

1. Currently, as we understand it, there are two proposed legislative responses to the recommendations of the Lockhart Review – the draft legislation proposed by Senator Kay Patterson, and that proposed by Senator Stott Despoja.

DIFFERENT PERSPECTIVES

2. These legislative responses invite detailed analysis, both as a whole, and section by section, from a legal, medical, scientific, and philosophical perspective.
3. Further, Senator Patterson's draft legislation ought be compared with Senator Stott Despoja's draft.
4. Disappointingly, the time available for submissions precludes the detailed analysis the drafts deserve.

LAW SHAPING CULTURE

5. This is legislation which, if implemented, aside from its immediate practical effect, will change our way of thinking about human life. Law shapes, moulds and even changes culture. Law influences our understanding of right and wrong, good and evil.
6. It is disappointing that the Committee is subject to such a tight timetable for submissions, public hearings and ultimate report. The very tight timetable restricting the possibility of detailed submissions, the availability of only three days for the public hearings, and the requirement to report by 27 October 2006 within four days of the final public hearing in Melbourne (on 24 October 2004), will unfortunately tend to diminish acceptance of the Committee's report.

REQUIRED LEGAL ANALYSIS

7. This submission will consider the proposed legislation solely from a philosophical perspective.
8. Ideally one would wish also to consider the proposed legislation from a legal perspective.

UTILITARIAN REASONING

9. What is evident from Senator Patterson's and Senator Stott Despoja's explanatory memorandum is that the reasoning in support of the proposed legislation is **utilitarian**. Utilitarianism is a particular ethical philosophy exemplified in the writings of Jeremy Bentham and John Stewart Mill.
10. It is to be contrasted with, for instance, **teleological, deontological and virtue based** approaches to ethics.
11. A philosopher whose approach is substantially teleological is Aristotle. A teleological approach to ethics focuses on the **good** to which human action is directed.
12. A philosopher whose approach is substantially deontological is Immanuel Kant. A deontological approach to ethics focuses on **duty**.
13. A contemporary philosopher whose approach is **virtue based** is Alasdair MacIntyre. Virtue based ethics focuses on the development of **good habits** as opposed to bad habits or vices.
14. Obviously there are many philosophical approaches to ethics, some approaches combining a variety of perspectives. For instance, in developed ethics such as that of the late Pope John Paul II, there are teleological, deontological, virtue based and even utilitarian aspects.
15. However, it is interesting that both Senator Patterson and Senator Stott Despoja so clearly exemplify a utilitarian approach.
16. Utilitarianism, commonly involves the **weighing** of the perceived advantages and disadvantages of proposed alternative courses of action.
17. Utilitarianism has been criticised on various grounds:
 - As a method of reasoning it can justify **any** action (e.g. mass killing of civilians, aggressive warfare, slavery, torture, etc.).
 - It tends to arbitrarily give weight to perceived advantages while disregarding or discounting disadvantages. Thus utilitarianism focuses on one aspect of reality while being blind to other aspects.

- It disregards the **intention** of the actor, and the immanent nature of the human act - which causes the actor to develop a particular character by reason of her or his actions. By stealing repeatedly, one becomes a thief.
 - It disregards the **act** itself – for instance, killing of a human being.
 - Whilst having a veneer of being scientific, it tends to be highly subjective.
 - It assumes an unrealistic ability to predict the results of actions.
 - It provides no adequate criteria for commensuration of advantages and disadvantages of proposed action.
 - It rejects the notion of exceptionless norms of conduct. The exceptionless norm ensures that conduct does not fall below a certain level.
18. Nevertheless, utilitarianism, as a method of ethical reasoning, does highlight the importance of effects. Utilitarianism, while flawed, like all philosophical errors, it possesses some truth.
19. The reason both Senator Patterson and Senator Stott Despoja can be said to have adopted a utilitarian approach in justifying their proposed legislation is that they focus on perceived advantages, disregarding disadvantages, seemingly disregarding any exceptionless norms of human conduct (for instance, an arguable norm against killing of human life).
20. Amongst the perceived advantages of the proposed legislation are scientific advance, possible cures of disease, retention of scientists (who might otherwise depart for overseas) in Australia, commercial advantage.
21. In adopting a utilitarian method of reasoning to justify the proposed legislation, both Senator Patterson and Senator Stott Despoja inherit the utilitarian perspective of the Lockhart Committee.
22. At the end of the day, the reason utilitarianism is flawed is that it provides **reasons** for a proposed course of action, not a **justification**.
23. For instance, those who argue for torture (subtle or not so subtle) of alleged Islamic terrorists typically adopt utilitarian reasoning. They give **reasons** for torture of possibly innocent persons, not a justification.

