

Whose Ethics are Bioethics?

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1. The nature and scope of bioethics

1.1 Bioethics concerns the proper use of science. Advances in our scientific knowledge and understanding mean that we can influence many things that we previously thought to be the result of chance, fate, or in (a more theological turn) *providence* – God’s governance through the natural order.¹ The use of such knowledge is sometimes described as ‘playing God’, but this is a deeply troubling accusation for an incarnational faith. The issues are very serious, and how else does God act in the world if not through us. It is our vocation to be the instruments of God’s will and we should not dodge that responsibility.

1.2 The term bioethics was coined in relation to environmental ethics – concerning our proper relationship with the biosphere, but it is now mainly used in relation to use of biomedical science.² Its scope can be illustrated by the issues that have hit the headlines over the past month

- Assisted dying and euthanasia, debated in Parliament (again) on 13 February.³
- Abortion, where two midwives failed in their claim that they were legally entitled to opt out of managing a labour ward because women were on the ward having terminations of pregnancy and they were entitled to exercise rights of conscience under s 4 of the Abortion Act 1967.⁴
- Medically assisted conception⁵
- Family planning for young people⁶
- Incentives to encourage people to donate organs for transplant⁷
- provision of safe abortion services under UK funded aid programmes⁸

¹ M/J. Langstone, entry in *New Dictionary of Christian Theology* (1983, London, SCM Press)

² H Kuhse & P Singer, *Bioethics: an Anthology* p 1

³ HL 13 Feb 2012, Col 621 <http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120213-0002.htm#12021316000099>

⁴ *R (Doogan and Wood) v Greater Glasgow and Clyde* HB [2012] CSOH 32, available at <http://www.scotcourts.gov.uk/opinions/2012CSOH32.html>

⁵ Nuffield Council on Bioethics, Call for evidence on mitochondrial donation, <http://www.nuffieldbioethics.org/news/call-evidence-mitochondrial-donation>

⁶ ‘School children offered contraceptive implants’ <http://www.bbc.co.uk/news/health-16951331>

⁷ BMA, *Building on Progress: Where next for organ donation policy in the UK?* (London, BMA 2012), available at http://www.bma.org.uk/ethics/organ_transplantation_donation/buildingonprogress.jsp

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1.3 These are issues on which our society is divided, sometimes deeply and violently divided, and which call into question the values on which it is based. My concern in this paper is with how we should respond to these divisions, both as a matter of principle and as a matter of practice. We need to decide what sort of society we wish to be and how we should go about resolving conflicts over bioethical questions. The grammar of my title is problematic. We can talk about ‘an ethic’ as a particular value-based approach to the way in which we live. In this sense, we are dealing with a plurality of ‘ethics’, each of which belongs to a particular person or community (Christian ethics, Islamic ethics, utilitarian ethics etc.). In our pluralist society we need to work out how to establish a basis for dealing with the very practical choices with which we are faced. In my particular spheres of work, this requires us to determine when we should use the law to resolve issues in bioethics and also how we reach a public policy position not merely a private view. Thus, we may both have questions about the best way to explore these difficult issues (a process question, analogous to the discipline of philosophical ethics) and also to wish to reflect on the fact that the results of such reflections have led people to reach different conclusions (ethics) on the issues, and consider how, as a society, we should respond in the face of such differences. In this sense, I am asking which of the competing ‘ethics’, adopted by various communities within our society should be adopted as public policy. Thus, the question ‘whose ethics are bioethics?’ asks which ethics will be accommodated within the public framework and in particular whether and how Christian ethics has a place there.

1.4 ‘Ethics’ as a practice, however, is singular. It is a branch of moral philosophy concerned with how we ought to act in specified circumstances (a substantive question), or at least how we should approach such decisions (a methodological matter). There is a political version of this methodological concern – examining the processes by which we resolve these issues for public policy purposes. My concerns in this paper are with the implications of the plurality of ethics for the processes that we can use, in the UK, in 2012, to set public policy on bioethics (which I shall call ‘public bioethics’). In particular, I am concerned with the opportunities and challenges that arise as that regulatory landscape is changing significantly. In this sense, the question is ‘Which ethics is bioethics?’ and asks us to choose the methodology for making such decisions.

