CONFERENCE ON BIOETHICS AND THE LAW OF HUMAN CONCEPTION

IN VITRO FERTILISATION

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The Hon Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

OF ANGELS AND LAWYERS

Sir Zelman Cowen, who chairs this session, was an early entrant into the debate on bioethical questions. In 1968 he wrote an important essay on the legal issues raised by organ transplantation.[1] As was so often the case, he was ahead of his time. As Governor-General of Australia, he remorselessly confronted the country, in speech after speech, with the social, ethical and legal dilemmas posed by new technology : nuclear, computer and biological.

Between 1976 and 1977, he participated in the project which brought me into the realm of bioethics. He was a part-time member of the Australian Law Reform Commission. In 1977 that Commission delivered a report on Human Tissue Transplants.[2] It is not immodest to say that the report has proved highly successful. In Australia, a country that can boast few uniform laws, it is the basis for uniform legislation by all of the Territories and States of Australia, save Tasmania.[3] It was praised in British and Australian medical journals.[4] It was even translated into Spanish for use throughout South America : not a normal place of export of Australian legal ideas!

Before the birth of Louise Brown in Bristol in 1978, the Australian Law Reform Commission called attention to the urgent need of law makers in Australia to address the discrete subjects of in vitro fertilisation and embryo transfer.[5] Although formally within its terms of reference the Commission felt that the moral and legal issues raised by the transplanation of life itself were of a different dimension to those posed by transplantation of a kidney or a cornea.

Australia is a federation. Most matters of medical law are left by the Australian Constitution to the States. Nominally, the report on human tissue transplantation offered a [model] law for the Australian Capital Territory, a Federal responsibility. A change of Attorney-General resulted in a new outlook. The new Attorney-General took the view that the development of legal responses to the problems of in vitro fertilisation should be left to the Australian States. It should not be an initiative of Federal Government or its agencies, such as the Law Reform Commission. This view was taken despite a request by the State Ministers of Health that the Australian Law Reform Commission, fresh from its success with the law on human tissue transplantation, should tackle the even more puzzling issues of IVF. The Federal Attorney-General was adamant. This was a State issue. The result of this political decision is that a series of special inquiries have been established by State Governments throughout Australia. Inquiries are proceeding in New South Wales[6], Victoria[7], Queensland[8] and, in a desultory fashion, in other States. It will be a miracle greater than in vitro fertilisation if the product of these labours is compatible and uniform legislation based on the views of the best national experts and developed in close consultation with the community.

One of the reasons why the then Attorney-General of Australia decided not to refer the law on in vitro fertilisation to the Australian Law Reform Commission was a view that was advanced, relevant to the subject assigned for my address. It was a view, powerfully expressed by another of the participants in the Human Tissue Transplants report. Sir Gerard Brennan, now a Justice of the High Court of Australia, expressed his reservations about a too early entry of the law into the regulation of in vitro fertilisation. His concern was that any such law, promoted by the Law Reform Commission, might be built 'on the shifting sands' of unstable and uncertain public opinion.[9] At such an early stage in the development of the medical technology, when the procedure was still regarded as experimental, the Law Reform Commission would prematurely tread where angelic judges and others might fear to do so. At such a premature stage in the identification of the problems, initiatives might be proposed by a few that would coerce reluctant legislators into law making that was premature. Where vital matters of life and death in the human species was concerned, on this view it was better not to rush things.

This approach to the law's proper reaction to in vitro fertilisation received support from two very different quarters in Australia. First, members of the medical profession began to urge that the law should keep out of the regulation of in vitro fertilisation practices. Sir Gustav Nossal, a distinguished Australian biologist, urged that the law was a cumbersome, slow-moving instrument for social control in a fast moving field of medical science. No sooner would laws be developed but they would be overtaken

by technological developments or by changing social attitudes. In these circumstances he, and many others like him, urged that legislation was too inflexible a response to the problems of bioethics. Instead, he suggested that 'soft-edged' solutions should be sought in the form of flexible guidelines developed by hospital ethics committees and peer groups of the scientists at the workface.[10]

