VICTORIAN FRIENDS OF THE HEBREW

UNIVERSITY OF JERUSALEM

MELBOURNE, SUNDAY, 29 JULY 1979

HUMAN RIGHTS : ISRAEL AND AUSTRALIA

The Hon. Mr. Justice M.D. Kirby
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INTRODUCTION : VISIT TO ISRAEL

In December 1978 it was my good fortune to visit Israel. I had previously visited that part of the world many times and motored through Syria, the Lebanon, Jordan, Egypt and Turkey. In 1963 I visited the old City of Jerusalem when it was then part of the Hashemite Kingdom. In 1978 Mr. Justice Moshe Landau, Deputy President of the Supreme Court of Israel, visited Australia. He made a profound impression upon all who met him. As a result of our meeting, an invitation was extended to me by the Minister of Justice of Israel to visit that country. I took the first opportunity, on my return from an intergovernmental meeting at the O.E.C.D., Paris, to stop for a few days in Israel. My visit was lamentably short. But it was long enough to permit me to meet many leaders in law and government in Israel. These meetings kindled my interest in the state of human rights in Israel and respect for the Rule of Law. It is the Rule of Law which is the unique feature of the Western liberal democracies. I welcome this opportunity to speak of the people I met and the impressions I gained.

My visit to the Hebrew University of Jerusalem at Mount Scopus was a memorable event. In its historic setting, the University gets on with the job of training

succeeding generations of lawyers in a happy blend of the English common law tradition, which we share in Australia, civil law brought by the many distinguished European lawyers and local approaches developed by the indigenous inhabitants who now number an increasing proportion of the University's staff and students.

My visit to the University was confined to the Law School where I was met by the Dean, Professor Claude Klein. Thoughts were exchanged with Professor Klinghoffer, Dr. Aaron Yoran of the Harry Sacher Institute of Legislative Research and Comparative Law and Dr. Shimon Shetreet, whose provocative book, "Judges on Trial" featured in the opening session of the recent Australian Legal Convention.

So much about the Law School was familiar. The library contained extensive collections of English language legal material, to which we have now added the reports and consultative documents of the Australian Law Reform Commission. The Law School sponsors an association which publishes the Israel Law Review, a rightly famous English language journal which brings some of the legal scholarship of Israel to the attention of a wider world.

I then met members of the Israeli Administration. The Minister of Justice, Mr. Shmuel Tamir, was overseas at the time of my visit, in connection with the then current peace negotiations with Egypt. Despite their preoccupation with those negotiations, I was able to confer with all of the leaders of the administration of justice in Israel. The Director-General of the Ministry of Justice, Mr. Mayer Gabay, discussed with me the legal initiatives which were current or planned in Israel and the special problems of justice in a country developing so quickly as Israel has. I also met the Attorney-General, Professor Itzhak Zamir, formerly Dean of the Faculty of Law at the Hebrew University. Professor Zamir's seminal work on Declaratory Judgments is wellknown in legal circles in Australia. The State Attorney of Israel, Mr. Gabriel Bach, discussed with me the special problems of updating police procedures at a time

when crime was increasing. The Deputy Attorney-General, Mrs. Judith Karp, showed a special interest in the role of the Law Reform Commission, for there is no exact equivalent of an independent law commission in Israel. Most extensive legal developments must be achieved within the Ministry of Justice, developed by the hard-pressed officers of the Ministry, when other duties permit.

I was taken to the Knesset where I met Mr. David Glass M.K., Chairman of that committee of the Knesset which is equivalent to the Senate Standing Committee on Constitutional and Legal Affairs in Australia. The role of the Law Reform Commission in Australia and of similar commissions in many countries of the English-speaking world, was explained. Mr. Glass' committee was considering a universal problem for the law which had taken me to Paris, namely the protection of privacy in the world of computers, databanks and satellite communications. I was able to brief Mr. Glass, generally, upon the work of the Expert Group on Trans Border Data Barriers and the Protection of Privacy, the meeting of which had occasioned my visit to Europe in December 1978.

