ABORTION AND THE LAW:
A 25 YEAR PERSONAL PERSPECTIVE.

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Introduction

At 2.30 am, on a Saturday morning in the last week of October 1969, a 23 year old woman was brought into the emergency section of the Royal Women's Hospital in Melbourne. She was very ill and in a great deal of pain. Her blood pressure was 80/40, her pulse was rapid and weak. Her temperature was 39.4°C. Her breathing was shallow. A foul bloody discharge emanated from her vagina. She was clinically in septic shock.

Emergency resuscitation procedures were started immediately. An intravenous line was set up and very high doses of broad spectrum antibiotics were commenced. She was admitted to the ward for observation and stabilisation prior to surgery. It was thought that she would need a hysterectomy. Twenty-four hours later she was dead. She was a victim of illegal backyard abortion.

At 10 am on Monday 20th May 1985, in a precisely timed and military-like raid with television cameras and reporters at the ready, more than 100 Queensland police officers raided two abortion clinics in Brisbane and Townsville. Equipment was seized and over 10,000 patient files were confiscated. Two doctors were charged with conspiracy to perform illegal abortions.

The young woman's death in 1969 and the Queensland clinic raids in 1985, although separated by over 15 years and almost 4000 kilometres had two things in common. They were both the result of Australian abortion laws and they both involved me.

In 1969, I was a fifth year medical student witnessing for the first time the horrors of illegal backyard abortions, and in May of 1985, I was the Medical Director of a clinic in Townsville that had since 1983 been trying to eliminate forever those very same horrors.

In the time that it took me to make these opening remarks, somewhere in the world, another woman has died as the result of an illegal, unsafe, backyard abortion.

So as we stand on the threshold of the 21st century, with men in space, medical technology able to radically extend life at both ends of the spectrum and with communication and computing technology exceeding our wildest imagination, 60 - 90,000 women per year, are still dying as a result of archaic, restrictive abortion laws, created and perpetuated by the same brilliant minds that have created this brave new world.

It would be naive in the extreme to suppose that this is accidental. I cannot accept that the minds of men that can create space stations and super computers, that can formulate complex financial and international legal precedents, that can dissect with patience and wisdom, the laws of the ancients, cannot understand the inhumanity of restrictive abortion laws and the misery they cause.
This paper will examine these laws, their genesis and history and what perpetuates these laws. Then perhaps we can begin to understand how to stop this senseless suffering and loss of life.

Abortion Laws

Every country, every jurisdiction in the world, has laws governing abortion. They fall broadly into three categories:

1. Abortion on demand or request (with some minor restrictions placed on later stage abortions), to safeguard the mother's health. Such a country is the USA through its constitution and upheld by the US Supreme Court in 1973 in *Roe v. Wade*. Some states, however, have recently been increasing restrictions on abortion services and the recent success of the Hyde amendment refusing Federal Medicaid funding for abortions, certainly does nothing to help the poor. The Netherlands and France also fall into this category for first trimester abortions on demand or request.

2. Abortion for cause, that is, rape, incest, physical or mental maternal health, extreme youth, foetal abnormalities or socio-economic reasons. Such countries include Australia, England and many western European nations. The *Abortion Act 1967* (UK) now embodies these principles.

3. Abortion totally prohibited. This is seen in Ireland and many of the Catholic dominated countries of Central and South America.

Modern abortion laws as we know them in Australia had their origin in English common law and really did not appear until the mid-19th century. In the United States, laws making abortion illegal appeared about 30 years before they did in England. Although only performed in small numbers and usually with disastrous results, abortion was criminalised in England in 1861 through the "Offences Against the Persons Act". This was done quite correctly to protect women from a medical profession in its infancy, which without the benefit of modern technology, antibiotics and aseptic techniques, performed surgical procedures which often led to death.

Today, of course, things are quite different. Modern science and medicine has made all surgery so safe that even major heart surgery and organ transplants are done almost with impunity. Abortion, especially in the first 12 weeks, is so safe today, when it is performed by experienced doctors with appropriate facilities, that the World Health Organisation suggests that the safest form of contraception is barrier contraception (condoms, diaphragm) relying on first trimester abortion as back up for barrier method failures.

