

AUSTRALIAN ASSOCIATION FOR RESEARCH IN EDUCATION

YOUTH SCHOOL AND UNEMPLOYMENT

SYDNEY OPERA HOUSE, 6 NOVEMBER 1980

A NEW APPROACH TO TEACHING LAW IN SCHOOLS

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

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YOUTH IN HARD TIMES

It is with some diffidence that I come before a conference of experts in education to speak about a matter of education. But as you know, judges by inclination or training learn to overcome diffidence. Many lawyers learn to become instant experts in a whole variety of disciplines and in a remarkably short space of time. I will be no exception. Having paused at the brink, I must take the plunge.

My thesis is that the youth of today face a society whose watchword is change. Amongst other changes, with which they must cope, are radical changes in the legal institutions and rules of Australian society. I propose to identify the chief forces for change and illustrate the ways in which the Australian Law Reform Commission is seeking to help Australia's lawmakers to cope with change. My proposition to you, as educationalists, is that an adequate preparation for citizenship and a rounded education today require some instruction in the basics of the laws by which the citizens of the future will be governed.

There is no doubt that today's young people face difficulties which their predecessors, at least, over recent generations, did not face. The report of the Committee of Inquiry into Technological Change in Australia (the Myers Committee) reported in July 1980:

Many of the unemployed persons in Australia are under 25 years of age and significant numbers are school leavers who have been unable to obtain work on completing their education. The committee recognises that a growing economy and expanding employment opportunities are particularly important for the new entrants to the labour force. Technological change is a key factor in achieving this needed economic growth.<sup>1</sup>

One hears loose talk in some quarters that many young people deliberately opt for unemployment. I am sure that the Myers Committee was right when it concluded:

In the case of unemployed persons, the committee believes that most would prefer to obtain their share of the national wealth by being in paid employment. Although unemployment benefits are paid and are increased from time to time, the evidence suggests that the absence of employment opportunities is in itself of fundamental concern to the individual unemployed person.<sup>2</sup>

Describing the disadvantages which young people face in entering the labour force in a time of recession, Professor Myers and his colleagues concluded that young people often faced special difficulties in a time of rapid technological change. Though they are frequently able to adapt more quickly, excessive vocational specialisation in training may all too frequently be overtaken by new technology.<sup>3</sup> A lesson Myers invites us to draw is that educationalists in schools should concentrate more attention on technologically-oriented secondary education and less attention on highly specialised vocational training.<sup>4</sup> Though it is fashionable to suggest that unemployment may be cured by education that is precisely directed at manpower needs of today, the danger is that the youth of today will be locked into specialties which are all too soon overtaken by rapidly changing technology.

It is in these circumstances that educationalists and social observers see merit in an educational system which, whilst paying proper deference to numeracy and literacy, also devotes adequate attention to preparing the youth of today for tomorrow's society of rapid change.

#### FOUR FORCES FOR CHANGE

What are the chief forces for change? The dispassionate observer can discern at least four forces that are at work in Western communities today, including Australia, changing the society into which young people emerge from their education. It will be important to keep these forces in mind for they affect the environment for which education is preparing the young. I would identify the following four main themes:

- . the growing importance of the role of government in the lives of all of us;
- . the growing importance of big business and the decisions made in large corporations, affecting our lives;

- . the changing moral values and social attitudes which are, in part, the product of an education system which is 'free, universal and compulsory'; and
- . above all, the force of science and technology, the most dynamic factor in the equation and the one which most obviously imposes the necessities of transition on us.

The Growth and Importance of Government. Take, first, big government. The common law of England, which is the basis of the Australian legal system, stretches for at least 800 years. But during the first 750 years, the role of government was distinctly circumscribed. Naturally enough, the legal remedies that were developed for the citizen reflected this limited conception of the functions of government. It is only really in this century, and indeed in recent decades, that the public sector has come to assume such a significant role in the daily life of virtually every one. Perceiving this development the Lord Chief Justice of England, Lord Hewart in 1930 sounded a warning in his book 'The New Despotism'. He alerted lawyers and law makers to the dangers for the individual (and for the rule of law) of large numbers of bureaucrats, working without effective judicial supervision and within very wide discretions conferred in ample terms by legislation, frequently designed by themselves.

