

The Greatest Heights of Parliament? Conscience Votes and the Quality of Parliamentary Debate

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And last of all, men, vehemently in love with their own new opinions, (though never so absurd,) and obstinately bent to maintain them, gave those their opinions also that revered name of Conscience, as if they would have it seem unlawful, to change or speak against them; and so pretend to know they are true, when they know at most but that they think so.

Hobbes, *Leviathan*, vii [31]

The major parties in Australia rarely permit their parliamentary representatives to vote according to conscience, that is, outside the sanction of party discipline. As Deirdre McKeown and Rob Lundie have documented in their comprehensive Research Brief, conscience votes, or free votes more generally, are infrequent in Australian parliaments. When the possibility of a sanctioned conscience vote does arise in Australian parliaments, there is often opposition by the leaders of the major parties. However, it has been generally if not universally accepted that parliamentary votes on abortion (and associated reproductive matters) should be conducted outside of party policy and discipline.

The Commonwealth parliamentary deliberation on ministerial power in regard to RU486 which took place in late 2005 and early 2006 is the specific example of sanctioned conscience voting used in this paper. On 8 December 2005, the Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) Bill¹ was moved in the Senate as a private member's bill by Senator Nash (Nat, NSW), and on behalf of Senators Troeth (Lib, Vic), Allison (AD, Vic)

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¹ *Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Act 2006 (No. 5, 2006)*, available at http://www.austlii.edu.au/au/legis/cth/num_act/tgaomrfaor486a2006822/.

and Moore (ALP, Qld).² The bill was designed to remove responsibility for approval of abortifacient drugs including RU486 from the Minister for Health and Ageing, and place that responsibility in the Therapeutic Goods Administration (abortifacient drugs had been made subject to the Minister's decision by a 1996 amendment to the *Therapeutic Goods Act 1989*).

The parliamentary record of the bill's progress discloses that it was not merely the powers of the Minister that were put in question, but also access to abortion more broadly. Those members of parliament who supported the bill tended to understand it as a technical matter of decision-making, while those who opposed the bill tended to understand the bill as about access to abortion. As Senator Webber noted, 'Whilst Senator Patterson and those of us that support this legislation say, quite rightly, that this debate should not be about abortion, because it is about the role of the Therapeutic Goods Administration, many have tried to make this debate about abortion.'³ A free vote on the bill had been sought and granted first in the Labor Party and then by Prime Minister John Howard for the Coalition parties on the suggestion of Senator Kay Patterson (Lib, Vic).⁴

A striking feature of commentary and analysis of debate on the RU486 bill was its focus on how the practice of a free vote affected the style of parliamentary conduct and deliberation. In contrast, scholarly discussions of the practices of conscience and free voting have for the most part examined the casting of the vote itself and its consequences for party discipline and cohesion.⁵ Such scholarly discussions have not been much concerned with the implications of the fact that when parliamentary *voting* is unwhipped, *debate* is also, at least comparatively, unconstrained by party discipline.

In the case of the RU486 proceedings many media commentators as well as the parliamentary participants themselves claimed that deliberations in parliament bore a different and more desirable tone and style. For example, Anthony Marinac asked in an opinion piece, 'Is it possible the RU486 debate gave us a momentary, teasing glimpse of the democracy we might have had, and might still have if we had the courage to grasp it?' Marinac concluded, 'True parliamentary democracy is there for the making and taking. Those who commented in their RU486 speeches on their pride in such a sincere, honest debate can have as much more as they dare to take'

² *Commonwealth Parliamentary Debates [CPD]* (Senate), 8 December 2005, 9. The first reading of the bill was opposed by a group of Senators, who with the exception of Senator Fielding withdrew their opposition to allow the bill to go to committee. See also *CPD* (Senate), 8 December 2005, 14–15. See Carol Nader, 'United across the trenches', *Age*, 9 February 2006, 17, for profiles of the bill's sponsors.

³ *CPD* (Senate), 8 February 2006, 140.

