

'Some things change, some stay the same'

David Brown

*From Legal Service Bulletin
to Alternative Law Journal.*

Casting around for a catchy song line to capture the mood. Preferably something from Talking Heads, to signify quirky, or Public Enemy, to signify oppositional, or Archie Roach/Paul Kelly to signify the local. Or Aramaieda or Lucinda Williams to signify that my musical taste runs beyond the male train. But the first bar that popped into my head was from the Pretenders 'Hymn to Her' (1986). Not quite what I wanted, hardly hip or hop, could even be on the dreaded MOR playlists that hog the radio, youth dread: the 'classic' hits. Usually heard at funerals along with Jackson Browne's 'To a Dancer' for those of the 68 generation who slipped off the adventure highway, or met Dennis Hopper along the way. But Chrissie Hynde has street cred. And one of the new tropes is to pay attention to the surfaces, the slips, the mangled fragments that get thrown up spontaneously. Maybe

she will always carry on
something is lost, something is found
they will keep on speaking her name
some things change some stay the same

wasn't too far off how I felt after a week spent reading through the last ten years *LSB/Alt.LJs*. A decade on since the 1984 publication *On Tap, Not on Top: Legal Centres in Australia 1972-1982* (dreadful title) in which my assessment of the first 10 years of the *LSB*, 'Critique of the *Legal Service Bulletin*' appeared.

It was an interesting exercise in various ways. I was able to establish that I still had the whole set with no missing issues. Only possible by keeping them at home, otherwise they would be in student households all over Sydney. And I was able to check my set of *Aboriginal Law Bulletins* along the way, looking good. The fliers and leaflets that drop out of back issues trigger memories of conferences attended and missed, meetings you meant to go to but didn't and used to feel guilty about, and books you meant to order but are now glad you didn't as you managed to score an inspection copy. You haven't got room for many more books anyway, indeed Berkelouw's second hand book shop beckons, calling up sacrilegious thoughts of rendering unto them that set of *Theories of Surplus Value* and associated classics which don't seem to get much of an airing these days. What with spending most of your time filling out questionnaires to account for what you do in the spare moments when you are not filling out questionnaires on how you spend your time, you haven't got any time to read anything much other than CD Rom and Internet menus of mega-mega-mega bytes of information that is available should you ever have time to scroll through it.

Continuity and change, 'some things change some stay the same', an archive of a movement, these are some of the impressions I was left with, together with a sense of personal and political shifts over the decade in question. I will try to sketch these impressions briefly, but without attempting a wholesale review in the serious and scholarly mode I attempted last time.

David Brown is Associate Professor of Law at the University of New South Wales.

'They will keep on speaking her name': from Legal Service Bulletin to Alternative Law Journal:

As much as we want to believe that names are somehow attached to the people, places, and things they identify, all our etymological efforts pay off with only the loosest elaborations of ordinary fictions: as John Stuart Mill argued, Dartmouth may have been a place in England at the mouth of the river Dart, but when the river changed course, the place remained properly called Dartmouth even though it had no further relationship to its earlier connotative meaning.¹

For those like myself not involved in the network of editorial collectives the first notice of the change in name came in an Editorial in the December 1991 issue. It said in part:

The change is designed simply to reflect what this publication has been for a long time and not to signal any change in focus, content, direction or philosophy. The goals of the publication can be broadly defined as:

- the promotion of social justice issues;
- critique of the law and legal system
- the development of alternative legal practice
- the development of community legal education; and
- the support of law reform activity

The Editorial Committees believe that *Alternative Law Journal* communicates these goals more accurately to our readers and subscribers . . .

The collective still strongly supports the legal service movement and the name change in no way represents a move away from that position. It reflects a focus on a broad range of critical issues relating to the law, including legal aid and the legal service movement.

