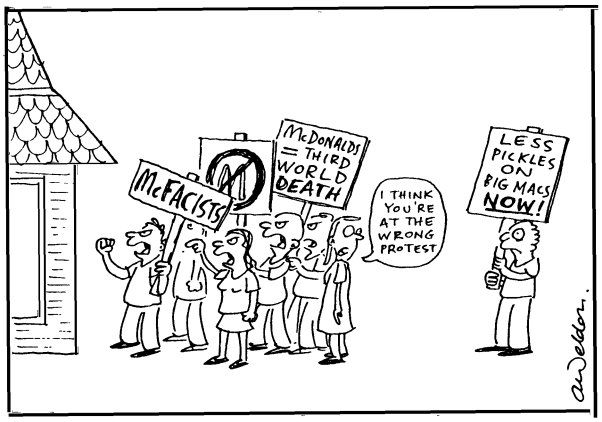
Mclibel: *do-it-yourself justice*

Dave Morris

Two non-legal people's challenge to a multi-national corporation succeeds against the odds.



'The McLibel case is the trial of the century — it concerns the most important issues that any of us have to face, living our ordinary lives.'

Michael Mansfield QC

I am a 45-year-old single parent and ex-postal worker, living in North London. I have been a social and political activist for over 25 years. I and co-defendant Helen Steel (a 33-year-old barworker) were sued for libel by the $30 billion-a-year McDonald's Corporation in 1990 over the distribution of a 1986 six-sided factsheet prophetically titled 'What's Wrong With McDonald's? — Everything They Don't Want You To Know', of which no more than 5000 had been published.

These leaflets, issued by London Greenpeace,[1] criticised the highly-influential McDonald's Corporation, the food industry and multinationals in general for promoting unhealthy food, damaging the environment, monopolising resources, exploiting workers, targeting and exploiting children and causing animal suffering. The leaflets advocated positive alternatives. None of these views were new, having already been widely publicly expressed by trade unionists, environmentalists and nutritionists for years.

Transnational corporations are now the most powerful institutions on our planet, dominating our lives and the environment. McDonald's alone spends over $2 billion annually advertising and promoting itself and its view of these issues worldwide. In our view it is an outrage that any such bodies should be able to try to suppress the public's right to express and consider alternative points of view.

The United Kingdom's libel laws

'The McLibel case has achieved what many lawyers thought impossible; to lower further the reputation of our law of defamation in the minds of all right thinking people.'

David Pannick, QC, *The Times* [UK] 20 April 1999

Libel laws in the United Kingdom are notorious. A defendant is guilty until proven innocent, despite facing having to pay huge potential damages and the draconian threat to freedom of speech. Cases are massively expensive, complex and completely stacked in favour of the prosecution. There is no legal aid. Right to jury trial can be denied. Every published book, programme, newspaper etc. is subjected to 'legalling' by lawyers — generally almost all material critical of any institution or individual that it is believed might sue is secretly removed. The public has barely any idea of all this.

Most libel suits result in a pre-trial climbdown by the defence and a grovelling and false 'apology' which is then paraded around by the victor as an example of how squeaky clean they supposedly are. This constitutes a form of mass censorship, generally carried out in secret. Its only beneficiaries are rich and powerful institutions and individuals. It

Dave Morris is one of the defendants in the McLibel case. Contributions to this article were also made by Helen Steel and the McLibel Support Campaign.

has to be asked why such censorship has never been successfully challenged or defied before. If not now, when?

It seems that libel developed as a means of settling disputes between the wealthy without resorting to duelling. But this century has seen a major shift as big business and other powerful institutions and individuals have taken full advantage of the legal machinery (including libel) to suppress criticism. The public, and the many diverse social and protest movements which have grown during this century, place great store in their freedom to express their views. In the USA, as a result of the 18th century victory of the American Revolution against British rule, freedom of speech was established as a constitutional right. US corporations are increasingly making use of other more amenable areas of the law, bringing what are known as 'slapps' suits, to try to harass and disable their critics. International companies are now capable of 'window shopping' around the world for the most favourable arena for obtaining public legal rulings in their favour — like the UK for example.

The whole legal system is dominated by lawyers, and is viewed by most ordinary people as an alienating, bizarre and oppressive edifice of jargon, procedures and hierarchy generally set up to defend the status quo (namely, those with power or money). With current government attacks here on the right to legal aid and assistance, this perception can only grow and ensure a climate where the public's expectations and resistance to legal injustice continue to fall.

