ments should be produced in the interest of justice. But justice did not always depend on eliciting the real truth of what happened and sometimes the plaintiff may have to prove his case without discovery. Air Canada was denied access to Ministerial documents relating to the formulation of Government economic policy which the Secretary of State for Trade decided it was not in the public interest to disclose. The Court would not override a Ministers certificate 'except in extreme cases'. Lord Denning suggested 'the open Government' calls were voiced 'mainly by the press, critics and oppositions who want to know all about the discussions that went on in the inner circles of Government'. So far, not with much luck in Britain.

- Indeed, in an only partly humorous item in the London *Times* in November 1982, it is suggested that the secrets of the war of 1066 cannot yet be disclosed for fear of irreparable damage to the public interest.
- An important new book has just been published by Tom Riley and a co-author Harold Relyea '*Freedom of Information Trends in the Information Age*, Frank Cass, London, 1982. The book reviews the moves towards FOI and contains reports on the operation of the United States law.
- Another useful reflection is the examination by Mr David Williams, President of Wolfson College Cambridge and an authority on administrative law of the Donoughmore Report in retrospect. It is published in *Public Administration*, vol. 60, 1982, 273. The report appeared in 1 932. It made numerous proposals concerning minister's powers. Its implications for the adjustment of institutions to the growth of governmental and departmental authority, the accession of the United Kingdom to the EEC and the fears expressed by Lords Devlin and Denning in recent writings are all tackled in this thoughtful article by Mr Williams. He points out that there has never been an official enquiry into administrative law as a whole in Britain. The 1969 proposal by the English Law Commission that a Royal Commission should do this was rejected by the Lord Chancellor in the same year. An effort to export a few Australian ideas to Britain and Europe may be found by the recent visit of AAT President, Mr Justice Davies to England and Europe. His Honour is one of the small international team of distinguished consultants working on the Justice and All Souls review of administrative law in Britain. And there are doubtless one or two salty Australian administrators who would have something to tell their counterparts in the plush imperial offices overlooking Whitehall.

medical law

Either he's dead or my watch has stopped.
Groucho Marx c 1935

tissue transplants. The venture of law reform into the bioethical sphere really started in Australia with the project of the Australian Law Reform Commission on Human Tissue Transplants. The ALRC report (ALRC 7) has now been adopted, with minor variations, in the A.C.T., Queensland and the Northern Territory. In the last quarter, two further Australian jurisdictions took the plunge:

- In Western Australia, the Human Tissue Transplant Bill 1982 was introduced based upon the Commission's report.
- In Victoria, the Human Tissue Bill 1982 was prepared by the new State Minister for Health, Mr. Tom Roper,

based upon the ALRC recommendations and introduced into the Victorian Parliament.

Both the W.A. and Vic. Bills contain the ALRC proposed legal definition of 'death'. Each was allowed to lie on the table to permit community groups to examine the measure and to offer comments. On 2 December 1982, it was announced in the Melbourne Age that the Victorian Government proposes one amendment to its Bill to ensure that hospitals can continue to take bone marrow from very young children for transplants. The amendment would, as reported, allow parental consent to be the only requirement where very young children are involved and would not require consent from the child. Readers of these pages will recall that the issue of child donations in the case of non-regenerative tissue was a matter upon which the ALRC itself divided – Sir Zelman Cowen and Sir Gerard Brennan, then ALRC Commissioners, dissenting on the ground, that in their view, such donations by minors should never be countenanced by the law.

Legislation in N.S.W. and S.A. is under consideration and, when introduced, would almost close the circle and provide a major uniform law reform achievement in a country that can boast of few uniform laws. A few other points:

- In the United States, a retired American dentist, Dr Barney Clark, in December 1982, underwent the implantation of an artifical heart, connected to an air compressor. As this issue went to print, he was expected to be up and about in a few days.
- Commenting, Dr William Dobelle of the Institute for Artifical Organs in New York predicted that 'by the turn of the Century every major organ except the brain and central nervous system, will have artifical replacements'. We are, in was claimed, in 'an era of spare parts medicine' with science able now or soon to be able to replace more than 50 body parts in an industry already turning over $1.2 billion a year in the United States. The *Age* (7 December 1982) questioned whether one day 'some worn out human will keep only his or her brain atop a bleeping body made of electronic artificial parts?'. Will man come to this? Food for thought.
- Even the brain itself seems not to be immune. The *Age* (6 November 1982) reports that Swedish surgeons have succeeded in transplanting tissues into a human brain. About two-thirds of the patient's adrenal gland marrow was implanted in the brain to combat Parkinson's Disease caused by a lack of the substance. So far, too early to draw conclusions.
- The shortage of transplant organs remains a major problem in all countries where consent is still required. But according to *Time* magazine (22 November 1982) whilst thousands of American adults die each year waiting for kidney transplants, paediatric organs for needy babies are 'more priceless than gold'. Ethical pressures imposed to find organs and the fear of 'harvesting' organs from brain dead patients, present major legal and moral quandaries. They stimulate the development of electronic and mechanical alternatives. They also stimulate law reform.

