No sooner had Lord Scarman resumed his seat than a torrent of judicial anxiety was let loose. Lord Elwyn-Jones, the last Labour Lord Chancellor, feared:

> "the price to be paid for a change which might impose additional uncertainties on those who are concerned with the effect of legislation and with litigation and would lead to extra work in the machinery of government."

Lord Diplock said that two-thirds of the work of the House of Lords Judicial Committee involved disputed questions of the interpretation of statutes:

> "It is a subject with which I am familiar and which, I am bound to say, I dislike. . . . I think the public is entitled to look at the legislation and see what it says. It will be a temptation to the courts and to counsel before the courts to go into a large number of documents. . . . I would urge this House to say: do not let us have a second reading of it: this is a matter which is not a subject for legislative interference."

Lord Mishcon drew attention to the fact that legal interpretation was not simply a job for the courts. 'It is' he said 'the almost daily job of [the legal] profession in advising ordinary citizens'. But the inference he drew from this was that 'Parliament must do its job properly and the legislation must be clear and careful'. Viscount Dilhorne said that if judges had to look at preliminary reports and materials:

> "the proceedings before a court to determine the meaning of a particular sentence would last a long time at great cost to the litigants. [It would] increase to a very large degree the danger that judges may be tempted to trespass into the legislative field and to decide not what it was that Parliament intended by the words used but what, in the light of those documents, Parliament should have done; and that is going beyond the judicial function."

Lord Chancellor Hailsham then entered the fray, for the defence of the measure. 'One has to ask oneself', he said, 'why it has lingered in the pigeon holes for so long'. Lord Hailsham dealt sternly with Viscount Dilhorne saying that his 'noble and learned friend' belonged to the 'literalist school'. He even accused him of being 'false to his lineage'! Lord Dilhorne is a descendant of the famous Lord Coke, who belonged to the liberal school.

> "[T]he fact of the matter is that there has always been this battle between the literalist school which says that the function of judges must really be to construe the grammar of the section and not to look outside to see what it was intended to do, and what might be called the positive or mischief school, which says that you must try to find out what Parliament meant to do and give effect to it. . . . One at least of the reasons why other countries manage to legislate in shorter and more intelligible language than England is that they take greater care about the preparation of their statutes. They have what are called in France the travaux preparatoire. (sic) . . ."

At the end of the debate Lord Scarman withdrew the Bill, presumably to fight another day. He foreshadowed a 'comprehensive measure' which would contain proposals relating to the preparation and drafting of legislation as well as its interpretation. Commenting, the *New Law Journal* (21 Feb 1980) concluded:

> "There were hopeful indications that the Lord Chancellor is prepared to consider anew the Renton Committee *[The Preparation of Legislation,* 1975] proposals and the way will be open in the next session for Lord Scarman to introduce the more comprehensive Bill. . . . Advocates of statutory law reform and critics of the rules of statutory interpretation — their difficulty is only made clearer by the semantic exchange between the Lord Chancellor and Viscount Dilhorne to see that difficulty exists — may now take some small comfort that after so long the whole subject of legislation will receive wider debate."

What about Australia? When the ALRC proposed a law on drinking driving, it included a clause permitting the courts to have regard to its report in interpreting the law. The Bill was adopted. But the clause was deleted. Europe may force the pace of change in Britain. Will there be a catalyst for change in Australia?

Child Abuse and Child Care

> "Children begin by loving their parents. After a time they judge them. Rarely, if ever, do they forgive them."
>
> Oscar Wilde, *A Woman of No Importance,* 1893

The ALRC is continuing its inquiry into child welfare laws for the Australian Capital Territory. The Commission has divided its reference into several projects:

- Young offenders
- Neglected children
- Uncontrollable children
- Child abuse

- Day care centres
- Employment of the young

The Commission's discussion paper, *Child Welfare: Children in Trouble* (DP9, 1979) was published mid 1979. It dealt with the first three issues above. See (1979) *Reform* 58. Shortly to be published is a further discussion paper, *Child Welfare: Child Abuse and Day Care.* It is expected that the Commission will proceed to a report towards the end of 1980, after completing public hearings and discussions on the issues raised in the papers.

As a result of public hearings held on DP9 and widespread consultation concerning the tentative recommendations set out in that paper, the Commission's thinking has become more clearly defined. The Commission's present proposals are set out in the introduction to the new paper.

