

334

AUSTRALIAN AND NEW ZEALAND ASSOCIATION

FOR THE ADVANCEMENT OF SCIENCE

SECTION 42 : LAW

LAW AND SCIENCE

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

April 1982

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The Inaugural Law Section

This is the first time there has been a Law Section in ANZAAS. It took a long time for lawyers to be accepted by scientists. Doubtless there are other groups in society who find it hard to accept lawyers. Many lawyers would question whether law is in any way a science. Some would fail to perceive the links between law and science. During my legal education I cannot recall a single discussion of the relationship between law and science. Yet as the program for the Inaugural Law Section of ANZAAS reveals, and as the abstracts of the papers to be presented plainly disclose, law and science have begun a dialogue. It is fitting that the most important interdisciplinary scientific meeting of our region should provide a forum. The notion of a Law Section was proposed by Sir Zelman Cowen when he was Vice Chancellor of the University of Queensland. Professor John Peden and the Macquarie University Law School deserve congratulations for bringing this idea to reality. The Section is fortunate to have as its President a distinguished law teacher who has an established interest in and knowledge about information science and its impact on the law. By a happy coincidence, Professor Whalan was born a New Zealander. Though the dream recorded in the preamble to the Australian Constitution of an Australasian Federation has not been achieved, ANZAAS provides an important link between our two countries. I am sure that lawyers on both sides of the Tasman will closely attend Professor Whalan's Inaugural Presidential Address on the topic 'The Science-Law Relationship : Are Lawyers Really Necessary?'

Information Technology

The first day, and the first set of papers, will be devoted to computers and the law, with sessions organised jointly with Section 41, Information Processing and Computer Science.

Mr. Peter Ward of the Federal Attorney-General's Department will outline the way in which new information technology can be brought to the assistance of lawyers and the community. His paper sketches the use of information technology within the Attorney-General's Department. Not only is this use extended to in-house retrieval of full text legal information (including legislation). It is planned to extend the system 'to interested persons and bodies throughout Australia'. A description of the system and of a second word processing system will indicate the great utility of information technology for legal practice. Finally, there will be a discussion of the Legislative Consolidation System being developed to assist in the consolidation of Federal legislation. A major complaint of the community is about the complexity and inaccessability of our laws. Bentham predicted that, with the development of codification, the farmer would be able to find access to the laws governing him. This dream was not realised. Perhaps information technology will deliver the goods. The commentator on Mr. Ward's paper is Mr. H.M.S. Schreiber, a past Commissioner of the Australian Law Reform Commission.

A current Commissioner, Professor Robert Hayes, will outline the work of the Commission on computers and privacy. His paper is devoted to the difficult issues in legal protection of privacy, namely the definition of privacy and the design of sanctions and remedies to protect it. By examining the experience of the New South Wales Privacy Committee, Professor Hayes analyses the need to go further than conciliation, advice and the development of voluntary guidelines. He outlines the additional risks to privacy posed by new information technology and places the work of the Australian Law Reform Commission on privacy protection into the context of other Federal law developments in Australia during the past decade. A principal commentator on his paper will be Professor John Goldring of the Macquarie University Law School, himself a present member of the NSW Privacy Committee.

A paper by Mr. Kevin Fitzgerald of the Computer Abuse Research Bureau at the Caulfield Institute of Technology in Melbourne examines the new problem of computer abuse in Australia. According to reports coming to the Bureau, there have been 76 cases of intentional computer abuse involving a total loss of \$2.27million. According to Mr. Fitzgerald, this is probably just the tip of the iceberg. Many cases of computer abuse do not come to light. Many are hard to detect. Future developments in electronic funds transfer will provide further opportunities for fraudulent manipulation of computing technology. Mr. Fitzgerald makes a number of suggestions for social retaliation, including practical suggestions about internal controls and staff selection.

In vitro Fertilisation

The second day will involve a joint session with Section 14 : Microbiology, Epidemiology and Medical Science. This will deal with one species of the new biotechnology which poses ethical and legal dilemmas that are only now being realised. The first speaker will be Professor Carl Wood, whose team at the Queen Victoria Medical Centre in Melbourne has developed the techniques of in vitro fertilisation and embryo transfer to the point that they are now responsible for more IVF births than any other unit in the world. Professor Wood loses few opportunities to invite public discussion about the social implications of his team's work. He has been open and frank in seeking community scrutiny. His appeals for action have led to the establishment of interdisciplinary committees in Victoria and New South Wales. These committees will look at the ethical and legal implications.

