

THE BULLETIN

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Editor: Matthew Evans, office@affinity.org.uk

Icing on the Cake: Reflections on the Ashers Baking Company Case

When Gareth Lee called at a bakery in Royal Avenue, Belfast, in May 2014, to order a cake to take to a party, neither he, nor the staff who served him, could possibly have imagined that four years later (1,615 days, to be precise) the cake he wanted, but never received, would be the subject of a UK Supreme Court (UKSC) ruling which for several hours was reported as the lead item on BBC news bulletins.

After reflecting on Mr Lee's order for a few days, the Ashers Baking Company (Ashers) informed Mr Lee that they could not supply the cake, and refunded the £36.50 he had paid. Mr Lee complained to the Equality Commission for Northern Ireland (ECNI), which pursued through the courts a discrimination claim against Ashers on Mr Lee's behalf.

The case, which became known in the press as the 'gay cake case', attracted widespread media interest throughout the UK and beyond. Although press fascination was partly due to its unusual details, the case was also recognised as raising fundamental issues relating to discrimination law which had not previously been resolved.

The judgment of the UKSC, delivered on 10 October 2018, has now settled some of these issues.

The purpose of this present article is to outline the main facts of the case, and of the UKSC's judgment, and to consider the significance and possible implications of the findings.

1 The facts of the case and the judicial journey

When he ordered his cake, Mr Lee, a volunteer with QueerSpace, an LGBT community organisation in Belfast, had asked Ashers to ice it with the words *Support Gay Marriage*.

Mr Lee wanted the cake for a party which QueerSpace was organising at Bangor Castle. When ordering the cake, Mr Lee had been served by Mrs Karen McArthur, a director of Ashers, and mother of Daniel McArthur, the bakery's general manager. Her husband, Colin McArthur, is also a director. At the time of the order, Mrs McArthur raised no objection, as she wished to consider how to explain her objection, and to spare Mr Lee any embarrassment in the shop. However, over the following week-end, the McArthurs decided that they could not in conscience produce a cake with the slogan requested, and Mrs McArthur telephoned Mr Lee to apologise, explaining that Ashers was a Christian business and would not be able to fulfil the order.

After his order was cancelled, Mr Lee was able to obtain the cake he wanted from another supplier. Subsequently he complained to the Equality Commission for Northern Ireland (ECNI) about the failure of Ashers to fulfil his order. The ECNI supported him in bringing to court a civil claim against Ashers for discrimination on the grounds of sexual orientation, political opinion and religious belief.

The sexual orientation claim was made under the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 (SORs), and the other two claims under the Fair Employment and Treatment Order 1998 (FETO).

The case was initially heard at the county court in Belfast by the Presiding District Judge, Isobel Brownlie, who on 19 May 2015 held that the failure of Ashers to complete the order amounted to discrimination on all three of the grounds in the claim. She awarded damages of £500. [15]

Ashers appealed to the Northern Ireland Court of Appeal (NICA), which on 24 October 2016 dismissed the company's appeal. The Court held that the decision to refuse to supply the cake amounted to associative direct discrimination on the ground of sexual orientation. Having dismissed the appeal on that ground, the Court did not make any decision on the questions arising under the other two grounds. [16]

Following the dismissal of its appeal to the NICA, Ashers applied to the UK Supreme Court (UKSC) for permission to appeal to the UKSC. Permission was granted, and the case was heard on 1 and 2 May 2018.

In connection with the Ashers case, the UKSC also agreed to consider interventions by the Attorney General for Northern Ireland (AGNI), Mr John Larkin QC. The AGNI's interventions – legally known as *references* – questioned the constitutional validity of the SORs and FETO in respect of the case against Ashers.

2 The issues at stake

The central issue which the UKSC was being asked to decide was whether the refusal of Ashers to supply Mr Lee with his requested cake amounted to unlawful discrimination under the SORs and/or FETO.

Paragraph 3(1) of the SORs and Article 28 of FETO define an offence of discrimination in identical terms: 'A person (A) discriminates against another person (B) if (a) on grounds of sexual orientation, A treats B less favourably than he treats or would treat other persons...' A further Regulation (5[1]) states: 'It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services – (a) by refusing or deliberately omitting to provide him with any of them...' [20, 39]

The District Judge had found that the conduct of Ashers had amounted to discrimination on the basis of the SORs, but she did not find that the bakery's discrimination was because of Mr Lee's actual or perceived sexual orientation. What she did find was that Ashers 'cancelled the order because they oppose same sex marriage for the reason that they regard it as sinful and contrary to their genuinely held religious beliefs.' [22]

The Court of Appeal held that the request for the words *Support Gay Marriage* to be iced on the cake meant that 'this was a case of association with the gay and bisexual community and the protected personal characteristic was the sexual orientation of that community'. In its view, this finding amounted to discrimination under the SORs, and it dismissed the appeal. [28]

At the Supreme Court, the judges needed to consider whether the findings of either or both of the lower courts were correct in law.

3 The Supreme Court's findings

3.1 The issue of discrimination

The five judges of the Supreme Court found unanimously that in connection with the claim brought under the SOR, no discrimination had occurred. The judges found that neither Mrs McArthur nor any of the bakery's staff were aware of Mr Lee's sexual orientation, and that Ashers would have declined the order whoever had sought to place it. Their objection was to the wording being requested – *support gay marriage* – and not to anything about the particular purchaser: 'The objection was to the message, not the messenger.' [11, 22]

Commenting on the District Judge's earlier conclusions as to the bakery's reasons for cancelling the order, the UKSC's judgment states: 'To the extent that the District Judge held that the bakery had discriminated unlawfully because of its owners' religious beliefs she was wrong to do so.' [45]

In other words, a finding of unlawful discrimination can never be based on the beliefs of the perpetrator of the action complained of: 'It is a well-established principle of equality law that the motive of the alleged discriminator is irrelevant.' [43] The crucial issue which determines discrimination is whether an alleged discriminator (A) has treated a person (B) differently from other people on the basis of a protected

characteristic of B or a person with whom B is associated. 'By definition, direct discrimination is treating people differently.' [23] In this case, no different treatment had taken place.

But the District Judge had also concluded that the message *support gay marriage* was indissociable from sexual orientation and therefore Ashers' decision to cancel the order had amounted to discrimination against a person's or a group of people's sexual orientation. [25] *Indissociability* is a legal term meaning *inseparably connected*.

The UKSC rejected the District Judge's finding of *indissociability*, on the grounds that the degree of *association* was nowhere near close enough. In its judgment, the UKSC stated: 'People of all sexual orientations, gay, straight or bi-sexual, can and do support gay marriage. Support for gay marriage is not a proxy for any particular sexual orientation.' [25]

In the lower courts, the Court of Appeal had followed similar reasoning to that of the District Judge, concluding that 'the benefit from the message or slogan on the cake could only accrue to gay or bisexual people' and therefore the decision to supply the cake amounted to discrimination by association. The UKSC's judgment specifically denies this, stating: 'It (the benefit from the message on the cake) could also accrue to the benefit of the children, the parents, the families and friends of gay people who wished to show their commitment to one another in marriage, as well as to the wider community who recognise the social benefits which such commitment can bring.' [33]

The UKSC also specifically rejected the suggestion, implied by the Court of Appeal, that the reason for refusing to supply the cake was that Mr Lee was likely to associate with the gay community of which the McArthurs disapproved: 'There was no evidence that the bakery had discriminated on that or any other prohibited ground in the past. The evidence was that they both employed and served gay people and treated them in a non-discriminatory way.' [28] Mr Lee, a gay man, 'was not personally known to the (Ashers) staff or to Mr and Mrs McArthur. He did not know anything about the McArthurs' beliefs about marriage and neither they nor their staff knew of his sexual orientation.' [11]

3.2 The issue of compelled speech

Ashers' legal team had argued throughout the case that if the law required Ashers Baking Company to express or endorse a view with which it profoundly disagreed, this would amount to 'compelled speech'.

The issue of compelled speech did not arise in connection with the SOR claim, since the judges found there had been no discrimination on that ground. [35] However, it did need to be considered under the FETO claims, since the judges ruled that the slogan *Support gay marriage* was a political opinion under the FETO criteria [41], and Mr Lee was perceived as holding the opinion which he wanted on the cake. [48]

As the UKSC judgment put it: 'By being required to produce the cake they (Ashers) were being required to express a message with which they deeply disagreed.' [54]

If producing the cake with the wording requested was an absolute legal requirement in the circumstances of the case, then it would be beyond doubt that Ashers had acted unlawfully. However, there are rights contained in Articles 9 (freedom of thought, conscience and religion), and 10 (freedom of expression) of the European Convention on Human Rights (ECHR). These rights were incorporated into UK law by the Human Rights Act 1998, which also requires courts to take account of all other legislation in a manner which gives effect to the rights enshrined in the ECHR (insofar as it is possible to do so). The question for the UKSC in this case, therefore, was whether, in the circumstances, Article 9 and/or Article 10 rights protected the baking company from a finding of discrimination on the ground of Mr Lee's political opinion or religious belief. It needs to be reiterated that it is only Mr Lee's political opinion and religious belief that is relevant to a discrimination claim. Whatever the opinions and beliefs of the McArthur family, they are not material to the case.

The UKSC judgment makes clear that the two lower courts had misjudged either the legal discrimination criteria, or the impact of ECHR rights, or both. It says of the District Judge, who found against Ashers on all three grounds: ‘It is unfortunate that she referred to both religious beliefs and political opinions in making these findings, because there appears to have been no evidence of Mr Lee’s religious beliefs.’ Rather, the UKSC’s judgment suggests, her findings were based not on his political opinion, but on the McArthurs’ religious beliefs. [46]

On the issue of ‘compelled speech’, the District Judge had not accepted that in supplying the requested cake, Ashers were being required to promote and support the campaign for same sex marriage. Although ultimately it failed to make a decision on the FETO appeal, the Court of Appeal had appeared to agree with this, arguing that ‘the fact that a baker provides a cake for a particular team or portrays witches on a Halloween cake does not indicate support for either.’ [54]

The UKSC judgment rejected these arguments, finding, on the basis of the McArthurs’ rights under Article 9 (freedom of thought, conscience and religion), and Article 10 (freedom of expression) that FETO should not be ‘given effect in such a way as to compel providers of goods, facilities and services to express a message with which they disagree, unless justification is shown for doing so’. [56]

The bakery could not refuse to provide a cake – or any other of their products – to Mr Lee because he was a gay man or because he supported gay marriage. But that important fact does not amount to a justification for something completely different – obliging them to supply a cake iced with a message with which they profoundly disagree... They would be entitled to refuse to do that whatever the message conveyed by the icing on the cake – support for living in sin, support for a particular political party, support for a particular religious denomination. [55]

Mr Lee’s legal team had argued before the UKSC that a trading company did not have Convention rights. The UKSC agreed that this was so, but found that in this case ‘to hold the company liable when the McArthurs are not would effectively negate their (the McArthurs’) Convention rights’. [57]

4 The case’s consequences

4.1 Immediate reaction

Colin Hart, director of The Christian Institute, which has supported and advised Ashers throughout the four-and-a-half years of the legal journey, described the outcome of the case as ‘a landmark judgment for free speech’:

We are very thankful to God for this ruling. Our prayers have been answered. We are also greatly indebted to the McArthur family. It has not been easy for them, but their stand has created a UK precedent. [Christian Institute email to supporters, 10.10.2018]

Daniel McArthur, general manager of Ashers, said he was ‘delighted and relieved’ by the ruling:

We always knew we had not done anything wrong in turning down this order. After more than four years, the Supreme Court has now recognised that and we are very grateful to the judges and especially grateful to God. We are particularly pleased the Supreme Court emphatically accepted what we have said all along – we did not turn down the order because of the person who made it, but because of the message itself. This ruling protects freedom of speech and freedom of conscience for everyone. [The Christian Institute website]

Gareth Lee, the complainant, expressed concern about the judgment:

This was never about a campaign or a statement. All I wanted was to order a cake in a shop that sold cakes

to order. I paid my money, my money was taken and then a few days later it was refused. That made me feel like a second-class citizen. I'm concerned not just for the implications for myself and other gay people, but for every single one of us. [quoted by Cathy Gordon in *The Scotsman*, 11.10.2018]

He added: 'I think this has consequences for everyone. Anyone can walk into a shop – you shouldn't have to work out if you are going to be served based on their religious beliefs... Do we have to guess? I am confused.' [quoted in *The Independent*, 11.10.2018]

The ECNI's Chief Commissioner, Dr Michael Wardlow, was also disappointed with the outcome: 'There is a concern that this judgment may raise uncertainty about the application of equality law in the commercial sphere...' [*Daily Mail*, 11.10.2018]

Immediate press and media reaction to the UKSC findings was largely favourable. The overwhelming majority welcomed the outcome, a frequent comment being that it demonstrated 'common sense'. Even the slightly more sceptical commentators objected more to what it regarded as the waste of money on both sides, rather than to the Court's findings.

The most negative of the national press titles was *The Independent*, which, in spite of the judgment, continued to describe the circumstances of the case as 'a clear case of discrimination'. [*The Independent*, 11.10.2018]

One of *The Independent's* contributors, Ben Kelly (11.10.2018) wrote: 'As a gay man from Northern Ireland, of course I feel disappointed by this story. It doesn't feel nice to know there are people out there who don't believe in your right to be equal.'

But that was not the view of all LGBT supporters. Peter Tatchell, campaigner and activist on behalf of LGBT rights, said:

This verdict is a victory for freedom of expression. Discrimination against LGBT people is wrong. But in a free society, people should be able to discriminate against ideas that they disagree with. I am glad the court upheld this important liberal principle. If the original judgment against Ashers had been upheld, it... would have set a dangerous, authoritarian precedent that could have been open to serious abuse. [Peter Tatchell, writing for the *Peter Tatchell Foundation*, 17.10.2018]

Andrew Pierce, an LGBT writer and campaigner, strongly supported the UKSC's judgment:

Justice was done yesterday because forcing people to promote a cause they disagree with, especially in an overtly political context, is neither fair nor free. The true test of a free and democratic society is that competing views are debated, not crushed by an unaccountable government quango. [*Daily Mail*, 11.10.2018]

4.2 Longer-term implications

[i] Implications for equality watchdogs

The Ashers case is bound to lead to some significant soul-searching by the Equality Commission for Northern Ireland, which has faced a deluge of criticism following the judgment. Several of its actions have been called into question – its decision to take the case through the courts, the huge expenditure it has been willing to commit to it, and its failure to defend the protected religious belief characteristic of the McArthurs while championing the protected LGBT characteristic of Mr Lee.

Reaction in the printed media has been largely scathing. The *Daily Mail* commented [Comment, 11.10.2018]: 'How sickening that by funding the case, the Northern Ireland Equality Commission has cost

taxpayers £500,000. Are there really so few genuine cases of bigotry in Northern Ireland that it has to spend our cash on trivialities?’

In a letter to *The Guardian* [13.10.2018], Jonathan Longstaff asked:

Would it not have been fairer if the taxpayer-funded Equality Commission for Northern Ireland had funded both parties in sorting out the correct interpretation of the equality legislation as to whether or not forcing someone to make a statement with which they disagree is discrimination? Could it be seen that the commission discriminated in funding only one party?

The financial hit taken by the ECNI is likely to become an issue again when the UKSC determines what, if any, costs order to make, and the precise liability of the ECNI becomes known.

Ross Clark, political commentator of the *Daily Express*, [12.10.2018] accused the ECNI and the lower courts of having ‘invented a law of their own’ and the equality industry of ‘aggressively promoting the interests of particular minority groups’.

He added:

A true liberal position is to support gay marriage but also support the right of people to hold views against gay marriage. That ought to have been the starting point for the Equality Commission when it came to considering Lee’s case against Ashers. It is sad – and needlessly provocative – that it ended up being dragged through the courts.

More significant than all the flak from the press will be the criticism of the ECNI implied by the UKSC itself in its judgment. Supreme Court judgments are always worded with impeccable courtesy and entirely lacking in gratuitous criticism. But in this judgment, it chose to make a specific point in connection with whether the approach of the ECNI to the case had been fair:

The Court of Appeal expressed some concern that the correspondence between the ECNI and the baking company may have created the impression that the ECNI was not interested in assisting members of the faith community when they found themselves in difficulties as a result of their deeply held religious beliefs. It is obviously necessary for a body such as the ECNI to offer its services to all people who may need them because of a protected characteristic and not to give the impression of favouring one such characteristic over others. [14]

Later in the UKSC judgment, the judges acknowledged that service providers do not always treat everyone with equal dignity and respect, but went on to say:

It is deeply humiliating and an affront to human dignity to deny someone a service because of that person’s race, gender, disability, sexual orientation or any of the other protected personal characteristics. But that is not what happened in this case and it does the project of equal treatment no favours to seek to extend it beyond its proper scope. [35]

In the context in which the UKSC made that statement, it is not clear who the Court was judging to have ‘extended it beyond its proper scope’ – the District Judge, the Court of Appeal or the legal team representing Mr Lee and the ECNI. It could be any or all three of these.

Some politicians in Northern Ireland have called for an investigation into the way in which the ECNI operates, or for the resignation of its Chief Commissioner. At the very least, it is obvious that the ECNI needs to review its policy assumptions and strategies in the light of the emphatic clarity of the UKSC’s legal decisions in the Ashers case. But in view of the widespread public criticism of the way it has approached the case, it is also essential that its present liberal campaigning culture is replaced by an objective and

dispassionate defence of all the protected characteristics, on an equal basis, which is what it was set up to do.

Although this was a case brought by the ECNI, the findings will have an influence on the Equality and Human Rights Commission which oversees equality and human rights issues in the rest of the UK.

(ii) Implications for the law and society in Britain

The immediate reaction of those who opposed Ashers was to claim that the UKSC's findings had created 'confusion' and 'uncertainty' in connection with discrimination law.

Dr Michael Wardlaw, Chief Commissioner of the ECNI, for instance, commented:

There is a concern that this judgment may raise uncertainty about what businesses can do and what customers may expect; and that the beliefs of business owners may take precedence over a customer's equality rights, which in our view is contrary to what the legislature intended. [Daily Mail, 11.10.2018]

The above statement by Dr Wardlaw is very revealing of the existing mindset in the ECNI. It needs to be considered a statement at a time:

'There is a concern that this judgment may raise uncertainty about what businesses can do...

