

ONE



London. Trinity term one week old. Implacable June weather. Fiona Maye, a High Court judge, at home on Sunday evening, supine on a chaise longue, staring past her stockinged feet towards the end of the room, towards a partial view of recessed bookshelves by the fireplace and, to one side, by a tall window, a tiny Renoir lithograph of a bather, bought by her thirty years ago for fifty pounds. Probably a fake. Below it, centred on a round walnut table, a blue vase. No memory of how she came by it. Nor when she last put flowers in it. The fireplace not lit in a year. Blackened raindrops falling irregularly into the grate with a ticking sound against balled-up yellowing newsprint. A Bokhara rug spread on wide polished floorboards. Looming at the edge of vision, a baby grand piano bearing silver-framed family photos on its deep black shine. On the floor by the chaise longue, within her reach, the draft of a judgment. And Fiona was on her back, wishing all this stuff at the bottom of the sea.

In her hand was her second Scotch and water. She was feeling shaky, still recovering from a bad moment with her husband. She rarely drank, but the Talisker and tap water was a balm, and she thought she might cross the room to the sideboard for a third. Less Scotch, more water, for she was in court tomorrow and she was duty judge now, available for any sudden demand, even as she lay recuperating. He had made a shocking declaration and placed an impossible burden on her. For the first time in years, she had actually shouted, and some faint echo still resounded in her ears. 'You idiot! You fucking *idiot!*' She had not sworn out loud since her carefree teenage visits to Newcastle, though a potent word sometimes intruded on her thoughts when she heard self-serving evidence or an irrelevant point of law.

And then, not long after that, wheezy with outrage, she had said loudly, at least twice, 'How *dare* you!'

It was hardly a question, but he answered it calmly. 'I need it. I'm fifty-nine. This is my last shot. I've yet to hear evidence for an afterlife.'

A pretentious remark and she had been lost for a reply. She simply stared at him, and perhaps her mouth was open. In the spirit of the staircase, she had a response now, on the chaise longue. 'Fifty-nine? Jack, you're *sixty!* It's pathetic, it's banal.'

What she had actually said, lamely, was, 'This is too ridiculous.'

‘Fiona, when did we last make love?’

When did they? He had asked this before, in moods plaintive to querulous. But the crowded recent past can be difficult to recall. The Family Division teemed with strange differences, special pleading, intimate half-truths, exotic accusation. And as in all branches of law, fine-grained particularities of circumstance needed to be assimilated at speed. Last week, she heard final submissions from divorcing Jewish parents, unequally Orthodox, disputing their daughters’ education. The draft of her completed judgment was on the floor beside her. Tomorrow, coming before her again would be a despairing Englishwoman, gaunt, pale, highly educated, mother of a five-year-old girl, convinced, despite assurances to the court to the contrary, that her daughter was about to be removed from the jurisdiction by the father, a Moroccan businessman and strict Muslim, to a new life in Rabat, where he intended to settle. Otherwise, routine wrangles over residence of children, over houses, pensions, earnings, inheritance. It was the larger estates that came to the High Court. Wealth mostly failed to bring extended happiness. Parents soon learned the new vocabulary and patient procedures of the law, and were dazed to find themselves in vicious combat with the one they once loved. And waiting offstage, boys and girls first-named in the court documents, troubled little Bens and Sarahs, huddling together while the gods above them fought to the last, from the Family Proceedings Court, to the High Court, to the Court of Appeal.

All this sorrow had common themes, there was a human sameness to it, but it continued to fascinate her. She believed she brought reasonableness to hopeless situations. On the whole, she believed in the provisions of family law. In her optimistic moments she took it as a significant marker in civilisation's progress, to fix in the statutes the child's needs above its parents'. Her days were full, and in the evenings recently, various dinners, something at Middle Temple for a retiring colleague, a concert at Kings Place (Schubert, Scriabin), and taxis, Tube trains, dry-cleaning to collect, a letter to draft about a special school for the cleaning lady's autistic son, and finally sleep. Where was the sex? At that moment, she couldn't recall.

'I don't keep a record.'

He spread his hands, resting his case.

She had watched as he crossed the room and poured himself a measure of Scotch, the Talisker she was drinking now. Lately, he was looking taller, easier in his movements. While his back was turned to her she had a cold premonition of rejection, of the humiliation of being left for a young woman, of being left behind, useless and alone. She wondered if she should simply go along with anything he wanted, then rejected the thought.

He had come back towards her with his glass. He wasn't offering her a Sancerre the way he usually did around this time.

'What do you want, Jack?'

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‘I’m going to have this affair.’

‘You want a divorce.’

‘No. I want everything the same. No deception.’

‘I don’t understand.’

‘Yes you do. Didn’t you once tell me that couples in long marriages aspire to the condition of siblings? We’ve arrived, Fiona. I’ve become your brother. It’s cosy and sweet and I love you, but before I drop dead, I want one big passionate affair.’

Mistaking her amazed gasp for laughter, for mockery perhaps, he said roughly, ‘Ecstasy, almost blacking out with the thrill of it. Remember that? I want one last go, even if you don’t. Or perhaps you do.’

She stared at him in disbelief.

‘There it is then.’

This was when she had found her voice and told him what kind of idiot he was. She had a powerful grip on what was conventionally correct. That he had, as far as she knew, always been faithful, made his proposition all the more outrageous. Or if he’d deceived her in the past he’d done it brilliantly. She already knew the name of the woman. Melanie. Not so remote from the name of a fatal form of skin cancer. She knew she could be obliterated by his affair with this twenty-eight-year-old statistician.

‘If you do this it’ll be the end for us. It’s as simple as that.’

‘Is this a threat?’

‘My solemn promise.’

