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"LEGAL IMPLICATIONS OF AIDS"

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(Australia)

IN THE REAR... LIMPING

An Australian judge once described law as "marching with medicine, but in the rear and limping a little"[1]. The IVth International Conference on AIDS in Stockholm disclosed the global challenge to communities and individuals presented by Acquired Immuno-Deficiency Syndrome (AIDS). The World Health Organisation (WHO) report to the Conference revealed just short of 100,000 notified cases of AIDS; an estimate of at least twice that number in actuality; and an estimate of the numbers infected with a Human Immuno-Deficiency Virus (HIV) of between 5 and 10 million persons[2].

Elsewhere, I have summarised my perceptions of the main conclusions to be drawn from the conference - scientific, economic and social[3]. In this essay, I will survey some of the chief legal responses to AIDS which have occurred to date, as communities respond to their differing perceptions of AIDS and of the way in which the law should deal with identified aspects of it.

Inevitably, there are a number of limitations which

affect the utility of an article of this kind. The law is local. Even in a unitary state national and local government authorities (legislators, administrators and courts) will establish rules of varying kinds affecting AIDS. In federal countries, there may be even greater diversity of lawmaking at federal, state and local levels. Approaches to epidemic control vary enormously according to the political system which operates, its responsiveness to popular opinion and its ability to deal with the problem authoritatively. This point has been made many times when comparing public health laws and policies on alcoholism in, say, the United States and the Soviet Union.

Furthermore, law does not exist in isolation. It is part of the mosaic of social regulation. It is shaped by the institutions which make it and upon which it must operate. As well, the perceived needs for law depend upon the perception (and actuality) of the size and nature of the problem being tackled. The WHO statistics show the wildly uneven distribution and differing patters of AIDS in different countries, at this stage of the epidemic.

Finally, there are limitations of knowledge that must be acknowledged. Whereas medical and other scientists, dealing with the human body, work upon phenomena which are universal and, relevantly, unvarying, it is not so in the law. The legal systems which operate throughout the world are fundamentally different, although there are two large groupings. One of these groupings is represented by the common law system, derived, ultimately, from England. This system is

substantially followed in most English-speaking countries. It lays emphasis upon the role of the judge as an expositor of law. Even legislation enacted by elected legislators (or subordinate regulations made by administrators under delegated power) reflect the intended interaction of such legislation with judge-made law. The other major grouping is the civil law system, derived principally from France. In this system the role of the judge is important but less so. Codification and general statements of the law are more common.

All of this is simply to introduce what follows by words of necessary caution about the applicability of legal rules established in one jurisdiction to respond to AIDS to the differing legal environment of another. At some points (as in international travel) domestic laws interact. They then affect foreign nationals. But for the most part, though the problem of AIDS is now global, the responses of the legal systems of the world depend upon the local institutions and legal environment. WHO contributes to understandings of the commonality of legislative responses to AIDS by the regular publication of tabular information on legal instruments dealing with AIDS and HIV infection[4]. This circular is published in two parts. One surveys the United States, the epicentre of the epidemic, by reference to legislative instruments, federal and state. The other deals with reported instruments from other jurisdictions around the world. These reports are indispensable. They continue to expand rapidly. They omit judge-made law and much official practice and policy.

Substantially they provide a conspectus of legislation, as that word is understood in common law countries.

There is no point in reviewing these collections. They disclose the rapid way in which laws have been enacted in many jurisdictions to provide for the screening of blood products, the notification by medical practitioners of suspected or confirmed diagnoses of AIDS and the growing number of jurisdictions which have introduced requirements for compulsory screening of identified groups, such as immigrants and prisoners.

It is not my intention to collect and analyse these laws. Instead, it is to give a tour d'horizon of laws on AIDS, so that some notion can be derived of the way in which lawmakers are responding to the epidemic. I will attempt to draw a number of general conclusions.

CRIMINAL LAW

Exposure to HIV infection, which may lead to AIDS, is life-threatening. There is no present cure for AIDS. Nor is the development of such a cure foreseeable. A large number - perhaps all - of those who are infected with the virus will suffer serious consequences for their health. Many will die as a result. Accordingly, it is a legitimate purpose of the law to endeavour to protect individuals, communities and nations from the spread of the virus.

