THE UNIVERSITY OF WESTERN AUSTRALIA

SUMMER SCHOOL, FRIDAY 23 JANUARY 1981

CHALLENGES TO AUSTRALIAN VALUES

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

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SUMMARY

The values of Australian society are under unprecedented challenge today. Great forces for change are at work. They include the growth of the role of government in all of our lives, the growth of business to its present national and even trans-national character, the growth of science and technology and the changing social perceptions and attitudes to what is right and wrong. The law has only a limited role to reflect and uphold social values. But it must not get too far distant from them. Slow-moving legal institutions find it hard to adjust in a period of rapid change. Law reform bodies have been established throughout the English-speaking world to help lawmakers deal with the 'too hard basket'. Some of the pressures for change are identified and described. Some of the work being done by law reform bodies in Australia to reflect changing social values is indicated.

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CHANGING TIMES, CHANGING VALUES

Egalitarian mateship still? We are living through times of profound change. Change is taking our country in directions that are not sure. It presents long-term problems to our political leaders, themselves distracted by the recurring obligations of democracy and the sheer magnitude and number of the problems they are called upon to solve and to 'get right'.

A year ago a most distinguished Western Australian, Sir Paul Hasluck, writing of the 'very great and widespread social changes [which] are taking place in Australia'[1] illustrated his thesis thus:

> It is open to doubt whether the Australian community today could be described as it might have been 50 years ago as Anglo-Saxon, Christian, egalitarian, self-reliant, democratic and moved by a spirit of mateship. But it is very difficult to make a list of the characteristics of the new mass. One cannot be sure that the old physical stereotype of the lean, fit, suntanned and manly Australian is still the ideal.[2]

Clear national objectives? Sir Arvi Parbo, Chairman and Managing Director of Western Mining Corporation, has pointed out that in the recent past a clear statement of values and goals (mixed with not a little economic good fortune) helped Australia to achieve those goals and further the material standard of life of its people:

> In Australia, a White Paper issued in 1945 nominated the achievement of full employment, rising living standards, high rates of economic and population growth, stability in costs and prices, external viability and a more stable and predictable economic environment as the national objectives. These objectives had the widespread support of Australians during the next 25 years. Anyone able to compare the Australia of 1945 with the Australia of today must be impressed by the results.[3]

Selfish convict genes? Yet, though these economic goals were stated and then pursued with success in the 50s and 60s, other distinguished Australians have questioned the highly materialistic values of most of our fellow countryman. Sir Mark Oliphant has even gone so far as to blame what he perceives as a national selfishness upon the origins of white settlement in Australia:

> The convicts who were sent from Britain to Australia were not all the victims of harsh laws which so punished one who stole bread for his family. Among them were criminals of the worst type, men and women too, without pity or remorse, who took every possible opportunity to advance their own interests, whatever the effect upon their fellows. I don't believe that the genes of acquisitiveness, of utter selfishness died out altogether as the convict blood was diluted by immigrants of normal type, prepared to work hard and hope that fortune would favour them. The gold rushes of the last century attracted hordes of undesirables to Australia, as well as honest miners and tradesmen. These again left their mark on the national heritage of character.[4]

Sir Mark urged the need to raise the level of 'compassion' in our society: to instil it in our children, including by education, in the place of 'a brutish determination to succeed at all costs, in sport or in business'.[5]

Post colonial anachronism? Quite apart from our situation at home, Australia's place in the world has changed enormously since the Second War. We are no longer an important piece in a worldwide British mosaic. According to one analyst, we do not even enjoy the same strategic importance to the United States, as we had in 1942.[6] We are a westernised country in the Asian region: a kind of post-Colonial anachronism. A realisation of our new vulnerability must teach us the importance of securing new relationships with our neighbours. Professor W. Macmahon Ball put it this way:

> Our future depends heavily on being able to develop close economic and political co-operation with the countries of South East Asia. This means doing two things: reducing the barriers to their imports and restructuring our manufacturing industry so that we can sell them the products their fast growing economies need. This is far the best way to help them and to help ourselves. It is clear that the longer we delay doing this, the further our economy will fall behind. Before long, as some gloomy people predict, we might become the poor whites of Asia. ... [T]he reorientation of our economy — to an economy that looks outward rather than inward — is the important present issue of domestic and foreign policy.[7]

