australia among the thirty-four with membership between ten thousand and fifty thousand which are far better equipped than the ACTU to perform their roles. The two white-collar-public service peak councils, though very much smaller than the ACTU in number of affiliated unions and unionists and in their responsibilities, are at least as well equipped in research and other facilities as is the ACTU.
Australian Council of Salaried and Professional Associations (ACSPA)

One of the principal features of Australian unionism in the past twenty years has been the movement of white-collar unions away from their isolationist position. In 1920, the aims of the Victorian Bank Officers Association were listed as:

- No strikes
- Abide by the Arbitration Court
- Effective administration and discipline must be maintained in the banking industry
- No affiliation with other bodies.

Such were the compromises that organizers of the new white-collar unions had to accept in the early 1920s. None of the four aims of 1920 has any place in the bank officers' union now. In the 1970s, the Australian Bank Officials' Association has become one of the leaders of the white-collar unions, and it was that union's secretary, R.D. Williams, who was one of the principal architects of the Australian Council of Salaried and Professional Associations.

ACSPA was formed in 1956 and gave cautious and inexperienced white-collar union officials the opportunity to operate in a broader-based union movement without entering directly into the ACTU, which was still regarded as being too radical and too committed to the political goals of the ALP. There are serious questions now whether there is a need for such a separate body as ACSPA or whether it would not be better for ACSPA to disband and its affiliated unions join the ACTU, which already has a number of white-collar affiliates. There was much talk of an ACSPA-ACTU merger after Mr Hawke became president of the ACTU. However, it is evident that there are still problems to be overcome before such a merger could take place; some are historical, some social, some political, and some economic.

While ACSPA is similar to the ACTU in organization, its objects do not include the social democratic goals of the ACTU. However, one does not judge unions by what they put in their platforms and objectives, but rather by how they act and what success they achieve. There remains still a difference between the two bodies. In a review of a chapter by Kenneth Walker on Australian white-collar unions, Norman Dufty wrote: "The picture of the white-collar workers which emerges from both Walker's research and my own is that of an employee interested in his job, ready to co-operate with his employer, but conscious of his solidarity with his fellow workers and disposed to advance his interests by constitutional procedures." That was written in 1967, and it could just as easily
have been written about most blue-collar unionists. The white-collar unionist has moved further along the road to the use of more militant action since then.

In Rawson’s second Handbook, five out of the twenty-six unions or branches of unions having ACSPA affiliations are also affiliates of the ALP. Whilst it seems unlikely that unions newly joining ACSPA will also join the ALP, it is notable that during the Whitlam governments, ACSPA as a body was more pro-ALP than it had ever been. It is unlikely that ACSPA would ever endorse a non-Labor party or government.

There are some 350,000 unionists affiliated with ACSPA. Though this makes it a small organization compared with the ACTU, it is nevertheless an increasingly efficient organization at its federal level and prepares cases for affiliates and acts on behalf of white-collar unions in much the same way as the ACTU represents its unions. Its state divisions are not comparable in size or influence with the trades and labor councils. There are about eight unions that are affiliated with both the ACTU and ACSPA. In the event of ACSPA merging with the ACTU, there would be no difficulty in providing one or two extra places on the executive to represent these white-collar workers.

**Council of Australian Government Employee Organizations (CAGEO)**

It is perhaps ironic that the first national trade union peak council should have been formed from public servants. It is all the more remarkable when one remembers that Fisher’s Arbitration (Public Service) Act of 1911, with its extension of the normal rights of all employees to public servants, was not universally acclaimed among commonwealth public servants. Gerald Caiden wrote: “For a number of quite different reasons, the majority of staff associations opposed access to arbitration which they considered to be for industrial and manual workers subject to fluctuations in employment.” However, in response to a fear of the loss of their rights to arbitration (and other fears), a loose national council called the High Council of Commonwealth Public Service Organizations was formed in October 1921. In 1969, this body was reformed as the Council of Commonwealth Public Service Organizations (CCPSO), which then consisted only of unions whose members were wholly employed by the Australian government. A further change in 1975 produced a central council, stronger in organization and more representative in name, of employees of Australian government departments and statutory authorities. This was called the Council of Australian Government Employee Organizations.
Much of what has been said about ACSPA applied also to CAGEO. There has been talk of CAGEO’s merging with the ACTU, and this could be accommodated; government workers in other countries belong to similar peak councils. However, it seems likely that in the future, CAGEO, which has over 150,000 affiliated unionists and as large a secretariat as the ACTU, will remain a separate union council which co-operates often with the ACTU. There are very few unions that are affiliated with both the ACTU and CAGEO, and fewer with both CAGEO and ACSPA.

Australia has other combined union bodies such as the Metal Trades Federation, the Combined Industrial Unions Council (a non-TLC body in Queensland), the Australian Public Service Federation, the Council of Professional Associations, and a few others.

UNIONS AT WORK

Unions have a basic responsibility to look after the interests of their own members, who, being employees, generally have nothing to sell but their labour. This may be highly skilled and costly to acquire and deliver or it may require little or no skill, little or no training, and be extremely dull. The majority of trade unionists fit in between these two categories, though a very large number also come close to or are included in the second. Such employees are in greater need of the protection of a strong union and a union-based political party. The extent to which members’ total interests should become the concern of their union is a question often debated. The narrowest consideration is that unions should concern themselves only with wages and conditions. In the broader, more socially conscious view of unions, a worker is seen as being not simply an employee with economic needs, but also as a citizen, a parent (now, or in the past or the future), a human being who becomes ill, grows old, pays taxes, and is a part of a community where each man bears some responsibility for the well being of his brother. Alone, the employee can achieve little; united with other employees within a union and with other unions, he may achieve much. In terms of how each employee conceives his union, the average Australian unionist (if one could model such a person) probably sits somewhere between these two positions.

Union officials are frequently lambasted in the media, in parliaments, and in other public and private meetings as the instigators of civil strife and strikes; they are "bosses" ordering their members to do this or that illegal act; they are "reds" or at least fellow travellers of the "coms"; they are unpatriotic; they are destroyers of inter-
national free trade proposals and are irresponsible gluttons bringing the country to financial ruin through constant wage demands.

The normal trade union leader is far from this picture. He is often stubborn about basic demands, usually not a smooth talker in front of journalists or radio tape recorders or television cameras, and a bit suspicious of those who seem to seek out the public limelight. He usually prefers discussion to rancour and tries to have about him people who think along similar political lines. The union secretary is normally a male (there are very few female secretaries among union leaders, despite there being 1.7 million females in the work force) elected by a vote of his union members. This may be a court-controlled ballot, but is usually by ballot among union members conducted by the union's elected returning officer. Apart from a union like the Waterside Workers' Federation, which has compulsory voting for its elections, it is rare for 50 per cent or more of union members to vote in such a ballot. Sometimes the voting figures go down to as low as 20 per cent of financial members voting even when ballot papers are posted out. Union secretaries receive around eight thousand to eleven thousand dollars a year. There are many who receive more, but this seems to be about the average. Union officials are notable, honest and are not given to ripping perks off the unions. Most unionists feel that their officials are honest.

Much of a union official's time is spent handling disputes with employers, which may involve anything from a breach of an award or the dismissal of a union member to larger issues. He attends to the problems of individual union members who may need legal or other assistance; he attends appeals before tribunals, e.g., arbitration, workers' compensation; he prepares wage and other cases for the Arbitration Court or for negotiations with employers. Unless it is a big union office with sufficient ancillary staff, he will also have to oversee the general working of the office and be a combination of press officer, public relations man, education officer, research officer, labour economist, industrial lawyer, and attendent of innumerable committee meetings. His day may start at a 5.30 A.M. job meeting, since this is the only way in which he can physically contact all his members at a particular job. Such meetings are important to ensure contact between union members and officials and when new agreements with employers are being sought or when there is industrial trouble at a plant or factory. It is only unions like the Seamen's Union and the Waterside Workers' Federation that have formalized stop-work meetings so that all members in a geographical area can meet, with the officials, during normal working hours.
Despite the aggressive picture painted, unions are basically defensive bodies whose role is the defence of their members' employment opportunities, financial security, and physical safety on the job. Union leaders tend to be socially conservative and conservative in economic questions, though they have been more receptive to radical economic policies when these had an obvious benefit for their members. They are protectionist rather than free trade in their outlook and hesitant about embarking on radical or new schemes until these have been fully talked out. Union meetings are usually poorly attended; the pub, rather than the formal meeting, is the place where new proposals are aired and given preliminary and often lengthy debate. (This may be one of the factors accounting for the low proportion of female union officials.)

Few union leaders and even fewer union executives can be said to have been trained for their positions either by their own unions or in inter-union training courses. Mostly the education of part-time and full-time union officials is done "on the job", a highly important part of their training, and there is a certain pride in those who have come up through the ranks and are able to hold their own in public and private negotiations with employers and others. Australia has produced some outstanding union officials who have had little formal education, but who have been self-taught through their own reading and through discussions with other unionists and with people outside the union movement. On the other hand, relying only on learning on the job has given some leaders a narrowness of outlook and an unwillingness to listen to outside advice. It was to broaden this base of union education that the national trade union training programme was established. This will combine both the theory and practice in those areas applicable to trade unionism and to labour relations.

Australian unions, with some notable exceptions, are not financially strong. Union fees are not high by international standards, varying between $12 and $150 a year. In a survey of 125 unions registered with the Commonwealth Conciliation and Arbitration Commission, John Wielgosz found that for unions covering 82 per cent of the total membership of that sample, over 90 per cent of total income came from union contributions. These 125 unions represent most of the biggest and strongest unions in Australia. There were, according to the same survey, sixteen unions with total assets of more than $500,000. This figure includes land, buildings, furniture, bank balances, and outstanding subscriptions. It is not a very impressive figure. Using per capita assets as a guide to examining union wealth, Wielgosz found that 89.5 per cent of this union membership was contained in unions having assets of less than thirty
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dollars per member. A compounding factor here is that the financial weakness of individual unions means that, in turn, the central union bodies—the TLCs and the ACTU—which could provide greater service if financially stronger, are also left financially weak. It has also meant that in the debate over collective bargaining and arbitration, Australian unions are not in a position to conduct lengthy strikes in support of wage contracts as do their American counterparts. Their own financial weakness ultimately forces many Australian unions to rely on arbitral tribunals or on a combination of arbitration, conciliation, and collective bargaining.

In the public eye, unions are usually associated with strikes. It normally takes two parties, employers and employees, to produce a strike, but somehow most of the blame for strikes is levelled at unions rather than at management. There are strikes that are directly union produced, such as political strikes (over the Vietnam war, apartheid, low pensions), and work stoppages through inter-union (demarcation) disputes or to hear reports from union officials. In the four years 1970–73, political strikes and other union stoppages accounted for around 16 per cent of all industrial disputes and for around 11 per cent of working days lost. The Bureau of Statistics keeps very comprehensive statistics on strikes, which have been recently analyzed in greater detail by the Institute of Labour Studies at Flinders University. However, while there are these comprehensive figures on man-days lost through industrial disputes, there are no comparable figures kept on deliberate absenteeism or “sickies”, which, as with strikes, can be manifestations of industrial unrest and dissatisfaction. It is admittedly more difficult to compile accurate statistics on these, but in terms of time lost through industrial injuries, there are more working days lost here than through strikes. In the 1960s the proportion was generally between three and five to one. While strikes are not in themselves desirable, they may have a necessary place in labour relations. It was Mr Justice J. E. Isaacs, a presidential member of the Australian Conciliation and Arbitration Commission and a man respected by both unions and employers, who noted: “Sometimes, regrettably, strikes provide the only way towards a workable solution and should be allowed to run their course despite much cost and inconvenience.”

The pattern of Australian strikes has changed in the past fifty years. There are very few long strikes now; seldom do they last longer than three weeks. Most strikes last between one day and three days, and the character of the Australian strike pattern is of a large number of comparatively short stoppages. In the report of the British Royal Commission on Trade Unions and Employers’ Associations—often simply referred to as the Donovan Report—
statistics on strikes in the mining, manufacturing, construction, and transport industries show that the United Kingdom had only a quarter of the number of stoppages per 100,000 employees as Australia, but twice the average of working days lost per stoppage; the United States had one-fifth of the number of stoppages per 100,000 employees as Australia, but eight times the average duration of each stoppage in working days. These were figures collated for the 1964–66 period and should be used for comparisons only. The different criteria used in various nations to compute such statistics make totally valid international comparisons impossible.21

In the fifty years between 1913 and 1963, more than half of all strikes occurred in the mining and stevedoring industries. It is quite erroneously claimed that this was due to the influence of communist trade union officials. Similar statistics were available in just about every other Western country, and the incidence of industrial unrest is related to the working conditions that have long existed in those industries where capital labour have traditionally come most harshly into confrontation. There is no real evidence, despite what ardent communists and equally ardent anti-communists say, that the presence of communist union officials has ever substantially contributed to the number of strikes in an industry. Such officials have certainly had an influence in continuing strikes already begun and in providing the rhetoric need to prolong a strike.22 A union's propensity to strike is much more related to the working conditions in the industry, the permanence or impermanence of employment there, the size of the work force—particularly when it is congregated in large groups—and the historical relationship between labour and capital, unions and management, in the industry. In times of economic uncertainty—e.g., when inflation rates are high or workers see their job security threatened through unemployment, or when employees' aspirations cease to be met by a continuing upward movement in real wages—then strikes are likely to increase and to fall only when some stability is restored or there is a major economic recession.

One of the characteristics of Australian unionism that is notably different from that of British unionism, particularly when there are disputes at the plant level, is the lesser role played by Australian shop stewards or job delegates. Australian unions are much more highly centralized in their decision-making processes. Both management and unions have preferred to settle even local disputes at a higher level than at the factory or job floor. Union officials have not been enthusiastic about increasing the influence of shop stewards or about giving them much more than a dues-collecting role. Whether this will persist or not is uncertain. There have been two major occa-
sions in the last decade, the Mount Isa strike and the GMH strike, where the rank-and-file members totally rejected the settlement proposals of the union leaders. In both cases the union leaders were out of touch with their rank-and-file members, something that shop stewards are less likely to be. Unions have a rough-and-ready democracy which places more importance on rank-and-file consensus with union policy and union leaders' decisions than may appear on the surface, and certainly more than one would obtain from a casual observance of media reports. The shop stewards and job delegates are an important part of that democracy and that consensus. In an atmosphere where there will continue to be more talk of worker participation or trade union education, there may well be a pressing need for unions, particularly the bigger ones, to rethink the place and role of their shop stewards.

Trade union education is something that has been spoken about in unions for a long time and is now becoming a reality. The same could not be said about worker participation in management, worker control, or industrial democracy. Apart from sloganizing and the odd union conference, Australian unions have not seriously considered these subjects. Indeed, in many areas, management is further ahead on the importance and relevance of worker participation than are the unions. There has been opposition expressed by all shades of union political opinion to the notion of worker participation. However, a number of individual union officials and many unionists have studied the question and accept that it will come. The big problem is that, in the absence of any adequate union research centres, there has been no opportunity for arriving at what this means to Australian unions and evolving a comprehensive union attitude and policy. Management's self-proclaimed prerogative to manage has not been challenged. What studies that have been done in Australia have been principally outside the unions. The broad union reaction has been one of caution, which is representative of most union reaction to sweeping changes. While there has been discussion outside the unions and advice offered, Australian unions in this, as in many other matters, prefer to be masters of their own house and to retain a healthy suspicion of outside advice.

The same caution and lack of research is evident in the debates on incomes policies. While economists and politicians have debated the values and forms of incomes policies, unions have taken the simple stand that they would not agree to any policy that fixed wage rates and did not allow these to rise through normal industrial action. The approach to some sort of social contract which the Whitlam government was effecting with the unions came the closest to union involvement in an incomes policy. In the main, unions have been con-
cerned to keep seeking higher money wages when, in a period of high inflation, it might have been better for them to have concentrated more effort on seeking benefits in long-service leave, sick pay, paid education leave, and the like, which could not have been eroded by inflation.

UNIONS AND THE FUTURE

In a paper delivered in 1971 and called "The Dynamics of Australian Industrial Relations", Ian Sharp said:

The purely physical changes in our work situations deriving from what now become self-generating technological advances, produce new problems for those who are responsible for industrial relations in the workshop. Training and re-training, increased employment of married women, the increase in self-employed labour units, the portability of work benefits, redundancy arrangements and the whole area of ergonomics—these are some of the matters which are thrusting themselves into importance within the context of economic industrial relations.

Now, industrial relations cannot be carried on without trade unions, yet unions, if they are positively to represent the needs of their members, must be participators in industrial relations, not merely reactors to change introduced by management through its own initiatives or forced on management through economic or technological changes. Australian trade unions had their organizational pattern laid down before 1920. Apart from having full-time as against part-time officials and more up-to-date office machinery, too many unions are organized now as they were fifty years ago, much the same as state railway systems are. Is this going to be the best system for the next twenty-five years? It seems unlikely.

Australian unions have been successful organizations. Real wage rates in Australia are high; workers had a forty-four-hour week and a forty-hour week before their overseas counterparts; while there was a gross decline in the introduction of needed welfare provisions in the inter-war period and an acceptance of unemployment rates averaging somewhere between 7 and 11 per cent, the wartime and post-war Labor governments provided the first national scheme of unemployment and sickness benefits, the basis of a national health scheme, and a full employment economy. Unions and employees, despite the increased unemployment in the recent recession, were assisted greatly by the Whitlam governments.

There is, however, another side to the unions' role that needs to
be looked at. As multinational corporations expand their influence, usually with little regard for unions, there is scant evidence of unions matching the planning and capacities of the multinationals. There is little evidence of union preparation for the technological changes of the next twenty-five years. Australian unions have been characterized by reacting to events as they occur, rather than planning for changes that are coming. There is no surety that jobs and industries existing today will be there in ten years in their same form and in their same locality. In such an environment it is the responsibility of the unions concerned to appreciate that such changes are going to occur and begin preparing their members for this. One comes back constantly to the totally inadequate research facilities provided by individual unions and by the peak union councils.

It is apparent that there will have to be more union amalgamations accompanied by greater emphasis on, and training of, shop stewards so that bigger unions mean more efficient unions and not unions remote from membership. Unions have been one of the principal protectors of the poor and the weak. They have long been a focus for groups in Australian society who see them as natural allies in the fight for greater tolerance, more humanity, and defence of the environment. There is a danger that as they become more “business unions” on the United States model they will lose this social democratic demand for equality and for total social wellbeing.

NOTES

7. See D.J. Murphy, "Unions and Social Welfare, an Historical View", History Teacher 14, 1974.
8. N.F. Dufty, "The Skilled Worker and His Union" JIR 2, no. 2 (October 1960), and "The White Collar Unionist", JIR 3, no. 2 (October 1961).


20. See *Bulletin of Labour Studies*, Flinders University, South Australia.


25. See also G.W. Ford’s chapter in *Australian Trade Unions*, ed. Matthews and Ford.


27. The relationship of unions to multinational corporations is covered well in Malcolm Warner and Louis Turner, "Trade Unions and the Multi-National Firms", *JIR* 14, no. 2 (June 1972). There is a useful bibliography attached to this article.
Communication is one of the fundamental characteristics of any social system. When, for example, a member of a small primary group shows signs of deviating from accepted patterns of behaviour, he becomes the focus of the group's communication until persuaded of the error of his ways, or until he is excluded from membership. When some great event threatens society it arouses a storm of communication. Likewise, when a society is making an important public decision, such as electing a government, the communication channels are filled to capacity.

Communication answers generally the same needs in all societies. In Harold Laswell's (Laswell 1966) terms these are the need to survey the environment, the need to reach consensus on important issues, and the need to socialize new members. In discussing the emergence of the mass media of communication, Daniel Lerner (Lerner 1958) distinguished between two systems of public communication, the oral and the media, according to the paradigm: who say what to whom and how? On these four variables of source, content, audience, and channel, the ideal types differ as follows:

<table>
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<tr>
<th>Media Systems</th>
<th>Oral Systems</th>
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<tbody>
<tr>
<td>Channel</td>
<td>Broadcast (mediated)</td>
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<tr>
<td>Audience</td>
<td>Heterogeneous (mass)</td>
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<tr>
<td>Content</td>
<td>Descriptive (news)</td>
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<tr>
<td>Source</td>
<td>Professional (skill)</td>
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<tr>
<td></td>
<td>Personal (face to face)</td>
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<td></td>
<td>Primary (groups)</td>
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<td></td>
<td>Prescriptive (rules)</td>
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<td>Hierarchical (status)</td>
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In media systems the main flow of public information comes from professional communicators selected according to skill criteria, whose job it is to transmit messages of mainly descriptive (news) or recreational content through impersonal media (print, radio, film, etc.).

This article is reprinted with alterations, from A I.P.S. Monograph 9. We are indebted to the Board of the Australian Institute of Political Science for granting us permission to reprint Professor Western's monograph.
television) to relatively undifferentiated mass audiences. In oral systems public information usually emanates from sources authorized to speak by their place in the social hierarchy, that is to say by ascription rather than by skill criteria. Its contents are typically prescriptive: news is less salient than "rules" which specify correct behaviour.

Our present concern is with media systems, and our attention will be directed to each of the four factors. In the first and second sections, when we will be concerned with matters of ownership and control, we will, effectively, be looking at questions of "channel". In the third section, when we will be concerned with issues relating to exposure, we will examine both audience and content, and in the final section, when we will focus on some characteristics of media managers, we will be taking up questions of source.

1 THE PATTERN OF OWNERSHIP

The Press

In Australia there has developed, in a relatively short space of time, a media system which is highly organized, far reaching, and oligopolistic in character. Its first sign was the appearance in 1803, only fifteen years after the first settlement, of the *Sydney Gazette*, published and censored by the British authorities. Governmental control of the press was short-lasting; by 1824 censorship was lifted, and two years later there were already two opposition papers (Mayer 1964, ch. 1).

In 1840 the *Sydney Morning Herald* became the first regular daily, and by 1848 there were a further ten. In this period papers came and went. Typically they started as weeklies, became bi- and tri-weeklies and finally dailies, perhaps lasting as dailies for no more than six to nine months. The situation had stabilized by the turn of the century, at which time there were twenty-one capital city dailies.

The early papers were dominated by local news; a shortage of journalists resulted in the "transplantation" of news and stories from paper to paper. From the beginning the space occupied by advertising was high.

The year 1923 saw the beginning of the end of the small proprietor. In that year there were twenty-six metropolitan dailies and twenty-one separate owners (Corden 1956). By 1930 there were twenty and twelve and as this goes to print there are seventeen and three. These three, together with a fourth group that has recently bowed out of metropolitan newspaper publishing, have put and are
still putting an indelible stamp on the system of mass communica-
tion in Australia.

The best-known group is undoubtedly the Melbourne-based
Herald and Weekly Times, originally presided over by Keith (later
Sir Keith) Murdoch. Founded in 1902 to take over a previous news-
paper publishing business, its first paper was the Melbourne
Herald. In 1922 it brought out the Sporting Globe and Home
Beautiful for the first time, and in 1925 the Sun News Pictorial was
purchased. The company gradually extended its influence first to
Adelaide and then to Brisbane. In 1929 in Adelaide it acquired a
considerable interest in Advertiser Newspapers Ltd and in 1953 a
controlling interest in Queensland Newspapers Pty Ltd. Queensland
Press Ltd was formed in 1955 and acquired all the shares in
Queensland Newspapers Pty Ltd (publisher of the Courier Mail and
Sunday Mail) and the Telegraph Newspaper Co. Ltd, publisher of
the Brisbane Telegraph. These moves, John Bushnell suggests,
"resulted in the concentration of a large part of Australia’s mass
communication media in the full control of one firm" (Bushnell
1961). Early in 1957 the Melbourne Argus, which had celebrated its
centenary some years before, ceased publication. Its circulation had
been declining for some time, and the situation was not improved
when the paper was taken over by the London Daily Mirror group
and given a more radical style. Shortly after its demise the parent
company, The Argus and Australasian Ltd, which still published the
Australasian Post and Our Garden, was taken over by the Herald
and Weekly Times Ltd. Five years later, through their acquisitions
in Davies Brothers Ltd, they obtained, if not control, at least a sub-
stantial interest in the Hobart Mercury; and in 1969, following a
successful takeover bid for all issued ordinary shares in West
Australian Newspapers Ltd, publisher of the two Perth dailies West
Australian and Daily News, control of those two papers. The com-
pany is also to be found in Papua New Guinea and Singapore. In the
first it publishes South Pacific Post and Niu Gini Toktok, while in
the second it publishes New Nation, an afternoon daily produced in
conjunction with the Straits Times.

In Sydney, the Fairfax family became proprietors of the Sydney
Morning Herald in 1841. They were not as expansionist as was Mur-
doch in the early days and their major developments have only
taken place in the last twenty-five years. In 1951 they published the
first number of the Australian Financial Review—at that time an
ambitious businessman’s weekly. In 1953 a large shareholding in As-
sociated Newspapers Ltd, proprietor of the Sydney Sun, was ac-
quired, and three years later the remaining shares were purchased.
In the same year, 1956, the public company John Fairfax Ltd was
formed. In 1961 a 45 per cent interest as purchased in Newcastle Newspapers Ltd, publisher of the *Newcastle Morning Herald* and the *Newcastle Sun*. In 1964 all the share capital of the Herald Capital Press of Australia Pty Ltd, publisher of the *Canberra Times*, was acquired. In 1966 a major interest was purchased in David Syme & Co. Ltd, and a partnership was formed with members of the Syme family; the Fairfax holdings were increased to slightly more than 50 per cent in June 1972, making David Syme a subsidiary, although it is claimed that it still retains management and editorial independence. In 1969 the short-lived evening tabloid *Canberra News* (it ceased publication around mid-July 1974) commenced publication, as did the even shorter-lived Melbourne afternoon tabloid *Newsday*. *Newsday* began publication in September, but sales and advertising never achieved minimum targets and publication ceased on 2 May 1970.

The third group of note is also located in Sydney and is identified with the Packer family. The family interest in the publishing and media business dates back to the early 1920s when Clyde Packer, the father of Sir Frank, was taken into partnership by Claude McKay and the then lord mayor of Sydney, Sir Joynton Smith, for the production of *Smith's Weekly*. In 1923 Frank Packer became a cadet reporter on the *Daily Guardian*, launched by his father's group, and in 1927 he became a director and general advertising manager of the *Daily Guardian* and *Smith's Weekly*. In 1929 Associated Newspapers, publishers at that time of the *Sydney Sun*, bought the *Guar­dian* and *Sunday Guardian*. Clyde Packer joined Associated Newspapers at the same time. Soon afterwards Frank Packer gained control of an ailing Sydney afternoon daily the *World*, which he then sold to Associated Newspapers. With the proceeds he launched the *Australian Women's Weekly*. In the same year (1933) he entered the Sydney daily newspaper market again by purchasing the *Daily Telegraph* from Associated Newspapers, and Consolidated Press Limited was formed. Consolidated Press Holdings was set up in 1954 to take over all the capital of Consolidated Press Limited. In 1969 the company obtained a controlling interest in the *Maitland Mercury* and also all the issued capital of the Bulletin Newspaper Pty Ltd, publisher of *The Bulletin*. A complex series of transactions increased the company's holdings in the electronic media, but in June 1972 the goodwill of the *Daily Telegraph* and the *Sunday Telegraph* was sold to News Ltd for $15 million.

The most recent group has a long history. News Limited was formed in 1922 to publish an evening paper in Adelaide. Over the years there have been numerous acquisitions, new ventures, and some divestments. The turning point for the company occurred in
1952 when Rupert Murdoch assumed control. At that time the Murdoch family controlled about 50 per cent of the ordinary shares. The story has it that the family offered Rupert either the News in Adelaide of the Courier Mail in Brisbane and it was the Adelaide offer that was accepted. The Murdoch story is well known. The successful weekly TV Week commenced publication in 1957. In February 1960 the company acquired Cumberland Newspapers Pty Ltd, publisher of a number of suburban and regional newspapers. In May of the same year a controlling interest in Mirror Newspapers Ltd, publishers of the Sydney Daily Mirror, the Sunday Mirror, Sportsman, the Melbourne Truth and the Brisbane Sunday Truth, was obtained. In 1963/64 a substantial shareholding was acquired in the Wellington Publishing Co. Ltd, publisher of the Dominion, and in 1964 the Australian was launched. In early 1969 the company gained control of The News of the World Organization Ltd and changed its name to News International Ltd. In 1969 News International acquired the Sun (London). In February 1971 the Sunday Australian began publication. As mentioned previously, in 1972 the publishing rights to the Daily Telegraph and the Sunday Telegraph were purchased from Consolidated Press Holdings Ltd and the Sunday Australian was merged with the Sunday Telegraph soon afterwards. Most recently the American weekly the National Star was launched.

There are three other minor groups which are also worthy of mention, although none of them puts out a metropolitan daily. The first is Maxwell Newton, publisher of two Sunday papers, the Melbourne Observer and the Canberra Post. The second is Gordon Barton, publisher of the Nation Review and the short-lived The Living Daylights, which is now amalgamated with Nation Review. The third is that stalwart of separatism, Lang Hancock, who publishes the Sunday Independent in Perth and who probably also holds the record for the shortest-lived metropolitan daily: the Independent Sun, which was launched in October 1973 and survived a bare month.

