Mr Chairman, My Lords, Ladies and Gentlemen,

The lecture you are about to endure commemorates in its title the name of a Prime Minister who throughout his life had a deep social conscience. He was no doctrinaire. He stood and fought for the social betterment of his fellow men, for social justice and for a peaceful world. Terse of phrase, his dry humour shone through to the end of his historic career which he summed up in a limerick he included in a letter to his brother Tom in the evening of his days:

> "*Few thought he was even a starter*
> *There were many who thought themselves smarter*
> *But he ended PM*
> *CH and OM*
> *An Earl and a Knight of the Garter*".

In choosing as my subject "*Aspects of Law Reform*" I had in mind to touch on matters which would have had both Clem Attlee's interest and support. That would especially be so, I believe, when law reform means keeping the law up to date, making the law clearer, its language simpler and more intelligible to that perpetual traveller on the Clapham omnibus and in seeing to it that access to the law and the exercise of legal rights are made more accessible, more available to all regardless of social position or wealth. I am sure that Clem Attlee would have agreed that this is not a field of concern only to lawyers and he would have accepted the words of Lord Scarman the First Chairman of the Law Commission of which I shall have more to say hereafter:

"There is no cosy little world of lawyer's law in which learned men may frolic without raising socially controversial issues. I challenge anyone to identify an issue of law reform so technical that it raises no social political or economic issues. If there is any such thing I doubt if it would be worth doing anything about it."

It is in that spirit that I embark with you on some thoughts on my first aspect of law reform - that of simplification and easier access to what the statute law is on a given subject which may be contained in many statutes going back over centuries. It is a branch of law reform called "*consolidation*" and it has an amusing history as I was reminded when reading an article on Consolidation and Statute Law Revision written by my friend Lord Simon of Glaisdale and J V D Webb in a publication named "*Public Law*" and from which I have gratefully borrowed in what I am now going to tell you.

The first reference that can be found to this branch of law reform goes back to a suggestion sent by the Commons to the Lords in 1549. You may be interested to know that it proposed that the common and statute laws -the sources to this day of our law - should be compressed into one code under titles and heads, and to protect the well-known monopoly rights of the legal profession, that it be put into good Latin. Even more interesting perhaps is the letter from King Edward VI who the history scholars amongst us will recollect reigned from 1537 - 1553 - one likes to believe a genuine outpouring of an infant prodigy for he was but thirteen years old at the time, and by that age had read Aristotle's Ethics in

the original and was himself translating Cicero's "*Philosophies*" into Greek. The letter was presumably addressed to Parliament and echoed an aim which has sounded across the centuries right unto this very day. It hoped that - and I quote - "*When time shall serve, the superfluous and tedious statutes were brought into one sum together and made plain and short to the extent that men might better understand them*".

For an early example of a Consolidation Bill, one finds the Statute of Labourers of 1562 in the reign of Queen Elizabeth 1. Her successor, James 1, known to every student of history by the contemporary description of him as "*the wisest fool in Christendom*" lived up to the more complimentary element of this ambivalence when he delivered a speech from the throne on 31st March 1609. Let us I pray you smile not at but with him after the passage of nearly three hundred and eighty-five years, for this is what he graphically drew attention to. It is a real gem:

> "*divers cross and cuffing statutes and some so penned that they may be taken in divers, yea contrary senses. Therefore would I wish both these statutes and report as well as in the Parliament as common law, to be once maturely reviewed and reconciled; and that not only all contrarieties should be scraped out of our bookes but even that such penal statutes as were made but for the use of the time (from breach whereby no man can be free) which doe not now agree with the condition of this our time, might likewise be left out of our bookes, which under a tyrannous or avaricious King could not be endured. And this reformation might (me thinkes) bee made a worth worke, and well deserves a Parliament to be set of purpose for it.*"

This was followed by a Commission set up in 1610, and if you visit the British Museum you will in fact find a manuscript there which has a list of statutes from 3 Edward 1 to 2 James 1 which had been repealed or had expired with further ideas for repeals and changes. Perhaps one can detect the influence of the great Sir Frances Bacon who was Attorney General to James 1. At all events he is the first reported Law Officer to press for consolidation and statute law revision. Listen to the four heads under which he conceived this aspect of law reform. They are to be found in Bacon's Law Tracts under the heading of "*Bacon's proposition of 1616 touching the compiling and amendment of the laws of England*". I solemnly challenge you to forget what I have just said and to ask yourselves as I do myself whether any Lord Chancellor or Law Officer in this year of grace could have put our current needs in better terms. Here are the four heads:

1. "*The Government to discharge the books of those statutes whereas the case by alteration of time is vanished. Those may nevertheless remain in the libraries for antiquities, but no reprinting of them. The like of statutes long since expired and quickly repealed; for if the repeal be doubtful, it must be so propounded to Parliament*".

2. "*The next is to repeal all statutes which are sleeping and not of use but yet snaring and in force. In some of those it will perhaps be requisite to substitute some more reasonable law instead of them, agreeable to the time; in others a simple repeal may suffice*".