But there are developments. Recently, as the media has expanded and public criticism (especially of politicians) has become increasingly hard to stifle in the modern age, the UK courts have had to recognise that governmental bodies can no longer bring defamation actions.[2] This was a crack in the legal door as far as we were concerned — after all, transnational corporations are often more powerful and even less accountable than local and national governments, and hence should also have no right to suppress free public debate over their activities.

In court — the legal battle

'I cannot think of a case in which the legal cards have been so spectacularly stacked against one party.'

Legal commentator, Marcel Berlins

We got two hours free legal aid — the advice amounted to: 'Libel is a nightmare for any defendant — with no legal aid you've probably not got a cat in hell's chance of even getting to trial, let alone winning'. We decided to fight, representing ourselves through 28 pre-trial hearings, some lasting up to five days. We were given occasional pro-bono advice by a barrister, Keir Starmer, involved with the Haldane Society of Socialist Lawyers.

It was a nightmare being litigants in person, and we had to learn quickly on our feet. We argued furiously, to little avail, for full disclosure by McDonald's of all relevant company documents. England's top libel judge was initially in charge of our case. As we became more experienced and assertive, our arguments with McDonald's and the judge increased. A new judge, Mr Justice Bell, who had only been appointed the year before and had never tried a libel case, was brought in instead. At the same time McDonald's replaced their barrister with a top libel silk, Richard Rampton QC.

First, he succeeded in having major chunks of our defence struck out for lack of witnesses. Second, to our further disbelief and shock, he successfully applied for our right to a jury trial to be denied us on the grounds that the issue of links between diet and disease would be too 'complex' for members of the public. It was a shrewd move — we believe that a jury would have been outraged that such a case could be brought at all. Mr Rampton confidently predicted a trial lasting '3-4 weeks'. We went to appeal on both points, losing the jury issue.

But, in a decision significant for all future libel cases, we succeeded in getting our full defence restored pending full disclosure of McDonald's documents and the coming cross-examination of witnesses. Support and publicity began to grow, as did our own confidence. On the eve of trial McDonald's issued press releases and 300,000 leaflets through their UK stores attacking Helen, myself and other campaigners for spreading 'lies'. Surely this was a breathtakingly hypocritical act by a company having cried 'libel!', calculated to undermine our public support when we needed it most, and a much more extensive and serious defamation that the one we were accused of. We countersued for libel in order to put McDonald's under the burden of proving that the London Greenpeace criticisms were untrue.

The trial finally started in June 1994, and lasted 314 court days over three years (the previous longest ever libel hearing lasting 101 days), in which we ourselves were grilling US and UK corporate executives and officials, dozens of experts and witness of fact, fielding our own witnesses (none of whom were paid), and also having constant legal disputes including four more trips to the Court of Appeal. McDonald's pulled out all the stops and spent an estimated £10 million as against our total of £35,000 raised from public donations. The Corporation's plan for a '3-4 week' show trial had turned into a comprehensive public tribunal in which 'McWorld' was on trial.

The administrative and advocacy workload was huge and the proceedings alienating, exhausting and highly stressful. We continued to get some sporadic advice on specific legal points, but 99% was down to us, working from our cramped homes. Helen had her job each weekend, and I was a single parent. However, it was greatly empowering to be members of the public uniquely able to challenge the might and sophistication of the corporate world face to face in the witness box. They could not hide behind their usual slick PR department. We felt a huge responsibility. As in society at large, it really felt like two worlds colliding. As experienced campaigners, this, and the successes we were having, is what drove us on. We knew we were onto something big when after only a few weeks of testimony two members of the Corporation's Board of Directors secretly flew over from Chicago at their request to meet Helen and me in an interesting but futile effort to settle the case.

The main reason that the case took so long is because McDonald's insisted that almost every criticism in the factsheet was libellous. We believe that those criticisms are common sense views on matters of great public interest, not just directed at McDonald's but at the food industry in general. Defending such views made the case very wide-ranging.[3]

The Corporation called its big guns into the witness box. Having been denied a jury, who might not be so ready to accept the word of corporate executives as true, we expected the judge to prefer the evidence of those representing the establishment or status quo. So from the start we adopted a strategy of gaining admissions from McDonald's witnesses,

so that it wouldn't come down to just 'our word against theirs', but also 'their word against their own'. As the trial wore on they were forced under lengthy cross-examination to make damaging admissions and concessions on all the issues.

