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Kerry Ross

University of Wollongong, kross@uow.edu.au

Susan M. Dodds

University of Tasmania, sdodds@uow.edu.au

Rachel A. Ankeny

University of Adelaide

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A Matter of Conscience? The Democratic Significance of 'Conscience Votes' in Legislating Bioethics in Australia

Kerry Ross¹, Susan Dodds² and Rachel A. Ankeny³

¹ Science, Technology and Society Program, School of English Literatures, Philosophy and Languages, University of Wollongong

² Faculty of Arts, University of Tasmania, Private Bag 44 Hobart, 7001 Australia
(susan.dodds@utas.edu.au), corresponding author

³ School of History and Politics, Napier 423, University of Adelaide, Adelaide 5005 Australia.

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Abstract: In Australia, members of a political party are expected to vote as a block on the instructions of their party. Occasionally a 'conscience vote' (or 'free vote') is allowed, which releases parliamentarians from the obligation to maintain party discipline and permits them to vote according to their 'conscience.' In recent years Australia has had a number of conscience votes in federal Parliament, many of which have focused on bioethical issues (e.g., euthanasia, abortion, RU486, and embryonic/stem cell research and cloning). This paper examines the use of conscience votes in six key case studies in these contested areas of policy-making, with particular attention to their implications for promoting democratic values and the significance of women's Parliamentary participation.

Keywords: Conscience votes, Deliberative democracy, Gender Representation, Bioethics policy

In Australia, federal parliamentarians are expected to vote according to pre-existing party policy or under instructions from party elites. In rare cases, a party may endorse a ‘conscience vote’ on a particular bill, freeing members from the obligation to maintain party discipline and allowing them to vote according to their individual ‘conscience’. In recent years, conscience votes have been most often granted in Australia in response to highly-contentious ethical policy questions, a shift which began in 1973 with the *Medical Practice Clarification Bill 1973* to decriminalise abortion in the Australian Capital Territory.ⁱ Between 1973 and 2006, the major political parties allowed their members a conscience vote 17 times, the majority of which can be classified as being about bioethical issues (e.g. euthanasia, access to abortion and embryo research).ⁱⁱ To date, there has been little critical research that evaluates the democratic effects of conscience votes. This paper considers this issue alongside of the increase in numbers of women MPs during this period. We assess the concordance between public opinion and the outcomes of federal Parliamentary conscience votes in the past three decades, showing that there has been more consonance between them in recent years, and that this is likely to be due to the impact of the array of modes of women’s participation on matters subject to conscience votes. This is demonstrated through the analysis of six key case studies of ethically-contentious conscience votes from the period under discussion in light of three democratic ideals: accountability, representation and deliberation. To the extent that there is a recent resurgence of interest in democratic ideals within political philosophy, it is worth exploring their manifestations in concrete political practice. (Among the recent works that discuss democratic ideals of accountability, representation and deliberation are: Dagger 1997, Dryzek 2000, Fishkin 1995, Goodin 2003, Gutmann and Thompson 1996, Mansbridge 2003, Sandel 2005, and Young 2000).

Background

A conscience vote, or a ‘free’ vote as it is sometimes known, occurs on a Bill, Motion or Report either because a party does not have a policy position on an issue or because the party decides that members should be ‘permitted to exercise their responsibility in accordance with conscience’ (Harris 2001: 277). In such cases ‘...members are not obliged by the parties to follow a party line, but vote according to their own moral, political, religious, or social beliefs’ (Penguin 1988: 86). In most cases, in the Australian Federal Parliament, conscience votes are granted in both the

House of Representatives and the Senate, and the three major parties (Australian Labor Party [ALP], the Liberal Party [Liberal] and the National Party [NPA]) each grant a conscience vote on the same issue. In some cases, a single party will permit a conscience vote: the *Death Penalty Abolition Bill 1973* and the *Sex Discrimination Bill 1984* are two examples where only one party allowed their members a conscience vote (See McKeown & Lundie 2002 for additional examples). Anyone may call or lobby for a conscience vote to be permitted by a party; the final decision usually rests with the party leader, informed by the party caucus (McKeown & Lundie 2002). There are no formal party policies in relation to conscience votes.

Allowing a conscience vote is a pragmatic way of addressing divisive policy questions. In most cases a conscience vote is allowed to accommodate diverse moral or ethical views within the party, as a conscience vote is preferable to members voting against party policy and ‘crossing the floor’. In other cases a party may endorse a conscience vote and challenge other parties to do likewise to reveal disunity within the opposing party (McKeown & Lundie, 2002). Allowing a conscience vote also may distance a party from community backlash on controversial issues as ‘a party can stand back and claim no responsibility for decisions on social issues which may have electoral implications’ (Jaensch 1996: 172). In the cases discussed in this paper, for example, it is arguable that the contentiousness of the issues arises not so much from the ethical debates at their heart, but from the political potential for religious concerns (relating to sanctity of life or the moral status of the human embryo or fetus) to influence party policy relating to health, choice and welfare. In the absence of a conscience vote on an ethically-charged issue, individual parliamentarians may choose to cast a vote as a matter of conscience without party endorsement and against party policy by ‘crossing the floor’ during a division to vote with the opposing side. Defying party policy in this way is thought to indicate a politician’s moral rebuke of party policy and rarely occurs in the Australian Federal Parliament due to strong party discipline.

A second procedural device for allowing parliamentarians to express views that fall outside Party policy is the private Member’s or Senator’s bill. The device of allowing individual parliamentarians to introduce a bill as a private Member’s (in the House of Representatives) or private Senator’s bill (in the Senate) allows a similar degree of freedom from the ‘party machine’ without directly challenging party policy. Typically, private Member’s or Senator’s bills are

introduced to provoke a review of a law, or to allow parliamentarians to take a largely symbolic stand on an issue that may be of particular interest to their electorate. Very few private Member's or Senator's bills introduced by parliamentarians who are members of the governing party succeed in being debated.