As well as these metropolitan papers there are around forty provincial dailies, some 380 other provincial papers, and somewhere between 150 and 200 suburban newspapers, almost all of the "giveaway" variety and published from once to three times a week. Little is known about the relationship between the provincial press and the major metropolitan groups. The evidence that is available reveals some interpenetration. The Herald and Weekly Times controls both the Kalgoorlie Miner and the Cairns Post and has a significant interest in Provincial Newspapers (Qld) Ltd, which controls the Bundaberg News-Mail, the Mackay Daily Mercury, the
Maryborough Chronicle, the Morning Bulletin in Rockhampton and the Warwick Daily News. John Fairfax Ltd controls the Illawarra Mercury and, as was mentioned previously, the Newcastle Morning Herald; it also has a substantial interest in the Shepparton News. Murdoch controls Darwin's Northern Territory News, Broken Hill's Barrier Miner, and the Northern Daily Leader from Tamworth; finally the Packer interests control the Maitland Mercury, the Manning River Times, the Lower Hunter News Pictorial, and the Cessnock Advertiser.

More interesting, perhaps, is the suburban press. As Australian cities continue to grow, the metropolitan press cover of day-to-day suburban life becomes more and more cursory. In this situation suburban newspapers have emerged to satisfy the demand of the suburban dweller for news of his immediate environment. Suburban newspapers have learnt quickly what experienced journalists have known for a long time, namely, that if a reader can't read about himself in the press, then the next best thing is to be told about his immediate environment.

The first of the major groups to move into the suburban field was Rupert Murdoch's News Ltd. Seeing the potential of the suburban market, Murdoch in 1960 purchased Cumberland Newspapers Pty Ltd, a company controlling ten suburban newspapers in New South Wales. In addition there are Cumberland Newspapers (Victoria), controlling seven suburban papers, and Cumberland Newspapers (Queensland), controlling a further eight. All are owned by News Ltd. As a counter to Murdoch in Sydney, Fairfax and Consolidated Press joined forces in areas not covered by the Cumberland Press papers to produce joint suburban newspapers. In Melbourne Fairfax controls ten suburbans. Most of the others, which are not controlled by Rupert Murdoch, are independent, although they typically have the Herald and Weekly Times Ltd as a minority shareholder. In Adelaide the suburban newspapers are virtually controlled by Messenger Press, in which Advertiser Newspapers (the Herald and Weekly Times group) have a 49 per cent interest.

There is more to the printed word than newspapers, however, for Australians support something over 1300 journals and magazines. These range from the enormously successful Australian Women's Weekly, published by Australian Consolidated Press with a circulation around 850,000, to political, professional, and technical journals which might have no more than 750 regular subscribers.

A major struggle for control of the Australian magazine market has been under way since the beginning of 1970. It commenced following the purchase of a 50 per cent interest in Sungravure Pty Ltd,
a subsidiary of John Fairfax Ltd and publishers of Woman's Day, by
the British-based International Publishing Corporation. The British
company also assumed management control; they made a number
of editorial changes, increased the price per copy by five cents, and
embarked on a substantial promotion programme. There was an im-
mediate and noticeable circulation increase. Consolidated Press fol-
lowed with a price increase for Women's Weekly and an equally
vigorous campaign which also had circulation benefits.

The next development came when Sungravure launched two
women's monthlies, Dolly and Belle, and acquired a third, Pol.
These glossy magazines are in marked contrast with Women's
Weekly and Woman's Day and are designed to appeal to the "new
generation". Southdown Press, owned by News International Ltd
and publishers of the New Idea, next became involved in the strug-
gle. In May 1972 Sungravure announced yet another new women's
magazine, Woman's World. This was seen as a direct competitor of
New Idea. The size of New Idea was immediately increased to
ninety-six pages and a massive promotion campaign was launched.
Sales lifted from around 368,000 to over 500,000, where they have
remained. Woman's World at the same time could do not better
than about 135,000. During this period Consolidated Press made an
unsuccessful bid for the publishing rights to the Hearst publication
Cosmopolitan, which finally went to Sungravure; undaunted, they
countered with the monthly Cleo, resplendent with the first nude
male centre-fold. The most recent addition to the market has been
the Australian edition of New York Times's highly successful Family
Circle. The competition in the women's magazine market has had
spectacular effects on circulation. In the five-year period 1962-67
the readership of national women's magazines rose less than 2 per
cent, while in the five years since 1968 readership has risen over 33
per cent.

Apart from women's magazines there is a wide range of
magazines catering for specialized markets. The K.G. Murray group
of magazines, for example, comprises twenty-eight monthlies, rang-
ing from Tailor and Men's Wear through Thrilling Confessions to
Tip Top; twenty-eight bi-monthlies, containing such titles as
Building Materials and Equipment, Nightly, and All Favourites; fif-
ten quarterlies, including Good Gardening and Playgirl; four half-
yearlies, of which the Batman Album and Flair Hair Secrets are two;
and finally fifty-seven yearlies, which encompass virtually all im-
aginable pursuits and activities. In June 1972 control of this collec-
tion passed to Consolidated Press when it made a successful bid for
Publishers Holdings Ltd, the publisher for the group. Other promi-

ant periodicals from the Packer company are the Bulletin and
Australian Home Journal. So while Australian Consolidated Press has withdrawn from the field of metropolitan dailies, it is still a force to be reckoned with in the magazine business.

Radio

From the days of the Sydney Gazette the press has been privately owned. And despite strong tendencies in the last generation towards the concentration of press ownership into fewer and fewer hands, there has been little advocacy of public or government remedy. The situation so far as radio and television are concerned is somewhat different, for it is here that one can identify a public sector. This has not always been so, for it was not until 1932, about nine years after the first radio broadcasts, that the need for some state participation in the development of radio was recognized.

Broadcasting commenced in Australia in July 1923, when the Postmaster-General's Department granted licences for the establishment of wireless stations maintained by subscriptions of listeners using receivers capable of operating only on the frequency allocated to the station to which the subscription was paid. This scheme was abandoned after twelve months when only four stations commenced broadcasting and only 1,200 listeners were licensed. It was replaced by a scheme which permitted the establishment of two classes of broadcasting stations: class A stations, which obtained revenue from listeners' licence fees which now entitled licensees to receive programmes of any station; and class B stations, which were maintained by revenue received from the broadcasting of advertisements.

In 1928, following a royal commission, the government took over the technical equipment of the class A stations, but left the provision of programmes to "experienced entrepreneurs under contract" (ABCB 1949). This was the Australian Broadcasting Company, which for the period 1930-32 developed an "efficient programme organization on a Commonwealth-wide basis capable of producing programmes of high quality" (ABCB 1949).

Shortly before the expiration of the company's contract, the government decided to establish a national broadcasting service, and the Australian Broadcasting Commission Act of 1932 heralded the establishment of the Australian Broadcasting Commission. The commission was empowered by the act to take over the existing studios of the Australian Broadcasting Company and from July 1932 to broadcast from the national broadcasting stations "adequate and comprehensive programmes" (ABCB 1949).

Parallel development also took place among class B stations, now known as commercial broadcasting stations, and by 1932 alongside
a subsidiary of John Fairfax Ltd and publishers of Woman's Day, by the British-based International Publishing Corporation. The British company also assumed management control; they made a number of editorial changes, increased the price per copy by five cents, and embarked on a substantial promotion programme. There was an immediate and noticeable circulation increase. Consolidated Press followed with a price increase for Women's Weekly and an equally vigorous campaign which also had circulation benefits.

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the eight main and four regional stations of the national network were forty-three commercial broadcasting stations, the majority of which were located in the capital cities (Mackay 1957).

Numbers have steadily increased. The national service now has twenty metropolitan stations (including four FM) and around seventy regional stations; there are twenty-five metropolitan commercial stations (including Launceston and Canberra) and over eighty country and regional stations.

Networks play an important part in Australian radio. Influenced by the BBC, the ABC has radio 1 and radio 2 and a regional network. Radio 2, with stations in each state capital plus Canberra and Launceston, provides quality programming; radio 1, with the same number of stations, provides more popular fare. The regional network, while taking some first and second network programmes, focuses quite importantly on the local scene (ABCB 1967). The two chief commercial networks are the Macquarie network and the Major network. The Macquarie network has stations in all capital cities, Launceston and Canberra as well as in provincial towns in New South Wales, Western Australian, and Queensland. Until 1964 it was run by a proprietary company in which the member stations had substantial interests. However, around the middle of that year John Fairfax Ltd obtained controlling interest.

The Major network is not a company but an association of radio stations that have joined together to facilitate the sale to advertisers of station time on a joint basis and to provide programmes "which could not be regularly maintained except by the co-operation of a number of stations" (ABCB 1951). It comprises stations in all state capitals, Newcastle, Launceston, and some provincial towns in all states. It is not as large as the Macquarie network, having virtually no representation in the country areas of New South Wales, although it does have slightly greater penetration in both Victoria and South Australia.

There is an interesting relationship between the Major network and the Herald and Weekly Times Ltd. The two Major network stations located in Victoria, one in Melbourne and one in a country area, are both wholly owned by the group, as are the network's two Queensland stations. Again, a South Australian subsidiary of the Herald and Weekly Times holds the licences of the four Major network stations in that state, while in Western Australia the company that holds the licences of one Perth station and three country stations is a wholly owned subsidiary of West Australian Newspapers Ltd, taken over by the Herald and Weekly Times in 1969.
Television

The advent of television, Alan Davies suggested back in 1968, "opened a choice between loosening the grip of the private proprietors (specifically the newspaper publishers) in the communications field or confirming it" (Davies 1968). The first moves towards a television service had come in June 1949, when Chifley announced his government's intention of introducing a national television service with a television station in each of the six capital cities. In December of the same year the Labor party was defeated at the polls by a Liberal-Country party coalition which had quite different ideas on the development of television. There was to be a national service established initially in Sydney, extending to the other states as experience and technical competence increased; as well, one commercial licence was to be issued in Sydney and Melbourne and in any other capital city where the applicant's capacity to provide a service justified the issue of a licence (ABCB 1952).

Little was done for several years. The prospect of Melbourne hosting the 1956 Olympic Games provided a stimulus, and by the end of 1956 a national and two commercial channels were established in both Sydney and Melbourne. It was not until the second half of 1959, however, that Brisbane and Adelaide obtained their first commercial stations. The national stations followed shortly afterwards, and by the middle of 1960 the Melbourne-Sydney pattern was reproduced. Television also moved to Perth and Hobart, but only one commercial station plus a national station was established in each city. A further commercial station began operating in Melbourne in August 1964, and in the first half of 1965 new stations, one to a city, were established in Sydney, Brisbane, Adelaide, and Perth. Between 1962 and the present time, over sixty national and commercial stations were established in rural and provincial areas. Currently, around 97 per cent of the Australian population has access to television.

From the beginning, the pattern of ownership was one of concentration in the hands of a few companies. The early licences were almost all taken up by newspaper proprietors. The Herald and Weekly Times Ltd controlled HSV in Melbourne; Australian Consolidated Press TCN in Sydney and, after some share dealings, GTV in Melbourne; John Fairfax Ltd controlled ATN in Sydney. The first group of licences issued in the other state capitals also went importantly to newspaper companies. The Herald and Weekly Times gained control of stations in Brisbane and Adelaide and had an interest in the only Hobart station; John Fairfax Ltd gained control of the other Brisbane station and in conjunction with Australian Con-
solidated Press controlled the Herald's Adelaide competitor. Western Australian Newspapers Ltd obtained the licence for the only Perth station.

There was, however, as Alan Davies suggests, "a good deal more active competition for the third commercial licence in the four largest cities, and the fact that they went to non-newspaper capitalists somewhat broadened the managerial structure in private mass communications" (Davies 1968). Most involved was Ansett Transport Industries. ATI, which had minority interests in the new Adelaide, Sydney, and Perth stations, applied for licences in both Melbourne and Brisbane. In Melbourne they were successful, but in Brisbane the licence went to another company. Undaunted, however, and before the new stations came on the air, ATI and three of its subsidiaries bought up nearly half the issued capital to give it virtual control of the new company (Walker 1967).

The most recent entrant into the television field has been the ALP. It was announced in the metropolitan press of August 1974 that the Herald and Weekly Times had sold its 30 per cent interest in Brisbane TV Ltd to the Queensland branch of the ALP. The shares had been for sale for some time, presumably because the parent group is in danger of contravening the "prescribed interest" clause of the amended Broadcasting and Television Act or because the act restricts the flow of funds from other companies in the group to Brisbane TV Ltd. All television stations faced very large expenditures on the introduction of colour television, and difficulty in diverting funds from within the group is likely to have been an important factor in the Herald's decision to divest itself of Brisbane TV Ltd. However, it appears that the terms of the proposal are at variance with official listing requirements of the Australian Associated Stock Exchanges and the deal was called off.

Networks are coming to play an increasingly important role in commercial television. The three major networks are the channel 7 network or the Australian Television network, the National Nine network, and the Independent System. The channel 7 network has stations in Sydney, Melbourne, Brisbane, Adelaide, and Perth; ATN in Sydney is owned by Fairfax, and the Perth station by TVW Ltd, but the other stations belong to the Herald and Weekly Times group. National Nine has stations in the same capitals, but there is more diversification of ownership. Packer owns the Sydney and Melbourne stations. Fairfax QTQ in Brisbane, Murdoch NWS in Adelaide, and Swan Television the Perth Station. The Independent System has stations in Melbourne, Sydney, Brisbane, and Adelaide. ATI owns the Melbourne and Brisbane stations, United Telecasters the Sydney station, and TVW Ltd owns SAS in Adelaide.
Nowhere in the English-speaking world is the degree of concentration of ownership of the mass media as pronounced as it is in Australia. What are the possible consequences of this centralized control? The London *Economist* puts the case well: "The right to inform the public on the facts of the day and to express opinions about them is one of the safeguards of freedom: and a society in which this right becomes increasingly circumscribed for economic reasons forfeits one of the distinctions that set it apart from societies where the same right is curtailed by political power" (Mayer 1964).

As Henry Mayer argues, "diversity of ownership implies diversity of views, while monopoly reduces variety" (Mayer 1964:175). This is clearly true in the abstract; powerful groups are in a position to importantly control what the average Australian reads, listens to, and watches. The critical question of course is: to what extent do they do so? Until we have satisfactorily answered this question, and it can be answered by appropriately designed research, we are not in a position to spell out the consequences of the present oligopolistic structure.

### 2 LEGISLATIVE AND OTHER CONTROLS

*by Charles Stokes*

A lot of the work of the Broadcasting Control Board at present relates to technical matters involving frequencies, the siting of transmitters, and equipment standards. The board also holds public inquiries for the minister for the media into applications for licences for commercial radio and television stations "in areas for which the minister proposes to grant licences" and makes recommendations to him *inter alia* on "the grant, revocation and suspension of licences, including licences for television translator and repeater stations, and the provisions concerning ownership or control of commercial stations" (ABCB 1973). But more important, perhaps, the board is charged, under the Broadcasting and Television Act, "to ensure that adequate and comprehensive programmes are provided by commercial television stations to serve the best interests of the general public, and to determine programme standards and standards subject to which advertisements may be broadcast or televised". The board’s duties are thus seen to be divided between what might be called engineering and editorial matters, and its members must therefore be required to possess a rare diversity of talents. The board has no control over the programming of the national service: that responsibility rests, under the Broadcasting and Television Act, with the ABC.
<table>
<thead>
<tr>
<th>Herald and Weekly Times Group</th>
<th>Metropolitan Dailies</th>
<th>Fairfax Group</th>
<th>Murdoch Group</th>
<th>Packer Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Herald (M)</td>
<td>Daily Telegraph (S)</td>
<td>Sydney Morning Herald (S)</td>
<td>Daily Mirror (S)</td>
<td>Daily Telegraph (S)</td>
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<tr>
<td>Sun (S)</td>
<td>Daily Mirror (S)</td>
<td>Sun Herald (S)</td>
<td>Sun Herald (S)</td>
<td>Sun Herald (S)</td>
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<tr>
<td>Courier Mail (B)</td>
<td>Sun (S)</td>
<td>Sun Herald (S)</td>
<td>Sun Herald (S)</td>
<td>Sun Herald (S)</td>
</tr>
<tr>
<td>Telegraph (B)</td>
<td>Daily Mirror (S)</td>
<td>Daily Mirror (S)</td>
<td>Daily Mirror (S)</td>
<td>Daily Mirror (S)</td>
</tr>
<tr>
<td>Advertiser (A)</td>
<td>Daily Mirror (S)</td>
<td>Advertiser (A)</td>
<td>Advertiser (A)</td>
<td>Advertiser (A)</td>
</tr>
<tr>
<td>West Australian (P)</td>
<td>Daily Mail (A)</td>
<td>West Australian (P)</td>
<td>Daily Mail (A)</td>
<td>Daily Mail (A)</td>
</tr>
<tr>
<td>Australian (N)</td>
<td>West Australian (P)</td>
<td>Australian (N)</td>
<td>Australian (N)</td>
<td>Australian (N)</td>
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<tr>
<td>Age (M)</td>
<td>West Australian (P)</td>
<td>Age (M)</td>
<td>Age (M)</td>
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<td>Mail (A)</td>
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<td>Sunday Mirror (S)</td>
<td>Sunday Mirror (S)</td>
<td>Sunday Mirror (S)</td>
<td>Sunday Mirror (S)</td>
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<tr>
<td>National Times (Q)</td>
<td>Sunday Sun (B)</td>
<td>Sunday Sun (B)</td>
<td>Sunday Sun (B)</td>
<td>Sunday Sun (B)</td>
</tr>
<tr>
<td>Sunday Times (P)</td>
<td>Sunday Telegraph (N)</td>
<td>Sunday Telegraph (N)</td>
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<tr>
<td>Sunday Mail (A)</td>
<td>Sunday Times (P)</td>
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Table 1. Australian Media Groupings
<table>
<thead>
<tr>
<th>Herald and Weekly Times Group</th>
<th>Fairfax Group</th>
<th>Murdoch Group</th>
<th>Packer Group</th>
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<tbody>
<tr>
<td><strong>Magazines</strong></td>
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<tr>
<td>Listener-In TV (M)</td>
<td>Woman's Day (N)</td>
<td>New Idea (N)</td>
<td>Women's Weekly (N)</td>
</tr>
<tr>
<td>Australasian Post (N)</td>
<td>Pix/People (N)</td>
<td>TV Week (N)</td>
<td>Bulletin (N)</td>
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<tr>
<td>Home Beautiful (N)</td>
<td>Dolly (N)</td>
<td>Best Bets (N)</td>
<td>Australian Home Journal (N)</td>
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<td>Your Garden (N)</td>
<td>Belle (N)</td>
<td>Parade (N)</td>
<td>Cleo (N)</td>
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<td>Aircraft (N)</td>
<td>Pol (N)</td>
<td>The Australian Student (N)</td>
<td>KG Murray Group (N)</td>
</tr>
<tr>
<td>3 half yearlies</td>
<td>Woman's World (N)</td>
<td></td>
<td>28 monthlies</td>
</tr>
<tr>
<td>1 yearly</td>
<td>Cosmopolitan (N)</td>
<td></td>
<td>28 bi-monthlies</td>
</tr>
<tr>
<td>4 bi-yearlies</td>
<td>Walkabout (N)</td>
<td></td>
<td>15 quarterlies</td>
</tr>
<tr>
<td><strong>Radio</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>VH Stations (Vic., 2; Qld. 3; S.A., 4; W.A., 4; Tas., 1)</td>
<td>Macquarie network “prescribed interest” in at least 5 stations</td>
<td>4 stations (W.A., 2; N.S.W., 1; S.A., 1)</td>
<td>5 stations</td>
</tr>
<tr>
<td></td>
<td>David Syme Co. (1 station)</td>
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<tr>
<td><strong>Television</strong></td>
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<td></td>
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<tr>
<td>HSV (M)</td>
<td>ATN (S)</td>
<td>NWS (A)</td>
<td>TCN (S)</td>
</tr>
<tr>
<td>BTQ (B)</td>
<td>QTQ (B)</td>
<td>WIN (NSW country) (38% interest)</td>
<td>GTV (M)</td>
</tr>
<tr>
<td>ADS (A)</td>
<td>CTC (C)</td>
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<tr>
<td>TVT (H)</td>
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</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. C. Williamson (1/3 investment)</td>
<td>Australian Newsprint Mills Holding Ltd (30% if issued capital)</td>
<td>Bay Books Pty Ltd Festival Records Pty Ltd Nationwide Air Services Pty Ltd</td>
<td></td>
</tr>
</tbody>
</table>

Code: A, Adelaide; AS, Adelaide suburban; B, Brisbane; BH, Broken Hill; C, Canberra; H, Hobart; M, Melbourne; MS, Melbourne suburban; N, national; NG, New Guinea; NSW, New South Wales suburban; P, Perth; QP, Queensland provincial; S, Sydney; SI, Singapore; VP, Victorian provincial; WAP, West Australian provincial

1. Equal share Herald and Weekly Times and Fairfax.
2. Equal share Herald and Weekly Times and Murdoch.
3. Equal share Fairfax and Packer.
In the important area of programming, the board receives countless complaints from pressure groups and from individual viewers. Complaints are investigated and, where breaches of the board’s television programme standards are involved, appropriate action is taken with the station concerned. The board’s monitoring staff also reports on material which appears to breach the standards. “Where the Board has reason to believe that any matter (including an advertisement) which it is proposed to broadcast or televise is of an objectionable nature, that matter shall be subject to such censorship as the Board determines” (section 101 of the Broadcasting and Television Act).

To supplement the general observations of programmes conducted throughout the year by its monitoring staff, the Broadcasting Control Board conducts surveys of broadcasting programmes “based on actual monitoring observations, to determine the adequacy and comprehensiveness of the service available to listeners”. These surveys provide further information on the level of listening, on overall and individual station popularity, on the popularity of individual programmes, and on the composition of the audience for programmes.

The board hopes that its future research will “cover the uses which people of all ages and backgrounds make of radio and television; opinion surveys of capital cities and some provincial centres; studies of the acceptability and appropriateness of special programmes for kindergarten-age and school-age children; and regular content and thematic analyses of particular types of programmes and experimental investigations into the effects of particular programmes on selected types of viewers” (ABCB 1973).

Unlike the Independent Broadcasting Authority in the United Kingdom, which has the responsibility for the provision of a completely independent television news service, the ABCB blandly comments that “there is no formal obligation on stations to provide news programmes”. It has no control over the administration of the news services, nor does it occupy itself with the fact that the provision of news on Australian television is essentially in the hands of the same people who provide Australia with the news in newspapers and on radio stations. The board’s apparent naïveté about the possibilities, even functions, of television news as opposed to talking-head radio news is charmingly summed up in its 1973 comment that “pictorial support in news programmes continued to be an outstanding feature of the service”.

The introduction of a credit points rating system in June 1973, with the idea of increasing the quantity and quality of Australian content in Australian television shows, caused a deal of heartburn in
the television industry. In the opinion of some executives, the new system has necessitated few changes in the general policy of most television stations, which continue to increase Australian content only if it will improve their ratings.

Parliament imposes a number of restrictions and controls over both ABC and commercial television stations. In having to broadcast proceedings of federal Parliament, the ABC's hands are tied by the Parliamentary Joint Committee on the Broadcasting of Parliamentary Proceedings. Neither the ABC nor the commercial radio or television stations are permitted to broadcast political news or comment in the last forty-eight hours of a federal election campaign although the newspapers are, quite properly, free to publish what they will, right up until electors go to the polls. A more seriously restrictive passage in the Broadcasting and Television Act, 1942-1969, puts a year-round clamp on freedom of political discussion and comment by radio and television stations. This is section 116(2), which says: "The Commission or a licensee shall not broadcast or televise a dramatisation of any political matter or controversial matter which is then current or was current at any time during the last five preceding years". Referring to the interpretation which was placed on the section in 1956 by the Attorney-General's Department, the ABC said in its fortieth annual report (1971-72): "This interpretation is included in the Television Programme Standards of the Australian Broadcasting Control Board, which the Commission has accepted as the minimum standards for its programmes. The Section of the Act as interpreted, ... in the opinion of the Commission, is unduly restrictive."

Few laws exist in Australia to control the freedom of the press—the written word. But those that find themselves on the statute books—mainly the laws of contempt, defamation, and libel—are dangerously inhibiting. Articles and public addresses by journalists and academics demanding a change in the laws would fill a large column. But neither the newspaper proprietors nor the politicians have shown concerted interest or taken united action towards law reform. Even editors who would like the laws liberalized appear reluctant to mount a concerted campaign to help achieve their aims.

Some students of the press in Australia, while freely admitting the restrictive nature of the laws of libel and defamation, suspect, nevertheless, that some editors hide behind them in order to avoid their duty and responsibility to encourage fearless investigative journalism on their newspapers and television current affairs programmes. But the more timid editor who spends his time avoiding trouble and controversy is becoming an anachronism in Australian journalism, as the role of newspapers changes to adapt to competition from the electronic media.
The Crimes Act and other acts of parliament obviously impose restrictions on the availability of information to the media; national security is usually given as the reason for suppression of news, although journalists suspect that in some cases it is used as an excuse. The “D notice” system, which is a copy of the British system of requesting the media to co-operate by not running stories about particular subjects whose publication could be considered prejudicial to the safety of the nation, has worked fairly smoothly in Australia.

Many people feel—and their attitude would seem to be spreading in the community—that Australia needs some sort of press council or media council to act as a moral conscience and a brake on the newspapers and radio and television stations. It is now a matter of who gets in first. If a federal media council were established, it could presumably investigate complaints against any branch of the media throughout Australia. State media councils could be established, but their jurisdiction would be limited and not every state might feel moved to set up one.

Australia may feel the need to set up a body similar to the British Press Council but one with jurisdiction, or judgement, over the electronic media as well as the newspapers and magazines. (Its relationship with the Broadcasting Control Board would have to be carefully worked out.) The British model is appellate: it is there to hear complaints and to give rulings. Nevertheless, it acts from time to time on its own initiative and has criticized the actions of certain newspapers without any request from a complainant. Anyone who feels he has cause for complaint against the press can take it to the Press Council, with basically two provisos—that he must first have tried to get redress from the editor and newspaper concerned, and that he must promise not to use legal process in the case if it is being dealt with by the Press Council. This right applies to journalists as well as to members of the public. The council has no sanction other than publicity. However, with fewer than half a dozen exceptions, the council has had its rulings published by the press—including, in full, by the publication concerned in the complaint—when they have been first announced, and has itself also published them annually. The council consists of journalists as well as laymen, and it is generally regarded as a useful watchdog. It not only provides the public with a means of redress of real grievances; it also ensures that grievances are real and not merely extensions of public prejudice. It not only guards the freedom of the press; it also publicly denounces what it regards as press error, and therefore helps to make the press more conscious of its freedom. Some journalists feel that the Australian newspapers—and also the radio and television interests—may be well advised to get together soon and form an Australian press council before one is forced upon them.
3 MEDIA EXPOSURE

In any assessment of time devoted to different activities, the media rank high. Studies have consistently demonstrated that people spend more hours per day in sleep than in any other activity. Next to sleep comes work, and after work attending to the media. Among young people in particular, television viewing is high, and a related series of investigations has shown that by the time they have reached sixteen years of age the majority will have spent at least as much time in front of a television set as they have at school. Such findings have caused investigators to argue that next to the family and school, television is the most significant agent of socialization (Feschbach and Singer 1971; Baker and Ball 1969).

The social diet of the population is clearly spiced by news, comment, and entertainment derived from a technological source, whether this be broadcasting or print. The actual details of this diet will be examined briefly in the sections that follow.

Print

Australians are avid newspaper readers; the daily newspaper circulation of around 363 per 1,000 of population is exceeded only by Sweden (518), Japan (492), and the United Kingdom (488) (Cortis and Carr 1972). Results from a survey in 1971 suggest that 84 per cent of a representative national sample of over 1,000 persons get at least one newspaper a day and that 29 per cent get two or more (Western and Hughes 1972). Significantly, the papers read are very largely the metropolitan dailies: 68 per cent reported reading only metropolitan dailies, a further 5 per cent read metropolitan and provincial papers, and only 11 per cent read provincial papers alone.

Nevertheless, the daily press is declining in significance. Before the Second World War, circulation had increased at almost double the population growth rate, but since the early 1950s circulation has grown at a slower rate than population. The same is true for Sunday papers as well. Figure 1 summarizes the situation.

Another way of looking at press exposure is to determine the actual time spent reading. In a paper delivered to the media seminar on the National Communications Plan in February 1974, Ray Newell, director of planning and research, Department of the Media, presented data to suggest that the average time spent reading metropolitan dailies has remained remarkably constant since 1950, at about 1.1 hours per day (Newell 1974). The data does not tell us anything about the differences between quality and popular papers, or between papers from different groups, and of course
Fig. 1. Increase in total capital city newspapers compared with increase in population

Fig. 2. Increase in daily newspaper circulation state by state compared with increase in population
Fig. 3. Sales per day of morning papers

Fig. 4. Sales per day of evening papers
Table 2. Net Paid Circulation for Six Months (1972) for Major Metropolitan Dailies

(In thousands)

<table>
<thead>
<tr>
<th>Herald and Weekly Times</th>
<th>Fairfax</th>
<th>Murdoch</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sun News Pictorial</td>
<td>648</td>
<td>Sydney Morning Herald</td>
</tr>
<tr>
<td>Melbourne Herald</td>
<td>498</td>
<td>Sun</td>
</tr>
<tr>
<td>Courier Mail</td>
<td>260</td>
<td>Age</td>
</tr>
<tr>
<td>Telegraph</td>
<td>159</td>
<td>Australian Financial Review</td>
</tr>
<tr>
<td>The Advertiser</td>
<td>217</td>
<td></td>
</tr>
<tr>
<td>The West Australian</td>
<td>218</td>
<td></td>
</tr>
<tr>
<td>Daily News</td>
<td>123</td>
<td></td>
</tr>
<tr>
<td>The Mercury</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2,176</td>
<td>829</td>
</tr>
</tbody>
</table>

Source: Guest and Bell *Australian Media: An Investment Review*, December 1972.

it has not taken circulation into account. But it does suggest that among readers (in later years a small proportion of the population) the time devoted to papers has not declined over a twenty-five year period.