This statement reflects a wholly inaccurate view of the case. The judgment raises no uncertainty about what businesses can do. On the contrary, it eliminates uncertainty. It clarifies that businesses cannot treat differently a person who has a protected characteristic, but that they are not required by the law, in the circumstances of the Ashers case, to express a message with which they disagree.

....and what customers may expect...

This is Mr Lee's complaint in the light of the UKSC judgment. He is concerned that whenever he walks into a shop he will never know whether he is going to be refused service. He is right to an extent. The UKSC judgment means that there are circumstances in which he can legitimately be refused service. However, this risk would only apply if he was asking for something to be done which bore a message, for example a T-shirt, a printing order, or a cake with iced wording. In each of these cases, he would always know that it was possible his order might be turned down. If this amounts to 'uncertainty', it is a very limited form of it.

It would be no different from my calling at a print shop to ask for a quantity of church text cards for 2019 displaying the verse *For God did not send his Son into the world to condemn the world, but in order that the world might be saved through him* [John 3:17]. How would I react if the printer told me that he was a Muslim, and had a policy of not printing anything which conflicted with his own religion, as my text certainly did? Far from making me feel like a 'second-class citizen', for me, it would be an exhilarating experience. I would rejoice that I lived in a country where belief and conscience are allowed to trump convenience and compulsory conformity. The minor hindrance of having to go to another printer would be a light affliction by comparison.

...and that the beliefs of business owners may take precedence over a customer's equality rights, which in our view is contrary to what the legislature intended.'

This is a misrepresentation of discrimination law. Dr Wardlaw may hold a particular view or conjecture about 'what the legislature intended', but there are no grounds at all for his holding such a view or conjecture. The law in question is not about the possibility of the beliefs of business owners taking precedence over a customer's equality rights. In fact, the UKSC judgment clearly stated that it is not about the beliefs of business owners at all. This is discrimination law, whose only criterion is whether a person – in this case a business – has treated different people differently. Dr Wardlaw may think he has insight into

what the legislature intended, in which case he ought to address the question of why the legislature did not incorporate that intention into the law they were enacting. Dr Wardlaw's real gripe is not that the Supreme Court judges have come to the wrong decision – although that is what he is saying. His real problem is that the law in question does not contain the provisions which he would like to see applied to Mr Lee's cake order.

Dr Wardlaw's difficulties seem to be an example of social liberalism's incredulity. What really irks him is not that the law has not been made clear, but how the Supreme Court can possibly have not found in favour of the liberal agenda, irrespective of what the law actually says. Social liberalism seems powerless to recognise that its agenda does not have an automatic right to succeed. The law is the law, and the desire of a particular interest group is not the law. That is the blind spot which risks bringing increasing gloom to the whole nation.

A completely different view of the outcome of the Ashers case is represented by a wide range of columnists, commentators and lawyers, of which the following are examples:

[This case] was about the right of each one of us – gay or straight, religious or secular, right or left – to choose our own beliefs and hold to them, without the strong, authoritarian arm of the state reaching in to batter us into submission. [Fionola Meredith, Belfast Telegraph, 11.10.2018]

Had this case been decided the other way, it would have struck a crippling blow to freedom of expression, effectively enabling the government to force private citizens to create messages with which they fundamentally disagree. [Paul Coleman, a solicitor and executive director of ADF International, a human rights organisation defending the right of people freely to live out their faith, writing in Spiked, 17.10.2018].]

The issue at stake was not just about special protection for Christians. The truth is, if the McArthurs had lost, freedom of conscience would have been under threat, by order of the state. [Andrew Pierce, Daily Mail, 11.10.2018]

(iii) The future for freedom of expression

It is right to rejoice both over the Supreme Court's findings and their ongoing implications. There are several actual or potential positives resulting from the case:

- Anyone providing goods, facilities or services can lawfully refuse to supply these in circumstances which would involve endorsing a message.
- The Ashers case is sure to be quoted in future cases involving discrimination where any form of compelled speech may be involved; but the case is likely to be referred to in future judgments in a much wider range of cases – those in which any of the principles relevant to the Ashers case, relating to discrimination or freedom rights, will be in issue.
- The case, because of its extensive publicity and the straightforwardness of the issues involved, has brought the hitherto neglected issues of freedom of conscience and freedom of expression into the centre of discussion.
- It is possible that the unanimous and clear UKSC judgment in the Ashers case will have a positive effect on politicians, and their legal advisers, and the whole of the Establishment, in connection with future legislation, and lead to a greater regard for individual freedom in public policy.

However, this is no time for bridled euphoria. The case has also reminded us that prior to the Ashers judgment, respect for Article 9 and Article 10 freedoms had sunk to a low point. A number of current commentators view the present and the future with foreboding and pessimism:

The case is emblematic of a growing intolerance towards deeply held Christian beliefs which is rarely applied to other religions. [leader, The Daily Telegraph, 11.10.2018]

People who disagree with gay marriage may be kicked out of jobs in education, social work, the Prison Service and so on (entirely wrongly). The Ashers verdict may mean that those people cannot yet be forced to expunge their minds of their beliefs and credos. [There is an authoritarianism which carries a] determination to not merely police what we do, but what we think. Because what we think is, for them, not simply wrong – which of course it may well be – but evil and deserving of punishment. It is an absolutism that is entirely free of compassion, tolerance and decency. It is the politics of the gulag... [Rod Liddle, The Sunday Times, 14.10.2018]

Peter Hitchens, writing in *The Mail on Sunday* [14.10.2018] was equally angry, indignant and pessimistic:

This political persecution of a Christian business was obviously unjustified from the start, and the lower courts which permitted it should be ashamed of themselves. It was all about forcing someone to express an opinion he did not hold, by baking a cake supporting same-sex marriage. No free society could allow someone to be coerced into doing that... The default position on such things in this country is still repressive and intolerant, as anyone in the public sector, and especially in the state schools, knows very well.

The fact that, throughout the Ashers case, the ECNI was paying so little heed to the Article 9 and Article 10 rights of the McArthurs is an indication that freedom of conscience is a value which no longer seems to be highly regarded as a protected right or in government policy.

This has been further borne out by the lower profile now given to freedom of expression. It doesn't appear at all in the widely used current government definition of 'British values'.

There is an ironic downside to the outcome of the Ashers case. Given that the UKSC finding is so clear, there will be little chance of the liberal agenda believing that it can gain any further ground on the basis of existing law. This means that there is a risk that politicians may be put under pressure to make changes to existing law, to bring about the equality and conformity reforms sought by social liberalism. This can only be achieved by measures which further restrict freedom of thought, conscience and religion, and freedom of expression.

(iv) Implications for the Christian constituency

Before Christians are carried away by the unexpected favourable outcome of the Ashers case, it is important to be clear on what its outcome does NOT mean:

- The case has not granted Christians, or anyone else, the right to discriminate against anyone who has a protected characteristic.
- The judgment does not establish a 'conscience clause' exempting anyone from a legal requirement on the ground of a conscientious objection. 'Conscience' is not the basis for the UKSC's finding. The Court's finding is applicable to any message with which the service-provider disagrees.

In addition, as in any case, the UKSC findings only apply for certain to the facts and circumstances of the particular case being judged, and the Ashers judgment needs to be viewed with that in mind. Any other case, however similar, may have slightly different facts or circumstances which may bring other issues into play, which could affect the outcome. For instance, some messages may be so closely identified with a group with a particular protected characteristic that to refuse to supply it may amount to discrimination. In the Ashers case, the judges ruled that the link of the message *Support gay marriage was not* exclusive enough to the gay community.

It is nonetheless good to rejoice over the emphatic and unanimous judgment in the Ashers case; and to be thankful to God for the initial stance and the subsequent consistency and steadfastness of the McArthur family, and for God's upholding of them throughout their four-and-a-half years of constant publicity and pressure. We should be grateful also for the tenacity, and for the careful and caring strategic decisions and advice of The Christian Institute on behalf of the baking company and the McArthur family.

But a more important need is to recognise that it was necessary to bring this case.

At first glance it may seem that the one aim throughout the case has been to defend the McArthurs and Ashers and to try to achieve a favourable outcome for them at each stage of the legal journey. That aim was not absent from the original motive, but it is simply a by-product of the true aim, which was to clarify what the law is in the UK, in relation to the circumstances in which discrimination can legally be held to have occurred, and over the issue of compelled speech.

Had there been no appeal to the Court of Appeal, the findings in the case would have remained those of the District Judge of the County Court, who found that discrimination had taken place on all three grounds claimed – sexual orientation, political opinion and religious belief. Had there been no appeal to the UKSC, the findings would have remained those of the Court of Appeal, which, though some of its reasoning was different from that of the County Court, nonetheless dismissed the appeal by Ashers. Without the case coming to the UKSC, the verdict would forever have been that the baking company had discriminated against Mr Lee, and the Court of Appeal's inaccurate definition of *association*, and its other errors, could have been argued in other cases.

The defence of the Ashers case was not motivated, as some have alleged, by the desire of Christians to 'defend their corner'. The motive is much bigger than that – a desire to challenge injustice, to clarify the law in the interests of everyone, and to seek to uphold the righteousness of God in every human domain. It is certainly potentially an expensive exercise, but justice does not have a price.

The freedoms God has given to man ought not to be removed or denied in the interests of political ideology, and those principles of creation need to be declared and defended, alongside the preaching of the gospel.

Note: The numbers in brackets throughout the above article are paragraph numbers in the UKSC judgment.

Rod Badams

Is Islam a Religion of Peace?

What makes a religion peaceful?

It is often stated today, in defending the reputation of Islam against the worst excesses of those who advocate terror, that Islam is a 'religion of peace'. How should we assess such a statement? We might ask whether Islam advocates peace. Being a religion of peace could imply that Islam advocates pacifism.¹ But is this really the case? To test this we need to examine the teaching of Islam in the Qur'an and the hadith.

Another way would be to ask whether its founder was a person of peace. We need to look at the life and teaching of Muhammad to make this assessment.

Alternatively, we might ask if the history of Islam has been peaceful. If a religious group had a long history of peaceful relations with other neighbouring groups and religions, this might be grounds to claim it as a peaceful religion. Sadly, the history of Islam is not one of peaceful relations with others. However, it is also the case that so-called 'Christian' nations have been far from peaceful themselves, and not just in self-defence. So this marker may not necessarily be a reliable guide.

What about if most of the followers of a religion are peaceful and law-abiding? Would this make it a religion of peace? Perhaps. But what if a significant minority claim inspiration from the teaching of their religion to commit acts of war and terrorism? What if this minority has a strong claim to be following the example of the founder of their religion? What if this minority can also point to multiple religious authorities and examples through history as setting a precedent for their religious understanding?

It is indeed the case that the majority of Muslims are peaceful, law-abiding people. But it is also the case that the majority of Muslims are unfamiliar with the teaching of the Qur'an and the life of Muhammad. They are not usually encouraged to read the Qur'an in a language they can understand. Many Muslims self-identify as such because of culture, birth or relationships. Therefore if we critique the teaching of their religion, we are not thereby criticising the behaviour or beliefs of every adherent of Islam.

In this article we will start by examining the meaning of 'Islam' and 'Jihad' and move on to the teaching of the Qur'an, and the example of Muhammad. We will briefly discuss the teaching of religious leaders and the history of Islam. I will conclude that Islam cannot be described as a 'religion of peace' in terms of its teaching, the example of its founder, or its history.

The meaning of 'Islam'

Muslims are not Islam. We need to distinguish between the people and the ideology; criticism of Islam is not criticism of all Muslims. To understand what Islam is, we need to examine its teachings from the Qur'an and the example of Muhammad. The fact that most Muslims don't know or agree with all these teachings does not change what the religion actually teaches.

The word 'Islam' does not mean 'peace' as is often assumed. It means 'submission' or 'surrender'. Mark Durie, a linguistics and theology scholar, writes: 'In its original meaning, a Muslim was someone who surrendered in warfare.'² Muhammad's famous phrase *aslim taslam* means 'surrender (i.e. submit to Islam) and you will be safe'.³ These words were included by him in letters sent to various rulers offering them peace if they surrendered to Islam. This is important because, far from carrying a peaceful meaning, Islam actually means peace after surrender in warfare or after subjugation.

¹ Though the Ahmadiyya sect does teach pacifism, it is not regarded as properly Islamic by the vast majority within Islam, and are heavily persecuted by mainstream Muslims.

² Durie, 'Is Islam a Religion of Peace?' in *Independent Journal Review* (2015). <http://www.meforum.org/5715/islam-religion-of-peace>

³ https://en.wikipedia.org/wiki/Aslim_Taslam

In fact, Islam was first called a religion of peace as late as 1930 in a book published to promote Islam,⁴ and as Muslims sought to promote their faith to western audiences. Thus, for the first 1,300 years of Islamic history, this description was unknown; it occurs nowhere in the texts or traditions of Islam right up until the last century.

The meaning of 'Jihad'

The Arabic word '*jihad*' means 'struggle' or 'strive'. It is sometimes ambiguous whether this refers to a spiritual or a physical (violent) struggle. The clearest use in a non-violent sense is Q 22:78:

And strive (jahidoo) for Allah with the striving (jihadihi) due to him. He has chosen you and has not placed upon you in the religion any difficulty.

However, there are plenty of clear references to *jihad* as violent struggle. For example, Q 2:216-218:

Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you... Indeed, those who have believed and those who have emigrated and fought (jihad) in the cause of Allah – those expect the mercy of Allah. And Allah is Forgiving and Merciful.

The claim is sometimes made that there is a distinction between the 'greater jihad' and the 'lesser jihad'. This claim is based on the following hadith:

Some troops came back from an expedition and went to see the Messenger of Allah sallallahu `alayhi wa-Sallam. He said: 'You have come for the best, from the smaller jihad (al-jihad al-asghar) to the greater jihad (al-jihad al-akbar).' Someone said, 'What is the greater jihad?' He said: 'The servant's struggle against his lust'(mujahadat al-`abdi hawah).

This hadith is narrated in Al-Bayhaqi in al-Zuhd al-Kabir, though it is noted that 'This is a chain that contains weakness.'⁵ It is dated from the first half of the ninth century and is not related in any of the official canonical hadith collections.⁶ Most significantly, it is contradicted by the Qur'an itself which says:

Not equal are those believers who sit (at home) and receive no hurt, and those who strive and fight in the cause of Allah with their goods and their persons. Allah hath granted a grade higher to those who strive and fight with their goods and persons than to those who sit (at home). Unto all (in Faith) hath Allah promised good: But those who strive and fight hath He distinguished above those who sit (at home) by a special reward. (Q 4:95)

Here it is clear that physical fighting is regarded as the greater endeavour. All four schools of Sunni jurisprudence, as well as the Shi'ite tradition make no reference to a 'greater jihad'. There are multiple references to jihad in the most trusted hadith collections and with virtually no exceptions, they all refer to physical fighting. For example:

A man came to Allah's Messenger and said, 'Instruct me as to such a deed as equals Jihad (in reward).' He replied, 'I do not find such a deed.' Then he added, 'Can you, while the Muslim fighter is in the battle-field, enter your mosque to perform prayers without cease and fast and never break your fast?' The man said, 'But who can do that?' Abu-Huraira added, 'The Mujahid (i.e. Muslim fighter) is rewarded even for the footsteps of his horse while it wanders about (for grazing) tied in a long rope.' (Bukhari 5:52:44)

⁴ Durie, 'Is Islam a Religion of Peace?'

⁵ See: http://www.livingislam.org/n/dgjh_e.html, also <http://sunnah.org/wp/2011/01/01/documentation-of-the-hadith-of-jihad-al-akbar-greater-jihad/>

⁶ Cook, *Understanding Jihad* (London: University of California Press, 2005), 35. See the whole chapter for a fuller discussion of the greater jihad concept. See also: https://wikiislam.net/wiki/Lesser_vs_Greater_Jihad, and this online fatwa: <https://islamqa.info/en/10455>

Leading scholar David Cook argues that attempts to present jihad in purely spiritual terms are completely unsupported by the evidence, and only occur in writings for Western audiences: 'Those who write in Arabic or other Muslim majority languages realise that it is pointless to present jihad as anything other than militant warfare.'⁷

In fact, jihad as physical fighting for the spread of Islam is so prominent in the traditional teaching of Islam that it is sometimes referred to as the sixth pillar of Islam. In the earliest hadith collections, sections on jihad immediately follow those on the five pillars.⁸ The primary meaning of jihad has always been physical fighting. This applies to the Qur'an, the hadith, Islamic history and classical Islamic hermeneutics.

To conclude, David Cook cites the standard definition of jihad given in the new edition of the *Encyclopaedia of Islam*: 'In law, according to general doctrine and in historical tradition, the *jihad* consists of military action with the object of the expansion of Islam and, if need be, of its defence.'⁹

The teaching of the Qur'an

Confusingly for the ordinary reader, the Qur'an is not in chronological order. The chapters (Surahs) come in order of length, from the longest to the shortest. According to classical Islamic teaching, however, earlier verses (in chronology of revelation rather than position in the Qur'an) are sometimes cancelled by later instructions in a manner somewhat similar to how Christians view the New Testament as cancelling some of the instructions of the Old Testament. This Islamic doctrine is called abrogation, and it is found in the Qur'an:

We do not abrogate a verse or cause it to be forgotten except that We bring forth [one] better than it or similar to it. Do you not know that Allah is over all things competent? (Q 2:106)

Or again:

And when We substitute a verse in place of a verse – and Allah is most knowing of what He sends down – they say, 'You, [O Muhammad], are but an inventor [of lies].' But most of them do not know. (Q 16:101)¹⁰ This doctrine of abrogation enables apparent contradictions in the Qur'an to be resolved; later verses abrogate earlier ones. Furthermore, Muhammad did not advocate violence earlier in his career, but waited until he had amassed a following large enough to wage war. Earlier verses are thus more peaceful, while later verses are more violent.

The most famous example of a peaceful verse is Q 2:256:

There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So whoever disbelieves in Taghut and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing.

However, this verse, and many others, is regarded as having been abrogated by the 'verse of the sword':¹¹

But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish regular prayers and practise regular charity, then open the way for them: for Allah is Oft-forgiving, Most Merciful. (Q 9:5)

⁷ Cook, *Understanding Jihad*, 43.

⁸ Qureshi, *Answering Jihad: A Better Way Forward* (Zondervan, 2016), 38.

⁹ Cook, *Understanding Jihad*, 2.

