

Year in Review: ethical issues in the treatment of gender diverse and transgender adolescents

Prof. Simona Giordano

Professor of Bioethics, Centre for Social Ethics and Policy (CSEP)

School of Social Sciences, Law School

The University of Manchester

Simona.giordano@manchester.ac.uk



11-13 AUGUST 2021
GOTHENBURG, SWEDEN

- Method: key word search using Ingenta Connect, Pro/Quest Central UK/Ireland, PubMed Central, Springer Online Journals, Wiley Online Library Full Collection 2019 and Wiley Online Library All Journals, Springer Links Journals.
- Key words: ethics, puberty suppression (n. 559 results); ethics transgender children (n. 2990 results)
- Lexis Nexis: key words gender dysphoria & minors (n. 8 results). Out of these, two deal with *Bell*, one with how the Family court has progressed in treating cases about gender dysphoria in children over the years, and one other article on how consent by minors to body modifications should be capacity- not age-based.
- Date Range: 2019- 2021

Selected papers

1. Ethical analyses
2. Papers that do not offer an ethical analysis but pose an original ethical issue.
3. Focus is on the ethico-legal issues that are likely to arise in the clinical management of gender diverse/transgender youth.

Thematic areas

1. Consent, minors and the courts (*Bell v Tavistock*).
2. Consent: the role of the family (*AB v BC*)
3. Ethics of puberty delay
4. Ethical issues in the provision of long-term GnRHa to non-binary adolescents
5. Mental health diagnosis
6. Ethical issues in the provision of genital surgery to minors

1. Consent, minors and the courts (*Bell v Tavistock*).

CASE LAW

Bell v Tavistock and Portman NHS Trust (2020) EWHC 3274

AB v CD & Ors [2021] EWHC 741 (Fam) (26 March 2021)

SUMMARY

- *Gillick v West Norfolk and Wisbech Health Authority* [1986] AC 112 dictates what elements must be satisfied in order to prescribe or administer treatment to a minor.
- In *Bell v The Tavistock and Portman NHS Foundation Trust* [2020] EWHC 3274 (Admin) - [2021] Fam Law 203) the claimants argued that children under 18 are not competent to give informed consent to the administration of puberty blockers;
 - information given is misleading and insufficient to ensure informed consent; and
 - Treatment is experimental and not backed up by sufficient evidence
 - Prescribing of blockers and subsequent cross sex hormones and surgery is one clinical pathway

What the child would have to understand, according to the ruling of Bell:

- “the child or young person would have to understand not simply the implications of taking PBs but those of progressing to cross-sex hormones. The relevant information therefore that a child would have to understand, retain and weigh up in order to have the requisite competence in relation to PBs, would be as follows: (i) the immediate consequences of the treatment in physical and psychological terms; (ii) the fact that the vast majority of patients taking PBs go on to CSH and therefore that s/he is on a pathway to much greater medical interventions; (iii) the relationship between taking CSH and subsequent surgery, with the implications of such surgery; (iv) the fact that CSH may well lead to a loss of fertility; (v) the impact of CSH on sexual function; (vi) the impact that taking this step on this treatment pathway may have on future and life-long relationships; (vii) the unknown physical consequences of taking PBs; and (viii) the fact that the evidence base for this treatment is as yet highly uncertain.” [para 138]

What Bell concluded

- “It is highly unlikely that a child aged 13 or under would be competent to give consent to the administration of puberty blockers. It is doubtful that a child aged 14 or 15 could understand and weigh the long-term risks and consequences of the administration of puberty blockers.” [para 151].
- Court authorisation would be required.
- “In respect of young persons aged 16 and over, the legal position is that there is a presumption that they have the ability to consent to medical treatment. Given the long-term consequences of the clinical interventions at issue in this case, and given that the treatment is as yet innovative and experimental, we recognise that clinicians may well regard these as cases where the authorisation of the court should be sought prior to commencing the clinical treatment” [para152].