The second line of support for the 'hands off' view came from legal quarters. Perhaps it was most emphatically stated by Lord Kilbrandon when he chaired the CIBA Foundation conference 'Law and Ethics of AID and Embryo Transfer'. The proceedings of this conference were published as long ago as 1973. Lord Kilbrandon stated that normally 'the law should not forbid what it is not necessary to forbid; and it ought to authorise what people feel they want to do'.[11] This thesis should not be unfamiliar to anyone brought up in the traditions of the common law of England. There is a well-worn jest about legal systems:

* In England [and one might say, Australia] everything that is not forbidden is permitted
* Under German law, everything that is not permitted is forbidden
* In France, everything which under law is forbidden is really permitted, and
* In Russia, everything that is permitted is really forbidden.

Like most jokes, this one has a point. It is at the heart of our freedoms that we live under the systems of law by which, unless the law specifically forbids particular conduct for good social reasons, the individual is free to pursue his own perceptions of right and wrong without undue interference by the agencies of the state. This is not a jurisprudential essay. Nor is this the occasion for elaborating the importance of this principle. But it requires only a moment's reflection to see how vital it is for the kind of diverse and individualistic societies which English-speaking people tend to enjoy.

THE HART v DEVLIN DEBATE

Lately, the debate about the limited role of the law, particularly the criminal law, has focused upon the right of the state to enact laws for the enforcement of private morality. In this country in 1957, the Wolfenden Committee, dealing with homosexual offences and prostitution, ran up a battle flag for those who argue for a limited function for the law:

> [The law's] function, as we see it, is to preserve public order and decency, to protect the citizen from what is offensive or injurious and to provide sufficient safeguards against exploitation and corruption of others ... It is not in our view the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the purposes which we have outlined ... [T]here must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business.[12]

This 'brief and crude' statement of the law's limited functions in matters of private morality was not a sudden invention of the members of the Wolfenden Committee, distinguished though they were. It traced its lineage to a long line of English jurisprudence going back at least to Jeremy Bentham and John Stuart Mill. Most of the debate concerning the Wolfenden principle, if I might call it thus, has been focused in the realm of the so-called 'victimless' crimes. These are the crimes, most of them still included in the criminal calendar of England and Australia, which punish conduct offending perceptions of morality taught in the Judeo-Christian tradition, even where the only people affected are consenting adults. I refer to laws on gambling, prostitution, nude bathing, pornography, narcotic drugs and so on.

Not everyone agrees with the Wolfenden principle that the law should keep out of enforcing perceptions of morality. A most distinguished judge, Lord Devlin, in a lecture soon after the Wolfenden report, asserted that the effort to withdraw the law from the realm of private morality was not only questionable but wrong. He argued that society has a right to punish conduct of which its members strongly disapprove, even though the conduct has no immediate effect which could be deemed injurious to those complaining or indeed others. The basis of this right to invoke the law, according to Devlin, is that the state has a role to play as moral tutor. On this view, the law is the proper 'tutorial technique' of the state, to uphold the strongly held perceptions of morality shared by the people. Commentators from the opposing point of view have sometimes suggested that this is an 'eccentric' attitude.[13] But it has many supporters, particularly in religious groups in Australia and Britain, who demand that the state should enforce perceptions of morality, even as against consenting adult minorities. In Ireland, within recent weeks, a constitutional change was endorsed at referendum, which will enshrine in that country's basic law the moral position of the Roman Catholic Church in respect of abortion. Contrary views of the secular and Protestant minorities are overridden by the law. The basic argument of those who justify such an approach is that society has a right to protect its own existence. On this view, the majority has a right to enforce its moral convictions, in defending its social environment from changes which the majority oppose.

Any contrary view of a minority, even though most closely affected — whether a pregnant mother who wants to terminate her pregnancy or a woman desperate to achieve a pregnancy by IVF -- must be subordinated to the perception of morality of the majority.

Lord Devlin acknowledged that there were occasions where law makers should stay their hand. They should do so where they detected uneasiness or half heartedness or latent toleration in society's condemnation of a practice. But where public feeling was high, enduring and relentless, where it gave rise to 'indignation and disgust'[14] society's right to act through the law should not be denied. Lord Devlin applied his thesis to homosexual conduct. If it was genuinely regarded as an abominable vice, society could and should act through its criminal law to punish the unacceptable, even where the only people involved were adult and consented to what they were doing.

