

**What future for the NGO sector?
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Twenty years ago, in mid-1987, as Canberra lobbyist for the ACF and with unconfirmed rumours of a mid-year election in the air, I was stopped in the corridor of Parliament House by Graham Richardson, then the numbers man for Prime Minister, Hawke. In his direct manner he asked, 'What do we have to do for the election? The Wet Tropics?' I acquiesced and we moved on, the whole exchange taking no more than a couple of minutes.

I had not specifically raised the issue with Richardson of stopping rainforest logging in the Wet Tropics by means of a World Heritage listing at an election, having focussed with him in the preceding months on World Heritage listing of Kadadu Stages II and III, stopping sandmining at Shelbourne Bay on Cape York and, importantly, getting a Commonwealth Commission of Inquiry, the Helsham Inquiry, into Tassie forests. I could claim the corridor exchange to be the easiest lobbying I ever did. However, behind the question and my answer were years of campaigning by hundreds of people and many environment organisations, local confrontation, scientific research, conferences, production of books and pamphlets and four years of work by myself in Canberra. But, my point here is to contrast that offer of World Heritage listing of the Wet Tropics from the most important powerbroker in the Government, with the relationship today between non-government organisations and the Coalition, and non-government organisations and the Labor Party. It was an offer to introduce iconic legislation against the wishes of a state government which would disrupt an industry and which would be very complicated to negotiate because of the fragmented boundaries between hundreds of landholders. The exchange was symbolic of a relationship which would be inconceivable to young activists today. It was a relationship that was tough and confrontational, as well as being cooperative, as on this occasion.

I do not wish to suggest that a close relationship between NGOs and the government should be the norm. In fact, for a healthy democracy I believe that an oppositional relationship is healthier and more desirable. The situation in 1987 was the conjunction of an unusual set of circumstances of which I was taking advantage - a key factor being that the Labor Party was worried that Bob Brown and the environment movement might form a Greens Party. However, today twenty years later, the relationship of NGOs in Australia to the two major parties is not only oppositional, but neither party sees fit to champion the need for vigorous public debate to ensure a healthy democracy. In the early 1990s, when a government policy or corporate development was announced in the media, we could expect to hear an NGO voice commenting from a different perspective. Today, those voices are largely silenced. We hear only a few brave academics, maybe a rogue businessman or a local individual. Yet NGOs are the engine for ideas and aspirations of what sort of society we might become, how we might choose to live together and alternative directions for us to consider and debate. As well, they provide

places for learning the democratic process, they build a sense of community and they help the average citizen wanting to speak to government about an issue.

Federal Coalition Policy towards NGOs

The current silencing of NGOs has occurred under the Howard Government, but those who think a Rudd Labor Government might reverse the situation may need to think again. The close cooperation on a few issues between the environment movement and Labor in the late '80s was an aberration and began to erode after the 1990 election and from the time Keating came to power in 1992. However, the past decade under the Howard Government has seen an unprecedented, coherent, ideologically based campaign against the whole non-government sector aimed at restricting its ability to advocate publicly. Good works, planting trees or caring for the needy are praised, but comment on government policy is immediately criticised. This agenda also coincides with a conservative government mantra of so-called smaller government, which sees many NGOs now performing services that used to be the responsibility of government, particularly in the social services area.

The Howard government campaign against NGOs has been documented before.¹ Their campaign is consistent with neo-liberal public choice theory – an economic theory posing as a theory of democracy which does not condone comment on public policy by NGOs in case they 'interfere with the market'. The Howard Government attacks started almost the day after the election with defunding of the peak national consumer group and of social welfare organisations representing some of the most vulnerable and disadvantaged in our community. Defunding of groups which publicly criticise government policy has continued unabated in the eleven years since. If money is still received, purchaser-provider contracts have replaced grants, so that NGOs now deliver the government's agenda, rather than serving their members' interests. The most insidious mechanism has been that contracts now contain confidentiality clauses, also known as reputation management clauses, which specifically forbid the organisation speaking to the media. NGOs, which try to rely on the generosity of public donors outside any Government funding, do not escape. In 2003, they faced a Charities Bill, which threatened to remove their ability to offer tax deductibility. When this was staved off, close to the 2004 election with the help of key church leaders, the Government came back in 2005 with two ATO rulings having the same aim. These were amended to be less draconian, but still affected many NGOs' ability to offer tax deductibility to donors. More recently an individual tax ruling against a small NGO, AidWatch, appears to have widened the definitions NGOs thought had been established by the two ATO rulings. The case is yet to appear before the Administrative Appeals Tribunal, but if the ATO is successful, the interpretation could affect much of the NGO sector's ability to offer tax deductibility. Last year, the disclosure requirements for third parties of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act covered material that arguably has no relationship to politics or elections, but required NGOs to report to the government on aspects of their activities. Each mechanism by itself is not a threat to

democratic process and freedom of speech, but it is the totality of the attacks and their coherent imposition over time which I believe should concern us.

