> I understand is about to be introduced in the Federal Parliament . . . The task of attempting a total restatement of police powers is monumental . . . It was realised early in the piece that it was not possible to attempt such a task in the Territory if we are to have an early passage of new general laws applicable to the Northern Territory Police."

Nevertheless, Northern Territory law draws many provisions from the Law Reform Commission's Report:

- provision for search warrants by telephone;
- criteria for emergency searches;
- criteria for arrest, including arrest warrants by telephone;
- limitation on various forms of investigation;
- adoption of the principle of vicarious liability for the negligent conduct of members of the police force.

No date has yet been given for the reintroduction of the revised version of the Federal Government's *Criminal Investigation Bill.* It seems likely that the establishment of the new Federal Police in Australia will provide the occasion for Commonwealth adoption of new procedures for handling complaints against police and new ground rules on criminal investigation by the new force.

Excluding Confessions: The key provision of the A.L.R.C. proposals on criminal investigation was the suggestion that the judicial discretion to reject and exclude confessions and admissions illegally or wrongfully obtained should be guided by certain criteria and not left at large as it is in the English common law. The criteria proposed included those now contained in the *Criminal Investigation Bill*, namely:

- the seriousness of the offence;
- the urgency and difficulty of detecting the offender;
- the nature and seriousness of the police contravention;
- the extent to which the evidence could have been obtained lawfully.

During 1978, the High Court of Australia, in *Bunning* v. *Cross* (1978) 52 A.L.J.R. 561, appears to have embraced a similar approach to that proposed by the Law Reform Commission. Stephen and Aickin JJ. (with whom Barwick C.J. agreed on this point) pointed to the competition between the public interest in lawful conduct by police and fairness to the individual and the public interest in securing evidence to enable justice to be done. A number of criteria were proposed. Not surprisingly, the criteria reflect substantially the same considerations as spelt out in the *Criminal Investigation Bill.* Law reform works in interstitial ways.

Overseas Reformers

> "They spell it Vinci and pronounce it Vinchy; foreigners always spell better than they pronounce."
>
> Mark Twain, circa 1869.

New Zealand: The proposals for revision of Law Reform machinery in New Zealand, mentioned in the last issue of *Reform*, have now been published. Professor D. L. Mathieson of the Victoria University of Wellington, writing in [1978] N.Z.L.J. 442, collects what he sees as the major disadvantages of the present system: a tardy pace, inefficient meetings, uneven expertise, a lack of appropriate research staff and of effective co-ordination of the country's law reform effort. In their place, he proposes that a Law Reform Commissioner should be appointed who is simultaneously a Judge of the Supreme Court. That Commissioner, supported by a Deputy and a small research staff, should have power to appoint ad hoc committees according to the circumstances and nature of each project.

The New Zealand Law Reform Council is to meet in April 1979. It last met in July 1976. The Government has promised that a review of existing statutes and regulations is to be carried out to "weed out" those that are outdated and irrelevant. This task of statute law revision is to be the special concern of the Law Reform Council.

Sri Lanka: The first program of work of the re-established Law Commission of Sri Lanka has now been published. It includes a mixture of items ranging from the preparation of a new code of civil procedure, procedures for the enforcement of fundamental rights, new administrative law and matters of statute law revision. Some items in the program are

technical, so-called "lawyers' law". These include projects on partnership law, arbitration, hire purchase and the law of evidence. Others involve complex matters of policy. These include study of a draft "Children's Charter", monopolies and trade practices, narcotics and drug abuse and compensation for victims of crime. An interesting innovation is the procedure by which, in certain projects, the Commission is to work in consultation with specialised agencies having an interest in the relevant area of the law. Also interesting is Item 2 on the program for the review of the system of legal education in Sri Lanka. The Commission is here to work in consultation with the Council of Legal Education and appropriate university authorities. Programs for reform of legal education are to be formulated and the Minister of Justice has asked the Commission to give this project some priority.

Britain: Speaking in New Delhi and Bombay in January 1979, Lord Scarman, the first Chairman of the English Law Commission, delivered the Jawaharlal Nehru Memorial Lectures. He chose as his subject *"Law Reform—The British Experience"*. The three lectures deal with:

- the history of law reform in Britain and the establishment of the Law Commission;
- the operation and methods of work of the Law Commission;
- the prognosis for law reform.

Lord Scarman acknowledges a frostier attitude to reform:

> "The enthusiasms of 1965 have been replaced by a chillier attitude towards law reform. Some doubt its wisdom; others its efficacy; and there is a general feeling that society suffers from too many laws, too many lawyers and would be re-invigorated by less legislation and fewer lawyers. I do not know how many of you read *Reform*, the regular bulletin of law reform news, views and information published by the Australian Law Reform Commission. [It] comments 'the dinosaur is a constant reminder that increase in size and amount can be a terrible mistake'."

Lord Scarman seeks to "describe in a few sentences the disillusion felt by many over the work of law reform":

> "It adds to the volume of the law: it is focused on 'lawyers' law' and has little, or nothing, to offer towards social and economic betterment of the community: it does not enter the fields of public, constitutional, or administrative law: and it offers no reform of the legal process or the legal profession."

Although these criticisms are not wholly fair, they are not to be disregarded. "Law Reform," declares Lord Scarman:

> "is not an end in itself: it is a means towards improving the quality of man's life in society. It cannot be allowed to degenerate into a purely professional or departmental exercise."

In his second lecture, Lord Scarman refers to the processes of consultation. He justly takes credit for the Working Paper which "represents a major advance in legislative method". Successive governments have borrowed the method and now publish "Green Papers" foreshadowing legislation. The method has also caught on in Australia and reflects, in some degree, growing openness in the practices of law making. Lord Scarman then refers to public consultation:

> "Lord Chancellor Gardiner frequently suggested to me, when I was Chairman, that consultation could not be complete without public meetings held in various parts of the country to discuss the tentative proposals contained in the Working Paper. Kirby J., . . . Chairman of the Australian Law Reform Commission, tells me that they hold such meetings in Australia. Though we have not felt the need for them in the United Kingdom, I would not rule them out."

What of the future? Lord Scarman laments the decline in the Law Commission's watching brief of "all the law" and the tendency for government to shape its whole program. He regrets the fact that certain areas (labour law, constitutional and administrative law) are "firmly kept away from the Commission". He rejects excision of "socially controversial law" and points to the Commission's success in divorce law reform. The profession's record, although a proud one in private and criminal law, is less distinguished, in Lord Scarman's view, in public law including administrative and constitutional law:

> "What is the future for law reform in the United Kingdom? . . . Case law will become, as much of it already is, the interpretation of enacted law. It will lose its character as a separate source of law. This change of character will not, however, diminish the importance of judge-made law. Indeed, the opposite will be true. Judges, interpreting a coded law, a written constitution and a Bill of Rights, will find their responsibilities deepened and widened. In such a future, which I believe to be probable, the task of law reform will be to keep the developing law under continuous review."