

## FRIENDS OF THE SCOTSMAN /

### Referendum vote could mean some big changes

**Dr Calum MacKellar** asks what leaving the EU means for medical ethics

In June 2016 the UK decided to leave the EU. But what does this mean for medical ethics?

Maybe it should be noted, at this stage, that the UK is not leaving the Council of Europe which is a completely different organisation to the EU. It was Sir Winston Churchill (1874 – 1965), who first called for the creation of the Council of Europe, in 1946, in a speech in Switzerland. As a result, the Council was founded in 1949 by the Treaty of London and is now the continent's largest and oldest political organisation grouping together 47 European countries including Iceland, Russia, Armenia and Turkey.

Its ruling council is the committee of foreign ministers of all the member States. It represents about 820 million people and is headquartered in Strasbourg, in north-eastern France with the aim, amongst other things, of (1) protecting human rights, democracy and the rule of law, (2) finding common solutions to the challenges facing European society and (3) consolidating democratic stability in Europe.

The Council of Europe is also responsible for the European Court of Human Rights (ECHR) which interprets the 1953 European Convention on Human Rights that supports international European medical law. In a way, the Council of Europe can be compared to the 'conscience of Europe' while the EU is the 'marketplace of Europe' having developed from the European Economic Community (EEC) which was created by the Treaty of Rome in 1957. But in April 2016 Mrs Theresa May MP complained that: "The ECHR can bind the hands of parliament, adds nothing to our prosperity, makes us less secure by preventing the deportation of dangerous foreign nationals – and does nothing to change the attitudes of governments like Russia's when it comes to human rights".

Adding: "So regardless of the EU referendum, my view is this: if we want to reform human rights laws in this country, it isn't the EU we should leave but the ECHR and the jurisdiction of its court." Of course, the ECHR is not perfect and Mrs May is also right that it does sometimes restrict national legisla-

tion. But it only does so when it believes that the inherent and equal human dignity of individuals in Europe is being threatened. What is striking, however, in Mrs. May's quote is that she does not explain what other moral values would be used if ever the UK was to reform human rights and draft its own moral principles. In a post-Christian society, like the UK, and if inherent human dignity is put aside, there is not much left. Maybe a moral system based on autonomy and the reduction of suffering could be considered. But then the equality of all persons would be a thing of the past since many have very limited autonomy, such as persons with serious mental disorders, and everybody suffers to different extents. Maybe the new UK morality could be reduced to just protecting and defending UK citizens and taking away the rights of those who are not 'like us'. But then it would be difficult to see how the UK could remain a civilised society in the eyes of the world.

The American physician, Leo Alexander (1905–1985), one of the leading examiners during the Nuremberg medical trials which took place just after the Second World War in Germany, emphasised the importance of looking back, with higher insight, and learning from the events of early 20th century. In this he warned that there was a certain kind of inevitable progression when the cost of civilised behaviour was rejected.

Society then becomes a moral and ethical wilderness where the value of some human lives are increasingly considered as being of poor or even substandard - where it is possible to grade the worth of every human life. If the European Convention on Human Rights is to be replaced with something else, it would be useful to know, therefore, what set of new values would be used and why these would be better than inherent and equal human dignity in the protection of the vulnerable such as many sick patients.

● **Dr Calum MacKellar**, Director of Research, Scottish Council on Human Bioethics



# Take courage as we build for our future



Architects are undervalued in our society and should be at the centre of housing policy, argues **Jim Tough**

Housing policy, like education, is a universal aspect of civic life in Scotland; the vast majority of us (notwithstanding the issue of homelessness that still blights society) have a house that we live in, a place where we live.

My own experience has been one of good luck and privilege. For my first eight years, a single end with a shared toilet in Bridgeton. The next decade in a brand new house in the new town of East Kilbride. Then, student life in a series of Edinburgh flats in various degrees of unhygienic communal living, early married life in a rented flat, then a first-bought house – and now in a self-built home in the Scottish Borders. I have been lucky. And I have had direct experience of what I believe is at the heart of the Saltire Society's Housing Design Awards, where that new family home in East Kilbride – front and back garden, inside toilet and bathroom, a safe place to play and a school within walking distance – arguably typifies the standards that the awards seek to encourage.

In the Year of Architecture, Design and Innovation, which coincides with the Saltire Society's 80th anniversary, we have been paying particular attention to the impact and influence of those awards and how they, and the projects themselves, have stood the test of time. This was the topic for a panel discussion at this year's awards ceremony, where broadcaster Kirsty Wark, artist Toby Paterson, and architects Malcolm Fraser and Jude Barber reflected on the state of building design and related issues from their collective experiences as judging panel chairs past

and present. New pamphlets from Malcolm Fraser ("Shoddy Buildings and Fancy Finance") and another from a fellow distinguished Scottish architect Neil Gillespie ("Rebuilding Scotland") have added to the debate. Some key issues emerged that the panel felt merited serious consideration in a national policy context. Finance for public buildings and social housing should be driven by public interest – the recent high-profile issue with PFI and Edinburgh school buildings is not only a matter of money. Good design takes account of light, space and place and this has a direct effect on the health and wellbeing of those using and living in those buildings.

