Council for Legal Education – Continuing Legal Professional Development
December 10, 2016
International Human Rights Day
Presenters: Shirley Richards and Philippa Davies

Presentation: RESPONSE TO 'REDEFINING MARRIAGE – US SUPREME COURT AND OTHER RELATED LGBT DECISIONS' BY LORD GIFFORD, QC

With minor amendments, the following paper was presented in two parts by Shirley Richards and Philippa Davies respectively at the CLPD seminar held on December 10, 2016 organised by the General Legal Council. Time constraints on December 10 did not permit Miss Davies to present Part 2 fully. Part 2 is included here in its entirety.

Part 1

It is no coincidence that on International Human Rights Day there is a discussion about redefining marriage as 'Human Rights' are being used by some as a weapon of cultural change. Melanie Phillips opines in her book, *Londonistan*, "Human rights doctrine is the principal cultural weapon to undermine the fundamental values of Western society."[1]

A discussion on human rights and redefining marriage raises questions, the first being: what are human rights? According to the Office of the High Commissioner of Human Rights, "Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status". Secondly, why should there be any such thing as "human rights" at all? Thirdly, who has the privilege of defining the rights which are "inherent to all human beings"? Also, do LGBT(QI) claims for rights for themselves qualify as rights which are inherent to ***all*** human beings? Part 1 of this paper addresses briefly (1) the history and concept of human rights generally, (2) distinguishing between the *Loving* and *Obergefell* cases, (3) the integrity of the alternative human rights framework in case law, and (4) law reform by judicial activism. Part 2 of the paper addresses the influence of Alfred Kinsey on jurisprudence.

1. <u>Human Rights</u>

Many scholars regard the work of John Locke in his *Two Treatises of Government* (1680-1690) as being seminal in the development of human rights. Locke wrote :

> "[T]here being nothing more evident than that creatures of the same species born to the same advantages of nature should be equal without subordination… unless the Lord and Master of them all should, by any manifest declaration of his will, set one above another, and confer on him by an evident and clear appointment an undoubted right to dominion and sovereignty."[2]

[1] Phillips, Melanie (2006) Londonistan. New York: Encounter Books
[2] John Locke, Two Treatises of Government 285-86

Locke saw the natural freedom of men as being bound by the law of nature. According to Michael Freeman in his essay, "The Problem of Secularism in Human Rights Theory":

> "We should note carefully the logic of this important moment in the history of the Western theory of human rights. The argument begins, not with rights, but with the obligation of everyone to obey the law of nature. This obligation is not to harm the life, health, liberty, or possessions of others. The ground of this obligation is that all men are the "workmanship" of God, his servants, and his property... This obligation not to harm others, Locke assumed, entailed the right of everyone not to be harmed. Locke introduced the concept of rights almost casually in a discussion of God's purpose in creating mankind and the consequent obligations of men to God and to each other."[3]

Locke's thinking influenced the *United States Declaration of Independence 1776* which refers to the law of Nature and of Nature's God. Many can readily bring to mind the following excerpt from the Declaration:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[4]

Contemporary concern for "human rights" was as a direct result of the atrocities committed in World War II. The result was the encoding of these concerns in the *Universal Declaration of Human Rights 1948* (UDHR). The preamble to the UDHR refers to, "equal and inalienable rights", to 'fundamental human rights" and to being "endowed with reason and conscience"[5]. In this framework freedom of expression, freedom of conscience and freedom of religion were seen as being important, or fundamental, members of the family of human rights. The protection of these freedoms were further strengthened when the UN General Assembly in 1966 adopted the *International Covenant on Civil and Political Rights* (ICCPR)[6]. Certain rights were declared to be non-derogable. One such is Article 18, which in part states that, "everyone shall have the right to freedom of thought, conscience and religion." This means that states may not derogate from the right to freedom of religion, even in times of emergency. By contrast, Article 17 which deals with privacy is not one of those non-derogable rights. Until recently, the doctrine and philosophy of Human Rights had appeared to uphold Locke's concept of inherent rights of man based on duties to God and mankind, rather than unrestrained freedoms without obligations.

---

[3] Freeman, Michael. The Problem of Secularism in Human Rights Theory, Human Rights Quarterly, Vol. 26, No. 2 (May, 2004) Retrieved from http://www.jstor.org/stable/20069731

[4] Office of the Law Revision Counsel United States Code, The United States Declaration of Independence 1776 Retrieved from http://uscode.house.gov/download/annualhistoricalarchives/pdf/OrganicLaws2006/decind.pdf

[5] United Nations, Universal Declaration of Human Rights Retrieved from http://www.un.org/en/universal-declaration-human-rights/

[6] *See* United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights (ICCPR): Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49 Retrieved from http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

While mankind was accorded with freedom and rights, those rights were balanced by his obligation and duty to God and mankind. We may call these "balancing concepts".

2. *Loving* v. *Virginia* no basis for *Obergefell*

The decision of the US Supreme Court in *Obergefell v. Hodges, Director, Ohio Department of Health et al*[7] to "redefine" marriage to include same-sex unions is a just stop along the journey towards radical autonomy. I dare say, not even Lord Gifford himself can predict where the journey will end. We seem to be trending in a direction where duty and obligations are no longer balancing concepts. Instead the concepts of liberty and 'rights' are increasingly seen as an ever-expanding tree with very little in the way of limitations resulting in the embrace of illogical and irrational behaviours. Having cast aside the balancing concepts, many of the Western societies have left themselves without the tools necessary to critique behaviour. Instead these concepts have now been reinterpreted to support radical autonomy of the individual, regardless of certain rights of others - particularly rights involving freedom of conscience and religion.
In the case of *Loving v. Virginia*[8] a case cited by Lord Gifford in his paper and relied on heavily by the majority in *Obergefell*, Mildred Jeter, a woman and Richard Loving, a man, were charged in Virginia with violating a ban on interracial marriage. They eventually appealed to the United States Supreme Court which, with the legitimate support of law and reason, held that the law was in violation of the Constitution and thus could not stand. With respect, using a case which clearly had to do with the issue of racial discrimination to support the issue of same sex marriage, requires legal and logical gymnastics.

Excerpts from the Judgement in *Loving* are instructive:

> "*We* cannot conceive of a valid legislative purpose . . . which makes the color of a person's skin the test of whether his conduct is a criminal offense.
>
> There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification... We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause…. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.
>
> Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival. *Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942). *See also Maynard v. Hill,* 125 U.S. 190(1888)...Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State."

[7] 576 US (2015)
[8] 388 U.S. 1Loving v. Virginia (No. 395)

First, there was no question in the Court's mind that they were dealing with true marriage, ie. the legal union between a man and a woman, which was the only concept of marriage in Western society from time immemorial[9]. The description of marriage as, "fundamental to our very existence and survival," requires an understanding that necessarily implies a procreative component, applicable only to marriage[10].

