

Contact Information:

Jeremy Bell

Submission: Dr Jeremy Bell.

Topic: *Abortion Law Reform (Women's Right to Choose) Amendment Bill 2016 and Inquiry into Laws Governing Termination of Pregnancy in Queensland*

Analysis: At the heart of this issue is the question whether abortion involves the conflicting rights of two human beings rather than the rights of just one.

Summarise the main thrust of your argument in no more than four sentences.

Qualifications: *I am a lecturer in history and philosophy, one of whose research specializations is bioethics. Both as a professional ethicist and as a concerned citizen, I am writing to oppose the Abortion Law Reform (Woman's Right to Choose) Amendment Bill.*

Preamble

Abortion is a divisive topic for the obvious reason that it involves cutting short the life of a human being, or of what will soon become a human being. Some people consider abortion at any stage of pregnancy morally equivalent to murder. Some deny that an embryo or foetus counts as a human being before a certain stage in pregnancy and consequently hold that only late-term abortion is morally equivalent to murder. Some acknowledge that abortion (or, at any rate, late-term abortion) means ending the life of a human being, but nonetheless argue that it is not morally equivalent to murder. They contend that an unborn human being's right to life does not outweigh a mother's right to control her own body, at least when her life or health is in serious danger.

Each of these views has some prima facie plausibility. I shall say more about the second and third later. What I wish to stress here is their common recognition that no morally responsible discussion of abortion can simply *disregard* the possible right to life of the unborn child.

It is troubling that, in his speech introducing the Bill¹, Mr Rob Pyne MP (hereafter Mr Pyne) *does* apparently disregard the unborn child's possible right to life. He expresses concern for mothers and doctors, yet he says nothing about unborn children. He alludes near the end of his speech to an unresolved question about 'gestation periods', by which he clearly means the question of when a foetus becomes viable. It is widely taken for granted that a viable foetus counts as a human being. Evidently Mr Pyne is well aware that, whatever one might think about early-term abortions, no one can plausibly deny that at least some late-term abortions destroy human lives. He may believe that the rights of unborn human beings are less important than the rights of mothers – and some ethicists would support him in this. But his sheer silence about the impact of the Bill on the unborn smacks of evasion. Just as it would be dishonest for an opponent of the Bill not to acknowledge the hardships of some women under existing abortion law, so too is it dishonest of Mr Pyne not to acknowledge that abortion at least sometimes means killing an unborn human child.

It is my contention that Mr Pyne's apparent disregard for the lives of the unborn severely weakens his case in favour of the Bill. I shall now examine this case in detail.

¹ Member's speech introducing the Abortion Law Reform (Woman's Right to Choose) Amendment Bill, 10 May 2016, <http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/160510/Abortion.pdf>, accessed 28/06/2016

Key issues

1. Existing legislation causes great suffering

Few people would say pregnancy ruins a life

- ‘Surely,’ says Mr Pyne, ‘a young woman should not have to ruin their young lives [sic] by proceeding with a pregnancy if they are not ready and their family and their doctor think it unadvisable’.
- I would firstly observe that this is extraordinarily strong language. Many young women fall pregnant unintentionally, choose not to have abortions, and raise their children in trying circumstances, often without a father. Certainly this has an enormous impact on their lives. But few of them would say, in all seriousness, that their lives have been ‘ruined’.

It would seem undeniable that late term abortion kills a human being

- Carrying an unplanned pregnancy to term is, of course, a huge burden and can entail great hardships. No one disputes this. But it does not follow that the right course of action for a woman who feels she is ‘not ready’ for childrearing is to terminate her unplanned pregnancy. If terminating a pregnancy means killing a human being, it is at least questionable whether she has any right to do so, no matter how great the burden of carrying the pregnancy to term.
- Consider the not dissimilar situation of a single mother in severe financial straits who, in a moment of desperation, contemplates killing her 2-month-old baby. Much as we may sympathise with her, we would surely not condone this course of action. Infanticide undoubtedly means killing an innocent human being.

