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PRINCESS ALEXANDRA HOSPITAL JUBILEE WEEK

BRISBANE, FRIDAY 24 JULY 1981

ADVANCES IN MEDICINE : IMPACT ON THE LAW

The Hon. Mr. Justice M.D. Kirby
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CONTROVERSIAL TIMES

It is the fortune — good or ill — of the medical and legal professions today that they are serving the community in times of rapid change. For medicine, the trauma of the realisation of this fact is not as profound as it is for the law. In a sense, medical history (particularly this century) has been a history of rapid change : changes in institutional arrangements, changes in moral and social attitudes, changes in techniques of healing and above all, profound changes in methods of treatment. A recent edition of the Economist gave the flavour of our times when it asked why there had not been the same dramatic developments in medical drugs in the 70s and 80s as there had been in the 50s and 60s of this century. Our expectations are high in medicine, because change has become a way of life.

Within the law, things move more slowly. Yet the law, its institutions and personnel, cannot be immune from the rapid developments of the time in which we are living. The law represents one means of bringing to resolution the disputes and problems of society : and doing so in a generally peaceful and routine way. The problem for lawyers and lawmakers is that in our time things are happening so fast. The old 'time cushion' that used to exist between movements in social attitudes or advances in technology, and the need for new laws, seems to have disappeared or at least to have significantly diminished. Nowadays, changes come upon us thick and fast. The institutions of lawmaking, whether in the parliament, the executive government or the courts, are not used to responding rapidly to the pressures of change. This is one of the reasons why, in the overwhelming majority of the jurisdictions which trace their law to the common law of England, law reforming agencies have been created. The task of these agencies is to assist Parliament to cope with the pressures of change. Those pressures come from many directions. They include the impact of the growth of the role of government in a legal system which

developed when that role was distinctly circumscribed. They include the new methods of doing business in the mass-produced consumer economy of today. They include the changes wrought by new social attitudes and changing moral values. They also include the very great impact of science and technology upon the legal system. It will be important for the successful ordering of society that we ensure that our lawmaking institutions can cope with the pressures of change, including changes in the medical discipline. It is about some of these changes and their impact on the law that I want to speak.

Those of you who are avid readers of the Bulletin[1] will have seen in the edition that came out this Wednesday, a reference to a Morgan Research Poll concerning public attitudes to the latest and most spectacular of Australian developments in the area of medical technology. I refer, of course, to the developments which Professor Wood and his colleagues have pioneered in Melbourne in the area of in vitro fertilisation. Of the Australians surveyed, 77% approved the procedure, 11% disapproved and 12% were undecided. The reason generally advanced for approval was that it was a good thing that childless couples could have children. The respondents were then told that at present couples were charged $350 per treatment and that one in eight only had been successful. They were then asked whether the couples should be able to claim for treatment on health insurance. 70% they should. 21% said they should not. 9% were undecided. It would perhaps have been interesting to have asked whether, consonant with the philosophy of Milton Friedman, couples should have to pay the full costs themselves. It is estimated that in the present initial phase the cost of one successful treatment would be in the order of $100,000.

The latest part of the Australian Law Journal to be issued also deals with the in vitro fertilisation programme. Among the problems for the law, identified by the editor of the journal, were (1) the necessity for legal controls over the qualifications of those undertaking the processes of in vitro fertilisation, (2) whether pre-implantation fertilisation should be deemed in law a conception, (3) questions of permissible abortion with respect to the ova, (4) the possible extension of social security benefits to the parents with respect to ex utero fertilisation as a medical service, (5) the problem of surrogate mothers.[2]

The editor of the Law Journal then went on:

> The freezing of excess ova raises, of course, other problems, some of an even more profound nature, if it is indeed true that such eggs could be used to effect a pregnancy in a female not even born at the present time, and when the mother from whom the ovum or ova had been taken had been dead for some years.[3]

In vitro fertilisation may be the most visible of the current advances in medicine to present problems for the law and morality. There are, however, many other issues of a less dramatic character. It is important that lawyers and lawmakers should be alerted to them.

