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## The Reform and Restatement of English Law

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# THE REFORM AND RESTATEMENT OF ENGLISH LAW

J. W. Bridge\*

## I. INTRODUCTION

Edward Gibbon in his *History of the Decline and Fall of the Roman Empire* records that in the ancient Republic of Locria "a Locrian who proposed any new law stood forth in the assembly of the people with a rope around his neck, and, if the law was rejected, the innovator was instantly strangled."<sup>1</sup> Whilst no such deterrent has ever threatened would-be reformers of English law, the history and development of law reform by statute in England has been beset with obstacles. One obstacle has been the common law to which statute law was traditionally regarded as inferior and to which it was at one time thought statutes should defer in cases of conflict.<sup>2</sup> Thus in a sense the common law and statute law were antagonists struggling for supremacy. As one authority has picturesquely put it: "My Lady Common Law regards with jealousy the rival who arrests and distorts her development, who plants ugly and inartistic patches on her vesture, who trespasses gradually and irresistibly on her domain."<sup>3</sup> The classic common law system whilst stable was not static. As a dynamic system of law it was able to adapt itself to the changing needs of the times. Although conservatism is often believed to be a characteristic of professional lawyers the English judiciary has always included those "bold spirits"<sup>4</sup> who have been prepared to allow a new cause of action if justice so required. In other words of Mr. Justice McCardie the traditional object of the common law "is to solve difficulties and adjust relations in social and commercial life. It must meet, as far as it can, sets of facts abnormal as well as usual. It must grow with the development of the nation. It must face and deal with changing or novel circumstances. Unless it can do that it fails in its function and declines in its dignity and value. An expanding society needs an expanding common law."<sup>5</sup> This judicial attitude has survived down to the

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<sup>1</sup> E. GIBBON, 4 *HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE* 476 (J. Bury ed. 1909).

<sup>2</sup> See C. ALLEN, *LAW IN THE MAKING* 444 *et seq.* (7th ed. 1964).

<sup>3</sup> SIR C. ILBERT, *LEGISLATIVE METHODS AND FORMS* 1 (1909).

<sup>4</sup> To borrow a phrase from Lord Denning: *Candler v. Crane, Christmas & Co.*, [1951] 2 K.B. 164, 178. Cf. *Ashby v. White*, [1703] 2 Ld. Raym. 938 (per Sir John Holt, C. J.).

<sup>5</sup> *Praeger v. Blatspiel, Stamp & Heacock Ltd.*, [1924] 1 K.B. 566, 570.

present day and amongst contemporary English judges Lord Denning is cast in this heroic mould. He has observed: "If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on; and that will be bad for both."<sup>6</sup>

Law reform through the gradual accumulation of judicial utterances expounding the common law was at best slow and uncertain. Even in the golden age of the common law judicial law reform had of necessity to be supplemented by parliamentary law reform so that paradoxically the two rival sources of law also complemented each other. But the pragmatism which gave birth to the common law also militated against the systematic reform of the law by statute. Periods of legislative activity in England have not only been exceptional, as Professor Dicey pointed out,<sup>7</sup> but the Englishman's pragmatic approach to the law has resulted in fragmentary law reform by statute. Whenever an imperfection in the law has become apparent the invariable reaction of Parliament has been to pass an act to deal with that isolated problem and the opportunity has not usually been taken to inquire more deeply into the causes of the imperfection and carry out any more thoroughgoing reform which such an inquiry might show to be necessary. The English legislative tradition, therefore, has not accepted the wholesale codification of the law which has been such a familiar feature of law on the continent of Europe since the time of Napoleon.<sup>8</sup> In modern times, however, particularly with the coming of the welfare state and the ever increasing concern of the law with an ever wider range of aspects of modern life, the volume of statute law has tended to become larger. As Roscoe Pound put it: "Attempts to reshape the law by judicial over-ruling of leading cases is no substitute for well-drawn comprehensive legislation."<sup>9</sup> In view of these pressures the course of English law over the past hundred years has been away from the law reports as the repository of the common law towards the statute book as the repository of the enactments of Parliament.<sup>10</sup>

<sup>6</sup> *Packer v. Packer*, [1954] P. 15, 22. Cf. *Comet Products U. K. Ltd. v. Hawkex Plastics Ltd.*, *The Times* (London), December 9, 1970, per Lord Denning.

<sup>7</sup> A. DICEY, *LAW AND PUBLIC OPINION IN ENGLAND* 18, 19 (2d ed. 1919). Cf. LORD EVERSHED, *THE IMPACT OF STATUTE ON THE LAW OF ENGLAND* 252-53 (1956).

<sup>8</sup> Some English statutes are, in effect, codifications of limited areas of English law, e.g., *Sale of Goods Act 1893*.

<sup>9</sup> Pound, *Codification in Anglo American Law*, in *THE CODE NAPOLEON AND THE COMMON LAW WORLD* 291 (B. Schwartz ed. 1956).

<sup>10</sup> Cf. Sir L. Scarman, *Law Reform—the Experience of the Law Commission*, 10 J. Soc'Y PUB. TEACHERS L. 91, 99 (1968).

An issue distinct from yet germane to that of law reform is that of the restatement of the law in the sense of consolidating the existing law and if necessary rewriting it to make it more intelligible. This latter problem, whilst not peculiar to the English legal system, is considerably aggravated by the fact that English law is the result of centuries of continuous growth. The Chronological Table of English Statutes contains over 3,000 separate Acts of Parliament commencing with the Statute of Merton of 1235. There are also many volumes of delegated legislation made under the authority of these Acts. In addition it has been estimated that there are over 350,000 reported cases. Glanvill, writing in about the year 1188, found it possible to refer to "the confused multiplicity" of English law.<sup>11</sup> At the present time it is not overstating the case to say that "the complexity of English law has, by now, reached a degree where the system is not only unknown to the community at large, but unknowable, save to the extent of a few of its departments, even to the professionals."<sup>12</sup> Thus the need has been felt increasingly that a thorough and continuing examination of English law should be undertaken in order to simplify it and make it more easily accessible. In the words of Judge Cardozo there is "the need of some re-statement that will bring certainty and order out of the wilderness of precedent,"<sup>13</sup> the need to pay heed to those voices which have been raised over the centuries "in protest against the tons of verbal pulp that must be squeezed to obtain an ounce of pure judicial law."<sup>14</sup>

It is, therefore, the aim of this article to give an account of the attempts which have been and are being made in England to tackle systematically the twin tasks of reforming and restating English law. Particular reference will be made to the English Law Commission, a permanent body set up by Act of Parliament in 1965<sup>15</sup> with the duty to take and keep under review all the law of England.<sup>16</sup>

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<sup>11</sup> *TRACTATUS DE LEGIBUS ET CONSUEUDINIBUS REGNI ANGLIAE* 3 (G. Hall ed. 1965).