By then she had regained her temper. And it did seem simple. The moment to propose an open marriage was before the wedding, not thirty-five years later. To risk all they had so that he might relive a passing sensual thrill! When she tried to imagine wanting something like it for herself – her ‘last fling’ would be her first – she could think only of disruption, assignations, disappointment, ill-timed phone calls. The sticky business of learning to be with someone new in bed, newly devised endearments, all the fakery. Finally, the necessary disentangling, the effort required to be open and sincere. And nothing quite the same when she came away. No, she preferred an imperfect existence, the one she had now.

But on the chaise longue it rose before her, the true extent of the insult, how he was prepared to pay for his pleasures with her misery. Ruthless. She had seen him single-minded at the expense of others, most often in a good cause. This was new. What had changed? He had stood erect, feet well apart as he poured his single malt, the fingers of his free hand moving to a tune in his head, some shared song perhaps, not shared with her. Hurting her and not caring – that was new. He had always been kind, loyal and kind, and kindness, the Family Division daily proved, was the essential human ingredient. She had the power to remove a child from an unkind parent and she sometimes did. But remove herself from an unkind husband? When

she was weak and desolate? Where was her protective judge?

Self-pity in others embarrassed her, and she wouldn't have it now. She was having a third drink instead. But she poured only a token measure, added much water and returned to her couch. Yes, it had been the kind of conversation of which she should have taken notes. Important to remember, to measure the insult carefully. When she threatened to end the marriage if he went ahead, he had simply repeated himself, told her again how he loved her, always would, that there was no other life but this, that his unmet sexual needs caused him great unhappiness, that there was this one chance and he wanted to take it with her knowledge and, so he hoped, her assent. He was speaking to her in the spirit of openness. He could have done it 'behind her back'. Her thin, unforgiving back.

'Oh,' she murmured. 'That's decent of you, Jack.'

'Well, actually . . .' he said, and didn't finish.

She guessed he was about to tell her the affair had already begun and she couldn't bear to hear it. Didn't need to. She saw it. A pretty statistician working on the diminishing probability of a man returning to an embittered wife. She saw a sunlit morning, an unfamiliar bathroom, and Jack, still decently muscled, pulling a half-unbuttoned clean white linen shirt over his head in that impatient way he had, a discarded shirt tossed towards the laundry basket hanging by one arm before sliding to the floor. Perdition. It would happen, with or without her consent.

‘The answer’s no.’ She had used a rising tone, like a flinty schoolmarm. She added, ‘What else would you expect me to say?’

She felt helpless and wanted the conversation to end. There was a judgment to approve before tomorrow for publication in the *Family Law Reports*. The fates of two Jewish schoolgirls had already been settled in the ruling she had delivered in court, but the prose needed to be smoothed, as did the respect owed to piety in order to be proof against an appeal. Outside, summer rain beat against the windows; distantly, from beyond Gray’s Inn Square, tyres hissed on drenched asphalt. He would leave her and the world would go on.

His face had been tight as he shrugged and turned to leave the room. At the sight of his retreating back, she felt the same cold fear. She would have called after him but for the dread of being ignored. And what could she say? Hold me, kiss me, have the girl. She had listened to his footsteps down the hall, their bedroom door closing firmly, then silence settling over their flat, silence and the rain that hadn’t stopped in a month.

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First the facts. Both parties were from the tight folds of the strictly observant Chareidi community in north London. The Bernsteins’ marriage was arranged by their parents,

with no expectation of dissent. Arranged, not forced, both parties, in rare accord, insisted. Thirteen years on, all agreed, mediator, social worker and judge included, that here was a marriage beyond repair. The couple were now separated. Between them they managed with difficulty the care of the two children, Rachel and Nora, who lived with the mother and had extensive contact with the father. Marriage breakdown had started in the early years. After the difficult birth of the second girl, the mother was unable to conceive again, due to radical surgery. The father had set his heart on a large family and thus began the painful unravelling. After a period of depression (prolonged, said the father; brief, said the mother), she studied at the Open University, gained a good qualification and entered on a career in teaching at primary level once the younger had started school. This arrangement did not suit the father or the many relatives. Within the Chareidim, whose traditions were unbroken for centuries, women were expected to raise children, the more the better, and look after the home. A university degree and a job were highly unusual. A senior figure of good standing in the community was called as a witness by the father and said as much.

Men did not receive much education either. From their mid teens, they were expected to give most of their time to studying the Torah. Generally, they did not go to university. Partly for this reason, many Chareidim were of modest means. But not the Bernsteins, though they would be when

their lawyers' bills were settled. A grandparent with a share in a patent for an olive-pitting machine had settled money on the couple jointly. They expected to spend everything they had on their respective silks, both women well known to the judge. On the surface, the dispute concerned Rachel and Nora's schooling. However, at stake was the entire context of the girls' growing up. It was a fight for their souls.

Chareidi boys and girls were educated separately to preserve their purity. Modish clothes, television and the internet were forbidden, and so was mixing with children who were allowed such distractions. Homes that did not observe strict kosher rules were out of bounds. Every aspect of daily existence was well covered by established customs. The problem had started with the mother, who was breaking with the community, though not with Judaism. Against the father's objections, she was already sending the girls to a co-educational Jewish secondary school where television, pop music, the internet and mixing with non-Jewish children were permitted. She wanted her girls to stay on at school past the age of sixteen and to go to university if they wished. In her written evidence she said she wanted her daughters to know more about how others lived, to be socially tolerant, to have the career opportunities she never had, and as adults to be economically self-sufficient, with the chance of meeting the sort of husband with professional skills who could help to support a family.

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Unlike her husband, who gave all his time to studying, and teaching the Torah eight hours a week without pay.

