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PUBLIC POLICY RESEARCH AND DEVELOPMENT UNIT

PUBLIC LECTURES ON LAW REFORM

INAUGURAL LECTURE, WEDNESDAY 21 MARCH 1984

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Hon Justice MD Kirby CMG
Chairman of the Australian Law Reform Commission

A STUDY IN CONTRASTS

Within recent months the Chief Justices of Queensland and Victoria have expressed views relevant to the chosen theme of my address. Each has indicated reservations about public consultation concerning law reform.

It is my view that there is a need for more and not less public consultation. There is a need for more imaginative procedures for ascertaining public opinion. The very essence of institutional law reform is seeking out public views, as an aid to the process of legal reform and change. With every due deference and respect to the Chief Justices of Queensland and Victoria, I beg to differ from them. Each has had a long and deep experience in the law. Accordingly, their views must be listened to with deference and attention. However, it will be my thesis that their opinions are unduly pessimistic and indeed just a little old-fashioned, particularly in relation to the capacity of reform legislation to contribute to the improvement of our society — all of it.

In order to highlight the stark study in contrasts between the approaches to law reform and public consultation advocated by the Chief Justices and those that have been vigorously pursued by the Australian Law Reform Commission, and indeed other Australian law reform bodies, it is necessary to record briefly what the Chief Justices have lately said.

Take, first, the Chief Justice of Queensland, Sir Walter Campbell. He was himself a past Chairman of the Queensland Law Reform Commission. So he is knowledgeable about institutional law reform. Addressing the Eighth Australian Law Reform Agencies Conference in Brisbane in July 1983, Sir Walter said:

> In an increasingly complex society it is a delusion to believe that the law can be made simple. Those who for the time, possess the necessary wealth or hold positions of influence can generally buy their way through a labarynth of legal rules ... The causes of poverty are endemic and cannot be eliminated by actions of a law reforming kind. Should not the law reformer have his eyes fixed on the middle 60% of society, or do I sound bourgeois?[1]

More recently, the Chief Justice of Victoria, Sir John Young, delivering the 3rd Biennial Oration of the Association of Australasian and Pacific Area Police Medical Officers on 16 February 1984 said, amongst other things:

* 'The function of the legal system is not to change the world but to keep the foundations and framework of society steady'.
* 'There are continual demands for what is described as 'Reform' but much of the clamour is based on misapprehension'.
* 'One of the difficulties is that so often what is described as public criticism is criticism contained in a few uninformed newspaper articles enlivened by eye-catching headlines'.
* 'In one sense Parliament cannot alter the law. All it can do is issue specific commands'.
* 'The infinite complexity of human affairs is such that it is extraordinarily difficult to provide in legislation a general rule that will work fairly in all cases'.
* 'It is for this reason that the more experienced the lawyer the more hesitant he is to advance sweeping reforms. What concerns me is that so much of what is demanded by way of reform is based on misapprehension'.
* 'I speak of changes [in the law] rather than reform because 'reform' has become such a vogue word and moreoever it has connotations of improvement whereas in fact it is seldom that anything is actually improved by an Act of Parliament'.[2]

Now, it is true that an Act of Parliament cannot make people good or kind or abolish poverty. It is also true that sometimes statutes operate in unexpected ways or have unintended consequences. But the notion that the law and law reform should serve only 60% of the community or that Parliament only complicates matters and should leave things to the judges is one that has to be rejected. It undermines the democratic nature of our society, reflected in Parliament. It also underestimates the role of legislation in effecting, and sometimes even leading, reform of conduct and attitudes. Parliament always led community opinion on the abolition of capital and corporal punishment. Parliament probably led opinion in the abolition of the shabby proof of adultery in divorce.

Parliament has reflected and in some ways led public opinion in the reform of the law on sexual offences. It leads in matters such as multiculturalism and equal opportunity. But an essential ingredient in major reforms touching strongly held opinions is an obligation of Parliament and law reformers to consult the community, carefully and effectively.

BEHIND CLOSED DOORS OR IN PUBLIC?

There is another important difference between the approach to law reform urged by Chief Justice Sir John Young and the approach taken by the Australian and other Law Reform Commissions. In his recent address, for example, Sir John Young appeared critical of the examination of the law on 'voluntary intoxication' by the Victorian Law Reform Commissioner (Professor Louis Waller). Professor Waller last year published an issues paper on the subject following a reference of the matter to him by the Victorian Government. That reference had been given following widespread community disquiet, reported in newspapers, following the decision of the High Court in O'Connor's case.[3] In that case O'Connor's conviction was quashed by the High Court on the ground that the trial judge had failed to instruct the jury properly that the Crown had to prove that the defendant had the 'necessary intent' to perform the criminal act in question notwithstanding his intoxication and that the jury could not ignore the possible impact even of self-inflicted intoxication on the accused's ability to form a criminal intent.