Conscience votes are rarely granted when a party has a strong policy stance on the issue. Aside from matters of procedure, conscience votes have been granted in relation to issues of personal morality such as abortion, euthanasia, homosexuality and gambling; issues subject to the moral authority of the state such as capital punishment and war crimes; and issues that encompass elements of both these categories such as family law, drug reform, *in vitro* fertilisation (IVF) and biotechnology-related medical research (Warhurst 2008). Not all legislation related to ethically difficult questions has been subject to a conscience vote, despite sometimes heavy lobbying from party members or the public. Recent examples include the refusals of John Howard's government to allow a conscience vote on the decision to go to war in Iraq (Oakes 2006) and in relation to legislation to disallow access to IVF for single or lesbian women (Zinn 2002).

During the period 1950–2004, there were 439 instances in which parliamentarians crossed the floor, of which 63% were Liberal Party Members, 26% were NPA Members and only 11% were ALP Members (McKeown & Lundie 2005). The most notable shift in terms of parliamentarians crossing the floor has occurred within the Liberal/NPA coalition which held power until 2007. Only four parliamentarians crossed the floor in Howard's first seven years of office (1996–2003) compared to 31 in the seven years of the previous coalition government under Malcolm Fraser (1975–83) (Hudson 2003). Diminishing the scope for parliamentarians to cross the floor may well have contributed to the increased significance of conscience votes in recent years as a response to diverse moral and ethical views within the coalition (Warhurst, 2008).

Case Studies

The following case studies were selected as key examples of the legislative processes in relation to ethically-contentious areas of public policy. Where possible, public opinion data was drawn from various published polls generally accepted as valid sources of public views.

Medical Practice Clarification Bill 1973

In the late 1960s and early 1970s, abortion was the subject of divisive public debate in Australia as women's groups lobbied for liberalisation of abortion laws. Public opinion was wide-ranging, with a 1973 McNair Anderson poll showing that up to 83% of Australians believed that abortion should be legalised under some circumstances (Betts 2004).ⁱⁱⁱ These figures are consistent with a poll taken in Sydney by the Women's Electoral Lobby, which found that 80% of the public (2000 respondents) supported liberalisation of abortion (Anonymous 1973b).

In the lead-up to the 1972 Federal election, the coalition Prime Minister William McMahon used the abortion issue to destabilise the campaign of the ALP leader Gough Whitlam. Having indicated his personal support for liberalisation of abortion law, but refusing to adopt it as ALP policy, Whitlam sought to deflect anti-abortion sentiment and appease the pro-abortion lobby by agreeing to a conscience vote on the issue if he were elected and promising a private Member's bill would be introduced into Parliament (Lilburn 2000; Coleman 1988). Whitlam was elected Prime Minister on 5 December 1972 and some months later the *Medical Practice Clarification Bill 1973* was introduced as a private Members' bill by the ALP's David McKenzie and Tony Lamb. The Bill sought to decriminalise abortion in the Australian Capital Territory, which legislatively is under the control of the Federal Government. (Papua New Guinea and the Northern Territory (the only other territory on the Australian mainland) were also included in an earlier draft of the Bill but were deleted by amendment during the passage of the Bill through the Parliament (Jones 1973).)

In Parliament, 207 petitions were tabled, most of them opposing the Bill, with the Speaker at the time commenting that it was, to his knowledge, the greatest number of petitions tabled on a single issue since Federation (Anonymous 1973). The Bill was debated in the House of Representatives by an all-male parliament and was defeated on 10 May 1973, 98 votes to 23 (House Votes and Proceedings 1973-74 24: 171). Reflecting on the vote some years later, Susan Ryan (1992) wrote: 'The debate was conducted in an all male chamber, the women were outside rallying, organising, shouting through loud hailers, preparing for disappointment. I decided that next time we should be in there making the laws.'

This conscience vote raises a number of key issues. Between 1901 and 1973 there had only been three women MPs in the House of Representatives and seven women in the Senate, and in 1973 there were no women in the Australian Federal Parliament. In the decades after the 1970s, the number of women parliamentarians increased sharply (Sawer 2003); the outcomes of conscience votes reflect this trend (see table). The use of a private Member's bill to spark a conscience vote is also significant. Karen Coleman (1988: 77) writes that when particularly divisive issues such as abortion demand political action, a private Member's bill 'can be employed in an attempt to shield the party from overt identification with the measure.' Lastly, this Bill provides an example of how a political party can distort the intent of a conscience vote for political gain. In late December 1972, the defeated McMahon stated that the Liberal Party would determine their vote on this issue in the party room and not in the parliament (Lilburn 2000). According to the record, however, both the ALP and the Liberal Party indicated that their members were allowed a conscience vote when the Bill came before the Parliament in early 1973. Yet McMahon's earlier comment appears to have held sway, as all Opposition members voted against the bill. Coleman (1988: 82-83) writes: 'Certainly for the Opposition, voting on the bill was not a reflection of individual positions on the question...rather by showing a unified front, they were concerned to highlight dissension within the Labor party over abortion.'

This Bill provides a clear example of how party members sometimes vote along *de facto* party lines in a conscience vote. It is notable however that there has not been a repeat of such a clear example of political allegiances uniformly shaping a supposedly 'free' vote, as will be seen in the case studies below.

Euthanasia Laws Bill 1996 – Private Member's Bill

On 25 May 1995, the Northern Territory (NT) passed the *Rights of the Terminally Ill Act 1995* making it the first place in the world to legalise voluntary euthanasia. The legislation caused intense public debate both within Australia and internationally, and a range of special interest groups mobilised in response (Cica 1996-97). The law survived a number of challenges in the NT Legislature and the Supreme Court; however, under the Australian constitution, the Federal Government has the power to overturn territory law. In September 1996 a private Member's bill, the *Euthanasia Laws Bill 1996*, was introduced in to the Commonwealth parliament by Liberal

MP Kevin Andrews with the intent to override (and thus repeal) the NT's *Rights of the Terminally Ill Act 1995*. The Bill was overwhelmingly supported in the House of Representatives and passed on 9 December 1996 (HVP 1996 58: 998), 88 votes to 35. The voting was much closer in the Senate where the Bill passed on 24 March 1997, 38 votes to 33 (Senate Journals 1997 92: 1740).