It is only in the last decade that, in Australia, Lord Hewart's warning has been answered. One of the happiest developments of law reform in our country has occurred at a Federal level and under successive governments of different political persuasion. It has produced what has been called 'the new administrative law'.<sup>5</sup> An Ombudsman has been established. An Administrative Appeals Tribunal has been set up, headed by judges, to review, on the merits, certain Commonwealth administrative decisions. An Administrative Review Council has been established to develop new administrative remedies in a systematic way. An important measure has been passed through Parliament and was proclaimed to commence on 1 October 1980. It confers on people in Australia a legal right to have reasons given to them for discretionary decisions made by Commonwealth public servants affecting them.<sup>6</sup> In the place of bland uncommunicative decisions, the individual will be entitled to a reasoned response. As far as I am aware, only in the Federal Republic of Germany and in Israel is there similar legislation. Freedom of information legislation was also before Federal Parliament when it was prorogued for the elections. Though there has been criticism concerning the areas of exemption from the right of access, critics should not lose sight of the fundamental change which the legislation envisages. In place of the basic rule of secrecy of bureaucratic procedures, will be a basic rule of openness and the right of access. Refusals of access will generally be the subject of independent review in the Administrative Appeals Tribunal.

Privacy legislation, to be proposed by the Law Reform Commission, and a basic code of fair administrative procedures will complete this 'new administrative law'. Although these developments have so far been limited to the Commonwealth's sphere, moves are afoot for similar changes in the States. The role of government and its employees has increased and is likely to continue to increase. The law has begun the long haul of responding to this phenomenon: providing individuals with accessible, low key effective remedies of review and reconsideration by external and independent machinery. The skill and dedication of the public officer is submitted to the civilising test of 'fairness' on the part of generalists, upholding the rights of the individual.

Growth and Change in Business. The second force for change in the law is the changing face of business. The mass production of goods and services gathered momentum from the automobile industry and is now an important feature of our society. Yet many of our laws reflect the business methods of earlier times and fail to reflect the realities of the mass consumer market of today. The common law of contract assumed an equal bargaining position between the vendor on the one hand and the purchaser on the other. It is precisely to meet the reality, which is different, that we now find most jurisdictions in Australia and elsewhere have enacted consumer protection legislation to ensure that basic conditions are met in fairness to the consumer.

Several of the tasks before the Australian Law Reform Commission illustrate the way in which it is necessary to bring laws developed in earlier times into harmony with the commercial realities of today. Our project on consumer indebtedness led to a report which suggests a new approach to the problems of small but honest consumer debtors. Our debt recovery laws pre-date the enormous expansion of consumer credit that followed the second World War. Accordingly, they are imbued with a philosophy that debt is never innocent and should be dealt with individually. The Commission's report faced up to the reality of the modern extension of credit, the reliance nowadays of creditors upon a credit reference system to protect them and the need to take individual debt not necessarily as a sign of moral culpability but often as an instance of incompetence in coping with the credit community of today. Procedures for credit counselling, aggregation of debts and systems of regular repayment of debts were suggested in the place of present procedures of court action and bankruptcy.

Likewise, the Commission's project on insurance seeks to adjust the law to an age of mass consumer insurance. The law governing the relations between insurer and insured was basically developed in the 18th Century, long before mass produced insurance policies were sold by radio and television to people of varying understanding and little

inclination to read the policy terms. The imposition upon consumer insurance of the obligation worked out in an earlier time for different kinds of transactions is scarcely appropriate. Yet unless there is reform of the law, that is what will continue to be the case.<sup>8</sup>

The Australian Law Reform Commission has also been asked to report on class actions: a legal procedure which has been developed in the United States. Class actions permit consumers and others to aggregate their claims into one big action, making litigation between the consumer and big business a more equal proposition than may be the case in an isolated individual claim.<sup>9</sup> These are just a few instances of the way in which proposals are being made to adjust the legal system to the commercial realities of today and to modern procedures for the administration of justice.

Changing Social and Moral Perceptions. The third force for change is more difficult to describe. It is probably bound up in higher levels of education, longer school retention and improved methods of the distribution of information by radio, television and the printed word. I refer to the changing moral and social attitudes which are such a feature of our time. There are many forces at work. In the space of a few decades we have moved from official acceptance of 'white Australia' to official (and increasing community) support for a more multi-cultural society. From forbidding the use of languages other than English in broadcasts we have moved to a multi-cultural television network. The last decade saw the rise of the women's movement, of anti-discrimination boards, of efforts to eradicate 'sexual oppression'. There has been talk of the rights of the child. Next year will be the Year of Disabled Persons. I predict that the growing numbers of the aging in our society will lead to new emphasis upon the rights of the old. Successive governments have carried forward policies to reverse decades of neglect and worse in relation to our Aborigines. These are just a few of the recent social changes.

For some citizens, especially those of the older generation, it must all seem as if the world has been turned on its head. Not two decades ago, it was the received cultural wisdom that Australia was a man's country of decidedly British values. Others could like it or lump it. Everyone had to comply with the accepted norm and be assimilated and integrated into it. Now the despised and disadvantaged groups of the recent past are listened to earnestly with growing community appreciation: ethnic groups, women, homosexuals, paraplegics and the disabled, the mentally ill and retarded, women, Aborigines, the old. Football and cricket still draw record crowds. But so now do our theatres, our films and the arts generally. Puritan morality has given way to open advertisement of massage parlours. Nude beaches flourish in at least some of the warmer States.