For all the reasonableness of her case, Judith Bernstein – angular pale face, uncovered frizzy ginger hair fastened with a huge blue clasp – was not an easy presence in court. A constant passing forwards with freckly agitated fingers of notes to her counsel, much muted sighing, eye-rolling and lip-pursing whenever her husband’s counsel spoke, inappropriate rummaging and jiggling in an outsized camel leather handbag, removing from it at one low point in a long afternoon a pack of cigarettes and a lighter – provocative items in her husband’s scheme, surely – and lining them up side by side, on hand for when the court rose. Fiona saw all this from her advantage of height but pretended not to.

Mr Bernstein’s written evidence was intended to persuade the judge that his wife was a selfish woman with ‘anger-management problems’ (in the Family Division, a common, often mutual charge) who had turned her back on her marriage vows, argued with his parents and her community, cutting the girls off from both. On the contrary, Judith said from the stand, it was her parents-in-law who would not see her or the children until they had returned to the proper way of life, disowned the modern world, including social media, and until she kept a home that was kosher by their terms.

Mr Julian Bernstein, reedily tall, like one of the rushes

that hid the infant Moses, apologetically stooped over court papers, sidelocks stirring moodily as his barrister accused his wife of being unable to separate her own needs from the children's. What she said they needed was whatever she wanted for herself. She was wrenching the girls away from a warmly secure and familiar environment, disciplined but loving, whose rules and observances provided for every contingency, whose identity was clear, its methods proven through the generations, and whose members were generally happier and more fulfilled than those of the secular consumerist world outside – a world that mocked the spiritual life and whose mass culture denigrated girls and women. Her ambitions were frivolous, her methods disrespectful, even destructive. She loved her children far less than she loved herself.

To which Judith responded huskily that nothing denigrated a person, boy or girl, more than the denial of a decent education and the dignity of proper work; that all through her childhood and teenage years she had been told that her only purpose in life was to run a nice home for her husband and care for his children – and that too was a denigration of her right to choose a purpose for herself. When she pursued, with great difficulty, her studies at the Open University, she faced ridicule, contempt and anathemas. She had promised herself that the girls would not suffer the same limitations.

The opposing barristers were in tactical agreement

(because it was plainly the judge's view) that the issue was not merely a matter of education. The court must choose, on behalf of the children, between total religion and something a little less. Between cultures, identities, states of mind, aspirations, sets of family relations, fundamental definitions, basic loyalties, unknowable futures.

In such matters there lurked an innate predisposition in favour of the status quo, as long as it appeared benign. The draft of Fiona's judgment was twenty-one pages long, spread in a wide fan face down on the floor, waiting for her to take it up, a sheet at a time, to mark with soft pencil.

No sound from the bedroom, nothing but the susurrus of traffic gliding through the rain. She resented the way she was listening out for him, her attention poised, holding its breath, for the creak of the door or a floorboard. Wanting it, dreading it.

Among fellow judges, Fiona Maye was praised, even in her absence, for crisp prose, almost ironic, almost warm, and for the compact terms in which she laid out a dispute. The Lord Chief Justice himself was heard to observe of her in a murmured aside at lunch, 'Godly distance, devilish understanding, and still beautiful.' Her own view was that with each passing year she inclined a little more to an exactitude some might have called pedantry, to the unassailable definition that might pass one day into frequent citation, like Hoffmann in *Pigłowska v. Pigłowski*, or Bingham or Ward or the indispensable Scarman, all of whom she

had made use of here. Here being the limp, unperused first page hanging from her fingers. Was her life about to change? Were learned friends soon to be murmuring in awe over lunch here, or in Lincoln's or Inner or Middle Temple, *And then she threw him out?* Out of the delightful Gray's Inn flat, where she would sit alone until at last the rent, or the years, mounting like the sullen tidal Thames, swept her out too?

Back to her business. Section one: 'Background'. After routine observations about the family's living arrangements, about residence of the children and contact with the father, she described in a separate paragraph the Chareidi community, and how within it religious practice was a total way of life. The distinction between what was rendered to Caesar and what to God was meaningless, much as it was for observant Muslims. Her pencil hovered. To cast Muslim and Jew as one, might that seem unnecessary or provocative, at least to the father? Only if he was unreasonable, and she thought he was not. Stet.

Her second section was entitled 'Moral differences'. The court was being asked to choose an education for two young girls, to choose between values. And in cases like this one, an appeal to what was generally acceptable in society at large was of little help. It was here she invoked Lord Hoffmann. 'These are value judgements on which reasonable people may differ. Since judges are also people, this means that some degree of diversity in their application of values is inevitable . . .'

Over the page, in her lately developing taste for the patient, exacting digression, Fiona devoted several hundred words to a definition of welfare, and then a consideration of the standards to which such welfare might be held. She followed Lord Hailsham in allowing the term to be inseparable from well-being and to include all that was relevant to a child's development as a person. She acknowledged Tom Bingham in accepting that she was obliged to take a medium- and long-term view, noting that a child today might well live into the twenty-second century. She quoted from an 1893 judgment by Lord Justice Lindley to the effect that welfare was not to be gauged in purely financial terms, or merely by reference to physical comfort. She would take the widest possible view. Welfare, happiness, well-being must embrace the philosophical concept of the good life. She listed some relevant ingredients, goals towards which a child might grow. Economic and moral freedom, virtue, compassion and altruism, satisfying work through engagement with demanding tasks, a flourishing network of personal relationships, earning the esteem of others, pursuing larger meanings to one's existence, and having at the centre of one's life one or a small number of significant relations defined above all by love.

Yes, by this last essential she herself was failing. The Scotch and water in a tumbler at her side was untouched, the sight of its urinous yellow, its intrusive corky smell, now repelled her. She should be angrier, she should be

talking to an old friend – she had several – she should be striding into the bedroom, demanding to know more. But she felt shrunken to a geometrical point of anxious purpose. Her judgment must be ready for printing by tomorrow’s deadline, she must work. Her personal life was nothing. Or should have been. Her attention remained divided between the page in her hand and, fifty feet away, the closed bedroom door. She made herself read a long paragraph, one she had been dubious about at the moment she had spoken it aloud in court. But no harm in a robust statement of the obvious. Well-being was *social*. The intricate web of a child’s relationships with family and friends was the crucial ingredient. No child an island. Man a social animal, in Aristotle’s famous construction. With four hundred words on this theme, she put to sea, with learned references (Adam Smith, John Stuart Mill) filling her sails. The kind of civilised reach every good judgment needs.