- Leave to appeal from this decision was granted in January 2021 with hearing expected in June 2021

Commentaries: must read**

- The case editor of Family Law and editor of the Family Law reports, Caroline Bridge described in a case described *Bell* as a “monumental” judgement (Judicial review: medical treatment - *Bell v The Tavistock and Portman NHS Foundation Trust* [2020] EWHC 3274 (Admin) - [2021] Fam Law 203)
- Mary Welstead entitles her paper covering the case, ‘*Knell sounds for the current treatment of minors for gender dysphoria. [2021] Fam Law 580***’, Mary Welstead provides a thorough summary of the salient points from the judgement and what has happened in the GID services since the court’s decision on 1 January 2020.
- Nicola Newbeginning and Robin Moira White, “What about parental consent in the treatment of trans children and young people? – a view of the *Bell v Tavistock* case”, <https://oldsquare.co.uk/wp-content/uploads/2020/12/What-about-parental-consent-in-the-treatment-of-trans-children-and-young.pdf>**

Simona Giordano, Søren Holm and Fae Garland, 'Gender dysphoria in adolescents: can adolescents or parents give valid consent to puberty blockers?', *Journal of Medical Ethics* Published Online First: 10 March 2021. doi: 10.1136/medethics-2020-106999**

Beattie C. High court should not restrict access to puberty blockers for minors, *Journal of Medical Ethics* Published Online First: 16 February 2021. doi: 10.1136/medethics-2020-107055 (student essay) **

Simona Giordano & Søren Holm, "Is puberty delaying treatment 'experimental treatment'?", *International Journal of Transgender Health*, 21,2, 2020, pp. 113-121, DOI: [10.1080/26895269.2020.1747768](https://doi.org/10.1080/26895269.2020.1747768) **

Nice reviews of evidence

- National Institute for Health and Care Excellence (UK), report 2021, *Evidence review: Gonadotrophin releasing hormone analogues for children and adolescents with gender dysphoria*. Accessed from link from National Health Service <https://www.england.nhs.uk/commissioning/spec-services/npc-crg/gender-dysphoria-clinical-programme/update-following-recent-court-rulings-on-puberty-blockers-and-consent/>
- *Evidence review: Gender-affirming hormones for children and adolescents with gender dysphoria*.
<https://www.evidence.nhs.uk/document?id=2334889&returnUrl=search%3Ffrom%3D2021-03-10%26q%3DEvidence%2BReview%26to%3D2021-04-01>
- The claim: ‘Low’ evidence because of lack of RCTs

PUBLICATIONS ON CONSENT PRIOR TO BELL

David Gilmore, The Family Court and gender dysphoria, *Family Law* - [2019] Fam Law 1418

The *Medical law Review* dedicated a special issue to 'Defining and Regulating the Boundaries of Sex and Sexuality:

[Heather Brunskell-Evans](#), The Medico-Legal 'Making' of 'The Transgender Child', *Medical Law Review*, Volume 27, Issue 4, Autumn 2019, pp. 640–657, <https://doi-org.manchester.idm.oclc.org/10.1093/medlaw/fwz013>

Murphy, Timothy F, ['Adolescents and Body Modification for Gender Identity Expression'](#), *Medical law review*, Volume 27, Issue 4, 2019, pp. p.623-639

Law publications

Title	Month/Year	Source
Knell sounds for the current treatment of minors for gender dysphoria - [2021] Fam Law 580	April 2021	Family Law
Judicial review: medical treatment - Bell v The Tavistock and Portman NHS Foundation Trust [2020] EWHC 3274 (Admin) - [2021] Fam Law 203	Feb 2021	Family Law
Will Gender Self-Declaration Undermine Women's Rights and Lead to an Increase in Harms? - (2020) 83(3) MLR 539-557	April 2020	Modern Law Review
Book Reviews: Family Law Isolationism and Church, State, and Family - Journal of Law and Religion (2019) 34 3 (490-495)	Dec 2019	Journal of Law and Religion
The Family Court and gender dysphoria - [2019] Fam Law 1418	Dec 2019	Family Law
Editorial: Defining and Regulating the Boundaries of Sex and Sexuality - Med Law Rev (2019) 27 (4): 541	Nov 2019	Modern Law Review
Adolescents and Body Modification for Gender Identity Expression - Med Law Rev (2019) 27 (4): 623	Nov 2019	Modern Law Review
The Right to Trans-Specific Healthcare in Norway: Understanding The Health Needs of Transgender People - Med Law Rev (2019) 27 (2)	May 2012	Modern Law Review

