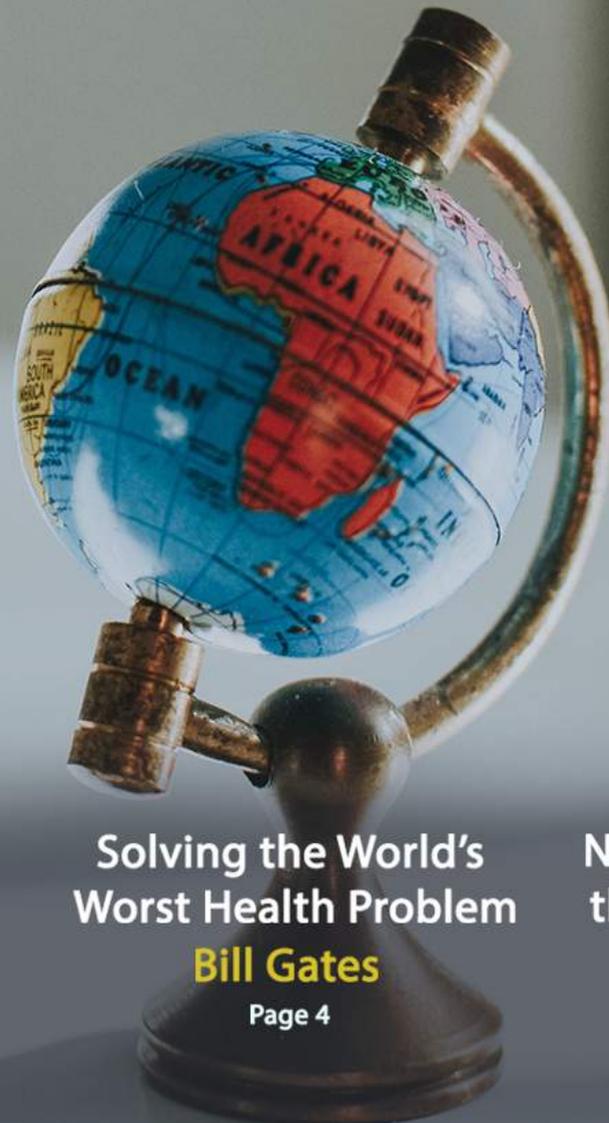




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We are very proud to present the fourth edition of The YLJ magazine.

For our return readers; welcome back. We hope you find this edition just as insightful as its predecessors.

For those of you less clued up on who we are and what we are trying to do, The YLJ is a platform for students, experts and anyone in between to express their views on today's big issues. The idea being, that through accessing the opinions of others our readers can begin to construct and develop their own opinions and engage in the debates and discussions that have previously been exclusively expert-oriented.

If you enjoy flicking through the pages to follow, I would highly recommend visiting TheYLJ.co.uk where you'll find a host of similar writings as well as the online versions of previous editions.

We are a growing community and are always looking to diversify the opinions that we share. If you have something to say let us help you spread the word. Visit our website and see how you can join our team of contributing writers under our 'Submit an Article' page.

I would like to thank our sponsors, everyone who contributed to this edition and all those who regularly write for us.

Kindest Regards

Daniel Braun
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WHY PROBIOTICS COULD HOLD THE KEY TO SOLVING MALNUTRITION – THE WORLD’S WORST HEALTH PROBLEM



Bill Gates: *American business magnate, investor, author, philanthropist, and humanitarian. He is best known as the principal founder of the world’s largest software business: Microsoft Corporation.*

I get asked a lot what I would choose if I could only solve one problem. My answer is always malnutrition – the greatest health inequity in the world. In sub-Saharan Africa, it’s responsible for about half of all childhood deaths.

The UK, through the Department for International Development, has been a longtime leader in the global fight against malnutrition. Since 2015, British aid has reached 60 million people with nutrition services. And thanks to new scientific breakthroughs I believe we will find a way to solve the issue of malnutrition within 20 years.

When most people think of malnutrition, they picture a starving child whose bones are sticking out. That’s wasting, when you have a low weight for your height. Wasting often kills you. But wasting isn’t the only problem that comes from malnutrition.

There’s also stunting. It happens when you have a low height for your weight, and it’s irreversible. Most children who survive wasting end up stunted. If you don’t get enough nutrition during the first three years of life, you don’t develop properly – physically or mentally.

Even if you survive to

adulthood, your chances of dying are much higher, and your quality of life is greatly reduced. Despite all of the amazing progress we’ve made on health, one out of every five children under five today are stunted.

Saving these children isn’t as simple as making sure they have enough food to eat. Stunting can happen even if you’re getting enough calories.

When you eat food, your body takes in energy. That energy is used for lots of things, like powering the brain, fueling physical activity, and supporting your immune system.

For the first couple years of

your life, any energy that's left over is used for growing your brain and your muscles and your bones. Infants need to double their birth weight within six months. But if you don't have energy left over, that growth doesn't happen as it should. You become stunted.

The most obvious reason why is because you don't get enough of the right food over a long period of time. But there are a few less intuitive causes of stunting. A deeper understanding of one of those reasons – the microbiome of the human body – is why I believe we're going to solve malnutrition within 20 years.

All of us rely on our body's

microbiome to function properly. We have more microbial cells living inside our bodies than human cells. These bacteria protect us from infection and are particularly essential to digestion. For example, your body literally cannot break down certain types of plant fibers without an assist from the bacteria in your gut.

We're still in the relatively early stages of research into the microbiome. Over the next 10 to 20 years, we're going to learn more about each individual microbial species and how they work with the food you eat to impact health. That knowledge will allow us to smartly engineer

interventions that "correct" the microbiome when it's out of whack.

You're probably familiar with one of these interventions: probiotics. In the future, we'll be able to create next-generation probiotic pills that contain ideal combinations of bacteria – even ones that are tailored to your specific gut.