Since 2000, the government has had a cheer squad on the sidelines both encouraging it on and suggesting mechanisms it could use to suppress NGOs' participation in public debate. The Institute of Public Affairs has a specific 'NGO Project', and its staff and associates have been speaking and writing consistently to denigrate the democratic role of NGOs. I am concerned that the combination of government mechanisms and language of Government Ministers, together with the widespread public criticism by the IPA have combined to diminish the legitimacy of NGOs in our public life. The drip-drip effect of so much negative media comment over a decade can slide into the consciousness of a nation.

Federal Labor Policy towards NGOs

However, the Labor Party is not necessarily the champion of the NGO sector. I do not need to elaborate on the disappointment the environment movement feels over Rudd Labor's failure on uranium mining, the Gunns pulp mill and even climate change, which Labor claims distinguishes it from the Government, but the environment movement says does not go far enough. Nor do I need to point out how much Labor's support for intervention in Northern Territory indigenous communities has disappointed all socially progressive NGOs, especially the Australian Council of Social Services, which has strong links to NT indigenous leaders. Those who think these policy positions on the pulp mill, uranium and NT indigenous intervention are only a stance to prevent Labor being 'wedged' by the government need to consider what Party leaders are saying on the central question of the democratic role of NGOs in our public debate. They also need to consider the difficulty of dismantling the mechanisms for silencing NGOs, which now exist in many Federal Government departments.

For a while, it seemed Kim Beazley as leader might address the issue of silencing NGO advocacy. He missed an opportunity in October 2006 when he addressed a National Civil Society Dialogue of hundreds of representatives of NGOs and trade unions at Parliament House by delivering a general speech that did not give any undertakings. But a few weeks later in November, NGO leaders were invited to Parliament House for something called Labor's Community Sector Forum at which Beazley announced six points under a plan called, Strong Communities Partnership. He promised Labor would,

- Guarantee consultation on all policy issues that affect the community sector;
- Establish funding principles to ensure the community sector is sustainable and achieves results;
- Build capacity within the sector so it can provide sustainable, quality services;
- Ensure uniformity of dealings and principles across government departments;

- · Recognise the diversity of the community sector's structure and function; and
- · Cultivate and support the important advocacy role played by the community sector.²

It was only dot points and he said that the detail could be worked out later, but the sixth point was a notable recognition that under the Howard Government public debate had been structured to exclude NGOs. Unfortunately, it has been the only recognition by Labor to date. As Beazley spoke, regime change was afoot and less than a fortnight later Kevin Rudd took over as Labor leader.

It took six months before clues emerged as to how the new team might view NGOs. Julia Gillard, is not only Deputy Leader and Shadow Minister for Employment and Industrial Relations. She is also Shadow Minister for Social Inclusion. 'What is that about?' you may well ask. It is a new title we have not seen in Federal politics before, which potentially is of significance for social service organisations and their peak group, ACOSS. Gillard's first speech in that capacity in April this year was short on detail of new Labor initiatives. It did identify measures of social exclusion using Tony Vinson's *Dropping off the Edge* report, but widened the definition of social exclusion to include those families who 'are living the Australian dream of buying their own home but feel pressured economically, socially and personally'.³ The latter description might sound a bit like 'Howard's battlers' and some elements of the speech seem to be addressing this constituency.

It was Gillard's speech to the Sydney Institute in July which announced some new initiatives relevant to social service organisations. Labor would appoint a new advisory Social Inclusion Board, similar to a ten member South Australian model. There would be a coordinating office for social inclusion in the Prime Minister's Department, and Labor would direct the Productivity Commission to develop 'a new tool to measure the contribution of third-sector organisations to our economy'. She also foreshadowed having Canberra public servants 'do stints with service providers in socially excluded communities', and referred to entering into 'partnerships' with 'state and local governments, the private sector and the community sector', linking this with developments in the UK and Canada.⁴ The proposals are a welcome reawakening of interest by a major political party in the social service area and must be appropriately acknowledged as such. However, it is Gillard's choice of words and the general tenor of the speech, which is of most interest to NGOs, because they give an indication of the theoretical framework driving the Labor Party's relationship with the sector.

The thrust of the speech is to justify the importance of the sector for its economic-productivity value, rather than its social or democratic value. The emphasis is on 'investment' in 'human capital', on 'building social inclusion through hard economics', on 'raising national prosperity', and on 'investment' from which a return will be expected. Non-government organisations are also described as the 'social economy' – a term foreign to Australia. It refers to the European Union name for the sector, *l'économie sociale*, but one can only

assume that its use by Gillard is intended to reinforce the economic message. In neither of Gillard's speeches is there reference to Kim Beazley's earlier undertakings, and neither has a reference to the important issue of reinstating the right of the non-government sector to advocate in the public sphere. That is not to say the speech is antagonistic to that idea. It simply does not mention this most crucial issue for the sector. Instead, it emphasises that from Labor's point of view the worth of the sector is measured in relation to its economic-productivity, rather than its democratic-social value. It would seem that, if the NGO sector wishes to change this emphasis, they may have much work to do using their lobbying skills to persuade the public and Labor of their important social and democratic role. But, are they up to that or have they allowed themselves to be emasculated?