The 'anyhow' philosophy. Though we approach the 21st century with great advantages: ample energy reserves, great food-growing capacity, attractive and varied climate, we must resist the 'she'll be right, mate', 'no worries' and 'anyhow ...' philosophy. There are too many problems at home and abroad to tolerate such an apathetic approach to the future. Sir Paul Hasluck again:

> By and large ... the Australian community today gives much less attention to principles than to practice and many of our political leaders reveal their shortcomings in their pride in being 'practical' or, as they say, 'getting on with the job', even if it means acting without thinking.[9]

FUTURE DIRECTIONS

So that is what this little talk is about: acting after thinking. Identifying the challenges that are at work really requires little more than momentarily getting off the merry-go-round and reflecting upon where our country is and where it is going. Its changed place in the world and the implications of its relationships with South East Asia, I must leave to others to explore. Clearly this development will have implications for Australia at home. Sir Mark Oliphant put this thought as follows:

> Australia contributes to overseas aid, in rather small amounts, except for Papua New Guinea, the objective being to raise the health and living standards of the recipient. Yet our own Aboriginal people have among the highest rates of death amongst children in the world, mostly from malnutrition, preventable diseases, and lack of hygiene associated with poor housing and bottle feeding of infants as well as abuse of alcohol. We attempt to buy the goodwill of developing nations, but neglect our own indigenos people.[10]

I must restrict myself to the forces that are at work in the law. But I have endeavoured to put these forces into their proper context for the simple reason that the law itself does not operate in a neat cocoon. It is a dynamic and living social science which provides the rules by which we live together in a complex and interdependent community, with relative peace. When disputes arise, it provides the institutions and rules to resolve them.

In August last, I delivered an address at the opening of a conference on Future Directions in Australia. The conference was attended by 120 young and youngish people, chosen as a cross section of 'opinion leaders' in Australian society. The conference was organised by Australian Frontier, a non-profit, non-partisan organisation. Among other major sponsors were the Federal Government, the Commonwealth Fund of New York and La Trobe University.

One acerbic participant called the group the 'hundred biggest egos' in the country, though he admitted he was including himself in that description. Participants ranged from a Federal Minister, an Opposition Senator, academics, representatives of Aboriginal organisations and the Vice-President of the Victorian Unemployed Workers' Union. Not surprisingly, some pretty harsh words were exchanged and a tendency to polarisation (so endemic in English-speaking people) often emerged. With due deference to the well known Australian cynicism about 'futurology', collected experts and talk of 'goals', 'future', 'vision' and so on, this diverse group of young Australians tried to do what Sir Paul Hasluck urged: paying more attention to principles, identifying challenges and issues rather than looking only at the short-term and immediately politically attractive. Sir Paul Hasluck once again:

> The use of new methods of public persuasion, whether in politics or commerce, and the level of argument on public issues suggest a falling away from the faith that what is stated clearly, exactly and reasonably will carry conviction. Parties try to win national elections by engaging public relations experts rather than re-examining policy. Packaging and a sales campaign are given more attention than the product.[11]

Fortified on occasion by a healthy serving of naivety, the participants sought to identify the challenges ahead for Australia. Consensus was not always possible, or even desirable. But a number of themes stood out:

- Distribution. The first was the need for a more equitable distribution of the national wealth in Australia. Each of the five action plans presented to the final session contained measures for redistributing wealth from the rich to the disadvantaged in our wealthy country.[12] This call for greater equity in slicing up the national cake came from all participants: from business leaders, politicians, academics, social welfare and community workers.

- Asianisation. A second theme, hinted at above, was the need for Australia to move closer to South East Asia, if it is not to face growing isolation. This theme, called 'Asianisation' envisaged Australia at last becoming more a part of its own region in the world.[13] It has implications for our trade and investment, cultural and social changes, migration and national strategies.

- Feminisation. A third theme, called 'feminisation' addressed an enormous social change that is still occurring. It concerns the role of women in decision-making in Australia (whether in political or economic issues), the changing role of the family, of marriage and of human relationships generally.