A traditional way by which legal systems attempt to inculcate individual responsibility is by the operation of the criminal law. That law, to breach of which penal and other

sanctions typically attach, operates imperfectly as the evidence of law breaking in different communities clearly demonstrates. However, the criminal law can have symbolic value in stating that conduct is punishable and hence is not approved by society. Various theories exist to justify the stigmatisation of conduct by criminal law. According to one theory, it is enough that conduct offends the moral sense of most members of society. This was a traditional basis for laws penalising adult homosexual conduct in many countries, even though there was no complaining victim. But with the spread of HIV, there is a risk of serious actual harm to individuals. This would invoke the other chief theory which underpins the criminal law: protection of the individual from harm.

It is possible that the knowing spread of HIV to another person - or reckless indifference to whether, by sexual or other conduct the actions of the individual will have that consequence - will already amount to a crime under general provisions of criminal law. Depending on its terms and on the consequences of the act, such conduct might amount to murder, manslaughter or assault occasioning grievous bodily harm etc[5]. But whether or not this is so, calls are now being made, and sometimes answered, for the provision of specific crimes to penalise the deliberate or reckless spread of this potentially lethal virus[6].

Responding to such calls, a number of Australian states, for example, have enacted laws to provide a specific penalty in the case of unprotected sexual intercourse by infected

persons. In my own State, a person who knows he or she has a proclaimed disease (including AIDS) may not have sexual intercourse with another person unless before such intercourse takes place the other person has been informed of the risk of contracting the disease from that person and has voluntarily agreed to accept the risk. The penalty imposed is a maximum fine of $5,000[7]. This may seem a modest penalty for activity that may spread a potentially fatal infection[8]. In Victoria, amendments to the Health Act were introduced in 1987 to provide a fine of up to $20,000 for a person who deliberately infects another with AIDS or any other infectious disease. Such laws should be seen as having symbolic rather than practical value. The penalty is inadequate. Proof and enforcement of the law would be extremely difficult. The offender may be dead or very ill by the time of the prosecution. Proof that it was he or she who caused the infection may be next to impossible. Moreover, such laws may have a counterproductive effect, even though unintended. If an element in such crimes is knowledge of one's own HIV status, the provision of such laws may discourage persons from taking the HIV test. Particularly may this be so if there are provisions for reporting of persons who prove HIV positive to the test, with personal identifiers that can be traced. Submitting to the HIV test may itself sometimes be a useful educational step in a course of behaviour modification designed to promote self protection and the containment of the AIDS infection. Criminal offences, which have only a minor symbolic value and are rarely prosecuted with

success, may actually prove counterproductive because they discourage test-taking.

This is not the only area where AIDS and the criminal law intersect. For example, in a recent murder prosecution in Sydney, Australia, the accused contended that he had killed his wife because she admitted an affair and he feared that she had AIDS and would infect the children. In numerous criminal cases, issues relevant to AIDS are now arising. Thus in England, the Queen's Bench held that fear of the giving of a blood sample for detecting the presence of alcohol in the blood of a driver, allegedly on the ground of concern about contracting AIDS in the process, was not a reasonable excuse to justify the refusal[9]. Also in England, the Court of Appeal has reserved for the future the question whether fear of AIDS will justify a higher tariff in the punishment of a person convicted of rape[10]. In South Australia, it has been held that the fact that a prisoner is suffering from AIDS is a consideration relevant to determining the sentence that should be imposed upon him. This was justified having regard to the state of the prisoner's health, his health prognosis and the likely loss of ordinary prison privileges because of isolation, consequent upon the diagnosis of AIDS[11].

In some jurisdictions it may be expected that constitutional guarantees of human rights will be invoked to stand in the way of penalising consensual sexual conduct. Recent decisions of the United States Supreme Court holding that states do not violate the Federal Constitution when they

punish homosexuals for consensual sodomy[12] and that Army Regulations discharging homosexuals, as such, from the armed services[13] do not breach the Constitution suggest that constitutional limitations will not play a large part in that country in controlling criminal or other laws targeted on the spread of the AIDS infection, whatever the invasion of privacy or breach of other rights involved.

QUARANTINE AND PUBLIC HEALTH

Quarantine laws are generally categorised as civil rather than criminal. However, they may impose restrictions on individual freedom which are as severe as penal laws. Sometimes they do so without the exquisite protections typically built into criminal process.