This assertion provoked Professor H L A Hart to respond. He contended that Devlin's criticisms rested on a confused conception of what society was. He said it would be intolerable that a moral status quo should be entitled to preserve its precarious existence by force. Devlin disagreed:

> I do not assert that <u>any</u> deviation from a society's shared morality threatens its existence any more than I assert that <u>any</u> subversive activity threatens its existence. I assert that they are both activities which are capable in their nature of threatening the existence of society so that neither can be put beyond the law.[15]

This debate between Lord Devlin and Professor Hart is well known throughout the common law world. It is a debate about the purposes and limits of the law in the enforcement of morality. True it is, that until now the Hart/Devlin debate has tended to focus on the old problems of morality. By that I mean the use of criminal laws to enforce views of right and wrong taught by the Churches but not always practised by large and growing numbers of citizens. However, as it seems to me, the old debate is now relevant to the pressing issues of bioethics.[16] Proponents of a strong reflection of moral laws in criminal and other legislation are most vocal in Church and Church-related organisations. At least, this is the case in Australia where the Churches (especially the Roman Catholic Church) have been in the forefront of those calling for a ban or moratorium on IVF and ET. On the other hand, to date the Churches have not carried the general population with them. Successive public opinion polls in Australia have indicated sustained public support for IVF as a means of aiding infertile couples in their predicament.[17]

In the new bioethical area, are there matters which, crudely and bluntly, are not the law's business? Should the law intervene to prohibit or facilitate IVF and its ancillary developments, in vivo fertilisation, surrogate parenthood, the freezing of human embryos and so on? Is the law needed, at the very least, to attend coherently to the consequential problems presented by such developments as they affect rules drawn in earlier times for different circumstances?

AUSTRALIAN DEVELOPMENTS

In Australia, high success has been achieved in the treatment of infertile women by IVF procedures. The centre of activity is Melbourne. Accordingly, in respect of the legal responses, most attention has focused on an inquiry by a nine-member interdisciplinary investigation headed by Professor Louis Waller. Waller is the State Law Reform Commissioner. He was asked to examine the social and ethical implications of the in vitro fertilisation program. Soon after his inquiry commenced its work in March 1982, Professor Carl Wood — the leading gynaecologist engaged in the IVF program in Melbourne — announced that the Ethics Committee of the Queen Victoria Medical Centre of Melbourne had approved a scheme which allowed women to donate ova to infertile patients. By October 1982 the Waller Committee, in an interim report, recommended that IVF be permitted by law for married couples using their own eggs and sperm. But it suggested a moratorium on the use of donor gametes. Accordingly, the State Premier asked the two public hospitals involved in the IVF program to halt donor ovum treatment. No law was passed. It was simply a request by the Executive Government of the State to the public hospitals involved. They continued treatment of 20 to 30 patients already undergoing the procedures, though they did not commence new treatment programs. In May 1983 when it was learned that the work was continuing, the State Government intervened more actively and it was halted. Against no law was passed. The Premier, Mr John Cain, said that the use of donor gametes involved 'deep ethical and moral implications'.[18]

On 27 August 1983 the report of the Victorian Committee on the second stage of its inquiry, was made public. It recommended:

* that the use of donor sperm and donor ova in IVF should be permitted in Victoria
* that comprehensive information, including ethical, social, psychological and legal matters, should be made available to infertile couples, including in languages other than English
* that counselling should precede, accompany and follow participation in donor gamete programs of IVF

* that consent to the use of donor gametes in IVF should be given and recorded in a document by the couple before they participate in the procedures
* that a couple should be required for a period of not less than 12 months to attempt to cure their infertility in other ways before entering an IVF program
* that admission to the IVF program should not disqualify patients from remaining on the [dwindling] adoption waiting lists
* that donors of ova should not be paid for their gametes and that children under 18 should be prohibited from entering the program
* that the use of known donors should be permitted where both parents request it
* that a hospital should, on request, offer non-identifying information about the sperm or ovum donor to the recipient on such matters as physical characteristics, but not details that could allow the identification of the donor
* that doctors and other medical staff should have the right to refuse participation in an IVF program.[19]

