97

MURDOCH UNIVERSITY, WESTERN AUSTRALIA

COUNTERPOINT FORUM, 24 APRIL 1979

HUMAN RIGHTS AND LAW REFORM

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THE BILL OF RIGHTS DEBATE IN THE UNITED STATES

Two hundred years ago this week, in the infant Republic of the United States, a debate was raging. In substance, it has been resolved in that country. It remains for resolution in Australia.

The debate was about the best way to protect human rights in a country boasting a system of government of laws not of men. The original Constitution of the United States contained a few statements of general rights, enforceable in the courts, but no general collection of the "rights of man". In this form, the Constitution had been passed by the representatives of ten States. No State dissented.

But when it was sent back for ratification, a debate flared which was not resolved until the fifteenth of December 1791 when, by due majority, the Congress adopted the first ten Amendments to the United States Constitution, known popularly as the Bill of Rights.

This Bill of Rights had been strongly opposed by the American Founding Fathers, many of them brought up in the traditions of the common law of England. Alexander Hamilton questioned the need for a statement of rights, where there was no express power given to take away the citizen's basic privileges. He suggested that fixing a list, any list, would result in a limitation of civic rights. Definition would inevitably produce circumscription. Who would be so bold, asked one patriot, as to list the rights of the people?

The debate, which was a vigorous one, was engaged two centuries ago between those of Hamilton's view and those who called for the inclusion, in the Constitution of the United States, of the f ndamental rights that would be above other lawsand beyond the power of Congress to amend. It was Mason, the draftsman of the Virginia Bill of Rights, who led the assault. Later it was agreed, as a price of ratification, to include a Bill of Rights and James Madison was assigned the task of drawing it. The Bill of Rights permeates American legal and social life. It has produced a nation of right-asserting citizens. It had encouraged the litigation of fundamental principles in the courts. It has certainly elevated to great importance the "least dangerous" arm of government : the Supreme Court of the United States. The Bill of Rights includes, as fundamental entitlements, the right of freedom of religion, freedom of the press, peaceful assembly, the right to petition, protection against unreasonable searches, the obligation to pay due compensation for compulsory resumption of property and the assurance of due process of law in legal process.

This is not the full catalogue of rights of the American citizen. But it is at the core of America's government under the law. Protection of human rights has been a recurring theme in the international policy of the United States. It is hard to learn, uphold and enforce these rights at home, without drawing inferences for the rights of others,elsewhere in the world. The notions undoubtedly played a great part in the development of the United Nations Organisation and in the post-war effort to secure internationall agreed statements of human rights. President Ford appointed a Human Rights Co-ordinator. President Carter has made the protection of human rights a corner stone of his foreign policy.

THE AUSTRALIAN DEBATE

We in Australia do not have a Bill of Rights in our Constitution. The adaptation of the United States Constitution muted the originality of our Founding Fathers. They adopted its written form, its federal structure and the limitation upon the powers of the central government. But they did not copy the United States model in three important particular respects. First, because we had no revolution, the Australian federal union was established as a monarchy under the Crown of the United Kingdom. Secondly, the principle of responsible government was adopted, so that our Ministers sit in the Parliament and are responsible to it. Perhaps most significantly, they did not copy the incorporation of a catalogue of rights, after the pattern of the United States Bill of Rights.

True it is, the Australian Constitution included certain statements of right. Thus, section 51(xxxi) ensures that if the Commonwealth acquires property it shall do so only "on just terms". Section 80 purported to guarantee trial by jury but only for trials "on indictment". This has proved a puny protection for it was held that the provision does not imply that any offence will necessarily be tried after the formality of an indictment. By reducing indictable offences, trial by jury is reduced.

Section 116 provides certain limitations upon the Commonwealth's legislating in respect of religion. Decisions so far suggest that this is a very circumscribed protection. However, there is currently before the High Court of Australia a challenge by the organisation known as Defence of Government Schools. It contends that the payment of funds to church schools offends section 116 of the Constitution. Time will tell whether there is more life in the section than was previously thought.

These exceptional provisions aside, it must be said that the Australian Constitution contains few general statements of civic rights, especially when contrasted to Constitutions of other lands. At the latest count, 108 national Constitutions of the world provide for a Bill of Rights after the American model. Thirty nine do not. Of course, the provision of a written Bill of Rights is no guarantee that the rights will in fact be protected. Many of the countries with a written list would not be regarded as right-asserting and right-protecting, according to our standards. The point for present purposes is that our Constitution, on paper, is exceptional in its failure to list the rights of the citizen enforceable in the courts. This does not say that our decision is wrong. It is simply exceptional.

