He writes on provocative subjects in a provocative style. His main aim is to question the theory of adjudication proposed by Professor Ronald Dworkin. Dworkin, in language familiar and congenial to Australian lawyers, urges that legal problems have 'correct legal answers'. Pannick claims that by postulating the existence of 'correct' legal answers to hard cases, the judge is encouraged 'to ignore the community interest'. Pannick disputes Dworkin's claim that courts eschew 'policy'. He instances *Rondel* v. *Worsley* where the House of Lords held that a barrister does have a certain immunity from civil suits, basing their opinions on arguments of so-called 'public policy'. Yet when Lord Morris sought to explain the 'public policy' it was not grounded on any issue of legal principle but one of political judgment:

> in order that a greater ill may be avoided, namely, the hampering and weakening of the judicial process.

Pannick's thesis is that:

> the pathway to a modern philosophy of adjudication has not been laid by English judges. There is a shameful absence of notable contributions by our judiciary, at least since Sir William Blackstone, a judge from 1770-80, to the advance of legal philosophy. It may be that, as Mr. Justice Roche suggested to Harold Lasky in the 1920s, our judges were 'vaccinated against any danger of speculation by their practice at the Bar'.

Definitely an article not to be read by the hypertensive.

- An interesting paper by Professor Edward Wise, 'Legal Tradition as a Limitation on Law Reform' takes to task American law reform for its failure both to establish 'permanent agencies specifically charged with superintending the business of technical law reform' and its inclination to look at foreign law 'at best only sporadically'. Even when this is done, the examination is usually limited to English-speaking countries, particularly England, for reasons of 'habit, familiarity and perhaps accessibility'. Conceding that certain subjects, such as criminal law, are peculiarly impervious to foreign influence (except in penological aspects), Wise suggests that:

  > in the United States at least, comparative law will prove most fruitful if it can permeate the ongoing process of rethinking our own tradition instead of making a belated entry at the stage when a particular statute is already being drafted.

  Wise gives an interesting perspective of the continuing reception in America of the common law of England:

  > English cases continue to be read, although more in academic circles than elsewhere, and largely, I fear, because to American sensibilities they seem to have many of the delightful qualities of a quaint 'fairy-tale'.

- Closer to home, the editor of the *Australian Law Journal* in (1980) 54 *ALJ* 697 has called attention to the contribution to law reform of the English statesman and historian, Lord Macauley. When he arrived in India in 1835, Macauley was invited to take up the Presidency of the Law Commission. In that post he gave the impetus to the complete criminal code and code of penal procedure, which profoundly affected not only subsequent Indian law but also the law elsewhere throughout the Empire. In earlier times, and other places, it was easier to secure 'daring and original' law reform. A pioneer well remembered.

action on police report

> When eras die, their legacies
> Are left to strange police
> Professors in New England guard
> The glory that was Greece
>
> Clarence Day, *Thoughts Without Words,* c 1920

a l r c report. The professors may guard ancient Greece, but who will guard the police? This was the first question posed to the ALRC

on its establishment in 1975. Now the Federal Attorney-General has introduced legislation into the Australian Parliament based substantially on the ALRC report *Complaints Against Police* (ALRC 1, 1975) and *Complaints Against Police: Supplementary Report* (ALRC 9, 1978). The first report, and the scheme proposed in it, was devised when Mr. Justice Brennan (see above) was a Member of the ALRC.

To effect the reforms, the Attorney-General introduced two Bills, one to amend the Australian Federal Police Act 1979 and the other, a substantial piece: the Complaints (Australian Federal Police) Bill 1981. Speaking of the latter, Federal Attorney-General Senator Durack, Q.C. said:

> This Bill will apply to complaints in respect of members of the Australian Federal Police; its purpose, to use the words of the Law Reform Commission in its first report on Complaints Against Police 'is to establish a system which permits just and thorough investigation of complaints against police, while at the same time upholding morale and discipline in the difficult work police have to do'. Establishment of such a system is clearly one of the most effective ways of maintaining and improving good relations between members of the public and the Police Force and the respect in which that force is generally held. In large measure, the Bill implements the recommendations of the Law Reform Commission. ... Thus, the Bill recognises the need identified by the Commission for certain elements of independence in the receipt, handling, investigation and determination of complaints against police.
>
> Australia, Senate, *Debates*, 26 February 1981.

