

DOCTORS AND THE GILLICK CASE

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I

In April this year a letter to the Prime Minister was handed in at 10, Downing Street from some of Britain's top 'agony aunts'. Signatories included Katie Boyle, Claire Rayner, Marjorie Proops and Anna Raeburn. They urged the Government not to accede to pressure to rescind the existing guidelines published by the Department of Health and Social Security whereby doctors can provide contraceptive advice without the knowledge of the parents to girls under 16. Unpacking that last phrase: 'contraceptive advice' can include the actual provision of contraceptive drugs or devices, and 'under 16' refers to girls who, if they engage in sexual intercourse, are party to a criminal offence. Speaking strictly, it is the man who breaks the law and is criminally liable, since a girl under 16 is deemed to be too young to give realistic 'consent' (Sexual Offences Act, 1956).

As they have done for the past two decades, the agony aunts were protecting the secularist 'liberal establishment' which successfully worked its way into power in Britain in the late fifties and early sixties. The DHSS circular to Area Health Authorities, first promulgated in the early seventies and re-worded without substantial alteration of basic content in 1980, appeared to encourage or at least to condone unlawful intercourse. Opponents of the policy in the 1970's had a strong case. If a child under sixteen was issued with contraceptives, it could only be for one reason, it was argued—that she should participate in a criminal act. Surely that was wrong? Not all all, said the DHSS; the doctor should, and would, only issue contraceptives if it seemed that the girl was determined to embark upon, or persist in, a relationship of sexual experimentation. Should she not be saved from the risk and fear of unwanted pregnancy? At least 'the pill' could hinder that unwelcome event, and thereby prevent a teenage abortion, which might otherwise be the only choice for a pregnant child of that age.

DHSS regulations do not have the force of law. But the Medical Defence Union had all along told doctors that if they *did* prescribe contraceptives in rare cases to 'protect' the child without the knowledge or consent of the child's parents, they (the MDU) were confident that such doctors would not be held to have acted unlawfully.

In July of last year Mrs Victoria Gillick challenged the legality of the DHSS advice to Area Health Authorities in the High Court. Mrs Gillick is a happily married Roman Catholic lady living in East Anglia. She has ten children, five of them daughters. She sought declarations from the court:

- (a) against the DHSS and her Area Health Authority that their advice was unlawful, and
- (b) against the AHA that no doctor or other professional person employed by them should be permitted to give any contraceptive and/or abortion advice and/or treatment to any child of hers below the age of 16 without the consent of that child's parents or guardian.

Mr Justice Woolf refused both declarations (see *The Times*, July 27th 1983). Mrs Gillick, nothing daunted, is taking her case to the Court of Appeal. Many people have remarked on the fact that the case is not to be heard there until November 1984.

II

What are the ethical parameters for doctors in this perplexing field? The first is evident. The medical profession exists to care for the injured, the diseased and the disabled. The doctor's task is to diagnose illness and, wherever possible, to heal. It is not immediately obvious that the supply of contraceptives falls within the doctor's traditional obligations. Doctors, like teachers, are often loaded with unwanted responsibilities by feckless parents or a confused and uncaring public. Should doctors ever have consented to supervise this kind of provision?

The second principle is a red herring, only apparently relevant to the case. This is the matter of confidentiality. As a matter of morality, secrecy has no intrinsic merit. The members of the MAFIA are sworn to secrecy, and it simply compounds their evil. Medical confidentiality is of course an appropriate factor in the framework of the professional code which has developed. It preserves a decent privacy and encourages the sharing of experiences and anxieties which are often needed for proper diagnosis and cure. But it is not essential to the medical ethic. Therefore it cannot be called in as if it were some over-riding consideration. It may not be used to protect criminals or those intending to commit a crime, for example. Confidentiality in the case of an intending criminal could well be collusion in his crime. Confidentiality in the case of a 13 year-old girl against the presumed wishes of her parents is collusion in the deception of parents and subverts their presumed desire for the health and welfare (physical, moral and social) of their child. A child who alleges she has cruel or uncaring parents is not self-evidently telling the truth. Parents must be presumed innocent until they are proved guilty. Confidentiality at the imperious behest of a depraved teenage girl makes a mockery of responsible community medical provision, since it assists the disintegration of family duties and allegiances.

As a matter of public policy parents are responsible for the welfare of their children. If they neglect them or are cruel to them the state can intervene. Children can be made wards of court, or be put into the care of the local authority. Here, by contrast, the state appears to be intervening in order to do, or to facilitate, what no reasonable or caring parent would ever do.

Furthermore many medical procedures, from injections and inoculations to operations, need parental consent. However, common law and the BMA's *Handbook of Medical Ethics* (1984) both indicate that the consent of a minor to medical treatment is valid if he or she can understand the nature of the treatment and any risks involved, a competence summed up in the words 'sufficiently mature'. Is this the case with sexual experiment by a girl under 16 who asks for the doctor or clinic to provide 'protection' against the potentially harmful effects of intercourse?

It could be argued on the one hand that the most recent wording of the DHSS stress more strongly than before that doctors would always seek to persuade children under 16 to tell their parents, and only yield to the demand for contraceptives without parental consent as a very last resort.