Returning to *Obergefell*, Chief Justice Roberts in his dissenting Judgement quite aptly points out that:

> "The majority observes that these developments, "were not mere superficial changes" in marriage, but rather "worked deep transformations in its structure." *Ante*, at 6–7. They did not, however, work any transformation in the core structure of marriage as the union between a man and a woman." [11]

Secondly, in order to get from *Loving* to *Obergefell* it means you are equating skin colour, which is immutable, with behaviour, which is not. This is not a new fallacy; it is the perpetuation of a false analogy. Honest research on both sides of the discussion have now demonstrated that:

> "..arguments based on the immutability of sexual orientation are unscientific, given that scientific research does not indicate that sexual orientation is uniformly biologically determined at birth or that patterns of same-sex and other-sex attractions remain fixed over the life course"[12]

Persons who identify as lesbians, gays, bi-sexuals, trans-gender, queer, intersex, agender, pangender, gender-questioning or any other variant are entitled to the same human rights as all persons by virtue of them being human beings, but are also subject to the same restrictions to which all human beings are constrained. If LGBT(QI) "rights' are indeed human rights, why would they pose far-reaching consequences for those inalienable rights on which we all rely in a free and democratic society? These include the rights to freedom of conscience, speech and religious liberty. As Professor Yvonne Lee (2008) insightfully asserts, by "portraying a subjective preference as a 'right', ...the science of whether this is genetic or a gender identity

---

[9] See *Obergefell v Hodges et al*, Roberts, C.J. dissenting, p. 4-5 , "As the majority acknowledges, marriage "has existed for millennia and across civilizations." Ante, at 3. For all those millennia, across all those civilizations, "marriage" referred to only one relationship: the union of a man and a woman. See ante, at 4; Tr. of Oral Arg. on Question 1, p. 12 (petitioners conceding that they are not aware of any society that permitted same-sex marriage before 2001)."

[10] Ibid - "This universal definition of marriage as the union of a man and a woman is no historical coincidence. Marriage did not come about as a result of a political movement, discovery, disease, war, religious doctrine, or any other moving force of world history—and certainly not as a result of a prehistoric decision to exclude gays and lesbians. It arose in the nature of things to meet a vital need: ensuring that children are conceived by a mother and father committed to raising them in the stable conditions of a lifelong relationship. See G. Quale, A History of Marriage Systems 2 (1988); cf. M. Cicero, De Officiis 57 (W. Miller transl. 1913) ("For since the reproductive in- stinct is by nature's gift the common possession of all living creatures, the first bond of union is that between husband and wife; the next, that between parents and children

[11] *Obergefell v Hodges et al*, Roberts, C.J. Dissenting, p. 8

[12] Lisa M. Diamond & Clifford J. Rosky (2016): Scrutinizing Immutability: Research on Sexual Orientation and U.S. Legal Advocacy for Sexual Minorities, The Journal of Sex Research, DOI: 10.1080/00224499.2016.1139665

disorder is insulated from debate,"[13] and this has been the situation for over 50 years. Professor Lee's paper on Singapore's legal approach to these issues is worthwhile reading for any serious student of human rights.

3. The Integrity of the Alternative Human Rights Framework in Case Law

After several decades of seemingly benign recommendations, legislation and judgements in favour of 'LGBT(QI) rights', we are now in a position to examine the outcomes for the integrity of the alternative human rights framework.

As instances in the United States and the United Kingdom will demonstrate, the impact of LGBT(QI) pseudo-rights on societies has been at the very least a curtailment of their inherent rights to conscience, freedom of speech and religious freedom. On the one hand we hear lofty words about freedom of conscience, such as the European Court of Human Rights judgment in *Kokkinakis v Greece*[14]:

> "...freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it."

However, as evident in the case *Lee v Ashers*, when it comes to the application of the principle, invariably LGBT 'rights' are used to trample on rights to freedom of expression, freedom of conscience and freedom of religion. As Travis and Weber (2016) stated, "where conflicts have arisen, LGBT activists have sought to subordinate freedom of conscience to LGBT policies—a trend that endangers the universal human rights system itself."[15]

Smith v Trafford Housing Trust

Mr. Adrian Smith of the United Kingdom, was demoted from his job at the Trafford Housing Trust because of a Facebook conversation in relation to the prospect of same-sex ceremonies being performed in church in 2011. In his post he stated, "this is equality gone too far"[16]. One may consider that he was acting pursuant to his freedom of thought, conscience and religion. For these words Mr. Smith was met with disciplinary proceedings. In those proceedings, it was

[13] Yvonne C. L. Lee (2008). "Don't ever take a Fence Down Until you know the Reason it was put up" - Singapore Communitarianism and the Case for Conserving 377A. Singapore Journal of Legal Studies [2008] 347–394, p. 367

[14] [1993] ECHR 20, para 31Retreieved online from World Legal Information Institute http://www.worldlii.org/eu/cases/ECHR/1993/20.html

[15] Travis Weber and L. Lin, Freedom of Conscience and New "LGBT Rights" in International Human Rights Law: Conscience Protection, Foreign Affairs, March 31st, 2016 Retrieved from http://www.thepublicdiscourse.com/2016/03/16543/

[16] [2012] EWHC 3221 (Ch)

concluded that he was guilty of gross misconduct and deserved to be terminated. Consideration was given to his long service to the company, he was demoted with a 40% pay cut.

Mr. Smith sued for breach of contract. The Judge found that there had been a breach of contract but because of the principles involved in assessing damages for breach of contract he was awarded less than £100. Justice Briggs expressed concern by stating:

> "I must admit to real disquiet about the financial outcome of this case. Mr Smith was taken to task for doing nothing wrong, suspended and subjected to a disciplinary procedure which wrongly found him guilty of gross misconduct, and then demoted to a non-managerial post with an eventual 40 per cent reduction in salary. The breach of contract which the Trust thereby committed was serious and repudiatory. A conclusion that his damages are limited to less than £100 leaves the uncomfortable feeling that justice has not been done to him in the circumstances. All that can be said is that, had he applied in time, there is every reason to suppose that the Employment Tribunal would have been able (if it thought fit) to award him substantial compensation for the unfair way in which I consider that he was treated."[17]

Mr. Smith was not reinstated to his original post.