2. Consent: the role of the family (*AB v BC*)

SUMMARY

- *Bell* left unaddressed the question as to whether parents can consent to blockers on behalf of their child.
- This was addressed in *AB v CD* and others, handed down in March 2021.
- If there is agreement between parties (parents minors and doctors) parents can consent and court authorisation is not needed.
- This judgment mitigates the effects of *Bell*; it has overall been well received, as is in line with international clinical guidance.
- There are no published commentaries of the case, but the issue had been discussed already prior to the judgment.

PUBLICATIONS PRIOR TO AB V BC: must read**

Priest, M. (2019). Transgender children and the right to transition: Medical ethics when parents mean well but cause harm. *The American Journal of Bioethics*, 19(2), 45-59.**

Antommara, Armand H. Matheny ; Shapiro, Robert A ; Conard, Lee Ann E, [Psychological Maltreatment and Medical Neglect of Transgender Adolescents: The Need for Recognition and Individualized Assessment](#), American journal of bioethics, 2019-02-01, Vol.19 (2), p.72-74**

Notini, L., McDougall, R., & Pang, K. C. (2019). Should parental refusal of Puberty-Blocking treatment be overridden? The role of the harm principle. *The American Journal of Bioethics*, 19(2), 69-72.**

Dubin, S., Lane, M., Morrison, S., Radix, A., Belkind, U., Vercler, C., & Inwards-Breland, D. (2019). Medically assisted gender affirmation: when children and parents disagree. *Journal of Medical Ethics*, 46(5), 295–299.
<https://doi.org/10.1136/medethics-2019-105567>**

Coleman, Doriane Lambelet, [Transgender Children, Puberty Blockers, and the Law: Solutions to the Problem of Dissenting Parents](#), *American journal of bioethics*, 2019-02-01, Vol.19 (2), p.82-84

Ashley, Florence, [Puberty Blockers Are Necessary, but They Don't Prevent Homelessness: Caring for Transgender Youth by Supporting Unsupportive Parents](#), *American journal of bioethics*, 2019-02-01, Vol.19 (2), p.87-89**

Ashley, Florence, [Watchful Waiting Doesn't Mean No Puberty Blockers, and Moving Beyond Watchful Waiting](#), American journal of bioethics, 2019-06-03, Vol.19 (6), p.W3-W4**

Harris, R. M., Tishelman, A. C., Quinn, G. P., & Nahata, L. (2019). Decision making and the long-term impact of puberty blockade in transgender children. *The American Journal of Bioethics*, 19(2), 67-69.

Clark, Beth, Virani Alice, Saewyc Elizabeth, The edge of Harm and Help: ethical considerations in the care of transgender youth with complex family situations, *Ethics and Behavior*, Volume 30 Issue 3 April 2020, pp. 161-180**

3: ETHICS OF PROVISION OF PUBERTY DELAY

Summary

- The legal ruling, at a close look, result from unsettled ethical debates around the ethical legitimacy of providing puberty delaying medications to gender diverse youth.
- Despite the treatment being rarely regretted, and being standard clinical practice since the mid 1990s, it has raised a great deal of controversy which, we can see, has not been settled.
- The ethical questions are: treatment is experimental; this is a vulnerable population; long term risks are unknown.
- The legal rulings replicates these concerns and, rather than addressing these, crystallise these, giving them the credibility of a legal ruling.
- The consequences can 'spill over' well beyond the jurisdictional boundaries of the UK: News from Sweden
https://segm.org/Sweden_ends_use_of_Dutch_protocol

Publications: must read**

D Cohen, H Barnes [Gender dysphoria in children: puberty blockers study draws further criticism](https://doi.org/10.1136/bmj.l5647) *BMJ* 2019; 366 doi: <https://doi.org/10.1136/bmj.l5647> (Published 20 September 2019). *BMJ* 2019;366:l5647