MORAL DILEMMAS

The problem, for the law, of many advances in medicine is that they have implications for personal morality and community morality. In responding to these problems the law and medicine have each exhibited diffidence and uncertainty : both disciplines reflecting deeply felt divisions of opinion in the community at large. The intractable nature of these issues is admitted every time a speaker turns his attention to them. In 1978 Sir Roger Ormrod, a Lord Justice of Appeal of England and himself a trained physician, delivered his paper, 'A Lawyer Looks at Medical Ethics'. He suggested that part of the problem of resolving the profoundly difficult moral questions that arise in ever-increasing number out of advances in medical technology, was the fact that 'there have been marked and widespread changes in moral attitudes':

> The questioning of accepted knowledge has extended to the questioning of moral attitudes, that is, of course, in the Western world, the moral teachings of Christianity. ... This means that the support of a form of authority, the accepted moral code, has largely gone, with the consequence that we are now faced repeatedly with choices which have to be made by each one of us on each occasion for ourselves, where before little or no question of choosing would arise'.[4]

His Lordship cautioned that this obligation of choice should not necessarily be regarded as a 'regression':

> However disturbing and difficult the consequences may be, the ability to choose imposes immense responsiblities, but it represents one of the greatest achievements of humanity.[5]

No issue of this kind has attracted so much public attention as the question of the law relating to abortion. Laws and practices differ profoundly. For example, the West German Federal Constitutional Court has declared that abortion is an act of killing. It could not, so the Court said, be camouflaged by 'the description now common, "interruption of pregnancy"'.[6] On the other hand, in 1973, the United States Supreme Court laid down a detailed regime to govern the basic rights of the pregnant woman under the United States Constitution.[7] As to the asserted right of the foetus to life, the Supreme Court observed:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at a consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.[8]

As many of you would know, moves are under way in the United States Congress at this time designed to specify, in the law, that life begins at the time of conception. Obviously, this definition will create problems for test tube fertilisation. It would mean that disposal of fertilised ova surplus to use would amount to the destruction of life. I have no doubt that there are some in our community who already take this view.

In New Zealand bitter debate continues to surround changes in the legislation regulating abortion.[9] In Australia, community groups opposed to abortion undoubtedly influenced the failure of the House of Representatives in 1980 to pass a Human Rights Commission Bill, which contained no reference to the human rights of a foetus. They may also have influenced the outcome in one or more electorates in the last general election. Members of the Young Liberal Movement have attacked these groups.[10] But so too has a recent Women's Conference of the Labor Party. An Australian development to detect and assess abnormalities in embryos less than 20 weeks old[11] coincides with a visit to this country of an evangelical former abortionist who urges against abortion, even in the case of established gross physical or mental disability. Here then is a fundamental difference of view upon which sincere and decent people on both sides feel powerfully. Yet it is only one of many such problems confronting medicine and the law today.

The counterpart to the 'right to life' movement is the group in society who urge the 'right to die'. Voluntary euthanasia, at least in the case of the seriously ill, incapacitated and dying, is not the notion of a few disturbed cranks. In England, Australia and elsewhere, sincere people have taken up the cause as an aspect of civil liberties. In some parts of Australia, attempted suicide is still a crime.[12] When that law was repealed in England in 1961, aiding and abetting another to take his or her own life remained a serious criminal offence. In October last year, Exit, the British Society for the Right to Die with Dignity, published a book containing a great deal of information specifically aimed to ensure that those who attempt to kill themselves do so with efficiency and success. The London Times cautioned that people who contemplate suicide do not always do so calmly and dispassionately, taking all factors for and against into consideration. It urged that the book could lead to unnecessary deaths and should not be published.[13] The Secretary of the British Medical Association added his voice, urging a reconsideration of the publication of the booklet. Countless letters to the Times followed, including some by failed suicides.[14]

