

choice of specially attractive or desirable donors and so on.

**prodigal nature.** It is in these circumstances of uncertainty that church leaders and others called for the moratorium that is now in force in Victoria. On 13 May 1983 it was announced that Britain's Roman Catholic Bishops had called for sweeping laws to ban what they considered fundamentally unacceptable aspects of in vitro fertilisation techniques, particularly any form of freezing or other storage, unless there is a definite prospect of transferring each embryo unimpaired to its own mother.

Under the banner 'a basic moral question' the *Australian* (5 May 1983) observed:

Aldous Huxley's 'Brave New World' and George Orwell's 'Nineteen Eighty Four' appear to have come a little early. The Melbourne in vitro fertilisation team which has suddenly catapulted us into science fact, rather than fiction, is to be congratulated on its dedication, its inventiveness, even its imagination. It suddenly made real the freezing of the human embryo and its thawing and reimplantation in the uterus, a procedure which had previously belonged to the realm of fantasy rather than fact . . . But the procedure raises a large number of ethical questions which will be considered soon by the Victorian Government's Waller Committee . . . The questions go to the very heart of our beliefs about the creation of human life and the legal, moral and ethical considerations which govern it subsequently. The recent discoveries undoubtedly will have the effect of enabling couples, hitherto unable to do so, to have children. While this in itself may increase the sum total of human happiness, there must be many who will doubt whether we should so change the nature of our society to grant power over the creation of life to any scientist, however strict the regulations that govern his professional conduct. Until there has been a thorough-going national debate on the ethical issues involved, we should be unwise to encourage or permit so fundamental a restructuring of the nature of human relations.

Writers to newspapers took a similar line. The Rev Father William Daniel SJ troubled to write from Rome urging that Dr Trounson 'should be encouraged to confine his work to veterinary science'. Mr B A Santamaria

(*Australian*, 17 May 1983) raised the prospect of deep frozen embryos being thawed into life in an entirely different epoch, long after both parents were dead. The possibility of cloning or 'carbon copies' of the same being were also raised. Other writers urged that IVF issues were too complex for the common law and needed a thorough-going statutory examination. On the other hand, Mr J Gerrard, President of the Humanistic Society of Victoria, wrote to the *Melbourne Age* (4 May 1983) urging that ethical problems raised by IVF were 'minimal' in comparison to such major issues of legitimate ethical debate as the nuclear threat and mounting unemployment.

The problem of community opinion lagging behind scientific practice in the field of bioethics stems to a major degree from some religious leaders relying on theology which bears little relation to human life. . . . Mother nature is prodigal with ova and even more so with spermatozoon. This is the basis of our natural evolution. He induces natural abortions. . . . If these discarded foetuses were important, then a scientific research program should be mounted to find out what and why there is such a high failure rate in natural abortions. Surely it is not beyond the intelligence of church leaders to update their theology in this field from its very uncertain biblical and pre-biblical bases.

Debate unfinished.

## **baby law**

'Baby: A loud noise at one end and no sense of responsibility at the other'.

Fr Ronald Knox, c 1930

**abortion case.** As if to signal that the bioethical issues discussed in the last item cannot be escaped by practising lawyers, a number of cases have now begun to come before the courts requiring instant solutions to litigation raising enormous social and moral problems. On 30 March 1983 a Queensland man's bid to stop the mother of his unborn child from having an abortion failed in the High Court of Australia. The Chief Justice, Sir Harry Gibbs, refused an application for special leave to appeal against a decision of the Queensland Supreme Court, given in the previous week. The Chief Justice said there were

limits to the extent to which the law could intrude into personal liberty and privacy. The case followed the dismissal by Mr Justice G Williams of the Queensland Supreme Court of an application by the father, Mr David Kerr, of an application for injunction. This order was confirmed by the Queensland Full Court. The Attorney-General, Mr S Doumany joined in the action by Mr Kerr. However, Sir Harry Gibbs said that the court would not intervene to prevent the mother from committing what was alleged to be the criminal offence of abortion. He said that it appeared unjustifiable to assume that the woman would necessarily be convicted by a jury of a criminal offence and that the grant of an injunction against the abortion could usurp the function of the criminal jury which might have to decide the issue if the operation went ahead in Queensland.

