Bioethics Outlook

Plunkett Centre for Ethics

Australian Catholic University,
St Vincent's Health Network Sydney, Calvary Healthcare,
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Archbishop Fisher pays tribute to Luke Gormally

The Catholic bioethicist Professor Luke Gormally, former director of the Linacre Centre for Healthcare Ethics in the UK and member of the Pontifical Academy for Life, died on 30 April, aged 73.

Professor Gormally was a leading voice in Anglophone bioethics for more than 50 years, having worked for the Linacre Centre between 1977 and 2007, first as research officer, then director, and then senior research fellow. Between 2011 and 2016 he was governor of the centre after it relocated to Oxford University and was renamed the Anscombe Centre, after Professor Gormally's mother-in-law, the Catholic philosopher Elizabeth Anscombe.

The Archbishop of Sydney, Anthony Fisher OP, worked closely with Professor Gormally at the Linacre Centre in the 1990s while he undertook doctoral studies at Oxford University. *"As is obvious from the photos of the day, he was a giant. He was the biggest man I ever knew. It meant when he came into a room, he completely dominated it because of his scale—he would have made George Pell look short. As giants go, he was a pretty gentle giant. He obviously had a great intellect. Whether it was the match for his wife I don't know, as both were serious philosophers. I always found him very generous and encouraging. His centre, that he effectively established and directed for many years, was really the premier Catholic bioethics centre probably in the world, certainly in Europe, jointly run by the British and Irish bishops' conferences. It's something they should be very proud of."*

Professor Gormally was an active participant in Anglophone bioethical debates for decades, arguing for Catholic ethical positions in the public arena during a time when the "culture of death" was embedding itself across the Western world.

He spent much of his professional life writing advices and submissions for parliament and the British and Irish bishops on euthanasia, care of the dependent elderly, reproductive technologies, abortion and other life issues.

"He was also a member of the Pontifical Academy for Life for many years," Archbishop Fisher said. *"I think probably increasingly disappointed with the academy in recent years, but in its golden age under Cardinal Elio Sgreccia (2005-2008) he was always a significant figure at its meetings."*

In his retirement Professor Gormally and his wife, Dr Mary Geach, jointly edited and published several volumes of Elizabeth Anscombe's papers, bringing her lesser-known work to a wider audience.

"Through their efforts, "[Professor Anscombe] managed to be more prolific in her writing since she died than she was while alive, which is a very remarkable arrangement," Archbishop Fisher said.

Professor Gormally suffered from health problems in later life due to his enormous stature, but maintained a firm Catholic faith and evangelical spirit. "*He was involved in the Neocatechumenal Way, which you don't often associate with top-flight Catholic philosophers. But there was this other side of him that was very evangelical and concerned about passing the faith on to the next generation."*

Dr Bernadette Tobin, director of the Plunkett Centre for Ethics at St Vincent's Hospital, said Professor Gormally was "an admirable academic". *"He contributed his own thinking to the development and defence of bioethics in the Catholic tradition. In this regard, his monograph* Why the Select Committee on Medical Ethics of the House of Lords unanimously rejected the legalisation of euthanasia, *which was published by the Plunkett Centre here in Sydney over 25 years ago, is still one of the most lucid and compelling accounts of the arguments, for and against, this socially-controversial practice. In addition, Luke ensured that as many as possible of the contributions of the great English Catholic philosopher Elizabeth Anscombe, his mother in law, would be available for posterity. Luke will be greatly missed by all of us who knew him, worked with him, and admired him. May he rest in peace."*

British Bishop John Sherrington, auxiliary bishop of the Diocese of Westminster and lead bishop for life issues, praised Professor Gormally after his death. *"Luke dedicated his life to building up the Linacre Centre to ensure that it made a very positive contribution to bioethical debate in society. Since that time, the centre has provided a critical Catholic voice to defend church teaching and argue against counter positions in the public arena. It has served the Catholic community and the bishops well for almost fifty years. I pray that Luke will rest in peace and rise in glory. May the Lord welcome home his faithful servant."*

Reprinted (with minor modifications) from the *Catholic Weekly*, 4 May 2023

Submissions re Human Rights (Children Born Alive Protection) Bill 2021

Last November a Bill was introduced into Federal Parliament to require a child born alive after an abortion to be given the same medical treatment or palliative care as any newborn.

