BIOETHICS - TOWARDS 2000

BASSER COLLEGE JULY 1988

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ADDRESS BY JUSTICE MICHAEL KIRBY

AN AGE OF SCIENCE AND TECHNOLOGY

Well might you ask, what on earth has this person got to offer to our conference? A judge with a background in law reform. What insights can he offer to this conference, which has after all people who are noted in the world, who have given a great deal of thought to the issues that are before you? And the answer comes back that in my time in the Law Reform Commission I was brought to a realisation of the tremendous impact on the legal system of science and technology. It is not surprising, of course, because we live in a society whose watch-word is science. It was perhaps a lawyer's myopia that I had not earlier in my law course or in ordinary life really seized the issue of the impact on my own discipline of this engine of change which is a dynamic of our generation.

If we think of our time and if we try to step back and look at our time as history will look at it, it will be seen as a time when three extraordinary developments took place: nuclear fission, informatics and biotechnology. There are writers who suggest that the three developments can be traced to a common conceptual core in the writings of Ering Schroedinger in Germany in the 1920's on quantum physics. Ultimately, these three scientific developments are linked. It is true that we are now seeing directly the linkage between computers and biotechnology, in, for example, the analysis of DNA with the use of computers. So those two technologies are coming together.

We are seeing how nuclear fission and the developments of informatics, computers talking to computers, come together. We saw a hint of it in the events of recent date in the Gulf, when the missle which was sent from a United States war ship could not be stopped. It was computer programmed to fire. There were four minutes in which the captain of the vessel, Will Rogers III, had to unscramble the signal which had been sent by the computer. So that is an alert to us of the linkage between computers and nuclear destructive forces. It should propel us into a new sense of urgency about the need to protect all the beauties of civilisation. Unless we can protect them, they will be wiped away. There must be little doubt that in a century or so, accident, mistake, folly, wickedness, will cause the destruction of at least much of humanity, unless we can bring that mighty destructive force under control.

So the dynamic of our time is technology and science. It took my time in the Law Reform Commission, releasing me perhaps from the daily concerns about the law of cattle trespass and the statute of limitations, to see this simple and obvious fact. Just about every task we had in the Law Reform Commission involved some aspect of science and technology and the impact of science and technology on the law.

EARLY REFERENCES TO THE LAW REFORM COMMISSION

Quite early in the life of the Commission we received from the Attorney General Mr.Ellicott, in the Fraser Government, the project on the protection of individuals in respect of human tissue

transplantation. There were people who said to Mr. Ellicott (and indeed the Law Reform Commission) this, "Why are you embarking on that task? Why are you working on human tissue transplants?" There are so many more lawyerly things for you to deal with. Issues which are comfortable to lawyers and issues about which lawyers will know. But Ellicott , I think, saw clearly that our institutions of law making, and in particular parliament, are facing a problem. The project on human tissue transplant was in a real sense an experiment to see whether the Law Reform Commission could be used for the purpose of assisting the democratic institution of Parliament to adapt to a time of very sensitive developments with many complex questions, and do so in an efficient way. A way that engendered action which was thoughtful (although not perhaps universally accepted, because to ask this is to ask, in these areas, too much) and which had had the attention of some of the best minds in our country looking at the questions and providing answers that could stimulate the legislature into action. The alternative course which is the perhaps natural and understandable is the easy course: to do nothing. So we sat around the table in the Law Reform Commission with the assembled commissioners. They were a distinguished team on this project. The commissioners at the time included Sir Zelman Cowen who later went on to become the Governor General; Mr Justice Brennan who later went on to be Sir Gerard Brennan, a Justice of the High Court of Australia; and other commissioners who looked at the project from the point of view of the law. But in order to ensure that we did not provide an answer to Parliament which was purely a lawyer's answer, we assembled around us the nucleus of a team of some of the best scientists, philosophers, surgeons and others in the country. People from different walks of

life, from different perspectives and from different States of the country. They would be able to bring to this federal project perspectives which could be offered to the lawyers to stimulate, guide and influence their decisions. The ultimate report was prepared with draft legislation, which in turn would then go to Parliament.

