> The irony could hardly be more pointed. In the aftermath of the tragedy it has become clear that the maximum-security section's sterile, electronic and dehumanising world incited the protest that led to the deaths of five prisoners.

Five years ago the $7 million complex won a merit award from the Royal Australian Institute of Architects — Jika Jika was commissioned in the 1970's after extensive overseas research into high security jails. It was completed in July 1980. But as early as May 1981 complaints about conditions had begun to surface. Wives and mothers of prisoners being held there told a State Labor MP that the section was a 'hell hole'.

calls for reform. 'Mind games' played by prison authorities could lead to events such as the Jika Jika deaths the Australian Law Reform Commission was told at its public hearings into sentencing matters in Melbourne. Mr Michael O'Brien of the Criminal Law Division in the Legal Aid Commission told the hearing that inmates were often extremely frustrated because privileges were withdrawn and they could not find out why. He said prisoners had sometimes tried to find out why privileges had been withdrawn. They had written to the Attorney-General's office and received a written response that no restrictions had been imposed. Mr O'Brien said:

> They parade the letters back at the prison but the authorities say 'regardless of what the letters say, we have our orders and that means you cannot have privileges'. Frustrations build up (through these) insidious sorts of mind games. Those sorts of mind games cause tragedies such as we have seen recently.

He called for imprisonment as a last resort and said many prisoners could be released without any danger to the community.

The Australian also urged prison reforms in its editorial of 2 November 1987:

> Prisoners serving long sentences for serious crimes have the right to expect basic humane accommodation and it is up to governments to ensure that sufficient funds are allocated for prison construction and upkeep to ensure this. . . While we should not lose sight of the fact that prisons are designed for three basic reasons — to inflict punishment on those who break our laws, to keep dangerous people away from society and to serve to discourage others from adopting a life of crime — prisons should not be inhumane, in either design or in the conditions found therein.

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appointments to the U.S. supreme court: trial by ordeal

> It has always been desirable to tell the truth, but seldom if ever necessary to tell the whole truth.
>
> Arthur Balfour, who was nicknamed Artful Arthur by Gladstone, (1848–1930)

reagan nominees unsuccessful. In October and November 1987 two Reagan nominees for the US Supreme Court were denied appointment to the highest court of the land. Judges Bork and Ginsburg, whilst their formal qualifications and experience were not at issue, failed to satisfy other criteria. Judge Bork was rejected primarily

because of his alleged legal and political philosophies. Judge Ginsburg, whom the President had nominated after the defeat of Bork, withdrew his nomination because of criticisms of his past personal activities and lifestyle.

Judge Bork was a well known conservative law professor and Appeals Court Judge. In academic writings he had criticised Supreme Court decisions striking down bans on abortion, creating a right to privacy and expanding the reach of the First Amendment protections of free speech. He argued that such decisions had intruded on the rights of the legislature and constituted illegimate judicial activism.

Under the American Constitution the Senate must approve any Presidential nomination to the Supreme Court. After his nomination, Judge Bork had to face a gruelling interrogation before the Senate Judiciary Committee. For a week the Judge faced nationally televised hearings which were akin to an adversarial trial. The Judge was questioned at length and both supporters and opponents were called to speak for and against his appointment.

Bork's critics feared that he would tilt the Supreme Court too far to the Right and that he would erode civil liberties for minorities which had been achieved over the past twenty years. Senator Edward Kennedy, a vehement opponent, tagged the judge a 'walking constitutional amendment'. Bork's supporters portrayed the judge as an adherent of judicial restraint who was eminently qualified for the position. According to his supporters, critics of Bork were in reality seeking political capital from their campaign and were undermining the independence of the judiciary.

The Senate Judiciary Committee voted 9–5 not to approve Bork's nomination.

The President attempted to tough the matter out and put the issue to the Senate, but Bork was rejected there on a 58–42 vote. The President next turned to Judge Ginsburg who was a US Circuit Judge, a former law professor and according to the President a believer in 'judicial restraint'. Judge Ginsburg did not even make the second hurdle. He withdrew his nomination after having to admit that he had occasionally used marijuana over ten years ago. The Judge had also disclosed that his wife had performed abortions and that whilst he had worked as an assistant attorney with the US Justice Department he had successfully argued for the deregulation for cable television at a time when he had a substantial investment in a cable television company. The major storm, however, was caused by the marijuana revelation. It was felt by many conservatives that they could not support the appointment to the Supreme Court of a judge who had in the past transgressed in such a politically and socially sensitive area as drug use.

judicial selection methods. The Bork-Ginsburg furore raises important questions about judicial selection methods and the role of political and public scrutiny. The Bork episode highlights the potentially controversial results of allowing close scrutiny of judicial candidates by legislatures.