Johns v Derby City Council[18]

In this case, Eunice and Owen Johns, a Jamaican couple, had fostered children 15 times before. Their application to foster children in 2007 was not approved by the Derby Council because in answering questions posed by the social worker they had made it clear that they could not and would not be willing to tell a child that homosexuality is "a good thing". This was on the basis of their religious beliefs, arguably pursuant to their human rights to freedom of religion. The High Court on February 28, 2011 sided with the Council. In his Judgement Lord Justice Munby made it clear that objection to homosexuality is not in the interest of the welfare of children. In paragraph 44 he spoke about manifestations of religious practice which will be regulated if contrary to a child's welfare. How are anti-discrimination legislation and policies to be reconciled with the promise of freedom of religion given in Article 9 of the European Convention of Human Rights? According to LJ Munby:

> "The answer is clear from the authorities to which we have already referred, which indicate that Article 9 only provides a "qualified" right to manifest religious belief and that interferences in the sphere of employment and analogous spheres are readily found to be justified, even where the members of a particular religious group will find it difficult in practice to comply: see *Sahin v Turkey* (2005) 44 EHRR 99. This will be particularly so where a person in whose care a child is placed wishes to manifest a belief that is inimical to the interests of

[17] Ibid, para 106
[18] [2011] EWHC 375 (Admin)

> children: see *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2AC 246."[19]

In other words, if you do not agree with homosexual conduct then you cannot foster children in the United Kingdom. Christian minded people and also many Jamaican couples living in the United Kingdom who based on religious beliefs are unwilling to endorse homosexual conduct will not be able to serve as foster parents. Is this another type of discrimination?

It is arguable that Lord Justice Munby seemed to think so, as he said that under the law what he termed as "indirect discrimination ' was justifiable. To quote from his judgement:

> "It is not conceded on behalf of the defendant and the Commission that a requirement that a foster carer comply with the National Minimum Standards for Fostering, in particular with Standard 7, and with any guidance or equal opportunities policy which requires respect and positive attitudes to be demonstrated towards homosexuality and same-sex relationships, is indirectly discriminatory against persons holding certain religious beliefs. This is because under the existing case law (see *Eweida v British Airways* [2010] IRLR 322) it is necessary to show "particular disadvantage" or "group" disadvantage to Christians or the particular denomination of Christianity and it is not conceded this has been shown here. However, on the assumption that such a requirement or requirements are indirectly discriminatory, it is clear on the authorities that compliance with anti-discrimination legislation prohibiting sexual orientation discrimination and the defendant's equal opportunities policies to the same effect, together with the need to ensure the non-discriminatory service provisions which is the subject of the section 19 duty will amount to justification: see, again, *Ladele* and *McFarlane*. (emphasis mine)"[20]

Again, 'LGBT rights' subjugated religious rights with an unjust and undesirable result for not only the persons involved, but society at large.

There are a number of cases in the United States where business owners including bakers, florists t-shirt makers have been fined or punished for refusing to comply with requests made by same sex couples for services in connection with same sex ceremonies. The case of Melissa and Aaron Klein is possibly the most well known as they were fined US $135,000 for refusing to bake a cake for a same sex "wedding" ceremony[21].

[19] Ibid, para 102
[20] Ibid, para 101
[21] *See Bureau of Labour and Industries.* Retrieved from https://www.oregon.gov/boli/SiteAssets/pages/press/Sweet%20Cakes%20FO.pdf

Elane Photography, LLC v. Willock[22]

A case which is less known is that involving the Huguenins of New Mexico, USA who operated a business under the name "Elane Photography". The Court of Appeal in August 2013, upheld the decision of the New Mexico Human Rights Commission that their refusal to photograph a same-sex commitment ceremony was in breach of the New Mexico Human Rights Act*.[23] The refusal to photograph a same-sex commitment ceremony was held to be discrimination based on "sexual orientation". Justice Bosson ruled that the Huguenins now are:

> "Compelled by law to compromise the very religious beliefs that inspire their lives. Though the rule of law requires it, the result is sobering…The Huguenins are free to think, to say, to believe, as they wish… but there is a price , one that we all have to pay somewhere in our civic life…. it is the price of citizenship"[24].

The ethos of the Judgement was a similar line of reasoning to that of LJ Munby in the case involving Eunice and Owen Johns. One finds it difficult to reason that this outcome is what Sir William Blackstone, had in mind when he penned his thoughts on the nature of "the rights of man". He stated in part that:

> "The absolute rights of man… are usually summed up in one general appellation and denominated the natural liberty of mankind. This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature; being a right inherent in us by birth and one of the gifts of God… But every man, when he enters society, gives up a part of his natural liberty as the price of so valuable a purchase."[25]

Lee v McArthur & Ors [26]

Lord Gifford has referred to the case in which he participated as counsel for the applicant being the case of *Dudgeon v United Kingdom*[27] in which the European Court of Human Rights held that Northern Ireland's 'laws against buggery and gross indecency' violated the European

[22] 309 P. 3d 53 - NM: Supreme Court 2013 Retrieved from http://caselaw.findlaw.com/nm-supreme-court/1642684.html

[23] * The following comment was noted at this point in the oral presentation: "Incidentally, in light of these cases I must express concern about the plan to introduce a Human Rights Institute in Jamaica, I don't know how many of us are aware that it is possible for the New York Human Rights Commission to fine employers, landlords, and business owners for violation of the Law by "intentionally failing to use an individual's preferred name, pronoun or title" - *See* Legal Enforcement Guidance on the Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23) retrieved from https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/GenderID_InterpretiveGuide_2015.pdf. These violations could incur fines of $125,000 and up to $250,000 if found to be deliberate. Professor Jordan Peterson, University of Toronto, has been protesting this requirement for politically correct speech in Canada"- *See* http://www.bbc.com/news/world-us-canada-37875695

[24] Ibid, para 91 , para 92

[25] William Blackstone (Ed.). (1830).*Commentaries on the Laws of England* (Vol.1), p.125

[26] [2016] NICA 39

[27] Application no. 7525/76, 22 October 1981

Convention on Human Rights. Years later in 2006, The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 was passed, followed in 2007 by the Sexual Orientation Regulations passed pursuant to the Equality Act. These Regulations prohibit discrimination in the provision of goods, facilities, services, education and public functions on the ground of sexual orientation.

The McArthur family is a Christian family who own Ashers Baking Co. Ltd. Gareth Lee, a homosexual man who wanted to mark, 'the end of Northern Ireland anti-homophobia week and to mark the political momentum towards legislation for same-sex marriage' ordered a cake from Ashers to bear the slogan, "Support Gay Marriage" with a picture of the Sesame Street puppets Bert and Ernie. Initially, the order was accepted but Mr. Lee was subsequently telephoned by Mrs. McArthur and informed that his "order could not be filled as they are a Christian business…She apologized and arranged for a refund."