The Editorial 'Time for a Change' by Beth Wilson and Ian Freckelton in the inaugural issue under the new name in February 1992 stated:

Our intention is to highlight concerns generally ignored by mainstream law journals and to provide an alternative perspective. Very often it is the disadvantaged, the 'underdogs' and the victims in our society who reveal the most valuable insights into the way we structure our world and set the agenda for reform . . .

In the Australia of the 1990s the alternative voice is being heard less and less in the clamour of economic rationalism, law and order politics, contracting media ownership and desperate search for employment. The *Alternative Law Journal* plans to maintain the unique forum developed by the *Legal Service Bulletin* for views which might otherwise be drowned out.

Little to object to here in either the goals or the sense of continuity and commitment. Change of name as a form of more accurate description, a sort of Trade Practices rectification of misleading labelling, and Alternative as an expression of 'the alternative voice'. Opinions no doubt vary on this but I rather liked the mundane, stolid unpretentiousness of LSB. A strictly literal reading by insiders would of course tie the 'Legal Service' to the legal centre movement and Fitzroy Legal Service specifically and 'Bulletin' to a sort of newsletter information service. But over time such literalist connections weaken for many and a range of associations might be conjured up. Like a loyal and dependable friend, part of a loose network, not to be cancelled, useful source for (up-to-date-but-not-too-long-to-run-off-and-not-too-complex) material for students, and so on. 'Alternative' invokes its own form of connection, to the era of the 1960s and 1970s when all manner of cultures, lifestyles, therapies, movements, and ways of being in the world paraded under the banner of the 'alternative', the 'counter-culture'. Posed always against the dead hand of conformity, traditional-



ism and the 'mainstream'. This is a foundation editor of the (now defunct) *Alternative Criminology Journal* calling.

Alternative not only invokes the 1960s and 1970s but also constructs a discursive position as outsider, oppositional in stance and voice. Apart from the obvious problems involved in homogenising 'the' alternative voice, the 68 generation legal service 'alternatives' are not quite so clearly the outsiders they once were. Some are judges, magistrates, politicians, heads of statutory authorities and law reform commissions, in senior positions in governmental bureaucracies and non-governmental agencies, deans and professors in university law schools. This does not mean 'incorporated' or 'sold out' nor that critical views and aspirations have evaporated. But it does suggest that the political and legal culture of the 1990s within which we work is somewhat different to that of earlier decades and that the posture of outsiders is somewhat less plausible. The mainstream media now frequently refer to characters such as Tasmanian Senator Chris Miles as 'violently anti-homosexual', 'virulently homophobic', others such as Bronwyn Bishop, Arthur Tunstall, Bruce Ruxton and their ilk are often dubbed 'extremist'. A satirical piece by Richard Glover in the *Sydney Morning Herald* recently conjured up a meeting of Bronwyn Bishop, Fred Nile, Bruce Ruxton and Arthur Tunstall in Trades Hall in the 1950s at which as Communist Party of Australia members they agreed to go into deep cover for decades so that they would be well placed to bring the ideas of right-wing conservative individualism, anti-homosexuality, jingoistic nationalism and racism into disrepute. There seems to have been a change in casting at the playhouse of the lunatic fringe.

'She will always carry on/we have survived'

In an article in April 1993 Simon Rice referred to an informative little English publication called *What a Way to Run A Railroad: An Analysis of Radical Failure*.² In a sobering introduction the authors provide a partial catalogue of 'radical organisations and publications which have closed down or disintegrated into inactivity over the last few years' (p.1). The list runs to 76. A similar exercise could be undertaken in Australia covering the last decade. The demise of *Australian Society* and *Australian Left Review* spring to mind, together with the dissolution of the Australian Communist Party.