Another intervention could be what's called "microbiota directed complementary foods." Think of them as being like fertiliser for the microbiome. Eating them encourages healthy bacteria – the ones that help digest food and protect us from infection – to flourish.



The basic insights we're gaining into how nutrition works will also have huge benefits for the developed world. Figuring out how to improve one might also help us improve the other.

Now that we're understanding more about how the gut gets messed up, we're figuring out how to change it. And that is going to not only help prevent malnutrition and obesity, but lots of other diseases – like asthma, allergies, and some autoimmune diseases, which may be triggered by an unbalanced microbiome.

If we can figure nutrition out – and I believe we will within the next two decades – we'll save millions of lives and improve even more.



If it's not bust, don't Brexit! Destroying the Norway/ Switzerland myth

Karina Robinson: *In addition to CEO of Robinson Hambro, Karina is Chairman of the Lord Mayor's Appeal Advisory Board and Master of the Worshipful Company of International Bankers. She is a Governor of the London School of Economics and sits on its Finance Committee. Karina is an advocate for Diversity & Inclusion in the City of London.*

The UK is tying itself up in knots over Europe. The pro and anti camps come up with ever more outrageous statements: "If we leave, the UK will float in a sea of isolation comparable to North Korea's" vs "The EU costs up to £10m per head of population and is responsible for the death of all puppies."

In truth, the numbers can be added up in all sorts of honest and/or creative ways to make the case for staying in, or leaving. Even those of us who believe that it is key for the UK's future to remain within the club are disgusted by the incompetence, waste and corruption within the EU. In the face of this, it is

difficult to argue against the emotionally-appealing view of an island utopia, as propounded by Brexit supporters.

But let me, as an immigrant and an adopted Brit, who has lived for longer in London than anywhere else and holds this country dear, give it a try:

1. Stop this fantasising about the UK (population 63.5m) being able to access a "favourable deal" a la Norway (population 5m) or Switzerland (population 8m) if Brexit takes place. Both countries have similar agreements with the EU which give them access to the single market. Except they have no say over regulation, which they

have to sign up to, nor a say on product standards. Plus the Swiss do not have unimpeded access to the financial and other services market in the EU, which would be a major blow for the City of London and our services sector as a whole. And, a fact that seems to have been ignored by Brexit proponents, both countries have to abide by free movement of labour rules, meaning they must remain open to EU immigrants.

2. Stop blaming the EU. It is excuse number three in the lexicon of all British governments, as a Minister recently told me. Perhaps it is time to admit publicly that much of the excessive

regulation this country suffers from is due to the British civil service's addiction to gold-plating EU Directives when they turn them into UK legislation.

3. Drop the outmoded argument that the EU is seeking ever closer union and we don't want to be part of it. The reality on the ground is totally different. Schengen is dead. The migrant cum refugee crisis is seeing the re-emergence of barbed wire and border controls. Meanwhile, the former East bloc countries are not going to join the Euro. In fact, a number of them are becoming ever more hostile to the EU itself, including the largest of them, Poland, which is following in the steps of Hungary's autocratic government.

5. Britain must become a leading protagonist in the EU, alongside Germany. That is its rightful role. There are a number of EU meetings at which no UK official bothers turning up because our direct interests are not affected, an unspoken policy that started with Gordon Brown's government, according to top UK civil servants. All meetings are important, not necessarily because of their content, but as a way of cultivating colleagues for future coalitions. A proactive policy will yield results – not least, because the world view of the UK and Germany are much more alike than that of Germany and France, with whom Germany is forced to partner due to the UK's disengagement.

6. On the security front, the more ties that bind us to our allies in a dangerous world, the better. Sir John Scarlett, former head of spy service MI6 recently wrote in *The Times* that "British agencies...collaborate intimately with their European partners and benefit greatly from their capabilities." President Barack Obama has called for the UK to remain in Europe as it gives the US much more confidence about the strength of the transatlantic union, which has made the world a safer and more prosperous place.

Brexit is a siren call. Let us not crash on the rocks, but sail on. And turn up to those meetings, guns blazing and charm turned on.

4. Get over the inescapable loss of sovereignty. Welcome to a world where even giants like the US and China have to balance national interests, those of their allies and the world economy. Global integration is a fact. The world is coalescing into blocs and we want to be included in treaties like the US-EU Transatlantic Trade and Investment Partnership (TTIP).



No point in learning when the Arctic is burning.



Natalie Bennett: Green peer and Former Leader of the Green Party from 2012 to 2016.

“No point in learning when the Arctic is burning.” I saw this sign at the Bristol September Climate Strike, as I joined thousands of people, most of them under 18, to demand action on the climate emergency. It left me feeling two strong emotions. First, I was proud of the signmakers, as I was of the young speakers, organisers and marchers. They’d expected, pre-empted, criticism of the action – “shouldn’t you be in school studying instead?” and wittily, neatly rebutted it. But I was also very sad. For the slogan reflected the sense of despair that I encounter very often around the UK and beyond, among young and old, who fear that we are on an unstoppable path to runaway climate change, and that there isn’t a future for them, or our society. Combatting that despair, pointing out that it is a massive – but doable – task to reverse the course of our economy,

to slash our greenhouse gas emissions and the multiple other damage we’re doing to this fragile planet in the decade the Intergovernmental Panel on Climate Change tells us is the window we have. My hope has three primary foundations.