Although the ALP and the coalition parties (Liberal and NPA) allowed their members a conscience vote on this Bill, it is telling that each leader (Liberal Prime Minister John Howard, NPA Tim Fischer and ALP Kim Beazley) indicated their opposition to euthanasia and their support for the Bill repealing the NT Act. Howard's support was such that the Bill was included in an already overburdened Parliamentary schedule. One coalition member who opposed the bill criticised the move: 'It was an extraordinary thing to do, Howard coming out like that had more impact than any other single thing during the debate. It put so many people under pressure to fall into line that it really wasn't a conscience vote' (Brough 1997). Whether due to their more conservative social views or to the pressure they felt to follow the party line, coalition members were generally far more supportive of the Bill than their ALP counterparts in both the Senate and the House of Representatives.

The parliamentary decision to overturn the NT Act was at odds with the views expressed within the Australian community. Newspaper reports at the time consistently showed that 70% to 80% of the public supported legislative change to allow voluntary euthanasia (Contractor 1997; Dodd 1997) and a nationwide NewsPoll showed public opinion was 79% in favour of euthanasia in 1995 and 63% in 1996.^{iv} The outcome of the conscience vote indicates that women parliamentarians were more inclined to support the NT euthanasia Act in line with public sentiment (see table). An academic study on the euthanasia Bill suggests that there had been more women parliamentarians, the outcome of the Bill would have been different, particularly in the Senate, even though this was not a 'women's issue' per se. Together with the unique style of deliberation women brought to the parliamentary debate, the authors suggest that '...the sexual integration of our political institutions is fostering greater overall representation of a "different voice"' (Broughton & Pamieri 1999: 43).

However, they also caution that given the under-representation of women in the Parliament, women's voices, under normal parliamentary practice, are often overwhelmed by the male-dominated party line. Thus conscience votes can be viewed as providing an important forum for more representative policy-making as they largely remove the everyday political barriers faced by women parliamentarians so that '...women's distinctive contribution may then be heard' (Broughton & Pamieri 1999: 30). It could be that women parliamentarians were influenced by constitutional concerns and Territory powers. However, an alternative interpretation of this episode supported by the evidence is that where women parliamentarians are freed from the demands of party solidarity, they are better able to vote in a manner that reflects the diversity of views held by Australians.

Research Involving Embryos and Prohibition of Human Cloning Bill 2002

A national debate over the use of embryos for research purposes was triggered by the release of a House of Representatives Inquiry in 2001 (Andrews Report 2001). This Inquiry, in part, was spurred by developments in human embryonic stem cell research and reports of the cloning of Dolly the sheep. The majority recommendations (6:4) of the Inquiry supported research on surplus IVF embryos created before 5 April 2002 but called for a ban on reproductive cloning and a three-year moratorium on therapeutic cloning (cloning for research purposes). At this time, only three States regulated embryo research by law. The Federal government saw these recommendations as an opportunity to enact Federal legislation to provide nationally consistent regulation (MacDonald 2003). The *Research Involving Embryos and Prohibition of Human Cloning Bill 2002* was introduced into the House of Representatives in June of 2002 by Prime Minister Howard. After some debate, the Bill was split in two, allowing MPs the opportunity to vote against human cloning but in favour of embryo research. The subsequent *Research Involving Embryos Bill 2002* was overwhelmingly passed in the House of Representatives on 25 September 2002, 99 votes to 33 (HVP 2002 48: 455). The Bill passed through the Senate on 5 December 2002, 45 votes to 26, the government having limited discussion and ordered its members to vote after 47 hours of debate (SJ, 2002 56: 1218, Metherell 2002).

All political parties allowed members a conscience vote on this Bill, although each party leader indicated his private view prior to the vote. Views were particularly divided among senior

members of the coalition (MacDonald 2003: 26). However as one reporter noted, Howard's decision to introduce the Bill personally was 'a blow to opponents of the Bill as it signal[led] the strength of his conviction' (Tingle 2002). ALP leader Simon Crean went so far as to state that it was ALP policy to support the use of excess embryos for research but he nonetheless allowed a conscience vote to 'respect the individual position that some of our colleagues have' (MacDonald 2003: 26).

According to an opinion poll taken in November 2001, the Australian community supported legislative moves to support licensed embryo research, with 70% of respondents approving the use of excess embryos for research purposes. The same poll showed that 55% of Australians also supported 'therapeutic cloning', or cloning to create embryos for research (Morgan Poll 2001).^v The views of women parliamentarians were again more in line with public sentiment; overall, the male vote was split 97 to 51 for the Bill, while women were split 47 to 8 for the Bill.^{vi}

The strong views and debate generated by the Bill suggest that despite criticism from some quarters, particularly over political views being expressed prior to the parliamentary debate, the process more closely followed the intent of a conscience vote than did the previous cases discussed. A paper on the deliberative value of the debate found that

Allowing a conscience vote in the Federal Parliament has also had the desirable effect of freeing politicians from party discipline and encouraging them to educate themselves about the issues. This is evident in the quality of the parliamentary speeches made on the bill in the House of Representatives. (Hall 2004: 31)

Debates surrounding the 2002 Bills indicate that conscience votes can allow parliamentarians to be moved by the evidence and argument of experts thus enhancing the possibility for democratic deliberation. (However we demonstrate the limitations of the actual deliberation on these bills in Ankeny & Dodds [2008] and Dodds & Ankeny [2006].) What is undisputable in this case (and the euthanasia vote) is that conscience votes on issues relating to reproduction and human life reveal a gender schism and women's parliamentary presence enhances representation.

Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005

In 1996, Independent Senator Brian Harradine introduced a ‘restricted goods’ amendment during the passage of the *Therapeutic Goods Amendment Bill 1996*. This amendment defined non-surgical abortifacients as a restricted good and shifted the authority for their use from the Therapeutic Goods Administration (TGA) to the Commonwealth Minister for Health, and was supported by the Howard coalition government and the ALP opposition but opposed by the Democrats. Abortifacients subsequently became the only therapeutic goods to be subject to ministerial approval, and the move amounted to a ban on ‘abortion pills’ such as mifepristone (popularly known as RU486).

