Lost Cause?
Law Reform in Tasmania 1941-1969

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Introduction

The establishment of law reform agencies has been one of the most important legal developments of the twentieth century. To remain relevant to the needs of citizens, the law cannot remain static. It must be constantly revised, reformed, and adapted to meet changed social and economic conditions, and to weed out injustices. Before the establishment of law reform agencies, judges, legislators, and professional legal bodies were primarily responsible for law reform.[1] However their attempts at reform were too random, too slow, and, usually, too conservative. As the number of judicial decisions and statutes grew inexorably from the late nineteenth century, the task of law reform naturally became a more difficult and complex undertaking. A permanent body of lawyers and selected laymen, independent of government, developing its own thoughtful and wide-ranging programme of reform, and empowered to appoint specialists with resources and time to research particular areas and to consult interested parties, came to be regarded as essential to effective and timely law reform.[2]

The history of many law reform agencies in various jurisdictions indicates that this conception of law reform was the ideal: in reality, the process was less perfect and more problematic.[3]

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1 W H Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (Juriliber, 1986) pp 436-50.

2 Ibid, passim.

3 Ibid. Other works that provide insight into the process of law reform are L Friedman, 'Law Reform in Historical Perspective' 13 *Saint Louis Uni LJ* 351-72 (1969); A Mason, 'Law Reform in Australia' (1971) 4 *Fed L Rev* 197-217; M Kerr, 'Law Reform in Changing Times' (1980) 96 *LQR* 515-33; P North, 'Law Reform: Processes and Problems' (1985) 101 *LQR*, 338-58; S Cretney, 'The Politics of Law Reform - A View from the

Law reform agencies were not always permanent. They could be disbanded or allowed to lapse into irrelevancy by governments. Lawyers usually dominated the membership; lay members were comparatively rare.[4] Thus the values that informed a law reform agency's investigations might be much different from the public's. What passed for law reform had relevance to lawyers but few others.[5] Public indifference to the cause of law reform was therefore the rule rather than the exception. Some groups in society have doubted the worth of law reform. While benefiting from some law reforms, feminists have decried 'the failure of law to transform the quality of women's lives'.[6] Others have labelled the law reform process a failure for not seeking 'a fundamental redistribution of economic or political power' but merely repairing a 'defective' system.[7]

Very often law reform agencies have not been able to initiate their own research programmes. Governments have chosen projects that suit their political inclinations, while stifling controversial yet necessary investigations. Usually governments have confined law reform agencies to the study of technical law or lawyers' law, leaving no scope for areas of law involving social policy. This division of law reform projects is of course misconceived because, as Lord Scarman has observed, 'to identify an issue of law reform so technical that it raises no social, political or economic issue' is very difficult indeed.[8]

Starving an agency of finances and thus the ability to appoint specialists was a common practice and often meant that projects had to be investigated by part-time members with no time for public consultation. As the implementation of law reforms depended on government support, law reform agencies tended to investigate politically safe areas.[9] Winning over Attorneys-General was crucial in securing government support.[10] Involving the representatives of

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Inside' (1985) 48 *Modern L Rev* 493-517; and D Oulton, 'Law Reform: Obstacles and Opportunities' (1988) 7 *Civil Justice Q* 32-43.

4 P North, 'Is Law Reform Too Important to be Left to Lawyers?' (1985) 5 *Legal Stud* 129-31.

5 Friedman, note 3 above, at 351.

6 C Smart, *Feminism and the Power of Law* (Routledge, 1989) pp 5, 160.

7 Hurlburt, note 1 above, at p 264.

8 L Scarman, *Law Reform : The New Pattern* (Routledge and Kegan Paul, 1968) p 28.

9 North, note 3 above, at 347.

10 M D Kirby, 'The Politics of Achieving Law Reform' (1988) 11 *Adel L Rev* 322.

the departments responsible for implementing law reform was politic, because to evoke their resentment and jealousy might thwart reform.[11]

Many of these themes will recur in this article, which traces the vicissitudes of law reform in Tasmania between 1941 and 1969. In 1941 the first law reform body was established and was called the Tasmanian Law Reform Committee. This committee was a part-time body and led a tenuous existence, at times disappearing from sight, then suddenly reappearing usually at the behest of strategically placed individuals. But the committee did draw attention to a range of law reforms and its deliberations deserve to be documented. One caveat should be registered, however. Relatively few of the reports and records of meetings of the Committee have survived and so this article at best can be only a partial reconstruction.[12] Moreover, few of the leading participants have left memoirs that might have revealed something about the inner workings of, and tensions within, the committee or have provided mature reflections on the Committee's achievements. The only member of the Committee to have written about his legal career was Robert Wilfred Baker.[13] Disappointingly reticent about many important matters, Baker did not mention his involvement with the Committee. But the fact remains that the Committee was established and that law reform was on the agenda in Tasmania between 1941 and 1969, albeit in a low-key way.

Background

Attempts at law reform were not unknown in Tasmanian history. For the nineteenth century, three examples will suffice. Pressure from the public and the legal profession saw the introduction of the Torrens system of registering titles to land in 1862.[14] When Andrew Inglis Clark became Attorney-General in the Fysh Ministry (1887-1892), he 'initiated' 150 bills and thus sponsored law reform in its widest sense.[15] In 1888 the Southern Law Society was formed partly

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11 Id, at 324; Cretney, note 3 above, at 509-10.

12 The main sources for this article include the files of the Attorney-General, the Solicitor-General and the Parliamentary Draftsman held by the Archives Office of Tasmania and a file held in the Tasmanian Supreme Court Library.

13 R W Baker, *Tasmania Now and Again* (Baker, 1983).

14 S Petrow, 'Knocking Down the House? The Introduction of the Torrens System to Tasmania' (1992) 11 *U Tas L Rev* 167-81.

15 L Robson, *A History of Tasmania:Volume II* (OUP, 1991) p 135; H Reynolds, 'Andrew Inglis Clark (1848-1907)' *Australian Dictionary of Biography* (Melb UP, 1969) Vol 3, pp 399-401.

