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CHANGES IN THE DELIVERY OF LEGAL SERVICES IN AUSTRALIA

by

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A shortened version of a a paper presented at the 28th Australian Legal Convention in Hobart Tasmania in September 1993. Justice Kirby is President of the New South Wales Court of Appeal, Chairman of the International Commission of Jurists and a former Chairman of the Australian Law Reform Commission.

BENEATH THE LEGAL ICEBERG

This convention assembles at a time when the ageless criticism about the delivery of legal services has reached, in Australia, a new level of stridency and anger. The air is thick with speeches criticising the judiciary and attacking the restrictive practices of the legal profession. In some States of Australia, solicitors are at loggerheads with barristers. "Lawyer bashing" has become even more energetic than usual, and not just in the popular press. The New South Wales Attorney-General is reported as "lashing" the judges of the state over "long delays in handing down judgements". He reportedly suggested that they were partly responsible for "the State's seriously over-crowded court system". Knowledgeable users of the legal system, such as the Australian Securities Commission, have accused it of being "obscenely and intolerably expensive". An energetic judge, who retired early to return to private practice, accused the regime he lately superintended of failing to identify early enough the 90% of cases which would be settled; of facilitating the use of litigation where it was not really apt; and of promoting uncertainty in the law by enlarging unpredictable factors that undermine the certainty of the legal rights of the parties. He said that few, if any, judges could today afford to litigate a private dispute. According to him, things are getting worse for the delivery of legal services, not better.

In these circumstances, it is little wonder that editorialists lament the fact that for most citizens of Australia, the "legal remedy is out of reach".

> "The huge legal costs faced by former Premier Sir John Bjelke-Petersen in the defamation case [illegible] Fitzgerald Inquiry illuminate a truth of modern litigation: it is beyond the reach of all but a few people. And this in turn points up another truth: that in an open and free society such a turn of events is unconscionable. The law, applied properly, applies to everyone. It follows, then, in natural justice, that the remedy of litigation must be available to everyone".

The solution offered by the editorialists was the trimming of fees by QCs and the greater use by lawyers of technology. Other observers have proposed new ways of tackling the twin problems of cost and delay. This paper will review some of the changes which have been implemented and others which are under consideration.

Acknowledging that the courts represent (and some will say should represent) only a tiny part of legal practice, it is nevertheless fair to say that in the last two or three years some changes have been initiated, or proposed, to enhance the relevance of the legal profession and the Courts of Australia to the community which they nominally serve. I will take a critical look at some of these initiatives. A number of them may have important implications for the delivery of legal services. Necessarily, I will be able to touch on some only of the developments.

THE JUDICIARY

The delivery of legal services concerns the accessibility of justice and its relevance to ordinary people. This means far more than free legal aid. It includes the service of a judiciary which has a heightened concern about the unmet needs for legal support, an increased interest in disadvantaged and minority groups and a sensitivity to changing social attitudes.

The debate in recent months about gender issues in the Australian judiciary has, to some extent, exaggerated the allegedly sexist attitudes of Australian judicial officers. The notion that the corrective is a return to school and compulsory instruction in political correctness may be doubted. But there is little doubt that there will be irresistible pressure for the appointment of more women, and more from the ethnic communities and other minorities to the Australian judiciary. This diversification of the bench is to be welcomed. It can be accomplished [illegible]

In New South Wales, the Attorney-General advised the Law Society in May 1993 that he intended to introduce legislation to remove the distinction between barristers and solicitors concerning judicial appointments and other statutory officers. An increasing number of solicitors have been appointed to the bench in a number of States of Australia and in the Family Court of Australia, generally with excellent results. However, it is to be hoped that the Attorney-General, a solicitor, will perceive other legitimate and hitherto neglected qualifications.

Some barristers have warned against the risk of mass resignation of judges if the "quality" of the bench is reduced. Whilst this prospect seems unlikely, maintaining quality and attracting the special kind of personality need for judicial life will continue to be a high responsibility of governments in Australia. Now new qualities must be added to those of honesty, learning, integrity, diligence and independence. There are now increasing demands that judges should take greater control of litigation in their courtrooms. Chief Justice Mason told the Australian Bar Association conference in July 1992:

> "If we are to reduce the length of cases, we should perhaps consider the adoption of procedures which would enable the judge to take a more active role in deciding the parameters of the case and limiting the evidence to be adduced, in particular setting limits to cross-examination. Introduction of time limits and more emphasis on persuasive written submissions are expedients which require very serious consideration."