On the other side of the ledger we have new publications such as the impressive *Feminist Law Journal*, *Polemic*, and the *Gay and Lesbian Law Journal*. And as Keith William's useful survey, 'Legal Centres Across Australia' in the December 1992 issue reveals, where once there was Fitzroy Legal Centre there are now 104 community legal centres nationally. While always facing the threat of funding cuts, especially under a prospective Coalition federal government prior to the 1993 election (see 'Community Legal Centres: National Overview 1992' in December 1992) the community legal centre movement which spawned the *LSB* hardly conforms to the 'radical failure' scenario of *What a Way to Run a Railroad*. The Australian legal centre movement, like the federal ALP and unlike the British Labour Party of the 1980s, has not followed the *Life of Brian* script of radical purity wherein survival and expansion is viewed as capitulation to the forces of the capitalist/welfare/corporatist state and therefore a signifier of failure; success being signified by collapse.

Not only has the *LSB/Alt.LJ* survived and prospered but my comment in the earlier review is as relevant as ever:

all these activities have been carried out at a high level of competence and reliability. The *LSB* has been remarkably free from delays, poor production, the lurching from issue to issue, the chaotic and inefficient administration of subscriptions, etc. that characterises so many other publications of a progressive nature. Production, printing and layout standards have been high. [p.40]

All the multitude of people involved in the production of the journal over the last 10 years, and perhaps especially Editorial Co-ordinator, Elizabeth Boulton, deserve warm congratulations for their hard work, professionalism and high standards.

Uniformity, change and difference

In a more critical tone my last review argued that there tended to be 'a uniformity of style, language and format' which 'often serves to obscure differences, and thus debate, serves to construct false unities and identities' (p.44). Similar criticisms could still be made, although there have also been shifts. There does seem to be a greater mix of article lengths and styles, with the introduction of new and differently targeted columns such as Sit Down Girlie, Legal Education, Cross Cultural Issues, Legal Centres, and others. Layout is crisper and clearer. A minor gripe: I think the persistent use of pseudonyms tends to undermine the liveliness and force of 'Sit Down Girlie', as though no one is prepared to stand behind the comment, thus marginalising it as against the rest of the journal. Even the daily press require letters to be signed. In terms of overall subject matter the focus is still resolutely Australian, continuing the initial concern with legal aid and the delivery of legal services, community legal centres, welfare rights, criminal justice issues etc. The growth areas have tended to be environmental law, human rights and women's issues.

There is continuity in the provision of basic information, new developments and network communication. But the trend to more of a mix with some longer articles allows scope for more substantial pieces and complex *argument*, opening a space for the 'intellectual tension' argued for by Gill Boehringer and Chris Ronalds in 1983.³ Although the extent to which contributors have actually utilised this space to articulate difference and to challenge taken-for-granted assumptions and unities such as civil libertarianism, and what it means to be 'progressive', is a moot point. For example while feminist-influenced work has increased its representation in the journal significantly over the last decade it has perhaps in its intellectual heritage drawn mainly on one particular stream of McKinnonite legal femi-

nism, at the cost of the richness and diversity available in other streams of feminist analysis. The force of this rather single-minded approach is exemplified in an extraordinary interview with Jocelynn Scutt, usefully published in *Polemic*, a lively new journal put together by law students from Sydney, UNSW and Macquarie Universities.

Katherine Mogg [Interviewer]: Do the ideas posited by postmodern feminists help in that they focus on the interaction of men and women in history rather than dividing and separating the two so that there can be only the history of men and women or men with women tacked on?

Jocelynn Scutt: Well I'm not a postmodernist. I really can't be bothered with Lacan and Derrida and all that kind of thing, because they weren't very nice men. French feminists who are postmodernists are part of that whole problem, because I think that whole movement has grown out of the adulation of men. They all, figuratively or literally, were sitting around the feet of Lacan, adulating him, and he's the one in the end who strangled his wife.

