

Opening the Seminar, the New South Wales Premier, Mr. Wran, criticised laws that attempted to "regulate the private moral conduct of citizens and to coerce them into what was regarded as virtue at the time the law was drawn". Speaking in the context of laws concerning drunkenness, vagrancy, homosexuality, prostitution and drug abuse, the Premier suggested that where the criminal law sought to impose a "private morality" it exceeded its legitimate function. Not everybody agreed with this. However, nude beaches, gambling casinos and liberalised censorship laws all demonstrate the changes in Australian society in the past decade. The process of change has not stopped.

Fifth United Nations Congress on the Prevention of Crime: The report of the Australian delegation led by the former Attorney-General, Mr. Kep Enderby Q.C. in Geneva, in September 1975 was tabled in Federal Parliament on 17 March. It recommends major changes in the criminal law.

Key recommendations in the report are :

- \* A commission of inquiry into methods of preventing corporate and white collar crime.
- \* Extension of extradition in these areas and for terrorism offences.
- \* Revision and simplification of criminal procedure and evidence.
- \* Concentration by police on crimes which exact the most serious economic and social costs.
- \* New codes of ethics for police and like agencies.
- \* New sentencing laws to promote diversion from unimaginative imprisonment.

The Commonwealth Attorney-General, Mr. Ellicott, said that the Sixth United Nations Congress would be held in Sydney in August 1980. The report says :

"The Congress will focus world attention on Australian criminal justice laws and practices and consideration will need to be given to action that might be required to update these laws and practices and to bring Australian programmes and achievements in the field to the attention of Congress participants".

## Opening the Doors: Locus Standi Revisited

"The real contribution of the legal process is to ensure that disputes will be handled in a low key way, that their resolution will be a routine business, that controversy will be kept within limits and handled without passion".

Sir Leslie Scarman, *Fourth Goodman Lecture*, May 1976.

The right of people to bring cases to the courts is in the news. The Court of Appeal in England chastised British Attorney-General Sam Silkin for refusing his consent to a relator action for an injunction against a trade union, on the ground that the union was interfering with postal communications and endeavouring to procure criminal offences. The Attorney-General refused the *fiat* but the Court of Appeal, despite the refusal of the Attorney-General, asserted its jurisdiction to grant an interim injunction. *Gouriet v. Union of Post Office Workers* 21 January 1977.

This principle will no doubt be reviewed in the House of Lords. But it will also, now, be considered in Australia. On 1 February 1977 the Federal Attorney-General referred to the A.L.R.C. for review and report :

- \* The standing of persons to sue in federal and other courts whilst exercising federal jurisdiction or in courts exercising jurisdiction under any law of any Territory; and
- \* Class actions in such courts.

General class actions do not yet exist in Australia, although some special provisions are made, often in consumer legislation. The S.A.L.R.C. is currently examining class actions in South Australia. A report on this subject is expected soon and will be before the A.L.R.C. in its work. A "class action" is one in which, although the plaintiffs cannot prove any special, personal interest in a matter, a group of persons join together to have the law enforced. In the United States class actions have been

especially significant in matters of environment protection and consumer protection. In the last decade, Australia has seen the proliferation of "green bans", often because of an inability to have a matter determined in court, because no personal or commercial interest existed, beyond "public spirit". Should these controversies be settled in courts? Does the Australian Constitution inhibit such litigation?

The wider question of standing raises the desirability of relator actions and the principles upon which the Attorney-General's *fiat* should be given.

This new reference coincides with changes in the federal court system and important developments in the administrative law area. The Commonwealth Ombudsman, Professor Jack Richardson, has been named by the Prime Minister. Amendments to the *Administrative Appeals Tribunal Act* are pending. An important new code for administrative procedures has been foreshadowed. Legislation on freedom of information, i.e. access to government information is due soon. The new A.L.R.C. Reference should be seen in this context. Adapting Sir Leslie Scarman's comments, the A.L.R.C. Chairman put it this way:

"A legal system which puts insurmountable technical and procedural impediments in the way of resolving issues in court rooms, invites those frustrated of this means of redress to seek other, perhaps less orderly ways of resolving their disputes". *Law Reform, Why?* (1976) 50 A.L.J. 459.

## Odds & Ends

"The arts babblative and scribblative"

*Robert Southey, c. 1835*

\*\*\* Canada L.R.C. Vice-Chairman John Bouck completed a tour of Australian L.R.C.s in February 1977. Whilst in Sydney, He attended a full meeting of the A.L.R.C., met the N.S.W.L.R.C. and the Commonwealth and N.S.W. Attorneys-General. He also visited Melbourne, Canberra and Adelaide.

\*\*\* There is no news yet about the appointment of a successor to the Hon. T.W.Smith, Q.C., former Victorian Law Reform Commissioner. Mr. Smith completed his term in December 1976. The position has been vacant for three months.

\*\*\* Professor Sam Dash, who took a leading part as Counsel in the Watergate Hearings visited the A.L.R.C. on his way to Monash University where he will be a Visiting Professor. It is hoped that he will be able to draw on his experiences concerning wire taps to assist the A.L.R.C.'s project on protection of privacy in Australia.

\*\*\* Mr. Justice Blackburn, past Chairman of the A.C.T.L.R.C. told the Second Symposium on Law and Justice in the Capital Territory on 26 March that there was need for urgent reform of the Criminal Law by a series of steps of "piecemeal reform". He proposed a number of steps by specialist ad hoc committees. He also urged the Attorney-General to make sure that the A.L.R.C. always had before it Territory references.

\*\*\* The S.A.L.R.C. is showing the way on its reference concerning solar energy. The Commission has invited public and expert comments on the legal implications of solar energy. This is believed to be the first study of its kind in Australasia.

\*\*\* Former Attorney-General Kep Enderby, Q.C., delivered a paper to the A.C.T. Symposium on police involvement in criminal prosecution. He suggested that "the issue of reform of the prosecution process should be referred to the Australian Law Reform Commission for investigation and report". He said as much in the presence of his successor, Bob Ellicott.

\*\*\* Mr. Ellicott, in opening the Symposium said that he had decided not to refer the reform of rape laws to the A.L.R.C., at least pending consideration of the report of the Royal Commission on Human Relationships which, he said, was due within the next few months.

\*\*\* The Law Foundation of N.S.W. has printed two useful monographs in recent weeks. Roman Tomasic wrote *Drugs, Alcohol and Community Control* to illustrate Australian approaches to alcoholism and drug dependence. Mr. Tomasic was a consultant to the A.L.R.C. in its report on *Alcohol, Drugs and Driving*. No doubt his recommendation for diversion will be considered by Professor Sackville's enquiry into drugs in South Australia.

\*\*\* Mr. Tomasic also wrote *Bail and Pretrial Release*. In it he reviews the A.L.R.C. recommendations on bail law reform which, he says, are supported by overseas and local enquiries. The A.L.R.C. proposals have now, substantially, passed into the *Criminal Investigation Bill 1977*.

\*\*\* *Reform* is being read widely overseas. Numerous enquiries have been received from Europe, especially the Netherlands, Sweden and Norway for information on A.L.R.C. proposals.