

## Technology and the world turned upside down

By John Bryson QC

I first worked in the city in 1954. I joined the Public Service when I was 16 after completing the university entrance examination, then known as the Leaving Certificate. To me the world looked modern but with retrospect the city was ramshackle and unpainted. Only the Stalinesque Maritime Services Board building at Circular Quay, now the home of artworks that cannot be shown anywhere else, had been built since 1945. Only the largest and most modern buildings had air-conditioning, and courtrooms did not. Most offices were gritty with dirt, and a chimney at Sydney Hospital discharged mysterious black smoke at most times - they burned off soiled bandages at best, and I shudder to think of the worst. A few businesses still used horses for city deliveries. Huge draught horses hauled wooden beer barrels on drays, and Penfold's Stationery used lighter carts. Signs of their passing were evident. Trams emitted many noises, such as clanging bells, rumbles, electric flashes and a special metallic scream as they rounded a tight curve into Phillip Street.

I worked at 237 Macquarie Street, an office building which has since disappeared under the Law Courts Building - no loss. Working conditions were extremely crowded and the furniture was antique. There was a great deal of dark stained wood, and dirt and dust were everywhere. Six people worked in the room where I was junior record clerk in the Department of Justice. The record clerk composed a one-sentence précis of every letter in and out, and four clerks including myself copied each précis onto four or five subject cards, so that all correspondence on any particular subject could be found again. Each document was numbered as a registered paper, and handwritten records showed which papers were in each file and to which officer the file had been sent. All the records were handwritten with steel-nibbed pens with wooden handles, dipped in an inkwell every sentence or so. When an enquiry came for the papers dealing with some subject or other we all riffled through cards and taxed our memories until we came up with something. The record clerk himself had little need or use for the cards. He had done this job for about thirty years and had a photographic memory of the correspondence, knew all the people and had followed all the controversies. State government was his culture and music. He loved it. His uncle had been state premier and his



Photo: Macinate

father had been a member of the Legislative Council. Each morning he conferred with the assistant under-secretary and between them they decided most of what the department was to do. As he was quite unable to pass examinations he was never promoted and remained in a low grade on low wages all his career, while participating in making important decisions. Forty years later someone explained to me what the memory of a laptop computer could do; I had no trouble understanding as I had been a cog in one before they existed. Two early lessons of my life:

1. Power is sometimes in unexpected hands.
2. The world has no need for computers.

Only one was true.

After passing several initial Public Service examinations and learning to calculate leave entitlements I was transferred next year into a real law office: the Crown Solicitor's Office. This office

handled the state government's constitutional advice and litigation; but none of that for me. I was dropped into a litigation factory which did nothing except acting for motorist defendants in common law claims for damages. From 1942 and for many more years the Government Insurance Office was the only insurer for motorcar personal-injury insurance in New South Wales. Nobody else was allowed to write a policy, the premiums were fixed and had no regard to the previous claims history of the insured. The GIO had to insure anybody who paid the fixed premium, no matter what motoring havoc he had wrought. About twenty or thirty solicitors and unqualified clerks like me managed thousands and tens of thousands of motorcar claims. All cases were heard by jury, and their assessments of damages were weirdly random. I attended to instruct counsel at District and Circuit courts all over the state, and got a good general view of what judges and barristers were like and what they did. All my travel was by steam train, except for really distant places. I was allowed to take planes to reach Wentworth at the Murray-Darling junction and Broken Hill. My first plane journey was the return from Tamworth to Sydney, at my own expense. It cost me most of a week's pay, as an 18-year-old clerk, and I was mildly reprimanded for not using the railways.

Few things in daily life are as transformed over the past half-century as the telephone. I took settlement instructions to country courts with me, but quite often needed to refer back to the GIO according to the course of negotiations. This involved using the telephone, but where was it? The usefulness of portable communications was obvious, and in comic strips Dick Tracy wore a two-way wrist radio and often used it, but no such thing existed in reality. When I first heard of STD in the 1970s it meant subscriber trunk dialling. You could pick up the phone and dial any number in Australia. In the 1950s and 1960s this was not possible. There might or there might not have been one public telephone somewhere in a country courthouse, it might not have worked. The public telephone might have been down the street at the Post Office. One had to fill a pocket with silver coins, find a public phone in working order, push a button marked Trunks. A woman answered 'Trunks' in an unwelcoming tone. 'State the number and town you wish to call' and she hung up. There was no predicting how long it

would take before she rang you with the connection. Quite commonly half an hour was required, say, to phone Sydney from Tamworth: it could have been much longer or it could have been 30 seconds. This complicated negotiations, and requests to judges for time to negotiate, no end. Settlement of a Supreme Court claim might involve the need to refer to reinsurers in London. At the worst this took days. Communication was by cable, and there could be no subtle explanations. Nowadays the mobile phone in your pocket can speed-dial your uncle in Stromness. The speed and efficiency of communication which we now know were beyond all imagining.

