

- In New Zealand, a great deal of attention has been given to police complaints machinery following the confrontations with the police during the demonstrations which attended the visit to New Zealand of a South African rugby team. According to news reports, police authorities were refusing to say how many complaints had been made about police during the Springbok tour demonstrations. The *New Zealand Herald* (17 December 1981) called attention to the recommendation in 1977 by the Chief Ombudsman that an outside authority rather than the police themselves should inquire into complaints against members of the service. The need for justice to appear to be done was picked up by the editorialists. 'All the publicly available evidence suggests that the police are far from indulgent with those of their number who breach their stringent code of discipline. But the existence of an independent tribunal to inquire into alleged transgressions would allay those few, and possibly unjustified, doubts that inevitably arise when the public has not seen and heard everything'.
- The Annual Report of the Victoria Police for 1980 has just come to hand. During the year, 940 complaints of various kinds were received and forwarded to the Internal Investigations Bureau. Chief Commissioner Miller reports that, although satisfied with the standards of the investigations 'I can believe that complaints procedures can be improved'. Calling for specific attention to Mr. Miller's 'persistent and persuasive' calls for enhanced police powers, the *Melbourne Age* (10 December 1981) returns to the Criminal Investigation Bill:

The most sensible approach to the dilemma has been suggested by the Australian Law Reform Commission in its report on *Criminal Investigation*. While its specific recommendations are open to debate, it was basically right in advocating the removal of some of the present legal inhibitions on police investigations, balanced by a strengthening of safeguards against the misuse of police powers. In spite of objections from police associations, it is in this

context that Mr. Miller's proposals should be examined.

All eyes are now on the Criminal Investigation Bill in the Australian Parliament.

bio-technology

Lawyers and scientists are content to work with a notion of relative truth. Claims to absolute verities are left to priests and politicians.

Mr. Justice Kirby, *National Science Forum*, March, 1982

test tube inquiry. On 11 March 1982, in a joint announcement, the Attorney-General and the Minister of Health of Victoria, reported the establishment of a committee to examine the need for guidelines for the procedures of *in vitro* fertilisation. The committee is to be chaired by the Victorian Law Reform Commission, Professor Louis Waller. Among the issues referred to the committee, which is to have members who are lawyers, doctors and medical philosophers are:

- is the practice of IVF likely to give rise to undesirable social and moral practices?
- what are the legal implications of IVF?
- what are the rights of infertile persons to IVF?
- what criteria should be used for the selection of participants in IVF?
- what methods should govern selection and treatment of embryos before and after implantation?
- what consequences follow, if the implantation is not proceeded with i.e. should the embryos be destroyed or otherwise used?

The Victorian Government inquiry comes after a distinct 'hotting up' of the debate in Australia about the moral and legal implications of this aspect of bio-technology. The debate has been accentuated because of the success of the Melbourne team under Professor Carl Wood, which has produced about half of the world's 'test tube babies'.

Some hint of the approach of Professor Louis Waller is to be found in an interview given by him to the Australian *Jewish News* (January 1982). As

reported, he sees his job as that of 'sweeping the cobwebs from the legal machinery'.

Law reform's clear task is towards the removal of rules that are clearly unsuitable for society today, as well as the creation of legal rules to meet new situations. These new legal rules may be products of law reform agencies in Victoria or elsewhere. There is, of course, a great deal of exchange and consultation between the different agencies. . . . The creation of legal rules to meet a changing world is further exemplified by new legislation regarding human tissue transplants, a flow-on from the work of law reform agencies.

Professor Waller said that the 'enormous rich heritage' of Jewish teachings was a 'closed treasure chest that should be opened'. It could, he declared, add a 'valuable perspective to such questions as abortion or other sensitive medico-legal issues'.

uncertainties ahead. The last quarter has also produced a number of anxious comments about the IVF technology:

- On 9 January 1982 the Australian Medical Association was reported to be seeking expert medical and legal opinion to determine the problems associated with the test tube baby program and other fertilisation techniques being established in NSW, after the Victorian model. It was also announced that the National Council of Women had established a special committee to examine the issues.
- At about the same time, official spokesmen for the Catholic Church in Australia called for a halt in IVF programs. According to the *Catholic Weekly* (3 January 1982) Dr. John Hill, official spokesman for the Catholic Archdiocese of Sydney, called for a halt to IVF work 'until the many ethical problems associated with it have been worked out'. He said that Pope Pius XII had absolutely rejected IVF in 1956. He objected to turning the 'marital home into an experimental laboratory'. In the same vein, Archbishop Little of Melbourne, in an interview with the *Melbourne Advocate* (14 January 1982) called for a halt to IVF so that 'all interested people in the community' could be given an opportunity to know the facts and to have

principles and interpretations available to them. The Anglican Primate of Australia, Sir Marcus Loane, supported an inquiry into ethical guidelines. 'We are dealing with humans and not animals in these experiments', he said.

