

**A SUBMISSION TO THE SENATE COMMUNITY AFFAIRS COMMITTEE INQUIRY
INTO RU486**

PHILOSOPHICAL CONSIDERATIONS ON THE PROPOSED BILL

I write to express my serious concern at the proposals to alter the status of RU486 (mifepristone) with regard to how access to the drug is regulated. My objections can be summed up as follows:

- 1. Not only medical criteria are relevant in assessing RU486, but also ethical, social and human rights considerations, which fall outside the specific competence of the TGA. To decide how RU486 is to be dealt with, we first need to be sure we have judged the human rights issue correctly.**
- 2. Rational reflection on the agreed scientific data clearly establishes the full personhood of the human embryo and foetus, and its corresponding rights, which the law therefore has the duty to protect.**
- 3. Once the full and equal personhood and rights of the embryo and foetus are realized, the law should never allow anyone ‘freedom of choice’ to violate these rights. Nor should poorly-informed ‘majority opinion’ release the law from its duty to protect minorities.**
- 4. In any case, not only the rights of the unborn child, but also the true best interests of its mother, are always harmed by facilitating abortion, since in no instance can someone be enhanced as a person by making the choice to kill another innocent person.**
- 5. Even though the legal status of abortion lies in the power of the States, the Commonwealth acting within its own sphere need not, and should not, attempt to mirror State decisions which authorize the violation of human rights; rather, it should, as far as it can, attempt to limit the violation, the damage to mothers and to their unborn children.**
- 6. Since abortion is a violation of fundamental human rights, it makes no sense if our central concern is to make it as ‘safe’ as possible to carry out this violation. RU486 is said by its proponents to facilitate access to abortion: how can facilitating abortion fail to increase it? Our aim should be to prevent the authorization of RU486.**
- 7. Giving the TGA the authority to permit RU486 would facilitate the violation of human rights rather than limit it; its competence is restricted to assessing medicines on medical grounds, leaving out the crucial human rights considerations raised by RU486.**

I discuss each of these points in more detail below. I draw your attention in particular to the discussion of Point 2, since it is logically pivotal to the other six points.

1. Not only medical criteria are relevant in assessing RU486, but also ethical, social and human rights considerations, which fall outside the specific competence of the TGA. To decide how RU486 is to be dealt with, we first need to be sure we have judged the human rights issue correctly.

It is generally agreed that the proposed changes to the status of RU486 would most likely lead to facilitating access to it for use as an abortifacient. However, since abortion, surgical or chemical, is an issue of serious ethical and social concern, the question of whether abortifacient drugs should be made available cannot be judged simply on the grounds of their medical effectiveness and safety in procuring abortion. Because the competence of the TGA is fundamentally medical, its grounds for approving or restricting particular medicines will generally omit these broader ethical and social considerations.

In other words, to give responsibility for deciding whether to authorize RU486 to the TGA, is to prejudice that only medical concerns are involved, not concerns of ethics and indeed, human rights. The same goes for attributing decisive weight to the opinions of organizations such as the AMA, whose competence is fundamentally medical.

However, on rational / philosophical grounds, there are serious reasons for challenging this prejudgment that we are dealing only with medical issues. To properly assess whether RU486 should be available in Australia, and whether this should be judged by medical authorities and on medical grounds alone, cannot therefore be done without making a prior assessment concerning the ethics of abortion, and the ethics of legalizing abortion.

The fact that the question of legalized abortion has already been debated extensively over past decades does not remove responsibility from our present elected representatives for correctly judging this question. The work of various contemporary ethicists gives strong reason to hold that abortion involves a violation of the fundamental human rights of the unborn. If it can be shown that past decisions have involved serious violations of justice, we may not resign ourselves to allowing this situation to continue, let alone worsening the situation by making further decisions consistent with the previous mistaken ones.

2. Rational reflection on the agreed scientific data clearly establishes the full personhood of the human embryo and foetus, and its corresponding rights, which the law therefore has the duty to protect.

Science establishes that from the earliest stage, the embryo is a living individual (as shown by its distinct and unified organization, activity and growth – the basic data here are uncontroversially accepted), genetically human: a living individual human being. Further, the unified organic continuity of the embryo with its later stages (foetus, child, adult) strongly indicates that we are dealing with the same individual being through all these stages- a being which will eventually display its fundamentally personal nature in its conscious and rational behaviour.

This individual, being from the start fundamentally personal in nature, therefore possesses the full rights of a person at all points of its existence (even at those times when it is unable to put into action all the personal functions that are rooted in its nature and identity).