So far, no community has provided specific laws to quarantine all persons with HIV infection. Such laws would be manifestly unjust and ineffective, at least in the most developed countries. The antibody test does not disclose all who are infected. It would be difficult, if not impossible, to provide resources to house, feed, guard and isolate all such persons. The economic impact of withdrawing from the economy people with (on average) eight, ten or many more years of productive contribution would be crippling. Moreover, having regard to the established modes of transmission of the AIDS virus, the risks of the spread of the infection to the whole community remain small. Clearly, the target of laws and policies should be the behaviour that spreads the risk, not the individual.

Nevertheless, calls for quarantine and manifest identification of the infected have occurred[14]. They will become more common as the infection spreads. In a number of jurisdictions already existing powers of quarantine have been enhanced and made specific to include AIDS[15]. Lessons have fortunately been learned from the ways in which communities earlier tackled syphilis - also a sexually transmissible disease potentially lethal. An English Royal Commission report in 1913[16] made the point that the public health objectives of procuring the identification of the infected, counselling and such treatment as was available, were more likely to be effective for the policy of containment than punishment and quarantine. As with syphilis so with AIDS. Winning the support of those with the burden of infection, and modifying their behaviour, is the strategy that offers most promise at this time.

Many jurisdictions have enacted laws to provide screening for the presence of HIV. None has so far provided for mandatory screening of the whole population. This has been recognised as ineffective. It is an inefficient use of available public resources. It carries with it the risk of discrimination on a large scale[17]. Notwithstanding rational arguments against screening of particular groups in the community, numerous jurisdictions have so provided. For example, China has recently extended its compulsory testing to all foreigners who apply to live in the country for more than six months[18]. There are many other like provisions,

particularly in the laws of countries presently reporting a low incidence of AIDS and HIV.

Numerous legal issues are raised by legislation on screening for antibodies to the AIDS virus[19]. They depend largely on the voluntary or compulsory nature of the screening provided; the facility for anonymous screening; and the obligation of those performing the screening to submit identified or purely statistical data to central record keeping facilities. The concern about AIDS registers and data protection has begun to attract the attention of international[20] and national[21] reviews of this issue. Because of the risk of discrimination, if not immediately then in the long term, the anxiety of potential or actual privacy invasion is added to the anxieties related to health.

The submission to screening, of itself, does not affect in the slightest either the health of the individual tested or the containment of the virus in the community. However, the hope is frequently expressed that submitting to such screening will encourage at least those without HIV infection to modify their behaviour and adopt "safe sex" and other practices as to limit the cycle of the infection. Screening provides the best possible data on the epidemiology of AIDS. These facts suggest that anonymous screening and de-identified reporting should be encouraged. The provision of facilities for counselling of those undergoing the screening test for HIV was emphasised in a number of sessions at the IVth International Conference. One of the topics most hotly debated was whether, and if so when, a

medical practitioner knowing that a patient is infected with HIV has an obligation to warn that patient's sexual partner(s). In circumstances of persistent refusal or failure of the patient to do so, does a duty to other individuals and to public health override the duty of confidence owed to the patient? Unless legislation is enacted imposing or relieving the medical adviser of liability to do so, such duty would, in common law countries probably be worked out by reference to the laws of confidence and negligence[22].

Various other public health issues raised by AIDS have been dealt with by the law. They include such matters as the closing of venues considered responsible for spreading the infection (eg bath houses); limitation on acupuncture and organ transplantation by persons infected with HIV; and tracing of sexual partners for the provision to them of counselling about exposure to HIV infection and so on.

BLOOD TRANSFUSIONS

A major early source of the spread of HIV infection was the blood supply. In developed countries, most of this occurred before the problem of AIDS was generally known and before the antibody test for the presence of the virus was generally available. But even now, in a number of developing countries, inadequate resources are available to test blood products. This point was made during the IVth International Conference.

Numerous legal issues are raised by post transfusion AIDS[23]. Many have concerned the liability of suppliers of

blood products where the product is alleged to have caused the infection of a patient. A number of cases involving allegations of this kind have come before the courts in Australia. In one, an application for the identification of a blood donor was refused[24]. In another, an application to bring legal proceedings out of time, on the ground of delayed diagnosis of AIDS, failed[25]. In some jurisdictions provisions have been urged[26] for a special fund to indemnify those who have acquired HIV or AIDS from blood transfusion[27]. Care must obviously be taken, in acting in this way, not to discriminate between those who have acquired the infection from transfusion as distinct from, say, lawful sexual conduct which was not at the time known to be dangerous. Such a distinction could perpetuate unfair discrimination amongst patients with AIDS, all of whom suffer in the same way. All of them need the support of a caring society.