Before Belfast County Court, in *Lee v McArthur & Ors*[28] Mr. Lee claimed that he had been discriminated against contrary to the provisions of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 and/or the Fair Employment and Treatment (Northern Ireland) Order 1998. District Judge Brownlie found for Mr Lee, concluding that Ashers Baking was liable under the 2006 Regulations for the unlawful acts of its two directors, Mr. and Mrs. McArthur, and that they, in turn, were liable under Regulation 24 for aiding Ashers Baking to act unlawfully. As a result of their actions, the company had discriminated unlawfully against Mr. Lee. They appealed and the matter came before the Court of Appeal in Belfast.

The Court of Appeal held that:

> "...The reason that the order was cancelled was that the appellants would not provide a cake with a message supporting a right to marry for those of a particular sexual orientation…This was a case of association with the gay and bisexual community and the protected personal characteristic was the sexual orientation of that community. Accordingly this was direct discrimination."[29]

This type of outcome was not entirely unforeseeable as in *Dudgeon***,** Justice Zekia had expressed concern in a dissenting judgement about the impact of the decision on the religious and moral beliefs of others. Justice Zekia held in part that:

> "While considering the respect due to the private life of a homosexual under Article 8 § 1 (art. 8-1), we must not forget and must bear in mind that respect is also due to the people holding the opposite view, especially in a country populated by a great majority of such people who are completely against unnatural immoral practices. Surely the majority in a democratic society are also entitled under Articles 8, 9 and 10 (art. 8, art. 9, art. 10) of the Convention and

[28] [2016] NICA 39

[29] Ibid, para 58

> Article 2 of Protocol No. 1 (P1-2) to respect for their religious and moral beliefs and entitled to teach and bring up their children consistently with their own religious and philosophical convictions."[30]

The Ashers were ordered to pay £500 as compensation. Not unlike the Huguenins, the Ashers are now, "compelled by law to compromise the very religious beliefs that inspire their lives". When one recalls *Dudgeon,* the consequential effect on case of the Ashers should also be brought to mind.

The cases of Ladele v London Borough of Islington[31]*, McFarlane v Relate Avon Ltd*[32] and *Bull v. Hall*[33] are also relevant to this discourse and one will find a similar and unfortunate trend. There are many other cases where people have suffered for having taken a stance based on their conscience or for just exercising what they thought was their freedom of expression. Not all of these cases have been litigated. The case of Brendan Eich comes to mind, CEO and co-founder of Mozilla Firefox who was, "forced to resign his position because six years earlier he had contributed $1,000 to support California's Proposition 8 campaign preserving marriage in that state as the union of one man and one woman"[34]. Eich was branded as 'unfit to serve' as the CEO of Mozilla, a company he had co-founded. In March 2014, 71 years old Bryan Barkley did a solo protest at Wakefield Cathedral, England he held a placard which read, "No same sex marriage." Mr. Barkley had been a volunteer with the Red Cross for almost 2 decades. "He was later summoned to a meeting to be told he was no longer welcome at the Red Cross because his actions were deemed to go against its values."[35]

4. Law Reform by Judicial Activism

Lord Gifford has stated:

> "I believe that the scale tips heavily in favour of recognizing the rights of the minority and not leaving it to Parliament. In principle, the decisions in the cases of **Lawrence, Dudgeon, National Coalition, Orozco, Fourie,** and **Obergefell** should be followed in the Caribbean."[36]

The words of the late Professor Carnegie in commenting on the *Roe v Wade* decision is relevant here. He stated, "this is law reform by the non-democratic mechanism of judicial review rather

---

[30] Application no. 7525/76, 22 October 1981. p. 24

[31] [2009] EWCA Civ 1357

[32] [2010] EWCA Civ 771

[33] [2013] UKSC 73

[34] Brown, Brian (2014, July 3) Is JP Morgan Chase the next Mozilla? National Organization for Marriage. Retrieved from http://www.nomblog.com/39442/

[35] Bingham, John (2014, November 13) Pressure mounts on Red Cross over elderly volunteer axed after gay marriage protest. The Telegraph. Retrieved from http://www.telegraph.co.uk/news/politics/11229306/Pressure-mounts-on-Red-Cross-over-elderly-volunteer-axed-after-gay-marriage-protest.html

[36] Lord Gifford, QC (2016) Redefining Marriage - US Supreme Court and Other Related LGBT Decisions

than by the result of deliberation by democratically elected legislators. Judges are there to interpret and apply the law not to make the law. As the late Judge Scalia stated, there can be "no social transformation without representation."[37]

We cannot think of *Obergefell* without remembering that there was a county clerk who ended up in prison because as a matter of principle she refused to sign same sex marriage licenses. We do not need to 'guess and spell' what the outcome will be for persons living in Jamaica, were the concept of 'LGBT(QI) rights' to be accepted. We only have to cast our gazes elsewhere and look to the past to see our future. It is clear that LGBT(QI) rights are at the very least a threat to some of the rights which we have held dear being freedom of expression, freedom of conscience and religious liberty.

One could ask how could same-sex relationships be considered to be equal with opposite-sex relationships? United States Supreme Court Justice Kennedy himself stated quite interestingly in *United States v Windsor, Executor of the Estate of Spyer, et al* that this is a relationship that the State "sought to dignify"[38]. The only way that same-sex and opposite-sex relationships can be made equal is by legislation whether of the judicial type as happened in *Obergefell*, or by the proper route of Parliament. However, legislation can only demand equal treatment of these relationships, it cannot cure the innate differences.

A key difference between same-sex and opposite-sex relationships is that the former are **all** incapable of procreation by natural means. The incapability of opposite-sex relationships to procreate is an anomaly rather than a norm. Another difference is related to outcome. Truly all persons are created equal but not all behaviours are equal in outcomes.

The Centre for Disease Control (CDC) published a study which states in part as follows:

> "The sexual health of gay, bi-sexual and other men who have sex with men (MSM) in the United States is not getting better despite considerable social, political and human rights advances. Instead of improving, HIV and sexually transmitted infections (STIs) remain disproportionately high among MSM and have been increasing for almost two decades. The disproportionate and worsening burden of HIV and other STIs among MSM requires an urgent reassessment of what we have been doing as a nation to reduce these infections, how we have been doing it and the scale of our efforts."[39]

The Wolfenden Report[40] which has been widely acclaimed for dealing with the question of decriminalisation of homosexual conduct, also examined the possibility of decriminalisation of

[37] Obergefell v Hodges et al, Scalia, J.dissenting, p. 6

[38] 699 F. 3d 169, affirmed. Retrieved from Legal Information institute https://www.law.cornell.edu/supremecourt/text/12-307

[39] AIDS Behav. 2011 Apr;15 Suppl 1:S9-17. doi: 10.1007/s10461-011-9901-6.