1.5 The current Government has adopted a very different approach to doing public bioethics from the one that had become established over the previous thirty years.⁹ Over that period, public bioethics in the UK has largely been done by committee – the Human Fertilisation and Embryology Authority or the Human Genetics Commission being leading examples. When it took power, the Government boldly announced the demise of these organisations in its

⁸ HL Written Answer 14 Feb 2012 : Column WA143

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120214w0001.htm#12021424000284>

⁹ I have taken this date from the establishment of the Warnock Committee in 1982 to examine the implications of advances in human fertilisation and embryology. For discussion, see Duncan Wilson, ‘Creating the ‘ethics industry’: Mary Warnock, in vitro fertilization and the history of bioethics in Britain’ *BioSocieties* (2011) 6, 121–141, available at <http://www.palgrave-journals.com/biosoc/journal/v6/n2/full/biosoc201026a.html>

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bonfire of the quangos (although the actual death is long and agonising),¹⁰ but has not really explained how public bioethics will be done in its absence. My aim in this paper is to consider some of the options and how the churches should respond to the opportunities that they present.

First, however, I want to say a little about the nature of bioethics and why we need to create a 'public bioethics'.

2. Christian Bioethics in a pluralist society

2.1 There are many possible ways of framing our responses to these questions, but we could begin by considering whether we should deny the legitimacy of plurality. This would lead us to see the task as concerned with determining the 'right' approach, the content of a Christian ethic, and seek to make that the basis of our public ethics and law.. For Christians (and those of other faiths) this could be a theocratic system, based on obedience to divine authority (possibly determined by appeal to revealed truths in 'Scripture' or to the authority of the Church). Such an approach needs to meet two major objections of principle and overcome significant methodological difficulties.

2.2 Even for believers, there is an objection that obedience to a command does not seem to make either the actions taken, or the person who takes them 'ethical'. Doing something because you are told to do so (particularly if your motive were to avoid eternal damnation) seems different from doing it because it is the right thing to do.¹¹ Requiring or prohibiting conduct through the law does not promote consideration of right and wrong so much as prudence and conformity. If we wish people to be 'ethical' in the areas about which we are concerned, we need them to think about the issues, not about structures of authority.

2.3 For non-believers, we need a reason to explain why they should be expected to follow the commands of a God in whom they do not believe. This is a particularly powerful objection where the theocracy claims the right to use the coercive force of law to enforce its morality, but almost as significant when such influence is exercised through funding decisions or social norms. However, it remains powerful when it is merely the nature of the authority being claimed by the bishops when they speak in the House of Lords from the privileged position that the establishment of the Church of England gives them (or other ennobled religious leaders from their personal position as legislators).

2.4 The methodological problems concern the difficulties in discerning 'the' Christian view on the issues with which Bioethics is concerned. It is easy to show that there is considerable

¹⁰ <http://www.bbc.co.uk/news/uk-politics-11538534>

¹¹ P Helm, *Divine Commands and Morality* (Oxford, Oxford University Press, 1981) contains key essays on these issues, which have been discussed at least since Plato.