'to promote reform in the law and practice'.[16] A sub-committee was formed to watch 'the course of legislation' and to suggest amendments in the law. The Government sent 'all drafts of bills' to the Law Society, which presented its views to the Attorney-General. Often its improvements were adopted and 'in some instances' bills were redrafted. The Northern Law Society, also formed in 1888, fulfilled a similar function. In the early twentieth century Justice Norman Kirkwood Ewing and fiery women secured the enactment of the *Criminal Code Act* 1924.[17]

These examples indicate that, as with the other Australian States, the impetus for law reform came from diverse groups - the legal profession, the public, the judiciary, and the government, especially committed Attorneys-General.[18] Interest in creating a law reform body did not manifest itself in Tasmania until the late 1930s, after the appointment of the English Law Revision Committee in 1934 and the New Zealand Law Revision Committee in August 1937.[19] The issue was first raised in November 1937 by George Leo Doyle, who represented Franklin in the House of Assembly and lectured part-time in law at the University of Tasmania. Doyle asked the Attorney-General, E J Ogilvie, whether the interim reports of the English Law Revision Committee had been brought to the attention of the Parliamentary Draftsman or the Crown Law Department and whether Ogilvie would consider appointing a Tasmanian committee 'to consider the possible introduction ... of the reforms recommended in Great Britain'.[20] Ogilvie undertook to obtain copies of the reports and to consider appointing a local committee after the Parliamentary Draftsman, J R Rule, had examined 'the results of the work' of the English Committee. Nothing emerged from Rule's investigations but English developments did influence future law reform initiatives in Tasmania.

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16 *The Cyclopedia of Tasmania* (Maitland and Krone, 1900) Vol 1, p 295.

17 S Petrow, 'The Furies of Hobart : Women and the Tasmanian Criminal Law in the Early Twentieth Century', *Australian Journal of Law and Society* (forthcoming).

18 For the history of law reform in Australia, see J M Bennett, 'Historical Trends in Australian Law Reform' (1969-70) 9 *West Aust L Rev* 211-241; and A C Castles, 'The New Principle of Law Reform in Australia' (1977) 4 *Dalhousie L J* 3-30.

19 Hurlburt, note 1 above, at p 36; Report by R G Osborne on Law Reform prepared for the Tasmanian Law Reform Committee, 30 June 1946, p 20.

20 *Journals and Printed Papers of Parliament*, vol 116, 16 November 1937, 111 (House of Assembly).

The Law Reform Committee

The impact of the Second World War on Tasmania has not yet been studied in detail but war did make citizens more willing to question traditional views and more receptive to change.[21] Law reform benefited from these changed attitudes. In June 1941 the Northern Law Society wrote to its southern counterpart suggesting that 'a committee be formed to consider and report on Law Reforms within the State'.[22] The Council of the Southern Law Society did not support the proposal as it 'incline[d] to the view that such a committee [was] not likely to be very useful'. This did not kill the issue. In August 1941 Tasman Shields, President of the Northern Law Society, canvassed the idea of appointing a Tasmanian Law Reform Committee with the new Attorney-General, James McDonald.[23] McDonald told Shields 'Certain anomalies in our laws have come to my notice' that should be 'remedied' and that he wanted 'to keep abreast of reforms in English Practice'.[24] The Cosgrove Government had won the 1941 election by a huge margin and was inclined to innovation.[25] McDonald decided to appoint a body similar to the English Law Revision Committee. He did not intend to give the committee 'statutory authority' but would 'submit the constitution of the Committee to the Governor-in-Council, in order to give it some status'.[26]

In a memorandum to Premier Robert Cosgrove, McDonald explained the functions of the committee. It will 'make recommendations, not as to policy of law but as to anomalies in existing law, which in some instances create inconsistencies, but more often fail to achieve the intention of the law'; and to keep informed of the work of the Law Revision Committee, on which it would be based.[27] The Tasmanian committee would eschew controversy. It was 'not concerned with legal measures required for political, economic, or social reform, but rather with the reform of the technical rules of law and their revision in the light of modern conditions'.[28] As the committee would investigate lawyers' law,

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21 Robson, note 15 above, part IX.

22 Minutes of the Council of the Southern Law Society, 27 June 1941.

23 Archives Office of Tasmania (AOT) Attorney-General's Department (AGD) 1/206/66/14, Shields to McDonald, 19 August 1941.

24 Ibid, McDonald to Presidents of Northern and Southern Law Societies, 2 September 1941.

25 R Davis, *Eighty* Years' *Labor 1903-1983* (Sassafras Books, 1983) p 39.

26 AOTAGD 1/206/66/14, McDonald to Baker, 24 September 1941.

27 Ibid, McDonald to Premier, 13 November 1941.

28 Osborne, note 19 above, at p 2.

lawyers naturally dominated the membership. McDonald initially proposed to nominate a Judge of the Supreme Court and two representatives each from the Northern and Southern Law Societies.[29] Both Law Societies supported McDonald's proposal. McDonald acceded to the suggestion by the Southern Law Society that the Faculty of Law at the University of Tasmania be asked to nominate a representative.[30] McDonald intended to join the committee and to convene the inaugural meeting but 'thereafter the Committee will regulate its own procedure'. The committee was expected to meet at least six times each year.[31]

In addition to McDonald, the first members of the committee were the Chief Justice, John D Morris, as Chairman; Tas Shields and Dr F R Tyson representing the Northern Law Society; Stanley Burbury and Roy Fagan representing the Southern Law Society; and Oliver Dixon representing the Faculty of Law in the absence of Professor Kenneth Owen Shatwell, who was on war duty. The members had impressive credentials. The 'very articulate' Morris was known for his 'strength of character', 'dominant personality', 'keen intellect', and 'forensic skill'.[32] Despite being a strong personality, the evidence does not indicate that Morris dominated proceedings. Tasmanian lawyers were proud of the 'independence' of their profession and apparently felt no inhibitions in criticising Morris.[33] Shields, admitted to the Bar in 1894, had wide legal experience.[34] Tyson displayed his research potential by completing a LLD in 1935.[35] Burbury graduated in 1932 and was the acting Dean of Law in the early 1940s when he began to assume a leading role in the legal profession.[36] He became Solicitor-General in 1952 and Chief Justice in 1956. Fagan, who graduated in 1934, was also a part-time lecturer in law and a respected practitioner.[37] He became Attorney-

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29 AOTAGD 1/206/66/14, McDonald to Presidents of Northern and Southern Law Societies, 2 September 1941.

30 Ibid, H S Baker to McDonald, 18 September 1941, McDonald to Baker, 24 September 1941.

31 AOT Supreme Court (SC) 514/1, 'Suggestions for the Consideration of the Law Reform Committee', undated handwritten notes.

32 Baker, note 13 above, at p 73.

33 AOT Royal Commission (RC) 33/1/33, p 1440.

34 S and B Bennett, *Biographical Register of the Tasmanian Parliament 1851-1960* (ANUP, 1980) p 148.

35 R Davis, *100 Years : A Centenary History of the Faculty of Law, University of Tasmania 1893-1993* (University of Tasmania Law School, 1993) p 30.

