

- a non-legal final tax tribunal (difficult from a constitutional point of view)
- reform and simplification of the entire tax Act
- reform of s.260 of the Act to strike effectively at avoidance

The last, it was suggested, 'might be a task which could be committed to a body like the Law Reform Commission'. Of wider scope was the suggestion of the lead editorial in the *Melbourne Age* (8 August 1980):

The Government should continue to plug the loopholes as they come to notice until it can thoroughly review the entire system, preferably by referring the legislation to the Law Reform Commission or a special inquiry. Ultimately, responsibility for a fair and reasonable taxation system must rest with Parliament which is accountable to the people, not with the Courts or bureaucrats.

In Parliament on 9 September, Federal Treasurer John Howard declared that a reference to the ALRC would not solve the tax avoidance problem. Responding to a question by Mr. Ralph Jacobi (Lab. S.A.) he said:

There has rarely been an Act or network of laws as much inquired into as the Australian taxation laws. But I don't believe the problem is to be solved by referring it to the Law Reform Commission. There is a common and misplaced view that all we have to do is get hold of expert draftsmen, put them to work on the taxation laws and all our problems would be solved.

It was difficult to reach a consensus on the laws, declared the Treasurer. Meanwhile it is understood that a Departmental inquiry is on foot in the Treasury addressed to s.260 of the Income Tax Assessment Act. It may not be true, but rumour even has it that Mr. S.E.K. Hulme Q.C., despite earlier 'arrogant' assertions, is advising on this 'impossible' task!

## well met in Lagos

But we from here are to go: some to desert Africa ... and others of us amongst the Britons who are kept far away from the whole world

Virgil, *Eclogue*, i, 64

The end of August 1980 saw a gathering, without precedent, in Lagos, Nigeria, of lawyers from all parts of the

Commonwealth of Nations. It was a remarkable meeting of common lawyers from different continents, cultures, languages, linked only by their common inheritance of the English tongue and of the traditions of the common law of England which now flourishes amidst more than a quarter of mankind.

The conference was opened by the President of the Federal Republic of Nigeria, Alhaji Shehu Shagari, on 18 August 1980. In his opening paragraph, the President struck a note familiar to law reformers.

Like any other sphere of knowledge, Law is dynamic and admits changes and new experiences. ... As Law is meant to serve the society as an accepted means of ensuring justice, it must be so fashioned and geared towards the achievement of that goal. This is what makes it dynamic. Since society is by nature dynamic, the laws that regulate its activities and orderly existence must be reviewed from time to time so as to make them relevant. I am sure it is in this kind of conference that you can look at and discuss those areas of law which are susceptible to abuse or whose relevance to modern society can be questioned.

The President pointed out that this was the first such meeting of Commonwealth lawyers on the African Continent. The meeting was dominated by participants from Africa, nearly 2,000 of them, far outnumbering lawyers attending from the Old Commonwealth. From Australia, the Chief Justice, Sir Garfield Barwick, delivered a lead paper on 'The Judicial Process Today' and the Chairman of the Law Reform Commission, Mr. Justice Kirby, delivered a paper on 'Law Reform in the Commonwealth of Nations'. He also chaired a session on 'The Role of the Judiciary in the New Commonwealth Countries'.

Chief Justice Barwick, speaking without notes for more than an hour, addressed himself to the problems which beset the due and efficient administration of the judicial process in common law countries. He expressed concern about such matters as:

- the prolongation of cases by expanding legal aid
- the increase in complexity of litigation, including by reason of law reforms

- the protraction of court process by inadequate attention to the issues for trial. He harkened for a return to the precision of common law pleading
- the dangers of new information technology, with the potential to regurgitate vast masses of precedent, without due attention to the principle at stake

Another lead paper was delivered by Professor T.B. Smith Q.C., Acting Chairman of the Scottish Law Commission. Professor Smith's paper dealt with the reception of the common law in the Commonwealth. He questioned whether the position of common law countries would not have been improved if, but for a few historical accidents, the Scottish civil law had played a more significant part in the colonies and Empire. He pointed to the advantages of the institutional writings as a source for a more coherent body of law than was possible in the pragmatic judge-made tradition of the common law of England.

At the Opening Ceremony, the keynote address was given by the Chairman of the English Law Commission, Sir Michael Kerr. Repeating some of the observations made in his Edward Bramley Lecture (see above p. 103) Sir Michael drew attention to the virtually universal phenomenon of law reforming agencies throughout the countries of the Commonwealth of Nations. This was also the theme of Mr. Justice Kirby's paper. After pointing out that law reform bodies are now busily at work in 23 Commonwealth countries, including Australia and Nigeria, the latter said:

All of these LRCs evidence the recognition by the lawmakers of the Commonwealth of Nations that the existing machinery for developing the law and fashioning its principles and procedures has fallen upon hard times. With few exceptions, the countries of the Commonwealth of Nations have inherited the common law. The original 'dynamic' of that system of law was a force for adaptation, modernisation and reform. Old precedents were constantly stretched and developed to meet new social needs. ... But even in the heyday of the confident common law of England, critics pointed to its structural weakness. Sir Francis Bacon, at the end of the 16th Century, called for a committee to take the whole body of the law of England into its hands. It should develop it systematically, released from dependence upon the haphazard chance fac-

tors of particular litigation: whether a barrister saw the important point; whether his client could afford to test it through the Appeal Courts; whether the judges wanted to grasp the nettle; whether this was the case to take a new direction. ... These were the organisational defects of a system so heavily dependent upon judge-made law.

