

If the A.B.C.'s programme and the questionnaire of the Law Foundation are any guide, the big concerns in the public minds about the legal profession are:

- * The scale of conveyancing costs and why land transactions cannot be handled by land agents, as in South Australia.
- * The unexplained delays by lawyers handling cases.
- * The antique English court dress which still marks the Bar off as "an elitist hierarchical institution".
- * The role which society is entitled to have in the work the legal profession does in the new age of legal aid from government.

Anyone with a spot of knowledge of legal history will realise the tremendous value of a vigorous, independent legal profession. How is independence to be maintained, consistent with the accountability that must go with publicly-funded legal aid?

The N.S.W. Premier, Neville Wran, Q.C., told a Law graduation in Sydney on 26 March:

"I am fully alive to the fact that the prospect of these reforms will cause some hearts to sink. As a result of changes that will be made, doors will undoubtedly shut on the legal profession. But doors will also open."

Mr. Wran promised that his Government would consider most carefully the N.S.W.L.R.C. report. He stressed the role of lawyers to:

"Insist upon orderly reform and take their part not only in the practice of law, but in its renewal".

Information or views can be sent to the N.S.W. Law Reform Commission, Box 6, G.P.O., Sydney, 2001, N.S.W. The parallel inquiry in England and the awareness of this N.S.W.L.R.C. exercise throughout Australasia, probably makes it that Commission's most important reference yet.

What is Death? Transplant Inquiry Concludes

"Life. A Spiritual pickle preserving the body from decay".

Ambrose Bierse.

Is it not remarkable how similar are the problems of law reform throughout the world? In December, 1976, the French Parliament passed a new law which, put briefly, provides that in this age of transplantation, a person's body organs and tissues are available for therapeutic or scientific purposes after his death, without his (or his relatives') consent, unless in his lifetime the deceased vetoed such use. The British Medical Association Journal review of this legislation described it as "courageous". The self-same question is presently before the A.L.R.C.

In January 1977 the Commission issued its Working Paper No. 5 *Human Tissue Transplants*. The working paper was produced after the Commissioners had lengthy consultations and a weekend conference with thirteen specialist medical practitioners called to Sydney from all parts of Australia to help the lawyers with the concept of "brain death".

The working paper has been widely distributed, and on 7 March 1977, the Commissioner in charge, Mr. Russell Scott of the A.L.R.C., appeared on the national television programme *Monday Conference* to explain the Commission's proposals to an audience of more than a million Australians. He was assisted by two doctors, one of whom, Professor J.R. Lawrence, is one of the team of consultants appointed by the Federal Attorney-General, Mr. Ellicott, to help the Commission in its task.

In March 1977 Commissioner Scott and A.L.R.C. Chairman, Mr. Justice Kirby, sat in public sittings in all capitals and in Darwin and Canberra to receive public and expert submissions on the working paper proposals.

At the end of the public sittings Mr. Scott drew attention to four issues for decision by the A.L.R.C.:

- * The definition of death.
- * Permissibility of transplants from live donors.
- * The acceptability of the French approach or the necessity for consent before tissues and organs are taken.
- * Ethical training in the medical profession.

The common law has tended to define death in terms of stoppage of the circulation of the blood. See (1976) 126 *New L.J.* 1232. But that will not do now. Ventilators and artificial respirators can keep a person's circulation going, although he has suffered irretrievable loss of use of the brain. How should the law cope with this? The A.L.R.C. proposes a definition of death, which will accept irreversible coma as a criterion.

Opinion was sharply divided in the public submissions concerning live donations, especially by children. As for tissue from dead persons, many laymen inclined to favour the approach of the recent French legislation (above). The medical profession, however, was extremely cautious. One doctor told the Sydney hearings that the very obligation to seek the consent of relatives puts a brake on any suggestion of recklessness or precipitate action by transplanters. The A.L.R.C. working paper takes up an intermediate position. Hospital authorities in possession of suitable cadaver donors would have a strictly limited list of relatives to approach.

In Perth and elsewhere stress was laid upon the need to train the medical profession for the moral challenges of current medical techniques. Transplants of fetal material are occurring overseas and have been perfected in animals. Should the law permit them here? The A.L.R.C. *Report* is due before 30 June 1977. Mr. Scott stressed the unique interdisciplinary nature of the reference. "Doctors, lawyers, and moral philosophers have sat down to produce a law which has then been submitted to the public audience. Hopefully the Commission's report will become a basis for a modern, uniform law. The law must face up to the expanding horizons of transplantation. It must acknowledge that every day, in every major city, ventilators are turned off", Mr. Scott said.

Aboriginal Customary Laws: Redressing the Balance

"Too little work has been done on the nature and content of Aboriginal law. We should not conclude that, because it is unwritten, it does not exist or that it is ephemeral."

H. C. Coombs

The Federal Attorney-General, Mr. Ellicott, in consultation with the Minister for Aboriginal Affairs, Mr. Viner, has given the Australian Law Reform Commission perhaps its most difficult task. A new reference calls on the A.L.R.C. to consider Aboriginal customary laws and particularly its application in the Australian criminal justice system. A reference was signed on 9 February 1977. It will involve the Commission in an inquiry and report upon:

- * Whether it would be desirable to apply Aboriginal customary law in whole or part generally or to tribal Aboriginals.
- * Whether existing courts should be used, and if so how.
- * To what extent Aboriginal communities themselves should have the power to apply laws and practices.

The A.L.R.C. Chairman has already had conversations in the Northern Territory with the Majority Leader, Dr. G. Letts, M.L.A. and the Cabinet Member for Law, Miss Elizabeth Andrew, about the Reference. Consultations have also been had with members of the Judiciary in the Northern Territory, Aboriginal leaders and departmental officers and academics interested in the subject. On 24 March 1977, the Chairman was invited to appear before the Joint Committee on Aboriginal Affairs of the Federal Parliament. This Committee is chaired by Mr. P.M. Ruddock, M.P., and contains four former federal Ministers for Aboriginal Affairs. The Committee emphasised the need for close consultation with the Aboriginal communities in Northern and Central Australia. One Member, Mr. K.E. Beazley, suggested that the transformation in Australia's attitudes to its Aboriginal people in the past ten years represented an attempt to scramble out of the category of "conquerors" into the category of those nations which had done a "fair deal" with their indigenous inhabitants. The A.L.R.C. Reference should not be seen in isolation. Important initiatives, bipartisan in origin, have been taken since the Aboriginal referendum in 1967.