AUSTRALIAN POLICE COLLEGE

NORTH HEAD, MANLY

FIFTH SENIOR POLICE EXECUTIVE OFFICERS' COURSE

3 MARCH 1981

CURRENT AND FUTURE TRENDS IN LAW REFORM

The Hon. Mr. Justice M.D. Kirby
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PUTTING IT IN CONTEXT

I am here because I am the Chairman of the Law Reform Commission. The Law Reform Commission is a Federal body established by the Australian Parliament with the support of all political parties to review, modernise and simplify Federal laws. There are State law reform bodies. Most countries of the world which have a legal system that can be traced to the common law of England have now set up law reform bodies to help their respective legislatures to update and simplify the laws.

Inevitably, the law tends to speak to each generation in the language, and reflect the values, of an earlier generation. The law is overwhelmingly a conservatising force. Lawyers tend themselves to be cautious and conservative by disposition and inclination.

Great forces are at work in our society today which necessitate reform and modernisation of the legal system. Among the relevant changes that are occurring are three which can be readily identified:

- First, the increasing power of government, its agencies and officials, to make decisions affecting all of us.

- Secondly, the increasing influence of the modern business corporation, adopting new methods of operations that render laws developed in earlier times inadequate or irrelevant.

. Thirdly, the impact of changing social values and moral perceptions. The business you are in, education, is inevitably playing its part in developing a community that is better informed, more questioning and more inclined to reject old values and former ways of doing things.

Each of these important changes comes upon a society with a legal base developed for earlier times, to meet the problems of earlier generations. Yet none of the forces which I have so far identified has anything like the impact on society as the changes brought about by modern science and technology promise to do. Science and technology constitute the most dynamic force for legal change which is at work in our country today. Technological change waits for no lawyer and no lawmaker. Technological changes occur, often without warning. They tend to outstrip the ability and inclination of the lawmaker to adjust. Indeed, they cast doubt on the capacity of our institutions to meet the contemporary pressures for change.

Law reform bodies have been established to help meet this institutional problem. They are among the institutions of lawmaking of the modern state. They do not themselves make laws. They propose new laws to the Executive Government and to the Parliaments to which they report.

Almost every one of the references received by the Australian Law Reform Commission reflects, in one way or another, the growing importance of science and technology in the lives of all of us, and in the life of the law. Before, however, I deal with the effects of technological change and illustrate them from the reports of the Law Reform Commission and of other Australian law reform bodies, let me say a few words about the Australian Law Reform Commission itself.

THE AUSTRALIAN LAW REFORM COMMISSION

The Commission is established to advise the Federal Attorney-General and Parliament on the reform, modernisation and simplification of Federal laws in Australia. There are 11 Commissioners, four of whom are full-time. Sir Zelman Cowen, who has long interested himself in the relationship between law and technology, was, until his appointment as Governor-General, a part-time Law Commissioner. In the early days of the Commission, it had the participation of Mr. Justice Brennan, who earlier this year was appointed to be a Justice of the High Court of Australia. Mr. Justice Brennan has written specifically about law, ethics and medicine, one of the important matters to which we must turn.[1] The most recently appointed Member of the Commission is Mr. Justice Neasey of the Supreme Court of Tasmania. He is now a part-time Commissioner.

The Commission is a body of lawyers, from different branches of the legal profession and different parts of the country, working on tasks assigned to it by the Federal Attorney-General. Its rationale is the improvement of our legal system.

The Commission prepares reports, many of which have been picked up and implemented both at a Federal and State level.[2] Before doing so, however, it engages in a debate with the expert and lay community about the defects in the current law and the ways in which those defects can be cured.

The Commission represents a modest investment in law improvement. In addition to the Commissioners, there is a staff of 19. We endeavour to supplement our staff and to infuse the perspectives of non-lawyers by the appointment of consultants, usually on an honorary basis. Many of our consultants have come from disciplines quite outside the law: psychologists, expert surgeons, computer scientists, media personnel, experts in drug rehabilitation, moral philosophers and theologians and so on.