A highly controversial trial

'So how did McDonald's end up as public enemy number one? ... McDonald's took a serious wrong turn in bringing the McLibel trial ... this not only brought many issues about its corporate behaviour into the public eye for the first time, it also had the effect of making it look paranoid and power-crazy.'

UK Marketing, 16 September 1999

There were so many controversies. As far as we could see it was a Kafkaesque political and legal scandal from beginning to end by any objective criteria or by plain common sense.

For example, when the writs were served, the 'words complained of' were already out-of-print. McDonald's had made an agreement in 1988 with Veggies Ltd, the main distributors of the factsheet, accepting their continued distribution of a version which was identical on every issue (except rainforests) to the words complained of in the trial. We argued this was tantamount to a generalised 'consent' and which Richard Rampton had to concede amounted to 'an accord of satisfactions' with the distributors. This guaranteed the continued public circulation of the 95% of the allegations whatever the verdict in the trial.

McDonald's had known the original was out of print as they had hired seven agents to infiltrate London Greenpeace over an 18-month period before serving the writs. Despite this, none of the five spies who gave evidence could identify a single example of either defendant actually distributing the document — proof of publication is a pre-condition of establishing libel, and the one point that McDonald's accepted they had the burden of proving. Even more incredibly, McDonald's own agents actually admitted distributing the factsheet themselves and hence McDonald's had published what they were trying to suppress — perfect grounds for a second defence of 'consent'.

McDonald's witnesses regularly said ridiculous things in the witness box in a vain attempt to conceal the truth or justify the way McDonald's operates and the effect those operations have around the world.

In just one of hundreds of examples, David Green, McDonald's Senior Vice-President of Marketing (USA) stated 'McDonald's food is nutritious' and 'healthy'. When asked what the company meant by 'nutritious' he said: 'provides nutrients and can be a part of a healthy balanced diet'. He admitted this could also apply to a packet of sweets [candy]. When asked if Coca Cola is 'nutritious' he replied that it is 'providing water, and I think that is part of a balanced diet'. He agreed that by his definition Coke is 'nutritious'.

We had a constant battle to get McDonald's to hand over all the relevant documents in their possession, such as the sources of their Brazilian beef supplies, and employee clock cards and time sheets to help establish allegations by our witnesses of illegal lack of work breaks.

Legal disputes, many of them acrimonious, often defined the parameters of what we were being forced to prove and how. But McDonald's had a top QC constantly bending the ear of an inexperienced judge, with us, as two members of the public, trying to read between the lines of his submissions, to research and get on top of other authorities, and to inject common sense into the proceedings.

Maybe the last word on this should go to Mr Justice Bell during one of the interminable arguments:

> For better or worse, the law of libel has grown up in its own special way over the last 150 years, and whereas in ordinary negligence claims if you don't know what the law is you can say what you think is sensible and there is a 90% chance of you being right, I am not sure the percentage isn't the reverse of that in the law of defamation. But there we are.

The verdict and appeal

'A judge yesterday branded McDonald's mean, cruel and manipulative after the burger giant had spent 10 million pounds to clear its name.'

Daily Mirror, 20 June 1997

The courts rejected our arguments about the failure of McDonald's to prove our publication of the factsheet, their own publication through their agents, and the company's consent through their agreement with the main distributors.

In terms of our counterclaim, the judge ruled that McDonald's had issued hundreds of thousands of leaflets and press releases carefully crafted by their PR firm which were defamatory of Helen and me and which they had failed to justify — libellous you would think. 'No' said the judge as the poor old company had the right to self-defence! This, and the 'publication' issue, are two of the most blatant examples in the case of the incredible double standards operating at the most fundamental legal level.

One of the major things for a jury to decide in a libel case is the meaning of the disputed words. The areas of the verdict we failed to win were mainly because the judge, having disposed of the jury, largely accepted meanings put by McDonald's on most of the issues, meanings we saw as ludicrous and extreme and which, we argued, the factsheet just did not say. For example, the factsheet repeatedly criticised the business practices of the food industry as a whole, but the judge insisted that we would have to prove that McDonald's itself was responsible. In a serious threat to free speech he also ruled that the accompanying satirical cartoons and graphics should be taken into consideration. And he bizarrely and unfairly refused our right to rely on any of the statements in the factsheet (bar one) as 'comment' or 'opinion', ruling instead that every statement was an allegation of fact that would have to be proven by us from primary sources of evidence. This made the task ten times as hard, at a stroke. Ironically, this last ruling meant that the parts found in our favour as fact turned out therefore to be all the more devastating for McDonald's.

