The Permissive Politicians

COMPARING THE PROBITY of members of the political executive in Australia and Britain, Professor Sol Encel has remarked of the Australian experience:

The long list of ministers who have been charged with corruption, and the repeated refusal of governments to lay down rules about the private interests of their members, reflect a basic difference of outlook about the standards appropriate to public life . . .¹

However, before discussing the Australian experience in detail it is necessary to examine briefly the norms of behavior adhered to in Britain.

In an attempt to remove or at least minimise the possibility of a clash between the public duties and private interests of Ministers of the Crown, the British Parliament has over the years evolved a comprehensive ruling on their business interests. Back in 1906 the Prime Minister, Sir Henry Campbell-Bannerman, ruled that all directorships held by Ministers must be resigned, except for directorships of philanthropic undertakings and directorships in private companies. This ruling remained definitive for over three decades, although there was increasing dissatisfaction with his narrow definition of private companies since under changing com-


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pany arrangements a private company was frequently a very large company. Furthermore, there had been a large extension of private companies acting as holding companies for public companies.

The whole question of private and public companies came to a head in 1939 with the revelation that Lord Runciman, the Lord President of the Council, was the director of a number of large private companies. The Prime Minister, Neville Chamberlain, recognised that if Campbell-Bannerman's ruling were to be interpreted in the modern statutory sense it would go far beyond the intentions of its framer. Accordingly, he ruled that the term "private companies" was to apply only to concerns dealing wholly or mainly with family affairs or interests, and which were not primarily concerned in trading.

While Campbell-Bannerman had delivered a reasonably comprehensive ruling on the question of directorships held by Ministers, the situation with regard to shareholdings, speculative investments and interests in Government contracts, remained in doubt. During the Marconi Inquiry debate of June 1913, Prime Minister Asquith laid down a rule of conduct for the guidance of Ministers in financial matters. He remarked on the "perfect absurdity" of the doctrine that a Minister ought not to hold shares in any company with which the Government has or may have a contract. There was only one rule to be observed, he continued, and that was that any interest held by a Minister in a Government contract coming before him must be disclosed to his parliamentary head, and the Minister himself should stand aside while the transaction was going through. Moreover, Asquith declared that there were certain commonsense principles, which he classified as "rules of positive obligation". Ministers should not enter into transactions where private interests may conflict with public duty; they must not use official information for private profit; they should not use their influence in support of a contract in which they have an undisclosed private interest; they must not accept favors from persons contracting or seeking contracts with the state; and they must avoid speculative investments in which their position gave them an advantage over other investors. Beyond these "rules of obligation" there were "rules of prudence" which he found difficult to formulate in precise terms. However, one of the obvious "rules of prudence" would be that Ministers should avoid all transactions which might lead to a belief that they were doing anything forbidden by the "rules of obligation".

The last important ruling on the private interests of Ministers was laid down by Sir Winston Churchill in 1952. It is largely a compound of previous rulings. Ministers are urged so to order
their affairs that no conflict arises or appears to arise between their private interests and their public duties. They must not engage in any activities which may distract their attention from their public duties, and they must, in cases of the retention of private interests, declare those interests if affected by public business, while detaching themselves from the consideration of that business. Ministers must resign all directorships, public or private, paid or unpaid, with the exception of private companies established for the maintenance of private family estates, or directorships and offices held in connection with philanthropic undertakings. And even these directorships should be resigned if any risk of conflict with public duties ever arises. Ministers must divest themselves of a controlling interest in any company, and of shares, whether controlling or not, in concerns closely connected with a Minister’s own Department. Finally, they should scrupulously avoid speculative investments in securities about which they have, or may be thought to have, early or confidential information. Churchill’s ruling has been upheld by subsequent Conservative and Labor Governments, one example being Basil de Ferranti’s resignation in 1962 from the position of a Junior Minister in the Macmillan Government.  

II

By contrast, we find in Australia the prevalence of easy-going standards regarding the possibility of conflict between a Minister’s official position and his private interests. In the 1880s successive Governments in Queensland were so closely linked with the Queensland National Bank, the principal financial institution of the Colony, that Opposition critics described the Morehead Ministry (1888-90) as a branch of the bank. The Premier himself was a director; the Treasurer, Sir Thomas McIlwraith, was a former director and one of the largest shareholders; A. H. Palmer, President of the Legislative Council and a former Premier, was also a director. McIlwraith’s successor as Treasurer, W. Pattison, was the largest shareholder in the bank as well as chairman of the Mount Morgan


3 For a survey of the situation up to the late 1950s, see Encel. op. cit., pp. 293-299.
Mining Co., one of the largest industrial concerns linked with the bank. In 1904, George Swinburne, Victorian Minister of Water Supply, was attacked in the Victorian Parliament because he was a director of the large engineering firm of Johns and Waygood, which tendered for Government contracts. Swinburne resigned from the board in 1905, although he rejoined when he went out of office. In 1924 a Federal Minister resigned from the Hughes-Page Ministry after he was indirectly implicated in the operations of Canberra Freeholds Ltd., whose London office in Australia House was selling blocks of land in Canberra under false pretences.