The range of subject matters upon which the Commission has been asked to report, or is at present working, is wide. It includes complaints against the police, the reform of criminal investigation procedures, the law relating to alcohol, drugs and driving, reform of debt recovery procedures and insolvency law, the law relating to human tissue transplantation, the law on defamation and privacy, the law governing the compulsory acquisition of property by the Commonwealth, laws on sentencing, laws on insurance, laws relating to class actions and standing to sue in the courts, child welfare law reform and the latest task on the comprehensive reform of the law of evidence. In many ways our most difficult task is that which raises the question of whether Aboriginal customary laws should be recognised in some way by our legal system. This is a difficult issue for it raises the issue of the whole rationale and purpose of the legal system and ways in which social order can be maintained in a diverse and multicultural community.

The advent of new technology presents problems for the lawmaker and the law reformer. But it also presents solutions. I want to deal with these features in turn. Putting it broadly, the three chief scientific and technological forces that are at work in the world today may conveniently be collected under the following heads:

- energy sciences;
- biological sciences; and
- information sciences.

I will deal briefly and in turn with each of them.

LAW REFORM AND ENERGY TECHNOLOGY

No task yet assigned to the Australian Law Reform Commission has been specific to the impact on the law of one of the most pressing of contemporary problems: the energy crisis. Yet one law reform body in Australia has already addressed this problem. There is no doubt that energy law, and specifically nuclear law, will be a growing issue for lawyers and law reformers of the future.

The rapid depletion of the world's fossil fuels and the controversies surrounding alternative sources of mankind's energy needs caught the attention of law reformers in Australia when a sub-committee of the Law Reform Committee of South Australia (S.A.L.R.C.), known as the Committee on Law and Solar Energy, was set up by the Government of that State in September 1976. The sub-committee issued a discussion paper titled Solar Energy and the Law in South Australia.[3] The paper addresses the legal problems facing and likely to face the 'potential increase in the use of solar energy'. The Chairman of the S.A.L.R.C., Mr. Justice Zelling led the committee which comprised Mr. D. Bollen Q.C., an officer of the Department of Mines and Energy, the Dean of Engineering in the University of Adelaide and a Senior Lecturer in Physics at Flinders University. Consultants have been appointed with scientific skills. The Committee was a truly inter-disciplinary exercise, as many law reform tasks in Australia inevitably become.

The terms of reference on solar energy required the S.A.L.R.C. to consider:

- legal problems facing the increased use of solar energy;
- rights of access to solar radiation;
- building and planning implications;
- consumer protection for energy appliances;
- control of solar radiation.

The committee issued 22 tentative conclusions. Amongst these was an opinion that the direct use of the sun could contribute up to 12% of Australia's energy requirements by the year 2000. This could include 70% of energy requirements for water heating and 50-80% of household energy. Various suggestions were made for building design, removal of government taxes on solar equipment and encouragement of research on applications of solar energy. The establishment of an Energy Advisory Service to assist consumers, builders and architects was proposed. Present public authorities (electricity and gas) were urged to play an important part in encouraging the alternative use of solar energy by appropriate tariff structures.

The adaptation of the law of easements to ensure a right of access to the sun was proposed. Although it is relatively simple to define the scope of the unimpeded access necessary to use solar collectors effectively, it is not so simple, according to the committee, to suggest how an individual right to such access could be implemented.

In addition to various comments on planning law, building codes and the like, the S.A.L.R.C. called attention to the need for better funding of research and development of solar energy in Australia. It stressed that the present expenditure by the Commonwealth Government for solar energy research and development was low when compared with expenditure overseas. The need for government incentives and for co-ordination between Federal and State efforts within Australia to encourage solar energy and energy conservation was declared to be 'essential'.