Needless to say, the decision sparked off much controversy in Australia. Overseas, there have been a number of relevant developments:

- In Britain, the columns of the *Times* have been agitated by discussion of the so-called 'morning after' pill and other methods of post-coital contraception. Dr Ian Kennedy, Reader in Law at Kings College, London, expressed the view that, provided they were used as an emergency measure, such treatments would be lawful and not an unlawful abortion. Life, the British anti-abortion organisation, is seeking a test case on the issue under current British abortion law.
- In New Zealand, court rulings on abortion law in late 1982 have not daunted Dr Melvyn Wall, who last year unsuccessfully sought an injunction to prevent a Taranki girl of 15 from having an abortion. The New Zealand Court of Appeal ruled that Doctor Wall could not intervene in the case. Dr Wall has said that he will seek a ruling from the Privy Council, if

given leave to appeal. He said that he would continue his battle for 'the rights of the unborn child' under the New Zealand Contraception, Sterilisation and Abortion Act.

- In Canada, Mr Justice William Matheson in the Saskatchewan Court of Queen's Bench, has completed 3 weeks of evidence in May 1983 in a test case, likely to go on to the Supreme Court of Canada, concerning the protections, if any, given by the new Canadian Charter of Rights to an unborn child. Judgment reserved. *Advocate* 16 June 1983.
- In the United States, in June 1983, a decade after the historic decision in *Roe v Wade*, the majority of the Supreme Court reaffirmed the 'basic principle that a woman has the fundamental right to make the highly personal choice whether or not to terminate her pregnancy ... Only when the fetus can be viable outside the womb, generally not until the third trimester, can the State seek to protect the life of the unborn child. *Time*, 27 June 1983, 38. Strong dissents were written by Justices White and Rehnquist and also by the new Supreme Court Justice Sandra Day O'Connor.

*deformed neonates.* Associated issues to agitate opinion in the last quarter include the treatment of deformed and mentally retarded neonates. This issue too illustrates the likelihood of difficult bioethical cases coming before the courts. Relevant developments:

- In Canada, the Supreme Court of British Columbia (Mr Justice McKenzie) overruled a provincial court order and, in effect, required that positive operative intervention should take place, against the wish of the parents, for the treatment of a severely retarded boy approaching seven years, blind, partly deaf, incompetent, unable to stand, walk, talk or hold objects. *Family and*

*Child Service v Dawson*, 19 March 1983.

- The Australian College of Paediatrics has issued a working paper in March 1983 on '*Non-Intervention in Children with Major Handicaps: Legal and Ethical Aspects*'. The paper, prepared under Chairman Mr Douglas Cohen, Vice President of the College, recommends the establishment of a Medical Intervention Advisory Board, including members of the medical and legal profession with powers to develop uniform guidelines relating to non-intervention in children with major handicaps.
  - At the annual scientific meeting of the College in May 1983, Dr Susan Hayes, Senior Lecturer in the Department of Behavioural Sciences in Medicine at the University of Sydney, delivered a paper suggesting that, under current practices in some hospitals in Australia, some infants had been allowed to die who would have developed into adults with only moderate permanent physical or mental disability if promptly treated. Also speaking at the same conference, the ALRC Chairman, Mr Justice Kirby said that a choice had to be made between continuing to turn a blind eye to present hospital practices; seeking rigorously to enforce current laws or inviting public and professional discussion in the hope of developing clearer rules to govern life and death decisions affecting disabled neonates. One interesting point made at the meeting was the extent to which scientific changes have aggravated the moral and legal problems. With computerised humidicribs and heroic medical efforts, some 'normal' babies, born underweight, can be nursed into life. If such efforts are not to be used for deformed or retarded babies, is there not already an acceptance of a governing principle of 'quality of life', leaving debate to be about the details?
- new frontiers*. Meanwhile, reports keep coming in of new territory for the scientists:
- On 19 April 1983 it was reported in the *Australian* that Sydney researchers are using human foetal tissue obtained from therapeutic abortions to develop a technique to fight diabetes. A team at the University of Sydney confirmed that it was investigating the possibility of transplanting pancreatic tissue from aborted human foetuses into mice as a first stage to experimental human pancreatic transplantation. A spokesman for the team said that the experiment had shown that cultured human foetal pancreatic tissue could survive long term in six non-diabetic mice.
  - On 28 May 1983, the *Australian* recorded that scientists at the Medical Research Council's reproductive biology unit in Edinburgh had seen a human embryo develop without being fertilised. The Edinburgh unit reported to the science journal *Nature* that the embryo had developed without any male chromosomes at all. Triggering off the egg development to form an embryo had been done 'by physical injury or mechanical damage'. Monash Professor Carl Wood reportedly commented that such a development might prove men 'redundant'. Dr Robert Edwards wrote that 'concrete grounds exist to confirm predictions that early human developments can begin without fertilisation'.
  - A report from San Francisco in April 1983 indicates that a woman declared clinically dead in January 1983 gave birth to a healthy boy. The woman's body functions had been kept running for two months by a life support system at the University of California's Hospital. Immediately after the operation in which the child was born, the mother's respirator was disconnected and she stopped breathing.

