

LEGAL CENTRES

Community legal centres, steam trains and bourgeois management

One of the substantial achievements of community legal centres (CLCs) over the past 15 years, and particularly during their proliferation over the past ten, has been their ability to provide an alternative voice in any discussion about the provision of legal services while at the same time maintaining credibility with governments, bureaucracies and funders.

Community legal centres have scarcely ever been radical, but have always provided an alternative. They have never been revolutionary, but have always been innovative and groundbreaking. The extent to which they have identified clear national characteristics is worthy of discussion, as are the vexed questions of by what mechanism and through which body should (or could) community legal centres express a single voice on national issues.

At a more local and regional level, however, CLCs have successfully found a place in the provision of legal services and the formulation of legal service and justice policy. They have elbowed their way into a position next to and often well ahead of the private profession, whether the solicitors or the bar. Through careful and responsible management they have been able to resist assaults on their financial and management integrity, and they are now well accepted as a legitimate part of the legal service landscape in Australia.

All this is deserving of more detailed discussion. My purpose here is to speak directly to community legal centres and to prompt them to consider management and organisation — on an individual level if they wish, but certainly on a broader and representative basis.

To do so, I use as a prompt observations made in 1985 by a group of former community-based publishing workers: Charles Landry, David Morley, Russell Southwood and Patrick Wright, in their book 'What a Way to Run a Railroad: An Analysis of Radical Failure'. The book was published by the Comedia Publishing Group and appears now to be out of print.

The Railroad book is well known among community managers, and has

been cited many times by those who think there is merit in stopping and looking constructively and critically at some of the more usual ways in which the community sector operates. My experience with the Combined Community Legal Centres Group of New South Wales and the National Association of Community Legal Centres, neither of which has been in the least unpleasant and both of which have been interesting, led me to consider some broader discussion on the way in which community legal centres can and should organise themselves.

Personal expertise

Let me start first at a very localised level, relevant to the way in which we may well approach our own staffing and management. More broadly, however, I have seen this filter through to the way in which CLCs regard each other and choose their representatives.

[C]ertain political and economical perspectives have played a major part in locking the radical alternative movement . . . into its own ghetto.

What is noticeable . . . is the ignorance in the radical movements of how 'the system' works. On the whole, people in these movements know little of commerce, accounting and other business practices.

Ignorance about the workings of commerce has been rationalised on the grounds that, if you are doing something politically 'different' — e.g. constructing new organisational forms or developing the 'politics of process' — you do not need to understand the mechanisms of bourgeois business.

These attitudes are clearly at odds with the practical measures necessary if alternative or radical politics are to develop with any commercial success and competence. They are also far from 'radical' in origin, and it is surely unfortunate that their influence in the radical sector should be both so powerful and so unexamined. [Railroad book at p.29]

CLCs will, on the whole, be regarded as having been quite wise when it comes to dealings with the political structures and market forces within which we operate. This knowledge has, however, been concentrated in a rare

few people and we have been noticeably dependent on the nous of a few in order to maintain our standing. I do not know if this *is* due to an intellectual rejection on the part of most CLC workers of the need to understand political and market structures but, whether by decision or by default, I think that we are lacking in that essential comprehension.

Real politik

With the appropriate people, i.e. those with a sound understanding of the pragmatics of politics and power, comes the need for centres to accept the validity of some management principles. We have to be prepared to acknowledge that we do not yet set the agenda, and that we must do battle on the opponents' ground and according to their rules.

[T]he wholesale rejection of management theory . . . fails to disentangle the role of management as a necessary administrative function within any organisation, regardless of its political purposes, from the particular 'command-structure' form of management which has developed in traditional business organisations. The dominant view of management among the radical movements — as merely a command structure capable of passing orders downwards — represents a serious misunderstanding of how management works.

One crucial function of management in a capitalist enterprise is the clarification of organisational goals and the continuous development and monitoring of strategies to achieve those goals. The problem — of how to clarify objectives, create a strategy to carry them out and find the means to make them happen — is one that few radical organisations recognise explicitly; most just muddle through. The lack of strategic clarity can only be a recipe for disaster.

[I]t is crucial to come to terms with the fact that since we exist in a capitalist market place we must understand how that market works in order to survive and manage within it. Juggling the contradictions between commercial necessity and political ambition may be an uncomfortable experience, but the only other option is either collapse or an existence so marginal as to be irrelevant. [p.32]

The greater the number of legal centres the more difficult it is for the centres to duplicate at a representative level the close, consultative, 'collective' style of management they each use on an individual basis.