36 Id at 33; W A Townsley, *Tasmania : Microcosm of the Federation or Vassal State 1945-1983* (St David's Park Publishing, 1994) p 11.

37 Davis, note 35 above, at p 33.

General in 1946, holding that office until 1969, except for a break between July 1958 and May 1959. Fagan was relatively 'conservative in many of his attitudes' but had 'progressive views on questions like penology'.[38] Dixon, who later became Ombudsman in Western Australia, was chiefly interested in making 'the law coincide with justice' and hoped the committee would 'accomplish work of practical value to the community as a whole'.[39] In 1942 two new members, Solicitor-General R N K Beedham and Parliamentary Draftsman Rule, representing key departmental interests, were added to the Committee.[40] McDonald described the Committee as 'a representative body, composed of legal men' advising the government on 'reforms of the law'.[41] Importantly, 'any layman' could 'place recommendations before the Committee'.[42] Laymen were required to explain in writing why their proposed reforms were 'considered necessary'. But no evidence of lay representations to the Committee has survived, a strong indication that no such representations were made or even encouraged.

The first four years of the Committee's existence were remarkably productive. Twelve proposals were enacted. These included amendments to the *Criminal Code Act* 1924, the *Administration and Probate Act* 1935, the *Jury Act* 1899, the *Landlord and Tenant Act* 1935, the *Fatal Accidents Act* 1934, the *Local Courts Act* 1896, the *Traffic Act* 1925, and two amendments to the *Evidence Act* 1910.[43] Not all proposals can be categorised as lawyers' law. A number involved social and economic issues. Take, for example, the amendment suggested by Morris to the *Infants' Welfare Act* 1935.[44] It considered the case of a mother 'driven out' of her home, leaving her children in the care of her husband. Perhaps her husband could not control their daughter, who 'becomes disobedient and wants to go her own way'. The father, without being legally required to tell his wife, might apply to the Children's Court to commit his allegedly uncontrollable daughter to an institution. The daughter, however, might not be uncontrollable if under her mother's care. The Law

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38 Davis, note 25 above, at pp 47-8.

39 Davis, note 35 above, at p 33; AOTAGD 1/206/66/14, Dixon to McDonald, 26 September 1941, and 1/238/37/2, Dixon to McDonald, 7 May 1945.

40 *Tasmanian Government Gazette*, 30 September 1942, p 3106.

41 AOTAGD 1/229/37/5, McDonald to President, Southern Law Society, 25 July 1944.

42 Osborne, note 19 above, at p 2.

43 Id at 3-7; AOTSC 514/1, 'Suggestions'.

44 Ibid; AOTAGD 1/212/37/1, McDonald to Chief Secretary, 25 May 1942.

Reform Committee's amendment enabled the court not to commit the child to an institution if 'satisfied that the other spouse is able and willing to control the child and that such control would not be harmful to the welfare of the child'. The Committee's amendment to the *Employers' Liability Act* 1895 abolished, on Burbury's suggestion, the defence of common employment, which had 'greatly diminished the liability of the employer to the employee for injury caused to him in the course of employment'.[45] Burbury realised that abolishing this defence would 'mean a wide extension of the employer's liability' and that the employer would cover this liability by more insurance but these were 'political and economic problems rather than legal problems'. A third example was Fagan's *Hire Purchase Act* 1943, based on the New South Wales *Hire Purchase Agreements Act* 1941.[46] Hire purchase agreements caused concern because they were 'often drawn in the interests of the vendor only and contained provisions so stringent as to be inequitable'. The agreements were 'frequently so long and [written] in such small print that very few purchasers read' them before signing. These three examples show clearly that the distinction between lawyers' law and social issues was very difficult to draw in the work of the Tasmanian Law Reform Committee.

Another twelve proposals by the Law Reform Committee were either not adopted by the government or were still under consideration by June 1946. These included amendments to the *Gaming Act* 1935, the *Police Offences Act* 1935, the *Jury Act* 1896, the *Criminal Code Act* 1924, the *Evidence Act* 1910, and the *Local Courts Act* 1896 and real property statutes.[47] Another proposal aimed 'to prevent the avoidance of superannuation schemes as infringing the rule against perpetuities'.

It is unclear why some proposals were enacted and others were not. Sometimes the Committee itself rejected a proposal such as establishing Courts of Conciliation to attempt a reconciliation before parties came to the Divorce Court.[48] An amendment to the *Matrimonial Causes Act* 1860, which proposed a rigid definition of the word 'collusion', was withdrawn due to 'adverse criticism' by the Leader of the Opposition, Henry Baker, and Solicitor-General Beedham, then not a member of the Committee.[49] Beedham felt that

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45 Osborne, note 19 above, at p 5; AOT SC 514/1, memorandum on the defence of common employment by SC Burbury.

46 Osborne, note 19 above, at p 6.

47 Id at pp 7-9.

48 Id at p 9.

49 AOT SC 514/1, Minutes of meeting of the LRC, 5 November 1942, Baker to McDonald, 13 October 1942, Beedham to McDonald, 4 August 1942.

Parliament should not 'impede the development of the law on this question by the Courts', which should 'adapt its conception of collusion to the changing views and moral standards of the community'. The 'variety of collusive acts' were 'practically infinite and incapable of inclusion within a fixed form of words'. Soon after giving this opinion, Beedham was appointed to the Committee, perhaps more for his expertise than to neutralise a possible opponent.

Why some sensible proposals were not speedily enacted is puzzling. E Mulvhill Johnson and 'other members of the Bar' suggested a straightforward amendment to the *Maintenance Act* 1921.[50] In 1942 the Police Magistrate of Hobart, discarding established practice, held that 'an Order Absolute in divorce prevents a wife from continuing to collect maintenance in the Lower Courts, and her only remedy is the Supreme Court'. This, Johnson predicted, will cause 'great hardship ... to those wives who are in poor circumstances' because the Supreme Court procedure was 'cumbersome and comparatively costly'. Another puzzling example was the amendment to the *Workers Compensation Act* 1927.[51] It repealed section 10 and enacted a new section enabling a worker injured at work to obtain compensation from his employer and also to recover damages from the person who injured him. The employer would be 'entitled to receive out of the damages the amount he has paid for compensation under the Act'. Leading solicitors had described the existing position as 'seriously anomalous'. The amendment would have avoided the possibility of 'two sets of compensation' being paid for one accident and would prevent the employer being 'mulcted in payment for which another is responsible'. Presumably the Cosgrove Labor government was cautious in supporting legislation that benefited employers more than employees.