Another branch of daily life which has been completely transformed since my career began is the exchange of letters and messages and the delivery of documents. In my first days telegram boys, on poorly maintained red bicycles owned by the Post Office, interleaved traffic recklessly and in great numbers. I suppose there were always courier services, but they would have been pursued by the Post Office enforcing its monopoly, so they kept their heads down. It was once usual – I suppose this has gone out of use, as it should have – to give an urgent parcel and a fistful of money to a taxi driver and ask him to deliver the parcel. This was reasonably reliable but there can only be misgivings about giving a parcel with something valuable like a certificate of title in it to a completely unknown taxi driver and telling him to take it to a solicitor's office a few suburbs away. At some time in the 1970s solicitors organised the document exchange, or DX. This may have been an initiative of the Law Society. At first only solicitors and barristers used the DX. It was probably outside the Post Office's reach because it did not deliver. You had to go and pick up your documents. It did not charge per item and you had to be a subscriber. DX soon became a success, then became a business and the Law Society sold it off.

Telex machines enabled a message typed in one office to appear immediately on the telex machine in another office. It was an instant telegram and the beginning of the end for the telegram boy. Telex was followed by the fax machine, which should appear in economics lectures as an example of a splendid piece of technology with nothing wrong with it overtaken by an even better one. The Post Office monopoly began to break down in the 1970s, when

some change brought couriers on pedal cycles or motorbikes onto city streets in great numbers. These too had a great success and I suppose that they still exist, but e-mail conquers all.

An exchange of emails which takes a few minutes would once have required a letter to be dictated, transcribed, checked, posted, delivered, with the same sequence for the reply; quite commonly a week to get attention and answer, but far longer if the recipient was not disposed to cooperate. Everything was on paper, everything had to be typed and everything had to be posted, or delivered around the town to other solicitors or to counsel by armies of messengers and articulated clerks. Many a mile I have tramped around the inner city delivering papers in my earliest years. Telex and fax rose and fell: email sent them off to join the Diprotodon. A laptop or desk computer is now almost universal for office-workers. Almost everyone can produce typewritten work with keyboard or electronic dictation.

For many years the Post Office had a legal monopoly on delivering letters as a business. It may seem that a courier service is a simple, obvious and useful service for the community to have, but for many years the business of carrying letters was illegal and Post Office policed its monopoly. Before the 1980s long strikes attacking the convenience of the public at large happened all the time. There have been some spectacular strikes since then, but in the old days there seemed to be an endless succession of interruptions: to gas and electricity supply, to railway bus and tram services, to petrol supply, to postal services - anything that would annoy the public at large. Postal services were especially vulnerable, in an age when there was really no other way of getting letters, briefs and documents around the country. I recall a telephone call from a solicitor in Broken Hill pleading for an advice on a brief he had sent me six weeks earlier, but I had not received the brief because of a go-slow in Broken Hill Post Office.

I have begun to show that many things happened early in my career in ways which now would seem so inefficient as to defeat the exercise completely. But the world rolled around and all the business was done. The case was heard or settled. Perhaps we had to wait a day for the next train back to Sydney.

Another area of life which has been transformed is the

world of ready money, money payments and bank transfers. Each currency had a fixed ratio of value to the United States dollar, and there was no room for trading in currencies. While exchange control lasted the Commonwealth Treasury exercised close control over availability of foreign currencies to Australians. Essentially any economic relations with overseas required Treasury approval, as no payment could be made without it. This complicated everything to do with overseas to a point approaching paralysis. If an Australian wished to travel overseas and take some money, or to buy and import something from overseas, or to remit a legacy or trust income overseas, it was necessary to have exchange control approval from the Treasury before your bank could give you sterling or foreign money. The banks had delegated authority and could give some approvals.

