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# Maureen Doris Brunt: 28 December 1928–30 January 2019 A Personal Tribute by Joe Isaac

Emeritus Professor Maureen Brunt passed away on 30 January 2019 at the age of 90. She was born in Coburg, a suburb of Melbourne. Her grandparents were farmers from Staffordshire who came to Victoria in the 1860s. Her father was a grocer who developed a bulk-buying group to take advantage of bulk buys from suppliers and later became a successful wholesale grocer. She attended the local primary and secondary schools in Coburg, and, at the insistence of her mother, she completed her schooling at the fashionable Presbyterian Ladies College which prepared her for higher education. She matriculated in 1946 with an exhibition in Geography.

The award of a commonwealth government scholarship provided the opportunity for her to be the first in the family to attend a university. She had wanted to do Arts and although her father was initially opposed to such a move, he later relented and reluctantly agreed for her do Commerce on the understanding that she would be the accountant in the family business. However, the course of events moved her in a different direction. Her academic interest turned in the direction of competition and industrial organisation, an area nevertheless close to her father's business background. This interest was sustained by a firm belief that, on balance, a 'competitive market' could be expected to deliver the best economic outcome for the country. This view aligned with her political attachment to the philosophy of Liberal Party of which she was a member for a short time.

Maureen had a strict religious upbringing and was very active in the Barkers Road Methodist Church, playing a lead role in the church youth group. She maintained her religious interest at Harvard and although her core values were derived from her religious upbringing, her interest in religious matters ceased soon thereafter.

In her first year at the University of Melbourne in 1947, Maureen attended my tutorials in Economics at Queen's College, where I was Resident Tutor. Before long, it was clear that she had an outstanding mind and that a distinguished academic and professional career lay ahead of her.

She graduated in 1951 with B.Com First Class Honours, which included a thesis on the economics of retailing. For this distinction, she won a scholarship to Harvard in 1954 where she completed a PhD in industrial organisation. Harvard appointed her to a teaching fellowship and put her under the influence of Professor Edward S Mason and others in the field competition law. These years sealed what was to be her lifelong interest in industrial organisation and competition law. Thereafter, her various activities – teaching, research, policy advice and determinations – were all in this field.

On her return to Australia in 1957, she continued her academic career with appointments successively to a lectureship at Melbourne, a senior lectureship at Adelaide and a lectureship at Harvard in 1964. She returned to Australia in 1967 to take up a Chair in Economics at the newly established Monash University in Melbourne. It made her the first female Professor of Economics in Australia.

By her teaching, public lectures and publications, Brunt was to influence many generations of students and public policy in economics and competition law in Australia. She was an outstanding, stimulating and a passionate expositor of complicated issues related to the economics of industry and competition law, from which her interest did not deviate.

Economics and law are necessary partners in the formulation of sound economic policy in this area of discourse – economics providing the object of policy, and law the instrument to achieve the object in practice. Consideration of one without the other could be expected to result in failure to meet the objects of economic policy. Although this is obvious enough, the history of the formulation of legal instruments for policy with a significant economic component, abounds with disputes about the shortcomings required for an effective implementation of the desired policy.

In Australia, Maureen Brunt drove public discussion on the necessary economic requirements for effective competition law. Her Harvard experience led her to establish the basis for a graduate interdisciplinary seminar on trade practices law attended by students and lecturers. More important, however, her publications and public lecturers, many critical of the existing Australian competition law, resulted in her appointment to policy-making bodies in which she was able to influence the outcome of their deliberations. These positions included Foundation Member of the Trade Practices Tribunal (1975–1998), Member (1972–1980) and later (1980–1983) Chair of the Victorian Government Consumer Affairs Council, Lay member of the High Court of New Zealand for competition cases from 1990 to 2000, Member of the Panel of the International Centre for Settlement of Investment Disputes (World Bank Group, 1995–2003) and the Industrial Property Commonwealth Advisory Committee (1988–1992). She was also on other advisory committees, including the Commonwealth Committee, Facilities for Non-Government Schools (1972–1974), the Council of the Presbyterian Ladies College (1967–1975) and Professorial Fellow at the Melbourne Business School and the Melbourne Law School, University of Melbourne (from 1990 until her death).

Maureen's publication list is short but each paper is long, complete in scope and argued with command of the subject matter. They covered the beginning of proper economic consideration of the trade practices legislation in Australia and its changes over the years – in many cases, under her influence and bearing her stamp of approval.

