

are recorded and brought to light by the SALRC report. Reserved for future treatment by the SALRC is the reform of the law of gaming and wagering generally. The committee points out that this review 'is not made easier by the fact that the law on this subject comes from differing periods of history with differing social views on gaming and wagering and as a result the laws passed reflect the philosophy of various ages in the last two to three hundred years'. Perhaps this is a comment on law reform relevant to organised crime throughout Australia.

in vitro; in limbo

Whoever named it necking was a poor judge of anatomy.
Groucho Marx

frozen embryos. These are angry days in the Monash Research Team, which is leading Australia's research into in vitro fertilisation (IVF). The team, under Professor Carl Wood and Dr Alan Trounson, is responsible for about 50 births by the IVF procedure, known popularly as 'test tube babies'. But then in April 1983, apparently in response to the opinion in the report of the Victorian IVF Committee, the Premier and Attorney-General, Mr John Cain, requested a moratorium on the use of donor sperm and eggs in the State's two IVF programs — the Monash University-Queen Victoria Medical Centre Program and the Royal Women's Hospital Program in Melbourne. As a result, Dr Alan Trounson threatened to resign, declaring that the moratorium was 'unfair and discriminatory'. He said that approximately 200 women were on the waiting list for donor ova. He pointed out that artificial insemination donor (AID) had been a common procedure in Victoria for more than 20 years and that discrimination between the use of ova and sperm was illogical and unreasonable. Mr Cain was unmoved:

All we are asking is that people in the field hold back a little until we find the solution to some of the enormous moral, legal and ethical problems that we are going to have to deal with.

In late April 1983 the Victorian IVF Committee released a summary of its views on the

issue of donor 'gametes'. This paper relates to the use of sperm, ova or embryos provided by people other than the couple seeking the child. The committee's summary did not include any specific recommendations to the Victorian Government. However, it invited comment for the assistance of the IVF Committee. The committee is headed by the Victorian Law Reform Commissioner, Professor P L Waller. An earlier interim report, submitted in September 1982, dealt with IVF procedures where sperm and ova were taken from the husband and wife in a married relationship. The April 1983 paper deals with 'one of the most discussed areas of IVF', the use of donor sperm, ova or embryos.

Approximately one out of every 12 married couples in Australia is reported infertile, not by choice. Accordingly it is no surprise that the patient waiting list for treatment at the Queen Victoria Medical Centre is more than a thousand anxious women. By the middle of 1982, the Wood/Trounson team was achieving pregnancy at rates even higher than those which healthy fertile young couples could expect. Inquiries were flooding in from all over the world. Although success remained somewhat 'erratic and unpredictable', a steady rate of 25% was being talked of. Discussions were even being held with the Mercy Hospital, run by the Catholic Church, about the possibility of fertilisation inside the womb, in an endeavour to overcome Roman Catholic objections. Then came the State Government's request for the moratorium. It was not heeded at first, according to Dr Trounson. Now it seems as if it is in force. But will it be successful? Something of an outcry in Australia in May 1983 centred around the revelation of the storing by freezing of human embryos. This procedure is no longer experimental. The embryo, invisible to the naked eye is freeze-thawed and stored in a liquid nitrogen freezer in a laboratory. The procedure was established long ago for animal breeding and is now being adapted to combat human infertility. Some media commentators, however, did not like the idea at all. When the news got out that a Victorian woman was 14 weeks pregnant

with an apparently healthy foetus after having been reimplanted with one of her own fertilised ova which had been frozen for four months, the President of Pro Life Victoria, Mr Alan Baker, said that the pregnancy had been achieved only at the expense of the 'lives' of 18 other normal embryos produced from the same couple which were thawed and later died. The Victorian President of the Right to Life Association, Mrs Margaret Tighe, said she 'mourned the loss of those hapless embryos . . . treated with as much respect as frozen peas'. She called on the Victorian Government to 'ban this gross experimentation with human life'.