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variety in the range of views expressed on them in the name of Christianity and they change over time.¹² The Lambeth Conferences of 1908 and 1920 denounced the use of contraception, but in 1930 the Conference gave the practice its first official church sanction (albeit grudgingly). The Church of England used to hold that artificial insemination by donor was adultery and therefore wrong,¹³ but it is now a widely accepted technology and the objection has faded. Surrogacy, where one woman has a child for another, was regarded as an abomination by many vocal Christians in the 1980s. However, but it could be said to be a biblical concept. Genesis gives us an account of its use – Jacob has children by the slaves of each of his two wives, who were sisters. Thus, in one short episode we see a consanguineous, bigamous marriage in which four children were born in (at least potentially) exploitative surrogate pregnancies using (sex?) slaves. Surrogate motherhood was also used by Rachel and Leah competitively – Rachel’s reaction to success is that ‘with might wrestlings I have wrestled with my sister and have prevailed.’¹⁴

2.5 If such that series of events were to be uncovered in *The Only Way is Essex* (TOWIE to the initiated), I imagine that Cardinal Keith O’Brien would see this as another example of the ‘grotesque subversion of a universally accepted human right’ (as he described proposals to recognise marriage between members of the same sex).¹⁵ This is what I described to my students on Friday as an ‘emotive overstatement’ which undermines the credibility of the speaker. It is language that can express disagreement but provides no basis for resolution because it offers no reason or logic, merely a visceral and aesthetic abreaction. Archbishop Vincent Nichols is perhaps seeking to undo this damage in the pastoral letter on marriage that has been issued to be read at Mass today.¹⁶ This sets out arguments in language that is temperate and seeks to make a distinctively Christian contribution but in terms that non-Christians can understand. This is important for our thesis in that it provides a foundation for the churches to contribute to public policy making.

2.6 Cardinal O’Brien’s approach serves to exclude Christians from making public ethics because it suggests that we have nothing to offer but strong opinion. This is reminiscent of a subjectivist approach has led some philosophers to suggest that ethical disagreements are merely a matter of opinion and therefore incapable of resolution as being right and wrong.¹⁷ Archbishop Vincent’s letter offers reasons for what he sees as the Christian position and therefore makes it possible to engage with the public debates. In doing so, he offers arguments of various types;

¹² R Gill, *A Textbook of Christian Ethics* (Edinburgh, T&T Clark, 2nd ed 1995) provides an introduction. See also the essays in R. Gill (ed) *The Cambridge Companion to Christian Ethics* (Cambridge, Cambridge University Press 2001) and G. Meilaender & W Werpehowski (eds) *The Oxford handbook of Theological Ethics* (Oxford, Oxford University Press 2005) illustrate the range of approaches that can be taken.

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¹⁴ Genesis 30:8. See chapters 29 and 30 for the full story.

¹⁵ ‘Catholic cardinal criticises gay marriages plan’ BBC News 4/3/12 <http://www.bbc.co.uk/news/uk-politics-17249099>

¹⁶ <http://www.catholic-ew.org.uk/Home/News-Releases/Archbishops-Letter-on-Marriage>

¹⁷ J L Mackie, *Ethics: inventing right and wrong* (Penguin 1977)

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- some are theological – the Roman Catholic vision of marriage,
- some are empirical – that the institution of heterosexual marriage is ‘at the foundation of our society... a crucial witness in our society, contributing to its stability, its capacity for compassion and forgiveness and its future, in a way that no other institution can’.
- Some appeal to ‘natural law’ – ‘The roots of the institution of marriage lie in our nature.... and written into our nature is this pattern of complementarity and fertility’.

2.7 Such a Natural Law approach is perhaps the most plausible attempt to hold onto the idea that, despite the demonstrable pluralism of ethics that we can see in our society, it is still possible to argue for a substantive approach in which we should determine the rightness and wrongness of choices in bioethics and enshrine them in public policy or law. The claim of modern religious Natural Law theorists is that the divine order can be identified independently of religious authority through reason and reflection on the natural order. Thus, a strong strand of Roman Catholic moral theology claims that while the faithful are bound by the discipline of the Church, natural law theory would lead all right thinking people to the same conclusions on the substantive issues.¹⁸ On this view, it is acceptable for Christians to seek to enshrine their ethic as an ethic for us all. It claims to be morally correct in some objective sense.

2.8 I am not going to defend such an approach, which I do not find convincing, but instead to turn to the way in which we do in fact seek to decide as a society what positions to adopt in public bioethics.