Reliable circulation figures for the provincial press and the suburbs are difficult to obtain but information about magazine circulation is readily available. As mentioned earlier, a major struggle for control of the magazine marked has been going on. One of the consequences of this struggle has been very substantial rises in circulation: 33 per cent over the five years to 1973 compared with 2 per cent over the preceding five years was quoted earlier.

**Radio**

From a period in the doldrums following the introduction of television, radio now has the greatest audience of any medium. In his address to the media seminar noted earlier, Newell described how radio listening declined in the first five years of television but then gradually recovered; today he estimates that the average time spent listening to the radio per person per day is around 2.9 hours. Radio’s recovery has been due importantly to changing format. In the early days of television, when it was still oriented to family listening, it was unable to compete; following the advent of the ubiquitous transistor, with the ability to take the radio into the car and outside the home, radio’s role changed dramatically. It is no longer a family medium but rather a personal mobile medium for news,
entertainment, and advertising. Increasingly, too, stations are tending to programme for specific target audiences. There are the rock-and-roll and pops stations directed at teenagers, there are the "good music" stations with comperes who "really care" catering for housewives, and there are other programming styles as well. However, there is not to date the degree of fractionation that is found in programming for commercial broadcasting in the United States.

As already mentioned, radio has the greatest penetration of any medium. On a total population basis there are 608 radios for every 1,000 persons, a statistic which puts Australians among the most radio-oriented people in the world. In the national survey referred to earlier, only 8 per cent stated that they neither owned nor had access to a radio (Western and Hughes 1972). The study also revealed patterned differences in station preferences and listening time. Thus commercial radio tended to be preferred by the young, the blue-collar workers, the less educated, and Labor voters, while the ABC was preferred by older, better educated, white-collar Liberal voters. Fairfax stations, including the Macquarie network, were preferred by around 18 per cent of the sample, and Herald and Weekly Times stations, including the Major network, were preferred by about 14 per cent.

Listening tends to be at a maximum before 8.00 a.m. Less than one set in ten will be on after 8.00 p.m. Increasingly it seems that radio listening is something that "occupies the surplus mind space that is available when we are driving a motor car, sitting on the beach, studying, or reading a newspaper. It has even been suggested that people scan a TV set and listen to the radio simultaneously" (Newell 1974).

**Television**

Television is almost as common as radio. Recent data suggest that television is available in over 90 per cent of all homes. This penetration has been achieved in fifteen years, slightly faster than in the United States and substantially faster than in the United Kingdom (Patterson 1972). However, in the metropolitan areas it appears that the total number of sets in use has fallen quite markedly since 1965. The data are presented in figure 5. As can be seen, in 1965 72.7 per cent of sets were in use; this was made up of 62.8 per cent of sets tuned to commercial channels and 9.9 per cent tuned to the ABC. By 1972 the total figure of operating sets had fallen to 66.5 per cent, but the ABC’s share of this market had risen to 13.4 per cent, while the commercial channels’ share had dropped to 53.1 per cent.
Table 3. Net Paid Circulation of Selected Magazines for Six Monthly Period April-September 1972

(In thousands)

<table>
<thead>
<tr>
<th>Herald and Weekly Times Group</th>
<th>Fairfax Group</th>
<th>Murdoch Group</th>
<th>Packer Group</th>
<th>Other</th>
</tr>
</thead>
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<tr>
<td>Australasian Post</td>
<td>Woman’s Day 553 (w)</td>
<td>New Idea 467 (w)</td>
<td>Australian Women’s</td>
<td>Time (Aust. Ed.) 135 (w)</td>
</tr>
<tr>
<td>The Weekly Times</td>
<td>Pix/People 181 (w)</td>
<td>TV Week 491 (w)</td>
<td>Weekly 864 (w)</td>
<td>Newsweek (Aust. Ed.) 40 (w)</td>
</tr>
<tr>
<td>The Listener-In TV</td>
<td>Woman’s World 200 (w)</td>
<td></td>
<td>TV Times 290 (w)</td>
<td></td>
</tr>
<tr>
<td>Your Garden</td>
<td>Dolly 140 (m)</td>
<td></td>
<td>The Bulletin 39 (w)</td>
<td>Readers Digest 750 (m)</td>
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<td>Australian Home Beautiful</td>
<td>Belle 90 (m)</td>
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<td>Australian Home</td>
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<td></td>
<td>Pol 49 (m)</td>
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<td>Journal 70 (m)</td>
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<td></td>
<td>Walkabout 33 (m)</td>
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<td>Cleo 170 (m)</td>
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<td>KG Murray Toal</td>
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<td></td>
<td></td>
<td></td>
<td>Bi-Monthlies 582</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Quartéries 328</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>½ Yearly 122</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Yearly 1,405</td>
<td></td>
</tr>
</tbody>
</table>

Source: Guest and Bell, *Australian Media: An Investment Review*

(m): monthly
(w): weekly
Fig. 5. Sets in use (7.00–10.00 p.m.) in major capital cities related to potential market size
Several explanations have been advanced to account for the decline in viewing. Bad programmes, it has been suggested, have contributed. Daylight saving has been a significant factor in the last few years; Melbourne, with the greatest daylight saving advantage, has the lowest viewing figures; Brisbane, without daylight saving, has the greatest proportion of sets switched on at peak viewing periods. A final explanation that has been offered is that Australians are becoming more discriminating in their use of leisure and are using television more selectively than was once the case. Clearly there are elements of truth in all these explanations, but further research is necessary before any very definite statement can be made.

The competitive climate that exists among the commercial channels in the capital cities is severe and far exceeds the situation that existed for magazines. With the advent of colour, conditions are likely to worsen, and it is possible that there will be a return to two commercial stations in Brisbane and Adelaide. Ratings, or at least belief in their validity, come to assume critical importance under these conditions of extreme competition. The survival of channels depends on their ability to attract advertising revenue, and this depends on their ability to persuade advertisers that they can attract a significant proportion of the viewing public.

Time spent watching television varies. In one study (Western and Hughes 1972) it was found that 46 per cent of the sample watched television every night. A further 9 per cent watched almost every night and an additional 7 per cent four to five nights per week. Only 9 per cent stated they watched only when there was a programme of particular interest. The sample divided itself into the following groups:

- Unselective and frequent viewers 30 per cent
  (watch every night irrespective of what is on)

- Selective and frequent viewers 27 per cent
  (normally watch every night but are selective
  and will turn the set off on having seen what they
  want to)

- Selective and occasional viewers 8 per cent
  (frequent and fluctuating)

- Sometimes selective, sometimes not 9 per cent

- Occasional viewers 12 per cent
  (occasional random switching on)

Twelve per cent didn't watch at all, and the remaining 2 per cent failed to answer the question. Viewing television is clearly a time-
consuming activity for a majority of people. Other data support these conclusions. Results from Anderson Analysis reported in Alan Davies's article "Mass Communication" (Davies 1969) suggest they average around 3.5 hours per day over a seven-day week. In the Broadcasting Control Board's study referred to earlier, viewers were classified as "light", "medium", and "heavy". Heavy viewers were those watching at least twenty-one hours per week; they comprised around 45 per cent of the sample examined. Ray Newell's estimate in his media seminar paper is slightly over three hours per person per day.

The Media Mix and Total Media Exposure

We stated earlier that time budget data suggest that next to sleeping and working in the individual's time allocation come the mass media. This was based on overseas data; we do not have time budget data for Australia, but from what is available we can build up something of a picture.

In summarizing media use, Western and Hughes assert that "the extent of exposure to the mass media is considerable. Of the total sample of 1,058, 70 per cent buy a newspaper every day and have a radio and television set in the house, both of which are listened to and watched almost without exception daily. Twelve per cent have dispensed with newspapers and employ only radio and television, 8 per cent make use of radio and press only, 6 per cent television and press, but only 4 persons out of the total of 1,058 neither read a newspaper, watch television nor listen to the radio" (Western and Hughes 1972).

And it is time-consuming. Newell suggests that "TV viewing time grew as an addition to listening and reading. This can all be added together to give us a Frankenstein of a curve which we will call Total Daily Media Usage Time" (see figure 6). He correctly suggests that this curve is similar to the growth curves associated with the "information explosion" and infers that gross daily usage time is likely to increase to accommodate new technical developments. He then goes on to suggest that "no one could possibly believe that the various reading and listening and viewing estimates are literally additive in the sense that almost eight hours per day are given over to the mass media as a whole". I would agree with this assertion and with what follows: "It seems evident that less than complete attention is given to each of these media separately and that we scan them in much the same way as a multiplexing machine scans a signal for crucial changes. This is quite apparent of people using two media simultaneously and probably occurs through all media usage" (Newell 1974).
It is probably also true that attention differs at different times and as a consequence of different stimuli. To understand properly the nature and extent of exposure to the mass media and to have a proper appreciation of its impact much greater account must be taken of both levels of attention and nature of the stimulus than has previously been the case.

4 MEDIA MANAGERS

Both here and overseas, information about the people who manage the media organizations is sparse. In the United States Schramm has noted: "We have as yet no adequate picture of the media personnel, their training, their jobs, their feeling about their jobs, their financial and other rewards, their codes of responsibility" (Schramm 1967). Since 1957 a number of studies have been reported but the picture is still fragmentary.

In Australia, Sommerlad (1950), Sparrow (1960), Holden (1961), Inglis (1962), Mayer (1964), and Horne (1966) have commented on
the occupational and other characteristics of journalists. Hudson (1963) appears to have made the first systematic investigation of journalists; in a study involving fourteen metropolitan newspapers in Australia he collected data on the status of journalists, their recruitment, education, the conditions under which they worked, and factors associated with their movement from the occupation.

From Hudson's investigation we learn that the largest single group of journalists is in the thirty to thirty-four year age group and that journalism is a male preserve, there being no more than around 10 per cent of women employed in the field. Hudson also reveals that no more than 5 per cent of five hundred journalists surveyed in Brisbane, Adelaide, and Perth had tertiary qualifications; in addition, while in the period 1950 to 1960 there were 285 enrolments in diploma of journalism courses at the universities of Melbourne and Queensland, only twenty-five students graduated—a drop-out rate of 91 per cent.

Journalists appear not to be joiners. Hudson (1965) remarks that it is probably important for journalists to be in touch with the basic thoughts and attitudes current in society; paradoxically, however, "... an occupational hazard of journalism is that it tends to breed in its practitioners a removal from their communities ... an almost ascetic type of detachment has even been put forward as an occupational necessity of journalism."

Some preliminary results from a more recent study round out this picture somewhat. The study focused on senior staff of the rank of news editor, feature editor, and above, working in press, radio, and television settings. Both capital and provincial cities were included. Data were collected by means of a mailed questionnaire sent to selected individuals in the different settings. Questionnaires were returned by 155 individuals, a response rate of around 45 per cent. The effective sample comprised seventy employed by different newspapers, sixty-one employed by radio and twenty-four employed by television. The television group, particularly, was disappointingly small.

Hudson's finding that journalism is a male preserve was reinforced. Only three of the respondents were women: one from newspapers and two from radio. A significant number of those on newspapers came from a journalistic background: 24 per cent of them reported a father in journalism or a related area. Such a background was far less common among those working in radio and television, although nearly half of them reported growing up in professional and managerial homes. Only four from the whole group had tertiary qualifications. Secondary schooling was all the education that two-thirds of the newspaper and radio men had had. Those in television were a little more likely to have had some tertiary education.
Findings relating to participation in community affairs are equivocal. The majority of those working in radio and television report no membership in voluntary associations, but around two-thirds of those on newspapers do belong to one or more associations. But minimum political involvement is suggested by the fact that over half of those from newspapers and television and around 40 per cent of those working in radio claim not to be regular party supporters. They vote at election time for the "best" candidate. Certainly other studies of comparable socio-economic groups would show a much higher proportion committed to one or other party.

The majority had worked in the media industry all their lives. Of the press men 56 per cent had always worked on newspapers; but there was some mobility. Twenty per cent reported as having worked on one paper only, 40 per cent had worked on two to four papers, and the remainder had worked on more than four. Those in radio were a little more variable. One-third had worked in radio continuously, a further 13 per cent had gone from school to something different but had soon made the break to radio and had not left since that time. Among the television managers 60 per cent had worked only in the industry, 50 per cent had had only one job, and 37 per cent had had between two and four. Not unexpectedly, movement from radio and press to television was greater than movement in the opposite direction. Clearly from this sample it would appear that the careers of media managers are not all that variable. They move into the industry relatively early in life and the majority of them stay there.

Questions relating to the functions of the media are of perennial concern. In order to determine the views of the sample on this issue, we asked them to indicate how important they felt each of five factors to be. The factors are listed in table 4 together with the proportion of each group saying "very important".

As can be seen, there is clear agreement concerning the provision of news. Obviously, informed comment is seen more as a function of the press; it is perhaps surprising that it rates so lowly with the television sample. Entertainment, of course, is television's role par excellence, and it is interesting to see the managers and the general public so in accord. Again the traditional role of the press as a guardian of public rights, perhaps honoured more in the breach in Australia, is in no danger of being usurped by the electronic media.

The point was made earlier that concentration of ownership does not necessarily mean a reduction in diversity. Individual editors may be able to run their papers as they see fit, free from direction of the parent company.
Several of the questions sought information on this issue. First we asked: “If you belong to a mixed-media group with associates in other cities, does your group have policies about the treatment of news about specific topics?” Then we asked: “Do occasions arise when all members of your group work together?” Around a third of the media managers with associates in other cities stated that there were policies about the treatment of news which all members of the group followed. The remaining two-thirds said that this was not the case and editors were free to determine how they would make use of any news story. Very few newspaper and radio men saw occasions when all members of their group worked together; among those involved in television, however, it was more common; half of those with associations in other cities could name occasions when it had occurred.

These findings are obviously far from definitive. The sample is small and the questions cover only part of the issue. Nevertheless, there does seem to be some support for the view that concentration of ownership does not necessarily mean dictation from head office.

To pursue the issue further, we listed a series of hypothetical situations and then asked: “Have you personally had any experience vis-a-vis newspaper proprietors (not necessarily your present proprietor/board of directors) of any of the following?” The question was given only to newspaper men. The situations are listed in table 5 together with the proportion indicating some experience of the situation and those indicating none.

The percentages do not always add to 100 as on some issues a proportion of the sample indicated uncertainty. As with most other aspects of reality the situation is one of some complexity. From the results it is clear that pressures are exerted. Stories are buried
Table 5. Newspapermen’s Experiences with Different Management-created Situations (%)

<table>
<thead>
<tr>
<th>Situation</th>
<th>Experienced at least occasionally</th>
<th>Never experienced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Instructions being given to you about the emphasis of a story</td>
<td>66</td>
<td>34</td>
</tr>
<tr>
<td>Instructions being given to you to treat a story counter to your own interpretation of the facts</td>
<td>20</td>
<td>80</td>
</tr>
<tr>
<td>Stories being suppressed or buried because they ran counter to editorial policy</td>
<td>44</td>
<td>51</td>
</tr>
<tr>
<td>Stories being suppressed or buried because they conflicted with management interests</td>
<td>41</td>
<td>54</td>
</tr>
<tr>
<td>Have you ever written stories which ran counter to editorial policy which were printed?</td>
<td>68</td>
<td>23</td>
</tr>
<tr>
<td>Have you ever written stories which conflicted with management interests?</td>
<td>70</td>
<td>21</td>
</tr>
</tbody>
</table>

because they run counter to editorial policy or because they conflict with management interests, instructions are given about the emphasis to be given in a story and about the “right” sort of interpretation to place on a set of facts. But at the same time stories are written which run counter to editorial policy and which are in conflict with management interests. Clearly control is exerted, but at the same time there is opportunity for resistance.

A related issue has to do with pressure from advertisers. Obviously this is a different dimension of the problem; the concern about concentration of ownership typically is in terms of the reduction of diversity that may follow from it. Reduction of diversity means fewer points of view, fewer interpretations of news, and less complete news coverage, all of which act to the detriment of the citizen who is attempting to inform himself about the affairs of the day. The dangers here are hegemonic in a sense; pressures on diversity from advertisers, on the other hand, are likely to be more narrowly specific, concerned primarily with the advertiser’s desire to protect his product from unfavourable publicity.

To gain some insight into this issue we put the following question to all three groups: “Because of the large part which advertising plays in the economics of a newspaper/radio station/TV station, advertisers are in a position to exert and may exert influence on editorial policy. How frequently would you consider that editors are subjected to pressure from advertisers?” We asked them to respond
Table 6. Media Men’s Experiences with Different Advertiser-created Situations (%)

<table>
<thead>
<tr>
<th>Pressure from advertisers</th>
<th>Experienced at least occasionally</th>
<th>Never Experienced</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Press</td>
<td>Radio</td>
</tr>
<tr>
<td>To adopt a certain editorial line</td>
<td>65</td>
<td>51</td>
</tr>
<tr>
<td>To publish a particular item helpful to some interest of the advertiser</td>
<td>97</td>
<td>85</td>
</tr>
<tr>
<td>To refrain from publishing a particular item harmful to some interest of the advertiser</td>
<td>75</td>
<td>79</td>
</tr>
</tbody>
</table>

in terms of the three factors listed in table 6. The data are quite striking. Pressures from advertisers are clearly part of the day-to-day life of the members of the sample. Around two-thirds of those in newspapers and television report at least occasional pressures from advertisers to adopt a certain editorial line; the figure drops down to around half for the radio men. Virtually all the press and television respondents report at least occasional pressures to publish or put on air items helpful to some interest of the advertiser, while 85 per cent of the radio men report the same. Again, there are pressures to refrain from using items that might be harmful to the advertiser’s interests. It might also be noted that, while for simplicity of presentation only two categories of data have been given, the first category, "Experienced at Least Occasionally", includes respondents saying "occasionally", "sometimes", and "often". Those often experiencing pressure amount to around 20 per cent of the sample.

The data we have examined clearly suggest that pressures from advertisers are greater than pressures from owners or boards of management. Space does not permit more than highlighting the issue here. Further examination of these and important related questions would necessitate a more detailed analysis of the data than we can provide at the present time.

CONCLUSION

We have come full circle. The chapter opened with a consideration of the organizational and ownership structure of the Australian mass media industry. We saw how from a situation of diverse ownership the control of the media came to rest in fewer and fewer hands. The significance of this situation for the citizen’s "right to know" was briefly examined. The extent of institutionalized and governmental control over the media was then described and some brief com-
parisons with the British situation were made. Media audiences were then examined and the extent of media penetration into the community noted. Finally the manufacturers of the product were considered, some of their social characteristics identified, their definition of their function described and the pressures they see themselves under briefly outlined.

Only the barest sketch of the issues mentioned has been provided and, of course, a number of matters have not been considered at all. The mass media industry in Australia is currently in some turmoil. Colour television has been introduced at considerable expense, particularly to the less profitable channels in the eastern states. FM radio has begun, and community access broadcasting has been the subject of a number of inquiries and seminars. Cable television is being investigated and the Postmaster-General's Department is working on a national telecommunications plan. The concept of the "wired city" has been under consideration.

All of these developments will have consequences for the mass media as we know them; but it would be a brave man who would predict when we will receive our daily paper via the portable console plugged into our bedroom cable socket; or when we will visit our neighbourhood television studio to assist with the local access programme we are interested in; or when we will participate in political affairs by signalling our approval or disapproval of governmental actions directly to the parliament via cable from our living room.

REFERENCES


THE MEDIA 171

Patterson, George. 1972. Data from George Patterson Survey.
There is always difficulty in any attempt to estimate the degree to which the law influences a society, since it is not at all clear whether the law is not simply a product of the society itself. There seems no doubt that there are interacting influences between social circumstances and the law at any given time. The real problem arises when we attempt to decide whether the law is operating as a form of social engineering as it was considered by Holmes and, if so, to what extent it operates to change the society. Certainly since the middle of the nineteenth century, with the massive increases in legislative intervention in all our lives, the law seems to have undertaken almost complete control over our social activities.

The rate of control over different facets of our lives has of course been uneven. In the criminal law, for example, as it touches the private citizen, the law readily responded to what have been felt to be social needs. On the other hand its intervention to regulate and control the activities of powerful corporations and other sources of so-called white-collar crime have been much less apparent and such interventions have been very much more resisted.

Again in the different areas of law the patterns of change have not been uniform, and it is difficult to discern any general pattern in the developing legal systems of the various Australian states, territories, and federal spheres. It is necessary therefore to look at the main branches of the law in these various contexts so that some attempt can be made to understand the trends; it may then be possible to predict the general directions of the law. As a preliminary matter it is important to note that all the changes taking place within the legal system are not now necessarily directed towards or conceived in areas of traditional law. It is now possible to speak of the “law of poverty” and therein include not only welfare law in the sense of governmental support through pensions and so on, but also housing law, general wage arbitration law, consumer protection, and a host of marginal matters that significantly impinge on the standard of living of a very large number of people in the community. Similarly, it
is now common to consider the whole environment in which society operates as being a proper concern of law, and it may be a matter of fundamental importance for the continued existence of an orderly and legal society.

Although these compendious terms—environmental law, law of poverty, and so on—indicate very wide areas of basic concern to the law, the law nevertheless still tends to work within the closed categories developed in an earlier period, and it is not yet completely convenient to discard the categories and attempt to discuss the living law in such compendious terms. It is more convenient to work within the traditional framework, being always aware of the risks of a too rigid acceptance of the traditional categories.

It is therefore intended in this short paper to consider the character of the law in Australia in a historical and social setting, but with an awareness of the broader perspectives in which the developments of that law have to be viewed and its objectives and purposes understood.

THE COMMON LAW TRADITION

It is common to speak of the Anglo-American system of jurisprudence when it is intended to contrast that system with the jurisprudence that developed during the eighteenth and nineteenth centuries in continental Europe. The Anglo-American system had its beginnings in the English common law and a considerable part of that common law origin still persists in many countries.

Australian law is firmly within the common law tradition and much more closely connected to traditional English common law than it is to the variations on that system that have been introduced in the United States. In one respect, however, the influence of American jurisprudence has been marked in Australian law. The Australian Constitution owes a considerable debt to its American predecessor. It is in the areas of private law that the close relationship to English traditional jurisprudence is most apparent in Australia.

CONSTITUTIONAL LAW

The law that regulates, limits, and controls the actual government of a state is of course of primary importance. In England the principles of government, the power of state, the duties of the citizen, and so on, have developed slowly over more than a thousand years and
have probably not yet reached a fixed and final form. Great Britain, it is often said, has a flexible constitution. Newer states, although they cast off their colonial status, nevertheless borrowed many features of the British Constitution. However, they introduced elements of rigidity into their constitutions by having them written into constitutional documents rather than left to constitutional practice and convention. With the establishment of the Commonwealth in 1901, Australia adopted a written constitution in a form similar in many respects to the American Constitution. Australian constitutional law deals with the power of the central government and the power of the various state governments as reflected in the constitutional document. Constitutional questions arising in the unitary form of government which prevails in Great Britain are often very different from those which arise in a federal system such as Australia, where the power of the state is divided between the number of participating governments—the federal and state governments. So also, the executive power in a unitary system is vested in the Crown. In a federation it must be divided among the participating partners.

The three arms of government—the legislature, the executive, and the judiciary—in the Australian legal system have to be considered at two levels, i.e., at the federal level and the state level.

Within the states themselves there is also control exercised over governmental power through state constitutions. Each of these state constitutions is contained in a written constitutional document supplemented by conventions and practices which are constitutional in character. State constitutional issues are nearer in kind to the British model, since they relate to the duties and powers of the state within a unitary system. But they are different from the British model in that they are subject in many respects to the federal Constitution.

At Federation 1 many of the powers which the colonies had previously held were surrendered to the Commonwealth, and those powers which were commonwealth powers were set out in the Constitution so that the central government only had power to make laws on express matters. The colonies which became the states were left with all the residue of powers.

Some of the powers which the Commonwealth has can be exercised only by the Commonwealth—they are "exclusive". Other powers which the Commonwealth has can be used by either the Commonwealth or the states and are said to be "concurrent" subject to the commonwealth law prevailing where there is a conflict. 2

Most of the powers of the central government are set out in section 51 of the Constitution, but the ordinary laws which touch the private citizen are made under powers outside the forty subject mat-
ters dealt with in section 51 and of course are made by the state governments. Criminal law, property law, the regulation of motor traffic, and so on are all dealt with by the states.

Commonwealth power under section 51 is directed primarily towards the making of laws on subjects which have an interstate or inclusive character for the whole of Australia, e.g., the control of naval and military defence, the postal service, lighthouses, and interstate trade. If a dispute arises whether a state or the Commonwealth has power to legislate on some matter, the matter must be decided within the judicial system set up under the Constitution. The High Court of Australia is the court most concerned with interpreting the Constitution. In many fields the powers of the Commonwealth and the states conflict in matters which concern the ordinary citizen. The Commonwealth has now passed general laws concerning divorce which apply to all the citizens of Australia because it had power to enact such legislation under section 51. Until the Commonwealth exercised this power, each of the states had different divorce laws. In other areas laws have been made by the Commonwealth and equally by the states on what is basically the same subject matter. For example, each state has its own criminal law, and there is a commonwealth Crimes Act. However, the range of matters dealt with in the commonwealth Crimes Act is limited by the constitutional powers of the Commonwealth and covers only a small part of general criminal law.

One of the most important powers held by the Commonwealth is its power to make grants to the states and to attach terms and conditions to those grants. Since the Commonwealth has taken over the great part of the taxation power, the Commonwealth holds the purse strings and can exercise considerable control over the states by attaching conditions to grants it makes.\(^3\)

The power of the Commonwealth has become increasingly important in recent years in areas such as social welfare, education, housing, and the financial support that the central government is able to give to the states to run their railway systems, preserve the environment, and in many general ways affect the lives of the citizens of the states. In certain periods, e.g., in wartime, the Commonwealth has power to control the whole economy of the country by virtue of section 51(vi), which gives the Commonwealth power to make laws "with respect to the naval and military defence of the Commonwealth and of the several States".

The powers of the central government, as mentioned before, are interpreted by the High Court of Australia. The Constitution set up a judiciary system separate from each of the judicial systems in the various states. While the High Court is primarily concerned with
constitutional matters, it also was given power to act as a court of appeal from the various state supreme courts so that many legal questions which involve the ordinary citizen within the states may come ultimately to be determined before the High Court. For example, criminal appeals can be brought from the supreme courts of the various states on appeal to the High Court of Australia. There is a similar right of appeal from the supreme courts of the states to the Judicial Committee of the Privy Council in England. The rights of appeal to the Judicial Committee are now limited, and most appeals in all kinds of matters ultimately go to the High Court of Australia.

CONSTITUTIONAL LAW AND POLITICS

Although the Australian Constitution is rigid or inflexible in many respects, there are necessarily broad areas which are covered only by practice or convention. In the recent conflict that developed between the two houses of the Federal Parliament much of the dispute was concerned with whether certain conventions existed. For example, the impropriety of the Senate in rejecting supply bills was in issue. Whether the Senate had power or was entitled in law under the Constitution so to act, it was nevertheless open to argument that because of conventions they ought not to have so acted.

Similarly, the dispute in 1932 that arose between the Lang government in New South Wales and the federal government involved questions of Constitutional convention relating to the powers of the state governor. These two cases illustrate the difficult border between matters of law arising under the Constitution and matters of convention which may give way to political expediency or changes in political climate. Constitutional law is very closely allied to political practice, and it is not always possible in purely legal terms to describe the ultimate sources of power in the polity.

THE LAW IN THE VARIOUS STATES

The settlement of Australia and the establishment of colonies was irregular and piecemeal. One result of the different dates of settlement was that the colonies came into existence at different stages in the development of English law. Each of the colonies on settlement brought with it the appropriate English law as the legal system in the new-found colony. The settling of New South Wales at the end of the eighteenth century meant that the law in New South Wales at the time of settlement was the English law at that date. This law
changes as it changed in England. Similarly with the other colonies the law imported was the law at the date of the establishment of the colony. After an initial period of dependency each of the colonies was granted an independent legislature. These independent legislatures were created at different points in time during the nineteenth century. Once each colony had power to make its own laws, then the law did not necessarily change as it changed in England; the local legislatures had increasing control over the creation of new law. In this way each of the colonies modified and adapted the original law that had been imported from England. The result, of course, was that the colonies at the time of Federation had each quite distinctive legal systems with their main point of similarity that they were all based on the common law, but had varied from it to a greater or lesser degree depending upon the legislative activity within each colony.

Since Federation this process has continued, and now the laws of each state are in many respects very different from one another, and one cannot say that what is legal in Queensland is necessarily also legal in Victoria. In many areas of the law which touch the ordinary citizen there are disadvantages in having so many different legal systems operating at the same time. For example, the criminal law varies from state to state as does the law of consumer protection; hire purchase law and even the traffic laws are not uniform.

THE COMMON LAW

As pointed out earlier, each of the colonies on its creation brought with it what is called the common law of England. Although the common law has been changed very considerably over the last hundred years, nevertheless certain broad areas of the common law survive. This means that if we want to understand the law of contract, for example, in New South Wales it is necessary to look at the common law of contract and also to look at what statutory changes have been introduced within New South Wales to modify or change the common law.