It was then my privilege to visit the Supreme Court of Israel and to sit for an hour on a Bench of the court at which Justice Moshe Landau presided. The language of the court was Hebrew and of course it was a mystery to me. Every so often counsel would refer to an English decision and read, in English, a statement of familiar principle written by an English judge. But though the language of the court was a mystery, its procedures and its business were entirely familiar. The wigs were missing : an appropriate concession to modernity and the climate. But the adversary mode of trial and the respected, neutral role of the judge, reminded me of the tremendous impact which the common law of England and its procedures and traditions have had in the four corners of the world. It is as well to remember that this system of justice, for all its faults and weaknesses, remains that of nearly one-third of

mankind, including in countries where Empire was but a fleeting experience. The initial spirit of the common law of England was a spirit of law reform: lawyers and judges working together to extend old principles and predictable rules to meet the challenges of new situations.

I met most of the judges of the Supreme Court, including the President, Mr. Justice Yoel Sussman and I have since struck up correspondence with several members of the court, including Mr. Justice Maer Shamgar who wrote a splendid piece in favour of the acceptance of a formal written Constitution in Israel,(1974) 9 Israel Law Review 467.

Unfortunately I did not meet Mr. Justice Haim Cohn, to whom I had been commended by our Governor-General, Sir Zelman Cowen. Mr. Justice Cohn had recently fallen ill and was in hospital during my visit. I shall revert shortly to the depth of his learning and scholarship. All of the judges of the Supreme Court of Israel and indeed all those who administer justice in Israel, carry on traditions that are familiar to us in Australia. For all the perils, difficulties and frustrations of life in Israel, the message I received in my short visit was a clear one. The rule of law is alive and well in Israel. An independent judiciary, a vigorous Executive and Parliament and a vigilant legal profession give daily credence to this assertion. The Hebrew University of Jerusalem, through its Law School, continues to train the succeeding generation of scholars and lawyers who will uphold that principle which traces its history to the Talmud, namely that civilised man seeks a government of laws not of men : the Rule of Law and not the whim of a transient despot.

This is not an occasion for a detailed analysis of the common themes of law and justice in Israel and Australia. I do, however, want to take a few illustrations to indicate the fact that there is a lively concern for the protection of human rights and civil liberties in Israel.

Indeed, a comparison between Israel and Australia is not always to the advantage of our own country.

PRISONERS' RIGHTS

Take, first, the protection of the rights of prisoners. This subject has been much in the news in Australia since the Nagle report outlined serious deficiencies in the administration of prisons in the State of New South Wales. Although all of us must be concerned with the apparent growth of crime, we must be equally concerned to ensure that even when punished in the name of society, a prisoner remains a human being and respected as such because he reflects in his humanity the spirit of all of us.

In Israel in 1974 a prisoner, Rami Livneh, asked the Governor of the prison for permission to bring in certain books which he wished to read. His wish was denied. In accordance with the law of Israel, the prisoner applied to the High Court of Justice for an order to enable him to bring in the books. Under the Prison Regulations, 1966, of Israel, a prisoner is not allowed to bring books into a gaol, unless the Governor of the prison has approved their admission. The prisoner in question sought to bring in certain political works by Marx, Engels, Lenin and Mao Tse-Tung. The Governor refused and gave reasons for his refusal :

> "The appellant is an unmistakable "political type" ... He comes into contact with various prisoners all the time,and the subjects discussed among them are those that concern the State regime,and government, with the appellant inflaming and inciting others against the State and its authorities. ... I refuse to allow entry of literature and other printed material which can influence the prison atmosphere adversely. ... I set before me always ... the preservation of quiet within the prison walls. ..."