These changes cannot come about without affecting the law and its institutions. People, including people in high places, begin to ask why there are so few women in the judiciary of Australia?<sup>10</sup> Why various laws still discriminate against migrant newcomers?<sup>11</sup> Why the criminal law continues to enforce, in the so called 'victimless crimes', attitudes to morality which are not now held by the great majority of citizens. In no other Commonwealth Act has the changing community morality been more vividly reflected than in the Family Law Act 1975. That Act substantially replaced the notion of fault as the basis for the disillusion of marriage, replacing it by a new test: the irretrievable breakdown of the marriage. As in education, so in law. In a time of transition, it is uncomfortable for those who cling to the values and certainties of the past. There are many sincere citizens who bemoan the radical changes, some of which I have touched on. No recent piece of Federal legislation has been so beset by heartfelt controversy than the Family Law Act itself. Yet if community attitudes and standards are changing, the endeavour through the law, to enforce the attitudes and standards of an earlier time is bound, in the end, to fail, unless it has substantial support or at least acquiescence in the community. Laws of earlier times applying on a social base that has shifted tend not to uphold past morality but simply to bring contempt for the law and its institutions. They breed cynicism and even corruption which undermines the rule of law itself. The moral of this tale is that, whilst the law must necessarily tread cautiously, its rules and their enforcement should never be too far distant from current perceptions of right and wrong. When those perceptions are changing rapidly, as they are just now, it is a difficult time for law makers and those who advise them. In a time of transition, it is also a difficult time both for those who support reform of the law and those who would cling to old ways. The attitudes of each must be understood and respected.

Dynamic Science and Technology. The fourth force for change in the law is equally at work in education. I refer to the dynamic of science and technology. The birth, in recent weeks in Melbourne of Candice Reid, a child fertilised in vitro heralds remarkable developments in biology which will pose dilemmas for society and the law. Cloning, which has been developed in plants and more recently in prize bulls is now, we are told, a possibility for human beings. In the United States the use of a host or surrogate mother to bear the child of another has occurred. Human tissue transplantation is occurring regularly in all parts of Australia, as scientists overcome the body's natural immune rejection of organs and tissues from other persons.

The developments of computerisation, particularly as linked to telecommunications, present many problems for society, including its educators. By a remarkable combination of photo reduction techniques, dazzling amounts of information can now be included in the circuit of a tiny microchip. The computerised society may reduce the needs of employment, increase the vulnerability of society, magnify our reliance on overseas data banks and endanger the privacy of individuals.

These and other developments raise questions which the law of the future will have to answer on behalf of society. Should human cloning be permitted and if so under what conditions? Is it acceptable to contemplate genetic manipulation, consciously disturbing the random procedures that have occurred since the beginning of time? In the case of artificial insemination by a donor other than a husband, what rules should govern the discovery of the identity of the donor, if this is ever to be permitted? What rules should govern the passing of property and how can we prevent accidental incest in a world of unidentified donors? Should we permit the storage of sensitive personal data about Australians in overseas data banks and if so under what conditions? What requirement should be imposed for the supply of data in one computer to another? Is the systematic matching of computer tapes a permissible check against fraud or a new form of general search warrant which should be submitted to judicial pre-conditions? Under what circumstances are we prepared to tolerate telephone tapping to combat crime? Is junk mail a passing nuisance or unacceptable invasion of privacy?

Almost every task given by successive Attorneys-General to the Australian Law Reform Commission raises an issue about the impact of science and technology on the law. In our project on criminal investigation, we had to look to ways in which police procedures could have grafted onto them the advantages and disciplines of new scientific advances.<sup>12</sup> In our report on human tissue transplantation, we had to work out the rules that should govern the taking of organs from one person for the benefit of another.<sup>13</sup> We also had to answer the question of how death is to be defined in modern terms. Should young people ever be entitled to donate a non-regenerative organ to a sibling and if so under what conditions? Should positive donation be required or can we legally impute a general community willingness to donate organs after death. Our project on defamation law required us to face the realities of defamation today: no longer an insult hurled over the back fence but now a hurt that may be carried to the four corners of the country.<sup>14</sup> Our reference on privacy requires us to examine the ways in which we can preserve respect for individual privacy whilst taking advantage of the computerisation of society.<sup>15</sup> Even our most recent project on reform of the law of evidence requires us to re-examine some of the accepted rules of evidence against modern psychological and other studies which suggest that many of the accepted tenets of the law do not stand up to empirical scrutiny.



