

The Abortion Myth

by Leslie Cannold; Allen & Unwin, 1998; 152 pp; \$16.95 softcover.

This is an excellent book about the abortion debate and should interest anyone who values enlightened discussion of this complex issue. As suggested by her title, Cannold takes up the challenge of questioning traditional pro-choice and anti-choice concepts of abortion and constructs a more focused determination of women's reproductive freedoms and choices. Central to her argument is how the issue of morality has been used selectively in the abortion debate. Anti-choice women assert that the foetus is a person, and as such has a 'right' to life. Thus, to abort the foetus is to kill, and is therefore immoral. Pro-choice women assert that a women's 'right' to control her body overrides the right of the foetus. The author argues that by using rhetoric that promotes the foetus and morality, the anti-choice movement has effectively appropriated the debate from pro-choice women. She also suggests, however, that pro-choice reliance on underplaying the moral dimensions of abortion, by choosing to reduce the importance of the foetus, fails to satisfy many of the ethical dilemmas associated with abortion.

Cannold asserts that any compromise in the debate will be unachievable while the following difficult questions remain unanswered: Are there 'irresponsible' pregnancies? Even if women have a right to choose abortion, is it always right for them to do so? Which reasons for having an abortion are bad ones? Does the foetus matter? How much? And why (p.xxxvi)? In her view, the moral uncertainty that surrounds these questions allows the anti-choice sentiment to gain ground. In order to retain women's reproductive freedoms she argues that abortion politics need first to allow women to have ambiguous feelings about abortion. Only then, she asserts, can they still be in favour of choice, still make the decision to have an abortion and still support those who have abortions.

Cannold sets the scene for the book by first introducing the reader to the process of ectogenesis which involves the gestation of a very young foetus in an artificial womb. This process was proffered by ethicists Professor Peter

Singer and Deane Wells as a solution to the abortion impasse. They argued that if pro-choice women had this ectogenetic solution available to them then they would be able to end an early pregnancy without killing the foetus and thereby retain control of their bodies. A decision to do otherwise therefore would be unethical.

In response to this speculation, Cannold undertook a study of 45 women in Australia of child-bearing age representing both the anti-choice and pro-choice sides of the abortion debate. The study's aim was to determine, through interview, their views and experiences of abortion and ectogenesis. Interview excerpts are interspersed throughout the text allowing an objective narrative for which Cannold is to be commended given the emotive nature of the subject. A criticism of the book would have to be the author's failure to disclose her methodology in relation to how the 45 women were chosen. Also, despite very bold statements of how many abortions and unplanned pregnancies take place each year in Australia, no sources are given.

The book engages the reader in a very brief journey through the intricacies of existing access to, and the legality of abortion in America, United Kingdom and Australia. In subsequent chapters the author examines the values women place on pregnancy and motherhood and develops a convincing argument for the need for women to be 'given the legal right and be trusted with the moral responsibility to say about becoming a mother yes, not now, not ever or never again' (p.130).

The author concludes that the solution of ectogenesis, rather than eliciting support from women generally, in fact did not stand up as a valid solution. Women do not want to relinquish their gestational responsibilities to an artificial womb because they feel that the unique relationship between mother and foetus created by pregnancy forms the cornerstone of women's responsibility-based abortion ethic. If women are to retain the power to be able to choose abortion in the event of unwanted pregnancy they must be

trusted to make the difficult decision of when they will become a mother. These women, regardless of their preferred position on abortion, shared in common the judgment that this responsibility is a moral issue and one that will invariably be directed by the circumstances of the individual. Cannold describes this responsibility as a women's moral agency.

In light of the recent Chan/Lee abortion case which led to parliamentary debate of abortion laws in Western Australia, this book is not only timely as a synopsis of the debate nationally and internationally, but offers fresh and substantial insight into the often rehashed issue of abortion. The author, by her own admission, is of pro-choice persuasion but succeeds in providing a very balanced account of opposing views throughout the book. Both proponents and critics of abortion should find this book a valuable contribution to the debate for its significant consideration of the ethical issues of abortion.

AINSLEY HARPER

Ainsley Harper is a postgraduate research student, Flinders University of South Australia.

The Adult Guardianship Experiment: Tribunals and Popular Justice

Terry Carney and David Tait; The Federation Press, 1997; 229 pp; \$35 softcover.

The term 'Adult Guardianship' refers to the legal appointment of a substitute decision maker for an individual deemed incapable of adequately determining her or his own best interests. This generally occurs in cases of intellectual disability or mental illness. The transfer of responsibility for personal and financial decisions is an area fraught with complex philosophical, moral, social, medical and legal issues, with many of these complexities and associated paradoxes captured in this book.