And next, well-being was a *mutable* concept, to be evaluated by the standards of the reasonable man or woman of today. What sufficed a generation ago might now fall short. And again, it was no business of the secular court to decide between religious beliefs or theological differences. All religions were deserving of respect provided they were, in Lord Justice Purchas’s phrase, ‘legally and socially acceptable’ and not, in Lord Justice Scarman’s darker formulation, ‘immoral or socially obnoxious’.

Courts should be slow to intervene in the interests of

the child against the religious principles of the parents. Sometimes they must. But when? In reply, she invoked one of her favourites, wise Lord Justice Munby in the Court of Appeal. ‘The infinite variety of the human condition precludes arbitrary definition.’ The admirable Shakespearean touch. *Nor custom stale her infinite variety.* The words derailed her. She knew the speech of Enobarbus by heart, having played him once as a law student, an all-female affair on a lawn in Lincoln’s Inn Fields one sunny midsummer’s afternoon. When the burden of Bar exams had recently been lifted from her aching back. Around that time, Jack fell in love with her, and not long after, she with him. Their first lovemaking was in a borrowed attic room that roasted under its roof in the afternoon sun. An unopenable porthole window gave a view east of a slice of Thames towards the Pool of London.

She thought of his proposed or actual lover, his statistician, Melanie – she had met her once – a silent young woman with heavy amber beads and a taste for the kind of stilettos that could wreck an old oak floor. *Other women cloy/ The appetites they feed, but she makes hungry/ Where most she satisfies.* It could be just like that, a poisonous obsession, an addiction drawing him away from home, bending him out of shape, consuming all they had of past and future, as well as present. Or Melanie belonged, as Fiona herself clearly did, with ‘other women’, the ones who cloy, and he would be back within the fortnight, appetite sated, making plans for the family holiday.

Either way, unbearable.

Unbearable and fascinating. And irrelevant. She forced herself back to her pages, to her summary of the evidence from both parties – efficient and drily sympathetic enough. Next, her account of the court-appointed social worker’s report. A plump, well-intentioned young woman often out of breath, uncombed hair, untucked unbuttoned blouse. Chaotic, twice late for the proceedings, due to some complicated trouble with car keys and documents locked in her car and a child to collect from school. But in place of the usual please-both-parties dither, the Cafcass woman’s account was sensible, even incisive, and Fiona quoted her with approval. Next?

She looked up and saw her husband on the other side of the room, pouring another drink, a big one, three fingers, perhaps four. And barefoot now, as he, the bohemian academic, often was indoors in summer. Hence the quiet entrance. Likely he had been lying on the bed, regarding for half an hour the lacy ceiling mouldings, reflecting on her unreasonableness. The hunched tension of the shoulders, the way he returned the stopper – a smack with the heel of his thumb – suggested that he had padded in for an argument. She knew the signs.

He turned and came towards her with his undiluted drink. The Jewish girls, Rachel and Nora, must hover behind her like Christian angels and wait. Their secular god had troubles of her own. From her low perspective, she had a

decent view of his toenails – nicely trimmed and squared off, bright and youthful half-moons, no sign of the fungal streaks that stained her own toes. He kept in shape with faculty tennis and a set of weights in his study, which he aimed to raise a hundred times in the course of every day. She did little more than haul her bag of documents through the Courts of Justice to her room, taking the stairs rather than the lift. He was handsome in an unruly way, lopsidedly square-jawed, a toothy game-for-anything expression that charmed his students, who didn't expect a dissolute look in a professor of ancient history. She had never thought he laid a finger on the kids. Now, everything looked different. Perhaps, for all a lifetime's entanglement in human weakness, she remained an innocent, mindlessly exempting herself and Jack from the general condition. His only book for the non-academic reader, a pacy life of Julius Caesar, made him briefly almost famous in a muted, respectable fashion. Some pert little second-year minx might have irresistibly put herself in his way. There was, or there used to be, a couch in his office. And a *Ne Pas Déranger* sign taken from the Hôtel de Crillon at the end of their long-ago honeymoon. These were new thoughts, this was how the worm of suspicion infested the past.

He sat down in the nearest chair. 'You couldn't answer my question so I'll tell you. It's been seven weeks and a day. Are you honestly content with that?'

She said quietly, 'Are you already having this affair?'

He knew that a difficult question was best answered by another. ‘You think we’re too old? Is that it?’

She said, ‘Because if you are I’d like you to pack a bag now and leave.’

A self-harming move, without premeditation, her rook for his knight, utter folly, and no way back. If he stayed, humiliation, if he left, the abyss.

He was settling into his chair, a studded, wood and leather piece with a look of medieval torture about it. She had never liked Victorian Gothic, and never less than now. He crossed his ankle over his knee, his head was cocked as he looked at her in tolerance or pity, and she looked away. Seven weeks and a day also had a medieval ring, like a sentence handed down from an old Court of Assize. It troubled her to think that she might have a case to answer. They’d had a decent sex life for many years, regular and lustily uncomplicated, on weekdays in the early morning just as they woke, before the dazzling concerns of the working day penetrated the heavy bedroom curtains. At weekends in the afternoons, sometimes after tennis, social doubles in Mecklenburgh Square. Obliterating all blame for one’s partner’s fluffed shots. In fact, a deeply pleasurable love life, and functional, in that it delivered them smoothly into the rest of their existence, and beyond discussion, which was one of its joys. Not even a vocabulary for it – one reason why it pained her to hear him mention it now and why she barely noted the slow decline of ardour and frequency.

