

Warren Burger was reported as calling on the U.S. Congress to create new Federal judge-ships in a more systematic way and having regard to the needs of particular districts and circuits. Yet the United States now has three times as many lawyers per capita as England. In this century the number of American lawyers has grown twice as fast as the population as a whole and it continues to expand more rapidly than ever. Multiplying even more quickly than lawyers are laws and law suits. In an article, 'Too Much Law, Too Little Justice: An Argument for De-legalising America', Harvard Law Professor Laurence H. Tribe, in the *Atlantic*, described a predicament which is not confined to the United States:

In 1977 the legislative bodies at the federal, state and local levels enacted approximately 150,000 new laws, and each of these new laws on the average required the issuance of ten new regulations. Between 1969 and 1972, the caseload of the federal courts (corrected for the increase in population) rose by half. If the federal appellate caseload, which accounts for only 10% of all federal cases, continues to grow as it has in the past decade, over one million federal appellate cases a year will flood the courts by the year 2010. ... Clearly, something is awry. For too long we have reflexively relied on law to right every wrong. This intoxication with law costs us dearly.

In India, where the Supreme Court occupies a similarly demanding constitutional role, a retired justice (Mr. Justice H.R. Khanna) has delivered a lecture on 'The Reform of the Judiciary'. The importance of the judiciary to the protection of liberties in India in recent years cannot be over-emphasised. In this connection, in words reminiscent of the recent Australian debate, Mr. Justice Khanna referred to a report of the Law Commission of India:

Quite a number of cases coming up before the Supreme Court have political overtones. In view of this fact we should pay heed to the suggestion of the Law Commission that no-one should be appointed to the Supreme Court as a judge unless for a period of not less than seven years he has snapped all affiliations with political parties and unless during the preceding period of seven years he has distinguished himself for his independent and dispassionate approach and freedom of political prejudice, bias or leaning.

n s w l r c changes

Progress is impossible without change; and those who cannot change their minds cannot change anything.

George Bernard Shaw, c 1920

new personnel. The oldest of the full-time Australian law reform agencies, the New South Wales Law Reform Commission, has undergone a change of personnel and an accompanying alteration of its statute. Mr. Justice J.H. Wootten, Chairman of the Commission since 1976, has from 1 February 1981 returned to his judicial duties as a member of the Supreme Court of New South Wales. His place is to be taken by Professor Ronald Sackville, Dean of Law in the University of New South Wales. Professor Sackville is no stranger to law reform. Between 1973 and 1975 he was a Commissioner for Law and Poverty in the Federal Commission of Inquiry into Poverty in Australia. In 1977 he was appointed Chairman of the South Australian Royal Commission into Non-Medical Use of Drugs. He has spoken and written widely about the problems of getting law reform proposals adopted through the pitfalls of the political process of Australia. A note on Mr. Justice Wootten and Professor Sackville appears in *Personalia* (see below p. 71).

new structure. As important as the changes in the chairmanship of the NSWLRC are the amendments proposed to the NSW Law Reform Commission Act, 1967. Explaining the amendments, NSW Attorney-General Frank Walker Q.C. said:

The Law Reform Commission of this State has proved a valuable adjunct to the legislative process and many of its recommendations have been passed into law. Because of the importance that the government attaches to law reform, a comprehensive review has been undertaken of the Law Reform Commission Act with a view to improving the law reform machinery in New South Wales. The government wants to ensure that the system of law under which the community lives is responsive to the social needs of our time. The legal rules governing the relationships of persons with each other and with the government should reflect current values and philosophies.

Amongst changes introduced are:

- provision for the appointment of commissioners other than lawyers;
- provision for a non-judicial chairman;
- provision for the appointment of part-time commissioners;
- power in the chairman to create divisions for particular L.R.C. projects;
- power to oblige provision of access to material, where this is refused and where the Minister makes an appropriate declaration.

The Attorney-General explained the adoption of part-time commissioners and the divisional arrangements as modelled on the ALRC statute:

The provision of part-time commissioners will contribute much to the Commission's effectiveness. It will permit the acquisition of persons of the highest possible calibre and diverse professional backgrounds who would not otherwise be available for full-time appointment. Part-time commissioners would be people expert in the subject of particular references and would not normally be expected to take part in drafting papers and reports. They would bring their expertise to bear primarily through attending meetings at which ideas were developed, policies settled and draft reports finalised. The Australian Law Reform Commission operates with full-time and part-time members and this system has proved successful. Successive Annual Reports of that Commission have emphasised the valuable role and constitution of part-time members and that the combination of part-time and full-time members working together on particular projects is an effective one. ... A further measure contained in the Bill before the House that has proved successful in the experience of the Australian Law Reform Commission is the concept of divisions. ... The provision for divisions will enable the Commission to make maximum use of the experience and available time to concentrate on a number of references. ...

Upon the announcement of his intended appointment, Professor Sackville is reported to have said that he hopes the NSWLRC would embark on law reform projects of social relevance. Everything in his past training would appear to suit him for leading such inquiries. The NSWLRC has not yet completed its major current project: an inquiry into the reform of

the legal profession of the State. One of Professor Sackville's special areas of discipline, as a law teacher, is land conveyancing. The inquiry into the legal profession and the recent controversy concerning the monopoly enjoyed by NSW lawyers in paid land conveyancing (see [1981] *Reform* 15) would seem to suggest that a project on all aspects of land conveyancing law and practice would be a natural task for the NSWLRC under its new leadership.

law reform suggestions

They'll take suggestions as a cat laps milk.
Shakespeare, *The Tempest*, II, 1.296

a l r c collection. The 1980 Annual Report of the Australian Law Reform Commission, tabled in the Australian Federal Parliament at the close of parliamentary business in 1980, contained a little noticed but potentially important innovation. Appendix A of the report is titled 'Law Reform Suggestions'. It lists a series of judicial, parliamentary, academic and citizen proposals for reform of the law. Among proposals listed are suggestions for changes in Federal laws. In some cases, where a suggestion for law reform has obvious implications for the Territories, the proposal has been included. Some of the suggestions listed in the 1980 Annual Report (ALRC 17) deal with:

- need for statutory regulation of artificial insemination;
- need for the provision of power for State courts to award costs against the Commonwealth where Federal criminal prosecutions fail;
- need for changes in the criminal law to provide alternative verdicts where a defendant escapes criminal liability for want of the requisite intent by reason of voluntarily induced alcohol or drug intoxication;
- need for new laws to protect certain legislation in the case of search warrants;