means can be found in almost all of the proliferating laws for privacy protection which have sprung up, particularly in Western Europe, as a reaction to the development of computerised records. The universality of computing technology and the basic similarity of privacy protection legislation (despite other cultural and legal differences) have a lesson for Australia. It is likely that future Australian legislation for privacy protection will reflect the "hard core" principles governing personal information systems. It is also likely that the "universal mechanism" to uphold these principles, namely individual access to one's own data, will be at the core of future Australian privacy legislation.

Temptations of the Bench

> "A judge is not supposed to know anything about the facts of life until they have been presented in evidence and explained to him at least three times."
>
> Lord Chief Justice Parker, *Observer*, 12 March 1961.

Professor Gordon Reid's suggestion of a new "judicial imperialism" (reported in [1978] *Reform* 23) has been followed by a series of published articles agonising over the proper limits on the use of judges for non-curial functions. The "hard line" of the Victorian Supreme Court judges is summed up in the article by Sir Murray McInerney "The Appointment of Judges to Commissions of Inquiry and Other Extra-Judicial Activities" (1978) 52 *A.L.J.* 540. That article, itself a revision of a paper originally presented to a conference of judges in January 1974 recounts in detail the history of successive attempts (generally without success) to secure the appointment of Victorian judges as Royal Commissioners:

> "Let it be assumed—it is perhaps a rather large assumption—that a Judge would perform [executive and administrative] tasks better than most people. Nevertheless the job of the Judge is to judge. It is a job which very few people in the community can do, and the number of people who can do that job at any given time, outside those already on the Bench doing it, is necessarily very limited. There are, however, sufficient men of the calibre to fill whatever needs there may be for Royal Commissioners and Boards of Inquiry without calling on the judiciary to undertake that work."

The extent of the feeling on this subject in Victoria is evidenced by the following quote from Sir Murray's article:

> "It has not been regarded in Victoria as improper to act as President of a Club, such as the Melbourne Cricket Club . . . Sir Owen Dixon was, I understand, at one time the President of the Australian Club. On the other hand the Presidency of a body such as the Victorian Football League might involve entry into the political arena to an extent which would make it undesirable for a Judge to accept such an office." (p. 552)

In the same vein is Mr. Justice Connor's article "The Use of Judges in Non-Judicial Roles" (1978) 52 *A.L.J.* 482. Connor J. identifies three categories of non-judicial functions in which judges have been increasingly used in recent years:

- the conduct of Royal Commissions and Inquiries;
- membership of Commissions, Tribunals and Councils;
- appointment to functions which are frankly of an executive nature.

It is the third category which captures his attention. He instances the appointment of Latham C.J. of the High Court of Australia as Minister to Japan in the critical period 1940-41 and Dixon J. as Minister to the United States from 1942-1944. The appointment of Mr. Justice Woodward as Director-General of Security and Mr. Justice Fox as Ambassador at large are also mentioned:

> "Take a Judge out of the [judicial] system by placing him in an executive role, deprive him of the assistance of professional advocates whose sole task is to further the cause of someone who may be affected by what he does, have him operate behind closed doors, free him during his ordinary working day from scrutiny by press, public and court of appeal . . . render it unnecessary for him to make a public statement of his reasons for doing what he does, and the chances are that after a while he will not act very differently from a good public servant. There will be times when, because of inexperience in an unfamiliar milieu, he may not do any better than a distinguished public servant would do if he were temporarily seconded to the judiciary. In my view these appointments should not be used as precedents for further judicial secondments to the executive; rather they should be seen for what they are, namely rare exceptions." (p. 484)

In the opinion of Mr. Justice Connor it would be "the supreme irony" if the independence of the judges, so hard won long ago, was to be eroded "by the voluntary action of judges themselves". The Editor of the *A.L.J.*, commenting on Sir Murray McInerney's paper, suggests (52 *A.L.J.* 537) that the Victorian misgivings "seem now to be further confirmed" by reactions to a report by a federal judge, Mr. Justice D. G. McGregor, as Royal Commissioner, when he found "impropriety" in the actions of a Federal Minister, which led to that Minister's removal from office.

A somewhat different view on this subject is expressed by Mr. Justice Brennan, President of the Administrative Appeals Tribunal and a Judge of the Federal Court. In an article "Limits on the Use of Judges" (1978) 9 *Fed. Law Rev.* 1, Brennan J. balances the risks involved in extending the role of judges beyond their traditional function against the peril that the judiciary may become irrelevant to the community it serves:

> "There are no absolute or universal rules . . . The answers depend upon where the balance is struck between the necessity to draw upon judicial skills in non-traditional ways, and the risk of thereby diminishing confidence. An undue timorousness in drawing upon judicial skills leads to the development of problem-solving machinery that is less satisfactory than it should be, and to a sense that the judiciary is unduly irrelevant to many issues of community concern. Too adventurous an approach requires the judges to expose themselves to an assessment—political or otherwise controversial—and to a consequent loss of confidence in the judiciary and in judicial institutions." (p. 3-4)

It is especially apt to pay heed to the observations of Mr. Justice Brennan for, not only does he preside over the most important new experiment in the use of judges in Australia (the general tribunal for the review of administrative decisions in the Federal sphere) but he is also Chairman of the Administrative Review Council which is advising Government and the Parliament on the direction of the new administrative reforms.

> "Where the function proposed is significantly different from the traditional function, the risk can be justified, but can only be justified, by the urgency of the community's need to use the judges' skills . . . Caution is needed in moving into the non-traditional area, measuring the risks by the yard-stick of traditional function, and there will be some unwished-for controversies on the way. But the risks must be run, or the institution of the judiciary may lose its relevance or, at the least, fall short of discharging fully the functions which the community would commit to it." (p. 14)

Meanwhile, the wider community seems relatively untouched by this controversy. In the view of some, this will simply illustrate the ignorance of the community about what is good for it and the fragility of trust in judges that ought not, lightly, to be damaged. In the view of others, it will demonstrate that the debate about the use of judges is a sterile one which reflects nothing more than a preoccupation with the preservation of outdated conceits, that have no particular public relevance.

In lighter vein comes the article "Temptations of the Bench" by Sir Robert Megarry, published in (1978) 16 *Alberta L. Rev.* 406. Sir Robert wastes no time on "crude matters such as bribery". He says that Bacon "was our last case" and that the subject "has long had no reality". In a footnote, he points out that this is so much so that when Lord Gardiner recently spoke of the case in the House of Lords, *Hansard* recorded that Bacon had "taken a bride from a litigant". Heady temptations by the Executive are ignored, despite the long-established tradition of using judges for inquiries and other executive functions in England. Instead, Sir Robert lists amongst the chief temptations:

- temptation of the tongue;
- temptation of brevity;
- temptation of the law (inventiveness);
- temptation of discovery (i.e., discovering new cases after argument closed).

A "quiverful of temptations" well worth judicial attention.

Odds and Ends

> "So live that you wouldn't be ashamed to sell the family parrot to the town gossip."
>
> Will Rogers.

■ Victorian Attorney-General, Haddon Storey Q.C., has introduced the *Legal Aid Commission Bill* 1978 into the Victorian Parliament. Amongst the more interesting functions of the proposed Commission are included power to: