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THE QUEEN'S UNIVERSITY OF BELFAST

BELFAST, NORTHERN IRELAND

FACULTY OF LAW

MacDERMOTT LECTURE 1983

TUESDAY 11 OCTOBER 1983

LAW REFORM - THE AUSTRALIAN EXPERIENCE

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LAW REFORM, BIOETHICS AND THE AUSTRALIAN EXPERIENCE

The Hon Justice M D Kirby CMG  
Chairman of the Australian Law Reform Commission

RETURN OF THE NATIVE

It is a distinct honour to be invited to deliver this Lecture, named for a famous and scholarly judge by this distinguished seat of learning.

It is also a special pleasure for me. Half my forbears trace their origins to this Province. In the early days of the century, my mother's father left Ulster, where he had been reared, to make a new life for himself and his family in Australia. He was a journalist. He came from a creative family. He never forgot his origins. He named his home in Sydney 'Ballymena'. He raised my mother in the stern Faith that was his conviction. At her knee, as a child, I learned the ways of the Protestant people of this Province. If asked my ethnic origins, I suppose I would still say 'Northern Irish'. Yet on my father's side, most of my people are from the South. They arrived in Australia long before, though whether they arrived in convict ships (now very fashionable), I cannot tell. From North and South of Ireland, my people went to Australia to establish a new life. They took with them the English language (after a kind), English forms of government and the common law of England which flourishes in my country. But they also took with them the special creativity and love of literature and words that marks out Celtic people.

The association of Irishmen with the law in Australia is a significant one. It is not my purpose to trace its history. The first rising of any magnitude against civil authority in Australia took place at Eureka, outside Ballarat in the gold fields of Victoria.

In truth, the event is a rather insignificant occurrence. It took place in 1854 It pales into utter insignificance beside the American Revolution and Civil War. Australia's history has been one of gradual reform, not violent uprising. Just the same, the event, such as it was, was led by, Peter Lalor, an Irishman born in Raheen, Queen's County in 1827. Curiously, the recently appointed Australian Ambassador to the Irish Republic is Sir Peter Lawler — spelt differently and with a knighthood, an officer of the Order of the British Empire but also a Celt.

Most of the folk heroes of Australia tend to be Irishmen. One highly celebrated is the bushranger Ned Kelly. He was tried in Melbourne in October 1880 for the murder of a police constable. The trial took place before another Irishman, Sir Redmond Barry, born in County Cork in 1813. It was Barry who sentenced Kelly to be hanged. 'May the Lord have mercy on your soul', he said. To which Kelly retorted 'Yes, I will see you there'. A fortnight after Kelly was hanged, Barry died rather suddenly, unexpectedly. A Jewish Australian Professor of Criminal Law committed this fascinating inter Irish exchange to the study of Irish experts, contending that its explanation lay far outside his realm of understanding.<sup>1</sup>

During the whole history of the Australian Federation, Irish people and their descendants have played a central part in the life of the law. The first Bench of the High Court of Australia — Australia's Federal supreme court — included Richard Edward O'Connor. He was soon joined by Henry Bourne Higgins. The third Chief Justice was Frank Gavan Duffy. He was joined on the Bench in 1930 by Edward Aloysius McTiernan, a Justice for an unprecedented term of 46 years until his resignation in 1976. On the present Bench of the High Court of Australia, at least three of the present seven Justices trace their origins to this Island. The Chief Justice of Australia, Sir Harry Gibbs, has told me that his forbears came from this Province and from England. Justices Murphy and Brennan bear witness to the great contribution of Irish Australians to our law. There are doubtless many others who could be mentioned. The point is that many Irish people went to Australia. At first they were often disadvantaged by their origins, their Faith or their social class. But in today's Australia the Irish, from North and South, are increasingly part of the old established order. We are now seeking to build a multicultural society based on the tolerance of difference. The principle of multiculturalism has been accepted by successive Australian Governments of different political complexions. In the place of the previous principle of integration and assimilation of different people into the one culture, there is now acceptance of the right of people just to be themselves. In the place of

uniformity, there is now a wholehearted embrace of diversity. The previous effort, so popular in my childhood, to force everyone to be a kind of Antipodean Englishman is now, with increasing popular conviction, giving way to a willingness to live together harmoniously with people permitted, even encouraged, to preserve their distinct cultural, linguistic and individual differences.

I speak with hesitation on this topic, for nothing is more tiresome than a foreign visitor offering solutions to deeply felt problems beyond his understanding. But as a native son, two generations removed, who still feels the pull of this Province, I hope I may be permitted to refer to this philosophy of multiculturalism. It was not easy to develop it in Australia. For more than a hundred years the principle was white superiority sheltered behind the British flag and the British Fleet. The watchwords 'White Australia' were unquestioned principles of Australian nationhood. There are many who still believe them today. But gradually, almost imperceptibly, a philosophy of toleration has grown in Australia over the past decade or so. Ethnic diversity is now more than a few colourfully dressed people dancing in the public squares on their national days. It is more than a few foreign language newspapers on the stand or interesting shops with exotic foreign foods. Save for Israel, Australia now has greater cultural and linguistic diversity than any other country on earth. In a sense, we had to develop a new national principle of multiculturalism. It is a healthy development. And it is one which may have lessons for Ireland, a land from which so many of Australia's leaders, political as well as legal, sprang.

I do not have to tell you of the pain which the daily television broadcasts of events in Northern Ireland brings, especially to people of Irish descent in Australia. Cocooned in our Antipodean island, remote from such strong passions, sustained by a growing movement of toleration, we look on these events with distress and despair. I will say no more of them. Some things are beyond words. But I would not want to return to this place without offering the hope that I believe springs from the acceptance of diversity. In multicultural Australia, I can join wholeheartedly with Irish Australians of all persuasions and all backgrounds. We feel that the violence is somehow unreal. We count our blessings that we can be reconciled on the other side of the world in a community which, at least officially, adopts the view that it is not necessary to march to the beat of a single drum. I hope that in time this democratic and tolerant principle will come to be accepted in this part of the world, for the sake of human life, communal harmony and respect for the Rule of Law.