3 Bureaucratic bioethics

3.1 With the birth of Louise Brown, the first IVF baby, in 1978 public awareness grew that overcoming human infertility was to become less a matter of chance and more a matter of choice. The Government of the day established a Committee of Inquiry under the chairmanship of Mary Warnock and the resulting report,¹⁹ published after two years of deliberation in 1984, led to the establishment of the Human Fertilisation and Embryology Authority in 1991. That process demonstrated a number of features that characterised a bureaucratic approach to public bioethics.²⁰

¹⁸ E.g. J. Finnis, *Natural Law and Natural Rights* (Oxford, Oxford University Press 1980). See also N. Biggar & R. Black (eds) *The Revival of Natural Law: Philosophical Theological and Ethical Responses to the Grisez School* (Ashgate 2000).

¹⁹ *Report of the Committee on Inquiry into Human Fertilisation and Embryology* (1984) Cmnd 9314.

²⁰ J. Montgomery, ‘Rights, Restraints and Pragmatism: The Human Fertilisation and Embryology Act 1990’. *Modern Law Review* 54(4), 1991, 524-534.

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3.2 Decisions were taken by a group of ‘experts’ empowered to consider and resolve the bioethical issues. Individual practice by health professionals was regulated by a licensing and inspectorate system overseen by the relevant authority. Parliament established some parameters, such as the legitimacy of research on human embryos in vitro up to 14 days provided that it served certain defined purposes (which began quite restrictively but were subsequently relaxed).²¹ Within these parameters, decisions on the acceptability of new technologies and guidance on the proper conduct of fertility services was a matter for the authority to decide. This enabled guidance to be developed more quickly than was possible through legislative change and addressed some of the concerns that law and ethics constantly lagged behind scientific ‘progress’ and therefore led to the technological fallacy that we should use the knowledge because we could.

3.3 The membership of such bodies became gradually more open as appointments were made through competitive processes against specified competencies. This has avoided accusations of political patronage but has also diminishing the ‘representative’ nature of membership. This has had an impact on the visibility of Christian voices. Senior religious figures were appointed in the early days of the Authority and Anglican bishops were well represented (Richard Holloway, Richard Harries, Michael Nazir Ali). However, this is now rare and although these bodies often seek to recruit members who are able to contribute a faith perspective, they tend also to look for technical skills in bioethics that may be beyond clerical applicants. The current membership of bioethical bodies may have traded technical expertise in relevant disciplines for connection with the wider public.

3.4 This is understandable in the light of a further development of the bureaucratic approach to public bioethics; the extension of debate beyond the committees of experts into broader public deliberation. This can take a range of forms

- Consultations on proposals on a yes/no basis
- Inviting public identification of issues, views and possible reforms
- Explorations of public concerns and values, for example, through ‘citizens juries’

3.5 In different ways, these democratic moves have altered the basis on which decisions on bioethics have been taken within this bureaucratic model. Public opinion can be more a matter of votes than argument, and care needs to be taken

- to distinguish informed from uninformed opinion
- to be alert to the manipulation of public consultations (both by the body consulting and also pressure groups supporting particular views)
- to guard against what John Stuart Mill described as the ‘tyranny of the majority’. Should my views of what you should do require you to accept them?
- to ensure that we recognise that all arguments are not equally sound

²¹ Human Fertilisation and Embryology Act 1990, s 14, sch 2 (as amended).

3.6 Some of these issues can be illustrated by policy making around the possible introduction of an opt-out or 'presumed consent' model in relation to the donation of organs for transplant. I was a member of the Organ Donation Taskforce for the report that it produced on this issue in 2008 which recommended that such a move should not be taken at that time (although it suggested that the issue might be reconsidered after five years if donation rates had not improved).²² That taskforce commissioned a detailed literature review to enable it to consider the available evidence on whether the introduction of presumed consent laws had an impact on donation rates. This was a rigorous academic process, and concluded that although there was some association between higher donation rates and presumed consent it was not possible to prove a causal link. There was much discussion of the fact that in Spain, which is held up as one of the most successful systems, the introduction of presumed consent had not in itself had a significant impact and it was not until that system combined with improvement in the organisation of the health services that rates improved. The Organ Donation Taskforce recommended introducing improvements to the health system rather than changing the law.