Commenting on United States sun laws, the committee concluded:

> The intense American interest in legislation to facilitate the use of solar energy, which has excited a similar interest here, may be misleading. Much of the legislation in the United States is in the nature of appropriation or funding bills, or in the form of general statements of intention, which would be expressed administratively, rather than in legislation in this country. The New Mexico Act dealing with sun rights, ... would for instance be regarded as too vague for legislative implementation here. This is not to say that American actions have no relevance to Australia, and for this reason, they are still examined by the Committee even if they are precedents for actions [rather] than legislation here.[4]

This discussion paper was a striking first for the S.A.L.R.C. and for law reform in Australia. It is an indication of the new fields which law reform in Australia must pioneer. The old days of purely technical, policy-free law reform seem to have gone. The impact of technology on the law and on society, with multiple policy implications, requires much more of law reform today.

LAW REFORM AND BIOLOGICAL TECHNOLOGY

Even more puzzling and difficult are the problems presented to the law reformer by the remarkable advances of new biological sciences. There are many problems here and most of them catch our society and its lawmakers unprepared for the difficult moral questions that are posed. The intractable nature of these issues is admitted every time a speaker turns his attention to them. In 1978 Sir Roger Ormrod, a Lord Justice of Appeal of England, and himself a trained physician, delivered his paper, 'A Lawyer

Looks at Medical Ethics'. He suggested that part of the problem of resolving the profoundly difficult moral questions that arise in ever-increasing number out of advances in medical technology was the fact that 'there have been marked and widespread changes in moral attitudes':

> The questioning of accepted knowledge has extended to the questioning of moral attitudes, that is, of course, in the Western world, the moral teachings of Christianity. ... This means that the support of a form of authority, the accepted moral code, has largely gone, with the consequence that we are now faced repeatedly with choices which have to be made by each one of us on each occasion for ourselves, where before little or no question of choosing would arise'.[5]

His Lordship cautioned that this obligation of choice should not necessarily be regarded as a 'regression':

> However disturbing and difficult the consequences may be, the ability to choose imposes immense responsiblities, but it represents one of the greatest achievements of humanity.[6]

No issue of this kind has attracted so much public attention as the question of the law relating to abortion. Laws and practices differ profoundly. For example, the West German Federal Constitutional Court has declared that abortion is an act of killing. It could not, so the Court said, be camouflaged by 'the description now common, "interruption of pregnancy"'.[7] On the other hand, in 1973, the United States Supreme Court laid down a detailed regime to govern the basic rights of the pregnant woman under the United States Constitution. As to the asserted right of the foetus to life, the Supreme Court observed:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at a consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[8]

The counterpart to the 'right to life' is the group in society who would urge the 'right to die'. Voluntary euthanasia has lately become a controversial matter in Britain. Indirectly, the issue has been raised in Australia by an important measure introduced into the South Australian Parliament, a Bill for a Natural Death Act. The aim of the measure would be to:

enable persons to make declarations of their desire not to be subjected to extraordinary measures designed artificially to prolong life in the event of a terminal illness.

A Select Committee of the Legislative Council in South Australia reported on the Bill in September 1980. It is a sign to us that this debate has now reached us in Australia.

In addition to the issues of life and death, and related to them, are other complex problems of our time. I refer to such developments as test tube fertilisation, artificial insemination generally, the alleged development of an animal/human symbiont in China, the use of host or surrogate mothers, testing of products by the use of clinical trials upon unaware patients, and so on.

