which was 'one of the most useful' the NSWLRC had received. 'A law reform commission', he said 'always faces the fundamental question of whether you approach the broadest issues first'. Not everybody loves a law reformer.

the judges

Seated on the Bench in their silk and horsehair and Rumpolian prescription for horn-rimmed glasses, the judges may look as if their get-up-and-go has got-up-and-went, but they don't like to be reminded of it.

Justice Daryl Dawson, Young Lawyers Assn, *Age*, 4 November 1983

purple curtain. During the last quarter, thousands of Australians, just finished their Sunday lunch in the sunshine, have had their ears bashed on what for most of them would be a novel topic : the judges. Speaking as the Australian Broadcasting Corporation's Boyer Lecturer for 1983, the ALRC Chairman, Justice Kirby, has delivered a series of six radio lectures on the judiciary. A novel feature of the exercise has been the inclusion of the authentic voices of important Australian, British and Canadian judges past and present. Voices captured to enliven the series include those of Latham, Barwick, Gibbs, Mason, Murphy, Denning, Hailsham and Scarman. This feature alone should make the series one of interest, if only to aspiring law students and historians of the judicial voice.

The Boyer Lectures start with a description of the Australian judiciary and how they are appointed. They then proceed through the 'tender topic' of judicial training to an examination of judicial method. A lecture on the handling of complaints against judges details the sorry history of the initial colonial judges in Australia, many of whom had to be 'amoved' for misconduct. The role of the judge in law reform is then discussed as a prelude to the final lecture on the subject of the future of the judiciary. Copies of the Boyer Lectures can be purchased from ABC bookshops in both book and cassette form. The ALRC Chairman, with a touch of irony, insisted not only on the use of authentic judicial voices but on theme music comprising the piece titled 'Judges of the Secret Court' by Berlioz!

As might be expected, a number of suggestions are made in the course of the lectures affecting the future reform of the judiciary. They include:

- greater effort to introduce more diversity in judicial appointment involving the appointment of more women and more people from ethnic backgrounds;
- establishment of a judicial training body to offer judges and others instruction in non-legal disciplines and updating of law education;
- introduction of more written arguments in court, to reduce expensive oral procedures;
- clearer exposure by judges of policy issues and choices;
- independent handling of complaints against the judiciary;
- annual report to Parliament by the judges on law reform needs demonstrated by cases during the year.

Justice Kirby also predicted the growing use of computers, the intrusion of cameras and broadcasting into courts and the eventual abolition of wigs and robes in Australian courts, except for ceremonial occasions.

Conceding that the proposal for a judicial training institute in Australia would be 'very unpopular' with many 'current and incipient judges', the ALRC Chairman urged establishment of such an institute along lines of similar bodies that have long existed in the United States. He also urged that they should be available for magistrates and tribunal personnel. He said that such a training institute was needed because:

- lawyers were increasingly specialising at the Bar and their specialist practices might not be suitable training for today's varied judicial work;
- the law today is complex and changing

rapidly, requiring constant updating;
- only by formal training will appropriate interdisciplinary contact be possible, encouraging a more self-critical approach to the judicial function; and
- appointment of specialist judges from specialist barristers could promote 'tunnel vision' and 'resistance to reform ideas', needing an appropriate corrective.

Justice Kirby pointed to the ever-widening functions of the Australian judiciary including proposals for a national Bill of Rights, advisory opinions, enlarged functions in respect of statutory interpretation, management of class actions and the role now necessary in the Administrative Appeals Tribunal of deciding cases 'on the merits', including the 'merits' of high policy content.

critics collect. Needless to say, the series attracted a number of critics:

- In a review in the *Age* Green Guide (17 November 1983) radio reviewer Barry Hill suggested that Justice Kirby had 'dampened the fires' which could have been 'flames from such a rich unexplored realm as the judiciary'. He considered that it was a 'pity' that a lawyer was chosen to tackle the subject, asking what a Phillip Adams would have made of the judiciary. With faint praise, Mr Hill conceded that nonetheless the lectures were 'worth listening to'.

- Chief Justice Gibbs was not so sure. At the Melbourne Young Lawyers' Christmas Lunch on 7 December 1983, he criticised specifically the ALRC Chairman's proposals for changes in the appointment of judges and for a course of judicial training. He said that appointments to the Bench should be made strictly on the basis of 'learning experience in practice and moral character rather than racial origin, sex or background'. He said that to suggest that judges should undergo a course of training 'appears to be a recognition that the persons appointed are not properly qualified'.

- Justice James McClelland, Chief Judge of the Land and Environment Court, took time off from a speech at the Journalists' Club in Sydney at the end of November 1983 to make a similar point. A national judicial institute was not, he said, a realistic proposition. 'You can only learn to be a judge by sitting up there and finding out how hard it is, but how simple it is if you only realise you are not a member of a priestly caste'. But he said that the first subject on any curriculum of a national institute would be 'how to avoid pomposity'. He claimed that many lawyers 'inflate like bullfrogs the moment they take their place on the Bench'.