In *The Adult Guardianship Experiment*, Terry Carney and David Tait set out to explore the viability of using lay tribunals rather than courts to decide

issues of guardianship. These tribunals, termed 'an experiment in popular justice', operate within an informal and somewhat flexible framework when compared to courts. Informal justice and diversion are increasingly being used in a variety of settings throughout the Western world to divert individuals from courts. Guardianship, however, is an area that has not been so quick to embrace these diversionary legal processes. One notable exception is Australia, where substitute decision-making forums have been set up to deal with guardianship. This has provided Carney and Tait with an opportunity to evaluate the effectiveness of the performance of tribunals as compared to courts.

The Adult Guardianship Experiment offers a concise history of guardianship laws from numerous national and international jurisdictions, providing the reader with a snapshot of the complexity of citizenship issues related to guardianship of vulnerable adults. However, in attempting to be inclusive of a vast range of jurisdictions, some of the material presented becomes too dense and somewhat difficult for the reader to digest. Nevertheless the discussion of legislative development and evolution is useful because it focuses on the basic legal principles of autonomy on the one hand and protection on the other. This provides both a philosophical and practical base from which to examine issues of citizenship within competing frameworks of freedom and control.

A comprehensive range of citizenship issues are explored including financial and property management, access to accommodation and services, personal wellbeing and bodily integrity, family contacts, and medical issues. From within these areas case studies are presented dealing with issues of regulation of fertility, protection from self-harm and money management, providing a range of comparisons between jurisdictions. While case studies are used effectively to demonstrate a range of ethical dilemmas that arise in the case of guardianship applications, the examples used tend, in parts, to be repetitive and thus detract from the overall presentation.

According to the authors, concerns from opponents of 'popular justice' that informal processes compromise basic freedom and autonomy, are unfounded. In the area of adult guardianship, Carney and Tait have found that tribunals, despite operating from numerous

theoretical positions, are likely to provide outcomes which are more equitable for the individual than decisions resulting from the largely impersonal court process. One of the significant differences between courts and tribunals is the requirement that the tribunals take account of the wishes of the individual who is the subject of the guardianship application. It is also apparent that other non-professional parties including relatives and supporters are included in the tribunal process, unlike the court process which is likely to include professionals and largely exclude 'non-experts'. It seems that, as with other informal legal processes, the opportunity to play an active part in the decision-making process of the tribunal impacts on the perceived success of this forum for the 'key players': the subject of the hearing, family and supporters. These informal tribunals tend to minimise intervention as opposed to the

court tendency to maximise intervention.

Overall Carney and Tait provide a credible argument for the continuation and expansion of tribunals in relation to adult guardianship. Implicit in this work is the suggestion that the harshest critics of informal and popular justice processes are likely to be those who have the most to lose in the expansion of this area — the 'professionals'. This book is a thought-provoking read for those with an interest in citizenship issues. It will be useful for practitioners who are involved in informal legal processes and tertiary students exploring the viability of alternative legal forums.

MARY MCKENNA

Mary McKenna is a postgraduate student in Legal Studies, Flinders University of South Australia.

If Divorce is the Only Way

by John D. Bieber; Penguin, 1998; 188 pp; \$16.95 softcover.

This is possibly the best 'how to' book that I have read on the subject of managing the divorce process. Usually divorce manuals lead the reader through what they need to know about family law and the legal process. This book does more. In addition to providing sound legal advice, it engages with the emotional experiences of the divorcing couple and provides not only a catalogue of the emotional stages of separation and divorce, but also a positive path through what can often be a painful and destructive process. I expect that people going through divorce will identify with Bieber's recognition of their emotional reactions and feel less isolated than they might otherwise have been without this book. It will also be useful for family court counsellors, social workers and mediators.

Although Bieber is a respected international divorce lawyer, he practises in London and so refers to the requirements of English law. However, Wendy Broun, a Sydney family law practitioner, has helped prepare the content for Australian readers. The language of the book is accessible and jargon-free and the tone conversational. Each chapter is also headed with pertinent and catchy quotes from literature which not only focus the mind on what is to follow but also serve to remind readers, in a gentle and sometimes humorous way, that

their problems at this time in their lives are neither unique nor new.

The book is divided into five sections which are designed to lead readers from the decision to separate through to the establishment of another chapter in their lives. Section one asks six questions which require readers to articulate their reasons for ending their marriages and what they expect will happen in the future. Sections two to four then provide lists of emotional do's and don'ts for getting through the separation and divorce process such as not seeking advice from too many people (p.38) and trying not to be vindictive or to give in to guilt (pp.57-63).

Sections five to eight deal with legal representation, children's issues, law and procedure and costs. Bieber has a novel approach in these sections because his presentation of 'facts' is never dry or clinical. He knows how people feel when they are ending marriage relationships and he deals sympathetically with the inevitable pain and fear which is involved. He does this without negating the need for hard-headed decision-making, for self-discipline and for taking responsibility rather than blaming the other party. For example, he warns of emotional involvement with lawyers (p.81), of not involving children in parental fights (p.88) and not abusing the legal process for personal ends (p.107). Sections nine