The exception did not come by oversight. There was spirited debate in the Constitutional Convention as to whether a Bill of Rights should be incorporated. The debate was put to the test on a proposal to include a guarantee of due process of law in the Constitution. The proposal was supported by Mr. R. O'Connor Q.C. of New South Wales, later to be a High Court Justice. It was opposed by Isaac Isaacs Q.C., the Victorian Attorney-General, later a Chief Justice of Australia and Governor-General. The issue was put to the vote and the proposal to include a guarantee of due process was lost by 19 votes to 23. The debate that had engaged Alexander Hamilton, Madison and the American Founding Fathers, was addressed by those who established our Federation. The result was different and it is perhaps for that reason that the debate is still with us today. There are still some who urge that we should establish an Australian list of guaranteed rights. Others would be content with legislation, short of constitutional amendment, guaranteeing certain fundamental rights. Still others oppose this general expression and say that the right way to go about protecting human rights in our country is by the passage of specific laws, possibly supplemented by the creation of a general watchdog, such as the Human Rights Commission.

THE DEBATE IN ENGLAND

It should not be thought that the recent revival of interest in the machinery for protecting human rights is a limited local concern. There has been a major debate in England over the past few years. Interestingly enough, the line-up of supporters and opponents of a constitutional Bill of Rights differs from that which has emerged in Australia. Whereas in Australia, it has been the Labor Party which has tended to favour general statements of rights, preferably in constitutional form, in Britain, the Labour Party has basically opposed this notion. The supporters have tended to come from the Conservative Party, notably Lord Hailsham, and the judiciary, notably Lord Scarman.

In November last, a report of a Select Committee of the House of Lords on a Bill of Rights was debated in the House of Lords. The initial resolution was that the report be noted. Proponents of a constitutional Bill of British rights proposed that the government "introduce a Bill of Rights to incorporate the European Convention of Human Rights into the domestic law of the United Kingdom". Lord Gordon-Walker and Lord Lloyd of Hampstead suggested that to do this would be to import "a new and formidable element of uncertainty into our law". Lord Scarman, on the other hand, criticised the inability of the general common law to handle the complicated problems of today :

> "The common law, marvellous as it has been in developing safeguards for human rights in certain fields, never succeeded in tackling the problem of the alien, never succeeded in tackling the problem of the woman and never succeeded in tackling the problem of religious minorities and it has in our day had to be supplemented by detailed legislation to ensure a measure of justice to racial groups". *House of Lords, Record of Debate,* 29 November 1978, col. 1346

Lord Hailsham pointed to the flood of legislation coming out of Parliament. He stood "unreservedly and solidly" behind Lord Scarman. By a majority of 56 to 30 the Lords adopted the resolution urging the government to introduce formal guarantees into the hitherto unwritten British Constitution. It will be interesting to observe whether the election campaign in the United Kingdom produces commitment, one way or the other, to a Bill of Rights in that country.

Quite apart from domestic debates of this kind in Britain, Canada, New Zealand and Australia (countries which have until now spurned the notion of a written list of rights) there have been great movements on the international stage. The European Commission on Human Rights at Strasbourg receives complaints against European Governments from individuals and other Governments. A recent "Stocktaking" on the success of the European Convention on Human Rights issued by the Council of Europe shows that the registration rate of individual applications has been rising steadily since 1967. It now numbers about 460 individual complaints a year. These cases are dealt with in the first instance by the European Commission on Human Rights. If sufficiently important, they are referred to the European Court of Human Rights. Countries bind themselves to bring their law into line with the obligations of the European Convention. As a result of decisions of this international court, domestic law and even the constitutions of European countries have been amended to accord with rulings on fundamental protections for the rights of European man. Important cases have established the right to interpreters in criminal proceedings, have limited the length of detention on remand, and have laid down the principle of equality between prosecution and defence : a notion imported into European law from the English legal system.

In addition to this European Convention on Human Rights, the Council of Europe has produced more than 100 Conventions on such diverse subjects as extradition, the legal status of migrant workers, transplantation laws and the suppression of terrorism. For all their great differences of history, culture and language, the countries of Europe seem to be doing rather better at uniform law in appropriate areas than we are managing in the Australian federation.

