reform

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in this issue

conferences, conferences

Meet we shall, and part, and meet again,
Where dead men meet on lips of living men.
Samuel Butler, *Life After Death*

hobart meeting. In the continuity of our legal system, it is virtually inevitable that the living lawyers of today, when they meet, should re-debate issues which agitated many of their professional forebears. But to the catalogue of old perennials in the legal conferences of the Antipodes must now be added new themes, reflecting especially the changing attitudes in society and dynamic new technology.

Coinciding with this issue of *Reform,* the 21st Australian Legal Convention gathers in Hobart, Tasmania. On Saturday 4 July it will be officially opened by the Governor-General of Australia (Sir Zelman Cowen). Amongst distinguished overseas guests are Lord Lane (Lord Chief Justice of England), Professor Dr. Wolfgang Zeidler (Vice-President of the Federal Constitutional Court of Germany), Sir Michael Kerr (Chairman of the English Law Commission) and Professor H.W.R. Wade QC. Among the lively topics to be discussed are:

- judicial review of administrative tribunals (Lord Lane);

- evaluation of the adversary system (Professor Zeidler);
- financial implications of family law (M.D. Broun);
- the electronic law office (Ian Nosworthy);
- tax avoidance (M.H.M. Forsyth QC);
- the prison system (Everett J.);
- federal/state court relations (Rogers J.).

One of the commissioners of the NSWLRC, Mr. Julian Disney, and the Chairman of the WALRC, Mr. David Malcolm QC, will lead a general forum discussion of the structure and regulation of the legal profession.

Many of the lawyers gathering in Hobart were brought up in an age of unquestioned acceptance of the British adversary trial system. Now, with all institutions under the microscope, Dr. Zeidler's comparison of the German system of judicial inquiry with the adversary trial may raise a few temperatures. In comments circulated to accompany his paper, Dr. Zeidler, who 'started as a young judge about 30 years ago in civil courts', compares the two systems in a vivid way:

> As regards the aspect of quality, I believe the common law procedure has a considerable advantage. ... Professor Kotz of Hamburg recently, at an annual conference of the German-British Jurists' Association, compared the two procedural systems by a parable: amongst the procedural systems the common law procedure is what a shining Rolls Royce car is amongst the automobiles, whereas the German procedure may be compared to a dusty small Volkswagen. I agree, but the question remains: what is it you can afford to pay for, and how often and in what situations are you in need of a Rolls Royce or of a Volkswagen? This leads me to those aspects of the common law procedure, which in my view may be looked upon as its handicaps. Under its rule most of the work is done by advocates. The parties have to pay for it accordingly. This means that people with education, financial resources and social and political connections have a better chance than the majority without such advantages. In Germany most of the legal work is done by judges, who get their salaries from the taxpayer, so there is no difference as regards the social or educational level as a starting point. Of course you may fall into the hands of a bad judge as well of bad advocates. But there is still a difference. The counsel you select yourself. The selection of the judge is a matter of destiny. So the chance of having a good judge is irrelevant to social status. It is the fair and equal chance of an honest gambling table.

More on the adversary trial below (see p. 93)

law reform conference. Meeting in Hobart at the same time as the Legal Convention is the Sixth Conference of the Australian Law Reform Agencies (ALRAC). Host for the conference is Mr. Bruce Piggott CBE, Chairman of the Law Reform Commission of Tasmania. The conference will be opened by the Attorney-General for Tasmania (Mr. B.K. Miller). The Keynote Address by Sir Michael Kerr will deal with the politics of law reform. Sixteen years after the establishment of the Law Commission of England and Wales, and with many notable law reform achievements under the belt, this may be a useful time to review the successes and failures of institutional law reform, and the way ahead. Other sessions of the one-day ALRAC conference will study:

- a general review of law reform developments in Australia;
- description of developments in overseas countries participating. In addition to Britain, these are expected to include New Zealand, Papua New Guinea, Canada, Germany, Hong Kong and Nigeria;
- processing law reform;
- uniform law reform in Australia;
- the forthcoming Australian Law Reform Digest; and
- uniform evidence law reform.