3.7 It faced a problem, however, because it had gone to considerable lengths to consult the public and the public view was supportive of the introduction presumed consent. The Taskforce dealt with this by regarding that support as conditional upon the premise that such a system would improve donation rates. As it had concluded that it would not, it regarded its position as compatible with public opinion.

3.8 In contrast to this expert approach to the policy problem, the Welsh Government is to introduce presumed consent based on a paper that states that 'research suggests that organ donation rates from deceased persons increase by approximately 25 to 30 per cent in countries where an opt-out system applies'.²³ This research was not identified and the consultation questions concerned the mechanisms for implementation not whether it should happen.

3.9 In terms of faith contributions one of the consequences of this development of public consultation has been that they have become hidden amongst a multitude of stakeholders. Their privileged position as members of the inner cabal of decision makers has been diminished, and the power of their voice in public debates is weak - small still voices amongst a lot of noise, wind and fire. They remain important in terms of the leadership of their flocks but not as an influence on others. Thus in the work around organ donation, considerable effort was put into understanding religious views in order secure the support of religious leaders for organ donation. Their concern about a move to presumed consent

²² *The potential impact of an opt- out system for organ donation in the UK. An independent report from the Organ Donation Taskforce* (2008, Department of Health, London).

²³ *Proposals for Legislation on organ and tissue donation: A Welsh Government White Paper* (2011) Number: WG13956 Para 6 available at <http://wales.gov.uk/docs/dhss/consultation/111107orgdonwpen.pdf>

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was a significant issue, but mainly because they advised that they would not support it and that it would therefore put the willingness of their members to donate at risk. This is an instrumental approach to religious views – putting respect for them at the service of increased transplant rates – rather than consideration in their own right.

4. A sea change in bioethical regulation?

4.1 Two important things have changed in the past few years that require a reconsideration of our approach. The first is a re-orientation of public discussion around a liberal paradigm and the second is the dismantling of the bureaucratic approach to public bioethics described in the previous section. Both have significant implications for Christian contributions to public bioethics.

4.2 The shift to the liberal paradigm in the public discourse of bioethics can be seen in the report of the Select Committee on Science and Technology in its report of the need for reform of the Human Fertilisation and Embryology legislation. The Committee was evenly split in its account of the way in which the issues should be addressed. The final report, issued on the casting vote of the chairman with five dissenters, argued that the bioethical matters in question were primarily a matter for the individuals involved and that the state should only intervene if this was necessary to prevent demonstrable harm. This approach, which is also that developed by the European Court of Human Rights in *Pretty v UK* precludes arguments about the inherent immorality of specific acts, such as suicide and euthanasia as being incompatible with human worth of dignity.²⁴

4.3. This liberal (or in the words of the dissenting members of the Select Committee, ‘extreme libertarian’) approach goes some way to explain the Government’s decision to abolish the HFEA. If the job of the authority is to protect those involved with assisted conception from risk of harm and to set limits to the use of techniques only where they are unproven and possibly unsafe, then the regulatory role closely aligned with that of the Care Quality Commission, which is to take over the licensing and inspectorate functions.

4.4 Those aspects of the HFEA’s role that concern bioethical policy making were criticised by the Select Committee for usurping the democratic role of Parliament (although that was arguably exactly what it was supposed to do). The Bonfire of the Quangos was driven in part by this principled, albeit ideological, rejection of technocratic bureaucracy in favour of different mechanisms for determining public bioethics. It cannot explain the abolition of the Human Genetics Commission, because it was only advisory. Nor can financial pressures fully explain the desire to abolish them, as they were not expensive. Nevertheless, the new

²⁴ I have explored the points made in this paragraph in J. Montgomery, ‘The Legitimacy of Medical Law’ In Maclean, S (ed) *First Do No Harm: Law Ethics and Medicine* (Aldershot: Ashgate, 2006), 1-16

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landscape for public bioethics is going to be very different and we should turn to that to consider what it might look like and how Christian voices might become heard.