<sup>12</sup> G. GARDINER & A. MARTIN, *LAW REFORM NOW* 1 (1963). Cf. Pound, *supra* note 9, at 288 *et seq.*

<sup>13</sup> B. CARDOZO, *THE GROWTH OF THE LAW* 1 (1924).

<sup>14</sup> Diamond, *Codification of the Law of Contract*, 31 *MODERN L. REV.* 361, 362 (1968).

<sup>15</sup> Law Commissions Act 1965. This Act also established a Scottish Law Commission since Scottish law in many respects differs from English law. Discussion of the Scottish Law Commission falls outside the bounds of this article.

<sup>16</sup> Law Commissions Act 1965, § 3(1).

## II. THE REFORM OF ENGLISH LAW

The demand for law reform is as old as the law itself. "Continual changes in the circumstances of social life demand continual new adjustments to the pressures of other social interests as well as to new modes of endangering security. Thus the legal order must be flexible as well as stable. It must be overhauled continually and refitted continually to the changes in the actual life which it is to govern."<sup>17</sup> Although at least from the time of Bentham<sup>18</sup> onwards suggestions have been made that a central governmental agency concerned with the reform of English law should be set up no positive steps in this direction were made until the middle of the present century. The not inconsiderable amount of law reform which took place in the past was largely the result of private enterprise and pressure groups. Professor A. L. Goodhart has distinguished five major influences which sometimes singly and sometimes in conjunction with each other have brought about reforms in English law.<sup>19</sup> Firstly there is the influence of public opinion which can induce the reform of a rule of law which is generally regarded as intolerable. This can be an effective means especially if public opinion on a particular issue is mobilised and expressed by influential members of the community. In English legal history such a person was Charles Dickens who through his novels and other writings directly and indirectly brought about a number of reforms. The most striking intervention on the part of Dickens was perhaps in the campaign which resulted in the abolition of public executions in England.<sup>20</sup> Dickens witnessed the notorious public execution in 1849 of a Mr. and Mrs. George Manning who were hanged together. As a result Dickens wrote two letters to *The Times* protesting against such degrading spectacles. This helped to mobilise public opinion and public executions eventually came to an end.<sup>21</sup>

Secondly there is the influence of the pressure group. A classic instance of a reform being brought about through such an agency is the reform of the law of divorce as a result of activities of Sir Alan Herbert, another distinguished British author, and his friends which culminated in the passing of the Matrimonial Cases Act 1937.

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<sup>17</sup> R. POUND, *INTERPRETATIONS OF LEGAL HISTORY* 1 (1923).

<sup>18</sup> Jeremy Bentham (1748-1832), the leader of the Utilitarian reformers. See, e.g., *JEREMY BENTHAM AND THE LAW* (G. Keeton & G. Schwarzenberger eds. 1948).

<sup>19</sup> *Law Reform* (the Presidential Address to the Holdsworth Club of the University of Birmingham, England, 1952) 5-9.

<sup>20</sup> See P. COLLINS, *DICKENS AND CRIME* 227-41 (1962) and 4 L. RADZINOWICZ, *HISTORY OF ENGLISH CRIMINAL LAW* 349-53 (1968).

<sup>21</sup> As a result of the Capital Punishment Amendment Act 1868.

That Act, *inter alia*, made cruelty and three years' desertion grounds of divorce at the suit of either husband or wife.<sup>22</sup>

Thirdly there is the influence which civil servants in the Departments of Government can employ to encourage law reform. One of the characteristics of the British system of government is the existence of a permanent, professional civil service which is not dependent for office on the political party in power. Governments of the right and of the left come and go and each is loyally served by the same body of permanent officials. This naturally results in such officials, because of their permanent relationship with a given Department of Government, acquiring great experience of and expertise in the affairs of that Department. If, in the course of their work, they discover that the laws which directly bear upon that work are inadequate or ineffective, while they cannot institute reforms themselves they may be in the position to influence the political head of that department, the Minister, to look into the matter and suggest reforms. Leading examples of the effect of such influence are the periodic reforms of the English law of companies. Since the 1830's the Board of Trade, being the Department of Government concerned with the registration and winding-up of companies, has been instrumental in bringing about a succession of reforms in that branch of the law. The initial step in this process is the appointment of an *ad hoc* committee under the chairmanship of a distinguished lawyer to inquire into the law and make recommendations for its reform. Such recommendations then form the basis of new legislation.<sup>23</sup>

Professor Goodhart's fourth source of influence in favour of law reform is the legal profession. As far as certain areas of the law are concerned, namely lawyers' law, practising lawyers are virtually the only persons who understand such law or can be aware of its defects. Thus there are instances when because of the reasoned views expressed by a relatively small group of professional lawyers the reforming legislative process has been brought to bear on such areas of the law. For example, by the end of the last century those lawyers

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<sup>22</sup> See Sir Alan Herbert's account of the legislative history of this Act in his book *The Ages Have It* (1937). Another example of a successful pressure group is that which eventually brought about the abolition of the death penalty for murder. See E. TUTTLE, *THE CRUSADE AGAINST CAPITAL PUNISHMENT IN GREAT BRITAIN* (1961) and the Murder (Abolition of Death Penalty) Act 1965.

<sup>23</sup> The most recent examples are the reports of Mr. Justice Cohen's Committee in 1945 which led to the passing of the Companies Act 1947 and of Lord Justice Jenkins' Committee in 1962 which was partially implemented by the Companies Act 1967. See L. GOWER, *MODERN COMPANY LAW* ch. 3 (3d ed. 1969).

versed in the arcane intricacies of the English law of real property had recognised that that law was both clumsy and out of date.<sup>24</sup> Such a revelation gave concern to very few laymen, but because of the concern expressed by the experts a group of closely connected statutes was eventually passed and came into force on January 1, 1926.<sup>25</sup> Those statutes brought about profound changes in the old law.<sup>26</sup> The judiciary may also be included here as a source of influence in favour of law reform. The English judges as such play no formal, official role in the reform of the law. But because of their status and expertise in the law they have sometimes been able to induce reforms by bringing a spotlight to bear on some inadequacy in the law. The classic instance of this is the reform in the law relating to the tortious liability of the Crown which was directly attributable to the outspoken criticism of the judges.<sup>27</sup>

Last, but of course not least, is the influence in favour of law reform which derives from learned writings on the law. Here pride of place must be given to Jeremy Bentham who waged a continuous battle for the reform of the law both substantive and adjectival. Many of his suggested reforms have since been implemented.<sup>28</sup>

Although many reforms have been brought about as a result of the operation of these influences they clearly fall very far short of an ideal agency for law reform. They are disorganised, inefficient and unsystematic. Further, even if one or more of these influences demonstrate the need for reforms in a particular branch of the law there is no legal duty on the Government to introduce the necessary legislation in Parliament. Parliamentary time is limited and is largely taken up with the consideration of the legislation necessary to implement the current policies of the Government. In such a situation measures to reform the existing law have tended to take second place. Even where recommendations for reform are made by a body set up by a Government Department there is no guaran-

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<sup>24</sup> See W. HOLDSWORTH, *HISTORICAL INTRODUCTION TO THE LAND LAW* ch. 4 (1927) and 3 F. MAITLAND, *COLLECTED PAPERS* 487-88 (1911).