It is said that these would be 'unusual' or 'exceptional' cases. It is

easy to envisage such interviews. Talk to any teacher. It is not difficult to conceive of certain aggressive fifteen year old girls in today's permissive climate who would see nothing wrong in demanding such 'contraceptive advice' coupled with the insistence upon total secrecy. It is also difficult to deny that there may be unusual situations in which even the most righteous doctor might feel that this was the only course of action open to him, as a last resort.

However, this does not necessarily mean that either the law or any Departmental guidelines should set out the circumstances in which such an action might take place, or even set it down as a possibility. Regulations and circulars from Government are not law, but they have many of the characteristics of law. They are public. They set standards. They shape professional conduct. They strengthen parents, teachers and other guiding figures. They help many of the populace towards a rudimentary morality when they have no other source of guidance from the family, school or church. Furthermore, 'rightness' in an extreme or highly unusual situation is an ethical category which often defies codification (compare euthanasia and the soldier trapped in the burning tank).

To make public the possibility, even as an exception, of a certain 'professional service' is to make people aware that it can be supplied, provided they apply in the right way, or at the right time. In this instance the conditions can be easily fulfilled by a perverse but insistent teenage girl: she must assert that she is already 'sexually active' (a most distasteful expression often used by the contraceptive lobbyists) or at least fully intending to be so in the near future, and she must give the impression that no-one can persuade her otherwise. Secondly she must insist that her parents be not told. Many girls will not find these requirements hard to fulfil.

There are several additional arguments which can be adduced in support of the rescinding of the regulation. Let us grant that God's law cannot always be translated directly into social legislation so as to outlaw sinful behaviour. Let us grant that *some* 15 year-old girls may be able to comprehend the social, mental, moral and spiritual significance or potential of the act of sexual union. They may be deemed, after rigorous questioning and/or sympathetic counselling, to have the maturity to assess the implications and consequences of intercourse, the emotional investment, the family adjustments, the loyalties aroused, the personal commitment signified and so on. They may still determine to persist. Three considerations can yet be adduced which should cause us to pause before approving the DHSS policy:

1. The declared policy should surely still be framed in such general terms as to protect the majority of girls rather than specifically providing a 'service' which is appropriate only for the mature minority.
2. The average doctor does not have the time to engage in such lengthy counselling/interview procedures as would enable him to be certain that he is faced with one of the 'mature minority' beyond any doubt. Nor can he set afoot an enquiry to assure himself that this girl has parents who are irresponsible or cruel, and therefore rightly not to be consulted.
3. The doctor *does* know of the failure of contraceptives to protect against sexually transmitted diseases (the inevitable accompaniment of increasing extra-marital sexual activity in any society). He also knows of the increased risk of cervical cancer to girls who engage in early or promiscuous sexual experiment. He also knows of the

health hazards of the contraceptive pill, which include thrombosis. Do not these multiple risks point towards a responsible negative?

But there is a more fundamental matter involved. The doctor's decision we are discussing scarcely concerns the child *as a patient*. A 15 year-old girl asking for the pill is not suffering in any obvious way. She has no ailment, no disease, no pain. She has no malfunction. Is the doctor's decision to supply contraceptives to a minor in any real sense a *clinical* judgement? If it were clinical, it could be maintained that the answer should always be 'No', granted the health risks the doctor would thereby appear to condone (see above). But if it is *not* clinical, then the doctor's special position vanishes. The sooner Parliament and the whole community (rather than the officials of the DHSS) decide what is to be lawful and what unlawful the better.

III

Christians believe in the Divine joining together of sexual fulfilment, parenthood, and the permanent covenant of marriage. Wilfully to separate any one of these triple blessings from the other two is to put asunder what God has joined. In the light of that principle - and even granting extreme exceptional cases - the DHSS circular ought never to have been issued, and would be better rescinded. It is unworthy to allow the medical profession to be put in the position - manipulated by the contraceptive lobby or by depraved teenage girls - of having to assist, condone or appear to facilitate extra-marital child intercourse, or to provide such 'protection' as *de facto* facilitates it.

A simple draft Bill exists to make it unlawful for any doctor to supply contraceptives to a girl under 16 without the consent of the girl's parents or guardian and without the knowledge of the girl's general practitioner. The Bill was drafted by the legal advisers of CARE (*Christian Action, Research and Education*) before Mrs Gillick's case came before the courts, and it is available for the Government or a private member to take up at any time. It is a simple two-clause amendment to the 1956 Sexual Offences Act.

Parliament has now received over 400 petitions asking for the law to be changed to protect parental rights and girls' morals. More than half a million signatures have been collected. Meanwhile the threat has been made by those who lead the medical profession that any doctor who does inform a girl's parents (and thus break 'medical confidentiality') would risk being brought before the General Medical Council and struck off the list. To their credit the Christian Medical Fellowship have asserted publicly that they consider this threat as a potentially disastrous move, and have called Christian doctors to what amounts to professional civil disobedience, obeying God rather than men. Let us hope that the whole profession will now see the CMF on the march, following the challenging Editorial in their journal (*In the Service of Medicine*, October 1983). Christian doctors disciplined in large numbers for the sake of family solidarity would not only make headlines. It might change the minds of the Civil Servants and the BMA. In English law, as in Christian theology, there is only one form of lawful sexual intercourse - that between a man and his wife. It is the swift disappearance of the priority and protection of marriage which lies at the root of so many of our present paradoxes in social morality and public policy. This larger issue remains as a challenge to *all* Christian citizens.