The common law system which developed in England arose out of customary laws which were changed and interpreted over many hundreds of years by the courts. It became a form of judge-made law which we can contrast with law made by the legislature and which is commonly referred to as statute law. We have then in each of the states a considerable body of common law doctrine and a considerable volume of statute law in most fields of law that touch us as citizens.
In the very early development of the law in England, the various customary laws were administered by local courts. After the Norman Conquest important cases began to be heard by the king himself sitting in his Curia Regis or Privy Council. This centralizing of justice had the effect of introducing uniformity among the various customary laws. It became necessary after the establishment of this early court system to have a record of what the law was on a particular matter; thus reporting of cases began as early as the thirteenth century. The year books which were begun in the reign of Edward I (1272–1307) lasted till 1535. From that date onwards either private persons or official publishers have continued the practice of publishing court decisions. The importance of these published decisions lies in the fact that the common law develops by precedent. This means that a court deciding a matter which is very similar to an earlier case must follow that earlier case.

THE COURT SYSTEM

Under the federal system that we have in Australia, each of the states has an independent system of courts, as has each of the territories, and there is a further system of federal courts. The hierarchy of courts indicates the way in which appeals move upward through the courts. Mostly the superior courts deal with appeals from the inferior courts, but in some matters they act at first instance or by way of retrying a case which has already been heard in a lower court.

Within each state the hierarchy of the courts has a supreme court at the top. In New South Wales, for example, there is a supreme court which has a court of appeal division presided over by the New South Wales chief justice. The Supreme Court has some original jurisdiction and hears appeals from the lower and intermediate courts. The Court of Appeal division, which is like the Full Court in other states, entertains appeals from single judges of its own Supreme Court. There is a system in New South Wales of circuit sittings of the Supreme Court, which means that judges of the Supreme Court go to the important country towns to hear cases.

The next court in order of importance in New South Wales is the District Court, which has both civil and criminal jurisdictions. On the criminal side it has original jurisdiction to hear the more serious type of criminal case which is not reserved for the Supreme Court and is not able to be heard in the Court of Petty Sessions. It can also hear criminal appeals from the lower courts. The judges on both the civil and criminal side are the same, and in civil cases matters are commonly heard without a jury, although these are available in
some circumstances, while in criminal cases, trials with a jury are common. District courts are established in all the various districts of New South Wales and at present sit in more than seventy towns.

The most inferior courts are the courts of petty sessions. These are most numerous throughout New South Wales, where there are about three hundred courts of petty sessions. These courts deal with civil matters; as small debts courts and also as courts of petty sessions they deal with relatively minor criminal cases. They also act as coroner's courts and as administrative courts to inquire whether a person charged with an offence ought to be committed to a superior court for trial.

In the other states the system is very much the same, although the names of the courts may vary slightly from state to state. In Victoria, for example, the intermediate courts are called county courts and the inferior courts are called magistrates courts, while in Western Australia lower courts dealing with civil matters are called local courts. In the Australian Capital Territory there is no intermediate court and the only two levels of court are the Supreme Court and the Court of Petty Sessions.

**FAMILY COURTS**

The Family Law Act, 1975 (Cwlth), provides a replacement of the existing divorce law by expansion of federal law to cover not only divorce proceedings but also a whole range of matters touching the family. This new legislation also provides for a new series of courts. Some of these courts are directly created by the federal government, even though they act within the states; there is also provision for a Family Court of Australia which is a new federal court created by part 4 of the act. The state family courts, where they are accepted, are nevertheless financed by the Australian government. It is not yet clear how many states will set up state family courts, but when the act comes into operation all states and territories will be served either by the Family Court of Australia, the Supreme Court of a state or territory, or the Family Court of a state which establishes such a court.

The range of matters which will be dealt with by these courts is extensive and covers not only such matters as the dissolution of marriages; in exercising their jurisdiction, the courts will also serve to preserve marriages and to look after such ancillary matters as the care and education of dependent children, the rights and welfare of children, and the promotion of reconciliation between marital partners.
This act marks a very considerable step forward in the use of the legal system, and the court system in particular, to serve a declared social purpose. The act does away with the element of fault in matrimonial causes and concentrates on the question whether there has been an irretrievable breakdown of the marriage.

THE SUBSTANTIVE LAW IN AUSTRALIA

The various parts of the law administered by our courts can be conveniently considered under a number of particular titles. We can, for example, discuss criminal law, the law of contracts, constitutional law, and so on as if each one was a separate compartment within our legal system. This, however, is done only for convenience, since many of these areas of the law might overlap and the same set of circumstances involve questions of both contract and tort and perhaps even criminal law. However, over many years these separate divisions have been considered independently of each other.

THE LAW OF CONTRACTS

The part of the law that probably touches on our private lives more often than any other part is the law of contracts, since almost every transaction we enter into involves contract law. We have only to buy something in a shop to have put into effect many of the contract rules that have been developed in our law over a long period. If we buy a motor car or a house or even eat a meal in a restaurant, the transaction can be analyzed in terms of contracts. Contracts therefore mark out our type of civilization to a very large degree.

Contract law is concerned with promises and the enforcement of those promises. The history of the development of this simple idea is very complicated, since it arose out of the principle of debt. The way in which a debt was recoverable was through a form of action in the courts named an assumpsit, and the right of a person to recover under this action was extended to all cases where a person had promised something and the courts were asked to enforce the promise. The name of this action came from the document which began the action in the early days. The document contained the words quare cum assumpsisset (because he had undertaken).

A contract results from one person accepting an offer from another or from his agreeing to another's request. The first two elements in a contract are said to be offer and acceptance. For example,
if A said to B "I will give you twenty dollars for your horse", and B said, "I accept", there is then a binding agreement. The contract could be formed the other way around, B saying to A, "Will you give me twenty dollars for my horse?", to which A answers, "Yes". The two parties to the contract are called the offeror and the offeree. The offeror in the first contract above is A, while in the second contract it is B. This type of contract is called a simple contract, and the terms of the contract are said to be express. Sometimes a person can enter into a contract by a mixture of words and conduct. Thus a person who picks up an object in a supermarket and hands it to a teller may go through all the processes of a contract using only actions and no words at all. In more formal contracts all the terms and conditions may be set out in a written document.

Sometimes when an offer is made it will not be immediately accepted and will remain open either for a specified time or until it lapses, or it is revoked by the offeror. But once it is accepted it becomes irrevocable. It is at that point of time that the binding contract is created.

Some contracts which involve important subject matters are required to be made in writing. The Statute of Frauds in 1677 set out certain conditions for several types of contract, and these contracts could only be enforced if "some memorandum or note thereof shall be in writing and signed by the party of be charged therewith ...". (This statute, although under different names, is in force in all the Australian states.) It covers such contracts as guarantees, contracts for the sale of land, and contracts which were not intended to be performed within one year. Even though such contracts were required to be in writing they were still called simple contracts.

In contrast to simple contracts are formal contracts. This is a contract which is not only in writing, but is also under seal. Other names for this type of contract are a specialty or a deed. The difference between these two forms lies in the need, in the case of simple contracts, for there to be some consideration within the contract, whereas with the formal contract the sealing is said to take the place of consideration. Consideration is the element in the agreement that gives the agreement its value. One can see this difference in a comparison between a contract and a gift. Consideration has been defined as "an act or forebearance or the promise thereof which is offered by one party to an agreement and accepted by the other as an inducement to the other's act or promise". The courts will not normally enforce a contract which is made without consideration; it will not, for example, enforce a gratuitous promise unless it is made under seal.

Some agreements which may appear to be enforceable contracts
may for one reason or another be invalid. For example, one of the parties may have had no capacity to enter into the contract; there may have been a mistake as to what was being contracted for; the contract may have been illegal.

Examples of cases where a person is incapable of making a contract are infancy and mental infirmity. Until recently infancy meant persons under the age of twenty-one, but in many states the age of infancy has been lowered to include only persons under eighteen years of age. If a person is of unsound mind he obviously cannot enter into a contract except in moments of lucidity. A special case where a person may be incapable of contracting is in the time of war when an enemy alien may lose his power to contract.

Cases of illegality making a contract unenforceable are where, for example, a contract is made to do something which the law forbids, such as a contract to commit a crime or an agreement between two persons to defame a third person. Similarly, contracts that are immoral or contrary to public policy are not enforceable. So a contract in consideration of future ex-nuptial cohabitation would be unenforceable as are contracts in respect of gaming and wagering.

**The Sale of Goods**

Probably the most important part of contract law for the ordinary citizen involves the buying and selling of goods. At the end of the nineteenth century, English law was rewritten as a code in an act called the Sale of Goods Act which is being adopted and modified in each of the Australian states. The act deals with sales “whereby a seller transfers or agrees to transfer the property in goods to the buyer”. *Property* in this sentence means something different from the usual sense of property and is closer to the word *ownership*. In many states there is now a move to introduce laws which develop the principles in the Sale of Goods Act so that they are able to protect consumers more adequately. There are now laws allowing goods purchased at the door to be returned at the election of buyer after the sale is apparently complete. These door-to-door sales acts are typical of the new consumer protection legislation which is being introduced throughout Australia.

**Bills of Exchange**

The other important area of the law which touches the citizen most commonly is the law of Bills of Exchange, which deals in part with the cheques we use in our day-to-day transactions. A cheque is a form of bill of exchange which is drawn on a bank requiring the bank to pay the person to whom one draws the cheque the amount
specified on the cheque. The ordinary currency we use transfers value represented by the currency immediately we hand over money to another person. This easy transfer to value through notes means that the notes are readily negotiable. A cheque can be readily negotiable if it is made out to "bearer", meaning that whoever holds the cheque can claim the value it represents. But a cheque can be made less negotiable by being marked in various ways. We commonly cross a cheque, which renders it not negotiable in the free way that a bearer cheque is negotiable.

**Employment**

Contracts of employment are also of considerable importance to most of us. In the early days employment tended to be strictly by masters of servants, but these terms now refer to a much broader class of employment contracts than the terms indicate. *Servants* now is much closer to the word *employee*, which is commonly used. We do still talk of the law of master and servant, but it most commonly means the law of employer and employee. Many of the terms and conditions under which an employee now works are controlled not by a contract of employment but by the laws of the state. An employee cannot be paid a salary or wage that is freely negotiated. All contracts of employment are subject to the laws governing the payment of a basic wage and to many statutes which regulate the conditions of employment. An employee cannot be employed, for example, to work dangerous machinery unless that machinery is properly fenced and the employee protected against injury.

Not all arrangements where one person requires another to work for him are master and servant arrangements. Sometimes the person contracting to have work done employs an agent to do the work rather than an employee. The law also regulates the relationships between the principal and the agent in such a situation.

The most important protection that the law gives now to employees is workers' compensation. The Australian acts generally follow the English Workmen's Compensation Act of 1897 and the protection against loss form accident "arising out of and in the course of" the worker's employment is compensated for by insurance compulsorily taken out by the employer.

**Consumer Protection**

In recent times the law has shown an increasing interest in what would earlier have been considered private practice. The offeror of goods these days is very commonly a large corporation which may attempt to sell goods by misrepresenting the quality of the goods, by
failing to notify the dangers associated with the goods, or by marketing the goods in such a way as to constitute a danger to the environment. Restrictive legislation in these and other areas is becoming increasingly common. Similarly, the law frowns upon the use of the monopoly powers that may become vested in particular purveyors of goods where those monopoly powers enable the companies arbitrarily to increase prices, to offer restricted services, or to offer goods of poor quality. Restrictive trade practices laws are a relatively modern development in this country. Their object is the prevention of these types of abuse and also a wide range of other malpractices which are deemed to be contrary to the public interest. This type of legislation increasingly limits the right of free bargaining and lifts the interest of the community above the rights of the individual or corporation to sell his goods or services in any way he can.

This tendency to protect the consumer is also discernible in the moves now under way to protect the citizen from financial loss by reason of injury suffered in the community. The principle underlying workers' compensation laws—i.e., that the employer must insure against such injuries and compensate the workmen—is being enlarged to encompass all members of society so that a form of national insurance will protect all citizens against loss by accident or injury without an inquiry into whether the person injured was in any sense to blame for his own misfortune or whether the person injuring him was similarly at fault. This principle of no fault liability is likely to become more extended in the near future.

**THE LAW OF TORTS**

Everyone is allowed by "the law" to go where he likes in public, to be personally safe, to enjoy his property, and to maintain his good reputation. If these rights are interfered with—if, for example, someone negligently runs over him in a motor car or comes on to his land without permission or defames him—he is entitled because of this breach of his rights to bring an action at law to obtain redress. This action is an action in tort. It is therefore an area of the law which has been developed to protect the rights of individuals by requiring persons who interfere with these rights to compensate the person injured. The list of different torts which are available to a person includes such matters as a right to recover damages where another person has been negligent and has caused some injury to the plaintiff, the right to obtain damages if one is wrongly imprisoned, the right to obtain damages where one is defamed, and in some cir-
cumstances to recover goods which are wrongly held against the owner's wishes.

The law of torts is often described as part of the area of the law called "wrongs", the other element in this area of the law is criminal law, which will be considered below. The most apparent difference between the law of torts and the law of crimes is that the law of torts is concerned mainly with compensating a person, usually in money terms, for the injury he has suffered to himself or to his property. In criminal law the purpose that the law serves is generally to punish the wrongdoer. The two types of "wrongs" may coincide in a single situation. If A strikes a blow and injures B, B may be compensated for the injury in torts; at the same time the assault by A is also a criminal wrong.

By far the most important part of tort law in modern society concerns negligent conduct, where one person by his negligence injures another person. Such injuries are particularly common since the development of the motor car, and a large body of law has been built up as to when the victim of a motor car accident can be compensated, by whom he will be compensated, and the measure of damages he ought to receive for his injuries.

This right to compensation which characterizes tort law gives rise to a difficult question whether there is a broad general principle imposing liability for harmful acts or whether only certain classes of harmful acts, which the courts have slowly developed over the years, are included in the field of torts. One school of thought is that there is a broad general principle and certain types of conduct are excluded from it. The other school argues that there is, as it were, a collection of types of harmful acts and that anyone who is injured and seeks redress must go to one of the law's pigeon-holes to find one that has the right label appropriate to the particular wrong he has suffered. In some torts it is necessary that the person committing the tort should have done so intentionally—for example, in false imprisonment. In some torts there is strict liability. This means that it is relevant what the state of mind of the wrongdoer was, for example, where dangerous things are allowed to escape from one's own land. The middle type of mental state appropriate in tort is negligence, which is strictly a failure to exercise due care in one's own conduct. Negligence is all that is required for some torts, and negligence itself is a tort.

Because of the very great increase in the use of the motor car in recent times and the growing risks of injury in industry, there is a strong move, particularly by the Australian government, to reconsider applicability of the law of negligence as an appropriate instrument for dealing with the injuries and losses sustained by so many
people in the community. The need for special legislation to deal with the increasing risks of injury that people carry in a modern community was touched on earlier in this paper, and it is in response to this need that the Australian government has been preparing comprehensive legislation which will have the effect of providing compensation for people injured, however these injuries might occur, through a general government insurance scheme. Such a scheme attempts to abandon inquiries into who is at fault when an injury is sustained and instead to enquire only into the question of how much injury and how much compensation ought to be awarded. This policy will lead to the end of fault liability, through which principle the courts have attempted to make adjustments between citizens in the past. The law, however, is not yet enacted and at the time of writing is still being considered by the Federal Parliament. Such a general scheme of compensation is already in operation in New Zealand and will of course have very far reaching effects on the law of tort.

**ENVIRONMENTAL LAW**

Perhaps the most interesting modern development in the legal systems of Australia and most advanced countries is the use of the law to protect the natural environment and to preserve many important features of that environment for future generations. Environmental purposes can be served by the use of the administrative powers of the state by preventing certain activities which might have the effect of despoiling the land or the rivers, or by the use of the criminal law as a form of deterrent against activities that adversely affect the environment. The increasing control by governmental agencies over such things as new developments and exploitation of natural resources has meant that much of the damage that might be done to natural forests, rivers, the shoreline, and so on is at least regulated, and when such damage has been inflicted on the environment the criminal law has been used to impose punitive measures to prevent recurrences. The pollution of rivers, for example, even when it has been accidental, has been made a matter of strict liability so that industries may be induced to exercise great care that their industrial processes do not spoil the natural heritage.

The protection of the environment, more than any other developing interest in the community, has highlighted deep-seated conflicts within our social system. The wealth of our mineral resources cannot be left wholly untapped if our economy is to develop, but the ways in which these mineral resources are to be exploited and whether,
for example, they are to be quarried by overseas industrial interests or used to advance our own industrial economy cannot be decided wholly as a matter of law. Similarly, whether we ought to exploit our mineral wealth at all or, rather, preserve it at least in part for our future generations is also a question of great difficulty. The primary conflict may arise between the owners of mineral resources and the government charged with the protection of our heritage. Indeed, industrialization itself produces another kind of conflict when the interests of the community are in conflict with the interests of industrialists. Industrial activity may wholly despoil the countryside in which it is carried on, and cities may be turned into smog-covered wastelands unfit for human habitation. On one hand the impulse to prevent such despoilation for the protection of the community immediately affected may seem a matter of great importance, while on the other hand the development of the industry may bring far-reaching benefits to the community in general.

This problem has been considered in many different contexts. A good example of the difficulties involved in resolving the conflict is contained in a paper "Obstacles to Taming Corporate Polluters: Water Pollution and Politics in Gary, Indiana" by Edward Greer. Gary is an industrial city of 175,000 people, and the city's economy is dominated by the Gary works of the United States Steel Corporation. Governmental efforts at all levels to abate the water pollution in Gary have come to an impasse. Gary has deteriorated from an area which had two exclusive hunting clubs into a city with severe air pollution and a water pollution problem which the author describes as "even more severe and intractable". Attempts have been made at both the state and federal levels using various legislative powers to enforce the use of measures that would abate pollution, while the United States Steel Corporation has resisted any pressure to make substantial investments necessary for pollution control. The author concludes: "In contrast to the vast resources available to United States Steel, local and state governments are virtually impotent ... and the federal government seems unwilling to bring its power to bear. The outcome is that United States Steel has not been brought to heel; it continues to ride roughshod over the public interest as it has since its birth at the turn of the century."

**CRIMINAL LAW**

The development of criminal law in England over many hundreds of years was closely connected with the law of torts. Both criminal law and the law of torts are concerned with wrongs done to individuals
or interferences with the rights of those individuals. Criminal law in more recent times has developed independently of the law of torts, and we can now say that an important distinction between the two is that in the case of criminal law punishment is the ordinary result of conviction whereas in torts compensation is the ordinary consequence of a finding of liability. There is another way in which the two fields can be distinguished in modern times. In criminal law it is now almost universally accepted that the Crown, through its agents, will prosecute criminal matters, whereas the person injured, or his successors if he should be killed, will institute proceedings in tort on their own behalf.

Although each of the Australian states took over the English criminal law at the date of colonization and followed the developments in English common law up till the time that each colony was given legislative power, each of the colonies and later the states developed the criminal law in ways that have meant that there are considerable differences at the present time between the law in one state and the next. Three of the Australian states, namely, Queensland, Western Australia, and Tasmania, codified the criminal law. This means that in those states the common law was virtually excluded and the code exhaustively stated the principle of criminal law for that state. Sir Samuel Griffith in his “Explanatory Letter to Attorney-General Queensland with Draft Code” (Queensland Parliamentary Papers C.A. 89–1897 (iii)) said:

the draft Code does not deal with the law embodied in Imperial Statutes which are in force through Her Majesty’s Dominions irrespective of local legislation, nor with such provisions of the English Criminal Law in force in 1828, where the Statutory Law and Common Law as are manifestly obsolete or inapplicable to Australia ... but an attempt has been made to cover the whole ground of what may be called the living Criminal Law including Procedure ... I have endeavoured to include all the rules of the unwritten Common Law which are relevant to the questions of criminal responsibility and the administration of justice in Courts of criminal jurisdiction, as well as offences at Common Law which are not such as ought, manifestly to be abolished, the intention being on the enactment of the Code it should also be enacted that no prosecution should thereafter be commenced as for an indictable offence except under the provisions of the Code or some other Statute in force in Queensland.

The Queensland code of 1899 was adopted (with suitable amendments) in Western Australia in 1902. A code of somewhat different form was introduced in Tasmania in 1924.

Apart from these three states, the other states and territories developed the criminal law by engrafting changes on the common law which was inherited on settlement. In New South Wales the
Crimes Act, 1901, effected a consolidation of the common law and such statutory changes as had been made before it, and similarly the South Australian Criminal Law Consolidation Act of 1935 incorporated both common law and statutory criminal law up to that date. In both states the acts have undergone many modifications and changes by amendment since those dates, as has the law in Victoria, which was last consolidated by the Crimes Act of 1968. In the Australian territories the criminal law applicable was borrowed at the date of establishment of the territories. In the Australian Capital Territory the law in New South Wales as it was in 1911 became the law of the territory, and in the Northern Territory the South Australian law as it was in 1910 became the law of that territory. Similarly, the Queensland code as in force in 1903 was adopted in Papua, which was then British New Guinea, and in New Guinea itself the code was adopted as it was in 1921. The Queensland law as applicable in New Guinea was later repealed, but then readopted in 1924. The position of the law in New Guinea; on independence, Australian law was of course no longer applicable.

The purpose of the criminal law has been said primarily to be the preservation of peace in the community. Such a view is consistent with the very early development of the criminal law, which was directed towards the preservation of "the King's peace". Of course, criminal law does many other things apart from simply preserving the peace of the community. It is important as an educative process in indicating to the citizens what are the community standards, and it acts as an invitation to the average man to adjust his sense of right and wrong to that of the lawmaker.

There has been considerable dispute in modern times about whether the criminal law is an effective instrument to regulate society, and many people question whether the rule of the criminal law as a preserver of the status quo should not be more closely examined. There have been many instances in the last decade of protesters violently rejecting certain parts of the criminal law on the grounds that they believed the law supported untenable policies. In recent years special legislation directed at protesters against government policy was introduced by the federal government. This legislation enlarged the ambit of the criminal law so that it could deal more effectively with large groups. Use of this law to restrict protests and to punish protesters was not wholly successful. Existing criminal law was also used in conjunction with such novel legislation, the two together attempting to support government policy by punishing violent protest. The conflicts that ensued are now well known, and the experience of the period of protests suggests the limits of the criminal law as a method of control of popular movements. State
violence in the suppression of public protest was itself in part responsible for the degree of violence that resulted.

Similarly, as a regulator of public morals the criminal law has been continuously questioned during this century. Perhaps the only part of the criminal law that has gone unchallenged is that part of it which prohibits certain forms of behaviour which are almost universally condemned. The criminal law as a form of social regulator is most widely acceptable in relation to such offences as murder, rape, robbery, and other forms of personal violence.

Even in the area of protection of property the criminal law has not gone unquestioned. Many would argue that the criminal law is far from even-handed in its dealing with the petty thief and the important white-collar criminal. The criminal law gives rise to the suspicion that it is an instrument of oppression of the lower classes and the less wealthy in the interest of certain dominant groups in the society.

The criminal law is concerned with both the prevention and the punishment of criminal activity, but it is in the area of punishment that the modern period has seen most soul-searching in an attempt to discover a method of dealing with convicted persons which can serve both purposes of prevention and punishment. Many schools of thought have developed which favour one or other basis of justification for punishing the criminal, ranging from pure social retribution to benign reformism. Penologists are, however, still sharply divided, and there is yet no evidence that any of the alternative forms of punishment and treatment that are now being experimented with by reformists has reduced the quantity of crime in the community.

Prevention and punishment have until recently been generally conceived as outside the ambit of the criminal law, or at least that part of the criminal law which concerned lawyers and judges. The judges determined the degree of punishment that might be inflicted and to a limited extent supervised the work of the police force, but primarily the administration of the prisons and the administration of the police as an executive arm of government was quite independent of the work of the courts. There has been, in recent times, a greater involvement of the courts in the consequences of the punishment it determines for convicted persons. The simple principle that the punishment should fit the crime has given way to discussions on the effectiveness of this or that form of punishment, taking into account the general welfare of the community through the reduction of crime and also a humane interest in the individual offender. It is sometimes said that the policy is now that the punishment should fit the criminal; but this would need to be modified to mean that the punishment should fit the criminal, subject always to the overriding importance of the public interest.
One very important change which has come about in recent years in the administration of the criminal law is the introduction of the principle of compensation to the victims of crime. There is a parallel in this move towards compensation in the criminal law with the movements towards compensation referred to earlier for all injuries suffered by members of society. In a sense the whole movement towards compensation illustrates a tacit acceptance of the fact that living in a modern society involves risks to one's health, wealth, and general well-being.

CURRENT TRENDS AND ISSUES IN LAW

Australian law has in a number of ways attempted to tackle the problems created by modern complex society. There have been many attempts through referenda and conferences on the Constitution to adapt the constitutional document to make it better fitted to serve a society very different from the one for which it was created three-quarters of a century ago. The traditional law has been modified and adapted in an attempt to meet the new threats to our environment, and the criminal law is at last showing signs of a responsiveness to the changing moral attitudes of modern times.

But perhaps the most important single change, and one that is not so readily observable, is that slowly the attitudes of the legislators and the lawyers are being modified through a recognition of the importance of understanding changes in the society and attempting to modify and adjust the law to accommodate those changes. The law is necessarily slow to change and will always lag behind the actual demands of a society, but there is now more conscious effort by legislators and the administrators of the law to come to grips with the novel problems presented by the second half of the twentieth century and to expand or contract the law responsively to the needs and demands of the new society.

The separation of law from other social questions tends to be artificial. All social activities in one way or another touch on or are touched by the law. It is this pervasive character of the law which makes it difficult to conceive of a "sociology of law" in the way that was proposed by Ehrlich. Ehrlich offered an interchanging theory by distinguishing living law, or the law of rules which develop naturally in the society, from the law of rules that are familiar to lawyers—lawyers' law. Since his time there has been a constant decrease in the amount of "law in society" and a proportionate increase in lawyers' law. The law in the statute books now covers almost every facet of our social lives, and we tend to think that we
can do what the law permits, rather than that we can do what we
like unless the law forbids.

This change reflects the nature of the changes which have taken
place in our society in the last hundred years and we now tend to
submit individual interests to something which is loosely called the
public good. This trend towards welfare-ism on the one hand and
legal restriction on the other presents the twentieth century dilemma for the law. As was pointed out earlier, the current moves to
protect all citizens from the risks of living in a modern society
through such schemes as universal insurance, increased welfare pay­
ments, and subsidies to support the less fortunate in housing, school­
ing, and even in food purchasing may produce a state of mind in the
community which has been called "a consumer mentality", to the
detriment of the society in general as the impulse to produce and to
develop individual skills is blanketed by the ready availability of
social support. Society may well be crippled by being supplied with
a social crutch.

It is true, of course, that these changes are generally not the result
of changes in the law, but rather the law is changed to reflect these
changes in demand. We have only to contrast the limitations on
legal interference with private interests during the laissez-faire
period in the nineteenth century with the overwhelming quantity of
legal regulation of our private and business lives in the modern
period to understand how great the change has been.

It is not clear how the law as such can resist the tendency towards
pre-eminence of the public good as a social philosophy, since it is
becoming increasingly apparent that the law must keep in step with
social changes. Its power to lead the way and to permit an alter­
native sociology is extremely limited. Such changes of this fund­
damental sort, as are necessary for a healthy society, must have their
source in the society, when these patterns are clear, then law can act
as a mechanism to reflect and enforce the new demands. Until that
time we cannot speak of a sociology of law, but only of law as a
regulator of social demands which have their genesis in much
broader aspects of social life.

FURTHER READING

Chisholm, Richard, and Garth Nettheim. Understanding the Law. Sydney: But­
terworths, 1974.
NOTES

1. Federation followed a series of conventions and conferences between 1890 and 1899 where the colonial delegates drafted a constitution.
2. Section 109 of the Constitution.
3. Section 96.
4. *Environmental Affairs* 3, no. 2 (Boston College Environmental Law Center), p. 199.
5. Ibid., pp. 211–12.
POVERTY:
Radical or Piecemeal Changes?

Peter Le Breton

Anti-poverty programs, such as they are in Australia, consist of a long series of ad hoc piecemeal measures isolated from the main body of government economic and social development policy and legislation. In a society which regards itself as prosperous and egalitarian, poverty is not generally considered significant or widespread. Where signs of poverty in the social fabric do become visible, they are apt to be treated as peculiar and individualistic, requiring social welfare patchwork. Poverty from this Galbraithian perspective is either case or insular, and hopefully those pockets of poverty that do remain will dwindle away with increasing affluence.

In recent years this outlook has lost credibility both in Australia and overseas. The War on Poverty in the United States, the efforts of the "socialist" Labour government in the United Kingdom, and the decision of the Australian government to conduct an inquiry into poverty in Australia indicate that poverty is being rediscovered in Western society. Gone is the euphoria of the 1950s and early 1960s which pointed to unlimited economic growth, dizzy affluence eventually for everyone, the emergence of a world of electronic bliss. The notion that rising affluence will sooner or later reduce or eliminate poverty is not by any means dead, but it has been losing its status as self-evident truth. Without fundamental structural change in our economic and social institutions, affluence may not be a cure for poverty, but its Siamese twin.

This paper is couched in general terms; it is also selective in the matters it deals with. A broad brush technique has a major advantage: hopefully, it helps to highlight some crucial trees in the forest which could be obscured in an attempt to illuminate the entire forest. The paper is arranged into three parts. The first and major

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part reflects the central focus which is on the relationship between poverty and social values and structures in Australian society. This section lays the foundation for part 2, "Poverty and Urbanization", and for the various recommendations in part 3.

The primary aim of the paper is to contribute to the development of an analytical framework to explain the mechanisms which produce and perpetuate poverty in Australia, and to consider obstacles which must be overcome if poverty is to be reduced or eliminated. Consequently, descriptive material about the characteristics of Australian poverty or the delivery of personal welfare services is not stressed. There are two reasons for this: these aspects have been dealt with in other Australian literature on poverty, and there is a need for work that goes beyond gathering information about the nature and extent of poverty in Australia and recommendations to ameliorate an essentially unchanged socio-economic order. Although public and private philanthropy are invaluable in relieving the victims of a hostile social system, the danger is that concentrating on relief work will divert attention from more important structural issues and therefore be, at best, ineffective or, at worst, counterproductive.