It is still not clear whether the Victorian Government proposes to implement the recommendations in the report. The Premier has announced that recommendations should not be implemented piecemeal. They form a proposal for laws for the community to 'accept or reject'. Specifically, the Premier agreed with Professor Waller that there had been 'no substantial public consideration of the issues involved':

> What the government is anxious to do is receive comments from all sections of the community on this important question. We are aware of the anxiety of people involved in the suspended IVF program. We will reach a decision as a government as soon as possible.[20]

On the other hand, the Government of the State of New South Wales has announced that it proposes to legislate promptly on certain aspects of in vitro fertilisation. A child born as a result of artificial insemination by donor carried out with the husband's consent and a child born as a result of IVF procedure where genetic material is provided by the husband and wife or where the semen is provided by a donor, are to be deemed by State law to be children of the husband and wife. The New South Wales legislation will also extend the principles to certain de facto relationships. However, as announced, the new law will not cover children born as a result of an IVF procedure involving donated ova.[21]

It will not surprise you to hear that, so far, there are few who are happy with the outcome of these inquiries in Australia:

* The President of the Right to Life Organisation condemned the Waller Report and demanded an immediate end to all IVF programs.[22]
* Couples waiting for the reopening of the suspended and highly successful Melbourne IVF program told newspapers of their anguish and frustration at the further delay.[23]
* Critics of the New South Wales announcement suggested that it solved only the easiest of issues, leaving untouched the remaining controversial issues of donated ova, donated embryos, surrogate motherhood, in vivo fertilisation and so on.[24]
* Critics of all the legal moves in Australia point to the languid pace by which the country is moving towards legislation and the difficulty of getting uniform legislation throughout Australia on such an issue where passions run high.[25] The Standing Committee of Federal and State Attorneys-General has been pondering the relatively modest reforms now proposed in New South Wales for several years.[26] But whilst the law makers tarry, new problems and new proposals have been presented for legal solution. These include:

* The freezing of human embryos[27]
* The transfer of an embryo from the body of one woman to another[28]
* The growing number of triplets and quadruplets and the lessons it presents for multiple implantations[29]
* Developments in surrogate motherhood. On 25 August 1983, for the first time, the Melbourne Age newspaper carried the following advertisement:

  SURROGATE MOTHER

  Young couple wanting lady to be a surrogate mother. Wife has had hysterectomy. For further information please write to
  Mr & Mrs S ... PO Box 239, Fitzroy, 3065.[30]
* Suggested further developments in IVF including embryos grown specially to provide needed transplant tissue, such as a pancreas.[31]

WHERE IS IT LEADING?

There are many observers who are now calling for the law to intervene to prohibit these developments either forever or until society has considered the legal and moral implications of what is happening. In Australia the Churches and the Right to Life organisations are in the forefront of the prohibitionists. Specifically, in their submission to the Waller Committee of Inquiry, the Catholic Bishops of Victoria urged that even adopting Professor Hart's test it was the law's business to prevent any human being from a

practice which threatened him or her with serious harm.[32] According to the Bishops, the human embryo is a separate human individual. It is therefore the law's legitimate business to protect it, just as it would a newborn baby or a fully grown adult.

But the Bishops then went further:

> [T]he law should uphold and embody the principles that are basic to our civilisation and our existing law in every other field.[33]

As elaborated, this view urged that the law should acknowledge the right of an [embryo] child to be born the 'true child of a married couple' thereby having an 'unimpaired sense of identity':

> The law, therefore, should not countenance procedures which aim at creating children whose biological parentage or 'identity' differs from their parentage and 'identity of upbringing'. Several practices or procedures, therefore, fall foul of these necessary principles -- especially such procedures as surrogate motherhood or fatherhood by ovum or semen donation or womb 'leasing' ... [I]t would be naive to forget that some of the means to this admirable end [of helping infertile couples] would violate principles on which sound law, as well as sound science, must stand if they are to be truly human.[34]

This submission, placed squarely in the context of the Devlin versus Hart debate demonstrates the different visions of the role of law now presented to our societies. On the one hand, Churches (but also some humanists) urge the necessity of action in the form of law to uphold morality -- and also to protect embryonic human beings. On the other hand, government committees such as the Waller Committee, spurred on by public opinion supportive of the IVF program, perceive a strictly limited role for the law. In consensual activities of married couples or others in stable heterosexual relationships, the law is conceived as having no business to prohibit that which citizens want and which some doctors can and will supply. Upon this latter view, the law's function is purely ancillary and adjectival.