But she had always loved him, was always affectionate, loyal, attentive, only last year had nursed him tenderly when he broke his leg and wrist in Méribel during a ridiculous downhill ski race against old school friends. She pleased him, sat astride him, now she remembered, while he lay grinning amid the chalky splendour of his plaster of Paris. She did not know how to refer to such things in her own defence, and besides, these were not the grounds on which she was being attacked. It was not devotion she lacked but passion.

Then there was age. Not the full withering, not just yet, but its early promise was shining through, just as one might catch in a certain light a glimpse of the adult in a ten-year-old's face. If Jack, sprawled across from her, seemed absurd in this conversation, then how much more so must she appear to him. His white chest hair, of which he remained proud, curled out over his shirt's top button only to declare that it was no longer black; the head hair, thinning monkishly in the familiar pattern, he had grown long in unconvincing compensation; shanks less muscular, not quite filling out his jeans, the eyes holding a gentle hint of future vacancy, with a matching hollowness about the cheeks. So what then of her ankles thickening in coquettish reply, her backside swelling like summer cumulus, her waist waxing stout as her gums receded? All this still in paranoid millimetres. Far worse, the special insult the years reserved for certain women, as the corners of her mouth began their

downward turn in pursuit of a look of constant reproach. Fair enough in a bewigged judge frowning at counsel from her throne. But in a lover?

And here they were, like teenagers, shaping up to discuss themselves in the cause of Eros.

Tactically astute, he ignored her ultimatum. Instead he said, 'I don't think we should give up, do you?'

'You're the one who's walking away.'

'I think you have a part in this too.'

'I'm not the one about to wreck our marriage.'

'So you say.'

He said it reasonably, projecting the three words deep into the cave of her self-doubt, shaping them to her inclination to believe that in any conflict as embarrassing as this, she was likely to be wrong.

He took a careful sip of his drink. He was not going to get drunk in order to assert his needs. He would be grave and rational when she would have preferred him loudly in the wrong.

Holding her gaze he said, 'You know I love you.'

'But you'd like someone younger.'

'I'd like a sex life.'

Her cue to make warm promises, draw him back to her, apologise for being busy or tired or unavailable. But she looked away and said nothing. She was not going to dedicate herself under pressure to revive a sensual life she had at that moment no taste for. Especially when she

suspected the affair had already begun. He had not troubled himself to deny it, and she was not going to ask again. It was not only pride. She still dreaded his reply.

‘Well,’ he said after their long pause. ‘Wouldn’t you?’

‘Not with this gun to my head.’

‘Meaning?’

‘I shape up or you go to Melanie.’

She assumed he had understood her meaning well enough but had wanted to hear her say the woman’s name, which she had never spoken out loud before. It evinced a tremor or a tightening in his face, a helpless little tic of arousal. Or it was the naked phrasing, the ‘go to’. Had she lost him already? She felt suddenly dizzy, as though her blood pressure had dipped then soared. She pushed herself upright on the chaise longue, and set down on the carpet the page of the judgment still in her hand.

‘That’s not how it is,’ he was saying. ‘Look, turn this around. Suppose you were in my place and I was in yours. What would you do?’

‘I wouldn’t go and find myself a man and then open negotiations with you.’

‘What then?’

‘I’d find out what was troubling you.’ Her voice sounded prim in her ears.

He gestured towards her grandly with both hands. ‘Fine!’ The Socratic method, as used, no doubt, on his students. ‘So what is troubling you?’

For all the stupidity and dishonesty of the exchange, it was the only question and she'd invited it, but she felt irritated by him, condescended to, and for the moment she didn't reply and instead looked past him down the room to the piano, barely played in two weeks, and the silver-framed photos it supported in country-house style. Both sets of parents from wedding day to dotage, his three sisters, her two brothers, their wives and husbands present and past (disloyally, they struck no one off), eleven nephews and nieces, then the thirteen children they in turn had made. Life accelerating to people a small village clustered on a baby grand. She and Jack had contributed nothing, no one, beyond family reunions, near-weekly birthday presents, multi-generational holidays in the cheaper sort of castle. In their apartment, they hosted much family. At the end of the hallway was a walk-in cupboard filled with folded-up cot, high chair and playpen, and three wicker baskets of chewed and fading toys in readiness for the next addition. And this summer's castle, ten miles north of Ullapool, awaited their decision. According to the ill-printed brochure, a moat, a working drawbridge and a dungeon with hooks and iron rings in the wall. Yesterday's torture was now a thrill for the under-twelves. She thought again of the medieval sentence, seven weeks and a day, a period that began with the final stages of the Siamese twins case.

All the horror and pity, and the dilemma itself, were in the photograph, shown to the judge and no one else.

THE CHILDREN ACT

Infant sons of Jamaican and Scottish parents lay top-and-tailed amid a tangle of life-support systems on a paediatric intensive-care bed, joined at the pelvis and sharing a single torso, their splayed legs at right angles to their spines, in resemblance of a many-pointed starfish. A measure fixed along the side of the incubator showed this helpless, all too human ensemble to be sixty centimetres in length. Their spinal cords and the base of their spines were fused, their eyes closed, four arms raised in surrender to the court's decision. Their apostolic names, Matthew and Mark, had not encouraged clear thinking in some quarters. Matthew's head was swollen, his ears mere indentations in roseate skin. Mark's head, beneath the neonatal woollen cap, was normal. They shared only one organ, their bladder, which was mostly in Mark's abdomen and which, a consultant noted, 'emptied spontaneously and freely through two separate urethras'. Matthew's heart was large but 'it barely squeezed'. Mark's aorta fed into Matthew's and it was Mark's heart that sustained them both. Matthew's brain was severely malformed and not compatible with normal development, his chest cavity lacked functional lung tissue. He had, one of the nursing staff said, 'not the lungs to cry with'.