Reliance on English law and knowledge of English Law Revision Committee reports was apparent throughout the proceedings of the Tasmanian Law Reform Committee. For example, in April 1943 Shields proposed that the *Matrimonial Causes Act* 1860 and its amendments be repealed and be replaced by English legislation of 1937, provided that 'the grounds for divorce be the same as at present in the Tasmanian Act'.[52] This would ensure that the Tasmanian procedure 'would be the same as in England and that the profession and the Courts would have the benefit and advantage

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50 Id, Mulvhill Johnson to McDonald, 1 October 1942.

51 AOTAGD 1/212/37/1, McDonald to Chief Secretary, 25 May 1942.

52 AOTSC 514/1, Shields to Secretary of LRC, 22 April 1943.

of the English decisions'. This was a sensible approach for a small State to take, although it invited the interpretation that local lawyers lacked initiative and imagination and were conservative in their attitudes to law reform.

Although the Committee had made a useful contribution, it was limited by its part-time membership. In June 1944 the committee recommended the full-time appointment of 'a highly qualified lawyer' to conduct research on its behalf.[53] McDonald seems to have disagreed with this recommendation perhaps on grounds of expense but the Committee persisted. In May 1945 the Chief Parliamentary Draftsman, R G Osborne (who had succeeded Rule in 1943), thought that the legal profession - perhaps intoxicated with post-war euphoria - 'now (to some extent at any rate)' appreciated the need for the reform of 'lawyers' law' but with 'no general agreement as to the measures of reform actually required'.[54] Osborne believed the Committee could enlarge its usefulness if 'assisted by a specialist on the question under review (who would, if a practitioner, be retained as counsel and paid an appropriate fee)' and if a recent law graduate was 'attached temporarily' to the committee as needed.[55] Osborne argued that it would be 'impracticable' for the Law Reform Committee 'to prepare satisfactorily a comprehensive law reform measure without assistance of this kind'.

In July 1945 McDonald agreed to review 'the general question of law reform'.[56] Osborne volunteered to report on what had been achieved by the Law Reform Committee and to suggest directions that future work might take. He secured the part-time services of a recent law graduate, Norma Levis, who had 'recently completed a brilliant law course', winning the Walker prize for the best graduating student.[57] In 1945 Levis lectured part-time in torts at the Law Faculty and was articled to the law firm Ogilvie McKenna, who allowed her to spend three or four afternoons a week on law reform research.[58] Although initially expecting to submit the report in six months, Osborne did not complete it until 30 June 1946, despite 'the valuable services' rendered by Levis.[59]

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53 AOTAGD 1/256/37/2, Osborne to McDonald, 1 July 1946.

54 AOTAB 361/38, Osborne to McDonald, 8 May 1945.

55 AOTAGD 1/256/37/2, Osborne to McDonald, 1 July 1946.

56 Id, 1/238/37/3, Osborne to McDonald, 10 July 1945.

57 Ibid; Davis, note 35 above, at p 37.

58 AOTAGD 1/238/37/3, Osborne to McDonald, 18 July 1945.

59 Id, 1/256/37/2, Osborne to McDonald, 1 July 1946.

In his report Osborne summarised the Tasmanian Law Reform Committee's proposals since 1942 and law reform developments in Britain, the other Australian States and New Zealand, and America.[60] Although most heavily influenced by the English Law Revision Committee, interesting developments in other jurisdictions were acknowledged. The report favourably quoted the view of the New Zealand Attorney-General that 'the general law - that which affects or may affect all citizens whatever their occupations or interests' should occupy most of the time of the New Zealand Law Revision Committee.[61] They should thus remove, continued the New Zealand Attorney-General, 'anomalies that cause loss, hardship, or inconvenience to some people without any justification in reason for their continuance'. This kind of reform aimed to create 'honest dealing between man and man', and, where loss or injury occurred, appropriate compensation should be paid upon 'rational principles that commend themselves to the common sense of well informed men and women'. The Tasmanian Attorney-General or any other member of the committee did not express similar philosophical ideals in any written documents that have survived. What captured Osborne's attention was that the American movement for law reform had become 'a significant part of the work of law schools', which stimulated 'interest in legal research in areas previously ignored' and was 'closely related to the developments in legal theory and legal education'.[62] Recent research has demonstrated that until the 1960s the Tasmanian Law Faculty staff was small and pre-dominantly part-time, with very inadequate library facilities.[63] Staff time for research was limited and publications were exiguous.

Osborne drew various conclusions from his survey of 'modern trends' in law reform.[64] One was that all the jurisdictions examined faced 'essentially' the same 'difficulties' in reforming the law: 'an indifferent legislature, an apathetic public opinion, and a conservative (and even hostile) legal profession'. Osborne particularly regretted the 'lack of interest' of lawyers. While accepting the suitability of law reform by a body 'representative of the judiciary and the legal profession', too much depended on the 'competence and enthusiasm' of its members and on the availability of 'skilled professional and research assistance'.

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60 Osborne, note 19 above, at pp 3-28.

61 Id at pp 21-2.

62 Id at p 28.

63 Davis, note 35 above, chs 3 and 4.

64 Osborne, note 19 above, at pp 28-32.

As for the Tasmanian Law Reform Committee, Osborne - damning with faint praise - concluded that it was 'at least established on a sound basis' and it had 'adopted methods accepted as effective and (it would seem) inevitable'.[65] The 'scope' of its work was 'similar to that of other law reform agencies' and 'the speed at which measures of law reform have been instituted does not fall below that of other jurisdictions'. For all the law reform agencies he surveyed, Osborne noted the 'uniformity' in the selection of law reform areas and 'in the nature of the particular reforms'. While 'a large body of material' remained to be considered, Osborne opined that the Tasmanian Law Reform Committee should concentrate on the issues raised by its English counterpart. Osborne cautioned that

> it was perhaps desirable to suggest that any programme of law reform in this State should be conservative in nature and in scope, and that it would be undesirable to attempt in this State extensive experiments in law reform, or to make, in the guise of law reform, sweeping alterations to the general body of English law which is shared with the other States of Australia and the rest of the British Commonwealth. It is ... essential that the general law of this State should, as far as possible, be uniform with other States and Great Britain. This means in practice that 'law reform' in this State should proceed at about the same pace as in Great Britain and other States.[66]

This approach would provide 'plenty of scope for useful work' and would allow 'some revision of legislation needed because of special local conditions'.[67] In a nutshell Osborne described the limited conception of law reform that predominated until at least 1969. But he did push the boundary a little further by highlighting three areas for 'special consideration' : (1) legal procedure and especially 'making the procedure in civil actions cheaper and speedier'; (2) criminal law and procedure, which included procedure in Justices' and Magistrates' courts, and 'the penal system'; and (3) legal aid to poor or 'assisted persons'.[68] These issues involved important 'administrative and social questions' and, as they were inextricably related to 'the special local circumstances' of Tasmania, necessitated a 'different approach' from other areas of law reform.