[40] *See* Br J Vener Dis 1957 33: 205, doi: 10.1136/sti.33.4.205 Downloaded from http://sti.bmj.com/ December 2016 - Published by group.bmj.com

prostitution.[41] *Interestingly, on this matter of prostitution the recommendation was for stiffer fines, one consideration was venereal diseases. [42]*One must then consider whether if at that time the information regarding HIV/AIDS was available to the Wolfenden committee whether they would still have gone ahead with their recommendation regarding homosexual conduct.

Perhaps in this debate it would be wise to be guided by Sir William Blackstone who stated, "The control of our private inclinations, in one or two particular points will conduce to preserve our general freedom in others of more importance."[43]

As this discussion ends, one must ask the question, has the tree of liberty produced a gormandizer which if left to flourish will pull all the sap away from the tree? The following questions should also be asked: How did we get to this point where deviance has been de-stigmatized; where law, medicine and politics have been seduced in order to dignify deviant behaviour as a "right'; where media has also been seduced in order to make deviance appear desirable?

Part 2

In his presentation, Lord Anthony Gifford stated that the US Supreme Court decision Obergefell v Hodges "… then looked at the history of attitudes in the US towards the rights of gays and lesbians. It noted that while for much of the 20th century homosexuality was treated as an illness, in recent years psychiatrists and others have recognized that sexual orientation is "both a normal expression of human sexuality and immutable".[44]

If one indeed researches the history concerning attitudes in the US towards gays and lesbians, particularly the designation of homosexuality within psychiatry, and subsequent decisions by US courts and legislatures over the 20th century, it will become quite clear that both the claim that homosexual orientation is normal and the US Supreme Court's decision to dismantle the most fundamental child productive and protective social institution- marriage, rest on the basis of fraudulent data disguised as scientific fact. The legal implications of this have been devastating.

The modern legal history takes us back to 1948 and 1953 with the publication of *Sexual Behaviour in the Human Male* (1948) by Alfred Kinsey, Wardell Pomeroy, Clyde Martin and *Sexual Behaviour in the Human Female* (1953) by Alfred Kinsey, Paul Gebhard, Wardell Pomeroy & Clyde Martin. The books were collectively called the Kinsey Reports.

---

[41] ***Correction:** Prostitution as such was not criminal in England although it was actively discouraged by law in a number of ways

[42] ***Correction:** Venereal disease was strictly speaking not a direct factor in the matter of the increased penalties however it was in fact a public health concern to the Committee.

[43] William Blackstone (Ed.). (1830). *Commentaries on the Laws of England* (Vol.1), p 126

[44] Lord Anthony Gifford, Redefining Marriage - US Supreme Court and Other Related LGBT Decisions, October 2016, p. 3

The lead author Dr Kinsey was an American zoologist specializing in gall wasps, however, by these publications on human sexuality and their subsequent impact on law, medicine, education and culture, Dr Kinsey came to be called the 'Father of the Sexual Revolution'. In these books, the authors claimed that:

- Nearly 95% of the American male population engaged in deviant sexual activities- such as extra marital, pre-marital affairs, homosexuality, pedophilia, bestiality.
- More than 50% of American women commit fornication, adultery, and had abortions and were not harmed by rape.
- Children are sexual from birth, they benefit from sex with adults, even incest; they need explicit sex education and should be taught masturbation.
- That everyone was situated at a point on a continuum between exclusive homosexuality or exclusive heterosexuality, but this was not fixed and could change over the course of one's life, The continuum was known as the 'Kinsey scale'.[45]

According to Dr Kinsey:

> "There is no scientific justification for the definitions of sex perversions which are customarily made under the law. Almost without exception the several examples of behaviour which are known as perversions, are basic mammalian patterns. In non-inhibited societies and in non-inhibited portions of our own society, the so-called sex perversions are a regular part of the behaviour pattern and they probably would be so throughout the population if there were no tradition to the contrary. This statement applies to such things as mouth-genital contacts, anal coital acts, homosexuality, group activities, relations between individuals of diverse age and animal intercourse. Our sex laws are so far from the normal biologic picture and so remote from the actual behaviour of the population...that it is physically impossible to enforce them in any but the most capricious fashion. "[46]

These statements and claims in the Report were shocking and revolutionary. In many of the States in the USA of 1948, the only legal sexual intercourse was heterosexual marital intercourse. All else was criminalized- fornication, adultery, seduction, access to contraceptives, abortion, incest, pedophilia, buggery, bestiality, among others.

Dr Kinsey's conclusions proposed that as most of the population's sexual choices were actually breaking the law, the only two options were to enforcing the laws and put everyone in jail, or change the law. The law was forbidding activities responding to wide-spread human needs.

The publications were presented as the first "scientific" studies of human sexual behavior. Dr Kinsey and his team were regarded as upstanding moral citizens; the research was funded by the

[45] *Stolen Honor, Stolen Innocence: How America was betrayed by the lies and sexual crime of a mad 'scientist'*, 2013,Judith Reisman, Ph.D

[46] Biography of Dr Alfred Kinsey James Jones, *Alfred Kinsey: a public/private life*, 1997, p.619, cited in Stolen Honor page 245-246

Rockefeller Foundation, hosted at the prestigious University of Indiana and celebrated by other Professors at Ivy League institutions. With significant media attention, Dr Kinsey held many lectures across the USA, to lawyers, judges, Congress, doctors, academics, media, social workers, psychologists, penologists, sociologists.

An advocate for criminal law reform Judge Morris Ploscowe wrote that, based on Dr Kinsey's publications:

> "E]nforcement of the prohibitions of sex legislation [are a] failure, our sex crime legislation is completely out of touch with the realities of [life]. [T]he law attempts to forbid an activity which responds to a wide human need.... [N]o bar association, law school journal, or lawyers' committee can consider laws... on sexual matters without reference to the Kinsey study. Kinsey's first volume ended an era.... [It is] the single greatest contribution of science to the ... law in my lifetime…."[47]

Judge Ploscowe would then become lead author of the law reform committee established by the American Law Institute in collaboration with the American Bar Association to produce a comprehensive "science-based" criminal law reform known as the American Law Institute's (ALI's) Model Penal Code (MPC) of 1955. The ALI task force submitted a recommendation to the ALI Council in 1953-54. The recommendations called for the repeal of laws or weakening penalties against multiple sex crimes. 52 laws were amended either to repeal or to weaken penalties.[48]

Princeton historian, David Allyn has written that, "By recommending the legalization of fornication, cohabitation, adultery, sodomy, etc., the MPC transformed what were known as "Public Morals" or "vice" laws into private sexual behaviors between "consenting" individuals. The new freedom, "Privacy," would allow one to be left alone to pursue one's one sexual "tastes..."[49]

