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FAMILY PLANNING ASSOCIATION OF THE A.C.T.

AUSTRALIAN NATIONAL UNIVERSITY FACULTY OF LAW

CONFERENCE ON LAW AND ETHICS IN FAMILY PLANNING

LAW SCHOOL, CANBERRA, SATURDAY 5 NOVEMBER 1983

LAW AND FAMILY PLANNING

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

THE LAW REFORM COMMISSION

I have to start by saying frankly that the views I will express are personal views. The Australian Law Reform Commission has not been required to examine laws specifically relating to family planning. Generally speaking, such laws are in the province of the States. In the ACT, there is a legitimate Federal concern. However, the Australian Law Reform Commission works only on references received by it from the Federal Attorney-General. No reference so far received has been specific to the issues of family planning.

My colleague, Professor David Hambly, is presently leading a major national inquiry within the Commission on matrimonial property law reform. I imagine that some disputes concerning matrimonial property arise when family planning has gone wrong and the marriage has failed. Certainly many marriages break down over sexual differences and incompatibility. But that, I concede, is a remote point. The next report of the Law Reform Commission to be tabled in Federal Parliament relates to privacy protection. One issue that arose in that inquiry related to the subject of the rights to privacy of young persons. The Law Reform Commission, in a discussion paper, had suggested that young persons between the ages of 12 and 16 should have certain defined legal protections to privacy, even as against their parents. Specifically we were thinking of medical advice and school counselling. Obviously the issue of contraceptive advice was raised in this context. Never has a tentative proposal of the Law Reform Commission engendered so much bitter criticism. Hundreds of letters were received. Petitions were signed in churches and tabled in Parliament. Personal representations were made. Clearly we had touched a nerve of strong and sincere community opinion.

C issues of sexuality and young people, the passions of many in the community tend to run high. The Commission has modified some of its proposals on this topic. I am not at liberty to disclose the proposals. They will be disclosed when the Commission's report is tabled in Parliament. However, it is clear that the rights of young people in respect of sexual advice, education and treatment are matters of high controversy and strongly divided community opinion. I plan to return to this general question.

A report of the Law Reform Commission on the subject of Human Tissue Transplants dealt with the issue of transplantation law. The project was completed nominally for the ACT. In fact, the recommendations in the Commission's report have been adopted in all jurisdictions of Australia, except Tasmania. In the course of that reference we were confronted with the problem of infertility. Approximately one in 15 married couples is infertile not by choice. Theirs is the reverse side of the family planning coin. They seek to plan a family and need assistance of science in doing so. The Commission addressed, briefly, the issue of artificial insemination as a form of transplantation. It mentioned the possibility of in vitro fertilisation (IVF), a full year before the first IVF baby, Louise Brown, was born in England. However, we concluded that the transplantation of life itself — whether in the form of sperm (by artificial insemination) or of an embryo (through procedures of IVF) or of a foetus (through in vivo fertilisation), all of these raised questions distinguishable from those raised by transplantation of a cornea, kidney or other specific organ. We indicated that those species of transplantation of human tissue required a separate reference from the Attorney-General. Unhappily, no such reference was received. The consequence is that we still await comprehensive laws on artificial insemination and no fewer than five State inquiries are grappling with the legal and moral questions of in vitro fertilisation. Other issues for the law remain for the future : cloning, in vivo fertilisation, use of foetal tissue and so on. We must develop institutional machinery in Australia adequately to tackle these high controversies.

THE IRISH DILEMMA

I want to approach a few observations about the law as it affects family planning and the sexuality of young people by taking a circuitous route. In talking about sex, it is usual in Anglo-Celtic society to indulge a little circumlocution. Two weeks ago I made my first visit to Ireland. Because my forbears came from both North and South, I visited both parts of that country. 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 they are only available 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.

There are some in Australian society who would urge a similar equation. There are some who are utterly opposed to family planning for themselves, their children and even for others. They base their views on strongly held moral principles. They believe contraception interferes in the ways of nature. Far from being promoted by open discussion and instruction in the schools, such matters are intimate concerns of a small circle, principally the family.