PERSONALIST APPROACH

24. A different approach is that of personalism.
25. The personalist approach can be outlined as follows:
 - 25.1 There is a difference between **things** and **persons**.
 - 25.2 A **thing** exists as an object which can be seen, touched, and heard etc.
 - 25.3 A **person** is an object, an objective 'something', or 'somebody'.
 - 25.4 A person is also a **subject**.
 - 25.5 The person is a rational being, something which distinguishes him or her from things.
 - 25.6 Moreover, as a subject, a person has a specific inner-self, an inner life. The inner life means a spiritual life which revolves around truth and goodness.
 - 25.7 The nature of the human person involves the power of self determination, based on reflection, and manifested in acting from choice. This choice is called free will.
 - 25.8 There is something incommunicable, inalienable about a person, a person's inner self, the power of self determination, free-will. No one else can want for me.
 - 25.9 To **use** means to employ some object or action as a means to an end. The means is subordinated to the end, and at the same time subordinated to some extent to the agent.
 - 25.10 Even an unborn child cannot be denied personality in its most objective sense, although it is true that will only gradually acquire the full exercise of human traits. An unborn child (or embryo) is a human being with potential to develop, not a potential human being.
 - 25.11 A person must not be merely the means to an end for another person. This is precluded by the nature of personhood, by what any person is. For a person is a thinking subject, capable of making decisions. Anyone who treats a person as the means to an end does violence to the very essence of what constitutes the other's person.
 - 25.12 The German philosopher, Immanuel Kant, recognised this in formulating the following moral principle:

Act always in such a way that the other person is the end and not merely the instrument of your action.

Another way of formulating this principle is:

Whenever a person is the object of your activity, remember that you may not treat that person as only the means to an end, as an instrument, but must allow for the fact that he or she, too, has, or at least should have, distinct personal ends.

- 25.13 The opposite of using is **love**, whereby another recognises and respects the good of a person.
 - 25.14 The personalistic norm states that the person is the kind of good which does not admit of use and cannot be treated as an object of use and as such the means to an end.
 - 25.15 In its positive form, the personalistic norm regards the person as a good to which the only proper and adequate attitude is love.
26. Thus personalism and utilitarianism are two quite distinct approaches to ethics.
27. The above approach draws on the thought of a variety of philosophers – Aristotle, Plato, Aquinas, Kant, Husserl, Wojtyla etc, and, of course, is compatible with a Christian religious perspective.
28. Nevertheless, as a philosophical approach to ethical reasoning, it must stand or fall in the light of human reason – just as utilitarianism must also stand or fall.

NATURE OF DISPUTE

- 29. This submission, in the time and space available, cannot resolve the argument between the proponents of utilitarianism (here the Lockhart Committee, Senator Patterson, and Senator Stott Despoja) on the one hand, and those who oppose the proposed legislation adopting a personalist perspective.
- 30. The best one can do is to illustrate the **nature** of the dispute as a means of assisting different protagonists to understand the importance of philosophical assumptions which underlie the different approaches.

31. Ultimately, it is suggested that, in considering the proposed legislation the Committee will have to decide whether a human embryo is a **thing** to be **used** (for the sake of scientific advance, possible cure of disease, retention of scientists in Australia, commercial advantage) or is a **person** to be **cherished**. The Committee will have to decide whether there are exceptionless norms which govern our conduct in the course of embryonic research.

SACREDNESS OF HUMAN LIFE

32. The human embryo, whether coming to being by sexual act between a man and a woman, or by actions of a scientist in a laboratory, is radically different from any other thing.
33. In appropriate conditions (that is in the womb of its mother) the human embryo will continue a life long process of development – from birth to infancy, to adolescence to adulthood – which will only cease at death.
34. Traditionally, western civilisation has considered human life to be sacred. What the proponents of the proposed legislation, in effect, urge is a utilitarian approach inconsistent with that traditional respect for the sacredness of human life. Thus the proposed legislation will not only achieve quite certain specific effects but will, if passed, work an important cultural change as to the sacredness of human life.
35. The above suggests a far more considered scrutiny of the legislation than is presently proposed.
36. A referenced version of this submission will be available on request.

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Date: 4 October 2006