

# Australian Adam Smith Club (Melbourne)

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

Society may subsist, though not in the most comfortable state, without beneficence; but the prevalence of injustice must utterly destroy it. *Adam Smith (1723-1790)*

## William Coleman on Economics and its enemies Two centuries of anti-economics

**The Adam Smith Club will host a dinner meeting on Wednesday the 16<sup>th</sup> of July 2003,  
at Nikitas Greek Tavern, 258 Swan Street, Richmond.**

William Coleman is a Lecturer in economics at the University of Cambridge, and the ANU. His interests are in macroeconomics, the history of economics, and the survival of liberal values in a hostile and uncomprehending world. His 1996 book *Rationalism and Anti-rationalism in the Origins of Economics* scrutinised the methodology of Adam Smith along with other classical economists, and a paper drawn from it won the 1996 History of Economics Society prize for the best article on the history of economics. In 2001 he earned warm plaudits and provoked deep disgust by coauthoring *Exasperating Calculators: The Rage over Economic Rationalism and the Campaign against Australian Economists*. His recent book - *Economics and its Enemies* - is a work of scholarship and inter-disciplinary scope that identifies "anti-economics" as the leading intellectual demonology of the present time, and conducts the necessary exorcism.

Attendance is open to both members and non-members. Those desiring to attend should complete the attached slip and return it to the Club no later than Monday the 14<sup>th</sup> of July 2003. Tickets will not be sent. Those attending should arrive at 6.30pm for dinner at 7.00pm. The cost is \$36.00 per head for members and \$41.00 per head for non-members (PTO for explanation of arrangements).

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



— detach and return —

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

Please reserve ..... place(s) at \$36.00 dollars per member and .....place(s) at \$41.00 per non-member for the July 16<sup>th</sup> meeting of the Australian Adam Smith Club. I enclose the amount of \$..... in payment for the same.

NAME (please print): .....

ADDRESS: .....

.....

SIGNATURE: ..... TEL: .....

## LAISSEZ FAIRE ON THE WEB

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

### REPORT ON THE JUNE MEETING.

A fine evening was had by all at the Curry Club Cafe, to hear Judge J Clifford Wallace on "Standing for Something". The wide ranging speech covered the nature of judicial corruption, the importance of judicial independence and of public confidence in the judiciary.

Examples from Judge Wallace's time as Chief Judge of the US Court of Appeal (Ninth Circuit), and of his official travels throughout the world gave clear examples of the shortcomings and problems he felt needed attention.

He rounded his talk with a more general statement on the decline of moral and ethical standards, and the need to make these a more central part of our educational and institutional structures.

The question time was most informative and helped by the Judge bringing copies of his papers for distribution. The issue of judicial activism was highlighted, and Judge Wallace firmly stated that he was not a judicial activist. The care the framers of the US Constitution had taken to make amendment difficult showed they would not have cared for Judges to amend without any mandate.

Thanks to Judge Wallace, his charming wife for attending - and the Institute for Public Affairs and J Rueben Clark Society of Brigham Young University for making Judge Wallace available to the Club.

Tim Warner

Hon Secretary/Treasurer

Australian Adam Smith Club

## SPECIAL PLEADING

Representatives of the textile, clothing and footwear industry in Victoria are bleating that there commissioned research indicates that up to nineteen thousand jobs may be a risk, if the recommendation of the Industries Commission to continue the gradual reduction of tariffs for the industry is

adopted by the Government. It is interesting to note that when attempting to gain ones way it is always best to divert attention from those who stand to gain the most. In this case the industries' self interest is to maximize profits by avoiding foreign competition. Leaving aside the dubious nature of

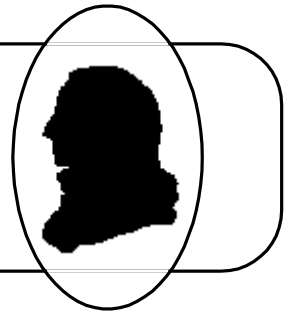
research commissioned to obtain a desired result, the real issue is that over four million Victorians are forced to pay more for textiles, clothing and footwear to protect the profits of the business owners and the jobs of their employees. *MG*

### VENUE ARRANGEMENTS

In order to control costs the Club is attempting a number of new formats for our meetings. Drink is not included in the price but can be purchased at the venue. BYO wine only. An upstairs room has been reserved for the dinner meeting. We hope these arrangements do not cause inconvenience and we welcome your feedback.

# Laissez Faire

Newsletter of the Australian Adam Smith Club (Melbourne), No 65, July 2003



## CELEBRATING 280 YEARS

At the Vine Hotel in Richmond a celebration was held on the 6<sup>th</sup> of June, it was to mark the 280<sup>th</sup> Anniversary of Adam Smith's birth. The atmosphere was one of joy, that we should be glad of the influence of Adam Smith and his philosophy on the world we live in. All power to Steve Clancy and Prodos for thinking of the Master and holding the event.

It does raise that perennial issue of how those who favour freedom and personal responsibility work towards that goal.

It is perhaps presumptuous without weighty statistical surveys - but I would hazard that most adults when asked their motivations would answer in ways that show the wisdom of Smith's insights. We do work for our own goals, and they are not necessarily those of our neighbour. But, and this is the rub which is lost on most of those who deny Smith, we are not all sociopaths - we create our dreams

and aspirations as caring members of family, religion and country 'sympathy' was Smith's term for our caring links to one another.

Because of the very diversity of our society we don't comprehend how we are bound by our joys at the freedom that we share. Those that gather in groups generally do so in complaint at the impositions that do exist, and are being created constantly for that is the way of all government. Smith stated that merchants would be forced into these sort of cabals for protection against government regulation & impost.