Already there is sufficient literature on Australian poverty and, of more importance, on Australian society to expose some of the causal connections as to the origins of poverty and its transference from generation to generation. Already there is a basis for designing meaningful short- and long-term programmes for the removal of poverty and the enhancement of well-being. The prevention and eradication of poverty should be our goal; relief, alleviation, or reduction is, as the Brotherhood of St. Laurence has suggested, too limited a goal for affluent Australia.

The aims of the paper are:
1. To contribute to the development of an analytical framework to explain the mechanisms which produce and perpetuate poverty in Australia.
2. To consider obstacles which must be overcome if poverty is to be reduced or eliminated.
3. To contribute towards the development of social structures and values conducive to the elimination of poverty and the achievement of a just and free society.
1 POVERTY AND THE SOCIAL ORDER

Perspectives on Poverty

Much ink has been used attempting to define poverty and draw poverty lines, and there are about as many different definitions as there are studies of poverty. No new rigorous definition will be attempted here. From the economic point of view, to be non-poor entails the attainment of a subsistence minimum or "modest but adequate" level of living. This level is determined both by biological factors, which are more or less constant, and by cultural factors, which vary according to time and place. Thus the nature of poverty varies historically according to prevailing acceptable standards. This means that poverty is not only an absolute but also a relative phenomenon and as such relates to the general distribution of resources, access to resources, and opportunities in society. From this perspective distributive justice lies at the heart of the poverty problem, and the term poverty increasingly in affluent societies (and in this paper) connotes relative poverty.

Poverty has traditionally been defined in terms of low income. More recently, definitions have been broadened to take into account numerous deprivation conditions which, whether or not accompanied by low income, are associated with impoverished lives. Poverty is not confined to urban areas, but because of the geographical concentration of "haves" and "have-nots" within cities its effects there are more apparent and acute than in rural areas. Poverty is increasingly seen as a complex social phenomenon, and its persistence in modern, affluent, industrial countries such as Australia in the seventies is remarkable and in want of explanation. This explanation is critical if meaningful steps are to be taken towards the eradication of poverty. Consequently, a major task is to explain the survival of poverty in Australia. It is only on the basis of an understanding of the socio-economic processes through which poverty is reproduced in successive generations that effective anti-poverty measures can be taken.

The philosophy underlying the analysis is that the eradication of poverty cannot be separated from the achievement of social justice; that inequitable economic, social, and political structures are a major cause of poverty; that poverty is closely related to unequal opportunities, short-sighted, intolerant, and hostile attitudes of the non-poor, discrimination, and exploitation. This approach is in contrast to the widespread traditional opinion that poverty is primarily due to the inability of the poor to cope with society, that the disabilities of the poor rather than the disabilities of society are the problem. The limitation of the "victim-blaming" view is not that it
is totally wrong but that it exonerates society at large from any responsibility for poverty; it focuses attention away from the need for social change.

Although the persistence of inequalities in Australian society is becoming a commonplace of social observation, an understanding of the social mechanisms which perpetuate poverty is only beginning to emerge. Neither President Johnson’s War on Poverty nor the British Labour government were able to significantly reduce poverty in the US or UK during the 1960s. In the post-war period the distribution of income, wealth, political power, and social opportunity has remained unequal and unchanged in those countries as it has in Australia.\footnote{7} Hopefully, Australia can learn from experiences overseas, and the rediscovery of poverty in this country in recent years will lead to more effective remedial programmes and the movement toward a just and humane society.

**Obstacles to Be Overcome\footnote{8}**

Functional analysis is a methodological tool which can help to explain the persistence of poverty in countries like Australia by drawing attention to the positive functions poverty performs for more affluent members of society. It can also suggest obstacles to be overcome if poverty is to be eliminated.

Some of the more important economic, social, and political functions of poverty are considered below.

1. Poverty ensures that “dirty” work will be done. Poor people have no choice but to perform dirty, repetitious, dangerous, undignified, dead-end, menial work for low pay. If poverty did not exist these jobs could only be filled by paying higher wages than for “clean” work and/or by automation. Both these “functional alternatives” to poverty would reduce the income of, and therefore be dysfunctional to, the affluent.

2. The low income of the poor enables the rich to divert a higher proportion of their income to savings and investment, and thus to maintain the economic and social order and to foster economic growth. Growth can produce higher incomes for everyone, including the poor, although it does not necessarily and in fact hasn’t improved the relative position of the poor, since the benefits of economic growth are also distributed in favour of the rich. If incomes are raised above subsistence levels, the poor would begin to accumulate capital so that their own entrepreneurs could supply them with goods and services and fewer people would be available to perform lowly paid dirty work.
3. Because progressive taxes are more progressive *de jure* than *de facto* (the rich having greater access to tax evasion and avoidance), and because many taxes are regressive, the poor pay a higher proportion of their income in taxes than the rest of the population. Furthermore, much government spending is not neutral in its distributional impact, but benefits more affluent taxpayers.⁹

4. Poverty creates jobs for a number of occupations, especially the police and corrective services, public and private social workers, and public health personnel.

5. The poor buy goods that others do not want (e.g., second-hand clothes and old cars) and thus provide enhanced incomes for sellers of these commodities.

6. The poor can be identified as deviants in order to uphold the legitimacy of social norms. Those who espouse the desirability of hard work, thrift, honesty, and monogamy need people who can be accused of being lazy, spendthrift, dishonest, and promiscuous to justify these norms; the norms themselves are best legitimated by discovering violations. The actually or allegedly deviant poor have traditionally been described as "undeserving" or "unworthy" and, more recently, "culturally deprived" or "pathological".

7. The deserving poor (because they are disabled or suffering from bad luck) enable the rest of the population to feel altruistic, moral, and that they are practising the Judeo-Christian ethic.

8. Poverty guarantees the status of those who are not poor. In a stratified society, where social mobility is an important goal and class boundaries are fuzzy, people have to know where they stand. The working class must maintain status distinction between itself and the poor, much as the aristocracy must find ways of distinguishing itself from the *nouveau riche*.

9. The poor assist in the upward mobility of the non-poor. By being denied educational opportunities or being stereotyped as unintelligent or unteachable, the poor thus enable others to obtain better jobs.

10. A society based on the ideology of *laissez-faire* requires a deprived population which is allegedly unwilling to work or work hard. Not only does the alleged moral inferiority of the poor reduce the moral pressure on the present political economy to eliminate poverty, but welfare measures can be kept to a minimum if those who will benefit from them most can be described as lazy, spendthrift, dishonest, and promiscuous.

11. The poor, because they are powerless, can be made to absorb the economic costs of change and growth. Yesterday the poor
performed backbreaking work to build the cities; today they are pushed out of their communities by high rents, urban "development" projects, and freeways to convey the middle class from the suburbs to the central business district.

It is true that poverty has many dysfunctions, mainly for the poor themselves, but also for the more affluent. These include crime, political protest, and taxes for welfare and the preservation of law and order. Apparently these dysfunctions do not (for the affluent) outweigh the functions.

Functional analysis suggests that poverty exists partly because it is useful to many groups in society. In this way it indicates, much more effectively than normal attacks on poverty, the nature of the obstacles to be overcome if poverty is to be eliminated. Functional alternatives may offer a liberal or reform approach to poverty—ameliorative policies that do not require any drastic change in the existing social order. However, to the extent that the alternatives are dysfunctional to the affluent, the elimination of poverty will depend upon poverty becoming sufficiently dysfunctional to the affluent, and/or the poor obtaining enough power to change the system of social stratification. It is conceivable that political majorities could perceive poverty as sufficiently dysfunctional to warrant its elimination. Increasing crime; violent and non-violent political protest; expensive and ineffective welfare and law-and-order programmes; a heightened awareness of human interdependence, of the universal desirability of a just and free society and therefore that the elimination of poverty would be in the interests of the non-poor as well as the poor—these are possible factors that could lead to structural change and the removal of poverty. On the other hand, mounting crime and protest could lead to reactionary removal of freedoms and further token welfare gestures to appease discontented political minorities, so that injustice, bondage, and poverty remain endemic to the social order.

**Political Constraints**

Any attempt to understand the mechanisms generating poverty and inequality must come to grips with the political process. The prospects of eliminating poverty or achieving social justice through a political system based on a philosophy of competition, material self-aggrandizement, and individual self-interest are bleak indeed. The extent to which the social system is able to recognize this fact and adjust itself to counteract the present conflict between individual and social interest will determine the extent to which it is possible to avoid deepening structural problems, social tensions, and
poverty consequent upon the process of massive urbanization.

The basic struggle is, therefore, a political one. Whatever the problems of eradicating poverty, that objective will not be achievable until the vast majority of Australians are convinced that they would be better off in a genuinely egalitarian society. The present disposition of power imposes severe political constraints on what can be achieved. This is so for several reasons. Not only do those who have most to lose in terms of status, privilege, and wealth have most power to directly influence the distribution of opportunities and command over resources and thus oppose social change; they also have power to shape public opinion and values so that the majority itself opposes change. Even welfare tokenism can serve to maintain the status quo.¹⁰

Until the political majority obtains a heightened perception of the need for social change, poverty is likely to persist. For in politics, where pragmatism transcends idealism, it is more important to demonstrate that reducing social polarization has substantial support than to submit that its consequences will be right, moral, or just. This support can only arise as consciousness of the widening gap between the actual and the possible permeates society.

Detecting injustices and mechanisms that help to perpetuate them is infinitely easier than correcting them. This boils down, it has been suggested above, to political constraints, but in a very far-reaching and multifaceted way. Academic and scientific paradigms—the ways in which inquiry is conducted and knowledge is structured—are unsatisfactory for prescriptive purposes. We have "good" theories to account for poverty, but what we need is to eliminate the conditions which give rise to the truth of the theory.

Where public policy arises from the prescriptive implications of "bad" theory, as with anti-poverty programmes based on the ideology of blaming the victim, results are either ineffective or counterproductive. As the eminent location theorist Losch observed, our real duty "is not to explain our sorry reality, but to improve it."¹¹

Those intent on reducing poverty must not only sensitize the community to the extent of poverty and social deprivation in Australia, but also help to promote remedial action. Improvements in descriptive reporting are certainly required, and there is much constructive research to be done in modelling the casual mechanisms responsible for the human tragedy society promotes. But already we are well beyond the point of diminishing returns from further research and investigation and must act with real social reforms: income transfers, public control of land use, industrial relocation, education and attitudinal reforms, serious job retraining, a realistic basic wage, a national health service, anti-pollution development controls,
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revolutionary zoning laws, and comprehensive urban planning. Unwillingness to implement such reforms is attributable to the political power of vested interests threatened by social reform, as well as, at times, by bureaucrats, academics, planners, politicians, and other "non-decision-makers".

It is useful here to delineate the major political perspectives on poverty. From the traditional and conservative viewpoint a distinction is made between the deserving or worthy and the undeserving or unworthy poor. Most poor people in affluent societies are of the latter type. Their poverty is self-inflicted, the result of individual faults and disabilities, "the weaknesses and frailties of human nature". They are victims of excesses, lazy and stupid for not taking advantage of opportunities. Therefore, the appropriate anti-poverty strategy is to change the attitudes of the poor, motivate them to work hard, to succeed, to pull themselves up by their bootstraps into the consumer society.

From the liberal perspective society itself, rather than the individual poor, is at fault for its failure to provide sufficient opportunities to enable the poor to acquire the attributes necessary for success: the poor are deprived, denied, disadvantaged, discriminated against. The liberal solution to poverty is therefore to provide a better "opportunity environment" in terms of improved access to education and job training and retraining, and social services generally.

The radical perspective accords with the liberal perspective to the extent that poverty is attributed to social failure rather than individual failure. However, unlike liberals, radicals question the system of income, wealth, and power distribution. Liberals may want to change the actual distribution of wealth, and they believe that this can be accomplished within the framework of prevailing institutions and social structures. Radicals believe that a just distribution of income is inconsistent with basic institutions of capitalist society. Consequently, radicals see the liberal approach to poverty eradication—equal opportunities for the poor—as doomed to failure. First of all, this "solution" assumes that the state possesses the power and the will to equalize opportunities within a system that is inherently polarizing. Secondly, even if opportunities could in fact be equalized through public intervention, it is erroneous to assume that this would lead to an equitable distributional outcome within a socio-economic order based on competition, acquisitiveness, and greed. Consequently, whilst radicals agree that it is necessary to provide much better opportunities for the poor, opportunities themselves will not be sufficient to achieve the social objective. In addition to equalizing opportunities, the radical solution to the
eradication of poverty and social injustice includes *fundamental changes in the system of production and distribution of resources*.

The three political perspectives outlined above are stereotypes and not therefore in reality mutually exclusive. It is in fact a central aim of this paper to develop a synthetic or eclectic approach to the poverty problem which transcends stereotypes and stultifying dichotomies. It is not a question of free enterprise or central control, capitalism or socialism, or any other black/white choice. Whilst conservatives are unrealistic in denying or ignoring the polarization inherent with the social system, and therefore the need for structural change, radicals are unrealistic if they ignore or under-emphasize, as they do, the effects of individuals on society. In concentrating on the social or cultural influences on individual states and well-being, they ignore the causal mechanisms operative in the other direction—the way in which individuals influence the nature of society. Society and the individual are interdependent, and each affects the other. Conservatives may be wrong in their aim to change the attitudes of the poor to fit into the *existing* system, but they may be right in so far as the attitudes and abilities of individuals help to determine the nature of the system.

Radicals tend to see only the other side of the picture: a hostile social order produces social injustice and human tragedy. They forget that the human condition is determined by both cultural and *physiological* phenomena. Because the notion of human nature has been a central weapon in ideologically conservative apologetics, radicals have mistakenly rejected the notion altogether. They see man as a creature the biological properties of whom set static limits within which the dynamic influence of culture or society shapes the human condition. This ignores the dynamic potentialities of human nature itself to also shape the human condition and social patterns.

What are the implications of this holistic, unified, dichotomy-transcending conception for the eradication of poverty in Australia? They are that the war on poverty and inequality must be fought on both the individual and the social front simultaneously. We need better individuals and a better society; in fact the two are symbiotic in the sense that neither is possible without the other. This means a revolutionary change in the learning and education experience in order to bring out rather than repress the potentialities of human nature. It also means a revolutionary change in the work experience or system of productive relations to abolish alienating jobs where material incentives are the chief—indeed often the only—inducement to work. It means fundamental social changes to achieve a distribution or redistribution of income, wealth, power, opportunities, prestige, etc.
There is empirical evidence which suggests that it is possible to deny the Freudian contention of a necessary, intrinsic, built-in opposition between the needs and interests of the individual and the needs and interests of society. It may be possible to create social institutions where the needs of individuals become synergic with the needs of society. In such a society, virtue plays both extrinsically as well as intrinsically—i.e., for example, the giving away of material abundance earns the greatest respect, status, and power. The dichotomy between altruism and selfishness is transcended; altruistic behavior becomes the only way to advance self-interest. Once such a society is established, poverty eradication becomes possible, or rather inevitable, for the eradication of poverty is no longer seen to be against the needs of the non-poor.

This kind of society may sound utopian, which to most people means unachievable and unrealistic. It is utopian in the sense that it functions much better than the non-synergic institutions which dominate Australian society, but there is already evidence that greater consciousness of the possibility of synergic social institutions is emerging. Public and private philanthropy, progressive taxation, some aspects of modern industrial psychology and management techniques are indicative, in theory at least, of the possibility of social structures based on compatibility between individual and social interest.

**Bureaucracy**

The welfare bureaucracy, like the social order that spawns it, is paradoxically an obstacle to the elimination of poverty in Australia. Bureaucratic survival and expansion has become an end in itself rather than a means of achieving the eradication of poverty. The poor become increasingly dependent on formal, impersonal, inflexible, and complex bureaucracies. This is demeaning and undermines the dignity, self-assurance, and power of individuals—the very qualities necessary to escape the cycle of poverty. A characteristic of welfare bureaucracies is that they fail to serve those most in need. Aiming at a “successful” policy, bureaucracy chooses to serve those who are most likely to be “successful”, i.e., upwardly motivated low-income groups, rather than those most in need. This can come about through a simple selection policy—e.g., without evidence of attempts to gain a regular income, a household is excluded from a housing authority waiting list; without evidence of a genuine desire to work in a degrading, low-paid job, it is difficult to obtain unemployment relief. These are modern bureaucratic manifestations of the traditional distinction between the deserving and the undeserving poor.
The complexity and inadequacy of Australia's social welfare system is well known and documented and will not be considered here. How to overcome the "problem of bureaucracy" is a question to be subsumed under the broader question of how to overcome the "problem of society". For until it is realized that non-stigmatizing social changes to shift the distribution of resources from the non-poor to the poor is the only way to eliminate poverty, self-serving bureaucracies must remain. Until it is realized that "self-help" and "citizen or resident participation" decision-making by the very people affected by decisions are not glib ceremonial phrases to rolé off the tongues of paternalistic planners and other members of the decision-making élite, but are indeed the very essence of healthy and viable individuals and communities, then poverty eradication is impossible.

Hopefully, the experiences of the United States will prove instructive for Australia. Not only did Congress water down the community participation aspects of the Office of Economic Opportunity Act\(^6\) (the major instrument of the War on Poverty), but those provisions to guarantee "maximum feasible participation" contained in the legislation were in practice eroded out of existence by local political and bureaucratic power.\(^7\) To avoid similar pitfalls when the Australian government gets around to launching the antipodean equivalent of the War on Poverty, it will be necessary to approach the phenomenon of poverty from a different ideological perspective from that underlying anti-poverty programmes in the United States or existing social welfare provisions in Australia.

**Conclusion**

Poverty in Australia is seen in individual and environmental terms. There is the poverty of the aged, widows, large families, Aborigines, migrants, and other minority groups. There is the poverty of the educational system that fails to provide equal opportunity to the nation's schoolchildren. There is the poverty of housing, public transport, unemployment under-employment, and low pay. There is the poverty of residential location.

Although there is a shift away from the naïve belief that poverty will gradually succumb to economic growth, it is still assumed that poverty can be reduced, if not eliminated, provided there is sufficient administrative and organizational effort—e.g., regionalism, the Grants Commission, Area Improvement Programmes, an Australian assistance plan. There is no question of conflict with the values and institutions of the Australian economy. All we need is activity, efficiency, co-ordination, and integration of service and
welfare programmes. These will change the attitudes, motivations, and earning capacity of the poor and provide them with improved opportunities and access to services. There is no recognition of the inevitability of over-bureaucratization, no questioning of the quality or function of the very services bureaucracies provide. Education for example, has the potential to encourage self-actualization; instead it is at its best a commodity package devoted to passing on the knowledge that people need in order to cope with or survive in our industrial society; at its worst it is counterproductive, for the poor emerge from school thoroughly socialized to accept their lot as deprived and underprivileged. Furthermore, if the culture of poverty is to blame, then logically the socio-economic system is blameless. This neatly shelves a crucial problem for social policy—namely, how to invest proportionately more resources in the poor than in the non-poor without stigmatizing the poor by their personal characteristics and circumstances. The political alternative to separate deprecating programmes for the poor is to channel more resources to them through established, socially approved “normal” institutions—tax reform, land tenure reform, education, health and legal services, housing. But this approach involves something different from that yet practised and possibly acceptable in Australia: instead of defining poverty and devising separate programmes for the poor, for Aborigines, etc., this approach involves reducing inequalities in the distribution of resources.¹⁸

In Australia, the problem of poverty is essentially a problem of inequality. To recognize inequality as the problem involves recognizing the need for structural change, for (at least short-run) sacrifices by the majority. It involves approving categories of public welfare hitherto disapproved of. In short it means, given our present social values and institutions, a painful process.

Australia has not yet begun to understand the immense problems and political implications of a realistic attack on underprivilege and inequality. As a result, incrementalism in social welfare is the name of the game. The Australian government allocated $3 million to improve the western suburbs of Melbourne in 1973/74. In subsequent years the number of dollars allocated under the Area Improvement Programmes may increase, or other programmes may be added or substituted. Doubtless, recognition of the need for area improvement—it is still not politically acceptable to speak of human improvement, although it is salutary to remind ourselves that “the long-range question is not so much what sort of environment we want, but what sort of man we want”¹⁹—is a political step forward.

Is it conceivable, however, that patchwork programmes can counteract the pervasive inequality-generating mechanisms in our
social order and in massive urbanization? A firm negative answer to this question is implicit in the analysis offered here.

It would be more appropriate if we inquired into the wealth instead of poverty. What are Australians to do with their wealth? This is a more relevant question in Australia in the 1970s than those which seek to find more effective ways of punishing and confining criminals, motivating children to learn an irrelevant curriculum within a dehumanizing environment, motivating people to work without providing meaningful jobs or adequate incomes, shifting people out of their houses and communities.

The Brotherhood of St Laurence's view that the Australian government's Commission of Inquiry into Poverty should make explicit its own value judgements, and that if it is not the intention of the poverty inquiry to tackle the question of the elimination of poverty then it should say so, is important. The inquiry should, moreover, clearly point out the magnitude of the task and the obstacles to be overcome if poverty is to be eradicated. In an affluent society the importance of absolute poverty—the failure to attain a minimum subsistence real income—becomes increasingly less important (though it is still present in Australia), whilst relative poverty becomes increasingly more important: "As a society's general standard of living rises, increasingly expensive consumption patterns are forced on the poor, not in order to catch up, but in order to remain a part of that society. Moreover, as society's normal standard of living rises—the poor will seek to emulate it—since they are part of society—and feel increasingly deprived if they cannot."  

Our increasingly affluent society has heightened the aspirations of all social and ethnic groups in relation to realizations. The gap between actual and minimally acceptable social conditions is widening. Legislative progress is gradually legitimizing grievances and claims for justice. Thus encouraged, oppressed groups (such as resident action groups) are struggling for reforms to make legal and moral rights a reality. However, the slow adjustment of social institutions, practices, and attitudes keeps progress well behind expectations. Local government does not have the resources, broad representativeness, or authority to deal with the distributional problems that pervade urban society. State and federal governments are limited by the fragmentation of functional powers and the political forces they represent. Vested interests are opposed to distributional change and bent on acquiring public funds for parochial goals through such measures as primary industry subsidies, road and air transport and defence. The states push embarrassing functions, such as the provision of child-care centres, onto local governments, which, in poorer municipalities where the need for such facilities is greatest, lack the resources to provide adequate services.
The theme of this paper is that the elimination of poverty requires structural change in economic, social, and political institutions, so that the *de facto* system of legal, political, and economic claims to resources be acceptable to all members of society. This amounts to changing the rules of the game, to the creation of synergic social institutions in which the conflict between individual and social interests is diminished. Foremost on the agenda is the need for revolutionary fiscal policy to redistribute income.

The hodgepodge of *ad hoc* welfare programmes now in force is inadequate. Poverty eradication requires a consensus that distributional changes are a matter of universal self-interest. The achievement of social justice requires a heightened mass perception of human interdependence. Until such a perception is forthcoming, a just and free society will remain an idealistic dream, and poverty will remain a sordid reality.

2 POVERTY AND URBANIZATION

Spatial Injustice

There is a wealth of evidence overseas and some evidence in Australia to demonstrate that the geographical distribution of income, wealth, and social opportunities within cities is grossly unequal. In all studies of this kind the unit of territorial aggregation chosen is critical, for an equitable areal allocation of, say, income at one spatial level may be inequitable at another. Thus inter-regional equality may conceal substantial intra-regional inequality. Ideally, when the issue is distribution, the smaller the spatial unit chosen the better, but data availability usually restricts the choice.

Inequitable spatial distribution may be considered like other aspects of social injustice as a form of discrimination. Geographical discrimination, no less than discrimination based on colour, creed, or sex, violates equity principles and ought therefore to be subject to the same degree of condemnation. It might be argued that territorial discrimination differs from other forms of discrimination in an important respect—people can move, whereas they can’t change colour or sex. In practice, however, the poor in Australian cities are not able to escape geographical discrimination in distribution by moving. First, they are usually too poor to move to better areas (where discrimination is less pronounced), where housing costs and usually transportation costs are higher. Second, even if some poor people could afford higher housing and transport costs, they might not choose to move because, for example, the psychological cost of dislocating from their community to an anonymous suburb could
outweigh the benefit of living in a better area. Third, many poor people do move but, like the residentially and occupationally mobile middle class, to neighbourhoods similar in status and conditions to those from which they came.

As a consequence of the urbanization process, socio-economic classes become territorially exclusive. Advantage tends to create further advantage geographically as well as personally, for wealth brings political power and therefore stronger claims to public services, such as education, utilities, and roads, and to private services such as health and law.

A study of Sydney by R.J. Lawrence reveals considerable territorial inequality in the provision of social services and facilities. A major study within the Department of Urban and Regional Development of the western suburbs of Melbourne indicates the presence of substantial spatial inequality between areas within the western region, a relatively deprived region within the metropolitan area. Other independent studies of Australian cities show similar results, and further studies are being undertaken using a wide range of social indices to provide greater detail. Other studies reveal that there is a statistical association between inequality and urban size, so that Melbourne and Sydney appear to be more unequal than Adelaide, Brisbane, or Perth. This raises the question whether there is a causal connection between social polarization and urban size. Rapidly rising land and housing prices have been characteristic of Australian cities in recent years, especially the larger ones. These forces are partly responsible for the poor concentrating in high-density housing or housing of deteriorating quality in inner-city areas. Alternatively, they are forced to move to the outskirts of the metropolitan area where they face higher transport and building costs. At a time when inflation is rapid and house/land inflation is even more rapid, city living becomes increasingly polarizing. The poor, lacking ownership in housing or land, do not have access to the same hedges against inflation as the more affluent, yet their cost of living, including rent, is rapidly rising.

If market forces exaggerate inequalities within cities, don’t public policies help to redress the imbalance by redistributing income, services, and opportunities to disadvantaged areas and groups? Nominally this is so to some extent. However, redistribution also occurs in the other direction, as money and power enable the affluent to avoid some of the real costs of generating their wealth, in the form of environmental damage and other diseconomies, which often (e.g., inner-city freeways) disproportionately afflict areas occupied by the poor. On balance it is possible that public policies with a spatial dimension have highly inegalitarian effects. Zoning, for ex-
ample, increases intra-metropolitan segregation by safeguarding attractive residential areas from other forms of development or redevelopment. The provision of educational, public health, and child care facilities is better in middle-class than in poor areas. Public housing projects appear to be conducive to the creation of social problems, such as a lack of community feeling, a high incidence of physical and mental illness, alcoholism and marital breakdown. High-priced and inadequate public transport coupled with the destruction of inner-city suburbs for freeway development hardly amounts to a socially equitable transport policy.

The general observation is that public policies in Australia have tended to be efficiency- rather than equity-oriented. In order to redress the spatial and social imbalance engendered by market forces and urban growth, public policies cannot favour the more affluent political majorities as many of them, perhaps understandably, appear to. Nor can they be neutral in their distributional impact as most of them ostensibly are, for the effective result of treating unequals as though they are equals is to benefit the advantaged and therefore to legitimize and preserve the distributional status quo. If public policies are to come to grips with social injustice and spatial discrimination in Australian cities, they will have to actively discriminate against the rich and in favour of the poor.

Social structures promote poverty directly and indirectly through promoting the disabilities of the poor. It is inequality of resources, power, opportunities, and awareness of opportunities that induces and perpetuates the cycle of poverty. The system discriminates against minorities and weak groups—the old, the young, the handicapped, the sick (especially the mentally sick), non-whites, the poorly educated, low-income earners, females, and so on. In Australia the process of urbanization promotes social injustice through generating economic and social inequalities, pollution, congestion, crime, disease, dear land, expensive housing, etc. Cities are unplanned, sprawling, alienating, bureaucratic, hierarchical, and stratified.

If we are to eliminate poverty and achieve a chosen income distribution, it is necessary to understand the mechanisms that generate inequalities in the first place, for it is only by controlling and manipulating these mechanisms that the objective will be achieved. There are hidden mechanisms at work in complex urban systems which increase inequalities and are poverty-conducive. These include the relocation of residences and employment, changing property values, and the spatial distribution of social services. The implication for social policy is that overkill in direct distribution is necessary if inequalities are to be counteracted. The inequality-
generating mechanisms within cities help to explain perhaps the central paradox of modern society—that an increasingly affluent society is creating major structural problems and deepening tensions in the process of urbanization, not only between urban residents, but also between city dwellers and alienated country residents.

Inequalities are generated within cities because more affluent and educated groups are able to adapt far more rapidly to a change in the urban system than underprivileged groups. They gain real income advantages from this opportunism which in turn reinforces and accentuates inequalities. Politics may be seen as an attempt to organize the distribution of externality effects to gain income advantages, and there is evidence that the distributive effects of the public sector in the system are, contrary to popular opinion, inequitable. Thus, for example, freeways benefit the middle class and affluent more than the poor by permitting mobility between spatially distant residence and workplace; the education system, which absorbs the major portion of state government budgets, provides enormously greater benefits to the haves than to the have-nots to whom, in many cases, being academically and middle-class oriented, it is irrelevant.