5. After the ashes – public bioethics abandoned?

5.1 A first possibility is that we may see a retreat from dealing with bioethics as a public issue. A focus away from what should be done to why it is anybody else's business. The characteristic of this approach, which is perhaps libertarian more than liberal, would be concern to protect people's private space to decide on issues in bioethics. It would be regulated only to prevent abuse of the participants; such as exploitation of the vulnerable (as in the protection of Rachel and Leah's slaves in the biblical surrogacy scenario), fraudulent activity (as in the breast implant scandal) breach of the criminal law (when euthanasia is in fact murder)

5.2 Such a development would give scope to consider the impact on others of such extension of the freedom to determine bioethical issues privately. At one extreme, whether additional 'conscience clauses' would be needed to protect professionals from being pressured or required to compromise their own moral integrity. We recognise this in relation to abortion, assisted conception and embryo research. We have resisted in relation to other care. This was important when some professionals, including those expressing homophobic reactions on what they saw to be religious grounds, declined to care for those infected with HIV. The denial of such claimed rights of conscience was an important part of securing access to services.

5.3 If we adopt this approach, then the most likely mechanism for exploring the boundaries of this private bioethics seems to be the courts. We can already see how this is occurring in connection with the debate around assisted dying as a series of test cases has and is being fought out in the courts. In the Pretty litigation it was established that people were entitled under the European Convention on Human Rights to the protection of their private right to decide how and when to die, subject only to the 'rights and freedoms of others' and possibly 'public health and morals'. Debbie Purdy pushed this further and the decision of the House of Lords in her case has forced the Director of Public Prosecutions to clarify the prosecution policy (and very nearly to change the law, although the initial consultation proposals which had this effect were amended so as to avoid it).²⁵ The latest skirmish in this war of attrition has been promoted by the case being brought by Tony Nicklinson to try to secure a new understanding of the law so that active killing would be acceptable under the principle of 'necessity'.

²⁵ I have discussed this in J. Montgomery 'Guarding the Gates of St Peter: life, death and law making' *Legal Studies*, 31, 2011, 644-666

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5.4 If this is to be the way in which bioethical issues are to be resolved, then religious groups may wish to consider bringing test case litigation, in the way that Lord Carey is encouraging Christians to use the courts to assert what they see as religious freedoms. This would seek to impose a Christian view on others through the law. Alternatively, the role of the churches might be to help people take decisions, support them as they work them through, give guidance as matters of personal conscience. This would be a pastoral role, but would have little to say about the issues of substance.

6. Bioethics, and the 'Big Society': the privatisation of public bioethics

6.1 If we continue to see bioethics as a public matter, then a number of options seem available. The first would hark back to the approaches taken before the bureaucratic approach of the last thirty years took hold. This could be described as the 'guild approach' to public bioethics, whereby groups with a stake in the issues developed guidance on how their members should behave. This did not claim formal authority over non-members, but where the groups were seen as having legitimate expertise and wisdom in the area, then their conclusions were highly influential.

6.2 This can be seen most clearly in the context of professional ethics, where the British Medical Association and the various medical Royal Colleges played a very significant role in developing public bioethics. Thus, the development of research ethics was driven by the profession in response to concerns that they raised about the conduct of their colleagues. This internal regulation of professional morality was the norm until distrust in the professions took hold, partly as a result of scandal and partly as a result of criticisms of the lack of accountability for medicine in dealing with things of wider social importance.²⁶ As government sponsored bureaucracies retreat from public ethics, we should expect a resurgence of the influence of this activity (which has never stopped but has been overshadowed). The professions acted to establish a Voluntary Licensing Authority to deal with assisted conception services prior to the Human Fertilisation Authority being established, and have supported the various statutory authorities rather than competed with them.