Our system isn’t working First, there’s the reality of life today – wracked by inequality and insecurity, physically and mentally unhealthy. The epidemic of mental ill health, particularly among the young, is just one sign of how badly we’re doing for people, as well as the planet. Why’s that hopeful? Because the impetus for transformational change comes not just from the science of planetary boundaries, but because we also need a transformation in the way we do things to improve the conditions of the people of this country, and this planet. Had we created a wonderful, flourishing society, demanding change would be a lot harder. Instead, it is easy. For example, by promoting

active transport (walking and cycling) and public transport over polluting, constricting, congesting private cars, we can improve health and wellbeing, strengthen communities, tackle loneliness. (That even fits neatly with other social changes. You can’t – or at least shouldn’t be – update your Facebook status or send a tweet while driving.) By ensuring everyone has a warm, comfortable, affordable-to-heat home, we can cut NHS bills, and carbon emissions, and provide multiple opportunities for independent small businesses for every community. By ending factory farming of animals and promoting fresh fruit and vegetable production, we can improve biodiversity and bioabundance, bolster food security, improve health, and save our antibiotics. By making multinational companies and rich individuals pay their taxes and cover the externalised costs of their products that they now impose on the rest of us, we can level the playing field to allow the



flourishing of small independent businesses that contribute to their communities rather than suck wealth from them, and allow the environmentally response to compete with - and defeat - the polluters.

Neoliberalism is in its last zombie days

The second cause for hope is the clear bankruptcy of the political status quo. The death of centrist politics is often bemoaned, but that simply a product of our broken condition.

Centrism implies leaving things much as they are - and it is obvious to everyone that is not a viable option. Surveys asking if people think their children and grandchildren will have a better life than they have come back overwhelmingly negative: people collectively know our current economical, social and environmental models aren't working.

The status quo - what's been seen as inevitable, mainstream politics, for the last four decades - is neoliberalism, the politics of Margaret Thatcher and Ronald Reagan. It said greed is good and inequality doesn't matter and the system can be propped up with endless growth, meaning even those getting crumbs from the table at which a few feast get a few more crumbs.

Its predecessor, which also lasted about four decades, was a social democratic consensus that accepted state ownership and control of coal mines and car factories and promoted not a living wage but a "family wage", so that a man (as was seen then) could support a wife and a couple of children on the wage of a modest job, buying a home over

a lifetime of that security. It was also built on growth, develops that were needed at least at its start to reconstruct a war-ravaged Europe.

I don't believe in perfect historical cycles, but it is clear that sets of ideas do have their time, and neoliberalism's is over. It is time for a new political philosophy.

Humans can change fast

Thirdly, there's the speed with which human societies and their ways of living can change. When I was in Katowice for the climate talks last year, we'd just heard the shocking verdict from the Intergovernmental Panel on Climate Change that we had 12 years to turn around our society to prevent runaway climate change. A lot of people were suggesting it wasn't possible. But I looked up the history of social media - being old enough to remember BT (before Twitter) - and it was just 12 years old. Now we've got a US president running the country - and much of the world - through it, while Instagram, which is even younger, is having a massive impact on our culture.

And that happened "organically", not under the force of an existential threat.

And anyway, "there is no alternative." It is an old phrase, but in this case a true one.

Not business as usual

But if we're going to set one single criteria about what is going to work, what is going to deliver the scale of change that we need, how to judge suggestions for the way forward, I'd suggest there's a good starting question: "is this business as usual?"

If so, it won't be the answer.

We can see this with plastics. There's now a huge scramble on among businesses to replace non-recyclable plastics with "recyclable". But that's a deceptive word. It doesn't mean the product is going to be recycled. And paper bags, while they might not contaminate our planet for centuries, use as much or more energy and resources as plastic. What we need is an end to single-use packaging - to switch to reusable items that last for long periods of time, making the investment in their production worthwhile.

Like, say, a pottery cup. It's been around for millenium. Proven technology. And generally speaking coffee tastes better out of it.

Again, we can improve our lives and help the environment at the same time.

And perhaps if we take the time to sit down in the local coffee shop to drink the coffee, neighbours might get talking, and we might start to make an impact on the epidemic of loneliness that has led the government to appoint a "Tsar" to tackle the issue.

But, some will say, "I don't have time." Well let's make more time: cut working hours. Keynes thought we'd all be working a three-day week by the 1970s, and that is a good work-life balance. Indeed the campaign for a four-day week has really caught fire in the past year.

We will have less "stuff", less consumption. But more life. No one lies on their death bed and says: "I wish I had spent more time in the office."

This isn't business as usual. It is business much better, for people and planet.



DEAR EXTINCTION REBELLION: YOUR AIMS ARE WORTHY, BUT TAKE YOUR PINK BOAT TO CHINA INSTEAD

Boris Johnson: Current Prime Minister of the United Kingdom, and Leader of the Conservative Party since July 2019.

“I have seen the damage we’ve done to the planet – but Britain has made great strides in cleaning up” Climate activists should be heckling China, not our green-friendly country.

Look, I share some of the irritation at these climate change protesters. I am not in favour of paralysing public transport in the greatest city on earth, and stopping people from getting to work. I don’t want some double-barrelled activist telling me that air travel is only to be used in emergencies – when his own Instagram account contains pictures of his recent skiing holiday. I admire some of these celebrity thespians, but when I see them mounted on a pink boat in Oxford Circus, blocking the traffic and telling the world how many trees they have planted to offset the carbon footprint of their flights in from Los Angeles, I slightly grind my teeth. And I am utterly fed up with

being told by nice young people that their opinions are more important than my own – because they will be around a lot longer than me, and therefore that they have a greater stake in the future of the planet. With all due humility to my juniors, I intend to be alive for a very long time. Indeed, one of my few remaining ambitions is to be on the beach at Hastings to write a colour story, for this newspaper, on the thousandth anniversary of the Norman landings in 2066 (complete with reflections, at this rate, on wherever the UK will have got to in the Brexit negotiations). And I am not sure why it is so glibly assumed that young people care more than anyone else about these issues.