This argument was not without force, on the face of it. But it did not suffice to persuade the Supreme Court of Israel. The court ordered the Governor to permit the prisoner to bring in the books. Justice Cohn explained why. He pointed out that the court would not interfere in the Governor's discretion, conferred by law, so long as the Governor exercised that discretion in good faith and in a reasonable manner. He then turned to examine whether the reasons given were sufficient to prevent the court interfering in the discretion exercised by the Governor. He held they were not :

> "When an unmistakeable "political type" like the appellant enters a jail, it is not surprising that he chooses political subjects for his conversations with his fellow-prisoners. We know of no law making it possible to stop him doing so. The Regulation authorising the governor of a prison to permit or deny the entry of books into the jail was surely not made to enable him to prevent arguments of this or any other category ... But we apprehend that the Governor's alarm at the power - to incite and mislead - of the books that the appellant asked to bring into the jail for his reading is an empty one - even in the context of the Governor's reasoning. The writings of Marx, Engels, Lenin, Mao Tse-Tung and their like - and, it is not necessary to remark, the novels of Boll and the books of Aharon Cohen likewise - do not belong to the class of incitement literature. They are books which are studied - and should be studied - in every University; there are in them permanent values of economic and political teaching which guide the lives of great and powerful nations. It is our good fortune that we have no part with those nations - but that does not derogate from the

> fact that teaching and study are necessary ... Just as yeshiva students who are serving a sentence in jail are permitted to choose for themselves, for reading and study, only sacred writings, forsooth! - Communists, serving a sentence may choose for themselves, for reading and study only communist literature. The choice is theirs; the fact that, in the eyes of the governor, the choice lacks taste makes no difference ...
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> [O]ut of excess of zeal to "preserve quiet within the prison walls", [the Governor] fell into the trap of a legal error : that he may use his authority so to forbid the entry of books as to gag mouths and prevent political arguments, just as he fell into the trap of a factual blunder : that in the books which the appellant wanted this time there is material to incite and mislead.
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> One must be very careful in exercising this authority to ban books even within prison walls : to forbid the reading of books which are not pleasing to the authorities gives off a stench of totalitarian suppression; if there are States in which confinement in jail serves also to indoctrinate prisoners in the spirit of the regime, we shall be no part of them. Confinement in our jails, however much it may deny and restrict physical freedom, leaves freedom of the spirit intact: that freedom no one may deny or restrict".
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> Rami Livneh v. Prisons Service Commission, H.C. 144/74, 28(2) Piskei Din 686 (1976) 6 Israel Year Book on Human Rights 296.

There can be few statements in English which assert more clearly the proper limits of the punishment of deprivation of liberty. Unfortunately, the law and the courts do not always perceive those limits so clearly. Contrast the ringing language of Cohn J. in Rami Livneh with the recent

decision of Australian courts in Dugan v. Mirror Newspapers Limited, (1979) 53 A.L.J.R. 166. Dugan was a prisoner serving a life sentence in a New South Wales gaol. He sought, whilst a prisoner, to sue in the courts of New South Wales, claiming that he had been defamed in a newspaper article written about him. Initially, many years ago, Dugan had been sentenced to death for the capital felony of wounding with intent to murder. This sentence was subsequently commuted to a sentence of penal servitude for life. Later Dugan was allowed at large on licence. During this time he committed a further felony for which he was convicted and ordered to serve a concurrent sentence of 14 years with hard labour. It was while serving these sentences that he commenced the subject defamation proceedings against Mirror Newspapers. The newspapers pleaded in defence that a prisoner serving a life sentence for a capital felony could not sue for a wrong done to him whilst under that sentence. The judge at first instance (Yeldham J.) upheld this plea. [1976] 1 N.S.W.L.R. 403. The Court of Appeal of New South Wales confirmed that it was a good defence in law. Finally the High Court of Australia affirmed the decision of the Court of Appeal. Special leave to appeal to the High Court was refused. (1979) 53 A.L.J.R. 166.

The legal basis which prevented the prisoner Dugan from having access to the courts is the ancient principle of the common law of England that anyone convicted of treason or of a felony and sentenced to death or outlawry was "attainted". This consequence of conviction had been removed in England by the Forfeiture Act 1870 which abolished attainder, forfeiture and corruption of the blood. In some States of Australia legislation had also abolished the common law principle. The state of the law was criticised by many of the judges who dealt with the case. Samuels J.A. in the Court of Appeal, New South Wales, whilst upholding the defence as good in law in New South Wales commented that :

> "the state of the law in New South Wales ... hardly accords with modern notions and merits the attention of the legislature".

