2400

WELCOME TO THE REAL WORLD

University of New South Wales Journal
Thematic Edition on the Global Financial Crisis
Foreword
September 2009.

The Hon. Michael Kirby AC CMG

UNIVERSITY OF NEW SOUTH WALES LAW JOURNAL

THEMATIC EDITION ON THE GLOBAL FINANCIAL CRISIS

FOREWORD

WELCOME TO THE REAL WORLD

The Hon. Michael Kirby AC CMG[*]

This Journal is to be praised for producing, in such a timely way, this thematic edition. It concerns the global financial crisis (GFC) of 2008-9. It examines the history, causes, impact, prognosis, economic features and damaging potential of the GFC. But, as befits a law review, it also examines the legal implications and, specifically, the national and international legal mechanisms that are called into play by such a seismic disturbance of the financial market. And it studies the institutions that may be marshalled to prevent its recurrence.

Many Australian lawyers would get through their busy days without being directly affected by the GFC. The High Court of Australia, with its varied diet of legal problems, largely self-selected by the process of special leave to appeal, would perhaps see an occasional consequence of the GFC in an issue of bankruptcy or insolvency law. But few lawyers would have much idea of the detail of the national and international regulatory mechanisms, of hard and soft law, that are impacted by such a sudden and unexpected disturbance of the markets. A phenomenon like the GFC draws to general notice the backdrop of governmental and inter-governmental institutions, rules and personalities that play a part in

[*] Former Justice of the High Court of Australia (1996-2009); President of the Institute of Arbitrators & Mediators Australia (2009-); Honorary Visiting Professor, University of New South Wales.

observing, monitoring and (to the extent that they do) regulating the "invisible hand" of the international market in financial services.

To this extent, this thematic edition is addressed to topics that some lawyers (perhaps most) might regard as esoteric and of little day to day relevance to their lives in the engine rooms of *micro* law. However, as several of the articles in this edition demonstrate, the ripple effect of the GFC can be felt in every land and at every level of the national and international economy. When economic fortunes are going well, the market appears generally to run smoothly, with the occasional stimulus of monetary policy or the application of the brake of domestic taxation. But when dislocation begins on a large scale, particularly in the largest economy of them all in the United States of America, the ripple effects throughout the world is unmistakable. The impact on poorer nations can be devastating. The consequences for important international policies are huge.

This was where I met the GFC. It is not in the economic regulatory mechanisms described in the articles of this edition. It was in the impact of the GFC on the global struggle against HIV/AIDS that I first saw the significance of the GFC for a specialised area of legal and social policy. Yet this is a consequence that one would not perhaps immediately think of.

The GDC and HIV/AIDS

Like an earthquake, measured high on the Richter Scale, the GFC came with stealth upon the global community. It arrived just as the world was beginning to make progress in the treatment of the human immuno-deficiency virus (HIV) in millions of people in developing countries.

For complex reasons, some of them economic, the United States administration of President George W. Bush, supported a series of international initiatives addressed to this epidemic which had first been identified in 1982. Meetings of global leaders were summoned to New York. A special session of the General Assembly of the United Nations was addressed to the issue. The Global Fund to fight AIDS, Tuberculosis and Malaria ("Global Fund") was created. Capital payments from the Global Fund were made to poorer nations to ensure that beneficial therapies, in the form of anti-retroviral drugs (ARVs), essential to control the ravages of HIV upon the human organism, would be available in developing as well as developed countries. The impact was dramatic. The toll of death and suffering caused by HIV was diminished. Hope was restored to millions of people. For the first time, we could begin to treat HIV as a medical illness, not an incurable disease or a scourge of God.