<sup>25</sup> Namely, the Law of Property Act, the Settled Land Act, the Land Charges Act, the Administration of Estates Act, the Trustee Act and the Land Registration Act, all dated 1925.

<sup>26</sup> See, e.g., A. HARGREAVES, *AN INTRODUCTION TO THE PRINCIPLES OF LAND LAW* (4th ed. 1963).

<sup>27</sup> See *Adams v. Naylor*, [1946] A.C. 543, per Lord Simonds at 552-53 and per Lord Uthwatt at 555; *Royster v. Cavey*, [1947] K.B. 204; and Crown Proceedings Act 1947, § 2. Cf. Federal Tort Claims Act, 60 Stat. 842 (1946).

<sup>28</sup> See note 18 *supra*. Other writings which have urged law reform on a broad front include *THE REFORM OF THE LAW* (G. Williams ed. 1951); G. GARDINER & A. MARTIN, *supra* note 12; D. YARDLEY, *THE FUTURE OF THE LAW* (1964).

tee that action will be taken on such recommendations, at least not for some time.<sup>29</sup> In order to remedy these deficiencies it has been suggested (a) that there should be some form of permanent, official body charged with keeping the law under constant review and empowered to make recommendations for its reform and (b) that the Government should undertake to provide adequate Parliamentary time for the consideration and implementation of such recommendations.<sup>30</sup>

The initial tentative steps toward adopting these suggestions were made first by creating standing committees to consider the desirability of bringing about changes in the law and secondly by providing a special form of legislative process to deal with certain law reform measures. In 1934 Lord Sankey, the then Lord Chancellor, appointed a Law Revision Committee "to consider how far, having regard to statute law and to judicial decisions, such legal maxims and doctrines as the Lord Chancellor may from time to time refer to the Committee require revision in modern conditions."<sup>31</sup> That Committee was replaced in 1952 by the Lord Chancellor, Lord Simonds, appointing the existing Law Reform Committee "to consider, having regard especially to judicial decisions, what changes are desirable in such legal doctrines as the Lord Chancellor may from time to time refer to the Committee."<sup>32</sup> These Committees were both concerned with the reform of civil law. In 1959 the Home Secretary appointed the Criminal Law Revision Committee "to examine such aspects of the criminal law of England and Wales as the Home Secretary may from time to time refer to the Committee, to consider whether the law requires revision and to make recommendations."<sup>33</sup> These three committees share a number of characteristics. In terms of their composition they include members of the judiciary, practising lawyers and academic lawyers with a senior judge as chairman. Although they

<sup>29</sup> For example, most of the recommendations of the Jenkins Committee on Company Law, which reported in 1962, have not yet been implemented although the Committee was appointed by the Board of Trade, See L. GOWER, *supra* note 23.

<sup>30</sup> For examples of such suggestions, see THE REFORM OF THE LAW, *supra* note 28, ch. 1, and G. GARDINER & A. MARTIN, *supra* note 12, ch. 1.

<sup>31</sup> See Wade, *The Machinery of Law Reform*, 24 MODERN L. REV. 3, 10-11 (1961). On the work of the Law Revision Committee, see Foster, *Law Revision*, 2 MODERN L. REV. 14 (1938). The Lord Chancellor is the highest judicial functionary in the United Kingdom. He is also a Cabinet Minister and Speaker of the House of Lords.

<sup>32</sup> Wade, *supra* note 31. See also Lord Chorley & G. Dworkin, *The Law Commissions Act, 1965*, 28 MODERN L. REV. 679 n. 21 (1965).

<sup>33</sup> By a warrant dated February 2, 1959. The Home Secretary is a Cabinet Minister and is responsible, *inter alia*, for the maintenance of the public peace and the general administration of the criminal law.



are standing committees they have no authority to undertake an investigation into the need for reforms on their own initiative; they can only deal with such matters as are expressly referred to them from time to time by the Lord Chancellor or the Home Secretary respectively. They also share one of the major weaknesses of ad hoc Governmental Committees in that there is no guarantee that the Government will accept or implement their recommendations. Despite these shortcomings a significant number of reforms have been achieved as a result of the activities of these committees. When seized of a particular topic it is the practice of these committees to invite the submission of written and oral evidence from those affected by or interested in the branch of the law in question. In the light of that evidence and the expert views of the committee a report making recommendations will be published. The Law Revision Committee and the Law Reform Committee have together produced twenty-five reports to date on topics ranging from the liability of joint tortfeasors<sup>34</sup> to the sealing of contracts by corporations.<sup>35</sup> At the time of writing the Criminal Law Revision Committee has produced ten reports on such important topics as indecency with children,<sup>36</sup> suicide<sup>37</sup> and the law of theft.<sup>38</sup> It is important to note that these committees in no way supplanted the other agencies of law reform discussed above but rather complemented the activities of those agencies.

In 1949 a minor step towards streamlining the passage of law reform measures through Parliament was achieved by the passing of the Consolidation of Enactments (Procedure) Act. That Act is concerned more with the consolidation of existing law rather than with its reform. But it does provide that where a consolidating bill is being prepared and corrections and minor improvements in the law which is to be consolidated are found to be necessary in order, *inter alia*, to bring "obsolete provisions into conformity with modern practice," a special procedure may be followed. The corrections and improvements are placed before both Houses of Parliament in a memorandum provided by the Lord Chancellor and if the terms of the memorandum are approved by a Joint Committee of both

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<sup>34</sup> LAW REVISION COMMITTEE, THIRD REPORT, CMD. No. 4546 (1934), implemented by the Law Reform (Married Women and Joint Tortfeasors) Act 1935.