Section 313 of the Queensland Criminal Code presupposes that an unborn child is a human being

- As Mr Pyne observes, this section is designed to cover assaults on pregnant women, and he says that it ‘rightly should remain in the Criminal Code’. The second part of the section reads as follows: ‘Any person who unlawfully assaults a female pregnant with a child and destroys the life of, or does grievous bodily harm to, or transmits a serious disease to, the child before its birth, commits a crime’.

*Punishing **unintentional** killings of unborn children and not punishing **intentional** killings is the height of absurdity*

- Section 313 seemingly presupposes that the unborn child is a human being, whose life and health deserve state protection. If that is so, it makes no sense to call for it to be retained, while demanding the wholesale decriminalisation of abortion.

The new laws imply unborn children have no rights at all

- Mr Pyne might argue that section 313 protects the life of the unborn child on the presumption that the mother wishes to carry the child to term. In other words, he might argue that the section is actually concerned with the rights of the mother, not with the rights of the child.
- Someone who assaults a pregnant mother and thereby kills her child wrongs her, not the child, while if she voluntarily terminates her pregnancy, no wrong is done to anyone.

- This would seem a rather strained reading of the plain language of section 313. More importantly, it seems to imply that the unborn have no rights of their own at all. To repeat, this is implausible, at least in the case of viable fetuses.

However, Mr Pyne might maintain that, even if the unborn do have rights, these rights are subordinate to the rights of the mother. This brings me to the second of his grounds for demanding the decriminalisation of abortion: the mother's right to control her own body.

2. A woman has a right to control her own body

The words "Woman's Right to Choose" in the Bill's title speak for themselves. The Bill's intention is to give pregnant women greater freedom of choice. Mr Pyne declares that 'when a young woman is not ready to have a child and chooses to terminate a pregnancy, that should be a matter for her and her medical practitioner, not a matter for the state'. He also speaks of empowering women to 'make decisions about their own bodies'.

A right to control one's own body does not mean the right to kill another human being

- Mr Pyne would be right that this should be a matter for a woman and her medical practitioner and not for the state if the pregnant mother were the only person whose body was affected by the decision to terminate the pregnancy.
- But, at least in late-term pregnancies, the body of a third party – the unborn child – is also affected by this decision.
- After (e.g.) 24 or 25 weeks' gestation, the being in a mother's womb is indeed a living human being, it is sheer sophistry to defend her right to terminate the pregnancy simply by appealing to her right to control her own body.

If the rights of the unborn child were of no concern to the state, there would be no reason to distinguish in this way between earlier- and later-term abortions.

- Existing abortion law in every Australian state and territory except the ACT either explicitly or implicitly recognizes that the state has a legitimate interest in protecting the rights of the unborn child as well as those of the mother².
- In New South Wales, as in Queensland, abortion at any stage of pregnancy is technically illegal (though, as is well known, the law is to some extent a dead letter in both jurisdictions). As I shall later show, there can be no question that the purpose of this legislation is, at least in part, to protect the unborn child.
- Victoria, Tasmania, Western Australia and the Northern Territory all distinguish between earlier- and later-term abortions, though they draw the line between the two at different points. Abortion in these jurisdictions is legal without restriction in the earlier period, but legal only under certain conditions in the later period. (In the Northern Territory, abortion after 23 weeks is illegal if performed for any reason other than saving the mother's life.)
- Why do all of these jurisdictions distinguish between earlier- and later-term abortions? The only possible explanation is that, the longer the gestation period, the likelier it is that the being in the mother's womb is indeed a human being, not just a potential human being.