The Global Fund was thus created during an interval in which the world community was enjoying a sustained period of general economic stability and growth. As the final article in this edition, by Professor Ross Buckley, on "Debt-for-Development Exchanges" points out, in 2007, a number of developed countries began to participate in the Debt2Health initiatives, including Australia and Germany. The object was to commit developed countries to cancel debts owed by developing countries in return for investment by them in the Global Fund. Thus Germany released huge debts owing to it by Indonesia and Pakistan in return for very substantial contributions by those countries, in hard currencies, to the Global Fund, with its capacity to provide assistance to the poorest of

the poor nations so as to make ARVs available to citizens living with HIV.

The direct subventions by developed countries, and the contributions provided in this way by developing countries themselves, afforded a prospect of a source that would allow the world community to get on top of the AIDS epidemic. Quite apart from the individual benefit to people living with HIV, the national economic benefits that would follow a return to economic productivity of the persons receiving the life-giving therapies would be very great. An air of optimism spread, not least because one consequence of the administration of ARVs was a rapid fall in the detectible virus in persons under treatment and thus a decline in their infectability, and hence of their capacity to spread the virus to even more sexual and other partners.

Unfortunately, despite these optimistic developments, the rates of infections continued to escalate. So far, HIV has defied the efforts of scientists to produce an effective vaccine and a total cure. When the AIDS epidemic first appeared, I was appointed to serve on the World Health Organisation Global Commission on AIDS. More recently, UNAIDS, the joint programme of the United Nations to combat the epidemic, appointed me to serve on the Reference Panel on AIDS and human rights. In consequence of these appointments, in June 2009, I was invited to participate in a meeting organised by the Council on Foreign Relations in New York, addressed to the future of the epidemic.

The meeting was told that, despite the growing availability of ARVs, the number of new diagnoses of people living with HIV stands at 2.7 million each year. It is by this huge number that the cohort of infected persons

increases every annual cycle. This statistic and other epidemiological material provided to the meeting demonstrated the urgent necessity for action to prevent the further spread of HIV. And one important new ingredient to add to the urgency was the GFC.

Whereas in times of economic optimism continued high level subventions from developed countries to the Global Fund might be expected, the GFC has radically altered the equation. Contributions for the future needs of the Global Fund are subject to doubts. This development, unforeseen when the Global Fund was created, is one factor that adds to the urgency of finding methods to promote prevention of further spread of the virus. In default of a total cure or of strategies of quarantine, other tactics needed to be considered. These included behaviour modification and the legal reforms that may be thought likely to promote that objective.

Thus, in a highly specialised area of international endeavour, the GFC had a large, unexpected and immediate impact. Everyone attending the New York meeting realised that the integers of the equation that had previously been taken as stable, needed to be adjusted for the incapacity or unwillingness of developed countries (and still more developing countries) to contribute the capital essential in the struggle against HIV and also tuberculosis and malaria.

Having achieved access for millions of patients to ARVs, with their life-changing consequences for the human beings affected, it seems unthinkable that the therapies will now be snatched away, returning the millions who have benefited from them to the untreated deadly condition of HIV/AIDS. Yet this is a large cloud that now hangs over the

international community in consequence of the GFC. Not only that the Global Fund may not be expand to treat still more people infected. Not only that it may not be enlarged to embrace the 2.7 million additional people infected annually with HIV. But that some of the millions who have received the ARVs, in consequence of the initiatives of the Global Fund, may lose those benefits. Truly this would be a ghastly blow to some of the most vulnerable of the poor in our world. However, such are the consequences of the GFC that such a prospect cannot be put out of consideration. The GFC is thus not a theoretical or esoteric construct. For home-owners in the United States, merchants in India, bank customers in Britain and farmers living with HIV in Uganda, the GFC is a very personal visitor, with grievous consequences for life and well-being[1].

Chapters in this issue

Quite possibly the reader will never read an edition of an Australian law journal with more acronyms than are found in these pages. They include MDGs, ODA, HIPCs, CDOs, CfD, FSB, DRM, AIGs and MBS. And that is just for starters.

It is also unlikely that the reader will see in many other contemporary law journals the same number of citations from the internet, necessary because of the complete up-to-dateness of the issues addressed in these pages.