There is a clear line between active euthanasia, the deliberate termination of life, with the concurrence of society, generally to avoid pointless suffering, and passive euthanasia, by which people are allowed to die naturally without intrusive medical treatment. But the problems raised by this debate merge into the abortion debate when we face the dilemma posed by the birth of a child monstrously deformed. According to Professor Peter Singer of Monash University, doctors are increasingly facing up to the question and saying 'enough is enough'. Professor Singer is quoted as saying:

> What sometimes happens is the parents will leave the baby in hospital and eventually it will develop some form of infection, possibly pneumonia. ... The doctors will then not treat it. They could easily give it a shot of penicillin ... but they let it die.[15]

Sir Macfarlane Burnet, reflecting on the nearly universal taboo against discussion of death, argues vigorously for the right to die and in some circumstances the right to let die. He too asserts, as a fact, that this already happens in Australia:

> [C]ompassionate infanticide is already standard practice where the product of birth is such as to justify the term 'monstrous', i.e. where there is a gross and physically disgusting malformation such as anencephaly (complete absence of brain). Severe spina bifida, where there is no possibility of effective surgery, is not infrequently dealt with by allowing the infant to die under sedation.[16]

According to a survey conducted by Dr. Brian Bates,[17] it is indicated that many Australian doctors believe in 'mercy killing' as a humane and moral position. However, consistent with the present criminal law, most medical practitioners make a real distinction between positively terminating life and simply withholding medication or failing to resuscitate. A report attributed to Dr. Raymond Duff, Professor of Paediatrics at Yale University, says that one study of 299 deaths at a special care nursery showed that 14% related to withholding treatment, usually for mentally defective and grossly deformed children.[18]

The problem of facilitating death is, in part, the product of new technology. It is not, of course, limited to unfortunate babies. Switching off life support systems such as respirators, stopping certain forms of therapy and the use of narcotics of various kinds can sometimes hasten death and may be judged to be justifiable where the medical position is hopeless, the patient is suffering excessive pain or would, if he survived, be a gross emotional burden to himself and his family and an enormous cost to the community :

hard pressed to cope with the costs of medical care. According to a Gallup Poll, 72% of Australians believe that if a patient suffering from an incurable and distressing illness wishes to end his life, a doctor should be 'allowed to supply the means'. 24% disagreed and 4% were undecided.[19] In the United States, following the Karen Quinlan tragedy, legislation was enacted in a number of States to permit an adult person of sound mind to execute a declaration which directs the withholding or withdrawing of 'extraordinary life sustaining procedures' once he or she is adjudged to have met certain preconditions, including terminal illness.[20] In South Australia, a Bill for a Natural Death Act has been introduced to:

> enable persons to make declarations of their desire not to be subjected to extraordinary measures designed artificially to prolong life in the event of a terminal illness.

A Select Committee of the Legislative Council reported on the Bill in September 1980. A similar Bill has been introduced into the Victorian Parliament. These measures are a sign to us all that this debate has now reached our shores. It will have to be addressed by the medical and legal professions, not left to the moral judgment of the individual doctor who happens to be on duty, guided by uncertain laws and not always reinforced by clear and commonly accepted moral percepts.

The so-called right to die leads naturally to the debate about the definition of death, a matter considered by the Law Reform Commission in its report on Human Tissue Transplants.[21] A definition in terms of irreversible loss of function of the brain was proposed by the Commission. It has been accepted in a number of jurisdictions of Australia. However, in Britain in 1980 a tremendous controversy broke out following a Panorama programme criticising the adequacy of current practice in Britain for the determination of brain death. Ministers and the organised medical profession attacked the B.B.C. The number of kidney transplant operations in Britain fell by half following the programme, allegedly because of a fall in the availability of donors.[22] Rather than beat the air of protest, The Lancet urged that the Royal Colleges should organise an immediate study of 500 patients meeting the criteria of brain death, and then submit them to E.E.G. examination to determine whether any show evidence of cortical activity.[23] Influenced by British practice, and resistant to tying a legal draft to a particular technology, the Law Reform Commission omitted a prerequisite statutory requirement of E.E.G. examination before a legal determination of brain death could be made.[24] The British debate illustrates the importance of lawyers and doctors having a clear understanding of the problems and practice of the other, where their disciplines intersect. This is not to say