A public opinion poll held in Australia in 1983 showed growing uncertainty about the freezing process of IVF. Forty-four per cent favoured embryo freezing. Thirty-three per cent were against. Twenty-three per cent were undecided. But a spokesman for the Anglican Church said that as long as the IVF procedures were restricted to married couples 'they are simply a technological extension of a natural process'. Just the same, the voices of doubt, some of them stimulated by the Victorian IVF Committee, began to be heard in the land – and beyond.

insignificant university. Perhaps the unkindest cut of all was an item in the English weekly *The Spectator* (30 April 1983). Mr J Hughes-Onslow, 'Nine Months to 1984', declared that the Monash test tube team was working in an 'insignificant university with no moral, legal, theological or political right to make decisions that involve all of us'. Mr Hughes-Onslow began his essay with a swipe at Monash Philosophy Professor Peter Singer whom he described as 'an international guru amongst anti-vivisectionists and vegetarians'. Obviously shocking to Hughes-Onslow was the notion that other forms of animal life were 'no more sacred' than human life. Responding to the *Spectator* article, Dr Trounson said that he could not believe its tone and the allegations that the Australian team had made 'hurried decisions' before establishing ethical and moral guidelines. He said that technical

criticisms of the Monash team had been answered by him in the *British Medical Journal* and were 'completely untrue'. Professor Peter Singer had his swipe back:

It seems that Mr Hughes-Onslow is still living in the great days of the British Empire in which anything that happened outside Britain was necessarily insignificant and should, in any case, be subject to imperial rule from London. People in Britain do not like the idea that they are not making the front running.

The reference to the *British Medical Journal* was to an article in the March 1983 issue in which Dr Trounson claimed that he had achieved the world's first pregnancy after an embryo transfer from one woman to another. Five eggs were removed. Three were fertilised in vitro with the donor's husband's sperm and then given back to her. These failed to become established. But one of the spare ova was then fertilised by frozen sperm from an anonymous donor and transferred to another woman. It did succeed in starting a pregnancy which lasted ten weeks. The English leaders in IVF, Doctors Steptoe and Edwards, asked in the *British Medical Journal*:

Was it not indeed fortunate for the in vitro fertilisation team that this foetus was aborted? The history of this case is strongly suspicious of hurried decisions taken under pressure and it illustrates the need for firm ethical guidelines and codes of conduct to be set up.

The London *Times* (4 May 1983) contained comments critical of the Melbourne experiment, offered by several medical and church bodies in Britain. Dr Clive Froggatt, Chairman of the Royal College of General Practitioners said:

The development of deep frozen embryos is extremely worrying. It is impossible to give any guarantees about the safety of such an experiment. No one knows if the process of freezing may cause damage to an embryo in the short term or the long. It is unethical to experiment without such guarantees and assurances. Nor is it possible to be certain that in 10 or 15 years the individuals born from frozen embryos may not become victims to a latent defect.

The freezing of human embryos is among eight procedures which the Royal College of General Practitioners declares are unethical, in a submission offered to the British Government Committee of Inquiry into Human Fertilisation and Embryology, chaired by Mrs Mary Warnock, Senior Research Fellow at St Hughes College, Oxford. That committee is due to report in 1984. Comments the *Times*, 'A date which those with doubts over recent medical developments regard as having ironic Orwellian undertones'.

in vitro; in limbo. Meanwhile, it is not really accurate to say that there has been little debate at Monash University or in Australia. A whole series of seminars and conferences has been arranged by the Bioethics Centre at Monash University. On 4 May 1983 a conference on the ethical use of donor sperm, eggs and embryo in the treatment of human infertility was held at Monash University. One of the many papers delivered was by Mr Justice Austin Asche, Senior Judge of the Family Court of Australia in Melbourne. Amongst the many topics dealt with in his paper, one of the keenest concern is the discussion of surrogate motherhood; made increasingly possible by external fertilisation of the human ovum.

The concept of surrogate motherhood carries with it two very real dangers which, in legal terms, could be summed up as duress and blackmail. Duress, because the surrogate mother may take on the task through sheer poverty and desperation; and blackmail, because the surrogate mother might endeavour to increase the original price agreed upon by threatening to keep the child ... In Australia, the child or person acting on behalf of the child would be entitled to take proceedings for maintenance and support against the biological parent or parents; so that it seems that there would be some safeguards there.

But the safeguards are not considered enough by many commentators:

- On 21 April 1983 it was reported that the English Law Society had urged that it should be a crime for a woman to offer to have a baby for other people in return for payment. The Law Society

was reported as saying that couples were paying very large sums for babies to be born by other persons, and thereby circumventing adoption laws.