So why do we still have these brutally restrictive anti-abortion laws in effect? It certainly is not to protect women, who as we can see are quite safe in the hands of well-trained doctors. It is also not to protect children. Infant mortality is highest in those countries with very restrictive abortion laws.

Therefore, who do these laws protect?

They protect the power brokers who created them and who now strive so zealously to enforce them, in this way protecting their power base. These power brokers are all men.
They are the leaders of governments and the leaders of the Catholic and Fundamentalist churches. Combined they form huge financial conglomerates that control billions of dollars.

The Abortion Debate

At some stage of any debate or discussion about abortion, especially with those opposed to abortion we usually come across two very commonly used phrases: "The Right To Life" (of the fetus, of course - the mother does not matter); and the term "Pro-life". All anti-abortion groups are "Pro-life". In fact, the last two American Presidents were so "Pro-life" that they ordered Congress to cease funding all family planning programs that performed or even mentioned abortion. This resulted in the closing down of dozens of programs in the USA, Latin America and other poor third world nations. As a consequence, the maternal mortality rate in those countries sky rocketed and many hundreds of thousands of women have died in the last 8 years. This was a direct result of botched, illegal and unfunded abortions.

George Bush was so "Pro-life" that he sent the United States military to war, to protect world freedom and American oil interests in the Gulf. Not only did over 200 US service men and women die in the conflict, but as a result of the most intense shelling and bombing known in the history of modern warfare, it is estimated that over 250,000 Iraqi men, women and children perished. This seems to me to be a very strange course of action for a "Pro-life" President to take. Whether or not the US were justified in their actions in the Gulf is not the issue at hand. One cannot, however, profess to be Pro-life and at the same time kill hundreds of thousands of women, men and children. President Bush was not "Pro-life", he was anti-abortion.

The Catholic Church in its persistent and senseless anti-abortion doctrines is also guilty of discrimination, bigotry and hypocrisy in the abortion debate. Confusion and debate about the time of ensoulment and thus abortion as a mortal sin, still persists. While Catholic church leaders refuse to allow abortion and modern contraception, hundreds of thousands of women die and children live lives of poverty and starvation. Perversely, the Catholic Church, whilst vehemently denouncing abortion and those who performed it during Medieval times, had no aversion to killing the unborn. Many pregnant women were burned at the stake as witches.

It should be noted, however, that there is a growing body of people within the orthodox framework of the Catholic Church, who believe that abortion is a matter for individual choice and they no longer insist on the policies espoused by the present Pope.

The need for the altruistic aim of protecting women from dangerous operations is gone. But the selfish aims of political and church leaders to retain power and keep it out of the hands of women remain, because in this age of equality in all areas of human endeavour, the only thing that really separates men from women is the child bearing that men cannot do and that women must do to ensure the survival of the human race.

Until women are given the sole right to make decisions about their fertility, and that includes unrestricted access to all forms of contraception and safe, legal abortion, they will never really be equal. They will always be shackled by the fear of unwanted pregnancy, and they will always be controlled and manipulated by the men who frame the laws that control access to safe and legal abortion services.
Evolution of Abortion Law

Even attempts to liberalise abortion laws have sometimes had the opposite effect, as can be seen by the evolution of abortion law in Australia. When Australia was first colonised by English settlers, they brought with them the laws of England and applied them to the new colony. In this way, all states in Australia in the late 19th and early 20th century had laws forbidding abortion.

The Queensland laws are embodied in sections 224, 225 and 226 of the Criminal Code. All other states have similar laws. These laws are almost identical to the "Offences Against the Persons Act" introduced in England in 1861.

Bold reform was introduced by the Government of South Australia in 1970, by enacting section 82A of the Crimes Act, making abortion legal under certain circumstances - specifically, when two doctors agree that the operation is indicated and that it must be carried out in a hospital.

Similar reform was introduced by the Government of the Northern Territory in 1974, but there was an added stipulation. The operation had to be carried out by a gynaecologist or obstetrician in hospital and only up to 14 weeks of gestation. Both of these jurisdictions have modelled their legislation on the Abortion Act (1967 - UK), in order to liberalise abortion practice in these states. However, the effect was quite different from the intention.