One of the most notable cases was that of Senator A. J. McLachlan, Federal Postmaster-General in 1934-38. M. Blackburn, Labor MHR, asked Prime Minister Lyons whether any Ministers were company directors. His question was prompted by the fact that McLachlan was a director of several important companies, including the Hume Pipe Co. Australia Ltd., the largest manufacturer of concrete pipes in Australia, which did considerable business with the Post Office. Lyons replied that “No reason can be seen why information of this personal character should be supplied to the honourable member”. Subsequently, pointed questions were raised in Parliament about the letting of Post Office tenders to the Hume Pipe Co., of which McLachlan was chairman of directors. Reluctantly, Lyons was pushed into making a statement of principle regarding directorships held by Ministers in public companies:

> It does not seem to me to be practicable or desirable to lay down a general rule that no Cabinet Minister shall be a director of any company. It would be plainly anomalous if one Minister could retain the whole of the proprietorship of some business or enterprise, while another Minister was debarred from being one of several directors conducting an exactly similar business or enterprise . . . If a contract which the Government makes with such a company is one which results from the exercise of individual judgment or selection, as in the case of the supply of goods of some special kind, it seems clear that a directorship of the company concerned would be inconsistent with the discharge of ministerial duty. But some arrangements which are technically contracts are made on a non-selective or non-discriminating basis . . . if there is the slightest element of judgment or choice involved in the placing of government business, no Minister should be a director of a company which is the recipient of that business.

Not surprisingly, McLachlan tendered his resignation as Postmaster-General.  

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4 Ibid., p. 293.
The most notorious case of all was that of Sir Arthur Warner, a Victorian State Minister and a leading industrialist, who was the central figure in a long succession of incidents where he had clearly used his political position to advance his business interests. While Minister for Housing, Materials and State Development in 1947-50, he had retained directorships in many companies having dealings with his various Departments. These flagrant abuses of the norms of behaviour to be found in Britain led to a full-scale debate in the Victorian Legislative Assembly during September 1949, but Warner's record was passionately defended by Premier Hollway. For six months before the 1950 State election he was also Minister of Electrical Undertakings and, at the same time, head of Victoria's greatest electrical manufacturing business.

As Minister for Transport 1955-62, Warner was involved in even more notorious examples of a clear conflict of interests between his public duty and his private interests. Electronic Industries Ltd., of which he was managing director, supplied electrical equipment to the Railways Department, of which he was Ministerial head. The disclosure that automatic soft-drink machines manufactured by one of his companies were being installed in Victorian railway stations, and that the old water fountains were being removed, led to yet another debate in the Legislative Assembly on November 19, 1958. Premier Bolte typically refused to take the Labor Opposition's charges seriously. He claimed that Warner was not a director of Vending Machines Pty. Ltd. However, when a Labor member pointed out that Warner was managing director of the company owning Vending Machines, Bolte merely replied that "Dr. Evatt is your managing director".

By this time it was obvious that literally anything could take place in the permissive atmosphere of Victorian State politics. In October 1967 the Chief Secretary and Deputy Premier, Sir Arthur Rylah, was appointed to the board of the clothing and footwear firm of Easywear Ltd. A stormy debate on the subject ensued in the Legislative Assembly on October 25, 1967. However, with the firm backing of the Attorney-General, Rylah emerged unscathed. In June 1968 he accepted his second directorship. The firm involved, Avis Rent-a-Car Systems Pty. Ltd., engaged in tenders for State and Federal Government contracts. While Acting Premier, Rylah visited New Zealand in August 1968 to negotiate with

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NZ Ministers, unsuccessfully as it turned out, a licence for Avis in New Zealand. The Victorian State Opposition Leader, Clyde Holding, demanded an immediate session of Parliament to debate the issue, but Bolte arrogantly refused the request, terming the episode a "trivial matter." When Parliament eventually resumed, a full-scale debate on the issue took place on September 17, but again the Liberal Ministry confirmed the status quo. Towards the end of January 1969, Rylah announced publicly — and with intense bitterness — that he had resigned his Avis directorship back in October 1968. Yet he also disclosed that he would be continuing his association with the company. Early in 1970 Rylah resigned his Easywear directorship after the company was taken over by another firm.