Osborne repeated his argument that future work by the Committee heavily depended on providing 'specialist and research assistance'.[69] Large projects of law reform involved 'considerable

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65 Id at p 29.

66 Id at pp 29-30.

67 Id at p 30.

68 Ibid.

69 Id at p 31.

research into the existing rules of law' in Tasmania and elsewhere, into 'the deficiencies in those rules', and into the proposals for reform in common law countries. The Tasmanian Law Reform Committee did 'useful work' of 'considerable value' by choosing 'relatively simple' matters that 'did not cover a very wide field'. The members thus offered advice and prepared legislation without extra assistance. But this could not continue in the future 'as the matters likely to be considered will be difficult and extensive in scope'. Osborne mapped out possible ways of 'considering and ultimately putting into legislative form, for submission to the Government, measures of law reform'.[70] First, the Committee should formulate 'a general policy' of law reform; that is, it should 'select broadly the matters to be dealt with and the manner in which they are to be dealt with'. Second, once the projects were settled on, the Committee should 'consider detailed legislative provisions'. This entailed the assistance of 'a specialist in the particular field', like a Judge or the Recorder of Titles or 'an experienced' barrister or solicitor (who might be a member of the Committee) to advise the Committee and to help draft the legislation. Also necessary was a 'top flight graduate', who would 'collect and collate' legislation from other jurisdictions, 'review and summarise' judgments and articles, and abridge the reports of committees or royal commissions. After the research had been completed and assessed, a member of the Parliamentary Draftsman's office should draft a bill in conjunction with the Committee and its legal adviser.

Osborne's judicious report recognised that law reform - as with reform of any kind - should proceed slowly in Tasmania. It embodied well-grounded proposals to guide future activities. The report's completion was timely. McDonald was replaced as Labor Attorney-General in December 1946 by Roy Fagan, a member of the Law Reform Committee. This change should have been a great boon for law reform, for Fagan was regarded as 'at least a reformer if indeed he wasn't something of a radical'.[71] As the only Labor politician with legal training, Fagan's views also commanded respect.[72] Osborne's report was a turning-point: Fagan seemed to be the right man to make the most of its recommendations.

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70 Id at pp 31-2.

71 R A Ferrall, *Notable Tasmanians* (Foot & Playstead, 1980) p 156.

72 Very few lawyers entered Parliament between 1941 and 1960. Apart from Fagan, they were H S Baker 1941-46, 1948-68; J H Dixon 1955-61; C J Eady 1941-45; R K Green 1946-50; W C Hodgman 1955-64; M F Miller 1955-64; and R C Wright 1946-49: see Bennett, *Biographical Register*, 8, 45, 52, 72, 84, 117, 172.

At the urging of the Northern Law Society, Osborne's report was considered at a meeting of the Committee on 19 June 1947.[73] Members decided to investigate the English Law Revision Committee's proposals that had not yet been adopted in Tasmania. They agreed that 'the most urgent' English measure was contributory negligence, on which a specialist, Professor Shatwell, was asked to write 'a memorandum'. Future employment of 'experts' and graduates to investigate other matters depended on government funding. The Committee was keen to report on the three areas of local significance as identified by Osborne and sought Fagan's authority to appoint suitable individuals and graduate research assistants. Law reform had some support within Fagan's party. At the Labor Party annual conference a resolution was moved that 'law reform in Tasmania be accelerated by the provision of permanent staff'.[74]

It is unclear whether Fagan accepted the Committee's recommendations, although he favoured a report on the English Committee's proposals on limitation of actions.[75] Shatwell, a law reform enthusiast, apparently completed his work on contributory negligence.[76] But in 1947 he left Tasmania to become Dean of Law at the University of Sydney.[77] A more crucial blow to the cause of law reform was the departure of a disillusioned Osborne to become Registrar at the Australian National University, also in 1947. Osborne's successor as Parliamentary Draftsman, R A Lewis, was not an activist for law reform and made no impression in the documents of the period. In November 1948, Shatwell's young successor, Professor R W Baker, tried to revive interest by sending to the Southern Law Society a resolution passed by the recent conference of the Australian Law Teachers Association encouraging law reform.[78] No response was recorded and from 1949 the historical record begins to desert us. We do not know for certain whether the committee disbanded, met irregularly, or continued to meet but without producing any reports. In November 1951 evidence surfaced to

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73 AOTAGD 1/264/37/1, Secretary, Northern Law Society to Fagan, 30 January 1947 and 1/264/37/3, Secretary LRC to Fagan, 23 June 1947.

74 Ibid.

75 Id, 1/264/37/9, Fagan to Premier, 27 August 1947.

76 AOT Solicitor-General's Department (SGD) 1/202//30, Fagan to Solicitor-General, 3 June 1952.

77 Davis, note 35 above, at p 38; for Shatwell's attitudes to law reform see K O Shatwell, 'Some Reflections on the Problems of Law Reform' (1957) 31 *ALJ* 325-42.

78 Minutes of the Council of the Southern Law Society, 17 November 1948.

indicate that the Committee still existed. Professor Baker wrote to Attorney-General Fagan with 'a list of topics which I consider to require investigation by the Law Reform Committee'.[79] Baker's suggestions for law reform can be categorised under broad topics: torts (in particular defamation), real property, contracts (especially consideration), and matrimonial causes, all areas that had been reformed in the other Australian States or in England. Baker suggested that investigations on many of these topics could be conducted by staff at the Law Faculty, whose reputation inside and outside the university he wanted to enhance. Fagan seems to have told Baker 'to proceed' and he would tell the Law Reform Committee later.[80] Although recognising the necessity for law reform, perhaps Fagan felt disinclined to work with a committee and preferred to decide areas of reform for himself.