One project of the Australian Law Reform Commission required us to face squarely some of the implications of biological advances. I refer to the work of the Commission on human tissue transplantation.[9] The Commission's report had to grapple with a number of the very difficult issues which are presented when medical science overcomes the normal tendency of the human body to reject transplantation of organs and tissues of another. The Commission had to deal, for instance, with the problem of the definition of 'death' for legal purposes. The common law approached this definition from the viewpoint of common sense. Although the laws of Australia and Britain have never attempted to define 'death' with precision and had left its diagnosis to the medical profession, it is generally accepted that the classical criteria for determining death were the cessation of respiration and circulation of the blood. Interpose an artificial ventilator in a modern hospital and these criteria become not only irrelevant but potentially mischievous. In the English case R. v. Potter[10] a man stopped breathing 14 hours after having been admitted to hospital with head injuries sustained in a fight with the accused. He was connected to an artificial respirator for 24 hours, after which time a kidney was removed and transplanted. The respirator was thereafter disconnected and there was no spontaneous breathing and heartbeat. At the coroner's inquest, the question arose whether the accused had caused the victim's death. Medical evidence showed that the patient had no hope of recovery from the brain injury. The coroner's jury found that the removal of the kidney had not caused the patient's death. It returned a verdict of manslaughter against the assailant. He was then committed for trial but was later found guilty only of common assault. The unsatisfactory features of this case have left many lawyers with the conviction that the common law should be clarified to make it plain that death may be determined by reference to irreversible loss of function of the brain. The Law Reform Commission proposed this in its report. Its proposals, in this respect, have been accepted in law in the Australian Capital Territory, Queensland and most recently the Northern Territory.[11] The issue is under consideration in the other States.

More contentious was the question whether a regime should be adopted by which all persons are to be taken as donors of organs and tissues for transplant purposes or whether a requirement of specific donations should be retained as a security against premature operations and to uphold the integrity of the individual and his control over his physical body.

Upon one matter within the Commission there was a division of opinion. It related to whether it should ever be permissible for non-regenerative tissues to be removed from living minors for transplant use. It was agreed within the Commission that the normal rule should be that in the case of non-regenerative tissues, removal from or donation by a living person below the age of 18 years should be prohibited by law. Two members of the Commission (Sir Zelman Cowen and Mr. Justice Brennan, then part-time Commissioners) would allow no exception to this rule, believing that the existence of an exception would impose unacceptable pressures upon siblings or other relatives which would be avoided if the law, defending minors, prohibited donation in every case. The majority of the Commission took the view that subject to pre-conditions relating to independent advice and scrutiny by an inter-disciplinary committee headed by a judge, the family should be allowed to solve this crisis, without absolutist prohibitions of the law.[12] The case illustrates the fact that as in all matters of law reform, but especially perhaps where medical science is involved, men and women of goodwill can have all the relevant information and expertise, yet can differ fundamentally upon what the reformed law should provide.

The report of the Law Reform Commission was praised in the British Medical Journal, not frequently given to commenting on Australian legal developments. It declared the report to be 'the latest of an outstanding series':

> The publicity which the Commission's activities attracted in the course of preparing and publishing the report did a lot in Australia to remedy the ignorance of the public and the apathy of the medical profession towards this important subject.[13]

I do not say that all of the problems of medical morality and all of the highly contentious issues raised by developments in the biological sciences are susceptible to easy law reform treatment. But what is the alternative? The alternative is that technology will continue to take us where it will. Man's opportunity to say 'halt' will be lost. Man's opportunity to determine the limits within which biological technology takes place will be abandoned or will be spoken with a muted voice. Above all, our opportunity, as a society, to lay down the legal regime within which technological advances will occur, and to provide for the consequences of those advances, will be completely lost unless we squarely face the moral, professional and legal consequences of the changes that are taking place.

It is in this respect that the Law Reform Commission, with its procedures for interdisciplinary consultation, public hearings, discussion on the media and widespread community involvement, provides legislators with a well fashioned instrument by which to tackle the 'too hard basket' of legal change. The alternative is that our legal institutions will become more and more irrelevant to the social and ethical problems presented by advancing technology. Those who would uphold our democratic traditions will strive to avoid that sorry end.

LAW REFORM AND INFORMATION TECHNOLOGY

The third technology which I have identified as having a profound effect on our society and its laws is the new information technology. Any layman can observe the rapid penetration of Australian society by the computer, the word processor and 'computications': computers linked by telecommunications. It has been estimated that in Australia computers are already part of an industry with an annual turnover of 1,500 million per year. Over 11,000 computers are said to be in use in this country. The Myers Committee of Inquiry into Technological Change demonstrated a rapid absorption of computer technology in Australia. We can see it at airports, in supermarkets, at banks, indeed everywhere.

