

Administrative Law: The Challenges of the 21st Century

Justice Dennis Davis

Administrative law in the 21st century cannot be analysed without recourse to the tendency that has grown apace over the past three decades: the judicialisation of politics. Politics has increasingly migrated to the courts. Conflicts which were once the exclusive domain of parliaments, street protests, mass demonstrations and media campaigns seem inexorably to find their way to the judiciary.

As John and Jean Comaroff have noted:

[C]lass struggles seem to have metamorphosed into class action ... people drawn together by social or material predicament, culture, race, sexual preference, residential proximity, faith and habits of consumption become legal persons as their common complaints turn them into plaintiffs with communal identities – against antagonists who, allegedly, have acted illegally against them. Citizens, subjects, governments, corporations litigate against one another often at the intersections of tort law, human rights law and the criminal law in an ever mutating kaleidoscope of coalitions and cleavages.¹

Administrative law in the 21st century takes place within this fraught context. At core, the extent of judicial control over the administration involves a continuous tension between the aim of empowering officials and affording them the necessary freedom to perform their executive and administrative tasks while, at the same time, controlling the arbitrary exercise of power, thereby limiting this freedom in order to protect the rights of the citizenry.

Small wonder that it has been suggested that if 'administrative law were a living person it would be diagnosed with multiple personality disorder!'²

1 JL Comaroff and J Comaroff, *Law and Disorder in the Post Colony: Introduction* (2006) at 27.

2 Since C Farina, 'Administration Laws Regulation: The Paradox of Attempting to Control and to Inspire the Abuse of Public Power' (2004) 19 *South African Public Law* 489.

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