LORD MacDERMOTT TODAY

Respect for the Rule of Law brings me to the man in whose name this lecture series is celebrated. For lawyers in Australia, John Clarke MacDermott is a famous Judge, whose contribution to the work of the Judicial Committee of the Privy Council made him, in a sense, a member of Australia's judicial hierarchy. For four years after 1947 he held an active appointment as a Lord of Appeal. As noted by Lord Lowry in his obituary speech, Lord MacDermott's judgments were written in superb and beautiful language. He found himself in the minority more often than 'some lesser men' — revealing perhaps the important attachment to principle that is both the strength and the problem of people who harken from these parts.<sup>2</sup> Of his life and work, I would not presume to speak. The best assessment I have seen is in that splendid book by Robert Stevens, 'Law and Politics', which was originally delivered as a series of lectures at this University.<sup>3</sup> According to Stevens, Lord MacDermott was set aside from the other Law Lords of his time by his jurisprudential approach to the task of the Judge of ultimate appeal. He always sought to construe statutes with the legislative intent in mind, to restate common law principles broadly, and to prevent the law from deviating too noticeably from common sense or from the current political and social developments of the country. He was always aware of the realities of the situation and refused to extoll, with complacency, the virtues of the existing law. His approach was one of 'balanced creativity and policy making'. In an uncongenial time, he made profoundly important contributions to the reforming role of a Judge at the apex of the legal system.

In his last years, Lord MacDermott was continuously troubled by the dangers for the Rule of Law that grow out of intolerance. The people who insist upon a single marching tune in society were, according to his view, endangering the Rule of Law. As a Judge and as a Christian man, he was concerned by what he saw in the health of this bulwark principle, throughout the Kingdom but particularly in this Province.

In 1957 he delivered the Hamlyn Lectures on 'Protection From Power'. He referred to the necessity of holding a just balance between power and liberty. Whereas some countries of the common law, including the United States of America and the Republic of Ireland, have entrenched fundamental rights and liberties in a Constitution, in the United Kingdom, as generally in Australia, something else has to sustain the just balance:

On what then do we depend for an enduring just balance? On something, surely, that is not law at all : on something that resides neither in institutions nor past achievements, but in the hearts of individual people, in the common, cognate virtues of courage, kindness and honesty, in the lustre of the spirit, in the faith and vision that nourishes and upholds all else.<sup>4</sup>

In the first Lecture in this series, given by him in 1972, MacDermott took as his theme 'The Decline of the Rule of Law'. Anguished by the developments here, he offered his own suggestions for 'the way to improvement'. It cannot be assumed, he asserted, that time is running in favour of law and order. He called for clarification and strengthening of the law. He lamented that the prospect of winning the battle for law and order merely by a process of debate, seemed remote.<sup>5</sup> He finished with a typical call for a return to the common virtues of kindness and decent behaviour, regretting only the lack of consensus within the community that 'augurs ill for the early establishment of sensible institutions and a return to wholesome and effective government.'<sup>6</sup> When he died in July 1979, the attainment of these goals was no closer. Unhappily, to an outsider, they seem no closer today.

In his evaluation of MacDermott, the Judge, Lord Lowry offered this telling remark:

He was a splendid lawyer and knew every branch of the law but he was the master of his law and not just its humble and obedient servant. His keen eye for the merits and his sense of what the just result ought to be, while not causing him to spurn the law (which he loved and respected), often enabled him to find a path to the goal by way of the law and not in spite of it.<sup>7</sup>

You will all be aware of the debate that has raged in recent years concerning the role of the judiciary in creative law reform. Until recently, the received wisdom was that Judges did not make the law. They simply found it in their bosoms and then proceeded to apply it. No Judges of the common law world were more assertive in this 'declaratory' view of the judicial role than those in Australia. One of our Chief Justices, Sir Owen Dixon, once declared that were it otherwise, were there no external standard of legal correctness, Judges would feel that the function they performed had 'lost its meaning and purpose'.<sup>8</sup> This was the dogma of 'strict and complete legalism' in which I was raised. It has been hard to take it seriously since a Scot, Lord Reid, denounced it as a 'fairy tale' unworthy of serious belief.<sup>9</sup>

But when it is conceded that Judges do make the law, questions remain as to the extent to which they have opportunities to do so, the occasions when they should seize those opportunities and the principles by which they should develop the common law. Lord MacDermott was, by the assessment of his peers, a 'bold spirit'. Lord Denning was boldest of all.<sup>10</sup> But other Judges, on both sides of the world, have expressed caution. Judges may not always be the best people to develop, stretch and bend the law. Their training may be too narrow. Their inclinations may be too cautious and unadventurous. The parties before them may not represent the whole range of the community's interests involved. The opportunities they have for expert and community consultation may be virtually nil.<sup>11</sup>

It is in these circumstances that even creative Judges have urged the necessity to develop and improve the machinery of institutional law reform. That machinery has been developed in most jurisdictions of the common law. The Law Commissions of England and Wales and of Scotland were the forerunners. But they were soon copied in other countries. In Australia, every State now has a law reforming agency. The Australian Law Reform Commission, a Federal body, was established in 1975. It is a permanent instrument to help the Australian Federal Parliament in the development of Federal and Territory laws in Australia. It has included some of the most distinguished lawyers in the country amongst its members. Justice Brennan, to whom I earlier referred, was, for example, one of the original Commissioners. So was one of the State Premiers, Mr John Cain. So too was a law teacher who went on to become Governor-General and is now Master of Oriel College, Oxford (Sir Zelman Cowen). The present Attorney-General of Australia, Senator Gareth Evans, who has told me of his own visit to this University, was also one of the foundation Commissioners. He has promised the strong support of the present Australian Government for the work of the Commission and for the implementation of its reform proposals.

If there has been one important contribution of the Australian Law Reform Commission to the institutional development of law reform in the common law world, I believe it has been in the procedures adopted for community consultation about the directions of law reform. Lord MacDermott lamented in his Inaugural Lecture that the time for consultation in Northern Ireland had passed. But in Australia, consultation in law reform is the special, demanding feature of our work. It is justified as a means of securing information. But it is equally important as a means of raising expectations that reform will be achieved. In this way, the involvement of the general community in the process of law reform has taken on a political significance which cannot easily be ignored. Whether Australian procedures are fit for export is for others to judge. Whether they are suitable

for contemplation in the divisions of this Province is uncertain. But perhaps in John Wesley's phrase and in God's good time, these things shall be. Certainly, in some matters of law development and reform, procedures of community consultation seem imperative if the law is to be kept up to date, certainly if it is to find Lord MacDermott's 'enduring just balance'.

#### THE REALM OF BIOETHICS

There has been much interest around the world in the recent amendment of the Constitution of the Republic of Ireland concerning abortion laws. I suspect that there will be even more interest in the proceedings in the European Commission on Human Rights concerning divorce laws in the Republic.<sup>12</sup> I must not comment on either of these developments. But they do lead naturally to a question that might even have taxed Lord MacDermott and would certainly have concerned him, because of his love of the Rule of Law. I refer to a number of perplexing bioethical questions relevant to human life that are presenting themselves to the common law today, whether in Northern Ireland, Australia or elsewhere. Some of these questions are with us already. Still others are just around the corner. Fundamental is the uncertainty as to whether our institutional machinery of law making is adequate to provide laws that are apt to resolve the social, moral and legal questions that are being posed by developments of science and technology.

If for a moment we distance ourselves from the daily business of the law, it is possible to discern some of the strong undercurrents in the legal system. One of these would surely be the impact of science and technology on the law. Future historians will be likely to say that one of the most remarkable features of this generation was the coincidence of three scientific developments of enormous potential : advances in nuclear physics; the development of the microchip and associated information technology and the discoveries of biological technology. All of these developments have implications for the law and for law reform. Of them, the dilemmas of bioethics : the moral questions raised by biological developments, are perhaps the most puzzling. They concern quite fundamental issues of human life and death. Therefore, they are issues that tend to have significant legal implications.

Some lawyers in Australia suggest that bioethical questions, insofar as they have implications for the law, are 'soft' issues : to be distinguished from so-called 'hard' or 'blackletter' questions, apt for the lawyer's art. True it is, no simple precedents offer universal solutions to the legal problems posed by advances in bio-technology. Analytical judicial techniques of a linguistic kind leave us unsatisfied when we ask and seek to answer these questions. My present purpose is to establish that bioethical questions



are now beginning to confront our courts. We do well to develop new and improved techniques to provide the law's solutions. Judicial training, the barrister's art, the limits of the witness box and curial procedures are not well adapted to providing satisfactory answers to the legal dilemmas that surround, for example, the right to live and to die.

In the midst of crowded court dockets, Judges of our legal tradition are now required to answer increasingly hard questions. To illustrate this proposition, take a sample of cases in common law countries. They are all cases heard within the past three years. None is from Northern Ireland, although, quite possibly, there have been cases here. By the time the next lecture in this series is given, there will be many more of them. The institutional question is critical. It is whether our legal system will cope adequately in providing acceptable solutions. On that question, I have a few observations to offer based on the Australian experience of institutional law reform.

#### LIFE AND DEATH CASES

Take, first, the right to live. In April 1982, a judge of the Supreme Court of New South Wales had to decide whether a 15-year-old State ward could have an abortion, notwithstanding the total objection, on the grounds of conscience, of her legal guardian, the Minister for Youth and Community Services. The abortion was permitted by the court.<sup>13</sup> An attempt was made to appeal to the High Court of Australia in the name of the unborn child. However, the abortion was performed. The appeal was dismissed as 'moot'.

In November 1982, a doctor in New Zealand who was likewise opposed to abortion, sought to challenge a certificate given under the relevant New Zealand legislation by two medical colleagues. Justice Speight in the High Court of New Zealand held that the doctor had no legal standing under New Zealand law to challenge the certificate. The New Zealand Court of Appeal affirmed his decision.<sup>14</sup> It held that neither the doctor nor anyone else had the right to represent the unborn child before the New Zealand courts.

In June 1983 Justice Matheson of the Saskatchewan Court of Queen's Bench in Canada completed three weeks of evidence in a case, the principal issue of which is the legal protection, if any, given by the new Canadian Charter of Rights and Freedoms to the right of an unborn child to live.<sup>15</sup> The case is regarded as a test and is certain to be appealed to the Supreme Court of Canada.

Almost exactly ten years after the important decision of the Supreme Court of the United States in Roe v Wade<sup>16</sup> in 1973, that court had to reconsider the law of abortion in the United States. By a majority the court reaffirmed what it called the 'basic principle', that a woman has a 'fundamental right' to make the 'highly personal choice' as to whether or not to terminate a pregnancy; only when the foetus can be viable outside the womb (generally in the third trimester) can the State seek to protect the life of the unborn child.<sup>17</sup>

In March 1983 the High Court of Australia refused to allow an appeal by a lover who sought to prevent the unmarried mother from aborting a foetus he claimed to have fathered. Amongst other things, the Chief Justice of Australia, denying special leave to appeal, said that such an order would be a serious infringement of the privacy of the mother.<sup>18</sup>

Apart from these abortion cases, courts in common law countries are increasingly being confronted by the issue of the law's protection for retarded or physically disabled neonates : babies born with gross congenital defects confronting medical practitioners, parents and the community with serious questions about the protection of human life, whatever its quality. In August 1981, the Court of Appeal in England had to decide on appeal from Justice Ewbank, whether to order an operation to relieve an otherwise fatal obstruction in a baby born with Downs Dyndrome (severe mental retardation). The parents did not consent to the operation. They believed that the child should be allowed to die 'naturally', under sedation. The Court of Appeal disagreed. It ordered the operation performed<sup>19</sup>, allowing but one exception to the right to life, namely where the child's life would be so 'demonstrably awful'<sup>20</sup> that it should be allowed to die. But what does this phrase 'demonstrably awful' mean and how will courts determine when what is 'awful' has become 'demonstrable'?

In November 1981, Dr Leonard Arthur was acquitted of a charge of attempted murder of a baby, John Pearson. This baby was also grossly retarded and deformed at birth. He was given a regime of water and sedatives and allowed to die. According to evidence adduced at the trial of Dr Arthur, this was a standard medical procedure in such cases, at least in many hospitals. Right to life organisations called for the better legal protection of the life of such neonates, indeed for the protection of any human life, regardless of its quality. Some philosophers were equally critical of Dr Arthur's regime. One, Professor Peter Singer, argued that it would be kinder and more principled to give such neonates a needle rather than to require a slow death by starvation in the name of a suggested legal superiority of passive neglect over positive and active termination, once the decision is made not to sustain life.<sup>21</sup>

In March 1983, in the Supreme Court of British Columbia in Canada, Justice McKenzie overruled a Provincial Court order concerning a young child. In effect, the judge required that an operation should take place against the wishes of the parents, to treat a severely retarded boy approaching seven years. The boy is blind, partly deaf, incontinent, unable to stand, walk, talk or hold objects. An implanted shunt upon which he relied for life had broken down. Without operation, the boy would almost certainly die. The judge held that the case was not in the 'demonstrably awful' class. Accordingly he reversed the primary judge and ordered the operation performed.<sup>22</sup>

In April 1983, a Federal judge in the United States struck down an attempted Federal Rule proposed by President Reagan to deal with the issues of neonaticide. The Rule sought to introduce toll-free lines for citizen complaints to Washington about suspected cases of hospital neonaticide and the strict removal of Federal funds for any hospitals found guilty of the practice. The rejection of the Rule is being appealed.<sup>23</sup>

The courts have not been able to avoid cases involving the suggested right to die. In February 1982 the Court of Appeal in England rejected a claim which asserted a cause of action for 'wrongful life'.<sup>24</sup> A number of cases in the United States have succeeded, based on the claim that the life of physical or mental handicap to which a child is condemned is such that reasonable parental and medical precaution before birth would have resulted in the termination of pregnancy.<sup>25</sup> The English Court of Appeal held that no such right was known to English common law. To impose a suggested duty to terminate human life would, if determined, be an unacceptable inroad into the public policy in favour of the sanctity of human life. Also in 1982 the English courts had to consider the prosecution of two leading members of EXIT, the British Euthanasia Society. The members had converted their intellectual belief in the right to a peaceful death into activities rather more energetic, aimed at helping people on their way. The result was a sentence of two and a half years' gaol for the leader.<sup>26</sup>

In the United States an increasing number of cases are coming before the courts involving the suggested right of the very old and infirm to die peacefully, without enduring heroic medical and surgical intervention. For example, in the case of Earle Spring<sup>27</sup>, State lawyers sought to uphold, purportedly on behalf of the incapable Spring, the law's protection of life at any price. The courts, sensibly, although after many months of appeals, rejected this approach. They paid attention to such considerations as pain, hopelessness, the predicament of the dying and their families and the cost to the community — although the last mentioned is not yet an issue frankly discussed, except in lectures such as this.<sup>28</sup>

In April 1983, a judge of the Supreme Court of New South Wales had to consider a case raising issues similar to those that have arisen in Northern Ireland. A prisoner, objecting to the manner of his imprisonment, threatened to starve himself to death and embarked upon a fast refusing food and medical treatment. An order was sought on behalf of the prisoner to restrain prison officials from feeding the prisoner against his will. In essence, the application asserted the prisoner's ultimate right to die. Based on relevant prison regulations, the judge refused the application.<sup>29</sup> Happily a compromise was struck and the prisoner broke his fast. But the case does raise the question of where self-determination in medical treatment ends and where prison discipline and other social intervention legitimately begin.

#### NEW BIO-TECHNOLOGY

As if these actual cases involving legal and moral questions about life and death were not hard enough, we must now contemplate new dilemmas as contemporary scientists manipulate basic human life forms. Should artificial insemination by a donor other than a husband be allowed or forbidden by law, and if allowed, with what consequences? Should in vitro fertilisation be forbidden or altered, and if allowed, with what consequences? Should it be provided on the National Health Service? If this is to be denied, will the procedure become the preserve of the infertile who are wealthy? Should in vitro fertilisation be available to create a foetus as a harvest of ready-made human organs, available for transplantation into the bodies of patients who would benefit greatly from the ready availability of specially grown and compatible organs? Should in vitro fertilisation in combination with cloning be permitted to supply vital organs needed for the relief of pain or even to save human life? Should frozen embryos, in excess of the needs of a couple undergoing fertility treatment, be discarded and washed down the drain? Or does human life begin, for the purposes of the law, at the instant of conception requiring respect for and protection of the human embryo even in its earliest and most primitive form? Should scientists be permitted to retain the embryo in the hospital refrigerator for decades, even perhaps centuries? If so, what happens, in law, to the transfer of property or of titles? What are the consequences of the death of one of the donors or of the divorce of the genetic parents? Should surrogate motherhood be permitted, and if so, under what conditions? Should the law contemplate the ownership and patenting of life forms?<sup>30</sup> Should there be any legal limits at all on genetic engineering?

Some absolutists call for a total ban on all of these procedures. Such calls have been partly successful in Australia. In the State of Victoria, where in vitro fertilisation procedures are most advanced, the government has imposed a moratorium on certain procedures pending clarification of the legal and ethical questions raised. Other

commentators question the limited function of the law in interfering with the efforts of modern medicine to alleviate the problems of infertility and other maladies. Committees in Britain, Australia and elsewhere have begun to tackle the issues of in vitro fertilisation including the legal issues. Yet the courts too, in a number of common law jurisdictions are addressing an expanding list of difficult ethical and legal questions affecting life and death. We are witnessing the beginnings of a complex jurisprudence of bioethics. A nagging question remains. It is whether we have the legal mechanisms to guide our societies to the answers to the dilemmas that are presenting themselves. Specifically, it is questionable whether those answers can be supplied quickly enough and expertly enough, without the development of appropriate new institutional means.

There is a choice before our societies. It is not a choice between having no law at all and having some law. Clearly, laws will be needed, if only to sort out the procedures and consequences of in vitro fertilisation, the treatment of neonates, the development of cloning, DNA manipulation and so on. The issues before us seem rather to be : How much law should there be? Should the law, out of deference to particular views of morality, step in with moratoria, absolute or limited? What should the law say? And who should design and make the law? I cannot believe that it is best to leave the solution of the acute moral and social dilemmas of a bioethical kind to busy judges in the midst of onerous duties operating within the limits of the courtroom assisted by lawyers often of narrow training and without the facility of widespread public consultation and community discussion. The question of whether there should be law on these topics and, if so, what that law should be, should depend upon considerations and techniques more sophisticated than those typically available in inter-partes litigation conducted according to the adversary process.

Lord Scarman once said that the genius of English-speaking people lay in their ability to solve complex and sensitive problems in a routine way. No one can doubt that the issues I have been addressing are complex and sensitive in the extreme. If we are to heed Lord Scarman's suggestion and at the same time to get on with the job of developing the law in a systematic fashion, we will need permanent institutions to tackle the legal questions raised by advances in biotechnology. Clearly, on matters on such sensitivity and potential divisiveness, a careful ear must be turned to informed community opinion. Much careful thought must be given to the limited role of the State in the enforcement even of the majority's view of morality, where that view affects a minority most intimately and painfully caught up in the laws so designed. In Australia, the Law Reform Commission has been used by successive governments of differing political persuasions to assist the law making process in the development of law on sensitive and controversial topics. One such

project actually involved the realm of bioethics, namely the Commission's report on Human Tissue Transplants.<sup>31</sup> The balance of this lecture is addressed to the techniques that have been developed by the Australian Law Reform Commission to secure and evaluate expert, lobby and community opinion, on topics of bio-ethics and the law, but also on topics of more routine law reform controversy.

