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Brief to the Standing Committee on Justice and Human Rights Regarding Bill C-484

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Dear Honourable Members of the Standing Committee on Justice and Human Rights

The Association for Reformed Political Action (ARPA) Canada is very grateful for your service to this country. We recognize the difficulty of having to make legislation on matters that are extremely important but also controversial. Bill C-484, the *Unborn Victims of Crime Act*, raises philosophical and metaphysical questions that go to the heart of the purpose of law and the protection of life.

ARPA Canada is a federally registered non-profit organization devoted to promoting political awareness and action among the Reformed churches in Canada. Some of the denominations that we reach out to include the Canadian Reformed, Free Reformed, United Reformed, Heritage Reformed, and Presbyterian Reformed churches, among others. A primary tenet of these churches is to honour God, the creator of life, by upholding the authority of the Bible and using it as a guide for all parts of life, including the political realm.

Recognizing the intrinsic value of human life, including the lives of unborn children, ARPA Canada strongly encourages this committee to support Bill C-484. We believe there are good ethical, biological, legal, and philosophical arguments to support this legislation regardless of whether one considers themselves “pro-life” or “pro-choice.” As such, we encourage you to consider our arguments presented in this brief, as we believe their truth will be clearly evident.

As you are well aware, this legislation, with some exceptions, proposes to make it a separate criminal offence to injure or kill an unborn child as a result of a crime committed against the mother of the child. **The primary issue raised by Bill C-484 is whether a child can have legal recognition even when not defined as a “human being” according to the Criminal Code.** Section 223(1) of the Criminal Code states that “A child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother....”

The status-quo of providing legal recognition and moral consideration to a child only when it has gone through the birth canal of its mother is ethically absurd. This is recognized by stakeholders on both sides of this debate. For example, world-renowned ethicist Peter Singer, from Princeton University, said “Admittedly, birth is in some ways an arbitrary place to draw the line at which killing the developing human life ceases to be permissible, and instead becomes murder.”¹ In

¹ Peter Singer, “Abortion, The Dividing Lines,” *Herald Sun* (Aug 25, 2007). Available at <http://www.news.com.au/heraldsun/story/0,21985,22304219-5000117,00.html>.

several books and articles he admits that parents should be allowed to kill their child several months after they are born. For example, after stating that parents should be able to kill a disabled child he explains: “One point on which I agree with opponents of abortion is that, from the point of view of ethics rather than the law, there is no sharp distinction between the foetus and the newborn baby.”² This proves the point that even someone on the opposite side of this debate as us agrees that the status quo of providing legal recognition only upon birth is illogical.

From a biological perspective there is little disputing that human embryos have or acquire the physical, psychological, and emotional qualities of adult humans. This understanding is reinforced by the growing, if not fully understood, evidence provided by scientific research on contributions made by genetic factors to all dimensions of humanity. It is entirely logical to provide legal recognition for the unborn child of an adult human. In fact, the law already recognizes this basic truth with animals such as sheep or cattle. If you look at the *Personal Property Security Act* of many of the provinces, you will see that its definition of a good includes the “unborn young of animals.”³ According to these Acts, the debtor can offer his unborn cattle, from the time of conception, as security for money he borrows from the bank. This means that if the debtor defaults on paying back the loan, the bank can seize the unborn cattle (presumably they may have to wait until it is born). While we are not advocating that parents are given the ability to pledge their unborn children as security, it is disturbing that the law (as set out by the provincial legislatures) currently attaches more value to unborn cattle than to unborn children!

Apart from provincial statutes which provide legal recognition for the unborn of other species, there is also federal precedent for legal recognition of the unborn children of humans. For example, the Canadian Institutes of Health Research (CIHR), together with the Natural Sciences and Engineering Research Council (NSERC) and the Social Sciences and Humanities Research Council (SSHRC) have developed a joint policy on experimentation involving humans.⁴ This policy requires that embryos may not be created specifically for research purposes. Furthermore, they require that “Research involving human embryos takes place only during the first 14 days after their formation by combination of the gametes.” As you are probably aware, this legal recognition of embryos is consistent with the findings of the Royal Commission on New Reproductive Technologies and consequently was included in the more recent law of Parliament; the 2004 *Assisted Human Reproduction Act*.⁵ This law also includes other forms of legal protection and recognition of the unborn. For example, Section 5.(1)f states that it is prohibited for anyone to knowingly “alter the genome of a cell of a human being or *in vitro* embryo such that the alteration is capable of being transmitted to descendants.”⁶ Combined, all of these laws and regulations point to the same conclusion: unborn children are worthy of recognition and

² Peter Singer, “Peter Singer: You Ask the Questions,” *The Independent* (Sept 11, 2006). Available at <http://www.independent.co.uk/news/people/peter-singer-you-ask-the-questions-415524.html>.

³ For example, see the *Personal Property Security Act* of Ontario (R.S.O. 1990) under Definitions and Interpretation which states: “‘goods’ means tangible personal property other than chattel paper, documents of title, instruments, money and investment property, and includes fixtures, growing crops, the unborn young of animals....” [http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p10_e.htm].

⁴ Government of Canada - Interagency Advisory Panel on Research Ethics, “Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans,” <http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm>.

⁵ See *Assisted Human Reproduction Act* Section 5.(1)d: available at <http://www.canlii.org/ca/sta/a-13.4/sec5.html>.