And Foucault killed his lover, and Derrida did something horrible to women (I've forgotten what it was). I don't know that they're admirable characters. Some people would say just look at their theory, but then do they actually say anything new? I think a lot of it is derivative. And why should we get involved in a whole lot of obscurantism? In the latest issue of the *Feminist Law Journal* there are two articles by men — why should they have articles by men, I ask you — and then it's got all this stuff about Lacan and Derrida. I would have thought that the whole aim of being a feminist lawyer would be to make the law more understandable, so I'm not in that camp at all.⁴

Is that B.A. Santamaria clapping? One doesn't have to be enamoured of postmodernism or blind to its obscurantist tendencies to acknowledge certain problems here. For a start Lacan didn't strangle his wife, that was Althusser. A minor point perhaps, ask Lindy Chamberlain. 'Foucault killed his lover'? A little more plausible than just nominating the wrong person but highly contentious nevertheless.⁵ Second, there may perhaps be a problem with evaluating someone's work output in terms of their moral character or alleged biography. Third, feminism for women only — might be a tad limiting.

My point here is not limited to feminism, the aim being to highlight a certain impatience with notions of genuine pluralism and diversity, a hostility to challenges to the taken-for-granted nature, the self evidence of 'what we all know' to be the project of social justice. Precisely the strengths of varieties of feminism has been to question verities of all persuasions, left/right/feminist, to open up rather than close off challenge and to promote reflexivity, articulate difference and constitute new political spaces and subjects.

State/National

While responsibility for editorial co-ordination and production has remained in Melbourne, at Monash Law Faculty, the devotion to State Editorial Committees which started in February 1982 has continued with all States and Territories represented and responsible for editorial content in relation to nominated issues. What this means in practice tends to vary. Certain State editorial committees, perhaps NSW and Queensland in particular, tend to produce issues with strong and coherent State themes, often planned well in advance with themes advertised and contributions invited. Some of the other State-edited issues tend to contain a more eclectic mix, starting with State-oriented articles but also containing a range of other pieces according to whatever has been contributed, with this style tending to be fleshed out with predominantly Victorian-oriented material.

Both these tendencies have advantages. The more eclectic, less thematic approach has the advantage of making the journal open to a wide range of contributors and topics. Importantly the journal is often the starting ground for student contributors. Another advantage is that articles can be published with comparatively little lag time as against other journals, allowing greater topicality and urgency. The strength of the issue will then depend largely on the strength of the articles received or in the pipeline, as reshaped in the editorial process. The more organised and thematic tendency gives a greater sense of coherence and linkage between pieces on different topics, provides greater scope for the Editorial Committee itself to suggest or commission topics/authors and provides authors with more time, direction and assistance. This is of advantage where events in a particular State have an especially conjunctural character or ethos, such as after a change in government as occurred in NSW in 1988 with the new Coalition Government starring in NSW Inc, or as is arguably the case now in Victoria, what Arie Frieberg describes as a messianic State. Indeed a comprehensive Victorian round-up of the political and legal changes under the Kennett Government is perhaps overdue (for partial roundups see June 1993 and April and August 1994).

A variant of the thematic issue is to have a non-State theme, such as occurred with the youth (June 1987) medico-legal (June 1989), scarlet (February 1990), international (April 1990) and environmental (August 1991) issues. This provides the advantage of greater organisation, commissioning, advertising and preparation time as well as providing a useful national roundup picture. This more specialist, issues-based rather than State-based approach might be tried more often. For it encourages both a national tendency by inviting specific State-based responses within a thematic framework. It might also perhaps create opportunities to promote the journal to a particular constituency of non-regular readers, at least in relation to the particular issue.