In his Hamlyn Lectures in mid-May 1983, the English Lord Chancellor, Lord Hailsham, endorsed a statement by ex-President Jimmy Carter that 'the single purpose pressure group' had become 'the greatest enemy of individual liberty'. Lord Hailsham did not suggest that such groups should be made illegal. Nor did he suggest that it was possible to differentiate between pressure groups with 'desirable' and 'undesirable' objectives. However, he suggested that there was a danger in pressure groups, founded on perfectly legitimate efforts to achieve a particular or social or political objective, tending to lose their sense of proportion. Lord Hailsham's warning was that a liberal democracy can 'if it is careless' be destroyed from within. Only by self-discipline and mutual tolerance will the democratic system survive.

The President of the Right to Life Association, Mr Margaret Tighe, wrote to the *Age* (22 March 1983) protesting at the criticism of single issue politics in marginal seats and castigation of 'single issue zealots' as a 'threat to democracy'. She compared the position of conservationists determined to stop the Tasmanian Dam, with the organisations seeking to save children from abortion. Meanwhile, the bioethical debate continues. Science rushes ahead. Will the law catch up?

## new reports

### Australia

- ALRC : 21 : Annual Report 1982. See above p.104
- : *Debts RP1* : Default Summons Survey 1982 (W J Tearle)
- : *ACL RP13* : ACL: Problems of Evidence and Procedure, 1983 (P Hennessy)
- : *ACL RP13* : The Proof of Aboriginal Customary Law, 1983 (Prof J Crawford). See above p.109
- : *Foreign SI* : Procedural Immunities and Submissions to the
- : *RP* : 2 Jurisdiction, 1983. (S Curran)
- NSWLRC: *WP* : Transport Accidents Scheme for NSW, 1983. See above p.105

- VLCC : : Report on the Statute Law Revision Bill, 1982-83
- : : Report on the Statute Law Revision (Repeals) Bill, 1982

### Canada

- CLRC : *WP 28* : Protection of Life: Euthanasia, aiding Suicide and Cessation of Treatment, 1982
- : *WP 29* : Criminal Law: The General Part – Liability and Defences, 1982
- : *SP* : Criminal Law: Legal Status of the Police, 1982. (P Stenning)
- BCLRC : 57 : Report on the Crown as Creditor: Priorities and Privileges, 1982
- : 58 : Report on Interpretation of Wills, 1982
- : *WP 40* : Bulk Sales Legislation, 1983
- : *WP 41* : Covenants in Restraint of Trade, 1983

### Manitoba

- LRC : 54 : Report on Certificates of Lis Pendens, 1983
- : 55 : Report on Structure of the Courts; Part II: The Adjudication of Smaller Claims, 1983

### Saskatchewan

- LRC : : Yearly Review, 1982

### New Zealand

- NZCLRC : : Report on Bail, 1982
- NZPALRC : : Statutory Powers of Entry, 1983

### South Africa South African

- LRC : 6 : Report on the admissibility of civil proceedings of evidence generated by computers, 1982

### United Kingdom

- Law : 116 : Family Law: Time Restrictions on Presentation of Divorce and Nullity Petitions, 1982
- Com. : 118 : Family Law: Illegitimacy 1982
- : 119 : Seventeenth Annual Report 1981-1982