

Faith *in the* Family

# ADVOCATE

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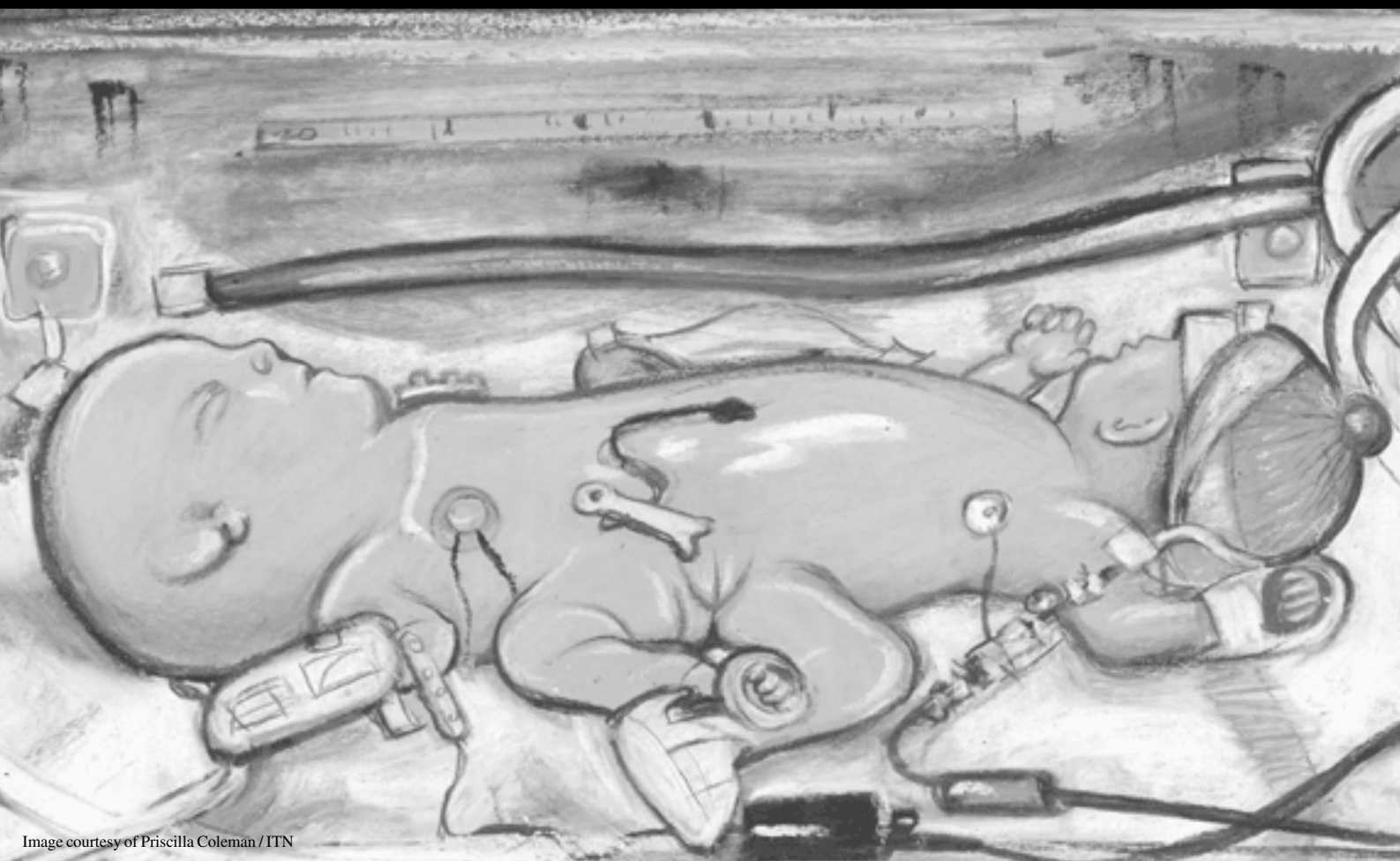


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## **Killing Mary to save Jodie**

**Euthanasia update**

**Stopping sex shops**

**Lib Dems back gay marriage and adoption**

**Book reviews:**

***A Return to Modesty* and *The Sex Change Society***

**Being a stay-at-home mum**

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THE  
CHRISTIAN  
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# ADVOCATE

## “This is a not a court of morals but a court of law”

This judicial catch-phrase is now routinely used by Judges in the highest courts in the land. It was used in the case concerning the conjoined twins, Jodie and Mary, and also in *The Christian Institute's* own judicial review hearing on sex shop licensing.

At a superficial level there is *some* truth in this saying. The law and morality are not *exactly* the same thing. There are many lawful actions which are morally wrong. We are free to think murderous thoughts, but if we carry them out, the law intervenes. You can tell a lie, but if that lie is part of a legal contract the law may intervene.

### Divorcing law from morality

Lord Hailsham, the former Lord Chancellor argued that: “...while there can never be a direct correspondence between law and morality, an attempt to divorce the two entirely is and has always proved to be, doomed to failure..”<sup>1</sup>

It was J S Mill (1806-1873) who paved the way for the modern notion of divorcing morality from the law. J S Mill's famous “harm principle” states that : “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”<sup>2</sup>



Colin Hart

The fundamental flaw with Mill's harm principle is the problem of who decides what constitutes *harm*? This problem is now even more acute with the drift away from Christian notions of law.

Charities like the NSPCC, Barnardos and Save the Children believe that it is harmful for children to be smacked by their parents. They are campaigning for smacking to be made a criminal offence. Gay rights campaigners believe that there should be new “hate speech” laws to outlaw criticism of homosexuality.

Whilst some are seeking to create laws others are seeking to repeal them. Under Mill's principle there is now said to be no harm to others when adults freely consent to so-called ‘private’ activities. On

this basis there are vocal campaigns to legalise euthanasia, extreme hardcore-pornography, sado-masochism and so-called 'recreational' drug use.

Lord Devlin (1905-1992), former Lord of Appeal, was an eloquent and robust critic of Mill. He argued that the law's "function" is "to enforce a moral principle and nothing else".<sup>3</sup> For Devlin society has the right to protect itself. The consequence of not doing so would be societal disintegration. Devlin argued that it is permissible for any society to take the steps needed to preserve its own existence as an organised society.<sup>4</sup>

Devlin clashed powerfully with the 1957 Wolfenden Committee, which argued that "there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business".<sup>5</sup>

Professor Hart, Professor of Jurisprudence from Oxford University, appeared to go further than Wolfenden. He openly discussed (though was more careful not openly to endorse) liberalising the law on abortion, euthanasia and drug taking.

In one sense the arguments in favour of reducing the age of homosexual consent have changed little from the time of Hart in his 1963 book *Law, Liberty and Morality*.<sup>6</sup>

*Legal positivists* argue that society can make its own laws without being linked to morality.<sup>7</sup> However many fail to note that Hart himself insisted that some laws can be immoral and iniquitous. He believed that this followed directly from the

separation of law and morality and urged citizens to challenge iniquitous laws.<sup>8</sup>

Critics of legal positivism take the view that law and morality should not be separated. Most of these critics believe there is a body of *natural law* which can be defended on the basis of rational argument and many believe ultimately that this can be derived from the law of God. They also believe that immorality, a defiance of our Creator's instructions, is harmful - something that the social sciences are now confirming.

It used to be commonly accepted that the starting point for our national laws was morality rooted in the Bible. This is explicitly recognised under our constitutional arrangements where the Sovereign swears in the Coronation service to uphold the laws of God. It is still true that many of the definitive judgments governing whole areas of law are explicitly based on Biblical teaching, for example marriage law and the law of negligence.

The de-coupling of morality from the law is precisely what many Judges are now intent on achieving. That is the real thrust of the assertion "This is a not a court of morals but a court of law". But does British society want "morally iniquitous" laws as Hart said could be the case?

The divorce between law and morality has not been created in any one particular case. There have been many cases ratcheting up the gap between the two. The more this proceeds, the more the law takes unpredictable turns. We

have now arrived at the stage where Judges are usurping the law-making role of Parliament. In so doing they are attempting to shift public perceptions of morality.

## Freedom and the family

We must argue against the law being separated from morality, but at the same time Christians must argue that there are proper limits to the law.

It is the state which, uniquely, has the power to coerce through the law. For there to be freedom there must be limits to the law's reach.

Parents have a natural God-given authority over their children but the state may or may not agree with the ways in which particular parents bring up their children.

Some parents smoke. All agree this is bad for the health of the parents and their children, yet the state should not remove the children into care. But clearly in the case of child abuse the state *must* intervene.<sup>9</sup> Apart from this, it is very wrong for the state to overrule the legitimate role of parents to make decisions for their children.

The overruling of parents is precisely what has happened in the Jodie and Mary case where Judges ordered the killing of Mary. It is the overruling of parental consent which has caused such grave concern even to doctors who otherwise supported the operation going ahead.

The precedent in this case is now mercifully much narrower thanks to the Court of Appeal, yet the door has been opened for others to claim that they can kill

in order to save life. It was the issue of precedent which pre-occupied the Appeal Court judges. If it was right to kill one person to save another could this not also be used in all sorts of other cases to provide a defence to murder?

Whatever the moral concerns of the parents, Lord Justice Ward said "This is a not a court of morals but a court of law". A final irony in this tragic case is that another Appeal Court Judge sitting on the same bench argued that no precedent was created by this case precisely because the law cannot be absolutely divorced from morality.

The continued benefits of law that *is* based on morality can still be seen. The law on sex shops has been used to good effect recently in Cardiff where Christians put a stop to plans to turn the local arena into a massive sex shop. Even though there are worrying developments in the area of euthanasia, it is still true that the law protects patients from being killed. The law has not yet been entirely divorced from morality. Let us fight to keep it so. ■

## References

- <sup>1</sup> R v Howe [1987] 1 A.C. 430
- <sup>2</sup> Mill J S *On Liberty*, Everyman's Library, Dent & Co, 1940, Chapter IV, page 73
- <sup>3</sup> Quoted in Hart H L A *Law, Liberty and Morality*, Oxford, 1963, page 32
- <sup>4</sup> Devlin, Lord *The Enforcement of Morals*, Maccabean Lectures in Jurisprudence of the British Academy, 1959, Oxford University Press, 1959, pages 13-14
- <sup>5</sup> Quoted in Hart H L A, *Op cit*, pages 14-15
- <sup>6</sup> Hart H L A, *Op cit*
- <sup>7</sup> Hart H L A *The Concept of Law*, Oxford, 1961, page 181
- <sup>8</sup> *Ibid*, page 204 ff
- <sup>9</sup> Romans 13:4

## Stopping sex shops

By Mike Judge

*The Christian Institute* has been supporting Christians in Newcastle, Sheffield and Cardiff who have been campaigning against a touring sex market which has planned visits to their cities.

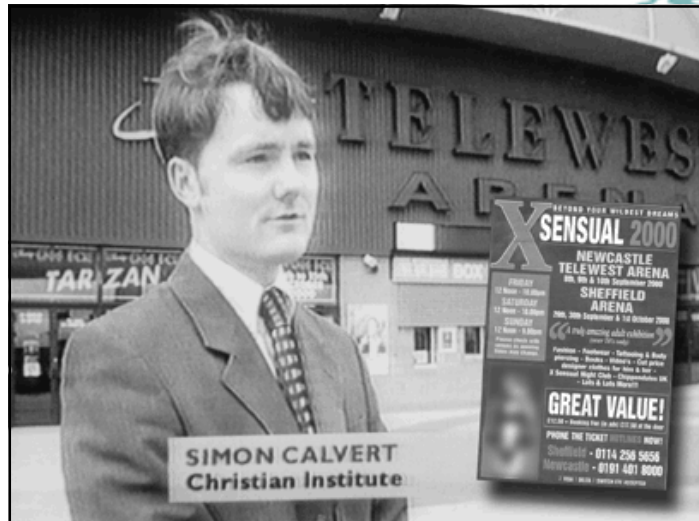
Xsensual Limited has been taking a touring three-day indoor sex market around the nation. At the event, individual stall holders sell everything from beds and lingerie to sado-masochistic items and the most hard-core pornographic videos legally available in this country. The event also includes strip shows and lap dancing.