<sup>35</sup> LAW REFORM COMMITTEE, EIGHTH REPORT, CMND. No. 622 (1958), implemented by the Corporate Bodies Contracts Act 1960.

<sup>36</sup> CRIMINAL LAW REVISION COMMITTEE, FIRST REPORT, CMND. No. 835 (1959), implemented by the Indecency with Children Act 1960.

<sup>37</sup> SECOND REPORT, CMND. No. 1187 (1960), implemented by the Suicide Act 1961.

<sup>38</sup> EIGHTH REPORT, CMND. No. 2977 (1966), implemented by the Theft Act 1968.

Houses the corrections and improvements will be deemed to have become law and cannot be subsequently amended. The consolidating bill itself will then pass through its stages in Parliament without debate.<sup>39</sup>

The establishment of these committees and the provision of this special procedure, although welcome, clearly only nibbled at the edges of the problem. There was still no body charged with the duty of keeping the law as a whole under continuous review and making recommendations for its systematic reform. In 1963 the campaign for the establishment of such a body received a fresh impetus by the publication of a work entitled *Law Reform Now* sponsored by the British Society of Labour Lawyers. In addition to making proposals for the reform of specific branches of the law the two editors of the book<sup>40</sup> contributed a chapter on the machinery of law reform. They proposed "the setting up within the Lord Chancellor's Office of a strong unit concerned exclusively with law reform in that wide sense which also includes codification."<sup>41</sup> The head of this proposed unit was to be of ministerial rank and would preside over a full-time committee of not less than five highly qualified lawyers. In the General Election of 1964 a Labour Government was returned to power and one of the editors of *Law Reform Now*, Mr. Gerald Gardiner, was appointed Lord Chancellor as Lord Gardiner. In 1965 Lord Gardiner submitted to Parliament a document setting out proposals for English and Scottish Law Commissions.<sup>42</sup> These proposals bore a close resemblance to the scheme which had been set out in *Law Reform Now*.<sup>43</sup> The Proposed Law Commission for England and Wales "will consist of five lawyers of high standing appointed by the Lord Chancellor with an adequate legal staff to assist them. The Commissioners will be required to keep the whole of English law under review and to submit to the Lord Chancellor programmes for the examination of different branches of the law with a view to its reform. . . . The detailed proposals for reform prepared by the Commissioners . . . will

<sup>39</sup> See Viscount Jowitt, *Statute Law Revision and Consolidation* (the Presidential Address to the Holdsworth Club of the University of Birmingham, England, 1951) 15-17. For a recent example of the use of this procedure, see the Matrimonial Causes Act 1965 and the Lord Chancellor's Memorandum of Corrections and Improvements dated June 2, 1965 (H. L. 137/H.C. 234).

<sup>40</sup> G. Gardiner and A. Martin.

<sup>41</sup> G. GARDINER & A. MARTIN, *supra* note 12, at 8.

<sup>42</sup> PROPOSALS FOR ENGLISH AND SCOTTISH LAW COMMISSIONS, CMND. NO. 2573 (1965). On Lord Gardiner's role in the establishment of the Law Commission, see Lord Chorley & G. Dworkin, *supra* note 32, at 679.

<sup>43</sup> One suggestion which the Proposals did not adopt was the appointment of a special minister to preside over the Law Commission; instead the Law Commission is responsible to the Lord Chancellor.

be published and if they are accepted by the Government the necessary legislation will be introduced."<sup>44</sup> These proposals were duly implemented by the Law Commissions Act 1965.

The English Law Commission is composed of two academic lawyers<sup>45</sup> and two practising lawyers<sup>46</sup> under the chairmanship of a High Court Judge.<sup>47</sup> The term of appointment of Law Commissioners is five years and retiring Commissioners may be reappointed.<sup>48</sup> All appointments are at present full-time. In accordance with the terms of the Law Commissions Act, which requires the Law Commission to keep under review all the law with a view to its systematic development and reform,<sup>49</sup> the first task of the Law Commission was to draw up programmes of law reform.<sup>50</sup> The Law Commission's first programme was submitted to and approved by the Lord Chancellor in July 1965.<sup>51</sup> It set out an ambitious and wide-ranging programme which listed seventeen areas of the law which it was proposed should be examined. This first programme was followed by a second which was submitted and approved in November 1967 and specified three additional subjects for examination.<sup>52</sup>

When the Law Commission submits such programmes of law reform it is required by statute to make recommendations (a) as to the agency which should undertake the examination of a given area of the law and (b) as to the terms of reference of the examination.<sup>53</sup> In most cases the Law Commission undertakes the examination itself but where it thinks it more appropriate it can recommend that particular topics should be examined by the Law Reform Committee, the Criminal Law Revision Committee, or by an ad hoc body. As far as the terms of reference in a given case are concerned

<sup>44</sup> PROPOSALS FOR ENGLISH AND SCOTTISH LAW COMMISSIONS, *supra* note 42, at 2-3.

<sup>45</sup> Mr. L. C. B. Gower, formerly Cassel Professor of Commercial Law in the University of London, and Mr. N. S. Marsh, formerly a Fellow of University College, Oxford, and Director of the British Institute of International and Comparative Law.

<sup>46</sup> Originally, Mr. N. Lawson, Q.C., and Mr. A. Martin, Q.C. (one of the editors of *Law Reform Now*). Mr. Martin is also a part-time Professor of Law in the University of Southampton, England. Mr. Martin resigned in 1970 and Mr. C. Bicknell was appointed in his place.

<sup>47</sup> Sir Leslie Scarman.

<sup>48</sup> Law Commissions Act 1965, §§ 1(2) and (3).

<sup>49</sup> *Id.* § 3(1).

<sup>50</sup> *Id.* §§ 3(1)(a) and (b) and 3(2). Members of the public may also submit law reform proposals to the Law Commission. During its first year it received 632 such proposals. See FIRST ANNUAL REPORT OF THE LAW COMMISSION (Law Comm'n No. 4) 24 (1965-1966).

<sup>51</sup> First Programme of the Law Commission (Law Comm'n No. 1) 1965.

<sup>52</sup> Second Programme of Law Reform (Law Comm'n No. 14) 1968.