Many such facilities have been introduced to Australian courts or are under consideration. In a more recent note, Chief Justice Mason remarked that when the House of Lords interrogated counsel to provide an explanation as to how it had come about that they had exceeded the time limit given to them, counsel's response, by their agreed answer, was:

> "We did not appreciate that your Lordships required so much assistance."

Some judges have a greater inclination and capacity to streamline proceedings than others. We have seen some notable examples of judicial

activists in lists dedicated to commercial cases. Chief Justice Mason predicts:

> "If the adversarial system is to survive, the difficulties must be overcome and that means that the judge must become more of a manager, an active overseer, so to speak. It also means that the differences between the common law trial and the civil law trial will be reduced to some extent. And that would accord with the move towards convergence of the two systems which is taking place in Europe."

These remarks do not go without criticism. Practice Notes requiring a measure of interventionist case management and judicial control of the hearing beyond the traditional role of the umpire inspire angry criticism by members of the legal profession. A past-President of the Law Society of New South Wales asserts that the additional monitoring of cases and responding to judicial call-overs will add thousands of dollars to the costs of the average case. This comment emphasises the importance of ensuring that heightened powers for the judiciary are not only attuned to the skills of the people who make up the bench. And do not make litigation still more unattractive by adding to what is already a highly labour-intensive activity carried on by highly expensive labour.

Sadly, a great deal of the criticism of the judiciary concentrates on trivial matters such as wigs and robes. Often, the criticism betrays a shocking ignorance of the hard and disciplined life that is required of a judicial officer in Australia today. In the past, when there were more lawyers in politics, it was a convention that the Attorney General would defend the judges against public attack by Premiers and Attorneys-General who should know better. It is because they are not defended as once they were that judges must find better ways of communicating to the public. By doing so, I believe they may help to win back the confidence of the community despite the media and political barrage. Notwithstanding the calumny, most Australian judges (and I know very large numbers of them) are admirable, hard-working and honest people who deserve the good opinion of the community they faithfully serve.

BARRISTERS AND SOLICITORS

The plethora of current inquiries into the organisation of the Australian legal profession is truly remarkable. Those at work include, on the national scene, the Senate Standing Committee on Legal and Constitutional Affairs, the Trade Practices Commission, the National Review of the Tax Profession, the National Competition Policy Review, the Parliamentary Inquiry into the Family Law Act and the initiative of the Standing Committee of Attorneys General. The last-mentioned body, in June 1993, issued from Darwin a Discussion Paper Reclaiming Justice - A National Approach to Access to Justice. In addition to the national inquiries, virtually every State has proposals for reform on the boil. In New South Wales there is before Parliament the Legal Profession Reform Bill 1993. It would abolish the distinction between barristers and solicitors. It would reduce the control of the Supreme Court judges over the admission of legal practitioners to the proposed Common Roll. It would change the procedures for the discipline of the legal profession and the making and handling of complaints about legal practitioners. And it would alter the regulation of legal fees and other costs.

In other States of Australia, the reforms proposed by State authorities may not be so radical. Thus in some States the decision to appoint no more Queen's Counsel (but to countenance a new rank of self-selected senior counsel) has been rejected. But the reforms in New South Wales continue apace. Their prospect led to deep divisions between barristers and solicitors and even an apparent split in the ranks of solicitors concerning the attitude that should be adopted to a separate Bar.

The Senate Standing Committee has now produced a report, "The Costs of Justice - Foundations for Reform". Amongst the proposals made are:

- Constant monitoring of the rules of procedure and evidence;
- Introduction of cheap and simple procedures to ensure that "a party in breach of a court order can be swiftly brought to order";
- Enforcement by the judiciary of its own rules of procedure to reduce the costs and delay of litigation and improvement in the "poor administration" of justice;

- Greater attention by appellate courts to reduction of legal complexity;
- Maintenance of self-regulation by the legal profession but with due attention to "public resentment at the high cost of justice to which some of its members have contributed";
- The provision of more information about legal fees and increase in pro bono work;
- The removal of restrictive practices within the legal profession, such as the two counsel rule which still applies, if not in name then in practice;
- The diversion of much legal work to non-lawyers, such as has been achieved with licensed conveyancers in South Australia and Western Australia; and
- Increased funding for community legal centres and better education of the community in legal fundamentals.