⁴ *CPD* (Senate), 8 December 2005, 133–4: 'I start by thanking the Prime Minister for responding to the suggestion I made, when I was the Minister Assisting the Prime Minister for Women's Issues, that we be allowed to have a conscience vote on this bill. That was important and it was one of my contributions in this debate.' However, the Prime Minister tended to suggest he acted on his own initiative in permitting a conscience vote.

⁵ A good example is the careful analysis in Overby et al. (1998), 381–92.

(Marinac, 2006). An even more hyperbolic assessment was that of Kerry-Anne Walsh, who wrote in the *Sun Herald*,

Imagine a world in which MPs treat each other with respect and dignity, dissect and analyse life-altering moral issues and adopt positions based on their life experiences, consciences, the merits of the arguments and their constituents' wishes...

Hang on — that was Federal Parliament last week.

The rare glimpse of independent thought was afforded by a conscience vote on legislation to hand the power of veto over abortion pill RU486 to medical experts, instead of vesting it in the Health Minister. There was pathos, passion, intelligence and humanity showcased in the debate, from the intensely personal airing of private experiences to intellectual dissertations on ethical concerns. Despite the gravity of the question before them, our elected representatives had the jubilant air of men and women relieved of the boredom of party political life (Walsh, 2006).

There were very few dissenting voices in the media to this assessment.⁶

The conclusion of commentators like Marinac and Walsh echoed the sentiments voiced in many of the speeches on the bill, from the front and back benches alike, which evinced a pride in the (alleged) 'maturity' of the debate. Prime Minister Howard led this parliamentary chorus, noting in his second reading speech,

I am not somebody who shirks from free votes. They are good to have from time to time on these issues. I think parliament rises to its greatest heights when we have debates of this kind. A free vote encourages people to examine their beliefs, to reflect upon their experiences, values and attitudes, and to deal sensitively with a difficult issue.⁷

In sum, the political and media commentary at the time of the RU486 parliamentary debate suggested the desirability of conscience voting in the interest of more reflective parliamentary life and deliberation. Another theme in commentary was that there is in fact an emerging if still tentative political and popular will to allow greater use of the practice of conscience voting, and that this progressive movement is stifled only by neanderthal party discipline and its upholders.

However conscience voting on the issue of abortion has long been opposed by the professed progressives in this area, in particular by women and women's groups arguing for reform of abortion law. But this progressive opposition to a conscience vote on abortion seems to have evaporated in the face of the changing gender composition of Australian parliaments. The RU486 debate revealed the tentative emergence of some new alignments in parliamentary life, specifically what seems

⁶ See for example, van Onselen and Errington (2006), 11.

⁷ *CPD* (House), 16 February 2006, 33.

to be an alignment on questions understood to be of particular interest to women.⁸ In the light of these new alignments, a new consensus took shape around the desirability of conscience voting on abortion and associated matters. This consensus was formed both in media and parliamentary circles.

My aim in the remainder of this paper is simply to voice a degree of scepticism about this *laudatio* of the practice of conscience voting. Until quite recently evaluations of the desirability of conscience voting on the issue of abortion have been concerned with the desired legislative outcome rather than with the possibility of more reflective parliamentary deliberation. Moreover there is little evidence to support the claim that the quality of parliamentary debate on the RU486 was indeed higher or more civil than on other bills to which party discipline applied. The disquiet voiced by Hobbes in the epigraph as to the use and meaning of the term 'conscience' in politics underlies my discussion.

Conscience Voting: Principle or Tactic?

Both the Labor and Liberal-National parties in Australia have permitted a conscience vote on abortion issues in parliament since at least the 1970s. Indeed both major parties have tried to avoid having any explicit party policy or platform on the question. The Liberal and National Parties, as also the Australian Democrats and the Greens, do not make a *specific* exception for abortion as a conscience issue. In practice however, the Liberal and National Parties generally concede that special status to abortion. For example in an interview in 1998 in which he was asked his position on late-term abortions, Prime Minister John Howard replied, 'These things are always regarded as conscience issues in the Liberal Party ... I know it's a very difficult social issue and I know the pressures that are placed on many women and men in relation to this and I don't seek to ram my own personal views of conscience down the throats of others.'⁹ In the context of calls made in 2004 for a national debate on abortion, Mr Howard made similar statements about the importance of conscience voting on such issues.¹⁰