It is to be noted that Dr Kinsey served as the scientific consultant for State commissions revising their sex laws, for example the revision of sex laws in Illinois, New Jersey, New York, Delaware, Wyoming, and Oregon. Various States Law Journals also cite the reliance on the Kinsey publications to advocate 'legalizing prostitution (Maine,1976); harmlessness of boy prostitution (Duke University, 1960); lightening sex crime penalties (Ohio, 1959); legalizing homosexuality (South Dakota, 1968); the need for "beneficent concern for pedophiles" (Georgia, 1969); and for general sex law revisions (Oklahoma, 1970). The journals commonly cited the "fact" that 95% of males are sex offenders (Oregon, 1972); that young children are seducers

---

[47] *Sexual Patterns and the Law, SEX HABITS OF AMERICAN MEN* , page 126 (Albert Deutsch, ed., 1948) cited in cited in *NEARLY 60 YEARS AFTER HIS DEATH, ALFRED KINSEY'S PANSEXUAL WORLDVIEW TAKES ROOT IN MARRIAGE DECISIONS* , Judith Reisman,Ph.D and Mary E. McAlistair, Esq. in Thurgood Marshall School of Law, Journal on Gender, Race, and Justice, Volume VI, Issue II, 2016, page 44

[48] *Stolen Honor*, pages 195-196

[49] American Legislative Exchange Council (ALEC), *Restoring Legal Protections for Women And Children: A Historical Analysis of The States Criminal Codes*, 2004, pge. 10

(Missouri, 1973, Tennessee, 1965);and that judicial bias is the cause of "severe condemnation of sex offenders" (Pennsylvania,1952).[50]

Yet, there was scholarly and public opposition and criticism of Dr Kinsey's works. Among the defects, his statistical methods were seriously criticized by the American Statistical Association and other scholarly reviewers. [51] His "sample populations" of research subjects in the Male report was actually drastically less than presented - the originally cited 18,000 interviews with a range of American men was actually 5,300 white males. Of these there were about 1,400 convicted sex offenders, about 319 non-sex offender prisoners, 200 sexual psychopath patients, more than 450 homosexuals and about 300 people from what Kinsey called "the underworld," *i.e.,* those who derive significant income from illicit activities"[52]

His research methodology was highly questionable as biographer James Jones writes that Dr Kinsey's staff and wife were required to engage in prohibited sexual acts with each other, male and female. Many of these encounters were filmed. [53] Dr Kinsey himself was a bisexual.[54]

The most disturbing revelation was Tables 31-34 in the Report *Sexual Behaviour in the Human Male*. The tables listed subjects aged 2 months to 14 years, and the time it took for them to reach 'orgasms'. A 4 year old child was recorded as having 26 orgasms over a 24 hour period. This was in fact data collected by pedophiles who documented their sexual abuse of children. Between 317 and 2,035 infants and children were abused by Dr Fritz von Balluseck, a convicted Nazi pedophile in Germany, and a US pedophile, Rex King, who raped 800 children. Children were held down and manually or orally stimulated and penetrated to 'orgasm'. Kinsey described 'orgasms' as terror, screams, violent convulsions, fainting, fighting off the adult rapist, collapsing, loss of colour, abundance of tears, sobbing excruciating pain and screams, if movement was continued.[55] The babies were timed with a stop watch for the speed of reaction.

Even though the Tables are openly published in Dr Kinsey's books, which are still available today, no-one raised an alarm until the 1980's when it was fully exposed by Dr Judith Reisman, an expert on Science Fraud, Human Sexuality, Child Sexual Abuse, and Mass Media Effects.

The British medical journal, The Lancet wrote " [T]he important allegations from the scientific viewpoint are imperfections in the (Kinsey) sample and unethical, possibly criminal, observations on children… Dr. Judith A. Reisman and her colleagues demolish the foundations of the two (Kinsey) reports. " [56]

---

[50] Ibid

[51] Congressional testimony of Dr. Albert Hobbs, University of Pennsylvania sociologist. Cited in in Rene Wormser, Ed, Foundations, 1993. Cited in *Stolen Honor*, page 54.

[52] *Stolen Honor* pages. 91-92, citing Kinsey, et. al., SEXUAL BEHAVIOR IN THE HUMAN MALE, *supra* note 6 at pages 13-16, 78, 176.

[53] *Stolen Honor,* page 75

[54] *Alfred C Kinsey,* James Jones, p.607 cited in *Stolen Honor* , pages 77-78

[55] *Stolon Honor* , pages 146- 148, citing SEXUAL BEHAVIOR IN THE HUMAN MALE, pages 160-161

[56] The Lancet, Vol. 337, March 2, 1991, p. 547

Professor of Constitutional law Dr. Charles Rice of Notre Dame concluded that Alfred Kinsey's research was "…contrived, ideologically driven and misleading. Any judge, legislator or other public official who gives credence to that research is guilty of malpractice and dereliction of duty."[57]

Kinsey's arguments and ideology have been incorporated into critical institutions of society.

For example, the Kinsey Institute formed the Sexuality Information and Education Council of the United States (SIECUS) in 1964. SIECUS developed the Comprehensive Sexuality Education curriculum which endorses and promotes early sexual activity, promiscuity, multiple partners, abortion, sexual exploration of diverse sexual orientations and gender identities, homosexuality and high risk sexual behaviours,. This is the controversial curriculum that was introduced into the sex and sexuality component of Health and Family Life Education (HFLE) curriculum for Grades 8 and 9 in Jamaica in 2012 and taught in 6 Children's Homes by Jamaicans for Justice, FAMPLAN and CVCC in 2014. It is also the influence for a 7 series primary level HFLE textbook currently available in bookstores in Jamaica.

In the field of medicine, a watershed moment came in 1973 with the decision by the American Psychiatric Association (APA) to remove homosexuality from being listed as a mental disorder in the DSM. The Diagnostic Statistical Manual (DSM) is used by the medical profession to uniformly define pathologies in both the clinic and the courtroom. The task force that proposed the removal of the disorder relied heavily on Dr Kinsey's publications. In fact, among the psychiatrists on the committee proposing this was Dr Paul Gebhardt, who co-authored *Sexual Behaviour in the Human Female*.[58]

Although the APA had a membership of 25,000 psychiatrists eligible to vote, only a quarter did. Psychiatrists had faced threatening letters and phone calls, heckling and disrupted meetings and threatened terrorist action by homosexual lobbyists.

