

Papua New Guinea has a well developed system of village courts, modelled on earlier like tribunals established in Africa to utilise and give recognition to local customary law. A paper on the subject was delivered by Frost C.J. to a Seminar held in Canberra in 1975. Mr. Justice Kirby said that if a reference were given to the A.L.R.C. on this subject, it would study what was being done in P.N.G. to see if some of the ideas could be applied in Australia. "The one-way exchange of ideas between two countries has finished and the process of two-way exchange of legal concepts has begun".

## What the Academics are Saying

This little section proved quite popular last time. Sir Leslie Scarman, the doyen, wrote to us saying that it was very useful for those who have to keep their heads in (and above!!) the heady academic waters "in which we have to swim if law reform is to be a success". Obviously, nothing more than a broad brush is possible. The literature produced by lawyers in the last quarter would fill a room. The A.L.R.C. prepares a supplement for the Interim Digest. This contains in much more detail an epitome of academic writings concerning especially law reform. It runs into many pages. It is organised under the following headings:

- \* History of law reform
- \* Fundamental values in law reform
- \* Definition and rationale of law reform
- \* Techniques and methods
- \* Simplification and codification
- \* Legislation and legislative drafting
- \* Uniform law reform
- \* International law reform

About one hundred supplements to the Interim Digest go off each quarter to the organisations and people on the receiving end. These include law reform agencies at home and overseas. Perhaps when the final Digest is produced, the quarterly supplement can be more widely distributed.

Turning to the academic lists, the last quarter has seen the Human Rights debate rage unabated. The views of Mr. Ellicott (Cwth Attorney-General) have already been referred to. Lord Lloyd of Hampstead answers the question "Do we need a Bill of Rights?" (1976) 39 M.L.R. 121 with a resounding negative. He looks to Parliament as the guardian of citizens' liberties. Mr. T. Harper (1976) 126 New L.J. 327, however, sees Parliament as an "unpredictable watchdog". The same theme is touched upon in the speech of the English Home Secretary reported (1976) 73 Law Soc. Gazette 134 and by D.J. Williams in (1975) 1 U.N.S.W.L.J. at p.118. The Canadians are only now at a point where they can evaluate their Bill of Rights. In a part devoted to an evaluation of the Supreme Court of Canada after its first hundred years, the Alberta Law Review scrutinises the record of the Supreme Court and Civil Liberties (1976) 14 Alberta L.R. 58. See also 92 L.Q.R. 127. Despite the difficulties of the courts in interpreting the Canadian Bill of Rights, Professor Taurapolsky agrees with the commentary by the Hon. J. Turner, a former Minister of Justice of Canada, that "a mere statement of what people's rights are, contained in an authoritative text, has a very useful effect".

Of course, the existence of the European Convention on Human Rights makes the whole subject more pressing, perhaps, for the English lawyer. A. Drzemczewski writing in [1975] Cam.L.J. 9, asserts that "it may not be self-evident to many British practitioners but since 1966 the supreme review tribunal in many matters of civil liberties and administration is not the House of Lords but the Strasbourg Court or Commission". The recent Golder case is cited as a poignant illustration of this. Somewhat cynically perhaps, D.G.T. Williams in his note on the Crossman Diaries case [1976] Cam.L.J. 1 at p.2 wonders aloud whether "in several English

cases the English judges have shown an unaccustomed readiness, which has perhaps been fostered by the growing awareness of the arguments for a Bill of Rights, to inject this balancing process into their reasoning". He refers to Widgery L.C.J.'s rejection of an injunction in favour of the right of freedom of the press, as an illustration.

Across the water in New Zealand, R.G. Lawson "Dictating Taste and Travel" reviews what he sees as recent government intrusions upon the individual and concludes "against all my training and sentiment, I find myself praying for a Bill of Rights guaranteeing the liberties which we believed we had but which are shown to depend on such fragile foundations and superior good will". [1976] N.Z.L.J. 167. We will no doubt see more of this Debate.

The role and choice of judges has come in for new scrutiny. Lord Devlin (1976) 39 M.L.R. 1 at p.2 comes down against judicial "enthusiasm" in lawmaking. New laws should only be made after consultation with those who will be concerned with it. Methods of achieving this have been admirably developed by the Law Commission (p.12). Whilst the law should not stand still, it is "the gatekeeper of the status quo ... a valve".

Murphy J. of the High Court proposed (50 A.L.J. 107) a widening of the persons from whom judges are chosen. S.D. Ross writing in (1976) 48 Aust. Quarterly 74 puts it more bluntly. He urges the establishment of an Institute of Judicial Administration to give judges training and refresher courses. He proposes a special course in the techniques of being a judge and in criminology, sociology and psychology for our judges. Needless to say, he takes a more positive view about judicial creativity than does Lord Devlin. The Canadian L.R.C. in "Criminal Law - Towards a Codification" p.28 also adopts a positive view.