On the international scene, there is the International Covenant on Civil and Political Rights. Australia, in a delegation led by Attorney-General Nigel Bowen, took a key part in the design of that International Covenant. We have signed it in December 1972. We have not yet ratified it. But ratification is the common aim of the present government and its predecessor. The Attorney-General has announced that Australia hopes to ratify the Covenant as soon as possible. Before doing so, it is discussing with the States the establishment of machinery that will translate the International Covenant from a fine statement of principles into something more effective. Senator Durack has persuaded most of the State Attorneys-General (and the Attorney-General for the Northern Territory) to take part in Ministerial meetings to discuss human rights issues. These meetings will provide a forum for Commonwealth and State Ministers to consider and discuss broad human rights issues. Some Ministers expressed reservations but Senator Durack indicated that he is confident that the meetings can do valuable work, particularly where there is an issue where uniform action may be needed on an Australia-wide basis (1979) 4 *Commonwealth Record* 109-110.

THE CONTROVERSY SUMMARISED

This, then, is the background for the controversy on human rights in Australia. Most of us would generally agree about the broad content of the "rights" of Australian citizens. The dispute in our country is not about whether

there should be human rights or whether they should be protected but precisely what the rights are and whether they should be enforceable by a general charter or in some other way.

Opponents of the Bill of Rights (whether in a Constitution or in general legislation) repeat the arguments of Hamilton. People have their rights, unless Parliament specifically takes them away. We can trust the common law and the independent judiciary to protect us from the loss of rights. The free press and general prosperity are also guardians of our rights. Lists of rights tend to define and circumscribe. They can also get out of date as the United States right "to bear arms" illustrates. It is wrong in principle, say the opponents, to commit protection of such important matters to unelected and unaccountable judges. It is all very well if they define the rights correctly. But judges can err and it is more likely that Parliament will be sensitive to the changing needs of society than the remote judiciary, which is unaccountable for its work.

Supporters of the notion of a Bill of Rights say that Parliaments and Governments tend to steer clear of sensitive questions. They point out that such difficult issues as racial integration, police powers and abortion reform have only been dealt with in the United States because of the Supreme Court's ability to grasp the nettle where Congress has failed. They say that judges under our system are more likely to be cautious and that excessive fears of "judicial imperialism" are misplaced. They say that there is a moral and educative advantage in listing the agreed bases upon which we live together in our form of society so that these are put above politics and reinforce the "fragile consensus" necessary for the maintenance of democracy. According to the supporters of the Bill of Rights, the real threat to liberties is not in a frontal assault but in the erosion of rights by overproductive Parliaments,

enacting an ever-increasing flood of legislation which chips away at the freedom of the citizen. A Bill of Rights would at least put some matters, so it is said, beyond dispute.

This is not an easy debate to resolve. It is not for me to resolve it. The arguments both ways are forceful. Each side has merit.

ARE OUR RIGHTS AT RISK?

It is sometimes said that the debate about protecting human rights is a theoretical one in Australia because rights are not really at risk. But the view that the common law and the independent judiciary will be sufficient to protect and uphold important rights is sometimes open to doubt.

Take the protection of privacy. This is so important a right that it is contained in the constitutional guarantees of several countries. It takes on a new importance and urgency in the age of computing science. Our High Court, in 1937, was urged to assert and define a common law right to privacy. The Chief Justice of the time said that "however desirable some limitations upon invasions of privacy might be, no authority was cited which shows that any general right of privacy exists". *Victoria Park Racing and Recreation Grounds Co. Limited v. Taylor* (1937) 58 C.L.R. 479, 496. The Law Reform Commission has now been asked to develop, in detail, the principles for legislative protection of privacy, where the common law failed to provide the remedy.

More recently, we have seen further evidence of failure on the part of the common law. In *Dugan v. Mirror Newspapers Limited* (1978) 22 A.L.R. 439 the High Court, by a majority, held that Dugan could not maintain an action for civil wrongs in the courts of New South Wales. Dugan

was a convicted prisoner. Many years ago he had been sentenced to death for the felony of wounding with intent to murder. The death sentence was commuted. He was later released on licence. During his freedom he committed another felony. He was sentenced to 14 years' imprisonment While serving this latter sentence, he commenced proceedings for defamation against a newspaper. The newspaper contended that a prisoner convicted of a felony and sentenced to death could not maintain an action for a civil wrong in the courts of New South Wales. It was alleged that this was the law of England inherited on the establishment of the Colony in Sydney. The defence was upheld. A person convicted and sentenced for a capital felony was declared precluded from bringing an action in defamation.