By 2005, mifepristone was legal and in widespread use in countries including the UK, the US and New Zealand (Buckmaster 2005-06). In October 2005, the Democrats signalled they would introduce amendments to the upcoming *Therapeutic Goods Amendment Bill 2005* to overturn the Harradine amendment (Allison 2005). This sparked heated debate particularly within the coalition. The Commonwealth Minister for Health, Tony Abbott, who held strong pro-life views, used the issue to reignite the abortion debate. One female coalition MP threatened to cross the floor if Prime Minister Howard did not allow a conscience vote (Maiden 2005). In early November, the ALP indicated its support for the amendment and the Party caucus voted to allow a conscience vote (Karvelas 2005). In late November with the Bill about to come before Parliament, Howard granted his party a conscience vote but meanwhile asked the Democrats to forgo the amendment and introduce a private Senator’s bill (Stafford 2005). In the end it was decided that the proposed amendment to the Bill would be postponed until immediately after a conscience vote on the private Senator’s bill which, if carried, would negate the need for the amendment. If the private Senator’s bill were to fail, the amendment would then be voted on, with Howard indicating that there would then be no conscience vote allowed for coalition members (AAP 2005).

By 2006, the number of women in Parliament had increased significantly, as they composed 24.7% of the House of Representatives and 35.5% of the Senate (Commonwealth Parliament 2006). Broken down into percentage of women per party, it is clear that the major conservative

parties lag behind their more progressive counterparts in both houses; Australian Labor Party 33.3%, Liberals 20%, National Party 16.7% in House of Representatives; ALP 36.4%, LIB 24.2%, NP 16.6%, Australian Democrats 50%, Green 75% in the Senate. In early 2006 four women Senators (Democrat Lyn Allison, Liberal Judith Troeth, National Fiona Nash, and ALP Claire Moore) co-sponsored a private Senators' bill, the *Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005*, to hand authority for the administration of abortifacients back to the TGA. A conscience vote was allowed by all major parties and, after intense lobbying (Peatling 2006a; Polimeni 2006), the Senate voted in favour of the bill, 45 votes to 28, on 9 February 2006 (SJ 2006 71: 1855).

Strikingly, the outcome of the conscience vote in the House of Representatives on 16 February 2006 (HVP 2006 85: 954) was not recorded by a final count, as is the norm. The Bill was passed on a 'voice vote' with one political reporter commenting: 'Howard did not press for a division, a formal vote that would have tallied the scale of the defeat for his and the Health Minister's position' (Hartcher 2006). One Liberal proponent of the Bill, MP Malcolm Turnbull, asked explicitly that his vote be recorded by the speaker but to no avail (Peatling 2006b). Despite the failure to formally count the final vote, the outcome has been reported as roughly 70% in favour of the Bill. The second vote immediately prior to the third and final vote was 95 in favour to 50 against and the ABC 7.30 Report claimed that 91 of 150 MPs voted in favour of the Bill (ABC 2006). The report did not indicate whether all of the remaining 59 votes were cast, as in some cases MPs are absent from Parliament or choose to abstain from voting for various reasons. In terms of women's votes, one report indicated that all 20 ALP women MPs voted in favour of the Bill with 10 out of 17 Coalition women MPs also casting their vote for the Bill (Summers 2006).

The case of the *Therapeutic Goods Amendment Bill 2005* was striking for reasons other than the disunity it caused in the coalition government. The Bill highlighted the now significant role of women parliamentarians in policy-making. In the Senate where the vote was recorded, it is clear that the higher proportion of women and the cross party support among them was decisive in the Bill's passage. There may be a number of reasons why women's greater presence in Parliament affected the outcome. Among these is that with an increase in the numbers of women holding seats, there are greater opportunities for women to use conscience votes strategically, on issues

that more directly affect the interests of women (such as laws relating to reproductive technology, abortion and embryo research), to maximise the effect of their presence in the legislative process, despite their remaining in a minority. For example, once freed from the constraints of party discipline, women parliamentarians can engage in ‘critical acts’, directly enjoining the men in their party to attend to the significance of the issues for the lives of women (see Dahlerup 1988 cited in Celis & Childs 2008), or they may be able to work across party lines with women in strategic positions in the other parties to create new coalitions to push for an outcome that alters the culture of the institution (see Kanter 1977, cited in Celis & Childs 2008).^{vii}

Public opinion polls in relation to the availability of RU486 showed once again that women parliamentarians were more representative of community views. A NewsPoll in January 2006 found that 68% of Australians approved of its use (Hartcher 2006),^{viii} and a Morgan Poll in February 2006 supported this with 62% of Australians polled agreeing that RU486 should be made available to Australian women (Morgan Poll 2006a).^{ix} Moreover, Senator Nash was quoted as saying that this bill was ‘the first time in the history of this place that four members of different parties have co-sponsored a private Senator’s bill’ (Summers 2006). Inspired by the passage of the Bill through the Senate, Anne Summers echoed the view of a number of women parliamentarians when she wrote, ‘Maybe women have finally achieved the critical mass that many have argued was the precondition to women having any real power in Canberra’ (Summers 2006).

As Sue Dunlevy (2006) has commented: ‘If nothing else, the gender divide on RU486 has proven once and for all that the only way women can truly be represented in parliament is if there are women in Parliament.’ Dunlevy identifies five women Senators from five parties involved in the passage of the Bill: in addition to the four Senators who introduced the Bill (Allison, Troeth, Nash and Moore), Senator Kerry Nettle (Greens) worked to ensure the Bill’s passage. Dunlevy foreshadowed that this shift may have a significant impact on future policy-making as women unite to agitate for legislative change in the Parliament.

Fired up by their unity on the abortion drug, the five women senators [from the five key parties] suggested this may just be the beginning of a new form of women’s politics. The same day these women took a public stand on RU486, Prime Minister John Howard faced a mini-revolt in his own party room over another women’s issues – childcare. (Dunlevy 2006)

Although this Bill was a particularly complicated one, representing a mixture of Constitutional, procedural and bioethical issues, it heralded a shift in gender politics among the sitting parliamentarians, as was reflected in the events surrounding the legislative responses to the Lockhart Review report on embryo research later in 2006.

Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006

In December 2005, the report of the Legislation Review Committee (LRC) on the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* was tabled, reigniting the embryo research debate in Australia. The report, which became known as the Lockhart Review after its Chair, the former Federal Court Judge the Hon John Lockhart AO, was commissioned ‘to consider and report on the scope and operation of each of the Acts’ (Senate Committee Report 2006) and to make appropriate recommendations on the future direction of human embryonic stem cell research and cloning for research purposes in Australia. The major parties (including the coalition) announced that they would permit conscience votes on any legislative changes that might be proposed.

A draft bill incorporating all of the LRC recommendations was subsequently tabled for discussion by Democrat Senator Natasha Stott Despoja and Labor Senator Ruth Webber. Subsequently, a more conservative bill, the *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006* was introduced as a private Senator’s Bill by Liberal Senator Kay Patterson on 19 October 2006. The process leading to the passage of the Bill was another example of cross-party cooperation among female parliamentarians in relation to ethically-contentious policy. Public and Parliamentary debate on the Bill centred on proposals in support of the creation of human embryos for research using somatic cell nuclear transfer (SCNT) and creation of human-animal chimeras, all of which were allowed under the proposed Bill in accordance with the recommendations of the LRC (Ankeny & Dodds 2008). Limits imposed on research under the Bill (again in line with the LRC recommendations) included strict prohibitions on the implantation of cloned embryos into a woman and on allowing cloned embryos to develop beyond 14 days. Following amendments

(including removal of permissibility of chimera research), the Bill passed through Senate on 7 November 2006 in a close conscience vote, 34 in favour and 32 against (SJ 2006 115: 3009). As with the RU486 Bill, the final conscience vote in the House of Representatives was not recorded although it passed ‘on the voices’ on 6 December 2006 (Anonymous 2006). (The second vote immediately prior to the third and final voice vote recorded 82 members voting in favour and 62 against the Bill [HVP 2006 145: 1635].)

Three Liberal Ministers (Health Minister Abbott, Treasurer Peter Costello and by then Employment Minister Andrews) opposing the Bill were joined by Liberal Prime Minister Howard and the freshly-elected Labor opposition leader Kevin Rudd (elected Prime Minister in late 2007), citing their personal moral objections (Anonymous 2006; Burke 2006; *Canberra Times* 2006; King 2006). An appeal to ‘conscience’ was also the motivation for some of those supporting the Bill, with Liberal Education Minister Julie Bishop saying, ‘I cannot in all conscience stand in the way of the only ray of hope available to sufferers of devastating and debilitating disease and injury’ (King 2006).

According to a Morgan Poll conducted in June 2006, an overwhelming majority of Australians (82%) supported human embryo stem cell research, with 80% supporting the merging of an unfertilised egg with a skin cell (Morgan Poll 2006b).^x A November 2006 poll released by pro-research group Research Australia, found that the majority of Australians (58%) supported such research, with the lower percentage suggesting that Australians are a little more conservative when asked about this research with reference to the term ‘therapeutic cloning’ (Research Australia 2006).^{xi}

Yet again, the views of the Australian public in relation to this Bill were better represented by women parliamentarians, with 83% of women (as opposed to 33% of men) in the Senate and 76% of women in the House (as opposed to 50% of men) supporting the Bill. In other words, the passage of the Bill appears to have been contingent upon the presence of women in Parliament. This shift in power has not escaped the notice of the international media (e.g., Bartlett 2006 writing in South Africa) or experienced Australian political commentators, such as Michelle

Grattan (2006), who suggested that the impact of women in the Parliament might even extend to re-shaping the political landscape of their male counterparts:

The women's push has been especially bad news for [Tony] Abbott, whose strong Catholic views mean he's been on the other side of issues like RU486 and therapeutic cloning. Not only have they beaten him hands down, they've also set back his deputy leadership ambitions. He'd poll badly among Liberal women, and there are now enough of them to make a difference.

Conclusion

The use of conscience votes in the Australian parliament in the past three decades demonstrates a number of democratically significant features, at least in regards to policy on some specific ethically-contentious issues. The Liberal Party, which was traditionally more tolerant of members who crossed the floor according to their individual conscience, when in power no longer tolerated such dissent except in difficult policy-making areas where consensus within the party was impossible. In such cases, the party has been forced to subject policy decisions to a conscience vote to avoid public displays of disunity.

The number of women parliamentarians has increased substantially, and it appears that when they are unleashed from the requirements of party solidarity through a conscience vote, they can significantly influence the outcome on key issues. It is notable that in the case of the RU486 Bill and the Research Involving Human Embryos Bill, women MPs' voting patterns were not aligned with public views as such, but were more radical and thus offset the more conservative votes of their male counterparts in a manner that led to an outcome better representing public opinion overall.

We are not arguing here that when women hold elected positions their presence will necessarily lead to legislative outcomes that better reflect the views of the electorate; nor are we claiming that women hold more progressive views than do men on all issues. Nor do we wish to unreflectively endorse the idea that women bring 'a different voice' to moral and other deliberations that is in some sense feminine, and which is grounded in an ethic of care and relationality (see Gilligan 1982). Rather, we view the data from Australian conscience votes as contributing to the evidence for viewing women's participation in parliamentary institutions as

shifting the way that politics is done (Celis & Childs 2008). This is not to make an essentialist claim about women's political behaviour or morality. Rather, we support the view articulated by Young (2000) that women are more likely to share a social perspective, grounded in their (gendered) social positions and in the life experiences that they are more likely to have had than men. These social positions and experiences then shape the questions women seek to answer in politics, and their expectations, assumptions and reasoning about social matters (Young 2000). Many of the policy debates here are likely to raise issues which have special resonance for women due to their connection to their life experiences, which include reproductive decisions, attention to health (their own and that of those they care for) and access to health services, as opposed to concerns primarily about economic issues (Campbell, 2004). Thus women may, collectively, have a different set of political priorities from those of men.