Whereas most law journals will focus on matters of national or sub-national concern, this edition is truly addressed to international

[1] United Kingdom Parliament, All Party Parliamentary Group on AIDS, *The Treatment Time Bomb*, London, 2009.

developments, including as they affect life and the law in the Commonwealth of Australia. To this extent, the edition demonstrates vividly the impact that international law and regulations are having on the Australian legal system. This was a repeated theme of my opinions in the High Court of Australia. Yet persuading Australian judges and lawyers to get their minds around the advent of international law and its impact on our own legal system is no easy task[2]. Indifference, resistance, and even hostility are features of the mind-set in a country that, intellectually speaking, is often still the victim of the geographical "tyranny of distance".

Every reader who ventures into these pages will have heard of the Gnomes of Zurich: unnamed personalities in the financial markets of that important city in Switzerland who are alleged to have unrivalled power in manipulating the global financial markets. Perhaps it is out of the desire to sweet-talk the Gnomes that some of the international bodies concerned in the regulation of the banking industry have been established in Switzerland, including the Basel Committee on Banking Supervision described by Douglas Arner and Michael Taylor of Hong Kong in their article on what they see as the possible "Hardening [of] the soft law of international financial regulation" in consequence of the GFC.

The chapter by Michael Legg of UNSW and Jason Harris of UTS tells how the GFC came about. The history is well recounted in their article "How the American Dream Became a Global Nightmare". This essay explains the trajectory of "the largest financial shock since the Great Depression, inflicting heavy damage on markets and institutions at the core of the financial system". The authors describe how the United

[2] *Al-Kateb v Godwin* (2004) 219 CLR 562 at 589 [62] per McHugh J; 622 [169] of my own reasons.

States market in sub-prime mortgages and “low doc” loans emerged, and how problems spread as a result of defaulting loans that led to the collapse of Lehman Brothers and the downward spiral of organisations with the beguiling names of Fannie Mae and Freddie Mac, now written into the global consciousness.

The self-same technology that underpins science and contemporary knowledge, that facilitates the airline and telecommunications systems and that permits the global movements of capital, quickly spread the impact of the GFC from the United States to Britain where the largest bank, HSBC, in March 2008, reported a $US17.2 billion loss on write-downs of its US mortgage portfolio. A similar impact on the largest retail bank in France, Crédit Agricole, demonstrated in a tangible way that no country in the modern world could be entirely immune from the GFC. In Australia, the receivership of what the authors call “two of the boom share market darlings”, ABC Learning and Allco, illustrated the fact that we too were not immune.

Regulatory gaps were quickly revealed by the unfolding crisis. Millions of jobs were lost. Many large corporations collapsed. Some of them were once thought too big to fail. A common theme of the recriminations, some of them resulting in legal claims, was the failure of financial institutions to disclose essential information to investors. It is at this point that the legal consequences of the GFC tend to meet the national legal systems of the world, as the losers seek to spread their risk of loss to financial advisers, auditors and regulatory authorities who did not see the GFC tsunami coming.

The article by Cynthia Williams and Frank Jan De Graff explores the "Intellectual Foundations of the Global Financial Crisis". The authors describe the financial and economic crises of the two years past. It would be touching if it were not so ludicrous, to read the admissions of Alan Greenspan in March 2008: "Those of us who look to the self-interest of lending institutions to protect shareholder equity have to be in a state of shocked disbelief" since "significant parts of [today's financial risk-valuation system] failed under stress". The faith of neo-liberal proponents in relatively unrestricted market operations, on the footing that the market would always adjust to avoid a destructive crisis, is reviewed and criticised in this chapter. It provides a searing analysis of what the authors call "market fundamentalism". Such criticism is not written on a blank page. It follows earlier similar themes developed by a number of Nobel Laureates in Economics, years before the GFC, including Amartya Sen (1998), Joseph Stiglitz (2001) and Paul Krugman (2008). Despite these distinguished critics, the authors point out that "neo-classical thinking still represents the mainstream of today's economics and almost every other theory starts from neo-classical reasoning".