Apart from the widely read text book, *The Structure of the Australian Economy*, which she co-authored with Peter Karmel 1962, her first major publication (Brunt, 1965) appeared soon after the Trade Practices Bill was introduced in the Federal Parliament in May 1965. She described the circumstances in which the existing Australian policy with respect to monopolies and restrictive practices as 'laissez-faire' (p. 361). The Trade Practices Tribunal was to 'make a case by case examination of restrictive agreements and monopolistic practices to determine 'whether they are in the "public interest"' (p. 358). It was early days in the life of trade practices legislation. She saw many gaps in it and

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was not impressed with certain aspects of the Bill or the Government's 'Australian approach'. While admitting that Australia was 'pioneering in a field of considerable complexity', 'the economic, constitutional, and administrative problems are scarcely so formidable as to require five years for their solution' (p. 357). It is arguable that she may have underrated the political difficulties and the inevitable delays in political processes, particularly when new and controversial provisions are to be introduced.

Maureen was in the habit of finding an appropriate quotation from Winnie-the-Pooh to express her views and her sense of humour. It is, therefore, fitting to note that in her criticism of this legislation, her article opens with the following:

> Hallo, said the Piglet, what are you doing?
>
> Hunting, said Pooh.
>
> Hunting what?
>
> Tracking something, said Winnie-the Pooh very mysteriously.
>
> Tracking what? said Piglet, coming closer.
>
> That's what I ask myself. I ask myself, What?
>
> What do you think you'll answer?
>
> I shall have to wait until I catch up with it, said Winnie-the Pooh

Her article examines the main provisions of the Bill, praising some and urging improvements in others, drawing mainly on American experience. However, a 'fundamental defect' of the Bill, in her opinion, is the absence of a stated criterion of the 'public interest' which the Tribunal is required to take into account in administering the Act. Although recognising that the Act 'purports' to spell out such a criterion, 'it consists of such vague and all-embracing language as to delegate to the Tribunal virtually legislative powers' (p. 359).

It is arguable that this is an unduly harsh assessment of the 'public interest' provision in the Act. It is notoriously difficult for Parliament to prescribe a definition of the public interest which will fit all cases at all times. This is also true in other jurisdictions where the public interest is prescribed as the basic test for action – for example, the Fair Work Act does not define 'public interest'. Most practitioners would consider the criteria which the Act 'purport' to provide for the meaning of 'public interest', together with the submissions of the parties in proceedings on any matter, as being sufficient to establish to the satisfaction of the Commission where the 'public interest' lay.

However, later, looking at achievements of the Australian trade practices legislation to which she herself had contributed over the years, she summarised them approvingly:

> The Australian Trade Practices Act 1974 is a court-centred law of the American type. After 20 years it has much to its credit – the abandonment of cartelization and the achievement of a coherent body of antitrust law focused upon market power as the central concept. The law has some distinctive features: the approach to market definition; the possibility of authorization on

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> grounds of public benefit; the treatment of verticals. The challenge now is to expose the exempt sectors to the Act and to design a compatible regime for the corporatized and privatized utilities. (Brunt, 1965: 357)

What then, were Maureen's contributions to the trade practices legislation over her life time? These are to be gleaned from her own words:

> These are observations of an academic economist who has participated in the adjudication function in competition cases in Australia and New Zealand over the last 23 years. My main experience has been as a member of the Australian Competition Tribunal. This is a quasi-judicial body with mixed membership of a presiding judge and lay members. While the Tribunal has been given specialised functions, it works under the shadow of the main enforcement body, the Federal Court of Australia. In addition, presiding members of the Tribunal are drawn from the Federal Court. For the last eight years I have also been a lay member of the New Zealand High Court, available for cases falling under their competition statute.
>
> My views have been formed not only by my understanding of US antitrust but also by participating in the Tribunal and Court functions. In addition, they have been formed by participating in team teaching of an interdisciplinary graduate seminar in competition law to students in law, economics and business at Monash and Melbourne Universities.
>
> My comment is directed to the role of economics and economists in antitrust in the traditional sense. This means a law whose objective is the promotion of effective or workable competition, and whose instruments are court-centred, requiring the interpretation and enforcement of statutory terms by the ordinary courts. There is much else that can be comprehended by competition law and policy in the broad, ranging from general economic legislation to administrative investigation and control. But the focus of this note is upon courts of law. And the conundrum is this: can, or should, economics play a leading role in the legal process?
>
> There are three levels of dimensions of antitrust law, all interdependent in a fundamental sense: the formulation of standards of liability or competition rules; practice and procedure in the reception of evidence and argument; and the formulation and imposition of penalties and remedies.
>
> Economics would need to find a point of entry at each level. In my view, the path to wisdom in antitrust work lies in recognizing and emphasizing the essential character of antitrust law as economic law. If antitrust is to be relevant and socially useful, the very fabric of the law must have mixed economic-legal content, with due attention given to both terms. (Brunt, 1999: 357)

Expressing her contributions in fewer words, it must be said that by her command of relevant economic and legal principles, Maureen Brunt will be remembered not only as the pioneer in the development of proper Australian legislation directed at the efficient performance of the Australian economy, but also as a warm and helpful colleague.

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