

BOOK REVIEWS

Review of Hugh Emy, Owen Hughes & Race Mathews (eds), *Whitlam Re-visited: Policy Development, Policies and Outcomes*, Leichhardt: Pluto Press, 1993. pp 1-261. \$24.95.

As with those old enough to remember John F Kennedy's assassination, most of us can remember where we were or what we were doing at the most significant moments of the rise and fall of the Whitlam government. As I was out of the country on 1 November 1975, my memories are of Election day in 1972. As campaign director for an electorate south of Fremantle the last two hours of polling were spent drifting up through the southern metropolitan area of Perth to Party headquarters bearing glad tidings based on Eastern States scrutineers and radio reports to the faithful at polling booths along the way. Many of these were fellow students and young people who were draft resisters contemplating with relief the end of an unwanted career as outlaws. Though I have since had a political career which has seen me involved directly in some of the events and policy decisions incorporated in the conference papers on which the chapters of this book are based, I found oddly that the one I most identified with was essentially a postscript by Owen Hughes. Hughes describes the events from a youthful, West Australian perspective that reminded me very much of my own sentiments at the time. To me then Whitlam and his government were larger than life. The removal of all illusions that comes with years in office, and seeing the protagonists of those days in that most human form which comes with continued life after defeat, has not dimmed that youthful impression.

The contributors to this book are mainly participants in policy formulation in the Whitlam era either as members of government, staffers or policy advisers. Their focus is in part their own creation. Curiously the contribution that most strays from the *Whitlam Re-visited* theme is that of Gough Whitlam himself. Whitlam's contribution critiques the Hawke/Keating handling of human rights issues. He eschews any formal opportunity for self-indulgent reminiscing and demonstrates emphatically the validity of the argument made in different ways by the other contributors, Race Mathews, Graham Freudenberg and Clem Lloyd, that however he is viewed as Prime Minister, Whitlam is the greatest Leader of the Opposition this country has ever had.

It is a common theme among all contributions dealing with policy matters, but particularly those by Joan Kirner and Jean Blackburn on education, Clem Lloyd on defence, Dick Scotton on health policy, and Tom Roper on social policy, that Whitlam came into office armed with detailed policies based on careful social,

economic and political analysis. That analysis legitimised those policies despite their subsequent brutalisation in the Senate. As Freudenberg points out, central to Whitlam's strategy as Opposition Leader and PM was his concept of mandates:

The most conservative interpretation of the meaning of the mandate is that it is no more than a general mandate to govern for a prescribed period. Whitlam expanded the idea of the mandate to new boundaries. This is part of the reason why all later Oppositions, State and Federal, have felt it necessary to produce elaborate manifestos well before [Election day], itself a significant change in the Australian political culture. (p 205).

Whitlam used both the concept of mandate and the establishment of shadow spokespersons to control policy development within the Party. His own encyclopaedic knowledge caused Race Mathews to write, "One of the reasons why working for Whitlam was exhilarating was the certain knowledge that there was nothing you could do for him that — given time — he could not do better for himself" (p 14). His use of the Parliamentary process, through questions on notice in particular, meant the Government's departments were his own. The massive intellectual dominance achieved by Whitlam as Opposition Leader gave his policy life beyond its destruction and ultimately his own by his enemies in the Senate. Hugh Emy points to the greater care taken by the Hawke and Keating governments with the Parliamentary process but, as Dick Scotton elaborates, no Parliamentary, political or legislative tactician could match the skill shown by Whitlam and his Ministers in pushing health reform through the Parliamentary and electoral process.

Tony Blackshield attests to this dominance in a different way in his re-visiting of the Whitlam government's legal reforms. He revises his own opinion that much had been in train independently of Whitlam, perceiving on reflection a more pervasive Whitlam hand before, during and after the period of the Whitlam government. He sees "a period of extraordinary ministerial energy and prolific policy initiative which in some ways changed our society forever and in other ways acted as a catalyst for further changes to follow" (p 99).

On law reform issues, in health, education, foreign affairs, social policy and aboriginal affairs, the subsequent governments maintained large portions of Whitlam's policy and enacted much they had rejected when in Opposition.

A sub-theme of most contributors to *Whitlam Re-visited* is whether or not Whitlam's government was a watershed. Virtually unanimously they agree it was. Readers are repeatedly invited to recreate the atmosphere of a time in which every conceivable area of domestic policy threw up inadequacies in social provision and the fundamental assumptions of foreign policy had collapsed. It is a moot point whether or not the problems would have been addressed by others. The fact is that no one else was addressing them.

The most interesting debate between the contributors is on the extent to which the Hawke/Keating governments of the 1980's and 1990's continued Whitlam policies, modified them beyond recognition or repudiated them. Clem Lloyd's contribution on Defence is most clear cut in perceiving continuity. All governments have pursued strategies of self-reliance and continental defence since the Whitlam/Barnard re-orientation. I would be more careful in describing both Whitlam's strategies and subsequent strategies as "continental defence", but his basic point is

sustained as is his final judgment: "The quality of this Australian Defence Force and the increasing tranquillity of its administration in recent years can be traced back directly to the fundamental re-structuring which was initiated in December 1972" (p 228).