Exchange control regulations had the effect, or were often contended to have the effect, of making agreements which potentially could involve paying money to anyone overseas illegal and void. Gerard Horton built his bar career on ingeniously perceiving or devising grounds for attacking commercial transactions for real or alleged entanglement with these regulations. In large, the regime of exchange control became a distorting influence on foreign trade. In detail exchange control was a great nuisance in everyday life. Ordering goods in small retail quantities from overseas and paying for them was possible only for determined purchasers with a taste for clerical work, and the Amazon book business could not have existed. In 1965 I purchased a barrister's wig from Ede and Ravenscroft in London. Paying for it involved obtaining exchange control approval through my bank in Sydney, buying a bank draft in sterling in favour of Ede and Ravenscroft for which my bank made a noticeable charge, posting it off to London and then when the wig arrived on the ship after some months, dealing with Customs through the local Post Office to have duty assessed, and paying duty at a high rate to protect Australian manufacturers of barristers' wigs - not that there were any. I had quite a file of papers for something which now would be handled on the internet in ten minutes or so. I was given a clear lesson that I should not go about wasting sterling currency selfishly just to buy things for myself.

For a long time it was not possible to leave

Australia without a tax clearance: a certificate from the Taxation Department which showed that you had paid all your taxes or given the department satisfactory security. If you were in default in filing a tax return, or had never filed one, you could not leave the country. Getting a tax clearance was a time-consuming process involving waiting around in the Taxation Department for hours and hours, a significant burden on travelling overseas.

Money could only be moved around Australia by sending a cheque or money order, a physical piece of paper, to the recipient. At one time the banks charged exchange, several pence in the pound, for negotiating cheques drawn on accounts in other states. This effrontery faded out about 1960. In the 1950s few people had cheque accounts. Many people bought money orders from the Post Office (and some still do). Most people dealt with banks only through savings accounts, and every transaction involved attending at the bank branch and filling out a deposit or withdrawal form, then queueing up to see the teller and show him your pass book, in which he wrote laboriously. Before going on holiday or travelling interstate one must call at one's bank branch, fill in some forms and send one's signature to the branch of the savings bank nearest one's destination, so that one could get money there. I bought travellers cheques to be able to pay my hotel bill in Melbourne. Less orderly people complicated their lives by asking hotel proprietors, club stewards or casual friends to cash cheques, with uneven success, rupturing many a friendship. From about 1960 onwards Diners Club and American Express credit cards began to appear and around 1975 there followed a revolution when banks started to issue credit cards. At first a bankcard purchase involved a telephone call by the merchant to the bank to see whether all was in order. ATMs began to appear, and the marriage of credit cards and electronic communications was the revolution. Now Woolworths will hand out money to you. The final simplification (so far) came with operating one's own bank account on the Internet. The ease and speed of transactions and the facility of everyday life have been transformed. The facility with which money can be transferred electronically has an air of magic to me.

In 1954 Australian currency was organised in £ s d, pounds, shillings and pence, the English arrangement

since King Alfred or thereabouts. It continued when Australia acquired a separate currency in about 1913, with the same value as sterling until Australian currency was devalued in 1925. In primary school everyone learnt to think in terms of money in units of 20 shillings to the pound, 12 pence to the shilling and 240 pence to the pound, and no-one seemed to have much difficulty with the arithmetic of everyday life. At one time, fading out in the seventeenth century, English money had often been reckoned in marks; a mark was two-thirds of a pound, 160 d, 13 s 4 d or 40 groats each of 4 d. When marks went out of use they left a ghostly trace in solicitors' bills, as many attendances were charged at one mark, 13 s 4 d, or half a mark, 6 s 8d. (A mediaeval statute required a serjeant-at-law to give advice for half a mark, a gold coin known as an angel, and this inspired mediaeval humour in which the barrister was called Balaam's Ass because he would not speak until he saw an angel: see Numbers ch 22 v26-28.)