Sir John Young questioned whether O'Connor's case 'really deserved the attention it has received'. He feared that the inquiry was 'the result of clamour in the press', that the public had not had the 'real problem explained to them' and that the consequence would be complex legislation and lengthier trials.[4]

As it seems to me, it is hard to deny that the O'Connor decision did not 'break new ground'. In those States of Australia which have a criminal code (Queensland, Western Australia and Tasmania, though not the Northern Territory of Australia) the earlier doctrine in the Majewski case (distinguishing specific and general intent) is the law. Justice Gibbs in O'Connor said that Majewski did not conflict with any Australian common law authority except decisions of judges sitting at first instance in the Supreme Court of Victoria. Justice Wilson said the justices of the High Court would be breaking new ground if they affirmed the decision of the Victorian Court of Criminal Appeal in O'Connor by rejecting Majewski. He said 'I cannot accept that this court should be the first court of final appeal in the common law to break new ground in this area'.

In the circumstances of such judicial comment it seems little wonder to me that the media was attracted to the issue. Perhaps it should be mentioned that Chief Justice Young was a member of the Victorian Court of Criminal Appeal when it handed down its decision in the O'Connor matter.

I share, with the Chief Justice, confidence in the common sense of juries. But I also believe that the clarification of this area of the law is a perfectly legitimate exercise. There is a clash between a basic principle of our criminal justice system (requiring proof of criminal intent) and apparent community perceptions of justice (in cases of loss of intent by self-inflicted intoxication). It is not a very satisfactory answer to say that juries pose no real problem on this issue, because, presumably, they are not always inclined to look favourably on an accused who is intoxicated. The basic legal dilemmas will remain, unless we address them. As well, there is a clash between English and Australian legal authorities at the highest levels. Newspapers have simply reflected community anxiety. I do not believe that this anxiety should be ignored, even on an assertion that experienced people well know that the legal defence is rarely successful. Lawyers should be required constantly to justify the law's stand in matters such as this. If I can say so, the thoughtful discussion document issued by the Victorian Law Reform Commissioner tried and succeeded in putting the competing points of view. It was not the usual boring document, so well beloved of lawyers. It was an interesting, well-presented and, so far as I could see, legally accurate document, inviting the opinion of the community. It has apparently succeeded in securing community reaction. This is the prelude to reform proposals that will assist the Parliament. The true democrats in our community will seek to make the Parliament work better. That can only be done, in matters of law reform, by engaging the community in an informed debate.

Also during his speech, Chief Justice Young told the Police Officers he was addressing that he was not urging them to 'go public'. On the contrary he urged them 'in your particular field of expertise to make your opinions known in the appropriate quarters when questions within our experience arise'.[5] This 'behind closed doors' approach to improving the law is another contrast with the methodology of the Australian Law Reform Commission. That Commission has adopted the view that there should always be a full opportunity of public participation in key policy decisions affecting legal change and reform. The balance of this paper is designed to indicate precisely what we have been doing. It is a tale of innovations.

METHODOLOGY OF CONSULTATION

Expert consultants. At the outset of any new project of the Australian Law Reform Commission, a small number of multidisciplinary consultants is appointed by me, to work with the Law Commissioners. This ensures that the 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 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. On insurance there were represented consumer groups and every branch of the insurance industry.

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[6] 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.[7] Development of a law on privacy requires, nowadays, the close participation of computer and communications experts.[8] Reform of the law on matrimonial property requires economists, social scientists and representatives of the women's movement amongst others. The issue of whether Aboriginal customary laws should be recognised in Australia requires anthropological and philosophical expertise as much as it does legal.[9]

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 reach 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. Similarly in our current inquiry into matrimonial property law, we are producing a video film to illustrate issues and to provide cassettes for distribution to community groups throughout the country.

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 English and Scottish Law Commissions have, apparently, not been held in the United Kingdom.[10] A fear has been expressed that they might descend into 'many irrelevant time-wasting suggestions'.[11] 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.[12] 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[13] and compulsory land acquisition[14], 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 politicans 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. These are not the bourgeois. They are not in the 60%. These are the 'other 40%' of our population. In point of principle, it is important that such people 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 to influence law developments. 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, such as voluntary intoxication, for example, 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 Fraser in terms of approbation as 'participatory law reform'.[15]

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 unparallelled'.[16] 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.[17] 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.[18]

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[19] 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.[20] 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'.[21] 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.[22] A reference has recently been received on this topic by the Commission. The Parliamentary Committee significantly proposed, as a prerequisite, the conduct of a social survey to gauge community opinion.[23] We are exploring ways of evaluating community attitudes on matrimonial property division following divorce. Happily, 'The Age' newspaper has agreed to include questions on the topic in a forthcoming Age poll.