that we should write E.E.G. examination into our laws. Medical knowledge is advancing and changing with such rapidity that particular specific criteria or equipment embedded in a statute may well become outmoded or obsolete, yet remain legally compulsory.[25]

Again, this is a matter of legal as well as medical controversy. The latest part of the Australian Law Journal contains an interesting article on 'Death by Statute' written by Mr. Frank Galbally, the noted Victorian lawyer.[26] He refers to the legal definition of death proposed by the Law Reform Commission and now adopted in a number of Australian statutes. He prefers leaving the definition to be developed by the law in the traditional manner of the common law, namely by the development of precedent. The danger of this approach lies in its uncertainty and in committing to individual judges (or juries) with their personal predelictions and without the benefit of widespread consultation and community debate, the determination of a matter so profoundly important. Nevertheless, it is necessary for me to bring to your notice Mr. Galbally's conclusion:

> I share the expression of confidence of the public in the medical profession in Australia noted by the Law Reform Commission, but must add that no expression of confidence, however justifiable, can remove from medical practitioners the duty to exercise their skills in accordance with the standards imposed on all professional people by civil and criminal law of the society in which they live. I also share the fears expressed by Sir Zelman Cowen : 'When a doctor really wants an organ from a dying man, then I simply cannot have 100% confidence that there will be 100% effort to keep him from dying'.[27]

Where language of generality is used in the law, it is important that the medical profession adopts adequate checks to assure consistency of practice with proper standards. Otherwise self-discipline will give way, under public pressure, to discipline by others.

The development of test tube fertilisation already mentioned requires urgent attention to the legal problems I have mentioned and others which have been outlined in a recent note by Mr Justice Asche of the Family Court of Australia.[28] But as if to complicate that debate, already difficult enough in itself, the media at the turn of the year carried the news of a Chinese atttempt to breed an animal/human symbiont by hybridising pantroglodytes (chimpanzees) and homo sapiens. Some described the notion as scientifically ludicrous.[29] But Professor Carl Wood, a leader of those working in Australia on in vitro fertilisation, has said that it was up to governments to legislate against such possible abuse.[30]

THE SOLUTIONS?

So far, I have outlined some of the problems that will face the medical profession in the decade ahead as it confronts the advances in its discipline. I have mentioned the so-called right to life and to death, the definition of death and in vitro fertilisation. I have done no more than to scratch the surface. I have said nothing of the dilemmas raised by the possibility of cloning.[31] The special problems of the aged in our nursing homes were recently commented upon by a magistrate[32] and will increase as a matter of public and professional concern with the demographic shift to the aged.[33] I have said nothing on this occasion about cancer treatment, the right of the patient to know and the duty of a doctor to tell.[34] I have said nothing about mental health law reform, though I do hope that in this International Year of Disabled Persons, the medical profession at least does not make the mistake of considering that 'disability' is a physical thing only. The laws governing mental health require reform. It will be an important achievement of the Year if the significant reforms lately adopted in South Australia can be accepted, with local adaptations, throughout the Commonwealth.[35] I have said nothing about the consent of young persons to medical treatment, though we all know that this is a subject of great moral and legal uncertainty. It has been the subject of many law reform reports.[36] I have barely touched on the dilemmas of the surrogate mother and barely hinted at the problems of genetic engineering, the first of which came last year before a bemused and divided Supreme Court of the United States.[37]