There is no doubt that computing will affect the education and future curricula. Indeed the advent of the new information science should be seen in the same way as the introduction of electricity: it will permeate almost every aspect of life. Its impact will not be confined to factory workers. None of the professions will be exempt. In the same way as pocket calculators took over from mathematical tables and slide rules in the 1970s, so pocket instructors will come upon the teaching scene in the 1980s: particularly in such disciplines as languages and the physical sciences.<sup>16</sup>

Many dispassionate observers say that our lawmaking institutions simply cannot cope with the pressures for change which I have described. True it is, law reform commissions have been created to help Parliament with the 'too hard basket'. But these bodies are generally small in size and resources. Furthermore, they are advisory only and whether laws are actually reformed depends upon the initiative of distracted politicians, housed in Parliaments governed by Party whips and division bells and engaged in the 'game' of Party warfare which tends to reduce so many difficult problems to over-simplification and a sporting contest. The judiciary itself, which in previous times resolutely attended to the 'nuts and bolts' of adapting the law to changing times, is now increasingly inclined to leave problems of law reform to Parliament. The issue for society in a time of change is whether Parliament is geared to attend to these problems and whether it is listening to the calls for reform.

#### EDUCATION IN TRANSITION

If the coincidence of such forces for change and the inability of law makers to cope present institutional problems for the law, there are equivalent institutional problems in education. One of the chief of them is that high technology promotes at the one time structural unemployment which leads, as I have said, to calls for greater vocational emphasis in education. Yet the technology itself seems certain to diminish the needs of employment of large numbers of people doing routine work and to supervene, rapidly and unexpectedly, highly skilled specialties of the past. Consequently, in point of logic, our education system should be addressing its attention to new forms of education which will suit young Australians of the future for a society in which adaptability is the watchword for those who work and in which there is much more leisure and consequently greater need for preparation to fill it. What I am suggesting is that the changes which confront the law, equally confront education. As in the law they pull in competing directions. We have all of us heard the demand for a return to the three Rs. We have all heard calls that education should 'return' to an emphasis upon preparing the young person to win against his fellows in the battle for scarce post-education jobs.

Though our school retention rates are still low by a OECD standards, when they increased in the 60s and 70s, they did so largely by applying to the greater numbers, the educational system traditionally offered for the smaller numbers entering the old professions in earlier times. In October 1979 Professor (now Sir Bruce) Williams delivered in Hobart his analysis of 'technological employment and unemployment and its implications for education'. His address contained a plea for the avoidance of the mindless pursuit of vocational forces in education:

That primary and secondary education should never be solely vocational is obvious from the extent of leisure and probable increases in it, from the prospective changes in the nature of work, from the importance of citizens who appreciate the virtues of honesty, integrity, tolerance and concern for others, and from the need for voters with a sufficient understanding of economic and political processes to make democracy work effectively. The view that there is necessary dichotomy between liberal education and vocational education is false, but it is sufficiently widespread to retard sensible reforms.<sup>17</sup>

I said our school retention rates are low. By comparison to those of Japan and the United States (countries with whom we trade and have many dealings and similarities) they are very low. OECD figures compare the numbers of 17 year olds who are in full-time education. In 1976, the last year of available comparative statistics, Japan had 88.1% in secondary and tertiary education. The United States had 84.6%. We in Australia can boast 39.9%.<sup>18</sup> And our situation has, if anything, deteriorated since 1976 as the recession invites anxious school leavers to quit education on the prospect of a sure job.

Sir Bruce Williams suggests that part of the problem may be the endeavour to stamp on greater numbers a system of education developed and suitable for a few traditional occupations and largely uninteresting and seen as irrelevant to the preparation of most young people for life in a technological age.

There is a need to establish a range of education programs suited to the interests and needs of very different groups of students. I doubt whether we will find such a set of programs until many administrators and teachers overcome some strong inhibitions which attach to vocational education.<sup>19</sup>

What inferences are to be drawn from our comparatively low school retention rates? First, I agree with Professor Williams that the percentage of retention is too low and that this 'will become increasingly obvious as further changes in technology reduce the employment of teenagers with low levels of manual and mental skills'<sup>20</sup> Secondly, important changes will be needed if our educational system is to adjust to the new task of preparing young people for a world in which (at least in the foreseeable future) full employment will not be guaranteed and indeed a steady level of youth unemployment may be endemic.<sup>21</sup>

Realization of the need for change seems to be coming. In most parts of Australia enquiries about the structure of education have either been begun, are in being or have recently been concluded. At a secondary level, a New South Wales Parliamentary Committee is busily at work. The Minister of Education for Victoria has issued a Green Paper on strategies and structures for education in Victoria.<sup>22</sup> A Committee of Inquiry into Education has been established in South Australia under Dr. J.P. Keeves. One of his particular terms of reference is to examine:

The means by which curricular and teaching methods of the schools and colleges should be changed to meet new technology and changing employment patterns.