It is interesting to note that Bolte, in defending the Victorian practice, has claimed that Ministers holding company directorships are on exactly the same plane as lawyers, farmers and accountants, etc. Other Liberal politicians have attempted to score juvenile debating points by pointing to Clyde Holding’s share in a Melbourne legal firm. But as Platt has noted: “A clear distinction must necessarily be observed between the problems of a rule of behavior applicable to legislators as a whole and a rule applied solely to members of the Government.” Defenders of the Victorian system have failed to understand the meaning of the dictum that “The wife of Caesar must be above suspicion.” Opposition spokesmen have been careful not to accuse Rylah of corruption; rather they demonstrated that he had placed himself in a position where his Ministerial activities could be interpreted as subordinate to his business interests.

In the same period, three of Rylah’s fellow Victorian Ministers have also been company directors. While on the board of Toppa Holdings Ltd., manufacturers of ice-cream and milk processors, V. O. Dickie was appointed Minister for Health in 1965. He did not resign from the board until 1968 when the company was taken over by British Tobacco. R. J. Hamer, Minister for Local Government since 1964, accumulated a number of directorships — Nylex Corporation Ltd., Moulded Products (Australasia) Ltd., Yorkshire Dyeware and Chemical Co. (Australasia) Pty. Ltd., the Gas Supply Co. Ltd., and General Foods Corporation Holdings Ltd. He resigned from the board of the Gas Supply Co. Ltd. in February 1966, when involved in discussions on the future of natural gas.

9 The Herald, 13 August 1968.
10 The Age, 29 January 1969.
11 Platt, op. cit., p. 269.
in Victoria. In March, 1970, he also resigned his Nylex directorship on the grounds that he had been appointed Acting Minister for Public Works. Finally, the Minister for Education, Lindsay Thompson, is a director of the Deakin Housing Society. Yet, significantly, another director of this company, Peter Howson, MHR, has revealed that he resigned his directorship during his term as Federal Minister for Air and rejoined the board only after being dropped from the Ministry.¹²

The practice of successive Bolte Ministries in permitting Ministers to retain or accept directorships has been sharply criticised on many occasions in editorials in the Melbourne daily press, where it has been suggested that Victoria should follow the British and Australian Federal practices.¹³ Bolte says that he is merely observing a "local rule". He believes that his authority is sufficient to safeguard the "public interest". Referring to Ministers who have occupied directorships, Bolte told the Legislative Assembly on September 17, 1968: "I have accepted sole responsibility for the conduct, the propriety and the honesty of all these Ministers". Ironically, Victorian Ministers control the activities of State public servants and local government councillors in an attempt to prevent their private interests conflicting with their public duties. Obviously, they have more faith in their own integrity than they have in either the public service or their fellow politicians at the local level.

Menzies was largely responsible for bringing Federal practice into line with that of Britain, although neither he nor his successors have explicitly laid down any rulings on the British pattern.¹⁴ In the interwar period Menzies was a director of the following companies:

Australian Foundation Investment Co. Ltd. (1929-38).
National Reliance Investment Co. Ltd. (1929-38).
County of Bourke Permanent Building & Investment Society (1933-39).


Equity Trustees Executors and Agency Co. Ltd. (1936-39).
Capel Court Investment Co. (Aust.) Ltd. (1936-38).

¹² The Australian, 5 March 1970.
¹³ See e.g., The Age, 17 September 1968; The Herald, 18 September 1968; The Age, 10 March 1970.
It can be seen that he had resigned all his directorships before becoming Prime Minister in 1939, but he had held Ministerial posts during the thirties, both as Victorian State Attorney-General 1932-34 and Federal Attorney-General after 1934. Nevertheless, during all the periods in which he was Prime Minister, Menzies strictly adhered to the British practice. Sir Phillip McBride, on being appointed a Minister in 1949, was obliged by Menzies to resign no fewer than 33 directorships. Moreover, when Sir William Spooner was given the portfolio of National Development in 1951, he had to resign 16 directorships.