T. y are not the legitimate concern of schools, teachers, or family planning organisations, let alone the State. Some who hold these views are content to respect the right of others to differ; but they insist on their right for themselves and their families to adhere to their perception of right and wrong. Others, a distinct minority in Australia, would seek to force their views on everyone out of a conviction for the absolute rectitude of such views. I do not deal with that minority position — it is probably not a minority in Ireland — but I do want to discuss aspects of the opinion concerning the rights of parents in these matters. For they are aspects that have lately come before the courts in England. Because our legal system is so similar to that of England, we in Australia can look at the resulting decision for instruction.

THE GILLICK CASE

In July 1983 Mrs Victoria Gillick, a mother of 10 children, sought a court declaration from the High Court of Justice in London. Specifically she claimed that a circular issued by the English Department of Health and Social Security, advising doctors that they can give contraceptive advice and treatment to girls under the age of 16 without their parents' knowledge or consent, was unlawful. Mrs Gillick, a woman aged 36 and a devout Roman Catholic living in Cambridgeshire, sought a declaration from Justice Woolf that none of her five daughters, aged between one and 13, must be given advice or treatment without her specific parental consent. Her counsel, Mr Gerard Wright QC, told Justice Woolf that a doctor who knowingly gave contraceptive advice or treatment to a girl under the age of 16, could be 'very close' to committing a criminal offence of aiding and abetting unlawful sexual intercourse (carnal knowledge). This was a reference to the fact that the legal age for consent for sexual intercourse is still 16, the age fixed by legal history just before the reign of the first Queen Elizabeth and for the protection of 'deflowering' maidens, who, following sexual intercourse, probably lost their hope of marriage and dowry.

Mrs Gillick's Queen's Counsel told the court that she found the circular 'quite intolerable'. According to her, it encouraged the secret provision of the Pill or other contraceptives to under-aged girls. She wanted to retain her right and duty as mother to the exclusion of any other person, to advise her children on sexual matters. Specifically she wanted to retain her right to prevent other persons doing things that would encourage her children to have a sexual relationship 'which the law forbids'. The legal action was brought only after Mrs Gillick had written several times to the health authority asking for an assurance that none of her daughters would be given contraceptives without her consent.

The request was refused. The departmental policy was that contraceptive advice for children under the age of 16 years was in the sole discretion of the doctor. According to Counsel:

> This is for girls for whom it is illegal to have sexual intercourse. That may be done not merely without the consent of the parents, but in deliberate secrecy.

Mrs Gillick asserted her 'fundamental right' to concern herself with the moral upbringing of her children and a 'fundamental right' to rebuke and even prevent interference. Though professional secrecy between the doctor and his patient was important, confidentiality should not be permitted to 'cloak illegalities'. To do so would be to completely abandon the protection of the law against under-aged sex.

Mr Simon Brown, Counsel for the Department, rejected Mrs Gillick's argument. He drew upon a competing area of the law. He said that so long as young people knew the consequences of their decision, they could give valid consent for medical treatment. An under-aged girl who had sexual intercourse was not herself guilty of a criminal offence, though the man might be. Therefore, in giving the girl advice and medical treatment, the doctor could not be said to be encouraging or procuring a criminal offence. Remember that Mrs Gillick sought the orders in relation to her five <u>daughters</u> — not her five <u>sons</u>. Contraceptives were said to be prescribed to those under the age of 16 for their own good and to stop the tragedy of unwanted pregnancies. There was no reason to suppose that doctors and family planning clinics want to encourage their patients to have unlawful sex. But it was their duty to give confidential advice to their patients, including young patients, of sufficient maturity to understand the advice. Better that the advice be given by professional doctors than that it be gleaned behind the school shed or at the local disco.

Mr Gordon Gillick, aged 43, told the London <u>Times</u> that he was 'totally in agreement' with his wife's stance on the issue. The case was brought, financed by legal aid, and watched, according to the <u>Times</u>, with intense interest by civil servants and pressure groups. The National Director of the Society for the Protection of the Unborn Child described the position adopted by the Health Department as 'absolutely appalling'. She forecast a parliamentary campaign to tighten the law if the Gillicks lost their case. Mr Gillick declared:

My children are not going to kick over the traces. But if they do later on, that is their choice. But it is the intervention in the family by the Department of Health and its agencies ... that we feel is so wrong. They actually go round and sell promiscuity in the schools.