How are we as a society to confront these difficult legal and moral dilemmas? One solution is to leave them to our respective Parliaments, in the hope that they may attend to the calls for guidance and new laws. Unfortunately, the matters of which I have spoken are uniformly difficult, controversial and unclear: they raise deep feelings. Politicians distracted by the rude necessities of democracy find the temptation almost irresistable to put them in the too hard basket. Occasionally they venture forth: as has been seen lately in South Australia in the Natural Death Bill. But generally speaking, nothing is done. We have no tradition of Private Member's Bills in Australia. In matters such as this, we have a tradition of timorousness and apathy.

There are other solutions. Perhaps the least satisfactory is that outlined by Ian Kennedy in the first of his 1980 Reith Lectures on the B.B.C. titled 'Unmasking Medicine'. He reminds us that six years ago the American Psychiatric Association took a vote and decided in that democratic fashion that homosexuality was not an illness after all. Accordingly,following this vote, since 1974 it has not been an illness. Kennedy's comment?

> How extraordinary, you may think, to decide what illness is by taking a vote. What exactly is going on here? The practice of medicine has changed. There is a feeling abroad that all may not be well. The feeling grows out of a sense of distance, out of a sense that medicine is in the hands of experts and sets its own path. We can take it or leave it.[38]

I commend Kennedy's Reith Lectures to those of you who are not over-sensitive.

If we cannot resolve the problem by ready parliamentary debate or by votes at symposia such as this, what is left? There are some who urge their resolution in the courts. When our American cousins are not extending democracy to its limits, they are seeking resolution of difficult questions by the judges. One instance I have already cited: the abortion debate in the United States was set at rest, for the time being at least, not in the Congress but in the Supreme Court: nine unelected judges, determining that volatile issue. The British Medical Journal, in October 1980, contained a letter from a Chicago doctor with detailed comments upon and empirical data about, a new virulent malignancy which he called 'Hyperactive Judges'.[39] Dr George Dunea described his findings thus:

> These are busy times for our black-robes Judges as they toil in their chambers, pouring over dusty volumes and burning the midnight oil to solve the problems of a perplexing world. ... Increasingly it is the Judges — not the elected representatives of the people — who decide who shall be terminated, compensated, reinstated, executed or resuscitated, vivisected or desegregated, dialysed, certified or involuntarily medicated, mercy killed, educated ... (etc.)[40]

Quite apart from questions of abortion, American judges, wrote the Chicago correspondent, are continually been drawn into controversies. Some of them have parallels in our country. Are medical interns students or workers? Are anaesthetists interfering with free trade? Can hospitals deny staff privileges to doctors and can they require them to take out malpractice insurance? Can insurance companies and pharmacists make deals on prescription drug prices? Should doctors advertise and can States legally prohibit them from doing so? And now, as new forms of life stand ready to be spliced from the old, it was the judges who had to decide whether a patent could be given for a micro-organism.

Excessive reliance on the courts, it was feared, would ultimately subvert the proper balance between the judiciary and the other branches of government. The issue is not a new one. In the United States it has called forth a flood of learned writing in legal and medical journals, the contestants being the so-called 'medical paternalism',in the one corner, and 'judicial imperialism' in the other. The spectre raised by Dr Dunea is put in ironical language, to make a greater impact:

> With admirable restraint [the judges] have so far confined their investigations to the court house — but soon they might be expected to come to the bedside, perhaps at the head of an integrated medico-judicial team, having exchanged their black robes for white coats and using the gavel to test the knee jerks; 'The heart has stopped, your honour', cries the nurse. 'Objection', shouts the patient's advocate. 'Objection sustained', agrees the Judge. Exhibition A, the cardiac monitor, is now disconnected. 'I wish your honour to review the electro-encephalogram, for which for the past week has been flat line'. 'Objection', cries the attorney for the State. 'Objection denied', answers the judge, settling down to examine the optic fundi. 'Objection', yells one of the attorneys. Whereupon the judge objectively but passionately clobbers him on the head with the gavel and orders the respirator to be turned off.[41]

Grim humour in the B.M.J. but for a serious point. Though judges have an entirely legitimate role to uphold the law and indeed to find and declare the law, if any, on a topic and to protect patients against haphazard and harmfully idiosyncratic medical decisions, the forum in which they operate may not always be well suited to a consideration of administrative problems, costs and moral questions.