Of course, I say nothing of the legal principles which led to this conclusion. The fact remains that the decision stands in stark contrast to internationally declared rights and, I would venture to suggest, the opinion of most Australians concerning the proper limit of punishment and the deprivation of civil liberties. The Universal Declaration of Human Rights, for example, asserts that :

> "everyone has a right to recognition everywhere as a person before the law" (Article 6).

In the European Court of Human Rights the issue of a prisoner's entitlement to access to the courts was raised in *Golder v. United Kingdom*. In that case the court said :

> "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".

One can abhor the crimes for which Dugan was convicted. One can accept that such crimes warrant punishment. But to deny access to the courts to a person on the ground that he is a prisoner convicted of certain offences is, I believe, unacceptable. Yet that is our law in New South Wales. There were no higher principles to which the Justices of the High Court could appeal. They felt their duty to be to enforce the law of 19th century England. In England this rule has been abrogated, as it has in several States by statute. In New South Wales, it is the law of the land and will be enforced in the courts. The Law Reform Commission in its work on the review of sentencing of Commonwealth offenders is examining this anachronistic rule so that federal offenders will be ensured a right of access to the Queen's courts. Lord Hailsham has said that the Banner of the West is the Rule of Law. There cannot be a Rule of Law without unfettered access to the courts of law. The loss of civil rights, in the sense of the deprivation of certain classes from access to the law, must be a matter of concern for all thinking people.

THE LAW REFORM COMMISSION'S ROLE

In the specific protection of human rights, the Australian Law Reform Commission has a particular role that is relevant to the present debate. There is a general provision in section 7 of the Law Reform Commission Act requiring the Commission, in preparing its reports, to ensure that its recommendations are consistent with the International Covenant on Civil and Political Rights. This is a novel provision in an Australian statute and it is one which the Commission takes seriously. The section was inserted on the resolution of the late Senator Greenwood. It is specially relevant because a number of tasks assigned to the Law Reform Commission by succeeding Attorneys-General have been of vital concern to the practical protection of human rights in our country.

The first task we had related to the implementation of a system of independently handling complaints against federal police. Our recommendations included the recommendation that the Commonwealth Ombudsman should be empowered to receive complaints, to investigate certain of them and to act as a guardian to ensure that complaints were vigorously investigated and fairly handled. It was also suggested that a special branch of police should be established and that an independent judicial tribunal should be created for the truly serious cases, short of the criminal. This proposal is under consideration in Canberra, in relation to the suggested establishment of the Federa Police of Australia. It has already been accepted by legislation in New South Wales. Some parts of the scheme have been adopted in Victoria, South Australia and Queensland.

Our second report on Criminal Investigation required us to review the procedures of federal police in the investigation of crime. There can be no more critical time for the rights of the subject and for taking those rights seriously, than when a person is under suspicion and interrogation for a criminal offence. A common theme of our report was the adoption of new means of science and technology to set at rest some of the disputes that presently plague criminal trials. The adoption of the tape recorder at police stations will, it is believed, settle many of the disputes concerning alleged confessions to police. The adoption of videotaping and photography of identification parades will dispose of some complaints about identification evidence. Judicial superintendence of arrest and search warrants by telephone is a novel suggestion that has now been adopted in the Northern Territory, where distance, as in Western Australia, is a relevant factor. Special protections were proposed for disadvantaged groups. Parents should be present when children are interrogated. Interpreters should be present where the interrogation is of people who are not fluent in English. Aboriginals who

are disadvantaged should have a "prisoner's friend" present. All of these proposals were accepted by government. An important Bill was introduced by Attorney-General Ellicott. It was the Criminal Investigation Bill 1977. Attorney-General Durack has said that he hopes to reintroduce the Bill, with some amendments, this year. It is a "major measure of reform." It commits the balance between protecting the community and protecting individual rights to the judiciary who are empowered to exclude evidence wrongfully obtained contrary to the new code.

Already, in advance of federal legislation, some of the proposals have been adopted in New South Wales and the Northern Territory. I believe we will see a new code for the federal police which will modernise police practice and make it available to all persons in our country. Such rules should not be hidden away in police instructions or English casebooks.