¹⁰ For more references justifying abrogation see: [https://wikiislam.net/wiki/Abrogation_\(Naskh\)](https://wikiislam.net/wiki/Abrogation_(Naskh))

¹¹ [https://wikiislam.net/wiki/Abrogation_\(Naskh\)](https://wikiislam.net/wiki/Abrogation_(Naskh)) also, <http://dev-political-islam.pantheonsite.io/abrogation-and-the-koran/>. A list of abrogated verses may be found here: https://wikiislam.net/wiki/List_of_Abrogations_in_the_Qur%27an

In fact, surah 9 is the last chapter to be revealed in the Qur'an and is seen as abrogating earlier instructions. Surah 9 is also the most violent chapter as the following verses demonstrate:

Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, until they pay the Jizya with willing submission, and feel themselves subdued. (Q 9:29)

Here 'Jizya' is the Islamic subjugation tax to be paid by Christians or Jews who have accepted the subjugated status of 'dhimmi'.

O Prophet, fight against the disbelievers and the hypocrites and be harsh upon them. And their refuge is Hell, and wretched is the destination. (Q 9:73)

Allah hath purchased of the believers their persons and their goods; for theirs (in return) is the garden (of Paradise): they fight in His cause, and slay and are slain: a promise binding on Him in truth, through the Law, the Gospel, and the Qur'an: and who is more faithful to his covenant than Allah? (Q 9:111)

O ye who believe! Fight the unbelievers who gird you about, and let them find firmness in you: and know that Allah is with those who fear Him. (Q 9:123)

Note that these are open-ended commands without qualification. In total, there are well over a hundred verses advocating violence in the Qur'an.¹²

Misquoting the Qur'an

Another verse that is used to argue that the Qur'an does not promote violence is Q 5:32:

...if anyone kills a person, it would be as if he killed the whole of mankind; and if anyone saved a life, it would be as if he saved the life of the whole of mankind.

This may be the most misquoted verse in the Qur'an. The whole verse provides the context:

On that account: We ordained for the Children of Israel that if any one slew a person – unless it be for murder or for spreading mischief in the land – it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land. (Q 5:32)

Notice that this command is described as having been ordained for 'the Children of Israel' – i.e. the Jews. It is not said to be a command for Muslims today. Even if it were ordained for Muslims today, there is an exception clause that is conveniently left out of the quotation: '...unless it be for murder or for spreading mischief in the land.' The question then arises as to what constitutes 'mischief' (*fasadin*). The term is very broad. In one passage in the Qur'an, merely disputing Islam is regarded as making mischief (Q 3:60-63). In another passage, rejecting Allah is making mischief (Q 7:103). There is a hadith that explains that this passage refers to polytheists (Sunan Abu Dawud 38:4359). The classical commentary on the Qur'an, Tafsir Ibn Kathir (2:11) explains:

'Do not make mischief on the earth', means 'Do not commit acts of disobedience on the earth. Their mischief is disobeying Allah, because whoever disobeys Allah on the earth, or commands that Allah be disobeyed, he has committed mischief on the earth.'¹³

So making 'mischief' can be seen as any form of disobedience of Allah. This would make any non-Muslim or disobedient Muslim an exception to the instruction not to kill a person.

¹² For a list of 164 verses see: http://www.answering-islam.org/Quran/Themes/jihad_passages.html

¹³ Qur'an Tafsir Ibn Kathir 2:11 http://www.qtafsir.com/index.php?option=com_content&task=view&id=436

The very next verse of the Qur'an then goes on to clarify, this time for Muslims and not restricted to Jews, what should be done to those who spread mischief through the land:

The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter. (Q 5:33)

This next verse encourages Muslims to kill or maim those who spread mischief in the land, which as we have seen could refer to any non-Muslim. Not so peaceful after all!

The example of Muhammad

Muhammad's life is held up as 'a beautiful pattern (of conduct)' for Muslims (Q 33:21). According to tradition, Muhammad participated in at least twenty-seven military campaigns and deputised some fifty-nine others.¹⁴ That is a lot of battles! Some of these were defensive, but most were in order to expand territory. As we have seen, he taught that it was a duty of Muslims to fight in physical jihad. He himself fought to expand the influence of Islam and encouraged his followers to do the same.

Although Muhammad did not envisage modern terrorism, some of his instructions and actions can be used to justify such. For example, Q 8:12:

I will cast terror into the hearts of those who disbelieved, so strike [them] upon the necks and strike from them every fingertip.

This hadith also justifies spreading fear: 'I have been made victorious with terror.' (Bukhari 4.52.220)

The contrast with Jesus could not be sharper. Jesus said 'love your enemies' – a statement found nowhere in the teaching of Islam. Jesus never killed anyone, and criticised Peter for taking up a sword in his defence. Instead of killing and maiming, Jesus healed people and even raised some from the dead.

Teaching of religious leaders

All four principle Sunni schools of Islamic law agree on the importance of jihad as warfare, as do Shiites.¹⁵ There is a long history of this teaching because it is very clear in the Qur'an.¹⁶ An online fatwa gives ten reasons why jihad is prescribed.¹⁷ These include: 'to make the people worship Allah alone', 'Frightening the kuffaar, humiliating them and putting them to shame', 'Acquiring booty' and 'Taking [i.e. making] martyrs'.

World renowned Islamic scholar, Mufti Taqi Usmani was a sharia judge in the Shariat Appellate Bench of the Supreme Court of Pakistan. He has served on the sharia advisory boards of several financial institutions, including HSBC. In his book 'Islam and Modernism' he responds to a question about whether jihad should still be waged in a country in which Islam can freely be preached. He responds by citing Q 9:29 (above) and commenting:

Here killing should continue until the unbelievers pay the Jizya after they are humbled or overpowered. If the purpose of killing was only to acquire permission and freedom of preaching Islam, it would have been said 'until they allow for preaching Islam'.¹⁸

¹⁴ Cook, *Understanding Jihad*, 6.

¹⁵ For references on this see: Bostom ed, *The Legacy of Jihad* (New York: Prometheus, 2008), 27-28. This material is also quoted here: <https://islamophobic.wordpress.com/2012/06/03/jihad-according-to-the-four-sunni-schools-of-islamic-jurisprudence-3/>

¹⁶ Bostom has translations of over twenty Islamic authorities on the nature of Jihad. *Ibid.*

¹⁷ <https://islamqa.info/en/34647>

¹⁸ Usmani, *Islam and Modernism* (trans. Siddiqui; New Delhi, India: Adam Publishers and Distributors, 2006), 131. Relevant pages are available online here: <http://www.sanetworks.us/uploads/application/40.pdf>

Usmani therefore argues from the text of the Qur'an that 'killing should continue' today. There is no question of this being defensive warfare or limited to Muhammad's time.

The historical spread of Islam

Islam is a territorial religion that splits the world into two spheres: *Dar al-Islam*, the house of Islam, and *Dar al-Harb*, the house of war. The primary goal of jihad is not to win people over to the faith, but to expand *Dar al-Islam*, or the territory of Islam. In the century following the death of Muhammad, Islam conquered territory stretching from the borders of China and India right up to Spain's Atlantic coast.

Writing in 1991, the French philosopher and theologian Jacques Ellul observed:

In a major encyclopaedia, one reads phrases such as: 'Islam expanded in the eighth or ninth centuries ...'; 'This or that country 'passed into Muslim hands...'. But care is taken not to say how Islam expanded, how countries 'passed into [Muslim] hands'... Indeed, it would seem as if events happened by themselves, through a miraculous or amicable operation... Regarding this expansion, little is said about jihad. And yet it all happened through war!¹⁹

It is beyond the scope and space of this article to document the spread of Islam through the centuries and how this has been and continues to be done through violent jihad.²⁰ Suffice to say that force has been used to increase the influence of Islam throughout the history of Islam. I will make do with a couple of representative quotes and refer readers to other resources for further study.

Twentieth century Orientalist and historian Henri Lammens summarised:

The Jihad. The war against the non-Muslims, so frequently recommended in the Medinese suras, almost became, as with the Kharijites, a 'sixth pillar of Islam'. Islam owes to it her expansion, in which 'the mission', properly speaking, has played an insignificant role.²¹

An online fatwa responds to the question: 'Was Islam spread by the sword?':

Undoubtedly taking the initiative in fighting has a great effect in spreading Islam and bringing people into the religion of Allah in crowds. Hence the hearts of the enemies of Islam are filled with fear of jihad.²²

Conclusion: Islam is not a religion of peace

No one can claim that Islam is a religion of peace if by that they mean that it had a peaceful founder, or that its teachings advocate peaceful interaction with people of other religions, or that historically its followers have been violence-free.

In saying that Islam is not a religion of peace, we are not saying that all Muslims are violent people, or even that the majority are such. We are referring to the teaching and history of the religion, not to the behaviour of the majority of people who claim adherence to it. It is important that as a society and as individuals we are clear about this. It is honest and correct to say that most Muslims are peaceful people. But it does not follow from this that Islam is a religion of peace.

Tim Dieppe

¹⁹ Jacques Ellul, Foreword to Bat Ye'or, *The Decline of Eastern Christianity under Islam: From Jihad to Dhimmitude*, (Fairleigh Dickinson University Press, 1996), 18 [emphasis and ellipses his].

²⁰ For extensive documentation see: Bostom, Andrew G. ed. *The Legacy of Jihad*. New York: Prometheus, 2008.

²¹ Henri Lammens, *Islam Beliefs and Institutions*, (London 1929), 62.

²² <https://islamqa.info/en/43087>

Gender Identity, Gender Reassignment and the Equality Act: A Parent's Guide

Introduction

As the tolerance agenda has evolved at a rate faster than legislation can keep up, everyday people are left unsure of what legal obligations apply to them. This is particularly true of gender assignment, which the Equality Act 2010 defines as a protected characteristic. The term is unhelpfully merged with other terms and ideas, such as gender identity, which is part of the gender theory school of thought, or gender identity disorder, which is a psychological condition present in individuals who may or may not later become gender reassigned.

For Christians this is a particularly difficult subject given the biblical truths about the unalterable nature of sex.²³ This belief recalls that God created humankind in his image, male and female; biologically and sexually different but with equal personal dignity. They therefore view any rejection of one's biological sex and any attempt to physically change, alter or disavow one's biological sex from conception as condemning of God's Word and creation order.

This article will examine what the law actually says about gender reassignment, analysing it alone, and then in conjunction with other legislation and case-law which helps to more clearly define it. It also looks at the corresponding issues relating to gender confusion, those being the medical, psychological and pastoral questions involved.

Case Study: 'Bethany': Parental Rights Under Attack

The story of 'Bethany' first came to the attention of the Christian Legal Centre when she was 14. 'Bethany' is the daughter of committed Christian parents. She exhibited many of the troubled behaviours prevalent in a high percentage of gender-confused children including self-harming and suicidal thoughts. She was also rebellious towards her family and had settled in with friends at school which were likely doing her far more harm than good. 'Bethany' was convinced that all of her depression and social anxiety would go away if she were recognised as a boy. She began asking her school, friends and parents to call her 'Gary' and treat her as a boy. She also altered her physical appearance and mannerisms to look more male than female.

Her parents, knowing 'Bethany' better than anyone else, and loving her more, believed her problems did not stem from a genuine case of gender identity disorder. They believed that given time and treatment, she would pass through this stage and settle into her biological sex. Importantly, they also hoped that that she would no longer self-harm or initiate other self-destructive forms of behaviour.

The school which 'Bethany' attended, and even the social workers who became interested in her case, all acquiesced to her desires to be treated as 'Gary', despite her parent's wishes that she continue to be treated in accordance with her biological sex. Matters escalated to such a point that social services suggested that by refusing to call 'Bethany' by her desired boy's name, the family was acting in a manner tantamount to child neglect. The family naturally became concerned that if they did not yield the pressure being posed by social services, they might lose custody all together.

Nonetheless, the family stood firm, and with the support of Christian Concern and an independent expert counsellor, 'Bethany' began receiving treatment for the various physical and mental health difficulties associated with her gender confusion. While the situation is not completely resolved, 'Bethany' nonetheless began making excellent progress in settling into her biological sex and coping with her self-harming behaviour.

²³ See e.g.: Genesis 1:27: 'So God created man in his own image, in the image of God he created him; male and female he created them.'; Matthew 19:4: 'He [Christ] answered, 'Have you not read that he who created them from the beginning made them male and female...'

Had the family not stood their ground, the outcome may have been very different. The reality is that in the vast majority of circumstances neither social workers nor school officials love and understand a child more than their parents do. This is why the law so robustly protects parental rights. Neither can a third party, such as a social worker or teacher, who is engaged with any number of families or other children at any given time, have the insight into what a child is going through in comparison to that child's parents.

Too many schools and social workers have taken on the tolerance agenda with zeal and unquestioned devotion. It is far too easy for them to ignore the real underlying problems a child may be facing. In fact, they may be unwittingly punished for doing so given the politically sensitive climate surrounding the issue of gender confusion.

As parents who may be dealing with a gender confused child, it is important to know the facts regarding what the law says, what science and biology say, and what psychology and leading psychologists say. The more parents who know and exercise their rights, the fewer occurrences there will be of social workers or schools questioning a parent's desire to raise their child in accordance with their biological sex.

(a) Biology

The biology behind sex is simple and straightforward: Sex is permanent. The genetic information directing development of male or female gonads (testes and ovaries) and other primary sexual traits, are encoded on chromosome pairs 'XY' and 'XX', which are present at conception. As early as eight weeks' gestation, endogenously produced sex hormones cause prenatal brain imprinting that ultimately influences postnatal behaviours.²⁴

This means that biological sex is a fixed principle, determined at conception.²⁵ More than 20% of the genes in the human genome are specific to one sex or the other.²⁶ In most tissue, there are over 6,500 protein-coding genes with specific sex-differential expression.²⁷ Men and women differ in their predisposition to certain diseases precisely because of this genetic architecture in our tissue.²⁸ Simply, this means that a person's sex is far more than just the sex organs they have been born with: it is inherent in every tissue of their being. None of this is altered by gender reassignment surgery: not one's chromosomal make-up, nor the sex-differentiation in their tissue. Those who undergo gender reassignment surgery will need to continue taking hormones their entire life to mask their biological reality.

The rare exception to this rule relates to those individuals who are born intersex: that is that they are born with a reproductive or sexual anatomy that does not fit either the biological definition of male or female. This condition is biological and does not relate to the psychological condition of gender identity disorder.

(b) Pastoral and Medical Issues Involved

There has been a troubling intersection in today's culture between political correctness, where tolerance is used as a sword to silence debate (rather than the shield it was perhaps intended to be), and the real-life issues behind gender confusion and gender reassignment.

Individuals suffering from gender identity disorder have higher rates of psychological problems and psychiatric disorders, such as negative self-image, low self-esteem, adjustment disorders, depression,

²⁴ See: Francisco I. Reyes *et al.*, *Studies on Human Sexual Development*, 37 J. of Clin. Endocrinology & Metabolism, 74-78 (1973).

²⁵ Fauci, Anthony S.; Harrison, T. R., eds. (2008). *Harrison's principles of internal medicine* (17th ed.) New York: McGraw-Hill Medical, 2339–2346.

²⁶ Prof. Pietrokovski, Shmuel; Dr. Gershoni, Moran. *The Landscape of Sex-Differential Transcriptome and Its Consequent Selection in Human Adults*, BMC Biology (2017) 15:7.

²⁷ *Id.*

²⁸ Rawlik K, Canela-Xandri O, Tenesa A. *Evidence for Sex-specific genetic architectures across a spectrum of human complex traits*, Genome Biol. 2016; 17: 166.

suicidality and personality disorders when compared to other groups within the population.²⁹ Diagnosis of genuine cases of gender identity disorder are often difficult due to the significant number of physical and mental health problems associated with it.³⁰ Therefore, policies which affirm a child in their gender confusion without requiring psychological evidence are highly damaging to the children involved. As a case in point, Stonewall has suggested that despite a one-third decrease in HBT (homophobic, biphobic and transphobic) bullying, 84 percent of young people who identify as transgender self-harm,³¹ while an additional 45 percent have attempted to take their own lives.³² Leading experts in the area of psychiatry and paediatrics argue that abundant scientific evidence exists showing that gender-affirming policies do none of the children they are meant to serve any real or lasting good; that it harms the vast majority of them; and that it leads to catastrophic outcomes for many such afflicted children.³³

According to the American Psychiatric Association, and the Diagnostic and Statistical Manual of Mental Disorders (5th ed.), 98% of gender confused boys and 88% of gender confused girls eventually accept their biological sex after naturally passing through puberty.³⁴ That equates to only 2 out of 100 boys who identify as being of a different gender continuing to believe so after puberty.³⁵ Studies also evidence that gender confusion can persist as a result of family and peer dynamics including parental and school reinforcement of cross-gender behaviour, not as a result of actual gender dysphoria.³⁶

The American College of Paediatricians has consequently warned:

There is an obvious self-fulfilling nature to encouraging young [gender-dysphoric] children to impersonate the opposite sex and then institute pubertal suppression. If a boy who questions whether or not he is a boy (who is meant to grow into a man) is treated as a girl, then has his natural pubertal progression to manhood suppressed, have we not set into motion an inevitable outcome? All of his same-sex peers develop into young men, his opposite sex friend develop into young women, but he remains a pre-pubertal boy. He will be left psycho-socially isolated and alone.³⁷

Melissa Midgen, a gender clinician at the Tavistock, in a book review on gender issues in children, stated the problem in very similar terms: 'the current socio-cultural situation is one which has permitted an inflation of the idea, and that we are indeed co-creating the very notion of the "trans kid".'³⁸ The result has been an increase in cases of gender confusion among children which amounts to a public health crisis. According to a 2013 article in *The Times*, the United Kingdom saw a 50% increase in the number of children referred to gender dysphoria clinics from 2011 to 2012,³⁹ It is also reported from the same study that in

²⁹ D. Duisin, B. Batinic, J. Barisic, et. al., Personality Disorders in Persons with Gender Identity Disorder, *The Scientific World Journal*, (2014); 2014: 809058, doi: 10.1155/2014/809058.

