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TEST TUBE LAW

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Consider the following statement, reported recently in the Melbourne press and attributed to the mother of Australia's tenth 'test tube baby':

'I feel satisfied. Having a child is what a woman was created for. We've never discussed the religious side of it ourselves — just taken our daughter as God's gift to us'.

It is difficult not to warm to the grateful statement of a person who once could not have a baby but now can. According to public opinion polls, Australians come out strongly in favour of the in vitro fertilisation program carried out under the direction of Professor Carl Wood at Melbourne's Queen Victoria Hospital. More 'test tube babies' are on the way. Some estimates say that more than 25,000 Australian women, presently unable to have children, could be helped by the test tube baby technique. Is this an end of the matter? Do we just let the scientists proceed and worry later about the consequences?

Not according to the prestigious London Economist and to various church spokesmen and concerned citizens. Take a few samples:

In 1956 Pope Pius XII rejected the notion that a married woman's desire for a child could justify 'artificial human fecundation in vitro'. 'Let it suffice us to observe', he said 'that they must be rejected as immoral and absolutely illicit'.

Dr. J.N. Santamaria, Director of Community Medicine at St Vincents Hospital Melbourne recently questioned 'the cost effectiveness of test tube babies. More fundamentally, he condemned the reduction of 'human procreation to a sexual act estranged from the divinely ordained order'. 'Fertilisation', he declared, 'loses its truly human nature'.

Even for those who do not accept a religious perspective, basic doubts are voiced. The Economist, whilst applauding the test tube technique in establishing wanted pregnancies reminded its readers that research on human embryos and genes 'is moving fast and raises the most fundamental ethical questions'. In a comment abstracted for readers of The Australian in Opinion (8 Oct) the Economist warns against an eventual unthinking legislative backlash against science and scientists because of community concern about research that involves 'monkeying with human beings'.

Professor Wood and his team in Melbourne so far appear to have carried Australian public opinion with them. This they have done by adopting a very cautious approach — excessively cautious in the view of some observers. The program is only available to married couples. Only the ovum of the wife and sperm of the husband are used. No use of surrogate mothers has been attempted, to carry to full term the 'test tube baby'. The numbers involved have been small and so permit close monitoring of results. There has been no experimentation with failed embryos. It is clear that, confined in this way, and supported by sympathetic media coverage, the Melbourne program has the support of most Australians. It is difficult not to be moved by stories of frustrated parenthood overcome by yet another scientific miracle and this one partly pioneered in our own country. There are more 'test tube babies' in Australia than anywhere else in the world.

The law has been called a melancholy science. It deals with problems. The development of 'test tube man' raises issues of religious principle and the spectre of 'human hatcheries' mentioned in Aldous Huxley's book 'Brave New World'. Huxley's prediction was of a world 600 years after he wrote in 1932. Technologically, Professor Wood and his team are a long way from the hatcheries. But clearly the spectre portrayed by Huxley is vivid enough, and the memory of authoritarianism fresh enough for concerned people to pose the question: what should the law, speaking for the whole of society, say about the rules within which test tube fertilisation will occur and advance? No one is more keen for guidance from society than Professor Wood and his colleagues. They realise that a number of questions of great importance are raised by their procedures. Doubtless, they also realise that the sooner these questions are answered, the less chance there will be of the 'legislative backlash' hinted by the Economist.

Take just a few of the questions that need to be considered, even if we set aside the opinions of those who would absolutely forbid this new technology.

Is test tube fertilisation to be available for de facto couples, in recognition of many modern stable relationships of this kind? Or should we insist on marriage?

Is the law to contemplate the use of surrogate mothers, who will bear the child of others? If so, are fees to be permitted? Who will have the right to abort such a pregnancy and on what grounds? Is there a danger that this may become the norm for busy professional women of the future?

Should research be permitted and, if successful, choice be allowed of embryo gender? In other words should couples be able to choose to have a son? Would this supposed new parental 'right' threaten the natural balance secured in the world between men and women?

Should other 'desirable' characteristics be available by test tube fertilisation? A recent newspaper report indicated a sperm bank in the United States, available to suitable recipients to produce the children of Nobel scientists. Technologically, it is a small leap from such a sperm bank to Huxley's human hatchery, with its production line of stereo-typed human beings. We are still a long way from this today; but should it be a matter upon which the law is perfectly silent?

If human life begins at the moment of conception, what is the legal consequence of destroying fertilised human ova surplus to use? Can we really contemplate, as is said to be possible, retention of test tube fertilisations, frozen and suspended in nitrogen for 400 years? If this is to be permitted, a child of our generation can be born in 400 years time with serious complications for the distribution of property, to say nothing of an identity crisis that would leave talk of today's 'generation gap' well behind.

What are the rights to donors to custody of a test tube embryo? Should they be entitled to insist on their retention against the risk of later accident or disease depriving them of children? If so, what is the consequence of divorce? How can we ensure against a mix-up in the lineage of such a tiny form of life? Are full records to be kept for the identity of the human origins of test tube fertilisations put away for future use?

The problems that accompany the test tube program range from the exotic (what will happen to British titles if a test tube baby of an Earl is born a century later?) to the hard-nosed and practical (how much of the test tube program ought to be publicly funded, given the relatively small numbers involved and the competing claims for the medical dollar?).

The technological imperative of our time presents to a dazzled society issues of the greatest complexity and difficulty. Furthermore, these issues tend to come upon us when we are unprepared. The scientist develops his technique and here we are with a number of legal, social and moral problems which it falls to our generation to answer. Answer them, we must. Otherwise, we are making a choice to elect to drift in whatever direction science may take us. Even if we opt for drift, there are consequences to be sorted out. Society has the right to have a say when something so fundamental as human life is involved.

The Standing Committee of Attorneys-General has announced that laws will be introduced to subsume the rights of test tube babies to those of ordinary children. This will be a beneficial step forward. But it answers only the simplest of the problems posed, some of which I have mentioned. Public opinion polls which precede a thorough community debate of the issues at stake are not very useful. Leaving it to individual scientists or part-time ethics committees in hospitals, generally meeting behind closed doors, will not do. On issues such as this, doctors tend to be suspicious of 'legal imperialism': judges and lawyers trying to limit them in their quest to help their patients. Lawyers, on the other hand, tend to be sceptical about medical 'paternalism' and the scientist's awareness of many of the moral and legal implications of what they are up to. Philosophers and moral theologians denounce both groups. But every informed observer who has looked at the test tube baby dilemma (and there are now many) has urged the imperative need of a thorough community debate mobilised by a highly talented inter-disciplinary team which gathers together all of the relevant experts.

We can face up to the sensitive problems in the 'too hard basket' presented by advances in medical technology. The Australian Law Reform Commission did this in its inquiry on human tissue transplantation. After thorough expert and community consultation, its proposed legislation is now being accepted in most parts of Australia. A similar approach could be taken to the consideration of test tube law. Scientists and theologians, lawyers and ordinary citizens should be brought into the debate. When our species is involved, all of us should be concerned.