A common theme of curriculum policies adopted, proposed or under study for secondary schools in most places of Australia is a greater emphasis on decentralization of curriculum decision making. Intrinsic to this movement is the involvement of individual schools in the making of decisions about the adoption, adaptation or creation of new curricula. Yet unless pressure is exerted from those who are looking at the long haul of education, I predict that the easy path of leaving things as they are and of succumbing to short vision pressure for more vocational emphasis, will persist unabated.

#### LAW IN SCHOOLS

I realise that those who design educational curricula are under the pressure of blandishments from a whole variety of persuasive, dedicated people, seeking to suggest that this or that should be added to the school curriculum. I want now to make my bid. My proposition is that the citizens of future Australia have a right to a fuller appreciation of the institutions of the law and at least their chief legal rights and duties: more than was thought necessary in times gone by. A society which acknowledges this proposition will act to put it into practice. There is no better place for community legal education to start than in school. The legal education of future Australians will go beyond instruction in the

Motor Traffic Code, necessary to secure a driver's licence. Lamentably, that is the extent of the systematic knowledge of the law which, until recently, has been considered necessary in our country. To negotiate the complexities of a fast-changing society with fast-changing laws, it is specially inadequate to rely upon an assumption that notions of 'right and wrong' will get the citizen safely through life. In times gone by, when there was less law and when there was less change in the law, this might have been an approach which could be tolerated. Nowadays, it is an attitude which I suggest to be quite unacceptable.

Why is it that until quite recently nothing much was done in Australia to promote the systematic study by the community of legal institutions and legal regulations? Why should it be that the one discipline which affects everybody in society has been neglected in the general school curriculum? Why have we been content to permit the average citizen's appreciation of the law to rest upon chance, gossip, the opinion of bush lawyers and other unreliable sources?

Can I suggest a few explanations for the neglect of community legal education:

- . General, compulsory, free and secular education is itself only a century old. Early curricula concentrated on the three Rs. At first, anything more was considered a luxury. As far as law is concerned, at least until lately, so it has remained.
- . In earlier times it was considered that the law was binding and that was that. If you did not know what the law was, that was too bad. A feeling of resignation and even cynicism about the law's mysteries was endemic.
- . Also in earlier times the law was mainly the preserve of rich, propertied people. The criminal law was generally the only aspect of the law and the courts affecting poorer members of the community. Often the law was about property. But if you had little property, the law was not for you. Nowadays, with wider rights to legal aid and beneficial legislation affecting everyone, the law is no longer the exclusive province of the rich. Yet unless people know their rights and duties and know how to enforce them, the advances we have made in the statute book will not be translated into reality.

- As I have mentioned, in a simpler society generalised notions such as wrongness or unfairness of behaviour could often provide a reliable guide to civic rights and duties. These notions were at the heart of the common law system which we inherited from England. But with the rapid increase in statute law, made by Parliament, and the growing range and complexity of the subject matters of such statutes, the broad notions of fairness can no longer provide a reliable guiding star for law-abiding conduct in society.
- A further impediment has been the view, held in some quarters, that a 'smattering' of legal knowledge may be positively undesirable. A little knowledge is a dangerous thing, said Alexander Pope. Some people would use this as an excuse to restrain even the first step towards greater community awareness of the law. But unless we start, the mysteries of the law and a fear of its rules and institutions will remain.

These impediments to a wider community understanding of the law are now crumbling. School curricula are now adding Legal Studies as a specific course. In Victoria this subject is now the third most popular optional subject at secondary school. Furthermore, in New South Wales, through the initiatives of the Law Foundation and the H.E.L.P. project, legal topics are being grafted on to the school programme. An interdisciplinary committee of judges, lawyers and educationalists has been set up to further this aim. In New South Wales the project has the interest of the Attorney-General and the Minister for Education. Significantly, the latter, Mr. Landa, is himself an experienced lawyer.

On the national scene, initiatives have been taken by federal agencies. The Curriculum Development Centre in Canberra has helped to fund some of the H.E.L.P. projects, the dissemination of literature and teaching aids and more recently the series of Six Films About the Law produced by Film Australia. I launched these films on 22 October. They provide a dramatic presentation of a factual situation and then interrupt the film may be interrupted to permit class discussion of the issues at stake. The legal solution is then presented and calmly explained: challenging the teacher and the class to a critical analysis of the law's solutions. If they disagree, this mode of presentation will promote a constructive approach to the orderly reform of the law.