Two Senators on the Committee (Senators Schacht and Spindler) dissented from parts of the above report. They expressed a greater sense of urgency about the reduction of legal costs and a conclusion that the legal profession was incapable of effective self-regulation. Needless to say, the main recommendation of the committee was that is own mandate of inquiry be continued.

The Federal Attorney General's Department has responded to the inquiry opened by the Trade Practices Commission with many proposals relevant to the future organisation of the legal profession in Australia. Its proposal include:

- The establishement of a single (national) legal market served by lawyers and non-lawyers;
- The abolition of the divided profession and its replacement by a fused profession;
- The abolition of restrictive practices which have no net public benefit;
- Permission to appropriately trained, licensed and/or supervised non-lawyers to perform work currently reserved to lawyers, including advocasy and also mediation and arbitration in areas such as conveyancing, succession, taxation, criminal law, etc;
- The introduction of contingency fees, advertising and a single national regime for ethical conduct, legal liability and insurance.

- The encouragement of multi-disciplinary practices, e.g. of lawyers and accountants;
- Fee competition amongst lawyers; and
- The abolition of the rank of Queen's Counsel.

With a great many of these proposals I completely agree. Each one of them should be tested against the way in which they would operate in practice to improve the delivery of legal services to our fellow citizens at costs they can afford. It should not be forgotten that the Royal Commission in England concluded that the divison of the legal profession was, on balance, economically rational and in the public interest. It will be important that the Australian Trade Practices Commission considers dispassionately the same responsibility. For my own part, I find it difficult to believe that the abolition of the rank of QC and its substitution by a professional rank of SC will affect in the slightest the provision of improved legal services to ordinary people.

Those who think that the broad thrust of the various proposals set out above will go away and that life in the legal profession will settle back to comfortable complacency should compare the published agendas of a number of governments in Australia of different political persuasions. There is, in fact, a high measure of consistency in the proposals at least of the Federal, New South Wales and South Australia law officers. The broad landscape ahead for the legal profession in this country seems clear enough. If there is complaint by lawyers about its contours, I suspect that politicians will show no great sympathy. In this, they wiill probably have the support of the ordinary citizens horrified in hard times at the reports of huge legal incomes and mindful of the inaccessibility of the law to many and the urgent need, at least, to do something about it.

For those who consider that the proposals set out above are unbearably radical, involving a disturbance of things long settled in the organisation of the legal profession in Australia, there are other lawyers who urge even more drastic changes. Mr John Weingarth, a lawyer who is Vice-President of Citibank, is hardly the kind of practitioner who could be accused of proletarian tendencies. Yet in a paper on Accessible and Affordable Justice he concludes that the legal system of Australia urgently needs to implement its own version of Glasnost (openness) and Perestroika

(restructuring), if it is substantially to modernise and to play its vital role in the democratic society. He suggests:

- The reorganisation of the courts;
- Micro-economic reform within the legal profession;
- The abolition of wigs and gowns, with their disproportionate contribution to the "image problem" of the profession; and
- The adoption of a uniform nationally based legal profession with modern work practices.

Those who watch these proposals from afar should insist that economic forces alone should not govern the design and functions of the legal profession in the future. Lawyers are not merely another occupational group. By virtue of their work they frequently play an important role in one of the central branches of government of the country. Whilst a measure of economic rationalisation is doubtless required to render the legal profession more competitive, the likely future impact of the growing influx of numbers of young law graduates from the increasing number of Australian law schools should not be overlooked in this respect. Nor should the special needs of high ethics and effective professional discipline to uphold the integrity and honesty of the legal profession be underestimated in a world of fast-changing institutions and social attitudes.

RECENT COURT INITIATIVES

No doubt stimulated by the many inquiries and heightened public debates and concern about the costs and delays of justice, new initiatives have been tried in recent years in every jurisdiction of Australia to improve the workings of the courts and the efficiency of the legal profession. A number of the innovations, chosen virtually at random, can be noted:

- The introduction of written submissions in criminal appeals to improve the efficiency and thus the speed of disposing of such proceedings, urgent in most cases but particularly where the appellant is in custody;
- The reduction of delays in criminal trials by improvements in the [illegible]

more effective administrative control and denial of adjournments. There are, of course, many instances where criminals accused, on bail, feel no great urgency to have their cases heard promptly. In such cases, it is in the public interest for the judiciary to maintain a close control over such hearings and to monitor them at important stages;