There are many other tasks which the Law Reform Commission is examining relevant to the protection of human rights. Our task on debt recovery, for example, addresses itself to the fact that in some parts of Australia persons are still imprisoned for civil debts. This practice runs counter to the principles of the International Covenant on Civil and Political Rights. If people are guilty of criminal conduct and are deliberately avoiding their debts, that is one thing. It is quite another (and most would think counterproductive) to threaten and actually carry out imprisonment of persons for failing to meet their debts. In the Credit Society, and especially in a time of unemployment, debt default can occur without intent. The law should recognise the realities of today's credit community.

The Commission's task on privacy protection will seek to establish rules that defend the claim of the individual to a zone of privacy. The task we have on class actions and standing address the question : What is the proper role of the courts? Is it appropriate that we should limit access to the courts to persons with a particular, pecuniary interest of their own in litigation? Should it be enough to be a citizen to be able to challenge legislation in the High Court of Australia? At present, it is not enough. Some particular personal involvement must be shown to move the court. It is not so in other countries, where it is considered that being a taxpayer is sufficient "interest". The reference on standing and the task on class actions require the Law Reform Commission to define the proper future role of courts and judges.

The two most recently received references have come from Senator Durack. Each of them fixes a deadline for report and in each case a report must be delivered in 1979. The first relates to the reform of sentencing of Commonwealth and A.C.T. offenders. Is it appropriate that judges should receive training before they tackle the task of sentencing? Should offenders in all parts of the country receive roughly the same punishment for a Commonwealth offence and if so how should greater uniformity be brought into the criminal justice system? What is the true purpose of punishment : is it to deter others? to vindicate society and secure retribution? or is to rehabilitate the offender? Does it have all of these purposes and if so are they consistent?

These questions also arise in our most recent assignment on child welfare laws. In today's society it seems inapt that a child should be charged with being a neglected child, yet in some jurisdictions, notably the A.C.T., that legal fiction persists. Important steps have been taken in South Australia and Western Australia to diminish the intimidation of the child welfare laws and

procedures. These are under close scrutiny by us for their application in the Capital Territory.

OTHER INITIATIVES ON HUMAN RIGHTS

The Law Reform Commission is not the only vehicle for promoting laws for the practical protection of human rights by specifics, not generality. A number of initiatives have been taken by successive Commonwealth Parliaments to deal with the special problem of human rights as against the bureaucracy. More damage may be done, in quantum, to human rights over the bureaucratic counter than in police stations and gaols. With the growth of government and of the services and facilities it is expected to provide, more checks are needed to uphold the position of the individual. The Prime Minister has said :

> "We have already legislated in a number of areas to protect the rights of citizens and will continue to do so where there is a need. The Ombudsman, the Administrative Appeals Tribunal and other provisions are areas where the Commonwealth has shown a concern for the rights of individual citizens against, for example, what can sometimes be regarded as a large, powerful and hard-to-understand bureaucracy. Protection for the rights of individuals in a modern society I think is necessary. We have legislated to put those matters into effect". C.P.D. (H of R), 21 March 1979, p.944

Mr. Fraser could also have mentioned the Administrative Decisions (Judicial Review) Act 1978. This Act, which has passed through Parliament (but which is not yet proclaimed) establishes important rights to judicial review in the Federal Court. It submits bureaucratic decision-making to the test of lawfulness and correctness. It also requires that Commonwealth officers give persons affected by decisions the reasons for decisions that are adverse to them.

The Freedom of Information Bill is another important initiative, being the first effort by a Westminster Parliament to grapple with the problem of the individual's right to break down the secrecy that has hitherto permeated government in this country. Other initiatives are planned. They include, as has been stated, the establishment of a Human Rights Commission. This will be a federal watchdog, which will scrutinise laws of the Commonwealth to ensure that they do not offend against the internationally declared standards set out in the Covenant on Civil and Political Rights.

> "Under the legislation individuals or groups who consider their rights to have been violated will be able to take their complaints to the Commission to seek redress. The Commission will have the power to report on laws and practices which may be inconsistent with the International Covenant, on laws that should be passed and any other action that should be taken by the Commonwealth in relation to human rights".
> Senator Durack (1979) 4 *Commonwealth Record* 109.

All of these are important initiatives and I believe they have not been sufficiently drawn to attention. It is reassuring that although differences exist as to the means of protecting human rights, there is a broad consensus amongst all the Parties in the Australian political system, at least at the Commonwealth level, that new machinery is needed and that this machinery should take as its guiding star international statements of civil rights, including the International Covenant.