- From New Zealand comes the report (NZ *Herald*, 26 September) that two Cambridge criminology lecturers have discovered that women were likely to receive more severe sentences if women magistrates were sitting. They claimed that the trend was 'even more marked' when a woman before the court was divorced or separated. But according to Sir Harry Gibbs, it is 'demeaning to women, as well as it is likely to be detrimental to the Bench, to suggest that their sex rather than their professional eminence and ability should be their reason for appointment'.

- Sir Garfield Barwick, emerging from retirement to launch his new book '*Sir John Did His Duty*', ruminated for the *Sydney Morning Herald* (5 November 1983). He expressed the view that judges were being appointed too young and also that a Chief Justice should be appointed from outside the court. In

an interesting interview for the *Law Institute Journal* (Vic), December 1983, he disclosed that his predecessor, Sir Owen Dixon, 'a very great lawyer', was 'difficult to argue before' because he rarely gave an indication of his thinking during argument. 'I am inclined to think', said Barwick 'that he regarded the time of hearing of an appeal as a waste of time. I would disagree with that. I have always thought that the time in court was work time in which you should be working at the case and forming views whilst you were in discussion'.

- Interestingly enough, Justice Rehnquist, one of the nine judges of the Supreme Court of the United States, recently urged more attention to oral argument before appellate tribunals in the United States, particularly the Supreme Court. See *The Third Branch*, December 1983, 1. The observation is significant because of the strict time limits imposed on counsel before the US Supreme Court (normally half an hour). These limits have led to the development of detailed 'briefs' of legal and policy argument, which Justice Kirby urged should be introduced in the higher courts in Australia, to make them more cost effective.

judging judges. The ALRC Chairman's suggestion that there should be improved procedures for handling serious complaints against the judiciary, compatible with the independence of the Bench and finality of trials, received some support from the *Sydney Morning Herald* (10 December 1983). The observations coincided with the tabling in the NSW Parliament of an interim report by the New South Wales Law Reform Commission on *First Appointment as Magistrates Under the Local Courts Act 1982.* The report deals with the procedure to be followed in the consideration of the reappointment of existing magistrates under new State legislation. The interim report proposed the establishment of an Appointments Committee chaired by the Chief Justice of NSW and including the Chief Judge of the District Court and the Electoral Commissioner for NSW. Criteria were suggested for appointment. Complaints were recorded that some magistrates were said to be 'lazy, domineering, incompetent and erratic'.

The *SMH* pointed out that no judge has been dismissed in Australia since 1867 and that 'impregnability' was sometimes important:

> If judges can be easily removed, the temptation for a government to do just this to someone who has been a thorn in its side may well become irresistible. Security of tenure, then, is indispensable in allowing judges, in Justice Kirby's phrase, 'to do unpopular things against powerful people'.

However, whilst reviewing the various possibilities, the *SMH* editorial concluded:

> Because the complaints about erring judges are not numerous, it may be that what is needed is more freedom in discussing what judges do in their courts rather than a complex administrative complaints system ... Only judges not worth protecting need fear greater public scrutiny of what the courts are doing.

Some might see this as a self-interested claim once again for reducing the contempt power now under investigation by the ALRC. Not everyone would relish the public canvassing of detailed complaints against judges through the pages of the popular press.

Apart from the magistrates in New South Wales, a number of cases overseas brought this issue to notice in the last quarter:

- In England, an Old Bailey judge, Judge Bruce Campbell, was removed from office by the Lord Chancellor following his conviction for smuggling whisky and cigarettes into England on board his motor boat. This case of removal of an English judge is the first for nearly a century.

- In mid December in Chicago it was announced that three judges and four lawyers had been indicted in a bribery investigation in which one judge's chambers were bugged and another judge co-operated with investigators by hiding a microphone in his cowboy boots. Circuit judge Wayne Olson was believed to be the first judge in the United States submitted to court-ordered bugging of his chambers.

- Closer to home, the Australian Society of Labor Lawyers has criticised arbitration President Sir John Moore for removing one of the Deputy Presidents of the Commission, Justice J F Staples, from charge of one of the Commission's 11 industry panels. The President of the Society, Mr Robert Tickner, claimed that the provisions for removal of a judge laid down in the Conciliation and Arbitration Act had been circumvented and that the independence of the judiciary was being undermined by Justice Staples' removal to a 'judicial limbo'.

victorian moves. Meanwhile, in Victoria, the new State Attorney-General, Mr Jim Kennan, has been moving quickly to tackle a number of problems involving the courts:

- In October 1983 legislation was introduced into the Victorian Parliament to remove the present statutory limit on the numbers of judges of the Supreme Court of Victoria. As well, provision was made for redirecting many cases from the Supreme Court to the County Court of Victoria. One point mentioned in Justice Kirby's Boyer Lectures was the tenfold increase in the 'throughput' of the Victorian Supreme Court since 1950, matched only by a doubling in the size of the Bench.