- In civil appeals throughout Australia written submissions have long been generally required. In New South Wales important appellate innovations include the monitoring of appeal notices by one of the judges to detect and remove incompetent or irregular appeals; the requirement (by Practice Note) of narrative statements of facts in large and complex appeals to facilitate decision-making and the planned facility of two-judge appeal courts in some cases to increase the throughput;

- The conduct of running compensation, damages and other lists to permit speedy disposal of appeals involving no likely point of legal principle and the delegation to the Registrar of a power to settle and finalise appeal papers even if the parties cannot agree. A large facility for expedition of the hearing of appeals is also available in New South Wales. This is probably a feature of a permanent appellate court. Such a court permits the more flexible utilisation of available judicial time. Notwithstanding these innovations, the burden of appellate work continues to grow. The greater the efficiency of primary decision-making, the larger will be the burden of the appellate docket;

- In a number of jurisdictions courts have established their own internal watchdogs to monitor the throughput of cases. In New South Wales, Chief Justice Gleeson, soon after his appointment, established a Policy and Planning Committee of the Supreme Court. It meets monthly. It closely watches trends. Out of its work came the "Special Sittings" of the Supreme Court of New South Wales in which virtually every judge took part. It resulted in a major clearance of the backlog of judicial cases in the Common Law Division. More such sittings are planned. In Western Australia, the counterpart was the "August Blitz" of 1993 described as a "month long war to eliminate an embarrassing backlog of civil cases.

South Wales recently adopted a procedure by which the parties, by agreement, surrendered the right of cross-examination of expert witnesses in favour of an on site inspection of the disputed locus held by the judge and assessor in which the experts, with the aid of models of the proposed development, explained their differing points of view. We will need more innovations of this kind. But we will also need reform of the law to ensure that they can occur within statutes generally drawn with different procedures in mind. Pre-trial conferences, provision of caps on legal costs, the penalty of indemnity costs for rejection of a reasonable settlement, the necessity to reduce a great deal of evidence to admit and the more energetic superintendence of the trial by the presiding judge point the way to reforms that will reduce court costs and delays. Credit must be given to the Australian Institute of Judicial Administration for keeping these issues constantly before the Australian legal profession and for conducting differential research to establish which reforms are likely to work in the Australian context;

- Expressed concern about the delays in the provision of judgments has led recently to the adoption of a new procedure announced to the legal profession for the signification of complaints about delays in particular cases. It would appear that this procedure may not fully satisfy the Government of New South Wales. It is anxious to have publicly available standards ("best practice") set either by the judiciary itself or by the AIJA. I support this notion. Allowance must be made for the variation in the judicial workload in different parts of Australia. But the publication of achievable standards for the disposal of reserved judgments may be warranted in some cases. In the New South Wales Court of Appeal, we constantly monitor reserved judgments at meetings of the judges held every fortnight. The procedure has proved an efficient way of superintending reserved decisions. Other larger courts without the same collegial facility may require different techniques if a serious source of grievance in the delivery of the legal product by the judiciary is to be cured; and

- Within the practising legal profession reforms have already been introduced or are under contemplation throughout Australia. The two

counsel rule and the two-thirds fee for junior barristers has long since gone as a matter of rule within the Bar in Australia. But has it disappeared in practice? It is now increasingly noticed that QCs are appearing without juniors in the higher courts in this country. An increasing number of solicitor advocates are appearing. There is much greater flexibility in professional arrangements. The High Court of Australia at the request of the legal profession amended its rules to permit solicitors to argue special leave cases; sometimes they do. Advertising by lawyers is now permitted, at least for solicitors, in some parts of Australia. A system of specialist accreditation has been introduced by the Law Society of New South Wales from July 1993. These changes do indicate that micro-economic reforms in the delivery of legal services, at least at one level, are occurring or are planned.

CASE MANAGEMENT, ALTERNATIVE DISPUTE RESOLUTION AND TECHNOLOGY

Three other developments, important for the more efficient delivery of legal services in Australia, need to be noted. The first is impoved case management in the Australian courts. There are seven fundamentals to case management. They are judicial commitment and leadership; consultation with the legal profession; court supervision of the case as it progresses; the formulation and publication of standards and goals; the development of a monitoring and information system; the control of listing to achieve creditable trial dates; and the control of adjournments. The courts are becoming much more conscious of the need to manage the progress of matters through their systems. The passive role of the judiciary of our tradition is drawing to its close.