⁶ *Ibid*, Section 5.(1)f.

protection under the law even though abortion is legal and open in Canada. Bill C-484 is consistent with Canadian law in this regard.

Moving beyond the biological and legal rationale for legally recognizing an unborn child, an even stronger argument is to consider the philosophical question of who is a person and how differing conceptions of persons result in different levels of legal recognition. Although many of us would rather not stretch our brains to consider the metaphysics of persons, it is essential to the issue before us.

A detailed examination of the philosophy of persons reveals that there are basically two ways that persons are understood in contemporary Western society.⁷ On the one hand, a person is someone who is autonomous – someone who can make decisions for themselves and pursue their own ambitions. If you look at how the Supreme Court of Canada has defined human dignity over the past two decades you will see that this is the preeminent way that persons are understood. Having dignity is all about being able to live in accordance with one's choices. This understanding of dignity and persons originated in the 1988 decision of *R v. Morgentaler*.

However, if this understanding of dignity and persons is applied consistently the law quickly runs into trouble. After all, there are many who do not demonstrate autonomy to the same degree as others. Does this mean that they do not have the same dignity and therefore do not receive complete protection under the law as autonomous individuals do? Sadly that is the direction that our courts are interpreting our laws and Charter. The elderly and the disabled are now struggling for the same legal recognition as others, especially when the autonomous in society would prefer to conveniently ignore their well-being (think of “mercy killing”). But the law is not meant to be a tool by which the majority (the healthy, strong, and autonomous) crush the minority (the weak, unborn, elderly, or disabled). When persons are defined as autonomous agents, equality goes out the window. Society's vulnerable become even more vulnerable because of a lack of legal recognition due to their physical circumstances.

In contrast to this narrow conception of dignity and persons is the account that ARPA Canada strongly urges you to consider when studying this legislation. Reformed Christians, along with most other people in Canada,⁸ believe that persons are not just autonomous individuals. Rather, all members of the human species are persons and intrinsically possess a worth that requires legal recognition for protection. As philosophers Robert Spaemann and Gilbert Meilaender argue, persons are a “someone who.” “A person is someone who has a history, not something that has certain properties.”⁹ All humans are persons, but this concept of a person is more than simply being a member of a species. “Persons have that species-specific nature, but the singular individual who has it is more than a member of a species. Likewise, persons are not instances of a universal concept. They are members of a community in which each ‘occupies a unique and distinctive position entirely his or her own.’”¹⁰

⁷ For more details see Mark Penninga, *A Judeo-Christian Account of Human Dignity in Canadian Law and Public Policy*, Master's Thesis, University of Lethbridge, 2008. (Available upon request by contacting ARPA Canada).

⁸ See the Environics 2007 poll which found that 72 per cent of those polled are in favour of legislation similar to C-484 [available at <http://www.lifecanada.org/html/resources/polling/2007PollTables.pdf>].

⁹ Gilbert Meilaender “Looking for personality” a review of *The Difference Between “Someone” and “Something,”* by Robert Spaemann, *First Things* (October 2007): http://www.firstthings.com/article.php?id_article=6047.

¹⁰ *Ibid.*

When we understand ourselves as persons – as a “someone who” we maintain an intrinsic dignity that does not get lost or minimized as a result of possessing less autonomy than others. There is no way that one’s reliance on her mother for survival can rob her of who she is. The “someone who” continues on through whatever happens to one’s body or intellect. Every human being, (understood biologically rather than according to the law), fits the requirement for being a person. They are unrepeatable beings with history. If someone were to ask you whether you were conceived, the answer would be obvious – of course you were (usually about nine months before you were born). It was not a “something” that was conceived and then became you upon birth or at some point between conception and birth. As Meileiander rightly points out, the idea of a “potential” person is absurd because “Nothing that is not a person can develop into a person.”¹¹ Likewise, if one were to get into a severe accident and lose their mental capacities, it does not mean that they no longer exist. It is that *person* who is brain-dead. The person does not cease to exist when their mental capacities leave.

This philosophy of persons is essential to properly understanding the implications of Bill C-484. Parliament has to make a choice – will it define persons as autonomous individuals and therefore deny legal recognition to unborn children who are the victims of crime, and by logical extension, to many other born humans as well? Or will it recognize that whether an unborn child is called a human or not (according to the Criminal Code) it is a person and therefore must be given legal protection. Bill C-484, which would recognize an unborn child as the victim of a crime, does exactly this. Canada’s *Assisted Human Reproduction Act* already recognizes that unborn children deserve legal protection. As such, it is logically consistent for Parliament to pass Bill C-484 into Canadian law.

Something can be quite logical without getting support or being applied. The reason is often that we do not want to do what we know we ought to do. As the Classical philosopher Plato said, we are in a constant struggle between our passions (our belly) and our desire for what is best (our mind). And as the Bible says “They exchanged the truth of God for a lie, and worshipped and served created things rather than the Creator – who is forever praised.” (Romans 1:25) We, as citizens, will always struggle with following our own ambitions, even when they are not in keeping with the good of society. But you, as legislators, have the noble task of laying aside personal ambitions and making laws that are for the good of society. We urge you to look beyond the rhetoric against this legislation and to support Bill C-484. It is a small but meaningful way to recognize the value of the most vulnerable members of our society.

Sincerely



Mark Penninga
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¹¹ Ibid.