#### REFORM CONSULTATION IN AUSTRALIA

Expert consultants. At the outset of any new project of the Australian Law Reform Commission, a small number of multidisciplinary consultants is appointed, to work with the Law Commissioners. This ensures that the Law Reform Commission can tackle, in an effective and informed manner, tasks which call on knowledge and skills beyond those of the lawyer. Because many of the matters referred to the Commission for report involve non-legal expertise, an effort is made at the outset of every task to secure as consultants, lawyers and non-lawyers who will have relevant expertise to offer as the project develops. In choosing consultants, the Commission has looked to a number of criteria. The first consideration is the possession of special related knowledge and information. Another is the desirability of securing consultants from different parts of the country. The Commission has also sought to balance competing attitudes and interests. Thus, in the project on introduction of class actions in Australia, the President of the Australian Consumers Association sits down with representatives of business and industry. In the project on improvement of debt recovery laws, the Executive Director of the Australian Finance Conference takes part, with persons experienced in helping and counselling poor debtors. In the project on the laws governing human tissue transplantation, just mentioned, medical experts of differing surgical disciplines were joined by a professor of moral philosophy, a Roman Catholic theologian and the Dean of a Protestant College of Divinity. In the reform of police procedures, legal academics and civil liberties representatives debate with senior police officers and other Crown officials. For the reform of defamation laws, no fewer than 30 consultants were appointed, including journalists in the printed media, radio and television, newspaper editors and managers, legal academics, experienced barristers, lecturers in journalism and an Anglican divine.

The end result of these procedures is a remarkable collection of interdisciplinary expertise which has greatly enriched the thinking of the law commissioners. Consultants attend meetings with commissioners, review in-house publications and generally add their knowledge and perspectives to the development of law reform proposals. They are in the nature of a chorus, cajoling, reminding, insisting and usually, finally, harmonising in the development of reform proposals. On some points, consensus cannot be achieved. Reports of the Commission make it plain that the

responsibility for recommendations is that of the commissioners only. However, there is no doubt that this interdisciplinary team has profoundly affected the reports of the Australian Law Reform Commission. The bias of lawyers, their perceptions of law reform proposals — and what Professor Julius Stone calls 'what lawyers think' are the problems of law reform — are exposed to a constant process of interdisciplinary exchange. The needs for such exchange are readily apparent in many of the tasks given to the Australian Law Reform Commission. A large proportion of these, chosen by political Ministers<sup>32</sup> have been addressed to controversial social questions upon which lawyers, plainly, do not have a special claim to expertise. Reform of child welfare laws, for example, requires the participation of medical practitioners, psychiatrists, police and other expertise.<sup>33</sup> Development of a law on privacy requires, nowadays, the close participation of computer and communications experts.<sup>34</sup> The issue of whether Aboriginal customary laws should be recognised in Australia requires anthropological and philosophical expertise as much as it does legal.<sup>35</sup>

The layman's discussion paper. The second development aimed to secure the involvement of non-lawyers in the process of law reform in Australia has been the development of the brief discussion paper. Brevity is a discipline that does not always come readily to lawyers, including law reformers. The traditional working paper first developed by the English Law Commission was often too long, too complex and too boring to secure the very aim in target, namely widespread consultation. For this reason, the Australian Law Reform Commission, and lately some of the State commissions in Australia, have produced, in addition to detailed papers, short discussion papers and pamphlet summaries of interim proposals. These state briefly the policy issues being posed for professional and public comment. By arrangements with law publishers, the Australian Law Reform Commission's discussion papers are now distributed with the Australian Law Journal and other periodicals, thereby reaching most of the lawyers of Australia. The result has not always been the desired flood of professional comment and experience. However, there has been some response from lawyers in all parts of the country, in a way that would simply not occur in response to a detailed working paper of limited distribution.

Discussion papers of the Australian Law Reform Commission are now widely distributed to other interested groups outside the law. Copies of summary pamphlets are reprinted in or distributed with professional journals in disciplines related to the issues under consideration. In the case of the discussion paper on the question of whether Australian law should recognise Aboriginal customary laws, a new procedure has been adopted, involving the distribution of cassette tapes, summarising in simple language the

problems and proposals. Translations into principal Aboriginal languages have been concluded. These cassettes are now being circulated for use in the far-flung Aboriginal communities of Australia. They will permit and indeed promote discussion and response in a way that no printed pamphlet could ever do.

Public hearings. The third innovation, to escape the dangerous concentration on what lawyers think worry citizens, has been the public hearing. Before any report of the Australian Law Reform Commission is written, public hearings are held in all capital cities of the country. Lately they are also being held in provincial centres. In connection with the inquiry into Aboriginal customary laws, they have been held in outback towns and Aboriginal communities. Public hearings of the Law Commission have, apparently, not been held in the United Kingdom.<sup>36</sup> A fear has been expressed that they might descend into 'many irrelevant time-wasting suggestions'.<sup>37</sup> This fear reflects the lawyer's assurance that he can always accurately judge what is relevant. Although it is true that in the public hearings of the Australian Law Reform Commission, time is occasionally lost by reason of irrelevant submissions, the overwhelming majority of participants in public hearings have proved helpful, thoughtful and constructive. In addition to public advertisement, specific letters of invitation are now sent to all those who have made submissions during the course of the inquiry up to the date of the hearing. Although hearings had a shaky start, for Australians are not accustomed to such participation in law making, they are now increasingly successful. Certainly this is so if success is judged by numbers attending and the utility in the provision of information and opinion. Many of the hearings proceed late into the night. Evidence and submissions are taken by the commissioners, usually required by an inexorable airline timetable, to join an early morning flight to another centre. In recent public hearings conducted into Aboriginal customary laws, hundreds of Aboriginals converged on remote hearing centres in order to listen and to participate: presenting very great logistical problems for an institutional body of small resources.