Since abortions were only allowed in hospitals, free standing dedicated clinics did not develop in South Australia and the Northern Territory, as they did in Victoria, NSW, Queensland and Western Australia. We saw the paradox of medical and nursing staff on one day trying valiantly to save the life of a premature infant or performing a complicated delivery or caesarean section, and on the next day these same health care workers would be reluctantly working through lists of abortion patients. Needless to say, these patients received little sympathy and only a minimum of care. Many women still go interstate for their abortions.

In Victoria and NSW, the celebrated cases of R v. Davidson (Menhennit, J., Supreme Court - 1969) and R v. Wald (Levine, J., District Court - 1971) in accepting the decision of Justice MacNaughten in R v. Bourne (1939 - UK), created a defence against criminal abortion and broadened the scope under which abortion could be legally carried out. Dr Bourne was a well respected obstetrician in London who, in 1939, openly and for no fee performed an abortion on a 14 year old rape victim.

In Queensland in 1986, Justice Maguire in the District Court confirmed these decisions in the Bayliss/Cullen case, which followed the infamous abortion clinic raids in 1985. Section 282 of the Queensland Criminal Code was accepted as a defence against the charge of criminal abortion in Queensland.

It is interesting to note that section 282 was included in the Criminal Code, probably to protect doctors and nurses from criminal responsibility when early obstetric operations, especially caesarean sections, were still far from perfect, and often led to an unfortunate outcome for the baby and the mother. Nevertheless, we now find ourselves in the paradoxical situation where the only two states that have passed laws to liberalise abortion, have limited and rather primitive facilities.
The other states which rely on case law, which has still not been tested at the highest legal levels, have well run, free-standing dedicated clinics with highly trained staff and the latest in diagnostic and therapeutic equipment. Recently South Australia has responded to this paradox by setting up a dedicated free-standing clinic in hospital grounds in Adelaide.

The Need to Decriminalise Abortion

The logical end point of course is not to create "new" and "better" laws or to "liberalise" and "legalise" abortion, but what must be done is to decriminalise abortion altogether.

Abortion is a surgical operation. No other surgical operation is restricted by laws other than those needed to safeguard the patient's well-being. Abortion should not be constrained by extra laws. It should be treated as any other medical or surgical procedure.

The Commonwealth Government treats it as such and pays a Medicare rebate for the procedure. It is time for the states to follow this lead and delete all reference to abortion from the Criminal Codes. Of course, this would involve a display of political courage which few of our political leaders have demonstrated in recent times.

There are many things that restrictive abortion legislation does. It restricts access to safe abortion services to those people in urban centres, and to those people with adequate financial resources. It limits knowledge about abortion services. People seeking accurate, relevant and up-to-date information about abortion find it very difficult to obtain. Medical students and doctors get no adequate training in university or teaching hospital posts in abortion technique. In Queensland, some doctors in rural communities are still sending their patients interstate for abortions.

Restrictive and ambiguous abortion laws make abortion decisions more difficult and often cause the procedure to be delayed beyond the fourteenth week of pregnancy. This is particularly so in the young and those with limited financial and educational resources. This delay of course makes the operation more difficult and more dangerous. Restrictive abortion laws increase feelings of guilt and anxiety in families already stretched beyond normal limits. These families really need help, care and understanding - not legal or moral barriers.

Conclusion

The single thing restrictive abortion laws will most definitely not do is to reduce the number of women seeking abortions.

A recently completed study by the International Planned Parenthood Federation reports that abortion figures are highest in countries with very restrictive abortion laws. In western Europe, where abortion is legal (except in Ireland and those women travel to England), the abortion rate is 14 per 1000 women. In Latin American countries where abortion is illegal, the abortion rate is 30-60 per 1000 women. Perhaps this also reflects the Catholic-dominated restrictions to contraceptive services in these countries.

Of one thing we can be certain. Desperate women would rather give up their lives than be burdened with children they cannot afford to feed. As it is put so elegantly in the Women's Encyclopedia of Myths and Secrets, by Barbara Walker:

"Each woman must be free to make her own choice,
No man may safely decide for her;
She must give life gladly;
To be able to give it well."

It is my most fervent hope that the young woman about whom I spoke in my opening remarks did not die in vain. And it is to this end, under the guidance and encouragement of my colleague, mentor and dear friend the late Dr Bertram Wainer, that I have dedicated the rest of my professional career to ensuring that the women of this country will always have access to safe, legal and dignified abortion services.

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