**Houses and Jobs**

Urban growth in Australia as elsewhere has been characterized by suburbanization of the location of residences and the location of employment opportunities. The main source of supply of low-income housing is in inner-city areas, and the urban system is very sluggish in responding to the demand for housing in suburban areas, although low-income suburbs have grown up on the outskirts of metropolitan areas. The supply shortage of low-income housing means that it is relatively high-priced. Whilst low-income earners live in the inner city or on the outskirts of the metropolitan area, most new employment opportunities arise within the middle-class suburbs, from which low-income earners are gradually cut off. They have thus to resort to local employment opportunities in the relatively stagnant industrial areas of the inner city or central business district or incur great costs by commuting long distances. By contrast, suburbanites exploit the radial pattern of transport facilities to converge on the central business district or seek employment locally.

Spatial relocation within the urban system has thus helped to improve options and accessibility for the affluent suburbanite and reduce these for low-income families. Transportation policy has facilitated the existing trend rather than counteracted it. This involves an implicit income transfer which is regressive.
Concentrating on the improvement of systems to bring suburbanites to the central business districts or to improve the mobility of suburbanites within suburbia primarily benefit higher-income groups. The development of “inside-out systems” for conveying people from inner city areas to job opportunities in the suburbs would have counteracted the inequities resulting from residence/employment relocation, but such systems have been neglected.

Even if an equitable transport policy could be implemented, it would only be an accommodation to a poorly functioning housing market which is unable to adjust in terms of quantity, location, or price to the changing location of employment. This points to the obvious need for the public provision of low-cost housing close to suburban employment opportunities rather than, or as well as, in the inner city and in outskirt suburbs of metropolitan areas.

**Claims to Property**

The changing value of property rights within urban systems also, as was suggested earlier, aggravates inequalities. Apart from the fact that the affluent own parcels of land and houses and the poor must in general rent, the appreciation of property values within urban areas occurs with vast intra-city variations. This is explained by the existence of external effects—that the value of any one property right is very much affected by the value of neighbouring property rights. Proximity to a new source of pollution, for example, will lead to a decline in land values, whilst a new golf course may lead to a rise in land values. Because the affluent have political power and articulateness to protect their neighbourhoods from negative externalities resulting from such sources as the location of factories, low-income residences, and alien ethnic groups, and to maximize positive externalities from such sources as proximity to the best schools, shopping and recreational facilities, and transport systems, they reap income benefits from these advantages which are capitalized in appreciating property values. This process means that wealth and power attracts further wealth and power according to socio-economic class and spatial location. The inequalities so generated determine the future allocation of resources so that the system is fundamentally and intrinsically polarizing, or, to use the economists’s jargon, in a state of permanent disequilibrium.

**Distribution of Services**

Command over resources, which is a good general definition of real income, is partially a function of locational accessibility and proximity. Therefore, urban growth and the continuous process of
deterioration, renewal, and resource creation will have a major impact on the distribution of real income and opportunities. Thus the provision of health, education, child care, and other public services, of shopping opportunities, entertainment, and other recreational facilities, of transport facilities and intangible features often subsumed under the catch-all phrase "quality of urban environment" will substantially affect both the original distribution and the subsequent redistribution of real incomes. Locational changes in the pattern of provision of these services bring about redistribution through the externalities associated with them. And it is the political process as it affects the urban system which operates to share out external benefits and allocate external costs.

3. RECOMMENDATIONS

If the existing distributional pattern (spatially, socially, economically, ethnically, etc.) is socially just, then it must be a consequence of properly high rewards to the successful competitors, moderate rewards for the loyal and docile, and properly harsh penalties for those unable or unwilling to sell their labour at the going price. The criteria of need would clearly justify a much greater investment of social services in poor areas than in rich areas. However, a distinction must be made between the commitment of resources and the results achieved. Results can be accomplished either by altering the inputs (i.e., investments) or the system which transforms inputs into outputs (i.e., social and economic institutions). If the system is ineffective or counterproductive in terms of the goal of eliminating poverty, increasing the level of inputs or shifting priorities within the system will, by itself, be insufficient to achieve the social objective. Basic structural changes are necessary within the system itself if existing territorial social inequities within Australia are to be eliminated. These changes might include the following:

**Land Tenure**

The conversion of the land tenure system from private to public ownership of land, but under such conditions that it does not degenerate—as in Canberra—into a *de facto* freehold system, is a goal worthy of serious consideration. The ideal would be to eliminate speculative gains and the use of land as a hedge against inflation.

A step in the right direction would be the conversion of develop-
ment rights on freehold land to the Crown, as recommended in the report of the Commission of Inquiry into Land Tenures.

**Housing**

As an alternative to a massive or selective conversion to leasehold, a heavily subsidized system of private ownership of land and public or private housing in cities has the promise of eliminating the territorial segregation of different socio-economic groups. Massive public intervention is necessary to achieve an adequate quantity of low-priced housing. The post-war experience of Prague is instructive. In that city after the war the distribution of land and housing was removed largely from the control of the market mechanism. Public subsidies reduced rents to about 5 per cent of average family income; new houses were distributed according to need—new dwellings going to families with children, to key personnel, and to families living in “unhealthy” houses. This policy produced two results: one was a spread of socially mixed neighbourhoods with no mass concentration of low-income earners; the other was that Czechoslovakia’s capital was “probably the only capital in Europe which managed to control its population growth successfully, and hence the number of its inhabitants is now practically the same as before World War II”.

**Education**

A radical reorganization of the learning and job-training experiences is required. Not only is access to educational opportunities and resources still heavily class-biased against the poor, but the way resources are used or the quality of resources is even more critical to the distribution of benefits and costs arising from education than the quantity of resources available. Thus if resources available to the affluent are used primarily as a device for expanding higher education—to use years of schooling as a job-screening mechanism and to postpone entry to an alienated labour force—then inequalities will be aggravated; and if resources available to the poor are merely used to achieve an inferior, second-rate brand of the same kind of education available to the affluent, inequities will continue to be promoted.

This is in fact what occurs. The expansion of educational systems, as Illich has pointed out, teaches those who have had limited schooling the superiority of those who have had better schooling. As the mind of society is progressively schooled, step by step its individuals lose their sense that it might be possible to live without being inferior to others .... . Schools rationalise the divine origin of social
stratification with much more rigour than churches have ever done". The inegalitarian effects of education, the "compounded discrimination" it fosters, are in part traceable to the competitive spirit: "The rich begin ahead and stay ahead, their original privilege now legitimised by measurable victory in a patently unfair competition".

The quality of education or the way in which resources are used is of paramount importance. As a suggestion, the poor need an education designed to develop self-assurance and confidence, the ability to act fruitfully and creatively, the power to choose a variety of lifestyles. This should be its overriding, perhaps even its sole, aim. True, educators pay lip-service to these aims, but the actual impact of education on the poor (but not only the poor) in Australia today is counterproductive in terms of these goals. The poor learn to accept the inevitability of their fate in the school system. They learn to accept failure, to kill aspirations. They learn that they will become labourers, that they will be doing the dirty work, that higher education, money, comfort, and respect are not possible.

In addition they are socialized like the affluent. They learn to conform, to defer to authority, to suppress initiative and individuality, to respond to the incentive of grades just as they will later (if they are to succeed in society) have to respond to the incentive of wages. In a society where work is alienating and material incentives are necessary to keep people at work, the socializing role of the school system is to lay the foundation for the division between unpleasant work and pleasant leisure. This it achieves admirably. The classroom is a joyless place and is inimical to learning, self-growth, and self-actualization.

It is the criteria of an education that will achieve the development in individuals of desirable states of subjective consciousness, and the way in which this kind of education can be implemented, that require investigation. If we need research projects and enquiries they should be focused in this direction, rather than upon studying and dissecting the characteristics of the poor, educational disadvantages, etc. Already there is literature and past empirical research available as a basis for action. Obviously further research is needed, but this is a continuous need and should not be used as an excuse for inaction.

Equality of educational opportunities and quality education for the poor may not be sufficient to remove inequities, but clearly they are a necessary component of a social revolution package which involves equalizing control over all kinds of resources and developing desiring states of subjective consciousness.
Health and Legal Services

A reduction of free-enterprise health and legal services may be the only way to guarantee adequate access to these services to all members of the community. This change, which is the negative aspect of the expansion of publicly provided health and legal services to a point where access is equalized throughout the community, may be the only way to meet human rights or needs in a market society. The poor are in greater need than the rich of both health and legal services, but in fact they have much less access to both. Exposed as they are to inadequate nutrition and a generally disease-conducive physical and psychological environment, and dependent unlike the rich on the sweat of their brows for economic subsistence, the poor have a considerably greater need for health services than the affluent. A similar argument applies to legal aid. Discriminated against and exploited by the powerful as employees, welfare dependants, consumers, and tenants, the poor have a much greater demand for legal protection in order to achieve legal justice, not to mention moral or distributive justice.

Taxation

A thorough overhaul of the taxation system is long overdue. This should involve a reduction in regressive tax measures, a restructuring of income tax rates to make them more progressive, an increase in the number and value of deductions for low-income earners, the introduction of a negative income tax to ensure a guaranteed adequate family income, an effective and progressive capital gains tax, and perhaps 100 per cent death duties. The need for this overhaul is indicated by the fact that, as in the United States, the distributional impact of the taxation system may on balance be regressive or at best, through some income ranges, proportional.

Public Expenditure

The determination of public expenditure programmes with much more reference to equity and much less reference to narrow efficiency criteria is perhaps the main prerequisite for the eradication of poverty.

Neglect of equity criteria in the ostensible interests of allocational efficiency is in actual fact inefficient. If poor people become better housed, better educated, and healthier, resultant productivity increases will raise the level of production and tax revenue. Further, those costs associated with locational adjustments to the negative externalities generated by poor and low-income earners in urban areas would be reduced. Urban sprawl, freeways, and traffic congestion,
being functions of the territorial segregation of socio-economic classes, would be minimized in an egalitarian society. Expenditure on welfare and police protection would also be reduced. It is therefore only a narrow view which claims that redistribution is inconsistent with efficiency criteria. Here is another dualism that may be transcended.

Obviously it is too sweeping to claim that efficiency and equity are totally consistent; the point is that they are far more consistent than is generally realized. A further point is that in an affluent (some would say over-developed) society the pursuit of efficiency and further economic growth may be undesirable.

The total impact of the public sector on the redistribution of resources is obviously dependent upon the distributional effects of both taxation and spending activities. Although it is conceptually difficult to measure with any prevision the distributional impact of much public spending, it is evident that the direction of the distributional effects is highly regressive. A sizeable portion of government spending is in the form of direct and indirect subsidies to businesses: governments are major buyers of consumption and investment goods and services from the private sector; some sectors, such as primary industry, receive special protection from governments. Public spending on sea, air, rail and road facilities, decentralization incentives, all tend primarily to benefit private industry, which helps to lower costs and increase profits. As the majority of stockholders’ dividends accrue to only a small minority of the population, the effect of government aid to business is regressive. Public subsidies to industry compete with health, education, and social services generally and with public servants’ salaries for scarce tax dollars. Notwithstanding the progressive distributional impact of social welfare programmes, it has already been noted that the effects of the provision of other public services, such as education, child care, and recreational facilities, are inegalitarian.

The dismal conclusion that emerges from this cursory consideration of the government’s taxing and spending activities is that far from acting to offset the market maldistribution of income, the role of the public sector is actually to worsen and perpetuate inequalities. This fact that this may not be intentional or is contrary to folklore and textbook dogma serves only to heighten the contradictions that seem to be endemic to our social and political system.

Other Recommendations

In addition to the six areas for social change considered above, a number of other recommendations are implicit within this paper.
Two examples: voting rights reform would help to improve the representativeness of those local authorities which exclude tenants from the right to vote, though *de jure* democracy is a far cry from the achievement or *de facto* democracy. The channelling of resources to the poor through acceptable social institutions, rather than through a myriad of special programmes which stigmatize the poor, would contribute to the de-bureaucratization of welfare services.

Hopefully, this paper can contribute to an understanding of the etiology and prognosis of poverty in our social order and, more important, of the therapies necessary to simultaneously modify the social order and eradicate poverty. If past therapies have been directed at relieving the symptoms and have had the adverse side effect of weakening the patient and lowering his resistance to the poverty disease, new therapies are required to remove the cause and once and for all cure the disease.

To apply such therapies or make operational recommendations along the lines of those suggested here requires a political will that may not yet be present in Australia. It is important, however, that we be moving *in the right direction* and not deceiving ourselves that *ad hoc* interventionism can eradicate poverty, that poverty can be reduced either without reducing inequalities or as a result of economic growth and the market mechanism. The poverty inquiry, when it releases its main report, would do well to consider the implications of radical changes in the brand of *laissez-faire* capitalism operative in Australia. It ought also reveal to the public the failure to carry out social reforms. Such consequences would include mounting social tensions and the impending crises facing our cities, not to mention the agonizing deprivation of those who are increasingly outcasts from Australian society.

**NOTES**


3. Of relevance here is an article by Peter Samuel (Bulletin, 24 February 1973) extolling the virtues of growth and the wisdom of the OECD and disparaging those concerned with equity or poverty. I commented on this in the *Bulletin* of 10 March 1973: Peter Samuel reveals the kind of inhuman obliviousness to social problems so characteristic of modern economists. Mr Samuel chastises the local intelligentsia for its concern over poverty, pollution, the distribution of income, and its growing realization that economic growth is not the panacea so many hoped it would be.
By contrast Samuel finds refreshing the hackneyed old economists' line re-advanced in the recent OECD survey *Australia* that more economic growth will provide the resources needed to tackle the country's domestic social problems.

Unfortunately for Samuel or at least the vested interests he unwittingly represents, fewer people can now swallow the growth-mania medicine. One reason for this is contained in the answer to the question: Growth for whom? The cake gets bigger but it is never cut, or at least never cut equitably.

Besides, despite some lip-service to the contrary, Samuel and the OECD have assumed social problems away—Australia already has a strikingly egalitarian distribution of income—or reduced them to the healthy ferment of a lively democracy.

Samuel is on firmer ground when he points to the failure of welfare programs to achieve their objectives. Perhaps we need better welfare programs, preventive measures rather than piecemeal palliatives, which do not necessarily require more money or institutions. Or maybe a fundamental change in the productive relations themselves. But such an alternative cannot even be considered by those with vested interests in the status quo. If a business is failing, the way to make it work might be to improve the management, certainly not abolish it. Likewise welfare services need improving, not abolishing. Certainly the Samuel-OECD approach to welfare problems—assume them away or trust in market forces to eradicate them—is being seen as the myth it is.

5. For an illustration of the point that poverty and income are not necessarily closely correlated, see Daniel Behrman, *A Tale of Two Suburbs* (UNESCO, 1973).

People are poor when they are deprived of the capacity for a full human life. Low income involves helplessness, alienation, ignorance, and total immersion in present problems, local conditions, and personal relationships. But those poor in income are not always poor in other ways. Characteristically, spontaneity and expressiveness, personal loyalty, trust, mutual reliance and co-operation, and community cohesiveness are present. On the other hand, many symptoms of poverty (e.g., alienation) afflict the materially affluent, whilst they often fail to achieve some of the positive characteristics of people on inadequate incomes. A conclusion to be drawn is that eliminating poverty-conducive social structures is a matter of universal self-interest. See Peter J. Hollingsworth, *The Powerless Poor* (Melbourne: Stockland Press, 1972).

6. For an excellent account of the pervasiveness and many guises of this view, see William Ryan, *Blaming the Victim* (New York: Random House, 1971).


9. The distributional impact of the public sector through fiscal policy is considered in part 2, "Poverty and Urbanization".

10. Welfare can serve different masters. It can be used as an instrument of economic growth which, by benefiting a minority, indirectly promotes greater inequality.

In an otherwise fine article here appears the following statement of how social indicators can be useful to political authorities as a guide to when welfare should be increased to appease discontented masses and preserve the status quo:

Insofar as racial groups in South Africa are differentiated with respect to access to employment, national resources, social services and political power, marked differences in levels of living or quality of life can be expected. The development of indicators to measure these conditions has some obvious public policy implications. For example, if some of the Bantu townships are becoming potentially explosive "social slums", then a monitoring system might be set up to provide indicators or predictors of impending crisis, which could be forestalled by remedial social programmes [emphasis added]. (David M. Smith, "Geography and Social Indicators", South African Geographical Journal 54 [1972], p. 55).

11. Losch envisaged that reality should not be used to check whether theory is "right", but theory should be "used to check whether reality is rational and to point out where and why it is not. If we adopt this approach, it follows logically that where the real world diverges from the normative prescription a case can be made for the use of legislation or other devices to bring reality into line with prescription". (Michael Chisholm, "In Search of a Basis for Location Theory", Progress in Geography 3, p. 130).


25. Planning and public spending in Australian cities, as in the US and the UK, remains disastrous for the future of the social system and for any possibility of reducing poverty so long as its aim is to *facilitate existing trends*. This tendency to make an ideal out of the *status quo* is objectionable "if we believe the status is nothing to quo about" (E.M. Hoover, "The Evolving Form and Organisation of the Metropolis", in *Issues in Urban Economics*, ed. H. Perloff and L. Wingo (Baltimore: Johns Hopkins University Press, 1968), quoted in Harvey, "Social Processes", p. 299.

26. For an account of these hidden mechanisms see Harvey, "Social Processes".


31. Although this is still no doubt true for a large proportion of Australians and a large proportion of jobs—and is indeed the reason why conservatives and liberals oppose the introduction of anything approaching an *adequate* guaranteed family income—there is mounting evidence to the effect that work incentives are more enhanced by income than lack of it. This emerges from a recognition that man has many *metaneeds* (non-material needs) and *metamotivations* (non-pecuniary reasons for working) and that "healthy" people in "good" jobs receive only a portion of their "pay" in money. See Herbert J. Gans, "Three Ways to Solve the Welfare Problem", *New York Times Magazine*, 7 March 1971; Abraham Maslow, *The Farther Reaches of Human Nature* (Harmondsworth, Middx.: Penguin, 1973), pp. 313–57.


33. Not only could the basic rate be made more progressive, but transfer payments such as child endowment, the maternity allowance, pensions, and scholarships could be made taxable.

34. A recent paper indicates that taxation policies in Australia have a regressive effect on incomes up to about $7,000 p.a. when indirect as well as direct taxes are considered. See P. Bentley, D.J. Collins, and N.T. Drane, *An Estimate of the Incidence of the Australian Tax Structure* (Conference of the Economics Society of Australia and New Zealand, Adelaide, 1973).

WOMEN AND SOCIETY

In July 1848 the first American women's rights convention was held at Seneca Falls, New York, and the Declaration of Sentiments which it passed is, in part, as follows:

The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her ... He has compelled her to submit to laws, in the formation of which she had no voice ...

He has created a false public sentiment by giving to the world a different code of morals for men and women, by which moral delinquencies which exclude women from society are not only tolerated, but deemed of little account in man ...

He has endeavoured, in every way that he could, to destroy her confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life.

In 1973, 125 years later, the sentiments are still pertinent. Inequalities exist. It is by now a cliché, and, like most clichés, the reality that lies behind it is often forgotten. Many recognized and accepted social expediencies depend on these inequalities. Economic progress is dependent upon an unequal distribution of income. The economy benefits from the cheap or unpaid labour of women workers. The
social system is dependent upon role differentiation and role stratification and is based on a family structure which is kept in existence through the subordination of women.

As well as these major social injustices, there are the day-to-day demeaning and frustrating examples of inequality. Our society abounds in nineteenth century protective and paternalistic attitudes. Women are prohibited from working in the mines, from carrying heavy weights, from carrying arms, from night work (except where required for the smooth running of society); women are discouraged from being garbos, waterside workers, builders' labourers, road labourers, surveyors, electricians, wool-classers, shearsers, barristers, lawyers, architects, and so on.

Most women hold low-level jobs, and wages in general have been lower for women than for men. Significantly fewer women than men are educated at the secondary or tertiary level, and those educated are heavily concentrated in non-vocationally oriented areas. Very few registered medical practitioners are women, and almost all doctors display a dismaying lack of knowledge of women's diseases and complaints.

Only 221 Aboriginal women have attained educational qualifications of trade and technical level or higher. Over 50 per cent of the Aboriginal female work force is concentrated in service and recreational occupations.

There are few women famous in the arts.

Women have great difficulty in obtaining home finance and other forms of credit, and in general can only do so by having their application countersigned by a man.¹

Older, more mature women are treated as unattractive and are rarely given entry to training schemes, educational institutions, or, often, the work force.

Girls are brought up to be girls, and boys are brought up to be boys, as if there were two different kinds of people.

Women but not men are identified by their marital status (that is, by the use of Miss and Mrs). Once married a woman takes over her husband's name, domicile, and often citizenship.

SUPERFICIAL REFORMS

As people have become sensitive to the existence of these inequalities, demands have been made for measures to be taken in an attempt to set right what is accepted as an unjust or an unfair situation. And so we begin rocketing down the road of reform. But too often these demands are based on an insufficiently deep analysis
of the cause of the inequality and, if granted, merely lead to further inequalities.

Perhaps I could illustrate this claim by looking at a few of the demands which have been made and which could easily merely replace one inequality by another.

One such demand is that expenses incurred through joining the work force—for example, the need to hire domestic help—should be tax deductible. However, tax deductions in general favour the rich over the poor: the higher the income, the greater the tax saving; the lower the income, the smaller the saving. Hence people on low incomes get the lowest benefits from deductions and, given that the average income for women is lower than that for men, women in general and the single non-professional mother in particular would benefit least from a system of deductions. Thus, if the demand for tax deductions were to be granted, this would set up further inequalities.

Another demand which has been made regularly over the last few years is the demand for a wage for work performed in the house. A question which does not seem to have been raised in connection with this demand is whether the working woman who still has to perform her job in the house would be eligible for this wage. If not, it would discriminate between working and non-working women. If so, would only married working women be eligible, for in this case there would be discrimination against single people, both men and women. But perhaps more importantly the question must be raised as to what would be the social consequences of acceding to this request. Recent experience in Hungary, where a wage for work in the home has been introduced, was that women who had been forced into the work force for economic reasons left and returned home. But gradually more and more women who originally had gone into the work force through choice were returning to the home. A preliminary survey of the reasons why this occurred seems to indicate that these women were put under considerable pressure by their husbands to give up their jobs.

One might learn from the Hungarian experience that before many reforms can be successfully implemented, a whole wide range of social attitudes must be changed. In this respect women themselves could well be partially to blame, for they have not learnt to say "I work because I enjoy working" or "I work because it gives me economic independence", but continually seek for excuses which are more acceptable to a moralistic and materialistic society, such as "I work because I need to" or "I work to save for a trip, a T.V...", or "I work for pin-money"

Even if the relevant social attitudes were changed, there is still
another question which must be raised. Many problems can be solved in more than one way and hence one must have a means of deciding between different possible reforms, and in most cases this will be impossible to formulate unless the reformer has a very clear idea of the sort of society which she or he is trying to bring about. Thus if one wanted a society identical in all respects to our own, but where for example divorce was easier for the professional working woman, then one would achieve one's aims by devoting one's energy to making one year's separation sufficient grounds for a legal divorce. But then, of course, that sort of change would not help any woman who was economically or psychologically dependent upon her husband, and in our society most women, no matter what their husband's income, or their own social or educational background, fit into this latter category. At the other extreme there is the radical reformer, the person committed to an almost complete restructuring of our society in such a way as to safeguard the essential dignity of men, women and children. This person, then, must carefully select only those reforms which will be helpful in achieving this aim and must reject any possible solutions which, though in the short term may better an existing inequality, in the long term reinforce the present basis of power.

EQUAL JOB OPPORTUNITY

One of the most significant demands that has been made in recent history to rectify existing inequalities was the demand for equal pay. That in general women could be paid less than men, and in particular that when doing exactly the same job women be paid less than men, is an obvious inequality. Thus last century when the women's movement began making demands in the political arena, one of these was the demand that this injustice cease. After a long, hard and bitter fight the principle of equal pay for equal work and subsequently the principle of equal pay for work of equal value have been accepted and are slowly being implemented.

However, it is now beginning to be realized that equal pay alone will not achieve the justice which was implicit in the original demand, and hence we have a new demand, namely the demand for equal job opportunities, training opportunities, and promotion opportunities. For whilst it is true that women often choose not to apply for jobs in certain categories or for various training schemes, very frequently it is the force of social convention that excludes them from these areas, either by the restriction of some jobs to men only or indirectly by denying women access to educational and
training facilities. The consequence of restricting some jobs to men only is that women, particularly the semi-skilled or the unskilled, can be retained in jobs at a lower rate of pay.

If a more searching analysis had been undertaken from the start into the causes of differential wages, perhaps the demand would have been not for equal pay but rather for equal job opportunities. For if women had been as free to enter and progress in all areas of the work market as men have then if there were no other constraints on the labour market, the forces within that market would have brought about equal pay for work of equal value.

It is the realization of the inadequacy of the demand for equal pay even for work of equal value that has led to this second demand, namely that of equal job, promotional, and training opportunities. Is this demand then the correct response to our original problem? If this demand were achieved, would we then have a more equitable situation?

The brief answer to this is, I think, no—for many reasons. The first is that it does not follow from the availability of training schemes or of unrestricted jobs that women will be able to avail themselves of these. For there is a whole range of quite firmly entrenched beliefs on the part of the mostly male employers which, unless changed, will inevitably hold women back. These beliefs are based on oft-repeated generalizations about the limitations of women, and employers are notoriously reluctant, even in the face of well-documented evidence, to give up these beliefs.

Even if there were equal opportunities for women, there could well be inequalities with patterns of employing women. A survey done by the Department of Labour showed the majority of employers give preference to unmarried women, if and when they are available, and dismiss married women first if a staff curtailment occurs. Some employers gave as grounds for this behaviour the claim that single women should be given preference for jobs because they were self-supporting and dependent on their work. But this seems either to be a thinly veiled moral judgement to the effect that a married woman's place is in the home, or alternatively a reiteration of the old basic wage notion of the breadwinner (which surely must soon be overthrown and replaced by a more equitable notion), or a lack of understanding of the discrepancies that exist between the earnings of a single worker and those of a single-wage family.

The second reason why this demand will not succeed is that it is still very widely true that entering the work force means that a woman now has two jobs: her old job of cook, charlady, child-minder, shopper, and servant, as well as her new one. Work in the home, that is, domestic labour, is both time-consuming and
demanding, but it is rarely considered to be productive labour. A study done by the Chase Manhattan Bank estimated that the aggregate working week of a woman who was holding down a full-time job as well as running a home was 99.6 hours, that is, an average of over 13 hours per day. The demands of two jobs lead inevitably to a situation where the woman is too tired and too distracted to devote her full attention to either.

The third reason that this demand will fail is that the existing career pattern is based on the expectation of unbroken continuity of service from recruitment until retirement, and most women do not fulfil that expectation. The most common reason for not fulfilling it will be childbearing. The age at which a woman is most likely to leave the work force to give birth (and in our society this almost inevitably means remaining out of the work force at least for some time to raise the child) is the age at which younger staff are being looked at by top management to pick out those who will follow in their footsteps. Even if the woman would like to return to the work force at any stage after the birth of her child, this desire is often frustrated by the unavailability of permanent part-time work, of suitable child-minding facilities, and of the flexibility in work arrangements which would allow her most easily to combine the continuing utilization of her skills and qualifications with her responsibilities to her home, her husband, and her child.

If present trends continue, it is probable that in the future many women will enter or return to the work force when their children are older, and they will usually have about twenty to thirty years of working life ahead of them. To enable women to resume their careers when they wish to do so and to ensure that their abilities, training, and experience are not wasted, employers must be prepared to plan for them a career pattern which includes a break in service.

Thus what seems to be emerging is the possibility of at least three different career structures: the present one based on continuity of full-time service; the second one which for present purposes may be viewed as unbroken, but in which the worker may work part-time at various stages within her or his overall full-time employment; and a third one in which the worker leaves the work force for periods of varying lengths but is able to return, if the break is short, at roughly the same level of employment that she or he held previously, or if the break is longer then with retraining either on the job or in educational establishments. Men, of course, as well as women—indeed the community as a whole—would benefit from an acceptance of these differing career patterns.

More fundamentally, the question must be raised as to what the
claim for equal opportunities amounts to. For the concept of equal opportunities seems to be tied to that of a race to get to the top, an ambitious race for wealth and prestige. It is one thing to speak of fitting opportunities to talents so that everyone can realize her or his capacities for a full and enjoyable life; it is another thing to demand equal opportunities to compete for prizes of status and wealth. This latter merely reinforces a capitalist society; the former implicitly acknowledges that the claim for equality can best be understood as a rejection of differentiation on set lines alone and as a plea for acceptance of differences as they actually exist.

**EQUAL REPRESENTATION**

The final demand which I want to consider is the demand for representation at all levels of the power structure, including parliament, and the attendant demand that areas of special concern to women be taken seriously.

South Australia gave women both the franchise and the right to sit in parliament in 1894. By 1902, the franchise had been extended to the Federal Parliament and the state parliaments of New South Wales and Western Australia. By 1908 all the remaining states had extended the franchise to women, and by 1923 women were allowed to sit in all the parliaments. However, it was not until 1943 that the first woman entered Federal Parliament, and to date there have been only forty-two women members of the Australian parliaments. There has been a higher incidence of women in local government politics and in the federal and state upper houses than there has been in the lower houses. Single-candidate electorates such as we have for the lower houses militate against the adequate representation of women, for there seems to be a reluctance to allow a woman to stand as a candidate. However, in a multiple-candidate electorate, various pressures may ensure that a woman is sometimes given a place on a ticket and thus may, in very safe electorates, be elected. It could well be also that in our society women with families have been less geographically mobile than men, and hence election to state or federal parliament could well have seemed a less attractive ambition.