We had numerous meetings with these consultants as we developed our thoughts. Then, when we had preliminary thoughts, we put them to the public in discussion papers, and by the modern means of communication via radio and television. I took part in talk-back radio. Between the Kellogs' advertisements and soap suds advertisements, the issues were discussed. For the time, this was an unprecedented endeavour to raise the temperature of the issue: to raise the issue in the public, and to get a thoughtful debate. It was not just debate which was seat-of-the-pants debate: uninformed debate, prejudiced debate. It was debate which was ultimately founded on the thinking of people who had the experience, knowledge and the insight of the time to confront the hard issues, testing their conclusions against the wisdom of public opinion.

HUMAN TISSUE TRANSPLANTS

Body donation

So it was that at the end of the project we had to confront the hard issues. The hard issues do not go away. The hard issues are difficult, and require thoughtful answers. Should we, for example, permit the donor's family, after the death of the donor to veto the wish of the donor that their body should be made available for experimentation or for work in a university. Or out of respect for the wishes of the deceased, whose body it was, should we say that the law should not

permit the family to overide the wishes of the deceased. The arguments were intense. The family said, "Well, the deceased has gone. The deceased's will should normally be respected. But in the end we are still here. We are still living. We are thinking. We are hurt by this idea that somebody we loved should be the subject of this form of experimentation or examination on a cold plank amongst medical students or medical researchers. We respect the right of those who give. We respect the right of the families of those who give, who are content that that should happen. But if we are deeply hurt by the idea, then our hurt must be reflected and respected in the law."

Opting out?

Another question arose as to whether we should adopt, as the French, Czechoslovakian and other legal systems have, the notion that everybody is a donor. One of the chief issues we confronted was the issue of death denial. That is people who will not face up to reality that they will die and therefore will not turn their attention to the idea of donation. It is young people killed in motor car accidents who are often the source of the best donation material. Should we require that the law reverse the present rule and say that everyone is a donor unless in your lifetime you sign a document or be entered into a computer, that says that you would prefer not to be treated as a donor? Would that be a correct principle?

What was very interesting to the lawyers sitting around the table with the medical practitioners was to find that almost all of the medical practitioners both in the team of consultants and in the public consultations, were against the French system. They said we should

look at it from the perspective of two competing medical teams, one looking after a person who is dying and one looking after the person who will benefit from a donation. That obligaton to get a donation, by activating the will of the donor or getting permission from their family is a very useful barrier against premature decisions which can be made just a little too quickly or a little too indifferently to the rights of the dying. For example, in a sort of utilitarian way, the operating team might be tempted to say, "Well, the man who is dying is a person of little worth; the person whom we can help is young and vigorous and of great potential. Let us therefore have a system by which we can take their organs without any specific act of donation." The philosophers, some of them, argued that the value of donation was the turning of the mind to the specifics of giving. It was not only a practical check. It was a morally useful thing that people should have to consider giving. But, on the other hand, people said young good donors, those who are killed in motor car accidents, just do not think of it. It is death denial. They do not consider it and therefore they will not give. They will not think of giving. Thus was the debate on that issue.

Coroners' cadavers

We discovered during the course of the project that coroners' cadavers, (for example, homeless people who die on the streets etc. ), virtually throughout Australia, when they are the subject of accidents, and are subject to post mortem examination, were subject to the removal of the pituitary gland. This tiny gland which is such a little thing is so useful. By scientific process it can be used to develop the medical material to combat dwarfism and solve other problems of humanity. Why put it back? Why bury it? Why burn it? Why not use it usefully? The

dead will not miss it. The living will not know that it is gone. It is a useful thing for other human beings, who might otherwise suffer. It has a therapeutic value which is undoubted. We have been doing it for years, no one has been complaining. What harm is done? What harm would be done if you stopped it?

The Law Reform Commission could see strength in those arguments. But there was no strength in taking the organ covertly and secretly. If this is to be countenanced, it ought to be countenanced by the law. It ought not to be just a de facto arrangement, that was carried on covertly without the sanction of the law.