Dr Charles Soccarides, Psychotherapist and eye-witness to the APA decision wrote a detailed history of what happened and his own efforts to preserve veritable science as the basis of psychiatry. "The APA used Kinsey's "data" to argue "exclusive homosexuality was a normal part of the human condition and homosexuality did not meet the requirements of a psychiatric disorder because the "data" proved it does not cause "subjective distress or is regularly associated with some generalized impairment in social effectiveness or functioning." [59]

Dr Kinsey's influence went overseas to Europe, including the United Kingdom. Dr Kinsey met with among others, the Departmental Committee commissioned by the UK Parliament to review homosexual offences and prostitution.[60] The Committee was chaired by Lord Wolfenden. The

---

[57] ALEC, F.46, page 10

[58] *Sexual Politics And Scientific Logic: The Issue Of Homosexuality*, Charles W. Soccarides, http://www.geocities.ws/kidhistory/homopolo.htm . Last accessed December 5, 2016

[59] *The Homosexual Decision-A Background Paper,"* Psychiatric News, pp 11-12, Robert F. Spitzer cited in Soocarides, ibid

[60] *Kinsey, a biography*, p.195, 1971, Cornelia V. Christenson cited in *Stolen Honor*, page 279

consequent 1957 Report of the Wolfenden Committee recommended decriminalizing buggery between consenting adults. This Report cited Dr Kinsey and his continuum scale in concluding that some persons have a homosexual propensity 'that varied quantitatively'. The gradations could exist from exclusively homosexual to exclusively heterosexual.[61] The Wolfenden Committee held the view that the conditions of heterosexuality and homosexuality were not absolute conditions and immutable but could "coexist in an individual, and the degree to which they co-exist in an individual can vary during different epochs in his or her life."[62]

In recommending decriminalization, the Committee stated that "there must remain a realm of private morality and immorality which is in brief and crude terms, not the law's business."[63] Not all members of the Committee agreed with this recommendation. A strong dissenting opinion was recorded by Mr James Adair, who inter alia lamented the 'marked degree of sentimentalism' displayed by Committee members obscuring "the interests of the public in general."[64] I have read the Hansard records of the 10 years of debate (1957-1967) in the UK Parliament House of Lords and House of Commons on the Wolfenden report and subsequent Sexual Offences Bill to decriminalize buggery and I have not found any comment stating or suggesting that the behaviour was immutable or normal.[65] Neither from those defending retaining the buggery law not those against.

The Wolfenden Report was also referred to by the European Court of Human Rights in Dudgeon v UK[66]. It specifically cited Wolfenden's definition of 'gross indecency' and[67] Wolfenden's commentary on the role of the criminal law "to preserve public order and decency [and] to protect the citizen from what is offensive or injurious"[68] In this regard, the Court agreed that "some degree of regulation of male homosexual conduct, as indeed of other forms of sexual conduct, by means of the criminal law can be justified as 'necessary in a democratic society."[69]

The Court in Dudgeon advanced a similar reasoning as that of the US' Model Penal Code in deeming homosexual tendencies as normal. For example, the Court avers that "the very existence of this legislation continuously and directly affects his private life … in prohibited sexual acts to

---

[61] Report of the Departmental Committee on Homosexual Offences and Prostitution (the Wolfenden Report) 1957, paragraphs 21 and 22

[62] Ibid, para 193

[63] Ibid Para.66

[64] The Wolfenden Report, Reservation by Mr Adair, paragraph 5

[65] For example, Mr. W.F. Deedes is reported in support of repealing the buggery but admitted that the removal of the criminal designation on homosexuality and its attendant stigma will eventually lead to it being considered normal. This would enable homosexuals onto a 'campaign of self-justification' to prove that homosexuality has 'its virtues'. UK Houses of Parliament, Hansard, paragraph 1465 Houses of Common 29 June 1960.
Dr. Reginald Bennett : … if we were to make indulgences in private not offences we would be permitting the spread of an activity which would inevitably lead to a greater evil in proselytising adolescents… A big part at least in the influencing and the curing of these young men and restoring them to normal life has been, so far as we can ascertain, the fear of the sanction of the law…." UK Houses of Parliament, Hansard, Para. 447, Houses of Common, 26 November 1958

[66] Dudgeon v. United Kingdom, Series A, No. 45, European Court of Human Rights, 23 September 1981

[67] Ibid, para.14,

[68] Ibid, para.49

[69] Ibid

which he is disposed by reason of his homosexual tendencies" [70] Also that "… justifications …for retaining the law in force unamended are outweighed by the detrimental effects … on the life of a person of homosexual orientation like the applicant.[71]

The Wolfenden Report and its recommendations to decriminalize buggery were referred to by the Chief Justice of Belize in his ruling in the case of Caleb Orozco v Attorney General of Belize.[72]

The US Supreme Court 2003 decision of Lawrence v Texas that repealed all remaining State sodomy laws, brings these sources together by citing the ALI- MPC, the Wolfenden Report and the Dudgeon judgment. In countering Chief Justice Burger who delivered the majority opinion an earlier ruling Bowers v Hardwick which upheld the Texas sodomy law, Justice Kennedy commented that American "laws and traditions in the past half century are of most relevance here. These references show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.[73]

He then cites the ALI-MPC and its reliance in American case law on human sexuality.

> "In 1955 the American Law Institute promulgated the Model Penal Code and made clear that it did not recommend or provide for criminal penalties for consensual sexual relations conducted in private. ALI, Model Penal Code §213.2, Comment 2, p. 372 (1980).
>
> It justified its decision on three grounds: (1) The prohibitions undermined respect for the law by penalizing conduct many people engaged in; (2) the statutes regulated private conduct not harmful to others; and (3) the laws were arbitrarily enforced and thus invited the danger of blackmail. ALI, Model Penal Code, Commentary 277–280 (Tent. Draft No. 4, 1955). In 1961 Illinois changed its laws to conform to the Model Penal Code. Other States soon followed. Brief for Cato Institute as Amicus Curiae."

Justice Kennedy refers to both the Wolfenden Recommendations and the decision of Dudgeon as important authorities illustrating changes in legal perspectives on homosexual conduct within Western civilization.[74] Justice Kennedy refers to voices in the USA giving 'substantial and continuing, disapproving of' [the] reasoning 'of the Bowers v Hardwick decision. One of the cited voices is Judge Richard Posner. In his article, Sex and Reason (1992), Judge Posner wrote

[70] Ibid, para.41
[71] Ibid , para.60
[72] CLAIM NO. 668 of 2010, para.12
[73] Lawrence v Texas, 539 U.S. 558, page 11
[74] Ibid p.12

"[t]he two Kinsey reports remain the high-water mark of descriptive sexology" and Kinsey is the "central figure" in the "scholarly science" of sexology.[75]

Finally, the 2015 majority opinion of the US Supreme Court ruling in Obergefell v Hodges cites the APA 1974 decision[76] and the Court's own ruling in Lawrence v Texas among other authorities in holding that same sex marriages should be legalized across the nation.