dunedin law conference. Many of the topics up for consideration in Hobart earlier came under consideration in Dunedin at the Triennial Conference of the NZ Law Society (21-25 April 1981). Among papers delivered by overseas participants were:

- Law, Free Speech and Rights of Literature (John Mortimer QC, creator of Rumpole);

- Lawyers and the Community: Outreach or Outrage? (NSWLRC Commissioner Julian Disney);
- Tribunals and Inquiries (Mr. David Williams, Cambridge); and
- Freedom and Information (ALRC Chairman, Mr. Justice Kirby).

Papers by other authors disclosed the variety and excitement of the issues before the law today. Dr. George Barton, a Wellington barrister, asked 'Whither Contract?' Mr. Ian L. McKay, a Vice-President of the NZ Law Society, wrote a piece on 'Intelligible Drafting' (see below p. 90). Dr. Geoffrey Palmer, MP explored 'What Happened to the Woodhouse Report?'. Proposals for law reform governing compulsory acquisition and compensation for the taking of land was examined by Peter Salmon, an Auckland barrister. In the course of his paper Salmon reviewed the ALRC report, *Lands Acquisition and Compensation* (ALRC 14). Creditors' rights were examined by Professor Richard Sutton, Dean of the Otago Law School. The possibility of intellectual property law affecting medical treatment by patenting new life forms was explored by Dr. Anthony Molloy, an Auckland barrister. Mr. Gerard Nash, former Dean of the Monash Law School, scrutinised clinical legal education in Australia and New Zealand.

There were many other interesting papers, some of which may appear in the new-look *New Zealand Law Journal,* whose attractive revised format greeted participants in their conference satchels. Perhaps insufficient attention has been paid to making law journals readable. Times are changing.

popularity contest? At the opening ceremony both the Governor-General of New Zealand (Sir David Beattie) and the Chief Justice (Sir Ronald Davison) examined thoughtfully the implications for the legal profession of a recent public opinion poll in New Zealand. The poll, published by Heylen, showed that only 39% of the population surveyed has 'confidence' in the courts and 34% in the legal profession. Sir David Beattie, himself a past judge of the Supreme Court of New Zealand and author of the now largely implemented report on court reforms, cautioned that the findings could give no-one involved in the law cause for self-satisfaction. He said that the legal profession should be able to withstand 'concentrated examination' by the public. It could not, he said, afford 'an erosion of public confidence'. Most troubling of all was the poll finding that scepticism was greatest amongst the young.

The Chief Justice of New Zealand advanced a similar thesis:

> None of us can be complacent and ignore the trend the poll result brings to light. ... If there is abroad in society that apparent lack of confidence in the courts, then I am greatly concerned.

Sir Ronald said that the legal profession must define its role in the 1980s and do so in a way sensitive to the needs of the public. This point was picked up by New Zealand Attorney-General J.K. McLay:

> The law can and does touch upon and act on the lives of each and every one of our citizens. Our legal system is not an entity unto itself.

In a comment on the Law Conference, the *Otago Daily Times,* printed in Dunedin, observed:

> The warning is there that lawyers, perhaps more than most professions, should consider deeply their relationship with the public, for it is respect for the law that ultimately governs our society. It is therefore imperative that the law should keep pace with the changing needs of the people, and no-one would admit this is an easy task in today's fast-moving and complex world. The effort has to be made, however, and it is for that reason there was special interest in the conference address by the Chairman of the Australian Law Reform Commission. ... In relation to the moves for a similar body in [New Zealand] ... the Commission appears to serve a most useful purpose on a number of grounds, not the least of which is the communication of policy options. The system has much to commend it, for it provides for a two-way flow of views. ... It is thoroughly healthy in an educated informed community to have less emphasis on mystery and more on the role of the law to help resolve disputes and to keep up with the tremendous changes taking place.
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> *O.D.P.*, 24 April 1981, 2.