Readership market

When considering such matters it would be useful to have a clearer idea of just who the *Alt.LJ* readership and subscribers are. When Beverly Duffy was conducting her research into the extent to which Sydney defence lawyers were aware of and were using the NSW DPP's Informer Index (June 1994) she found not only were they not aware of the index, but also many were not aware of the journal she was going to publish the results of the research in, the *Alternative Law Journal*, which was, if anything, even more depressing. We joked about publishing a short piece for the *Alt.LJ* entitled 'an essential publications resource kit for criminal lawyers', but catch 22, if they did not read the *Alt.LJ* anyway it would not be much use. Debates as to targeting specific or niche readerships are difficult to conduct without basic information which can then be fed into the debate and disseminated to readers themselves. The Sydney Editorial Committee set out a number of interesting issues and suggestions in December 1993, including a clearer definition of purpose(s), information as to the target audience, whether to conduct readership and non-readership surveys, segmentation and targeting strategies, and promotion and distribution methods. It bears further consideration.

In case this smacks of putting the market before the message I would argue that it merely provides a more accurate information base from which to conduct discussions and make calculations as to desired aims and objectives and the form of the relationship between editorial networks and constituencies of readers — actual and prospective.

Directions

I doubt that the key issue here is the desirability of a 'continuing fundamental critique of the legal order' as argued out between Gill Boehringer/Chris Ronalds and Jack Goldring in 1983, nor its derivative red herrings 'revolution/reform', 'theory/practice'.⁶ Nor am I convinced that the main heads of my critique of 10 years ago:

- the resistance to theory
- avoidance of key debates: the rule of law and the state
- the evasion of popular cultural forms
- questions of language and style
- social democracy, legal domination and civil liberties

are quite so pressing or, so helpful in expressing future directions.

That is not to say that they have disappeared as issues. I have already touched briefly on resistance to theory, in the form of the need to question the assumed unities behind notions such as civil liberties, feminism, human rights etc. obscured in a certain uniformity of language and style in many journal contributions. My earlier plea for greater attention to the popular culture has gone largely unrequited, although major advances have been made in the education section in providing materials which might be used in legal studies curricula in schools and Redfern Legal Centre Publishing's *Streetwise Comics* have been a great success. But there is still little recognition of the need to develop forms of 'crossover' or 'fusion' practices from the legal sphere into the popular cultural realms of the soap and the women's magazine. Practices which take account of the 'government at a distance' strategies through which specific populations are increasingly governed less by way of social control and more through active popular investment in forms of techniques of the self such as diet, exercise, education, the cultivation of knowledges appropriate to being a good parent, consumer, citizen. There is also little evidence of 'crossover' in the sense of styles and forms other than the strictly objective, rationalist and linear format of the 'article' (what about the odd poem, short story, photo-montage, different ways of telling a story or conveying a message?).

Again I think there *are* key debates that have been given insufficient attention, but these are not really captured in the rather stereotypical form of 'theories of the state and the rule of law'. Thankfully the days of attending meetings or conferences and hearing speakers denounced for not having articulated a (or an incorrect) theory of the state, along with 47 other instances of manifest failure, are over. With the intellectual collapse of Marxism as a doctrine of political emancipation, the demise of the Soviet Union and most actually existing communist regimes, the tearing down of the Berlin wall, the dominance of right wing economic rationalist governments in most of the Western democracies in the 1980s, and the rise of forms of religious and nationalist fundamentalism in many areas on the globe, social democracy sounds rather less like an epithet to be enunciated in a sneering tone and more and more like something worth defending and extending.

The areas of debate the *Alt.LJ* and the different constituencies of its readers might usefully consider promoting over the next decade broadly concern the rapid and far reaching changes, local and global, that are taking place on the eve of the second millennium. They involve consideration of significant geo-political shifts, the escalating internationalising effects of the revolution in information technology, and the forms of national,

regional and international institutions and relationships that will emerge in and through these developments.