Mark was sucking normally, feeding and breathing for both, doing 'all the work' and therefore abnormally thin. Matthew, with nothing to do, was gaining weight. Left alone, Mark's heart would sooner or later fail from the effort, and both must die. Matthew was unlikely to live

more than six months. When he died, he would take his brother with him. A London hospital was urgently looking for permission to separate the twins to save Mark, who had the potential to be a normal healthy child. To do so, surgeons would have to clamp then sever the shared aorta, so killing Matthew. And then begin a complicated set of reconstructive procedures on Mark. The loving parents, devout Catholics living in a village on Jamaica's north coast, calm in their belief, refused to sanction murder. God gave life and only God could take it away.

In part, her memory was of a prolonged and awful din assaulting her concentration, a thousand car alarms, a thousand witches in a frenzy, giving substance to the cliché: the screaming headline. Doctors, priests, television and radio hosts, newspaper columnists, colleagues, relations, taxi drivers, the nation at large had a view. The narrative ingredients were compelling: tragic babies, kind-hearted, solemn and eloquent parents in love with each other as well as their children, life, love, death and a race against time. Masked surgeons pitched against supernatural belief. As for the spectrum of positions, at one end were those of secular utilitarian persuasion, impatient of legal detail, blessed by an easy moral equation: one child saved better than two dead. At the other, stood those of firm knowledge not only of God's existence but an understanding of his will. Quoting Lord Justice Ward, Fiona reminded all parties in the opening lines of her judgment, "This court is a court of law, not of

morals, and our task has been to find, and our duty is then to apply, the relevant principles of law to the situation before us – a situation which is unique.’

In this dire contest there was only one desirable or less undesirable outcome, but a lawful route to it was not easy. Under pressure of time, with a noisy world waiting, she found, in just under a week and thirteen thousand words, a plausible way. Or at least, the Court of Appeal, working to an even harsher deadline on the day after she delivered her judgment, seemed to suggest she had. However, there could be no presumption that one life was worth more than another. Separating the twins would be to kill Matthew. Not separating them would, by omission, kill both. The legal and moral space was tight and the matter had to be set as a choice of the lesser evil. Still, the judge was obliged to consider what was in Matthew’s best interests. Clearly not death. But nor was life an option. He had a rudimentary brain, no lungs, a useless heart, was probably in pain and condemned to die, and soon.

Fiona argued, in a novel formulation which the Court of Appeal accepted, that Matthew, unlike his brother, had no interests.

But if the lesser evil was preferable, it might still be unlawful. How was murder, cutting open Matthew’s body to sever an aorta, to be justified? Fiona rejected the notion urged on her by the hospital’s counsel, that separating the twins was analogous to turning off Matthew’s life-support

machine, which was Mark. The surgery was too invasive, too much of a trespass on Matthew's bodily integrity, to be considered a withdrawal of treatment. Instead, she found her argument in the 'doctrine of necessity', an idea established in common law that in certain limited circumstances, which no parliament would ever care to define, it was permissible to break the criminal law to prevent a greater evil. She referred to a case in which men hijacked a plane to London, terrorised the passengers and were found innocent of any crime because they were acting to avoid persecution in their own country.

Regarding the all-important matter of intent, the purpose of the surgery was not to kill Matthew but to save Mark. Matthew, in all his helplessness, was killing Mark and the doctors must be allowed to come to Mark's defence to remove a threat of fatal harm. Matthew would perish after the separation not because he was purposefully murdered, but because on his own he was incapable of flourishing.

The Court of Appeal agreed, the parents' appeal was dismissed and two days later, at seven in the morning, the twins entered the operating theatre.

The colleagues Fiona valued most sought her out to shake her hand, or wrote the kind of letters worth saving in a special folder. Her judgment was elegant and correct, was the insiders' view. Reconstructive surgery on Mark was successful, public interest faded and moved on. But she was unhappy, couldn't leave the case alone, was awake

at nights for long hours, turning over the details, rephrasing certain passages of her judgment, taking another tack. Or she lingered over familiar themes, including her own childlessness. At the same time, there began to arrive in small pastel-coloured envelopes the venomous thoughts of the devout. They were of the view that both children should have been left to die and were not pleased by her decision. Some deployed abusive language, some said they longed to do her physical harm. A few of those claimed to know where she lived.

Those intense weeks left their mark on her, and it had only just faded. What exactly had troubled her? Her husband's question was her own, and he was waiting for an answer now. Before the hearing she had received a submission from the Roman Catholic Archbishop of Westminster. In her judgment she noted in a respectful paragraph that the archbishop preferred Mark to die along with Matthew in order not to interfere with God's purpose. That churchmen should want to obliterate the potential of a meaningful life in order to hold a theological line did not surprise or concern her. The law itself had similar problems when it allowed doctors to suffocate, dehydrate or starve certain hopeless patients to death, but would not permit the instant relief of a fatal injection.

At nights her thoughts returned to that photograph of the twins and the dozen others she had studied, and to the detailed technical information she had heard from medical

specialists on all that was wrong with the babies, on the cutting and breaking, splicing and folding of infant flesh they must perform to give Mark a normal life, reconstructing internal organs, rotating his legs, his genitals and bowels through ninety degrees. In the bedroom darkness, while Jack at her side quietly snored, she seemed to peer over a cliff edge. She saw in the remembered pictures of Matthew and Mark a blind and purposeless nullity. A microscopic egg had failed to divide in time due to a failure somewhere along a chain of chemical events, a tiny disturbance in a cascade of protein reactions. A molecular event ballooned like an exploding universe, out onto the wider scale of human misery. No cruelty, nothing avenged, no ghost moving in mysterious ways. Merely a gene transcribed in error, an enzyme recipe skewed, a chemical bond severed. A process of natural wastage as indifferent as it was pointless. Which only brought into relief healthy, perfectly formed life, equally contingent, equally without purpose. Blind luck, to arrive in the world with your properly formed parts in the right place, to be born to parents who were loving, not cruel, or to escape, by geographical or social accident, war or poverty. And therefore to find it so much easier to be virtuous.