6.3 Churches too could step into the space vacated by the official regulatory bodies. Here too, this would be reasserting a role that they have played before. For many years, the Church of England's Board of Social Responsibility made some distinguished contributions to thinking in bioethics. The report *On Dying Well* was a significant contribution to the euthanasia debates that were already raging by the 1975 when it was published. I had an opportunity to examine it when I was asked to update the legal chapter for its reissue in

²⁶ E.g. I. Kennedy, *The Unmasking of Medicine* (Paladin 1983), being the book from the Reith Lectures for 1980.

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2000 and it remains a robust and reflective exploration of the issues.²⁷ The original working party brought together some of the leading intellectuals and medical practitioners in the field to reflect on the issues over three and a half years. It contained chapters on both moral and theological concerns, and was thus placed to make a contribution to the public debate not merely to advise the faithful.

6.4 The Church of England has substantially retreated from this type of contribution since the Board of Social Responsibility was subsumed into the Division of Ministry and Public Affairs in 2002. Malcolm Brown, the Director of that Division has suggested this is a consequence of the need for 'engagement from the perspective of faith in public ethics must have a missiological quality since it cannot be taken for granted that any of the Church's interlocutors have the slightest grounding in, let alone sympathy for, the idea that ethics may look different when God is factored in.'²⁸ It has led, however, to a degree of introspection so that the purpose of the report *God, ethics and the human genome: theological, legal and scientific perspectives* was to offer material to resource contributions to the debate,²⁹ but not to enter into it directly. The disbanding of the official machinery for deliberation provides an opportunity for the Church to reconsider this approach.

6.5 In addition to these groups with professional interests in developing public bioethics, the 'big society' can also respond through non-government organisations. The Nuffield Council on Bioethics was established in 1991 to play the sort of role that national bioethics commissions play in other countries. It stands for an open approach to public bioethics in the academic tradition, based bringing together leading thinkers in working parties to deliberate on the issues with the aid of consultation responses. It is funded by the Nuffield Foundation, the Wellcome Trust and the Medical Research Council but on terms that ensure that the topics it selects and the conclusions that it reaches are independent of them, and of any other interest including specific approaches to bioethics.

6.6 A further development raises a new type of concern. Like any other form of privatisation, the retreat of government opens up the activity to those with the financial means to engage more fully than those without money. In the context of bioethics, we can already see this in the establishment of the Commission on Assisted Dying, whose report was published in January 2012.³⁰ The 'commission' in this case was not given by Government but by two private individuals, Bernard Lewis (founder of the River Island shopping chain) and Terry Pratchett (the celebrated author), both of whom were said to be in favour of liberalising the law to permit assisted suicide. The Commission was chaired by a lawyer, Lord Falconer. This development raises some new questions about legitimacy in public bioethics. Should we be suspicious of privately funded commissions because we fear that the views of funders will

²⁷ *On Dying Well: A contribution to the euthanasia debate* (1st ed 1975, 2nd ed 2000, GS Misc 600).

²⁸ M. Brown, 'An Anglican gene? The lineage of this book' preface to *God, ethics and the human genome: theological, legal and scientific perspectives* (London, Church House Publishing 2009) at p xxv.

²⁹ *Ibid.* p xii.

³⁰ <http://www.commissiononassisteddying.co.uk/>

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have disproportionately influenced the conclusions? Do public and transparent processes provide sufficient reassurance? The Assisted Dying Commission received 1279 submissions of evidence – a response that cannot be dismissed lightly. Does the legitimacy of the reports of such commissions depend on those who choose to submit evidence? If so, have they inadvertently been seduced into strengthening the prospects of legal change by lending their authority to a private enterprise?