You see in this case why the law is such a fascinating but demanding vocation. Here was a judge, in the midst of a busy case list, faced suddently with a case of the highest controversy. On both sides were sincere people standing for their perceptions of important principles. The law of the land would ultimately govern the case. But in the end, what value was to be assigned a higher priority:

* The right of a young person, like any patient, to have confidential advice from a doctor; or
* the right of parents to govern the lives of their children according to the moral code in which they want to bring them up;
* the right of doctors to face reality and help young people who are likely to have sex anyway, to avoid the special tragedy of unwanted pregnancies, abortions and venereal diseases with the burden they places on families, individuals and society as a whole; or
* the right of parents, opposed to contraception, to prevent having information on such an intimate matter forced upon their children in a compulsory school context.

Justice Woolf dismissed Mrs Gillick's case. According to the report, children under the age of 16 are entitled, in England, to receive contraceptive advice without the knowledge or consent of their parents, at least where the alternatives sought to be prevented were unwanted pregnancies, abortions and venereal diseases. Justice Woolf reportedly viewed the prescription of the 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 said that the state had 'taken away the right of parents to protect their children'. It is not indicated whether an appeal would be brought or legislative action sought to reverse Justice Woolf's determination.

In August 1983 I called this decision to attention in an address I gave in Perth. 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.

Clearly, the Gillick case, the Law Reform Commission's earlier papers on the privacy of young persons, the Medicare card and the whole issue of family planning instruction in schools, raise fundamental values. These values concern:

* the respect for the integrity and privacy of the individual, even the young individual;
* the respect for the unity and coherency of the family as a fundamental unit of modern society;
* the law's general protection for medical confidentiality to ensure that treatment is based on uninhibited information;
* the law's protection of young people against seduction or premature, unconsensual sexual experience;

* society's legitimate right to prevent unwanted pregnancies, abortions and venereal disease;
* the parents' right to look to the law to uphold their entitlement (whatever others do) to bring young people up according to a particular moral code, at least so long as the children remain young and vulnerable.

THE LAW'S APPROACH

England. The recent decision in England was not written on a blank page. It was formulated against the background of decisions of the court and opinions of the British Medical Association dealing with advice and treatment for young people about contraception. Changing attitudes to sexual morality in Britain, as in Australia, have greatly increased the number of young people having early encounters with sex. Also in Britain, as in Australia, the number of unwanted teenage pregnancies has continued to rise. The law's prohibition against sexual relations with young people, its prohibition or discouragement of advertising of contraceptives, its requirement of a doctor's prescription for some forms of contraception and its facility for doctors advising parents of medical treatment given to their children, none of these have managed to discourage the rapid and apparently continuing growth of early sexual experience. The common law of England did not adopt an arbitrary age for consent for medical treatment, determined by reference to a birthday and the chronological passage of time. On the contrary, it took a remarkably sensible approach, which is perhaps to be expected from a system of law developed to solve problems rather than develop to state grand theories. The common law permitted the young person to consent to medical treatment so long as that young person had the ability to understand fully the issues involved. As to whether there was that appropriate level of full understanding, it was a question of fact in each case. Obviously, the more serious the procedure, the more unlikely that a young child, particularly below puberty, would have the necessary understanding. If the child could not provide a full and knowing consent to the particular procedure involved, the consent of the parent, guardian [or of the state] was necessary. Relying on this principle, courts in England have agreed that a schoolgirl aged 15 should be allowed to have an abortion against the wishes of her parents, the judge saying:

> I am satisfied she wants this abortion; she understands the implications of it.

An instance of the state stepping in, with general public support, to override the perceptions of parents and their moral views, can be seen in legislation permitting a parental refusal of blood transfusion to be overruled. Where it is a small, minority religion, the community applauds the firm action of the state, protecting the perceived interests of the young person.

where the opposition is larger and more vocal and where the matter touches the sensitive and controversial questions of sexuality, our community is much more ambivalent about the respective rights of the state, parents and the child.

Leaving aside the more difficult issues of abortion and the fitting of contraceptive devices to female minors (for these involve surgical operations) is the supply of contraceptive drugs or contraceptive advice to young patients in a different class? Here there is no question of physical assault. But there are questions of the respective rights of parents and children, of the integrity of the family and the proper limits of state intervention. Assuming that, as has just been held in England, no criminal or ethical offence occurs where a doctor gives advice to a young person about contraception, should the doctor have a right or duty to inform the parents of what he has done? Generally speaking, parents should have a right to know what is happening to the children in their care. Ideally, they should consent to any medical treatment, irrespective of the child's capacity to understand the complexities. But if the child refuses and insists upon respect for his or her confidentiality, may the doctor breach that patient's privacy because the patient is young? A recent English text suggested this approach:

> Parental concern is with the sexual intercourse and if their lack of control is such that intercourse is occurring, it implies either that they are indifferent or that they regard the practice as inevitable or that the situation is beyond their control. Thus they forfeit any absolute right to know of the steps which are being taken to limit the ill effects of their daughter's lifestyle. Certainly, the doctor has a duty to explain to his young patient the undesirability and dangers of indiscriminate sexual intercourse, certainly he must point out that his patient's partner is committing an offence but, beyond that, he is arguably acting in the best interests of all if he respects confidentiality when it is demanded.