* It will deal with the categories qualifying for the program (married heterosexual couples and stable de facto relationships)
* It will lay down the procedures (preliminary screening, counselling and advising)
* It will cover certain legal consequences (assimilating some IVF children at least to natural children of the marriage)

* It will present solutions to many fascinating legal complications (can frozen embryos be kept indefinitely? What effect does this have on succession of property or titles? What happens when the donors are divorced or one dies? How do we prevent accidental incest? Should records of donors outside a marriage be kept against the risk of hereditary diseases or identity problems etc?)

The view one takes of the role of the law depends, in part, upon personal attitudes to morality, the teaching of religion and the vision held about the utility of intervention in medical practices. As well, the confidence reposed in scientists and where their remarkable experiments are taking mankind will affect the timing of any legal intervention.

For some, these dilemmas are just too difficult. They despair not only of the capacity of our law-making institutions to provide sensible and forward-looking law. They also despair about the capacity of our generation to provide answers to so many questions with which we are suddenly confronted, the full implications of which we cannot possibly see. Lord Justice Ormrod suggested that we should rejoice in the fact that we have moral choices to make.[35] Certainly, the courts, in default of well-thought-out legislation, are increasingly being called upon in Britain, Australia and elsewhere to provide instant solutions for acute bioethical problems.[36] So judges have to make choices. They will continue to do so, unaided by community opinion, unless society develops coherent legislation for their guidance.

TOWARDS A NEW MODEL OF LAW-MAKING

And that is why an increasing number of spokesmen in Britain, Australia and elsewhere are looking for a new model of law making that will help our democratic institutions to grapple with the problems that bioethics pose. This brings me to where I began : with the work of the Law Reform Commission in Australia. Recently I read the compliment paid to our technique of law development included by Dr John Havard in his Marsden Lecture, reported in the latest issue of the Journal of Medicine Science and Law[37]:

> With the possible exception of Australia, where a Law Reform Commission ... is tackling the more important aspect of [medico-legal] problems, there is very little evidence of any recognition of the threat which Anglo Saxon law presents to modern medical practice ...[38]

There is a choice before our societies. It is not a choice between no law at all on these topics and some law. Laws will clearly be necessary, if only to sort out the procedures and consequences of in vitro fertilisation and the other techniques I have mentioned. The issue seems rather to be:

* How much law should there be?
* Should the law, out of deference to some people's view of morality and the role of the law step in with moratoria, absolute or limited?
* What should the law say?
* And who should design and make the law?

My expertise is best directed to the last question. Speaking as a judge, I cannot believe that it is best to leave the solution of the acute moral and social dilemmas of bioethics to busy judges in the midst of onerous duties, operating in courtrooms, with the limited assistance of lawyers of variable training and without opportunities of widespread public consultation and community discussion. The question of whether there should be law and, if so, what that law should be, should depend upon considerations and techniques more sophisticated than those available in the inter partes trial conducted by the adversary process.

If this is the conclusion that is reached, the important lesson that should emerge from this conference is that urgent attention should be paid to the health of our democratic institutions as they are confronted by the acute moral, legal and personal dilemmas of bioethics. Inevitably, laws will be made. They may be made by judges, drawing upon their narrow experience and doing their best in the tradition of the common law. They may be made, de facto, by anonymous officials, deciding to fund, with government finance, this program of infertility treatment but not that. They may be decided by ministers, with imperious instructions to public hospitals, groping anxiously for a political compromise and to avoid the dangers of the single interest political groups of which Lord Hailsham recently warned us.[39] But preferably, as it seems to me, they should be developed in the democratic institution of law making: the representative parliament, aided and encouraged by interdisciplinary bodies which take pains in consulting a wide range experts but the general community as well.