In the 1950s I had to attend many taxations of detailed bills of costs, in which every item was a step taken by the solicitor in the conduct of the proceedings. Mercifully I have forgotten details, but an example (and there might be some hundreds of such items in a bill) would be perusing letter 6 s 8 d. The amount to be charged for each such attendance was fixed by rules of court before the war, and twenty years later bills were taxed in pre-war values and increased by percentages to allow for inflation. The work may have been done over several years, so there might be several different sections of the bill to which different percentages were applied. All of this was done by mental arithmetic; in the head, without electronic calculating machines, which did not exist; quite laborious. After the solicitors' costs came barristers' fees, which were always calculated in guineas. A guinea was not a coin or a note, but a notional piece of money worth £1 1s, 21 shillings. It was necessary to be adept in mental arithmetic in units of 21; the 21 times table. This was quite simple really; 100 guineas were £105 and 500 guineas were £525. However when I first started barristers' guineas were different; if a barrister said that his fee would be 20 guineas the guineas he was talking about were worth £1 2s 6d: a clerk's fee of 1s 6d was added to the 21 shillings. This ended, as far as I can remember, in 1955, and after then a guinea meant what it said

in plain English. On the backsheet of the brief under the barrister's name the solicitor wrote the fee, and the word 'guineas' was abbreviated as 'guas', often pronounced as spelt.

On Friday, 11 February 1966 I was admitted to the bar again after being a solicitor for a few years, opened my bar practice on that day by sending off several advices for which I had already received briefs, and charged for them in guineas; seven, I think. That was my last opportunity to charge in guineas. On Monday, 14 February 1966 the currency changed to decimal currency and all accounting changed to dollars and cents. All the banks closed for one or two days and then issued the new money. They both circulated for a while and the old money was soon recalled and disappeared. One aspect was that many of the old coins actually had silver in them and were getting to be worth more than their face value. For a few years ghostly guineas lingered in barristers' fees, often multiples of \$21, ten guas. Since then the world has been decimal. The money is not the same. Steady inflation eats it all the time. Slow hyperinflation gives all economic life a slightly frantic edge. In 1969 I bought my room in Wentworth Chambers for \$8400: this huge sum nearly broke me.

A great deal of the furniture of everyday life has been transformed, and much of it was unknown. At some time during my four years with the crown solicitor I bought a fountain pen, so that I could function away from my steel pen and inkwell. Fountain pens were marketed as luxuries and were ridiculously dear; several pounds. A rubber sac in the pen contained the ink, and had to be watched carefully. On aircraft the sac sometimes emptied itself into one's suit. Ballpoint pens were in use but they, too, might empty out unpredictably. Plastic articles were just beginning to be part of everyday life. Among the small things of life which have been transformed are keys. Searches for keys, usually in short supply and often in the care of someone who happened to be absent, were a great source of trouble and inefficiency. Electronic keys, swipe cards and keypads have greatly enhanced security of office buildings, motor cars and much else. Perhaps some people now lose their swipe cards all the time.



Photo: Wikipedia / Oliver Kurmis

Electronic equipment hardly existed in everyday life. Typewriters were manual, mechanical, extremely expensive and cost several months' pay. Few men ever learnt to use them well. When a barrister employed a secretary he was beginning to achieve some success and could have his written work done properly. Writing shorthand and typing were highly skilled and required one or two years' training before employment. A few barristers could write shorthand, usually because they had earlier careers in journalism or one of the few government departments where internal correspondence was in shorthand. The smallest typing error caused great difficulty, often a retyped page. A transcript of evidence took many hours to produce, as the court reporter dictated from his shorthand notes to a copy-typist. It might be eight o'clock at night before the transcript was available, or perhaps the next day. Transcripts were typed on manual typewriters and about four or five copies could be made with carbon paper. To arrange the paper, say five white sheets interleaved with four pages of carbon paper, took time and patience. After the first carbon copy the products were fuzzy, indistinct and not much use. Many women were court reporters, but they could not be sent to a country court sitting if there was to be a trial for a sexual offence: 'dirty depts.' Only with electronic equipment have there been progressive availability of transcripts through the day, with multiple copies and prompt completion soon after the court rises. Word-processing machines have transformed the

productivity and efficiency of barristers in long cases.

Copying documents was a great difficulty. Copying was done by a second rank of women typists. To be classified as a copy-typist was a mild insult and the work was unbelievably tedious, to sit hour by hour reading and transcribing a document held in a frame just to the top right of the typewriter, impossible unless one had sufficient skill to keep one's eyes off the keys. Completely accurate copies were rare. Somewhere in a large firm's office there would be a poorly-lit room of copy-typists toiling away, usually taking at least a day to achieve anything. At Allen Allen and Hemsley the manager of the typing pool was the Dragon, addressed to her face as 'Dragon.'