In England, there is official backing for this policy in the Health Department Memorandum so recently challenged in the courts. It also has professional support in the BMA Handbook of Medical Ethics. Nevertheless, there is a degree of professional ambivalence. This arises out of a desire of adult doctors to respect parental responsibilities. In 1971 a doctor informed the parents of a girl, aged 16, that she was using contraceptive medication. The doctor had been informed, as family physician, by a birth control centre. A complaint was lodged against the doctor. It was held that the doctor was not guilty of serious professional misconduct because he took what he believed to be the best course in protecting his patient.

N etheless, the British Medical Journal expressed the view that as a general rule the physician should observe even the young patient's confidentiality. It has been suggested that in today's British society a different result would have ensued in that case. Certainly the decision by Justice Woolf will encourage departmental policymakers in the belief that the community's interest in family planning to combat unwanted pregnancies, abortions and venereal disease amongst teenagers condones private contraceptive advice to the young, even against the knowledge and wishes of their parents, so long as the young are of sufficient maturity to understand the nature of the medical advice they are receiving.

Canada. In Canada, the debate has been vigorous and except in Quebec (where there is a statutory obligation to inform parents) it also proceeds against the background of the English common law. In 1970 a physician in British Columbia was found guilty of infamous or unprofessional conduct for supplying a birth control device to a 15-year-old female patient without parental consent. His misconduct was held to lie in intentionally not disclosing his treatment to the parents. The Supreme Court of Canada upheld the ruling, though it did not say that the physician was always obliged to inform parents. It simply held that in that particular case he was, because the mother had already been in touch with the doctor.

The whole issue of contraceptive advice to young people was reviewed in 1975 by the Institute of Law Research and Reform of Alberta, one of the Provinces of Canada. In that country, as in Australia and Britain, the figures disclosed a large increase in sexual activity amongst young people. Furthermore, large numbers of ex-nuptial children were being born to unmarried girls under the age of 20. In fact, 23% of the illegitimate children born in Alberta were born to minors. The Institute concluded that the withholding of contraceptive advice to young people was not a deterrent to their sexual activities. Accordingly, it was better to face reality and to facilitate the avoidance of unwanted pregnancies. But then the Institute faced the issue of whether parents should be informed of contraceptive advice, assistance and prescription. Would doing so unacceptably invade the medical privacy of the young person? Would it deter them from seeking help and thereby vitiate the whole objective? Would failure to provide information to the parents fracture the unity of the family and the parental right to counsel, warn and uphold their perceptions of morality? This Canadian institute concluded:

> We are aware that Quebec's statute imposes on a physician an obligation (in most cases) to inform the parents and that British Columbia's 1973 amendment confers on parents a privilege of informing the parents.

> We accept the general proposition that it is better for minors to take their parents into their confidence. Our understanding is that the practice of physicians is to try to persuade young patients to do this. If the patient agrees there is no problem. The hard issue arises where the minor is adamant in refusing. We think that in these circumstances the usual obligation of confidentiality should apply. This [is our] formal recommendation. ...

United States. If the cases coming to the courts have been rare in Britain, Canada and Australia, there has been no shortage of litigation in the United States. In 1965 the Supreme Court held that a State prohibition against the use of contraceptives violated the constitutional privacy rights of married couples. Six years later this protection was extended to the use of contraceptives by unmarried adults. In 1973 the Supreme Court handed down its critical decision overruling a State anti-abortion statute on the ground that it intefered with the privacy rights of pregnant women. All of these cases involved adults. Then in 1976 the right of privacy of the minor was raised in the Supreme Court. The court held that a State law could not constitutionally impose a blanket requirement of parental consent on a minor having an abortion during the first trimester of her pregnancy. This decision explicity recognised the medical privacy rights of young people. A year later, in Carey v Population Services International the Supreme Court of the United States, whilst acknowledging that the position of young people and adults was not the same from the point of view of privacy, overruled a New York statute which prohibited any person from selling or distributing any contraceptive aid to a young person and banning all contraceptive advertisements. New York State had defended the legislation as necessary to deter juvenile sexual activity. However, there was virtually universal support amongst scientists and social scientists for the view that limiting access to contraceptives did little to deter teenage premarital sexual activities.