The question that is presented by this chapter is whether, in the wake of Mr. Greenspan's confessions, improved regulatory supervision of financial markets is necessary and, if so, what form such regulation should take. In order to test their propositions, the authors examine the relative performance in the GFC of the Anglo-American economies, and of the North European, Scandinavian, German and Netherlands economies. In the latter economies, shareholders tend to have greater rights than are enjoyed under the laws of the United States. A more corporatist tradition exists in Europe when contrasted to the Anglo-

American faith in *laissez-faire*. The authors conclude that 'market fundamentalism' has been one of the causes of the GFC. The self-interest of actors ("some call it greed") is seen as a "key driver of social progress and under the assumption of full information, the market was assumed to develop towards a certain equilibrium between demand and supply on a consistent basis". However, the authors believe that "the deterministic, individualistic, rational view of markets tending to equilibrium has led to neglecting the critical role of social values and change in economic progress". For them, the fundamental issue presented by the GFC is whether the nations hitherto devoted to the neo-classical market model will alter their ways and move more closely to the perspectives of regulation as adopted in the laws of Northern European countries which they judge to be preferable for long-term development.

The article by Ankoor Jain and Cally Jordan asks whether "Australia [is] Still the Lucky Country?". Certainly, the impact of the GFC on capital markets in Australia has not been so devastating. In this chapter, the authors try to get to the bottom of why that has been so. Both Australia and the United States are countries where the dream of individual home ownership is a powerful motive force of great political significance. Yet for various reasons, which they explain, the sub-prime lending practices and "no doc" policy that flourished in the United States never took on in Australia. Legal and banking prudence was a feature of the Australian financial and juridical scene. Part of the explanation as to why Australia has weathered the GFC better than most countries is therefore said to lie in the colonial legacy of British banking which, as in Canada, has influenced the practices of the Australian banking and financial sectors. There are also other considerations, including the protection of banking

competition; the powerful role of the Reserve Bank of Australia; and the monetary and fiscal policies observed by successive federal governments.

It is here that the institutions established by the Australian Parliament to promote vigilant supervision of Australian financial market are described, together with appropriate reference to elements in the Australian taxation system; the legal features of most mortgages in Australia; and the cushioning effect of Australia's trading relationship with the People's Republic of China. These factors have rendered Australia relatively resilient in the GFC when compared with the economies of United States of America, Europe and Japan.

The article by Professor Janis Sarra of UBC seeks to draw out the lessons for corporate governance from the impact of the GFC in Canada, the European Union and Australia. According to Professor Sarra, considerations such as corporate board independence; good risk management; greater disclosure and transparency; effective codes of conduct; and attention to economic, social and environmental sustainability produce an outcome less likely to plunge their societies into a spiral of greed that may have consequences such as the GFC.

Especially because this article is written from the backdrop of Canadian experience, which in many aspects of its banking culture shares features in common with Australia, it provides a useful insight into elements that need to be preserved and strengthened, particularly in corporate governance, if future financial crises are to be contained. Indeed, the chapter concludes with an analysis of the record of the American International Group, Inc., a large Delaware corporation that was on the

brink of collapse in September 2008 when the US Federal Reserve Board and Department of the Treasury announced that it would be bailed out by the Federal Reserve Bank of New York. The bail-out was achieved through the provision of a $US85 billion credit facility to assist a sale process of the business in an orderly fashion. In the back blocks of Moscow and Leningrad, there were doubtless not a few old-style communists, learning of these state rescues, who ruminated on the lessons of Marx and Engels. Some may even have seen the effective nationalisation of so many financial businesses as an indication that their old theories of economics were not so discredited after all.

For Professor Sarra, transparency in corporate governance is the key to confidence in the financial products that work global capital markets. This is a theme that re-appears in other contributions to this volume. Obliging transparency represented part of the effort of the law to promote accountability on the part of those who are dealing with other people's funds, for the integrity and prudence of their deployment and the acceptability and realism of the risks that they take.