Fisher, Celia B [Providing Puberty Suppression Treatment for Transgender Youth: What Constitutes Competence?](#) *American journal of bioethics*, 2019-07-03, Vol.19 (7), p.68-69

Ashley F. Thinking an ethics of gender exploration: Against delaying transition for transgender and gender creative youth. *Clinical Child Psychology and Psychiatry*. 2019;24(2):223-236. doi:10.1177/1359104519836462**

Wren B. Reflections on 'Thinking an Ethics of Gender Exploration: Against Delaying Transition for Transgender and Gender Variant Youth'. *Clin Child Psychol Psychiatry*. 2019 Apr;24(2):237-240. doi: 10.1177/1359104519838591. PMID: 30968723.

Wren B. Ethical issues arising in the provision of medical interventions for gender diverse children and adolescents. *Clinical Child Psychology and Psychiatry*. 2019;24(2):203-222. doi:10.1177/1359104518822694 **

Giovanardi G, Morales P, Mirabella M, Fortunato A, Chianura L, Speranza AM, Lingiardi V. Transition memories: experiences of trans adult women with hormone therapy and their beliefs on the usage of hormone blockers to suppress puberty. *J Endocrinol Invest*. 2019 Oct;42(10):1231-1240. doi: 10.1007/s40618-019-01045-2. Epub 2019 Apr 5. PMID: 30953318.

Hilary, M., Murat, A., & Ferrando, C. A. (2019). The role of the ethicist in an interdisciplinary transgender health care team. *Transgender Health*, 4(1), 136-142. doi:http://dx.doi.org.manchester.idm.oclc.org/10.1089/trgh.2018.0058

Warren M. Seigel, Kelly McBride Folkers and Nancy Neveloff Dubler, [Ethics of Gender-Affirming Care](#) in Transgender Medicine, edited by Leonid Poretsky, Wylie C. Hembree (New York: Springer, 2019), ch. 17, pp.341-355**

Simona Giordano, “The importance of being persistent: should transgender children be allowed to socially transition?” *Journal of Medical Ethics*, 45, 2019, pp. 654-661.**

Reirden DH, Glover JJ. Maximizing Resources: Ensuring Standard of Care for a Transgender Child in a Rural Setting. *Am J Bioeth*. 2019 Jul;19(7):66-67. doi: 10.1080/15265161.2019.1618944. PMID: 31237502.

[Redcay, Alex](#); [Elisabeth Counselman Carpenter](#); [McMahon, Sheila](#); [Luquet, Wade](#); [Rice, Karen](#); et al. The Arc of Justice: Examining Policies and Laws to Advance the Human Rights of Transgender and Gender Expansive Children [Journal of Human Rights and Social Work](#); Cham [Vol. 4, Iss. 3](#), (Sep 2019): 156-163.

Vrouenraets, L. J. J. J., Hartman, L. A., Hein, I. M., de Vries, A. L., de Vries, M. C., & Molewijk, B. A. (2020). Dealing with moral challenges in treatment of transgender children and adolescents: evaluating the role of Moral Case Deliberation. *Archives of Sexual Behavior*, 49(7), 2619-2634.

Editorial, 'A flawed agenda for trans youth', The Lancet Child and Adolescent Health, vol 5 Issue 5, p.385, 14 May 2021,
[https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(21\)00139-5/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(21)00139-5/fulltext)**

4. Ethical issues in the provision of long-term GnRHa to non-binary adolescents

- **Summary:** puberty suppression has so far been used in adolescents with gender dysphoria on a temporary basis. One question that has been asked in the last two years is whether it would be ethical or in line with the usual goals of medicine to prescribe long term puberty blockers to gender non binary youth.