³⁰ See e.g.: M.S.C. Wallien, H. Swaab, P.T. Cohen-Kettenis, Psychiatric Comorbidity Among Children with Gender Identity Disorder, *Journal of the American Academy of Child & Adolescent Psychiatry*, (2007) 46(10): 1307–1314; C.M. Cole, M. O'Boyle, L.E. Emory, W.J. Meyer, III, Comorbidity of Gender Dysphoria and Other Major Psychiatric Diagnoses, *Archives of Sexual Behavior*, (1997); 26(1):13–26; and M. Hoshiai, Y. Matsumoto, T. Sato, et al., Psychiatric Comorbidity Among Patients with Gender Identity Disorder, *Psychiatry and Clinical Neurosciences*, (2010); 64(5):514–519.

³¹ Stonewall, School Report (2017), 7. Available at: <http://www.stonewall.org.uk/school-report-2017>.

³² *Id.*

³³ See e.g., United States Supreme Court: Brief of Dr. Paul R. McHugh, M.D., Dr. Paul Hruz, M.D., PH.D. and Dr. Lawrence S. Mayer, PH.D. as Amici Curiae, Gloucester County School Board v. G.G., by his next friend and mother, Deidre Grimm, (January 10, 2017) (No. 16-273). See also: American Psychological Association, 'Answers to Your Questions About Transgender People, Gender Identity and Gender Expression' (pamphlet), <http://www.apa.org/topics/lgbt/transgender.pdf>.

³⁴ American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, Arlington, VA, American Psychiatric Association, 2013 (451-459). See page 455 re: rates of persistence of gender dysphoria.

³⁵ Lawrence S. Mayer, Paul R. McHugh, *Sexuality and Gender: Findings from the Biological, Psychological and Social Sciences*, The New Atlantis, Fall (2016), part 3.

³⁶ Zucker, Kenneth J. *Children with gender identity disorder: Is there a best practice?*, *Neuropsychiatrie de l'Enfance et de l'Adolescence* 56, no. 6 (2008): 363, <http://dx.doi.org/10.1016/j.neurenf.2008.06.003>.

³⁷ American College of Paediatricians, *Gender Ideology Harms Children*, Aug. 17, 2016, available at <https://www.acped.org/the-college-speaks/position-statements/gender-ideology-harms-children>.

³⁸ Melissa Midgen, Transgender Children and Young People: Born in Your Own Body, *Journal of Child Psychotherapy*, (2018) DOI: 10.1080/0075417X.2018.1435707.

³⁹ Chris Smyth, 'Better Help Urged for Children with Signs of Gender Dysphoria,' *The Times* (London), October 25, 2013,

2012, 208 children were referred, whereas only 64 were so referred in 2008.⁴⁰

A particularly tragic element of transgender advocacy towards young people has been the push for puberty suppressing treatment and hormones from increasingly younger ages. As the American College of Paediatricians has repeatedly stated, such treatments treat puberty as a disease.⁴¹ Instead, puberty should be welcomed as the natural and healthy progression from childhood to adulthood. These treatments inhibit growth and fertility and will have life-long effects on any child taking them.⁴² Children who take hormone inhibiting drugs are unlikely to be able to conceive any genetically related children even through artificial reproductive technology.⁴³

These treatments are neither fully reversible nor harmless.⁴⁴ Puberty suppression hormones prevent the development of secondary sex characteristics, prevent bone growth, prevent full organisation and maturation of the brain, and inhibit fertility.⁴⁵ Cross-gender hormones increase a child's risk for coronary disease and sterility.⁴⁶ Oral oestrogen, which is administered to gender dysphoric boys, may cause thrombosis (blood clots that can be life-threatening), cardiovascular disease, weight gain, hyperglyceridaemia (increased levels of fat in the blood), elevated blood pressure, decreased glucose intolerance, gall bladder disease, prolactinoma, and breast cancer.⁴⁷ Testosterone administered to gender dysphoric girls may negatively affect their cholesterol; increase their hepatotoxicity and polycythaemia (an excess of red blood cells); increase their risk of sleep apnoea; cause insulin resistance; and have unknown effects on breast, endometrial and ovarian tissues.⁴⁸ Girls may also eventually get a mastectomy, which carries its own unique set of problems and is irreversible.⁴⁹

Based on the invasiveness of these treatments, and the psychological and health consequences stemming from gender confusion, we as a society must take a good hard look if 'tolerance' and gender affirming policies are really the answer to this issue.

It is undoubtedly a difficult and life changing thing to have one's child go through gender confusion. It is natural for a parent to want their child to be happy. But any short-term happiness that is gained by placating a child's desire to dress and be identified as being of the opposite sex is outweighed by the significant and sinister outcomes that face so many of these children.

It is an unpleasant and unpopular thing to suggest, but the reality is that much of the existing policy regarding gender-confused children is the direct result of very successful advocacy done by transgender campaigning groups, and has no basis in either mental health, binding law, or safeguarding concerns. Proverbially speaking, transgender advocates have shouted the loudest and therefore have been the ones who have dictated how this issue is treated. Those who dare to challenge this *zeitgeist* are quickly labelled as bigoted, hateful and transphobic.

As was discussed above, this narrative that a transgender child is a healthy and happy child has no bearing in psychology or social science. As this article has already shown, outcomes for 'transgender children' are

<http://www.thetimes.co.uk/tto/health/news/article3903783.ece>.

⁴⁰ *Id.*

⁴¹ See e.g. *Infra fn. 14*.

⁴² Hembree, WC, et al. Endocrine treatment of transsexual persons: an Endocrine Society clinical practice guideline. *J Clin Endocrinol Metab.* 2009; 94: 3132-3154.

⁴³ Moore, E., Wisniewski, & Dobs, A. 'Endocrine treatment of transsexual people: A review of treatment regimens, outcomes, and adverse effects.' *The Journal of Endocrinology & Metabolism*, 2003; 88(9), 3467-3473.

⁴⁴ Michelle A. Cretella, *Gender Dysphoria in Children and Suppression of Debate*, 21 *J. of Am. Physicians & Surgeons* 50, 53. (2016).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*, citing Eva Moore et al., *Endocrine Treatment of Transsexual People: A Review of Treatment Regimens, Outcomes and Adverse Effects*, 88 *J. of Clin. Endocrinology & Metabolism*, 3467-73 (2003).

⁴⁸ *Id.*, citing Moore, *supra*, at 3467-73.

⁴⁹ *Id.*, citing Laruen Schmidt, *Psychological Outcomes and Reproductive Issues Among Gender Dysphoric Individuals*, 44, *Endocrinology Metabolism Clinics of N. Am.* 773-85 (2015).

almost universally poor. Let us now turn to the law and see why the current status quo is also not supported by current legislation.

(a) Equality Act 2010

The Equality Act 2010 defines the protected characteristic of ‘gender reassignment’ thus:

*A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.*⁵⁰

The Act neither defines what is meant by the ‘process’ envisioned or ‘the proposal to undergo’ gender reassignment. Importantly, no binding case-law whatsoever exists which applies such an expansive definition of what is meant by a ‘proposal to undergo gender reassignment’ as to include young children, particularly where no medical or psychological evidence has been adduced as to the state of mind of these children.

Nor can children of such a young age, in accordance with UK domestic law and the United Kingdom’s obligations to the United Nation’s Convention on the Rights of the Child⁵¹, be deemed to have the maturity or mental capacity to make a decision which so massively impacts their future psychological and physical well-being as to change their gender surgically or to alter their physiology through hormone blocking treatments. Neurologically, the adolescent brain is immature and lacks the adult capacity for risk assessment prior to the early mid-20s.⁵²

The Convention dictates that any action taken in relation to a child, whether by a public or social welfare body, must be in the best interests of that child.⁵³ While some researchers have reported that they have identified some factors associated with the persistence of gender dysphoria into adulthood,⁵⁴ there really is no evidence that any clinician can identify perhaps the two percent of children for whom gender dysphoria will persist with anything approaching certainty. Given how radical gender reassignment is, including the use of puberty inhibiting hormones, the last thing social workers and schools should be doing is exacerbating the problem by affirming children in their gender confusion and forcing others to do the same by threat of punishment.

Gender identity and gender reassignment are not synonymous. A very strict legal process is required to obtain a Gender Recognition Certificate following the *Gender Recognition Act 2004*. The applicant seeking legal recognition of their gender reassignment must be 18 years of age⁵⁵ and must have lived in the acquired gender for a period of at least two years ending with the date the application is made.⁵⁶ Evidence of gender dysphoria is also required, provided either by a medical practitioner practising in the field of gender dysphoria or a chartered psychologist in the field.⁵⁷ A Gender Recognition Panel must then determine if the evidence provided is sufficient to grant the Certificate.⁵⁸

Far from providing a legal basis for treating perceived gender identity with gender reassignment, holding

⁵⁰ *Equality Act 2010 (c. 15, pt. 2), §7(1)*.

⁵¹ See e.g. Article 12: ‘States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight **in accordance with the age and maturity of the child.**’ [emphasis added].

⁵² Michelle A. Cretella, *Gender Dysphoria in Children and Suppression of Debate*, 21 J. of Am. Physicians & Surgeons 50, 53. (2016).

⁵³ Article 3(1).

⁵⁴ See. e.g., Thomas D. Steensma et al., *Factors Associated with Desistence and Persistence of Childhood Gender Dysphoria: A Quotative Follow-Up Study*, 52 J. of the Am. Acad. of Child & Adolescent Psychiatry 582-90 (2013).

⁵⁵ *Gender Recognition Act 2004 (c.7), § 1(1)*.

⁵⁶ *Id.*, § 2(1)(b).

⁵⁷ *Id.*, § 3(1)(a-b).

⁵⁸ *Id.*, § 1(3).

out gender-affirming policies as best practice contravenes existing case-law. In *Re J (A Minor)*,⁵⁹ the family court removed custody from a mother of her 4-year-old child and gave full custody to the father because of her rigid approach to gender identity and the significant emotional harm she was causing her son in her active determination that he should be a girl. The court noted that while in his father's care he began identifying as a boy and settled well at school.

In *Croft v. Royal Mail Group plc*⁶⁰, the courts ruled that protection for discrimination based on gender reassignment required the process of transitioning to have begun before this complaint could apply. Anatomical sex, it was held, played a factor in determining the applicability of anti-discrimination legislation. Precisely stated, recognition of gender reassignment in the context of non-discrimination law is not automatic and does not flow from merely identifying by a different gender. Neither does the Equality Act protect males who merely identify as females and dress in female clothing.⁶¹

Comparing the threshold to determine where gender reassignment should apply against another protected characteristic, the House of Lords has ruled that in order for religion or belief to be protected under the Equality Act, the beliefs involved must possess an adequate degree of seriousness, importance and coherence.⁶² The argument that the protected characteristic of gender reassignment should be attached merely by a young child's desire to sometimes dress in the typical clothes of someone from the other sex does not pass intellectual muster. If in fact the manifestation of that desire is a genuine case of gender identity disorder, it is all the more shocking that a child should be allowed to name his own psychological diagnosis and be affirmed in it, by threat of punishment from local authorities if the parents choose to dissent.

(b) Human Rights Act 2010

Article 8 of the European Convention of Human Rights guarantees the right to respect for private and family life. The Court has read gender reassignment into Article 8.⁶³ However, the right to private life is not absolute, and interference with matters pertaining to an individual's private life are prescribed in Article 8(2):

There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

It is wholly lawful, and appropriate, for parents to place restrictions on their children dressing or manifesting behaviour which is inconsistent with their biological sex. Schools would also do well to adopt such policies. It is well settled case-law that the right to place restrictions on physical appearance, even where that appearance is meant to be a manifestation of that individual's sense of self-identity, are both proportionate and lawful: *Popa v. Romania*⁶⁴, *Tiğ v. Turkey*⁶⁵, *S.A.S. v. Germany*⁶⁶, and *Gough v. the United Kingdom*⁶⁷. While these cases deal with public or state actors, the principle is all the more true where a child's parents are the decision makers in any such restrictions.

This article has already detailed the significant health issues related to gender confusion: self-harming and suicide rates, undiagnosed comorbidities, unnatural persistence of gender confusion, and conflation of

⁵⁹ [2016] EWHC 2340 (FAM).

⁶⁰ [2003] IRLR 592.

⁶¹ Gwyneth Pitt, *Pitt's Employment Law* (London: Sweet & Maxwell, 2016), 48.

⁶² *R (Williamson and Others) v. Secretary of State for Education and Employment* [2005] UKHL 15, § 23.

⁶³ See e.g.: *L. v. Lithuania*, application no. 27527/03, judgment of 11 September 2007, § 56.

⁶⁴ Application no. 4233/09, decision of 18 June 2013, §§ 32-33.

⁶⁵ Application 8165/03, decision of 24 May 2005.

⁶⁶ Application no. 43835/11, judgment [GC] of 1 July 2014, §§106-107.

⁶⁷ Application no. 49327/11, judgment of 28 October 2014, §§182-184.

cases of children referred to gender identity clinics. Article 8(2) specifically mentions the protection of health as a legitimate ground for restricting manifestations of Article 8 rights. The Court has upheld restrictions based on promoting health numerous times.⁶⁸

At the end of the day, when dealing with this sensitive issue, we must remember one very sobering statistic. The suicide rate among those who use cross-sex hormones and undergo sex-reassignment surgery is twenty times higher than among the general population. Prevalence of suicide at this rate is universal, including in countries, such as Sweden, which are among the most LGBT-affirming nations in the world.⁶⁹ This statistically debunks the notion that lack of acceptance is the cause of suicide among transsexuals.⁷⁰ Individuals suffering from gender confusion, particularly children, need our help and not tolerance.

Conclusion

Equality and self-determination are the great governing idioms of the current cultural *zeitgeist*. The equality agenda has advanced to such a point that now it reaches into the innermost aspects of family life, including childcare. Tolerance however is not love. Real love requires more of us than to merely affirm a child in their gender confusion. Gender Identity Disorder is rarely, if ever, cured by mere affirmation. It is a condition that brings with it serious symptoms including suicidality and self-harming at rates far higher than any other segment of the population. As a society, we can do better by children suffering with gender confusion. For the sake of future generations, we must do better.

Roger Kiska

⁶⁸ See e.g., Application no. 8231/78, *X v. the United Kingdom*, DR 28 (1982) 5; Application no. 8209/78, *Peter Stutter v. Switzerland*, DR 16 (1979) 166; and *Laskey, Jaggard and Brown*, application nos. 21627/93, 21826/93 and 21794/93, judgment of 19 February 1997.

⁶⁹ Dhejne, C, et.al. *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLoS ONE, 2011; 6(2). Affiliation: Department of Clinical Neuroscience, Division of Psychiatry, Karolinska Institutet, Stockholm, Sweden.

⁷⁰ Those who have undergone gender reassignment surgery.

Loneliness in Society and the Church

Our world has never been so connected; language, transport and technology have all played a role in linking people together from near and far. With speed previously impossible to imagine, I can now communicate with someone on the other side of the planet by phone, Skype, WhatsApp, Facebook and many other apps and platforms. I can juggle social media contacts and friendships in every continent and – so long as resources are at hand – can travel almost anywhere in the world within a maximum of 24 hours.

For most people, whether village, town, or city dwellers, social opportunities abound: Pubs and coffee shops; clubs and community centres; parks and gyms; events and arenas; churches and meet-ups – the list goes on. Such a wealth of connectedness and opportunity, however, belies the existence in western society of a pervasive condition that plays a role in negatively impacting people's mental, spiritual, emotional and physical health. When chronic, it can drive people beyond the passive self-harm of neglecting care for one's own well-being to active, physical self-harm and even suicide. The condition is loneliness.

Loneliness statistics

Thanks to recent research from the Office for National Statistics (ONS)⁷¹, London School of Economics⁷² and the Campaign to End Loneliness⁷³, some figures exist that in some way enable us to understand the loneliness problem in the UK.

- Over 9 million people in the UK – almost a fifth of the population – say they are always or often lonely.
- The highest proportion of any age group reporting loneliness are those aged 16 to 24; almost 10% in this age group report chronic loneliness.
- Those single or widowed were at particular risk of experiencing loneliness.
- Those in rented accommodation reported feeling lonely more often than homeowners. These are often younger people with little sense of connection or belonging to the area in which they live. Almost half of people in England aged 25-34 rent their homes.

As people age it may be that a resilience to loneliness is built up leading the elderly to not report it as much. Old-age loneliness exists, regardless. The Campaign to End Loneliness points to studies that indicate:

- Widowed older homeowners living alone with long-term health conditions are more likely to experience loneliness.
- Over half (51%) of all people aged 75 and over live alone.
- Two fifths of older people (about 3.9 million) say the television is their main company.
- 63% of adults aged 52 or over who have been widowed, and 51% of the same group who are separated or divorced, report feeling lonely some of the time or often.
- 17% of older people are in contact with family, friends and neighbours less than once a week and 11% are in contact less than once a month⁷⁴.

Studies consistently indicate that women are more likely than men to report feelings of loneliness. The probability is that men do have similar feelings but find themselves unwilling to acknowledge the extent of the problem, leading to unhealthy internalisation. Perhaps this helps to explain why British men are three times more likely to commit suicide than women⁷⁵, making it a leading cause of death for men between the ages of 20 and 49.

⁷¹ Edward Pyle and Dani Evans, 'Loneliness - What characteristics and circumstances are associated with feeling lonely?', *Office for National Statistics*, 10 April 2018.

⁷² David McDaid, Annette Bauer and A-La Park, 'Making the economic case for investing in actions to prevent and/or tackle loneliness: a systematic review', London School of Economics and Political Science, September 2017.

⁷³ www.campaigntoendloneliness.org

⁷⁴ <https://www.campaigntoendloneliness.org/loneliness-research/>

⁷⁵ Samaritans, *Suicide Statistics Report*, September 2018.

Loneliness' symptoms and source

Loneliness is defined by *Merriam Webster's Dictionary* as 'being without company', 'cut off from others', 'sad from being alone', and 'a feeling of bleakness or desolation'. The accompanying feeling of isolation produces dejection, depression and the resulting poor quality of life can lead to early death.

For young people, paradoxically in some people's minds, technological connectedness may be an issue.⁷⁶ While building up a digital social network, tech-savvy millennials are in danger of forsaking face-to-face community and the meaningful communication on which healthy communities are built.

For the elderly, FaceTime, and WhatsApp enable many to connect with their families who may be separated by large distances. Trips to the shop are an important means of social interaction, but the growing use of automated checkouts has robbed many of their chance to communicate with real people.⁷⁷

Loneliness can be caused by the loss of a loved one to death, divorce, or estrangement and yet people are often less than transparent about it.