By July 1952 Baker had sent Fagan a 'supplementary' memorandum on contributory negligence to update Shatwell's 'very comprehensive and thoughtful report'.[81] Between 1953 and 1956 a number of areas were suggested and sometimes memoranda (they were not really reports) were written. Baker prepared memoranda on various aspects of reforming the defamation laws.[82] Other suggestions were sent to Fagan by the Treasury (public accounts), Justice Ken Green (charity, guardianship and custody of infants, property law, the *Criminal Code*, and the *Testators Family Maintenance Act*), the Bar Council (the non-feasance principle and road authorities and the *Testators Family Maintenance Act*), the Assistant Parliamentary Draftsman (severing certain criminal jurisdictions of inferior courts, and unpaid land tax), the Northern Law Society (*Testators Family Maintenance Act*, succession, and probate), and the Southern Law Society (abolishing the rule in *Shelley's* case, the *Evidence Act*, and the *Conveyancing and Law of Property Act*).[83]

Perhaps the most active individual in suggesting law reforms was Stanley Burbury who was appointed Solicitor-General in 1952. His areas of interest included matrimonial causes legislation, culpable negligence in relation to reckless driving, the *Legal Assistance Act*, limitation of actions, the *Criminal Code*, the *Justice's Procedure Act* 1919, the *Police Offences Act* 1935, the *Prison Act* 1908, and the *Infants'*

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79 AOTAGD 1/304/37/13, Baker to Fagan, 29 November 1951; Davis, note 35 above, at pp 39-40.

80 Id, handwritten notes by Fagan, 12 December 1951.

81 Id, 1/318/37/4, Baker to Fagan, 1 July 1952.

82 Id, 1/339/37/6.

83 AOTSGD 1/277/9/72; Minutes of the Council of the Northern Law Society, 24 May 1956.

Welfare Act 1935.[84] Burbury drew much inspiration from English developments. His attitude was that, unless local conditions were pre-eminent, it was 'desirable that Tasmanian law should be kept in conformity with English law upon general principles'.[85] This gave Tasmanian law 'the advantage of uniformity and of the judicial interpretation in England of the English Statute'.

It seems that the Law Reform Committee was not used much between 1952 and 1960. Indeed, in September 1956 the Secretary of the Southern Law Society was moved to ask Fagan if the Committee was 'still technically in operation'.[86] Although the details are blurred, it seems that Burbury and Fagan decided matters between themselves and Burbury's successor as Solicitor-General, D M Chambers, also enjoyed a close working relationship with Fagan.

Another protagonist for law reform, Professor Baker, was preoccupied with other matters. He travelled to America on a Carnegie Travel Award in 1954 and thereafter fought hard within the University to build up his Law Faculty, finally resigning in frustration in 1959 to begin a new career as a legal practitioner.[87]

It is unlikely, moreover, that Fagan was able to devote much attention to law reform in the 1950s for party political reasons. The Cosgrove Labor Government was afflicted with difficulties that diverted Fagan from giving prominence to issues lacking wide public appeal: clinging to office was paramount and Fagan played an indispensable role.[88] In any case the lay Cabinet members found the technical nature of some of the proposed reforms beyond their comprehension and were indifferent to the future of the Committee.[89] The Law Reform Committee was probably allowed to

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84 Id, Burbury to Fagan, 29 June 1953, 17 July 1956 and 1/234/9/1A.

85 Ibid; another established lawyer H S Baker agreed with this approach and deplored the fact that two members of the Law Faculty - R W Baker and R P Roulston - spent their study leave in America and not England, AOT RC 33/1/33, 1442-3.

86 AOTAGD 1/362/37/14, Lovibond to Fagan, 13 September 1956.

87 Davis, note 35 above, at pp 50-56.

88 Davis, note 25 above, at pp 48-58; according to one account, Premier Cosgrove had curbed Fagan's reformist inclinations because of the conservative nature of the Tasmanian electorate: see Ferrall, note 71 above, at p 156.

89 Fagan once told Burbury that the Joint Tortfeasors and Contributory Negligence Bill 'caused great amusement in Cabinet because no one knew what it meant', letter to the author from Sir Stanley Burbury, 5 June 1994.

lapse around 1956, without arousing public or parliamentary comment.

Criminal Law Reform Committee

Interest in law reform was revived in 1960 by Stanley Burbury, who had been Chief Justice since 28 August 1956. Burbury had felt for some time that the *Criminal Code* needed revision and advocated uniformity with other States over 'basic' questions of criminal law.[90] In July 1960 Burbury told Fagan that 'the time may be opportune to set up a small ad hoc Law Reform Committee' to consider amendments to the *Criminal Code*.[91] Members should be the Solicitor-General, two representatives of the judiciary, and two representatives of the Bar, with the Attorney-General being an ex officio member. Apparently the new Criminal Law Reform Committee - presumably modelled on the English Home Secretary's Criminal Law Revision Committee established in 1959 - did not meet until April 1962.[92] Burbury was Chairman. The other members were Justice Crisp, Solicitor-General Chambers, Fagan, R W Baker and H E Cosgrove. Later, N C H Dunbar, Professor of Law at the University of Tasmania, and E G Butler became members.[93]

For the first meeting, Burbury proposed eleven amendments to the *Criminal Code*, one dating back to 1948; the others dated from 1958 and had been suggested by Supreme Court Judges, Chambers, or Fagan.[94] Burbury pointed out that in recent years sections of the *Code* which expressed 'general principles of liability' created 'great difficulties', citing *R v Vallance* and *R v Hitchens* as evidence.[95] Similar sections in the Queensland and Western Australian codes contained 'important variations in drafting' with the consequence that High Court decisions on one code were 'not necessarily applicable' to other codes.[96] Burbury referred to 'a number of

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90 *Zsebe Takacs v R* [1960] Tasmanian Supreme Court, Unreported Judgments Series A, no 51.

91 Tasmanian Supreme Court Library (TSCL), Law Reform File, Burbury to Fagan, 25 July 1960.

92 AOTSGD 1/411/27/166, Secretary LRC to Solicitor-General, 19 April 1962; F Sellers, 'The First Ten Years of the Criminal Law Revision Committee' [1969] *Crim L Rev* 223-34, 302-312.

93 AOTAGD 1/434/11/4, Minutes of the meeting of the Criminal Law Reform Committee (CLRC), 30 May 1962.

94 AOTSGD 1/411/27/166, memorandum by Chief Justice prepared for the first meeting of the CLRC.

95 *R v Hitchens* [1959] Tas SR 209 and *R v Vallance* [1960] Tas SR 51.