Child donations

What of children's donations? Should we permit a young sibling in a family to donate an organ to a brother or sister? Now those of us who have had the blessing of a happy family life will know the strength of the bond that exists within the family. It is a mighty blessing. My family meet once a week still. My brothers and sisters all come together. It is a great source of strength. Between siblings there are often advantages for donation of organs and tissue in tissue typing. Therefore, even in non-twin siblings, there are advantages over a donation from outside the non-genetically related family group. The question arose before the Law Reform Commission as to whether amongst young people (that is to say people under the age of sixteen) there could be that maturity to resist the pressure that might occur within a family unit to virtually force a donation to a sibling. Just as a family can be a source of strength, it can sometimes be a source of oppression. The will of the parent, or of some other sibling, or the

crisis within the family, might overbear the will of some young person. Out of bravado or without appropriate consideration of the issue he or she might say, "Yes I will give. Mum wants me to give the kidney". The question arose as to whether the law should countenance this or should forbid it in every case, in order that undue pressure should not be put upon the sibling.

This controversey tested our different starting points. Within the Law Reform Commission there was a division. Sir Gerard Brennan and Sir Zelman Cowen said that the law should never permit a young person, under the age of 16, to donate an organ, even within the family. Because the risks of undue pressure were too great, the law protective of young people should say, "We are sorry. This is a terrible predicament. But we will prevent this. You can look elsewhere." The law should not allow young people to be donors because a young person does have the maturity to make the decision to give the organ. A decision without full and knowing consent is not a true decision in such a case. If the young person does not have full and knowing consent because of youth, then the law should protect him or her from the pressure of the mother or the father or the very predicament in the family.

The majority of the Commission (including myself) took the other point of view. We said, essentially, that this was a matter to be solved within the family. It was to be solved with protection to the young person, but not to exclude the possibility that the young person is of sufficient maturity to make the decision to donate to a sibling. Although it is convenient for the law to fix arbritary ages, people do

mature at different rates. Some people at 12 are equivalent in intellect and moral judgment to others at 18. Therefore, to fix an arbitrary age of 16 is to pay no regard to the actual maturity of the child. We suggested that there should be a procedure by which a Family Court judge could receive an aplication. If the Family Court judge on medical and other evidence was satisfied that the young person was sufficiently mature to understand the full scope of the decision that was being asked of him or her, and did make a thoughtful considered decision to make the organ available to a sibling, it was not the role of the law to stop it by imposing an absolute and unbending rule.

THE VALUE OF LAW REFORM

They were the different points of view which were put forward. This report on Human Tissue Transplants, in which the Law Reform Commission was led by Mr. Russell Scott, became something of a land mark. It was translated into Spanish. It has been copied, and the legislation suggests that it has been copied in parts of Latin America. It is not often that we export anything to Latin America, but very rare if ever, that we have exported legal thoughts, especially legal thoughts on a matter such as this! The report has also been the subject of legislation in most parts of Australia. That legislation has passed into the statute books. It governs the law of our country on this topic, and that in a country which cannot boast of many uniform laws. By this report the Law Reform Commission helped our society to face up to issues in the "too hard basket" of problems to which we supplied our answers. Our answers may not have been perfect. Time may change our perspective of some of the problems. One of them I will come to below. But the fact is: we gave an answer.

It is often said of lawyers that they have lots of faults. But at least they have one strength - that is, that they will supply an answer. I sit in my court, the Solicitor General addresses me. Ultimately (sooner rather than later) a judgment is given. Judges and lawyers are paid to do that which most people in society try to avoid, namely making decisions. So it was with the Human Tissue Transplant report. We made our decisions. We offered them. When they went to Parliament it was interesting to observe that the Parliamentarians themselves felt strengthened by the fact that we had gone through our consultatative process. We had involved the philosophers. We had involved the best medical experts. We had involved the public, through public hearings, discussion papers, news media, television and so on. In a sense the process itself became very important. By our process we were strengthening the ability of the democratic institution to offer an answer. It was an answer which a politician could say to those who challenged this or that little point: "Well, you may differ. Sir Zelman Cowen and Sir Gerard Brennan differed. But this is the majority view. This is the view that has been given. This report we will pass in to law and we will see how it goes." As it happened, on the point of the children, the minority view was generally accepted in most parts of Australia. That is, the view of Sir Gerard Brennan and Sir Zelman Cowen was accepted in the law. The majority point of view, although accepted in some jurisdictons, was not favoured in most.