. Aboriginalisation. A fourth issue, termed 'Aboriginalisation', inevitably loomed large because the conference coincided with the confrontation at Noonkanbah. Just as the Australian community itself has been seeking out a new relationship with the indigenous people of the continent, so too the participants identified this issue as a kind of 'litmus' for Australia's place in a civilised world. At the end of the conference, the respect for Aboriginality was expressed in terms perhaps equally relevant for a wider multi-cultural Australian society:

> We do not have to be homogenous Australians. It is not necessary that we all go marching ahead in lockstep together.

In the lifetime of everyone here, Australia has moved from a rather complacent, under-educated and somewhat intolerent country, sure of its place in the British Empire, certain of its Christian values and of the superiority of the white Anglo-Celtic man to a new society: less sure of its place in the world and less certain of its values at home. The instinctive reaction of most Australians is to shrug and say 'She'll be all right, mate'. I join Sir Paul Hasluck and others who caution that things are happening too quickly and changing too profoundly for this to be a safe response to the changes about us. Certainly, in my own discipline, the law, things are changing so fast that one may even question whether our traditional lawmaking institutions are sufficiently well geared to cope with the pressures for change that challenge our legal system today.

LAW IN A TIME OF CHANGE

The law did not escape attention at the Future Directions Conference. Although a sprinkling of participants were lawyers, numerous legal themes came under the microscope. They illustrate the changes that are occurring even in a discipline as inevitably conservative as the law. Among the issues considered were:

. Provision of a Bill of Rights for Australia to put minimal civic rights above the party battle and to guarantee their respect, whether as against direct assault by government or simply as a result of proliferating lawmaking and legislative oversight.

. Provision of a facility for ordinary citizens, on referendum, to have an initiative in lawmaking, including in revision of our 1901 Constitution.

. Provision of 'sunset' legislation for public institutions, to encourage greater flexibility and more public accountabiliy by the need to justify their works and value.

- Provision of better facilities for access to the courts, including by such means as class actions, a greater use of conciliation in place of the traditional adversary trial, night sittings by judges and magistrates and provision of neighbourhood justice centres.

- Promotion of greater openness in government and less governmental secrecy except in areas clearly involving national security or the like.

Whereas the call at the conference for a Futures Commission to advise successive short-term governments about long-run problems for Australia has not yet been picked up (and indeed may be unlikely because of the current pressure to contain government) at least in the law, institutions have now been created to look in a principled fashion at the future. I refer to the law reform commissions and specifically to the Australian Law Reform Commission: the permanent statutory body charged with the obligation to advise the Federal Government and Parliament on the reform, modernisation and simplification of Commonwealth laws. The Commission is set up in Sydney. It has, at any time, about 12 members. Of the 12, four, including the Chairman, are full-time Commissioners. Generally, the full-time Commissioners represent the various arms of the legal profession: the judiciary, the Bar, the solicitors' branch and legal academics. Generally, the Commission reflects the geographical divisions of our country. Sir Zelman Cowen, whom we are proud to number as a past Commissioner, was appointed as a part-time Commissioner from Brisbane. The most recent appointment is Mr. Justice Neasey, a Judge of the Supreme Court of Tasmania, also a part-time Member. One of Senator Durack's first appointments to the Commission was our valued colleague, Mr. James Mazza, a barrister and solicitor of Perth. He brings to our table the practical experience of a seasoned trial lawyer and also the perspectives of an imaginative and successful businessman.

In all of our tasks we engage in what the Prime Minister, Mr. Fraser, has called 'participatory law reform'.[14] By public hearings, the widespread distribution of discussion papers, appearances in the media, the use of surveys and public opinion polls, we seek to go beyond the experts and to find out what the Australian community expects of its laws and their reform. We work closely with our State colleagues. In every state there is a law reform body, none more distinguished than the Law Reform Commission of Western Australia. On the initiative of the Attorney-General for Western Australia, Mr. Medcalf, that Commission is working closely with us in a mutual inquiry we have concerning laws for the protection of privacy. We recently concluded successful joint public hearings and a joint seminar in Perth, designed to identify the problems of privacy invasion which new laws should address.