If the parliaments of Australia are generally unwilling to face up to these difficult, technical and moral problems, if we cannot leave it to a democratic vote at a Medical Congress and if the courts and the forensic medium cannot offer ready solutions for all the problems of the world, what is left? Are we simply to ignore these issues? In my view that would be quite unsafe. Surrogate mothers will be used. Genetic manipulation will go on. Research with patient files will increase apace with the use of computers fed with data often compulsorily supplied. Artificial insemination will go on, laying down problems for the law, society and individual human beings in a decade or so. The mentally ill, the aged, the young, will continue to present their special problems. The abortion debate will remain with us. The balance between cost of treatment and quality of life will remain a fundamental dilemma. Are we to muddle through with ad hoc improvisations dependent upon the idiosyncracies of the individual practitioner? Or does society and its medical profession deserve something better?

We in Australia have developed an unlikely, but I believe successful, mode of addressing many of these problems. I refer to the Australian Law Reform Commission. It is a curious notion that a body of lawyers should be asked to solve problems of this kind. Some will see it as simply a variant of unacceptable judicial imperialism. But it is not. Released from the court room limitations, armed with a team of consultants from all branches of the medical profession, theologians, moral philosophers and others, we can face up to the dilemmas of our time and provide guidelines and laws that will benefit doctor and patient alike. I well remember the days in which Sir Zelman Cowen and Mr Justice Brennan (recently appointed to our highest court) sat at the table of the Law Reform Commission. With the top medical talents of the country, we sought to solve the problems of one particular dilemma, human tissue transplants. Our solutions we submitted to public hearings and professional seminars in all parts of the country. The vehicle of television and radio was used to present the issues and to raise community appreciation of the vexing problems at stake. In the end, a report was drawn where the options were clearly stated. On one or two issues the Commissioners themselves divided. But the legislative arm of government was helped in a unique way to face up to the issues involved. Legislation has followed in the State and Federal spheres including here in Queensland. Clearer guidance is given to all involved: patients, their relatives, hospital staff and medical practitioners.

The Law Reform Commission is continuing its work: on medical privacy, on the admission into evidence of medical records, of compulsory reporting of child abuse cases and so on. Laws proposed by the Law Reform Commission are being adopted in all parts of the country. Furthermore, they are being adopted by the elected representatives of the people.

I do not pretend that all of the issues I have mentioned are susceptible to easy resolution. Some intractable problems do not even submit to debate and discussion. Others do not result in a consensus, however informed, however sincere the participants. But many do. And many will require attention in the decade ahead. On issues such as I have canvassed, our parliamentary representatives need help. It is a matter of satisfaction to me that the Australian Law Reform Commission has in a number of projects brought together lawyers and medical practitioners of the highest calibre to offer that help. I hope we will see more of it. Enough has been said to show that more of it is needed.

FOONOTES

1. The Bulletin, 28 July 1981, 124.

2. (1981) 55 Australian Law Journal 315.

3. id.

4. Sir Roger Ormrod, 'A Lawyer Looks at Medical Ethics', (1978) 46 Medico-Legal Journal 18, 21.

5. ibid.

6. Cited in J D Gorby, "The "Right" to an Abortion, The Scope of Fourteenth Amendment "Personhood", and the Supreme Court's Birth Requirement', Southern Illinois Uni LJ, 1 (1979).

7. Maher v. Roe, 410 US 113 (1973).

8. ibid, cited Ormrod, 23.