By the use of film, broadcasts, television, video cassettes and other means, the new technology is coming to the aid of community legal instruction, including in the schools. One of the practical impediments which has existed until now to the successful introduction of law instruction in the school curriculum, has been the inhibition that some educationalists feel in providing instruction in a professional discipline which is not specifically their own. Lawyers generally make hopeless teachers. Teachers doubt their ability effectively and accurately to communicate the law.

It is here that I believe the new media will come to our aid. I hope that the series produced by Film Australia will be just the start of the provision of interesting, accurate and up-to-date material authoritatively to explain and introduce the law, its procedures, personnel and institutions.

The notion of teaching law in schools has the endorsement of no less an educationalist than the Governor-General of Australia, Sir Zelman Cowen. We are proud to list Sir Zelman as a past Commissioner of the Law Reform Commission. In May 1980 he said this:

Taught imaginatively it seems to me that [a knowledge of selected areas of the law of direct concern to ordinary members of society] can be a most valuable contribution to the understanding of social institutions and I am pleased that the response to the offering of the subjects [in some of the States] has been so great. The task of teaching it well and perceptively and within appropriate limits is a very difficult one, and the education of the teachers themselves is very important.<sup>24</sup>

In September 1980, Sir Zelman expressed this view:

I believe that Mr. Justice Kirby is right when he warns of the need for a clear understanding of the targets to be aimed at in the teaching of legal studies which, well designed and taught, can contribute significantly to civic education. It is not easy: in a society in which, to use words to which I recur, the consensus is often fragile, questions about the nature of law; the source of its authority and its appropriate reach are hard enough for the most acute and well informed lawyer and legal philosopher and the issues have to be communicated, in a meaningful way, by teachers, who themselves understand them, to senior school students. The difficulty does not diminish the importance of the task.<sup>25</sup>

Why should we be concerned about adding instruction in the law to the already burgeoning curriculum? I would cite at least four reasons.

- . First, it is important for citizens in a democratic community to have some understanding of the character of the law and of its impact on society and the individual. It is not that every man should seek to be his own lawyer. But he is more likely to have an understanding of the way society works if he grasps the general principles of the law, the machinery of lawmaking and in particular the basic rules in those areas of the law which are likely to have a special concern for and impact upon him.
- . Secondly, an understanding of institutions can provide the future citizen with a greater opportunity for participation in the lawmaking process. The long-established institutions, new tribunals and also the more recent law reform bodies now provide growing opportunities for participation including in the design of the content of the law. It is a participation which we should be encouraging citizens to take and utilise to the full.
- . Thirdly, the law has a positive role to improve society. A better understanding of the law on the part of the citizen will allow the individual to comprehend more fully its operation and his personal responsibility for the state of the law. The time must end when we can abdicate this responsibility, blaming unidentified others for laws which have become out of date, obscure, irrelevant and obstructive to society as it is.
- . Fourthly, the Rule of Law is said to be the special feature of Western democracy. It is asserted as an essential ingredient in the assurance and protection of freedom. A society which does not take its citizens into confidence but simply imposes on them obligations of obeying a vast and ever-growing storehouse of legal rules (whilst doing precious little to instruct in even the fundamental rules) is engaging in a dangerous hypocrisy.

My calls for attention to community legal education, including in the schools, have been mirrored in other countries. In New Zealand, Professor Bernard Brown of the Auckland University has said that:

It is hard to conceive of a more potent instrumentality than school to carry out the necessary educative tasks [of better informing young people about law] ... The course should strive to broaden their perspectives on society by introducing them to issues of topical controversy and, through discussion, acquaint them with the particular problems they will meet in an adult world. Teachers will need a ready supply of information, together with short orientation courses.<sup>26</sup>

In Canada, one of the Justices of the Supreme Court, Mr. Justice McIntyre told a conference held in Saskatoon that school students in Canada should be informed about the substance and procedure of the law, about their rights and liberties and 'above all on need for the rule of law'. He said that legal education in schools was a new field of education, the goal of which should not be to make everyone into a lawyer but to make ordinary members of society 'aware of the law and of their rights and responsibilities'.<sup>27</sup>

In Australia too, law related education is now beginning to flourish. It has taken a different course in different parts of the nation: varying from an extremely popular detailed and specific subject in the Victorian secondary curriculum to an effort to graft legal themes onto established curricula in other States.<sup>28</sup>

I am aware of the difficulty of imposing curriculum changes from above by administrative fiat. Efforts to do so with science and other material have too often come unstuck.<sup>29</sup> For all that, there is a clear need for us to do more to prepare citizens for the complexity of the legal rules with which they will be confronted in life. Everyone is deemed to know the law. Parliaments produce more and more laws. I hope I will live to see the day when the enthusiasm for new law making will be equalled by a passionate concern to bring the chief rights and duties of people affected to their specific notice. School is, as it seems to me, the place to start this endeavour. So long as the law is perceived as a remote thing, a mystery, the possession of judges and lawyers and others sworn in the priestly caste, ordinary folk will not assume their proper measure of responsibility for the state of the law. Knowledge of some laws, if widespread throughout the community, would, I am sure, lead to strong demands for their repeal, improvement or reform. Apathy about the intermittent injustice of the law would be lessened by greater civic knowledge about the law, about how to find it, about how to use its institutions and procedures and about how to secure its orderly improvement and renewal.