The underlying principle here is clear enough in the case of unconscious adult human persons- although temporarily unable to exercise consciousness and rationality, they retain the basic *potentiality* for these functions and so remain persons. Once we understand this principle, we can see that it is not the *actual present exercise* of consciousness and rationality that determines personal dignity and rights- this would rule out the unconscious as actual persons. Rather, the fact that an individual is of such a nature that it has the fundamental *potentiality* for exercising

consciousness and rationality (while remaining the same individual), establishes that, in essence, it is an *actual* individual person with corresponding rights.

This rules out human sperm or eggs as persons since when these unite together, they become a new individual, with a unified directive activity and growth different from anything possessed by either sperm or egg before their union. However, it does establish human embryos and fetuses to be persons, since (like unconscious adults), given the right conditions these same ongoing individuals will one day manifest the rational capacities that are (in principle) already inherent and awaiting development within their present endowments. (They are therefore rightly described not as ‘potential persons’ but as ‘persons having potential’.)

As a rule, unconscious adults will be able to exercise their rational capacities in a far shorter *time* than it will take embryos to reach this stage, but this is irrelevant to the principle: even if we knew it would be many years before a particular unconscious adult could again exercise the capacities of a person, we would nonetheless rightly treat that adult with the respect due to a person.

Similarly, the unconscious adult does not need to pass through as many different physical stages as does the embryo to reach actual consciousness and rationality, but again, the precise number of stages is logically irrelevant. Once it is realized that in each case it is one and the same ongoing individual being which passes through various physical changes of shape, size, etc., those changes are shown to be, in a sense, ‘surface’ changes which do not alter the continuity of the individual in its deepest nature, that nature which gives it the long-term fundamental capacity for personal functions.

Neither does the ‘dependent’ status of the embryo nullify its personal status. For many weeks it will be unable to survive outside the environment of its mother’s body, but in the same way, *every* human person is dependent for survival on favourable environmental conditions. Taken unprotected into the environment of outer space (to take an extreme example), each one of us would swiftly die. Neither does an adult cease to be a human person simply because his or her life becomes dependent on another in some extraordinary circumstance – imagine, for example, a fallen mountain climber hanging on to a rope held by another person. These examples show us that dependence on environment, or on another person, is not logically relevant to personhood. The ‘non-viability’ of the embryo outside the mother is no indication of non-personhood.

Even if one maintains that the evidence for the personal nature of the embryo falls short of demonstrative proof, to intentionally destroy what is *probably* an innocent human person is ethically equivalent at least to manslaughter (comparable to a hunter shooting at something he/she cannot tell is an animal or a person).

Thus the embryo and fetus must be treated as individual human persons like the rest of us, whose life may never be sacrificed for the benefit of another, no matter how difficult the situation. The sacrificing of an innocent human being to the interests of another individual or group violates basic human rights, as well as undermining true democracy and morality. The law must give the same protection to the rights of the unborn as to those of us already born.

3. Once the full and equal personhood and rights of the embryo and foetus are realized, the law should never allow anyone ‘freedom of choice’ to violate these rights. Nor should poorly-informed ‘majority opinion’ release the law from its duty to protect minorities.

Clearly, if the embryo and foetus are innocent human persons with equal human rights to adults, then the right of a woman to freedom of choice does not extend to killing an unborn child, any more than it extends to killing another adult who might involuntarily inhibit her development in various ways. Even in the tragic cases where the child is disabled or the product of rape or incest, these should not be grounds for capital punishment of the child, anymore than they would be if the child were already born. The argument of ‘freedom of choice’ therefore has no logical validity, at least unless it is first established that the independent argument claiming to show the full personhood of the unborn, is itself not cogent.¹

On the basis of what has been established, that the foetus deserves to be respected as a human person, is not merely the private belief of some individuals and religious groups: carefully-reasoned ethical reflection on the scientific data can lead to no other conclusion. The existence of the foetus as a person is the way we know things to be in the real world, not simply a private opinion. So the majority opinion in society that abortion should sometimes be permitted is not well-informed. Principles of equality and democracy show that minorities must be given legal protection, even if the majority is not in favour of according them equal rights; for the good of everyone, our laws need to reflect the real world, not less-informed opinions, especially in matters of basic human rights.

4. In any case, not only the rights of the unborn child, but also the true best interests of its mother, are always harmed by facilitating abortion, since in no instance can someone be enhanced as a person by making the choice to kill another innocent person.

Beyond this, once the personhood of the unborn child is realized, we can also recognize that the best interests of the mother herself are never served by facilitating abortion, chemical or surgical. Ethical reflection leads to the conclusion that we are never enhanced as persons by making the choice to destroy another innocent person, even if we have good motives, since we thereby make ourselves into violators of the dignity, preciousness and uniqueness of the life and existence of the individual human person we have killed.