Late in the 1950s primitive photocopying equipment began to appear. Copies were on photographic paper with a grey background, emerged wet from the machine to be hung out to dry on the Venetian blinds, and faded in a few months. Then about 1960 Xerox burst on the world and printed money and fabled fortunes for its shareholders, while its patent lasted. This was the parent of large-scale litigation with its thousands of copies. I remember my first astonished sight of a Xerox machine, demonstrated to wondering young solicitors by the office manager of Allens in October 1962. What was his name? I remember him as 'Puff Puff', his usual name, as he smoked a pipe at all times. We watched dumbfounded as clear printed copies rolled off at high speed, consigning carbon paper to oblivion. 'We will have to be careful with this' said Puff Puff. 'It costs thruppence a page! It could get away.' The Cumaean Sybil had no clearer moment.

Tobacco and tobacco smoke were everywhere. At any one time half the people working in an office room would be smoking, so too on trains and buses. As with beer, tobacco is something I have never seen the point of, the smoke and the ash were disgusting and I lived in a world of them. In law school lectures a bench near the door held about eight undergraduates who were not smoking. Professor Stone's cigars were awful.

A large innovation of my time has been the penalty notice, written by a policeman or public officer and

imposing a fine which has to be paid unless the recipient requires court proceedings. In the 1950s there was no such procedure. Penalties were rarely imposed by administrative action. There were some instances in customs law and these were regarded as harsh. Sometimes there were newspaper stories about Australians in, say, Switzerland who were

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astonished to be handed a penalty notice by a policeman for doing something or other, and to be told that the policeman had fixed the fine which they had to pay. These stories were presented as examples of what happened in strongly statist European countries where they did not know about the presumption of innocence and the police had altogether too much power. In the 1950s and perhaps later a magistrate sat more or less all the time in the court at Phillip Street North, commonly known as the Water Police Court, hearing parking prosecutions. These were prosecutions on the classic model where an information was filed, a summons was issued and served, the defendant was called three times, the process server went into the witness box and proved service and the parking officer deposed to what he had observed about the car. No defendant with any wit turned up, but a few came along to waste the magistrate's time by saying yes, the car was parked there but the parking officer was very rude. It was probably with parking offences that the penalty notice system began. Gradually, it was extended to many traffic offences, then much further into everyday administration, for all I know for eating underage oysters. The saving in public, court and police time and effort must be very large. I do not think that there is any residual resentment of this process - if you want to hearing you can get a one.

Another transformation relates to the presence of women in legal practice. Women lawyers employed in the Crown Solicitor's Office, and there were a few,

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received 85 per cent of the salary paid to a man holding the same position. I do not know of any women who were in bar practice when I first started noticing barristers in 1955, there may have been one or two. When I went to the bar in 1966 there were four or five. Two early stars soon appeared: Mary Gaudron and Priscilla Fleming, and many since. Many women practised as solicitors. There were firms where the principal or the senior partners were women, some were quite strong practices, but there were few of them. Big city firms had one or two women partners, inconspicuously working hard. Many women worked in law offices, but they were seldom in charge. In Allens' office in 1962 two Allen sisters were reputed to have been the first women to work in a legal office in Sydney. They had been there for about sixty years and were well over eighty. One drifted around putting incoming letters on the wrong desks, and the other worked, with intensity and accuracy, as secretary to a peppery senior partner, whom she spoke to as if he were a small boy. When displeased she would say 'Mr Hemsley would not have done it this way.'

Where women were most seen in my early years was as secretaries to lawyers who were men. Some were remarkably talented, nominally personal assistant to the partner, in reality close to running the practice. I marvelled at the high ability of some of these people, who could well have practised law themselves. Some barristers' secretaries thought the impious thought 'I can do better than this bloke,' read for the bar and did better. Sometimes I thought it was unfortunate for the community that such talented people were employed as auxiliaries to somebody else, but this is a tendency of my mind, as I have often thought that far too much of the community's talent goes to advocacy rather than, say, to governing the country.

The Jury Act provided for women to serve on juries, but for many years they did not do so, and the ministerial line was that money could not be found to install toilets next to jury rooms. At some time in

the 1960s this was overcome, and women began to be seen on juries. At first the bar was nervous, but soon experience showed that their presence made no remarkable change to verdicts.