It is pointed out that child abuse is itself evidence that a child is in need of care and an extreme form of neglect. Present procedures for handling such problems often require resort to criminal proceedings. The ALRC suggests changes:

- Instead of criminal proceedings of charging a child with being a neglected child, civil proceedings should be brought
- Instead of a charge, a declaration should be sought that a child is 'in need of care'
- Possibly instead of proceedings in the magistrates' Children's Court, a special division of the Family Court of Australia should be created in the Capital Territory to deal with children's cases
- An independent official ('the Youth Advocate') should be responsible for co-ordinating informal solutions in the case of neglected or abused children and, where necessary, initiation of proceedings for a court declaration. He should also have a responsibility to seek out reconciliation between the parties who generally have to go on living together
- A consultative committee comprising welfare, health and voluntary agency representatives should assist the Youth Advocate to channel cases to the appropriate service agency
- A Youth Services Council should be established to co-ordinate the health and welfare services of the ACT

The problems of child abuse are not theoretical. All too often, the newspapers carry sad cases of the 'hidden cruelty' of child abuse. Recent stories:

- Victorian police surgeon, Dr Peter Bush, accuses society of failing to recognise and deal adequately with child abuse. The child cannot generally protect itself or report the incident. Cases seen by doctors represent 'only the tip of the iceberg'.
- Dr Anna Yeatman told a seminar of the Australian Institute of Criminology that the suggested link between poverty and child abuse was questionable. Poor people use physical force but others may deploy 'other coercive and non-rationally accoutable sanctions' against children.
- Queensland State Welfare Minister, Mr Sam Doumany, said that the problem of sexual abuse of children was becoming 'more obvious'. One of the 'great barriers', fear of becoming involved on the part of neighbours, friends and others, was, he said, 'being greatly reduced'.
- In addition to the existing crisis centre 'Montrose' the N.S.W. Government is launching a unique Sydney refuge for homeless children.
- In February 1980, front page stories reported a case before Judge Collins in the N.S.W. District Court which the judge described as 'sordid and unnatural by any human standards'. The parents of a nine-month child whose injured and shrivelled body at death 'was a sight to cause sympathetic horror' were sentenced to twelve months of periodic detention. The Crown has appealed against the sentence.

How can the law cope with such problems? The ALRC discussion paper makes a number of suggestions:

- *Mandatory Reporting.* After the introduc-

tion of mandatory reporting in N.S.W. in 1977, the numbers of cases coming to the notice of the authorities increased almost 200%. Reporting legislation usually involves doctors (and others such as dentists, nurses, social workers and teachers) reporting to a Welfare Department or Child Protection Centre rather than to the police. Such legislation also provides that a person reporting in good faith is immune from civil liability for breach of confidence, defamation, malicious prosecution etc. The ALRC discussion paper proposes that mandatory notification by medical practitioners and certain other professionals should be introduced in the A.C.T. Provision should also be made for voluntary notification by any person. Notification should be made to the Youth Advocate and those who notify in good faith should be duly protected by law. The DP says that the estimated number of cases of child abuse in the A.C.T. would not warrant the establishment of a special child crisis centre. Instead, the Youth Advocate should be the focus of a 24-hour service and the Youth Services Council should monitor the co-ordination of available supportive facilities.

- *Parent Prosecution.* The DP recounts the different views taken as to whether criminal prosecution of a parent should be readily initiated or attended by special procedures. Obviously, some cases must result in prosecution for breaches of the criminal law. But the relationship of the child to its parent or guardian must normally go on. Prosecution of a parent may exacerbate the family tensions. The DP suggests that whilst the decision to prosecute the parent should remain a matter for the police, such proceedings should be initiated only after consultation with the interdisciplinary committee set up to review particular cases. Furthermore, the police should be given the facility where it would be in the interests of the child to do so to withdraw a prosecution, by leave of the court. Whilst the criminal law cannot turn a blind eye to cases of child abuse, special sensitivity is needed because of the ongoing relationship between the child and the parents.

- *Protection Orders.* Health Commission authorities have stressed the need to provide a means where the child is in immediate danger of further injury to remove a child to a hospital or other place of safety. This suggestion runs into the normal legal principle that a person (including a child) should not be deprived of liberty in the absence of a specific court order. Most child welfare laws in Australia make special provision for detention of children by police or authorised health or welfare officers for 48 hours. The ALRC DP proposes that the Youth Advocate should be notified immediately such cases arise. He should obtain a holding order from a magistrate and detention for longer than 48 hours should require a 'child protection order', such as is provided under the Tasmanian Child Protection Act.

- *Day Care.* With increasing numbers of women in the workforce, the regulation of child care services becomes more important than in the past. At present, in the A.C.T., a licensing system is in force but the provisions are ill-defined and generally do not apply to occasional care centres or private minders. Cases of large numbers of children of working mothers kept in small confines without proper facilities and stimulating activity, raise the question of fresh controls. Such controls must not be unrealistic or impose excessive costs on poor parents, who need to work. The problems of young children in the care of others may have changed since Oliver Twist's time. The need for the law to provide minimum protections for dependent, uncomplaining children is as strong as ever it was.