Two points of difficulty will have to be noted as this change in the ways of centuries works its way through the Australian courts, as it is already beginning to do. The first has already been mentioned. It is the cost-effectiveness of judicial case management. It will not avail the better delivery of legal services in this country if intensive judicial supervision deflects judges from their primary task of judging and adds costs to litigation which add to the problem. The second concern to be watched relates to the need to defend the traditional manifest neutrality of our judiciary. It would be a tragedy if greater throughput were achieved at a

and legal profession of the manifest impartiality of the judiciary. The premature expression of opinion, without full knowledge of the facts of the case, and apparent pre-judgment by the judge assigned to manage, and then try, the case could undermine public acceptance of judicial decisions. To some extent, this problem can be met by ensuring that the judge who manages the pre-trial stages of litigation does not conduct the trial if it proceeds. But this will not always be feasible or appropriate, particularly in smaller jurisdictions or in specialised divisions of the courts.

A second development of importance concerns the use of alternative dispute resolution. The use of referees and arbitrators in conjunction with litigation is now well established in many parts of Australia. In a decision which supports this move, the New South Wales Court of Appeal has held that:

> "As a broad proposition ... the Court will not reconsider questions of fact where there is factual material sufficient to entitle the referee to reach the conclusions he did, particularly, where the disputed questions are in a technical area where the referee enjoys an appropriate expertise."

In some jurisdicitions the facility of conciliation is also provided to attempt to bring forward the procedure of settlement which presently comes, typically, at the last moment when the delay has been suffered and the costs incurred. It seems fairly clear that this should be an important target of attempts to improve the delivery of legal services. But I do not under-estimate the difficulties of achieving success. Lawyers, like litigants, tend to delay absolute realism and concentration upon a case until the hearing is about to commence. Then only does the case have full attention so that its prospects are realistically weighed.

The third area of innovation involves the use of technology. Already technology has infused the judiciary and legal practices in Australia. Word processing is commonplace. Facsimile filing is possible. Direct accessing of legal data and library material is feasible. Many legal problems lend themselves to intelligent systems which will (with alteration of the substantive law) reduce the lawyerly labour component that adds to delay and cost.

Within a number of Federal bodies telecommunications is used to reduce the cost, formality and inconvenience of attending a court or tribunal hearing. The changes go beyond the High Court's video link for special leave applications. Thus the Administrative Appeals Tribunal, for more than a decade, has conducted some hearings by telephone. It seems likely to me that this facility will spread to the higher courts. Already, where necessary, injunctions can be sought and issued by a Supreme Court judge by telephone. An important aspect of the strategy of the New South Wales Department of Courts Administration is to develop and apply information systems supporting the efficient and effective achievement of the departmental goals and priorities. Such systems permit better performance monitoring, the tracing of court and departmental files, the provision of statistics and the identification of trends and problem areas. The provision of better information technology is, in fact, a pre-requisite to improved case management systems. It permits differential case management. It should ensure a much better judicial overview of the performance of the system for the administration of justice. In New South Wales the Judicial Information Technology Committee comprises judges and departmental officials. It is chaired by Justice Cole of the Supreme Court. There are similar developments in other States. In the Federal sphere the Attorney General (Mr Michael Lavarch) recently announced that a new electronic system containing updated Federal statutes and statutory rules would be introduced by July 1994. It was intended that this database would impove public and professional access to Federal law.

In Western Australia, the Chief Justice reported on the improved equipment and facilities for video recording of police interviews with suspects in indictable offences. If these facilities reduce extensive voir dire and the prolonged trials, as well as the appeals and rehearings that tend to accompany them, they will amount to another contribution by technology for reduction of delay and court log-jams. If cases can be disposed of more quickly, more court days will be available for the speedier throghhput of other cases waiting their turn in the list.

Other innovations of a procedural character could be mentioned, including the development of representative procedures. The attempt to prosecute a representative action in New South Wales failed by judicial decision. But legislative - or even judicial - rescue may be at hand.

CONCLUSIONS: TURNING INQUIRIES INTO ACTION

The above review shows some of the many innovations which are under consideration, some of which have already been introduced, in Australia for the improvement of the delivery of legal services.

