V. Conclusion

'Past', we are told, 'is prologue' and this is no where more evident than in Commonwealth abortion law. This analysis suggests that the background to Commonwealth abortion law may provide more opportunities for the lawful introduction of medical tehnologies emerging in the foreground than may presently be realized. Commonwealth legal reforms may have tended to overlook these antecedents, possibly because it was thought that they could provide little perspective to the application of modern bio-technologies. Lord Macaulay, first and foremost a historian, in 1837 applied criminal sanctions only when a woman could be proven "with child". He explained to his Governor-General that pregnancy was family matter needing sensitive family support to determine its outcome, not the crude sanctions of criminal law. As a result, he urged that criminal law be applied, but only sparingly, when a woman was certain to have been "with child". A century-and-a-half later, Lord Macaulay's view of abortion as a private family matter is coming to be reincarnated in and possibly protected under some Commonwealth constitutions and human rights instruments with provisions on individual privacy and private family life.

Of those countries that have inherited the Indian Penal Code, Bangladesh is one of the few that has capitalised on its legal heritage to promote the health of women and their families. That heritage enables the provision of procedures up until the point when a woman can be proven, by reasonably available methods, to be "with child", i.e. about six to eight weeks since her last menstrual period. It would seem that other countries which have acquired the Indian Penal Code or variations on it might also consider providing such health benefitting services. Still others, in the process of changing their laws, might benefit from the Bangladeshi experience.

It is suggested that no one can seriously advocate the curative methods of abortion as being desirable methods. Most would probably agree that preventive methods of contraception are far preferable and should be more widely accessible to reduce the present high incidence and severe health effects of abortion. The point at which contraception becomes abortion is not clearly delineated in Commonweatlh abortion laws, and the point varies according to jurisdiction. Further, while some might consider a particular procedure to amount to abortion in fact, it may not necessarily be so in law. Before criminal liability can exist for abortion in some Commonwealth jurisdictions, certain stages such as implantation, proof of pregnancy or quickening have to have been established beyond reasonable doubt to have occurred. These stages of gestation can vary according to Commonwealth jurisdiction, and to whether a person is acting on a woman or a woman is acting on herself. A woman acting on herself does not appear to be criminally liable under the abortion provision in the majority of Commonwealth jurisdictions unless and until she can be proven to be "with child". This legal position holds the potential for being of major significance to women's health, particularly as self-administered methods (such as those discussed by M.P. Embrey in Appendix C) become available. Although it may not be widely appreciated, some legal provisions are thus capable of accommodating recent advances in medical technology as was urged by the Fourth Commonwealth Medical Conference, without the need for legislative intervention.