

COME BACK LIONEL

If messages could be sent to the beyond then the High Court in its decisions in *Nationwide News v Wills* and in *Australian Capital Television v Commonwealth* sent one to Lionel Murphy. For years Lionel Murphy was a lone voice on the High Court when he tried openly to relate our Constitution to that ill-mannered and undefined beast called Australian democracy. Now we find six judges of the High Court venturing into this unexplored wilderness and deciding that our Constitution does protect freedom of speech. Only Justice Dawson remains defending the orthodoxy that Lionel Murphy challenged.

Over the past few years various judges of the High Court, especially Chief Justice Mason and Justice Brennan, have been dropping hints in court and at legal conferences that constitutional changes were in the wind. After almost 90 years of operation the High Court now informs the citizens of this country that some form of constitutionally protected freedom of speech can be implied into our national Constitution.

Unless the politicians at State and federal level can reach agreement on a formal Bill of Rights it seems that the judges of the High Court will slowly map out an implied set of rights. The Electoral and Administrative Review Commission of Queensland is currently conducting a major review of the way that Queensland can secure 'the preservation and enhancement of individuals' rights and freedoms'. During November and December of this year the Commission will be travelling throughout the State holding public hearings on this matter.

For a journal like the *Alternative Law Journal* the challenge of providing alternative perspectives becomes an even more important objective. If the experience of Canada, with its Charter of Rights, is any guide, the High Court's excursion into the field of rights will focus debate on some of those issues to which Justice Gaudron referred when she wrote that the Constitution 'is predicated upon a free society governed in accordance with the principles of representative democracy'. For those who read this journal the challenge now is to give real meaning to, and gain an understanding of, those principles.

In many ways the High Court has opened up a Pandora's box. If some form of freedom of speech can be implied into the Constitution, what other types of rights can be implied into or out of our Constitution? It is refreshing to see that the High Court's decision has, if only briefly, brought the terms 'rights, liberties and freedom' into media discussion alongside the steady diet of economic rationalism. Yet such action will also conjure up adverse reactions.

Already the Federal Liberal Opposition has raised the issue of Federal Parliament imposing some form of check on the way High Court judges fashion an implied set of rights from our Constitution. While not agreeing with the ideas put forward by the Opposition, in my opinion such a debate is to be welcomed. For too long the workings and philosophies of those presiding on the High Court have remained well removed from mainstream discussions.

In the past, the selection of High Court judges and their approaches to the Constitution were considered, outside the narrow confines of the legal profession and halls of academia, to be unimportant scraps of information. This state of affairs may very well change in the next few years.

For too long, legal discussion about the Constitution has taken place with little reference to the ideals and values of an Australian democracy. The High Court's recent decision will force us to bring fresh energy to such a debate. As the readership of this journal would attest, such a debate will not be simple or ever likely to reach a consensus. For me, as a constitutional law lecturer, the High Court may at last have started to make history rather than merely repeat the past.

Rick Snell

Rick Snell teaches law at the University of Tasmania.