On the contrary, the older I get, the more worried I am about the future of the planet. I speak with the authority of someone who has seen decades of change – and the frightening impact of humanity on the natural world. I remember the beaches of the Mediterranean in the Seventies – as clean and beautiful as they were in the days of Odysseus. I have seen the arrival of the tide of plastic detritus. If Britain can dramatically reduce its dependence on coal, and its CO₂ output, why can’t the Chinese? In my lifetime the population of the world has more than doubled, and I have seen the effect: from the smog from huge new megalopolises in Asia to the forest-clearing fires over Africa. I can remember looking 40 years ago at the huge herds of wild beasts on the plains of the Serengeti, and I have the ocular proof that those herds are smaller today. It is precisely because I have seen the evidence, over time,

that I cannot find it in my heart – no matter how smug, irritating and disruptive they may be – to condemn these protesters today. Today is Earth Day, and they have a point. They are right to draw attention to the loss of habitat, and the extinction of species. They are also right to sound the alarm about all manner of man-made pollution, including CO₂. As it happens, they have helped to draw attention – by their protests – to some of the most extraordinary statistics in the current debate, some of which are actually extremely encouraging.

You may not know this, and I doubt that you will have heard it from the lips of the protesters, but here in the UK we are a world leader in reducing the greenhouse gases that are associated with climate change. We have championed the retrofitting of buildings, commercial and residential, as well as insisting on demanding standards for new build.

We have boosted renewable energy supplies, so that there are some days when the UK receives more than half its power from the wind or the Sun. We have been utterly ruthless in getting rid of coal-fired power stations, which now account for less than 5 per cent of UK power genera-

tion, and not much more than 1 per cent of total CO₂ output. We have promoted all manner of green transport, notably electric vehicles – and the effort has shown up in the figures. When I was Mayor of London, we had a massive increase in the population, but CO₂ output fell by 14 per cent. As for the country as a whole, there has been a 23 per cent cut in CO₂ emissions since the Tory led government arrived in 2010, and a 42 per cent cut on 1990 levels. That is one of the fastest reductions anywhere in the developed world.

I say this not because I am in any way complacent – only because it should fill us all with a surging optimism that with the right incentives we can make even more rapid progress. In the next few weeks it seems likely that the Climate Change Minister, Claire Perry, will announce a target of net zero emissions by 2050. That would be an amazing achievement; but the evidence of the last few years is that it can be done, not through hair-shirted Leftyism but solid Tory technological optimism. Who wanted to stick with coal? Who fought against the closure of the pits? Arthur Scargill, Jeremy Corbyn and the rest of the far Left. Who was the first British prime mi-

nister to put the environment at the centre of politics? Margaret Thatcher.

I am not saying for one second that the climate change activists are wrong in their concerns for the planet – and of course there is much more that can be done. But the UK is by no means the prime culprit, and may I respectfully suggest to the Extinction Rebellion crew that next Earth Day they look at China, where CO₂ output has not been falling, but rising vertiginously. The Chinese now produce more CO₂ than the EU and US combined – and more than 60 per cent of their power comes from coal.

Here, for heaven's sake, is the real opportunity for protest. It was only in 1990 that the UK was 70 per cent reliant on coal. Look at the speed with which we have turned things round. If Britain can so dramatically reduce its dependence on coal, and its CO₂ output, why can't the Chinese do the same?

My map tells me that London is nearer to Beijing than it is to Los Angeles. Surely this is the time for the protesters to take their pink boat to Tiananmen Square, and lecture them in the way they have been lecturing us. Whether the Chinese will allow them to block the traffic is another matter.



A Microcosm of Human Rights Issues at Large: the Human Rights Council



Thomas Tutton: Thomas Tutton is a History Graduate from St Catherine's College, Oxford University.

The UN General Assembly's recent vote to elect Nicolas Maduro's Venezuela to the Human Rights Council (HRC) was in many ways symptomatic of wider issues in the field of human rights.

Based in Geneva, the Council was created in 2006, replacing the ineffective Commission on Human Rights. The HRC is made up of 47 member states who are elected for rotating three-year terms, using the system of United Nations Regional Groups to allocate seats between different continental groupings. Its mandate is to support the implementation of existing treaties of international human rights law, such as the Universal Declaration of Human Rights and a whole host of further acronym-heavy covenants. It must be noted that the HRC plays a vital role as a forum for

discussing the most serious violations of human rights across the world, and it has achieved notable successes in producing reports on international human rights crises, for instance in Eritrea and North Korea. However, the Council continues to suffer from a number of problems which are representative of wider issues in human rights protection worldwide. The obstacles that the HRC faces have been brought to the fore on two occasions in 2019. In July, a remarkable exchange broke out over China's policies in its Xinjiang province. China's mistreatment of its Muslim minority, through the arbitrary detention of millions of Uyghurs in euphemistically-termed 're-education camps', has been thoroughly documented in the Western press. It was the subject of a letter to the 41st session of the HRC signed by 22 states

– mostly EU members, with the addition of Australia, New Zealand, Canada and Japan – which firmly criticized Beijing's actions. In response, a second letter emerged defending the Chinese government's conduct, with the signature of 37 states, including Muslim-majority nations such as Saudi Arabia and Pakistan, as well as Russia, North Korea and Myanmar. Then, in October, Costa Rica announced its candidacy for election to the Council in an attempt to block Venezuela from an unopposed nomination, with only Brazil also standing for the Latin American group's two vacant seats. Despite Costa Rica's excellent human rights record, it received only 96 votes in the General Assembly to Venezuela's 105 and Brazil's 153. Together, these incidents perfectly encapsulate the HRC and indeed the world's inability to

reach a consensus on human rights. Inherent in both the HRC and the UN more generally is an intrinsic majority for the world's developing countries, which are primarily located in Africa and Asia. These states are fiercely protective of their independence and of the principle of non-intervention, which is enshrined in Article 2 of the UN Charter. It is through the prism of colonisation that many developing countries view the West's newfound desire to protect human rights – something which was clearly not a priority when Europeans were enlarging their empires with complete disregard for the wishes of native populations. The Third World, as it is rather condescendingly still referred to, views with extreme suspicion any perceived interference by the “first” in states' internal affairs: the West's recognition of Juan Guaido as Venezuela's president has been interpreted that way, explaining the Maduro regime's victory in the HRC election

despite its consistent violation of human rights. Support for the Uyghurs also smacks of hypocrisy when Western countries fail to respect human rights themselves, locking children in cages at the US-Mexico border, allowing boatloads of migrants to drown in the Mediterranean, or continuing to facilitate the barbaric war in Yemen by giving military and diplomatic cover to the murderous government of Saudi Arabia.