Meanwhile, at a time when recycling is part of the zeitgeist, it seems contradictory to charge VAT on rebuilding and refurbishing older buildings while new builds are zero rated. The importance of design and the role of the architect should be part of the curriculum – the idea of the "starchitect" and celebrity buildings can create an unhelpful impression of the architect as somehow removed from our daily experiences. Good design and good designers are not simply nice to have but are an essential part of any ambition we have to improve health and quality of life. Encouraging children to be confident in their understanding of design is part of this aspiration.

In the words of the introduction to the influential Saltire Society publication "Building Scotland", written by founder members Robert Hurd and Allan Reiach in 1944: "The point of this book is to introduce you to the pleasures and pains of ancient and modern forms of Scottish architec-



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ture: and in doing so indicate that, to be a good citizen in the age of reconstruction, every man, woman and child should learn to use their eyes and be competent to know a good (or bad) building when they see it."

The discussion also found general support for a simpler regulatory environment governing architecture and place making. By all accounts, the understanding architects must have of complex and accruing regulation adds cost, complexity and inhibits a holistic approach to design. A

simpler, more coherent regulatory framework would allow architects and clients to use their time more effectively.

It's exciting to be part of the Year of Architecture, Innovation and Design and it is important to celebrate excellence and achievement in what is such an integral part of our society. It is equally important to be ambitious for the future. To quote from Neil Gillespie's Saltire pamphlet, which refers back to Hurd and Reiach's original 1944 publication: "At

one point in Building Scotland the authors say 'If the ability of the 20th century architect to tackle modern problems is still in doubt turn over and take... courage!'

Some 70 years later the call remains the same: "Take... courage!" To find out more about this year's Housing Design Awards or to get copies of any of the related publications mentioned, please visit our website: [www.saltiresociety.org.uk](http://www.saltiresociety.org.uk)

● **Jim Tough** is executive director of the Saltire Society

↑ **Charging VAT on rebuilding and refurbishing older buildings while new builds are zero rated seems contradictory**



### 'Human rights documents have their origin in Judeo-Christian morality'

Plans for a British Bill of Rights are raising concerns, writes **James Mildred**

In a speech at the Pearce Institute last year, Nicola Sturgeon fired a warning shot across the UK government's bows by criticising its proposals to replace the Human Rights Act and the European Convention on Human Rights (ECHR) with a British Bill of Rights. During the speech, Ms Sturgeon said that: "...if you weaken human rights protections – and this is contrary to how things are sometimes portrayed – you're not striking a blow at judges in Strasbourg, lawyers in London or politicians in Scotland. You're striking instead at the poor, the vulnerable, and the dispossessed."

Well, Amen Nicola! Human Rights documents such as the Universal Declaration of Human Rights and the ECHR have their origin in Judeo-Christian morality. Born after the

tragedy and horror of the Second World War, they were intended to protect against a tyrannous state.

For the sake of removing any question marks over Ms Sturgeon's passion for the ECHR, at the start of her speech she said: "And so today I want to talk about the importance of the protections granted by the European Convention of Human Rights and by the Human Rights Act."

Accept her commitment at face value. It is a narrative she and other politicians often adopt. Given this zeal for the ECHR and our First Minister's staunch determination to defend it against any attempts by the UK Government at Westminster to replace it with a British Bill of Rights, Nicola Sturgeon must be feeling really quite embarrassed right now. After all, not that long ago the UK Supreme Court

ruled that the Scottish Government's flagship Named Person legislation in parts actually breached Article 8 of the ECHR which guarantees the right to a private and family life.

This should not have come as a surprise. The Scottish Government was warned by various legal bodies and charities back in 2013 that the data sharing provisions in the Named Person scheme breached the ECHR. So it's not as if the First Minister and her Ministers were unaware of the legal arguments. They just ignored the warnings.

The First Minister in the Pearce Institute speech extolled the merits of the ECHR: "The European Convention of Human Rights is a considerable achievement of post-war Europe – perhaps the finest achievement of post-war Europe."

She also made it clear that in her view: "The European Convention of Human Rights sets out minimum standards for civilised societies that we should actually be looking to build on."

Funnily enough, ever since then the First Minister has been strangely quiet, making no public comment after the Court's ruling that the data sharing provisions in the Named Person scheme were illegal.

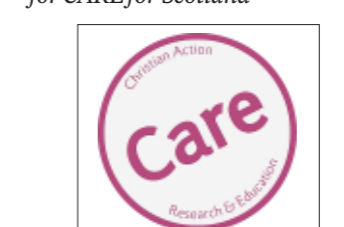
Instead, we had John Swinney on our TV screens to explain what the Scottish Government would do next. Recently, he wrote to MSPs to tell them that the Named Person scheme is on pause while civil servants and Ministers desperately scramble to try and address the issues raised by the Court's ruling.

I can't help but feel that Mr Swinney

is facing mission impossible. The Scottish Liberal Democrats and Scottish Labour have also been hugely supportive of the ECHR and are likewise concerned by the UK government's possible plans to replace it with a British Bill of Rights.

Both parties were enthusiastic supporters of the Named Person scheme, but are now finally expressing reservations.

● **James Mildred** is Press Officer for CARE for Scotland



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