In the High Court, Gibbs J. conceded that the rule seemed "out of harmony with modern notions". But only Murphy J. felt able to say that it was not part of the law of New South Wales applicable to the Dugan case. Murphy J. cited the case of Golder v. The United Kingdom, (European Court H.R., 21 Feb. 1975, Series A, No. 18). In that case the European Court of Human Rights had held that an English prison rule which provided that "a prisoner shall not be entitled ... to communicate with any person in connection with any legal ... business except with the leave of the Secretary of State" was a violation of the European Convention on Human Rights. The European Court said, and Murphy J. adopted it in the Dugan case :

> "In civil matters one can scarcely conceive of the rule of law without there being a possibility of having access to the courts ... The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally recognised fundamental principles of law : the same is true of the principle of international law which forbids the denial of justice ..."

The Australian Law Reform Commission has now proposed that this anomalous rule, which prevents prisoners from having access to the courts, should be repealed, so far at least as Commonwealth and Territory offenders in Australia are concerned :

> "No matter how serious a person's crimes, the punishment of the loss of his liberty does not warrant, in addition, the loss or suspension of his civil rights as a person. Nor does it warrant denying him access to the courts of the land for the impartial determination of his claim. The punishment of prison is the deprivation of liberty.

> It is not appropriate to add to that punishment confused and antique notions such as "civil death" which had their origin in a time when the death penalty was the common punishment for convicted felons."
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> The Law Reform Commission (Aust) "Sentencing : Reform Options" (Disc.P. 10, 1979) 61.

One feels confident that Cohn J. would approve of the views expressed by the Law Reform Commission on this subject.

NEW ADMINISTRATIVE LAW

One of the most adventurous developments in law reform in Australia is in the field of administrative law. Under successive Commonwealth Governments (and in the States as well) important legislation has been adopted to improve the position of persons living in Australia in relation to the Public Service. In the Commonwealth's sphere there have been a number of statutes, providing remedies and agencies of protection. The Administrative Appeals Tribunal has been established as an independent body, headed by judges, to review the merits of decisions made by administrators under Commonwealth laws. A Commonwealth Ombudsman, Professor Jack Richardson, has been appointed. He carries out, in an informal and speedy way, examination of grievances against administrators. He can call for the files and, if he thinks bad administration has led to injustice, he can endeavour to rectify the situation by informal conciliation and persuasion. If his views are ignored or disputed, he can report ultimately to the Prime Minister and Parliament.

An Administrative Review Council has been established, of which I am one member, to supervise the reform of administrative law and procedure in Australia and to introduce greater fairness in the tribunals and procedures established to make decisions affecting people's rights. A Freedom of Information Bill has been introduced into Parliament by the Attorney-General, Senator Durack. This

is the first endeavour in a Westminster system of government, to introduce the prima facie rule that a person is entitled to information in the hands of government, unless good reason is established why he should not get it.

One Act which has already been passed by the Commonwealth Parliament but not yet proclaimed is little known but it may have a profound effect upon Commonwealth administration. I refer to the Administrative Decisions (Judicial Review) Act 1977. That Act simplifies the procedures for seeking review by the courts of decisions made under Commonwealth law in Australia. Any person whose interests are adversely affected by such a decision will be empowered to seek an order of review from the Federal Court of Australia on grounds specified in the Act. Perhaps the most novel provision in the Act is contained in section 13. That section permits a person entitled to review of a decision to obtain the reasons for the decisions and to do so without ever commencing a court case. It establishes an important "right to reasons".

> "13(1) Where a person makes a decision to which this Act applies ... any person who is entitled to make an application to the Court ... may, by notice in writing given to the person who made the decision, request him to furnish a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision".

This is a very important provision. One of the defects in the present law for judicial review of administrative decisions is the difficulty that often exists in getting beyond the "face of the record" and finding the real reasons for the bureaucratic decision, so that these can be tested against the standard of lawfulness and fairness. The right to reasons in the Judicial Review Act will change all that.

In Israel, I somewhat proudly told my hosts of the new administrative law in Australia and especially of the right to reasons enshrined in the Judicial Review Act. I was then informed of the passage, several years before, of a similar law in Israel which, for nearly 20 years, had provided for the giving of reasons by public authorities. The law is titled the Administrative Procedure Amendment (Statement of Reasons) Law, 5719-1958. Section 2 of the Law provides :

> "2. Where application has been made to a public servant, in writing, to exercise any power conferred on him under any Law, and he refuses the application, he shall notify the applicant, in writing, of the reasons for the refusal".