By law these hard-core videos, known as 'restricted 18' (R18) videos, can only be sold from a licensed sex shop which is also permitted to sell other explicit sex items.<sup>1</sup> Strip shows and lap dancing, however, only require an entertainment licence.

### Cardiff

As part of their plans to hold an event at the Cardiff International Arena, Xsensual applied to Cardiff City Council for a sex shop licence. *The Christian Institute* contacted churches and individuals in the Cardiff area and informed them of their opportunity to object. The Council received a record-breaking number of objections - more than 450.<sup>2</sup> Prior to the Institute's involvement the Council had received only five objections.

As a result of the level of



Institute Deputy Director opposes the Xsensual show on local TV news



objections, the Licensing Committee of the Council had to reschedule the Committee meeting at which they would decide on the licence application. Almost one hundred individuals and churches asked *The Christian Institute* to speak on their behalf at the meeting. Solicitor and Deputy Director of the Institute, Simon Calvert, addressed the Committee in detail for twenty minutes arguing that the location of the Cardiff International Arena was not suitable for a sex shop. After careful consideration, the Licensing Committee agreed that because of the proximity to a church, a school and a large toy shop, Xsensual should not be awarded a sex shop licence for the Cardiff International Arena.

### Newcastle

Several weeks earlier, Newcastle City Council had

granted a blanket three-day sex establishment licence to Xsensual to use the city's Telewest Arena as a sex shop. However, *The Christian Institute* obtained a legal opinion which said this was not a legitimate use of sex shop licensing laws. Xsensual themselves would not be selling R18 videos and other sex items. Rather, it was third party stall holders who paid Xsensual for the opportunity to sell goods at the event. Xsensual was, in effect, a sex market organiser not a sex shop.

By issuing a licence to Xsensual, rather than individual vendors, Newcastle City Council was passing control of who could and could not sell R18 videos and other sex items to the event organiser. On the basis of this, the Institute applied for a judicial review of Newcastle City Council's decision.



Unfortunately the judicial review was unsuccessful. The Judge decided to give legal approval to granting a single licence to cover a large event with a number of stalls selling R18 videos and other extreme sex items. However, as a result of the judicial review the council added an extra condition to the licensing agreement – that the names and addresses of all stall holders should be made available to the Council. In the end it seems that only 20 or so of the anticipated 94 stalls eventually attended the

event. Local press in Newcastle described that city's event as a "flop".<sup>3</sup>

### Sheffield

By the time *The Christian Institute* contacted supporters in Sheffield, the local authority had already agreed in principle to grant a licence for the sex market to be held in the Sheffield Arena. The licence was not officially granted until the day of the event and in this instance was granted to the Arena rather than Xsensual.

Nevertheless, *The Christian Institute* spoke out in the media against the event and encouraged objectors to do the same. Although the crowds at the Sheffield event were larger than in Newcastle, the organiser of the event, Jack Frere of Xsensual, claimed to have lost £250,000 over both events.<sup>4</sup>

### Sunday Observance

On a separate legal point, *The Christian Institute* drew attention to the fact that the 1780 Sunday Observance Act

prohibits dancing for a fee on Sundays – including strip shows and lap dancing. As a result, those elements of the show were banned from the Xsensual event on a Sunday at Newcastle and Sheffield. There is still uncertainty as to whether the event will go ahead in Cardiff at all. ■

### References

- <sup>1</sup> *Local Government (Miscellaneous Provisions) Act 1982*
- <sup>2</sup> *The Western Mail*, 7 October 2000
- <sup>3</sup> *Evening Chronicle*, 18 September 2000
- <sup>4</sup> BBC Radio Wales, Sarah Dickins Programme, 3 October 2000

## Sex shop licensing

By Mike Judge

The introduction of a sex shop licensing system in the Local Government (Miscellaneous Provisions) Act 1982 was intended to give greater control over the expansion of the number of sex shops and to stamp out the involvement of a criminal element in the ownership of sex shops.<sup>1</sup> Every Local Authority was given the right to take up licensing powers if they wanted to.

There are four major reasons for the introduction of the sex shop licensing system.

- The rapid expansion of the numbers of sex shops.
- The historical link between sex shops and crime.
- Corruption in the policing of sex shops.
- The relative ineffectiveness of the obscenity laws.

Sex shops, as we understand them today, are a relatively recent phenomenon. They are

### Sex shop licensing: The Law

#### Mandatory grounds:

No licence shall be granted to:-

- A person under the age of 18 years old;
- A person disqualified from holding a licence;
- A person other than a body corporate who is not resident in the United Kingdom or not resident throughout the period of 6 months immediately preceding the date when the application was made;
- A body corporate which is not incorporated in the United Kingdom;
- A person who within a period of twelve months immediately preceding the application date has been refused the grant or renewal of a Sex Establishment Licence for the premises, etc. in respect of which the application was made, unless the refusal has been reversed on appeal.

#### Discretionary grounds:

The Local Authority has discretion to refuse grant or renewal of a licence if:-

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- If the licence were to be granted or renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant, who would be refused the grant or renewal or transfer of such a licence if he made the application himself;
- That the number of sex establishments in a relevant locality at the time of the application is made equal to or exceeds the number which the authority considers appropriate for the locality (note that such number can in fact be nil);
- The grant or renewal of the licence would be inappropriate having regard to the character of the relevant locality; or the use to which any premises in the vicinity are put; or the layout character or condition of the premises, vehicles, vessel or stall in respect of which the application is made.

Source: The Local Government (Miscellaneous Provisions) Act 1982, schedule 3

a product of the permissive society of post-war Britain.<sup>2</sup> The first sex shop in London was opened in 1970<sup>3</sup> and by the 80's there was a rapid expansion of sex shops with many major towns and cities having at least one.<sup>4</sup>

Historically, a criminal element has been linked to the sex shop industry. Illegal merchandise was nearly always available 'under the counter' in most establishments.<sup>5</sup> In London's Soho in particular, sex shops operated alongside prostitute's flats.<sup>6</sup> By the 80's Soho had become a *de facto* red light area.<sup>7</sup> One of the major sex shop owners also had interests in prostitute's flats, gambling

clubs and illegal drinking clubs.<sup>8</sup>

Police corruption was also historically linked with the sex shop industry in Soho. The responsibility for policing London's sex shops fell to the Metropolitan Police's Obscene Publications Squad. Made up of just a handful of officers, it had total control over that area of policing. Only a few officers needed to be bribed for sex shop owners to secure special protection from raids and prosecution.<sup>9</sup>

From the 50's to the early 80's the law on pornography was ineffective. A private members Bill introduced by Roy Jenkins

became the Obscene Publications Act 1959.<sup>10</sup> Before this Act, the law on pornography had been largely governed by common law interpretation of obscenity.<sup>11</sup> The Act sought to liberalise the laws on obscenity for literature while tightening the law on pornography.<sup>12</sup> However, a series of judgments in favour of pornographers meant the Act actually weakened the law rather than strengthened it.<sup>13</sup>

The introduction of the licensing system in the 1982 Local Authority (Miscellaneous Provisions) Act significantly reduced the numbers of sex shops. More often than not, applications for sex shop

licences were turned down.<sup>14</sup> This had more of an impact on small firms and many went to the wall.<sup>15</sup> Even for the large sex shop chains, control through a Council licensing system posed far more difficulties than action by the police.<sup>16</sup> ■

## ■ References

- <sup>1</sup> Manchester C, *Sex Shops and the Law*, Gower, 1986, page 208
- <sup>2</sup> *Ibid*, page vii
- <sup>3</sup> *Ibid*, page vii
- <sup>4</sup> *Ibid*, pages vii, viii
- <sup>5</sup> *Ibid*, page 30
- <sup>6</sup> *Loc cit*
- <sup>7</sup> *Ibid*, page viii
- <sup>8</sup> *Ibid*, pages 37-38
- <sup>9</sup> *Ibid*, page 37
- <sup>10</sup> *Ibid*, pages 32-33
- <sup>11</sup> *Ibid*, page 34
- <sup>12</sup> *Loc cit*
- <sup>13</sup> *Ibid*, page 35
- <sup>14</sup> *Ibid*, page 161
- <sup>15</sup> *Ibid*, page 183
- <sup>16</sup> *Ibid*, page 183

## Euthanasia news:

### *Bill blocked | BMA speaks out | New incapacity law*

By Mike Judge

#### **Euthanasia Bill blocked**

A Private Member's Bill that tried to outlaw euthanasia has been stopped from progressing through Parliament by the Government. Ann Winterton's Medical Treatment (Prevention of Euthanasia) Bill ran out of time for debate. The Government said it would not support the Bill, arguing that current legislation already made euthanasia illegal in Britain.<sup>1</sup> However, there has been a legal loophole for euthanasia ever since 1993 when law lords ruled that food and water could be withdrawn from Hillsborough victim, Tony Bland.<sup>2</sup> Ann Winterton's Bill sought to close this loophole. The Bill would have made it illegal for doctors to

deliberately end the life of their patients.<sup>3</sup>

Before the Bill was blocked, Ann Winterton, MP for Congleton in Northwest England, said: "My Bill will make it abundantly clear to doctors that they cannot intentionally bring about the deaths of their patients either by action or by omission."<sup>4</sup> The bill now joins the long queue with other Private Members Bills and stands no chance of becoming law.

#### **Doctors: no to assisted suicide**

The British Medical Association has reaffirmed its objection to assisted suicide. Following a major two-day conference the BMA



Ann Winterton MP

announced that it remains opposed both to euthanasia and assisted suicide.<sup>5</sup>

Over a number of years the BMA has come under increasing pressure from a vocal minority of members who

support euthanasia. This latest conference was called specifically to promote a consensus on the issue. The conference concluded that it "cannot agree to recommend a change in the law to allow physician-assisted suicide."<sup>6</sup> The conference said the practice of assisted suicide would change the doctor-patient relationship and it would alter the profession's standing with society.<sup>7</sup>

However, behind the apparent consensus, deep divisions remain. Guidelines issued by the BMA on the withdrawal of food and water say that doctors should not have to seek court approval for withdrawal. Chairman of the BMA's

Medical Ethics Committee, Dr Michael Wilks, said the conference “has firmly rejected any move to change the law on physician assisted suicide. That may appear to be a simple reaffirmation of existing law and policy, but behind the decision lies two days of intense and thorough debate.”

“The consensus statement is remarkable for the fact that delegates with fundamentally and diametrically opposing views on end of life issues were able to agree a position with which they all feel comfortable.”<sup>8</sup>

#### Adults with Incapacity (Scotland) Act

The Scottish Parliament voted to accept a law which gives people the power to appoint someone else to make their healthcare decisions. The

Adults with Incapacity (Scotland) Act extends power of attorney from just financial matters to include healthcare and welfare.

When the Bill was first drafted it raised serious concerns with many pro-life groups. Although the proposed legislation did not legalise advance directives, also known as ‘living wills’, it nevertheless gave proxy decision makers the power to request that treatment – including the feeding of food and water – be withheld or withdrawn. The final version of the legislation removed hydration and nutrition from a definition of medical treatment.