3. "*The third, that the grievousness of the penalty in many statutes may be mitigated, though the ordinance stand*".

4. "*The last is the reducing of convenient statutes heaped one upon another to one clear and uniform law*".

Under Cromwell's Commonwealth two committees on consolidation were appointed. They started off well but not much appears to have been done. Listen to the glorious description of what the committee did as set out in Cromwell's Letters and Speeches by Carlyle and let any conveyancing lawyers or home buyers in this audience chortle.

"March 25th 1652. Above two years ago when this Rump Parliament was in the flush of youthful vigour, it decided on reforming the laws of England, and appointed a working committee for that object, our learned friend Bulstrode one of them. Which working committee, finding the job heavy, gradually languished, and after some Acts for having law proceedings transacted in the English tongue, and for other improvements of the like magnitude, died into comfortable sleep. On my Lord General's return from Worcester, it had been poked up again; and now, rubbing its eyes, set to work in good earnest; got a subsidiary committee appointed of 21 persons, not members of this House at all, to say and suggest what improvements were really wanted; such improvements they the working committee, would then with all the readiness in life, effectuate and introduce in the shape of specific Acts. Accordingly, on March 25th first day of the new year 1652, learned Bulstrode in the name of this working committee, reports that the subsidiary committee has suggested a variety of things amongst others, some improvements in our method of transferring property; of enabling poor John Doe who finds at present a terrible difficulty in doing it, to inform Richard Roe. 'I, John Doe, in very fact, sell to thee, Richard Roe, such and such a property - according to the usual human meaning of the word 'sell'; and it is hereby, let me again assure thee, indisputably SOLD to thee, Richard, by me, John' which my learned friend thinks, might really be an improvement.

To which end he will introduce an Act - nay, there shall further be an Act for the 'Registry of Deeds in each County, if it please Heaven! Neglect to register your sale of land in this promised county-register within a given time, enacts the learned Bulstrode, such sale shall be void. Be exact in registering it, the land shall not be subject to any incumbrance". Incumbrance, yes, but what is 'incumbrance'? asks all the working committee, with wide eyes, when they come actually to sit upon this Bill of registry and to hatch it into some kind of perfection.

What is incumbrance? No mortal can tell. They sit debating it, painfully sifting it, for three months; three months by Booker's Almanac and the Zodiac Horologe: March violets have been June roses; and still they debate what "incumbrance" is - and indeed, I think could never fit it at all; and are perhaps debating it, if so doomed, in some twilight foggy section of Dante's Nether World, to all eternity, at this hour".

In more modern times namely in 1854 a statute law committee was created by Letters Patent its objects including "*the consolidating of the statute laws of the Realm or such parts thereof as you may find capable of being usefully and conveniently consolidated*". Such pure consolidation bills are not subject to amendment by Parliament and thus go speedily through after scrutiny by a joint committee of both Houses. Because of this procedure which does not impinge on Parliamentary time I am reliably informed that there is no backlog.

It is a part of the Law Commission's work which has been of the greatest practical value. One of the momentous achievements of the Parliamentary draftsmen and of the joint committee of which I have in the past been a member was the Income and Corporate Taxes Act 1988. It covered just over 1,000 pages I believe a record for the longest statute law revision and consolidation, but I must confess has proved rather of greater use to the legal and accountancy profession than to the average layman. Indeed the current Finance Bill presented by the Government has been attacked by amongst others The Institute for Taxation which represents professional tax experts. Their President after saying

that tax legislation has now become chaotic and out of control, warned that whilst people with access to such professional advice would survive the changes the ordinary man will be left baffled, bemused and possibly subject to penalties.

So much for consolidation of existing statute law with or without minor modification. Another aspect of law reform must, of course, be not consolidation but alteration or clarification of existing law. For this purpose there had been before 1965 a Lord Chancellor's Law Reform Committee. This had however the major weakness amongst others that it had no permanent composition, no permanent secretariat, its members could only meet in their spare time and - most important of all - its recommendations were not accompanied by draft Bills which could then be placed before Parliament without more ado and a slot therefore had to be found for them in the Parliamentary programme of legislation. This was a great impediment with Parliamentary Counsel fully engaged drafting Bills to carry out Government policy on matters to which the Government gave far greater priority. In 1963 a book was published entitled "*Law Reform Now*". Its editors were Gerald Gardiner as he then was and Professor Andrew Martin. Gerald Gardiner had long been a member of the Lord Chancellor's Law Reform Committee. One of the contributors to the Book was Elwyn-Jones a future Attorney General and Lord Chancellor to whose name I will affectionately return in the course of this lecture.