6.7 Bioethics remains of public importance rather than a matter of personal choice, but with these developments, the opinion leaders are no longer sponsored by the state or part of its machinery of governance. We need to reflect on the nature of authority in this new world of the privatisation of public deliberation on bioethical issues.

7. The Democratic turn

7.1 A final model for the future of bioethics in the UK would be to drive it through Parliamentary processes. Some areas of bioethics, in particular abortion and euthanasia, regularly appear before legislators in the form of private members bills, although they rarely reach the statute book. More importantly for the development of bioethics policy are the committee inquiries. These both provide parliamentarians with an opportunity to set out policy proposals independently from Government and also enable members of the public and pressure groups to contribute their views. The volumes of evidence to the House of Lords Select Committee on Medical Ethics (1993-4) provide a fascinating snapshot of views on the ethics of death and dying following the decision in *Airedale NHS Trust v Bland* [1993] (concerning the boy crushed in the Hillsborough stadium disaster).³¹ In the 2004-5 Session, the issue of assisted dying was thoroughly explored under the chairmanship of another lawyer, Lord Mackay of Clashfern and, again, the two volumes of evidence record the state of public debates over the issues.³²

7.2 A standing Parliamentary Committee on Bioethics might, therefore, be a way forward.³³ This approach has the advantage of a secure constitutional legitimacy in a democratic society, including perhaps a place for the established church but is prone to political pressures and the power of lobbyists. Current activity around abortion issues shows how a small determined group of MPs can have an impact disproportional to their support amongst the electorate through mechanisms that are neither transparent nor

³¹ House of Lords Select Committee on Medical Ethics, HL Paper (1993–4), 28

³² House of Lords Assisted Dying for the Terminally Ill Committee (2004-5) HL 86.

³³ As proposed in the report of the Select Committee on Science and Technology, *Human Reproductive Technologies and the Law* HC (2004-05) 7, para 398, www.publications.parliament.uk/pa/cm200405/cmselect/cmsctech/7/7i.pdf

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accountable.³⁴ Another group of MPs promotes the liberalisation in the area of euthanasia, supported by Dignity in Dying.³⁵ Reading parliamentary debates, one is struck by the rhetorical power of anecdotes in deliberations. Choosing a political solution to deliberations on public bioethics may not improve their quality.

8 Conclusions

- There are competing 'ethics' seeking adoption in our public bioethics, of which Christianity is at least one (there may be many versions of Christian ethics)
- For reasons of principle, for Christian ethics to be adopted as public bioethics, as opposed to guidance for the faithful, they must be made intelligible to others. Thus, Christians need to distinguish the claims that they hold to be generally true (whether as a matter of natural law or otherwise), from those that are only true for those who accept the discipline of faith (to oversimplify a sophisticated Thomist tradition)
- Christians also need to consider where they should argue for a degree of plurality that will enable the faithful to follow their own discipline without necessarily imposing those values on others.
- The governance structures for public bioethics that developed over the past thirty years have reduced the impact of Christian voices
- The mechanisms by which public bioethics will be governed for the next few years are not yet settled, but the Church has opportunities to reconsider both the form and nature of its contribution
- It is not true that Christians have been excluded from public bioethics, but it is probably the case that the Christian voice has been obscured.
- We need to consider how to respond to the new environment, to whom we are ministering, and on what basis.

³⁴ E.g. All-Party Parliamentary Pro-Life Group, supported financially by Christian Action Research and Education, <http://www.publications.parliament.uk/pa/cm/cmallparty/register/pro-life.htm> For pro-choice group see the All-Party Parliamentary Group on Sexual and Reproductive Health in the UK, supported by the Family Planning Association <http://www.publications.parliament.uk/pa/cm/cmallparty/register/sexual-and-reproductive-health-in-the-uk.htm>

³⁵ All-Party Parliamentary Group on Choice at the End of Life, <http://www.publications.parliament.uk/pa/cm/cmallparty/register/choice-at-the-end-of-life.htm>