For example while there have been a couple of thoughtful contributions to the current debate over republicanism in the pages of the journal (Kathe Boehringer, December 1991; Pat Cavanagh, October 1993), this is remarkably little for such an important issue. Similarly while there have been a range of commentaries on *Mabo*, a sustained examination of notions of sovereignty and indigenous rights has yet to clearly emerge. Similarly, although there have been some interesting contributions to the internationalisation of Australian law, through the application of treaties and human rights concepts, there is much scope here for more sustained work which tries to indicate future directions, trends and problems. Again, while there have been useful commentaries on individual decisions there have been few overviews of the shifting jurisprudential bases of High Court decision making, the increasing 'constitutionalisation' of many areas of law as implied rights to free speech, a fair trial and so on are constructed out of the Constitution (for one see Michael Kirby, 'Lionel Murphy and the Power of Ideas', December 1993).

Legal institutions, culture and practice are changing rapidly. Again journal contributors have helped readers grapple with these trends, and Francis Regan's work here perhaps deserves special mention (see for example October 1990, October 1991). But the enormity of changes in the area of what it is now fashionable to call micro-economic reform, what we used to call a political economy of the legal profession and legal markets, has hardly been adequately surveyed in its pages.⁷ As in the legal profession and practice so in the universities the teaching of law is undergoing significant changes with moves to national admission standards and a national curriculum, increased awareness of gender and race issues in curriculum and teaching, changes in fee structures and admission requirements, the emergence of a number of new law schools some of which are positioning themselves in particular niche markets, a significant expansion in the numbers of law graduates nationally, fluctuating job prospects, and so on. Regionalism and internationalism are now more important than ever in legal and educational markets. The university environment itself has changed markedly since the Dawkins era. Most legal academics are now out on a different highway, 'looking for adventure' but not on harley's with ape-hanger handle bars but glued to their Internet computer screen in offices or homes by way of modem. Many universities have opened up postgraduate courses; there has been a scramble for overseas students and particularly for the Asian market. Asian law courses and centres abound as Australia is repositioned economically and culturally in the Asian region. Law students in many universities now are developing computer research skills far in advance of most established lawyers in practice. Plenty of action but little reflection on some of the implications these developments might contain and how they might be connected with notions of human rights, social justice and law reform.

These are perhaps some of the sorts of issues, the picking of trends, cataloguing but also predicting and attempting to influence, the political, legal, social and cultural context within which we will welcome in the third millennium. It is not a case of substituting these issues for the traditional concerns of the journal or of neglecting the 'alternative voices' of the 'underdogs and the victims of society' the 'black Australians, prisoners, young people, prostitutes, and the injustices implicit in our responses to those unfortunate enough to have contracted the HIV/AIDS virus' which in the Beth Wilson and Ian Freckelton

Editorial 'Time for a Change' (February 1992) are invoked as the line of continuity between *LSB* and *Alt.LJ*. Indeed in some areas such as deaths in custody and police killings (with the exception of stalwarts such as Jennifer Searcy and Jude McCulloch) I would argue that the journal should have 'turned up the radio/I can't hear it'.

For these voices need not be 'drowned out' but might rather be brought in from the margins and amplified, through taking advantage of the proliferation of surfaces and modes of articulation thrown up in the new communications culture. The point is to understand and predict the trends precisely so that the various constituencies of legal workers (broadly defined) which the journal has serviced and might service can position themselves flexibly in a rapidly changing context so as to act more effectively as transmission agents for the varied interests and voices they relay. Putting these 'underdog' voices into circulation is no longer, if it ever was, best achieved by crying in the wilderness or adopting the stance of outsider. For amelioration of the conditions faced by prisoners, street kids, indigenous people, depends not on the constant affirmation of their undifferentiated victim or outsider status but on their reconstitution as responsible political subjects within an inclusive form of social democracy. A social democracy that acknowledges and encourages diversity and difference and does not use it to exclude and stigmatise, to mark out social division. A social democracy that recognises and attempts to redress its own shortcomings and the substantial differences in life chances available to its citizens.

Flexibility and innovation might well be more useful states of mind in which to negotiate these developments than the heritage defensive set and language of resistance and struggle. Time to get out on that highway, a new millennium beckons. See you in 10 years time, in the year 2525, sorry 2004. 'She will always carry on . . .'

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