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TEACHING ABOUT SEX : THE AUSTRALIAN EXPERIENCE

EDITED BY WENDY McCARTHY

SYDNEY, FRIDAY 28 OCTOBER 1983

SEX AND LAW

October 1983

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SEX AND LAW

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

THE IRISH DILEMMA

Sex and law are a powerful mixture. If I had any doubts, they were removed a fortnight ago when I was in Ireland. It was my first visit to that beautiful county : the land of my ancestors. As could only happen in Ireland, I bumped into a long-lost relative in a chemist shop, when all I wanted was a roll of film.

The Irish Republic had just gone through a remarkable referendum. The people voted to include in the Irish Constitution a specific prohibition on the making of any laws to permit abortion. The Irish Prime Minister campaigned against the referendum as unnecessary and divisive. But it passed. It was, by all accounts, a bitter and unhappy campaign. Irish women seeking abortions travel to Britain — at least 5,000 a year according to estimates.

The sale of contraceptives was also forbidden in Ireland until the Supreme Court ruled that such a ban was contrary to a constitutional guarantee of family privacy. In the result, contraceptives can now be purchased but only on strict medical prescriptions; and many doctors in conscience will not write them.

The controversy of sex and the law that was most current when I was in Ireland concerned divorce. Whereas abortion and contraception were unthinkable topics in the 1930s, divorce was not. Accordingly, a provision was included in the Irish Constitution forbidding the making of any law for divorce. It remains to this day. There is no divorce in Ireland whether for Catholics, non-Catholics, believers or non-believers. However, in October 1983 an Irish citizen, Dr Roy Johnston, a scientist, took a complaint to the European Commission of Human Rights, and he won. He contended that the Irish constitutional prohibition on divorce was contrary to his human rights under the European Convention on Human Rights ratified by Ireland in 1953. The European Commission held that a prima facie case of deprivation of human rights had been established and had to be answered by the Irish Government. Dr Johnston had separated from his wife in 1965. For 12 years he has been living with a de facto wife by whom he has a daughter. He wants a divorce to legitimise his relationship and also the status of his child.

The distinguished, witty, educated Irishmen with whom I spoke defended this total ban on divorce. At its heart, the defence was this : Better that there be a little pain for the Dr Johnstons of this world than a lot of pain by introduction of divorce and the breakdown of 30% of marriages. Better that people be forced to live together, even sometimes in misery, than that a minority of individuals enjoy freedom to roam. If they do not like it, they can always leave our society, said one.

I believe that a similar issue is confronted in the Australian debate about teaching schoolchildren about sex. It is necessary for advocates of sex education in schools to face up squarely to the opposition, which is the modern successor to the kind of opposition to any divorce I found in Ireland:

- . That sex education is necessarily morally loaded and is therefore the legitimate concern and right of parents only.
- . That respect must be given for the view, even if a minority view, that teaching about such a topic outside the moral environment of the home, is 'formulated paganism' or 'humanism triumphant'.
- . That teaching sex to children maturing at different rates will remove the 'wonder' and 'mystery' of sexual development, with which we have got by until this generation.
- . That religious schools especially should be entitled either not to teach the subject at all or to do so within a specific and even dogmatic moral framework.
- . That, in practice, with vulnerable young people, sex education is bound to become sexually exciting and stimulating, leading on to promiscuity and therefore undermining specifically Christian values of modesty, virtue, chastity and saying 'No'.

Or, finally, the cynical assertion that young people know it all anyway, and efforts to teach them will merely embarrass adults behind the times and bore and confuse the children.

PARENTAL RIGHTS

One of the chapters in this book is about the legal situation of teachers:

- . How they need to be careful to know criminal law, such as on the age of consent, so they can answer questions.
- . How they must take care not to become involved themselves in criminal acts, such as procuring lawful abortions.
- . How they must be aware of the respective rights of parents, children and doctors, including as to confidentiality on sexual matters.

These questions were recently examined in England in the Gillick case. Mrs Gillick, a woman of 36 and a devout Roman Catholic, sought a declaration that none of her five daughters aged one and 13, should be given advice or treatment on sexual matters without her specific parental consent. Specifically, she wished to forbid the giving of contraceptive advice or treatment. She also had five sons but, for whatever reason, her proceedings were brought only in respect of the daughters.

The judge refused the requested injunction. He reportedly viewed the prescription of a contraceptive pill as not so much 'an instrument for a crime or anything essential to its commission' but a palliative against the consequences of the crime of unlawful sexual relations. Mrs Gillick was not impressed. She claimed that the state had taken away the right of parents to protect their children.

I called this decision to attention in an address in Perth in August 1983. Neither the judge in England, nor I, escaped from the crossfire:

- . The Times editorial (27 July 1983) thundered:

The responsibility of parents for the moral and physical welfare of their children needs to be even more explicitly acknowledged in the official guidance and more consistently respected in the practice adopted toward sexually precocious children and their possible introduction to contraceptives.