Proponents of this political input into judicial selection say that in a democracy there must be checks and balances and accountability. The judiciary is an arm of both government and administration and therefore

in a democracy must be subject to review. Government or executive judicial appointments must be screened by the legislature to ensure that politically acceptable appointments are made. Without such scrutiny, abuse and corruption are possible. Parliamentary scrutiny and veto can ensure that all relevant views are publicly assessed.

Opponents of formal political scrutiny in judicial selection assert that such a system leads to an erosion of judicial independence. The judiciary is thrust into the partisan world of politics. Politicians will make decisions based not on merit but according to their own political philosophies or machinations.

The Ginsburg saga brings into focus the issue of the distinction between the private and public lives of judicial candidates. It raises questions as to how, if at all, a candidate's past life, including criminal offences or allegations, ethics, lifestyle and family circumstances should affect appointment prospects. Whilst the test for these considerations might seem to be whether they affect the candidate's professional calibre and standing, another factor may well be whether sections of the community are prepared to accept the appointment of those individuals who do not completely conform to various stereotypes of what sort of person is fit to be a judge.

judicial appointments in australia. In Australia, appointments to the High Court rest with the federal cabinet. There is no requirement that an appointee be approved by Parliament. The only mandatory qualification is that justices of the High Court must be, or must have been, Supreme Court judges or legal practitioners, qualified to practice before the High Court or a State Supreme Court, of not less than five years' standing. Whilst the appointment of High Court judges has probably not created the same interest as has the appointment of US Supreme Court judges in the United States, controversies have still arisen. The major source of conflict has been a number of appointments by Labor governments. The selection of Justices Evatt and McTiernan in the 1930's and the appointment of Justice Murphy in 1975 each brought howls of protest from conservative political parties and certain sections of the legal profession, particularly members of the Bar. The nub of this protest was the claim that these appointees had been selected on political grounds, as established Labor party politicians and not because of their legal experience and backgrounds, which in terms of private practice or judicial experience was allegedly limited in comparison with other potential candidates. The contrary view is that the conservative parties have not needed to make appointments which are clearly politically aligned with their parties (although this does not mean that they will not do so on occasions). All the conservative forces have to do is appoint eminent members of the Bar who by background, training and profession will be sympathetic to conservative ideologies. It is also suggested that political and policy experience is a plus rather than a minus for the High Court. The Court in its role of constitutional review has to make decisions where political expertise may be useful.

The central issue so far in High Court appointments, and judicial appointments generally in Australia has been whether such appointments should continue to be drawn almost

entirely from experienced and eminent members of the Bench and Bar. The traditional approach is to argue that it is only these groups who have significant court experience and the capacity to readily understand and apply the rules and procedure of evidence. The first point is whether this assertion is true. Perhaps a lawyer of intelligence and resources should be able to adapt and learn quickly enough to avoid any embarrassing mistakes when new to the Bench? The second point is whether criteria other than this strict professional requirement, such as academic, administrative or corporate experience should also be taken into account.

Justice Gaudron is the first woman appointed to the Australian High Court. If Australia is to follow historical developments in the United States, it would seem that in the future a legal academic who satisfies the mandatory qualification of professional experience will take a place on the nation's top Bench.

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odds and ends

□ *the age of marriage.* The Law Reform Commission of Ghana recently considered the age of marriage. At present the English Common Law Rules based on Canon Law which fixed the age of marriage at 14 for boys and 12 for girls applies in Ghana. Under Ghana customary law there is no prescribed age limit.

After a program of public consultation the Commission recommended that the age of marriage should be 'fixed at a reasonable age when young persons would be deemed to have acquired qualities of maturity, a sense of responsibility and a sound financial base to support a family'. It recommended that the age of marriage should be 21 years for both sexes which would also have the effect of parental consent being unnecessary.

The Commission addressed the particular problem of young females in rural areas who tended to marry early. It has been suggested to the Commission that the proposed new age could prejudice these young girls. The Commission's conclusion on this point was that such girls should be given 'every opportunity to enhance their educational training and their individual development and that they should not be hampered by early marriage in achieving these objectives'. It also urged parents to 'refrain from pushing their infant daughters into early marriages most of which ultimately end on the rocks with disastrous social and pyschological consequences to the young girls who had no say when their infant marriages were arranged'. It recommended an intensive education program to reform the attitudes of families regarding child marriages.

The Australian Law Reform Commission's Report on *The Recognition of Aboriginal Customary Laws* (ALRC 31, August 1986) considered the issue of the age of marriage in the context of its recommendation that Aboriginal traditional marriages should be recognised by the Australian legal system. As with Ghana customary law there is no prescribed age limit for marriage within Aboriginal customary law. ALRC 31 recommended that no age limit should be specified for the recognition of Aboriginal traditional marriages. However a minority view put forward in the report proposed that the same minimum age limits as are