The work of the Law Reform Commission proceeds in a way that is quite different to the preparation of most of the laws of our country. Laws made by Parliament are traditionally prepared in secret. They are first publicly revealed when they are tabled in Parliament. This secrecy is designed to permit reflective consideration of competing possibilities free from outside pressure. It is also designed to maximize the political advantage of the Executive Government of the day.

In the many controversial tasks given to the Law Reform Commission, we proceed in exactly the opposite way. We issue discussion papers with tentative proposals for improvement of the law and identification of current defects. We distribute widely pamphlets which summarize the points being made. We hold public hearings at which experts, lobby groups and ordinary citizens can come along to express their views about the current law and the Commission's tentative suggestions to improve it. We hold public seminars and numerous private consultations. We use the media, including talk-back programmes to convey our proposals to interested Australians. We use public opinion polls and specialized surveys, such as the recent survey conducted of all judges and magistrates in Australia taking part in sentencing. Special efforts are made to consult disadvantaged groups: migrants, children, Aborigines and so on.

These efforts will come to nothing if the view persists that the law is somebody else's responsibility. At a time of rapid change, leaving it to others may be specially perilous. One of the chief reasons for community legal education, as I see it, is to ready the members of Australian society to take a more active part in the machinery of government, specifically law making. I believe that in the future there will be many more opportunities for people to take part in the design of Australian society. Until lately, our education system has tended to anaesthetize the community to its responsibility for the state of the law. The teaching of law related subjects in schools may rectify this. The large numbers of students flocking to take the course in Victorian schools is an indication that what every lawyer knows: that the law is not a dry and dusty thing, devoid of human interest and full of technicalities and Latinisms. These are misconceptions about the law. It is, on the contrary, the living instrument by which human problems are solved, injustices can be righted and society protected against those who would do it harm.

There are practical things that can be done to translate these pious sentiments into action.

Education authorities can introduce law related education into the specific school curriculum, providing consultants and material for use by teachers who will often approach the law with a feeling of diffidence and lack of confidence. On a local level, headmasters and others can encourage the adoption of law related courses as 'Other Approved Studies' i.e. as optional subjects for the school curriculum. I have no doubt that lawyers throughout Australia would be only too glad to be rostered to help teachers, though I caution that education is a job for educationalists, not lawyers.

Court visits should become a regular feature of education at school. In New South Wales during Law Day (22 October 1980) school children participated in a mock trial before Mr. Justice Samuels in the Supreme Court — watched by hundreds of their colleagues. In Victoria 16,000 secondary students visited the Supreme Court and Country Court of Victoria in 1978. Similar numbers have visited the courts since then. Many citizens have never been in a court and have a distorted image of the law, chiefly the result of American television programs.

Liaison between education departments and the legal professional bodies has been achieved in Victoria. It has led to the supply of material to schools and to a supportive involvement of the legal profession in community legal education. Video tape and films of courtroom scenes (real and simulated) have already been produced or are in production. The series by Film Australia is a distinctly helpful step in the right direction. Such discussion should identify the values which the law is seeking to uphold. It could promote a healthy respect for the law based on knowledge rather than on ignorance and fear.

#### CONCLUSIONS

Ignorance, fear, a feeling of remoteness, costliness, inaccessibility. All too often these are the reactions of good decent Australian citizens to their law, its institutions and procedures. We are living through a time of transition. I have sought to identify the chief forces that are at work for the change of the law. It seems incredible to me that we have got by for so long with such puny efforts to teach future citizens at school about the law and its institutions. In earlier times with fewer laws, fewer rights and duties and less concern that courts and tribunals should be available for ordinary people, the lack of instruction may not have been a problem. Today, it is a defect in our society. It should be rectified.

I fully realise that there are many pressures for the change of the curriculum. There are those who call for better instruction in community health. There are those who want specific instruction in the new technology. Equally vocal are those who want to return to the three Rs and a strict concentration on preparation for the vocations that are now scarce and must be competed for. I recognise these many pressures. But, without apology I add my voice because I believe that the law is the one discipline from which no one in society can escape. Every time you cross the road, every time you buy a bus ticket, every time you purchase a sandwich, drive your car, buy a home, fall at work, chastise a child or purchase some shares, you are engaged in conduct about which the law has things to say. A community which deems everyone to know the law and does precious little to turn this presumption into at least the beginnings of reality inevitably engenders an attitude of cynicism and helplessness. I hope that before this Century is out, indeed in this decade, schools and colleges throughout Australia will embrace community legal education. Properly presented, students will like it. Moreover it will be good for them. Moreover it will be good for Australian society.