The first chapter was directed to the machinery of law reform and proposed the appointment of five independent Law Commissioners. A Labour Government was elected in October 1964, Gerald Gardiner was appointed Lord Chancellor and the Queen's Speech in November 1964 included as one of the Government's aims "*the appointment of Law Commissioners to advance reform of the law*". The Act carrying this out secured the Royal Assent on the 15th June 1965 and came into force. Thus was born the Law Commission for England and Wales. There is a separate Law Commission for Scotland because of the differences between the law north and south of the border. It has accomplished much. It normally issues consultation papers before making firm recommendations for a reform of the law thus giving opportunities to lawyers and laymen to play their part in the process. These often include an examination of the law in other jurisdictions with the remedies they provide. Most important of all, where a report with final recommendations is submitted to the Lord Chancellor, a draft Bill is annexed which would give effect to their recommendations so that the Bill can be introduced by the Government as it is without further ado. Alternatively, it can be taken up by a Private Member. There is no doubt about the intensity and width and worth of the reports and recommendations they produce or the public benefit they convey. There is also no doubt of the quality of their research which is so often of the greatest use to the highest courts in our land. Their work is of vital importance to the administration of justice, not least in the field of criminal law where certainty is

a very necessary requirement. Parliament is, however, letting the Commission down and something must be done about it. Let me quote from the article which the present Chairman of the Commission wrote only last September in the News Letter of The Criminal Bar Association. After describing the procedure followed by the Commission in preparing its reports and recommendations and the draft Bills where appropriate he writes:

> *"What happens then? The present position is well described in our latest Annual Report, which can be found in all the Inn libraries. Increasingly often, nothing at all, at any rate for a very long time. The wheel has turned full circle since 1965. There are now thirty Law Commission reports, incorporating law reform recommendations of high quality, which are waiting for parliamentary time. All of them are in areas of law where the law was known to be thoroughly bad or out of date when the Commission originally embarked on its work, and everything we do is, of course, paid for by the taxpayer."*

This waste of worthy work is really quite scandalous. It is not in self defence - a plea not unknown to lawyers - that I say that the problem is not with the House of Lords. The failure to afford time to law reform Bills is in the Commons and lies at the door of those who are responsible in that House for legislative programming. It is to those who have influence in these matters that I make my humble plea for proper respect for the work which the Law Commission does and for the priority that many aspects of law reform deserve and which they are not getting.

My third and last aspect of law reform in the administration of the law strikes at the very heart of the worth of any judicial system. That system can

have all the merit of being up to date, consolidated, just and clear and simple but if its scales are weighed in favour of the wealthy and the powerful and against the non-wealthy and the weak it is sorely deficient as a just judicial system. We thought that both in criminal and civil law we had made substantial strides in making all of us more equal before the law than we were prior to 1949 when Attlee's Government passed the Legal Aid Act. It was a very meaningful step in making legal advice and the law available to those who otherwise could not afford it. One of its main architects was the well loved Elwyn-Jones to whom I have previously referred - a figure deeply missed in our public life and remembered as a very distinguished Lord Chancellor. In recent times, however, cuts have been introduced by the Government which have removed the means for many people to exercise their legal rights. As the Law Society has said "*The cuts represent an assault on the Legal Aid scheme out of all proportion to the savings they were designed to achieve. The real costs of the cuts is a serious weakening of the principle of equal justice for all*".

This - and I cannot refrain in this context from saying it although my address was and is meant to be non-political - this in spite of the Conservative Party's 1992 election manifesto commitment to (and I quote) "*Enabling people with limited means to have access to legal services*". Perhaps the cruellest cut of all is to the so called Green Form Scheme. That as many of you will know has as its full name "*Legal Advice and Assistance (Green Form) Scheme*" and was

introduced in 1973 to provide a much needed advisory and diagnostic legal service for people of low and moderate means so that they could get legal advice and assistance. This was especially valuable to those least privileged amongst us in the complex but for them so important field of social welfare law. When introducing the Bill bringing in the Green Form Scheme Lord Hailsham then Lord Chancellor commended it by saying that the Scheme would "*Radically improve the service to the public by helping to resolve different personal and social questions and in their earlier stages which is, of course, precisely when litigation can most helpfully be avoided*". The Scheme includes advice on such matters as matrimonial affairs and the preparation of written cases to go before a Tribunal (where in most cases Legal Aid is not available to cover professional representation) and under it there was a free limit of £75 per week disposable income and a scale under which a contribution was made by those having a weekly disposable income of above £75 per week up to £145 per week. On the 12th April 1993 eligibility for Green Form advice was restricted to those whose disposable income was at or below income support level namely £61 per week and those in receipt of income support, family credit or disability working allowance. These are the very poorest in our land. Those just above that miserably low limit no longer have the benefit of this Scheme at all. They are now driven to go to the already overburdened and overstretched advice services such as law centres and citizen advice bureaux which many in this audience and indeed in this building know so well. They also know that these bodies have simply not got the resources to take on this extra work.

Had he been with us Clement Attlee would have condemned in a short sharp sentence these erosions in the Legal Aid for the initiation of which his Government was responsible.

Let me try and be as terse as he was and end by merely saying:

"*So do I*"