Advances have been made in recent years. The Responsibility to Protect (R2P) was enshrined at the 2005 World Summit and seeks to render states accountable for their violations of human rights. The HRC itself continues to pressure governments to respect their populations' rights. And it will receive an added opportunity to act on these issues next year, when Saudi Arabia and China will both be absent from the Council for only the second time since it was founded in 2006. But to convince the developing

world of its sincerity, the West must persist in protecting civil liberties at home and return to a foreign policy that promotes human rights abroad. The retreat towards isolationism must be reversed, and Western states must continue to use the forum of the HRC and other multilateral bodies to call out human rights abuses wherever they occur, including in “friendly” states such as Egypt and Bahrain.

The stakes are high. Our inability to find common ground in the field of human rights has had enormous consequences for populations that continue to face persecution and violence worldwide. And the next century will present an unprecedented new wave of challenges to human rights across the globe, from ever-greater surveillance technologies to the existential threat of climate change. The lessons from these abortive efforts at global cooperation are clear. We simply must do better.





THE OVER-SEPARATION OF POWERS

Professor John Spencer CBE: *John Spencer is a Professor of Law at the University of Cambridge. His areas of expertise include criminal law, criminal evidence, comparative criminal procedure and EU criminal law.*

In mediaeval times, and under the Tudors, the Chancellor was the King's senior minister and right-hand man. As such he acted as his deputy in all the aspects of internal government which, in those days, were thought to be the proper function of the King: law-making, dispensing justice, and administration. The holders of this office include some whose fame lives to this day: among them, Cardinal Wolsey, and Sir Thomas More. The Chancellor ceased in practice to be the King's or Queen's chief minister with the rising power of Parliament, which meant the sovereign needed a "Prime Minister" who was based in Parliament and could get the King's business through. But the Chancellor – or Lord Chancellor, as he eventually became – continued to be a figure of significance. And as a throw-back to the earlier days, he continued to exercise responsibilities in all three areas of government. As a law-maker, he acted as the Speaker

of the House of Lords. As a dispenser of justice, he was the head of the judiciary. And as an administrator he was a minister in the government of the day, in charge of a ministry called the Lord Chancellor's Department, which was in substance if not in name the ministry of justice. This ancient combination of legislative, judicial and executive functions began to look distinctly odd when, in modern times, it became accepted that an essential feature of good government is "the separation of powers". This notion was popularised by the French enlightenment philosopher Montesquieu, who put the matter thus:
... there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

For adherents of this theory, a Lord Chancellor whose role combined all three of these different functions was a strange anomaly. Academic lawyers took particular exception to the fact that the Lord Chancellor, a Cabinet minister, was in theory the "top judge" as well; and hence, as some people saw it, "A politician on the back of the judiciary". It was with the avowed aim of removing this anomaly that the Blair government caused Parliament to enact the Constitutional Reform Act of 2005. A central part of this important Act was the abolition of the traditional Lord Chancellor and his replacement by a new and slimmed down figure, the Minister-of-Justice-cum-Lord-Chancellor. Unlike the old-style Lord Chancellor, this new slim figure was to have one role only: as a minister, and member of the executive. No longer was he also Speaker of the House of Lords, and (at least in name) the head of the judiciary as well. To mark the change of substance, the government

department for which he was responsible received a change of name. No longer called the Lord Chancellor's Department, it became the Department of Constitutional Affairs: a bizarre title, derisively reduced to "Decaff" and soon swapped for the more intelligible "Ministry of Justice".

If there were theoretical objections to the old-style Lord Chancellor, in practice it had its good side too. If no longer the Sovereign's right-hand-man, the person appointed to the office was invariably a senior and respected figure: either a senior judge seconded to the post, or a senior politician whose final position this would be before retirement; and if a politician, it was always someone with a solid legal background. Whether judges or politicians, the old-style Lord Chancellors always carried weight. A good example of genre was Lord Mackay of Clashfern, the Lord Chancellor in the Conservative government in the 1980s and 1990s. A man of intelligence and unbending integrity, who had risen through the Scottish Bar to become the Scots Lord Advocate, he was (it is reliably reported) the only Minister to whom Mrs Thatcher would always pay attention if he said "Prime Minister, I'm afraid you cannot do that". As one of the functions of the Lord Chancellor was, by convention, to defend the independence of the judiciary and to publicly defend judges when improperly attacked, the fact that they were weighty persons, and respected within the government, was important. If in theory the Lord Chancellor was politician on the back of the judiciary, in practice

it was often the reverse. In the hope of preserving the better features of the previous system, section 1 of the Constitutional Reform Act provides that nothing in the Act shall adversely affect the Lord Chancellor's existing constitutional role in relation to that principle of the rule of law, and section 2 provides that no one shall be appointed as Lord Chancellor "unless he appears to the Prime Minister to be qualified by experience". And following the spirit of this, the first two Lord Chancellors to be appointed under the new system were persons who would have been plausible candidates for office under the old. Jack Straw and Kenneth Clarke were both senior politicians, both of whom had formerly been in practice at the Bar. But regrettably this did not last.