MARGINALISED GROUPS

One of the tricky problems presented to lawmakers by AIDS is the fact that, at least in developed countries, the groups initially presenting in large numbers with the HIV infection were already stigmatised and, in some senses, "socially outcast"[28]. I refer to homosexual or bisexual men, intravenous drug users and prostitutes. Public opinion polls suggest widespread support, at least in my own country, for mandatory testing of such groups. Thus, a 1987 Australian survey showed 90% support for compulsory testing of homosexuals; 86% were for immigrants entering Australia; 83%

for prisoners in gaol and even 57% for tourists entering the country[29].

Democratically elected governments, under the pressure to be seen to be doing something effective in the face of a major epidemic, may be tempted to legislate against particular groups. Migrants, prisoners, drug users and prostitutes, in particular, lack an effective voice to dissuade lawmakers from provision of laws discriminating against them. It is therefore important for those concerned with the science of lawmaking to remind lawmakers of the dangers of unjust discrimination and the probable ineffectiveness of mandatory testing of such groups. To test migrants but not tourists would seem unjustifiable, as the latter, rather than the former, may typically have greater exposure to AIDS. To test prisoners without making administrative arrangements for their care if found to be HIV positive is pointless. Yet in prisons around the world (including in my own country) compulsory testing is now increasingly occurring. To provide for testing of prisoners and not to provide for condoms and for the control of the spread of the infection by intravenous drug users is irresponsible[30].

In a survey conducted for the National Health and Medical Research Council of Australia it was disclosed that about 12% of men in the sample admitted to homosexual behaviour during their lives[31]. The actual proportion might well be higher. The possibility of sexual activity in crowded prisons, where normal sexual outlets are impossible, must be acknowledged by a

society in whose charge the prisoners are. There is growing recognition of public acceptance of this fact[32]. As was pointed out in Stockholm, one of the advantages of the sexual revolution in developed countries has been a growing realism about human sexuality and willingness to face candidly its consequences.

This realism may, in due course, produce an important legal revolution concerning intravenous drug users. The reports to the Stockholm Conference made it plain that in the United States and Europe heterosexual intravenous drug users are now a rapidly growing proportion of those presenting with HIV infection (estimated 25% in the United States; 30% in Europe)[33]. This fact has led, in a number of jurisdictions, to the provision of sterile syringes in an exchange program designed to curb the spread of HIV. An Australian report suggests that up to 1 in every 10 returned needles in the inner city of Sydney is infected with HIV. This constitutes a "substantial increase" in the apparent spread of the virus amongst intravenous drug users[34]. The introduction of syringe exchange programs requires a degree of political courage. This is especially so at a time of national concern in many countries about the growing use of narcotic and other drugs. However, it also represents recognition of the fact that the present legal response to drug control, at least in some developed countries, is failing. There is a growing willingness to contemplate (or at least to experiment with) treating the problem as one of public health. A discussion

paper issued in Australia in February 1988 reviewed, for the first time, various options designed to control what was described as "the second AIDS epidemic". This is the spread of HIV by way of the sharing of syringes and later sexual intercourse to the general community[35]. Editorials in a number of Australian newspapers are now facing candidly the possible need to provide heroin and other drugs to intravenous drug users as part of a strategy to prevent the risk of the spread of the AIDS virus into the general community. Illegality and covert supply of drugs tends to promote this risk[36]. This is a remarkable development. But it reflects the growing recognition of the seriousness and extent of the problem of AIDS. A drastic problem may necessitate drastic solutions. It may concentrate the mind on those measures most likely to be effective.

OTHER ISSUES

Numerous other issues require attention in any review of the impact of AIDS upon the law. They include:-

* The provision of laws against discrimination against people with HIV or AIDS whether in employment[37], housing[38], the provision of social security or otherwise.
* The regulation of insurance and the extent to which insurers may seek to protect themselves from unjustifiable liability while requiring policy holders to answer questions, undergo screening for HIV or otherwise[39]. Different problems arise in different

jurisdictions, having regard to the provision or absence of publicly funded health care. In the absence of such provisions, the entitlement to the protection of private insurance may be critical. Questions addressed, for example, to whether a person has submitted to screening, or sexual orientation as such, might be unfairly discriminatory. Yet so might prohibitions on the provision of insurance to particular groups, given that it is behaviour and not membership of a group, as such, that puts a policyholder at risk.