The best example of Menzies' firmness on the question occurred in 1958, when Sir Percy Spender, a former Minister in the Menzies Government (1949-51) and former Australian Ambassador to the United States (1951-58) who had just been appointed a Justice of the International Court of Justice at The Hague, was virtually forced to resign from the board of the Goodyear Tyre and Rubber Co. (Aust.) Ltd. His resignation was tendered after he received a tersely-worded letter from Menzies following allegations by E. J. Ward in the House of Representatives on August 26, 1958. Strange as it may seem, Menzies appears to have been genuinely ignorant of the fact that Spender had been a director of the company since 1944. After L. H. E. Bury was dismissed as Minister for Air in 1962, he joined the boards of Duncan Holdings Ltd., Lend Lease Corporation Ltd., and the General Assurance Society Ltd., but resigned these directorships upon being appointed Minister for Housing in 1963. In March 1962, Sir Allen Fairhall, then Minister for Supply, was obliged to resign from the board of R. & N. Statham Ltd. However, he retained the managing directorship of Wilken and Jones Pty. Ltd., successful manufacturers of dummy models for shop-window displays of women's clothing.

Both Holt and Gorton maintained Menzies' general adherence to British norms of behavior regarding company directorships.

15 Aldridge, op. cit.
16 Following his retirement from the International Court of Justice in 1967, Spender joined the boards of Bushells Investments Ltd., Bushells Pty. Ltd., and The Reader's Digest Association Pty. Ltd. He also became chairman of Agen Holdings Ltd. and Vanguard Insurance Co. Ltd.
18 Incentive (Canberra), cited in Tribune, 11 September 1968.
Gorton informed the House of Representatives on May 29, 1969 that no Ministers were on the boards of public companies, although some held directorships in private pastoral companies or small businesses, but none of these companies had any dealings with any Government Department or public instrumentality. Of course, many former Liberal and Country Party Ministers assume (or less frequently resume) directorships, e.g. at the Federal level: Sir Arthur Fadden, Sir Charles Davidson, Sir Neil O'Sullivan, Sir William Spooner, Sir Phillip McBride, Sir Allen Fairhall and Sir Howard Beale.

At the State political level, a general, if rather uneven, trend towards the standards observed in Federal politics may be discerned. No Minister in the various Playford administrations in South Australia — apart from the late Sir Cecil Hincks, Minister for Lands 1946-53 — was allowed to retain a company directorship. On joining the Askin Ministry in 1965 as N.S.W. Minister for Child Welfare, Minister for Social Welfare, Advisory Minister for Transport, and Vice-President of the Executive Council, A. D. Bridges gave up 65 directorships worth about $60,000 a year. Bridges died in 1968, and his successor as Minister for Child Welfare, F. M. Hewitt, had to resign 14 directorships. When Nicklin became Premier of Queensland in 1957, he instructed all Ministers to surrender their directorships. His ruling, however, did not apply to share holdings in companies that are intimately connected with a Minister's Department. These problems received widespread publicity during the Evans scandal of 1962 and the more recent Bjelke-Petersen case.

During October and November 1961, E. Evans, Queensland Minister for Mines and Development, bought 2000 Australian Oil and Gas shares when the average market price was $2.20. By March the market price of AOG shares had risen dramatically and his original investment of about $2200 was worth about $20,000. It is clear that Evans had used his Ministerial position to advance his material interest, but his actions were upheld by the Cabinet. Even the staunchly pro-Government Courier-Mail declared editorially:

That a Minister for Mines should speculate for his personal profit in any mining enterprise that has to deal with him as a Minister will still appear...

21 In 1966, J. M. Fraser, Minister for the Army, formed a family pastoral company — Fraser Properties Pty. Ltd. — with an authorised capital of $700,000 (The Age, 26 August 1966).
22 The Management Digest (Canberra), 20 February 1968.
23 The Sydney Morning Herald, 23 May 1968.
24 Ibid., 3 September 1968, 18 September 1968.
improper to many people, though the Premier has found it possible to excuse Mr. Evans' "flutter". 25

During the Queensland State election campaign in 1969, the leader of the Opposition accused Premier Bjelke-Petersen of using deceit to acquire "fabulous wealth" from oil share transactions. It was also disclosed about the same time that he held half a million Exoil NL shares. 26 Late last year a new mining company, Bjelke-Peterson Pty. Ltd., was established; it was "believed to be associated with the Premier of Queensland". 27 During a recent appearance on the ABC television program "Four Corners" (March 21, 1970) Bjelke-Petersen was brutally frank in expressing the view that he saw no conflict between the public office he held and his extensive interests in the oil and mining industries.