² Children by Choice provide a helpful summary of existing abortion law in Australia on their website, at: <http://www.childrenbychoice.org.au/info-a-resources/facts-and-figures/australian-abortion-law-and-practice>, accessed 28/06/2016

- I would here remark that many discussions of abortion obscure the basic question about the rights of the mother and the rights (if any) of the child by pretending that abortion is simply a medical procedure affecting no one but the mother.
- Mr Pyne himself cites Children by Choice Manager Amanda Bradley, who calls abortion 'the only health procedure' that is treated as a criminal offence. Earlier this year, the Victorian DLP MP Rachel Carling-Jenkins tabled a bill in the Victorian Parliament criminalizing abortion after 24 weeks' gestation.
- The Australian Medical Association criticized the bill on the grounds that it 'jeopardise[d] the independence of medicine', 'interfere[d] with medical care' and 'criminalise[d] a medical procedure'³.
- These statements from Ms Bradley and the AMA give the impression that terminating a pregnancy is like removing a mole or a cancer. But an unborn human being is not a cancerous growth. Any serious discussion of abortion must acknowledge that the procedure affects both mother and child.

Queensland law already covers instances where pregnancy causes a mother's life to be in danger

- In cases where a mother's life is in danger if she continues with the pregnancy, there is certainly a powerful case for her having the right to abort, even if this does mean killing another human being.
- I would argue that, in truth, none of us has a right intentionally to kill another human being simply for the sake of self-preservation, but I shall not pursue this issue here.
- However, supposing that abortion for the sake of preserving the other's life is morally licit, case law in Queensland already protects mothers and medical practitioners when abortions are carried out for this reason, as Mr Pyne acknowledges.

Killing one human being for the health of another seems grotesquely unjust, however this right is already protected under Queensland law

- Many people feel that, since the unborn child is, as it were, an intruder in the mother's own body, she has a right to end its life, at least if it threatens her health. But this view is unrealistic.
- The child is not literally an 'intruder', in the sense that an armed housebreaker is an intruder. The child did not choose to be conceived within the woman's body. Except in cases of rape, the woman has had sexual intercourse knowing that conception was a possible result (even if she used contraception, which of course does not always work).
- The child's prolonged dependence on the mother is a biological reality over which neither mother nor child has any control. Even in cases of rape, it is unfair to brand the child as an unwanted, uninvited 'intruder'. It is not the child's fault that it came into being as a result of an appalling crime.
- For these reasons, I am deeply sceptical of the suggestion that a mother has a right to abort her child for the sake of her health, if her life is not threatened. But, in any event, case law in Queensland already protects this alleged right.

It is difficult to justify late-term abortion without serious threat to the health or life of the mother

³ "The AMA Urges Parliament to Vote Down the Abortion Bill", http://amavic.com.au/page/News/The_AMA_urges_Parliament_to_vote_down_abortion_bill/, accessed 28/06/2016

- A mother has a right to control her own body – but she has no right to attack the body of the innocent child in her womb, if it is posing no immediate threat to her life or health.

Even early-term abortions are ethically problematic

- Even though a human zygote has no arms, legs or other easily recognizable human features, it is a living being that, if nothing goes wrong, will assuredly develop recognizable human features before long. It is, in short, a human zygote.
- If it were transplanted into the womb of a chimpanzee, it would not grow into a chimpanzee, but would simply die. There are therefore grounds for calling it a human being.
- The normal definition of murder is the intentional killing of an innocent human being.

We must consider that we were all, at one stage, zygotes

- Even if we are inclined to doubt whether a human zygote is a human being (perhaps because it seems strained to call the zygote a person), we must admit that each of us was once a zygote.
- If my mother had used an abortifacient at the time of my conception, thereby killing the zygote that would one day be me, she would have killed me.

Legislating a line where an unborn child becomes human is a perilous task

- Medical professionals and bioethicists who deny that a human zygote is a human being do not agree on precisely when the living thing in the mother's womb becomes a human being.
- Legislators who do not recognize a human zygote as a human being may suppose that there is nothing wrong with aborting embryos or foetuses that are not yet human beings. But they must admit that the vagaries about when an embryo or foetus becomes a human being make the task of legislating a perilous one.

