

Readings/Royal Women's Hospital event for launch of Jo Wainer's book 'Lost: stories of illegal abortion'

History of abortion law reform in Victoria by Robyn Gregory

My talk today is based on work I undertook for a doctorate, examining the history of abortion law reform in Victoria. I found masses of information, meticulously recorded. Yet what it raised was often quite the opposite – scandal, corruption, gossip, intrigue, drama and vested interests – in a long, fascinating and complicated series of sagas that I can only give you a taste of in the next ten minutes. I am sure many of the themes will be familiar to you. I, for instance, listened to some of the debate around RU 486 and would swear it was a transcript of the abortion debate in Federal Parliament in 1973.

The simplest way that I can think of to summarise this history, is to portray it as a case study of conflict, cooperation, cooption and collusion in five main arenas of vested interest. I will outline these briefly today; in no particular order, to help set the context in which the women in 'Lost' were seeking abortion.

1. The first of the vested interests was government interest in fertility control – and therefore women's sexual behaviour - as a reflection of national concerns about the size and composition of the Australian population

- For instance in 1904, an inquiry into the declining birth-rate found that Australian women had long used every means at their disposal to limit the numbers of children they bore, for both economic and social reasons. Ignoring these reasons, the royal commission found that the decline in births was largely the result of the 'selfishness and pleasure-seeking' of women (commissioner, 1904).
- A similar inquiry in 1944 found that women were deliberately limiting their families through the use of contraception and abortion, causing grave anxiety about the future of the Australian people. While there was a little more sympathy expressed for women, attention was on the survival of the nation, not women's need for affordable, safe and accessible birth control and abortion – and this despite the fact that 1/3 of maternal mortality at the time resulted from abortion.
- From the early 1960s opposition to abortion was located squarely in terms of the threat it posed to 'white Australia'. The argument went that we were defenceless because of the small size of our population, and that we relied on immigration to increase our population because women were limiting the size of their family. Further, it was poor and non-white women having large families, while increasingly emancipated middle-class white Australian women limited childbirth – the same women with the greatest access to comparatively safer medical abortions.

- Anyone who remembers Dana Vale's recent comments in relation to RU486, that Australia is 'going to be a Muslim nation in 50 years' because we are aborting ourselves out of existence, will experience a sense of déjà vu. Similarly, Costello's comments in 2004 and again this year urging women to do their patriotic duty.

2. The second factor was the struggle for industrial control of a lucrative abortion industry, supported by systemic police corruption, medical corruption and collusion by politicians and officers of the Crown Law Department

- This was not exclusive to the 1960s. In 1890 the *Age* described a growing underground practice in abortion, referring to Collins Street as 'the very head centre of illegal operations ... left largely undisturbed by both police and parliament'. Similarly the 1904 RC pointed to the role of doctors in abortion.
- By the 1920s abortion was widespread and abortion services had become lucrative and well-known businesses. A police crackdown on midwives in Melbourne between 1928 and 1932 put most of the remaining skilled midwives out of business. Poor women had been increasingly left without access to traditional networks, resulting in them seeking abortion later in their pregnancy, when all other methods had failed, or attempting self-abortion. The incidence of abortion and deaths associated with abortion steadily increased and by the mid 1930s abortion accounted for 31 percent of maternal mortality at the Women's Hospital.
- Despite this, there was little policing or prosecution of doctors and by 1939 abortion was largely provided by medical practitioners.
- Then, in the second half of the 1960s, a police crackdown on medical practitioners performing abortion quadrupled the rate of prosecution. This triggered allegations of a closely connected network of graft and corruption operating in Victoria, whereby the practices of abortionists were being protected by past and present members of the VPF in return for payment of bribes. The payments were to warn doctors of impending raids, cover up complaints, and, in some cases, cover up women's deaths. Direct evidence points to this network operating at least from the 1930s. The Kaye Enquiry into Police Corruption in 1971 resulted in three police officers being jailed.
- Police activity was supported by the influence of Roman Catholic and Masonic factions in the police force and public service generally, with evidence that different factions supported different medical practices (and the small number of 'backyarders' that still existed) and that a 'turf war' between the practices led to prosecutions. There is evidence that the police were assisted by members of the Crown Law Dept, who helped to delay trials and colluded in ensuring that evidence disappeared. However, the terms of reference of the inquiry focused only on the corruption of police officers.
- While the outcome of the inquiry suggested police corruption was the result of a few 'bad apples' in the Vic Police Force, analysis of the evidence suggests that the culture of the police force and its role in enforcing a widely unpopular law were – and remain – instrumental in

the development and maintenance of systemic corruption. Where there are 'large groups of consumers and suppliers with an interest in subverting law enforcement, police corruption simply becomes a routine business expense' (Samuel Walker, US civil libertarian).

- Women's safety could not be ensured while a paid-up practice could avoid responsibility for negligence. While abortion remained illegal, there was no regulation over the standards of practice, nor sanctions for sub-standard service. Some physicians ignored medical protocols in their attempts to avoid prosecution and pursue profits, with illegality leading to poor standards of abortion practice regardless of the qualifications of the operator.