* Family law may be affected, as for example in those jurisdictions which provide for dissolution of marriage on the ground of matrimonial fault such as adultry[40]. Particular issues of child abuse; the rights of sexual partners and the position of families devastated by the loss to AIDS of an income earner, all need consideration. An interesting consequence of the introduction of laws requiring pre-marriage tests for HIV in some jurisdictions of the United States was reported in Stockholm. It was that applications for marriage licenses had fallen by 60%[41]. This simply demonstrates the need for more careful consideration in the design of laws.

* Concern has been expressed about the neuropsychiatric aspects of HIV infection and about whether dementia will provide justification for compulsory screening of employees in some occupations. A number of airlines are

now requiring flight and cabin crew to submit to HIV tests, ostensibly upon this basis. A committee of the WHO has questioned the need for such tests. It pointed out that mental impairment is likely to show up in advance of other symptoms thereby removing the justification of universal screening, with its serious dangers for discrimination[42].

* Reports of the first tests of AIDS vaccine were made to the Stockholm Conference. Vaccines present issues for the legal liability of those individuals and corporations involved in such tests. In some jurisdictions, common law decisions and legislative provisions have heavily burdened vaccine development, for the protection of those who suffer as a consequence[43]. Given the dimension of the global problem of AIDS and the urgency of providing an effective cure and vaccine as quickly as possible, consideration will need to be given to such matters as the protection of drug companies and the compensation of any who suffer from their urgent activities[44].

* Finally, the likelihood, in present circumstances, of large numbers of persons dying from AIDS has called attention once again to the issue of euthanasia and the need for respect of the terminally ill[45]. Sadly, hysteria can generate pain for the dying and the grieving. In my own State, for example, regulations require that a person known or reasonably suspected to have suffered [from AIDS] should, at the time of death,

be placed in double plastic bags, heat sealed with the words "Infectious Disease - Handle with Care" placed on the body in letters of prescribed colour and height[46]. Obviously this procedure has impeded the grieving process. It betrays the right of a deceased person not to disclose the nature of his or her illness. There is no scientific basis for the regulation. AIDS is not transmitted by handling the body of a person who has died in this way. The regulation was simply a response to a trade union demand which was grounded in irrational fear.

CONCLUSIONS

This last comment calls attention to the need to base laws on facts. There is also a need to recognise the limited capacity of the law to promote the behaviour modification which is essential, in present medical circumstances, to the containment of HIV and AIDS. The only vaccine we have at the moment, as the Swedish Minister for Health said in Stockholm, is knowledge[47]. This is why, at least at present, legal regulation should be addressed to facilitating public education, the ready provision of condoms with water-based lubricants and the ready availability to people concerned about their probable risk, of anonymous HIV screening. Such screening may be the first step on the road to self protection and the protection of others.

It is in this sense that the report of the United States Commission led by Admiral Watkins (which coincided with the Stockholm Conference) is most important. That report

emphasised the need, paradoxical though it may at first seem, to accompany laws and policies on AIDS with the provision of protection against discrimination of those who are infected. The lesson is there from the earlier legal regulation of syphilis. Attempts to deal with syphilis punitively, by stigmatisation, contract tracing and the rounding up of prostitutes[4a] provided no effective protection for society. On the contrary, it involved great injustice. It was, above all, ineffective. Injustice in combating AIDS might be tolerated by some. Many in the groups most at risk in developed countries face the prospect of further stigmatisation. They contemplate injustice with resignation and anger controlled by knowledge of long experience. But inefficiency in controlling the spread of HIV is unforgiveable. At risk is nothing less than the health of millions of people.

Just as we are fortunate that this epidemic struck at time when we have WHO to mobilise the international community and the tools of molecular biology to identify the virus so we are fortunate as we approach our legal responses. We have the modern means of communication to spread rapidly the educational message. We have the candour which has, in many countries at least, accompanied new approaches to human sexuality. This is helpful in combating stigmatisation and in promoting frank instruction, including to the very young, concerning the modes of transmission and means of protection. We have a new willingness to think radically concerning the groups most at

risk, not least for the protection of the rest of the community. We also have a growing knowledge of the science of jurisprudence. And this brings a realisation of the limits of what can be achieved by the law in epidemic control.