Horses for courses perhaps — centres need to identify the advantages of formal structures and hierarchies of decision making, and to consider the benefit of adopting management principles when organising themselves to deal with other power-players in the social justice system.

Process v outcome

While management principles of, say, determining objectives and formulating strategies can be accepted readily, our decision-making processes let us down.

The libertarian obsession with 'process politics' leads to an obsession with all aspects of internal structure and its working. As a result, the collective can often lose sight of its larger political objectives and stress the primacy of the form of organisation over the political objectives it was set up to meet. This often occurs in two stages.

At the outset the collective process is regarded as equally important to whatever political purposes the group might have. Later the process itself often comes to be seen as of primary importance in a way which is perhaps best understood as an over-reaction to the subordination of the individual to the outward political aim which characterises traditional party political structures.

Even though many people in such collectives will readily admit that the process is inefficient and messy, it is nevertheless often held to be more 'democratic'. From this position it is a short step to claiming that the process is morally superior to the 'bourgeois' way of doing things and therefore cannot be called into question.

[A] problem is the frequent lack of clear discussion over policy options: often the very notion of being clear about what your policy objectives are is tainted with all the evil connotations of machismo and 'power'. A polarised discussion will be presented in such a way as to blur differences. Moreover, this whole process (especially when merged in a 'consensus' decision-making procedure which excludes the possibility of decision by majority vote) encourages people to say similar sounding things when they actually mean the very opposite. Equally bad, it often leads to a use of language that serves to obscure sharp differences of opinion so that at least the work at hand can carry on.

The democratic impetus behind the notion of collectively discussing and deciding things is certainly important, but in order to survive, an organisation must be capable of taking key policy decisions quickly when a situation demands it. Too often the commitment to 'consensus' pre-empts that possibility. Different situations demand and allow different decision making procedures, and the 'principled' adherence to (a collective/consensus) method in all situations is a recipe for disaster. [pp.37-40]

At local, state and national levels, important policy decisions with urgent ramifications for community legal centres are being made constantly. Centres rarely wish to breach the collective solidarity and are, in any event, philosophically committed to the collective democratic process in responding to external issues. This is slow and often inadequate.

As CLCs become a more substantial and respected part of policy debate in Australia, and as CLCs proliferate and diversify, fundamental decisions about the continuation of CLCs as a collective organism need to be made. The imperative of consolidating a funding base premised on the collective identity of CLCs militates against CLCs splitting and going their own way. It may be that some form of executive decision making through elected representatives with delegated decision making powers is becoming a necessary consideration for CLCs.

Current issues

The points above raise, I think, the following issues for CLCs when organising themselves on a broader, representative basis:

- the need for swift, decisive representative decision making processes;
- the need to understand and use principles of organisational management;
- the need to recruit and train people who are familiar with and able in the commercial and political domains.

SIMON RICE

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Legal services overturn centuries of history

For hundreds of years it has been the rule that only barristers and solicitors can represent people in court. However, in Victoria, after discussions with Family Court judges and the Chief Magistrate, Springvale and Monash-Oakleigh Legal Services have convinced the judiciary to allow court appearances by Monash University law students working at the legal services.

Selected students, working under the supervision of solicitors, can now appear in the Family Court and Magistrates' Courts for clients who cannot afford representation or are not entitled to legal aid. The benefits to the students, clients and courts, are significant. Students who are already working as 'solicitors' in the legal services, handling files and preparing cases for hearing, can derive considerable satisfaction from presenting the case. The benefit to the clients is obvious, as they would otherwise be unrepresented. The courts derive the benefit of having an application made by someone who is articulate, well prepared and thoroughly familiar with the details of the case.

Guidelines have been set down by the Chief Magistrate and the Family Court. Student appearances will be limited to unopposed and consent matters in the Family Court, and guilty pleas and adjournments in the Magistrates' Courts. Students will appear with a supervising solicitor to assist them if necessary. The clients have to agree to the student appearing for them, and to fully understand that the student is not a qualified lawyer.

This new right of appearance is a major step in pursuing the rights of those unable to afford legal representation and is also a very positive addition to the practical training of law students.

Ross Hyams

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