plug pulling. American journals continue to record cases where legal problems have arisen after nurses terminate a dying patient's support system. The Chicago *Tribune* (9 September 1982) records that two nurses who shut off a respirator are not to be charged with murder 'because they were acting on the patient's request and the patient was dying at the time, with no hope of survival beyond a few hours'. Much point was made of the fact

that the patient 'was rational, highly intelligent and suffering considerable pain'. In Australia, the question of whether doctors should allow badly deformed new born children to die rather than to trying to keep them alive was submitted to a national public opinion poll. As reported in *The Sydney Morning Herald* (15 November 1982) two out of three respondents believed that doctors should be allowed to let the child die. The same proportion held that if a doctor disagrees, it was the parents' wishes rather than those of the doctor which should be respected. Two out of three of the respondents also expressed the belief that an adult with a terminal or chronic illness who wished to end his or her life should be helped by the doctor to die. On all of these issues, large variations existed attributed to religious beliefs. Within the churches, the strongest objection to infant non-survival, came from Roman Catholics (33%), compared with Anglicans (13%). Even so, 56% of persons claiming adherence to the Catholic religion thought a badly deformed infant should be allowed to die.

euthanasia. The issue of the right to die arose in a number of quarters since the last edition.

- In Melbourne in August 1982, an international conference of the World Federation of Right to Die Societies, considered thoughtful and sober addresses on the vexed problem of euthanasia in the case of terminally ill patients in pain. The President of the World Federation, Mr. Sidney Rosoff, a New York lawyer, contended that jurisdictions with strict laws on euthanasia were often less than honest when they circumvented the law in difficult cases, a reference to the many established cases of withdrawal of life support, withholding extremely expensive and experimental therapy and non-rescue of babies born grossly retarded or deformed.
- The President of Pro-Life, Victoria, in the wake of the euthanasia conference urged a public enquiry into any proposed 'natural death will' legislation in Victoria. The Victorian Government has referred the Refusal of Medical Treatment Bill to the Health Commission for urgent consideration. The Bill provides for a fatally ill person aged 18 and over to sign a witnessed declaration refusing life sustaining medical treatment. Mr. Baker described the Bill as 'the thin end of the wedge' and the first step to legalisation of homicide by consent or euthanasia.
- Working Paper No. 28 of the Law Reform Commission of Canada, *Euthanasia, Aiding Suicide and Cessation of Treatment* arrived in Australia during October. The Paper does not favour the legalisation of active euthanasia in any form nor the complete decriminalisation of the act of aiding or counselling suicide. However, it does propose amendment of the Canadian Criminal Code to make it plain that physicians are not required to continue to administer medical treatment against the clearly expressed wishes of the person or where such treatment is medically useless and not in the best interests of the person.

test tubes again. In September 1982 the National Health and Medical Research Council issued its first comprehensive code of guidelines for the procedure of in vitro fertilization (IVF) and embryo transfer. The code will now go to the Federal and State Health Ministers for consideration. It is not likely to be the last word on the subject. State enquiries on specific legal duties and rights are now proceeding in N.S.W. and Victoria. See [1982] *Reform* 107. In fact, the NHMRC document addresses the broader issue of 'ethics in medical research'. As if in vitro fertilization were not enough, the document goes on to tackle:

- human experimentation
- research on children and other dependants
- therapeutic trials

The NHMRC Code rejects 'absolutist' criticisms of IVF and concludes that the system 'can be a justifiable means of treating infertility'. But it warns that it is not as yet an 'established therapeutic procedure'. It proposes the establishment of institutional ethics committees to vet individual cases. On the more touchy subject of cloning, it is pointed out that attempts at cloning in lower vertebrates have produced a high proportion of malformed offspring. Cloning of human beings is condemned as 'ethically unacceptable on both fundamental and consequential grounds. It is interesting to note that one of the members of the advisory committee which produced the report was Mr. Russell Scott, now Deputy Chairman of the NSWLRC who is also leading the N.S.W. inquiry into IVF. Mr. Scott was Commissioner in charge of the ALRC project on human tissue transplants. Contrary to views on the ethics and implications of IVF were expressed at a seminar in August 1982 organised by Women Who Want To Be Women. Dr. J.N. Santamaria of Melbourne expressed special concern about the wastage of fertilised human embryos involved in current IVF techniques. Defending IVF, Dr. Ian Johnston, a Melbourne specialist, referred to the large numbers of married couples in Australia who are, unwillingly, the victims of infertility.