Women's political concerns may also be better championed by women politicians, once they are elected to office. This is not to say that elected politicians who are women will inevitably represent women's interests (nor that all women share a set of distinctive interests), but rather that on key issues affecting women, women in Parliament may be better able to use the formal, party room and informal political processes to achieve outcomes that are viewed as promoting the interests of women (as in the case of the *ad hoc* coalitions formed among strategically-placed women politicians from across the political spectrum in relation to the Therapeutic Goods Amendment [Repeal of Ministerial Responsibility] Bill, 2005 and the Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Bill [2006]). The point being made here is that a necessary condition for women's interests to be *substantively* represented in politics is that there are a reasonable number of women in elected office (Celis & Childs 2008, Campbell & Lovenduski 2005). It certainly appears that Australian women parliamentarians, particularly senators from minor parties where cross-party collaboration is essential for effectiveness, have taken the lead to press for cooperative policy development on issues concerning bioethics.

Are conscience votes more or less democratic than the discipline of party policy? Although there is criticism that more vulnerable parliamentarians may still adhere to a *de facto* party line or vote a particular way out of fear of public backlash, the case studies outlined here indicate that

conscience votes can provide more favourable conditions for representative and deliberative democratic policy-making than normal Parliamentary processes. In our view, the ability to use conscience votes in very specific cases may allow issues which would otherwise be discounted as ‘political minefields’ or too readily polarised to be more carefully considered and debated, and hence to achieve the goals of deliberative democracy. In the case of those examples where there was considerable pressure brought to bear on politicians from religious quarters, a conscience vote *per se* need not have yielded careful deliberation, as parliamentarians may well have sought to avoid being associated with decisions that could provide opponents with powerful supporters (as has been seen in the United States where politicians are identified with “pro Choice” versus “pro Life” positions). We would argue that the deliberative legitimacy of conscience votes is best realised when parliamentarians, freed from Party discipline, are able to draw on their experiences to articulate what the interests at stake are in a policy debate, to develop arguments to articulate the significance of those interests and to weigh up the range of interests on the issue without reverting to ready policy positions. Conscience votes encourage an increased level of lobbying and deliberation, which suggests that parliamentarians are more informed about these issues than otherwise. Thus they are more likely to attend to the views expressed by their constituents and to be moved by arguments of their parliamentary colleagues without regard to the party of the person making the argument (as can be clearly seen in the cross-party coalitions that united over the bills related to RU-486 and embryo research). Voters may have good reason to believe that their efforts at persuasion of their elected representatives will be more effective where the representative has the freedom of a conscience vote. For these reasons, conscience votes *may* enhance deliberation and accountability.

However, because of the strength of political parties in Australia, and the dependence of most parliamentarians on party support, conscience votes provide only limited opportunities for critical dissent. They enable parties to avoid public displays of disunity where a small number of vocal opponents would otherwise cross the floor, while enforcing party unity on all other matters. Further, given the lack of any requirement for MPs to articulate reasons for votes or to reflect constituents’ views, or even for the Parliament to record the final vote by members, parliamentarians are not forced in any formal way to bear responsibility or face voters’ reactions. Finally, by allowing conscience votes on contentious public issues, centrist political parties are

able to avoid initiating policy development in areas where they would be required to demonstrate leadership, or anticipate rather than follow public sentiment on divisive or unpopular matters.

There is one democratic value that appears to be clearly supported by the cases of conscience votes discussed here: representation of voters' attitudes or values. The introduction of more women into the Australian Parliament, in combination with the strategic use of conscience votes, has made a significant contribution to more representative policy-making, at least in the ethically-contentious domains discussed in these case studies. The last three case studies in particular indicate that women are more inclined than male parliamentarians to take a position that reflects majority public opinion in response to contentious policy questions, regardless of party affiliation. One explanation for this could be that although the demographic characteristics of parliamentarians still fail to reflect the broader community (elected representatives are Whiter, richer and better educated than the Australian population as a whole), women representatives appear to bring perspectives to the legislative debate that better reflect the population's views (at least on the issues for which a conscience vote has been allowed). We can speculate that if the membership of Parliament were to better reflect the diversity of the Australian populace (for instance having greater ethnic diversity, or fewer representatives with inherited familial wealth or from families with long political histories), then there would be further opportunities for legislative debates to substantively represent voters' interests. An alternative explanation of women's involvement in conscience votes may be, at least in the case of bills initiated in Senate as private Senator's bills, that the higher proportion of women senators among minority (progressive) parties allows these policy initiatives to challenge the arguably more conservative impulses of the major parties. The available evidence clearly demonstrates that conscience votes allow alternate views on contentious policy questions to be represented which may otherwise have been overwhelmed by normal 'party line' political decision-making. *[Insert Table]*

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TABLE: CONSCIENCE VOTES IN AUSTRALIA 1973-2006

Medical Practice Clarification Bill 1973										Public Opinion Polls
	Total Votes			Men			Women			
	For	Against	N	For	Against	N	For	Against	N	
House of Representatives										In favour of some legal access to abortion †
ALP	23	40	63	23	40	63	No women MPs			
Liberal	–	38	38	–	38	38				
CP	–	20	20	–	20	20				
Total votes	23	98	121	23	98	121	0			
% of vote	19%	81%								80% - 83%

Bill Defeated

† McNair Anderson poll 1973 (cited in Betts 2004)

Sex Discrimination Bill 1984										Public Opinion Polls
	Total Votes			Men			Women			
	For	Against	N	For	Against	N	For	Against	N	
Senate										
ALP*	24	–	24	18	–	18	6	–	6	
Liberal	11	8	19	8	7	15	3	1	4	
NPA	–	4	4	–	4	4	–	–	–	
AD	5	–	5	4	–	4	1	–	1	
Total votes	40	12	52	30	11	41	10	1	11	
% of vote	77%	23%		73%	27%		91%	9%		
House of Representatives										No relevant polls available†
ALP*	67	–	67	61	–	61	6	–	6	
Liberal	17	14	31	17	14	31	–	–	–	
NPA	2	12	14	2	12	14	–	–	–	
Total votes	86	26	112	80	26	106	6	–	6	
% of vote	77%	23%		75%	25%		100%	0		