Often there are situations of unwanted pregnancy for which there is no perfect solution, but any solution is certainly better for the mother than choosing to become the killer of her child, which is always a serious backwards step. This is not to stand in judgment on those who have made this choice, often under great pressure, with much pain, and unaware of the full meaning of their action. However, given the clear evidence we have for the personhood of the unborn, evidence available to all, it is not arrogant but rather, unavoidable, that we recognize such a choice to have been a mistaken one. (True, the law often rightly leaves people freedom to make their own mistakes, but the law rightly limits this freedom when (as in this case) their choices encroach on the fundamental rights of others.) As honest people concerned for the rights of all, we cannot close our eyes to the evidence, even at the risk of being labeled ‘judgmental’.

¹ Even if we consider the personhood of the unborn only probable, then in supporting the woman’s right to freedom over the foetus’ right to life, we are authorizing the woman to kill what is probably an actual person. It is not a matter of weighing the ‘certain’ rights of the mother against the ‘merely probable’ rights of the foetus, since the mother’s right to freedom in these circumstances is itself only ‘certain’ once it is already reasonably established that there is no other person involved.

Those supporting legal abortion because of a concern for women's well-being therefore need to consider carefully whether they might in fact be undermining women's true well-being, holistically considered. Our society should discourage and prevent, by all reasonable means, the choice to kill unborn persons, for the sake of both women and their children. Rather than providing, in RU486, yet another means for mothers to harm their children and themselves, we need to maximize availability of other solutions to unwanted pregnancy, and to help provide healing for those women who suffer psychological trauma from the abortions they have already had.

5. Even though the legal status of abortion lies in the power of the States, the Commonwealth acting within its own sphere need not, and should not, attempt to mirror State decisions which authorize the violation of human rights; rather, it should, as far as it can, attempt to limit the violation, the damage to mothers and to their unborn children.

The legal status of abortion basically lies, of course, in the power of the States, not the Commonwealth. However, this does not mean the Commonwealth is obliged, on those matters falling within its own competence, simply to rubber-stamp whatever the States have decided. If rational ethical analysis indicates that State laws do not deal adequately with abortion, then there is no virtue in the Commonwealth attempting at all costs to be consistent with this unjust state of affairs merely for consistency's sake.

It might be argued that since surgical abortion is legally available, to be consistent, we must also make chemical abortion available; or that since abortion is legal, consistently with this we must make it as accessible as possible. Against this we need to consider that truly ethical people do not attempt to act consistently with a standing injustice which is beyond their power to remedy entirely; rather, they attempt to limit that injustice to the extent they are able.

The Commonwealth should accordingly do whatever lies within its constitutional power to rectify the injustice that the unborn are deprived of the protection which State laws clearly should give them. Obviously it is beyond the competence of the Commonwealth to simply nullify State legitimization of abortion; however, the more limited action of restricting access to RU486 is quite within the constitutional and legal power of the Commonwealth. There would thus be a certain 'inconsistency' between State and Commonwealth approaches to abortion, in that State laws treat the unborn unjustly, whereas Commonwealth laws, at least in respect of RU486, treat them justly. This is obviously better, however, than a 'consistent' situation in which the unborn are treated unjustly across the board.

(As a parallel, if some State law unjustly discriminated against a certain racial group, there would be no ethical obligation or logical demand for the Commonwealth, within its own sphere of competence, to introduce its own racist legislation so as to complement the unjust State law.)

6. Since abortion is a violation of fundamental human rights, it makes no sense if our central concern is to make it as 'safe' as possible to carry out this violation. RU486 is said by its proponents to facilitate access to abortion: how can facilitating abortion fail to increase it? Our aim should be to prevent the authorization of RU486.

No one desires any woman to be physically harmed in the process of an abortion. If, however, every abortion kills a person of equal rights to the mother, there is something very skewed in our thinking if our primary focus is to make this killing 'safe' to perform.

Already 80,000 unborn children are killed by abortion in Australia each year. According to its proponents, RU486 will facilitate access to abortion. Can we expect to facilitate something and not cause an increase in it?

It makes no sense to try to make the killing of any class of persons 'as safe and effective as possible': killing people should be illegal without exception. To help someone kill another person 'safely and effectively' is to share responsibility for the killing.

7. Giving the TGA the authority to permit RU486 would facilitate the violation of human rights rather than limit it; its competence is restricted to assessing medicines on medical grounds, leaving out the crucial human rights considerations raised by RU486.

It is clear we are not dealing merely with a medical issue. The TGA is not the competent authority to deal with this matter.

Disrespect for unborn human life is unfortunately already widespread in Australia; by facilitating abortion, making RU486 available would greatly increase this tragedy. The proposed change to its status would amount to parliamentary authorization of killing of the innocent.

For the sake of mothers and their unborn children, please oppose the measures to make RU486 available.

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