A number of implications are posed for our society and its laws. These have been identified in many overseas reports.[14] They have been repeatedly, stressed in international conferences: for the technology is international and the problems are virtually universal, at least in the western countries which, like Australia, are absorbing computer and information technology. Amongst the problems that have been repeatedly identified are the effect of the new technology on employment, its impact on national security and defence, its results on the national language and culture, the greater vulnerability of the computerised society and its impact on individual liberties, including privacy.

One of the tasks of the Australian Law Reform Commission requires it to look at the impact of computerisation of personal data for privacy. Of course, damaging personal data can be kept in a pencilled notebook. However, there are well established features of the computer which create new dangers. These features have been identified in many reports. They include:

- The amount of data that can be stored.
- The speed with which the data may be retrieved.
- The ever diminishing cost of storage and retrieval, making it feasible to retain data that would in earlier times have been lost or supervened by sheer bulk and expense.

- The linkages that can be created to establish a 'data profile' from many sources of information, perhaps supplied for other purposes.
- The establishment of a new occupational group, the 'computerists' without the old training, ethics and discipline even of the established profession.
- The fact that the new technology is not generally accessible to ordinary citizens.
- The tendency of the new technology towards centralisation of control.
- The international dimensions: the rapid growth of overseas data bases storing personal information upon all of us for airline, credit, banking, insurance and other purposes.

To deal with these issues the Law Reform Commission has proposed legal reforms, outlined in two discussion papers, the second of which deals specifically with Privacy and Personal Information. This paper proposes new laws for the protection of privacy, the creation of new protective bodies, including a Federal Privacy Commissioner, and the creation of new rules on data protection and data security enforceable through the Commissioner and, in some cases, in the courts.

There are many other implications for the new information technology and the law. Computer crime is one of the most obvious. It will require redefinition of the law of 'theft' in many of the jurisdictions of Australia. In the United States, it has been held that theft of information itself or even of a computer programme is not 'theft' for legal purposes. Those purposes normally imply the carrying away of goods. This illustration is simply an instance of the way in which the letter of the law is overtaken by new technology. Nowadays it is the message rather than the medium that is valuable. In times gone by, it was adequate to protect the medium.

The latest reference to the Law Reform Commission requires reform of the law of evidence. One of the most important reasons for the giving of that reference was the growing impact of computerisation on the keeping of records. Normal rules against admission of hearsay evidence would require the calling before the court of the original maker of a record and a close tracing of every step thereafter to the final 'printout'. Yet the very development of computers postulates the input of many hands. Indeed that may be a prime purpose. It may simply be impossible to trace those who programmed, supplied and generated the data in the computer. On the one hand, the law and its officers must not fall into the trap of accepting data as true simply because it is generated by a remarkable new technology. On the other hand, the law must not remain the only decision-makers in society who reject computer-generated evidence. Otherwise, decisions will be made in the courts which bear no relationship to the decisions of reasonable men in

society. Balancing the rights of the individual and the need to utilise and accept the new technology poses important quandaries for the Law Reform Commission in its evidence reference.[15]

THE LAW USING TECHNOLOGY

My thesis is not only that we must be alert to the forces for change and the need to adjust the law to cope with change. We must encourage the best possible use in the law of the new technological advances. Lawyers tend to be frightened off by technology. They tend to have come up the education stream with skills in verbal dexterity, historical knowledge and poetic inclinations. Yet it is important that the law and its practitioners should be receptive to technological change and should not only address its consequences for the substantive law but should also embrace the new technology and put it to the best possible use of society in the law.