- In Australia, *New Idea* magazine, 21 May 1983, reported the case of 'Jane Smith' who had carried to birth a baby, Jesse, for Sue and Terry Clark. 'Jane', 20, was refused treatment by IVF and conceived the baby 'normally' to Terry, handing him over immediately after birth. She told a national television program audience on 11 June 1983 that she had gone ahead with it initially for the mother and was glad to have helped the couple who were desperate for a child. (ABC, Four Corners, *In vitro; in limbo*).
- On 11 May 1983 Dr Gabor Kovacs of Melbourne's Prince Henry's Hospital said that women with infertile husbands had been treated with the sperm of male in-laws in attempts to achieve pregnancy from donors within the family. 'All were of European background. They felt that they could continue the family line that way'. Dr Kovacs said that the clinic was reluctant to use the technique because of the 'identity problems' that any offspring might suffer. Responding, a spokesman for the Anglican Social Responsibility Commission urged hospitals to have these issues 'debated in public before they launch into the practice'.
- Serious commentators in the print media are constantly returning to the 'unresolved issues' about embryo freezing and external transfer: the fate of the embryo if the donors are divorced or separate; the length of time that embryos should be preserved in a frozen state; the risks of deformity; the inheritance rights; the protections that should be given to the embryo; the question of sale and purchase of embryos including spare embryos; the

choice of specially attractive or desirable donors and so on.

prodigal nature. It is in these circumstances of uncertainty that church leaders and others called for the moratorium that is now in force in Victoria. On 13 May 1983 it was announced that Britain's Roman Catholic Bishops had called for sweeping laws to ban what they considered fundamentally unacceptable aspects of in vitro fertilisation techniques, particularly any form of freezing or other storage, unless there is a definite prospect of transferring each embryo unimpaired to its own mother.

Under the banner 'a basic moral question' the *Australian* (5 May 1983) observed:

Aldous Huxley's 'Brave New World' and George Orwell's 'Nineteen Eighty Four' appear to have come a little early. The Melbourne in vitro fertilisation team which has suddenly catapulted us into science fact, rather than fiction, is to be congratulated on its dedication, its inventiveness, even its imagination. It suddenly made real the freezing of the human embryo and its thawing and reimplantation in the uterus, a procedure which had previously belonged to the realm of fantasy rather than fact . . . But the procedure raises a large number of ethical questions which will be considered soon by the Victorian Government's Waller Committee . . . The questions go to the very heart of our beliefs about the creation of human life and the legal, moral and ethical considerations which govern it subsequently. The recent discoveries undoubtedly will have the effect of enabling couples, hitherto unable to do so, to have children. While this in itself may increase the sum total of human happiness, there must be many who will doubt whether we should so change the nature of our society to grant power over the creation of life to any scientist, however strict the regulations that govern his professional conduct. Until there has been a thorough-going national debate on the ethical issues involved, we should be unwise to encourage or permit so fundamental a restructuring of the nature of human relations.

Writers to newspapers took a similar line. The Rev Father William Daniel SJ troubled to write from Rome urging that Dr Trounson 'should be encouraged to confine his work to veterinary science'. Mr B A Santamaria

(*Australian*, 17 May 1983) raised the prospect of deep frozen embryos being thawed into life in an entirely different epoch, long after both parents were dead. The possibility of cloning or 'carbon copies' of the same being were also raised. Other writers urged that IVF issues were too complex for the common law and needed a thorough-going statutory examination. On the other hand, Mr J Gerrard, President of the Humanistic Society of Victoria, wrote to the *Melbourne Age* (4 May 1983) urging that ethical problems raised by IVF were 'minimal' in comparison to such major issues of legitimate ethical debate as the nuclear threat and mounting unemployment.

The problem of community opinion lagging behind scientific practice in the field of bioethics stems to a major degree from some religious leaders relying on theology which bears little relation to human life. . . . Mother nature is prodigal with ova and even more so with spermatozoon. This is the basis of our natural evolution. He induces natural abortions. . . . If these discarded foetuses were important, then a scientific research program should be mounted to find out what and why there is such a high failure rate in natural abortions. Surely it is not beyond the intelligence of church leaders to update their theology in this field from its very uncertain biblical and pre-biblical bases.

Debate unfinished.

baby law

'Baby: A loud noise at one end and no sense of responsibility at the other'.

Fr Ronald Knox, c 1930

abortion case. As if to signal that the bioethical issues discussed in the last item cannot be escaped by practising lawyers, a number of cases have now begun to come before the courts requiring instant solutions to litigation raising enormous social and moral problems. On 30 March 1983 a Queensland man's bid to stop the mother of his unborn child from having an abortion failed in the High Court of Australia. The Chief Justice, Sir Harry Gibbs, refused an application for special leave to appeal against a decision of the Queensland Supreme Court, given in the previous week. The Chief Justice said there were