- The Victorian Government has made a number of top legal appointments including the first woman magistrate in Victoria and the first Director of Public Prosecutions. It has also selected a new Solicitor-General and appointed Professor David Kelly, ex ALRC Commissioner, to head the Law Department. See [1983] *Reform* 176. In November 1983, following the retirement of Justice Lush, the Attorney-General announced the appointment of Mr Howard Nathan QC. Until his appointment, Mr Nathan was Legal Counsel to the Victorian Attorney-General. Jokingly he described himself as the 'attorney-colonel'. In the same mood, upon his appointment, he wrote across his personal file 'dead – October 1983'. This gesture raises the question of whether there is life after judicial appointment.

tasman news. This issue was also raised in New Zealand following the announcement on 20 October that the Judicial Committee of the Privy Council had dismissed the appeal by the former High Court judge, Mr Peter Mahon. The judge had appealed against the New Zealand Court of Appeal decision concerning the Royal Commission he conducted into the crash of the New Zealand airliner on Mt Erebus in the Antarctic. Following the NZ Court of Appeal judgment, Justice Mahon had resigned from the Bench. The Privy Council at the end of its 38-page judgment urged that the time had now come for all parties to 'let bygones be bygones' so far as the aftermath of the disaster was concerned. There had, declared Their Lordships, been 'manifestations of human fallability that are easy to understand and to excuse'. The Privy Council was at pains to stress that the dismissal of the appeal 'cannot have any adverse effect upon the reputation of the judge amongst those who understand the legal position, and it should not do so with anyone else'. Interestingly enough, former Justice Mahon was shortly afterwards appointed to one of the NZ Law Reform Committees (see *Personalia*).

The debate about the Privy Council itself as a

judicial arm for Australia and New Zealand continues:

- On 8 October 1983 the Auckland *Star* reported that the Auckland District Law Society Committee, debating the Privy Council, wants appeals retained but also wants a New Zealand judge to sit on all appeals from New Zealand.

- Prominent Auckland barrister, Mr Peter Salmon, has also urged the retention of the right of appeal to the Privy Council. Addressing Auckland Rotarians, Mr Salmon said that in a small country like New Zealand 'we just cannot provide the continuity of enough judges of the calibre needed, remembering that we also have to staff the Court of Appeal, the High Court and all the District Courts, as well as maintain a strong Bar.

- But in Australia, still waiting for the final legislative removal of residual appeals from State Courts to the Privy Council, the High Court has made its position plain. On 14 October 1983 in the appeal of James Finch, the court granted the Commonwealth an interim injunction to prevent Finch from seeking leave to appeal from a decision of the High Court of Australia to the Privy Council in London. The injunction was granted by Justice Mason, who directed that the proceedings be referred to a Full Court of the High Court.

The judges, 'the central actors' in our administration of justice, have come under increasing scrutiny in the year past and the year ahead promises more of the same.

anglo enemies?

A real patriot is the fellow who gets a parking ticket and rejoices that the system works.

Bill Vaughan, c 1958

anglocentrism. Delivering the Third Annual Address to the Australian Institute of Multicultural Affairs, Associate Professor Donald Horne of the University of New South Wales declared that those Australians who still defined Australia by its Britishness or anglocentricity were the 'main enemies' of cultural diversity in Australia. Professor Horne said that he believed that anglocentrism was still so ingrained in the intellectual community that it might be 'ineradicable'. Defining a future Australian society of his desires, he said that anglocentrism could be replaced by eurocentrism. Professor Horne said that, for example, he would replace the school subject 'English' with the subjects 'Expression' and 'Literature' in the school curricula. He said that he regarded teaching of these subjects as more important than the teaching of community languages. He hoped that immigrants in the future would arrive in Australia which would boast 'that in origin it is both multicultural and multiracial, an Australia in which it is proclaimed that we are all ethnics'. He suggested that the first concern of multiculturalism as a national ideal should be the fate of the Aboriginal people of Australia. The remedy was not incorporation of Aborigines into multicultural programs but recognition that they were 'a special case demanding their own program of retrospective justice'.

parochial nationalism. Professor Horne's views provoked the ALRC Chairman, Justice Kirby, to a defence of the anglo element in Australian society. Speaking in the congenial atmosphere of the Royal Commonwealth Society in Sydney, he declared that it was dangerous and wrong to 'artifically whip up' a tension between 'those who value the continuing British element in Australian life and the ideal of multiculturalism'. He suggested that it would destroy multipartisan support for the principle of multiculturalism, given that more than 70% of Australians traced their origins to the British Isles:

> At the heart of multiculturalism is the ideal of tolerance – that our society in Australia is