We should not just accept that the Law's delays (and one might add costs) are the inescapable burdens of human existence which cannot be made more tolerable. Some delay and cost is certainly inescapable in any justice system. In a system which uses people trained as the Australian legal profession has been, it is clear that many problems of a legal character will not be susceptible to their involvement. But that fact may require changes of substantive law and a broadening of the involvement of non-lawyers in the delivery of what, until now, has been seen as a legal service. It may also require a readjustment of some of the activities of the legal profession to broaden its range of work and to alter its activities so as to make it more accessible to ordinary people. These obligations will also fall upon the judiciary: a fact already recognised in part at least. Not everyone can have a day in court. Not all social problems are best solved in a curial setting. But where courts are properly invoked, it is managing the process of litigation so that they provide solutions to conflict and do not become part of the problem.

The best approach to the issues of this paper involves the formulation of policies upon the basis of accurate empirical data. Such data should show accurately how the justice system presently works. This was a point made by Dr Deborah Hensler, a leading analyst from the United States, when she visited Australia recently. An important contribution to a better foundation for the development of strategies, at least in New South Wales, is the decision of the Law Foundation's Board to develop a Research Centre on Civil Justice designed to end the "great trade in myths, perceptions and fictions about the legal system" and to substitute hard data for pre-supposition. Nearly twenty years ago, Sir Garfield Barwick, then Chief Justice of Australia, called for the collection of uniform judicial statistics for this country. Although conditions have changed significantly and some statistics are now available, Sir Garfield Barwick's call remains substantially unanswered.

This is itself a remarkable thing. The courts of Australia are a part of the country's system of government. All of the courts operate under the Australian Constitution. The legal profession too is clearly an important actor in the constitutional and legal system of the country. According to the Chairman of the Trade Practices Commission the legal profession has a turnover of $3 billion and employs more than 55,000 people. The Senate Committee noted that in Australia in 1985 there was one lawyer for each 693 people. This statistic compared with the United States with one lawyer for 418 people and England with one for 1,165 people. There are more than 25,000 lawyers in practice in Australia today. There are 16,000 students currently studying law or legal studies. This last statistic represents an increase of 47% in numbers since 1988. The number of law schools in Australia has more than doubled in the past five years. The number of law graduates in Western Audtralia has recently been described as a "glut" which will cut starting salaries of young lawyers from $23,000 a year to $15,000.

The challenge before the judges and lawyers of Australia is to turn the many inquiries, political initiatives, legislative reforms and professional and judicial anxieties into practical measures which will improve the delivery of legal services to ordinary citizens of this country. The purpose of this paper has been to suggest that some improvements have already occurred. Some are under active consideration. But most still lie in the future. And meanwhile, the formal legal system operates, for the most part, beyond the reach of many ordinary Australians. This should be a matter of concern to a profession whose mission is the provision of "justice for all" and whose aspiration is still said to be equal justice under law.

JUDICIAL DECISIONS AND SOCIAL ATTITUDES

by

Lord Justice Balcombe

This is the text of the Maccabaean Lecture given on 2 November 1993 which is due to be published in the proceedings of the British Academy whose permission to publish this paper is gratefully acknowledged. Lord Justice Balcombe is a member of the Court of Appeal of England and Wales

INTRODUCTION

1956 was the tercentenary year of Jewish re-settlement in England. The Jews had been expelled by Edward I in the year 1290 and were re-admitted by Cromwell. The Maccabaeans is a society of Anglo-Jewish professional men and women founded in 1891 and the decision was taken by the then committee to commemorate the tercentenary of the re-settlement by the foundation of the Maccabaean Lecture in Jurisprudence under the auspices of the British Academy. A fund to endow the lecture was raised by an appeal to the membership. I was then a junior barrister of some six years standing in practice at the Chancery bar. I little realised, when I made my small donation to the appeal, that I would one day be a beneficiary of my own contribution. The lecture has acquired a very considerable prestige in the legal community and when I look at the list of previous lecturers I am very conscious of the honour done to me by the Council of the British Academy in inviting me to give this year's lecture.

The subject I have chose for my talk is "Judicial Decisions and Social Attitudes". We do not have a written constitution in this country, save in so far as introduced by European law, so that judges do not, as they do in the United States, have to rule on the constitutionality of such matters as the effect of a statute prohibiting or regulating abortion, but there are many areas under the law as it exists today in which judges have to make decisions which require them to make value judgments based on considerations of policy for which the law does not provide a ready or obvious answer.