True it is, the Israel law is in some ways narrower than the yet to be proclaimed Australian law. For example, it is permissible under the Israel law for a public servant to refuse to notify reasons :

> "3(1). if the law which vests the power in him provides that he is authorised to exercise it at his discretion or without giving reasons".

I understand that the cases which have construed "at his discretion" have held that a decisionmaker who exercises a discretionary power is not exempted from the duty to state reasons. The discretionary nature of the administrative power does not, in itself, exempt the public servant from the duty to state reasons. Only if the statutory provision employs further expressions which provide explicitly that the power is to be exercised, for example, in the "absolute discretion" of the public servant will he be exempted from the duty to state reasons. There would be no such exemption under the Australian Judicial Review Act.

Whatever the nuances of the legislation, the significant point is that both Australia and Israel are approaching the thoroughly modern problem of the relative power of the individual and the public administration in their two countries. As the role of government expands, the importance of the individual human being tends to contract. The provision of new formal and informal means of permitting the individual to assert his rights against the anonymous bureaucracy represent timely developments in Israel and Australia. Many countries now have Ombudsmen. In Israel, the State Comptroller's law of 1958 was amended in 1971 to give the State comptroller jurisdiction as a Commissioner for Complaints from the public about acts (including delay in performance) or omissions contrary to law or without lawful authority or contrary to sound administration. Furthermore, the State Comptroller is able to act where the administration has been unduly harsh or manifestly unjust. The State Comptroller is assisted by a special unit in his office called the Office of the Commissioner for Complaints From the Public. B. Frank. "The Ombudsman and Human Rights - Revisited" (1976) 6 Israel Year Book on Human Rights, 122, 127. Most of the States of Australia and the Federal Parliament in Australia have now established Ombudsmen. The new administrative law in Australia has taken novel directions. There is no doubt that Israel and Australia can learn from each other as they seek to make bureaucratic decisionmaking more sensitive to the importance of the individual and more responsive to the needs of society.

EXPROPRIATION LAWS

One species of the new administrative law is the effort being made in Australia to update the law governing compulsory acquisition of property by the government. One of the few rights included in the Australian Constitution was a guarantee in section 51(xxxi) that when the Commonwealth acquired property, it should only do so "on just terms" and "for any purpose in respect of which the Parliament has power to make laws".

In 1977 the Federal Attorney-General in Australia asked the Australian Law Reform Commission to re-examine the legislation governing compulsory acquisitions by the Commonwealth. The essential question was whether the laws and procedures contained in the Lands Acquisition Act 1955 still provided "just terms" according to today's notions of what are just, in the circumstances where government acquired property for public purposes.

The Law Reform Commission is working towards a report on this subject in the near future. The report will review proposals for change which were set out in the Commission's discussion paper, Lands Acquisition Law : Reform Proposals, Disc.P.#5, 1978. Among the reforms considered are the provision of a right to a public inquiry to ensure that the acquisition is a legitimate one and that all possible alternatives have been explored before a person is deprived of his property; the provision of a new formula for compensation, to include compensation for intangible and hitherto uncompensated deprivations resulting from compulsory acquisition; the provision of a new and more informal procedure to ensure that disputes about acquisition and compensation get to an independent decision-maker for resolution; and compensation for the injurious effect of Commonwealth works upon nearby property.

Compulsory acquisition of property is a worldwide phenomenon. It is part and parcel of the growth of the public sector in all countries : a growth that has been accelerated in recent years. In Israel, as in all modern communities, the law provides for the taking of property but it also provides for means of submitting that acquisition to independent judicial scrutiny, to make sure that the right is properly, fairly and legitimately used. It is a serious thing to take a person's property, in societies such as ours. Its impact upon people is not always appreciated by administrators,fired with the zeal of a public work to which they have become committed.