Were the Bill to be enacted by the Parliament, the duty owed by a health practitioner to provide medical care or treatment to a child born alive as a result of a termination would be the same as the duty owed by a health practitioner to provide medical care or treatment to a child born alive in other circumstances. The medical care or treatment should be appropriate to the circumstances: life-saving emergency treatment or palliative care.

The Bill would require health practitioners to report such births so that statistics could be kept.

An important clause in the Bill, were it to be enacted by the Parliament, says that, were the health practitioner to fail in his or her duty to give the child appropriate medical treatment, the Bill would ***not*** make the mother of the child born alive liable to prosecution

The Community Affairs Legislation Committee recently considered the Bill. The committee is due to report back to parliament on 1 July. In what follows we publish three submissions made by academic staff at Australian Catholic University. Other submissions, both in favour and against the Bill, can be found on the Senate's website.[1]

Bernadette Tobin of the Plunkett Centre for Ethics:

The mission of the Plunkett Centre is to promote the values of compassion and fellowship, intellectual and professional excellence, and fairness and justice. Its primary focus is on the realisation of these values in the provision and the allocation of health care. The Centre expresses this commitment through research, teaching and community engagement as informed by the Catholic tradition. As Acting Director of the Plunkett Centre for Ethics, I write in support of the *Human Rights (Children Born Alive Protection)* Bill 2021 (henceforth the Bill).

This Bill requires what ought to be something straightforward. It reminds the community that, at law, children born alive in whatever circumstances (including after attempts at termination) are human beings ('persons') and thus that healthcare practitioners have the same duty of care to these children as they do to anyone else requiring (emergency) medical care.

The Bill does not interfere with the law(s) about abortion. If passed, all it would do would be to clarify that the law(s) on infanticide, that is, the deliberate bringing about of the death of a newborn child by either act or omission, applies in these circumstances. I do not know whether (or if so, how often) this practice occurs in Australia. If there are no incidents of this practice, the Bill would have no direct effect but would still have the indirect effect of reminding the community of (a) the difference between

[1]https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ChildrenBornAlive2022/Submissions

the law(s) on the termination of pregnancy and the law(s) on infanticide and (b) the scope of the law(s) on infanticide.

The Bill's import is limited to requiring emergency medical treatment, including palliative care, to children born in these circumstances.

Beyond that, the ordinary ethical considerations, applicable in any case of neo-natal care, would apply to the continuing care of the child, specifically:

(a) that there is an ethically-significant difference between therapeutic treatment on the one hand and treatment which is either futile or overly-burdensome on the other;

i. that treatment which is *unlikely* to make a significant contribution to health or health-related well-being is said to be 'futile';
ii. that if the benefits a treatment offers are *unlikely* to outweigh the burdens it will impose, the treatment is said to be 'overly-burdensome';
iii. that the benefits of treatment may include the preservation of life, the maintenance or improvement of health, the relief of pain or discomfort, etc;
iv. that the burdens of treatment may include pain, discomfort, loss of lucidity, breathlessness, etc;
v. that comfort care should be given to all newborn children, but the appropriateness of more extensive measures should be determined in the light of the child's condition and of the foreseeable benefits and burdens of treatment options for the child.

b. that parents have the primary responsibility for the health and wellbeing of their children;
i. that decisions about whether to accept or refuse treatment for a child is the responsibility of the parent(s);
ii. that the care of newborn children with severe abnormalities, or with extremely low birth weights or other serious health needs, can involve difficult ethical decisions about the benefits and burdens of treatment;
iii. that treatment should not be administered (except in the case of emergency) without consultation with, and the consent of, the child's parent(s);
iv. that healthcare practitioners may ask the appropriate Court to make a treatment decision if they have a different view of the best interests of the child from that of the parent(s).

One ethical consideration that deserves special emphasis in these circumstances is that the burdens to be considered are those that may fall ***on the child,*** that is, the fact that the mother (or the parents) decided to terminate the life of the foetus *in utero* does not itself constitute a burden of further treatment.