Pro-life groups also hoped that the Act would overturn the judgment of the Law Hospital test case. The judgment in this case held that the feeding of



Dr Michael Wilks

food and water to a persistent vegetative state (PVS) patient was classed as medical treatment and could be withdrawn.<sup>9</sup> The Scottish Council on Human Bioethics feared that the Act could extend such passive euthanasia to cases other than PVS patients. However, in a statement to the Justice Committee the Deputy Minister for Community Care, Iain Gray, said that withdrawal of food and water to hasten the

death of a non-PVS patient would leave doctors open to criminal prosecution.<sup>10</sup>

Pro-life groups are currently awaiting the publication of a code of practice for proxy decision makers and the Ministerial Guidance to NHS hospitals on withdrawing and withholding treatment. ■

#### References

- <sup>1</sup> House of Commons, Hansard, 28 January 2000, Col. 743
- <sup>2</sup> Airedale NHS Trust v Bland [1993] AC 789
- <sup>3</sup> Press release from Ann Winterton MP, 9 December 1999
- <sup>4</sup> Loc cit
- <sup>5</sup> Press release from the British Medical Association, 4 March 2000
- <sup>6</sup> Loc cit
- <sup>7</sup> Loc cit
- <sup>8</sup> Loc cit
- <sup>9</sup> Law Hospital NHS Trust v Lord Advocate [1996] SC 301
- <sup>10</sup> Scottish Parliament, Justice and Home Affairs Committee, Official Report, 1 March 2000, Col.875

## PVS patients still vulnerable, despite Human Rights Act

By Mike Judge

The new Human Rights Act does not protect patients trapped in a persistent vegetative state (PVS) from the withdrawal of food and water, a judge has ruled. The High Court has judged that two PVS women can be starved to death despite the new Act guaranteeing a right to life. President of the High Court Family Division Dame Elizabeth Butler-Sloss, said withdrawing food and water was in the best interests of Ms H, aged 36, and

Mrs M, aged 49, who cannot be named for legal reasons.<sup>1</sup> It had been thought that the Human Rights Act, which incorporates the European Convention of Human Rights into the UK court system, might supercede a precedent set by the Tony Bland Judgment in 1993. That judgment, which held that artificial feeding was a medical treatment, means doctors can seek court approval for withdrawing food and water from PVS patients. Doctors

have since gained such court approval in approximately 20 cases.<sup>2</sup>

However the 1998 Human Rights Act, which came into force in October, states: “Everyone’s right to life shall be protected by law. No-one shall be deprived of his life intentionally...”.<sup>3</sup> It was thought this might have an impact on the Bland Judgment. John Grace QC, representing the two hospitals caring for the

PVS patients, argued the medical technology keeping the two women alive did not exist when the European Convention on Human Rights was formulated in 1950.<sup>4</sup> Dame Butler-Sloss accepted this argument and went on to rule that the two women lacked the mental capacity to make decisions about medical treatment. She therefore allowed doctors to end the feeding of food and water at the request of the relatives.<sup>5</sup>



Dame Butler-Sloss

The decision has outraged many pro-life campaigners. Paul Tully, general secretary of the Society for the Protection of Unborn Children, said: "The decision of Lord Justice Butler-

Sloss is utterly appalling. She appears to have gone much further than the House of Lords in the Bland judgment and suggested that it is in the 'best interests' of these patients to be killed."<sup>6</sup> Phyllis Bowman, campaign director of Right to Life, said: "We find it astounding – we can't see how it's a basic human right to be starved and dehydrated to death."<sup>7</sup>

Philosopher, Dr David Oderberg, wrote a critique of the Butler-Sloss judgment for the *Mail on Sunday*. In his article Dr Oderberg, who prefers to describe PVS as 'persistent non-responsive

state' (PNS), said: "What began as common care for needy patients has become, through a perverse chain of reasoning, extraordinary or burdensome care which can be done away with. Along with the patients themselves. Distressingly, far too many of my fellow philosophers have been filling clinician's heads for years with the nonsense that only if a human is conscious and self-aware does he have a life 'worth living'. The saner ethical response, of course, is to say first that doctors know far less than they think about what is really going on in the heads of PNS patients, and so should always err on the side of

caution. Secondly, however, even if what is really going on inside their heads is very little at all, they are still alive, they are still human, and so they deserve the full protection of the law as much as the sleeping, the drunk and the drugged."<sup>8</sup> ■

## References

- <sup>1</sup> *BBC News Online*, 6 October 2000, [http://news.bbc.co.uk/1/hi/english/health/newsid\\_959000/959868.stm](http://news.bbc.co.uk/1/hi/english/health/newsid_959000/959868.stm), as at 11 October 2000
- <sup>2</sup> *Loc cit*
- <sup>3</sup> *Human Rights Act 1998*, Schedule 1, Article 2
- <sup>4</sup> *The Herald*, 7 October 2000
- <sup>5</sup> *BBC News Online*, *Op cit*
- <sup>6</sup> *Press release from the Society for the Protection of Unborn Children*, 6 October 2000
- <sup>7</sup> *BBC News Online*, *Op cit*
- <sup>8</sup> *Mail on Sunday*, 8 October 2000

## The DNR death warrant

By Mike Judge

Doctors are ignoring national guidelines on the resuscitation of older people, according to the charity Age Concern.<sup>1</sup> Over the past months there has been a spate of cases where 'do not resuscitate' (DNR) orders have been included in the medical notes of patients without their knowledge or consent. Guidelines drawn up by the British Medical Association, Royal College of Nurses and the Resuscitation Council recommend that doctors must base decisions on clinical need and the express wishes of the patient.<sup>2</sup> However, in just two days Age Concern found 50 cases of DNR orders, most of which did not have the patient's consent.<sup>3</sup> Professor Shah Ebrahim, from University of Bristol's social medicine

department, says over two thirds of patients with DNR orders are not involved in making these decisions.<sup>4</sup> At the British Medical Association annual conference, doctors called for US-style DNR consent forms to be introduced. In America patients who do not want to be resuscitated have to sign a form giving their consent. The matter was referred to the BMA medical ethics committee for a decision.<sup>5</sup>

The controversy over DNR orders has parallels with euthanasia in Holland. There, euthanasia is tolerated and official Dutch Government records reveal that in 1990 as many as one fifth of all deaths were the result of intervention

or omission where it was partially the intention of the doctor to shorten life. In the same year 1,000 deaths were the result of a euthanasia decision where the patient had *not given consent*.<sup>6</sup> In the UK nationwide concern over DNR orders began when the story of 67-year-old cancer patient, Jill Baker, came to light. Mrs Baker, from Portsmouth, was admitted to St Mary's Hospital after a tube used in her chemotherapy became infected. However, she became unhappy with her care and discharged herself demanding to see her medical notes.

She found that a doctor had written: "In view of the underlying diagnosis (cancer), in the event of cardiac arrest or

stroke, resuscitation would be inappropriate."

Mrs Baker said: "When I read this I was absolutely horrified. They were going to let me die. My husband was sitting with me all the time I was in the ward and no-one talked to us about this or asked our views. I never ever met the doctor who wrote this and she hasn't met me."<sup>7</sup>

The British Medical Association was quick to stress its commitment to good practice in DNR orders. In a statement the BMA said it recognised that discussions about resuscitation were difficult. Dr Michael Wilks said: "...The BMA's Medical Ethics Committee is already working on new

guidance about the practice of obtaining consent. We would welcome an opportunity to discuss the issues raised by Age Concern and to identify particular areas of support and

training which would help improve practice.”<sup>8</sup>

## References

- <sup>1</sup> Press release from Age Concern, 11 April 2000
- <sup>2</sup> Decisions relating to

cardiopulmonary resuscitation: A statement from the BMA and RCN in association with the Resuscitation Council (UK), June 1999

- <sup>3</sup> Independent on Sunday, 16 April 2000
- <sup>4</sup> British Medical Journal, Volume 320, 29 April 2000, 1155

- <sup>5</sup> BBC News Online, 27 June 2000
- <sup>6</sup> Keown J *Euthanasia Examined*, Cambridge University Press, 1995, page 270
- <sup>7</sup> BBC News Online, 13 April 2000
- <sup>8</sup> Press release from the British Medical Association, 13 April 2000

## Killing Mary to save Jodie: *The story*

By Dr Seyi Hotonu

On the 8<sup>th</sup> August 2000 the Siamese twins, later to be known as Jodie and Mary<sup>1</sup>, were born at St Mary’s Hospital in Manchester. The choice of venue was deliberate. In May the parents had come from Gozo, an island near Malta, to ensure that the babies, when born, would receive expert medical care. At birth both children needed immediate resuscitation but they began breathing and their hearts were beating. Subsequently Mary’s heart failed and so did her tiny malformed lungs and so Jodie’s heart and lungs began to support both babies.<sup>2</sup> It was later reported by that Jodie appeared to be “...a bright, alert baby, sparkling, sucking on her dummy, moving her arms as babies do.”, Mary was described as having a deformed face, and “...no effective heart or lung function. She lives only because of her physical attachment to Jodie. The blood & the O<sub>2</sub> that maintain her life come from Jodie. In the words of one of the doctors, Jodie is her life support machine.”<sup>3</sup>

The original medical assessment was of the opinion that if the girls were not separated, both would die



within three and six months because of the extra strain on Jodie’s heart and lungs.<sup>4</sup> However although a separation operation could well mean Jodie’s survival, it was thought that she would have some degree of disability<sup>5</sup> and that her twin Mary would have to be sacrificed. The twins’ parents could not accept this advice. They stated that they were unable to consent to a procedure that would intentionally kill one of their daughters to enable the other one to survive.<sup>2</sup> Instead they decided that it was “God’s will” for the twins to stay together even if they both die.<sup>6</sup> As a

result of this impasse, the courts were asked by Central Manchester healthcare trust to make a decision as to whether the separation operation could proceed.

At the original hearing on 25<sup>th</sup> August 2000, the high court judge Mr Justice Johnson ruled that the separation operation should proceed. He gave his ruling in public after a private hearing that lasted two days. The Official Solicitor represented Mary. Following this judgment, on 28<sup>th</sup> August, Cardinal Ersilio Tonini, Archbishop Emeritus of Ravenna, in northeast Italy, and

the Vatican’s principal commentator on medical ethics, offered a “safe haven” to the twins and their parents in an indefinite and completely free pledge of medical services as an “ethical alternative”. This deal was brokered by the ProLife Alliance.<sup>7</sup>

At a result of this judgment the parents lodged an appeal that was heard one week later by three judges, Lord Justice Ward, Lord Justice Brooke, and Lord Justice Robert Walker.<sup>8</sup>

### Jodie’s prospects

During the appeal hearing, Lord Justice Ward asked for a



Solicitor for the twins' parents

second medical opinion because he wished to confirm the views already expressed and to allay any public concerns. An expert from Great Ormond Street Hospital was called to assess whether the estimate, that the twins had only six months to live without the operation, was correct and to assess the risks that surgery would entail.<sup>9</sup> He was also asked to comment on the quality of life of Jodie, the stronger twin, if she were to survive, and to confirm that Mary did face certain death.<sup>10</sup> Subsequently the medical experts said that the death of the twins was 'not imminent'. A cardiologist from Great Ormond's Street Hospital said that, contrary to previous opinion, they would survive beyond six months without an operation. Whilst a surgeon stated that they could live together for 'many months, perhaps even a few years', but that they would not 'survive long term'.<sup>11</sup>