Mr Justice Bell ruled that:

- McDonald's marketing has 'pretended to a positive nutritional benefit which their food (high in fat and salt etc) did not match';
- McDonald's 'exploit children' with their advertising strategy, 'using them, as more susceptible subjects of advertising, to pressurise their parents into going to McDonald's';
- they are 'culpably responsible for animal cruelty'; and
- they 'pay low wages, helping to depress wages in the catering trade'.

Despite a technical 'win' for McDonald's over other points,[4] it was seen generally as a humiliating defeat for the

Corporation. No-one could recall a court delivering such critical judgments against such a powerful institution. McDonald's then capitulated by abandoning all efforts to get costs, damages or even an injunction to halt the leafletting (their primary aim — as outlined in their original Statement of Claim). Two days after the verdict, in a 'Victory Celebration Day' called by the McLibel Support Campaign, over 400,000 anti-McDonald's leaflets were defiantly distributed outside the majority of their UK stores, and there were solidarity protests around the world. We were elated. As experienced campaigners we knew throughout that what really counted was the court of public opinion, the determination of activists to refuse to be silenced and to ensure that an oppressive law could be made unworkable by co-ordinated mass defiance. This is what had happened in this case.

The specialist, industry press which informs and advises corporations warned other companies not to 'do a McLibel'. If the McLibel example inspires future defiance could this signal the beginning of a real fightback against censorship, or even the end for libel laws?

Significantly, McDonald's did not appeal over the damning rulings against their core business practices, later stating in written submissions that the judge was 'correct in his conclusions'! We had failed to convince the judge on all issues, however, and so we appealed, challenging his 762-page verdict on a wide range of evidential, procedural and legal grounds specific to our case, and over fundamental matters of libel law.

On 31 March 1999 the Court of Appeal added to Mr Justice Bell's damning findings after an intense and gruelling 23-day hearing in early 1999 in which we again represented ourselves. Lord Justices Pill, May and Keane ruled:

- it was fair comment to say that McDonald's employees worldwide 'do badly in terms of pay and conditions';
- it was true that 'if one eats enough McDonald's food, one's diet may well become high in fat etc, with the very real risk of heart disease'.

But despite these further findings the Appeal Court only reduced Mr Justice Bell's original award of £60,000 damages to McDonald's (who had spent an estimated £10 million on the case) by £20,000. We naturally have refused to pay a penny — it is an outrage that McDonald's has been awarded any damages at all in the light of all the serious findings made against the company, including those of deception and exploitation, and the fact that no official sanctions have been taken against them.

We believe that the critics of the company and the food industry in general were completely vindicated by the evidence. We felt we succeeded in almost every area of the case, which is why the majority of sub-findings of fact, if not all the final conclusions, were in our favour. To summarise, we won outright the sections on advertising and animals, effectively all of nutrition and employment short of parts of the final conclusions,[5] but did not succeed on environment and food safety despite what we believe was overwhelming evidence.

We have now lodged a 43-point petition applying for leave to appeal to the House of Lords. A decision is expected by the end of the year. If not granted, we will take the British Government to the European Court of Human Rights. We are seeking to defend the public's right to criticise companies whose business practices affect people's lives, health and environment, arguing that multinational corporations should no longer be able to sue for libel.[6] We also seek an end to unfair and oppressive defamation laws and procedures, as highlighted by our own case.

Most importantly for McDonald's, we are seeking leave to argue that, having now won the bulk of the issues in dispute with the fast-food corporation, we should have won the case outright. The reputation of McDonald's has been so damaged by the findings against it that the remaining matters not proven have no material effect.

Conclusions

'Observers believe it will go down as the biggest Corporate PR disaster in history.'

UK Channel 4 News

A legal disgrace

There is no doubt that the McLibel trial became a unique and historic public tribunal of inquiry into many aspects of the food industry and modern corporations — despite all the odds being stacked completely against those representing the public interest.

I believe, by outlining just some of the controversies, that I have demonstrated how the legal establishment strained every fibre to protect a major player in the economic establishment, despite the company's completely untenable position in trying to suppress widely held public views.