The demand for adequate representation and for increasing discussion of issues of importance to women, which has led in recent history to the formation of various lobbying and pressure groups, is bringing women more and more into contact with the many institutions in which power resides and thus with the power game and the game of politics. This is a game the rules and limits of which have
evolved within these essentially male institutions until they have become fixed, sacred, and invested with tradition and importance. It is a game in which up until now almost all the players have been men. It is a game which is inextricably concerned with the gaining of and use of power. It is a game which is solidly based on the old boy network, that is, on contracts established with other men either at school, at university, on the job, in the pub or in the course of playing the game itself.

Women then who choose to play this game will suddenly find themselves faced with the intricacies and frustrations of sub-games such as the "play-it-cool" game. There is a certain type of behaviour required for successful participation which excludes overt passion, commitment, concern, and sensitivity—in other words, those very attributes which are the marks of people fighting against decades, if not centuries, of being at best ignored and at worst actively discriminated against in every way.

Then there is the "terms of reference" game, perhaps best illustrated by the put-down comment, "Yes, dear, that is all very interesting but it is outside the terms of reference of this group." There is no reason why the limits and categories which men have set up should be accepted by people who have been forced to enter the game because of the inadequate understanding that these same people have had of the issues concerned.

Next, there is the "standing orders" game: presumably standing orders were originally formulated to facilitate proper discussion, but over time they have become the tools of the tyrannical chairman concerned that issues of passion should not interrupt the smooth running of his meeting.

Then there is the "power game", in which the issues ostensibly being discussed are merely a front for the interplay of power, a means for gaining power and using it. The skills required for successfully playing this game are the traditional masculine skills of ambition, competition, aggression, self-confidence, decisiveness, practicality, objectivity, and the ruthless competitive pursuit of planned goals.

And now, since women have started asking for access to these games, there are new games. One could be called the "sex-object" game—the more pleasing the woman is to the eyes of the beholder, the more she conforms to the accepted stereotype of a sex object, the more likely she is to be listened to. Linked to this is the inability of those playing the game to perceive women as people. The women coming into the situation presume that they will be communicating on a person-to-person basis. However, many men seem unable to overcome years of bad habits and may even go so far as playing yet
another game which could be called the "put-down" game. A mild version of this game involves the use of expressions such as "ladies", "girls", "members of the fair sex", etc., as to a not so subtle means of downgrading the opinions of women. A more frustrating version of this could be called the "invisible women" syndrome. This often happens in meetings where a woman might put forward a well-argued case which at the time is ignored, but if later repeated by one of the men present seems to gain so much more significance.

Having decided, despite all this, to enter the game rather than to opt out completely, women will then be faced with the dilemma of either accepting the rules, the strategies, and the limits of the game in which they are trying to make themselves heard, or of attempting to change them. Genêt argues in his play The Balcony that no revolutionary changes will ever come about until we change the very structure of this game, not just the rules and so on, but more importantly the roles that the game itself forces on participants.

Perhaps the lesson that the last 125 years should have taught us is that reforms alone will always be insufficient if one is deeply committed not merely to gaining the odd reforms, but to a reassessment of that which within the society causes or sustains these inequalities.

**SOCIAL REVOLUTION**

There has been much discussion in recent times of the damaging effect that sex role conditioning has on the future development of an individual. Bringing girls up as girls rather than boys, and boys as boys rather than girls reinforces the masculine/feminine polarity in which aggression, ambition, clear-thinking, and toughness are considered to be the prerogative of the man, and passivity, submissiveness, sympathy, altruism, and frailty that of the woman.

The destruction of these sex roles will involve a social revolution, and it could well be that few, if any, reforms will in the long run succeed until this social revolution has occurred.

But there is another revolution which must also take place which could be called a psychological revolution. Both men and women within our society must be made aware of their habitual patterns of prejudice which they often do not see as prejudice. That it exists can be shown by looking at both our language and our behaviour. Words such as Chairman and ombudsman reflect a past political reality, namely that only men used to have access to power. But now the use of these terms helps to ensure that the past reality remains. Such seemingly insignificant things as the constant use of the pronoun he to pick up the reference of a noun and the constant ordering of pro-
nouns as he and she rather than she and he can be exceedingly frustrating to a woman who for the first time in her life has begun to see herself as an individual in her own right rather than an individual attached to some man or other, such as her father or her husband.

There are more subtle ways of belittling women. One could well imagine somebody calling a girl a tomboy with a touch of pride in their voice, but how often does one hear the same pride in the voice of a man calling his son a cissy.

Even terms of abuse reflect the common practice of belittling women. Although Australian terms of abuse are decidedly unimaginative, of those that do exist, many have female connotations and where there is a masculine equivalent, the term with the female connotation is often more abusive than the term with the masculine connotation. The belittling of, or the sheer disregard for, women which lies behind so many of these language habits must begin to be pointed out and must be pointed out time and time again until the deep-seated and perhaps unconscious prejudices that lie behind many of these expressions are confronted.

But it is not just our language usage to which we must become sensitive; we must also become sensitive to our conscious emotional dependencies.

Men must learn to listen to women, to look at them and to accept them as they are. To do this, they must rid themselves of a self-imposed restraint to place each woman into either the "angel" or the "whore" category. As Theodore Roszak observes: "... the woman most desperately in need of liberation is the 'woman' every man has locked up in the dungeons of his own psyche. That is the basic act of oppression that still waits to be undone, though the undoing might well produce the most cataclysmic reinterpretation of the sexual roles and of sexual 'normalcy' in all human history."

Woman must learn, in the spirit of the Seneca Falls declaration, to regain her confidence in her powers, to increase her self-respect and to cease to be willing to lead a dependent and abject life. Woman must learn not to rely on others to make decisions of take the initiative, but most importantly of all she must learn how to gain confidence in her own self as a free, independent, self-guided human being.

These are no easy demands—the more one becomes sensitive to one's language, the more one realizes what has happened over the centuries to women. The more one looks at one's own behaviour and reactions, the more one realizes that this, too, time after time belittles women or ignores them or insults them. The pain grows and grows. This whole process is sometimes referred to as gaining a
feminist consciousness, and the pain has perhaps best been described by Robin Morgan in a poem called "Monster" in which she says:

*One sister, new to this pain called feminist consciousness for want of a scream to name it, asked me last week "But how do you stop from going crazy."

*No way, my sister.
*No way.

**NOTES**

1. Women on similar salaries to men now have the same opportunity to obtain credit. Their applications do not have to be countersigned by men.—Ed.
2. Part-time domestic help is not tax deductible, but full-time domestic help is.—Ed.
3. The Family Law Bill of 1975 has effectively made one year's separation sufficient grounds for divorce.—Ed.
4. Equal pay for equal work has been implemented in most industrial areas.—Ed.
THE MEANING OF "MINORITY"

I must admit to some uneasiness about this topic. The term minority group is an ill-defined one, and indeed I am not sure if this topic is a euphemistic way of asking me to talk about homosexuals and the Labor government, in which case, as I shall note later on, the promise has been small and the performance nil. But taking the topic at its face value let me try to define who are meant by minorities.

To speak of minorities is not merely to speak of a statistical class. Cabinet ministers, VFL footballers, and bishops are in this sense minorities—indeed there are far less of them in our society than prostitutes, alcoholics, and gypsies, which may be all for the good. Yet the latter groups are generally regarded as minorities, whereas the former are not. Thus the term minority seems to imply a group that is in a subordinate position within society, and whose minority status is a mark of this.

It is in this sense that women are sometimes regarded as a minority group, though statistically this is usually nonsense. Such a use of the term suggests a particular liberal interpretation of society, one that sees it as a harmonious whole from which certain small groups diverge. (This, I would suggest, is the underlying assumption behind sociological theories of deviance.) Instead I would suggest to you that society is divided by different sorts of cleavages, of which sex, class, and race are the most significant.

But if society has certain cleavages it is also true that there is a set of dominant cultural, social, and political values which act so as to disguise these cleavages. This is just as true under a Labor as under a Liberal government, for as we all know a marxist analysis of society features only in the rhetorical flourishes of a small section of the ALP. The belief that Australian society is basically consensual—that is, that what unites us is greater than what divides us—is widely believed, and to this extent is of course true. Thus the trade union movement can co-operate with private enterprise to provide services to its members; the serious and basic challenge of Women’s Liberation to prevailing norms of sex roles and family organization is ignored by the media, which treats the movement either as a joke or reduces it to another reformist pressure group; and while there is
some support for those Aborigines who speak of maintaining their cultural identity rather than being assimilated into the Australian mainstream, they are usually regarded as an exceptional case.

I am not necessarily arguing that such a search for consensus is morally wrong, but for the moment just pointing out its existence. For the minorities with whom I shall be concerned are essentially those who are excluded from the national consensus, and who are stigmatized as minorities for this reason.

This assumes that there is in Australia a very powerful set of cultural norms to which all are expected to conform, norms that are enforced by the home, the schools, and the media and that cut across class, sex, and ethnic divisions. (I use ethnic here meaning white ethnic, for to a large extent white Australia has not really expected such conformity from Aborigines). These norms are basically those of a lower middle-class liberal capitalist society, strongly influenced by an unfortunate combination of Irish Catholic puritanism and Nonconformist wowserism. They include a strong stress on the virtues of work, progress, and material possession, on consumerism, on the family and the centrality of the house and garden in individual life.

These values are, of course, central to all Western industrial nations, though we might note some specifically Australian variations. Compared with Americans, Australians seem to me more hedonistic and less ambitious, and at the same time more committed to privatism and suspicious of public life. There are few people that hold as strongly as Australians that one shouldn’t discuss religion and politics because they cause conflict. Strong stress on the privacy of the home and family coexists uneasily, too, with that strain in Australian life that seeks to enforce particular moral values on the whole society.

The tone of the dominant culture is probably best reflected in the mass media and commercial television, whose advertisements constantly reinforce the cultural norms of the society. An evening spent in front of the TV set or reading the Women’s Weekly makes it perfectly clear that the good life involves a conventional family structure, a new house and car, and an abundance of material possessions. Kids are constantly urged to persuade their parents to buy the latest toy and “be the envy of the other kids on the block”.

In a country where one vision of the good life is relentlessly communicated to its inhabitants, almost anyone who fails to live up to this is branded as a minority, to be pitied, censured, or perhaps rescued. Thus the poor of Fitzroy and Collingwood are minorities to be researched, while the rich of Toorak and Mount Eliza are the success stories whom we should all aspire to emulate. (This may explain
the popularity of the society pages, and those color photographs of Toorak weddings in the Women’s Weekly.) It is precisely those who either fail or refuse to achieve the dominant standards with whom I am concerned.

**THE UNMARRIED**

There are different types of nonconformity to the dominant value system and doubtless it would be possible to construct some grand typology to embrace all types. One large group consists of those people who are physically excluded by virtue of deformity, handicap, or just difference of appearance. Another, to which we all belong at one stage in our life, includes those who are differentiated by age—children, adolescents, and old people all form minority groups to some extent, and of these it is the old who most clearly suffer social oppression. That I shall deal with neither of these groups at length is not meant to suggest a denial of their oppression. It is likely indeed that both psychologically and economically the blind, the permanently invalid, the dwarf, and the intellectually sub-normal are among the least equal of all in our society, and it is also likely that they have the least recourse to challenge their position. As one polio victim, Leonard Kriegel, wrote, “The homosexual on public display titilates, the gangster fascinates, the addict touches—all play upon a nation’s voyeuristic instincts. The cripple simply embarrasses. Society can see little reason for recognising his existence at all.”

Minorities by and large do embarrass society, which either chooses to ignore them—Ralph Ellison’s *Invisible Man* is a metaphor that applies to far more than blacks—or creates elaborate rationalizations to justify their subordinate position. To a large extent this is then internalized by those defined as minorities, who therefore exhibit the characteristics that justified their stigma in the first place. Claims of alcoholism among Aborigines, of neuroticism among homosexuals, of paranoia among cripples are all partly true, for they are all in part strategies developed by these groups to enable them to function in a hostile world.

I want to talk about one particular sort of minority, one that is rarely perceived as such but that embraces a very large number of Australians indeed. I refer to those people who for one reason or another fail to conform to what seems to me the core of our hegemonic value system, namely the nuclear family. Except for certain specifically defined groups—nuns and priests being an example—the unmarried are regarded as incomplete beings in contemporary Western societies, and fit objects for pity, harassment and/or salvation.
In Australia this does not reach the stage reported by Levi Strauss among the Bororo of Brazil where he met a man described as "useless, ill-fed, sad and lonesome". When he asked if he were ill, Levi Strauss was told no, he was just a bachelor. Middle-aged and elderly single women in small towns might however approximate this position. Old maid in our society has something of the meaning of bachelor among the Bororos.

As an adult beyond a certain age not to be part of a nuclear family of one's own is to feel excluded from what is widely believed to be the only acceptable form of organizing one's sexual and social life. That homosexuals and single heterosexuals may live perfectly happy without marriage and children is rarely admitted—perhaps it cannot be admitted, for to do so would be to call into question the dominant ideology that forces most people into accepting marriage as inevitable and its perpetuation as highly desirable.

Great numbers, however, do not fit this pattern, either because their marriages are ended by divorce or death or because they never marry. According to the breakdown of the 1966 census—unfortunately later figures are not yet available—in every age group there is a substantial proportion who have never been married, which never falls below 7 per cent (in the groups aged over forty-five. Or put another way, of those people older than twenty-five in Australia there are as many as live in either Adelaide or Brisbane who are not and have never been married, to whom can be added a quite substantial number of divorcees and widows and widowers.

The singles embrace a very wide range of society, from unmarried couples living in de facto relationships to celibates of either sex living alone. In recent years society has become somewhat more conscious of some singles, in particular unmarried mothers—though rarely unmarried and deserted fathers—and homosexuals. The majority are however ignored; and this being ignored is often reflected in social discrimination. Unmarried women in particular find it very difficult to get loans, especially for housing; the AMP Society. I have been told, refuses loans on its policies to unmarried persons for homes.

The government's cash grants for housing apply only to married couples; the ALP promised at the 1974 election to make interest payments on home mortages tax deductible to all, but this proposal appears to have been shelved. Job discrimination against singles is harder to document; there are undoubtedly jobs where a spouse (especially for men) is required, though these are rarely specified. Superannuation schemes—this is at least true of the New South Wales state government system—make a clear distinction between single and married women on the one hand and married men on the other; put very crudely, the estate of the latter benefits
far more than does that of the former. Social ostracism of the
unmarried—again particularly of unmarried women—is marked; a
young widow of my acquaintance found she was rapidly dropped
from dinner parties, because her presence disrupted the symmetry
of the table (or because, perhaps, she threatened other wives?). The
income tax system and estate taxes all operate with a heavy bias in
favour of the married, irrespective of whether they have children or
not.

But most oppressive is the assumption that all are married; those
politicians who talk constantly of "the family man", of "wives and
children" appear oblivious of the hundreds of thousands whose self-
definition is not as part of a conventional family unit. The
superiority of that unit is defended on all fronts. Thus a Newsweek
cover story which featured "The 'Singles' Society: America's New
Subculture"—needless to say theirs was a totally heterosexual
definition—pontificated that "inordinately indulged, prolonged
singlehood tends to deaden the emotional and sexual palates, freez­
ing its disciples in a state of suspended adolescence. Intelligently ex­
plored, the same period of life can produce that sort of self-discovery
that makes for a wiser, happier choice of a permanent partner" (my
italics).® That millions of people do not attain—and may not wish to
attain—permanent partnership is ignored.

THE ALP IN OFFICE

I have, because of my own situation, a particular concern for and
knowledge of the position of homosexuals in Australia. Prior to the
1974 election I strongly urged homosexuals to vote Labor.® This was
partly because of the number of potential Labor ministers who had
publicly supported the decriminalization of homosexuality, partly
because I believed an ALP government would on the whole produce
a liberating effect in Australia. Eight months later I admit to some
disillusionment. Suggestions that the draft criminal code for the
ACT would be speedily reworded so as to drop homosexuality—and
abortion—from the listed offences have given way to vague talk of
private members' bills. Approaches to the Minister for Labour to in­
clude homosexuals in the purview of a committee investigating job
discrimination met with a knockback and, so it is alleged, ribald
comments from Mr Cameron.

In fact the ALP has hidden behind the claim that homosexuality is
a moral issue, on which there can be no binding party policy, to
avoid taking any real action, at either state or federal level, to act
against anti-homosexual discrimination. That such discrimination
exists should, I think, need no documentation. It involves police harassment, job discrimination, housing difficulties, and psychiatric and medical oppression and is best expressed in the fact that only a very small number of Australian homosexuals feel free enough not to go to considerable lengths to disguise their sexuality. Two examples will suffice here to make the point. The first is that actors who have portrayed homosexuals in the television series Number 96 have been subsequently denied jobs in television commercials. The second is that despite the widespread belief that the law is never enforced against "private behaviour" between "consenting adults" there were in 1971 in New South Wales forty-three prosecutions for buggery and twenty-seven for indecent acts between males. All but five led to convictions, and these were by and large not cases that involved minors or the use of force.

Now to say that such discrimination is something that a party committed to liberty and equality cannot remove because of individual conscience is equivalent to saying that the ALP could not oppose racism because individuals have the right to conscientiously believe blacks to be inferior. That right does not justify governments treating Aboriginal citizens as inferiors. Equally it is possible to defend the rights of homosexuals without endorsing homosexuality just as we defend the rights of Christian Scientists or Jehovah's Witnesses without necessarily agreeing with their views. Unless homosexuals are to be defined as non-citizens they have the right not to be harassed by the police unless they are doing clear harm to others, the right not to be discriminated against in employment—and to be protected in this as much as any other group—the right to form legal relationships with the same financial and social benefits as are available to heterosexuals, i.e., the right to marry.

That this is not so is because of all single persons, homosexuals are the most clearly a challenge to the prevailing social norms and hence to be excluded from the benefits of equality. The treasurer is not going to grant the same taxation concessions to a homosexual couple as exist for heterosexual, even though he represents, as the member for Melbourne Ports, some thousands of homosexuals. Our stigma makes us excluded from the purported "equality before the law" that theoretically exists in a Labor Australia.

A Labor government could quite clearly move towards attaining equality for single people, not just by its legislative programme but also by a recognition in its pronouncements and speeches that not everyone is, or wants to be, part of the conventional family, and that those who do not belong to such families have the right to be protected from discrimination and given the same sort of social and economic advantages as are available to those who marry. It could
very clearly start making the sort of moves towards legal and social equality for homosexuals that the Dutch government—which does worry about anti-homosexual job discrimination—has begun.

But those oppressed in our society for their failure to adhere to conventional norms are by no means restricted to the non-married. We may not have reached the extent of oppression that exists in much of America against so-called hippies, but by the same token “drop-outs”, “long-hairs”, or whatever the appropriate local term may be hardly receive equal treatment at the hands of authority. The restrictions on obscenity that exist in Australia, despite the DLP promises last year that Labor would open the floodgates, are restrictions that apply particularly to certain groups who do not share the conventional standards of both working- and middle-class Australians. They also affect a certain class of businessmen, who might legitimately expect more consideration from the [then] Opposition parties than they get.

Restrictions on life style are particularly felt by schoolkids, who are a minority generally regarded as enjoying very few rights—high school students are expelled from school for things that are taken for granted by adults. While in America the courts have begun to define certain rights of school students, this has not happened here, where, for example, students over the minimum school leaving age can be virtually expelled from schools at the pleasure of the headmaster, with no reasons given, and where all sorts of restrictions on dress and behaviour are imposed by school authorities. And among the larger and more obvious cultural minorities in our society are the migrant communities that make up a large part of our cities. Indeed the so-called majority, whose standards are supposedly those of “the average Australian”, turns out to be a relatively small number of middle-aged, middle-class, white, heterosexual males of Anglo-Irish ancestry. A visit to almost any magistrate’s court will make it perfectly apparent that these are the views that are being upheld by the law.

**EQUALITY AND LIBERTY**

One of the classic arguments of political theory is whether equality and liberty are incompatible, and traditional democratic thought has tended to hover uneasily between the two poles on this question. For a social democratic party in the last third of this century, situated in a moderately affluent and industrial society, the need to reconcile the two seems to me a prime necessity. The move towards equality can be of two sorts, as Peter Medding has written in relation
to ethnic groups: “The first strand is that of levelling, of uniformity and conformity, of cutting every one down to size, and the same size ... The other strand of equality can be termed the equality of diversity: recognition of, and the search for individual and group creativity and distinctiveness.” Despite the attacks of conservatives, who have always accused socialists of the former tendency, it is the latter that seems to me the essence of a social-democratic equality.

Now “equality of diversity” may seem to be traditional liberal pluralism in a new guise, but in fact it repudiates the hegemonic value system within which such pluralism functions. To give an example: it replaces “worship in the church of your choice” with the recognition that organized religion is no more deserving of political support and tax concessions than organized prostitution. Under our present system the existence of a dominant value system means there is a need for those who fail to fit in to be branded as some form of outcast. In a situation of genuine cultural diversity this need would no longer exist, and such people would not necessarily be perceived as part of a minority.

What this would mean in practice is that there would not be one community standard, which is the myth fostered by the courts, but many, and governments would define the rights of individuals to choose their own standards, provided they did no tangible harm to others. Indeed the idea of “community standards”, often referred to by trendy liberals as much as by conservatives, represents the authoritarian imposition of the views of the majority on minorities that conservatives such as Tocqueville have always feared from equality. Perhaps the government need consider making far more generally applicable the principle now being slowly applied to Aborigines, namely discrimination in reverse in order to attain genuine equality of opportunity. One of the classic problems of pluralism is that because it assumes all groups are equal it in fact operates in favor of those with greater recourses. A government pledged to equality may have to resort to positive inequality to remedy this imbalance, as it quite clearly needs to in the case of the physically handicapped to a degree not yet contemplated.

There are, of course, dangers in recognizing genuine diversity, most particularly that certain groups may themselves be oppressive or may impose norms that militate against a society that is in general tolerant and accepting of divergence. Groups that have as part of their culture a belief in the need to export their ideology present an obvious dilemma—a good example would be the Catholic view that contraception is to be discouraged not just for Catholics but in society at large. The same sort of dilemma applies to “skinheads” who are obviously victimized by authorities, but who also tend to
threaten other groups and individuals. Thus to argue for cultural pluralism is, in fact, to recognize that there must be limits on the rights of groups to seek to impose their views on others, and this applies to individuals within particular groups as well. One of the most common strains in Australian family life today is between migrant parents, seeking to uphold traditional values, and their children, who are far more influenced by the norms of their contemporaries. In these cases my sympathy is with the children, not those who argue that parents have the right to impose their own values in the name of preserving traditional cultures.

A society that recognized genuine social and cultural diversity of the sort that I have hinted at would be one with a very different type of educational and media systems to the highly centralized, authoritarian oligopolies that dominate the means by which values are disseminated at the present time. Between them, schools and the media, especially television, effectively promote the values of competition, hierarchy, obedience to authority, and sexual repression that form our basic set of cultural values. Linked to the nuclear family, in which the majority of children are raised, they further the belief that to diverge from the standardized pattern of the nuclear family is to be in some way deprived, deviant, and depressed. It is my contention that a genuine equality would be one in which the assumption that there is one pattern to which all should conform would no longer exist.

NOTES

2. This is the general argument of W. Grier and P. Cobbs, Black Rage (New York: 1968).
4. The AMP Society together with other finance companies say that they do not discriminate between married and unmarried persons.—Ed.
5. Such deductions were introduced for low income earners in 1975.—Ed.
7. See my article in William and John 7, 1972.
8. Lex Watson, "The Law is Not Dead", Camp Ink 2, no. 11 (1972). There were a further 169 prosecutions (133 convictions) for "indecent assault on a male person" which may also have involved consent.
9. This is cogently argued by Helen Mayer Hacker in Sagarin’s The Other Minorities, p. 74.
Sociologists and others who have written about what are called "social problems" or "social issues" have generally focused on those individuals or groups of individuals for whom problems are said to exist—the poor, the mentally ill, ethnic groups, delinquents, and so on. Indeed, as writers such as Szymanski have noted, there are considerable incentives for social scientists to produce data oriented toward those who wish to utilize such information in order to implement practical programmes designed to reduce the more severe tensions and conflicts expressed by these "problem" groups.

Only rarely in sociological writing is much light reflected upon the "helpers", those for whom these studies of social problems provide ammunition in their rehabilitative, manipulative role as agents of social control. Yet the predominant focus of social research on the system's victims is hardly surprising, and its origins have been discussed at length by commentators such as Douglas, Gouldner, and Mills. In general, it seems as though those who hold power in society exert significant pressure on the social sciences to produce practical knowledge to be used by those who wish to institute social programmes. Of course, this is not to deny that many beneficial consequences accrue from such programmes. However, it seems that the great stress placed on the development of practical techniques has diverted attention from the understanding of more complex societal phenomena which is the promise of a critical sociology.

Furthermore, we would contend that mere recognition and criticism of this state of affairs is not enough. What is needed is for us to adopt a critical stance toward those who have attained the power to define for society those issues and problems that require study and corrective treatment. In applying such a critical perspective we need to identify the nature and extent of those activities which are designed to control or manipulate the existing attitudes and behaviour of so many other members of society.

We find in most modern industrial societies that these activities are carried out in large part by occupational élites which have been
collectively termed the "helping professions" and which include, among others, social workers, psychiatrists, lawyers, and counsellors. The interests and activities of these professional experts have critical implications for the whole of society as they increasingly affect the everyday lives of a large and ever-growing proportion of the population. In large measure the professions have attained their position through a subtle exploitation of their claims to greater knowledge than the ordinary citizenry over a broad range of social issues.

McInlay in commenting on the professional's right to exclusive practice, deference, prestige, and power has suggested that the encouragement of public acceptance of the need for professional services is of crucial importance. It seems that the professions have met with considerable success in these aims, for rarely are the claims of these occupational groups—whose activities impinge increasingly on the affairs of others—received with scepticism. Consequently there appears to be some justification in McInlay's warning that "the possibility exists of 'professional rights' being accorded to individuals and groups whose public claims are either ill-founded, or perhaps even deliberately deceptive".

There are, of course, many instances in which trust must necessarily be accorded to professional groups, because the public have no way of evaluating their activities. However, it is disturbing that, as several recent studies have suggested, these situations may derive rather more from lack of access to the professional's techniques and activities than from any other single factor. In short, the lay person is seriously impeded or handicapped in his or her attempts to evaluate the quality of professional service. As Bidwell and others have noted, the less knowledgeable the client, the more absolute his trust must be, and the status and power of the professional is thus enhanced. For these reasons the professional associations have played a leading role in developing legal safeguards which effectively retain the knowledge base of their activities under their own exclusive control.

For example, the Australian Psychological Society in Queensland has recently instituted moves toward the government registration of practitioners who are approved by the Society. Although evidence demonstrating the efficacy of many psychological techniques is singularly lacking, these moves will ensure that the development and expansion of lay therapy and client self-help movements is severely impeded. We are lead, inevitably, to the conclusion that moves toward registration have been in response to considerable pressures to reduce the incidence of threatening non-professional activities which would jeopardize the psychologists' claims to the right to exclusive practice.
There are other examples of established professions which have won the legal rights to exclusive practice. This is nowhere more evident than in those instances where professionals are required by law to perform routine procedures despite the ability of the recipients of these "services" to undertake them themselves. One conclusion is that the public "need" for professional services has been carefully and calculatingly engineered by the professions who are most likely to benefit from such a state of affairs. In short, we would agree with Heraud's conclusion that "the main strength of the professions appears to lie in their ability to exploit a particular expertise, aided by a high degree of organization, to counter the control of other groups and ideologies".

What is now clear is that the professions and their attendant institutions have assumed a position of considerable authority and status in Australian society during the past decades. Furthermore, and in line with the arguments that we have been pursuing, it is not too difficult to claim that the helping professions—which see themselves as combating various social problems—have become a problem in their own right. In the following section of this chapter we wish to subject the consequences of the growth in the size and power of the professional groups to critical scrutiny. In particular, we shall focus on two major aspects of the professions' role in contemporary society. Firstly, are professional services effective and is expert intervention likely to have a beneficial outcome for those who receive such services? Secondly, are professional services offered to all those who may need them, or is there an element of social discrimination in the provision of professional help? And do the professions use their powerful position, in particular in the social welfare arena, in order to facilitate social change, or does their conservative reputation extend into professional action, thus impeding beneficial changes?

Before embarking on our review of professional practice, we feel that there would be some value in briefly reviewing some of the data which may enable us better to appreciate the position of members of the professions within the social fabric of Australian society. Of necessity, we can only provide an incomplete outline of professional occupations, for, in contrast with many positions lower in the occupational hierarchy, there is a paucity of sociological data available on the professions. However, the information which is available is sufficient to indicate that the incumbents of professional occupations and the concomitant values and attitudes they hold may be representative of only a small proportion of the general population.
The increase in numbers of those who would claim to be members of the professions has been recognized by social scientists as one of the most significant features of industrial societies in recent decades. Increasingly, occupational groups have sought professional status for their members. The acceleration of this process since 1960 when W.J. Goode claimed that "an industrializing society is a professionalizing society"\textsuperscript{10} has had crucial implications for educational and occupational institutions in our society.

In line with the trends in other industrial societies, Australia has experienced a marked expansion in professional occupations, not only in absolute terms, but also in comparison with all other sectors of the work force.\textsuperscript{11} Yet, paradoxically, while this expansion has led to a serious problem of underemployment for the professions, the availability of professional services has been severely restricted for a relatively large section of the community. This situation has occurred as many professionals have directed their primary attention toward the development of complex and expensive services that are generally only utilized by a well-to-do middle-class clientele.

As a direct result of this artificial constriction of supply, basic legal, medical, and other personal services are still a luxury for large segments of the population. For example, a report of the Dental Advisory Committee in Victoria in 1972 indicated that 30 per cent of six-year-olds had never been to a dentist. Similarly, the availability of specialist medical facilities in certain areas of most large cities may be contrasted with the poor delivery of basic health-care services to urban working-class and country communities.

