a catalogue of grounds for review and provides the all-important access to reasons and information upon which review may be made.

- In South Australia, an announcement was made on 21 June that a Government committee would investigate freedom of information legislation for that State and draw up detailed instructions for a Bill. Legislation by the end of the year was promised.
- In Ontario, the Commission on F.O.I. and Individual Privacy has held public hearings, and issued its research program. Address: 180 Dundas St. West, Toronto, Canada.
- In England the long awaited white paper on reform of the *Official Secrets Act* 1911 fell short of the expectations of those committed to F.O.I. legislation. The only major reform proposed was to limit the cases where disclosure about government secrets would render the officer liable to criminal sanctions under the Act. *The Times* contrasted the legislation recommended with the Labour Government's manifesto to replace the Secrets Act with a statute putting the onus on public authorities to justify withholding information. Thundered *The Times*:

> "British governments have not been so successful in advancing the welfare of the country, that the habit of secrecy can be justified by results. Some secrecy is necessary for government, but nothing like as much as is practised in London. The cause of public information is not merely a search by newspapers for more grist for their mills. It is important to efficiency and democracy."

Reformers' Ruminations

> "To the timorous souls I would say in the words of William Cowper: 'Ye fearful saints fresh courage take./The clouds ye so much dread/ Are big with mercy, and shall break/In blessings on your head.' Instead of 'saints' read 'judges'. Instead of 'mercy' read 'justice'. And you will find a good way to law reform!"
>
> *per* Lord Denning M.R.

> "The clouds in my Lord's adaptation of William Cowper may be big with justice but we are neither midwives nor rainmakers."
>
> *per* Bridge L.J.
>
> [1977] 3 *All E.R.* 803 at 815, 821.

A number of recent publications show law reformers contemplating their art and musing openly on what it is that they are about. In his Presidential Address to the Holdsworth Club *Ferment in the Law*, 1977, Lord Edmund-Davies referred to the astonishing transitions that have taken place in society and in the law in his lifetime

> "It has been a lifetime of great change for lawyers, as for all men. Revered legal institutions (such as the Jury system in general, and the sanctity of unanimous verdicts in particular) established principles (such as the *stare decisis* rule), fundamental bases of penal policy (such as the concept of personal responsibility) these and many other familiar features of the legal landscape have been subjected to a fresh and careful scrutiny. 'Critics of the status quo' . . . have rioted in print, sometimes emboldened by courage borne of their confusion. But that is no new thing for, as Lord Buckmaster once said, 'law and legal procedure have always been a red flag to the man possessed of reforming zeal'."

Lord Edmund-Davies doubted that there was ever a time when more practising lawyers of distinction had been prepared to extricate themselves from day-to-day tasks to survey their place in the life and work of the people. He referred to his own work in a Royal Commission and in the Criminal Law Revision Committee of which he was chairman for seven years. Why there should now be such a ferment of law reform has not been adequately explained. Proferred explanations include the advance of legal aid, the increase in crime, the "general lessening of respect for tradition and authority and the speed and sophistication of the modern world".

> "Generalisations are dangerous. Some say that judges as a class are reluctant reformers, while academics are avid. But I have known the roles to be exchanged, some academics being cautious and conservative, while in one important respect judges are persistent and consistent reformers. It is not only as members of law reform bodies that judges have done useful work. We have long lost sight of the judge who profoundly shocked Romilly when sentencing Thomas Muir to 14 years' transportation by declaring that to speak of reforming the Law Courts was 'seditious, highly criminal and betrayed the most hostile disposition towards the constitution'. The disappearance of such judges is good riddance."

The great importance of adequate consultation on their References and the need to secure the help of diverse experts were cited as the first lessons of law reform technique learned in the C.L.R.C. The need to tackle procedural reform was mentioned. Lord Edmund-Davies expressed reservation about codification. He concluded with a warning to L.R.C.s to resist the impulse towards "excessive introspection which contemplates only its own internal processes".

The Canadian journals are full of articles on law reform. In a perspective published in the *C.B.A. National*, the retirement of the second Chairman of the Canada L.R.C., Mr. Justice Lamer, was noted with the assertion that the working papers of that Commission had received "little attention, less results".

> "Nine years after John Turner, as Justice Minister, created the Law Reform Commission, its extensive working papers have received little attention and got even less results. A few experiments with family courts, a pilot project here and there in crowded criminal courts; for the rest the Commission's proposals have been ignored as politicians try to cope with the backlash of the 1970's. Muldoon [Mr. Justice Lamer's successor] who watched the justice committee badger Mr. Justice Lamer . . . doesn't have any illusions about what the Federal Commission can do. He won't even talk about drug law. He said in an interview that his interest is corrections—perennial problem-child of the justice system."

In a note written with Professor E. F. Ryan, Mr. Justice Lamer had expressed some parting views. "The Path of Law Reform" (1977) 23 *McGill L.J.* 519, 523

> "As a matter of political and legal philosophy we recognise law-making by non-elected judges is undesirable. A democracy, it is said, follows a theory that judges only apply law while the people make law through their elected representatives. As a matter of actual practice we may be drifting dangerously close to the worst of both worlds. The lawyer's art at this stage of the 20th century is not only to know the law but also to know the code for concealing social and economic change in the interstices of jargon, precedent and legal fiction. The results are often unsatisfactory, some judges adhering strictly to what has been decided and others venturing into new territory all doing their best to follow the ideal of fidelity to law."