96 AOTSGD 1/411/27/166, memorandum by Chief Justice.

instances' under the Tasmanian code where the draftsman had 'not kept as closely' to Stephen's 1879 draft code as in Queensland and Western Australia. A small sub-committee was proposed to consider this issue.

Another issue raised by Burbury was the variations between the existing English law and the laws of some Australian States on 'fundamental matters', such as constructive murder and the defence of insanity.[97] Burbury was now less convinced that the criminal law of the Australian States 'should keep as closely to English law as has been traditional'. But a 'strong' case he believed could be made for 'uniformity between the States'. A sub-committee should consider the most important State variations. Recent amendments to the New Zealand *Criminal Code* would also repay careful study. Burbury suggested seeking the assistance of the Faculty of Law. In the event, no one with 'practical experience' of the Tasmanian *Criminal Code* was on the staff but the Law Faculty was asked to prepare a paper on committal proceedings in Scottish, American, and Continental systems.[98] Members of the Committee were asked to report on particular aspects of the criminal law.

Burbury endeavoured to seek support for his ideas on uniformity for 'basic legal rules' at a Chief Justices' conference in 1962.[99] Burbury believed that judges should contribute more to the reform of 'lawyers' law' - law of a 'non-controversial' kind - by 'pooling ... the views of Judges from all the States' and making recommendations to a conference of State Attorneys-General. He also wanted to adopt 'at least some of the basic law reforms instituted in England after full consideration by the Lord Chancellor's Law Revision Committees'. To become more involved in law reform, Burbury suggested that judges 'needed something in the nature of a Secretariat with research facilities'. A 'good research graduate' would fit the bill by collecting material on specified topics and staying informed of law reform developments in other jurisdictions.

The Chief Justices of Queensland and Western Australia were receptive to Burbury's proposals.[100] They agreed to expedite research into the criminal codes by appointing 'an academic lawyer of the status of senior lecturer'. Three academics were mentioned:

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97 Ibid.

98 Ibid.

99 TSCL, Law Reform file, memorandum by Burbury for consideration at the Chief Justices' Conference, 22 May 1962, Minutes of meeting of CLRC, 27 July 1962.

100 AOTAGD 1/434/11/4, Burbury to Fagan, 9 July 1962.

Professor Norval Morris and Colin Howard of Adelaide University and Professor Geoffrey Sawer of the Australian National University. The aim would be to overhaul the three criminal codes and to establish a uniform code for the three States so that their judicial decisions might prove to be more mutually useful. Burbury and his colleagues described their codes as being 'out of touch with modern penology'. The definition of offences and the penalties for many offences needed scrutiny. Some sections overlapped, while other sections contained 'differences in prescribed punishments which cannot be justified as between one offence and another'. Serious differences also existed over procedural matters, such as indictments.

The reform process would unfold as follows.[101] The research worker would conduct 'a comprehensive, comparative law study' of the criminal codes of Australia, New Zealand, and other appropriate jurisdictions. The Chief Justices would consider the material assembled by the researcher and would formulate 'the general lines and content' of a new code for consideration by the Attorneys-General. A representative committee would then be set up to draft the new code. Burbury advocated a Standing Committee on Criminal Law Reform 'to keep the Code constantly under supervision'. He realised that 'some controversial aspects' made 'complete uniformity' impossible.[102] Fagan actively promoted 'the movement for uniform laws' and supported the deliberations of the Standing Committee of Attorneys-General, established in February 1961.[103]

In July 1962 at a meeting of the Tasmanian Criminal Law Reform Committee, Burbury informed members of his discussions with other Chief Justices.[104] He commented favourably on the 'active' New South Wales and Victorian Law Reform Committees. Members agreed to Burbury's proposal that the Criminal Law Reform Committee turn itself into 'a general' Law Reform Committee. Attorney-General Fagan attended this meeting and apparently concurred with the other members.

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101 Ibid.

102 Id, Minutes of meeting of the CLRC, 30 May, 1962.

103 M Fagan (ed), *The Brief Case : A Souvenir of the Legal Convention in Tasmania* (Law Council of Australia, 1963), p 7; for the movement for uniformity see G Sawer, 'Federal-State Co-operation in Law Reform: Lessons of the Australian Uniform Companies Act' (1963) 4 *Melb U L Rev* 238-53, and R Cranston, 'Uniform Laws in Australia' (1971) 30 *Pub Adm* 229-245.

104 TSCL, Law Reform file, Minutes of meeting of CLRC, 27 July 1962.

Criminal law remained the focus of the Law Reform Committee's deliberations but some attention was paid to civil procedure.[105] In 1964 Burbury took up Fagan's invitation to study pre-trial procedures in America and Britain.[106] Burbury returned fired with enthusiasm for procedural reform. In 1965, with the help of the Bar Association, he drafted new Pre-Trial and Discovery Rules based on American practice, the English Compulsory Summons For Directions, and the new English Discovery Rules.[107] The rules were accepted by the Supreme Court Rules Committee and were slightly amended to meet local conditions in 1968.[108] Fagan hoped the new rules, such as pre-trial conferences and listing documents intended to be used at the trial, would 'facilitate and improve the proper administration of justice' and would 'provide direct benefits to the community through the minimising of inconvenience and delays that have sometimes been associated with the law in the past'.[109]

Despite the wide area of reform open to it, the Committee only met 'occasionally to consider specific matters'.[110] In 1965 Fagan told W B Common, counsel of the Ontario Law Reform Commission, that 'a good deal' of law reform had been conducted in Tasmania 'in recent years' owing to 'submissions from Government departments, individual members of the legal and other professions, the Tasmanian Law Society and the Bar Association and various ad hoc committees, including one over which the Chief Justice presides'.[111] Despite this statement, I have found no evidence that 'other professions' suggested law reforms but ad hoc was certainly an apt designation for law reform in Tasmania. That law reform had 'not evolved in the main from recommendations of any permanently established body' did not overly concern Fagan. Fagan kept himself informed of law reform in other jurisdictions but left office in May 1969 without making a radical departure from established policy. For instance, he did not appoint a researcher to ease the committee's burdens. Fagan regarded the abolition of capital punishment in 1968

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105 Id, memorandum by Chief Justice Burbury on Law Reform in Tasmania 1962-63.

106 S Burbury, 'Modern Pre-Trial Civil Procedure in the USA: A New Philosophy of Litigation' (1964) 2 *U Tas L Rev* 111-124.