Reports of the federal Law Commission have led on to reforms of the law both at a federal and at a State level in Australia. And if every one of our reports has not been followed by instant legislative action, one must not be too impatient, for the way of the reformer is often hard and lawmaking institutions, particularly in a federation, sometimes work slowly. Of the tasks given to the Commission by successive governments, first Labor and then Liberal and National Country Party, this much must be said. They all reflect important challenges to the law and to the values of Australian society. All of them are highly relevant to the future shape of our community. Though it would have been easier to deal with technical legal issues of limited social concern (such as the Statute of Mortmain or the rule against perpetuities) each of the projects committed to the Australian Law Reform Commission has represented an illustration of the law and society in transition.

Seeking to identify the chief forces for change that are at work in the legal system, I would catalogue 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 by 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.

FOUR CHANGES TO OLD LAWS

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 everyone. 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'.[15] 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 came into force from 1 October 1980. I refer to the proclamation of the Administrative Decisions (Judicial Review) Act 1977. This Act for the first time confers on people in Australia a legal right to have reasons given to them for discretionary decisions made by Commonwealth public servants affecting them.[16] 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 is to be reintroduced in Federal Parliament. 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, there will be a basic rule of openness and 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 equivalent changes in some of 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 early assembly lines in the autombile 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 often quite different, that we know 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 polices 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 obligations 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.[18]

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.[19] Some of you may have read of how, in the United States, in recent weeks, a group of Australian Vietnam veterans has been permitted to join in a class action against chemical companies for the actionable wrongs allegedly attributable to the defoliant 'Agent Orange'. A comprehensive class action for damages could not have been mounted in Australia. The Law Reform Commission has been asked to report on whether this procedure (described by some as the 'free enterprise answer to legal aid') should be introduced in federal courts in this country. 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.

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 and some of them I have already identified. 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. 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. This year is the Year of the Disabled Person. 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 Aboriginals. The most recent discussion paper of the Law Reform Commission examined the question whether, and if so how, there should be recognition of at least some of the traditional laws of the Aboriginal people of Australia either in our courts or in special courts dealing with traditional Aboriginals. Upon this matter there have already been important and innovative moves in this State. These are just a few of the recent social changes, reflected in new laws.

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, Aboriginals, the old. Football and cricket rarely draw record crowds. The numbers who who along to our theatres, our films and the arts generally have greatly increased. Puritan morality has given way to open advertisement of massage parlors. 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 are there so few women in the judiciary of Australia?[20] Why various laws still discriminate against migrant newcomers?[21] Why the criminal law contines 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 dissolution of marriage, replacing it by a new test: the

irretrievable breakdown of the marriage. 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. In certain recent proposals concerning children's privacy, the Law Reform Commission itself felt the deep passions which change in this area stirs up.

Yet if community attitudes and standards are changing, the endeavour, through the law, to enforce or uphold 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 to a social base which 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 the current consensus of right and wrong. When this consensus is changing rapidly, as it is 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 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 last June in Melbourne of a child fertilised in vitro heralds remarkable developments in biology which will pose dilemmas for society and the law. The recent birth in the United States of a child carried by a host or surrogate mother extends this development. Cloning, which has been developed in plants and more recently in mammals will shortly, we are told, be a feasible possibility for human beings. 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 law makers. 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 bases 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 bases 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 by government departments 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 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.[22] In our report on human tissue transplanation, we had to work out the rules that should govern the taking or organs from one person for the benefit of another.[23] 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.[24] 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.[25] Even our most recent project on reform of the law of evidence requires us to rescrutinise 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.

CONCLUSIONS

Where does this all lead? Our country, its values and its institutions are going through a process of profound change. Among the institutions most profoundly affected by change are the laws and the courts. This is because the law is a conservatising force that inevitably tends to speak to each generation in the language and of the values of generations gone by.

In the 19th century inflation of the Pound from the beginning of the century to its close, was less than 1%. Although there were important changes in the law in the 19th century, the challenges faced by the law (and the challenges therefore faced by lawmaking institutions) were nothing when compared to the forces of change at work in our century. Just as inflation and economic change has been on the grand scale, so too has the pressure for legal change. Whereas business and government can react with relative speed to economic changes, law makers are not so nimble when it comes to answering the pressures for law reform.