* No Conscience vote for ALP

† See Gallup Poll 1982 for closest comparison

Euthanasia Laws Bill 1996

	Total Votes			Women			Men			Public Opinion Polls	
	For	Against	N	For	Against	N	For	Against	N		
House of Representatives											
ALP	22	21	43	21	18	39	1	3	4	Support law reform to allow euthanasia† [Against the bill]	
Liberal	53	11	64	40	9	49	13	2	15		
NPA	11	2	13	11	2	13	—	—	—		
Ind	2	1	3	2	1	3	—	—	—		
Total	88	35	123	74	30	104	14	5	19		
% of vote	72%	28%		71%	29%		74%	26%			
Senate											
ALP	9	18	27	6	12	18	3	6	9		
Liberal	21	6	27	17	2	19	4	4	8		
NPA	5	1	6	5	1	6	—	—	—		
AD	1	6	7	1	1	2	—	5	5		
Green	—	2	2	—	1	1	—	1	1		
Ind	2	—	2	2	—	2	—	—	—		
Total	38	33	71	31	17	48	7	16	23		
% of vote	54%	46%		65%	35%		30%	70%			
										60% - 80%	

† Newspoll 1995; 1996

2002 Research Involving Human Embryos Bill

	Total Votes			Men			Women			Public Opinion Polls	
	For	Against	N	For	Against	N	For	Against	N		
House of Representatives											
ALP	53	6	59	35	6	41	18	—	18	Support use of excess embryos in research †	
Liberal	39	18	57	31	14	45	8	4	12		
NPA	6	6	12	5	5	10	1	1	2		
CLP	1	—	1	1	—	1	—	—	—		
Ind	—	3	3	—	3	3	—	—	—		
Total votes	99	33	132	72	28	100	27	5	32		
% of vote	75%	25%		72%	28%		84%	16%			
Senate											
ALP	20	8	28	11	6	17	9	2	11		
Liberal	15	11	26	8	10	18	7	1	8		
NPA	—	3	3	—	3	3	—	—	—		
CLP	1	—	1	1	—	1	—	—	—		
AD	7	—	7	5	—	5	2	—	2		
Green	1	1	2	—	1	1	1	—	1		
Ind	1	2	3	—	2	2	1	—	1		
PHON	—	1	1	—	1	1	—	—	—		
Total votes	45	26	71	25	23	48	20	3	23		
% of vote	63%	37%		52%	48%		87%	13%			
										70%	

† Morgan Poll 2001

Therapeutic Goods Amendment (Repeal of Ministerial Responsibility) Bill 2005 (2006)

	Total Votes			Men			Women			Public Opinion Polls
	For	Against	N	For	Against	N	For	Against	N	
Senate										
ALP	21	7	28	10	5	15	11	2	13	
Liberal	14	17	31	7	16	23	7	1	8	
NPA	1	3	4	–	3	3	1	–	1	
CLP	1	–	1	1	–	1	–	–	–	
AD	4	–	4	2	–	2	2	–	2	
Green	4	–	4	1	–	1	3	–	3	
Family First	–	1	1	–	1	1	–	–	–	
Total votes	45	28	73	21	25	46	24	3	27	
% of vote	62%	38%		46%	54%		89%	11%		
House of Representatives*										
ALP	54	5	59	34	5	39	20	–	20	Support women's access to the 'abortion pill'†
Liberal	37	35	72	29	29	58	8	6	14	
NPA	3	8	11	2	7	9	1	1	2	
CLP	–	1	1	–	1	1	–	–	–	
Ind	1	1	2	1	1	2	–	–	–	
Total	95	50	145	66	43	109	29	7	36	
% of vote	66%	34%		61%	39%		81%	19%		68%

* No formal final (third) vote on Bill - numbers are taken from second reading vote and are thus indicative only

† Morgan Poll 2006a

Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Bill (2006)

	Total Votes			Men			Women			Public Opinion Polls
	For	Against	N	For	Against	N	For	Against	N	
Senate										
ALP	17	8	25	7	5	12	10	3	13	Support use of human embryos in stem cell research; Support cloning for research purposes†
Liberal	10	19	29	4	17	21	6	1	7	
NPA	–	3	3	–	4	4	–	–	–	
CLP	–	1	1	–	1	1	–	–	–	
AD	4	–	4	2	–	2	2	–	2	
Green	3	–	3	1	–	1	2	–	2	
Family First	–	1	1	–	1	1	–	–	–	
Total	34	32	66	14	28	42	20	4	24	
% of vote	52%	48%		33%	67%		83%	17%		
House of Representatives*										
ALP	43	15	58	25	13	38	18	2	20	
Liberal	38	33	71	28	28	56	10	5	15	
NPA	1	11	12	1	11	12	–	–	–	
Ind	–	3	3	–	1	1	–	2	2	
Total	82	62	144	54	53	107	28	9	37	
% of vote	57%	43%		50%	50%		76%	24%		58% - 80%

* No formal final (third) vote on Bill - numbers are taken from second reading vote and are thus indicative only

† Morgan Poll 2006b; Research Australia 2006

AD	Australian Democrats	Green	Australian Greens
ALP	Australian Labor Party	Ind	Independent (no party affiliation)
CLP	Country Liberal Party	Liberal	Liberal Party of Australia
CP	Australian Country Party	NPA	National Party of Australia
Family First	Family First Party	PHON	Pauline Hanson's One Nation Party