That is why the law limps after medicine ... at the rear of the line. For the health of society and the practical containment of AIDS, that is where I would keep it for the present. Over-enthusiasm is enacting laws on AIDS may make some people feel better. But it will have precious little impact on controlling the spread of this epidemic. It may cause serious disadvantages of stigmatisation for those infected, or most at risk, whose cooperation we must win. In this way too many laws may actually impede the control of the spread of AIDS. For the moment, that control depends most on community and individual education. This may seem a strange conclusion for a lawyer to reach. But for my own part, I am sure that:-

* effective media news, advertisements and even soap operas broadcast to the general population;
* ready and cheap provision of condoms with water based lubricants; and
* and a new approach to illegal drugs

will be a more effective strategy than laws, to stop the spread of this lethal virus if we are really serious about containing AIDS.

FOOTNOTES

* Based upon a contribution by the author which is published in AIDS (1988), 2) Suppl 1) s 209- s 215).

† Member of the World Health Organization Global Commission on Aids 1989-; Trustee of the AIDS Trust of Australia 1988-; Honorary Fellow, New Zealand Research Foundation, 1986-; Commissioner and Member of the Executive Committee, International Commission of Jurists, 1984-; President of the Court of Appeal of New South Wales 1984-. The views stated are personal views.

1. Justice Windeyer in Mount Isa Mines Ltd v Pusey (1970) 125 Cwlth L Repts 383, 395.

2. J Mann, "The Global Picture of AIDS" in Papers of the IVth International Conference on AIDS, Stockholm, Sweden, June 1988.

3. M D Kirby, "AIDS - Report from the Stockholm Conference" in Papers, ibid, n 2.

4. See World Health Organisation, Tabular Information on Legal Instruments Dealing with AIDS and HIV Infection, WHO-GPA-HLE-88.1, June 1988.

5. See K M Sullivan and M A Field, "AIDS and the Coercive Power of the State", 23 Harvard Civ Rts-Civ Lib L Rev 139, 163 (1988). Cf Scots Criminal Law and AIDS in the Scots Law Times, 18 December 1987, 389.

6. See eg J R Seale, "Kuru, AIDS and Aberrant Social Behavior" in (1987) 80 J Roy Soc Medicine 200, 201. See also D J Besharov, "Make it a Crime to Spread AIDS", Washington Post, 18 October 1987, D5 and M Barnard, "Curtail Sexual Threat by Law", Melbourne Age, 22 March 1988, 13.

7. See Public Health (Proclaimed Diseases) Amendment Act 1985, s 3 (inserting s 50N(3) in the Public Health Act 1902 (NSW)).

8. See Health Amendment Act 1987 (Vic). A similar provision has been enacted in the Soviet Union by the Decree of 25 August 1987 as reported in Izvestia, 26 August 1987, 2. It provides for deprivation of liberty for up to five years for knowingly exposing a person to infection and for up to eight years for knowingly transmitting AIDS to another person.

9. Fountain v Director of Public Prosecutions [1988] Crim LRev (GB) 123.

10. The Queen v Malcolm [1988] Crim LRev (GB) 189.

11. The Queen v Smith (1987) 44 Sth Aust State Rep 587.

12. Bowers v Hardwick 106 SC 284 (1986). See discussion Sullivan and Field, 161.

13. United States Army v Watkins (1988), US App LEXIS 8315.

14. W J Buckley Jr, "Combating the AIDS Epidemic", New York Times, 18 March 1986, A 27.

15. See eg Public Health (Control of Disease) Act 1984 (UK). Cf J Aiken, "AIDS - Pushing the Limits of Scientific and Legal Thought" in 27 Jl Law Sci & Tech (1986) 1, 5.

16. See "History Says No to Policemen's Response to AIDS" in (1986) 293 BMJ 1589.

17. M D Kirby, "The New AIDS Virus: Ineffective and Unjust Laws" in France, Ministry of Foreign Affairs etc Symposium International de Réflexion sur le Sida, Paris, 22-23 October 1987 (Version Anglaise) Papers, 203, 209ff. Note Council of Europe, Committee of Ministers, Recommendation R(87) 25, 2.

18. As reported, London Daily Telegraph, 8 January 1988, 6.

19. See J K M Gevers, "AIDS, Screening of Possible Carriers and Human Rights" in Health Policy 7 (1987) 13. See also discussion Dale and Ors, "Blood Testing for Antibodies to the AIDS Virus: The Legal Issues", CRS Report for Congress, 87-738A; cf M Somerville and N Gilmore, "Human Immunodeficiency Virus - Antibody testing in Canada", mimeo, 24 August 1987.