There have been no sanctions at all against McDonald's as a result of this case. Recent reviews and statutory changes to the law of defamation pointedly refused to look at any of the fundamental issues such as those I have raised here, and failed to do more than tinker with streamlining procedures. Libel laws remain as unfair, oppressive and unacceptable as always.

Effectively the courts have given the green light to companies to abuse the legal system without any risk of paying consequences. But the actions of campaigners and witnesses in ensuring that the truth came out during this trial and was widely publicised, and the international grass-roots campaign of mass defiance and solidarity have:

- created a precedent that will deter companies taking similar legal action in the future; and
- given encouragement to the public to openly voice their concerns about present day issues without fear.

Overall, the one thing the trial and the rulings have shown is how inappropriate it is for the legal system to be deciding what people can and cannot say, and what is deemed to be 'true' or 'untrue'. In contrast the US legal system is not allowed to take on such a role. There are many different political viewpoints, inevitable conflicts between those who hold the power in society and those who seek to expose and resist such rule. It is vital for the future of this planet and its population that these subjects are areas of free uninhibited debate and ordinary people can express their views, so the self-interested propaganda of greedy multinationals and their ruthless drive for profits can be widely challenged.

A public victory

McDonald's brought the case to suppress the dissemination (at that time in the thousands) of London Greenpeace anti-McDonald's leaflets. However, three million leaflets have been handed out on the streets in the UK alone since the

writs were served on us, and there have been over a million more handed out in solidarity protests all over the world, available in at least 27 languages. This success is no thanks to the media whose coverage — with one or two exceptions — was patchy and superficial. It is due to the McLibel Support Campaign, set up to galvanise the great public interest and support, and to help with legal finances and practical tasks, but most importantly to back the grass-roots leafletters, thousands of whom signed a pledge to continue to disseminate leaflets before, during and after the trial in defiance of the law.

Despite the support campaign being run on half a shoe-string from an office in someone's bedroom, it succeeded in ensuring that the private and often obscure legal battle in the courtroom became a public issue fought and won in the court of public opinion and on the street. In addition, an Internet site, 'McSpotlight', was launched in 1996 by volunteers, enabling campaigners, researchers, journalists and interested people world-wide to have immediate free access to anti-McDonald's leaflets (and the translations), full daily trial transcripts, legal arguments and judgments, documentation about the company, press coverage, previously censored material, ongoing debate sections and so on. It is probably the most comprehensive and publicly accessible documentation of a major case in existence. It has been accessed 75 million times so far. McDonald's, despite being probably the most sophisticated and successful propaganda organisation in the world, was forced onto the defensive and it effectively buried its head in the sand over the case.

People often wonder just how we managed to find the strength to battle away and achieve what we did. Both Helen and myself, and also London Greenpeace, had the long experience of involvement in a wide range of inspiring campaigns, struggles and movements of ordinary people against the odds. We also have no illusions that could have led to disillusionment. We are anarchists who want to see the end of the exploitation of people, animals and the environment in order to create a new society where people have control over their own lives and communities. We know this will be a life-long struggle.

McLibel echoes other recent campaigns and movements defying legal suppression, for example:

- free speech campaigns,
- struggles for the basic rights to organise and demonstrate, or even for the right to party,
- widespread illegal soft-drugs use,
- the mass public non-cooperation of 18 million people in the UK not paying the Poll Tax,
- the traditions of direct actions and protests (for example, for the sake of the environment and animal rights),
- occupations of unused empty homes, buildings and land,
- and of course the continuous struggles of workers and the labour movement against employers and, increasingly, the courts.

Is it not it a fact that the control of the wealth and decision making in modern capitalist society is in the hands of a ruling class of company directors, controllers of financial institutions, politicians, property and land owners, military strategists etc, and not in the hands of ordinary people in their workplaces and their communities? If this is so, then it inevitably follows that many areas of the legal system are used as a means of control over the public in their everyday lives, especially if they act individually or collectively to challenge the powers-that-be. Considering that social inequalities and controls, and conflict and environmental destruction are serious and growing problems, then public discontent and opposition is bound to increase likewise – and, therefore, the authorities' use of the legal machinery will also increase to try and keep the public quiet.