Throughout the proceedings

medical opinion was quoted which asserted that Jodie would have a good quality of life once she had been surgically separated from Mary. Amongst the statistics that have been quoted regarding the success of this operation, Judith Parker QC for Jodie at the court of appeal asserted that whilst there was a 95% possibility that Jodie would survive a planned operation, this would drop to 36% if the operation were performed under emergency conditions. Furthermore it was claimed that if Mary were allowed to die first, Jodie would have a survival rate of 1% or less.<sup>12</sup> Despite these optimistic claims for Jodie, American medical expert Alice D. Dreger can point to nine such sacrificial operations, out of which none has resulted in any long-term healthy survivor.<sup>13</sup> Furthermore Dr Laurence Somers, who performed a sacrificial operation in 1979, recalled that his surviving twin died at 3 months of a massive heart attack and that another

'survivor' of a similar operation, that had taken place 6 months earlier also died at three months old.<sup>14</sup>

### Court allows submissions

During the hearing the judges received written submissions from the Cardinal Archbishop of Westminster, Cormac Murphy O'Connor and the ProLife Alliance. The Archbishop said, "There is a fundamental moral principle at stake – no one may commit a wrong action that good may come of it. The parents in this case have made it clear that they love both their children equally and cannot consent to one of them being killed to help the other. I believe this moral instinct is right. It would set a very dangerous precedent to enshrine in English case law that it was ever right to kill a person that good may come of it".<sup>15</sup> The ProLife Alliance submitted a written opinion by David Anderson QC. He argued that the operation to separate the twins is contrary to

Article 2 (Right to Life), Article 3 (Freedom from Inhuman and Degrading Treatment and Torture) and Article 8 (Respect for Family Life) of the European Convention on Human Rights.<sup>16</sup>

### The operation

On 22<sup>nd</sup> September, the Judges decided that the separation operation should be allowed to proceed. Following this judgment, the twins' parents decided against an appeal to the House of Lords.<sup>17</sup> The operation took place on Monday 6<sup>th</sup> November 2000 and lasted twenty hours. The aorta was severed killing Mary.<sup>18</sup> Jodie is making "steady progress".<sup>19</sup> ■

### References

- <sup>1</sup> The names are false to preserve the babies' anonymity
- <sup>2</sup> *The Sunday Times*, 10 September 2000
- <sup>3</sup> [http://news.bbc.co.uk/1/hi/english/health/newsid\\_896000/896928.stm](http://news.bbc.co.uk/1/hi/english/health/newsid_896000/896928.stm) on 13/9/00
- <sup>4</sup> *The Herald*, 26 August 2000
- <sup>5</sup> *The Daily Telegraph*, 26 August 2000
- <sup>6</sup> *The Times*, 26 August 2000
- <sup>7</sup> *The Universe*, 3 September 2000
- <sup>8</sup> *The Daily Telegraph*, 5 September 2000
- <sup>9</sup> <http://www.twinspin.com/ubb/Forum42/HTML/000027.html> on 14/9/00
- <sup>10</sup> *The Times*, 5 September 2000
- <sup>11</sup> *The Daily Telegraph*, 15 September 2000
- <sup>12</sup> *The Times*, 5 September 2000
- <sup>13</sup> Alice D. Dreger, 'To separate or not to separate' <http://www.conjoined-twins.i-p.com/ethics.html> on 14/9/00
- <sup>14</sup> *The Times* 12 September 2000
- <sup>15</sup> Steven Morris <http://www.guardianunlimited.co.uk/Archive/Article/0,4273,4061390,00.html> on 14/9/00
- <sup>16</sup> Taken from a press release on the ProLife Alliance website <http://www.prolifealliance.org.uk/Pressreleases/pr140900.html> on 20/9/00
- <sup>17</sup> [http://www.news.bbc.co.uk/1/hi/english/health/newsid\\_945000/945677.stm](http://www.news.bbc.co.uk/1/hi/english/health/newsid_945000/945677.stm) on 28/9/00
- <sup>18</sup> *The Daily Mail*, 8 November 2000
- <sup>19</sup> *The Daily Telegraph*, 9 November 2000

# Killing Mary to save Jodie: *The deadly dilemma*

By Colin Hart

## The arguments

Not everyone will agree on this case. There are “pro-lifers” on both sides. No one disputes that it is a very tragic case indeed. There are many very difficult issues. But hard cases tend to make bad law. It is precisely this sort of hard case that can set profoundly important precedents.

All three Appeal Court judges accepted that Jodie’s interests should prevail over Mary’s because Mary was “self-designated for a very early death”<sup>17</sup>. Having decided this there still needed to be a legal basis on which the operation could proceed even though it would involve the killing of Mary.

In English law it is unlawful to kill an innocent person in order to save another. Each judge found a different way to give the go-ahead to the operation whilst still attempting to retain this principle.

Under the law, it is only necessary for a majority of the Appeal Court Judges to agree in order for a decision to be reached. It does not matter *why* they agree or that the arguments for agreeing are logically inconsistent from Judge to Judge. But whilst it may not matter in terms of the legal outcome, it does matter morally. This is why it is important to look at the arguments that were used in the case from the initial hearing with Mr Justice

Johnson to the Appeal Court hearing with Lord Justices Ward, Brooke and Walker.

## The sanctity of life principle

The law of murder is based on the sixth commandment that “You shall not murder.”<sup>18</sup>

The Bible recognises the crucial distinction between one who deliberately kills and “one who kills his neighbour unintentionally, without malice aforethought”.<sup>19</sup> The concept of intention is central to the English law of murder.

Lord Justice Brooke argued that the “sanctity of life principle” clearly emanated from the Judaeo-Christian tradition. He argued that the law is still concerned to protect the sanctity of life from birth to death even if it has departed from this principle before birth by permitting abortion.<sup>20</sup>

## The Parents’ views

The health authority brought the case in the High Court because doctors wanted to go ahead with the operation *against* the wishes of the parents. Under English law only a court can make this legal. Parents always have to give consent to their child receiving medical treatment, except in the extraordinary circumstance in which a court overrides their objections.

In medical practice very often the views of the parents are simply accepted by the medical

team. But as Lord Justice Ward said in his judgment, “In law the parental view is not sovereign.”<sup>21</sup>

Lord Justice Walker said of the parents that “Their views might be described as controversial but (unlike the objections to blood transfusion held by Jehovah’s Witnesses) they are not obviously contrary to any view generally accepted by our society.”<sup>22</sup>

All have accepted that the parents’ objections were perfectly rational. They were based on the Judaeo-Christian tradition that underpinned the formation of the law itself.

In a finely balanced case where there are strong moral and legal arguments on both sides, the opinion of parents could well have been the determining factor for a medical team. Indeed, Lord Justice Ward made clear that it would:

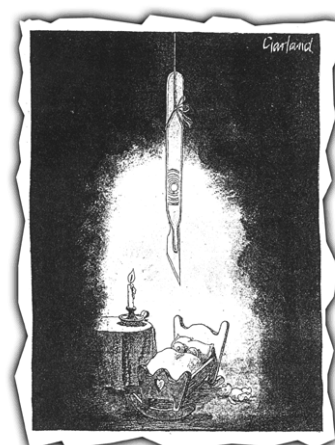
“have been a perfectly acceptable response for the hospital to bow to the weight of the parental wish however fundamentally the medical team disagreed with it.”<sup>23</sup>

Biblically it is the parents, and not the state, who are responsible for taking decisions about their children. Whilst Christians are to submit to “every authority instituted among men” (1 Peter 2: 13), children are to obey their parents (Exodus 20:12). Parental authority within the family stands between children and the state.

Classically the state should intervene to protect the child against clear abuse and to protect the rights of the parents. This is precisely what happened in the “judgment of Solomon” where the king intervened in the case of the two prostitutes to decide which was the real mother of the child (1 Kings 3:16-28).

In the *Jodie and Mary* case the Judges made clear that it would have been perfectly lawful for the doctors to have accepted what the parents said about the operation not going ahead. Even after the court case there is still no law which states that conjoined twins like Jodie and Mary *must* be separated.

The overriding of parental consent was a central issue in this court case, along with a declaration that the operation



Daily Telegraph, Monday 11 September 2000

involving the killing of Mary would be lawful. Two of the three Appeal Court Judges accepted that under the law, the doctors would have “murderous intent” as they performed the operation. The views of the parents are far from being unusual. Indeed it could be argued that they are naturally in line with the law as has been understood until this case.

Professor Raanon Gillon, editor of the *Journal of Medical Ethics*, said the Appeal Court decision was wrong because of the issue of parental consent. “It is far better to let the parents decide. I have to say that if I were making the decision myself and if I were convinced that one child would be saved then I personally would choose the operation. But I don’t think my view or anybody else’s view should be imposed on parents who conscientiously choose the opposite.”<sup>24</sup>

Professor Gillon went on “It has quite clearly removed parental consent from these parents and in my view quite illegitimately. There are good reasons for removing parental consent - when the parents are being negligent or when they have really weird views that would result in the deaths of their children. But these parents do not have really weird views. They have very standard views, the most important of which is you don’t kill one person in order to save another.”<sup>25</sup>

Dr Richard Nicholson, editor of the *Bulletin of Medical Ethics* also protested that the judgment “says that parental beliefs and concerns can safely be ignored”.<sup>26</sup>

The court should have held the parents views in very high regard and, given that those

views were rational, especially in such a difficult situation, they should have left well-alone. But the court did not do this. Instead, it seized to itself the ability to decide the fate of Jodie and Mary.

### Mary’s best interests

Clearly the intention of the operation was to benefit Jodie by separating her from Mary. But surely the operation could never have been in Mary’s interests?

Mr Justice Johnson thought so. He stated in his judgment that “to prolong Mary’s life for these few months would in my judgment be very seriously to her disadvantage”. The extra months gained by not operating would “simply be worth nothing to her”.<sup>27</sup>

The Court of Appeal divided on the question of whether the operation was against Mary’s best interests. Two of the judges (Lord Justice Ward and Lord Justice Brooke) said the operation was not in Mary’s interests, whilst Lord Justice Robert Walker said: “The surgery would plainly be in Jodie’s best interests, and in my judgment it would be in the best interests of Mary also, since for the twins to remain alive and conjoined in the way they are would be to deprive them of the bodily integrity and human dignity which is the right of each of them.”<sup>28</sup>

Lord Justice Ward flatly contradicted this. He argued that for Mary to gain bodily integrity “is a wholly illusory goal because she will be dead before she can enjoy her independence and she will die because, when she is independent, she has no capacity for life.”<sup>29</sup>

Lord Justice Ward went on to say: “The sanctity of life doctrine is so enshrined as a fundamental principle of law and commands such respect from the law that I am compelled to accept that each life has inherent value in itself however grave the impairment of some of the body’s functions may be. I am satisfied that Mary’s life, desperate as it is, still has its own ineliminable value and dignity. In my judgment the learned judge was wrong to find it was worth nothing.”<sup>30</sup>

### Bland and the withdrawal of treatment

Doctors legitimately decide to withhold medical treatments if giving such treatment is futile and not in the patients best interests. For the first time the *Bland* case<sup>31</sup> allowed doctors to withhold food and water as if they were ‘medical treatments’.

Tony Bland went into a persistent vegetative state (PVS) following injuries sustained in the Hillsborough Football Stadium disaster. Patients in PVS have a functioning lower brain stem. They can breathe on their own and respond to touch, but they have altered consciousness and they may require artificial methods of feeding.

With the support of Mr Bland’s relatives the local health authority sought a Court ruling that they could withhold food and water and so cause death by starvation. The House of Lords agreed to this request.

When considering the fate of Mary, Mr Justice Johnson drew direct parallels with the Bland case. The killing of Mary was said by the judge to be in Mary’s best interests. The operation to separate the twins was equated



Mary (left) and Jodie (right)

*The law of murder was never intended to condemn to death someone whose only “crime” was to be joined to her sister - a situation over which she had no control.*



with withdrawing Mary's blood supply.