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- ⁱ See Donley Studlar (2001) for a critical international comparison of ‘morality politics’ as a distinctive area of political study, and Marvin Overby et al. (1998) for a Canadian comparison.
- ⁱⁱ The following is a list of conscience votes in the Australian Federal Parliament since 1973 (this list cannot be verified as being complete since conscience votes are not recorded as such on the Parliamentary record): *New and Permanent Parliament House Motion (as to site) 1973*; *Medical Practice Clarification Bill 1973*; *Sexual Relationships – Social educational and legal aspects - Proposed Royal Commission Motion 1973*; *Death Penalty Abolition Bill 1973*; *Homosexual Acts and the Criminal Law Motion 1973*; *Parliament Bill 1974*; *Family Law Bill 1974*; *New and Permanent Parliament House Motion 1974*; *Termination of Pregnancy – Medical Benefits Motion 1979*; *Family Law Amendment Bill 1983*; *Sex Discrimination Bill 1984*; *Procedure Committee Motion 1987*; *Euthanasia Laws Bill 1996*; *Constitution Alteration (Establishment of Republic) Bill 1999*; *Research Involving Embryos and Prohibition of Human Cloning Bill 2002* (this Bill was split to become the *Research Involving Human Embryos Bill 2002* and *Prohibition of Human Cloning Bill 2002* due to the distinct nature of these two issues; the former Bill was then subject to a conscience vote by all parties whereas the latter was decided through the usual practice of voting according to party policy); *Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 (2006)*; *Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006* (list up to 2002 from McKeown & Lundie 2002 and Department of the House of Representatives 2005: 280-1, with additions taken from Commonwealth Parliament 2006, Bills list).
- ⁱⁱⁱ McNair Anderson Poll (1973): Question: ‘Which (of these responses) comes closest to your opinion? Abortion should be legal:…In all circumstances, that is, “abortion on demand” [response rate: 23%]; In cases of exceptional hardship, either physical, mental or social [20%]; If the mother’s health, either physical or mental, is in danger [21%]; Only if the mother’s life is in serious danger [19%]; Abortion should not be legal in any circumstances [13%]; No opinion/no response [4%].’ (Betts 2004).
- ^{iv} The decline in 1996 may reflect the wording of the question that mentions ‘lethal injection.’ NewsPoll (1995 and 1996) –Question: ‘Thinking now about euthanasia where a doctor complies with the wishes of a dying patient to have his or her life ended. Are you personally in favour or against changing the law to allow doctors to comply with the wishes of a dying patient to end his or her life?’ Strongly in favour 61%; Partly in favour 18%; Partly against 3%; Strongly against 12%; Don’t know 6%. NewsPoll (1996) Question: ‘And are you personally in favour or against changing the law to allow doctors to perform active euthanasia, for example, by giving a patient a lethal injection?’ Strongly in favour 39%; Partly in favour 24%; Partly against 11%; Strongly against 17%; Uncommitted 9%.
- ^v Poll questions: ‘Should couples with excess embryos after infertility treatment or IVF be able to choose to donate these embryos for research rather than discard them?’ Yes 70%; No 19%; Undecided 11%. ‘A very important new avenue for research using human embryos involves taking cells called stem cells from the inside of a five day old embryo. The embryo is no longer capable of further development. Scientists are working on techniques to turn stem cells extracted from an embryo into any type of cells in the body such as nerve cells and muscle cells to treat diseases such as heart disease, Alzheimers, cancer, spinal injuries and many more. Put simply, stem cells can be extracted from human embryos to be used in the treatment

of many diseases and injuries. Do you approve or disapprove?' Approve 70%; Disapprove 19%; Undecided 11%.

- ^{vi} Poll question: 'As with any transplant some patients may have problems with their bodies rejecting stem cells. To overcome this, a patient's own genetic material can be inserted into an egg to create an embryo that will be used to extract stem cells. The process is called nuclear transfer or therapeutic cloning. Do you approve or disapprove?' Approve 55%; Disapprove 32%; Undecided 13%.
- ^{vii} We are grateful to the anonymous reviewer for *AJSI* who pushed us to articulate this point clearly.
- ^{viii} ARHA (2006) and NewsPoll (2006). This particular NewsPoll was commissioned by pro-choice group, the Australian Reproductive Health Alliance (ARHA). Question: 'Now thinking about the topic of abortion. Abortion is already available in Australia using surgical methods. However there is a drug called RU486 which can be used by doctors to terminate a pregnancy, without surgery, within the early stages. Would you personally be in favour, or against RU486 being made available in Australia for use by qualified medical practitioners?' In favour 68%, Against 21%, Neither/don't know 9%, Refused 2%.
- ^{ix} Poll question 'Now thinking about the "Abortion Pill". There is currently a proposal to introduce the drug RU486, also known as the "Abortion Pill", into Australia. Do you think the "Abortion Pill" should be made available to Australian women, or not?' Yes, make available 62%; No, not make available 31%; Can't say 7%.
- ^x Poll question: 'A very important new avenue for research using human embryos involves taking cells called stem cells from the inside of a five day old embryo. The embryo is no longer capable of further development. Scientists are working on techniques to turn stem cells extracted from an embryo into any type of cells in the body such as nerve cells and muscle cells to treat diseases such as heart disease, Alzheimers, cancer, spinal injuries and many more. Put simply, stem cells can be extracted from human embryos to be used in the treatment of many diseases and injuries. Do you approve or disapprove?' Approve 82%; Disapprove 13%; Undecided 5%. Question: 'Scientists can now make embryonic stem cells for medical research by merging an unfertilised egg with a skin cell. In this case, no fertilisation takes place and there is no merger of the egg and sperm. Knowing this, do you favour or oppose embryonic stem cell research?' Approve 80%; Disapprove 11%; Undecided 9%.
- ^{xi} Poll question: 'While normal embryonic stem cells are important for producing normal cells to potentially repair or replace diseased and damaged tissues, they have a limited use for researchers in understanding how diseases are established and develop. It is proposed that the laws governing stem cell research be extended to allow Somatic Cell Nuclear Transfer (SCNT), also known as therapeutic cloning, which involves creating a stem cell from a patient's cell but does not involve the union of an egg and sperm. Theoretically, SCNT is the same technology that has been used to reproductively clone animals (such as Dolly the sheep), but the Australian scientific community does not support reproductive cloning and the use of SCNT to clone a human will continue to be explicitly prohibited and be a criminal offence under Australian laws. Do you strongly support, somewhat support, neither support nor oppose, somewhat oppose, or strongly oppose the extension of the current Australian laws to allow therapeutic cloning of nuclear transfer embryos for health and medical research?' Strongly support 30%; somewhat support 28%; neither support nor oppose 19%; strongly oppose 10%; somewhat oppose 8% can't say 6%.