For a while, the case had left her numb, caring less, feeling less, going about her business, telling no one. But she became squeamish about bodies, barely able to look at her own or Jack's without feeling repelled. How

was she to talk about this? Hardly plausible, to have told him that at this stage of a legal career, this one case among so many others, its sadness, its visceral details and loud public interest, could affect her so intimately. For a while, some part of her had gone cold, along with poor Matthew. She was the one who had dispatched a child from the world, argued him out of existence in thirty-four elegant pages. Never mind that with his bloated head and unsqueezing heart he was doomed to die. She was no less irrational than the archbishop, and had come to regard the shrinking within herself as her due. The feeling had passed, but it left scar tissue in the memory, even after seven weeks and a day.

Not having a body, floating free of physical constraint, would have suited her best.

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The click of Jack's tumbler against a glass table returned her to the room and his question. He was looking at her steadily. Even if she'd known how to frame a confession, she was in no mood for one. Or any display of weakness. She had work to do, the conclusion to her judgment to proofread, with the angels waiting. Her state of mind was not the issue. The problem was the choice her husband was making, the pressure he was now applying. She was suddenly angry again.

‘For the last time, Jack. Are you seeing her? I’ll take your silence as a yes.’

But he too was roused, out of his chair, walking away from her to the piano, where he paused, one hand resting on the raised lid, gathering his patience before he turned. In that moment the silence between them expanded. The rain had ceased, the oak trees in the Walks were stilled.

‘I thought I’d made myself clear. I’m trying to be open with you. I saw her for lunch. Nothing’s happened. I wanted to talk to you first, I wanted—’

‘Well you have, and you’ve had your answer. So what now?’

‘Now you tell me what’s happened to you.’

‘When was this lunch? Where?’

‘Last week, at work. It was nothing.’

‘The sort of nothing that leads to an affair.’

He remained at the far end of the room. ‘There it is,’ he said. His tone was flat. A reasonable man tested to exhaustion. Amazing, the theatrics he thought he could get away with. In her time on circuit, ageing and illiterate recidivists, some with very few teeth, had come before her and performed better, thinking aloud from the dock.

‘There it is,’ he repeated. ‘And I’m sorry.’

‘Do you realise what you’re about to destroy?’

‘I could say the same. Something’s going on and you won’t talk to me.’

Let him go, a voice, her own voice, said in her thoughts.

And immediately, the same old fear gripped her. She couldn't, she did not intend to, manage the rest of her life alone. Two close friends her age, long deprived by divorce of their husbands, still hated to enter a crowded room unaccompanied. And beyond mere social gloss was the love she knew she felt for him. She didn't feel it now.

'Your problem,' he said from the far end of the room, 'is that you never think you have to explain yourself. You've gone from me. It must have occurred to you that I've noticed and that I mind. Just about bearable, I suppose, if I thought it wasn't going to last, or I knew the reason why. So . . .'

He was starting to come towards her at this point, but she never learned his conclusion, or let her rising irritation form a response, for at that moment, the phone rang. Automatically, she picked up the receiver. She was on duty, and sure enough, it was her clerk, Nigel Pauling. As ever, the voice was hesitant, on the edge of a stutter. But he was always efficient, pleasingly distant.

'I'm sorry to disturb you this late, My Lady.'

'It's all right. Go ahead.'

'We've had a call from counsel representing the Edith Cavell hospital, Wandsworth. They urgently need to transfuse a cancer patient, a boy of seventeen years. He and his parents are refusing consent. The hospital would like—'

'Why are they refusing?'

'Jehovah's Witnesses, My Lady.'

‘Right.’

‘The hospital’s looking for an order that it will be lawful to proceed against their wishes.’

She looked at her watch. Just past ten thirty.

‘How long have we got?’

‘After Wednesday it will be dangerous, they’re saying. Extremely dangerous.’

She looked around her. Jack had already left the room. She said, ‘Then list it for hearing on short notice at 2 p.m. on Tuesday. And give notice to the respondents. Direct the hospital to inform the parents. They’ll have liberty to apply. Have a guardian appointed for the boy with legal representation. Direct the hospital to serve evidence by 4 p.m. tomorrow. The treating oncologist should serve a witness statement.’

For a moment her mind blanked. She cleared her throat and continued. ‘I’ll want to know why blood products are necessary. And the parents should use their best endeavours to file their evidence by noon on Tuesday.’

‘I’ll do it straight away.’

She went to the window and stared across the square, where shapes of trees were turning solid black in the last of the slow June dusk. As yet, the yellow street lamps illuminated no more than their circles of pavement. The Sunday-evening traffic was sparse now and barely a sound reached her from Gray’s Inn Road or High Holborn. Only the tap of thinned-out raindrops on leaves and a distant musical

gurgling from a nearby drainpipe. She watched a neighbour's cat down below pick a fastidious route around a puddle and dissolve into the darkness beneath a shrub. It didn't trouble her, Jack's withdrawal. Their exchange had been heading towards excruciating frankness. No denying the relief at being delivered onto the neutral ground, the treeless heath, of other people's problems. Religion again. It had its consolations. Since the boy was almost eighteen, the legal age of autonomy, his wishes would be a central concern.

