
Book Review

The Kerr Vision of Australian Administrative Law, Robin Creyke and John McMillan (eds.), Canberra: Australian National University Centre for International & Public Law, 1999

What do you call a somewhat disjointed, thoroughly thought-provoking, multi-authored thing? A collection perhaps? A compilation? A retrospective? *The Kerr Vision* is all these things and more. It is the first publication I have stumbled across which attempts to put into some kind of perspective a hallowed and somewhat arcane/well-hidden area of law. The fact that the basic principles of administrative law are not at once apparent to the conscious mind may indicate that the reforms of the 1970s were unsuccessful but, as is pointed out repeatedly in this publication, the change is much more subtle and powerful than has been recognised. The dialogue between the state and the individual must surely be one of the most important areas of law in any liberal democracy. It is this fundamental relationship that the editors have attempted to underline in this book. It is as if they are saying to the reader that Australia is a much different place now from what it might have been, but for the Reports of the Kerr, Bland and Ellicott Committees.

It is of course the former group, which is of greatest interest. Not only did it contain a future Chief Justice and an Attorney-General, but it was chaired by the man who stood implacably in the middle of Australia's greatest administrative nightmare. Well might the enthusiastic Leader of the Opposition in 1971 have regretted anything but faint praise for the Report of the Kerr Committee, let alone its implementation between 1975 and 1977. Moreover, it is curious that one of the current architects of change felt that the Report was "one of the most outstanding documents covering this particular subject which has been written in the common law world". It is this sort of historical insight that the editors initially seek to lead us back to, in order that the comments of the later authors may be put into some context.

In their introduction Creyke and McMillan set out the history of the reform of administrative law in the late 1970s and early 1980s and its justifications. The editors compare the assumptions underlying this period with the assumptions made in the current process of reform. A stark

contrast is drawn between legalism and administration, between the 'welfare state' and the 'lean government'.

Besides this highly readable introduction, of particular interest are the reflections of Sir Anthony Mason on the development of an Australian Administrative Law. Having been a member of the original committee, a Solicitor-General and the Chief Justice of the High Court which gave a stunningly expansive interpretation of the reforms, the views of Mason resonate with their customary *gravitas*.

At page 122, Sir Anthony confesses to his disappointment in the fate of the Kerr Vision. At the heart of this pain seems to be the failure of the systems of review to bridge the cultural gap between administrators and lawyers. The pride of place given to legal methods in the Kerr Vision of administrative law was axiomatic. A system of judicial review and quasi-legal merits review could hardly have been contemplated without legalism, though this seems to be the current intent. What Mason seems to be intimating in his comments is that, although the reforms have significantly altered the relationship between the citizenry and their representatives, bureaucratic culture has not changed. The remainder of Mason's comments relate to the current changes to administrative law. He criticises the admission of non-legal members to the Administrative Appeals Tribunal (AAT) on the ground that faults in the system are best solved by employing better qualified lawyers, not 'unqualified lawyers' (p.126).

The authors of the articles include current or former members of the judiciary, academia and the bureaucracy. The articles might concisely be described as 'The Vision, the Renovations and some Reflections'. In the section headed 'The Vision, The Plan, and the Structure' Lindsay Curtis appraises the achievements of the three committees, by reference to their precursors, the personnel, the actual recommendations, and their effects. Dennis Pearce catalogues the successes and failures of the Commonwealth Ombudsman, an office first proposed by the Kerr Committee. Mr Justice Lockhart of the Federal Court reviews the effectiveness of the structure of administrative law over the last 25 years, with emphasis on the Federal Court's administration of the *Administrative Decisions (Judicial Review) Act*.

In the section entitled 'Renovation, Redesign or Relaxation' the authors outline the future of administrative law. In his article entitled 'The Boundaries of Administrative Law – The Next Phase', Mr Justice Sackville of the Federal Court analyses the operation of the *Administrative Decisions (Judicial Review) Act* over the last 25 years and the impact upon it of decisions such as *Minister for Immigration v Wu Shan Liang*. In accounting for such examples of limitations on judicial review, His Honour addresses the tension between a policy of judicial restraint and the urge to come to a just result in each case. It is proposed that, in the face of a more restrictive judicial approach to such tensions, litigants will test the boundaries of administrative law by utilising less well known grounds of review.

Justice Kenny of the Victorian Supreme Court considers the implications of Chapter III of the *Commonwealth Constitution* for administrative

and judicial bodies exercising similar powers. Her Honour also points out the centrality of the Constitutional guarantee of judicial review of administrative decisions. Finally, Stuart Hamilton identifies four areas of change within administrative law, including privatisation of government functions, the role of public servants, continued dissonance between administrators and reviewers, and the continued expansion of procedural fairness and reasonableness.

In summary, *The Kerr Vision* provides an informative background to the current Australian system and makes pertinent comment on its present nature and future course. For the student it represents something of a *realpolitik* primer for Administrative Law and for the practitioner both an interesting historical read and an insider's handbook on issues in the area. I wouldn't buy this book, but I would definitely read it!!!

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