The session on law reform also had before it a paper by Mr. H. H. Marshall Q.C. of the London-based British Institute of International and Comparative Law. Mr. Marshall's paper dealt principally with 'law revision'.

- elimination of obsolescent, archaic or temporary laws
- consolidation and re-publication of laws
- moves to a textual drafting system, not always adopted
- reconsideration of the application of English laws in Commonwealth countries
- provision (frequently by private enterprise) of annotations, interpretations and references to case law which, though not part of the authorised statutes are of great value to courts and practitioners
- adoption of loose-leaf and computerised statute systems

In the middle of the conference, a meeting took place at the premises of the Law Reform Commission of Nigeria, of the available members of Commonwealth law reform commissions present in Lagos. Commissioners from several Commonwealth countries sat down with the new Nigerian Law Commissioners to discuss common problems. The Nigerian Commission is established under the Nigerian Law Reform Commission Decree 1979 enacted by the Federal Military Government but now continued by the democratic civilian government elected in Nigeria in 1979. The Nigeria LRC is authorised to prepare on its own initiative and submit to the Federal Executive Council programmes for the examination of different branches of the law. But it is only when such recommendations have been approved by the Federal Executive Council that it may examine particular branches of the law and formulate 'by means of draft legislation or otherwise' proposals for

reform. To date, the Commission has not received its approved programme. As previously announced in these pages, the Chairman of the Nigerian Commission is the former Chief Justice of Nigeria, the Honourable Sir Darnley Alexander.

Scarcely a quarter goes by now but a new Commonwealth law reform agency is established. For example it has been announced that a new Law Reform Commission has been established for Hong Kong. The Chairman of the Commission is the Attorney-General for the Colony, Mr. John Griffith Q.C., who was at Lagos. Also present was the Chief Justice, Sir Denys Roberts, who is a member of the Commission. Other members are recorded below (see p. 132). The first meeting of the Hong Kong LRC occurred in June 1980. The first three topics referred to it for consideration are:

- commercial arbitration
- crime: homosexuality laws
- the laws of evidence in civil proceedings

It is envisaged that the Commission will work principally through sub-committees to which will be co-opted suitable experts and that it will proceed to examine both detailed minor corrections and improvements of the law and fundamental aspects of reform of laws or procedures of Hong Kong. Consideration of proposals for reform advanced by the Government or private sector will also be part of its function.

The intellectual feast at Lagos was equalled by the social hospitality and exotic cultural events organised by the hosts. Of special interest to the ALRC were the many papers on the integration of Nigerian customary laws into the Nigerian legal system. The revival of Islam, with its preponderance in the North of the country, has led to the call for parallel systems of Islamic courts and a return to some of the severe rules and punishments prescribed in the Koran. In one session a call was made for a return to stoning of adulterers!

## privacy inquiry gathers pace

The grave's a fine and private place  
But none I think do there embrace

Andrew Marvell, c.1670

A major national debate is continuing in Australia in the wake of the ALRC discussion papers on privacy protection detailed in [1980] *Reform* 68. Led by the new Commissioner in charge of the reference, Associate Professor Robert Hayes, the ALRC is receiving and analysing large numbers of comments, induced by proposals contained in its DPs 13 and 14. Put shortly, the Commission has proposed new Federal legislation in Australia to deal with:

- intrusions by Government officials and private concerns
- secret surveillance, including telephone tapping
- data protection and data security (computerized information)

**Editorial Comment.** Generally speaking, the reaction in the public media continues to be favourable. Under the heading 'Protecting us from Spies' the Brisbane *Courier Mail* says:

The Australian Law Reform Commission's recommendations on protecting the right to privacy, now open for Government consideration and public debate, deserve widespread support. They are far from radical proposals. ... Their moderation is the more surprising because according to the Commission Chairman ... the day of Big Brother may not be far off. The recommendations take two unexceptionable forms — to set up protective bodies which would handle complaints, conciliate, develop codes of practice and set standards and to make provision for a wronged person to take civil action. ... If the Commonwealth adopts the report, the States should go along with it. This is not a matter for argument about State rights. It is about people's wrongs. Nor is it a matter on which the hoary and generally ill-advised argument that 'if a person has nothing to fear he has nothing to worry about', should apply.

When the editorialist of *The Canberra Times* dipped his pen, he was somewhat less sanguine:

The ultimate success of all the labours of the Australian Law Reform Commission to recommend legislation to protect individual privacy will