One point which we drew to notice in the report on Human Tissue Transplants was the transplantation of life itself. We pointed to the fact that our research showed (and this was in 1977) that just around the corner was the transplantation of human life itself. We were refering to the transplantation of the human embryo, created in vitro:

the transplantation of a whole human life in potential. We suggested then that examination of the implications of this important scientific development was a task that would require urgent attention. We said that it was different in quality to transplant a human life in potential than, say, transplanting a cornea. The issues raised were quite different. A blood transplant or transplant of a kidney involves a part of a human being. But the moral and ethical questions of IVF seemed to us, in the Law Reform Commission, to be different. And so in our report we said this is a problem which is coming very quickly. If the Attorney General wants us to look at this problem, he should give a new reference requiring us to examine it.

It is a misfortune that Mr.Ellicott was not the Attorney General at that time. Because had he said "Yes, I want you to look at that new question", we in Australia would have gone down that track. We would have had the Law Reform Commission's report. We would have used the same techniques to think through these new procedures. We would have done so on a national basis. We would have had the report ten years ago.

IN VITRO FERTILIZATION APPEARS

What occured was this. The first IVF baby, Louise Brown, was born in England in 1978. Professor Wood's team was set up in Melbourne, at Monash University. The procedures advanced very quickly. Then only belatedly decisions were made to do something. Mr. Ellicott had left office, Senator Durack was the Attorney General. He took the view that this was not really a Federal matter. By inference, he was saying that Mr. Ellicott had wasted the time of the Law Reform Commission by

giving the project on human tissue transplantation to it. We did not receive a reference on in vitro fertilization. Without the reference we could not start on the fascinating, challenging, difficult and novel questions which were shortly to be presented by the birth of Louise Brown. The result of that course of events has been that in most States of Australia nothing has been done about the legal and ethical questions raised by IVF. In some parts of Australia little bits and pieces have been tackled. The easy bits, such as saying that we will deem the child born in vitro to be the child of the social parents. Committees have been set up in Victoria and New South Wales. There is a National Health and Medical Research Council Committee exploring the subject. Instead of having one national enquiry into this topic which could at least pose the questions which could then be answered, if need be, in different ways in different States, we have had these several enquiries going ahead.

As you would realise, in nuclear fission, informatics or biotechnology we are not really talking about a problem of one legal jurisdiction. Computers chatter away to computers across borders utterly indifferent to the proud frontiers that humanity has imposed upon the world. Nuclear fission is likewise indifferent to borders. Similarly, the questions of bioethics are indifferent to local borders. If we ban in vitro fertilisation in New South Wales, what use will that have when the person affected can go across the border to the Northern Territory or to Western Australia? The issue is one which commands local consideration. But desirably it also deserves national consideration. But nothing was done on a national basis. The report of

the N.S.W. Law Reform Commission on the subject will come out in a few weeks' time. It will be ten years or more since the birth of the first in vitro child. I will be looking forward very much to reading the suggested solutions. With Mr. Scott and with Mr. Mason taking part in it, it will surely be a report of a very high standard. This may mean that it will demand and earn the respect of the Australian community and indeed elsewhere as did the Human Tissue Transplant report. But how much better it would have been if we had done all that previously and by way of a national inquiry.

In the decade which has passed since the birth of Louise Brown many questions have been presented that require an answer. One of these is the surrogate birth question. Do we permit or do we ban surrogate births? They have presented as a large practical problem because of the capacity, by fertilising the embryo of one woman and placing it in somebody else to carry that foetus to full term.Surrogacy presents parents, anxious for assistance from science, with the actuality of a genetically-related child.