A controversy involving the South Australian Minister for Local Government, Roads and Transport, Murray Hill, who is also a leading local estate agent, arose in 1969. The Leader of the Opposition, Don Dunstan, claimed that pamphlets bearing the name Murray Hill Pty. Ltd. were inviting householders to sell their properties through the company. They were being distributed to people living in an area affected by plans under the Metropolitan Adelaide Transportation Study (MATS). Hill was defended by Premier Hall in the House of Assembly on August 7, 1969, on the ground that he was no longer a director of his company and "therefore completely exonerated". However, as Dunstan was quick to point out, Hill's financial interest in the company was retained and his actions were so open to dubious inference as to constitute a grave impropriety. It is also relevant to note here that Hill is a director of two public companies — The Century Insurance Co. Ltd., and Friends Provident and Century Life Office.

At the Federal level, there has not been a comprehensive ruling on the question of Ministers' shareholdings. Gorton told the House of Representatives on March 4, 1969, that Federal Ministers were not prohibited from holding shares in mining companies which might apply to the Government for leases. He went on to observe, with obvious satisfaction, that the Minister for National Development, David Fairbairn, who dealt with mining leases, had sold all such shares before taking office. In October 1969, it was revealed that Senator M. F. Scott, Minister for Customs and Excise, and the Rev. Dr. Malcolm Mackay, Liberal MHR for Evans, had been...

26 Nation, 22 March 1969.
involved in a $2 million deal over a manganese mine in north-west Australia. Mackay is chairman of Longreach Metals NL, and Scott was a major shareholder in Mount Sydney Manganese Pty. Ltd. which sold out to Longreach. Scott is also the principal vendor in a string of West Australian mining leases. It is interesting to note here that Scott was recently elected chairman of the Government Members Mining Committee, after being dropped from the Gorton Ministry. His predecessor was none other than Mackay, whom Whitlam once described as having "given up the divine for the divining rod".

Unquestionably, many politicians — including Ministers — make much more money than would appear possible if they were dependent solely on their parliamentary salaries. One journalist recently asked:

Was there any truth in the whispered allegations that a National Development Minister played the stock market because he knew a lot about mineral and oil exploration because of his position?

It will be many years before crude bushranger ethics cease to dominate important areas of Australian political life.

III

Despite the uneven trend in Australia towards upholding the norms of behavior required of British Ministers, editorial writers and Labor politicians delude themselves when they claim that the adoption of a comprehensive ruling along the lines of the one in existence in Britain would remove the possibility of a conflict of interests. Even if Ministers were to divest themselves of all directorships and shareholdings, business and propertied interests would still be able to count on their positive and active goodwill.

Furthermore, the existence of Labor Ministers has not destroyed the validity of such an analysis. A handful of them, of course, may have believed that they were not serving capitalist ends but their instrumental function in the system has determined otherwise.

28 Sunday Observer, 19 October, 1969, 26 October 1969.
29 The Age, 18 March 1970.
It is not so much a question of Ministers being consciously influenced in their contact with business by the possibility of securing directorships at some later date. Their personal ties with the world of corporate capitalism are not as important as their worldview. Beyond all their political, cultural and religious differences, Ministers accept as beyond question the capitalist context which is of fundamental importance in shaping their attitudes, policies and actions to specific issues and problems. They are fundamentally committed to capitalist enterprise which is seen as a necessary, desirable and "natural" element of Australian society. The various ends pursued by the members of Governments are conditioned by, and pass through the prism of, their acceptance of and commitment to the existing economic system.

POSTSCRIPT

This article was completed just before the eruption of the Comalco shares scandal in May-June, which began when the giant international mining company offered share allotments in its new issue to leading politicians, public servants and financial journalists. Prime Minister Gorton personally rejected the preferential offer and suggested that other Federal Ministers should follow suit, since acceptance of the shares could give the impression that they were being singled out for special treatment — and that would be undesirable in the light of Comalco’s dealings with the Government. He laid stress on the fact that subscribers to the flotation would almost certainly make a quick-scale profit. As it turned out, the shares were issued on June 11 at $2.75, yet within minutes they had rocketed to $5.80 on the Melbourne Stock Exchange.

Gorton's advice, however, was not listened to by key members of the political executives in several States. In Queensland, for example, six Ministers — including the Treasurer, the Minister for Industrial Development, and the Minister for Works — received thousands of shares as "customers" of Comalco. Other Ministers may have taken up the offer through nominee companies or relatives. Nevertheless, the Ministers named in the press passionately defended their actions, the common refrain being that it was their own private business and that they could make money how and as they wished. The Bulletin (June 20) referred to the "thinness" of this type of argument: "Politicians with an interest in a company can push contracts worth millions to favored ones."

The Comalco scandal is a reflection, in the crudest form, of how the political executive — and other elements in the State system — serve the interests of the owners and controllers of concentrated economic wealth.