To the Rt Hon. Fiona Bruce MP
Chair of the All-Party Parliamentary Pro-Life Group
Regarding the Inquiry into Fetal Development and Activity

23 March 2018

Dear Mrs Bruce,

Thank you for the opportunity to respond to the Inquiry into Fetal Development and Activity.

We have decided to take up the Committee of Inquiry's suggested alternative of responding in the form of a letter to the Committee, rather than by engaging directly with the questions set out in the consultation. This is, in the first place, because, as a research centre for bioethics, our expertise is not in the biomedical or clinical determination of markers of foetal development. It is rather in the ethical significance or implications of such markers. It is also the case that we are concerned that a focus on the dating of particular developmental milestones (for example, the emergence of foetal sentience or the threshold of viability) may sometimes obscure rather than illuminate the key ethical issues at stake. It is these ethical issues that we wish to discuss briefly in this letter.

The first point to make, in relation to these signposts on the developmental journey, is that they are of course moments in the life of a human individual. To live is to change, and all human beings are engaged in a process of constant change that begins when we first come into being as an embryo. There is no serious scientific or philosophical disagreement that the embryonic stage of development is the first stage of life of a human being (and indeed of any mammal). As to when the embryonic human begins, while English law offers little protection to human beings before birth, it provides a helpfully inclusive definition of a human embryo: "references to an embryo include an egg that is in the process of fertilisation or is undergoing any other process capable of resulting in an embryo".[1]

The beginning of the process of fertilisation provides the starting point from which development, at least in the earliest stages of life, is then measured in days and weeks. Scientific, legal and regulatory references to 14 days or 8 weeks or 24 weeks imply that – through various changes in shape and growth and pattern of activity – there is a human individual whose life is being measured from conception to that point (or, in the case of "gestational age", from the start of the mother's last menstrual period to that point).

This is the fundamental reality and the key ethical question is whether the human being in the womb is protected and nurtured or whether his or her life is deliberately ended by abortion or by foeticide. This question is literally a matter of life and death: whether the death of the child occurs at 6 weeks or 12 weeks or 24 weeks, it is always the loss of a unique and irreplaceable human individual. (Note that death and not "mere" expulsion from the woman will standardly be intended

[1] http://www.legislation.gov.uk/ukpga/2008/22/pdfs/ukpga_20080022_en.pdf

by the abortion doctor: “When undertaking a termination of pregnancy, the intention is that the fetus should not survive and that the process of abortion should achieve this.” [2] We are focusing here on the central case of such intentional killings, rather than on cases where the child dies as an unintended side-effect of some procedure, whether or not that procedure is morally indicated.)

Over time, the mother, father and others close to the unborn child may form a stronger bond with the child and the grief of loss may be greater if there is a miscarriage. There may also be other reasons why pregnancy loss or deliberate abortion later in gestation has added risks or harms. Nevertheless, these further considerations are secondary in comparison to the fundamental issue of life or death for the unborn child.

Having said this, attention to the markers of development can also remind us of the humanity of the unborn child. For example, while a human heart may beat 3 billion times during our lifetime, our first heartbeat is thought to occur when we are around 21 days old. Recently there has been speculation that the first heartbeat might be even earlier, [3] but precisely when our heart starts to beat is not so important. What is significant is that our heart has been beating throughout our life since we were born and was beating in the womb even when we were just a few weeks old. This reminds us of the continuity of our life. Our heartbeat is a sign of life, and abortion and foeticide stop a beating heart, end a human life, a life like the life you and I had when we were that age.

Other stages of development – outward movement, reactivity, signs of distress – are also reminders of the humanity of a child. We were alive before we could move our limbs but the movement of our limbs is a sign and a reminder of the reality of that life. When we see a child curled up in the womb, or appearing to walk, or sucking his or her thumb, or (even) seeming to react to music, we see ourselves. There are elements of our nature that are deep in us and go back before we can remember, even back to the womb. Thus, attention to the activities and features of the developing infant can be helpful in recognising our common humanity from the beginning of our existence.

On the other hand, a danger in giving too much significance to the first expression of some activity, like the baby’s first reaction to noxious stimuli, is that this milestone may be used to obscure or devalue the life the child had before that point. There was once a superstitious belief that the moment the mother felt the baby kick was the moment when the soul entered the body. This was reinforced by a premodern science which imagined the body as clay shaped from the outside rather than as already constituting a living being that develops according to its own inherent nature. There is no longer any scientific, philosophical or theological basis for taking such a view (though it is also true that those in the past who took such a view of “delayed ensoulment” were often still strongly opposed to abortion).[4] As we now know beyond any doubt, there is no stage of gestation at which abortion would not involve taking the life of an innocent human being; nor is there any reason to treat a younger unborn child as expendable, any more than an older unborn child.