3. The third factor impacting on abortion was the political manoeuvring of a government determined to retain power by framing abortion as a medical rather than a legislative problem. This was played out as conflict between community calls for abortion law reform to protect doctors from prosecution on the one hand, and a political requirement for preference votes from the Democratic Labour Party on the other (resolved in favour of the latter)

- The largely Roman Catholic DLP seldom polled more than 12 percent of the vote, but in return for allocating second preferences to the Victorian Liberal Party, they held considerable sway. This included the appointment of a RC Homicide Squad chief and the resultant raids on medical abortionists in the 1960s and 70s.
- However, the police action left the Bolte/Rylah government in a dilemma – they couldn't legitimately stop the police from enforcing the law, but they were equally worried about the electoral and religious implications of legalising abortion.
- Social, political and economic changes in the decades leading up to the 1960s (the world wars; women's move into paid work; advances in medical and obstetric science; intro of oral contraceptive in 1961 heralding the possibility of sexual and reproductive freedom; legislative changes in US and UK) led to growing discussion of the need for abortion law reform to bring the law into line with changing social mores and conditions. As a result, the government came under concerted pressure from a range of influential bodies to change the law – the Young Liberals, the Liberal Party State Council, Young Labor, the ALP State Council, the NH&MRC, A&NZ College of Psychiatrists, the AMA, College of GPs, media including the Age, Sun, Herald and Australian, Protestant Churches – Presbyterian Church of Victoria, Social Questions Committee of Anglican Diocese of Melbourne, Diocesan Synod, Council of Congregational Union of Victoria, Council of Liberal Jewish Ministers of Victoria - and Gallup Polls all pointed towards overwhelming support for reform.
- The govt was increasingly squeezed between the need for DLP preferences on one hand and a community overwhelming in favour of liberalisation of abortion laws on the other. They were searching for a

politically expedient and electorally safe way around the dilemma and it is likely that the Crown Law Department, in its February 1969 report on the topic, advised a judicial solution to the political pressure. Ken Davidson – the first of the doctors to face trial in 1969 - and the Menhennitt Ruling that led to his acquittal in May 1969, was a convenient judicial response to a political problem.

- There was little change to women's ability to access an abortion with doctors continuing to be charged, which left them hesitant to perform the operation.

4. The fourth vested interest was the professional struggle for medical control over reproduction, supported by civil liberties activists and liberal feminists seeking access to abortion without engaging in questions of political control over decision-making.

- Late in the 19th century, the medical profession began a campaign to demonise midwives' traditional role in childbirth and abortion. At the time, midwives constituted the greatest competition to general practitioners attempts to set up practice in Australia. This campaign was successful despite evidence that midwives had dramatically fewer complications than doctors, who knew little about childbirth and abortion at this time, but tended to use more interventionist methods in an attempt to establish technical expertise. Ironically, the erosion of confidence in midwives also helped to establish businesses for male backyard abortionists, who were assumed to be doctors.
- Since at least the 1930s, the majority of abortions in Australia were carried out by medical practitioners and medical schools taught that an abortion performed in a hospital to save a woman's life was lawful, providing professional protection. However, as estimates that 70,000 abortions were performed each year in Australia became public, it became evident that the notion of performing abortion for life-saving reasons was largely fictitious – advances in health care, and a resultant decline in maternal mortality, meant that few women required abortion as a life-saving measure. However women continued to seek abortion, while the medical consensus that had protected and supported doctors was beginning to break down, leaving them increasingly vulnerable to prosecution.
- However, medical practitioners also provided a practical means of controlling social problems that met with the professions own desire for status and credibility. By accepting a role in controlling the availability of abortion, physicians assumed the mantle of moral as well as medical expertise.
- As a result, emphasis during the 1960s was on supporting medical practitioners to assist them to avoid prosecution for doing their job; and by default ensuring that individual women could access abortion.
- While polls were showing a slow shift in acceptance of abortion for socio-economic reasons, reform was unquestioningly aimed at clarifying the law and protecting doctors from prosecution. Women were rarely referred to, except as the unfortunate bearers of unwanted

pregnancies, victims of seduction, or self-centred harlots. Even proponents of abortion portrayed it as the last resort for desperate women in awful circumstances rather than support for women seeking reproductive choice.

5. The final area of vested interest was the struggle by an increasingly organised feminist movement to reframe abortion as a political issue, expressed as control over reproductive decision-making.

- Many small 'l' liberal feminists became radicalised as a result of their experiences of campaigning for law reform – in particular, the exclusion of women's voices from parliamentary debates and medical and health policy decision-making; as well as the repeated failure of governments to take responsibility for changing the law in line with popular opinion.
- Some feminists came to see regulation of abortion by the medical profession as oppressive for women – a fake repeal to buy off middle-class women and make them believe things had really changes.
- There was a growing realisation that controlling procreation was not synonymous with the liberation of women. For instance, abortion used as a eugenic or cost-saving measure to control populations was oppressive. This left women clear that it was control over reproductive decision-making that was most important to women, not simply access to abortion. This led to campaigns to improve socio-economic conditions, including equal pay, access to childcare and family payments, family planning, contraception and sex education in schools, etc. The main purpose of these campaigns was to ensure that 'the right to choose' meant real choice.

So, the history of abortion in Victoria has been dynamic, with neither the law nor medical practice fixed. Rather, changes in medicine were influenced by changes in the legal definitions of crime, just as the law shaped medical thinking and practice. Similarly, women's abortion practices, as well as the meaning of abortion, has shifted over the century, reflecting class and ethnic differences, unequal access to contraception, and changing political interests and social concerns. Today, a woman's *right* to choose is reflected in abortion practice in Victoria, although women's *ability* to choose remains fraught. While Tony Abbott might suggest that 'thinking feminists' are ambivalent about women's choice, he has missed the point. Women are ambivalent about a political system that locates responsibility for circumstances beyond their control with individuals and then calls the circumstances they face 'choice'.