The big change came in 2012 when David Cameron, the Prime Minister, caused Chris Grayling to be appointed as Lord Chancellor: a junior politician with no legal experience and who had never previously shown any interest in the law. His appointment, which lasted for three years only, was the first of a rapid line of equally short appointments, all – apart from Michael Gove – of junior people hitherto unknown, who were in no position to stand up for the rule of law in government, or to defend the judiciary in public

when required.

Liz Truss, another appointee with no legal background or experience, lamentably failed to defend the judiciary when the Daily Mail attacked the three Court of Appeal judges as "enemies of the people" because the editor disliked their ruling the government had no power to launch the process of the UK's withdrawal from the EU without first obtaining Parliament's approval.

Chris Grayling set out to pursue a "tough justice" agenda, of which the most immediately headline-catching was an attempt to "toughen" life in prisons by preventing prisoners from receiving books: a measure which was later challenged in the courts and held to be unlawful. He pushed through, without piloting it, a scheme to privatise the probation service, which was predictably disastrous, and is now about to be reversed at the cost of almost £550 million to the public purse. But far worse in terms of its broader effects were his presiding over savage budget cuts to legal aid, the court system and the prisons. A graphic illustration of the consequences came recently, when a Dutch court refused to extradite a person wanted in the UK, because current prison conditions in the UK risked exposing him to inhumane or degrading treatment.

It is hard to believe that any of this would have happened if this country still had a Lord Chancellor of the type that existed before the Constitutional Reform Act. As the saying goes, "You never miss the water till the well runs dry".

A More Modern Parliament



Ellie Reeves : Eleanor Claire Reeves is a British Labour Party politician, and the Member of Parliament for Lewisham West and Penge.

Britain is a multicultural, cosmopolitan, pluralistic society and it is important that Parliament reflects this diversity. Political discourse can only be improved if those participating reflect the communities which they serve. Whether this be encouraging more women, BAME or other under-represented groups to stand for Parliament, we should not rest until we are satisfied that no matter who you are, you can look at Westminster and feel that you, and what is important to you, is fully represented.

As a Labour MP, I am proud of the Party's record in trying to address the imbalances of the diversity of our elected representatives. At the 2017 General Election, 40% of Labour candidates were female – the most we have ever had at a national poll. I was delighted to be part of this 40%, but we recognise we still have more to do if we are to reach parity.

Following the election of Ruth Jones as the new Member of Parliament for Newport West in early April, there are now 210 female MPs constituting nearly a third of the House of Commons. Since my election, I have repeatedly raised issues around making Parliament more family friendly. If we can make working as an MP as open, accessible

and flexible to the demands of family life, then we will be able to attract more women to stand for Parliament and reach that important 50/50 balance of MPs. Over the past 20 years we have seen a great deal of modernisation. The House now has fewer late-night sittings, a nursery has opened within Parliament and, most recently, proxy voting has been introduced for those on parental leave. But we know we cannot rest on our laurels. We must continue to ensure that the actions we take are as proactive as possible. It doesn't work if we are constantly reacting to failures in the existing systems as happened with the pairing debacle in July 2018 when the Government broke pairing arrangements with an MP who had recently had a baby. Whilst this expedited the introduction of proxy voting, something which was long overdue, it showed that Parliament was still behind the curve.

We should have the determination to create a more modern Parliament from the ground up. That means making active choices to diversify the composition of Members of Parliament and I was thrilled when the Labour Party recently launched the Bernie Grant Leadership Programme. Named after one of the first, pioneering black MPs, the

scheme is designed to address the under-representation of BAME members as elected Labour politicians.

Following the 2017 General Election there were 52 BAME MPs, making up around 8% of the House of Commons. If the BAME population was proportionately represented, then the number of BAME MPs would be around 90. Like the steps taken to reach parity based on gender, we need to be proactive in bringing about the level of change to have a Parliament that properly reflects the society it represents. I hope schemes like this continue to bolster BAME representation at future elections because it is only right that our representative democracy has politicians that truly reflect the make-up of our communities. Addressing the imbalances of the make-up of elected officials at all levels of government requires determination. True political action is the joining together of words and deeds and I believe there is a genuine desire across the House of Commons to proactively improve the diversity of Parliament. It is crucial that we continue to push for a Parliament that fully reflects 21st Century Britain – both in how we operate and the MPs who are sent to Westminster to represent.

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Morrisons held vicariously liable for employee's data breach: An illustration of injustice towards non-negligent employers?

Matti Brooks: *Matti Brooks is a Law student at Sidney Sussex College, Cambridge University.*

The UK Supreme Court recently scheduled a hearing date for the *Various Claimants v. WM Morrison Supermarkets* data breach appeal, to be heard in November 2019. This prompted me to review the appellate decision so far, and to consider the possible implications for both corporations and victims of data crimes alike. In doing so, I touch upon some of the viewpoints presented by various works cited at the end of this article. In the autumn of last year, the Court of Appeal dismissed an appeal against the High Court's ruling that Morrisons was vicariously liable for its employee's tort of misuse of private information. This was in spite of (i) Morrisons' 'appropriate' and 'reasonable' conduct, complying with many of the Data Protection Principles prescribed by the Data Protection Act 1998; and (ii) the employee's crime occurring within the confines of his private home and outwith working hours, his intention being malicious - to paralyse

the financial reputation of Morrisons. The Court of Appeal could not establish direct liability for the company, owing to the fact that the rogue employee had become a 'data controller' (under the terms of the Data Protection Act 1998) upon acquiring the sheer data that he extracted from the company's software. So, what precisely were the facts? Mr Skelton was an employee of Morrison Supermarkets. He was entrusted with the role of senior IT auditor, which made him responsible for transmitting the payroll data of around 100,000 employees to the company's external auditors (KPMG). However, premised on a long-term grudge he held with the company, he pursued a calculated and malicious ploy to expose highly confidential information on a vast scale to a public file-sharing website, and later to newspaper outlets (albeit he was only successful in relation to the former). In what amounted to the first group litigation data breach case to reach the courts, 5,518 employees were triumphant in