9. J B Elkin, 'Definition Issue in the Abortion Row', in Auckland Star (N.Z.), 22 December 1980.

10. The Age, 5 January 1981.

11. Reported The Australian, 9 October 1980, 2.

12. See Suicide Act 1961 (U.K.), s.1. Cf. Canadian Criminal Code, s.224. The Crimes Act was amended in Victoria in 1967, in the Criminal Code in Tasmania in 1957 and in Western Australia in 1972. In New South Wales and South Australia, it is a common law misdemeanour to attempt to commit suicide. Despite recommendations for reform, no reform has been enacted.

13. The Times (London), 18 October 1980 ('The Road to Dusty Death').

14. See, for example, The Times, 24 October 1980, 13.

15. Cited The Age, 19 November 1980.

16. Sir Macfarlane Burnet, Endurance of Life: The Implications of Genetics to Human Life, 1978, 96. Cf. P J Kearney, in Day (ed.), Medical Wisdom and Ethics in Treatment of Severely Defective Newborn and Young Children, (1976) 60.

17. As reported, Sun Herald, 12 July 1981, 13.

18. ibid.

19. Australian Public Opinion Polls (The Gallup method), 4 December 1979, Poll No. 06/6/79.

20. Burnet, 97-8.

21. The Law Reform Commission, Human Tissue Transplants (ALRC 7), 1977, 111.

22. The Times, 14 November 1980, 4.

23. The Lancet, 18 October 1980, 841.

24. ALRC 7, 55.

25. id., 60.

26. F. Galbally, 'Death by Statute' (1981) 55 Australian Law Journal 339.

27. id., 346 citing Z. Cowen, 'Organ Transplantation — The Legal Issues' (1969) 6 U.Qld.LJ 1, 10.

28. A Asche, 'A.I.D. and the Law' in C Wood (ed), Artificial Insemination by Donor, (Melbourne, 1980). Cf. J Hanmer, 'Reproductive Engineering: the Final Solution?', New Society, 24 July 1980, 163.

29. Cited The Australian, 30 December 1980.

30. Reported in The West Australian, 25 September 1980. Address to Melbourne Rotary Club.

31. T Connolly, 'The Morality of Cloning and Artificial Insemination', in Faith and Culture, Vol. 1, 1978 (The Catholic Institute of Sydney).

32. Miss S Shreiner S.M., report in The Australian, 15 January 1981, 2.

33. Australian Council on the Ageing, Growing Older, Vol. 7, No. 17 (September 1980).

34. M D Kirby, 'New Dilemmas for Law and Medicine', Malcolm Gillies Oration 1980, mimeo, September 1980.

35. ibid. Mental Health Law Reform, 20th Barton Pope Lecture, 1980, mimeo, September 1980.

36. See Law Reform Commission of Canada, Consent to Medical Care, Study Paper, 1979; Law Reform Commission of Canada, Medical Treatment and Criminal Law, Working Paper 26, 1980; Law Reform Commission of Saskatchewan, Proposals for a Consent of Minors to Health Care Act, Report, 1980. Institute of Law Research and Reform (Alberta), Consent of Minors to Health Care, Report No. 19, December 1975; Report from the Statute Law Revision Committee, Victoria, Age of Majority, 1977. See also P D Skegg, 'Consent to Medical Procedures on Minors', (1973) 76 Modern Law Review 370 and reports there cited.

37. Diamond v. Chakrabarty (1979-80), 48 USLW 4714 (1980).

38. I Kennedy, The Reith Lectures, 'Unmasking Medicine', published in The Listener, 6 November 1980, 600; 13 November 1980, 641; 20 November 1980, 677; 27 November 1980, 713; 4 December 1980, 745 and 11 December 1980, 775.

39. G Dunea, 'Hyperactive judges', in 281 British Medical Journal, 4 October 1980, 926.

40. ibid.

41. id, 927.