So apart from the legal considerations, I believe three main questions arise from this experience:

- In what ways can courts be transformed into arenas around which public debate and struggles can be stimulated and mobilised?
- Are 'natural justice' and 'civil society' much stronger than people realise? And can supposedly powerful legal, state and corporate institutions be rendered powerless?
- Do grass-roots movements, backed by public support, have the potential to really take on and undermine or even abolish those institutions which currently dominate and oppress the public?

Further details of the case and the campaign are available from: The 'McSpotlight' Internet site <www.mcspotlight.org>. Available on CD-Rom. McLibel Support Campaign, 5 Caledonian Road, London N1 9DX, UK. <mclibel@globalnet.co.uk> Further info on the issues: 'McLibel Verdict & the Evidence', 'McLibel Appeal Decisions — More Bad News For McDonald's', 'Trial News' evidence summaries, available from the McLibel Support Campaign & on McSpotlight. Also: *McLibel: Burger Culture On Trial* (Pan Books) and the superb documentary *McLibel: Two Worlds Collide* (One Off Productions, <oops@spanner.org>)

References

1. London Greenpeace was the first Greenpeace group in Europe, founded in 1971, and has always been separate from Greenpeace International (founded in 1977).
2. In the case of *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534 (HL) it was ruled that the public should be able to subject such bodies to 'uninhibited public criticism' without the fear of libel writs due to the 'chilling effect on freedom of speech' that it inevitably involves.
3. Most of the time McDonald's forced us, despite our complaints, to prove the obvious — for example, that much of its packaging ends up as litter, that diet is linked to ill-health, that their advertising to children gets them to pester their parents to take them to McDonald's, that animals raised for the food industry suffer cruelty, and that McDonald's pays low wages to its workers.
4. Despite a great deal of evidence on the environmentally damaging effects of the production and disposal of mountains of McDonald's disposable packaging, the Appeal Court upheld the finding by the trial judge that most of this evidence was not relevant, and that McDonald's had been libelled because the leaflets said they used only a 'tiny' amount of recycled paper, whereas he found that it was a 'small but nevertheless significant proportion'! He also agreed with McDonald's that it was their customers who were the ones responsible for causing litter!

   Mr Justice Bell had accepted 'the expansion of beef cattle production has ... led to the destruction of areas of rainforest' in Costa Rica, Brazil and Guatemala, and that McDonald's is the world's largest promoter and user of beef, and has in those countries used beef from ex-rainforest land. But the Appeal Court upheld his narrow and semantic interpretation of the meaning of this section of the factsheet — that we had to prove McDonald's *itself* had been involved more directly, and in the recent destruction of only a specific type of 'luxuriant, broadleaved, evergreen, very wet, canopy' tropical forest. He therefore discarded any evidence about damage to tropical forests in general. He also chose to over-rule the opinions of the only experts on this issue (called by the defence). So we were unsuccessful.

   Regarding food safety, the Appeal Court upheld the adverse ruling based on the trial judge's controversial meaning ie. that the factsheet accused McDonald's of subjecting their customers to 'a serious risk of food poisoning' (which it did not say — it merely criticised modern

Continued on p.293

battle between objectivism and relativism in ethics was becoming increasingly irrelevant. Since the time of Descartes, modern moral philosophy has been driven to find 'clear and distinct' answers to the ancient question 'How are we to live?'. Various attempts were made to avoid the supposedly slippery slope of moral relativism. Each attempt at moral objectivism however, failed to provide anything other than general principles. Bioethics in its first generation attempted to go beyond the limits of philosophy and evolved too quickly into a means for solving problems. Richard Hare provided a warning against this at an early Bioethics forum in 1977 saying, 'perhaps the only contribution of the philosopher to the solution of these problems [in medical ethics] is the clarification of the logical properties of tricky words like wrong'.[5]

In the last few years of this century there is a growing realisation that not only is objectivism in ethics impossible, it is also unnecessary. The slippery slope of moral relativism is not as slippery as we have been led to believe. Even if we never achieve moral certainty we are unlikely to slide into moral chaos. People who are driven to change the world rarely appeal to some sense of final or ultimate truth. Opposition to tyranny of any sort does not need certainty to be effective. While many people might disagree with the theological assumptions of the Society of Friends (Quakers) most would acknowledge they were a significant force in the abolition of slavery. When Peter Singer highlights the cruel way we treat animals, we are more likely to be influenced by his passion and commitment, and to some intuitive sense that he is saying something important, than we are to the logic of his argument.