Mr. Russell Scott, Deputy Chairman of the New South Wales Law Reform Commission, will examine the legal implications of in vitro fertilisation. He is well placed to do so. Not only was he the Commissioner in charge of the Australian Law Reform Commission's successful report on Human Tissue Transplants (ALRC 7, 1977). He has recently published a perspective of the future of human bioethics, The Body as Property.

These papers will be followed by a discussion of the implications of technology for marriage, as seen by the Reverend Dr. Tom Connolly, Head of the Department of Moral Theology at the Catholic Institute of Sydney. Dr. Robert Young of the Department of Philosophy at La Trobe University has prepared a paper on moral and ethical aspects of IVF. He analyses the bases of opposition including the wastage of human embryos, the allegedly risky experimental nature of the technology, its possible impact on family stability, its introduction of a 'stud farm' mentality and its misuse of the scarce medical dollar. Dr. Young suggests answers to these criticisms. The most worrying of them is the first, because it involves the question, addressed by Dr. Young, about 'personhood' ie when for social, ethical and legal purposes, an embryo becomes entitled to protection. This issue is also inherent in the paper by C. Lowry on whether the IVF embryo can be treated as property. Recent cases in the United States and current legislation before the Australian Federal Parliament raise issues about property in life forms. These are new issues for the law. But they will not go away. A failure to address them is to make a decision.

Industrial Relations

On the third day, jointly with Section 28 : Industrial Relations and Organisational Studies, the Law Section will consider issues of industrial relations and the law. The participation of Mr. John Halfpenny, Secretary of the Victorian Branch of the Amalgamated Metal Workers' and Shipwrights' Union, will ensure a lively debate on technology, the multinational corporation, trade unions and the economy. Mr. Herbert of the Metal Trade Industry Association will present an employers' view of technological change. The Hon. Mr. Justice Macken of the NSW Industrial Commission will examine changing patterns of work and the way in which these challenge the industrial law of Australia. Mr. Alan Boulton, Research Officer with the ACTU, will present a paper on the general impact of technology on the trade union movement. His commentator will be the redoubtable Shadow Minister for Science and Technology, Mr. Barry Jones MP. Mr. Jones has himself made a notable contribution to the discussion of the impact of science on society in numerous speeches and books. His latest book, Sleepers Awake!, is an important overview. For the good health of the Rule of Law and of our parliamentary institutions, we will be fortunate to have in Parliament people such as Mr. Jones, who are interested in the relationship between society and the law, on the one hand, and scientists and technologists on the other.

Women's Studies

The fourth day, jointly with Section 44 : Women's Studies, will involve an examination of women's studies and the law. Margaret Thornton of Macquarie University has examined job segregation and industrialisation against the principle of non-discrimination against women. Her paper examines the issue in the Hunter Valley Region and comes to a gloomy prognosis. Sexual segmentation of the workforce persists with an alleged social bias against women working in what are seen as 'men's jobs'. Ms. Thornton's paper draws attention to employment stereotypes and the way in which, at least to some extent, these are reinforced by legislative and award provisions.

Yvonne De Michiel of Macquarie University has prepared her paper on the subject of women and occupational health and safety. She calls attention to the way in which some legislation, designed to protect women in employment, has simply reinforced social and employment stereotypes and even operated to the detriment of male employees. By confining women to so-called 'light' work, not only have women been condemned to monotonous and low-paid jobs in the industrial sector. They have also provided a palliative, according to Ms. De Michiel, which has delayed a more aggressive approach to the problems of industrial safety. Ms. De Michiel makes suggestions about ways in which the current situation could be improved, including by establishment of health and safety committees at work and the acceptance of a legal right to stop work without penalty where conditions are harmful to health or safety.

Finally, Her Honour Judge Jane Mathews examines the changing profile of women in the legal profession. The difficulty of securing data is described. However, it is beyond question that there is a significant increase in the number of women entering law schools. Some law schools have proved more congenial than others, depending on the courses offered. Judge Mathews seeks to trace the discrimination against women in the law that has both diminished the number of women entrants and tended all too often to confine women to particular work thought 'suitable'. Times are changing. Supported by her commentators Deidre O'Connor and Kim Ross, Judge Mathews charts some of the changes.

Conclusions

The Law Section of ANZAAS has been generously supported by the Law Foundation of New South Wales. It is an innovation. But there must clearly be more communication between scientists and lawyers, indeed between scientists and the community. It is hoped that this experimental Section will, by the quality of its participants and the importance of the topics addressed, ensure that future ANZAAS Congresses continue to bring lawyers, scientists and technologists together in a modern dialogue.

M.D. KIRBY
30 April 1982