20. Council of Europe, Committee of Experts on Data Protection, AIDS Registers and Data Protection, Memorandum, 30 March 1987.

21. See Dale and Ors above n 19.

22. Cf Tarasoff v Regents of the University of California 551, P 2d 334 (1976).

23. J F Williams, "Blood Transfusions and AIDS: A Legal Perspective" 32 Med Trial Techn Qly 267 (1986).

24. See Loker v St Vincents Hospital (Darlinghurst) & Anor, unreported, SC, (Allen M), 1 October 1985. Noted M D Kirby, "AIDS Legislation - Turning Up the Heat?" (1986) 60 Aust LJ 324, 330.

25. Dwan v Farquhar (1986) Qld Law Reptr 600 (SCQ).

26. New Zealand Herald, 18 June 1988, 24.

27. The UK Government has made an ex gratia payment of £10 million to enable the Haemophilia Society to set up a trust fund to help haemophiliacs infected with the AIDS virus from infected blood products. (See "Government Gift of £10 M to help Haemophiliacs" The Times (London) 16 November 1987).

28. S Kingman, "AIDS and the Social Outcast" in New Scientist, 10 March 1988, 30.

29. 1987 Aust Election Survey Reported AFAO, National AIDS Bulletin, June 1988, 9.

30. WHO, Special Program on AIDS, Statement from the Consultation on Prevention and Control of AIDS in Prison, Geneva, 16-18 November 1987.

31. Melbourne Age, 8 April 1988, 1.

32. See eg New Zealand Herald, 3 October 1987; 1 March 1988, 8.

33. D C Des Jarlais, "HIV Infection among Persons who Inject Illicit Drugs: Problems and Progress" in Papers of the IVth International Conference on AIDS, Stockholm, Sweden, June 1988.

34. J Gold quoted Sydney Morning Herald, 10 February 1988, 8.

35. L R H Drew and V K Taylor, "The Second AIDS Epidemic: Spread via Needle-Sharing to the General Community: A Review", mimeo, 9 February 1988, Australia, Department of Community Services and Health.

36. See eg Melbourne Herald, 6 June 1988; Melbourne Age 17 June 1988.

37. See eg N Fagan and D Newell, "AIDS and Employment Law" in (1987) 137 New LJ 752, 753; J Heilman, "Discrimination" in Los Angeles Lawyer, June 1986, 26.

38. See discussion New York Commission on Human Rights, Report on Discrimination against People with AIDS, April 1986, 13 ff.

39. See eg M Neave, "Anti-Discrimination Laws and Insurance. The Problem of AIDS" (1988) 1 Insurance Law JL (Aust) 10.

40. R C O'Brien, "AIDS and the Family" in WHL Dornette, "AIDS and the Law", J Wiley & Sons, 1987, 86.

41. J Osborn, "AIDS - Politics and Science", The McNally Lecture, unpublished paper, Uni of Michigan, 5 April 1988, 5.

42. WHO, Global Programme on AIDS, Report of the Consultation on the Neuropsychiatric Aspects of HIV Infection, Geneva, 14-17 March 1988.

43. M D Kirby, "AIDS, Drugs, Vaccines and the Law - Lessons from the United States Experience", mimeo, paper for the ANZ Assn Advct of Science, May 1988.

44. Cf National Childhood Vaccine Injury Act (US); 1986 PUB L 99, 660.

45. See eg D Schulman, "Stopping AIDS - Euthanasia", in Tikkun, Vol 2, No 3, 14 (1987). See also Medical Treatment Act 1988 (Vic).

46. Public Health (Funeral Industry) Regulation, 1987 (NSW), Reg 21(2). Cf Public Health (Control of Disease) Act 1984 (UK) ss 43, 44.

47. Minister Gertrud Sigurdsen, Minister of Health (Sweden) comments at the IVth International Conference on AIDS, Stockholm, Sweden, June 1988.

48. See discussion in Sullivan and Field, G W Matthews and V S Neslund, "The Initial Impact of AIDS on Public Health Law in the United States - 1986 in 257 Jl AMA 344, 346 (1987). See also A M Brandt, "AIDS - From Social History to Social Policy" in 14 Law Medicine and Health Care 231, 233 (1986). In 1918 the US Congress allowed more than $1 million for the detention and isolation of venereal carriers. During the War more than 30,000 prostitutes were incarcerated in institutions supported by federal funds. The story is compared with the internment of Japanese Americans during World War II.