Needless to say, as is usually the case, these Supreme Court decisions invited a great deal of public comment and scholarly analysis. Public comment has been as divided as these issues are divisive. In fact, the latest decision upholding the right of young people to normally secure contraceptive advice without State interference, provoked the introduction of Federal legislation into the Congress seeking to limit that right. The legislation known colloqually as 'the Chastity Bill' or the 'Squeal Law' would seek to impose on Federal appropriations of grants to medical services, a requirement, in the area of premarital adolescent sexual relations and pregnancy, tha hospitals, doctors and others should notify parents and obtain parental consent before rendering any federally supported services to minors. So far, the law has not been passed.

I , interesting to observe how, in the United States, these great controversies tend to be fought out not in the democratic legislature but in the unelected Supreme Court and according to the suggested import of the Bill of Rights drawn up in the aftermath of the American Revolution in 1790. In the circumstances where a Bill of Rights is being proposed for Australia, we should note the strengths and the limitations of the United States experience.

The US Squeal Law was one politician's response to the Supreme Court decision about the right of minors to have contraceptive advice and assistance without parental consent. For the other point of view, a recent edition of a United States law review proposed:

> [C] onfidential access to contraceptives serves the important State interest of promoting the health of minors, and encouraging responsible decision-making and responsible sexual activity. It also acts to decrease the incidence of teenage pregnancy — a State goal of great importance -- which should be one of the dominant motives behind any legislation in this area. Parents remain free to influence their children in any manner they see fit, according to the usual method in which parent/child conflicts are resolved within the individual family. It is recognised that teenage pregnancy is a serious problem. Increasing the fear of pregnancy by burdening the minor's right to confidential access to contraceptives will not deter sexual activity, and thus will not solve the problem of teenage pregnancy. A better alternative would be to encourage parental consultation without requiring it, and to improve the quality of the minor's decision through sexual education programs. This would serve the State interest of encouraging an informed, mature decision, encouraging parental involvement, and protecting the minor's health, without the counterproductive threat of coerced parental notification.

'A LITTLE LOVING MORAL GUIDANCE'

In a generous article to mark the 500th anniversary of the birth of Martin Luther, the Australian Catholic writer Father Edmund Campion, in this week's issue of The Bulletin, concludes his reassessment of 'the rebel who turned reformer' with a sketch of the great man's family life:

> He still had moments of depression as in the old days, but his Bible and his family dissipated them. At times he was coarse, irascible and peevish. Yet, the undomesticated monk achieved one of the abiding triumphs of Protestism : family life as the spiritual norm for Christian men and women.

in Australia have not yet had a major national debate, let alone conclusive legal decisions, relevant to the precise position in law of young people seeking contraceptive advice and facilities. True it is, in New South Wales, a 1970 statute permits a young person aged 14 years or older validly to consent to medical or dental treatment. Elsewhere in Australia the legal position of the child depends, not on statutory guidance, but on the common law test as to whether the child is 'mature' or 'emancipated' so as to be able to seek and receive confidential medical advice and treatment. The Law Reform Commission of Western Australia is looking at this issue.

There are some who, consistent with the view of 'family law as the spiritual norm', resent or even reject the notion of young people in Australia having rights to contraceptive advice and treatment separate from those granted by their parents. Some even express the view in Old Testament terms. 'Whilst the child lives under my roof and eats at my table and is clothed by me, he or she will do as I decide'. Most Australian parents to do not take this possessive view. They simply do not consider it has anything to do with the State to interfere in so intimate a relationship as that with their children and upon so intimate a subject as sexuality. Whether it is the medicard for the young, the availability of confidential medical advice and treatment or the teaching of sex in schools — many sincere parents are utterly opposed. They see such intrusions as destructive of 'family life as the spiritual norm'.

