

# OPINION

## It's Still Time

The change in political climate between 1975 and 1995 has been profound. The theme of this edition of the *Alternative Law Journal* is '20 years on . . .' — a retrospective look at some of the changes initiated under the Whitlam Government.

Clearly the atmosphere of innovation and fundamental reform during the 70s is no longer 'flavour of the moment'. The focus on economic rationalism during the 90s has meant that the rationale for many of the changes introduced in the 70s may be obscured. The shifting focus over the last two decades may mean the original vision of achieving social justice across the board is not implemented, but instead is swamped by so-called 'economic realities'. There is a growing feeling that the time for grand visions is past, and that the scope for reforms such as those made during Lionel Murphy's terms as Attorney-General has narrowed.

In a recent address to the Parliamentary Research Service, Mr Mark Latham MP (a former researcher for Gough Whitlam and now member for Werriwa), gave further reasons for the change in the political climate. He suggested that both the internationalisation of the economy and the growth in the size of electorates was adding to the pressures on Australian politicians today. He identified another feature of the changes as the increasing complexity of political decisions. The growth of the 'information society' means that decision makers are under pressure to take into account many more factors — particularly economic factors — when making policy decisions. These pressures are contributing to a certain reluctance that politicians have to spending time contemplating overall policy directions. In fact, Mr Latham suggested, they are instead spending more and more time in the hand to hand combat of Parliamentary and party politics — the 'theatre' of Parliament.

He illustrated the changing attitude to economics with a story about Menzies. According to Nugget Coombs, then Governor of the Commonwealth Bank, Menzies said to Coombs 'I'm not interested in economics . . . and I get bored listening to people talking about it . . . but . . . if you feel the economic situation is of a kind I

should know about, ring me up and I'll come and talk'. Whitlam has also pointed out that economic issues were outside the mainstream of political debate in the 60s. It may have been the fact he was not caught up in economic issues that freed his attention and gave him the capacity to work with Murphy to bring about such profound changes to the Australian legal system.

The *Family Law Act 1975*, the *Trade Practices Act 1974*, the establishment of a permanent Law Reform Commission, the *Racial Discrimination Act 1975* and reforms in the administrative law area — these were all major innovations taken by the Whitlam Government in an atmosphere where fundamental reforms aimed at ensuring everyone got a 'fair go' were accepted as a basic premise. There has been a shift in focus and the primary question of many political decisions is no longer 'will this legislation ensure basic rights are accessible to all citizens?' but rather 'can the economy afford the burden of providing such rights?' Undoubtedly by 1975 economic concerns were beginning to be seen as significant, and indeed played a central role in the aftermath of the November 11 crisis, however their dominance was yet to develop.

There is another factor in the growing complexity of political decisions in the 90s: in some ways it may be easier to introduce sweeping reforms, which fundamentally change the political landscape, than to move on to the more painstaking task of fine tuning these instruments of reform. The political and intellectual challenge is becoming the need to ensure that the reforms made by Murphy and others achieve their ambitious goals. So, for instance, as Saku Akmeemana and Teya Dusseldorp point out, the *Racial Discrimination Act* has proved disappointing as a tool for far reaching social change (and the difficulties of anti-discrimination legislation based on individual complaint-based mechanisms apply to the other legislative schemes in our human rights regime). David Howarth's analysis of the history of the *Trade Practices Act* also points to the need for on-going efforts to ensure that consumers are actually protected by our consumer protection laws, while Stephen

Bourke suggests that the *Family Law Act* is still falling short of the Herculean task of minimising the emotional and social cost of separation.

It was under the Whitlam Government that the Commonwealth started to play a major role in the provision of legal aid. Yet, as Ronald Sackville points out, in recent times it's been the High Court which has protected (and some would suggest invented) fundamental rights and freedoms, such as the right to a fair trial, so that a trial judge has the power to stay proceedings to ensure a fair trial which may require, in a serious case, that an accused has counsel (*Dietrich v The Queen*). Ironically it's the Court, formerly seen as the bastion of the conservative legal community, which has recognised that these rights and freedoms should be protected irrespective of the costs, while the Labor Government often seems to be fighting a rearguard action against the Court's desire to protect the underprivileged. It will be interesting to see what direction the Court takes after the changes to the bench effected by the Government.

Hopefully we will never lose sight of the basic commitment to ensuring equity and justice for everyone. If we attend to economic 'imperatives' which suggest that society can no longer afford to ensure all its members certain basic rights, we will have lost the essence of Murphy's reforms. We must recognise that the 'economic dictates' currently given such weight are nothing other than political decisions parading as objective necessities. Undoubtedly the long haul to achieving the ambitious goals set up under the Whitlam Government has only just begun.

But it's still time.

**KirstyMagarey on behalf of the  
ACT committee**

*Kirsty Magarey works as a legal adviser in the Parliamentary Research Service, Canberra.*