

CRAWFORD SCHOOL OF ECONOMICS AND GOVERNMENT

The courts and economic efficiency

How a national competition policy created
a nation of tax-farming monopolies



Terry Dwyer

Tuesday 19 May 2009
12.30pm - 1.30pm

Seminar Room 4, First Floor, Crawford Building
Light lunch will be provided

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In attempting to privatise, commercialise or corporatise government business enterprises (formerly public utilities) such as airports, electricity, water and gas systems, Australian governments have adopted replacement cost accounting for sunk capital on the theory that today's cost should reflect costs which would be incurred by a hypothetical new entrant. Consumers are charged again for assets written off decades ago, asset revaluations are not counted as income but added to the regulatory cost base to justify further price increases. The result is that prices are driven far above the short run marginal cost with associated deadweight losses from these hidden taxes on consumers, workers and exporters. The regulated net revenue streams represent a rent on past (and often previously recouped) investment rather than a reward for new investment and are traded as capitalised rents on the stock markets. Analytically, there is little difference to the tax farming monopolies which characterised pre-Revolutionary France. Yet Australian Courts and Tribunals have been misled into thinking that such pricing regimes represent economic efficiency rather than efficient monopoly rent seeking and have awarded returns on notional figures for moneys never invested by anyone. By contrast the US Supreme Court, after decades of experience, rejected replacement cost accounting for regulating public utilities in 1944.

Dr Terry Dwyer—B.A.(Hons) B.Ec.(Hons) (Syd.), M.A. Ph.D. (Harvard), Dip. Law (Syd.)—has researched infrastructure pricing and policy for the Business Council of Australia and the Rural Industries Research and Development Corporation. He has also prepared submissions to regulators in pricing reviews for water and gas and has appeared as a solicitor-advocate in the Australian Competition Tribunal on behalf of electricity users.

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