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.[24] 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'.[25] Statistics and social surveys can provide a means by which inarticulate and disadvantaged groups — the other 40% — 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.[26] 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'.[27] 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 Victorian judges was much lower than the national average.[28]

In addition to the survey of the judiciary[29], the Australian Law Reform Commission conducted surveys of federal prosecutors[30], and prisoners[31] 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 accurate 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 do provide a corrective to an adults-only perception of children's involvement with the law. Likewise 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 of the Australian Law Reform Commission. 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[32], in administrative reform[33] and in the work of permanent law reform bodies. In the inquiry into class actions, for example, the reform 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.[34]

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'[35], 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 really represent the areas of urgency of law reform that would be identified by ordinary citizens if you asked them — especially the other 40%. 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.

This is what the Australian Law Reform Commssion has sought to do in its first ten years. State law reform bodies are now following suit. We must all be prepared to run the gauntlet of criticism, even from the highest levels of the legal profession, for community consultation has not been the way of our legal system. It is impossible to consult the community in the courtroom, although the jury can often present a microcosm of the community's good sense, as Chief Justice Young points out.

But as our society becomes more complex and as the pressure for reform, including legal reform, become more urgent, it will be vital that our law reforming bodies should be able to assist Parliament. To do so effectively, they must refine their techniques of consultation and community discussion. Otherwise what they will offer in their reports may be nothing more than the opinion of a few people, however intelligent, who may not be reflective of the diversity of the community; nor conscious of its shifting sands of power, interest and opinion.

If we have done one truly original thing in law reform in Australia, it is in the sphere of consultation. I have described mainly what has occurred at the level of the Australian Law Reform Commission, for I am most familiar with it. But innovative things have been done in the State sphere, including by the Victorian Law Reform Commissioner, Professor Waller, and his predecessors. These innovations deserve applause not criticism. They deserve encouragement, not rejection borne either in complacency or fatalism. We must never accept injustice, where it can be shown to exist. True it is, we may stumble in seeking to right wrongs or remove unfairness. But I have no doubt that it is better to stumble and even sometimes fall, venturing, than to accept with resignation the unacceptable.

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FOOTNOTES

1. Sir Walter Campbell, speech at the Opening of the Eighth ALRAC Conference, Brisbane, July 1983, cited [1983] Reform 140.

2. Sir John Mcl Young, 'The Courts and Law Reform', 3rd Biennial Oration, The Association of Australasian and Pacific Area Police Medical Officers, mimeo, 16 February 1984.

3. The Queen v O'Connor (1979-80) 146 CLR 64.

4. Young, 17.

5. Young, 18.

6. 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.6(1) of that Act. Note that this discussion of law reform technique is derived from (and elaborated in) MD Kirby, Reform the Law, 1983, 57ff.

7. Australian Law Reform Commission, Child Welfare (ALRC 18), 1981.

8. Australian Law Reform Commission, Privacy (ALRC 22) 1983, forthcoming.

9. 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.

10. Lord Scarman, The Jawaharlal Nehru Lectures 1979, 'Law Reform — The British Experience', mimeo, Lecture 2, 4.

11. N Marsh, 'Law Reform in the United Kingdom: A New Institutional Approach', 13 William and Mary L Rev, 263, 276 (1971).

12. G Sawer, 'The Legal Theory of Law Reform', (1970) 20 Uni Toronto LJ 183, 194.

13. Australian Law Reform Commission, Human Tissue Transplants (ALRC 7), 1977.

14. Australian Law Reform Commission, Lands Acquisition and Compensation (ALRC 14), 1979.

15. J M Fraser, Speech at the Opening of the Australian Legal Convention (1977) 51 Australian Law Journal 343.

16. Sir Zelman Cowen, Speech at the Opening of the International Bar Association Meeting, Sydney, September 1978, cited [1978] Reform 63.

17. M Zander, 'Promoting Change in the Legal System', (1979) 42 Mod L Rev 489.

18. J Stone, Social Dimensions of Law and Justice, 74.

19. J H Farrar, 'Law Reform and the Law Commission', 1974, 125.

20. Cf the writings of J Baldwin and M. McConville, eg 'Allegations against Lawyers' [1978] Crim LRev 741.

21. 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.

22. Australian Parliament, Report of the Joint Select Committee on the Family Law Act, 1980, Vol 1, para 5.155.

23. ibid.

24. Scottish Law Commission, Annual Report 1977-8, para 37.

25. Stone, 62.

26. ALRC 15, 1980. See especially Appendix B, (A National Survey of Judges and Magistrates: Preliminary Report), id., 341-503.

27. id., 502.

28. id., 483 (Table 15A).

29. ALRC 15, 499.

30. id., 504, Appendix C, (Federal Prosecutor Survey).

31. id., 509, Appendix D, (National Survey of Offenders).

32. 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).

33. Australia, Administrative Review Council, Second Annual Report 1978, para 9; Fourth Annual Report, 1980, para 43.

34. Australian Law Reform Commission, Insurance Agents and Brokers (ALRC 16) 1980, 82. Legislation based on that report was introduced in December 1983 into of the Australian Parliament. See Insurance (Agents and Brokers) Bill 1983; Cf Insurance Contracts Bill 1983.

35. J Stone, Province and Function of Law, 1946, 408.