The Australian Labor Party has allowed a conscience vote to its members on questions of abortion and the unborn since the early 1970s. However, the decision of the ALP national conference in 1973 that abortion should be a conscience issue (Frykberg, 1977) was contested by women in the ALP at subsequent state and

⁸ I do not want to enter into debates about questions of what are 'women's issues'. I mean this only in the sense noted by the Prime Minister himself: 'Every man who enters this debate should be conscious of the reality that abortion is something that has for women, and particularly those who have experienced it, a special impact and a special character. No man who enters a debate of this kind should forget that': *CPD* (House), 16 February 2006, 33.

⁹ John Howard, transcript of radio interview with Neil Mitchell, Radio 3AW, Melbourne, 1 May 1998.

¹⁰ John Howard, transcript of doorstep interview, Adelaide, 9 July 2004, and John Howard, transcript of doorstep interview, Canberra, 10 November 2004.

national conferences. For example in 1976 the NSW Labor Women's Conference passed a resolution calling for the abolition of all laws against abortion (and prostitution), with the resolution adding, 'No man is being asked to violate his conscience, but merely to cease oppressing women'.¹¹ It remained the position of a majority of ALP women throughout the 1970s and 1980s that abortion should be the subject of party policy and of party discipline like any other issue. Many Labor women saw the conscience vote as a major obstacle to abortion law reform, arguing that the consciences of parliamentarians were too often formed in and by religious contexts.

By the time of the RU486 debate, this opposition of pro-choice women to conscience voting had become muted to such an extent that I have found no mention of it in the parliamentary record. Conscience voting is now taken to be a practice that serves pro-choice positions, and this seems to rest on the changing composition of parliaments with the greater representation of women who, across party lines, are overwhelmingly in favour of easier access to abortion and who are broadly pro-choice in regard to related issues.¹² Enthusiasm for conscience voting by pro-choice women is a very recent development.

In contrast, there was a significant number of parliamentarians who voted against the RU486 bill who voiced some degree of diffidence as to conscience voting on the issue. A good example was the speech of Senator Santoro, who argued in opposition to the bill,

... I cannot help but feel that we are being asked to accept that only one side of the argument represents good conscience. I say this because it is implicit in the request for a conscience vote that we are asked to form a position based on our private views and legislate accordingly. If we were asked simply to reflect on the conscience of the nation, the evidence would be very clear. It is clear in the work done by the Sexton Marketing Group for the Southern Cross Bioethics Institute, which showed that Australians want a reduction in the rate of abortion without a ban. And it is clear in the research carried out by Market Facts and released by the Australian Federation of Right to Life Associations just last weekend, which found that a slight majority of Australians oppose the decision to terminate a pregnancy for social or financial reasons. Those data certainly inform my conscience, but those propagating RU486 tell us that such democratic views are immaterial. We are told only one side reflects good conscience or good faith because, we are assured, there is urgency in this issue. That urgency is presumably to facilitate more abortions, which is against the valued and measured view of the nation.¹³

Senator Santoro's speech seems to argue that senators' votes should reflect not their own consciences, but should reflect the view or perhaps conscience of the *demos*.

¹¹ 'Call for abolition of some sex laws', *Sydney Morning Herald*, 29 March 1976, 2.

¹² See paper's author, article.

¹³ *CPD* (Senate), 8 February 2006, 122.

The debate on the relationship between conscience voting and democratic deliberation is a very old one, involving important principles about representation. One of the core texts in this debate is of course Edmund Burke's meditation on the responsibilities of the member of parliament to the electors in his *Speech to the Electors of Bristol* (1774).¹⁴ In the RU486 proceedings, however, there was almost no reflection on the difficult questions grappled with in this old debate. I am not saying this in order to criticise Australian parliamentarians for not being philosophers, but rather to emphasise that *either* their praise *or* their criticism of conscience voting did not in general draw on any principled understanding of the practice and of the complexity of its implications.