Despite the problems of oversupply experienced by many professional groups, they nevertheless enjoy a considerable economic advantage over other occupations. Thus, income statistics for salaried professional workers show that doctors and lawyers in this category earn between four and five times the average income for all workers.\textsuperscript{12} Furthermore, there has been a relative increase in the earnings of professionals compared with the rest of the work force. In Victoria, for example, increases in the real incomes of professional men between 1956 and 1964 outstripped increases in average weekly earnings for all employed males by 244 per cent for dentists, 56 per cent for doctors, and 51 per cent for lawyers.\textsuperscript{13}

In large measure this situation has been brought about by the professions' own insistence on exclusive legal rights to perform and charge for a wide range of services. As Webb has noted in an article critical of the professions in Australia, where there is underemploy-
ment professionals are supplementing their incomes by increasingly taking on routine matters which require little expertise but which are none the less lucrative. Few of the professions are able to escape criticism on this issue. For example, evidence that costs of conveyancing carried out by the legal profession exceed by at least five times the costs of the same service undertaken by non-legally trained brokers in South Australia is indicative of the price paid by the community for professional autonomy.

The problem here is not, as the professions would argue, one of training other people to do the work. Rather it is one of overcoming the professions' resistance to outside interference with restrictive and monopolistic practices.

Finally, in turning to an examination of the backgrounds from which members of the professions are drawn, we find that large sections of the community are systematically excluded from entry into these occupations. The evidence available to us indicates that a considerable majority of students in medicine and law, for example, come from high-status home backgrounds, over 60 per cent having fathers in professional or managerial occupations. A study by Anderson and Western of new entrants into professional faculties at Australia universities demonstrated that children with parents in blue-collar occupations were under-represented by the ratio of one to three, while those whose parents were in managerial or professional occupations were over-represented by four to one.

The prejudice against women in the professions is also significant. Census data for 1971 on medical practitioners and dentists show that less than 12 per cent of practitioners are females (as compared with over 50 per cent in the USSR, for example) while only 6 per cent of law professionals are females. Interviews carried out by the authors indicate clearly that even in the 1970s, women who pursue careers in a number of the more traditional professions are still looked upon as mildly eccentric by the majority of their male colleagues. Nowhere, it seems, is the enormous conservatism of the professions more evident than when it comes to changing the club rules concerning eligibility for membership.

In summarizing this brief account of the professionals' position in Australian society we would emphasize the rapid expansion of professional occupations together with a disproportionate increase in the economic rewards associated with such occupations. At the same time, however, there has been a much less significant broadening of the social backgrounds of those who enter the professions. Indeed, it seems that the more traditional professions are dominated by males from high-status social backgrounds. Given the professed obligation of the helping professions to serve the public interest and
their important role in welfare policy-making in Australia, this must raise questions as to how broad is their understanding of community problems and how representative are the solutions proffered.

Despite the high prestige of most professional occupations, it is becoming increasingly evident that the delivery of professional services is becoming the subject of public scrutiny and criticism. In the next section of this chapter we wish to examine briefly some of these major criticisms, particularly those which derive from some of the factors we have outlined above. Following on from this we wish to examine the response of the professionals to this criticism and discontent and to map out some of the more recent changes in professional practice. Finally, we shall offer some further suggestions directed toward the benefit of those who are the present recipients of the services of the helping professions.

**PROFESSIONAL INTERVENTION: HOW EFFECTIVE?**

It is generally assumed that the impact of the helping professions has on the whole been broadly beneficial for the well-being of human civilization. The medical profession, for example, is credited with major advances in the health and welfare of Western societies. However, such an assumption may reflect the extent to which myths and legends associated with medicine have gained popular acceptance rather more than any accurate appreciation of historical realities. Thus, after a careful examination of the recent literature, Ivan Illich has pointed out that:

> In contrast to the natural environment and modern though non-professional health measures, the specifically medical treatment of people is nowhere and never significantly related to a decline in the compound disease burden or to a rise in life expectancy. Neither the rate of doctors in a population, nor the clinical tools at their disposal, nor the number of hospital beds are causal factors in the striking changes in overall patterns of disease.\(^{18}\)

As Illich has suggested in a previous paper, longevity owes much more to the railroad and the synthesis of fertilizers and insecticides than it owes to new drugs and medical care.\(^{19}\) The medical profession has had little overall impact in this process.

There is reason for further scepticism if we examine the evidence concerning the performance of the helping professions at the level of the individual client or patient. Indeed, there is considerable evidence for the view that a great deal of the disenchantment at present being voiced about professional help arises from the simple fact that it often doesn’t work. Several major evaluative works have been
unequivocal in this issue. Fischer, for example, concludes his analysis of social casework with the comment that—

professional caseworkers were unable to bring about any positive significant measurable changes in their clients beyond those that would have occurred without the specific intervention program or that could have been induced by nonprofessionals dealing with similar clients, often in less intensive service programmes ... not only has professional casework failed to demonstrate that it is effective, but lack of effectiveness appears to be the rule rather than the exception across several categories of clients, problems, situations, and types of casework.20

A further review of research on the effectiveness of social work therapeutic intervention by Segal21 arrived at the equally disquieting conclusion that the net impact of social work help is possibly negative. There would seem to be some value in the suggestion that the effectiveness of practice ought always to be of paramount concern to the professional. However the energy with which the social work profession has recently involved itself in a wide variety of social problems seems to indicate that there may be some divergence between the values expressed in professional codes of ethics and the desire to promote the profession.22

Similar discouraging conclusions have resulted from studies of counselling and psychotherapy. The evidence suggests that whatever effects psychotherapy may have are likely to be extremely small.23 However, Bergin concludes on the pessimistic note that a multiplicity of processes occur during counselling, some of which are now known to be either unproductive or actually harmful.24 A similar comment by Carkhuff and Berenson that "therapeutic processes may be 'for better or for worse'"25 does little to restore confidence in the counselling professions. There would seem to be considerable justification in their conclusion that "the only person who can be an effective therapist is the one who will not be counselled by any of the existing approaches".26

It may be argued that recent extensions of the helping professions under the heading of community psychology and community psychiatry hold out promise of new solutions to social problems. However, such expectations have rarely been supported by evidence. As one commentator bluntly puts it, "there is very little scientific evidence demonstrating the effectiveness of community psychology and related practices in preventing or curing mental illness".27

This is not to imply that all psychiatric services are without value. However, there is a need for public understanding that the problems with which community psychiatry is concerned are not medical; they are social, economic, and political. Endeavouring to find solu-
tions to these problems in the language of the mental health professions serves only to obscure both the problems and the alternatives. And, as Leifer concludes, "it permits the advocates of certain approaches to these problems to promote their cause under the banner of medical progress; and it permits them to justify the exercise of power for social control in the name of helping the suffering".  

The expansion of professional activities in the welfare arena seems to have been little affected by the present lack of evidence of the effectiveness of the helping professions. It is therefore becoming increasingly urgent to examine the recent expenditure on programmes directed toward juvenile delinquency in the light of Schur's recent conclusion that—

neither the treatment reaction nor the reform response has provided any real basis for confidence that our measures are effective in preventing delinquent behaviour or rehabilitating youthful offenders ... many observers are coming to believe that our present approaches to delinquency and juvenile justice are basically unsound: that the underlying assumptions are all wrong, and that present programmes are not just ineffective but positively harmful.

In conclusion we would suggest that there is a need for deep reflection on the nature of the activities of the helping professions. Further public support directed toward better facilities, rehabilitative schemes, and research programmes ought to be undertaken only with the most careful consideration in the light of a considerable body of evidence that these services may be ineffectual, or worse, even harmful.

**THE PROFESSIONAL REGULATION OF BEHAVIOUR**

It is becoming increasingly clear that the helping professions now have at their disposal a range of behaviour-modifying techniques whose potential for abuse raises serious questions concerning the future of human freedom. However, it is not our intention here to further discuss these techniques but to examine the more subtle mechanisms of social control which are put into effect through the activities of the welfare professions.

Professional judgements about human affairs, though couched in welfare terms, are also about deviance and conformity. Indeed, by playing an important role in making the rules whose infraction constitutes deviance and by applying the rules to various groups and individuals, the helping professions are in part creating the problems which they attempt to solve. Although claiming to offer treatment,
help, and service to the victims of such social problems as crime, delinquency, poverty, mental illness, and so on, the helping professions are in fact concerned with engendering "appropriate" standards and values and the reinforcement of dominant social practices.

Social work and particularly social casework can be a most effective buttress for the existing structural arrangements of society. The profession tends to view the prevailing social morality as unproblematic, and clients are helped to adjust in some way. This situation is recognized by Cannan, who suggests that "conventional social work ... can be said to serve a 'cooling out' function in so far as clients are prevented from seeing the overall contradictions of the rent system, employment and wages". In this way social work acts as a system of social control, as it locates the problems in the individual, not in social organization. It prevents the welfare recipient from understanding the totality of his social and economic situation.

We are not suggesting that social workers consciously set out to do this. However, there is a close link between the middle-class values they espouse and individualistic theories of human functioning. As Bitensky has put it, "political influence manifests itself by its cumulative and pervasive effect on the theoretical superstructure and the value system of the profession". Both of these dimensions stress the need for self-reliance and self-help in individuals if they are to succeed in terms of the middle-class yardsticks of material possessions and high occupational status.

Thus if a "problem" individual refuses to find employment it is assumed that this is symptomatic of some personal problem. After all, it is held that work is of some intrinsic value to the individual as a means of self-expression and personal worth as well as for the economic good of the nation. Hence, Boss has commented that "these values after all have served social workers well, solid middle class virtues representing all that is good in society and worthwhile inculcating in all those people who you serve professionally. If they have helped social workers to get where they are, they can help others too". Unfortunately, the professional who has made it in good middle-class society fails to appreciate that often for a variety of reasons the client will not have the necessary resources to make it.

The impact of social work extends far beyond the anaesthetizing effect it has on current social problems. It also has a crucial role to play in smoothing out conflict and in manipulating the economic market. Piven and Cloward, in particular, have argued that government relief policies are concerned with problems of regulation. "Expansive relief policies are designed to mute civil disorder and restrictive ones to reinforce work norms ... but [this mechanism] also goes far toward defining and enforcing the terms on which different clas-
ses of men are made to do different kinds of work; relief arrangements, in other words, have a great deal to do with maintaining social and economic inequities.37

Thus far, we have concentrated our enquiry on the social work professions; however, we believe that the other helping professions are equally involved in the regulation of “deviant” behaviour. During the last decade in Australia there has been a significant expansion of medical services for the poor, extending somewhat beyond the traditional public hospital situation. This expansion has increasingly extended the influence of the medical profession over minority groups in the population. Significantly, however, the expansion in medical services has been biased in the direction of mental health services. This disproportionate concern with mental hygiene, often at the expense of general health services, has been interpreted by the more militant members of these communities as a social control effort.38 Certainly, it seems that whatever views one might have concerning the desirability or otherwise of mental health services, it is clear that they do have the alleged result of more effective controls over social deviance.

Similar concern linking the helping professions with social control functions has been voiced with regard to law. Sackville has argued that the legal profession has a vested interest in a particular social order and thus lawyers have done little to disturb the inequalities in the present system.39 Donnison, also commenting on the legal profession in Australia, reaches a similar conclusion. Legal processes, he says, “give little help to the most deprived. We may indeed have to rely on the rites of democracy and law for lack of anything better, but we should not delude ourselves about their capacity for meeting the needs of the poorest people. For them, legal rights are not a solution to their problems but part of the problem itself.”40

In summary, we would argue that the relevance of what the helping professions are doing must come under increasing scrutiny as modern industrial societies search for the means to keep an increasingly complex political, social, and economic system running smoothly. So far it has been possible for governments to offload society’s unease about these problems through the extension of welfare services whose personnel work conscientiously, if not necessarily effectively, to restore to proper functioning the victims at the receiving end of these problems. In this, our society has been temporarily absolved from re-examining the structures and institutions which generate these problems. We would question for how long this will continue to be possible.
THE PROFESSIONS IN TROUBLE

So far we have been concerned to draw attention to the place of the helping professions in society, to their special social (socio-economic and sexual) composition, and, especially, to emphasize a variety of deficiencies in the services they offer (such as their failure to serve all who need them). But it also must be said that these occupations are in a state of change. From the United States and to a lesser extent from England there has been in recent times mounting evidence that all is not well: welfare recipients staging sit-ins and picketing social agencies, patients forming medical "consumers associations", and ex-prisoners joining self-help organizations have all pointed to a deep-seated discontent with run-of-the-mill professional services. 41

Some of these signs are now apparent in Australia. While the movements for change in this country have probably not matched the intensity or extent of the trends overseas, there are growing indications that the helping professions here are undergoing important changes. We turn now to an examination of some of the most prominent features of these changes, though, as in the previous sections, our exposition will be hampered by the paucity of evidence on the local situation. To make sense of the variety of things that have happened and which are now going on it will be helpful to divide the subject into, on the one hand, those changes aimed at generally reforming professional practice, and on the other, the moves which may be subsumed under a clear rejection of some part or all of a professional service.

Change through Reform

A great deal of the activities directed towards changing the welfare professions has been of a reforming kind. By that it simply is meant that calls for change are mostly aimed at tailoring a specific aspect of professional service to suit a particular unmet need, rather than involving demands for a wholesale alteration of the fabric of professional practice. In other words the modifications proposed are limited in scope, thereby posing no challenge to the concept of exclusive definition of the nature and quality of service by the professionals themselves. Three aspects of these reformist sorts of changes may be identified in the Australian context.

1. The first kind we wish to identify seems to be characterized by a general call for the broadening or expansion of a particular type of service (such as medicine or law). A familiar pattern has been as fol-
 lows. It begins with an identification of a failure to reach all who need the service—typically, the needs have been in the lower socioeconomic classes and ethnic and minority groups in society—often based on evidence from social science research coupled with pressure from vocal professionals and lay people such as community leaders and members of parliament. Generally the welfare professions have responded to these charges that they fail to serve all who need their help by attempting to correct such deficiencies. But—and this point can’t be made too strongly—such changes have, as a rule, been carried out slowly and mostly reluctantly with segments of the profession fighting a bitter rearguard-defensive battle.

In Australia the continuing struggles to establish and retain Medibank and legal aid are clear cases of what we have in mind. It is clear that the central thrust of these changes is predicated on the assumption that the service in question is valuable and good: for instance, legal aid schemes take account of the fact that poorer people are very often unable to afford the high costs of litigation (such as a divorce action),42 while failing to meet the objection that members of lower socioeconomic classes are often on the receiving end of systematic biases against them in the legal system. Furthermore, the outcome of such “expansion of service to all” has usually meant the growth of bureaucratic services delivered within a formal and rationalized framework. From this has developed the maintenance of centralized records, computerized files and dossiers, coupled with an increasingly impersonal professional relationship. As a consequence the professional services have become more and more distant from the understanding and control of the ordinary person.

2. Sometimes the professionals themselves, and at other times the recipients (or potential recipients) of services, have been involved in attempts to alter particular aspects of a profession. Again, it is characteristic that these are piecemeal changes; when they have been made they basically leave intact the main framework of practice. That is to say they modify or delete some single aspect of the professional repertoire. A case in point is the development of do-it-yourself legal kits which provide the lay person with step-by-step procedures with regard to some aspect of the legal system—such as divorce litigation (in uncontested cases) and conveyancing (in the field of the transfer of property). Medicine too, especially the field of psychiatry, has felt the winds of change from this direction. Calls for an end to particular practices—such as the widespread over-prescription of minor tranquillizers and antibiotics by general practitioners, the indiscriminate use of electro-convulsive therapy by psychiatrists, and the use of a range of noxious and aversive agents
on people with unpopular and unconventional sexual habits—have become stronger in both professional journals and the popular press in recent times.

But here again, as in the case of moves towards an expansion of professional services to all comers, the professional response has been in most instances open hostility or, at the least, reluctant acceptance. It is responses such as these that evoke in observers the feeling that professionals are overly concerned with self-interest to the extent that any change (especially one initiated by those not of the cognoscenti) is interpreted as a threat to their financial and social status. Of course in one sense they are correct. A central aspect of professionalism is the power to determine the kind and quality of services to be offered. And any hint by outsiders that they are dissatisfied raises the possibility that evaluation might be a two-way process—professionals assessed by clients as well as vice versa. Very often it has seemed as though the professions were determined to deny and to resist any move for change because the implied criticism was felt to be inconsistent with the whole concept of the professional body as the sole judge of issues surrounding its services.

3. Finally, stimulus for change of a limited nature has come from internuncial disputes within the professions themselves. Within probably all of the helping professions there are differences of opinion—which sometimes reach the proportions of a conflict—over practically all and any aspects of intellectual and practical activity.

For example, we find that Australian academics and practitioners have been embroiled in disputes about the relative merits of existential versus behaviouristic psychologies as intellectual systems and as the mainspring for action in the daily practical context. It has been argued that therapy done in the existential tradition is more humanistically oriented and, therefore, more concerned about the worth and dignity of the client or patient than work done by those of the "S—R", behaviouristic persuasion. Yet rarely if ever does this debate touch on the basic assumption upon which it is founded: the notion of a profession as a body of people with special knowledge and skills providing a service to ordinary people who may lack such specialized competences. Again, the arguments about whether contact with welfare and psychiatric agencies is a stigmatizing experience for clients are conducted in such a way that more fundamental questions are never raised. Liberal-minded professionals who wish to humanize the prisons, hospitals, and welfare systems in which they are employed so often fail to take up the more fundamental issues about what they do: Is there any evidence that they really help the people they claim to be serving? Do their piecemeal
therapies divert attention from basic inequalities and exploitation in the society at large which may be the root-cause of the individual cases they handle?

But is would be fair to say that within the fields of psychiatry, clinical psychology, and social work there are at present some intra-professional disputes over matters of a quite basic kind. The "radical therapy" movement has reached this country and we now find some practitioners arguing that change—the traditional goal of psychotherapies—does not necessarily mean conformity or adjustment to dominant values. Instead it may entail sensitizing the recipient to particular tensions or repressions in the environment or enabling them to transcend what had been for them limitations to personal growth. The new social worker role of advocate (in which the professional takes up the cudgels for the client against aspects of the public or private sector of our society) can be seen as a break with the more traditional caseworker concept based on some modified form of the psychotherapeutic relationship. Social work advocates may champion the rights of a client against a particularly rapacious landlord or dilatory bureaucrat. In doing so, however, they have often incurred the anxiety, wrath, and scorn of their more "dignified" colleagues who do battle with nothing more exciting than the balance of forces between the id, ego, and super-ego of their clients.43

**Change through Rejection**

Sometimes, however, the helping professions are faced with really serious challenges. Of all the changes to be found in the professions, perhaps the most interesting have been the cases of outright rejection of some aspect of professional service, and in a few instances even the whole concept of a helping profession as traditionally conceived has come under fire.

To show what we mean by calls to reject or deny specific aspects of professional practice, it will be helpful to turn to some illustrative material. Recently there was a campaign in Brisbane on behalf of a supporting mother to claim welfare benefits. The campaign activities included meetings, sit-ins, and leaflets directed against the federal Department of Society Security and the state Department of Children's Services. Not only did this campaign take up issues surrounding the facts of the particular case but it attempted to change widespread notorious practices carried on by welfare workers. This can be seen from an extended quote from one of their leaflets—

> We therefore demand:
> immediate supporting mothers' benefits for Karen
full back pay with interest for Karen
'clients' files must be open to all 'clients' applying for benefits
an end to the stopping of benefits before appeals are held
that the maintenance requirement be dropped
an end to sex snooping
the right of women to welfare benefits assessed without regard to their
private lives, their sexual relations
the right of all supporting and unmarried mothers to welfare benefits
with no strings attached
as well, we demand the dropping of all charges made against those ar­
rested at the Department of Social Security on the 26th March. 44

There can be no mistaking the strident note in these demands. Here we have an outright and open rejection of particular practices
encountered by welfare recipients. The professional welfare worker
is not seen as a benevolent helper but in fact just the opposite: as
someone who represents an oppressive and noxious system if not as
an active agent of repression. In fact, a later pamphlet made just
that same point when it stated: 'It should be stressed that we see
cases like that of Karen Duncan not in isolation, but as symptomatic
of the oppressive nature of the welfare system. It follows that we
must not be content with reformist welfare 'solutions', but we must
organize instead to change the welfare system to make it serve the
interests of the people on welfare'. 45 They saw this in terms of
specific proposals such as 'free 24-hour Child Care Centres . . . free
adequate and universal welfare services, and a living wage for
welfare clients'. 46 It seems as though their critique of particular
features of the delivery of services generated a recognition of the
need for a broader-based analysis of the welfare system. But,
significantly it seems to us, their proposals left the role of the profes­
sional virtually intact and, therefore, posed no really lasting chal­
lenge to the intellectual and moral hegemony of the helping profes­
sions as the final arbiters of the quality and direction of services.

More fundamental kinds of 'total' rejection of the whole profes­
sional ethos are not common. Overseas observers, however, have
identified a movement called the 'revolt of the client', which two
American commentators, Haug and Sussman, saw as the emergence
of welfare client and minority group members organizing
themselves (with little or no outside help) for social and political ac­
tion. As they see it, there are increasing numbers of blacks, hospital
patients, and welfare recipients challenging the professionals' claim
to specialized knowledge and skills and questioning their altruism. 47
Not only have clients and patients begun to ask questions about
their rights in the determination of benefits and the efficiency of
hospitals and social services, there is increasing evidence that they
are prepared to demand a large—perhaps even an equal—say in the
running of these institutions. Haug and Sussman described a real challenge to the professionals' power when they said of the American scene: "poverty group members, arguing that they know more about their community needs, problems, and solutions than the professional social workers and are more concerned, have organized for a voice in welfare benefits and their distribution". 48

To date we have seen little of this in Australia, and it is not clear whether the few manifestations of the phenomenon will have a lasting effect. During the early 1970s an organization composed of welfare recipients (at the Childrens’ Services Department) called Client Power was established in Brisbane. It published a manifesto in Australian social work, negotiated with welfare agencies on behalf of its members, and organized some demonstrations and other activities of a militant kind. 49 It has now disappeared from the scene. On the other hand, local efforts by black Australians to organize to help themselves have been more enduring—Brisbane's The Black Community Housing Service is one example of its kind, offering welfare and medical and legal help and staffed mainly by blacks.

Before concluding this section there is one crucial issue to be tackled, though for reasons of limited space and the lack of available information we will be restricted in what we can say. Implicit in much of the previous discussion is the problem of whether the changes observed have been initiated and sustained from within the professions or from without, by clients and potential clients. The truth of the matter (or so it appears to us) is that the main thrust for change has come from the professions themselves or, rather, from particular segments of them. Mostly, critical analyses and activities have been the responsibility of a few, often motivated by left-wing political beliefs of a libertarian, humanistic kind, with an egalitarian ideology emphasizing participatory democracy.

But this stress upon mass participation has sometimes caused tensions when lower class and minority group clients have not rallied to the cause. Again, these movements have tended to have been dominated in their leadership, goals, and strategies by vocal, articulate, and militant professionals and students rather than by the clients themselves. In some ways, this situation is a testimony to an elitist, qualification-oriented, knowledge-dominated society that these movements are seeking to change: persons lacking in verbal skills, the ability to articulate their discontent, and without formally certified knowledge are likely to be severely disadvantaged participants in the public arena in Australian society. Furthermore, welfare recipients may fear the imposition of penalties such as loss of benefits if they speak out against agencies which generally keep extensive dossiers on their clients and minitor them closely.
The main thrust of this paper has been to indicate the major short-comings and dangers inherent in the practices of the helping professions. In so doing we have also tried to outline the contemporary situation of change in professional-client relations in Australia. In focusing on such changes it is necessary for us to emphasize that we do not wish to suggest that major changes are imminent. While professional-client relations are by no means static, we may easily overestimate the pace of change and misjudge the direction it takes. Nevertheless, we shall conclude by outlining positive proposals toward the direction in which beneficial changes might accrue.

**THE HELPING PROFESSIONS: ALTERNATIVE FUTURES**

In putting forward these suggestions we have attempted to favour possibilities that are not only necessary but also possible within the contemporary situation of the unequal distribution of resources in industrial societies. It is important to recognize, however, that inequalities in client-professional relations are both part of and contributing towards the inequalities in the broader web of social relations. While we believe that calls to dismantle the professions are not totally lacking in justification, we feel that in our modern societies dominated by scientific, expert knowledge such demands are most unlikely to be heeded in the foreseeable future.

1. Firstly, there is a need for a general improvement in the quality of the available services. Partly, because of the general climate of uncritical acceptance in Australia we have, for too long, allowed the helping professions to maintain a quality of service which is often inadequate. In medicine, for example, assembly-line interviews—an examination and prescription of treatment in three to five minutes—have become almost the norm in both private consultation as well as in large public hospitals. Another disturbing aspect of bad quality service is the tendency to rely on treatments which do not have a great deal of evidence to support their efficiency. In the face of quite strong empirical research which reveals casework may be largely ineffective as a method, the social work profession has continued to use it as the mainstay of their professional repertoire. It must be remembered that the helping professions deal with vital areas of human life—health, justice, sanity—and effective services providing feed-back and knowledge of results must be built into the helping strategies.

2. Despite the recent implementation of mechanisms to ensure that
the professions offer their services to all who may need them, there is still room for serious misgivings. Evidence from the United States and Britain suggests that the typical delivery of services by the helping professions—even when constrained by government legislation—tends to exclude lower socio-economic groups. It is highly probably that, like the United States and Britain, this will also be the case in Australia. It is essential to avoid the complacent view that the establishment of schemes like Medibank and legal aid constitutes an ultimate phase of development of the helping professions. The overseas experience ought to remind us that inequalities in the delivery of services will be difficult to eradicate and we may expect that migrants, blacks, the elderly, and the poor will be inadequately served by the welfare professions.

3. It seems unlikely to us that any thoroughgoing changes within the professions—that is, generated spontaneously by the professions themselves—will occur until the biased social composition of new entrants to the professional schools is itself changed. As we have already noted, selection is predominatly from the ranks of white, male, middle and upper classes, and this may be a prime factor in the treatment received by members of other social groups. As a first necessary step toward making real change a possibility, it will be necessary for recruitment into the professional training establishments of women, members of the working class, and people from a much broader spectrum of racial and ethnic backgrounds in order to understand and to deal with the sometimes specific problems of these groups.

4. There would appear to be significant advantages to be achieved if the professions were to heed the voice of consumer rights groups. What these groups are saying, among other things, is that professional services must be opened up for scrutiny by the public and that mystifying jargon should be replaced by plain English to explain what many suspect is, after all, often a relatively uncomplicated state of affairs. In the social welfare field this may mean opening confidential personal dossiers to an examination by the subject of such files. Alternatively, it may take the form of a recognition that patients or clients have a right to have exotic diagnostic terms explained and justified to them, especially where so many of these terms carry pejorative overtones and implications of moral failure.

A further point made by the various client groups concerns the nature of the professional-client relationship. Apart from a significant concern that these relationships are often stressful, oppressive, and stigmatizing there is often a failure to understand what the
professional is doing, and explanations of important procedures are often totally absent. Professionals would do well to take seriously such statements by the client groups which often amount to a denial of the value of professional help.

5. Finally, there is a need for democratization of professional-client relationships. The social distance between client and professional is vitally important. It prevents clients from effectively questioning the professionals' judgments and forestalls criticism of the various treatments or forms of help offered. Indeed, it is one of the most useful aspects of the professionals' repertoire, because it ensures the asymmetry of communication between the two parties—advice, criticism, directions flow one way only, from professional to client. Whilst we are aware of the argument that this social distance may protect the professional in difficult situations of uncertainty, where, for example, the professional must still make decisions although the information available is inadequate, we take the view that in the long run the negative consequences for the quality of services offered far outweigh such factors.

Also implied in the concept of democratization would be an end to the jealous guarding of knowledge and skills that we have seen so often in the past and which we would suggest, has been almost a characteristic of the professions. We would hope to see this attitude replaced by a willingness to share professional knowledge and techniques among other people—both in the short term (in specific client-professional interaction) and in the long term through wider public education and the dissemination of new ideas to lay as well as professional audiences.

In a very important sense, most of the changes we would wish to see may be subsumed under the rubric of the democratization of client-professional relationships. As we have argued throughout this chapter, the relationship between professional and client, with all the inequalities it carries, is almost a paradigm case of social relations in a wider capitalist society. Professional-client relations are based upon inequalities in the wider society, such as unequal access to educational institutions, while at the same time they contribute—sometimes explicitly, sometimes implicitly—to the persistence of class, sex, and ethnic patterns of stratification. There is, therefore, an urgent need to examine the future role of the professions in our society. This is particularly so in view of the ground swell for change in the professions that we have been experiencing in Australia during the present decade.

Nevertheless, we would suggest that large-scale changes in the
professions are unlikely to eventuate in the present climate of
Australian society. The modest proposals we have put forward may
therefore be seen as indicators of the desirable directions along
which it is hoped changes will occur. However there will be a con­
tinuing need to break the stranglehold of the professions on impor­
tant areas of social life.

One way this may come about is through the recognition of a dis­
tinction between expertise and professionalism. Expertise, as we see
it, applies to doing some task effectively and efficiently and passing
on one's skills and knowledge to others wherever and whenever this
is at all possible. Professionalism, on the other hand, refers to the
hoarding and jealous guardianship of techniques and information
and, as is increasingly the case, using this knowledge in the service
of socio-political élites who are able to purchase it.\(^{50}\) We would
therefore advocate a far more careful and critical appraisal of the
role of the helping professions than appears to have been the case in
Australia in the past.

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