Objections have been made to the passing of this Bill. Some have been mentioned in the Parliament so far. In my view, each can be satisfactorily answered. Three, together with responses, can be set out as follows:

Objection 1: The Bill would require healthcare practitioners to keep non-viable babies alive: **Response:** This is not so. See 6 (a) (v) above.

Objection 2: The Bill would require healthcare practitioners to keep alive children with congenital abnormalities. **Response:** The Bill does not interfere with good medical practice for the care and treatment of children born with congenital abnormalities. See 6 (a) (ii-v).

Objection 3: It is a myth that children are born alive after elective terminations, and the Bill perpetuates this myth. **Response:** The parliament has been provided with some data which indicates that this is a known, though rare, occurrence. If that data is reliable, it is not accurate to call it the practice a 'myth'.

David Kirchhoffer of the Queensland Bioethics Centre

I write in support of the *Human Rights (Children Born Alive Protection) Bill 2022* (henceforth the Bill).

The Bill sets out to ensure that all children born alive in Australia are provided with the same standard of care in the clinical setting, regardless of the circumstances that have precipitated their birth.

This intention is in accordance with Australia's human rights obligations, both those that various states have enshrined, e.g., Queensland's Human Rights Act 2019, and international human rights treaties ratified by Australia, e.g., the United Nation's 1990 Convention on the Rights of the Child.

In this submission, in addition to the obvious connection to obligations to protect human rights highlighted above, I draw on the work of prominent philosophical bioethicist Sissela Bok to counter any claim that this Bill would restrict women's reproductive rights in Australia. I then argue that even if cases where care was not provided never happened, passing the Bill still has important value in line with the social functions of law, especially in demonstrating the Commonwealth's commitment to human rights treaties that it has ratified.

1. The Bill does not restrict access to termination of pregnancy, but rather affirms the rights of any child born alive to adequate care.

    a. In 1975, the California State Legislature passed a bill requiring physicians performing abortions to take "all reasonable steps, except extraordinary means, in accordance with good medical practice, to preserve the life and health of the live-born person."[2]

    b. In October 1975, Sissela Bok, a now well-known bioethicist and philosopher then at Harvard Medical School, published an article in *The Hastings Center Report*, in which she considered whether this new law was ethically appropriate and whether it contradicted the idea, held by Bok and others, that a woman has a right to terminate a pregnancy.

[2] Bok, Sissela, Bernard N. Nathanson, David C. Nathan, and Leroy Walters. "Case Studies in Bioethics: The Unwanted Child: Caring for the Fetus Born Alive after an Abortion." *The Hastings Center Report* 6, no. 5 (1976): 10–15. https://doi.org/10.2307/3561251.

c. Bok supported the idea that a child born alive as a result of abortion should be protected, but noted that this put her in an apparent philosophical contradiction: "I believe that abortion can be justified; yet am I not also saying that fetuses *are* to be treated as patients? If so, how can they be aborted in the first place?"

d. Bok resolves this contradiction by stressing that though she believes, "a woman does have the right to an abortion in the sense of the termination of her pregnancy, she does not have the right to the death of the fetus." Bok goes on to assert that it is "a fallacy to believe that a right to the former implies a right to the second." There is, therefore, no contradiction for Bok in claiming that "if a live birth should result [from an abortion], it must be protected."

2. The Bill has value, even if no child were ever born alive after termination of pregnancy, because the Bill provides guidance on the values important in Australian society, particularly the rights of children, and the kinds of behaviours that are to be encouraged in our society. This is in line with the purposes of law.

    a. The late political philosopher Joseph Raz argued that law has several social functions, both direct and indirect.[3]

    b. Among the primary direct social functions of law, Raz states that "the most basic and elementary the law performs" is "preventing undesirable behaviour and securing desirable behaviour".

    c. Among the indirect social functions of law, Raz states that these "include such things as strengthening or weakening the respect given to certain moral values, for example, the sanctity of life, strengthening or weakening respect for authority in general, affecting the sense of national unity, etc." Raz further states that "some laws are created with the intention of securing indirect effects." In other words, laws can be enacted with these indirect social functions in mind.