The notion of conducting public hearings was suggested many years ago by Professor Geoffrey Sawer of the Australian National University. He drew attention to the legislative committees of the United States of America and the utility in gathering information and opinion, involving the community, as well as the expert, in the process of legislative change.<sup>38</sup> The hearings have several uses. They bring forward the lobby groups and those with special interests, including the legal profession itself. They require an open presentation and justification of arguments about the future of the law under study. They encourage ordinary citizens to come forward and to 'personalise' the problems which hitherto may have been seen in abstract only. In a number of inquiries of the Australian Law Reform Commission, notably those on human tissue transplants<sup>39</sup> and



compulsory land acquisition<sup>40</sup>, the personal case histories help the Commission to identify the lacunae or injustices in the law needing correction. Quite frequently, problems are called to attention which have simply not been considered. Defects in tentative proposals come to notice and can then be attended to. The media attention which typically accompanies the series of public hearings and the companion industry of professional seminars, has itself a utility which cannot be under-estimated. It raises community expectations of reform action. It placates those community groups which rightly insist on having their say. It ensures that when politicians receive the report proposing law reform, it has been put through a filter of argumentation in the community to which they are electorally responsible. There is also a point of principle. The public hearings of the Australian Law Reform Commission, as they have developed, provide a forum for the articulate business interest and the well briefed government administrator. But they also provide the opportunity for the poor, the deprived, the under-privileged and the disaffected or their representatives to come forward and, in informal circumstances, to offer their perception of the law in operation and their notion of relevant injustice and unfairness. In point of principle, it is important that ordinary citizens should be encouraged to have their say in the review of important laws which affect them. There is an increasing awareness that the occasional 'say' through the ballot box is not always adequate. New machinery is needed which at the one time acknowledges realistically the impossibility of hearing everybody's opinion, but encourages those who wish to voice their grievances and to share their knowledge to come forward and to do so in a setting which is not over-formal or intimidating.

Use of the public media. A fourth relevant innovation of the Australian Law Reform Commission has been the use of the public media: the newspapers, radio stations and television, to raise awareness of law reform issues in a far greater community than would ever be achieved by the cold print of legal publications. The public media have attendant dangers. They tend to sensationalise, to personalise and trivialise information. A five minute television interview, or even a half hour 'talk back' radio programme, scarcely provides the perfect forum for identifying the problems which law reformers are tackling. For all this, a serious attempt to involve society in the process of law improvement must involve a utilisation of the modern mass media of communication. In Australia, the technique of discussing law reform projects in the media is now a commonplace, both at a federal and state level. The process has been described by a Prime Minister in terms of approbation as 'participatory law reform'.<sup>41</sup> The Law Reform Commission has even received Vice Regal plaudits for 'great intellectual capacity with a flair for publicising the issues of law reform' and attracting 'public interest to a degree unparalleled'.<sup>42</sup> Mind you, the Governor-General who said these things was Sir Zelman Cowen, one of our alumni.

The need to face up to the reality that a good idea needs more than to be put forward to be acted upon and to reject the 'intellectual snobbery' of the retreat to lawyers only or to experts only has been stressed in Britain by Professor Michael Zander.<sup>43</sup> Lawyers are not always the best people to identify the problems of law reform, particularly the social deficiencies of the law which are of general community concern.<sup>44</sup>

Surveys, polls and questionnaires. A fifth innovation is the utilisation of surveys and questionnaires. This is the utilisation of surveys and questionnaires in the development of law reform proposals. The idea of using surveys for the purposes of law reform consultation is not new. Calls for the greater use of surveys in Britain<sup>45</sup> and elsewhere tended to fall on deaf ears. By and large, lawyers have a well developed aversion to the social sciences generally and empirical research and statistics in particular.<sup>46</sup> The English Law Commission resorted to a social survey in developing its proposals on matrimonial property. They are expensive and take a lot of time. But they represent a practical endeavour to 'harness the social sciences to law reform'.<sup>47</sup> A report by the Joint Select Committee on the Family Law Act in Australia urged a review of the law relating to matrimonial property by the Australian Law Reform Commission.<sup>48</sup> Significantly, it proposed, as a prerequisite, the conduct of a social survey to gauge community opinion.<sup>49</sup> This difficult question has now been referred to the Australian Law Reform Commission. Already we are exploring ways of evaluating community attitudes on matrimonial property division following divorce.

Australian law reform bodies have used surveys of opinion, social science techniques and analysis only possible because of the development of computers. For example, in a current project on the reform of debt recovery laws, the Australian Law Reform Commission is collaborating with colleagues in the Australian States. Specifically, with the assistance of the New South Wales Law Reform Commission, it is scrutinising, with the aid of computers, returns on a survey conducted concerning all debt recovery process in New South Wales courts over a period of a year. Both the Australian and New South Wales Commissions came to the conclusion that sound law reform in this area could only be proposed upon a thorough appreciation of the actual operation of current laws. This required a detailed study of the way in which the debt recovery process was currently operating. That study is now drawing to its conclusion and will form the basis of the reform reports. The Scottish Law Commission, in its work on a related topic, has also conducted a survey of a similar kind.<sup>50</sup> All these efforts are directed to address the problems of 'the law on the ground', as distinct from verbal speculation about the 'law in the books'.<sup>51</sup> Statistics and social surveys can provide a means by which inarticulate and disadvantaged groups can speak to law makers.

The gathering of facts by surveys is not now very controversial. Oliver Wendell Holmes' prediction has come about: the constructive lawyer today is a 'man of statistics' or should I say -- a person of statistics. More controversial is the collection of opinion by procedures of surveys. The extent of the controversy was discovered by the Australian Law Reform Commission when it conducted a unique national survey of Australian judges and magistrates involved in the sentencing of federal offenders.<sup>52</sup> The survey was voluntary and anonymous. Its completion would have taken, on average, about an hour and a half of the time of extremely busy and supposedly conservative professionals. Notwithstanding scepticism about the value of surveys generally and the usefulness of the sentencing survey in particular, it is reassuring, and perhaps a sign of the times, that the response rate was equivalent to 74% of the judicial officers sampled. In a vigorous defence of basing law reform on empirical findings, the officers who conducted it pointed out, had until now been 'predominantly positivist and analytical rather than purposive or sociological'.<sup>53</sup> Resistance to an analysis of sentencing by the techniques (and partly in the language) of sociology, was evident in some quarters, especially in the judiciary in Victoria. The participation of the latter was much lower than the national average.<sup>54</sup> Reporting on this, the commentators on the survey responded in terms which, one suspects, would have quickened Lord MacDermott's heart:

Sentencing is not simply the application of abstract rules and principles to specific situations. It is an inherently dynamic and essentially personal process. If this observation is a mere 'matter of sociology', then it would appear to be shared by other lawyers, defendants and by a number of judicial officers as well. The process of sentencing is not exclusively one of syllogistic legal reasoning. That is why some of the questions raise issues which have fairly been described as sociological and others seek to identify relevant personal values of judicial officers.<sup>55</sup>

In addition to the survey of the judiciary, the Australian Law Reform Commission conducted surveys of federal prosecutors<sup>56</sup>, and prisoners<sup>57</sup> and public opinion. With the assistance of newspapers and others engaged in public opinion sampling, the Commission included questions relating to public perceptions on sentencing issues in national surveys of public opinion. In every case, the questions are designed by properly qualified specialists in public opinion sampling. So far, it has been possible to submit the questions, on issues such as criminal punishment and privacy, without cost to the Commission. Although we are a long way from surrendering recommendations and action on law reform to the vagaries of transient opinion polls, suggestions for reform, particularly in a volatile political climate, are better made against a clear understanding of public opinion, as scientifically shown by the procedures now available for its discovery.