The second generation of Bioethics will involve us in a conversation about what it means to be human, our place in the biosphere and how we might make the new century less traumatic than the past. Engaging people in a conversation about issues like the Human Genome Project and human cloning will be much more crucial to how we deal with the future than the previous attempt to construct ethical boundaries. Any boundaries we do decide to create around techniques associated with gene-linked experimentation will be pragmatic and legal.

Ethical and legal pragmatism

Ethicists, philosophers or theologians will not *solve* moral dilemmas like abortion in any objective sense. However, most moral dilemmas can be *resolved* by creative dialogue about the type of society we want to live in and by drawing a line and legislating on that line. A resolution of this type recognises that absolute answers are beyond the scope of the most basic philosophical question, 'How should we live?'. Asking the question in a collaborative and cooperative sense is the first step to take to engage the type of examination needed for a diverse moral community to exist harmoniously. However, because there will never be universal agreement and because dialogue can't *solve* moral problems, a further step needs to be taken. This is done through legislation which, having considered the dialogue, draws a line and legislates the 'ethical' outcome. A legal decision *resolves* the issue either through the parliament or the court. For example, in the case of abortion, political and legal pragmatism takes over when no general agreement is possible. A pragmatic line is drawn somewhere around 20 weeks of gestation that allows for abortion to take place prior to that point. Some societies will still choose to disallow abortion but most will produce pragmatic and legal guidelines that live with the tension rather than attempt to *solve* the dilemma.

Given that in the new century we will be faced with many more bio-medical dilemmas than in this century, our conversations need to be much more frequent. In this second phase of Bioethics, pragmatism and the law will play an increasing role in resolving ethical dilemmas.

References

1. Beauchamp, Tom and Childress, James, *Principles of Biomedical Ethics* Oxford, University Press, 1994.
2. A cut down version of this text is used in Australia – Mitchell, K., Kerridge I. and Lovat, T., *Bioethics and Clinical Ethics for Health Care Professionals,* Social Science Press, Wentworth Falls,.
3. Singer, P., *Practical Ethics,* Cambridge University Press, Cambridge, 1979.
4. Singer, P., *Animal Liberation,* A New York Review Book, 1975.
5. Hare, Richard, 'Can the Moral Philosopher Help?', in *Philosophical Medical Ethics, Its Nature and Significance: Proceedings of the Third Trans-Disciplinary Symposium on Philosophy and Medicine*, 1977.

Morris article continued from p.273

factory farming methods). This was despite Justice Bell finding that we 'were able to establish some incidents of food poisoning attributable to eating McDonald's food', including two serious Ecoli outbreaks; that salmonella was present in '25% of the pieces of deboned [chicken] meat' supplied to McDonald's, and campylobacter on 70%; and that the risk of undercooking, a breakdown of the only effective defence against food poisoning, 'is endemic in the fast food system'.

5. We basically won all of the issue of nutrition, diet and ill-health, although we were somehow deemed to have lost it at the final hurdle. After all, our position was the same as the World Health Organisation. McDonald's expert witness said that the key part of the factsheet text was 'a very reasonable thing to say'. A controversial debate over the meaning of the text raged throughout the proceedings. The Appeal Court ruled it had 'considerable sympathy' with our submissions but was bound by a legal technicality (that during the trial we had withdrawn a previous Court of Appeal hearing on this matter) from ruling outright in our favour. They added that the judge should not have conducted the scientific enquiry (lasting 60 days — the reason for the original and controversial denial of a jury!).

   On the issue of employment, we won outright on pay and conditions. On unions, we were put to prove that 'McDonald's have a policy of preventing unionisation by getting rid of pro-Union workers'. Their UK Head of Personnel admitted that employees 'would not be allowed to carry out any overt union activity on McDonald's premises', and that 'to inform the Union about conditions inside the stores' would be a breach of the employee's contract (Crew Handbook), 'gross misconduct' and a 'summary sackable offence'. The judges ruled that this systematic and, we argued, illegal discrimination was not enough to win! But the Appeal Court did agree with us that 100 days of employment evidence was too much.
6. In an important judgment the Appeal Court also agreed with us that campaigning groups should have the same right as the media to plead a defence of 'qualified privilege' (a new and developing area of law which protects a publisher from having to prove 'reasonable' criticisms made in the public interest). But they ruled that the factsheet 'lacked balance' and 'made scant reference to authoritative sources'. We believe this discriminates against publicly-distributed campaigning material.