The succeeding chapter by Douglas Arner and Michael Taylor is the one that describes the legal framework for international financial regulations. The chapter begins with the history that preceded what is described as "The Basel Concordat" of 1975. It describes the work of the Organisation for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), and later the World Trade Organisation (WTO) in promoting integrity in the global financial system. But it points out that much of the earlier "regulation" was based upon a very "soft law" approach. Perhaps this explains why Alan Greenspan and his colleagues were looking on in amazement when things began to

go bad in 2008. They had such a confidence that self-regulation and market forces would protect nations, banks and individuals from the occasional imprudence of particular investors. What they had not counted on was the coalescence of circumstances that propelled the world into the GFC.

The cutting edge of this chapter lies in a consideration of the hardening of the "soft law" of international financial regulations and an evaluation of the various models that have been discussed to permit a more rigorous regulatory environment to evolve. Those models include those devised by the WTO, by the IMF, and by the European Union (EU). Drawing on an excellent historical perspective, the author concludes, unsurprisingly, that the "soft law" regulations have "proven ineffective in preventing and resolving international crises". This became clear enough with the Asian financial crisis in the 1990s. But it has been put beyond doubt by the GFC. The chapter ends on a pessimistic note. The very complexity of the need for mechanisms to deal with cross-border financial institutions makes the prospect of the substitution of effective 'hard-nosed" international institutions "not overly bright".

Andrew Godwin writes of the special lessons of the Minibonds crisis as it broke in Hong Kong, following the collapse of a very popular investment product offered by Lehman Brothers Asian Limited. The chief interest of this chapter, apart from the detailed analysis of the particular case, is its consideration of the "plain English" requirement for the description of investments that accompanied the marketing of the Minibonds.

The fundamental difficulty, as the author acknowledges, is that most investors, including in risky operations of this kind, will never read a

prospectus. No matter how clear the description of the investment and of the risks may be, they will generally be blinded by the oral presentations of the merits of the investment and their own eager anticipation of being part of the high returns. In the Hong Kong case, particular difficulties arose from the need to translate the documentation into “plain Chinese” for the majority of investors in the product.

How financial markets can assure greater transparency and effective accountability in the aftermath of the GFC, and the huge losses borne by many ordinary investors, is a human challenge (but also a legal one) that grows out of the experience of the GFC. Andrew Godwin makes a number of practical suggestions while maintaining a healthy scepticism about the impact of what can be done. It is unrealistic to expect, he concludes, that the majority of retail investors will suddenly start reading a prospectus or a product summary in relation to a complex investment product and understand the product sufficiently to make a truly informed investment decision about the risks involved. Yet if this so, should there not be some other more effective guardian that will investigate such risks and provide the kind of accountability that self-reliance manifestly does not?

Scott Hickie in his article on the challenges for ecologically sustainable development in the GFC brings this thematic issue back to the consideration that economics is not the only player in the global financial market. Many social and cultural forces are also at stake. So are the Millennium Development Goals (MDG) and especially international objectives designed to protect the biosphere and the global environment.

The impact of the GFC on the HIV/AIDS epidemic is one of the seriously deleterious consequences for the global community of human beings. The impediment to effective economic policy aimed to reduce greenhouse gases, slow global climate change and otherwise promote economic development and rescue billions from poverty are other large victims of the GFC in the foreseeable future.

An interesting section of Scott Hickie's chapter quotes from the report of the Special Representative of the Secretary-General of the United Nations on the issue of Human Rights and Trans-national Corporations and other Business Enterprises. In his report, Professor J. Ruggie, the Special Representative, emphasises that non-commercial interests affect broader public interest concerns that need to be considered in any realistic evaluation of the operation of financial markets. Here, we can see one of the most important defects in the "invisible hand" theory of the neo-liberal market proponents. Because the environmental, epidemiological and other burdens of the world are less likely to feature in the short-term considerations of those whose decisions influence market forces, they tend to be undervalued in economic terms, if valued at all.