FOOTNOTES

- \* This is a revised and updated version of a paper 'Law and Society in a Time of Change' delivered by the author to the Australian High School Principals Association Annual Conference, Hobart, 16 July 1980 (see C.46/80).
1. Committee of Inquiry into Technological Change in Australia, Report, Technology Change in Australia, A.G.P.S., (Vol. 1), 1980, 117 (para. 5.198).
  2. *ibid* (para. 5.197).
  3. *ibid*, 105 (para. 5.127).
  4. *ibid*, 90 (para. 5.48).
  5. G.D.S. Taylor, 'The New Administrative Law' (1977) 51 Australian Law Journal 804.
  6. Administrative Decisions (Judicial Review) Act 1977 (Cwth).
  7. Australian Law Reform Commission, Insolvency: The Regular Payment of Debts (ALRC 6), AGPS, Canberra, 1977.
  8. Australian Law Reform Commission, Discussion Paper No. 7, Insurance Contracts, 1978.
  9. Australian Law Reform Commission, Discussion Paper No. 11, Access to the Courts - II Class Actions, 1979.
  10. Mr Justice Murphy in an address to the National Press Club, Canberra, 21 May 1980.
  11. Australian Law Reform Commission, Criminal Investigation (ALRC 2) (Interim Report), AGPS, Canberra 1975. See esp. paras.259ff (special problems of non-English speakers). See also M.D. Kirby, New Laws for New Australians, Sir Robert Garran Memorial Lecture, mimeo, 24 June 1980.
  12. ALRC 2, above. Amongst suggestions made were sound recording of confessional evidence, telephone warrants for urgent searches and arrests and photography or video tapping of identification procedures.

13. Australian Law Reform Commission, Human Tissue Transplants (ALRC 7), AGPS, Canberra, 1978.
14. Australian Law Reform Commission, Unfair Publication: Defamation and Privacy (ALRC 11), AGPS, Canberra, 1979.
15. Australian Reform Commission, Discussion Paper No. 14 Privacy and Personal Information, 1980.
16. M.D. Kirby, 'The New Technology and the Teaching of Legal Studies', mimeo, Melbourne, 10 July 1980. See also C. Evans, 'The Mighty Micro' 1979, Chapter 9.
17. B.R. Williams, 'Technological Employment and Unemployment and the Implications for Education', Lecture at the University of Tasmania, mimeo, 10 October 1979, 14.
18. M.D. Kirby, 'Under Educated Australia: The New Helots?' address at Macquarie University, mimeo, 23 May 1980.
19. Williams, 13.
20. B.R. Williams, Occasional Address, Sydney University, mimeo, 24 May 1980, 2.
21. P. Karmel, 'The Employment of the Young', Occasional Address Macquarie University, mimeo, 21 May 1980, 3.
22. Green Paper on Strategies on Structures for Education in Victoria, paper presented for discussion by the Hon. A.J. Hunt, MLC (Minister of Education) and the Hon. Norman Lacy, MP (Assistant Minister of Education), undated (1980) Government Printer, Melbourne.
23. The terms of reference appeared in the Australian, 12 July 1980.
24. Z. Cowen, The Buntine Oration, 21st Annual Conference of the Australian College of Education, Brisbane, mimeo, 12 May 1980, 23.
25. Z. Cowen, Some Thoughts on Education, Annual Address to Convocation, University of Sydney, Sydney, mimeo, 13 September 1980, 22.
26. Professor Bernard Brown cited in J. Vaughan, 'H.E.L.P. - Whence? Wither? Paper for the Advisory Committee on Legal Education in Schools (N.S.W.)', March/April 1980, mimeo. 14-15.

27. As reported in Canadian Bar Association National, June 1980, 4.
28. K.E. Lindgren, Legal Studies in Australian Secondary Schools (1980) 54 Aust.Law JI 399. M.D. Kirby, 'Law in Schools', Australasian Commercial and Economic Teachers' Association, Canberra, mimeo, 31 August 1979.
29. See for example United Kingdom Schools Council, Impact and Take-up Project (condensed Interim Report) 1978 and R.W. Howe, 'Impact of [National Science Foundation of the United States] sponsored programs on Elementary and Secondary Schools Programs, Teachers and Students, mimeo, prepared for the Exploratory Conference on the National Science Foundation's Impact on U.S. Science Curriculum and Development (Maryland Impact Conference) 1971.