Now a few further developments:

- In September 1982, the interim report of the Victorian Committee to consider the social, ethical and legal issues arising out of IVF (Professor Louis Waller, Chairman) was published. The Committee reaches tentative views that legislation should be enacted confining IVF to married couples, requiring them to undertake other medical procedures for in excess of 12 months and providing for 'appropriate counselling'. These conclusions are now open to comment.
- The English journal *New Scientist* (2 Septemb er 1982) under the racy title 'Aussies Tackle Biotechnology and the Law' outlines the work of the ABC 'Science Show' and the ALRC public discussions of difficult bioethical questions. The conclusion? 'At least this legal body, which represents a fairly small investment in legal reform has succeeded to helping Australian law to face up to the vital task of confronting some of the contentious issues of technological change. And face up to these it must'.
- A new Australian book on IVF Is *Life in a Test Tube* by Dr D.C. Overduin and Fr. John Fleming, published by Lutheran Publishing House. In fact the book tackles contraception, sterilization, genetic engineering, human experimentation -- and a range of other vexing medical issues that present complex challenges to law reform in human bioethics.
- A thoughtful article of the legal implications of 'abnormal conception' is contained in an article written by the ALRC Legislative Draftsman, Mr. Stephen Mason, titled 'Abnormal Conception' (1982) 56 *Australian Law Journal* 347. The article deals with the position in law of children born by in vitro fertilization, artificial insemination and by the use of surrogate motherhood.
- In Britain, there was an angry reaction to reports of experimental work on 'spare human embryos'. This outcry led to the formulation by the Medical Research Council of Britain of ethical guidelines for doctors carrying out such research. These guidelines lay down certain standards including the need to carefully define the purposes of the research and not to transfer embryos into the uterus

after any experimental work on them. (*Guardian*, 29 September 1982) An editorial in the *Australian* (30 September 1982) concluded that it was easier to state the problems of IVF than to solve them 'but one thing is certain', says the editor 'these questions are too important to be left only to scientists. The formulation of acceptable standards must involve our society as a whole'.

no cargo cult . How are these problems, then, to be tackled. Dr. Robyn Williams is Australia's top science communicator: principal broadcaster and guru in the ABC Science Unit. In a thoughtful speech 'A Promise of Miracles – What is Science for?' delivered as the John Henry Newman Lecture for 1983, Dr. Williams lists a number of steps that should be taken to help society cope with the world of modern science and technology, starting with better teaching of science, history and philosophy at schools and universities. He suggests that until now Australians have regarded science as a kind of 'cargo cult' – this being the way newspapers, television, the schools and even many universities still treat scientific change. He fears the gloom of a new 'anti-intellectual period' in Australian history and urges a quest for more 'democratic, human, humane science'. A thoughful essay on the relationship between ordinary men and women of this planet and the massive, almost incomprehensible parade of scientific and technological changes happening all around us.

odds and ends

■ ***work laws.*** There have been a number of developments in the law of employment and workers' compensation.

- That vigorous critic of the present workers' compensation system, Professor Harold Luntz of Melbourne Law School, delivered a paper to a seminar at Monash University on 'Workers' Compensation in the context of Compensation Generally'. In his paper, Professor Luntz contends that the National Compensation Scheme proposed by the Woodhouse Committee in 1975, but not implemented, remains the preferable way ahead. 'The proposals should not be left to lie where they sank but should be salvaged, refurbished and set to sail again'. Professor Luntz has also drawn attention to recent statements of the N.S.W. Court of Appeal in *Calvert v Stollznow* [1982] 1 NSWLR 175 where the judges called for a further look at the NSWLR working paper on occupiers liability. A similar call was made by Mr Justice Cox in South Australia in regard to the SALRC report on the same topic in *Clements v Bagot's Executor and Trustee Co.* (1981) 26 SASR 339, 403. In *Lee* v. *Redding* (1981) 28 SASR 372, Mr. Justice Jacobs in the Full Court of South Australia drew attention to the unsatisfactory state of the law with regard to the interaction of damages and social security benefits. The strong criticisms of the present system coming from the Bench are becoming more insistent.
- On 17 November 1982 in an address to a seminar in Melbourne organised by the Royal Australian College of General Practitioners, the ALRC Chairman, suggested that the rapid increases in premiums for workers' compensation insurance in Australia, rather than arguments of social justice, were likely to step up the pressure for more uniform, rational and comprehensive compensation laws. Among criticisms levelled at the present laws were the cost-intensiveness of judicial resolution of disputes and assessment of compensation, the dis-