A realisation of this fact adds strength to the argument that greater national and international regulation is required in order to nudge the global financial markets to feed into their equations the human and ecological costs of financial investments. A realisation of this truth has led the OECD, in its "Common Approaches", to adopt as an objective the promotion of "coherence between policies regarding officially supported export credits and policies for the protection of the environment ... thereby contributing to sustainable development". The achievement of

sustainable development may not always be a realistic outcome of unregulated global market forces.

The final article, by Professor Ross Buckley, describes the “Debt For Debt Exchanges”, previously mentioned. He does this by reference to the initiatives of a number of European countries, namely Switzerland, Italy, Spain, France, Germany and Norway. The same type of initiative has also been adopted by Australia and has obvious social benefits. On the other hand, it also has it critics, as Professor Buckley acknowledges. If the reality is that a debt could and would not be paid (and would therefore have to be waived or forgiven), a purported imposition on a developing country of a requirement to provide some equivalent or countervailing payment (say to the Global Fund) is, in the view of some, an interference in the “sovereignty” of the developing country concerned. It involves the imposition by the creditor country of expenditure obligations that might not necessarily be those chosen by the debtor country itself. Moreover, it is imposed by the economically strong upon the financially weak. It is yet another illustration of the inequity of market forces as they operate on a world in which 2 billion people daily live in grinding poverty.

All this said, something needs to be done to relieve developing countries of the crippling burden of international debt. Anything that can encourage developed countries to do so should be explored and all the options evaluated. The Debt for Debt exchange initiative has suddenly become even more important and urgent in the circumstances of the GFC.

This short review of the chapters in this thematic volume indicate the novelty, importance and interest of the subject matters covered. This is the real world of international finance. The Gnomes of Zurich have long since known all about it. For many Australian lawyers, it is in this volume that they will hear for the first time about the intricate details of the global arrangements for financial transactions. So, as the BBC and CNN constantly boast, you saw it here first.

The local debates

Lurking behind the global debates presented by the papers in this volume is a reflection of the domestic political controversies which we now face in Australia. In a speech, reviewing *The March of Patriots* by Paul Kelly, the Prime Minister of Australia (Mr. Kevin Rudd) asserted that, contrary to Paul Kelly's suggestion, there was no essential bipartisan agreement on national and international economic policies in this country[3].

With just a little partisan rhetoric, Mr. Rudd claimed that it was the Hawke-Keating governments of the Australian Labor Party, and his own, that had embraced a social response to the operation of global markets. The Coalition parties, on the other hand, were described as locked in the faults of neo-liberalism that are analysed in this volume. In his published launch speech, Mr. Rudd wrote:

> "Neo-liberalism is more than the dimension of a political project, it is the ideological content of that project, and for neo-liberals, the project is clear-cut: it is the theory of self-regulating or self-correcting markets and of an ideal role for government that is shackled in its role as market regulator, and restricted in the

[3] The Hon. K.M. Rudd "Drive to Reform is not Bipartisan", *The Australian*, 8 September 2009, 12 (extract from a speech at the launch of *The March of Patriots* by Paul Kelly, 2009, given on 7 September 2009, Canberra).

> provision of public goods ... We have seen it in workplace relations, where Work Choices effectively saw labour as no different from any other commodity to be traded on a free, barely regulated market at the lowest market price.
>
> We have seen it in climate change – described as the greatest market failure in economic history – where the Liberal Party refused to act because its majority believed the problem would solve itself absent the State intervening to regulate for a market to set a carbon price.
>
> We have seen it not only in global financial markets before the global financial crisis, but also nationally, when, despite multiple recommendations, our predecessors refused to implement a deposit insurance scheme because they were captive to the banking industry's argument that statutory protections for consumers were unnecessary.
>
> And in the fiscal response to the crisis we see the same ideology at play, which argues against fiscal stimulus to cushion the impact of the global recession, presumably because of a belief that the macro-economy is best left to correct itself.
>
> Of course, technically, it may be able to correct itself, so long as you are prepared to accept hundreds of thousands of Australians as collateral damage as a consequence of a "market correction"."