The Bill follows the basic scheme laid down in the ALRC reports:

- establishment of an internal investigation division of police;
- provision for the Commonwealth Ombudsman to be a neutral recipient and, in some cases, investigator of complaints; and
- establishment of a Police Disciplinary Tribunal, whose President will be a judge.

Provision is made for notification of all complaints to the Ombudsman. If the Ombudsman is dissatisfied with the report of the police investigation division on a complaint, he may ask for further investigation or he may carry out investigation by his own office. In special circumstances, the Commissioner and the Ombudsman may agree that either the Ombudsman or a person outside the investigation division should make the initial investigation of a complaint. If the Ombudsman and the Police Commissioner cannot agree on this matter, the responsible Minister is to decide. The Ombudsman is empowered to recommend that criminal or disciplinary proceedings be brought against a policeman complained of. Again, if the Commissioner does not agree with this recommendation, the matter is to be referred to the Attorney-General for decision. Criminal charges against a police officer may continue to be brought in the ordinary courts. Disciplinary charges are to be dealt with by the new Federal Police Disciplinary Tribunal.

The points of variance from the ALRC report were carefully noted by the Attorney-General in his speech to Parliament. Only two are in any way important:

- The ALRC proposal for the Ombudsman to have a general power to conduct his own investigations in specified cases. The Bill envisages a slightly more limited role for the Ombudsman, with the Minister as the umpire where he and the Police Commissioner disagree.
- The ALRC envisaged the Ombudsman having a general power to ensure that a charge was laid against the police officer by making a formal recommendation to such effect. The Bill leaves this to be determined by the Police Commissioner but in default of agreement, the Attorney-General is to be umpire.

The Attorney-General pointed out that the introduction of the Bill was in no way a reflection on the new Australian Federal Police or its members. He paid tribute to their general 'honesty, zeal and devotion to duty'. He also paid tribute to the ALRC:

> This Bill will establish effective and just system and the minor variations from the Commission's proposals that I have indicated in no way detract from the great credit due to the Commission for its evolution of the basic concept on which this Bill is constructed.
>
> Australia, Senate, *Debates,* 26 Feb 1981.

vicarious liability for police. Coinciding with the Complaints Bill, the Attorney-General introduced a further Bill to amend the Australian Federal Police Act 1979 in order to implement two further recommendations of the ALRC. These deal with:

- provision for vicarious liability by the Commonwealth for the conduct of police officers in the course of their duties; and
- provision requiring identification numbers in the dress of uniformed police.

The origin of the rule that the Commonwealth was not liable, as an ordinary employer is, for the acts or omissions of police officers, was described, analysed and criticised in ALRC 1 and ALRC 9. Its origin is to be found in *Enever* v. *The King* (1905) 3 *CLR* 969 and rests upon the independent status of a constable. However, the anomaly was unjust to police and also to citizens claiming damages and, in Attorney-General Durack's words:

> There is no sufficient reason why a police officer should, in this regard, be placed in a different position to that of any other officer of the Commonwealth. Accordingly, the government was glad to accept the Commission's recommendation in this regard and the Bill will make the Commonwealth liable for civil wrongs committed by police officers in the performance of their duties. ... The Bill plays an important part in the general implementation of the recommendations of the Commission.
>
> Australia, Senate, *Debates,* 26 Feb 1981,

In advance of Federal legislation, the Queensland Police Act was amended along similar lines to provide for vicarious liability for police and legislation has since been introduced in other States.

state complaints. Complaints against the police have been in the news in the States over the past few months. In New South Wales, the State Ombudsman, in his 1979 report, complained of 'some feelings of frustration' in carrying out his functions under the Act. He complained of the specific difficulty of making an 'independent appraisal' and urged that there 'should be a right for the Ombudsman to investigate further if he considers that in the public interest he should do so'. Early in 1981 the Deputy Ombudsman in New South Wales assigned to deal with police complaints (Mr. Roger Vincent) resigned, protesting that the lack of a power of independent investigation deprived the Ombudsman's involvement of the effectiveness needed to deal with the citizen's complaint. State ministers defended the current NSW scheme. The *Sydney Morning Herald* (19 February 1981, p.6) did not agree that there was evidence that the New South Wales public was being 'conned' over the handling of cases of alleged police conduct:

> It is reasonable and desirable that the Ombudsman and his staff, if they are dissatisfied, should say so publicly. But the remedy for their dissatisfaction lies in their own hands. Let them produce hard, precise evidence that the system is not working as well as it should. They have not yet done so. Until they do, their requests for investigatory powers are not likely to be granted.