The source and symptoms of loneliness can be complex as seen in responses I received when enquiring after people's own experience of loneliness. For example K, a male in his early twenties:

It seems to me that a big part of the problem is how much we move around as a society and don't hold ties to our roots as important. Gone are the days of living and dying in one town and knowing the same people the whole time and having a lifetime to build meaningful relationships. The way we live now you move wherever the work is, with the expectation of being there a short time then moving. I'm not saying it's all necessarily bad, but it does mean you don't have any set of friends long enough to know people really well. Add to this that jobs can have whatever hours they like and you probably only see the friends you do have at most once or twice a week. It's a pretty brutal setup. We associate loneliness with the old, when it's all too common in the young. For some reason I don't ever seem to get beyond the level of 'day-to-day' chat with friends, even people I see often. People are conditioned against being real with each other and visibly retreat if a conversation starts to go that way. Maybe it's a guy thing; maybe it's an English thing. Who knows? But loneliness is a problem.

Loneliness and the church

With loneliness so prevalent in society, it is certain that there are members in your church who are lonely. Pastoral vigilance and discernment is important, as well as addressing the causes of loneliness.

Lack of motivation and intentionality

Some church members need to be encouraged to avail themselves of the opportunities for friendship and fellowship in church, rather than persist with attitudes that prolong and exacerbate their isolation. It may require a gentle push to overcome the initial hurdle of joining the small group or other event so that the opportunity for genuine relationships can be made.

Fear of repeated loss

Friendships can be betrayed and trust broken, even in church circles. In these cases it may be harder to trust people and risk losing friendships again. Church members will need help to overcome such fears and, with discernment, to continue to pursue wholesome relationships.

⁷⁶ Sean Coughlan, 'Loneliness more likely to affect young people' BBC News, 10 April 2018; Jo Griffin, *The Lonely Society?*, The Mental Health Foundation, 2010.

⁷⁷ Sean Coughlan, 'Automated checkouts 'miserable' for elderly shoppers', BBC News, 21 September 2017.

Selfishness

Some are lonely because, they say, no one meets their requirements in a friend. I have heard professing Christians who are lonely excuse their lack of involvement in church life on the basis that no one there shares the same niche interests, age or cultural demographic. A challenge to faithful discipleship will require a change in such attitudes by the power of the Holy Spirit; church life is not meant to cater to our whims, desires and tastes. A consumerist approach to church life expects to be entertained and provided for; a more biblical mindset and one that would help reduce loneliness in church life is (to paraphrase a well-known saying) to 'ask not what your church can do for you, but what you can do for your church'.

Unhelpful church models

The church is to be a gathering of believers for worship, yes, but also for stirring one another up to love and good works (Ephesians 5, Hebrews 10:24-25). The local church is to be a familial community in which its members have a sense of belonging. Jesus told his disciples that the love they have for one another will be a sign to the world that they are his disciples (John 13:35). Do some ways in which we organise church life make it harder to achieve these goals, and make loneliness more likely?

1. Commuter church

In this model attenders travel from a large geographical area to central venue. In a city like London a church might advertise a location as being a 5-10 minute walk from a railway station, requiring a journey of up to an hour and a half in total for many people. With the demands of the working day, meeting up on a week night is far less likely, reducing meaningful face-to-face fellowship to perhaps only two hours out of the week's 168. On a Sunday these people will travel past numerous faithful churches – congregations of those who love the Lord and could do with the extra help and support from those in their community. So believers not only feel more isolated in their large commuter church but also miss out on local opportunities to impact their community for Christ.

2. Multi-service church

Some churches grow to the extent that they need multiple services in order to accommodate the congregation under one roof. Getting people in and out efficiently to facilitate this may hinder opportunities for informal interaction outside of worship times. The effective use of small groups at other times will be particularly important in enabling members to engage one another in a meaningful, deeper ways.

3. Online church

Modern technology enables churches to livestream their Sunday services. Sadly, for all the benefits of this, if believers regularly neglect to meet with the church body, swapping that for the easier option of watching from home, it will do nothing to cure their loneliness.

With Christ in the silence of loneliness

Loneliness is both a social problem and a spiritual issue. Some are lonely because they cannot forgive others and their bitterness isolates them. Some are lonely because others do not care enough to visit them when they are sick or will not go out of their way to keep them company. The causes are endless; sometimes the lonely person is at fault; sometimes it is the people around the lonely person who are failing.

Sometimes the silence of loneliness is deafening. But there is hope for the lonely in Jesus Christ. Consider this testimony, shared with me by S, a middle-aged woman, who experienced the pain of her husband walking away:

Loneliness hit me hard when J left. We had done life, ministry, family, everything together and suddenly it was all gone! I felt lonely in a broken way. People treated me differently; that was a shock! I felt the loneliness was imposed on me and it wasn't what I expected. This wasn't the life I planned or thought I was going to have. It didn't feel right. In a crowd I was lonely; on my own I was lonely; all the time, but especially on Saturdays. That was our day off together and I had no one on that day to talk to. I often sat in the car at the supermarket and wept, not wanting to go back to an empty house... I couldn't fix the loneliness and as someone said to me. 'All the plasters have come off and you can't fix this'.

However, I am grateful now for that time of loneliness as the Lord drew very near. Thankfully it was not long before the Lord used it for good in my life. I thought often of Jesus' time in the garden where he had no one and he prayed 'if it is possible let this cup pass from me, nevertheless not my will but your will be done. I felt challenged in my loneliness to trust in him who would be with me in the forced loneliness and become my deepest treasure. He did and he is. Blessed be his name. He gives and takes away and we bless his holy name. My heart will choose to stay. Because he does it for good! Blessed be his name. I sang that song a lot!

I read: 'Loneliness is a wilderness, but through receiving it as a gift, accepting it from the hand of God, and offering it back to him with thanksgiving, it may become a pathway to holiness, to glory and to God himself... The wilderness is that season of our lives where God, through our loneliness, teaches us that his will is to do something in us, not merely do something for us. That is, by walking by faith and not by sight, he works in us a stronger faith, leading to a deeper worship that results in a greater joy.' (Elizabeth Elliot)

For the Christian, Jesus, who himself experienced grief and loneliness as part of his sacrifice for believers (Isaiah 53), is the cure for our loneliness. Looking to him and growing in love for him changes everything. He is the one who leads us through the lonely shadows and valleys of this life (Psalm 23).

*O soul, are you weary and troubled?
No light in the darkness you see?
There's light for a look at the Saviour,
And life more abundant and free.*

*Turn your eyes upon Jesus,
Look full in his wonderful face,
And the things of earth will grow strangely dim,
In the light of his glory and grace.*

Regan King

Loneliness and Dementia

Loneliness is a major issue in our society and something that affects people of all ages and situations. It is generally well recognised that social isolation and loneliness can adversely affect people's general health and sense of well-being, and so needs to be addressed. The Alzheimer's Society website, under the heading of loneliness, suggests that the lack of social connections can damage a person's health as much as smoking fifteen cigarettes a day. They also claim that loneliness increases the risk of dying by 29%. Conversely, it is also known that strong social networks and support can enhance recovery rates from serious illness. Older people are one of the most affected groups in society as far as loneliness is concerned.

The Royal Voluntary Service, previously known as the WRVS, published an analysis in October 2018 on the impact and value of Lunch Clubs. One of their observations was that of the ten million people over 65 in the UK, four million live alone and one million say that they are lonely. Part of the reason for this loneliness is that they are no longer able to drive and they have difficulty going out, especially for shopping, and specifically that they eat alone. They also point out that by 2023 the number of people over 65 will rise to thirteen million which will bring increased demand for community-based support services. The Alzheimer's Society report that half a million older people claim that they do not speak to anyone for periods exceeding six days a week. It should be noted that being alone is not the same as being lonely. Loneliness is about a person's expectations, the perceived absence of social attachments, so that someone can feel lonely when among a crowd.

The NHS website 'Moodzone' has a page on 'Loneliness in Older People' which is dated 30 November 2015 (it is due to be updated on 30 November 2018). In this article they state that 'according to Age UK, more than two million people in England over the age of 75 live alone, and more than a million older people say they go for over a month without speaking to a friend, neighbour or family member.' A number of reasons are given for this social isolation including 'getting older or weaker, no longer being the hub of their family, leaving the workplace, the deaths of spouses and friends, or through disability or illness.' One of the outcomes for many older people is the development of 'depression and a serious decline in health and wellbeing'. It should be noted here with sadness that family support networks are often very fragile and limited.

These kind of statistics are becoming more commonly known as public perception of the reality of social isolation and loneliness is better informed. But what are the effects of loneliness? And how does loneliness relate to dementia.

A review of 19 studies on loneliness undertaken in July 2015 and reported on by Science Direct (volume 22, pp39-57) found that 'low participation, less frequent social contact, and increased loneliness are significant in the incidence of dementia'. The Alzheimer's Society claim that there is a 64% increase in the likelihood of dementia when people experience persistent loneliness. This figure is based on a study undertaken in Holland in 2012. Details of this research are published at www.alzinfo.org/articles/feeling-lonely-increases-risk. I quote:

The researchers followed 2,173 older people, ranging in age from 65 to 86. None had dementia at the start of the study, which lasted three years. About half lived alone, and one in five reported feeling lonely. The study participants also were given memory and thinking tests to look for signs of serious memory loss and incipient Alzheimer's disease. After taking account of socioeconomic status and concurrent medical problems, the researchers found that those who felt lonely were more likely to develop dementia. Those who were socially isolated but didn't feel lonely, on the other hand, were not at an increased risk of developing dementia.

A number of explanations can be given for this impact of loneliness. Alzheimer's disease is a complex condition that probably has a number of different causes. Among those are contributory factors which, while not causing the disease directly, influence and strengthen its progress. These factors include stress

and anxiety, exercise and diet, social and intellectual engagement, as well as advancing age and genetic factors. Loneliness creates considerable stress and anxiety and may also have an effect on the nervous system, but this latter suggestion has yet to be established.

The Alzheimer's Society undertook a survey in 2013 of over 500 adults with dementia. This showed a number of causes of loneliness:

- Loss of confidence after diagnosis (speaking from 45 years personal experience of working with people with dementia this is often exacerbated by a failure by medical services to give adequate and accurate information about the condition and how to respond to it).
- Fears of becoming confused and getting lost – people living alone have no-one to go out with and so stay in the safety of their own home.
- Mobility difficulties and other physical impairments.
- Half the people surveyed said they had lost friends once they had been diagnosed.
- Forgetting that people have visited and so feeling loneliness (perception is critical to the feeling of loneliness).

The survey highlighted the importance of family and friends for socialising and being able to leave the house. Anecdotal evidence would strongly support all these factors. Also, dementia often brings with it increasing memory loss, more frequent periods of confusion, loss of skills, changes in personality and depression. All of these can intensify a sense of loneliness. To be diagnosed with dementia is, for many people, like a sentence where the punishment is loneliness.

The required responses to loneliness will vary according to each individual situation, the personality of the person with dementia and the general health of the person. It is only recently that there has been a growing awareness of the degree and impact of loneliness on older people. Many initiatives have been started by groups working with older people suffering dementia and loneliness. GPs have now been encouraged by Government to prescribe activities for those who are lonely. But the task is a huge one and goes to the heart of the nature of our society.

It is at this point the church should come to the fore. Thankfully some churches have done so with great effect and are to be applauded for their initiatives. Indeed, it has to be said that many of those churches who have done so have found that along with their caring initiatives have come wonderful opportunities for the gospel both with lonely older people and with their families and others in the community. It has been a privilege to go to a number of churches to speak about ageing and associated issues, and especially dementia, and to find excellent work being done for the glory of God. A great promoter of new initiatives is the website of *Faith in Later Life* (<https://faithinlaterlife.org>).

But there are more churches doing little or nothing than there are those taking the opportunity to reach out to older people. I started the article with reference to the Royal Voluntary Services comments on Lunch Clubs. For a large number of churches this is the full extent of their work with older people. That should not be minimised but it is not an adequate response to the massive need in our communities, and even in our churches.

Again, speaking out of personal experience, I recently had a conversation with a member of a gospel church that has a large congregation, a very comprehensive range of activities for younger people, young mums and single people, but scarcely anything for older people beyond its Sunday services. Yet it had a significant number of people over 70 attending or associated with the church. The idea that some of those older people could be lonely was a shock and was totally rejected by this person who was an office bearer. But I had been able to hold good conversations with several of the older people in that church, and it was tragically clear that loneliness *was* a real issue. Indeed, the situation was exacerbated in that the Sunday services tended to be less accessible to older people. As might be expected, several of the older people I spoke with had the beginnings of dementia, but there was no formal support in place for them.

It needs to be remembered that many Christian older people will not raise their own personal feelings of loneliness. This is partly because they will feel it sounds 'unspiritual', a comment made to me innumerable times. Or I frequently hear the following sentiment: 'I should be more content and believe the Lord is with me, even though I don't feel Him.' Then again there is the dread of being a burden, even though there is a requirement on all believers to 'bear one another's burdens'. And while Galatians 6:2 is speaking about spiritual issues, practical concerns are not excluded, especially since the practical influences the spiritual. We must face the fact that there will be some godly elderly saints who still feel very lonely, even though they may be in church on Sunday morning.

A difficulty for those who would support older people is that conversation with someone with dementia can be difficult. So people may shy away, leaving the older person feeling a degree of rejection, which increases feelings of loneliness. Churches should do much more to equip leaders and members to be able to respond to people with dementia. Pilgrims' Friend Society do a range of seminars and workshops which would greatly help (<https://www.pilgrimsfriend.org.uk>).

The New Testament has much to say about mutuality. The whole range of 'one anothers' emphasise the responsibility of every believer to minister to and care for each other. There is no age limit placed on this duty. Indeed, in Philemon v9 the Apostle Paul expects his advanced age to be one reason why others should listen to him. Churches need to be much more aware of the situation of their older members and develop responses that will suit their own resources and minister to the plague of loneliness which exists in our own midst. Then, of course, there are the opportunities for reaching out to lonely older people in our community, and through them to many others.

Loneliness can be a contributory factor to the development of dementia. And people with dementia often feel very lonely, which only intensifies their condition. These people are in our churches and on our doorsteps. May God give us wisdom and compassion to respond to a growing need.

Roger Hitchings

Review: That Hideous Strength – How the West was Lost The Cancer of Cultural Marxism in the Church, the World and the Gospel of Change

Melvin Tinker, EP Books, 2018, 127pp, £6.99

In this challenging and powerful volume, Melvin Tinker has some penetrating insights into the nature of the spiritual warfare that is raging today in the West. As the title suggests, he is indebted to the observations of C S Lewis in his work *That Hideous Strength* (1945), and he also provides an illuminating exposition of the biblical account of the Tower of Babel (Genesis 11).

In his ‘tall story about devilry’, Lewis made a ‘serious point’ about the capability of an intellectual elite of ideologues to change the way great swathes of a population consider what constitutes ‘common sense’ and determine which views are permissible and which ideas are passé, or even dangerous. By means of fiction, Lewis described an outlook that derides the supernatural and embraces naturalistic materialism. *That Hideous Strength* lays bare the character of scientism, a wholesale philosophical movement which, as a matter of principle and not evidence, leaves no room for God.

Tinker argues that in Cultural Marxism, there is a new manifestation of that ‘hideous strength’, which is equally powerful and just as dangerous as the one that Lewis described and which exhibits the same characteristics and aims. He traces the origins of this ideology back to the Frankfurt School and notes the influence of leading figures such as Herbert Marcuse, Antonio Gramsci, Max Horkheimer, Eric Fromm and Wilhelm Reich.

Andrew Sandlin, Founder and President of the Center for Christian Leadership in California, regards the aim of Cultural Marxism as the liberation of humanity from social institutions and conditions which prevent individuals from realising their full self, desires and aspirations. Among the social institutions and conditions within the sights of the social revolutionaries are the family, the church, business, traditional views, habits and authorities. The term ‘Cultural Marxism’ is rarely heard in common parlance, but the language employed to promote its ideas is ubiquitous, in words such as ‘equality’, ‘liberation’ and ‘tolerance’. Tinker refers to the adoption of a ‘new totalitarian-tolerance’ masquerading as a new freedom, with the aim of extinguishing the old tolerance, together with the people and institutions that espouse it, such as the church. It is Cultural Marxism that lies behind the political correctness of our age.

Tinker argues that vast sections of the Christian church have colluded with the new totalitarianism, either actively, by buying into Cultural Marxism (theological liberalism), or passively, by ignoring it and maintaining an exclusive commitment to ‘preaching the Word’ (evangelical pietism). Yet we cannot afford either to embrace Cultural Marxism or to bury our heads in the sand. This all-pervading ideology is the machine that is stifling freedom of speech and thought in society and providing the philosophical matrix for much of the gender agenda. It must therefore be seen for what it is: a particular manifestation of the principalities and powers seeking to dethrone God and destroy man. In this, Tinker sees a parallel with the Tower of Babel, a similar corporate rebellion which set itself up against the Creator and his cultural mandate.

So how are we to respond to the challenge of Cultural Marxism? Tinker urges Christians and churches to commend God’s truth, engage with the culture, and courageously refuse and reject the spirit of the age. He observes that the church is easily drawn to one of two extremes: (a) cognitive cultural resistance – not wanting to upset or offend the powers-that-be, it lives in isolation from the world, with occasional evangelistic forays; or (b) cognitive and cultural adaptation – allowing the church to be seduced by the culture, so that it merely reflects back to the world its own values and ideas in a thinly-veiled Christian dress. In this connection, he cites some particularly poignant words from Reinhold Niebuhr: ‘Whenever religion feels completely at home in the world, it is the salt which has lost its savour. If it sacrifices the strategy of renouncing the world it has no strategy by which it may convict the world of sin.’

Christians must therefore have the courage to go against the flow and maintain their distinctiveness in both belief and behaviour. The Cultural Marxists will want us to keep our heads down and our mouths shut, but, as Martin Luther King remarked, there comes a point where silence is betrayal. Silence must therefore end and Christian believers must employ God's methods of prayer, proclamation and persuasion.

In his Foreword, Dan Strange helpfully notes that from beginning to end, the Bible teaches that there is an antithesis between believers and unbelievers and a God-given enmity between those who worship Christ and those who serve idols. Christians are therefore inevitably and unavoidably involved in a war of competing worldviews and fundamentally different ways of interpreting the world. But, as Tinker trenchantly observes, in order to properly wield the sword of the Spirit, pastors need to educate their congregations about the culture in which they live and expose the influence and manifestation of 'that hideous strength'.