In 1972 a case came before the Supreme Court of Israel which illustrates the independent scrutiny to which government acquisitions are put in that country. Mrs. Berger was a resident of Germany. She was the organiser of a particular Christian religious sect which was engaged in encouraging visits to Israel by German Christians. She acquired certain real estate in a district of Hiafa and in the property acquired, she lodged the visitors. She became the owner of a wellknown boarding house. The Local Council became alarmed for fear that Mrs. Berger would embark on missionary activities. An attempt was made by the Chairman of the Local Council to influence her to surrender her real estate. It was without success.

Having failed to prevent the acquisition of the boarding house, the Council submitted a building plan in respect of the area in the vicinity. The plot on which the boarding house was built, together with certain other areas, was scheduled for expropriation for public purposes. Mrs. Berger claimed that the Council's objective was not the lawful one to acquire property for public purposes. She asserted that the Council's main intent was simply to remove it from her hands. Her case was taken to the Supreme Court of Israel and she succeeded. An order was made restraining the Council from proceeding with the expropriation. Berinson J. took the opportunity of this case to voice his opinion about the attitude that should be adopted in Israel towards strangers. His language went beyond what was necessary for the resolution of the particular case. However, it speaks to us in terms of a continuous civilisation that has no peer in the world.

> "When we were exiled from our Land and kept far from our Soil, we were victims of the nations of the world in whose midst we dwelt, and in every generation we tasted the bitter flavour of persecution, oppression and discrimination only because we were Jews ... From what we learnt out of this harsh and luckless experience, which pierced very, very deeply into our national and human

> consciousness, it might be expected that, with the renewal of our independence, in the State of Israel, we would be careful and guard against any shade of discrimination or the maintenance of a double standard towards any law-abiding non-Jew who is amongst us and who wants to live with us in his own way, according to his religion and faith. In hatred of strangers there is a two-fold course : it destroys the image of God of the one who hates and it brings ill to the hated one for no evil-doing on his part. We must show a human and tolerant attitude towards everyone created in the image of God and uphold the great rule of the equality of all in rights and duties." Berger v. District Commission for Planning & Building, Hiafa et al, H.C. 392/72, 27(2) Piskei Din 764; (1976) 6 Israel Year Book on Human Rights 309, 310.

OTHER COMMON CONCERNS

I have illustrated the common concerns of lawyers and judges in Israel and Australia with three cases only. There are, of course, many more. There is, for example, a continuing debate about the use of the death penalty in Israel and Australia. Following the cruel attack on the coastal town of Nahariya, the government of Israel announced the the death penalty should be sought by prosecutors for terrorist acts if they were of "inhuman cruelty". The emergency regulations enacted by the British mandatory authorities in 1939 and reconfirmed in 1945 remain part of the law of Israel. Under these rules, acts of violence, whether by firearms, bombs or grenades against life or property, are punishable by death. Arab terrorists have, until now, been tried in military courts and Israeli prosecutors were under instructions not to invoke the clause. The question will now arise as to whether this form of punishment will be restored. One of the papers presented to the Fourth International Congress of Jewish Lawyers and

Jurists in Jerusalem in December 1978 by Justice Stanley Mosk argued passionately against the death penalty :

> "There is no persuasive justification for the death penalty. It demeans life. Its inhumanity raises basic questions about our institutions and our purpose as a people. We must revere life and in so doing create in the hearts of all people a love for mankind that will finally still violence. A humane and generous concern for every individual, for his safety, his health and his fulfilment, will do more to soothe the savage heart than the fear of state-inflicted death, which chiefly serves to remind us how close we remain to the jungle. So long as government takes the life of its citizens, the mandate "Thou shalt not kill" will never have the force of the absolute. Our greatest need is reverence for life ... mere life, all life ... life as an end in itself. Indeed, it is the Talmud which declares that "He who destroys one person has dealt a blow at the entire universe" (p.33).

In Australia the debate about the purposes of punishment is raised by the reference to the Law Reform Commission of the punishment and sentencing of Commonwealth offenders. The death penalty was abolished in the Commonwealth's sphere in 1973. It has likewise been abolished in every State except Western Australia. Even in that State, it is many years since a death sentence has been carried out. In conjunction with the Commission's inquiry a survey was recently conducted by the Melbourne Age. It showed that very few Australians were opposed to the death penalty under any circumstances (24%). The numbers favouring a limited use of the punishment of death have tended to increase in recent years, doubtless in response to the escalation of violence and, specifically, terrorism.