<sup>53</sup> Law Commissions Act 1965, §§ 3(1)(a), (b) and (c).

the Law Commission can recommend one of two courses of action: the passing of a statute aimed at achieving a specific reform or the codification of a distinct area of the law.<sup>54</sup> The practice of the Law Commission to date shows that when it thinks in terms of codification it is not envisaging a universal code of English law after the Napoleonic pattern. Rather it is developing an established English legislative practice of bringing together in one statute all the law on a particular topic so that statute becomes "the authoritative, comprehensive and exclusive source of that law."<sup>55</sup> For example, in its programmes of law reform the Law Commission proposes to undertake the codification in this sense of the English law of contract, the law of landlord and tenant, family law, and criminal law. Other matters which these programmes suggest should be the subject of specific statutory reform include civil liability for dangerous activities and things, the recognition of foreign divorces, nullity decrees and adoptions and the rules governing the interpretation of statutes and wills.

The staff of the Law Commission is small. The latest Annual Report reveals that apart from the Commissioners themselves there are forty-eight full-time members of staff made up of a Secretary, four draftsmen, sixteen other lawyers and twenty-seven non-legal staff.<sup>56</sup> The staff has been kept small as a deliberate act of policy. In its first Annual Report the Law Commission stated: "We think that a large legal staff would be undesirable at this stage. It might encourage the Commission to look inwards upon itself for inspiration and ideas, whereas in our view it must look outwards—to the legal profession and to the public."<sup>57</sup> The Law Commission has therefore adopted working methods which not only involve its own legal staff but also draw on the assistance and advice of experts in both the practising and academic branches of the legal profession. The nature of these working methods is perhaps not without interest. Let the Law Commission speak for itself:

Our basic method has been to allocate each item in the Programme for which we are the examining agency to a team headed by one or more of the Commissioners. Each team is the master of its own procedure, subject to a few general considerations.

The first task of the team is to prepare a Working Plan, i.e. a phased programme of research and consultations. The Working Plan is then submitted to the Commissioners . . . for comment and approval with or without modification. Once approved, the

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<sup>54</sup> *Id.* § 3(1). See also SIR L. SCARMAN, *A CODE OF ENGLISH LAW?* 3 (1966).

<sup>55</sup> See SIR L. SCARMAN, *CODIFICATION AND JUDGE MADE LAW* 7 *et seq.* (1966).

<sup>56</sup> FIFTH ANNUAL REPORT (Law Comm'n No. 36) 17 (1969-1970).

<sup>57</sup> FIRST ANNUAL REPORT, *supra* note 50, at 3.

Working Plan is immediately put into operation and the team concerned will make periodic progress reports to the Commissioners.

Discussion of a team's work is not restricted to the Commissioners and their staff. It is our policy to make the lines on which we are thinking widely known outside the Commission. The extent to which it is useful to publicise any matter depends, of course, on its nature; but in addition to consulting with the professional organisations,<sup>58</sup> we send our papers to the press (and especially the legal press) whenever we consider that they are of sufficient interest and that public discussion or criticism would be useful.<sup>59</sup>

The research undertaken by the Law Commission, the consultation with other experts and the circulation of working papers for comment are supplemented from time to time by seminars held in the universities on particular aspects of law reform, attended by Law Commissioners and academic experts. As the Law Commission put it in its Third Annual Report: "These seminars have proved to be a means of concentrating thought in a congenial atmosphere on the more difficult problems that confront us and have helped us in a way that no other meeting could."<sup>60</sup> The Law Commission's approach to Law Reform has also been far from insular and there have been many contacts with foreign lawyers and law reform bodies in other countries. The Law Commission is indeed under a statutory duty "to obtain such information as to the legal systems of other countries as appears to the Commissioners likely to facilitate the performance of any of their functions."<sup>61</sup> In pursuance of this duty there have been valuable exchanges of views and information on matters of common interest and concern.

Down to the end of 1970 the Law Commission had drawn up and circulated for comment thirty-three working papers and had submitted to the Lord Chancellor twenty specific proposals for the reform of the law of which at the time of writing twelve have been implemented by Act of Parliament.<sup>62</sup> Allowing for the fact that six of these proposals were published in the last quarter of 1970 there has been very little delay in the acceptance and implementation of the Law Commission's recommendations. It has been pointed out earlier that one of the obstacles to systematic and effective law

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<sup>58</sup> These include the Society of Public Teachers of Law which is the British counterpart of the Association of American Law Schools.

<sup>59</sup> FIRST ANNUAL REPORT, *supra* note 50, at 6.

<sup>60</sup> (Law Comm'n No. 15) 26 (1968). The papers submitted to one of these seminars have been published as *THE DIVISION AND CLASSIFICATION OF THE LAW* (J. Jolowicz ed. 1970).

<sup>61</sup> Law Commissions Act 1965, § 3(1)(f).

<sup>62</sup> The proposals implemented deal largely with aspects of criminal law, family law and the law of property. See FIFTH ANNUAL REPORT OF THE LAW COMMISSION, *supra* note 56, Appendix 2.

reform is the pressure on Parliamentary time. But the first five years of the Law Commission's existence has demonstrated that "law reform has not suffered from lack of Parliamentary time as many feared that it would."<sup>63</sup>

### III. THE RESTATEMENT OF ENGLISH LAW

Reference has already been made to the fact that English law is not only in need of substantive reform but also of restatement. Restatement is necessary if the diseases of anachronism, inaccessibility and unintelligibility are to be expunged from the body of the law. Whilst one may agree with the view of Dr. C. K. Allen, a distinguished English lawyer, "that the records of our law form one of the world's great monuments not only of legal science but of human intelligence,"<sup>64</sup> at the present time that monument may be said to be "a huge formless mass of roughest stone."<sup>65</sup> English law has reached this state because of the character of the common law and the nature of English statute law. The common law is the product of centuries of continuous growth. Its sources lie in innumerable decided cases, reported and unreported, with the result that "it is today extremely difficult for anyone without special training to discover what the law is on any given topic; and when the law is finally ascertained, it is found in many cases to be obsolete and in some cases to be unjust."<sup>66</sup> As Lord Justice Diplock succinctly expressed it in a recent judgment, the common law "is a maze and not a motorway."<sup>67</sup>

As far as English statute law is concerned it is virtually a national pastime to heap abuse on those responsible for drafting statutes. A legal versifier has put it in the following words:

I'm the Parliamentary Draftsman,  
I compose the country's laws,  
And of half the litigation  
I'm undoubtedly the cause.  
I employ a kind of English  
Which is hard to understand:  
Though the purists do not like it,  
All the lawyers think it's grand.<sup>68</sup>

<sup>63</sup> *Id.* at 2.

<sup>64</sup> C. ALLEN, *supra* note 2, at 355.

<sup>65</sup> Pace Lloyd, *Codifying English Law*, 2 CURRENT LEGAL PROBLEMS 165 (1949).

<sup>66</sup> PROPOSALS FOR ENGLISH AND SCOTTISH LAW COMMISSIONS, *supra* note 42, at 2.