Lord Devlin took the trouble to write to the Times (29 July 1983):

There are some things the law will not stand for ... I hope that the common law will be found still capable of giving an answer to the question of whether it is the parent or the health authority who is to decide whether or not a child under 16 is to be provided with the means of sexual promiscuity.

For my pains in calling this English decision to notice in Australia and for calling for clarification of our local laws, I induced a letter to the Sydney Morning Herald:

I am fed up with the cynical encroachment of the State upon my moral authority. Under the umbrella of law reform, the State has already nullified the rights of the unborn. Now it seeks to undermine what little influence parents might exercise at the most crucial time of a child's life. Of course the rights of the child who wishes to indulge in sex for kicks (or to keep face with others) are now being held aloft by Justice Kirby as the supreme right overriding all others including the right of a child to a little loving moral guidance.

LOVING MORAL GUIDANCE

The speech I made in Perth called attention to some well known facts, borne out now by material in this book and also by recent statistics in Australia. A major survey by a local magazine of 6,500 young Australians, most of them girls under 20, disclosed:

- . 55.5% said they were no longer virgins;
- . 28.5% of 11 to 14 year olds were having regular sex but not using any form of contraception at all;
- . Even amongst those using contraception, 22% of those aged 14 were relying on the 'withdrawal method' — not notoriously successful in preventing the spread of venereal disease or avoiding pregnancies and later abortions.

It is said that we have 60,000 abortions a year in Australia. Whatever the exact figure, this is a large number of young women, young men, their families and others caught up in a terrible crisis of aggregate pain, grief and often remorse that haunts them for years to come.

Those who urge the merits of this book and what it is trying to do, dispute vigorously the assertion that they are seeking to replace parents, indoctrinate with a particular moral code, deliberately provoke sexual excitement or induce a lack of concern about moral questions. Instead they point to:

- . the clear and growing evidence of the fact of sexual experimentation amongst young Australians, bombarded, as they are, every day by the ethos and pressures of sexuality;
- . the clear evidence of the inability of at least many parents to speak candidly to their children about this most powerful subject;
- . the continuing high levels of abortion, despite the availability of contraceptives;
- . the growing spread of venereal conditions amongst young people — a subject mentioned this week with the call for a major increase in the resources made available in Australia for the treatment of venereal disease;
- . the continuing burden of unwanted first pregnancies, with forced marriages, single parent burdens and shame.

THE BOOK

The book is full of thoughtful, and for the most part entirely sensible, comments on sex and the young in Australia. If it does nothing else, it will surely help to dispel the cynical response 'They know it anyway'. The catalogue of misunderstanding, confusion and misapprehension collected in the words of young people themselves should be read by everyone concerned about this topic.

There is no substitute for the frank discussion about sex, from a very early age and in a loving family context. But I do not take anything in this book to be usurping parental rights — whatever they may be in law. On the contrary, where some parents would transfer moral instruction to the schools, one is reported (on page 15) as asserting that that was the parents' job and that they should not 'cop out'.

The truth, at least for contemporary Australian society, probably lies somewhere between the family fundamentalists and the avant garde educators. The education at school will be better understood and appreciated if it is given against a background of open family discussion. Family perceptions may be better tested in a world of shifting values, if supplemented by instruction from sensitive and trained people

in the classroom. Getting the balance right is the challenge. There will always be plenty of opportunities for parents to instil their views and values, outside the class room. Unhappily the evidence is plain. Most parents in Australia fail to avail themselves of that opportunity and duty. In such circumstances, the community — and the young people themselves, surely have rights to be safeguarded.

I cannot believe that the balance urged by some opponents of teaching about sex is right. This is the balance they have struck in Ireland where the law forbids abortion, even for cases of rape, incest or ectopic pregnancies. Where the law makes it impossibly hard for the very people who most need contraception to get it. Where the law forbids divorce even to non-Christian and non-believers and whatever the unhappiness of their marriage and the success of later relationships and rights of their children. This is the ultimate logic of the fundamentalists, who would forbid the teaching of sex in schools for fear of promoting still more promiscuity and having it accepted as normal.

But causing equal concern are those who would totally ignore parental rights or seek to propagandise a particular view of morality which parents may not wish their vulnerable children to hold. In a diverse, tolerant and secular society, we must respect the right to differ. On the subject of teaching about sex, we should listen to what the children themselves say. It is this book's concentration on that perspective that is its most valuable contribution to the debate.

In the sure knowledge that the debate will long continue, I now have pleasure in launching this book. I congratulate the editor, my friend Wendy McCarthy. I congratulate the other contributors and the publisher. I especially congratulate Victoria Roberts for her witty and perceptive cartoons. They help to remind us that this is not a gloomy topic, even if sex is for many a 'shameful but powerful secret' (page 97). As Rachael Winder reminds us (page 18):

Thou shalt remember the sacredness and dignity of thy calling, and,
At the same time, thou shalt not take thyself too damned seriously.

Good advice for sex teachers. Good advice for parents. Good advice for judges.