Those who have children genetically related to them may find the desire of people to have that blessing is sometimes difficult fully to understand. But that such a desire is a strong motive force is unarguable. People would not go through the tremendous sacrifices that are required if there were not that powerful motivation to have children who were genetically theirs or at least genetically one of theirs. We have to understand that basal fact. People who do not have the problem have to be tender and sympathetic to the desire of those who do have the problem and who look to science as providing a

solution. Such people typically feel impatience with ethicists, lawyers, philosophers, or church people. To those who say "We have got to ban this lest it just go down one track", they reply, "Its all very well for you. Humanity presents a problem. Science presents the solution. What do you expect us to do? Deny C.T. scans, refuse nuclear magnetic resonance, refuse all other developments of science because it is natural just to die? We do not do that. Why, they therefore ask should we accept that it is natural not to have children, if science presents a bridge that will overcome the impediment?"

SURROGATE BIRTHS

In default of comprehensive legislation, the issue of surrogacy is now coming before the courts. Some of you will have read about the case in the United States of the celebrated battle between the carrying mother who changed her mind. There have also been similar cases in England relating to the question of whether a child, carried by the surrogate mother, could be the subject of a court order in England forbidding the removal of that child from the jurisdiction. The case was one of a couple in the United States. By all accounts they impressed the judge as a fine couple. The wife was unable to bear a child. The father looked up an advertisement. He found that there was a group in England who would offer the services of a woman who was then impregnated with his sperm. The child was born. She did not change her mind as did the carrying mother in the United States. She simply said that she wanted some money. The case then came to the courts. One of the questons raised by the local authority which brought the proceedings was whether the child could be taken out of the United Kingdom and taken

to the United States. But the judge said that the key to the solution of the problem, by the common law, was to look steadfastly to the best interests of the child. He formed the view that the best interests of the child were to be with the "parents" in the United States. They could provide the child with a better environment. At least in the case of the father, they were genetically related to the child. And so he ordered.

USE OF FOETAL TISSUE

In respect of other issues, still further problems are presenting. The experimentation with foetal tissue is quite similar to the question which I raised about the pituitary. There will be many who say that whether we like it or not, in our society foetuses are destroyed. Should we bury them? Should we burn them? Or should we use the foetus for useful purposes: purposes useful not to the mother or father of the foetus, not to the foetus itself, but to humanity in general.

It seems that the foetus is, because of its necessity of living in another human being's immune system, able to provide many insights into the structure of the human body and the acceptance of transplanted tissue. For experimental and therapeutic purposes, it presents many advantages to the scientist. There is, for example, a scientist in South Australia who argues that one of the paths in the battle against cancer is going to be the use of the foetus for the purpose of transplantation into the patient of an absolutely tissue typed foetal organ. By cloning this will provide an organ in the place of the diseased organ which is destroyed for the purpose of replacing, by transplantation, the organ which is the subject of the cancer.

The details of this procedure may seem problematic. But that is one scientist's view. He sees that this is a path which deserves experimentation. If it be true, that is a course that lies ahead. There will be many who will say this is horrible. The development of a foetus not for the benefit of the foetus but for the benefit of some other person. The destruction of the foetus, using it simply as a provision for an organ, for that person. But there will be others who say if it is your mother or father, or if it is your loved one, then you might pause before you condemn this. Reactions of horror have been seen throughout history at many new developments. Therefore we cannot frame our laws, or our policies simply because some people are offended by the notion. Judges are often offened by this or that. But that cannot be the basis of their decisions. We have to rest our laws on something firmer than that. We have to find a stronger basis than a feeling of disgust or horror in order to make laws forbiding such things. There are people who are horrified at the notion of surrogacy. But the couple in the United States were not horrified. They saw it as the means of getting a child which was genetically related to one of them. They were good people. They just asked that science come to their aid.