The judiciary, particularly in Australia, has shown a marked disinclination to follow the path of innovation. Instead it increasingly leaves to Parliament the tasks of law reform which were once resolutely addressed by the lawmaking judges of the common law of England. The problem for institutional law reformers is posed by the question: 'Is Parliament listening?' Doubts that short-term parliaments and distracted executive government have the time or inclination to address, in a routine way, the needs of law reform, have led to a more 'sober' view in recent years of the potentialities of law reform.

There are some commentators, including Alvin Toffler in his new book 'The Third Wave', who are profoundly pessimistic. They believe that our institutions, faced with pressures of change of such number, diversity and complexity, will simply not cope. They foresee an institutional breakdown, critical for the survival of western parliamentary democracy as we know it.

The optimists amongst us must hope that the parliamentary institution will survive the challenges of change today, as it survived and adapted to the numerous revolutions, peaceful and profound, that have marked its history. The true democrats amongst us will heed the call of Professor Gordon Reid, Pro-Vice Chancellor of this University. His appeal is addressed to those who would make the parliamentary institution work.[26] In a time of profound change and of unprecedented challenges to our Australian values, both at home and abroad, parliaments need help. In the sphere of the law, law reform institutions have been created to provide that help. A critical question for this decade is whether parliaments and other lawmakers can so adapt their procedures

to maximise the usefulness of law reforming agencies. If they do, Toffler may be proved wrong and our resilient legal institutions may survive. If they do not, I can only predict that the problems for the law will abound and multiply whilst the responses become weaker, more incoherent and indistinct. Such a result is a formula for social breakdown. Those who care should seek to ensure that it does not come to pass.

FOOTNOTES

1. Sir Paul Hasluck, 'The Aimless Society' in The Age (Melbourne) 8 December 1979.

2. ibid.

3. Sir Arvi Parbo, 'Society's Suspicion of Profit' in The Age 13 December 1979.

4. Sir Mark Oliphant, 'The Way Back to a Decent Society' in The Age 12 December 1979.

5. ibid.

6. W. Macmahon Ball, 'Act, or be the Poor Whites of Asia' in The Age, 10 December 1979.

7. ibid.

8. C. Bell, 'Twenty Years of Danger' in The Age 11 December 1979.

9. Hasluck, op cit.

10. Oliphant, op cit.

11. Hasluck, op cit.

12. See The Age 18 August 1980, 1.

13. The Age 15 August 1980, 6.

14. J.M. Fraser, Speech to the Opening of the Australian Legal Convention (1979) 51 Australian Law Journal 343.

15. G.D.S. Taylor, 'The New Administrative Law' (1977) 51 Australian Law Journal 804.

16. Administrative Decisions (Judicial Review) Act 1977 (Cwlth).

17. Australian Law Reform Commission, Insolvency : The Regular Payment of Debts (ALRC 6), AGPS, Canberra, 1977.

18. Australian Law Reform Commission, Insurance Agents and Brokers (ALRC 16), AGPS, Canberra, 1980. See also Discussion Paper No. 7, Insurance Contracts, 1978.

19. Australian Law Reform Commission, Discussion Paper No. 11, Access to the Courts - II, Class Actions, 1979.

20. Mr. Justice Murphy in an address to the National Press Club, Canberra, 21 May 1980.

21. 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.

22. ALRC 2, above. Amongst suggestions made were sound recording of confessional evidence, telephone warrants for urgent searches and arrests and photography or video taping of identification procedures.

23. Australian Law Reform Commission, Human Tissue Transplants (ALRC 7), AGPS, Canberra, 1978.

24. Australian Law Reform Commission, Unfair Publication: Defamation and Privacy (ALRC 11), AGPS, Canberra, 1979.

25. Australian Law Reform Commission, Discussion Paper No. 14, Privacy and Personal Information, 1980.

26. G.S. Reid, 'The Parliamentary Contribution to Lawmaking' in Politics, XI(1), May 1980, 40.