With the rise of technology and the decline of jury trial there has been a rise in the elaboration of the issues which legislatures refer to the courts, in the rules of decision devised by courts of appeal, and in the length and complexity of hearings. Increased complexity has marched with increased capacity to manage complexity conferred by technology. Each decade legislatures devise more new remedies, state their grounds with complexity and send them to the courts for disposition. The community has a strong taste for referring its problems for disposition to the courts, or to tribunals which operate more or less on the judicial model, and for steering resolution away from the Executive. Mysteriously there is also an unending drumbeat of grievance about the complexity and cost of judicial proceedings. I see this as an implied compliment, ungenerously expressed.

Before 1960 most common law trials with juries lasted about two days; there was a fear that if the trial lasted more than three days the jury would resent its complexity and visit their disapproval on whoever was thought to have caused this. In principle jury trial in civil litigation does much for the attainment of justice because it brings the views of the community effectively to bear on decision. So much for high principle; but I felt that if people were personally unpopular or members of an unpopular group this worked against them with juries and there were influences the other way. I well remember a case where an old soldier was injured on Anzac Day while riding as a passenger on a flattop lorry driven by another old soldier who had drunk rather a lot. In theory there was a strong defence – *volenti non fit injuria* – but no arrangement of available objections to the panel could produce fewer than four jurors wearing RSL badges. The plaintiff won.

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In recent decades advocacy has become less dramatic and more to the point. Cases are won as much by thought and preparation before the hearing as by conduct during it. Electronic searching has improved, simplified and complicated the means of research. The quality of the research is still in the insight of the researcher. Written submissions or speaking notes were once almost unknown and unwelcome. They are a great advance, the enemy of brilliant shallow extemporisations. There always were advocates whose preparation was well directed and exhaustive. There were also people whose minds were astonishingly well stored with cases on all points imaginable. Minds like these were particularly drawn to practice points. Passing observations interred in the *Weekly Notes* could be dredged up in great numbers with claims for their high authority. Much of the law about practice of the courts had a folkloric quality, largely dispelled by the *Supreme Court Act 1970*. Electronic searching can dredge up even greater masses of arguably or marginally relevant unconvincing material. The mind of the researcher is the real scene of action, the search engine is not, and heroic capacity for rejection is called for. In my impression there is now a stronger disposition of courts to expect the submissions of counsel and the legal principles contended for to make sense, to be credibly consistent with an overall system of justice. Arguments which might bemuse the hearer with detail but never achieve coherence seem to have become less common.

How difficult research once was! Research consumed endless time and required a wide table covered with volumes open and closed, old and new, five text books with insights cribbed from each other, a spread of volumes of the *English and Empire Digest* open at unlikely topics, a few volumes of the *Australian Digest* and a few additional annual volumes. There were law reports shedding yellow dust from decaying leather

bindings; scribbled notes of inspirations from friends who had not really thought about it; and trips up and down stairs to borrow someone else's books, perhaps in the owner's absence, in too much haste to sign them out. It was chaos. Was this decision reversed under a completely different name? Was such and such a nineteenth century judge not over-wise? Was such and such an eighteenth century law reporter reputed to be insane? Here is an academic journal article comprehensible only in its relentlessly critical tendency. The FW Maitland correspondence contains an elusive Cambridge inside joke about the leading case. But nowadays the search engine can print out a slightly off-the-point authority in the Old Munster Circuit before your critical faculty has lighted up. Progress cannot be stopped.

The courts have moved from a position where they rarely interfered with decisions of the Executive to the present position where judicial review is a large part of their business. In the 1950s federal constitutional litigation was repeatedly cast in the constitutional remedies of prohibition and mandamus, but in the state little was heard of judicial review, although there were well-established legal bases for the courts to restrain excesses of power, and Jordan CJ published a little pamphlet with all the case references. One difficulty was the procedural thicket which then surrounded the prerogative writs. Another was that judicial attitudes did not favour interfering with Executive action; there was an inappropriate extension of the separation of powers. In the intervening decades judicial attitudes have transformed themselves, procedural difficulties have more or less vanished and legislation has facilitated judicial review. There has been an enormous change in what the courts are practically able to do and are willing to do.

The world has turned itself upside down.