THE RULE OF LAW AND ACCESS TO LAW

There is no room for complacency about protection of civil rights in today's Australia. By world standards, we live in a country of peace, order and the rule of law. If there are wrongs, there is a general consensus that there are ways to cure those wrongs and regular, routine machinery to grapple even with sensitive and controversial subjects, such as those referred to the Law Reform Commission have uniformly been.

It would be my hope that the next decade will see a greater effort to interpret the law and its percepts to the community generally. Too often in the past, the law has been regarded as a mystery : something remote and, generally available to the wealthy few who have the knowledge, resources and courage to work its machinery.

The procedures adopted by the Law Reform Commission have sought to raise the public debate about the purposes of law in our kind of society, its present defects and the way in which real reforms can be achieved by improvements in the administration of justice. The writing of splendid reports and even the drafting of legislation is not good enough if people do not get to know of the reforms or are too ignorant, timorous or overborne to exert their rights.

A beginning has been made with community legal education in Australia. We have now begun to go beyond teaching a few rudiments of the traffic laws. I am told that, in Victoria legal studies is now the most popular optional subject in the secondary school curriculum. I hope that this interest will inspire those who draw school curricula to include in them study of legal machinery and of the basic rules of some areas of the law. I also hope that lawyers and the courts will play their part in this movement to educate the community in the vital functions which they play in our democracy. It is not enough to erect splendid court

buildings. It is vital that thought should be given to interpreting the law, especially of the highest courts, to the community governed by the law.

Consider these figures. If a citizen wishes to keep himself generally informed about the decisions of our highest court, the High Court of Australia, he will not find it easy. I do not know what happens in Perth, but in Sydney, where the principal office of the court is located, a citizen wanting to take away a decision of the court must pay 50 cents a page at the court registry. If he wanted to buy a single part of the authorised reports of the court (the Commonwealth Law Reports) he could purchase this part for something over $12. To secure a volume of these authorised reports, he would be obliged to pay $44. And he would find that the authorised reports were only up to date to June 1977.

If, as an alternative, he decided to subscribe to the Australian Law Journal Reports, he would be obliged to pay $53 a year for that journal and then he would receive the parts unbound. He would find as at April 1979 that the last part received was the February issue which included cases up to December 1978. The Australian Law Reports issued their last part in mid March. The last date of the cases reported was 22 December 1978 so that this series is also about three months' behind. At $55 a volume and approximately five volumes a year, it would cost the ordinary person $270 a year to keep pace, generally a few months behind, with the judgments of the High Court.

I realise, of course, that most people are not interested to read the detailed decisions of the court. Our lawyers' mode of presenting decisions would make that difficult for the layman anyway. But the price of keeping

the law to the "priestly caste" of lawyers is either indifference to it or a mixture of fear and contempt of its rules and of its practitioners.

I find it hard to believe that as the 20th century moves to its close, the legal profession, alone of all the service professions of the community, will be relieved of the obligation to interpret its role to those whom it ultimately serves. The price of the present situation can be readily seen. It was illustrated this month on a day when the High Court handed down seven important decisions. Most newspapers carried not a word about these decisions. One gave a garbled version of five of them in a few column inches. At least it tried. But when, in one newspaper, an effort was made to report the decision of the High Court in the case of Coe v. The Commonwealth of Australia and Anor., I regret to say that the newspaper got it wrong. It reported a 3-2 majority of the Full High Court whereas in fact the Court was evenly divided. It misreported the effect of the majority and minority opinions. And this was upon an application to amend a statement of claim seeking declarations that the Aboriginal people of Australia had certain rights in land, of which they were dispossessed. It was an important and controversial case. It was, moreover, one upon which the Justices divided. Insofar as the ordinary citizens of Australia were concerned, an important decision of their third arm of government was misreported, and in material respects, misinterpreted for them.

I do not blame in this the reporter or the newspaper. Again, I say, they tried. I believe that we should do more to help them. The experience of the Law Reform Commission teaches that there is a great deal of interest in the community about the law. What is needed is more concern on the part of lawyers to interpret their profession and to do so in language which the ordinary person will understand.

If the Banner of the West is, as Lord Hailsham asserts, the Rule of Law, more must be done to inform our citizens of the way in which the rules are made. And the way in which they are open for change, improvement and orderly reform.