

BOOK REVIEW
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NEW BOOKS

**ANGELS OF DEATH - EXPLORING THE EUTHANASIA
UNDERGROUND**

AUTHOR: ROGER S MAGNUSSON
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The author of this book teaches law at the University of Sydney. He has chosen a topic for study that makes most people feel uncomfortable. Yet as recent experience shows, it is a topic that is increasingly visiting the higher courts as they are invited to solve contested problems of life and death.

In *Rodriguez v Attorney-General of Canada* [1994] 2 LRC 136, the Supreme Court of Canada, by a majority of five Justices to four, rejected a claim that the *Charter of Rights and Freedoms* permitted a profoundly disabled person, beyond the physical ability to end her own life, to have the assistance of a medical practitioner to

bring her life to a close at a moment of her own choosing. Suicide is not a crime in Canada. But counselling or procuring an act of suicide is. The majority in the Canadian decision thought that effective protection of life, and especially of vulnerable people, sustained the maintenance of the statutory prohibition without exceptions. The minority argued that it was discriminatory to deny some people the choice of ending their lives "solely because they are physically unable to do so".

A similar case was recently heard by the House of Lords: *Pretty v DPP* [2001] 3 WLR 1598; [2002] 1 All ER 1. Mrs Pretty suffers from motor neurone disease. It is progressive and will eventually bring her to a point where she cannot swallow or breathe. She now lacks the physical ability to end her life. Her husband is willing to help her terminate her life when she so signifies. But he would only do so with the protection of a court declaration that it would not be a crime.

English law on suicide is similar to Canadian law. Mrs Pretty sought to invoke the *European Convention on Human Rights*, now incorporated in United Kingdom law by the *Human Rights Act* 1998 (UK). She argued her grounds of appeal based on the guaranteed right to life (art 2), the right to protection from inhuman and degrading treatment (art 3), privacy (art 8), freedom of thought and religion (art 9) and the prohibition against status discrimination (art 14). The Law Lords unanimously rejected the claim. But Lord

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Bingham of Cornhill opened his reasons with the statement "No one of ordinary sensitivity could be unmoved by the frightening ordeal which faces Mrs Dianne Pretty".

The Law Lords' decision in *Pretty* may be contrasted with that of the English Court of Appeal in 2001 concerning the Attard conjoint (Siamese) twins: *In re A (conjoined twins: surgical separation)* [2001] 2 WLR 480; (2000) 4 All ER 961. There the court authorised a separation operation that was bound to result in the death of one of the twins, as it did. Although that decision might be seen as life-affirming (in that it saved one life otherwise bound to die) it still represented a difficult intervention that went beyond the earlier decision of the same court and the House of Lords in 1992-3. This had concluded that it was permissible to cease treating a brain-dead patient, although doing so would certainly lead to death: *Airedale NHS Trust v Bland* [1993] AC 789. A lethal injection was impermissible. But the withdrawal of treatment was held legally justifiable in the circumstances.

In Australia, the law of suicide has been brought into line in all jurisdictions with English and Canadian law. Suicide is no longer an offence resulting, as it formerly did at common law, in forfeiture of property to the Crown. Nor is attempted suicide an offence. But assisting or encouraging another person to commit suicide is an offence in every Australian jurisdiction.

The attempt by the Northern Territory by the *Rights of the Terminally Ill Act* 1995 (NT) to permit assisted death in defined cases under regulated conditions was over-ridden by federal legislation: *Euthanasia Laws Act* 1997 (Cth). However, Bills to similar effect have been promised in at least two Australian States. More can be expected as public opinion polls in Australia indicate majority support for the general idea of euthanasia.

It is into this legal minefield that Roger Magnusson has stepped with his book. Unlike many texts on legally related topics, the author has adopted a scientific or empirical approach. With the assistance of Professor P H Ballis, he has undertaken an extensive course of interviews with medical practitioners, nurses, social workers, patients and families of people who have pursued suicide options when living became intolerable to them. Many of the patients whose stories are recounted in this book are, or were, young people dying from AIDS. Because of their age, and often rejection by their biological families, such people have not uncommonly wished to take charge of the ending of their lives. The book suggests that an informal network exists in Australia to help the profoundly disabled to bring their lives to an end. But it also suggests that some cases involve "cowboys" and incompetent operators whose activities are reprehensible but rarely, if ever, come to light.

The fundamental quandary presented by the book is basically that which occupied the attention of the Canadian and British judges, although it approaches the puzzle in a different way. Is it better to retain the present law, even knowing that it is sometimes honoured in the breach and contains illogical elements, so as to uphold the law's unyielding commitment to protecting life, especially of the vulnerable? If assisted death were made easier, would dying people be placed under pressure to make the "ultimate sacrifice", as the author puts it, for the sake of the "family silver"? Or should the law be changed?

In the end, Roger Magnusson comes down in favour of permitting assisted death in strictly limited cases, mainly to introduce effective regulation of what he sees as unacceptably variable "underground" practices. In this, he reflects a view stated in the United States Supreme Court by Justice Brennan in the *Cruzan Case* 497 US 261 at 310 (1990): "Dying is personal. And it is profound. For many, the thought of an ignoble end, steeped in decay, is abhorrent".

To some extent, modern palliative care, with the final painkilling injection that is certain to result in death, resolves the underlying issue of this book in ways that exempt lawyers from involvement. But the state of the present law is the background for the "underground" described by the author. Recent experience

elsewhere suggests that our courts will eventually face issues raised by the dilemmas that the author has addressed.

The book is beautifully produced by Melbourne University Press. It has a first-rate bibliography and index, the latter including an entry on "God" who secures many mentions. It is written with sensitivity and with much detail on legal developments in Australia and overseas. The interview methodology has its dangers. But it has yielded many powerful statements concerning the desires of patients, facing with equanimity their journey to the "undiscovered country" from which no traveller returns.

Michael Kirby

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