Consulting special groups. There are other initiatives which could be described to demonstrate the way in which institutional law reform today is seeking out a thorough understanding of legal problems as perceived by consumers and participants, as well as by lawyers. For example, in a project on child welfare laws, care was taken to conduct informal discussion at schools and at children's shelters, with the young people of the relevant jurisdiction. The discussions were conducted in an unstructured way and at public, private and church schools, schools in richer and poorer suburbs and schools run according to unorthodox as well as orthodox teaching traditions. The results may not be particularly scientific. But they provide a corrective to an adults-only perception of children's involvement with the law. Likewise, as I have stated, there is now a large minority in Australian society, made up of migrants, many of them non English-speaking residents. They are consulted in every project. Through ethnic newspapers, radio and television, and through representatives and institutional spokesmen, efforts are made to secure the special perceptions they have of the operation of a legal order which in so many of its institutions, rules and procedures, is profoundly different from those of their countries of origin. To heed Holmes' warning that the constructive lawyer should be a 'master of economics' care is being taken in a number of projects to weigh and express the competing costs and benefits of a particular reform. In the past this equation has been unexpressed and ill-defined. In the future we are sure to see more of it in judicial reform<sup>58</sup>, in administrative reform<sup>59</sup> and in the work of permanent law reform bodies. In the inquiry into class actions, for example, the criteria are being identified which should be weighed in judging whether a class action procedure could be warranted in Australia on orthodox cost/benefit analysis. Consideration of the costs of alternatives was a major factor identified to justify the Commission's proposals concerning the regulation of insurance intermediaries in Australia.<sup>60</sup>

## CONCLUSIONS

The obligation to reconcile the law with modern perceptions of justice can no longer be attempted by a 'mere armchair analytical legal study of existing alternative rules'<sup>61</sup>, political hunches or playing with political words. So long as law reform remains a concern of lawyers only, it will inevitably tend to be confined to narrow tasks, non-controversial and technical, which do not represent the areas of urgency of law reform that would be identified by ordinary citizens. Yet when we go beyond the safe waters of technical law, it is plain that those who have a responsibility for the development of the law must acknowledge the sociology, statistics and economics of their task. They must broaden the base of their research. They must cast more widely the net of expert and community consultation.

In Australia, this is what the national Law Reform Commission has sought to do. The result has been a creative and innovative agency that is constantly in the news. Law reform has become a matter of high interest and widespread community discussion in Australia. Coinciding with this development, and partly encouraged by it, has been another community legal development which Lord MacDermott predicted here. I refer to his suggestion that the Rule of Law should be promulgated through the medium of general education.<sup>62</sup> In 1972 MacDermott proposed that the law should become part of the syllabus on civics in schools:

We cannot expect the Rule of Law to have an honoured place in the community if the rising generation and our administrators have not had a chance of learning about it.<sup>63</sup>

In Australia, this lesson has at last been learned. Legal Studies has become one of the most popular curriculum courses in Australian secondary schools. In the State of Victoria, it is eclipsed only by English, Australian History and Biology as the most popular senior school subject. The aim is not to turn out a disputatious nation of lawyers. It is to give a wide cross section of the community in school a sound understanding of the legal system and basic rudiments in those laws which are most likely to impinge upon their lives.<sup>64</sup> Though initially resisted by educational administrators, the students are voting with their enrolments. The result can only be a more healthy awareness of the law in Australia. Together with permanent law reforming agencies actively at work in a public way, this educational development may promote a community alert to the strengths and weaknesses of the system and determined to react to injustice with more than a shrug of indifference or apathetic resignation.

I have now completed my task. I return with pride to the land of my forbears. I enter this famous University with a wholehearted respect for its contribution to scholarship. I join you in honouring Lord MacDermott. I have listed a few very modern problems of bioethics and the law that would have taxed even his fine intellect. I have told you of some of the developments in law reform in Australia. They are developments to which Irish Australians have made notable contributions. Though we are a world apart in distance and in so many other ways, we share a delicate link in our common inheritance of a fine legal tradition. We should foster this link. In a world of division and conflict, we should celebrate and magnify all things that bring people together.

FOOTNOTES

1. L Waller, Regina v Edward Kelly, in C Cave (Ed), Ned Kelly : Man and Myth, Cassell, Aust, 1980, 105, 149.
2. Lord Lowry, The Right Honourable Lord MacDermott of Belmont, (1979) 30 NILQ 281, 282.
3. R Stevens, Law and Politics, The House of Lords as a Judicial Body 1800-1976, Weidenfeld & Nicolson, London, 1979, 380ff.
4. Lord MacDermott, 'Protection From Power', Hamlyn Lectures, 1957, quoted by Lord Lowry, *ibid*, 285-6.
5. Lord MacDermott, 'The Decline of the Rule of Law', (1972) 23 NILQ 474, 488.
6. *id*, 494.
7. Lord Lowry, 283.
8. Sir Owen Dixon, 'Concerning Judicial Method', in Woinarski (Ed), Jesting Pilate, Sweet, Australia, 1965, 155.
9. Lord Reid, 'The Judge as Lawmaker', (1972) 12 Journal of Public Teachers of Law, 22.
10. Lord Denning, in Candler v Crane, Christmas & Co [1951] 2 KB 164, 178.
11. See eg Mason J in State Government Insurance Commission v Trigwell (1978-79) 142 Commonwealth Law Reports, 617, 633; Lord Justice Scarman (as he then was) in Farrell v Alexander [1976] 1 QB 345, 371.
12. Dr Roy Johnston v Ireland, Decision by the European Commission of Human Rights, reported The Irish Times, 8 October 1983, 1.
13. K v Minister for Youth and Community Services (NSW), [1982] 1 NSW Law Repts 311 (Helsham J). An appeal to the NSW Court of Appeal was dismissed, (1982) 8 Family LR 250.
14. Wall v Livingston, unreported judgment of the Court of Appeal of New Zealand (Woodhouse P for the court), CA4/82, 22 November 1982, (1983) 9 NZ Recent Law 113.