The central issue of the *Bland* case is whether food and water given by artificial means constitutes a medical treatment. The House of Lords ruled that it did. The judges argued that withdrawing food and water was an act of omission that would not be murder. By contrast the Lords said that any active attempt to intentionally kill Mr Bland would have been murder.

In the original judgment in the *Jodie and Mary* case at the end of August, Mr Justice Johnson directly followed the logic of *Bland*. He stated "I have concluded that the operation which is proposed will be lawful because it represents the withdrawal of Mary's blood supply".<sup>32</sup>

The effect of this would have been to classify the operation to separate the twins as the withdrawal of medical

treatment. Thankfully the Appeal Court unanimously rejected this argument.

Lord Justice Ward said using *Bland* was "utterly fanciful".<sup>33</sup> Lord Justice Brooke stated "the judge's approach was wrong...These acts would bear no resemblance to the discontinuance of artificial feeding sanctioned by the House of Lords in the *Tony Bland* case".<sup>34</sup> Lord Justice Robert Walker agreed.<sup>35</sup>

### Lord Justice Robert Walker: Double effect

Doctors cannot be charged with murder every time one of their patients dies. Many perfectly sensible medical treatments involve risk. Many involve predictable but acceptable side-effects.

In some cases drugs given to relieve pain have an unintended effect of shortening life by a matter of a few days. The intention is to relieve pain but, at the same time, it can be

foreseen that the drug treatment may actually hasten death. This is called 'double effect'. The law does not prevent a doctor acting in this way and Christian theology recognises the moral validity of a doctor taking such action (see the last edition of *Advocate*).

Professor Robert Twycross puts it this way: "Broadly speaking, the principle of double effect states that if measures taken to relieve physical or mental suffering cause the death of a patient it is morally and legally acceptable provided the doctor's *intention* is to relieve the distress and not to kill the patient. This is a universal principle without which the practice of medicine would be impossible. It follows inevitably from the fact that all treatment has inherent risks." [emphasis added]<sup>36</sup>

Lord Justice Robert Walker was convinced by the "double effect" argument: "The surgery would not be intended to harm

Mary but it would have the effect of ending her life, since her body cannot survive on its own (and there is no question of her life being prolonged by artificial means or by a heart-lung transplant).<sup>37</sup>

It was on this basis that Lord Justice Robert Walker held that the operation could proceed. The central problem with this argument is that although the operation was for the benefit of Jodie, it could never have been for the benefit of Mary since it would kill her. The fundamental basis of double effect - benefit to the patient - is simply absent.

The two other Judges robustly dismissed the double effect argument. Lord Justice Ward said: "I simply fail to see how it can apply here where the side-effect to the good cure for Jodie is another patient's, Mary's, death, and when the treatment cannot have been undertaken to effect any benefit for Mary."<sup>38</sup>

Likewise Lord Justice Brooke stated: "...the doctrine of double effect can have no possible application in this case, as the judge [Mr Justice Johnson] rightly observed, because by no stretch of the imagination could it be said that the surgeons would be acting in good faith in Mary's best interests when they prepared an operation which would benefit Jodie but kill Mary."<sup>39</sup>

### Lord Justice Ward: 'Quasi self-defence'

The European Convention on Human Rights has now been incorporated into English Law. Article 2 guarantees the "right to life". Clearly this applies to both Jodie and Mary. Whilst rejecting the notion that Mary was an *unjust* aggressor, Lord Justice Ward argued that Jodie

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needed defending from her sister. He said: “Though Mary has a right to life, she has little right to be alive. She is alive because and only because to put it bluntly but nonetheless accurately she sucks the lifeblood of Jodie and her parasitic living will soon be the cause of Jodie ceasing to live. Jodie is entitled to protest that Mary is killing her.”<sup>40</sup>

It was on this basis that Mary’s Article 2 right to life was set aside by Lord Ward who justified the operation by broadening and reinterpreting the self-defence plea.

Lord Justice Ward argued that if a six year old was “indiscriminately shooting all and sundry in the schools playground” he might be killed in self defence of others. He

then went on to say: “I can see no difference in essence between that resort to legitimate self-defence and the doctors coming to Jodie’s defence and removing the threat of fatal harm to her presented by Mary’s draining her life-blood. The availability of such a plea of quasi self-defence, modified to meet the quite exceptional circumstances nature has inflicted on the twins, makes intervention by the doctors lawful.”<sup>41</sup>

### Lord Justice Brooke: The doctrine of necessity

In an emergency, on very rare occasions, the law has permitted the lesser of two evils to be committed. During the Great Fire of London, for example, houses were destroyed to prevent the spread of fire.

The argument ran that Mary was going to die anyway, but whilst alive she was killing Jodie. Lord Justice Brooke therefore argued that the doctors had a defence of necessity. They were forced to choose between the lesser of two evils.

The doctrine of necessity has rarely been used by the Courts. Lord Justice Brooke, admitted that “This doctrine is so obscure and it has featured so seldom in our case law...”<sup>42</sup>

The leading case on this legal doctrine concerns the gruesome story of four sailors who had to abandon their yacht, the *Mignonette*.

### *Queen v Dudley and Stephens [1884]*

Following a storm, the crew of *Mignonette* were compelled to leave the yacht and take to a life boat. They were 1000 miles off land. After 20 days of survival on the open sea without water or food (apart from two tins of turnips) two of the sailors decided to murder and eat the cabin boy. The third sailor who had dissented from the murder also fed on the remains of the boy.

In their defence the sailors argued they had no other course open to them. The cabin boy was weak and thought likely to die. There was no sail in sight and they reasoned that unless they fed upon the boy they would very soon die of starvation.<sup>43</sup>

## High Court Judgment: August 28<sup>th</sup>



Mr Justice Johnson

- ✓ **Key argument** : *Use of Bland*: “the operation...will be lawful because it represents the withdrawal of Mary’s blood supply”<sup>1</sup>
- ✗ **Double effect**: “no possible application”<sup>2</sup>
- ✗ **Mary’s best interests** : “To prolong Mary’s life...would be very seriously to her disadvantage”<sup>3</sup> “Mary’s life would be nothing to her”<sup>4</sup>

## Appeal Court Judgment: September 22<sup>nd</sup>



Lord Justice Ward

- ✗ **Use of Bland**: “utterly fanciful”<sup>5</sup>
- ✗ **Double effect**: “I simply fail to see how it can apply...”<sup>6</sup>
- ✗ **Mary’s best interests** : “It cannot be. It will bring her life to an end...”<sup>7</sup> “Johnson J. was wrong to find that Mary’s life would be worth nothing to her”<sup>8</sup>
- ✓ **Key argument** : ‘*Quasi self-defence*’ of Jodie: “makes intervention by the doctors lawful”<sup>9</sup>

The case eventually was heard in London before five Judges. The sailors were found guilty. Lord Coleridge, the Chief Justice said:

“Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it.....”<sup>44</sup>

The Chief Justice noted the strength of temptation and the suffering the men endured. Nevertheless, he said, temptation could never be an excuse. The men were guilty of wilful murder. The only course open to Judges, he said, was to

ascertain the law and to declare it: “If in any case the law appears to be too severe on individuals, to leave it to the Sovereign to exercise that prerogative of mercy...”<sup>45</sup>

This is exactly what happened. Following the trial, the Crown commuted the death penalty to six months’ imprisonment.

### *The three legal obstacles to necessity being used*

Lord Justice Brooke accepted that previous legal cases had set up at least three main obstacles which limit the use of necessity.

The first legal obstacle (created by *Queen v Dudley and Stephens*) was the generally accepted assumption that necessity is no defence to a charge of murder.<sup>46</sup> Lord Justice Brooke argued that it

could be. The second legal obstacle was that necessity had generally been held to apply only to an emergency situation. Lord Justice Brooke argued that this need not be so.<sup>47</sup>

The third legal obstacle was that if necessity was a defence for the doctors in the case of Jodie and Mary, surely the same defence would also be available to the *Mignonette* sailors? One of the main reasons why Lord Justice Brooke argued that it would not be available was because morality would prevent it. As Chief Justice Coleridge said in 1884, morality cannot be absolutely divorced from the law.

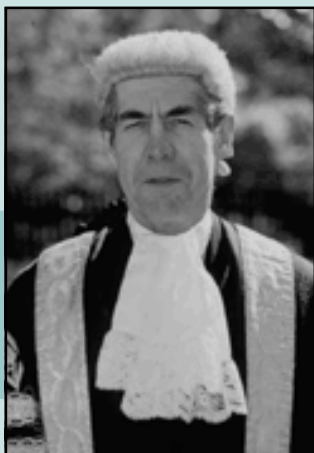
In this way morality made a surprising re-entrance to the case after Lord Ward asserted “This is not a court of morals

but a court of law”.<sup>48</sup> Because of morality Lord Justice Brooke believed he was safe from opening a loophole to allow people to commit murder. Morality would prevent the defence of necessity being used wrongly by the Courts.

### **Killing according to schedule**

In the operation to separate Jodie and Mary it was essential that there be no emergency. It was claimed during the legal proceedings that, if surgeons could choose the timing of the operation, Jodie had a 95% chance of survival. If surgeons had to act in an emergency this would have fallen to 36%. In both cases Mary had to be killed during the operation and not before.<sup>49</sup>

It was also claimed that if Mary had died before the operation



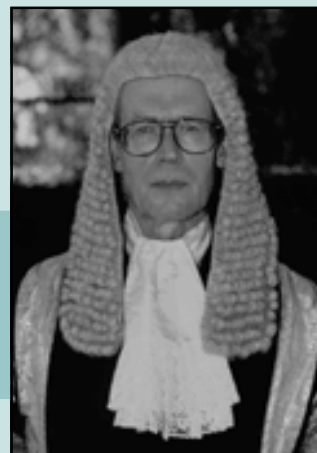
**Lord Justice Brooke**

× *Use of Bland*: “the judge’s approach was wrong...no resemblance to...the Tony Bland case”<sup>10</sup>

× *Double effect*: “no possible application in this case...”<sup>11</sup>

× *Mary’s best interests* : “by no stretch of the imagination could it be said that the surgeons would be acting in... Mary’s best interests”<sup>12</sup>

✓ **Key argument** : *Necessity*: “I consider that... requirements [for the doctrine of necessity to apply] are satisfied in this case”<sup>13</sup>



**Lord Justice Robert Walker**

× *Use of Bland*: “the judge erred in law”<sup>14</sup>

✓ **Key argument** : *Double effect*: “The surgery would not be intended to harm Mary but it would have the effect of ending her life...”<sup>15</sup>

✓ *Mary’s best interests* : “Continued life...would hold nothing for Mary...”<sup>16</sup>

Jodie would have had a survival rate of 1% or less.<sup>50</sup> It was therefore regarded as imperative for Jodie that Mary be kept alive until she could be killed during the operation. This was killing according to schedule.

## Precedent

The Judges themselves were at pains to emphasise that, in the words of Lord Justice Ward, “this is a very unique case”.<sup>51</sup> It was very significant that the Court of Appeal dismissed some alarming arguments put forward by Mr Justice Johnson, the first judge to hear the case. The Appeal Court came up with their own alarming arguments, but their legal effect will be much narrower than Mr Justice Johnson’s cavalier use of the *Bland* case to justify the withdrawal of someone’s blood as if it was a medical treatment.

The higher Court unanimously rejected this use of *Bland*. By a two to one majority the Appeal Court Judges also accepted that the operation would *intentionally* kill Mary. Also by a two to one majority the Appeal Court rejected the view that the operation to kill Mary could be said to be “in her interests”. From a pro-life perspective these are all positive developments which will limit the extent to which the case can be cited as a precedent.