finding Morrisons vicariously liable for the tort of misuse of private information. This outcome had much to do with the broad test devised by Lord Toulson at [44] in *Mohamud v. WM Morrison Supermarkets*, which asks the courts at the first limb to determine the 'field of activities' entrusted by the employer to the employee. In this instance, the employee's 'field of activities' were the storage, receipt and disclosure of payroll data to a third party. That the related disclosure was to unauthorised persons was irrelevant according to Langstaff J in the High Court; rather, it was 'closely related to what he was tasked to do' (at [185]). With such simple facts, why does the judgment raise a myriad of questions and concerns? The judgment acknowledges that Morrisons implemented proportionate and responsible measures to ensure that, as 'data controller', they did the most they could within their circumstances to safeguard one's fundamental right to data privacy. However, they were still held to be strictly

liable under the principle of vicarious liability. The alarm for businesses today will be that this verdict, in conjunction with the recent legal developments and press coverage ushered by the GDPR, may open the floodgates for group litigation surrounding other data breaches, even where the employing agency was in no way at fault. Nevertheless, fault is not necessarily to be equated with fairness; ultimately, whether *Morrisons* should be strictly liable for its employee's tort is a question which enters deep theoretical territory – what is the justification for vicarious liability? A question to which I later turn... Beyond the practical concerns, there is also anticipated financial hurt. A data breach that affects as many as the half a million disturbed by the British Airways scandal, may generate hefty sums of liability. Although quantum has not yet been assessed in the *Morrisons* case, the very high fines imposed by the ICO in response to GDPR breaches by *Marriott International* and *British Airways* can only foreshadow an unfavourable approach when it comes to assessing quantum for *Morrisons*. Nonetheless, the ICO is committed to reacting proportionately to the breach in question, the implication being that quantum should be significantly less where companies are vicariously liable, as opposed to personally at fault under the Data Protection Act. This makes the prospect of vicarious liability less concerning. The Court of Appeal did recommend that cyber insurance was the solution to “Doomsday or Armageddon arguments” (i.e. the anticipated detrimental financial ruin) concerning the consequences

arising from its verdict. However, as research suggests, this market is in its youth and the lack of understanding around the industry means that selling cyber insurance may be more risky (in particular, there's the prospect that deliberate breach by an employee may not be covered). It will be interesting to see what impact cyber insurance has on mitigating company losses following civil liability, yet it begs the question whether the ‘deep-pocket’ rationale should remain a consideration (however big) when it comes to the pillars of vicarious liability.

Enterprise liability – the ‘recognition that carrying on a business enterprise necessarily involves risks to others’ (see *Dubai Aluminium v. Salaam*, per Lord Nicholls at [21]) – seeks to justify vicarious liability on the basis that it's fair for a company to be held liable for its employee's tort, owing to its willingness to undertake a risk-taking initiative. But surely this rationale only works up to a point... In the *Morrisons* case, the acts of Mr Skelton were maliciously and deliberately targeted at the party whom the claimants sought to hold responsible, ‘such that to reach the conclusion [the Court had] may seem to render the court an accessory in furthering [Mr Skelton's] criminal aims.’ This was what irritated Langstaff J in the High Court, and was the foundation on which permission to appeal stood (see [198]). Perhaps the Supreme Court should reassess the earlier decision of *Mohamud* (discussed earlier), where it was decided that the employee's motive was irrelevant to an employer's finding of vicarious liability (see [47]). Motive should in fact be relevant to whether or not a

company is vicariously liable in this instance (a possible test of remoteness which would strive to reinstall the dividing line between a ‘mere opportunity’ to commit a tort, as opposed to its ‘inherent’ risk – for which see *Lister v Hesley Hall Ltd*, at [65]). I consider that without such exception, the current ruling tilts the scales of liability too far in favour of the victims of data breaches, at the expense of the company. This becomes even more significant when one appreciates the inevitable suffering faced by large enterprises when data breaches are exposed to the public: diminishing share prices and negative publicity.

To finish, I am excited to see what the Supreme Court make of the appeal. I anticipate that the cyber insurance market may expand significantly if they were to uphold the decision of the Court of Appeal, and we may expect a greater number of group litigation data breach cases. We are witnessing great progress in the battleground in the right to keep personal information confidential, though one should be cautious not to prejudice the company and to instead find a constructive equilibrium between the victim's fundamental rights and the somewhat innocence of companies who have taken every precaution possible to adhere to the Data Protection Principles. It is submitted that enterprise liability mandates it fair to hold *Morrisons* vicariously liable despite its non-negligence, insofar as there is a close connection between the employee's tort and his position of employment (based on earlier tests). I consider this would work most effectively if the employee's personal motive was in fact made relevant.

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The continuing gender imbalance under the law in our “PROGRESSIVE” ERA



Nicole Zannetides : YLJ Writer

The aim of a legal system is to ensure that justice is dispersed equally among all members of society and that chaos is restrained. However, legal systems across the world appear to be contradicting their very own purpose and aims by wrongfully prioritizing certain regional laws which result in the discrimination of certain minorities and in particular women. Legal systems across the world provide ‘loopholes’ which serve to benefit misogynistic politicians and law makers, resulting in rights of certain groups to be further suppressed and ignored by dominant (usually male) figures with powerful lawyers. After decades of fighting for equal representation under the law and a right to have control over decisions affecting their own bodies, women across the world find themselves once again under the control of misogynist law makers. A prime example of this would be the Alabama abortion law which served as a display of political power of a male dominated Senate. Apart from loopholes and racist, misogynistic law makers, the legal system is flawed as it fails to deal with certain ‘vague’ definitions of terms such as sexual harassment and sexual

assault. In general, the role of a legal system in society is to ensure a fair and just treatment towards all civilians whereby human rights are respected and any act of violation towards them is penalized. However, today, we notice the legal systems promoting a misogynistic, paternalistic society which undermines progress made in the past.