Lord Scarman once said that the genius of English speaking people lay in their ability to solve complex and sensitive problems in a routine way. No one can doubt that the problems of the law of bioethics are complex and sensitive in the extreme. If we are to heed Lord Scarman's suggestion and to preserve the democratic element in our laws whilst at the same time getting on with the job of developing the law in a systematic fashion, both Britain and Australia must develop permanent institutions to tackle the legal

questions of bioethics. If no other conclusion is reached in this conference it must be that the questions are many, they are increasing in number, complexity and urgency and the good health of the rule of law requires that we should develop institutions adequate to respond. Otherwise, it will be the judgment of history that the scientists of our generation brought forth most remarkable developments of human ingenuity — but the lawyers, philosophers, theologians and lawmakers proved incompetent to keep pace.

FOOTNOTES

1. Z Cowen, 'Organ Transplation — The Legal Issues', (1968--9) 6 Uni Queensland LJ 3.

2. Australian Law Reform Commission, Human Tissue Transplants (ALRC 7), 1977, AGPS, Canberra.

3. Transplantation and Anatomy Act 1979 (Qld); Transplantation and Anatomy Act 1983 (SA); Human Tissue Act 1982 (Vic); Human Tissue and Transplant Act 1982 (WA); Transplantation and Anatomy Ordinance 1978 (ACT); Human Tissue Transplant Act 1979 (NT). The Governor's speech opening the current session of the NSW State Parliament on 16 August 1983 said that human tissue transplant legislation would be introduced in the session.

4. [1978] British Med J 195-96; [1977] 2 Med J of Aust 689-91.

5. ALRC 7, 18.

6. Chaired by Mr Russell Scott, Deputy Chairman of the New South Wales Law Reform Commission and formerly Commissioner in charge of ALRC 7.

7. Chaired by Professor Louis Waller, Victorian Law Reform Commissioner. See below.

8. Chaired by Justice Demack, a Judge of the Supreme Court of Queensland.

9. Justice F G Brennan, 'Law, Ethics and Medicine', [1978] 2 Med J of Aust 577, 578.

10. G Nossal, 1982 Lemberg Lecture, 'The Genie is Out of the Bottle', Australian Academy of Science, delivered at University of New South Wales, 27 January 1982, as reported AMA Gazette, March 1982, 24.

11. Lord Kilbrandon, cited in CIBA Foundation, 'Law and Ethics of AID and Embryo Transfer', 1973 quoted by R V Short 'Scientific Prospects for the Use of Donor Sperm, Eggs and Embryos in the Treatment of Human Fertility', mimeo, address to Monash University Centre for Human Bioethics Symposium on Ethical Implications in the Use of Donor Sperm, Eggs and Embryos in the Treatment of Human Fertility, May 1983.

12. Great Britain, Report of the Committee on Homosexual Offences and Prostitution, Cmd 247 (1957), 9-10, 24.

13. R Dworkin, Taking Rights Seriously, Harvard, 1977, 242.

14. P Devlin, The Enforcement of Morals, Maccabaean Lecture, 1959, reprinted as 'Morals and the Criminal Law', in Devlin, The Enforcement of Morals, 1965, 17.

15. id, 13, note 1 (emphasis in original).

16. Note that the Law Commission's Report, Family Law and Illegitimacy, No 118, 1982, which discusses amongst other things the status of children conceived by artificial insemination discusses the issue raised in the Hart/Devlin debate (p.20-21).

17. Morgan Gallup Poll responses to the question whether the respondent approved of 'the test tube baby method' have produced the following results:

	July 1981	Feb 1982	July 1982	April 1983
	%	%	%	%
Approve	77	69	69	74
Disapprove	11	11	13	13
Undecided	12	20	18	13

The Bulletin, 17 May 1983, 32. In response to the question 'Do you approve or disapprove of a married couple using an egg donated by another woman?' 57 percent approved, 27 percent disapproved and 16 percent had no opinion, in May 1983; ibid. A year earlier the figures were 45 percent approved, 30 percent disapproved and 25 percent had no opinion; The Bulletin, 3 August 1982, 28.