Despite all these reassuring comments, there can only be a sense of misgiving arising from the ethical and legal arguments that have been used to justify the separation operation and to interpret Mary’s status.

There must also be unease about the deliberate timing of Mary’s death in order to increase the chances of success for the operation.

There can be no doubt that many of the disturbing arguments on self-defence and necessity will be cited as a precedent in future cases affecting the sanctity of human life and the power of the courts, and doctors, to intervene.

## Conclusion

Arguments crucial to one Judge in deciding to give the go-ahead were often rejected by other judges. This is hardly a basis of sound legal principle.

The very great danger is that the finely balanced arguments in a highly unusual case will be seized upon by ‘moral innovators’ to legitimate clearly wrong and indefensible actions in other cases.

Lord Justice Ward put forward a self-defence argument. But by no stretch of the imagination was Mary an aggressor. She was joined to Jodie from conception. To use the word “aggressor” of Mary is to do violence to language. The law of murder was never intended to condemn to death someone whose only “crime” was to be joined to her sister - a situation over which she had no control.

Lord Justice Robert Walker used double effect as his key argument. This was rightly attacked by his fellow judges as “having no possible application”.

It is the argument by Lord Justice Brooke concerning the defence of necessity which would probably have convinced the House of Lords if the case had reached them. Like self-defence, necessity has been used *in extremis* to justify the taking of human life.

But to allow necessity to apply where there is no emergency is

a very dangerous step to take. Surely Lord Justice Brooke is wrong to argue that a defence of necessity should be available outside an emergency and in the case of pre-meditated murder. In this case the killing was planned weeks before and furthermore the parents did not consent.

Doctors are not infallible. Mary thrived when the doctors thought she would not. The second medical opinion estimated the survival times in years rather than in months, unlike the first opinion. At the end of the day, doctors can only make educated guesses.

There have been many successful operations to separate conjoined twins. But no operation has ever succeeded in this type of case where one twin is dependent on the other. In these cases both twins have always died. There never was as much certainty as was claimed.

There has most definitely been a tragedy, but there was no ‘catastrophic event’ - as the term is commonly understood - justifying this legal intervention. Mary and Jodie were conjoined because of the way they were conceived and developed in the womb. No one is responsible for this. It is an act of God. It is a tragedy. Parents are normally the natural arbiter in such cases, but their views have been ignored.

The operation should not have gone ahead because there was:

- strong disagreement amongst the judges about the legal basis on which it should go ahead;
- no emergency;
- no catastrophic event;
- a lack of reasonable certainty; and

- no parental consent, surely necessary where the issues are so finely balanced. ■

## References

- <sup>1</sup> Quoted in the Judgment of Lord Justice Ward in Part II section 15. All references taken from the Judgment are found at <http://www.courtservice.gov.uk> (as at 06/11/00)
- <sup>2</sup> See comments in the Judgment of Lord Justice Brooke, *Op Cit*, section 15
- <sup>3</sup> Quoted in the Judgment of Lord Justice Ward, *Op Cit*, Part IV (Family Law) section 7.6
- <sup>4</sup> *Ibid*, Part IV (Family Law) section 7.5
- <sup>5</sup> The Judgment of Lord Justice Ward, *Op Cit*, Part IV (Family Law) section 7.7
- <sup>6</sup> *Ibid*, Part IV (Criminal Law) section 4.2
- <sup>7</sup> *Ibid*, Part IV (Family Law) section 7.9
- <sup>8</sup> *Ibid*, Part IV (Family Law) section 7.5
- <sup>9</sup> *Ibid*, Part IV (Criminal Law) section 7.7.
- <sup>10</sup> The Judgment of Lord Justice Brooke, *Op Cit*, section 13
- <sup>11</sup> *Ibid*, section 15
- <sup>12</sup> *Loc Cit*
- <sup>13</sup> *Ibid*, section 26
- <sup>14</sup> The summary of the Judgment of Lord Justice Robert Walker, *Op Cit*, principle (ii)
- <sup>15</sup> The Judgment of Lord Justice Robert Walker, *Op Cit*, section 34
- <sup>16</sup> The summary of the Judgment of Lord Justice Robert Walker, *Op Cit*, principle (viii)
- <sup>17</sup> The Judgment of Lord Justice Brooke, *Op Cit*, section 26
- <sup>18</sup> Exodus 20:13 *The New International Version (NIV)*
- <sup>19</sup> Deuteronomy 19:4-8 ; Exodus 21: 12 - 14
- <sup>20</sup> The Judgment of Lord Justice Brooke, *Op Cit*, section 11
- <sup>21</sup> The summary of the Judgment of Lord Justice Ward, *Op Cit*
- <sup>22</sup> The Judgment of Lord Justice Robert Walker, *Op Cit*, section 28
- <sup>23</sup> The Judgment of Lord Justice Ward, *Op Cit*, Part II section 14
- <sup>24</sup> Quoted by the BBC on news.bbc.co/hi/english/health/newsid\_937000/937057.stm (as at 25 September 2000)
- <sup>25</sup> *Loc Cit*
- <sup>26</sup> *The Independent on Sunday*, 27 August 2000
- <sup>27</sup> Quoted in the Judgment of Lord Justice Ward, *Op Cit*, Part II section 15
- <sup>28</sup> The summary of the Judgment of Lord Justice Robert Walker, *Op Cit*
- <sup>29</sup> The Judgment of Lord Justice Ward, *Op Cit*, Part IV (Family Law) section 7.2
- <sup>30</sup> The summary of the Judgment of Lord Justice Ward, *Op Cit*
- <sup>31</sup> *Airedale NHS Trust v Bland* [1993] AC 789

<sup>32</sup> Quoted in the Judgment of Lord Justice Ward, *Op Cit*, Part II section 15

<sup>33</sup> The Judgment of Lord Justice Ward, *Op Cit*, Part IV (Family Law) section 7.7

<sup>34</sup> The Judgment of Lord Justice Brooke, *Op Cit*, section 13

<sup>35</sup> The Judgment of Lord Justice Robert Walker, *Op Cit*, section 30

<sup>36</sup> Twycross, Robert, Letter to the Editor BMJ vol 319, 4 Sept 1999. Page 639

<sup>37</sup> The Judgment of Lord Justice Robert Walker, *Op Cit*, section 34

<sup>38</sup> The Judgment of Lord Justice Ward, *Op Cit*, Part IV (Criminal Law) section 4.2

<sup>39</sup> The Judgment of Lord Justice Brooke, *Op Cit*, section 15

<sup>40</sup> The summary of the Judgment of Lord

Justice Ward, *Op Cit*

<sup>41</sup> The Judgment of Lord Justice Ward, *Op Cit*, Part IV (Criminal Law) section 7.7.

<sup>42</sup> The Judgment of Lord Justice Brooke, *Op Cit*, section 16.

<sup>43</sup> R v Dudley and Stephens (1884) 14 QBD 273

<sup>44</sup> *Ibid*, 287

<sup>45</sup> *Ibid*, 288

<sup>46</sup> The Judgment of Lord Justice Brooke, *Op Cit*, sections 19 & 20.

<sup>47</sup> *Ibid*, section 26

<sup>48</sup> The summary of the Judgment of Lord Justice Ward, *Op Cit*

<sup>49</sup> *The Times*, 5 September 2000

<sup>50</sup> *Loc Cit*

<sup>51</sup> The Judgment of Lord Justice Ward, *Op Cit*, Part VI (Conclusion)

## Government plans to reform sex offences

By Simon Calvert

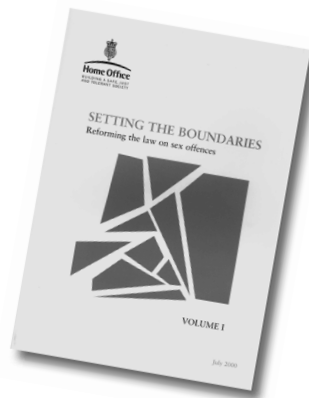
The Home Office recently announced a series of recommendations for reforming the law on sex offences. These recommendations emerged out of an eighteen-month review of the law undertaken by Home Office officials in conjunction with representatives of the NSPCC, lawyers' groups, the police, and other government departments. Also participating as members of an external reference group were representatives of rape crisis centres, social services, groups working with children and with the mentally disabled, the BMA and Stonewall. The Muslim Council of Britain, the Board of Jewish Deputies and CARE were also on the external reference group.

The review took a very wide-ranging look at the law and has produced what can only be described as a very mixed bag of proposals. The press have tended to focus on the proposed repeal of gross indecency - the law which criminalises homosexual liaisons in public toilets and elsewhere. The review proposes that the gross indecency laws are replaced by

a much weaker public order offence which does not discriminate against homosexual men.

Alongside these plans to concede to the longstanding demands of gay rights groups, it must be said that the review has also taken on board some very real concerns in relation to the protection of children.

In early 1999, *The Christian Institute* worked closely with Edward Leigh MP on the standing committee for the Sexual Offences (Amendment) Bill. During the course of the committee debates, Mr Leigh called for various protective measures, including the extension of the law of incest to cover step-parents, fostering and adoptive parents and a wider range of family members. He also called for the law of incest to cover homosexual as well as heterosexual abuse. He pointed out that the Government's proposals for a new offence of 'abuse of trust' failed to deal with a whole range of circumstances where such abuse could take place. Clearly the Home Office read



the reports of these debates and the proposals emanating from the review reflect many of the concerns raised there.

The Home Office produced its report in July 2000 and called it "Setting the Boundaries – Reforming the law on sex offences". This is a consultation document on which the public are invited to give their views.

These are the main conclusions of the review as contained in Volume I of that report:

- The offence of rape should be extended to cover forced oral sex and offences against transsexuals whilst a new

offence of sexual assault by penetration would cover other forms of penetration without consent.

- The definition of consent should be defined by reference to 'free agreement'. This is an attempt to cover more situations where coercion is used to obtain sex from a victim. The law should also allow a conviction on the grounds of recklessness where the perpetrator 'could not care less about consent'.
- A new offence of sexual assault should be introduced to cover sexual touching (i.e. behaviour that a reasonable bystander would consider to be sexual) where the victim does not consent.
- As a matter of public policy the age of legal consent should remain at sixteen. The law should also state that children below thirteen can never effectively consent to sexual activity.
- There should be a new offence of adult (over 18) sexual abuse of a child (under 16). There would be no time limit on this offence, so that victims who took years to

# Gay Marriage

come forward could do so in the knowledge that a prosecution could still be brought. This would be complemented by a new offence of persistent sexual abuse of a child.

- Those who give help or advice to children in matters of 'sexual health' should not be regarded as aiding and abetting a criminal offence, nor should the children who seek such advice.
- There should be a new offence of sexual activity between minors to cover 16 and 17 year-olds where the other party is under 16. The review wants "appropriate non-criminal interventions" for those under sixteen engaging in mutually agreed under-age sex.
- There should be a new offence of breaching a

relationship of care. This would prohibit sexual relationships between a patient in medical care or residential care and a member of staff, as well as between doctors and patients. However a "pre-existing relationship" would constitute a defence.

- A new offence of familial sexual abuse should replace incest. Uncles and aunts related by blood would be covered, as would step-parents, foster-parents and adoptive parents. The offence would also extend to anyone living in the household in a position of trust or authority. Sexual relations between adoptive siblings should be prohibited until age 18.
- The review says "The criminal law should not treat people differently on the basis

of their sexual orientation." This means the law should not imply any opprobrium towards homosexual acts. The laws on buggery and gross indecency should therefore be repealed. Sexual acts in public should be covered by a single offence covering homosexual and heterosexual acts.