Are NGOs able to respond?

The non-government sector does not appear to have leverage with either of the major parties. The pervasiveness of public choice theory is likely to continue to affect the attitude of the public, the bureaucracy, the media and parliamentarians. Unfortunately, the sector has done little to counteract this hegemony or to promote an alternative democratic model. The formation of a National Roundtable of Nonprofit Organisations in 2004 has seen that organisation make important representations on the ATO draft rulings mentioned earlier and on the Electoral and Referendum Amendment Act of last year. However, this has been defensive action. The Roundtable's main proactive focus has been on the need for reform of the regulatory regime affecting the sector – a necessary project, but not one to be undertaken with an unsympathetic government, for whom 'reform' could be a signal for tighter restrictions. The other national organisation, the Australian Collaboration, is made up of six key advocacy groupings in the sector – environment, social services, international development, consumers, ethnic communities, churches and youth. However, it is primarily a think tank promoting a vision of Australia relevant to its constituent members. On its website under, 'Democracy Watch', it has drawn attention to restrictions on advocacy by government, but the Collaboration itself is not proactive as an advocacy grouping of the sector. Two meetings of a National Civil Society Dialogue in 2006 and 2007 sponsored by the ACTU, Australian Conservation Foundation, Australian Council of Social Services and the National Council of Churches, brought together a wide cross section of groups from many parts of the sector, as well as trade unions. The need for a sector consciousness was recognised and important links developed, but no clear agenda has yet emerged.

Some social services NGOs have been proposing a 'compact' or 'accord' between government and the sector similar to the UK and Canada, in order to establish 'rules for engagement'. Julia Gillard hints at such a proposal in her July speech, referring to entering 'into accountable social inclusion partnerships with state, and local governments, the private sector and the community sector'. An agreement might be helpful in promoting cultural change in the bureaucracy. However, there is mixed evidence of the value of such an arrangement in the UK and Canada. Reviews of the UK Compact

reported it to have been inaccessible, poorly implemented, limited in scope, and there was a lack of awareness across voluntary and government agencies about its functions. The Canadian Accord is reported to be in the process of being dismantled by a new conservative government – a fact to which Gillard refers. NGOs wishing to pursue a compact or accord should be clear that doing so is not a means to establish their legitimacy. The legitimacy of the NGO sector is from a model of democracy in which NGOs, along with other interests, contribute to a vigorous public sphere, in which there is a contestation of ideas and reasoned argument. They do not have to ask the government to give them legitimacy.

The ANU academic, John Dryzek and various colleagues may have a warning for Australian NGOs, if the Howard Government is defeated. Commenting on the ending of the Thatcher Government, which repressed NGO advocacy in ways similar to the Howard Government, the academics say that once the active repression was lifted, the most notable outcome was 'just how little groups are prepared to settle for'.⁵ The relief after a decade of pro-active repression appeared to leave some British NGOs without the skills or willpower to play active advocacy roles. The Australian sector may need to head this warning, if the Howard Government is defeated.

Conclusion

On past performance, if the Coalition wins the election, they can be expected to introduce further mechanisms to discourage public debate by NGOs, which would only serve to diminish our democracy. The position of Labor on uranium mining, Gunns pulp mill, and the NT indigenous intervention have seriously disappointed the sector. It is difficult to weigh up how much these decisions are Labor trying to avoid being 'wedged' by Howard and how much they reflect genuine conservatism in Labor's thinking. I believe they show both and a different Labor Party will not emerge should they win the election. However, one thing is clear if there is a change of government, the entrenched mechanisms introduced by the Coalition to discourage NGO advocacy will still exist across many Federal Government departments. Dismantling confidentiality clauses, purchaser-provider contracts and a culture of disrespect towards non-government organisations by the bureaucracy, would be a massive task - even if the government were interested. To date, there is little indication that the current Labor leadership is at all sympathetic to the democratic value of the NGO sector. It would seem that for the long term health of Australia's democracy, it is going to be up to the sector itself. They will need to persuade the public and the major political parties that Australia needs their contribution to a dynamic contested public debate on what sort of society we want and how we might get there. It remains to be seen whether the sector has the skills and willpower to promote its democratic role and whether the Labor Party, if elected, would respond to strengthening public debate in this way.

References

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- 5 Dryzek, J.S., Hunold, C., Schlosberg, D., Downes, D., and Hernes, H. 2003, 'Environmental Transformation of the State; the USA, Norway, Germany and the UK', *Political Studies*, Vol 50, p 677.