107 Pre-Trial and Discovery Rules of the Supreme Court of Tasmania (Government Printer, 1968), p 5.

108 Id at pp 7-9.

109 Id at p 4.

110 AOTAGD 1/491/37/13, Fagan to WB Common, 7 October 1965.

111 Ibid; see also Annual Reports of the Law Society of Tasmania 1966-67 and 1967-68.

as his 'greatest political achievement'.[112] But he was proud of the law reforms and 'procedural measures' he had achieved in areas such as defamation, legal assistance to needy citizens, testator's family maintenance, tortfeasors and contributory negligence, company law, local courts, and courts of summary jurisdiction.[113]

The Liberal Party and Law Reform

The new Liberal Attorney-General, Max Bingham, introduced new arrangements for law reform in 1969. Justice Frank Neasey was appointed part-time chairman of the Law Reform Committee with a full-time secretary/research officer.[114] The Chairman was empowered to appoint ad hoc committees on particular topics with representatives of the Bar Association, the Law Society, and other bodies as required. But Bingham did not want to establish a 'cumbersome and more expensive machinery'. Neasey was expected to 'draw largely on work done elsewhere' and thus to eschew 'much duplication of effort'.[115]

The legal profession was divided over the new arrangements. The Bar Association gave its full support.[116] The Law Society found much to oppose.[117] It disliked the Government initiating topics to be investigated or allocating 'priorities'. There were, it pointed out, 'grave dangers in a committee so loosely constituted' and felt that 'too much discretion' resided in the two permanent officers and the Government. The new arrangements 'would not necessarily preserve independance [sic] and freedom from politics'.

The alternative arrangements suggested by the Law Society had a familiar ring. It wanted a Standing Committee on law reform to be appointed, comprising representatives of the Attorney-General, the Parliamentary Draftsman, the Law Society, the Bar Association, the Law Faculty, and the Judiciary, with a Supreme Court Judge as chairman and a full-time secretary/research officer. The Standing

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112 Davis, note 25 above, at p 48; RP Davis, *The Tasmanian Gallows: A Study of Capital Punishment* (Cat and Fiddle Press, 1974) pp 94-9.

113 Fagan, note 103 above, at p 7.

114 AOTAGD 1/559/38/1.

115 On the state of law reform in Australia see R D Conacher, 'Law Reform in Action and in Prospect' (1969) 43 *ALJ* 513-29; K C T Sutton, *The Pattern of Law Reform in Australia* (UQP, 1970); D St L Kelly, 'The South Australian Law Reform Committee' (1970) 3 *Adel L Rev* 481-86.

116 Annual Report of the Bar Association of Tasmania 1968-69, p 1.

117 Annual Report of the Law Society of Tasmania 1968-9, pp 5-7.

Committee would be empowered to appoint a sub-committee and to 'co-opt' individuals with 'special qualifications'. The Standing Committee should also 'consult' with any organisations or individuals with 'a special interest' in the area under investigation. Much stress was placed on an 'independent' Standing Committee, whose recommendations were 'free from party political considerations of any kind. Its findings should represent a scientific and balanced approach to the problems with which it is concerned, whether they be matters of pure lawyer's law or involve political considerations or government policy'. While giving 'precedence' to topics referred by the Attorney-General, the Standing Committee should have 'free discretion to give preference based on the degree of social urgency'. The reports of other Australian law reform agencies should be read to assess their relevance to Tasmania and, where possible, the 'research facilities' of the Law Faculty should be used. The Law Society - rather optimistically - wanted the Standing Committee to concentrate on 'the review and modernisation of broad areas of law rather than particular legal anomalies or abuses.' Attorney-General Bingham was not 'amenable' to these proposals and adhered to his still-conservative arrangements.[118] But the intervention of the Law Society opened the possibility that law reform in Tasmania would receive greater public prominence in the future than it had received in the past.

Conclusion

Between 1941 and 1969 the record of the Tasmanian Law Reform Committee was far from impressive. To be sure, a small number of law reforms were enacted which had benefits for lawyers and, to a lesser extent, citizens. But essentially the approach to law reform was ad hoc and conservative. Most reforms were derived from other jurisdictions, especially England, and innovation was notably absent. Perhaps for a jurisdiction like Tasmania, with a small pool of legal talent, selecting tried-and-true reforms from a larger jurisdiction was sensible and efficient, saving time and expense.

The way the Law Reform Committee was established and administered ensured its effectiveness was limited. First, it was confined to dealing with lawyers' law and without lay members was unlikely - unless circumstances dictated - to encroach much into social policy areas. Submissions from outside the legal profession, which might have enlivened proceedings, were not apparently received or even seriously invited and so the Committee was very

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118 For the subsequent history of law reform in Tasmania see Hurlburt, note 1 above, at pp 102, 164-8, 304, 411-12; J Gorr, 'People's Law or Lawyers' Law?' (1988) 13 *Leg Serv Bull* 243-45.

much a closed shop. Second, the Committee was not given statutory recognition, and, despite having leading lawyers as members, seems to have had limited influence on government on whose support it depended. If the Law Reform Committee had been given statutory powers and had been required to report to Parliament, its work might have been more effective or, at least, better known. Throughout the period under review, indexes to parliamentary proceedings do not mention the Law Reform Committee, which depended on the Attorney-General to support its proposals. Parliament, of course, was itself an agent of law reform through its select and joint committees but it would have benefited from receiving proposals from a body with no party affiliations.

The degree of support of the Attorney-General, who for most of these twenty-eight years was Roy Fagan, was crucial at two points. One was to secure funding for the Committee so it could appoint full-time members or specialists to write reports with the help of research assistants. Such support was rare. The part-time members were busy men with other responsibilities: they bore the brunt of the work but it proved too difficult and hence the adoption of proposals from other jurisdictions became essential. The other kind of support was for the Attorney-General to argue in Cabinet for the enactment of law reforms. Despite a general commitment to law reform, the evidence does not indicate that Fagan was zealous in this regard. His preoccupation from the early 1950s was to save his party from political defeat, not to dally with the reform of lawyers' law. Of course, if the Labor governments had endorsed more law reforms with a social policy content, electoral benefits might have accrued. But the political judgment was that the electorate was conservative and that caution was the best policy.

The main obstacles to law reform in Tasmania were perceptively foreshadowed by R G Osborne in 1946: 'an indifferent legislature, an apathetic public opinion and a conservative (and even hostile) legal profession'.[119] While these and other obstacles prevailed, as they did until 1969, Tasmanian law reform remained, if not exactly a lost cause, then at least a missed opportunity.

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119 Osborne, note 19 above, at p 28.