- Trafficking of persons for sexual exploitation and sexual exploitation of under eighteens should also be criminalised.
- There should be a further review of the law on prostitution.
- There should be a new public order offence but only where the person knew or should have known that his sexual behaviour in public was likely to cause distress, alarm or offence. ■

## ■ Information

The Home Office has invited comments on the proposals of the Sex Offences Review, to be submitted before 1 March 2001.

The Christian Institute will be making its own response available.

## How to get hold of the report:

*Setting the Boundaries - Reforming the Law on Sex Offences (Vol.1)* is available from Haydee Scarsbrook, Sex Offences Review, Sentencing & Offences Unit, 50 Queen Anne's Gate, London, SW1H 9AT, Telephone 020 7273 3443. There are two volumes. The first is the report itself, the second is a substantial volume of supporting evidence. Volume I is also available via the internet at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

## Lib Dems back gay marriage and adoption

By Rachel Woodward

At their conference in September the Liberal Democrats became the first major political party to call for the introduction of 'civil partnerships', or what have become known as 'homosexual marriages'. These partnerships would be 'based in part on the legal effects and duties of marriage, including access to "adoption and fostering"'.<sup>1</sup>

This reinforces the pledge, given in a policy briefing earlier this year, that the Liberal Democrats "would ensure ... fair assessment of prospective adoptive or foster parents, such that sexual orientation by itself

is not a prohibitive factor".<sup>2</sup>

The equating of homosexual partnerships with heterosexual marriages has caused much debate in recent months, resulting in divisions between, and within, the main political parties. In July Ken Livingstone, the Mayor of London, stated his intent to lead a public debate on the issue. Speaking on BBC1's *On the Record* he called for the official recognition of gay and lesbian 'marriages'. "We have a huge lesbian and gay community in London. They want to register their relationships, to see that the city they have chosen to live



Susan Kramer, mover of the Lib Dem motion

in, or grown up in, recognises and respects their choice"<sup>3</sup>, he said.

In August Steven Norris, the vice-chairman of the Conservative Party, claimed that homosexual couples should

be given the same rights as heterosexual married couples. He believes that his Party needs “educating”, and that there is “no moral barrier”<sup>4</sup> to the introduction of ‘civil partnerships’. Norris’ comments have caused consternation from within the Conservative Party. William Hague was very quick to dismiss his remarks<sup>5</sup> and Ann Widdecombe, the shadow Home Secretary, said that the legalisation of homosexual marriages would be a reform “way, way too far”.<sup>6</sup>

The recent introduction of the Human Rights Act is being used to put pressure on the Government to legalise ‘gay marriage’. Homosexual pressure groups believe that the ‘right to marry’ should apply to same-sex partnerships and Stonewall will be launching test cases in an attempt to secure this change.<sup>7</sup> The National Family and Parenting Institute, the government’s advisory committee on family policy, has described the legalisation of homosexual marriage as “inevitable”. Mary MacLeod, the chief executive of the Institute, said that “the thrust of legislation is to equalise and it would be very difficult to argue against”.<sup>8</sup>

On 24<sup>th</sup> September the Home Secretary stated that the government “have no plans to introduce gay marriages” but that he was “willing to think about it”.<sup>9</sup> A few days later his opinion was more firm:

“Marriage is about a union for the procreation of children, which by definition can only happen between a heterosexual couple. So I see no circumstances in which we would ever bring forward

proposals for so-called gay marriages”.<sup>10</sup>

### Christian Comment

With ever-increasing pressure on the Government to change the law it is vital that we are aware of the facts so that we can argue clearly to defend the institution of marriage, and to prevent the legalisation of homosexual ‘civil partnerships’. Many people are unaware that the debate over the legalisation of homosexual ‘marriage’ is perhaps at its most heated amongst homosexuals. The homosexual lifestyle is very different to the heterosexual ‘equivalent’ and many lesbians and gay men do not want to be ‘restricted’ by having to conform to traditional standards. In a debate recently published by *The Guardian* Terry Sanderson, writer for the *Gay Times*, argued strongly against the introduction of homosexual ‘marriage’.

“The fundamental advantage that gay relationships have over marriage is that we can tailor them precisely to our requirements. We can make it up as we go along, change with the circumstances and go with the flow. We don’t have to promise sexual exclusivity or to share our worldly goods if we don’t want to”.<sup>11</sup>

To equate homosexual partnerships and heterosexual marriage is therefore a nonsense because they are simply not the same. The SIGMA project, the leading research into the homosexual lifestyle in the UK, was conducted by researchers sympathetic to gay rights. It found that most homosexual men in the study had casual partners, on average seven per year<sup>12</sup>, and claimed that:

## The Lib Dem motion

Conference welcomes the moves made by many European countries to establish systems of registered civil partnerships and deplors the lack of a similar structure in England and Wales.

Conference reaffirms the Liberal Democrat belief in equality and believes that any two unrelated people over 16 should be allowed to enter into a civil partnership in order to organise their common life.

Conference therefore calls for:

1. The establishment of a scheme for the civil registration of partnerships between any two unrelated people over 16 in England and Wales.
2. This civil partnership to be based in part on the legal effects and duties of marriage, including:
  - a) Maintenance.
  - b) Property.
  - c) Inheritance.
  - d) Pensions.
  - e) Immigration.
  - f) Tax and social security.
  - g) Rights as next of kin.
  - h) Adoption and fostering.
3. The employee benefits presently given to married couples to be extended to those people who have entered into a civil partnership.

Conference further calls on the Government to discuss the scheme with the relevant devolved administrations across the United Kingdom to ensure that civil partnerships should be recognised in the rest of the United Kingdom.

*Applicability: England and Wales.*

“There is a widespread expectation among gay men that relationships will not be monogamous since this is widely seen as a means of combining the security of a long term commitment with the excitement of new encounters.”<sup>13</sup>

Questions need to be asked as to the suitability of such relationships as environments for bringing up children. The

Government has recently stated that “Marriage is the surest foundation for raising children and remains the choice of the majority of the people in Britain.”<sup>14</sup> It is the crucial building block of society. The marriage relationship has enjoyed privileged status in the Western legal tradition because of the unique social benefits it offers. Marriage is not an arbitrary construct, it is an ‘honourable estate’ based on the



different, complementary nature of men and women - how they refine, support, encourage, and complete one another.

To treat homosexual relationships as equal to marriage will redefine the institution of marriage

completely. If the legal benefits of marriage were to be given to homosexual partnerships then marriage would cease to be privileged. A simple example shows this to be so. Disabled parking is provided to those with a disability. If the ability to park in disabled parking spaces was extended to others then there would be no privilege at all for disabled people.

All of the world's major religions have consistently viewed homosexual practice as morally wrong.<sup>15</sup>

The Bible is clear that heterosexual marriage is the only context for sexual relationships. It is a divine institution. Both the old testament and the new testament view adultery, sex before marriage and homosexual activity as morally wrong. (See for example 1 Corinthians 6:9).

The legalisation of 'civil partnerships' is not socially or

morally acceptable. We must speak up for what is right in order to protect the vital role of marriage in our society. ■

## References

- 1 Liberal Democrats Policy Motion F16 *Civil Partnerships*.
- 2 Liberal Democrats Policy Briefing 12, *Equal Citizenship: Policies for Lesbians and Gay Men*.
- 3 *The Daily Telegraph*, 3 July 2000
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- 5 *The Guardian*, 31 August 2000
- 6 *The Independent*, 25 September 2000
- 7 *The Daily Telegraph*, 24 September 2000
- 8 *Loc Cit*
- 9 *The Independent*, 25 September 2000
- 10 *The Independent*, 1 October 2000
- 11 *The Guardian*, 2 September 2000
- 12 Weatherburn, P et al *The Sexual Lifestyles of gay and bisexual men in England and Wales*, HMSO, 1992, Page 19
- 13 *Ibid*, Page 12
- 14 Supporting Families (Green Paper), The Home Office, 1998, Introduction paragraph 8
- 15 See Morgan, P and Lawton, C (ed), *Ethical Issues in Six Religious Traditions*, Edinburgh University Press, 1996



## A return to modesty: *Discovering the lost virtue*

Wendy Shalit, The Free Press, 1999, ISBN 0-684-84316-1  
*Book Review by Simon Calvert*

This is a personal, highly intelligent and very readable examination of sexual modesty and how society would benefit from embracing its principles. Shalit is Jewish and holds to the traditional Jewish teaching that sexual relationships should only take place within marriage. But her understanding of

sexual modesty goes deeper than this. Her book reflects a grasp of the far-reaching implications of modesty, restraint and propriety for both the individual and for society. She examines the many different ways, now ingrained in the culture and in every day life, in which these virtues are

being eroded and eradicated.

Nonetheless, in certain quarters of Jewish-American culture these virtues are still revered and practiced and this culture provides the inspiration for much of what Shalit has to say. This same deep understanding of these virtues does not exist

within mainstream Christian culture, even amongst evangelicals. This book could do much to put that right if Christians will read it.

The author examines the overwhelming pressure felt by young women to believe that they are no-body unless they are

sexually active. This, Shalit shows, results from the popular belief that modesty, shyness, restraint, dressing decently and feeling embarrassed about sexual matters are ‘old-fashioned’ and must be dispensed with.

This is creating a generation of miserably bruised young women, volunteering to be used by men and living in increased risk of sexual violence. The most gripping sections of the book are those that examine the terrible damage being done to young women by their attempts to act out the sexual mores in which society has taught them to believe. In particular she examines the chronic self-doubt which cripples many women who go from one sexual relationship to another seeking approval. Increasing numbers of these women end up harming themselves through bulimia, anorexia and other forms of self-harm.

She quotes Mary Pipher, a psychologist and staunch feminist, who concludes that “girls are having more trouble now than they had thirty years ago, when I was a girl, and more trouble than even ten years ago... Girls today are much more oppressed. They are coming of age in a more dangerous, sexualized and media-saturated culture... as they navigate a more dangerous world, girls are less protected”.

Chief among the instructors in this ‘new sexual morality’ are the women’s magazines, which urge readers to throw off all restraint and be as sexually aggressive as men. But no less culpable are the children’s sex education lessons (Shalit quotes actual examples) which leave children with the unmistakable impression that

sex is something that they should be doing and the sooner the better.

Shalit also examines the growing number of women who find modesty a compelling idea. She tells stories of women who have converted to the Jewish or to the Christian faith and embraced ideas about chastity which their families and their societies had taught them were outmoded and even dangerous. Her account of the aggressive reaction some of these women receive is fascinating and she concludes that jealousy is often a factor: “I began to perceive a direct relationship between how much one was floundering sex-wise, and how irritated one was by modestyniks [Shalit’s endearing term for women who choose sexual modesty]”

She quotes the following from a letter she received: “When I indicated to my female [flatmates] that I intended to remain a virgin until marriage, I was met with overt hostility – even to the point where, en masse, they trotted out their birth control devices and spoke about the glories of intercourse. Needless to say, resigned to the “reality” of my ostracism, I gave in and gave away my virginity to a boyfriend who deserted shortly thereafter.”

One glaring weakness in Shalit’s book is her attempt to position herself somewhere in between feminists on one hand and moral conservatives on the other. The praise on the dust jacket from a leading feminist and from a conservative historian show what Shalit is trying to do: trying not to be pigeonholed as conservative and therefore ignored by a large part of her potential audience. But to do this, early in the book, Shalit sets up a false premise:

that all conservatives are unconcerned about how miserable young women are as a result of sexual permissiveness. Her particular example is those who are the victims of sexual violence. She claims conservatives downplay these concerns by saying “Boys will be boys”. She says they do not take seriously the claims of feminists about such things as date-rape, anorexia, the shyness of teenage girls and the women who say they feel ‘objectified’ by the male gaze. Of the many people I know whose views of sex would be described as ‘conservative’, none would show the callous disregard Shalit attributes to them.