Tinker notes that:

[T]he diabolical drama which is being played out in our schools, colleges, work places and government needs to be placed within the bigger biblical drama of God's action in the world through his Son, the Lord Jesus Christ, and his people who are caught up in it, living as strangers and exiles, and called to stand against the world in order to win the world. And so ultimately we can't help but be optimistic...

In the short-term, he acknowledges that such Christian optimism does not preclude the possibility that we may enter a new dark age before the final triumph. But the ultimate victory of the Lord and his people is assured. In a particularly illuminating section, Tinker draws attention to the chiasmic structure of Genesis 11:1-9, depicting a reversal of mankind's plans. The centre point of the chiasm is found in the words: 'the Lord came down' (11:5). It is the actions of the Lord, and not the actions of man, that will prove decisive. The Lord will subvert all man's attempts to sabotage his purposes, and the kingdoms of this world shall become the kingdoms of our Lord and of his Christ, and he shall reign for ever and ever (Revelation 11: 15).

Even so, come Lord Jesus!

Norman Wells

Update on life issues

Abortion

Decriminalisation of abortion in the UK

On Tuesday 23 October, yet another Ten-Minute Rule Bill on this topic was debated at Westminster, this time in the name of Diana Johnson MP. Though her Bill appeared to be about bringing abortion access to Northern Ireland, in reality it would remove most of the legal safeguards around current abortion practice in Wales, Northern Ireland and England. This is a step too far. Such a radical proposal has no place in the UK. While Ten-Minute Rule Bills are unlikely to become law, they can, especially if they go to a vote, have an important symbolic significance. And so it came to pass that at 12.39 on Monday 23 October 2018, Diana Johnson MP spoke. Then Fiona Bruce MP responded. Then at 12.59 the House voted – the Ayes, 208 and the Noes 123. Oh no! How could that be? The Second reading of this Abortion Bill will take place on Friday 23 November.

The very next day, Wednesday 24 October, an amendment, tabled by Stella Creasy MP and Conor McGinn MP, to the Northern Ireland (Executive Formation and Exercise of Functions) Bill, which would have fast-tracked abortion and same-sex ‘marriage’ in Northern Ireland, was abandoned. Instead, MPs were presented with a ‘new clause 7’, which stated that current laws preventing abortion and same-sex ‘marriage’ in Northern Ireland are incompatible with human rights legislation. This was approved by 207 vs. 117 and added to the Bill as clause 4. The entire Bill was then overwhelmingly approved (344 vs. 26) to be read a Third time. It now passes to the House of Lords to be debated on Tuesday 30 October.

On 30 October, the Northern Ireland Bill duly entered the House of Lords. Its primary purpose has always been to seek plans to restore the power-sharing Executive in Northern Ireland, clarifying the role of civil servants. During its Committee stage, peers debated the Bill and notably Lord Adonis tabled Amendment 10, ‘The guidance may direct departments after 1 May 2019 not to enforce sections 58 and 59 of the Offences against the Person Act 1861’ and Amendment 11, which would have legalised same-sex ‘marriage’ in the Province. In the event, Amendment 10 was withdrawn and 11 was not moved. During that Tuesday night, the House completed the Second reading, Committee and Report stages, as well as the Third reading. The Bill was finally passed and, as both Houses had agreed the text, it received Royal Assent on Thursday 1 November.

Neither of these Bills changes current abortion law. The second Bill requires the Secretary of State for Northern Ireland to provide guidance to civil servants and to produce quarterly reports to Parliament on the supposed incompatibility between human rights law and Northern Ireland law on abortion and same-sex ‘marriage’. The government is now under considerable pressure to act. This is despite a recent ComRes poll of 1,863 people in England and Wales which revealed that when offered the choice of either the status quo, tighter restrictions on abortion, or making abortion available on demand, or for any reason up to 24 weeks, just 21% of women and only 26% of men would support the latter option. Significantly, a total of 67% of women favoured either the status quo, or a more restrictive abortion regime. The Westminster Bills are therefore out of step with the general public’s thinking. In other words, the people don’t want abortion to be decriminalised. But make no mistake, the pro-abortionists are on a roll.

Abortion law in Northern Ireland

The 1967 Abortion Act does not apply to Northern Ireland. In effect, abortions in the Province are illegal in all but exceptional medical and mental health circumstances. That restriction sticks in the craw of many, including Sarah Ewart. In early October, she applied for a judicial review, seeking a declaration of incompatibility with human rights law in cases of fatal foetal abnormalities.

In June, a majority of Supreme Court judges said the Northern Ireland ban on terminations in cases of rape, incest or fatal foetal abnormality needed ‘radical reconsideration’ because the current legal framework was

incompatible with human rights laws. However, the Supreme Court dismissed the legal challenge by the Northern Ireland Human Rights Commission by a narrow majority over a seeming technicality because it said it had no jurisdiction to consider the case because there was no actual or potential victim of an unlawful act involved in it.

It was 5 years ago, that Ms Ewart travelled from Northern Ireland for a termination in England after a 20-week scan revealed that her baby had anencephaly, meaning that the brain was not developing normally and that the baby would either die before being born, or shortly afterwards. Ms Ewart attended the Belfast High Court on Monday 1 October to seek leave to apply for a judicial review of the current laws. There are four respondents in the case, Northern Ireland's Secretary of State Karen Bradley, Northern Ireland's Department of Justice, the Department of Health and the Executive Committee. This ongoing case is being heard by Mr Justice McCloskey.

Abortion pills at home

In August, the UK Government agreed that women in England could take the second abortion pill, misoprostol, at home. Some described the move as 'risky and reckless'. The change follows considerable pressure from a number of medical bodies, such as the Royal College of Obstetricians and Gynaecologists (RCOG) and groups like the British Pregnancy Advisory Service (BPAS). The Scottish government approved a similar measure in October 2017, as did the Welsh government in June 2018.

Section 1 (3) of the 1967 Abortion Act requires that treatment for abortion can take place only in an NHS hospital or approved independent sector place. NHS guidance says the courts have decided this means that both abortion pills must be taken in hospital or at an approved clinic where medical supervision is available. However, the Government has now decided that the second pill can be taken at home, without proper medical supervision. This is seen as merely another step towards abortion without any restrictions.

So now what happens when things go wrong? Medical help will not be readily available. Frightened girls may not follow the packet's instructions correctly. And the problem of disposal of the embryo or foetus still exists. Is this a good move for women's welfare, or is it a cheaper scheme for the NHS, and a victory for pro-abortionists?

Banning NIPT results

Can medical results be vetoed? Many are calling for a ban so that parents-to-be cannot be told the sex of their baby after early blood tests, amid fears they may lead to abortions of girls. The relatively new non-invasive prenatal test (NIPT) is used by the NHS to search for genetic conditions, such as Down's syndrome. However, the test can also determine gender, though NHS doctors are not meant to reveal this. Moreover, people can pay around £150 to £200 for a NIPT privately to discover their baby's gender. All that is required is a drop of the woman's blood to be sent in the post. The clinic then analyses DNA derived from the baby and the results can be sent back in a matter of a few days.

The Labour MP Naz Shah, the shadow women and equalities minister, has said it is morally wrong for people to use the test to abort pregnancies based on the outcome. Yet thousands of British women are using an online forum to discuss the use of NIPT to determine gender. Even so, Ms Shah has clearly stated that cultural practices in some groupings, like the South Asian community, have a preference for boys. The Department of Health said it would continue to review the evidence.

Amnesty International and abortion

Amnesty International delegates from around the world gathered at a conference in Warsaw between 6 and 8 July. They adopted new proposals to tackle what they called, 'the devastating human rights consequences of misguided attempts by countries to criminalise and restrict abortion and to punish people for using drugs.' Tawanda Mutasah, Amnesty International's Senior Director for Law and Policy, declared, 'We want to make sure we are well placed to fight for the human rights of millions of people whose lives are impacted by how governments criminalise or restrict access to abortion.'

Representatives voted to adopt an updated position on abortion that calls on states not just to decriminalise abortion, but to guarantee access to safe and legal abortion in a broad way that fully respects the rights of all women, girls and people who can get pregnant. It will replace Amnesty International's current position on abortion, which calls for the decriminalisation of abortion, and access to abortion in a limited set of cases, which was adopted in 2007. Amnesty International has declared abortion to be 'a human right' – the organisation is now one of the biggest promoters of abortion in the world. 'How,' you may ask, 'can Amnesty claim to be a protector of human rights while supporting abortion?' Does Amnesty not regard unborn children as human?

Assisted Reproductive Technologies

Robert Winston on IVF

On the 40th anniversary of the birth of Louise Brown, the world's first IVF baby, on 25 July this year, Professor Lord Robert Winston, the IVF pioneer, gave an interview to *The Irish Times* (28 October 2018). As ever, he was forthright. He began, 'The 40th anniversary is a time to celebrate the great happiness of millions of couples. But this achievement... is also a moment for most serious reflection.'

He described a 'major problem' with private clinics 'selling the dream' to desperate couples, leading people to believe they are much more likely to get pregnant than they really are. 'The NHS and the HFEA websites are quite self-congratulatory if you look at them, but the reality is, people are being sucked into IVF without a full recognition of exactly how low the success rate is. He believes that, 'people don't always understand that the chance of getting pregnant from an individual IVF cycle in the UK still only stands at about 21% if you're under the age of 35 – the chances are even lower if you're older.' Moreover, he maintained that the private sector is on a 'gravy train' with IVF with some clinics charging up to £8,000 for a single cycle of treatment. He described the combination of 'desperation' from couples and 'avarice' from private practices as a 'dangerous combination'. He went on, 'The HFEA records success rate per embryo transfer, but that in itself is misleading, because a large number of women start a cycle but never get to the embryo transfer stage, either because their ovaries don't respond or because the eggs don't fertilise.'

'The first thing we need to change, which is something we're not doing in reproductive medicine, is to regard infertility as a symptom. Right now, we regard it as a diagnosis and it's fundamentally wrong to offer a treatment on the basis of symptoms – because the underlying cause of the symptom will vary...' 'In many cases, in-vitro fertilisation is not the best [treatment] – but it's the most profit. Unexplained infertility is a nonsense; it's a failure to make a diagnosis. People are reluctant to go through with investigations, which in my view are justified, because at the moment, so many patients are failing to get pregnant with an IVF cycle and then get pregnant after the IVF has finished.' And, 'One of the important issues is making a diagnosis and finding other more effective simpler remedies, but most clinics are now geared up to do IVF, so they don't actually treat the underlying issue.' Winston considers that, 'one of the most common causes of infertility in women is a hormone deficiency, which is usually better treated by drugs – yet few clinics offer this. He therefore believes it is time to make a change.

Another almost inconceivable IVF story

In September this bizarre case was reported in the media. You couldn't make it up. A wealthy British unnamed couple, described as 'very rich and from a notable family' have created a 'designer grandson' using sperm taken from their dead son. They wanted an heir and a grandson after their unmarried son, aged 26, tragically died in a motorbike accident. His body lay undiscovered for two days after which a urologist retrieved some sperm and immediately froze it. Nearly a year passed before the sperm sample was flown to the USA by a specialist medical courier to an IVF clinic in California, run by David B. Smotrich MD, FACOG, an obstetrician and gynaecologist and the founder and medical director of La Jolla IVF.

Using an American ova donor and a surrogate mother, a boy was born in 2015. Gender-selection techniques, which are not permitted in the UK, were used to ensure a male heir. The British couple, who were named as the legal parents, were present for the birth. According to Dr Smotrich, the three-year-old is now living in the UK with his grandparents, who are believed to be in their fifties. It is estimated that the procedure, including hospital fees and payments to the American ova donor and surrogate, would have cost between £60,000 and £100,000.

Dr Smotrich said he understood that the couple's son had not given formal consent to the extraction and use of his sperm in the event of his death, suggesting that those involved in the UK may have committed a criminal act and could face prosecution. Moreover, he stated that the couple had been 'very specific' about the type and calibre of the ova donor and the surrogate, insisting on subjects who matched the kind of woman they believed their son would have married in terms of physical looks, intellect and education. Dr Smotrich said he had no ethical objections to helping the British couple and confirmed that the remaining sperm and three more embryos were in cryogenic storage. And though he knew that gender selection is banned in the UK, he maintained, 'It was a privilege to be able to help them.' Apparently, he still receives Christmas cards from the family.

Saviour siblings

It is a long time since saviour siblings were in the news headlines. In mid-August, the news that an Australian couple, who genetically engineered their baby to become a bone-marrow donor for one of their other five children, has prompted renewed debate about designer babies. Olivia and Andrew Densley from Melbourne spent A\$100,000 (£57,000) on repeated IVF treatments before obtaining a matching embryo to save their fifth child, Fletcher, aged four, who suffers from the potentially deadly illness known as Wiskott-Aldrich syndrome. This condition is characterised by a deficient immune system and an inability to form blood clots, causing dangerous bleeding.

A bone marrow transplant offered the only hope of cure. The Densley family undertook a worldwide search for a matching bone marrow donor – it proved to be fruitless. The couple then decided to create their own compatible saviour sibling. In mid-August, their daughter, Lilliahna, was born. The life-saving bone marrow for Fletcher will be extracted from her when she reaches 22 lb in weight. Oh, the problems of consent, Lilliahna's possible resentment concerning her utility, the eugenic nature of IVF-PGD and its destruction of 'unsuitable' embryos, the knowledge that Mrs Densley already suffered from Wiskott-Aldrich syndrome, and so on, and so on. If you want to discuss a contentious bioethical topic, try saviour siblings.

Genetic Engineering

The Nuffield Council on Bioethics Report

Should we, or should we not, be allowed to modify human DNA in future children? On 17 July, the UK's influential Nuffield Council on Bioethics said yes by implicitly endorsing (p. 75) 'heritable genome editing interventions'. It declared (p. 96) the practice of altering the DNA of a human embryo as 'morally permissible' 'in certain circumstances' (p.158). After 20 months of consultation with many experts in the UK and beyond, the Council's 183-page Report, 'Genome editing and human reproduction: social and ethical issues' [here], has been published. Its main conclusion (p. 154) is, 'We can, indeed, envisage circumstances in which heritable genome editing interventions should be permitted.'

The Council had four terms of reference (p. iv). First, 'To identify and define ethical questions raised by recent developments in biological and medical research that concern, or are likely to concern, the public interest.' Second, 'To make arrangements for the independent examination of such questions with appropriate involvement of relevant stakeholders.' Third, 'To inform and engage in policy and media debates about those ethical questions and provide informed comment on emerging issues related to or derived from its published or ongoing work.' Fourth, 'To make policy recommendations to Government or other relevant bodies and to disseminate its work through published reports, briefings and other appropriate outputs.'

The Report recommends (p. vii) that two overarching principles should guide the use of ‘heritable genome editing interventions’ for them to be ethically acceptable. First, ‘that such interventions are intended to secure, and are consistent with, the welfare of a person who may be born as a consequence.’ Second, ‘that any such interventions would uphold principles of social justice and solidarity – by this we mean that such interventions should not produce or exacerbate social division, or marginalise or disadvantage groups in society.’

The Report further recommends that heritable genome editing interventions should be permitted only when three conditions have been satisfied. First (p. 135), ‘there should be sufficient opportunity for a broad and inclusive societal debate.’ Second (p. 159), ‘research to establish the clinical safety and feasibility of genome editing.’ Third (p. 100), ‘measures to monitor the social consequences and to mitigate any adverse effects are in place.’

Overall, the Report states (p. xviii) that if ‘heritable germline genome editing’ were to be permitted, it should be under three controls. First, ‘not be permitted until risks of adverse outcomes have been thoroughly assessed, and then only on a case-by-case basis.’ Second, ‘licensed and regulated under the system currently overseen by the HFEA.’ And third, ‘within the context of a carefully monitored study, with comprehensive follow-up arrangements in place.’

The Report has not gone unnoticed. Its endorsement of human genome editing has drawn fire from several experts – including at least one who consulted on the Council's previous 2016 Report. Critics, for example, include Stuart A. Newman, Professor of Cell Biology and Anatomy at New York Medical College, who said, ‘I'm very troubled by it. I think it's very irresponsible of them to make that pronouncement. I think that these methods are dangerous and in fact, there is no child there, there is basically a fertilized egg and they're saying that the child has an interest and the interest is to be experimented on. These experiments are very chancy and there is really no guarantee that the developing embryo won't turn out more impaired than the way it started. I really don't understand the rationale at all.’

And Dr David King, Director of Human Genetics Alert, claimed, ‘This is an absolute disgrace. We have had international bans on eugenic genetic engineering for 30 years. But this group of scientists thinks it knows better, even though there is absolutely no medical benefit to this whatever. The Nuffield Council doesn't even bother to say no to outright designer babies. The people of Britain decided 15 years ago that they don't want GM food. Do you suppose they want GM babies?’ And Marcy Darnovsky of the Center for Genetics and Society in California, commented that the Report acknowledged that if reproductive gene editing were permitted, it would be used for enhancement and cosmetic purposes. ‘They dispense with the usual pretence that this could – or, in their estimation, should – be prevented. They acknowledge that this may worsen inequality and social division, but don't believe that should stand in the way. In practical terms, they have thrown down a red carpet for unrestricted use of inheritable genetic engineering, and a gilded age in which some are treated as genetic “haves” and the rest of us as “have-nots”. The bottom line is all too clear. Sadly, the Nuffield Council on Bioethics has given its blessing to an unneeded and societally dangerous biotechnology, one that could be leveraged by privileged elites seeking purported genetic improvements to ensure that their children are treated as superior to the rest of us.’

For many critics, the big issue is one of burdening future generations with possibly dangerous genomic alterations without their consent. This they say is unconscionable. And there is also that most vexed question about genome modification that is not for therapeutic reasons – to eliminate genes causing disorders – but for enhancement – attempting to improve a child's intelligence or physical appearance. Can these issues be bioethically justified?

While the Nuffield Report is purely advisory, most of its recommendations on similar topics have eventually become law in the UK. For this reason, its advice to the British government is of global significance. Germline engineering, as this technique is sometimes called, was for a long time the red line in biology. Any changes made would become part of the genome of the individual, to be passed on to future generations.

The uncertainties and risks were deemed so great that it should never be attempted. How times have changed! Are we in danger of creating a eugenic mentality that aims to improve the gene pool, but instead creates social stigmas and social privileges for people with certain genetic qualities?