Other common concerns include the debates in Israel and Australia about the introduction of a written Bill of Rights and limits upon the use of judges. This last subject matter was mentioned by the Chief Justice of Australia in his report to the Legal Convention in Adelaide in July 1979. It arose in an acute way in Israel because of the participation of Mr. Justice Barak in certain legal aspects of the negotiations for a Peace Treaty with Egypt. Barak J. had, before his recent appointment, taken a significant part in legal issues relevant to the peace. In Israel, as in Australia, the numbers of highly talented and experienced officials available to the nation are strictly limited. In these circumstances it is perhaps inevitable that greater demands will be made upon the judiciary for non-curial duties, than occur in other countries. The involvement of the judge, although with the knowledge of his judicial brethren and the consent of the President of the Supreme Court, sparked a controversy not dissimilar to that which perennially arises in Australia when judges step outside the courtroom to assume wider community responsibilities. See F.G. Brennan,"Limits on the Use of Judges" (1978) 9 Federal Law Review 1.

CONCLUSIONS

This is not an exhaustive analysis. By way of three or four illustrations, I have merely sought to show how similar are the approaches to legal problems in Israel and Australia. Australian lawyers feel at home in the milieu of Israeli law. An independent judiciary exists to protect the rights, under the law, of Israeli and non-Israeli alike. That this can be stated is the more remarkable because Israel is confronted by problems from within and without that far transcend any that we in Australia face. It is a signal achievement of Israeli society that despite these problems and perils, the Rule of Law continues to be maintained and enforced in the courts and respected by the government and people.

I am not saying, of course, that everything is perfect. There is no society on earth where injustice has been abolished, where there is unimpeded access to the courts and where the laws enforced are uniformly up to date, simple and just. Israel is no more that society than Australia is. In each country there is much scope for reform and modernisation of the legal system, of those who administer it and those who practise in it. A recent report of a United Nations Committee claims, for example, that Arab residents in Israel may not always be afforded the rights spoken of in this paper. I make no comment on that report for I have not seen it and I have not read the response of Israel to it.

But even on so sensitive a subject as the military tribunals and the differential treatment of the accused before them and the ordinary courts, Israel is a society atuned to self-criticism and orderly reform. During 1979, a committee was established under the Chairmanship of Mr. Justice Landau, to inquire into the structure of the courts in Israel. One matter in its remit is the role of military tribunals and their relationship with the ordinary courts system.

Mr. Justice Shamgar, a former Attorney-General of Israel, and judge advocate general of the Israeli army, is reported in the Jerusalem Post (30 May 1979) as expressing criticism of the military judicial system :

> "It is the only penal system in the country parallel to the civil courts, and there are issues on which the courts of each system reach totally different conclusions".

The judge is also reported as critical of the current practice by which military judges are appointed by the Chief of Staff. He expressed the view that this could lead to a lack of proper judicial independence and an unhealthy familiarity "between judges and those being judged". These and other issues are now being examined under the spotlight of public controversy by Mr. Justice Landau's committee.

In Israel, if injustice exists, one can feel confident that, if it comes before the courts, it will be exposed and criticised in vigorous, persuasive language by an independent bench. If it does not come before the courts, there are still means available and vigorous spokesmen in the highest quarters inclined and able to expose injustice and to work for its rectification.

These observations were never intended to be a panegyric of praise. They are nothing more than the scattered thoughts of a traveller, whose visit was shamefully brief but who brought away many abiding impressions of the men and women who administer justice, under difficult circumstances, in Israel. I have, as stated, previously visited the Arab lands that surround Israel. There I have seen the many contributions which they have to make to human civilisation. I look to the day when Israel can live at peace with its neighbours and when a free interchange of lawyers and legal ideas among all nations in the region (and beyond) will contribute to the scholarship of mankind and reinforce respect for the Rule of Law and add light to the search for Justice.