Take first two cases in which technological developments have come to the aid of the legal process. The shocking toll of the road is a universal phenomenon of the post-automobile society. To natural and inevitable perils are added the special dangers which result from the conduct of intoxicated drivers, affected by alcohol or other drugs. It is not so very long since prosecution evidence, in cases involving drivers charged with driving whilst affected by alcohol, was confined exclusively to impressionistic evidence. Lengthy examination and cross-examination was required to test this evidence. Many of the disputes which revolve around impressionistic evidence of this kind were laid at rest by the introduction of blood alcohol analysis and breath analysis. How would we have coped, even as inadequately as we do, with the tremendous social problem of intoxicated driving, had it not been for the advent of breath analysis equipment? The Law Reform Commission was asked to report upon a number of defects which had become evident in the relevant law of the Australian Capital Territory. Its report Alcohol, Drugs and Driving led to the enactment of a law, substantially adopting the great bulk of the Commission's recommendations. As in all its tasks, the Commission had a panel of consultants who included Dr N.E.W. McCallum, Reader in Forensic Medicine in the University of Melbourne and Dr D.G. Wilson, Queensland Government Medical Officer. The Commission also had the closest support and assistance from officers of the Australian Police Forces, Federal and State. It concluded that the primary method of ascertaining the presence of alcohol in the body of a suspected person should be breath analysis, conducted by means of an instrument approved for that purpose. It urged, in particular, the use of the Model 1 000 Breathalyser, with its facility to print out the results of tests conducted by it. Attention was called to other breath analysing instruments now being developed and the need to continue comparative scientific evaluation of them.[16]

To cope with the growing problem of driving impaired by the consumption of drugs other than alcohol, new provisions were suggested for medical examinations and the taking of blood and other samples necessary to identify the presence of other intoxicating drugs. The report acknowledged that this was a growing problem with which the law would have to grapple.[17] In the first paragraph of the Commission's report, the way in which the law would increasingly look to science and technology was frankly acknowledged:

> How is the law to deal justly and promptly with those members of society who potentially or actually endanger themselves and others by driving a motor vehicle after having consumed a relevant amount of alcohol or other drug? The question must be resolved in the context of our present law and practice in the administration of criminal justice. The answers will require an examination of scientific instruments that have been devised for the specific purpose of putting at rest many old court-room controversies. New questions are raised concerning the proper faith that may be put by the law in machines, given that the consequences may visit criminal penalties upon the accused. These questions point the way for other likely advances in the years to come. It is therefore important that at the outset we should get right our approach to these novel legal developments.[18]

The Commission's report on Criminal Investigation[19] also reflected the endeavour of the Commission to facilitate the use of science and technology to put at rest disputes relevant to the guilt or innnocence of the accused. A facility for telphone warrants for urgent police searches and arrests was proposed.[20] This facility has now passed into law in the Northern Territory of Australia and there seems little doubt that it will be adopted elsewhere, as a means of retaining the benefit of independent judicial scrutiny of serious police actions, whilst acknowledging the special needs of police to act promptly in a country subject to the tyranny of distance.

Many other proposals in the report could be mentioned. One of them suggested the use of photography to record an identity parade and to place before the jury the way in which the accused was identified, where identity is in issue.[21] The common law acknowledges the special dangers of convictions based on identity evidence.[22] The need to protect against wrongful convictions on erroneous identification evidence cannot be met entirely by the facility of photography or video-recording. But a start must be made. Placing before the tribunal of fact, judge or jury, the actual evidence may be infinitely preferable to a courtroom debate, months later, concerning what occurred.

This principle applies equally to tape recording of confessional evidence. One committee after another, in Britain and Australia, has recommended the introduction of sound recording of confessions to police.[23] Nobody believes that tape recording could be introduced without problems, costs and difficulties. Nobody believes that the tape recorder will be the complete answer to disputed evidence concerning what was said to police. But is there any doubt that, in time, sound (and probably video) recording of confessions to police will be used to put before the tribunal of fact the actual, alleged confession of the accused? Quite apart from official committees of inquiry, the courts are now, with increasing insistence, suggesting that tape recordings should be used.[24]

Aside from developments such as these, there is little doubt that the new information technology will provide many benefits for the legal profession itself. Word processors are now a commonplace in many Australian legal offices. The Commonwealth statutes are already computerised. A start has been made to computerise the decisions of the High Court of Australia. The Australian Law Reform Commission has used the computer to search the Commonwealth statutes and to identify inconsistencies and outmoded provisions. We have already used computers to analyse surveys conducted in connection with a number of our projects.