<sup>67</sup> *Morris v. C. W. Martin & Sons Ltd*, [1966] 1 Q.B. 716, 730.

<sup>68</sup> J.P.C., POETIC JUSTICE 31 (1947).

Although at least one member of the English judiciary has found the Statute Book entertaining and amusing,<sup>69</sup> most would probably share the view recently expressed by the Chairman of the English Law Commission, himself a judge, when he observed: "The Statutes are elaborate to the point of complexity; detailed to the point of unintelligibility; yet strangely uninformative on matters of principle."<sup>70</sup> There are several reasons which explain this confused and disorderly state of affairs.

In the first place English statute law has a long history of continuous accretion; there are operative enactments dating from the thirteenth century and quite apart from the linguistic difficulties presented by old statutes the number and variety of statutes makes it difficult to ascertain the law. This difficulty is exacerbated by fragmentary legislation and legislation by reference to earlier legislation. This has resulted, in the words of one authority, in "statutes relating to the same subject matter [being] heaped one upon another so that it is impossible for a citizen to make himself acquainted with the laws under which he lives."<sup>71</sup> On the subject of legislation by reference the same authority observes that it "produces a body of law which it is impossible for the Courts to construe and the public to understand, and a Bill drafted by reference is very difficult to amend because legislators cannot follow out its inferential details."<sup>72</sup>

Secondly there is the accusation that much of the blame for the state of statute law must be laid at the door of the draftsmen. Whilst there is considerable justification for this accusation the draftsmen are not altogether undeserving of sympathy. "In a sense, the scales are heavily weighted against the draftsman: if he has made himself plain, there is likely to be no litigation and so none to praise him, whereas if he has fallen into confusion or obscurity, the reports will probably record the results of the fierce and critical intellects of both Bar and Bench being brought to bear on his work."<sup>73</sup> It is also important to bear in mind that until 1869 there were no full time Parliamentary draftsmen engaged exclusively in the drafting of legislation. Down to 1869 legislation was drafted either by civil

<sup>69</sup> Lord Justice MacKinnon, *The Statute Book* (the Presidential Address to the Holdsworth Club of the University of Birmingham, England, 1942) 4; although the learned Lord Justice did find some Acts worthy of criticism, *id.* at 15.

<sup>70</sup> WHAT'S WRONG WITH THE LAW 10 (M. Zander ed. 1970). See also R. MEGARRY, *MISCELLANY AT LAW* 349-65 (1955).

<sup>71</sup> Sir Mackenzie Chalmers quoted by Sir W. Graham Harrison in *An Examination of the Main Criticisms of the Statute Book*, (1935) J. Soc'y PUB. TEACHERS L. 13.

<sup>72</sup> *Id.* Cf. *R. v. Goswami*, [1969] 1 Q.B. 453, 461 (per Salmon, L. J.).

<sup>73</sup> R. MEGARRY, *supra* note 70, at 349.

servants in the Departments of Government<sup>74</sup> or more frequently by lawyers practised in the art of conveyancing, "the driest of all earthly studies."<sup>75</sup> The latter's expertise in drafting conveyances to deal with the most complex dispositions of land in the most comprehensive manner was applied with zeal to the task of drafting statutes with the inevitably resulting obscurity of language and confusion of intention. The appointment of professional parliamentary draftsmen since 1869<sup>76</sup> has introduced a welcome consistency of method and style into parliamentary draftsmanship. But the whole matter is still enveloped in a veil of mystery and the legacy of the conveyancers of old lingers on.

Thirdly, while the draftsmen themselves may not be entirely blameless, blame also attaches to the Government and to Parliament. The draftsman acts on instructions received from the Government and when the subject matter of legislation is complicated a degree of obscurity is perhaps difficult to avoid. Obscurity may even be required by the Government for diplomatic or other reasons. Further, the draftsmen are only responsible for drafting legislation; Parliament is responsible for the final form which a statute takes. Ill-considered and ill-consistent amendments introduced in the course of Parliamentary debates may play havoc with the most elegantly drafted bill.

Finally it should be remembered that the Parliamentary Draftsmen work under intense pressure. One former Draftsman writing in 1935 speaks nostalgically of the last century when Parliament only met effectively from February to August which gave a breathing space for the preparation of bills.<sup>77</sup> Nowadays not only are Parliamentary sessions longer but the increasing volume and range of legislation in the present century has added to the draftsman's difficulties.<sup>78</sup>

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<sup>74</sup> For example, Sir James Fitzjames Stephen, who himself played a major part in the codification of the Law of India, records that his father, as Under-Secretary for the Colonies, drafted the Slave Trade Act 1824: "[It] was dictated by him in one day and at one sitting. It consisted of fifty-two sections, and fills twenty-three closely-printed octavo pages. Many of the sections are most elaborate." 3 HISTORY OF THE CRIMINAL LAW OF ENGLAND 256 n. 3 (1883).

<sup>75</sup> LORD THRING, PRACTICAL LEGISLATION 2 (1902).

<sup>76</sup> See SIR C. ILBERT, *supra* note 3, ch. 5. For an account of the preparation and drafting of bills, see Sir G. Ram, *The Improvement of the Statute Book*, 1 J. Soc'y PUB. TEACHERS L., NEW SERIES 442 *et seq.* (1951).

<sup>77</sup> Sir W. Graham Harrison, *supra* note 71, at 43-44.

<sup>78</sup> For a recent account of the failings of English Statute Law, see *Statute Law Deficiencies* (1970) a report published by the British Statute Law Society. The Society is an association of statute users



Thus the task of restating English law has two aspects: the excision from the statute book of dead and obsolete enactments and the recasting and consolidation of enactments on the various branches of the law in the interests of intelligibility and accessibility.

Throughout the centuries many suggestions for the improvement of the statute book have been made.<sup>79</sup> During the last century a campaign for the revision of statute law flourished. Between 1861 and 1898 over thirty Statute Law Revision Acts were passed. For example, one such Act passed in 1861 repealed no less than 900 obsolete enactments covering the period 1770 to 1853.<sup>80</sup> The ultimate object of this exercise was to produce an edition of the statutes comprising only those enactments which were in force. In the 1870's a programme of consolidation was launched. Between 1870 and 1900 a specially appointed Statute Law Committee prepared no less than 121 consolidation bills; but of these only forty-nine became law. This disappointing result was due largely to lack of Parliamentary time.<sup>81</sup> Steady if unspectacular progress continued to be made during the present century both in terms of statute law revision and consolidation, the latter, as has already been pointed out, benefitting from the provisions of the Consolidation of Enactments (Procedure) Act 1949.