Conscience Voting and Parliamentary Deliberation

As I noted above, it was suggested in the course of the RU486 debate that the sanctioned conscience vote shaped not only the vote on the bill, but also the way in which the debate was conducted. In some fairly straightforward aspects, this was certainly the case. Because conscience voting is unwhipped, for example, the order and length of speeches is much less controlled by party imperatives and can be subject to more cross-party negotiation. An example of this is the negotiations in the Senate at the Committee stage.¹⁵

Again, the outcome of a conscience vote does not directly affect confidence in the government. The number of speakers on conscience votes can potentially be much larger than in party-disciplined debate. Because speeches are also unwhipped there is greater latitude, at least in principle, for debate that is less constrained (if not unlimited) in subject and in time. Such considerations seem to underlie the claims made about the higher quality or 'maturity' of parliamentary debate on the RU486 bill.

I am not quite sure what comparative measure could be used to gauge the difference in *quality* of debate of unwhipped deliberations. However, as I noted above, the claim that the RU486 debate was of a different quality was made by speakers on the bill, from the Prime Minister on down, as well as by other political and media commentators. Senator Nash introduced the bill as inaugurating a new parliamentary era:

This is not about party policies. This is about four senators in this place as individuals, with enormous support, who believe, regardless of belonging to different parties, that passing this bill is the right thing to do. I am advised that this is the first time in the history of this place that four members of different parties have co-sponsored a private senator's bill. I think it brings great strength to the bill that, regardless of our individual philosophies and ideologies, we are united in our belief that passing this bill will be of benefit to people in this country.¹⁶

¹⁴ See the discussion of this work in the Australian context in Sawyer, 1998.

¹⁵ *CPD* (Senate), 9 February 2006, 109–10.

¹⁶ *CPD* (Senate), 8 February 2006, 89.

Certainly there was a high level of interest in the bill. The Community Affairs Legislation Committee received 4788 contributions, including 2,496 submissions, and held public hearings on 15 December, 3 February and 6 February under the chairmanship of Senator Gary Humphries. The report of the Committee was presented by Senator Humphries on 8 February 2006.¹⁷ The records of the Committee hearings display scant evidence of cross-party harmony, and indeed were marked by often heated exchanges. Some of the women and groups involved communicated their disquiet about the tone of the hearings in letters to the Committee. For example, a letter from the Public Health Association to the Committee concluded, 'We also take this opportunity to register our strong objections to the tone and conduct of some Committee members during the inquiry. We believe the questions outside the committee's terms of reference put to us by several of the Committee's members opposed to the Bill should have been disallowed.'¹⁸ A letter from Women's Health NSW, the National Union of Students and Reproductive Choice Australia noted, 'We write to register our objections to the tone and conduct of some Committee members during the inquiry. At times, the questioning was inappropriate, unprofessional and hostile as well as clearly outside the Inquiry's terms of reference. We also write to address a number of factually incorrect claims made in the Committee's report.'¹⁹

Second reading speeches also were not free of rancour. Moreover, as noted above, many of the speakers questioned the weight that should be given to the individual conscience of parliamentarians in such issues in comparison to, say, the representation of community views. Very striking also are the different understandings of 'conscience' itself, with the word often being prefaced by 'clear', 'good' or 'informed' for example. Many of the speeches were as much concerned with extolling the virtues of a conscience-driven vote for parliamentary deliberations as with the merits of the bill itself.

Conclusion: Future Directions

Further work is clearly needed to explore the comparative quality of debate in a conscience vote as against that constrained by party discipline. The considerations raised by speakers in the RU486 debate could usefully be explored further with examples from other parliamentary contexts where conscience voting is more frequent. Another avenue for work on the RU486 debate, as well as debates around the other recent conscience votes on euthanasia and stem-cell research, is further exploration of the different understandings of 'conscience' invoked by different speakers. ▲

¹⁷ CPD (Senate), 8 February 2006, 20.

¹⁸ Public Health Association, letter to Senate Community Affairs Committee, 28 February 2005 [sic: should read 2006].

¹⁹ Women's Health NSW, the National Union of Students, and Reproductive Choice Australia, letter to Senate Community Affairs Committee, 21 February 2005 [sic: should read 2006].

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