There is some practical significance in the question of when a child in the womb can feel pain as this is relevant to whether or how anaesthesia should be given if surgery is attempted in utero (for example, to treat a condition like spina bifida). However, if a child in the womb could not yet feel pain he or she would still deserve protection, just as an adult under general anaesthetic or someone born without the ability to experience pain deserves protection. Nor can it be argued that the issue is relevant for the ethics of abortion as though late abortions should occur with anaesthetic. The task of an anaesthetist is to care for the wellbeing and safety of the patient – but if there are two patients, mother and baby, how can the life of one be ended unjustly by abortion? Giving guidance

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[2] https://www.rcog.org.uk/globalassets/documents/guidelines/terminationpregnancyreport18may2010.pdf
[3] http://www.ox.ac.uk/news/2016-10-11-first-our-three-billion-heartbeats-sooner-we-thought
[4] https://www.baylor.edu/ifl/christianreflection/CloningarticleTheologiansBrief.pdf

on how to conduct abortions, even with the aim of preventing foetal pain, would be telling doctors how to conduct or prepare for a wrongful attack on the unborn child. All deliberate preparations for abortion are themselves wrong, and we do not believe such preparations should ever be recommended, though we do not exclude cases where doctors are punished for particular egregious acts (analogously with rape laws, rapists can be punished for non-consensual sex with, say, very young girls without any suggestion that the law is positively recommending consensual sex with very young girls). "Selective bans" on particular wrongs and warnings when these wrongs will be punished are not the same as giving "how to" instructions on performing or preparing for wrongdoing.[5]

In English law the stage of viability is sometimes singled out as a moment of ethical significance. This is in part for reasons of historical accident as, to close a gap in the law, the Infant Life Preservation Act 1929 prohibited as "child destruction" the killing of an unborn child when he or she would be capable of being born alive. Viability also perhaps has emotional resonance because of the cognitive dissonance experienced by those striving to save very premature babies at a stage when babies of the same age are being aborted.

Without prejudice to whether this stage of development is ethically significant, it is evident that there is a contradiction between the intention of the law and the guidance of the Royal College of Obstetricians and Gynaecologists in this area. The RCOG recommend foeticide by lethal injection prior to delivery in cases of abortion after 21^{+6} weeks. This is to avoid the possibility that the child might be born alive. This guidance effectively recommends child destruction for infants who might be born alive *because* they might be born alive. The fault of the law here is to focus on time limits stipulating when a child is deemed viable rather than prohibiting the practice of child destruction – that is, the practice of foeticide when this is done precisely to avoid the "danger" that the child might live.

It has been pointed out that the legal provision since 1990 for abortion up to birth on the basis of an unborn child's disability effectively equates disability (including such conditions as Down's syndrome and spina bifida) with being non-viable. This change in the law added a level of direct discrimination, and hence a further injustice, to the Abortion Act 1967. It has also allowed the practice of child destruction where there is no doubt whatsoever that the child would be viable and precisely because the child would otherwise be born alive but be born with a disability.

Foeticide, the destruction of a child before birth, whether a child who is close to viability or a child who is clearly viable but who has some disability, is an act of direct and deliberate infanticide in utero which can have no ethical justification. However, the issue of child destruction is not itself a question of the timing of viability but is a matter of intention and this may be evident in the method used. Poison is injected into the child's heart to kill the child before he or she is born . This barbaric practice could be outlawed whatever the current clinical threshold of viability.

In relation to abortion of the child before viability with the intention that he or she should not survive, the focus on the timing of different milestones of development does not affect the central ethical issue in abortion, which is the unjust ending of the life of a child. Indeed, while developmental milestones can help remind people of the humanity of the child, we are concerned that, especially within a culture where abortion is widely practised, such a focus could and would be used to obscure or deny the humanity of the child before that stage.

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[5] For an exploration of these issues, see Dr Helen Watt's 2017 presentation at a conference in Maynooth, Ireland on Abortion and Disability: https://www.catholicbishops.ie/2017/10/20/papers-delivered-at-the-conference-abortion-disability-and-the-law/

Making earlier abortion an artificial target in healthcare, as has occurred within the Department of Health and the professional bodies in recent years, has very real dangers for children, for mothers and for professionals. On the basis of marginal clinical differences in risk and procedure it creates strong external pressure to speed up the process. This potentially deprives the mother of valuable time for reflection. It promotes impulsive reactions to situations that may be unexpected and challenging and that may need time and space to be assimilated.

An exaggeration of the clinical and ethical significance of each added day or week not only adds to pressure on women to decide quickly but also threatens to strip healthcare workers of the right of conscientious objection on the basis that any delay, however short, necessarily constitutes harm.

Over the past fifty years there have been repeated debates within Parliament that have focused on the gestational time limits for abortion. In this way people have sought to express their more fundamental ethical opposition to the practice of abortion itself. However, while the debates have at least allowed the issue of abortion to be raised in Parliament, we are sceptical that a simple reduction in the time limit will necessarily lead to a reduction in the number of children lost by abortion. It may lead rather to a policy of promoting abortion at an earlier stage of development, which may ultimately mean that more abortions are carried out.

For such reasons we would urge that this inquiry, whatever its findings, avoid the danger of effectively encouraging social acceptance of “early” abortion, obscuring the fundamental ethical principle of respect for every human life however young or old, while adding to the pressures on women and on healthcare professionals to act unjustly with ever greater haste.

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