On the other hand, certain facts must be faced if we are to be even partly realistic in this debate. I suggest that central are the following four facts:

* The sexual 'revolution'. All our young people are constantly bombarded by increasing information (print and electronic) about sex. It is no longer a subject in the shadows. Only this week the Australian Broadcasting Tribunal had to redefine 'indecency' because of the marked increase of references to sexuality in the media — ever alert and sensitive to changing public tastes, morals and expectations.
* Sexual activity in the young. Young people in Australia are much more active in sex, earlier in their lives than any previous generation. This may be regrettable. It may even be undesirable. To some it is shocking and shameful. But it is the fact of the matter. As a society we deceive ourselves if we ignore this indisputable reality. A recent major survey of 6 500 young Australians, most of them girls under 20, disclosed that more than half said they were no longer virgins; nearly 30% 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 notably successful in preventing the spread of disease, pregnancy and later abortions.

* Disease, pregnancy and abortions. The third reality is that disease, pregnancy, abortions, unwanted single parent burdens, forced marriages are all commonplace in Australian society. The aggregation of human misery and pain caused by these circumstances for young men and women, their families and for the general community is enormous. It is simply not good enough calling for a return to 'old-fashioned morality' and to the 'best contraceptive' of 'saying no'. The Millennium might come. But in the meantime we have an important, urgent social problem on our hands and kindliness, in the Christian tradition, requires us as a community to respond.
* Parental neglect and shame. The fourth fact, also revealed by the recent survey but demonstrated also in the statistics on abortion, disease, forced marriages and unwanted pregnancies — is the inability of many parents to speak or to speak effectively and relevantly to their children about sexual matters. There is also the inability or unwillingness of young people to speak to their parents. In this mutual silence built on shame, modesty, embarrassment or plain neglect, lies the seeds of ignorance, misinformation, experimentation and personal tragedy.

Responding to these four realities of modern Australian society, the pressures are now increasing for the provision of advice on sexuality and contraception for young people, through medical facilities and in schools. There remains much sincere opposition to these moves. Of course, the moves cannot and should not exclude parental instruction and advice in a loving home environment. But there is a genuine fear in some quarters, as demonstrated by the legal case brought in England by Mrs Gillick, that such facilities and such advice will undermine parental influence and specifically religious values taught in the home.

Family Planning Associations must, as it seems to me, be sensitive to these concerns. Sex instruction must be alert to the moral implications of sex education and the entitlement of parents, at least for a time, to endeavour to persuade their offspring to their religious and moral convictions, including as they affect sexual activities.

But a point is reached where young people are entitled to respect for their own individuality. The law itself recognises this entitlement. According to all the evidence, that point is now being reached earlier than in times gone by.

Some would argue that a point is also reached where the community, which must foot the bill of disease, of pregnancies, of single parent benefits and of the 60 000 abortions performed annually in Australia, is entitled to be concerned for its own protection. This is not just a matter of money. It is a matter of a modern community's legitimate concern with the pain, remorse and self-reproach that frequently accompany sexual activity, particularly in the young.

CONCLUSIONS : FACING FOUR REALITIES

In this talk, I have offered no firm conclusion. Of one thing only we can be sure — that discussion of this topic will last for ever. The sexual revolution of the past two decades has not been an entire calamity, as some would have us believe. For many, repression and personal misery, frustration and anxiety have been diminished or even removed. Certainly, Australia is a less 'uptight' society than once it was. Today it may be contrasted with fundamentalist societies, not always to the latter's advantage.

But we have problems, including legal problems, in respect of the relevant rights of young people, their parents, medical advisers and the community generally. I have mentioned four considerations that must be kept constantly in mind in this debate:

* The ever-increasing amount and openness of discussion of sexual matters in Australia, daily bombarding young people and shaping their attitudes and values.
* The evidence of increasing sexual activity, beginning earlier, amongst young Australians.
* The evidence of the inability of at least half Australian parents to speak frankly and relevantly about sexual matters with their children and the reciprocal inability of many young people to respond.
* The continuing painful evidence of the spread of venereal disease, unwanted pregnancies and 60 000 abortions a year — burdens particularly falling on young Australians and their families.

I repeat that a kindly community, conscious of its Judeo-Christian ethisc, will not turn its back on these problems. It will not satisfy itself in simplistic calls for a return to 'good old days' which were not so good after all and which will, in any case, not return. Nor will it consider that the solution is purely legal or bureaucratic. But there is law reform and social reform to be done here. I hope that the Australian community will prove itself adequate to this most testing challenge.