

# FROM MARGINAL TO MAINSTREAM

## How social change compels law reform

Barack Obama's election as president of the United States resonated worldwide. The enthusiasm with which this news was received seems to indicate that the Age of Supremacy is not completely over for the USA. While there is ongoing uncertainty about prevailing economic conditions, the election of Obama signals hope for those whose focus remains on issues of social justice. If the president-elect can focus his government back onto these issues, it may be that the US remains globally central for longer than previously thought.

The administration of George W Bush was categorised by systematic and continued abuses of human rights, as well as flagrant breaches of international law. The United States, along with Russia and China, still has not signed the International Criminal Court Statute of Rome. Why would it when, to do so, would have significantly limited its power to engage in the so-called 'war on terror'? Adherence to an internationally approved process for the examination and trial of those accused of 'terrorism' (narrowly defined as acts alleged or committed against US interests by certain 'rogue' nation states) was not part of its agenda. In fact the process of examination of 'enemy combatants' outside the rule of law was rebuked as unlawful by the United States Supreme Court, not once but twice — in 2004 and 2006. Only following the enactment of the *Military Commissions Act of 2006* did the Bush military tribunals for foreign terror suspects become 'legal'. Even then, the Supreme Court held earlier in 2008 that detainees were still entitled to exercise their rights of habeas corpus pursuant to the *United States Constitution*. As we have seen at the atrocity that is Guantanamo Bay, sovereign nations with existing human rights laws are still capable of committing human rights abuses. The very same fears that the United States expressed when it unsigned itself from the ICC in 2002 — that its citizens would be subjected to judicial proceedings on purely political grounds if it signed up to the Statute of Rome — were those used in justifying the continued detention of non-US citizens without charge by US authorities.

At home, the US administration was found seriously lacking in delivering to its own. The supposedly richest nation on earth was unable to deliver emergency supplies and relief to thousands of stranded citizens following the devastation of Hurricane Katrina. Ultra-conservative policy saw the panning of potentially momentous scientific breakthroughs such as in stem cell research, or policies on climate change.

The election of Barack Obama as president promises to end this period of conservatism. As the focus of

this edition of the *Alternative Law Journal* demonstrates, issues that start off at the periphery often end up in the centre. From slaves to freedom fighters to world leaders, the advent of the first African American president gives us pause for thought about the hope given to us all by the vigorous pursuit of human rights. But, as Obama himself acknowledged in his acceptance speech, his election is the beginning of the journey. Now placed at the centre, can this symbol of the potential of human rights deliver the reforms that are needed for America and the world? With control of Congress, and the law-making potential this provides, can Obama in any way change the direction of his country?

The current edition of the Journal focuses on others who still live on the periphery — prostitutes, terrorist suspects, adherents to Shariah law, prisoners. How has the law contributed to the marginalisation of these groups, and what role does it have in protecting them, or bringing them in from the margins? Why is it that the laws of prostitution require such political scrutiny, or do the laws of abortion generate such fearsome debate? What is it about our nature that leads us to presume that 'different' equates to 'dangerous'? What is it about our changing global environment that eventually leads us to embrace what we previously misunderstood, and probably criticised?

It was a pleasure to revel in the inspiring rhetoric of Obama's acceptance speech, but the obligation to address the issues facing those who exist at the periphery of our society continues unabated.

RUTH BREBNER and ALEX REILLY