To recap then:

1. The American Law Institute (ALI) Model Penal Code (MPC) 1955 drew from Dr Kinsey's ideologies, fraudulent research and conclusions,
2. The American Psychiatric Association (APA) 1974 decision drew from Dr Kinsey's ideologies, fraudulent research and conclusions,
3. The Wolfenden Report and Recommendations cited Dr Kinsey's fraudulent research and conclusions,
4. Dudgeon cited the Wolfenden Report,
5. Lawrence v Texas cited ALI-MPC, Wolfenden and Dudgeon ,
6. Obergefell v Hodges cited the APA decision and Lawrence v Texas.

The common 'scientific' link ? The works of Dr Alfred Kinsey.

It must be recalled that the British medical journal, the Lancet noted "[T]he important allegations from the scientific viewpoint are imperfections in the (Kinsey) sample and unethical, possibly criminal, observations on children." [77]

Lord Anthony Gifford has stated that the Courts are called upon "to make a judgment, or strike a balance, as between the rights of the individual and the legitimate needs of a democratic society. The essence of the courts' role is similar in both US and Caribbean jurisdictions."

To ensure justice, the courts, however, must closely examine the arguments for change and the authorities that are being used to justify sex law changes. These changes will have far-reaching effect in law, medicine, education, culture and society and the well-being of all our children.

In response to the oft-repeated claim that homosexuality is immutable, psychiatrists and researchers at the Johns Hopkins University in Boston published in September 2016, a review of 200 peer-reviewed studies on Sexuality and Gender. They concluded that there is no scientific evidence to support the claim of immutability.[78]

---

[75] Richard A. Posner, *SEX AND REASON*, 19 (Harvard Univ. Press, 1992) cited in *NEARLY 60 YEARS AFTER HIS DEATH, ALFRED KINSEY'S PANSEXUAL WORLDVIEW TAKES ROOT IN MARRIAGE DECISIONS* , Judith Reisman,Ph.D and Mary E. McAlistair, Esq. in Thurgood Marshall School of Law, Journal on Gender, Race, and Justice, Volume VI, Issue II, 2016

[76] Lawrence v Texas, FN. 70, page 8

[77] FN.53

[78] The New Atlantis Journal, Special Report : *Sexuality and Gender- Findings from the Biological, Psychological, and Social Sciences*, Fall 2016, Lawrence S. Mayer, Paul R. McHugh, http://www.thenewatlantis.com/publications/executive-summary-sexuality-and-gender. Last accessed December 9, 2016.

Dr Lisa Diamond, co-editor in chief of the American Psychological Association's 2014 *Handbook on Sexuality and Psychology* and who is openly lesbian, has stated that "Individuals with nonexclusive patterns of attraction are indisputably the 'norm' and those with exclusive same-sex attractions are the exception….individuals with same sex attraction report predominant – but not exclusive- other sex attraction." [79] She has called on other LGBT persons to stop promoting the myth that they were' born that way'[80]

From the public health dimension, the Johns Hopkins report and APA studies indicate the close links between the incidence of homosexuality and childhood sexual abuse.[81] Johns Hopkins records that homosexuals are 200-300% more likely to have been sexually abused as children than their heterosexual counterparts.[82]

The public health statistics of the outcomes of engaging in homosexual behaviours challenge the claim that homosexuality is normal. Dr. Jeffrey Satinover has indicated that Homosexual practitioners lose 25 to 40% of their lifespan. STDs, GC, syphilis, Hepatitis, anal cancer, amoebic bowel disease, herpes, and HIV/AIDS.[83]

A 1999 New Zealand Study found that homosexual, lesbian and bisexual young people were at increased risk for suicidal behavior and ideation, major depression, generalized anxiety disorder, conduct disorder, and tobacco dependence, and multiple disorders compared to the heterosexual subsample.[84]

A 2014 Australian study found that a leading reason for suicide among LGBTI people is stress from romantic partners rather than societal rejection. "LGBT individuals experienced relationship problems more often, with relationship conflict also being more frequent than in non-LGBT cases."[85]

Sachs J in Minister of Home Affairs v Fourie [86] envisioned a "… democratic, universalistic, caring and aspirationally egalitarian society [that] embraces everyone and accepts people for who they are."

Yes, we are to affirm every human being as a person of value made in the image of God the Creator. But do we accept without further question and investigation, demands for changes in

[79] *THE AMERICAN PSYCHOLOGICAL ASSOCIATION SAYS BORN-THAT-WAY-ANDCAN'T-CHANGE IS NOT TRUE OF SEXUAL ORIENTATION AND GENDER IDENTITY*, Laura A. Haynes, Ph.D., California Psychologist. September 9, 2016. http://www.aoiusa.org/american-psychological-association-course-correction-sexual-orientation-and-gender-identity-not-fixed-after-all/ . Last accessed December 9, 2016.

[80] Ibid

[81] Ibid

[82] N 32

[83] Satinover, J. *Homosexuality and the Politics of Truth*. Baker, 1998. Pp. 51, 68-69.

[84] *Is Sexual Orientation Related to Mental Health Problems and Suicidality in Young People?* Fergusson, et al. Arch Gen Psychiatry. 1999; 56:876-880 . https://www.ncbi.nlm.nih.gov/pubmed/10530626. Accessed on December 9, 2016.

[85] Skerrett D, et al. *Suicides among lesbian, gay, bisexual, and transgender populations in Australia: An analysis of the Queensland Suicide Register.* Asia-Pacific Psychiatry, April 2014. **DOI:** 10.1111/appy.12128 . Accessed December 9, 2016: https://www.ncbi.nlm.nih.gov/pubmed/24692051

[86] Case No CCT 60/04, 1st December 2005.

law, policy and redefinition of universal, long-standing social institutions such as marriage and parenting, on the basis of fluid personal preferences?

Sexuality can be a struggle for some but does that mean that what a person feels defines *who* they are? And are we only defined by what we do? Feeling homosexual or lesbian or

transgender does *not* mean *created* homosexual, lesbian or transgender. Feeling and playing with toys like a 6 year old girl when you are a 44 year old man does not mean that in reality you are a 6 year old girl.

Let the aspiration for a democratic, universalistic, caring and egalitarian society AND compassion, be pursued on the basis of objective factual truth and not subjective ideologies. For once normality is redefined to admit any desire, without boundaries, moral or otherwise, it is doubtful that there will be any limitation to what we will <u>all</u> be expected, even required to embrace and accept in our 'aspirationally egalitarian society'.

-End-