To keep our balance, it is perhaps relevant to note U.N. Gupta's article "Legal Realism and Indian Constitutional Interpretations" (1975) 17 J.I.L.I. 212. At p.236 he says that "packing the court is a recognised mild antireaction when politicians sense considerations other than law in the judgments of courts". This is also an old debate and we shall hear more of it.

Prospective overruling by Superior Courts comes in for scrutiny in England and the United States. Lord Devlin (supra p.5) comes down against it but cites Lord Simon (p.20) in favour. F. X. Beytagh "Ten Years of Non-Retroactivity" reviews the assertion of the Supreme Court of the United States in favour of prospective overruling (1975) 61 Virginia L.R. 1567.

Three extremely interesting books have appeared in the last quarter. Each of them repays frequent scrutiny by law reformers. Associate Professor Gordon Hawkins, a Member of the A.L.R.C., has published "The Prison", one of a series of studies in crime and justice put out by the University of Chicago. Professor C.G. Weeramantry's book "The Law in Crisis" is graced with a pungent introduction by Lord Denning and a commendation by Professor Stone. It is a balanced review, in elegant language, of the challenge to the legal order. It contains at pp.81ff a vigorous defence of the doctrine of precedent. In typically forceful language, the author asserts that precedent it is that releases us from "the scourge of unpredictability". Finally, a group of lawyers at the University of New South Wales Law School has put out a Penguin "Law For the People". It contains a wide-ranging review, in generally conversational language, about current legal rights and moves for their reform. Speaking at the "launching" of the book, Mr. Justice Kirby identified the two themes of the book : the first, is a concern with the right of the citizen to access to and knowledge of the legal system binding him. A similar theme emerges from "The Law in Crisis". Secondly, the book demonstrates,

according to Mr. Justice Kirby, that we "live in a new Age of Reform". Whether in the criminal law, family law, trade practices, legal aid or the law of conveyancing or succession, scarcely an area of the law now exists which is not coming under increasing scrutiny.

The role which the organised legal profession in Australia can play in this movement is outlined by R.D. Nicholson, Secretary-General of the Law Council of Australia in "Lawyers and Legal Renewal" [1975-6] Oracle (Monash Uni.) p.14. Perhaps the only other recurring theme that should be mentioned is the warning coming from a number of quarters that there may be "too much legislation". The law and legislation do not automatically guarantee removal of social ills. This point is made in the Sixth Annual Report of the B.C.L.R.C. (p.5) and in the speech of Bouck J., a new member of the Canada L.R.C. titled "Courts on Trial" p.7. In this respect he reflects the view expressed by Hartt J. reported in "National" April 1976 p.10 and Professor Mohr, *ibid*, March 1976, p.19. A like point is made by the editor of the Australian Law Journal under the banner "The Continuing Flood of Legislation" (1976) 50 A.L.J. 108.

## New Reports

The following are the reports relating to law reform received by the A.L.R.C. between April 1976 and June 1976:-

### Australia

- A.L.R.C. : Conference Papers for the Third Australian Law Reform Agencies Conference, Canberra, May 1976 : Supplement of Australian Law Reform Digest
- N.S.W. Women's Advisory Board : Report on Reform of Rape Laws, 1976.
- N.S.W. Child Welfare Legislation Review Cttee : Report, 1975.
- N.S.W. Privacy Cttee : Annual Report, 1975.
- Q.L.R.C. 19 : Evidence, 1975.
- Q.L.R.C. 20 : Law of Succession & Illegitimate Persons, 1976.
- Qld. Cttee of Inquiry : Nature & Extent of Problems Confronting Youth in Qld., 1975.
- Qld. Cttee of Inquiry : The Status of Women in Qld., 1974.
- Qld. Select Cttee : Report on Punishment of Crimes of Violence, 1974.
- S.A.C.L.R.C. : Special Report : Rape and Other Sexual Offences, 1976.
- S.A. Judge White's Report : Fair Dealing with Consumers, 1976.
- W.A.L.R.C. : 34(2) : Report on Administration Bonds & Securities, 1976.
- W.A.L.R.C. : 49 : Report on the Suitors' Fund Act, 1976.
- W.A.L.R.C. : 60 : Report on Alternatives to Cautions, 1975.
- Cttee of Inquiry : Report on the Question of Privacy and Data Banks (2 Vols.), 1976 (W.A.)
- Roy Comm. : Laverton Royal Commission (Aboriginals & Police), 1975. (W.A.)
- Tas.L.R.C. : Procedures & Evidence in Rape Cases, 1976. W.P. & Report.
- Tas.L.R.C. : Report on the Evidence Bill 1975 (Microfilm and other Reproductions), 1976.

### United Kingdom

#### Law Commission:

- 71 : Annual Report, 1974-75.
- 72 : Jurisdiction of Certain Ancient Courts, 1976.
- 73 : Remedies in Administrative Law, 1976.
- 74 : Charging Orders, 1976.
- 75 : Report on Liability for Damage or Injury to Trespassers & Occupier's Liability, 1976.
- 76 : Criminal Law : Report on Conspiracy & Criminal Law Reform, 1976.