15. As reported in the Advocate (newspaper of the Archdiocese of Melbourne), 16 June 1983, 3.
16. 410 US 113 (1973).
17. City of Akron v Akron Center for Reproductive Health, Inc, 51 US Law Week 4767, 4768, 4770 (1983).
18. Attorney-General for the State of Queensland (Ex rel Kerr) v T., (1983) 57 ALJR 285. Cf Paton v British Pregnancy Advisory Service Trustees (1979) 1 QB 276; Dehler v Ottawa Civic Hospital (1980) 101 DLR (3d) 686; Affid Ontario CA (1980) 117 DLR (3d) 512; l.a.r. Supreme Court of Canada, 3 February 1981, unreported.
19. In Re B (a minor) [1981] 1 WLR 1421.
20. ibid, 1424 (Templeman LJ).
21. P Singer, unpublished address to the Annual Scientific Meeting of the Australian College of Paediatrics, March 1983. See also discussion in The Lancet 1981: 2: 1101-2 and (1982) 56 Australian Law Journal 141.
22. Re Superintendent of Family & Child Services and Dawson, (1983) 145 DLR(3d) 610, 623.
23. American Academy of Pediatrics v Heckler, unreported, 14 April 1983 (DC DC, Gesell J).
24. McKay v Essex Area Health Authority & Anor [1982] 2 WLR 890. See discussion J Finch, 'No Wrongful Life' (1982) 132 New LJ 225.
25. Curlender v Bio-Science Laboratories, 165 Cal Rptr 477 (1980); Robak v United States, 658 F2d 471 (1981); Turpin v Sortini, 11 C3d 220 (1982).
26. R v Reed and Lyons, unreported, The Times, 31 Oct 1981. Reed was refused leave to appeal against conviction but his appeal against sentence was allowed and the sentence reduced to 18 months: The Times, 13 March 1983, p.2.
27. In Re Spring, Mass 405 N.E.2d 115 (1980). Discussed in J J Paris, 'Death, Dying and the Courts: The Travesty and Tragedy of the Earle Spring Case', 49 Linacre Quarterly 26, 32 (1982).

28. Cf R Ormrod, 'A Lawyer Looks at Medical Ethics', (1978) 46 Medico Legal J 18, 29.
29. Schneidas v Corrective Services Commission, unreported, 8 April 1983 (Lee J).
30. Diamond v Chakrabarty, 100 S Ct 2204 (1980).
31. Australian Law Reform Commission, Human Tissue Transplants (ALRC 7) 1977 2.
32. Under the Law Reform Commission Act 1973 (Aust), the Australian Law Reform Commission is confined to work 'in pursuance of references to the Commission made by the Attorney-General, whether on the suggestion of the Commission or otherwise'. See s.5(1) of that Act.
33. Australian Law Reform Commission, Child Welfare (ALRC 18), 1981.
34. Australian Law Reform Commission, Privacy (ALRC 22) 1983, forthcoming.
35. Australian Law Reform Commission, Discussion Paper 17, Aboriginal Customary Law — Recognition?, 1980; Discussion Paper 18, Aboriginal Customary Law — Marriage, Children and the Distribution of Property, 1982.
36. Lord Scarman, The Jawaharlal Nehru Lectures 1979, 'Law Reform — The British Experience', mimeo, Lecture 2, 4.
37. N Marsh, 'Law Reform in the United Kingdom: A New Institutional Approach', 13 William and Mary L Rev, 263, 276 (1971).
38. G Sawyer, 'The Legal Theory of Law Reform', (1970) 20 Uni Toronto LJ 183, 194.
39. Australian Law Reform Commission, Human Tissue Transplants (ALRC 7), 1977.
40. Australian Law Reform Commission, Lands Acquisition and Compensation (ALRC 14), 1979.
41. J M Fraser, Speech at the Opening of the Australian Legal Convention (1977) 51 Australian Law Journal 343)



42. Sir Zelman Cowen, Speech at the Opening of the International Bar Association Meeting, Sydney, September 1978, cited [1978] Reform 63.
43. M Zander, 'Promoting Change in the Legal System', (1979) 42 Mod L Rev 489.
44. Stone, 74.
45. J H Farrar, 'Law Reform and the Law Commission', 1974, 125.
46. Cf the writings of J Baldwin and M. McConville, eg 'Allegations against Lawyers' [1978] Crim LRev 741.
47. A Diamond, 'Law Reform and the Legal Profession', (1977) 51 Australian Law Journal 396, 406. The reference to harnessing the social sciences is from the 7th Annual Report of the Law Commission of England and Wales, 1971-2, para 2; Cf 11th Annual Report of the Law Commission, 1975-6, para. 6-8.
48. Australian Parliament, Report of the Joint Select Committee on the Family Law Act, 1980, Vol 1, para 5.155.
49. *ibid.*
50. Scottish Law Reform Commission, Annual Report 1977-8, para 37.
51. Stone, 62.
52. ALRC 15, 1980. See especially Appendix B, (A National Survey of Judges and Magistrates: Preliminary Report), *id.*, 341-503.
53. *id.*, 502.
54. *id.*, 483 (Table 15A).
55. ALRC 15, 499.
56. *id.*, 504, Appendix C, (Federal Prosecutor Survey).
57. *id.*, 509, Appendix D, (National Survey of Offenders).

58. See eg Mathews v Eldridge, 424 US 319 (1976). Cf J L Mashaw, 'The Supreme Court's Due Process Calculus for Administrative Adjudication', 44 Uni of Chicago L Rev 28 (1976).
59. Australia, Administrative Review Council, Second Annual Report 1978, para 9; Fourth Annual Report, 1980, para 43.
60. Australian Law Reform Commission, Insurance Agents and Brokers (ALRC 16) 1980, 82. Legislation based on that report has been promised in the late 1983 session of the Australian Parliament.
61. J Stone, Province and Function of Law, 1946, 408.
62. Lord MacDermott, 488.
63. *ibid.*
64. M D Kirby, Reform the Law, OUP, 1983, Chapter 4 ('Community Legal Education').