Publications: must read**

- Notini, L., Pang, K.C., Telfer, M., & McDougall, R. (2020). "No One Stays Just on Blockers Forever": Clinicians' Divergent Views and Practices Regarding Puberty Suppression for Nonbinary Young People. *The Journal of adolescent health : official publication of the Society for Adolescent Medicine*. <https://doi.org/10.1016/j.jadohealth.2020.09.028> **
- Notini L, Earp BD, Gillam L, *et al*. Forever young? The ethics of ongoing puberty suppression for non-binary adults, *Journal of Medical Ethics* 2020;46:743-752**
- Pang KC, Notini L, McDougall R, Gillam L, Savulescu J, Wilkinson D, Clark BA, Olson-Kennedy J, Telfer MM, Lantos JD. Long-term Puberty Suppression for a Nonbinary Teenager. *Pediatrics*. 2020 Feb;145(2):e20191606. doi: 10.1542/peds.2019-1606. PMID: 31974217.**

- Dangelo R. Who is Phoenix? J Med Ethics 2020; 46: 753–4. doi:10.1136/medethics-2020-106822 <http://www-ncbi-nlm-nih-gov.manchester.idm.oclc.org/pubmed/33033114>
- Lemma A. Commentary on: 'Forever young? The ethics of ongoing puberty suppression for non-binary adults'. J Med Ethics 2020; 46: 757–8. doi:10.1136/medethics-2020-106587 <http://www-ncbi-nlm-nih-gov.manchester.idm.oclc.org/pubmed/32878919>
- Wren B. New way of being a person? J Med Ethics 2020; 46: 755–6. doi:10.1136/medethics-2020-106584 <http://www-ncbi-nlm-nih-gov.manchester.idm.oclc.org/pubmed/32883708>
- Nahata, L., & Quinn, G. P. (2020). 'Harm threshold': Capacity for decision-making may be reduced by long-term pubertal suppression. *Journal of Medical Ethics*, 46(11), 759-760. doi:<http://dx.doi.org.manchester.idm.oclc.org/10.1136/medethics-2020-106625>
- Notini L, Earp BD, Gillam L, *et al*, Identity, well-being and autonomy in ongoing puberty suppression for non-binary adults: a response to the commentaries, *Journal of Medical Ethics* 2020;46:761-762

5. ETHICAL ISSUES IN MENTAL HEALTH DIAGNOSIS

Summary

- In 2019 the WHO has published a new version of the ICD; gender identity disorder has been renamed as Gender Incongruence and has been moved from the category of mental disorders to a new category, named 'Conditions related to sexual health'
- The move has been generally welcomed, as less pathologising and stigmatising. But is all that shines gold? Two papers (by the same author) highlight that there could be problems with this move.

Publications

- Edmund Horowicz and S Giordano, “Gender Incongruence as a Condition Relating to Sexual Health: The Mental Health ‘Problem’ and ‘Proper’ Medical Treatment”, in French “Intersexuation, transidentité, reconstruction mammaire, et surdité”, *Droit et cultures* 80, Corinne Fortier (éd.), *Réparer les corps et les sexes*, vol. 2, 2021 <https://journals.openedition.org/droitcultures/6460>.**
- Horowicz, Edmund [Rethinking ‘need’ for clinical support in transgender and gender non-conforming children without clinical classification: Learning from ‘the paper I almost wrote’](#), *Bioethics*, 2021-03, Vol.35 (3), p.246-254**

6: ETHICS 19-21 GENITAL SURGERY FOR LEGAL MINORS

Summary

- All major international clinical guidelines advise that genital surgery should be postponed till the age of legal adulthood in any given country.
- Adulthood is taken as a minimum eligibility criterion.
- Since around 2014 this eligibility criterion has been questioned. More recently, two publications have appeared on this topic.

Publications

- Elizabeth R. Boskey, Judith A. Johnson, Charlotte Harrison, Jonathan M. Marron, Leah Abecassis, Allison Scobie-Carroll, Julian Willard, David A. Diamond, Amir H. Taghinia and Oren Ganor, [Ethical issues considered when establishing a pediatrics gender surgery center](https://doi-org.manchester.idm.oclc.org/10.1542/peds.2018-3053), Pediatrics June 2019, 143 (6) e20183053; DOI: <https://doi-org.manchester.idm.oclc.org/10.1542/peds.2018-3053>**
- Horowicz, E. (2019). Transgender adolescents and genital-alignment surgery: Is age restriction justified?. *Clinical Ethics*, 14(2), 94-103.**