    d. This Bill, if enacted, would serve both of these social functions of law. In the case of the primary direct social function of securing desirable behaviour, the Bill reiterates the importance of providing appropriate medical care to all children born alive in Australia, independent of the circumstances that gave rise to their being born alive (see section 5 above). The Bill acknowledges that appropriate care can include the withholding or withdrawal of disproportionate medical treatment, but should at least include the provision of palliative and comfort care in such instances.

    e. In the case of the second indirect social function, the Bill underscores Australia's commitment to international human rights treaties, particularly the United Nation's 1990

[3] Raz, Joseph, "The Functions of Law", In *The authority of law: Essays on law and morality* (Oxford, 1979), available at https://doi.org/10.1093/acprof:oso/9780198253457.003.0009

Convention on the Rights of the Child, and thereby strengthens the respect given to these important moral values in our society.

Queensland's clinical guidelines for termination of pregnancy[4] state in paragraph 5.4.1 that *all* live births, regardless of gestation, should be registered and issued with a death certificate. All births, whether dead or alive, after 24 weeks must be registered and death certificate issued. This underscores that any child born alive in Queensland is understood at law to be a person who should be registered as such. Since any child born alive is named and recognised at law as a person, it follows that it is appropriate to provide any such child with appropriate medical care. Enshrining this in Commonwealth law would not limit access to termination of pregnancy and would ensure the law serves its primary function of securing desirable behaviour with respect to children, and its indirect function of promoting the core values that Australia upholds in line with its commitments to human rights.

Michael Casey of the PM Glynn Institute:

This submission supports the Human Rights (Children Born Alive Protection) Bill. It is made by the PM Glynn Institute, which is a public policy institute at Australian Catholic University (ACU). Through its contributions to public policy and public debate, the Institute participates in ACU's work as a Catholic university to promote human dignity and the common good.

I note the submission also made by my colleague at ACU, Associate Professor Bernadette Tobin AO, director of the Plunkett Centre for Ethics, which sets out concisely the important ethical principles which are involved in providing, withholding or withdrawing medical care and treatment to newly-born infants. My own submission is based on acceptance of these principles. I also acknowledge that this is an area in which many difficult questions arise both for clinicians and parents.

In his second reading speech Senator Canavan provides some data from Queensland and Victoria (over different periods of time) about the number of children born alive following an abortion. Obviously, further investigation is required to establish the extent to which this occurs in Australia, and what guidelines are already in place concerning medical care and treatment of children born in these circumstances. However, even if the numbers are small, the Bill upholds an important principle, as well as addressing an important purpose.

The promotion of human dignity, the common good, and social justice entails respect for human life from conception to natural death. To respect human life means to treat every human being as a person, irrespective of age and stage of development, ability and disability, strength and weakness, and capacities and agency, including any diminishments or limitations to agency and capacities. Dependency

[4] Queensland Clinical Guidelines, 2019, "Termination of pregnancy", Queensland Health: available at https://www.health.qld.gov.au/__data/assets/pdf_file/0029/735293/g-top.pdf

and vulnerability do not qualify or cancel out the intrinsic worth – the dignity – that inheres in each human being by virtue of being human.

This understanding of dignity underlies the major international human rights agreements to which Australia is a signatory. As the International Covenant on Civil and Political Rights (ICCPR) makes clear (article 6.1), "*Every human being* has the inherent right to life" (emphasis added). This article also provides that the right to life "shall be protected by law", and that "No one shall be arbitrarily deprived of his life".

The Universal Declaration of Human Rights (UDHR) commences with the "recognition of the inherent dignity" and "the equal and inalienable rights of *all members of the human family"* (emphasis added) as "the foundation of freedom, justice and peace in the world" (Preamble). Article 6 of the UDHR also stipulates that "Everyone has the right to recognition everywhere as a person before the law" (article 6). There is no conditionality to dignity or personhood. Every human being is a person with inherent worth.

This understanding of inherent human dignity is increasingly contested. Some argue, for example, that dignity and personhood do not attach to human life in infants and children until a particular point of development; or that it can be lost once we fall below a certain threshold of agency and self-understanding (through disability or mental illness or age). Sometimes these arguments extend a role to families or society in deciding whether vulnerable humans should be accorded dignity before they have qualified or after they have become disqualified, subject to considerations of social and environmental responsibility.