18. J Cain quoted the Age (Melbourne) 27 August 1983, 1.

19. Victoria, Committee of Inquiry on In Vitro Fertilisation, Report on Donor Gametes in IVF, August 1983. Note that Dr Francis Harman, a Roman Catholic theologian and parish priest and Mrs Jasna Hay, a former teacher with interests in migrant welfare and education dissented from the views of the seven other members of the Committee. Dr Harman expressed 'a fundamental reluctance to pave the way for the synthetic child'. In a nine-page statement, he said there was no community consensus about the issues involved. Mrs Hay expressed uneasiness about embryo donations contending that the implications of the treatment had not 'been sufficiently explored'.

20. J Cain cited Sydney Morning Herald, 5 September 1983, 2.

21. D P Landa, cited ibid.

22. Mrs M Tighe, cited Australian, 27 August 1983, 1.

23. See eg Melbourne Herald, 29 August 1983, 9.

24. Mr K Gabb, MP cited Sydney Morning Herald, 5 September 1983, 2.

25. See Mr Cain's statement ibid.

26. In July 1983 it was announced that the Federal and State Attorneys-General of Australia had decided on the preparation of model legislation along the lines proposed by Mr Landa. See the Age, Melbourne, 16 July 1983, 3.

27. Short, above note 11, 8—9; 'The Frozen World of In Vitro', The Age, 18 June 1983. The first freeze-thaw embryo implantation attempted in Australia ended with a miscarriage in the 24th week of pregnancy in July 1983; Melbourne Herald, 16 July 1983, 1.

28. See Justice A Asche, 'AID, IVF and Genetic Engineering — Beyond the Legal Frontiers', the David Opas Memorial Lecture, 30 July 1983, mimeo, 5. A report on work of the Harbor University of California at Los Angeles Medical Centre appears in the Lancet, note, the Australian, 27 July 1983, 7.

29. 'Melbourne Test Tube Quads on Way', the Age (Melbourne), 30 July 1983, 1. See eg World's First Test Tube Triplets Under Wraps', the Australian, 9 June 1983, 1; 'The Test Tube Triplets', Sydney Morning Herald, 1 September 1983, 5; 'In Vitro Success Rate "may surpass nature" ', the Australian, 7 September 1983, 4.

30. Cf D C Overduin and J I Fleming, Life in a Test-Tube : Medical and Ethical Issues Facing Society Today, Adelaide, 1982, 82-85; Asche, above note 27, 31-35; W Wadlington, 'Artificial Conception : The Challenge for Family Law', (1983) 69 Va L Rev 465, 474-76, 479-82; Stephen Mason, 'Abnormal Conception', (1982) 56 Australian Law Journal 347.

31. The Australian, 9 August 1983, 3, reported that the first transplant of human foetal tissue into a diabetic patient in Australia was likely to be performed within weeks by a team of doctors from the Walter and Eliza Hall Institute, Melbourne. Similar operations, which aim to restore a part of the normal insulin producing function, have already been performed in Sweden, Italy and France, but with only limited success.

32. Victoria, Submission of the Catholic Bishops of Victoria to the Committee of Inquiry into In Vitro Fertilisation, reported in the Advocate (Melbourne), 14 July 1983, 3.

33. ibid.

34. ibid.

35. Lord Justice Ormrod, 'A Lawyer Looks at Medical Ethics', (1978) 46 Medico Legal Journal 18.

36. See eg.in Re B (a minor) [1981] 1 WLR 1421 (CA); Gillick v West Norfolk and Wisbech Area Health Authority, 25 July 1983, Justice Woolf, QBD, The Times 27 July 1983, 4; The Attorney-General for the State of Queensland (ex rel Kerr) v T, (1983) 57 ALJR 285 (H Ct); Re Superintendent of Family & Child Service and Dawson (1983) 145 DLR (3d) 610 (BC Sup Ct).

37. D J Havard, 'The Influence of the Law in Clinical Decisions Affecting Life and Death', Med. Sci. Law (1983) Vol. 23, No. 3, 157.

38. ibid., 165.

39. Lord Hailsham, Hamlyn Revisited : The British Legal System Today, 1983 Hamlyn Lectures, Stevens, London, 1983.