Gene editing of human embryos

Japan is set to allow the gene editing of human embryos. An expert panel, representing the country's health and science ministries, released new guidelines in September. Although the country regulates the use of human embryos for research, until now there have been no specific guidelines on using novel tools, such as CRISPR–Cas9, capable of making precise DNA modifications.

The new guidelines will allow for research to be carried out on early-stage embryos, with scientists hoping to gain insight into early human development and perhaps eventually fix genetic mutations that cause inherited diseases. As ever, bioethicists are concerned that the technique could be used to alter the embryos for non-medical reasons. While the guidelines would ban the manipulation of human embryos for reproduction, they will not be legally binding. Currently these proposed guidelines are open for public consultation and their implementation is expected in early 2019.

It was in April 2015, that researchers in China first reported using CRISPR-Cas9 to edit human embryos. Such editing is still banned in most countries, though China, the United States, Sweden and the UK sanction it – restrictions in the latter were relaxed in February 2016.

Gene-editing human sperm

Would it be more bioethically acceptable to gene edit reproductive cells, namely, sperm and ova, rather than human embryos? If so, then there should be encouragement for the recent work published by Diane Choi and her team at Weill Cornell Medicine in New York City. In a poster (P-794) entitled, 'Feasibility of CRISPR-Cas9 on the human sperm cell' and presented at the annual meeting of the European Society of Human Reproduction and Embryology during July 2018 in Barcelona, the US scientists used CRISPR-Cas9 editing to directly target a gene associated with male infertility in mature sperm cells. They found that a single 1100-volt electrical pulse, for just 50ms duration allowed the CRISPR components to break through the tough exterior of the sperm cells without killing them. Although sperm motility was reduced by half, as the strongest and healthiest sperm had been selected, their swimming ability was still efficient enough to be able to fertilise an ovum without the need for ICSI.

In theory, all single gene disorders transmittable by the male could be treated if CRISPR-Cas9 could be successfully used on sperm. An additional advantage of targeting sperm rather than embryos is that the cells of the latter are dividing rapidly so that the editing process may be incomplete leading to mosaicism. Moreover, if successful, this approach could lead to treating genetic diseases passed on by fathers, such as cystic fibrosis, sickle cell anaemia and muscular dystrophy.

Stem-cell Technologies

Parkinson's and iPS cells

At the end of July, researchers in Japan announced the launch of a clinical trial to treat Parkinson's disease with neurological material derived from induced pluripotent stem (iPS) cells. Parkinson's disease results from the death of specialized cells in the brain that produce the neurotransmitter, dopamine. A lack of dopamine leads to a decline in motor skills, resulting in difficulty walking and involuntary trembling. As the disease progresses it can lead to dementia.

The trial strategy is to derive dopaminergic progenitors from iPS cells and inject them into the putamen, a round structure located at the base of the forebrain. Surgeons will drill two small holes through the patient's skull and use a specialized device to inject roughly 5 million reprogrammed cells. The trial is being led by Jun Takahashi, a neurosurgeon at Kyoto University's Center for iPS Cell Research and Application (CiRA), in cooperation with Kyoto University Hospital. Studies with animals have shown that the progenitors

can differentiate into dopaminergic neurons inside the body and then engraft into the brain. Takahashi's group reported last year that monkeys with Parkinson's had shown significant improvements with this treatment, lasting for at least 2 years. The team plans to recruit seven human patients and follow them for 2 years post-injection.

This is the third human trial using iPS cells approved in Japan. The first, using retinal cells derived from iPS cells to replace eye tissue damaged by age-related macular degeneration (AMD), was launched in 2014 and is being led by Masayo Takahashi of the RIKEN Center for Developmental Biology in Kobe, who just happens to be Jun Takahashi's wife. The AMD treatment was initially reported to be safe, though there has been one reported adverse event. Earlier this year, a team at Osaka University in Japan won conditional approval for an iPS cell-based study for ischaemic heart disease.

Stem cells from umbilical cord blood

It has long been known that human umbilical cord blood (hUCB) is rich in stem cells. Researchers from the Stowers Institute for Medical Research in Kansas City, Missouri and their collaborators from elsewhere have identified a way to expand the numbers of blood-forming, adult stem cells from hUCB. This could make these cells available to more people, and be more readily accepted in those who undergo adult stem-cell treatments for conditions, such as leukaemia, blood disorders, immune system diseases and other types of cancers, but who cannot obtain an appropriate and available bone marrow match.

Life-saving bone marrow transplants have been the common practice for decades, but they do not work for everybody. Only 30% of patients have a bone marrow donor match available in their families. Moreover at least 170,000 people in the USA are expected to be diagnosed during each year with a blood cancer, such as leukaemia, lymphoma and myeloma. Adult stem cells from umbilical cords are more likely to be a match for more people because there are fewer compatibility requirements than for a bone marrow transplant. But adult patients need two cords' worth of blood per treatment, and there are not enough cord units available for everyone who needs the treatment. Hence the drive to expand the stock.

Bio-engineering an oesophagus

Around one in 3,000 babies is born each year with abnormalities of the oesophagus, usually involving either a gap between the upper and lower section, or where it does not connect with the stomach. Scientists at Great Ormond Street Hospital (GOSH) and the Francis Crick Institute in London have grown a bio-engineered oesophagus which was successfully implanted into mice. The work was published *in Nature Communications* (2018, 9: 4286) under the title 'Multi-stage bioengineering of a layered oesophagus with in vitro expanded muscle and epithelial adult progenitors' by Luca Urbani *et al.*

The team used a rat oesophagus, which they first stripped of its cells, leaving behind a collagen scaffold. Then they seeded it with stem cells obtained from early-stage muscle and connective tissue from mice and humans, and other early rat cells, which went on to form the lining on the inside of the organ. This use of stem cells from different species would enable the researchers to differentiate between the origins of each tissue type which developed. Finally, 2 cm sections of the oesophagus were implanted into the abdomen of mice.

Paola Bonfanti, the group leader, said, 'We were amazed to see that our engineered tissue had both the structure and function of a healthy oesophagus, and hooked up with nearby blood vessels within a week of transplantation.' The sections of oesophagus were capable of muscle contraction, which is needed to move food down to the stomach. Paolo De Coppi, co-author commented, 'This is a major step forward for regenerative medicine, bringing us ever closer to treatment that goes beyond repairing damaged tissue and offers the possibility of rejection-free organs and tissues for transplant.' The eventual aim would be to create bio-engineered organs from a pig oesophagus, which would be injected with a patient's own stem cells, in order to minimise the risk of rejection.

This field of bio-engineered organ transplants suffered a major setback in 2016 when a surgeon in Sweden, Paolo Macchiarini, was accused of falsifying his research. Of nine of his patients, who received a synthetic

windpipe, seven died, and the two survivors had the organ replaced with a donor trachea. The London team say that scandal reinforced their determination to proceed cautiously.

Disgraced stem-cell researchers

What's up with stem-cell researchers? Are they a cohort prone to cheating? Does their research have such potent potential that they are easily distracted by dreaming of huge grants and Nobel Prizes? Whatever the reasons they do seem to have an extraordinary number of retractions of their research papers.

For example, Ole Petter Ottersen, the president of the Karolinska Institute in Sweden has recently ruled that seven of its researchers, including the now disgraced surgeon Paolo Macchiarini, were 'guilty of scientific misconduct'. In 2017, Ottersen was given the task of cleaning up the famed Institute after a scandal over bio-engineered implants damaged its reputation. He has asked for six articles to be retracted, including two published in the *Lancet*. Controversially, he included in his list one of Macchiarini's co-workers, Karl-Henrik Grinnemo, who had initially alerted the Institute to defects in the articles as long ago as 2014. In his retraction request for the 2011 paper in the *Lancet* (2011, 378:1997-2004), 'Tracheobronchial transplantation with a stem-cell-seeded bioartificial nanocomposite: a proof-of-concept study', Ottersen stated that, 'No ethical permit had been obtained for the underlying research. The research was carried out without sufficient support by preclinical data, and the paper presents its data in a way that is unduly positive and uncritical. The clinical findings reported are not supported by source data.' Macchiarini's three co-authors of the Review paper, 'Engineered whole organs and complex tissues' published in the *Lancet* (2012, 379: 943-952), were found not blameworthy and not guilty of misconduct.

Yet another example of stem-cell cheating has been attributed to a world-renown cardiac researcher, Piero Anversa. He rose to prominence for his work on the regeneration of heart tissue by stem cells. He appeared to show that the heart's capacity for self-repair was generally underestimated. Yet some of his critics said that the idea of regenerative stem cells existing in the heart was implausible. Now, officials from his previous places of work, Harvard Medical School and the Brigham and Women's Hospital in Boston, have asked that 31 of his papers be retracted from journals. The papers in question, 'included falsified and/or fabricated data'. In addition, the *New England Journal of Medicine* has retracted one paper of Anversa's papers and issued an 'expression of concern' about two others. The *NEJM* retracted paper was the 2011 study, 'Evidence for human lung stem cells' (2011, 364: 1795-1806).

Now comes news (*The Daily Telegraph*, 31 October 2018) of a cover-up by stem-cell scientists based at University College London (UCL). The team, led by Professor Martin Birchall, was proposing to conduct a multi-million-pound clinical trial using tracheas, bio-engineered with stem cells, to treat patients with failing windpipes. Their grant application was based on their experience with this novel surgery. But they failed to disclose that two of their previous patients had died soon afterwards. Miss Shorten, a 19-year-old, had the operation in 2010 at the Careggi Hospital in Florence, but her new trachea collapsed, she spent 6 months in intensive care and was given a plastic trachea, but she died four months later. Miss Davison, aged 15, had undergone a tracheal transplant in 2012 at Great Ormond Street Hospital (GOSH), but it too collapsed, she suffocated and suffered irreversible brain damage and died 13 days later. Neither of these deaths was mentioned in the grant application, in fact they were described as 'successful' in promotional literature. The team's promised £4.7m of UK funding has been withdrawn and an additional £6m EU-backed trial is now unlikely to go ahead. How did these deceitful research workers ever receive approval for their project? Professor Patricia Murray, a stem-cell biologist from Liverpool University, has taken a great interest in this story. She said, 'The reason is because they basically lied about patient outcomes and omitted adverse outcomes. If they had been accurate about what happened and told the truth, I don't think they would have got the funding.' Various investigations into these matters are ongoing.

I hope this sad litany of stem cell dishonesty has come to an end. But that seems a somewhat forlorn hope. Scientists, like many others, can be driven people, and both internal and external pressures to continually produce astounding results, to win prizes and to secure grants, can make 'cutting corners' very tempting. And this can so easily grow into bold-faced cheating. When science becomes fraudulent, we all suffer.

Euthanasia and Assisted Suicide

Clinically-assisted nutrition and hydration (CANH)

On Monday 30 July, Lady Black delivered a landmark judgement of the Supreme Court with profound implications on how we value human life. It removed the previous requirement to obtain legal sanction for every decision to withdraw clinically-assisted nutrition and hydration (CANH) from people who lack capacity through 'prolonged disorders of consciousness' (PDOC). Prior to this ruling, based on the 1993 case of Anthony Bland, brain-damaged patients in a persistent vegetative state (PVS) or a minimally conscious state (MCS) were able to have their cases heard by the Court of Protection. This sensible pathway was enshrined in the 2005 Mental Capacity Act. PVS and MCS patients are typically regarded as unaware, though they can breathe without the use of a ventilator and they require food and fluids to be administered by tube, known as CANH. If CANH and good care are provided PVS and MCS patients may live for many years. Some patients may even regain a degree of awareness. This new Supreme Court ruling effectively deprives these patients of the opportunity to recover and sets a dangerous precedent.

It is difficult to understand how the best interests of the patient can be served by withdrawing CANH. Yet the Supreme Court has now said that it is acceptable for the patient to ultimately die as a result of starvation and dehydration, crucially, without applying to the Court of Protection. In other words, it will not be their underlying condition which would be the cause of death. Yet, in welcoming the move, the *British Medical Journal* stated, 'This represents the culmination of a paradigm shift over the past six years, moving from a focus on a patient's diagnosis and level of awareness to a focus on the patient's best interests. In effect it returns clinical decision-making to the clinical team and patients' families.'

The judgment confirms that there is now, 'no requirement in domestic law for an application to the court' and that, 'the combined effect of the 2005 Mental Capacity Act, the Mental Capacity Act Code, and the professional guidance, particularly that emanating from the General Medical Council' provides a sound, protective regulatory framework. Lady Justice Black concluded that, 'Existing law and guidance are sufficient to ensure good practice, primarily through using the best interests process.'

Starving and dehydrating patients for a week or two until they die – can that really be in anyone's best interests? And it is estimated that there are around 24,000 people in the UK in PVS and MCS. Some will see this ruling as compassionate and humane, others as the removing of a vital legal safeguard for a highly vulnerable group.

The case of Mr Y

The Supreme Court ruling, discussed above, was triggered by an appeal on behalf of Mr Y, a banker. The following is verbatim from the Press Summary published by the Supreme Court on 30 July 2018.

'The question in this appeal is whether a court order must always be obtained before clinically assisted nutrition and hydration ("CANH"), which is keeping a person with a prolonged disorder of consciousness ("PDOC") alive, can be withdrawn, or whether, in some circumstances, this can occur without court involvement.'

'In June 2017 Mr Y, an active man in his fifties, suffered a cardiac arrest which consequently led to extensive brain damage due to lack of oxygen. He never regained consciousness following the cardiac arrest and required CANH to keep him alive. His treating physician concluded that, even if he regained consciousness, he would have profound disability and would be dependent on others to care for him for his remaining life. A second opinion from a consultant and professor in Neurological Rehabilitation considered Mr Y to be in a vegetative state without prospect of improvement. Mrs Y and their children believed that he would not wish to be kept alive given the doctors' views about his prognosis. The clinical team and the family agreed that it would be in Mr Y's best interests for CANH to be withdrawn, which would result in his death within two to three weeks.'

‘On 1 November 2017, the NHS Trust sought a declaration in the High Court that it was not mandatory to seek the court’s approval for the withdrawal of CANH from a patient with PDOC when the clinical team and the patient’s family agreed that it was not in the patient’s best interests to continue treatment and that no civil or criminal liability would result if CANH were withdrawn.’

‘The High Court granted a declaration that it was not mandatory to seek court approval for withdrawal of CANH from Mr Y where the clinical team and Mr Y’s family were in agreement that continued treatment was not in his best interests. The judge granted permission to appeal directly to the Supreme Court. In the intervening period Mr Y died but the Supreme Court determined that the appeal should go ahead because of the general importance of the issues raised by the case.’

‘The Supreme Court unanimously dismisses the appeal. Lady Black gives the sole judgment with which the other Justices agree.’

The case of Niall McGrath

In March 1989, Niall McGrath incurred massive brain injuries as he allegedly fell down steps in a London pub. Six operations and ten days later, a week before his 21st birthday, doctors pronounced him ‘clinically dead’. Sandy, his sister, said, ‘They actually withdrew him off life-support three times. He was a write-off.’ But instead of rapidly wasting away, Niall began to breathe. He was moved to the National Rehabilitation Centre in Dun Laoghaire and later to St Joseph’s Care Home in Longford, Ireland, where he has remained ever since.

Up until 8 years ago, Niall could not speak or move. Then in 2010 he stunned doctors when he came out of his coma. He has since been steadily recovering. Now the 50-year-old is making massive strides. He is able to stand up for 25 minutes and he can transfer himself from the wheelchair to the bed. He also uses an iPad, and attends speech therapy. His sister calls on him every lunchtime and brings Niall’s 73-year-old mother, Mary, to visit him every evening. Sandy is concerned that people like Niall could die under legislation passed by the UK’s Supreme Court in July allowing medical teams and families to withdraw life support without applying to the courts. She fears similar laws may be introduced into Ireland.

USA and Elsewhere

Brett Michael Kavanaugh

So Donald Trump’s controversial nominee finally got his seat on the SCOTUS, the Supreme Court of the United States. Justice Kavanaugh is a 53-year-old Roman Catholic, who is married to Ashley with whom he has two daughters. On the evening of 6 October, he was sworn in at a private ceremony after weeks of acrimonious debate. The Senate had earlier backed his nomination by 50 votes to 48. All this followed four days of questioning by the Senate Judiciary Committee, a bitter battle over claims of sexual assault (which he vigorously denied), an additional investigation by the FBI, several excoriating articles in the media, and numerous protest marches by feminists and others.

Why all the bluster? First, there were the assault claims that reached back to the 1980s. Second, there was Mr Kavanaugh’s record of previous legal opinions – he is considered to be conservative and therefore, because he is replacing the liberal Justice Anthony Kennedy, he will likely tilt the balance of the SCOTUS to 5 vs. 4 in opposition to issues like abortion and same-sex ‘marriage’. Many consider that the colossus of Roe vs. Wade could now be under threat. His appointment is for life and the US pro-life constituency is generally delighted, maybe even thrilled.

Donald Trump on evangelicals

In late August, a dinner was held at the White House attended by leading evangelical Christians. Donald Trump recognised the support he had received from them to secure the presidency, ‘But I really don’t feel guilty because I have given you a lot back, just about everything I promised.’ He pointed to moves by his

administration to stem the flow of federal funding to abortion clinics and his work to secure the freedom of imprisoned church leaders around the world.

Mr Trump welcomed several high-profile Christian figures for the formal occasion, including Rev Franklin Graham, the president of the Christian university Liberty, Jerry Falwell Jr. and James Dobson from Focus on the Family. The US President also said that 'attacks' on faith communities throughout the US were 'over', citing his efforts to protect freedom of conscience and religious liberty. He added, 'Unlike some before us, we are protecting your religious liberty. We're standing for religious believers, because we know that faith and family, not government and bureaucracy, are the centre of American life. And we know that freedom is a gift from our Creator.'

It is now said that there are more evangelical Christians in the Trump government than ever before. And there are Bible studies in the White House, and there is more prayer in that building than since America's early history.

