

law reform. A novel inquiry initiated by Mr. Smith is addressed to psychologists. Some assumptions of the law of evidence may be founded on commonsense views which are simply not borne out by modern psychological knowledge.

The trial system is coming under increasing scrutiny. The ALRC project on Federal evidence law reform will provide a focus for a continuing debate.

industrial relations law reform

One of the greatest labor-saving inventions of today is tomorrow.

Vincent T. Foss

Clarence Darrow who gave the advice on juries cited above also had a philosophy of industrial relations. 'I am a friend of the working man' he declared 'and I would rather be his friend than be one'.

In Australia, a statutory system of compulsory conciliation and arbitration was borrowed from New Zealand at the turn of the century and is at the heart of the resolution of many of the important economic and industrial relations issues of modern Australian society. The growth of large trans-national corporations and of powerful trade unions has led modern commentators in Australia and elsewhere to suggest the need for fairly fundamental law reform, designed to uphold the effectiveness in this area of the rule of law. Lord Denning, in the epilogue to his latest book *The Due Process of Law* exclaims with mock astonishment:

In the Easter vacation a visit to that other London in Western Ontario where I was made an honorary Doctor of Laws, I told the truth to an academic audience: 'The trade unions are above the law'. Only to be received back in England with yells of abuse – and much comment. There was a General Election pending!

In Australia, the steady operation of the Federal and State industrial machinery has been interrupted in recent months. A judge of the Australian Conciliation and Arbitration Commission has resigned. Disputes have broken out about s.45D of the Federal *Trade Practices Act* concerning

secondary boycotts. Industrial relations are on the boil again.

One of the developments, relevant to this journal, was a suggestion by the N.S.W. Premier, Mr. N.K. Wran, Q.C., for a bipartisan approach to the reform of Australia's industrial laws, including a referendum for a constitutional transfer of industrial matters by the States to the Federal Parliament. Mr. Wran was speaking at the annual convention of the Industrial Relations Society of South Australia. Specifically, Mr. Wran disclosed that he had proposed at a Premiers conference that review of the Commonwealth's conciliation and arbitration legislation should be referred to the Australian Law Reform Commission. He said that body would 'be an appropriate body for the task'. He acknowledged that there were critics in his own political party, suspicious of the proposal. However, he felt that rationalising the Australian industrial laws was a matter of high national priority. All too often, the disparity of laws and tribunals positively *caused* rather than *cured* industrial disputes. Mr. Wran said that the Federal legislation had not been reviewed for nearly 80 years. It had become a 'hotch potch' of political amendments, losing the confidence of trade unions, employers and the community alike.

Mr. Wran's suggestion of an ALRC inquiry drew immediate responses from the States. The Queensland Minister made it plain that Queensland would never release its authority in State industrial matters 'to Canberra'. The Federal Minister for Industrial Relations, Mr. A. Street pointed out that a committee working to the Ministers for Labour was already inquiring into the industrial relations system. Mr. Street said that the committee had made 'genuine progress'.

Various editorialists had their say on Mr. Wran's proposal. The *Australian Financial Review* (22 April 1980) said that there was 'a good deal to be said for 'Mr. Wran's proposal that there should be a full scale inquiry into the future of the whole arbitration system'. It agreed with Mr. Wran's view that uniformity in industrial matters was 'at least as important as in securities and company law'. But it was less sympathetic to the idea that the inquiry should be conducted by the ALRC, declaring:

The subject is simply far too wide and important in its social and economic aspects to be entrusted to lawyers alone ...To put the Law Reform Commission in charge of such a report would be tantamount to setting the mice to guard the cheese.

Citing proposals by the President of the Australian Council of Trade Unions, Mr. R.J. Hawke, for greater collective bargaining in Australia's industrial relations, the *Sydney Morning Herald* came out in favour of a public national inquiry into the industrial relations system.

Admittedly the record of national inquiries is not inspiring. Many subjects have been investigated, many reports have been written and very little has been done about them. Some subjects have been 'over investigated' ...But in industrial relations there has been no comprehensive review of the operation of the system at least since Federation. A national stocktaking is overdue.

The editorial in *The Australian* (22 April 1980) urged the banner 'Forget the politics and make industrial laws work'.

Mr. Wran is seeking an independent inquiry into the whole conciliation and arbitration system by the Law Reform Commission. These are undoubtedly constructive suggestions, which at least open up the possibility of useful debate. ...Apart from the considerations of attempting to achieve simplicity, uniformity and effectiveness, any review of industrial laws must look seriously at the issue of enforcement. If there are to be penalties, applicable to unions or employers alike if they break the law, the law is worthless if the courts lack the ability and determination to enforce the sanctions.

Australia's system of industrial relations is deeply engraved on the national makeup. But no laws or institutions are now exempt from critical and regular public scrutiny. There will be many eyes on the report of the officers' working party examining the system. Constitutional, political, institutional and personal considerations stand in the way of the reformer here. But the problems of industrial relations are not likely to abate. Some day, fundamental re-scrutiny of the system may be called for.

legal profession reforms

A lawyer is a man who helps you get what is coming to him.

Dr. Laurence J. Peter

The last quarter has seen the publication in Britain of the *Report of the Royal Commission*

on Legal Services in Scotland. The Commission was headed by Lord Hughes. It has put forward more than 200 recommendations for changes in the Scottish legal system. Some of the recommendations differ from those made by the Benson Commission which reported on the English legal profession. See [1980] *Reform* 17.

As a result of its four years of labour, the Scottish Commission has come up with proposals on legal aid, conveyancing and legal fees. Chief amongst the recommendations are:

- Integration of civil legal aid to be administered not by the Law Society but by a Legal Services Commission.
- Legal aid should not be available for conveyancing transactions, advice on tax planning or the like.
- Criminal legal aid should be available to all, at least on the issue of how to plead.
- Lawyers should lose their exclusive right to undertake domestic conveyancing for a fee. Appropriate bodies which met certain standards should also be able to do domestic conveyancing work.
- Simpler registered conveyancing should be introduced so that the State could provide low cost conveyancing of land.
- Divorce law should be simplified and legal aid spent on divorce (70% of present funds) should be reduced.

Predictably, the Law Society of Scotland strongly deprecated the recommendation that domestic conveyancing for a fee should no longer be monopolised by the legal profession. It claimed that it was wrong to believe that conveyancing was easy. The Society also objected to the establishment of a new independent legal fees body to take over from the judges the fixing of court fees.

Writing on the Scottish Commission report, Professor Michael Zander has said that although the composition of the Scottish Royal Commission was 'rather similar' to that of the English Royal Commission, the Scottish report is considerably 'more radical' than the English. Professor Zander said that it was curious that the NSWLRC, consisting entirely of lawyers should have produced