When the English Law Commission was set up in 1965 statute law revision and consolidation were appropriately included amongst its terms of reference. The enabling Act provides that the duties of the Law Commission shall include "the elimination of anomalies, the repeal of obsolete and unnecessary enactments and generally the simplification and modernisation of the law."<sup>82</sup> In its First Programme the Law Commission recommended the examination of "miscellaneous matters involving anomalies, obsolescent principles and archaic procedures" and drew up a first list of five such matters.<sup>83</sup> In recommending this course of action the Law Commission is not denying the possibility that ancient rules of law may still be applicable in modern conditions but is making the point that

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and was established in 1968 to secure improvements in the expression, production and publication of statutes and to educate the public in the scope and processes of legislation.

<sup>79</sup> See SIR C. ILBERT, *supra* note 3, ch. 4, and Viscount Jowitt, *supra* note 39, *passim*.

<sup>80</sup> See Viscount Jowitt, *supra* note 39, at 6-7.

<sup>81</sup> *Id.* at 8-9. Similar difficulties have faced the Law Commission's programme of consolidation; see its FIRST ANNUAL REPORT, *supra* note 50, at 23.

<sup>82</sup> Law Commissions Act 1965, § 3(1).

<sup>83</sup> First Programme, *supra* note 51, at 13-14.

such rules should be examined to see whether, for example, they rest on social assumptions which are no longer valid. The Law Commission has made a start on this work and has produced two sets of proposals, one to abolish certain ancient criminal offences<sup>84</sup> and the other to reform the law relating to maintenance and champerty.<sup>85</sup> Both these proposals have been implemented by the Criminal Law Act 1967.<sup>86</sup>

In addition to making proposals for the abolition of specific obsolete laws the Law Commission is continuing the work of consolidation and statute law revision. In 1965 the Law Commission was formally requested by the Lord Chancellor to prepare a comprehensive programme of consolidation and statute law revision. In response to that request the Law Commission has drawn up a report outlining the first stage of the programme.<sup>87</sup> By consolidation is meant "the process of combining the legislative provisions on a single topic into one coherent enactment."<sup>88</sup> The Law Commission has recommended that seven major topics be considered initially as ripe for consolidation.<sup>89</sup> Steady, if unspectacular, progress has been made in consolidation.<sup>90</sup> Statute law revision involves "pruning the dead wood from the statute book."<sup>91</sup> To that end the Law Commis-

<sup>84</sup> (Law Comm'n No. 3) 1966. An example of the crimes the repeal of which was recommended is that of being a "common night walker," that is, being out and about at night when decent folk are in bed. Insofar as such persons remain a problem they can be dealt with under other provisions of the law.

<sup>85</sup> (Law Comm'n No. 7) 1966. Maintenance was committed when a person who with no legal interest or justification gave encouragement or assistance to one of the parties to an action. Champerty was a particular type of maintenance in which in return for giving assistance to one of the parties to an action the maintainer was promised a share in the subject matter or proceeds of the action. Both these offenses were created to deal with particular abuses arising out of the conditions of mediaeval society but are now considered to rest on outdated considerations of public policy. On the origins of those offenses, see W. HOLDSWORTH, 3 HISTORY OF ENGLISH LAW 394 *et seq.* (1935).

<sup>86</sup> Section 13. Although maintenance and champerty have been abolished, champertous agreements, including contingency fee arrangements between lawyer and client, continue to remain unlawful in England as contrary to public policy. See Criminal Law Act 1967, § 14(2).

<sup>87</sup> *Law Commission's First Programme on Consolidation and Statute Law Revision* (Law Comm'n No. 2).

<sup>88</sup> *Id.* at 3.

<sup>89</sup> Namely, the statutes relating to income tax, estate duty, stamp duties, rented properties, road traffic, public health and local government. *Id.* at 7-9.

<sup>90</sup> See ANNUAL REPORTS OF THE LAW COMMISSION (Law Comm'n Nos. 4, 12, 15, 27 and 36).

<sup>91</sup> *Law Commission's First Programme*, *supra* note 87, at 3.

sion has embarked "on a review of all statutes in chronological order with a view to recommending the repeal of all that cannot positively be shown to continue to perform a useful function."<sup>92</sup> At the time of writing the Law Commission has produced three reports on this subject.<sup>93</sup> The first of these has been implemented with the result that some 150 statutes have been repealed either wholly or in part on the ground that they are no longer of practical utility.<sup>94</sup>

In this task of consolidation and statute law revision the Law Commission is collaborating closely with an Editorial Board which has been appointed to supervise the production of a new official edition of a work entitled *Public General Statutes in Force*.<sup>95</sup> Earlier editions of this work arranged the statutes in the traditional chronological order which made it of limited usefulness to the legal profession. The bound volume format of earlier editions also made the up-dating of the statutes difficult. The new edition will therefore set out the statutes grouped according to subject matter. It will also be prepared in loose-leaf form so that the law can be kept up-to-date by the simple expedient of removing pages setting out superseded provisions and inserting pages setting out the law in force.<sup>96</sup>

#### IV. CONCLUSIONS

F. W. Maitland, one of the most distinguished of English legal historians, when writing in 1906 in praise of the codification of German law, turned to English law and commented: "Are we facing

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<sup>92</sup> *Id.* at 9.

<sup>93</sup> *First Report* (Law Comm'n No. 22) May 1969; *Second Report* (Law Comm'n No. 28) August 1970; *Third Report* (Law Comm'n No. 37) December 1970.

<sup>94</sup> See Statute Law (Repeals) Act 1969.

<sup>95</sup> See *FOURTH ANNUAL REPORT OF THE LAW COMMISSION* (Law Comm'n No. 27) 21 (1968-1969). The Chairman of the Law Commission is also Chairman of the Editorial Board. See also Dunlap, *The Arrangement of the Statute Book*, in *THE DIVISION AND CLASSIFICATION OF THE LAW* 81 (J. Jolowicz ed. 1970).