Peter Karmel's contribution on tertiary education argues more discontinuity than continuity. Whilst pointing to the difficulty of comparisons drawn decades apart in periods of substantial social and economic change he nevertheless argues that contemporary policies "contrast greatly with those of the Whitlam era" (p 183). Whitlam's policies were essentially funding related. Those of the Hawke/Keating government are more directly related to the "activities and inner workings of the institutions" (p 183). In that regard he believes that recent Labor governments have pursued an excessive emphasis on education as an instrument of economic policy.

The most impressive contribution contrasting the Labor governments of yesterday and today is Hugh Emy's political overview. He judges that:

The social program of the Whitlam Government was a substantial success. The type of social democracy it offered has been electorally attractive. If there is now to be a reaction to the perceived economism of the Hawke-Keating Governments, it should not be allowed to drive the party back towards the uneasy combination of conservative Labourism and a rather rigid form of Socialism... The better alternative is to work out a more constructive *rapprochement* between Whitlamite social democracy and the more recent focus... on building a more durable, competitive market economy, one capable of sustaining Australian living standards in the next century. (p 17).

Whitlam Re-visited belongs on the bookshelves of all students of Australian politics. It would have been even more interesting if it was the product of a twentieth anniversary conference on the defeat of the Whitlam government rather than its victory. History never repeats itself, but the Parliamentary circumstances confronted by the Keating government now are more akin to those confronting Whitlam than at any time in the previous 10 years. The Senate menaced all Whitlam's reforms, forcing his government to operate as much as possible outside Parliament and when in Parliament to view itself as laying down historical markers for what ought to be. The Hawke and Keating governments have to this point been able to undertake a more leisurely Parliamentary life. The legislative program has swollen in recent years. However, since the 1993 Election the question of whether or not a piece of legislation will pass the Senate in acceptable form has become a salient one for Cabinet.

The contemporary political importance of this book may well be its indication that there is value in a socially, politically and economically correct course whatever its legislative fate. As Joan Kirner wrote in her contribution: "[O]ne can hardly imagine a conference of this kind being organised in 1995 to look back on the twentieth anniversary of the election of the Fraser Government and review its achievements" (p 2).

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Review of Archie Zariski (ed), *Evidence and Procedure in a Federation*, Sydney: Law Book Company, 1993. pp i-xxv, 1-231. HC \$65.00.

This book is a record of the proceedings at a conference which the Australian Institute of Judicial Administration and the Law Council of Australia sponsored on 9 and 10 April 1992 in Melbourne. It is broadly divided into two sections dealing with evidence and discovery.

Evidence

As the title indicates, the book emphasises the issues about evidence and discovery that are important in a Federation. Since its creation in 1976, the Federal Court's jurisdiction has steadily increased. It exercises jurisdiction under Commonwealth legislation but the associated jurisdiction means that it can deal with matters that would otherwise come within State Supreme Court jurisdiction. The cross-vesting scheme will further increase its jurisdiction. Clearly, therefore, a coherent system of evidence and procedure has to apply to the Federal Court (indeed to Federal jurisdiction generally) irrespective of whether that jurisdiction is exercised in the Federal Court or in a State Court pursuant to Federal law. There is a quaint provision in section 79 of the Judiciary Act 1903 (Cth) that State law of evidence and procedure applies to a court exercising Federal jurisdiction. Consequently, the Federal Court applies the rules of evidence of the State where it happens to be sitting. Similarly, where a State Court exercises Federal jurisdiction, it applies the rules of evidence applicable in that State.

This is of no moment in procedure. All courts have comprehensive rules of procedure. It is of concern in evidence. There is no uniform law of evidence. With the ever increasing volume of Commonwealth legislation conferring powers on the Federal Court there is a need for a uniform law of evidence to govern Federal proceedings. The Australian Law Reform Commission in its report on *Evidence* (No 38, Canberra, 1987) provides a draft Bill. At pp 42-45 of the conference proceedings Doyle criticises some sections of the Bill as not being an improvement on the common law. It lacks flexibility. However, it is submitted that this is beside the point. For certainty and convenience there ought to be a definite set of rules of evidence governing Federal proceedings. Whether a statute is inferior to the common law is immaterial. This in part is the point Jackson makes at p 12. The legal profession is taking on a more national attitude. Many of the larger firms of solicitors are national rather than State partnerships. Even litigation in which State law applies crosses State boundaries. The cross-vesting scheme preserves all the Federal, State and Territory jurisdictions. With this diversity it is important to achieve as much uniformity in evidence and procedure as possible. This is surely relevant to the policy of the High Court decision in *Breavington v Godleman* (1989) 169 CLR 41 and the New South Wales Court of Appeal decision in *Beecham (Aust) Pty Ltd v Roque Pty Ltd* (1987) 11 NSWLR 1.

The debate about a uniform law of evidence identifies an important issue. It