In particular, cases of rape and sexual assault continue to demonstrate the imbalance between men and women under the law. The #MeToo as well as the #TimesUp movements dealing with sexual violence and harassment as well as inequality have become worldwide phenomena in the past two years, highlighting the gross under-reporting of sexual offenses, the rigid burden of proof on proving sexual offense and generally the disconnect between the law and enforcement. It can be seen that legal systems across the world are taking one step forward and two steps back, particularly in the area of women’s rights in cases of rape and abortion. The biggest flaw of rape trials is cross-examination. Indeed, for the female victim to even describe out loud the horror of a past

rape incident which can be said to penetrate the soul as much as any physical penetration is a distressing act and requires immense courage. Hence many victims of rape chose not to report to avoid mentally reliving the horrifying experience; This is just one of the reasons why female victims do not report rape. Additionally, they are aware that through cross-examination, they will be brutally judged, challenged, and disbelieved. Every revealing clothing worn, every drink consumed, and any and every sexual act engaged in the past will be weaponized and used against them. Therefore, the requirement of the law for survivors to relive their trauma and bear the burden of proof indicates the great need for reform of the legal system. Indeed, it is the abusers that must face all and every burden and humiliation. Instead, the spotlight is on the traumatized victims who have nothing to gain by reporting a rape case. What the law requires the victims to do is prove the unprovable. This is an appalling requirement which inevitably contributes to the under-reporting of rape and an increase in the essence of patriarchy and male dominance

as male abusers feel that they can get away with it. To criticize female rape victims if they behave in ways which men may not approve of or understand indicates that the law does not attempt to aid female victims. All women are well aware that cross-examination will merely serve as a means of exposing all the standards that confront women. The fact that the court has accepted in the past provocative clothing as proof of implied consent is genuinely disgusting.

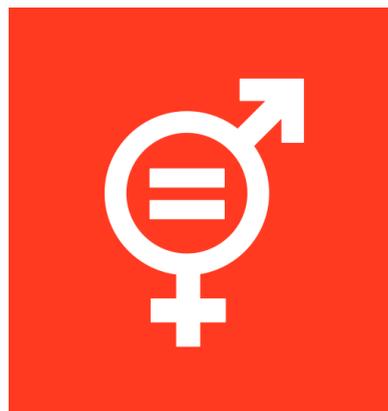
Two recent cases, one taking place in Alaska and another in Indonesia can be used to reflect the wider issue of the imbalance between men and women under the law and the urgent need for legal reform on an international scale. The outrageous case in Alaska emphasized the existence of loopholes in national sexual assault. A man who had offered the victim a lift had pulled over and strangled her to the point where she had become unconscious. While she was unconscious the man had masturbated all over her face. By the time she had woken up the man was zipping up his pants and asked her if she needed anything to wipe her face before he drove off leaving her utterly shocked and alone. Lauren's attacker was a 33-year-old married father named Justin Schneider. He openly admitted that he had forced himself on Lauren and did so with the intention of satisfying his sexual needs and desires and also admitted that he ejaculated on her face while she was unconscious. In such a case one would undoubtedly assume that this man was charged of sexual assault. Yet the law in the state of Alaska provided a loophole. The

attacker, after pleading guilty on the grounds of simply a second-degree assault, walked out of the courtroom as a free man. Sexual assault charges could not even be brought to court as the law would not allow it. This is because as Schneider touched only his own genitals but didn't touch Lauren's or force her to touch his, his actions did not qualify as a sexual assault. This outrageous outcome is an alarming indicator of how the vagueness of the law can result in unjust outcomes which greatly disadvantage victims of sexual assault. Out of 54 states and territories, 44 of these jurisdictions including Alaska do not have a legislated definition of sexual contact.

Moreover, the case that took place in Indonesia, relates to a woman named Baiq Nuril Maknun who had been jailed for recording her boss's sexually harassing, threatening phone calls. This case highlights a paradoxical element in the law. Indeed, the law requires proof for victims of sexual assault/harassment and yet when a victim attempts and successfully provides proof of sexual harassment, she ends up being punished. This suggests that regardless of the amount of proof and evidence a woman can gather to strengthen her case, she will still be unable to walk out the courtroom as a 'winner'. The woman is facing six months in prison in Indonesia for recording a highly inappropriate phone call by her boss as evidence that she was being harassed by him. Baiq Nuril Maknun's nightmare had started a couple of years ago when as a temporary school teacher on Lombok island, she

began receiving harassing phone calls from the headteacher who would describe to her his sexual activities with another woman. Baiq Nuril Maknun decided to video record one of these phone calls as evidence of this ongoing harassment. However, instead of her evidence strengthening her position in court, she was fined and sentenced for 6 months in prison on the grounds of violating a telecommunication law of the island. This highlights the literal 'burden' of proof placed upon victims of sexual assault and harassment.

"All are equal under the law" – A fundamental right which should be applied in all circumstances in order to ensure a fair trial and the smooth-running of the legal system. In an era where we claim that we have achieved gender equality moving away from discrimination and being members of a progressive, advanced society, the existence of an imbalance between men and women under the law is more valid than ever. Without a genuinely effective reform, the law will continue to display the power imbalance between men and women, promoting paternalistic societies and further burdening victims of sexual assault.



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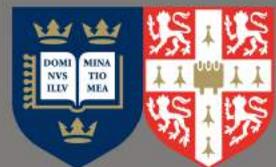
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