CONCLUSION : CAN OUR INSTITUTIONS COPE?

In this short sketch, I have been able to do little more than to outline the way in which technology affects the law, its institutions, its personnel and its procedures. In times gone by, there was usually a 'time cushion' between an important technological development and the need to provide for its social and legal consequences. Enough has been said to show that technological change comes upon us today at an exponential rate. Whether it is in the energy sciences, biological sciences or the new information technology, we are seeing changes occur that dazzle the mind and have gone beyond the understanding of most laymen.

Some pessimistic observers say that our institutions, including our legal institutions, will not be able to cope with these changes. Alvin Toffler, in his latest book, 'The Third Wave', prognosticates a breakdown of the lawmaking institutions of the western community. On the other hand, within Australia, we have developed one means by which our legislators can be assisted to face squarely, and with the best available interdisciplinary advice, the problems posed by technology. I refer to the law reform commissions, and specifically to the Australian Commission. I suggest that this work is worthy of the support of all citizens concerned that our democratic lawmaking institutions should survive and that in the midst of so many scientific and technological changes, we should not get away from a society ruled for the ordinary man and woman.

FOOTNOTES

1. See F.G. Brennan, Law Ethics and Medicine (1978) 2 Medical Journal of Australia, 577.

2. See The Law Reform Commission, Annual Report, 1979 (ALRC 3), 23.

3. South Australian Law Reform Committee, Solar Energy and the Law in South Australia, Discussion Paper, 1978.

4. ibid.

5. Sir Roger Ormrod, 'A Laywer Looks at Medical Ethics', in (1978) 46 Medico-Legal Journal, 18, 21.

6. ibid.

7. Cited in J.D. Gorby, 'The "Right" to an Abortion, The Scope of the Fourteenth Amendment, "Personhood" and the Supreme Court's Birth Requirement', Southern Illinois Uni LJ, No. 1 (1979).

8. Maher v. Roe, 410 US 113 (1973)

9. The Law Reform Commission, Human Tissue Transplants (ALRC 7) 1978.

10. (1963) 31 Medico-Legal Journal, 193. See ALRC 7, 58.

11. Transplantation and Anatomy Ordinance 1978 (ACT), s.42; Transplantation and Anatomy Act 1979 (Qld), s.45; Human Tissue Transplant Act 1979 (N.T.)

12. ALRC 7, 51.

13. British Medical Journal, 28 January 1978, 195.

14. Notably the report of S. Nora and A. Minc, 'L'Informatisation de la Societe, (Report on the Computerisation of Society), Paris, 1978 (France), and Report of the Consultative Committee on the Implications of Telecommunications for Canadian Society (Clyne Report), Ottawa, 1979 (Canada). There are many other notable reports, particularly in Scandinavia. See, generally, Privacy Protection Study Commission, Personal Privacy in an Information Society, Washington, 1977 (United States) and Report of the Committee on Data Protection (Sir Norman Lindop, Chairman) Cmnd. 7341, London, 1978 (United Kingdom)

15. See M.D. Kirby, 'The Computer, The Individual and the Law', a paper for the 21st Australian Legal Convention, Hobart, Tasmania, 7 July 1981, to be published in the Australian Law Journal.

16. ALRC 4, 125.

17. id., 131.

18. id., 1.

19. The Law Reform Commission, Criminal Investigation (ALRC 2), 1975.

20. ALRC 2, 95.

21. ibid., 53.

22. R v. Turnbull [1971] 1 QB 224.

23. For a list of the reports, see Kirby, Controls Over Investigation of Offences and Pre-Trial Treatment of Suspects (1979) 53 Australian Law Journal 626, 628. See also the recent report of the United Kingdom Royal Commission on Criminal Procedure, 1981.

24. See Sholl J. in R v. Governor of Metropolitan Goals; ex parte Molinari [1962] VR 156, 169; Gibbs J. in Driscoll v. The Queen (1977) 51 ALJR 731, 742.