But, putting this aside, her book is an earnest appeal for compassion towards young women. Compassion in the form of encouraging men *and women* to greater self-control and higher standards of decency in dress and in romantic and sexual behaviour. She also calls for institutions such as universities to ease the pressure by removing ‘unisex’ toilets and changing rooms and other environments where the sexes are now thrown together in ways which lead to exposure and embarrassment. (Her own

university started to reverse its policy of having mixed bathrooms and toilets as a result of national media attention garnered by Shalit’s writings on the subject.)

I strongly recommend church leaders and Christian parents to read this book. To church leaders I would say that if we are serious about teaching our young people to hold to Christian standards of sexual morality, we should be prepared to explain *why*. Shalit gives a splendid apologetic for modesty (she quotes Christian as well as Jewish sources) in a book which is rich with stories which would make good sermon illustrations.

To Christian parents I would say that this book is vital to understanding the pressures to be sexually active which young people face and from where these pressures come. Shalit is critical of parents who are afraid to give a strong moral steer to their children for fear of being overbearing. Parental negligence, and even downright complicity, are cited as causes of sexual experimentation by girls.

Christian fathers especially



Wendy Shallit

should read “A Return to Modesty”. It is a moving book. I am the father of a little girl myself. Shalit says that “In a sexual landscape without any rules, girls lacking male approval are more often taken advantage of”. Sitting in my local barber’s shop waiting to get my hair cut, I read Shalit’s account of the comfort that she believes only a father can bring

to a daughter and she speaks of her own father’s paternal concern. I was embarrassed to find, there in the barber’s, a tear coming to my eye. It brought home to me the importance of having the same type of strong relationship with my own daughter. A relationship which will help her to stand firm as a Christian in a society where her beliefs are increasingly

marginalized and resented.

Finally, liberals will be surprised at one of Wendy Shalit’s strongest arguments for modesty: sexual satisfaction. She concludes that those who practice modesty and restraint are more likely to end up in marriages where they have a happy sex life, whereas those who engage in sexual

immorality end up miserable and unsatisfied. “Modesty”, she says, “is the proof that morality is sexy. It may even be the proof of God, because it means that we have been designed in such a way that when we humans act like animals, without any restraint and without any rules, we just don’t have as much fun”. ■



## The sex change society: *Feminised Britain and the Neutered Male*

Melanie Phillips, The Social Market Foundation, 1999 ISBN 1-874097-64-X

*Book Review by George Curry*

Autonomy and equality are the two words that probably best encapsulate the distinctiveness of our generation. Few seriously question the assertion. But to what has the quest for independence and parity led?

Melanie Phillips, author and columnist, argues that the pursuit of freedom and self-sufficiency has, not surprisingly, encouraged selfishness and individualism. More seriously, she asserts that the demise of the traditional restraints on our inherent inclination to individualism has seriously undermined the social fabric of our society.

In particular, she contends that the sphere of marriage and family life is the main battleground for the sex-change state. But not exclusively for the world of work has also been transformed by the political correctness that emanates from the new governing class of intellectuals, politicians,



Melanie Phillips

lawyers and journalists. Phillips demonstrates, in nine carefully crafted chapters, that two cardinal doctrines undergird the thinking of many opinion-formers. These are the doctrines of non-judgementalism, with its refusal to say that one lifestyle is better or worse than any other, and hard-line gender feminism, with its assertion that men are a problem. She states, that despite being somewhat contradictory, these beliefs feed

off each other, and that they have systematically undermined the social norms of self-restraint and encouraged the legitimisation of sexual licence.

The author’s view that feminism has distorted its own agenda by replacing the pursuit of equality with that of sameness will not appeal to all. Nor will her thesis that it is too readily assumed that men are intrinsically violent and irresponsible whilst women are viewed as essentially innocent.

Nonetheless, Phillips cogently shows that feminism now dominates the moral discourse and that this new orthodoxy, rather than being based on concepts of fairness, justice or social solidarity, is based on hostility towards men. In her view, men have been demonized. She argues that the continued attempt to reverse the roles of men and women represents nothing less than an

endeavour to feminise the state.

As a result a double crisis exists. Women are at a cross-roads, facing a double strain. On the one hand, many aspire to an equality in the public sphere which they can never attain due to the ineradicable differences between the sexes. Whilst, on the other, in the private sphere they drive men away from providing the protection and support which they need and for which, at heart, they long. Men are demoralized. The trend seems to be to reduce fatherhood to an emission in a test tube. Moreover, the impression given is that the only solution for men to the problems with which masculinity is associated is to become feminised.

Phillips does not just diagnose the ills of society. She also prescribes a cure. She calls for a social justice built upon a judicious balance between freedom and constraints

without which freedom cannot survive.

In particular, Phillips asserts that three crucial concepts must be established. First, proper freedom of choice must be restored. Secondly, incentives for social rather than antisocial behaviour must be given. And thirdly, the link between conduct and its consequences must be reestablished.

Furthermore, she argues that incentives for marriage should be provided because it is an invaluable institution that is crucial for the proper socialising of children. It should be the passport to a range of benefits.

In the space of some 360 pages Phillips provides ample evidence to substantiate her thesis that a set of false

assumptions about the family, men, and sexual identity has become embedded in the political and cultural discourse of the day.

Her argument needs to be heard. All who read what she says will be challenged. Christians, no doubt, will be encouraged, for they will discover that much of her common sense argument

resonates with what the Bible says about men, women and family life. If this valuable volume stimulates believers to search the scriptures and to articulate afresh the biblical concepts of manhood and womanhood then it will have served a most useful purpose beyond those expressed by the author. ■

## Being a stay-at-home mum: *A personal perspective*

by Kathy Calvert

***Kathy Calvert is married to Simon and is a full-time mother to their two-year-old daughter, Amy. Before Kathy had Amy she worked as an I.T. Systems Administrator for the main office of a large international quantity surveying firm. She is now a stay-at-home mum. Here, in her own words, she tells Advocate about the opposition, the sacrifices and above all the rewards of her full-time motherhood.***

“I thoroughly enjoyed my job and the challenges it presented. I enjoyed the company of other adults and welcomed the mental stimulation of the work. I have always enjoyed working hard and have either been in full-time education or full time employment since I was 16 (I am now 29). However I am stunned by the attitude of most people when I tell them that my husband & I made the decision for me to leave my job and be a

full-time mum. They look at me as if I have completely lost my head. “Just let me know when you get fed up and want to go back to work to get your life back” one well-meaning person said, offering to child-mind. “Your brain will turn to jelly from all that baby talk” a former work colleague told me. I acknowledge that there *are* circumstances where mothers have to work, but I think that few mothers are encouraged to find ways to enable them to stay home with their children while they are young.

There are difficult financial issues. At the time I left work I brought in nearly 50% of our income. But there *are* sacrifices that can be made and a baby is worth the sacrifice. For us that has meant giving up expensive holidays, making do with the clothes that we have, cutting down on grocery bills and having few meals out.

When Amy is 18 and looking back on her childhood, she won't remember (or care) that she didn't wear the best label clothing or have the most expensive, newest toy on the market. She will remember that it was her mum who helped her with her schoolwork. That it was her mum who held her hand in the dentist's chair and helped her pick out that all-important outfit for the first 'grown-up' birthday party. The time when they are young cannot be replaced once it is gone. I once read that no one ever says on their deathbed “I wish I'd spent more time at the office.” It is the time with our children that we will value most when they have grown.

Also there *is* work that can be done from the home to bring in a bit of extra money. This option is barely discussed in most pregnancy or mother & baby magazines. In fact, looking through magazine back-issues

I failed to find one article that pointed out the advantages of being a full-time mum to both the mother and the child. Nor did I find an article which suggested ways of making money from home (taking in ironing, typing, running a door-to-door catalogue, sewing, etc.) to enable a mother to stay at home.

People assume that if you've chosen to stay at home, that all you do is sit and watch chat shows and munch on chocolate. That you have taken the lazy option and are work-shy, or that your husband makes lots of money and you can afford to be a lady of leisure. For myself none of the above are true. I have chosen to stay at home because I love my daughter. Because I believe that her needs for a mother far outweigh my needs for material comfort or a “fulfilling career”. I have a fulfilling career. I am full-time mother.” ■

# Summary

## Stopping sex shops

The Christian Institute has opposed a touring indoor sex market holding events in Newcastle, Sheffield and Cardiff. The organiser of the events, Jack Frere of Xsensual, claims he has lost £250,000 from the shows in Newcastle and Sheffield.

After hearing arguments from the Institute, Cardiff council decided not to grant a sex shop licence for the Cardiff event. A licence was needed for stall holders to sell pornographic videos and other sex items. It is not yet clear whether the Cardiff show will go ahead.

## Euthanasia News

A Private Member's Bill to outlaw euthanasia was blocked from further progress because the Government refused to support it.

Doctors remain officially opposed to euthanasia and physician-assisted suicide. The BMA made its announcement at the end of a major two-day conference on the issue.

New legislation in Scotland gives people the power to appoint someone else to make health care decisions on their behalf should they lose the capacity themselves. This includes the possibility of withdrawing and withholding treatment. Pro-life groups

await a code of practice for such 'proxy decision makers' and guidelines for NHS hospitals.

## PVS patients still vulnerable

For the first-time ever, a judge has ruled that starving a patient to death will be in their 'best interests'. Dame Butler-Sloss decided to allow doctors to withdraw food and water from two women in a persistent vegetative state.

The judgment was given despite the new Human Rights Act guaranteeing a right to life. Dame Butler-Sloss held that the European Convention on Human Rights could not have envisaged today's life-sustaining technologies.

## DNR death warrant

Doctors are consistently signing 'Do-Not-Resuscitate' orders for patients, without their consent. The British Medical Association is considering whether to recommend US-style DNR forms where patients who do not want to be resuscitated have to sign to show their consent.

## Jodie and Mary: *The Deadly dilemma*

Not everyone agrees about the decision to separate the Siamese twins, Jodie and Mary. This is tragic case and the issues are difficult.

But the obvious confusion amongst the judges about the legality of the separation, the lack of an emergency situation, and the absence of parental consent leads Colin Hart to conclude that the twins should not have been separated.

## Sex offences review

The Government has launched a public consultation on its review of sex offences. Proposals include a new offence for adults (over 18) sexually abusing children (under 16). And incest could be extended to cover other family relationships like foster parents, step parents, uncles and aunts.

However, the law on gay sex in public could be liberalised. The Home Office wants to replace gross indecency with a much weaker public order offence which does not discriminate against homosexuals. The deadline for the consultation is 1 March 2001.

## Lib Dems back gay marriage and adoption

The Liberal Democrats voted for homosexual 'civil partnerships' at their annual conference held in Bournemouth in September. The conference said such partnerships should be based on the 'legal effects and duties of marriage' and should include adoption and fostering.

## Faith *in the* Family

The married family is the future. It is *the* most stable relationship in which to raise children. It follows that, for the sake of our Nation's children, public policy must uphold marriage - *the voluntary union for life of one man and one woman to the exclusion of all others*.

*Faith in the Family* is a project of *The Christian Institute* which seeks to promote marriage and family values in public policy.

*The Advocate* is a regular magazine of news and comment on the major issues facing the family today.

*The Christian Institute* is a registered charity (1004774) which seeks to uphold historic, Biblical, Christian truth. Since being established in 1990 the Institute's public policy work has specialised in marriage & the family, religious liberties, education, drugs legalisation, medical ethics and the constitution.



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