PROTECTIVE WARDSHIP FOR THE UNBORN

Before I came to this conference, I was looking at a recent decision of the Court of Appeal of England. It was a case which would be of interest to many in this audience. It related to the question of whether wardship jurisdiction could be available to a foetus. In other words, could a local authority bring proceedings in the courts of law

to get an order, making an unborn child a ward of the court for the purpose of providing, by the law, protection for the unborn child, even to the extent of controlling the liberty of the mother? This was not a case such as arose recently in Australia. You will remember the case where the father in Queensland tried to stop the mother having an abortion. This was not a case where the mother intended to have an abortion. This was a case where the mother intended to have the child and wanted to keep it. The judgment is full of the descriptions of the unorthodox life of the mother. She was virtually a 1960's hippie. She travelled across to Europe. She had had an earlier child. Her life was one of fickleness in relations, and experimentation with hallucinatory drugs. In short, she was not the sort of mother that you or I have had.

But then she became pregnant on a trip to Turkey. The case came before the court on 14 January 1988 before a single judge on the application of the local authority which sought to make the unborn child a ward of the court. The judge looked at the authorities. He had to weigh up the arguments in favour of and against making the unborn child a ward of the court. Was that the principle behind wardship? Or was it the protection of the child? The child was due to be born at the end of January. Therefore, it was not a fight between the mother and the child, or the local authority and the mother. It was about the whole guiding principle of wardship jurisdiction on protection of the child. As the child was about to be born it was desirable that a decision should be made. It was protective of this life in potential that the common law should move to develop for the purpose of providing protection for the best interest of the child. The judge

heard the case. He reviewed the authorities and the decisions. And ultimately he said no. The common law of England does not provide protection until the child is born. Therefore the application of the local authority, which everyone acknowledged was very well motivated, was dismissed.

Appeal courts can sometimes move with speed. Indeed, the local authority brought an action two days later in the English Court of Appeal comprising three judges. The English Court of Appeal had to consider whether, first, the trial judge had been correct in the decision he had made. Secondly, whether the law should move and develop consensus with the principle of wardship, which is protection of a child. To provide protection for this child whose birth was but two or three weeks off. The judges reviewed the authorities. They reviewed the ancient principles. But in the end, the three judges said no. One of the judges in the last paragraph of his judgment said something which is apt for the subject matter and my address this morning. He said this is a matter too sensitive. This is a matter that is too complex and delicate. If the law is to develop on this matter it is not a law that is to be developed by the judges. It is a law to be developed by parliament and therefore it is not apt that judges should move into this law. Though they develop other areas of the law by methods of analogous reasoning, it is not apt that they should move into this area of the law. Leave it to parliament.

You might say that this was a pusillanimous decision. Why did he not do what judges for eight centuries in the English tradition have done? Develop old principles from precedent to precedent to new analogous

circumstances? If we protect a child when the child is born and if you lay down all the evidence which shows how unorthodox and indifferent to the child this mother will be in two weeks when the baby is born, what great leap is it for the law to say, "We are going to set in train the steps which in two weeks will all be ready for this child when it is born?" The answer comes back. Parliament has not done it. It is a delicate problem. If we allow two weeks before, do we allow it four weeks before? Do we allow it ten weeks before? How far back do we go? Do we go back to the very moment of conception? This is the problem which the judges in England were presumably anxious to avoid.

THE NEW CHALLENGE OF AIDS

I have just returned from summing up the final session of the Fourth International Conference on AIDS. Extracts from the address which I gave where broadcast on the ABC Science Show. One of the most acute problems which were being faced by the Conference was the new issue which is arising from the increasing numbers of women presenting with AIDS. At the beginning, at least in the developed countries, AIDS was not an issue for women. But in New York, as many of you will have read, AIDS is now the chief cause of death of young women between the age of 25 and 35. So the issue of a woman's right to become pregnant, although she has the virus, became a matter of discussion at the conference in Stockholm.