Chelsea Clinton on abortion

The daughter of former US President Bill Clinton was interviewed by the satellite radio station, SiriusXM, in September. She suggested that it would go against Christian values for the United States to revert to a time before *Roe vs. Wade*. She talked about her efforts to keep abortion legal in the US and said, 'Every day I make the moral choice to be optimistic that my efforts and my energies, particularly when I'm fortunate enough to be in partnership with fellow travellers, hopefully will make a difference.' Asked about a possible repeal of *Roe vs. Wade*, she replied, 'That's unconscionable to me, and also, I'm sure that this will unleash another wave of hate in my direction, but as a deeply religious person, it's also unchristian to me.' OK, her views are ditzy, but she does have political ambitions and so her views are noteworthy (and worrying).

The world and euthanasia

During the first week of October, the World Medical Association (WMA) held its annual medical ethics conference and annual general meeting in Reykjavik. Euthanasia was on the agenda. The pro-euthanasia Canadian Medical Association (CMA) and the Dutch Medical Association (KNMG) prepared a resolution in a bid to change the position of the WMA's opposition to euthanasia. In the event, it was withdrawn because of lack of support.

Meanwhile, the August edition of the WMA's *World Medical Journal* contained reports from doctors around the world who had debated end-of-life care issues. In Brazil, WMA members declared that, 'if the doctor is prepared not only to cure but also to kill, the ethics of medical practice and the trust that the patient must have in his doctor will be very battered.' Furthermore, all of the medical associations in Israel, Australia, New Zealand, Japan and China were opposed to euthanasia. Similarly, those in Africa, were 'unanimously opposed to euthanasia and physician-assisted suicide in any form.' At one of the symposia of the WMA conference, the majority of participants rejected euthanasia 'as being diametrically opposed to the ethical principles of medicine and expressed concern that they could lead to misuse or abuse.'

Abortion in South Korea

Abortion is illegal in South Korea except for cases of rape, incest, genetic disorders, or where the pregnancy would threaten a woman's health. Yet it is also commonplace with about 340,000 technically-illegal terminations performed annually. In August, the government issued regulations that threatened to ban doctors from practice for a month if they were found to have performed an illegal abortion. The new rules have included abortion among a list of 'immoral medical actions'.

In September, almost two thousand South Korean obstetrics and gynaecology doctors protested against these new Ministry of Health and Welfare abortion regulations by refusing to perform abortions for women. The Korean College of Obstetrics & Gynecologists issued a statement, 'We flatly refuse to carry out abortions, which the government has defined as an immoral medical action.' Lee Young-Kyu, vice-chairman of the Korean College of Obstetrics & Gynecologists, said that the ban was 'simply appalling'. 'Patients, who seek

abortions, were often poor or underage', she said, adding that, 'If women were forced to give birth in these circumstances, it puts a question mark on whether that is moral.' Meanwhile, the country's Constitutional Court is reviewing the near total ban on abortion, and is expected to make a ruling later this year.

Miscellaneous

A short story

One of my favourite quotations is that attributed to Blaise Pascal, 'Je n'ai fait celle-ci plus longue que parce que je n'ai pas eu le loisir de la faire plus courte.' It translates as, 'I would have written a shorter letter, but I did not have the time.' It is recorded as number 16 of his 'Provincial Letters' written by Pascal to a group of Jesuits on 4 December 1656 protesting about the practical morals of the Roman Catholic Church.

Then again, I have heard [far too many] sermons that could have been cut, even slashed, without detriment. Moreover, every piece of writing can be improved by editing, despite the usual protestations of prolix authors. More's the pity that a growing number of publishers no longer employ copy editors with their blue pens and scissors. And by editing is invariably meant shortening. So, how about not just shortening an article, but going for the ultimate and creating an entire story in just a few, say, six words? In the truncated world of Twitter that ought to be simple.

But can this fabled example, often ascribed to Ernest Hemingway, which he produced allegedly to win a bet, be improved upon? Here it is: *For sale, Baby shoes, Never worn*. Beat that! See, there is already a story going through your head, perhaps even the rough outline of a film. And does it have a definite bioethical theme? It does for me.

Are you fat and lonely?

Thankfully, currently, I am neither, but I know people who are. About 62% of adults in the UK are now classified as overweight, while 28% are clinically obese. Obesity is one of the leading preventable cause of death. It is often associated with additional conditions, like diabetes mellitus, heart disease and stroke. The NHS is already creaking with the obesity overload. Most of its victims simply eat too much, especially the wrong types of food, and they typically lack sufficient physical activity.

Similarly, loneliness is on the increase. Over 9 million people in the UK – almost a fifth of the population – say they are always or often lonely. At least half (51%) of all people aged 75 and over live alone. Two fifths of all older people, almost 4 million in total, say the television is their main company. Prime minister, Theresa May, has recently announced a range of activities that GPs can refer their lonely patients to, as a means of tackling this epidemic. These will include social activities, such as cookery classes, walking clubs and art groups.

Both obesity and loneliness are sad and dangerous markers of our so-called advanced Western society. We can all think of simple reasons why some are fat, or lonely, or both. But is there a genetic reason? Do genes predispose some people to these conditions? It might seem a theory a tad farfetched, but it has been the subject of a recent study published in *Nature Communications* (2018, 9: 2457) by Day *et al.*, from the University of Cambridge School of Clinical Medicine, under the title, 'Elucidating the genetic basis of social interaction and isolation.' They kindly reframe fat and lonely as 'adiposity' and 'social isolation'.

The researchers performed genome-wide association study analyses for loneliness and regular participation in social activities in 452,302 UK Biobank study participants. They identified 15 genomic loci for loneliness, and demonstrated a likely causal association between adiposity and increased susceptibility to loneliness and depressive symptoms. Fascinatingly, further loci were identified for regular attendance at three places – a sports club or gym, pub or social club, or religious group. They found, 'Across these traits there was strong enrichment for genes expressed in brain regions that control emotional expression and behaviour.'

And furthermore, 'These data highlight shared genetic architecture between loneliness and a range of

complex traits, including a causal relationship between body size and loneliness/depressive symptoms.’ In other words, some people are genetically prone to an association between ‘adiposity’ and ‘social isolation’, but only a little, just 4.2%, so don’t blame your genes for your troubles. And the remedial prescription? Eat less, walk more, and go to church would be a good start for many.

A new Hippocratic Oath

It was a combination of the Hippocratic Oath and the Judeo-Christian doctrines that established the wholesome ethics and practice of early Western medicine. With their ‘first, do no harm’ and ‘love your neighbour as yourself’, they kept medicine safe and beneficial for over 2,000 years. Sadly, their influence has now declined. The Hippocratic Oath has over the last 70 or so years reappeared in various, but always in bioethically-weakened, forms.

Here is a snapshot of that downgrade. The original Hippocratic Oath specifically forbade both euthanasia and abortion, ‘I will give no deadly drug to any, though it be asked of me, nor will I counsel such, and especially I will not aid a woman to procure abortion.’ In 1947, the British Medical Association (BMA) affirmed that the Hippocratic Oath, ‘... enjoins ... the duty of caring, the greatest crime being co-operation in the destruction of life by murder, suicide and abortion.’ By 1997, that same BMA had produced its draft revision of the Hippocratic Oath, which stated, ‘I recognize the special value of human life but I also know that the prolongation of human life is not the only aim of health care. Where abortion is permitted, I agree that it should take place only within an ethical and legal framework.’ Similarly, in 2005, the World Medical Association approved a revision of the Declaration of Geneva, which modestly asserted, ‘I will maintain the utmost respect for human life; I will not use my medical knowledge contrary to the laws of humanity, even under threat.’ The removal of that vital phrase ‘from the time of conception’ not only eliminated the implicit anti-abortion stance of the original, but it also simultaneously introduced doubt about the fundamental issue of when human life begins.

The University of Exeter Medical School was set up in 2012. Its first-year students began the new programme in September 2013. This summer, its first cohort of medical students graduated. Interestingly, they devised their own version of the ancient Greek oath, which the 88 doctors-to-be swore at their July graduation ceremony. It emphasised their commitment to service and care, advancing knowledge and life-long learning and teaching, and to maintaining their own health and well-being.

Amidst some of the somewhat florid language and politically-correct platitudes there was this welcome sentence, ‘I shall never intentionally cause overall harm to my patients, and will have the utmost respect for human life.’ While this echoes the grand Hippocratic statement, an echo is never as strong as the original chime – it can be almost inaudible. And the Exeter Oath also included, ‘I will work towards a fairer distribution of health resources and oppose policies in breach of human rights.’ One can only wonder if the Exeter doctors had ever pondered the 1948 General Assembly of the United Nations adoption of the Universal Declaration of Human Rights, of which Article 3 declares, ‘Everyone had the right to life ...’ Let us hope that these new doctors take seriously their pledge, ‘I will seek to increase my understanding and skills, and promote the advancement of medicine as both a teacher and a learner.’ May they read a good bioethics book!

Learn a new word

Tokophobia. No, it’s not a fear of clocks – that is chronomentrophobia. Tokophobia is a pathological fear of childbirth from the Greek tokos, meaning childbirth and phobos, meaning fear. And it is apparently on the increase, according to Catriona Jones, a lecturer in midwifery at the University of Hull. So much so, that NHS perinatal mental health services have asked her to look into the problem after a recent and notable rise in the number of women asking for caesarean sections. For some women tokophobia can be so severe that they never become pregnant or, if they do, they may decide to abort. What such women need is a pathway of proper support and care, which should be available from mental health practitioners, midwives and health visitors. Or they could spend time with a pro-life counsellor.

John Ling

Latest news of significant individual cases

The following are summaries of the story so far in some of the significant recently-resolved or still unresolved cases involving Christians responding to a wide range of legal, police or disciplinary action against them. Seeking a remedy by means of litigation can be a lengthy process – sometimes taking several years for a closure to be reached. All cases mentioned are being handled by the Christian Legal Centre.

Felix Ngole

Felix Ngole was studying at the University of Sheffield on an MA Social Work course. In a Facebook discussion about the marriage registrar, Kim Davis, who refused to register same sex weddings, Felix posted Bible verses and comments to demonstrate the Bible's teaching on sexual ethics and marriage. An anonymous complaint was made about the comments and Felix was removed from his course because his comments may have caused offence and his subsequent appeal was dismissed. The University's decision prevents him from pursuing his desired profession as a social worker and highlights their very concerning position that only certain views about sexual ethics are acceptable.

Felix challenged the University's decision by submitting a complaint to the Office of the Independent Adjudicator which was rejected. With the support of the Christian Legal Centre (CLC), he then appeared in the High Court in late April 2017 to seek permission for a judicial review of the decision to expel him from his University. Felix was granted such permission, and his case was heard in full in October 2017.

While noting that the university's sanction 'was indeed severe', and that there had been no evidence of Felix acting in a discriminatory fashion, the Tribunal found against him on the basis that the posts could be accessed and read by people who would perceive them as judgemental... or suggestive of discriminatory intent, and it was reasonable to be concerned about that perception.

The ruling has a deeply concerning impact on freedom of expression, and flies in the face of the government's expressed intention to promote free speech at universities. CLC assisted Felix with submission of an appeal which has been granted. The hearing is likely to take place in early 2019.

Sarah (not her real name)

Sarah was introduced to CLC by the Baroness Cox. She had been abducted as a 15-year-old girl by an Islamic grooming gang and was subjugated and kept as a sex slave for 12 years. By the time she escaped from the gang, she had been subjected to 8 forced terminations of pregnancy, 3 Sharia marriages and countless rapes and physical assaults. She was referred to by the gang as 'white trash' and was expected to wash, cook and clean for the gang members. Even when she was supposedly married to one of the gang members Sarah would be raped by other members of the gang. At one point in her captivity, when she found she was pregnant again, she managed to escape for long enough to be able to keep the baby and eventually gave birth to her first child, a son.

Once she finally managed to escape from the clutches of the gang she went to the police to seek assistance. The police assigned to her a Muslim officer who persuaded her to drop charges against certain members of the gang. This particular officer is now serving a jail sentence for having thousands of paedophilic images on his computer.

The trauma Sarah suffered had taken its toll on her and she was in need of mental health services, but these were not provided. Sarah was finding the job of dealing with her personal circumstances, whilst looking after her son, a challenging situation. Social Services became involved and far from supporting Sarah, they began to question her competence as a parent.

At around this time Sarah allowed herself to go on a date with an Asian man who had contacted her on Facebook. He assured her that not all Muslim men were the same and she agreed to meet. He took her out to dinner in London where he eventually took her to a hotel and brutally raped her. It was here that she conceived her second child, a daughter. Social Services gave little or no support to Sarah as a parent and took her daughter away the day after her birth as they considered Sarah to be a danger to her.

It was at this point that CLC was introduced and helped Sarah through the family court procedure. Despite the best efforts of the lawyers used for Sarah's case, the daughter has been placed for adoption and the son is the subject of a special guardianship order. If the final adoption order is made, Sarah will not be able to see her daughter again until she is 18.

This case has attracted a great deal of media interest and has been widely reported in the national press. It has been cited by the Baroness Cox as 'possibly the worst case of grooming' to have happened in the UK.

Dr David Mackereth

Dr Mackereth is an experienced doctor having been in practice for over 30 years. He decided to accept a position conducting fitness to work medicals on behalf of the Department for Work and Pensions (DWP). He attended a training course in London and was told that if he was confronted with a patient who identified as other than their birth gender he was to use the appropriate pronoun when addressing them. Dr Mackereth thought this was absurd medically, but equally flew in the face of his Christian conscience that when 'God created mankind, he made them in the likeness of God. He created them male and female and blessed them' (Gen 5:1-2).

His employer told him that unless he agreed he would not be able to continue with the training. When faced with this decision Dr Mackereth decided that he could not in good conscience comply with the demands and was subsequently unable to finish the course. With assistance from CLC, Dr Mackereth is taking his case to the Employment Tribunal.

Pastor Paul Song

Pastor Paul Song was a volunteer Chaplain at Brixton Prison. During his 19 years' service he taught various Christian courses including 'Alpha' and 'Just 10'. His courses were so popular that, even with a capacity of 80 prisoners per course, he still had a waiting list. During this time, he saw many inmates come to faith.

Paul's relationship with the prison was always good until the appointment in 2015 of a Muslim Imam as Senior Chaplain. The Imam told Paul his material was 'too radical' and that he wanted to 'change the Christian domination' at the prison. These allegations led to Paul being excluded from the prison. With the assistance of the Christian Legal Centre (CLC), Paul is challenging the decision.

In light of pressure having been brought to bear, Her Majesty's Prison Service agreed to conduct an investigation into the circumstances surrounding Paul's exclusion. Governor Sara Pennington of HMP Elmley was appointed to carry out the investigation and found that there had been procedural breaches by the prison and that the factual findings were also uncorroborated and recommended Paul's reinstatement subject to his undergoing a refresher chaplaincy course.

After his reinstatement Paul spoke to a national newspaper explaining some of the events that had led to his expulsion. As a consequence, he was excluded from the prison a second time on the basis that he compromised the safety of staff and prisoners by disclosing information to the press without permission. Paul was astonished as he disclosed nothing new and the information was a year out of date. A second investigation is pending.

Richard Page

Richard served as a magistrate in Central Kent for 15 years. In July 2014, he dissented from the decision of two co-magistrates to approve the adoption of a child by a same-sex couple. During a closed-door discussion with his colleagues, Richard said that it was in the best interests of the child to be raised by a mother and a father. A series of 'investigations' ensued, following which the Lord Chancellor and the Lord Chief Justice ordered that Richard be removed from the magistracy, saying that he had been influenced by his religious beliefs and that this amounted to serious misconduct. Richard was ordered to go on 're-education' training.

At the Employment Tribunal in February Richard was unsuccessful in his attempt to challenge the decision. During these proceedings, the opposing barrister labelled Bishop Michael Nazir-Ali and Christian Concern as 'extremists' and criticised Richard for becoming associated with them.

The Christian Legal Centre (CLC) is helping Richard to appeal and there is a permission hearing taking place at the Employment Appeal Tribunal on November 27. In a separate action, the NHS reacting to the reporting of Richard's removal as a magistrate, refused to extend his term as a non-executive director of the local NHS Trust because of his 'discriminatory' views.

At a preliminary hearing at the Employment Tribunal in January 2017, the judge described Richard Page's case as 'crying out to be heard'. A full hearing took place at the Employment Tribunal in August 2017, following which Richard's claim to be reinstated was rejected.

In obiter, the judgment noted that 'Had the belief relied on by the Claimant been... that "homosexual activity" is wrong then the tribunal may well have concluded that this was not a belief that was worthy of respect in a democratic society'.

CLC is continuing to support Richard and permission has been granted for an appeal. Richard is still awaiting a hearing date.

Sarah Kuteh

Sarah began working for an NHS Trust in 2007, and in January 2016 she was assigned a position in the pre-operation assessment department. Her role included taking patients through a pre-op assessment questionnaire, including asking about the patient's religion, as this may have informed their future treatment.

On occasion, Sarah would enter into discussions with them about their faith. Where the patient said that they were not interested in religion, she would ask, where appropriate, how they had arrived at their decision. Depending on the patient's demeanour and their willingness to talk about religion, she would also sometimes share briefly about how her faith had changed her life.

Following a short investigation, during which Sarah was unable to quiz the witnesses who had made complaints, the hospital dismissed her in August 2016 for gross misconduct, a penalty which she believes is completely disproportionate and punitive.

Supported by the Christian Legal Centre, Sarah filed a claim for unfair dismissal in the Employment Tribunal, which was dismissed. The Employment Appeal's Tribunal upheld the original decision. Sarah is waiting for a date for a hearing at the Court of Appeal.

Contributors to this issue of *The Bulletin*

Rod Badams was a journalist for 11 years, before serving as General Secretary of Christians at Work from 1979 to 1998. He was FIEC Administrator from 1998 to 2011 and editor of *The Bulletin* from 2006-2015.

Tim Dieppe is Head of Public Policy at Christian Concern.

Roger Kiska is a legal counsel in the area of International and Domestic Litigation, with the Christian Legal Centre.

Regan King serves as a church planter and pastor at The Angel Church, Islington, London and is a communications officer at Christian Concern.

Roger Hitchings retired in 2011 from the pastorate of a small church in the East Midlands after 15 years of ministry. Previously he worked for 23 years in the field of social welfare with a particular emphasis on older people, and continues with that area of interest through writing and speaking.

Norman Wells is a graduate of London Seminary and has served as director of the Family Education Trust since 2004. He is also a director of the Coalition for Marriage.

John Ling is a freelance speaker, writer and consultant bioethicist. He is the author of three books on bioethical issues. His personal website is www.johnling.co.uk

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Editor: Matthew Evans, office@affinity.org.uk