<sup>96</sup> See *THIRD ANNUAL REPORT OF THE LAW COMMISSION* (Law Comm'n No. 15) 22-24 (1967-1968). On the question of the language of statutes, Sir Leslie Scarman is of the opinion that the road to clarity of expression lies in exercising scrutiny over the formative stage when the Departments of Government are drawing up the instructions on the basis of which statutes are drafted. See *WHAT'S WRONG WITH THE LAW*, *supra* note 70, at 12 *et seq.* Cf. Sir G. Ram, *supra* note 76, at 450. Ideally, statutes should use language which is readily understandable by all, but a more realistic aim is to take steps to ensure that they are at least "clear and understandable to sensible people who are prepared to take some trouble to grasp what is being put to them." *THE REFORM OF THE LAW*, *supra* note 28, at 20.

modern times with modern ideas, modern machinery, modern weapons? I wish that I could think so. Some of our ideas seem to be antiquated; some of our machinery seems to me cumbrous and rusty; some of our weapons I would liken to blunderbusses, apt to go off at the wrong end."<sup>97</sup> Over sixty years later in view of the establishment of the English Law Commission we may perhaps respond to Maitland's comments with cautious optimism. In terms of the mechanics of law reform we now have "machinery which, if effectively used, should enable rules of law . . . devised to meet the requirements of earlier ages in which needs were different, to be changed or moulded so as to provide a flexible and suitable system for our own day, and, indeed, for periods to come."<sup>98</sup> The initial steps have been taken to modernise our ideas and bring our weapons up-to-date. There is indeed widespread support for the task which has been taken up by the Law Commission and most lawyers, and certainly their clients, would agree that the aim of reducing English law to a body of statutes which contain statements of the law in as simple language as possible is an eminently desirable one.

What of the Law Commission's activities to date? As far as the choice of topics listed in the Law Commission's Programmes are concerned, the Law Commission has itself said that "another set of men might have made a different choice of priorities. Where so much requires to be done, any choice is bound to meet with criticism."<sup>99</sup> The criteria which have guided the Law Commission in its choice of topics for codification, namely the social importance of certain areas of the law and/or their present suitability for codification are in principle acceptable. The terms of reference of the Law Commission are very wide and it has chosen to operate on all fronts at once, tackling not only the reform but also the consolidation and revision of the law as well as keeping an eye open for any topical matters requiring urgent action.<sup>100</sup> Given the close interrelationship of all these matters such a decision was inevitable; just as inevitable as the long-term nature of the entire law reform programme.

The Law Commission is a novel institution in the English legal system. "It holds an initiative in the reform process, and it is more than a mere committee, whose existence may be terminated by a stroke of a Minister's pen. It is an institution having a statutory existence. Neither the anger of a Minister nor the rebellion and resignation of Commissioners can destroy it. It exists until Par-

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<sup>97</sup> F. MAITLAND, *supra* note 24, at 485-86.

<sup>98</sup> Lord Chorley & G. Dworkin, *supra* note 32, at 675.

<sup>99</sup> FOURTH ANNUAL REPORT OF THE LAW COMMISSION, *supra* note 95, at 1.

<sup>100</sup> See *First Programme of the Law Commission*, *supra* note 51, at 4, ¶ 7.

liament by enactment delivers the coup de grace."<sup>101</sup> But despite the fact that it is in a sense a revolutionary body, there has not been that complete break with the earlier English traditions of law reform which many people expected.<sup>102</sup> The Law Commission, whilst the pre-eminent law reform agency in England at the present time, is not the exclusive agency. There are no less than thirteen other separate official bodies concerned with aspects of the reform of English law at work at the present time.<sup>103</sup> Some of these, such as the Law Reform Committee and the Criminal Law Revision Committee, do carry out investigations at the request of the Law Commission, but others are quite independent of the Law Commission and some have a distinct statutory status.<sup>104</sup> Whilst the Law Commission can plan its work in the light of the activities of these other bodies and may give them advice and information<sup>105</sup> there is a need for their activities to be harmonised and co-ordinated. This may already be done to some extent by the Law Commission but it would be better if all questions of law reform had to be channelled through the Law Commission, which could then act as the official co-ordinating body of all law reform activities in England.

Whatever proposals for reform or restatement are produced by the Law Commission the ultimate responsibility for accepting and implementing them rests with the Government and Parliament. Although the Government cannot require the Law Commission to undertake a particular investigation unless the Law Commission itself proposes it, the Government, through the Lord Chancellor, has a power of veto over programmes for law reform so that it can effectually prevent the Law Commission undertaking any law reform investigation of which they disapprove.<sup>106</sup> Further, the Government possesses a second veto in the form of its control over Parliamentary time. It has been said that the greatest single obstacle in the path of law reform has always been the shortage of Parlia-

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<sup>101</sup> SIR L. SCARMAN, *LAW REFORM* 13 (1968).

<sup>102</sup> For a critical comment, see Lasok, *Reforming the Divorce Law: A Critical Appraisal*, 20 *QUIS CUSTODIET* 103-05 (1968).

<sup>103</sup> See the *List of Official Committees, Commissions and other Bodies Concerned with the Reform of the Law* compiled by the Institute of Advanced Legal Studies of the University of London (No. 6, August 1970).

<sup>104</sup> E.g., the Council on Tribunals set up by the Tribunals and Inquiries Act 1958. The Council is concerned, *inter alia*, with draft legislation on new administrative tribunals.

<sup>105</sup> See *First Programme of the Law Commission*, *supra* note 51, at 3, ¶ 1.

<sup>106</sup> See Sir L. Scarman, *supra* note 10, at 93-94, where it is recorded that one topic proposed for examination in the Law Commission's First Programme was not approved by the Lord Chancellor because of the objection of one of his ministerial colleagues.

mentary time.<sup>107</sup> "It would be a tragedy if law reform should falter through a failure of the political machine to adjust itself to the task of enacting law reform proposals."<sup>108</sup> We have already seen that to date the Law Commission has no complaint on this score.<sup>109</sup> But the legislative proposals of the Law Commission have as yet only amounted to a trickle. The test will come when the full flood of codification measures is before Parliament. Whether the government of the day will provide Parliamentary time for such measures will largely depend upon the extent to which the Law Commission succeeds in winning the confidence of Parliament. It may also be found necessary to adopt a special Parliamentary procedure for the consideration of law reform bills designed both to ease the passage of such bills through Parliament and to ensure as far as possible that they are passed in the form which they have been drafted and not subject to ignorant or uninstructed amendment.<sup>110</sup>

Looking to the future, if the Law Commission is permitted to carry on with its work and if it continues to enjoy the goodwill and confidence of Government and Parliament, it may well be said that English law "is on its way back to modernity."<sup>111</sup>

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<sup>107</sup> See A. MARTIN, *METHODS OF LAW REFORM* 23 (1967).

<sup>108</sup> SIR L. SCARMAN, *supra* note 101, at 37.

<sup>109</sup> See note 63 *supra*.

<sup>110</sup> SIR L. SCARMAN, *supra* note 101, at 39 *et seq.*

<sup>111</sup> SIR L. SCARMAN, *CODIFICATION AND JUDGE-MADE LAW* 21 (1966).