It will be important to see whether the Commonwealth Ombudsman, with wider powers and access to the responsible Minister, can, in the event of a dispute, avoid these State tensions.

In Victoria, the retiring head of the Police Bureau of Internal Investigation, Commander Gordon Marchesi, called in November 1980 for the establishment of a public tribunal to oversee the work of the bureau. He complained that the 11-strong bureau was undermanned and faced difficulties within the Force in which the 'brotherhood syndrome' was entrenched. Specifically he criticised:

- movement of complaints through open police channels, forewarning police of inquiries;
- requirement that confidential complaints can be lodged only at police headquarters;

- inability of the internal branch to initiate its own investigations; and
- inability to react quickly to serious complaints.

Picking up the point, State Opposition Spokesman on Attorney-General's Affairs, Mr. John Cain, complained that the retired magistrate whose job it was to check files of police investigations had last reported in September 1978 then dealing only with complaints up to November 1976. Following these criticisms of the Victorian system, the State Minister for Police and Emergency Services, Mr. Thompson, announced that State Ombudsman Norman Geschke would now examine police files on public complaints to decide whether the police action was 'proper in the circumstances'. Under arrangements following a report of a committee headed by Mr. Justice Norris, if the Ombudsman is not satisfied with the police complaint 'he will start his own investigation'.

and in britain. Following the delivery of the report of the Royal Commission on Criminal Procedure in Britain, the Chairman, Professor Sir Cyril Philips, has been appointed to head up the Police Complaints Board, the body established in Britain to review handling of complaints against the police. It is hoped that Sir Cyril Philips may be visiting Australia later in 1981 and will explain English initiatives on police complaints and criminal procedures. Meanwhile, the Court of Appeal of England, in *Neilson* v. *Laugharne* (the *Times,* 18 December 1980, p.11) has made it clear that statements taken by police for the purpose of investigating complaints against other members of the police forces are protected as class documents from discovery in civil actions against the police in respect of the subject matter of the complaint. It was held that the basis of the protection was the 'public interest privilege'. It was not right that disclosure should be used to help a plaintiff to make out a case which he would not otherwise have had. The prospect of disclosure, it was feared, might inhibit the proper conduct of an investigation. Lord Denning M.R. used characteristic language in upholding the police claim to privilege:

> The case looked like a 'fishing expedition'. Legal aid was being used by complaining persons to harrass innocent folk who had only been doing their duty. The complainants made all sorts of allegations, often quite unjustified, and then used legal machinery to try to manufacture a case. The court should come down firmly against tactics; it should refuse to order production.

Upholding those who are 'doing their duty' on behalf of society, whilst dealing firmly with those who forget or exceed their duty, is the function of the new Australian Federal Police complaints procedure. Observers will be watching closely its operation. The accord struck between the Police Commissioner (Sir Colin Woods) and the Commonwealth Ombudsman (Professor Jack Richardson) on the basis of the ALRC reports bodes well for the success of the new scheme. The likelihood that the Federal Police will increasingly enter the 'big league' of narcotics suppression, corporate crime, computer crime and anti-terrorist activities will make it important that the new scheme should strike the 'just balance'.

insurance brokers: progress?

> In human affairs, the best stimulus for running ahead is to have something we must run from.
>
> Eric Hoffer, *The Ordeal of Change,* 1964, 9

liberal philosophy. In an important address to the South Australian State Council of the Liberal Party of Australia, delivered because of his illness by Senator Chaney, the Prime Minister, Mr. Fraser, on 5 December 1980 examined 'the philosophical basis of liberalism'. In the course of the address, Mr. Fraser urged not as 'a dogma or a creed to be adhered to regardless of the circumstances' but as guiding principles:

- the role of government to maximise the individual's control over one's life;