Perhaps it was perverse to discover in this sudden interruption a promise of freedom. On the other side of the city a teenager confronted death for his own or his parents' beliefs. It was not her business or mission to save him, but to decide what was reasonable and lawful. She would have liked to see this boy for herself, remove herself from a domestic morass, as well as from the courtroom, for an hour or two, take a journey, immerse herself in the intricacies, fashion a judgment formed by her own observations. The parents' beliefs might be an affirmation of their son's, or a death sentence he dared not challenge. These days, finding out for yourself was highly unconventional. Back in the 1980s a judge could still have made the teenager a ward of court and seen him in chambers or hospital or at home. Back then, a noble ideal had somehow survived into the modern era, dented and rusty like a suit of armour. Judges had stood in for the monarch and had been for

centuries the guardians of the nation's children. Nowadays, social workers from Cafcass did the job and reported back. The old system, slow and inefficient, preserved the human touch. Now, fewer delays, more boxes to tick, more to be taken on trust. The lives of children were held in computer memory, accurately, but rather less kindly.

Visiting the hospital was a sentimental whim. She dismissed the idea as she turned from the window to go back to her couch. She sat down with an impatient sigh and took up her judgment in the matter of the Jewish girls from Stamford Hill and their contested well-being. Her last pages, her conclusion, were again in her hands. But for the moment she couldn't bring herself to look at her own prose. This was not the first time that the absurdity and pointlessness of her involvement in a case had temporarily disabled her. Parents choosing a school for their children – an innocent, important, humdrum, private affair which a lethal blend of bitter division and too much money had transmuted into a monstrous clerical task, into box-files of legal documents so numerous and heavy they were hauled to court on trolleys, into hours of educated wrangling, procedural hearings, deferred decisions, the whole circus rising, but so slowly, through the judicial hierarchy like a lopsided, ill-tethered hot-air balloon. If the parents could not agree, the law, reluctantly, must take the decisions. Fiona would preside with all the seriousness and obedience to process of a nuclear scientist. Preside over what had begun with

love and ended in loathing. The whole business should have been handed to a social worker, who could have taken half an hour to reach a sensible decision.

Fiona had found in favour of Judith, the fidgety ginger woman who, the clerk reported, at every break would dash across the marbled floors and through the polished stone arches of the Courts of Justice and out into the Strand to get to her next cigarette. The children should continue to attend the mixed school chosen for them by their mother. They could stay on until they were eighteen and have tertiary education if they so chose. The judgment paid respect to the Chareidi community, the continuity of its venerable traditions and observances, adding that the court took no view of its particular beliefs beyond noting that they were clearly sincerely held. However, witnesses from that community called by the father had helped undo his case. One respected figure had said, perhaps too proudly, that Chareidi women were expected to devote themselves to making a 'secure home' and that education past sixteen was not relevant. Another said it was highly unusual even for boys to enter the professions. A third had been a little too emphatic in his view that girls and boys should be kept well apart at school in order to maintain their purity. All this, Fiona had written, lay well outside mainstream parental practice and the generally held view that children should be encouraged in their aspirations. This must also be the view of the judicial reasonable

parent. She accepted the social worker's opinion that if the girls were to be returned to the closed society of the father, they would be cut off from their mother. The reverse was less likely to be the case.

Above all, the duty of the court was to enable the children to come to adulthood and make their own decisions about the sort of life they wanted to lead. The girls might opt for their father's or their mother's version of religion, or they might find satisfaction in life elsewhere. Past eighteen they would be beyond the reach of parents and court. In parting, Fiona lightly rapped the paternal knuckles when she observed that Mr Bernstein had availed himself of female counsel and solicitor, and benefited from the experience of the court-appointed social worker, the astute and disorganised Cafcass lady. And he was implicitly bound to the order of a female judge. He should ask himself why he would deny his daughters the opportunity of a profession.

It was done. The corrections would be typed into her final draft early tomorrow morning. She stood and stretched, then picked up the whisky glasses and went to the kitchen to wash them. The warm water flowing over her hands was soothing and held her at the sink for a blank minute or so. But she was also listening out for Jack. The rumble of the ancient plumbing would let her know if he was preparing for bed. She went back into the sitting room to turn out the lights and found herself drawn again to her position at the window.

Down in the square, not far from the puddle that the cat had stepped around, her husband was towing a suitcase. Supported by a strap from his shoulder was the briefcase he used for work. He reached his car, their car, opened it, put his luggage on the back seat, got in and started the engine. As the headlights came on and the front wheels turned at full lock so that he could manoeuvre out of a tight parking space, she heard faintly the sound of the car radio. Pop music. But he hated pop music.

He must have packed his bag earlier in the evening, well before the start of their conversation. Or conceivably, halfway, when he had retreated to the bedroom. Instead of turmoil or anger or sorrow she felt only weariness. She thought she would be practical. If she could get to bed now she could avoid taking a sleeping pill. She went back into the kitchen, telling herself that she was not looking for a note on the pine table, where they always left each other notes. There was nothing. She locked the front door and switched off the hallway lights. The bedroom looked undisturbed. She slid open his wardrobe and with a wifely eye calculated that he had taken three jackets, the newest of which was off-white linen from Gieves & Hawkes. In the bathroom she resisted opening his cabinet to estimate the contents of his washbag. She knew enough. In bed her only sensible thought was that he must have taken great care going along the hall without her hearing, and closed the front door inch by deceitful inch.

Even that was not enough to stop her descent into sleep. But sleep was no deliverance, for within the hour she was ringed by accusers. Or they were asking for help. The faces merged and separated. The baby twin, Matthew, with the earless bloated head and heart that wouldn't squeeze, simply stared, as he had on other nights. The sisters, Rachel and Nora, were calling to her in regretful tones, listing faults that may have been hers or their own. Jack was coming closer, pushing his newly creased forehead into her shoulder, explaining in a whining voice that her duty was to expand his choices into the future.

When her alarm rang at six thirty she sat up suddenly and for a moment stared without comprehension at the empty side of the bed. Then she went into the bathroom and began to prepare herself for a day in court.