The greater part of society wants to be left alone, to work toward its own version of happiness. They act with irritation toward those groups and governments that restrain them, but their general freedom is an unstated and unloved condition.

Fifty years ago the great author, satirist and lawyer AP Herbert rejoiced in the freedoms of Magna

Carta, the Common Law and rights of freeborn Englishmen. To delve into those pages of the "Uncommon Law" is to be refreshed at the joy of freedom and the damning of those who would interfere with our freedom. We have lost that thirst for freedom. We instead substitute a poor brew of disdain and anger at those working against our freedom, and take a hoarders sterile view of those freedoms that we do maintain.

Rejoice! We are, as PJ O'Rourke put it, free born of Very Great Britain. We have a vote, we don't have an ID card, we have the Rule of Law, we choose our children's education - we our masters of our souls.

Fight to maintain those freedoms, fight to expand those freedoms but, rejoice at where we are and the great ideals that sustain us, leave the carping to those whose philosophy belittles the soul. *TW*

## RESPONSABILITY

Thumbs up to the Federal Government for finally meeting at least part of its moral obligations.

Our government has two main reasons for existence - to protect its citizens from external threat and to protect the rights of its citizens from internal threat. This validates the armed forces, police and our legal system.

The government has recently announced proposed changes to military compensation which significantly increase the lump sum payment offered to widows, the death benefit and allowances per child.

One hopes that in this day and age, the term widow also refers to widowers who may bear the same responsibilities of child rearing as their female counterparts when their spouses are in the armed services.

One also hopes that the sums proposed do actually relate to current and projected earnings of the dead soldier so that their families are not financially disadvantaged after their death. Dying in the protection of one's sovereign rights may be noble, but one cannot live off glory and medallions.

Bringing this compensation into line with current life style expectations is well overdue. Unfortunately, the proposed bill does not increase the compensation for the families of servicemen and women who have already died. Compensation such as this must be tied to some form of index or review to ensure that these sacrifices are not forgotten and downgraded over time.

*RB*

## NO FUNDAMENTAL RIGHT TO PROPERTY

In 1981 the then NSW government nationalized various privately owned coalfields in that State. In the subsequent two decades consequential events occurred. Although the original appropriating Act allowed for compensation, needless to say by 1990, some 9 years later, payment of this had still not been concluded. In that year, the original Act was amended with the intention of capping the total amount of compensation payable. The reason for this was stated to be “the need for budgetary constraint”. The amendment allowed for the compensation paid to differentiate and for specific persons or classes of persons to receive only a certain set amount regardless of how much was the value of the coalfields previously owned. In debate in Parliament the Minister claimed that the former owners would receive “fair and equitable compensation...except for the big fellows”. It followed that “the big fellows” would receive, if anything, unfair and/or inequitable compensation.

In the event the claims of the 3 largest owners were limited to a total of \$60 million. The value of one such appropriated owner’s property, Durham Holdings Pty Ltd [“Durham”], was determined to be \$93 million. As a result of the amendment however, the actual payout to Durham was limited to \$27 million. Durham commenced legal proceedings to try to recover the remaining \$66 million.

The NSW Court of Appeal having dismissed the claim, Durham sought leave to appeal to the High Court. In an unusual step, the application was eventually heard, in 2001, by a Full Bench of six judges. Of the seven High Court judges, only Chief Justice Gleeson did not participate. Whilst all six judges were unanimous in rejecting Durham’s application, there were essentially two distinct judgments. In agreeing with each other, five of the judges disposed of the matter in four pages. However Kirby J used the opportunity to expound over twenty eight pages on what he saw as the Australian constitutional paradigm. In a number of ways his approach was significantly different from that of the others. In the event however the result for Durham was the same.

One of Durham’s main arguments was that the NSW Act confiscating its property was a Bill of Pains and Penalties; legislation imposing, without judicial trial, punishment upon individuals or a class of individuals for actions which were not punishable

at the time of their commission. [Where the punishment provided is death such measures are called Bills of Attainder]. These have been eschewed by Parliaments for centuries. Both the majority judgment and Kirby J gave this argument short shrift. The majority simply ruled that there was no punishment of the applicant. Apart from not imposing a punishment for any offence, Kirby J also saw the legislation as not comprising the exercise of any judicial power or as imposing any judgment on the applicant. In this regard the Court’s decision could be seen as somewhat narrow. As Durham argued, the offence which it had been convicted of by the legislature was of being one of “the big boys”. Its punishment was to be deprived of \$66 million of its property.

Durham’s other main argument was that the right not to be deprived of one’s property without just compensation was fundamental to the Common Law such that even the concept of parliamentary sovereignty did not override it. Interestingly while the court had no trouble in rejecting the argument, the judges, with the possible exception of Kirby and Callinan JJ, were not prepared to rule out completely the possibility that some right or rights might be so fundamental as to be protected from legislative interference. However whatever such fundamental right or rights might be, the right not to be deprived of one’s property without just compensation, [unless falling within the ambit of the Commonwealth Constitution’s prohibition to such effect], was not one of them.

For those who support the right to property and see it as the basis of liberty, Durham’s case constitutes a significant setback. In another more recent case the High Court has rejected similar argument with respect to the right to a jury trial and the right to keep and bear arms. Those who like the late Sir Owen Dixon, arguably Australia’s most famous judge, who see the Common Law as a fundamental paradigm, are unlikely readily to accept Kirby J’s suggestion, given in his judgment in Durham’s case, that the source of judicial control of extremist legislation lies in the derivation of implied rights from the Constitution, based on a concept of popular will, to which control the States must perforce submit, and to see it to that extent as rather more a cause for concern than a comfort. *DBS*