- The debate has not been one-sided. Professor Carl Wood, Head of the Monash University IVF team, also supported an inquiry which he said should be conducted by the Australian Law Reform Commission or a similar Federal body. He expressed the fear that without such an inquiry the 'concerted move against IVF by church leaders' might cripple the program. The Director of Medical Services at the Royal Women's Hospital in Melbourne, Dr. C. Flower, accused politicians of being wary of IVF. 'It's an issue on which they don't want to stand up and be counted because it's so emotional' (*National Times*, 7 Feb, 1982, 12).
- On the offensive was the comment by the Monash Medical School's Professor David Scott. He said that society should think carefully before putting brakes on medical researchers in the controversy over bio-medical research ethics. He pointed out that people who once would not have survived illness or injury are today leading normal lives thanks to human tissue transplants.
- The *Melbourne Age* (13 January 1982), before the establishment of the Victorian Committee, was critical of the absence of a national inquiry:

The reported deference of Federal and State Ministers to each other at the weekend about whose province it was to institute an inquiry was not simply Micawberish; it bordered on humbug. Particularly puzzling was the attitude of the Federal Attorney-General, Senator Durack, who said that the matter was primarily one for State health authorities. . . . The time for procrastination is passed. Leading churchmen of several denominations have called for a full inquiry leading to legislation setting out limits in this area of research. . . . If Australia is proud to call itself the world leader in the technology of *in vitro* fertilisation then we are less than

responsible if we do not lead in discussion and legislation on its ethics as well. And the lead should come from the Commonwealth.

Now, the lead has come from the State of Victoria with the announced inquiry by Professor Waller's committee. It may be hoped that the committee:

- will have regard to interstate and international discussion of the issue;
- will seek to involve the community and community groups in the discussion, including by radio and television;
- will see its inquiry as part of the mosaic of multi-faceted bio-ethics law.

transplants law. In a speech at the Masonic Centre, Sydney, on 24 February 1982, the Governor-General, Sir Zelman Cowen, returned to his long-standing interest in the subject in dealing with human tissue transplants law:

While the drama of the early heart transplants has passed, more practical and urgent issues in tissue transplants present themselves and it has been necessary to consider them in the context of writing legal rules for their conduct. These legal rules necessarily involve important underlying ethical issues which have been actively debated. I was a part-time Member of the Australian Law Reform Commission which considered this matter, and the report of the Commission itself has served as the basis for legislation. The procedure adopted therein framing recommendations was interesting: it involved wideranging discussions with doctors, theologians, philosophers and others on the issues involved.

So far the ALRC legislation has been adopted in ACT, NT and Qld. When the Victorian Parliament was dissolved for the election, it had before it the Transplantation and Human Tissue Bill 1981, based on the ALRC report. In New South Wales, the State Minister for Health, Mr. Brereton, is reported on 7 January 1982 as announcing his intention to introduce changes to legislation governing the removal and use of human tissue for experiment. Mr. Brereton's announcement followed confirmation of claims that bones had been removed from the bodies of dead infants without parental permission as part of a program conducted by the Atomic Weapons Test Safety Committee between 1957 and 1978. A similar outburst arose in March 1982 when it was indicated

that the cornea of a deceased youth had been taken without parental permission. The ALRC legislation covers cases of this kind, whilst providing for emergency procedures involving the consent of a coroner.

new methodology? A lead story in the London *Observer* (7 February 1982) outlines the need to confront ethical dilemmas posed by the latest developments in bio-technology. The writer, Geoffrey Robertson, a well known barrister-broadcaster, points to the methods used by the ALRC in its inquiry on Human Tissue Transplants as indicating the way ahead:

What institutional device should be selected for the urgent task of reforming the law to cope with the present, not to mention the future dilemmas of bio-ethics? Royal Commissions are slow and cumbersome, and their reports have a propensity to gather dust. In Australia, where medical techniques of *in vitro* fertilisation are slightly more advanced, a useful beginning has been made by the Law Reform Commission — a body whose methodology significantly departs from its English equivalents. . . . It has taken evidence from every conceivable interest group but, more importantly, its provisional solutions have been submitted to public hearings in all parts of the country. Its members have used radio and television to explain the issues and raised community appreciation of the problems at stake. Its initial report on human tissue transplantation was couched in easily understandable language and carried a greater measure of professional and public accord. This insistence on confronting ethical issues through interdisciplinary co-operation and insistence on public participation is far removed from the traditional approach of our own law reform commissions, which prefer to shirk publicity and to avoid moral questions. . . . A new approach to the methodology of law reform is required, an approach that can take full account of professional practice, contemporary moral vision and public preference in designing workable and acceptable rules.

A BBC *Panorama* program on IVF and associated problems was shown throughout Britain on 21 December 1981. The BBC came to Australia to interview Professor Wood and his team. The *Listener* (24 December 1981, 739) quotes the ALRC Chairman's comments:

My hope is that it won't be the epitaph of our generation that people will say: here was a community which developed the most amazing, dazzling fields of science, and yet they proved themselves so indifferent,

so incompetent, that they didn't address the serious social and ethical consequences of what they were up to.

miscellaneous. In closing this item, two additional reports:

- The *Times*, Law Report, 20 February 1982, carries the report of the English Court of Appeal in *McKay v. Essex Area Health Authority & Anor.* The appeal judges held that the common law did not recognise that a person had a right of action for being allowed to be born deformed. The court unanimously so held when allowing an appeal from a decision which had in turn reversed an order of a Master striking out a claim of an infant as disclosing no reasonable cause of action. The claim in question was that the infant 'had suffered entry into life in which her injuries are highly debilitating and cause distress, loss and damage'. The child suffered disability because her mother was infected with rubella in the early months of pregnancy. The claim of 'wrongful life', developed in the United States, was rejected. Lord Justice Stephenson asking 'how could there be a duty to take away life? How could it be lawful? It is still the law that it is unlawful to take away the life of a child born or any living person after birth?'
- In the address to the National Science Forum on 4 March 1982, with which this item begins, the ALRC Chairman drew attention to discussion in recent United States law journals about the legal implications of human cloning. See, for example, P.D. Turner, 'Legal and Ethical Implications of Artificial Human Procreation', 58 *Uni. Detroit J. Urban L.* 459, 482 (1981). According to United States estimates, human cloning would be technologically possible within 10 to 20 years. Clones of other mammals have already been produced. The ALRC Chairman listed a number of legal questions, including as to the legal relationship between the clonist and clonant, ie whether they would be sibling,

parent and child or a different relationship requiring new legal treatment:

The lesson of science and technology for the law is that its developments tend to happen very rapidly — sometimes overnight. One morning we wake up and the newspapers proclaim a 'test tube baby'. Smiling parents and doctors reassure us that all is well. So far, perhaps it is. Will we have the same reaction if one day, within the next 20 years, we wake up to find that the remarkable scientists have gone beyond cloning frogs, mice and prize cattle? Will the television pictures of the first cloned human being fill us with delight, fear, horror, awe? Without legal regulation it is sure that scientists somewhere will continue the experimentation. Meanwhile the law and lawmakers sleep on this subject.

odds and ends

■ **foreign report.** The first report of the Law Reform Commission of Nigeria, 1980, is now to hand. It sets out the qualifications of the Commissioners and outlines the methodology and program of the Commission. The first item on the agenda is a review of the Marriage Act, complicated in Nigeria by the differing secular and Islamic approaches to the subject. The report contains a complaint that will be familiar to all LRCs that 'the administrative cadre is greatly understaffed' and 'the finances of the Commission . . . grossly inadequate'. Also from Africa comes the first Annual report of the Zimbabwe Advisory Committee on Law Reform, 1981. The first Chairman of the committee is the Chief Justice of Zimbabwe, Mr. Justice Fieldsend, who was one-time Secretary of the Law Commission for England and Wales. The Annual Report indicates an intention to proceed by working papers and a detailed report on progress is given in the projects now under consideration. These include the problem of habitual criminals, aspects of capital punishment, civil imprisonment and civil procedure and evidence. Specific mention is made of the 'friendly connections with the ALRC, Law Com and the Legal division of the Commonwealth Secretariat. Something of a record in law reform implementation is achieved by the prompt introduction into the Legislative Council of Hong Kong of the Arbitration (Amendment) Bill 1982 based on the first report of