Legislators should risk drawing the line too early rather than too late

- Drawing a line between (supposedly permissible) early-term and (impermissible) later-term abortions means drawing the line between a medical procedure that harms no one and an act of intentional killing.
- Killing an innocent human being is universally recognized as one of the worst of all crimes. Legislators who distinguish between earlier (supposedly permissible) and later (impermissible) abortions should surely risk drawing the line too soon rather than drawing it too late.

3. Existing legislation is outdated

Mr Pyne states that sections 224-226 of Queensland's Criminal Code (which outlaw abortion) are 'archaic' and 'outdated'. They have 'no place in a modern liberal democracy'. It is tempting to disregard these statements as mere rhetorical flourishes. Certainly they are not *arguments*. They nonetheless call for comment. If they mean anything definite, they mean that Queensland's laws outlawing abortion were appropriate at the time of their passage (1899), but are now no longer so.

What is supposed to have changed? If abortion, or anyway late-term abortion, is a crime against the unborn child (at least when the mother's life or health is not in danger), surely this is no less true today than it was in 1899.

It is incorrect to claim that 19th Century abortion laws were to protect mothers from unsafe procedures rather than to protect unborn children

- One sometimes encounters the claim that the purpose of 19th-century anti-abortion laws was not to protect the unborn, but to protect pregnant mothers from what were then primitive, unsafe abortion procedures. Since today's abortion procedures are much safer, it could then be argued that the 1899 law is indeed 'outdated'.
- Yet the claim that 19th-century anti-abortion laws were not concerned with the lives of the unborn is untenable. The British anti-abortion legislation on which Queensland's legislation was later based clearly was intended to protect the unborn⁴.
- It forms part of the Offences Against the Person Act (1861), whose very title makes its intention manifest. Well before 1861, Britain's 1803 Ellenborough Act had outlawed abortion after 'quickening' (foetal movement). The obvious purpose of distinguishing between abortion before and after 'quickening' was to draw a line between abortion that (supposedly) did not involve killing a human being and abortion that did involve killing a human being.
- The history of British and Commonwealth abortion law thus leaves no room for doubt that concern for the unborn played a major role in the framing of anti-abortion laws.

Opposition to abortion is motivated by a desire to control women and their sexuality

- The idea that opposition to abortion is motivated chiefly by the desire to control women and, in particular, to control their sexuality is of course a familiar one. It is difficult for anti-abortion arguments to gain a hearing if people are predisposed to regard their proponents as hypocritical misogynists.
- I would urge supporters of liberal abortion laws to trust in the good faith of most (if not all) of their opponents, many of whom are themselves women.

⁴ See the Appendix to the Victorian Law Reform Commission's report on abortion, tabled in the Victorian parliament on 28 May 2008: <http://www.lawreform.vic.gov.au/content/appendix-history-abortion-law-policy>, accessed 28/06/2016

References

Children by Choice Fact Sheet: Australian Abortion Law and Practice,
<http://www.childrenbychoice.org.au/info-a-resources/facts-and-figures/australian-abortion-law-and-practice>, accessed 28/06/2016

“The AMA Urges Parliament to Vote Down the Abortion Bill”,
http://amavic.com.au/page/News/The_AMA_urgues_Parliament_to_vote_down_aborti_on_bill/, accessed 28/06/2016

Appendix to the Victorian Law Reform Commission’s report on abortion, tabled in the Victorian parliament on 28 May 2008:
<http://www.lawreform.vic.gov.au/content/appendix-history-abortion-law-policy>,
accessed 28/06/2016

Member’s speech introducing the Abortion Law Reform (Woman’s Right to Choose) Amendment Bill, 10 May 2016,
<http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/160510/Abortion.pdf>, accessed 28/06/2016

Signature

Dr Jeremy Bell

Date: 28 June 2016