While these arguments are usually informed by a genuine concern for human beings who are suffering, their effect is to bring about a profound change in the meaning of dignity. It ceases to be something inherent to human life (to "all members of the human family") and becomes instead, notwithstanding good intentions to the contrary, the gift of those who have greater strength, to be granted or withdrawn as the conditions of an individual's life varies.

Human dignity is therefore no abstract question merely for philosophers and ethicists. How it is understood has major implications for the sort of society in which we live. For example, one of the major premises of abortion is that human dignity does not inhere in the child in the womb. The decision to have an abortion can be complex and difficult, and not every abortion is intended to be a denial of the humanity or the dignity of the unborn child. This is especially the case where the pregnancy is very much welcomed and wanted, but serious health complications arise during the course of the pregnancy for the child or the mother. In these circumstances, abortion may even be seen as the compassionate way of responding to a tragic situation.

That abortion has come to be seen as an appropriate way of responding in these cases, however, depends on the prior acceptance in law and medicine of the principle that the dignity of the unborn child is not the same as that of the child born alive.

If in fact children born following an abortion are not provided with appropriate medical treatment and care, or if any existing guidelines fail to ensure that the appropriate ethical principles are applied to provide the appropriate care for such children, leaving this situation unaddressed poses a danger.

Exceptions and limited circumstances such as these make up a series of incremental changes by which one of the foundations of law, medicine and human rights – that dignity is inherent to human life – can slowly come to be displaced by a hollowed-out concept of dignity, which depends on human life attaining – and retaining – certain characteristics and conditions.

The Bill is cast narrowly to achieve its purpose. It acknowledges that a child born after an abortion procedure may not in fact survive, clarifying that the medical care or treatment he or she is owed may encompass palliative care (clause 9(4)).

It does not disturb the existing abortion regime in Australia, and explicitly provides that the mother of a child born alive after an abortion is not liable to prosecution under the Bill or under the Commonwealth Criminal Code (clause 12).

The Bill merits the Parliament's support, not only because of the obligations Australia has assumed in international law under articles 6 and 24 of the Convention on the Rights of the Child (UNCRC) and articles 24 and 26 of the ICCPR, but also because of the way it would reinforce the principle of inherent dignity in human life as one of the major foundations of Australian society.

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St Vincent's Health Network Sydney
(St Vincent's Public Hospital, St Vincent's Private Hospital, the Mater Hospital, St Vincent's Private Community Hospital Griffith)
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St André International Centre for Ethics and Integrity

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- Bioethics Colloquium: Oct 25 - 28
- Applied Ethics Teacher Training Program: Oct 31 – Nov 4

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Holistic Approach: In addition to stimulating the intellect, we also wish to nurture well-being more holistically. The historic and natural beauty of the conference site, French cuisine ad patrimony, as well as time for reflection, spiritual enrichment and developing new friendships are key ingredients of the program.

Academic Rigor: All lectures will be presented by internationally renowned ethicists. The academic program for each seminar is vetted by the Centre's Curriculum Committee, consisting of seasoned ethics educators from universities across the world. A detailed certificate of completion specifying learning objectives, content, and contact hours, will be provided to each participant.

Teaching Staff include •Jos V M Welie, MA, M MedS, JD, PhD (Course Director). President of the St André International Centre for Ethics and Integrity (France); Professor of Interdisciplinary Normative Science, Maastricht University (Netherlands); Member of Pontifical Academy for Life; • Linda Scheirton, RDH, MA, PhD Professor Emerita of Health Care Ethics, Creighton University (USA) • William Sullivan, MD, PhD, Joseph P Kennedy Sr Chair in Bioethics, Georgetown University (USA); Member of the Pontifical Academy for Life

Provence Location: All 2023 seminars will take place in the conference centre Notre Dame du Grace in Rochefort du Gard near Avignon in the south of France. Onsite sessions will be alternated with excursions to historic, religious and cultural sites related to the topic of the seminar.

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