One of the papers that was presented demonstrated that in virtually all of the cases of children born to women who have AIDS the virus is transmitted as you would expect to the child. However, in about 50% of such cases by the end of the first year, for reasons which are not

entirely clear, the child appears to throw off the virus and then to be released from the virus. This has led to two scientific comments. One is, that if we can only find out what it is that makes those 50% throw off the virus we may have a key to discovering how we are going to cope with this virus which is such a tremendous puzzle, despite the advances in molecular biology. The other scientific contribution was that of Professor Luke Montagnier who was the man who unmasked the virus with Professor Robert Gallo and who showed what this insidious infection that has already attacked probably 10 million human beings looks like. Montagnier says that we cannot be sure that the 50% who appear to throw of the virus have indeed done so. He says that at the moment our only tests are for the antibodies to AIDS and the antibodies generally take about 15 weeks to develop. We do not, at the moment, have tests for the AIDS virus itself. Now they are developing DNA probes which will test for the actual virus as distinct from the antibodies. When that is developed, it will have many advantages. At the moment the AIDS test is imperfect because of this "window period" of 15 weeks. The person can be infected but not sufficiently long enough to bring out the antibodies that produce a positive result in the test. Montagnier illustrated his point graphically by a submarine on the screen before the 10 000 delegates in Stockholm. He said "My fear is that this insidious virus can hide itself in the central nervous system and not produce the antibodies and in those 50% of young babies who appear to throw off the virus still have it. It is simply not producing the antibodies. In that sense they will still suffer the consequences of AIDS which is expected in most cases to be either a very serious illness or death."

So, if you take Montagnier's thesis, do you permit a woman to exercise her perfectly natural desires to give birth to a child, if the child is indubitably (or let it be only in 50% of cases) going to suffer from the AIDS (HIV) virus? When the judges of England said, "No, we are not going to make an unborn child a ward for the purpose of controlling the mother in order that she has the child or in order that she adopts the child out or gives it to foster parents", then the issue is posed on the reverse side. If you have the law which is there for the protection of the child, may it not be that the state will say: because of the costs involved, because of the inconvenience and cruelty involved to a young child to be born with HIV virus who will indubitably die or suffer greatly from it because of the great inconvenience to the economy and so on including heavy hospital costs we will allow the law to step in, in order to prevent the mother having a child. Is that something that we would contemplate? In Stockholm these issues were being seriously debated because of the absolutely devastating effects of the AIDS virus.

GOOD ETHICS RESTS ON GOOD DATA

The moral of this discussion is simple. We live in a time of very complex ethical and social problems presented by science. I agree with Professor June Osborn of the University of Michigan School of Public Health. She is a noted authority on AIDS and AIDS responses. She says, and I am sure this should be the text for my lecture, "Good ethics are grounded in good science". Good principles of law are grounded in knowledge of what we are dealing with. This is what Mr. Mason, the solicitor general said at the outset of this session. We had our beliefs in the past but our beliefs develop. We acquire more

knowledge. We have the benefit of science and technology. We would do well as a community to base our laws and our policies and our moral principles on a thorough understanding of science and technology. That really is all I came to tell you this morning. The lawyer is not exempt from science and technology. The parliamentarian is not exempt. The men and women of the church are not exempt. The citizen is not exempt. It is the engine of our time. And if we say, "Well, how do we cope with all these problems? How do we cope with whether a child should be allowed to donate organs to a sibling? How do we cope with IVF births? How do we cope with surrogacy? How do we cope with cloning of the human species? How do we cope with experiments with foetal tissue? How on earth do we cope with AIDS with ten million of our fellow human beings infected, suffering and dying, with all their friends, and families, and the ecomonic consequences?" The answer comes back, we cope with these problems by learning about what we are dealing with and by helping the democratic process to assist the politicians to respond to such issues. Not by knee jerks, but with information, and with an appreciation of the issues which are involved.

When I was told that you were meeting here to discuss these question today, I thought that it sounded a very worthwhile meeting. I am very glad that I was asked to join you. I hope that the balance of the conference is a great success. There is nothing more important than citizens like yourselves thinking about these issues. Such thought will stimulate and help our political and legal processes to come to the right answers or at least to ask the right questions.