Mr. Rudd concluded his launch speech with the words: "History will be the judge on whether we succeed or fail. But our ambition from the start is to make a fundamental difference, not to be here for the sake of being here. But to be a government of hard heads and soft hearts".

Mr. Rudd's claim for the primacy for his party in the effective regulation of uncontrolled market forces was immediately rejected by the Leader of the Opposition, Mr. Malcolm Turnbull[4]. He told Parliament that the nation's relative economic strength to weather the GFC, when compared

[4] The Hon. M.B. Turnbull, remarks in Parliament, reported M. Franklin "Turnbull lambasts Rudd's 'graceless dishonesty'", *The Australian*, 9 September 2009, 6.

to the position of other advanced nations, was linked to economic reforms put in place by the Coalition government of Mr. J.W. Howard. He acknowledged that Australia's modern economic reform process had been "a long work" by both sides of politics. But he asserted that it was wrong to suggest that only the Australian Labor Party had delivered the necessary reforms.

In his comments on Mr. Rudd's launch speech, Paul Kelly also questions the correctness of the assessment by the government and points out[5]:

> "The book argues that Howard, in office, never aspired to significantly cut the size of government, that he kept Medicare and the social safety net, gave huge budget support to families, spent generously, was cautious (Work Choices aside) about market forces, and, in relation to financial regulation, backed ... strong regulatory regimes and rejected any "let it rip" neo-liberalism. In short, Howard actually shunned the neo-liberal agenda and, having not promised this agenda, it is unsurprising that he did not achieve it".

The contemporaneous Australian political debate about neo-liberalism, the GFC and financial and market regulation illustrates how far we have come in understanding the integration of the Australian economy and society with global financial markets. As Paul Kelly observes, the statement by Prime Minister Rudd on these themes is a "powerful and partisan interpretation of history" and an obvious early shot across the bows for "next year's election and the embryonic debate among pro-Labor intellectuals over how to place Rudd Labor in an ideological and historical context". Perhaps this is why Mr. Turnbull, for the Coalition parties, reacted so strongly to the Prime Minister's claim, likening this

[5] P. Kelly, "Rudd aims a spear at the Liberal Party's Heart. The Prime Minister seeks to refashion the political narrative but will his barbs hit their target?", *The Australian*, 9 September 2009, 14. See also P. van Onselen, "Howard hardly a lazy leader", *The Australian*, 9 September 2009, 14.

interpretation to “a speech by a Communist Party general secretary extolling the virtues of the dictatorship of the proletariat”.

However all that may be, there is a dividing line in Australian politics over legal and economic policy. It concerns the extent to which, occasions on which, and institutions by which the elected public institutions of society will intrude into the activities of unelected and often infinitely more powerful forces of the global financial market and the local surrogates that play their part upon the stage of national affairs.

Somewhere in the middle of these debates lies the common ground that Australian governments normally discover once in office. That common ground will generally seek to preserve the benefit of the inventiveness, energy and creativity of market forces whilst at the same time taming their worst excesses; regulating their occasional tendency to serious error; and correcting their short-term disinclination to be concerned with long-term issues such as AIDS and global climate change.

This political coda on the issues presented by the articles in this volume shows how timely are the topics that the authors address here. Their themes lie at the very heart of political life and they plumb the depths of the conflicting values of the Australian nation. That is why this thematic volume is so useful, interesting and important. Its importance includes the legal profession; but as I have shown, extends far beyond. And the real puzzle we are left with is what changes, if any, will be introduced in national and international institutions to help us in the future to weather more successfully, and with less pain, the recurrent cyclical storms that can turn so quickly, as in 2008-9, into the cyclone of a GFC.

****