The monumental growth of bureaucracy discretion was described as a repetition of the moves in Equity to modify the rigidities of the Common Law. But the moral drawn is the need for lawyers to find new tasks, relevant to the new society. The work of the Canada L.R.C. in promoting communication with the public, as well as with the bench and the bar, was described as "an integral part of law reform".

Adelaide academic, Mathew Goode, takes the Canada L.R.C. "value-consensus model" apart in a stinging article in (1978) 4 *Dalhousie L.J.* 793. Starting from the avowedly "philosophical" approach to law reform of that commission, he proceeds to scrutinise and criticise the "philosophy" on which the "value consensus" model is said to rely:

> "First, there may exist a consensus for reform of the law. If there is also a consensus for the content of the reform, and it involves a 'core value', the reformer will reform in accordance with the consensus. Secondly, there may exist a consensus in favour of the *status quo* and similarly, the reformer will not reform. But the third situation, which will always give rise to trouble, is where there is no consensus or consensus on only a number of a larger number of related questions . . . [Here] a law reformer needs a perspective . . ."

The issue about the "fundamental values" of law reform trouble layman and reformer alike. It is a matter upon which most reform reports are conspicuously silent. The days when we were all utilitarians have passed. What is now the sheet anchor?

One of the A.L.R.C. Commissioners, Professor Alex Castles, writes on the new principle of law reform in Australia in (1977) 4 *Dalhousie L.J.* 3. The article is perceptive analysis of the history and development of law reform throughout Australia. The "new principle" is the acceptance of need for "continuous, systematic law reform" to supplement legislative and judicial law making. The common law approach to piecemeal, case-by-case reform, is now reflected in institutional law reform bodies. Working on specific references they are not encouraged (and in a federation, perhaps not able) to deal with law reform in a total and conceptual way. This approach to the "new principle" conveniently masks the nagging questions about fundamental values. It is when Lord Hailsham challenges the notion of majority consensus, that reformers are plunged into gloom. Despite its handicaps, Professor Castles predicts that systematic reform will become fully accepted as a recognised part of the ordinary process of

law making in today's busy and complicated world.

Too Much Law or Too Little?

"They are as sick that surfeit with too much
As they that starve with nothing"
Shakespeare, *The Merchant of Venice*, I, 2, 6.

The growth of lawmaking has come under the spotlight in the last quarter, following observations by the visiting U.S. Attorney-General, Mr. Bell, and Australian leaders. Graphs have appeared in the newspapers showing the growth in legislation. Australian parliaments pass about 1000 Acts a year and a great deal of subordinate legislation supplements this record.

An address by Sir Geoffrey Howe to the Society of Conservative Lawyers has now been published. Titled *Too Much Law?* it seeks to examine the economic impact of lawmaking upon society.

> "To say that law has an economic effect does not mean that it always does economic damage. The opposite is often true . . . But we must not overlook the extent to which most laws involve *some* economic cost."

The cost of consumerism and of "the planning wreckers" are mentioned and a number of commandments are listed for future Conservative government. The first is that "it is now necessary to curtail the volume of law."

Victorian Attorney-General Mr. Storey defended the range of new laws necessary to deal with matters upon which the common law was silent or deficient.

> "In the consumer protection area particularly, what legislation there is is designed to combat practices nearly everyone would abhor."

Whilst the pressure is on to reduce the numbers of law, attention needs to be given to ensuring that lawmaking is done in a more systematic way. The large numbers of law reform reports which lie idle awaiting public service, government, and parliamentary attention, lead some to despair. In his address *Ferment in the Law*, Lord Edmund-Davies chastised the indifference of successive British Governments to reform proposals

> "A large amount of work has already been done and reports already produced await the consideration of the legislature. Lord Gardiner has listed a number. . . . The mischief is of long standing, for in 1957 Lord Kilmuir said, 'Only too often reforms which are recommended appear to be pigeonholed, while others take an inordinate time to reach the Statute book'. Faced with such a long list of unfulfilled recommendations, it is saddening (but not surprising) to find such a distinguished and devoted advocate of law reform as Professor Glanville Williams observing in a recent letter to *The Times*, 'I begin to wonder whether it is worth spending any more time on Committee work until the Home Office has begun to attend to its present stockpile.' We can ill-afford to lose the services of such outstanding pioneers in reforming many branches of the law, and particularly at a time, when, without being excessively and unhealthily on the look-out for fresh fields, much undoubtedly remains to be done."

The Economist reports that only six of the twenty members who "won" the annual ballot managed to steer their Private Members Bill onto the statute book last year in Britain. One Bill was the Civil Liability (Contribution) Bill drawn by the Law Commission (12 August 1978). In Australia, the numbers of Private Members Bills are even fewer. In England unless there is an all party agreement on their content allowing them to be dealt with in the second reading committee instead of by a full debate on the floor of the House, Law Commission proposals tend to join the long queue.

An order and methods team from Mars looking at this method of legal renewal would undoubtedly condemn it as grossly inefficient, involving the waste of the talent and expensive time that goes into the preparation of proposals for reform. The log-jam whilst proposals are considered, often at a low level in the public service, inevitably causes heartburning among those who devote their energies to law reform. Is relief in sight? The Senate Standing Committee on Constitutional Legal Affairs is currently examining the whole question of processing law reform reports. While in our system of Cabinet Government the Executive takes the principal initiative in deciding legislation, Parliament may have a role to enliven the interest and attention of Ministers and their public servants, preoccupied with other things. The Committee is to be reconstituted with new members and the forthcoming 1978 *Annual Report* of the A.L.R.C. will revert to the theme of making law reform practical and useful in Australia.

In New Zealand, according to *Law Talk*, 3 August, Justice Minister, David Thompson,