book reviews

Assisted dying. Reflections on the need for law reform

Sheila AM McLean. Routledge-Cavendish, Oxford 2007. 224 pp. £27.99.

Voluntary euthanasia (VE) and physician assisted suicide (PAS) have occupied a huge amount of media time and public discussion in the last few years. This has reflected the introduction of three successive parliamentary bills in the House of Lords by Joel Joffe, a distinguished civil rights lawyer, along with powerful lobbying by a sophisticated pressure group. A glance at the medical ethics shelves of any large bookshop will demonstrate a dozen or more books arguing the case for and against change in the law. The title usually tells all: *Euthanasia examined*, reviewed in this journal in 1996, provides a variety of arguments for and against;[1] *Aiming to kill*, reviewed in 2005, solely argues the case against.[2] McLean's title, *Assisted dying*, is clearly going to be an argument in favour. 'Killing' and 'therapeutic homicide' are the terms preferred by antagonists, 'assisted dying' that of protagonists. The use of language is part of the battle, of course, just as 'unborn child' or 'pre-embryo' are used in debates at the other end of life.

Sheila McLean is an academic lawyer and one of the best known UK authorities on medical law. She is director of the Institute of Law and Ethics in Medicine in Glasgow and a member of the British Medical Association's medical ethics committee. She has been a prominent protagonist of change and gave evidence to the House of Lords Select Committee. Her book, predictably then, centres on legal considerations and arguments in favour of change. This is surely the core of the debate on this issue. Even opponents of legal change, such as the late Dame Cicely Saunders, would concede that there might be rare occasions when deliberate ending of life might be right – as in the hackneyed example of the driver trapped in his burning cab and the passer by with a gun. The book contains relatively little information on current practice, nothing on historical background or practicalities. As she points out, legislation for VE or PAS in other countries has produced further debate on whether the result has been liberation or abuse. While experience elsewhere informs debate in the UK, it cannot be the critical factor in a decision for change. Much the same could be said about the views of doctors and the gradient in opinion among them related to their professional involvement in terminal care. Most (96%) specialists in palliative medicine, for example, oppose legal change, rather less geriatricians (80%), and less again (about 70%) other physicians. Explanations for this phenomenon remain unsatisfactory, yet surely deserving of exploration. Should we, in the words of one contributor to the College's consultation, 'honour that view' from palliative medicine? If so, why? Why should that influence the general public – or our parliamentary representatives?

McLean declares her jurisprudential colours at the outset. Her case is based on John Stuart Mills' famous declaration that:

> *the only purpose for which power can be rightfully exercised over any member of a civilised community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.*

This principle is of older provenance originating from Thomas Aquinas who formulated this by writing:

> *law…does not forbid all the vices from which upright men can keep away, but only those grave ones from which the average man can avoid and chiefly those which do harm to others.*

As McLean says, it is possible to address VE/PAS (I will use the more neutral term) from other perspectives, but this one, she asserts, underpins the legal, philosophical and political framework of most western democracies. Given that consent is not a defence to criminal assault or bigamy or incest or a number of other offences, this assertion deserves some supporting argument beyond the qualifying 'to a greater or lesser extent'. Why is bigamy wrong? It could be an entirely private arrangement without effects on others. Much the same could be said of a series of other offences. These questions are long standing, but it is hard not to return to the famous debate on morality and the law between HLA Hart and Patrick Devlin at the time of the Wolfenden Report. There was no 'winner' and, in different ways, the debate continues in contemporary jurisprudence. I'm sorry McLean didn't say more here, for I'm sure she would have said it well. What is well said in the first chapter, however, is that weight of numbers is no basis from which to reach ethical positions.

The 'Millian' position taken by McLean is later supported by reference to the European Convention on Human Rights, a further factor in the jurisprudential debate that she so usefully introduces. But, on the other hand, even in her first paragraph, I found myself challenging her: is it really the case that there is a 'very strong trend' or even a trend at all 'toward a combination of longer lives and worsening health'? Geriatricians tell me that the good news is that we are living longer and experiencing shorter periods of disability. If the need for VE/PAS is increasing or decreasing, is it relevant as to whether it is right? Certainly evidence of 'longer life and worsening health' would be a powerful creator of fear and the need for change – just as assertions of poor state education or healthcare create fear and a rush into alternative provision. One of the interesting results of the free-text responses to the College's consultation in 2006 was the enormous variation in opinion between those who attested to highly distressing end-of-life experiences, while others asserted that such terrible suffering was extremely rare. With disagreement about the morally relevant facts, moral judgement becomes even more difficult. However McLean is clear that VE and PAS are facets of the same decision. Both are positive choices for death. Both will be supported or refuted by the same arguments.

The excellent introductory chapter leads into the two core chapters of the book: one evaluating the arguments for and against legislation, the other on choosing death. Both are well argued, provocative and well researched with descriptions of relevant cases. Indeed these two core chapters were a joy to read: I doubt if the arguments from a jurisprudential perspective have been better set out. There is a particularly clear account of Scottish law. Some of the asides beg further discussion: for example, why is it that those who oppose capital punishment are significantly more likely to oppose

VE/PAS? We do not know of course. Nor do we really know why those who attend religious services are more likely to oppose change. Bishops may have featured in the recent House of Lords debate, but their contributions were notable for the lack of any theological content at all – perhaps appropriately in a secular society. Does representation matter? In one sense, the House of Lords represents no one, yet the quality of its debate on this issue has been impressive. McLean states that she has no interest in defending majoritarianism and states that she will not play 'the numbers game'. Arguments based primarily on numbers, she says, are inherently futile. This doesn't prevent the numbers appearing at various points in the book.

The central point in her argument is autonomy. This is defined and explored. Choice has always been the most powerful factor in advocating change and she explores it to the full as she evaluates the arguments for and against. Take, for example, her statement that the choice for death is not *only* (author's italics) a private decision or her question whether 'assisted' dying is ever truly autonomous. These threats to the autonomy argument are not ducked, but met head on and well argued. By contrast her discussion of the sanctity of life is short and largely, (but not exclusively), linked to religion – a posture that short-changes a valuable concept, as shown by another secular supporter of VE/PAS, Ronald Dworkin in his masterly *Life's dominion*.[3]

The chapter on 'choosing death' provides a review of case law surrounding the distinctions between killing and letting somebody die, between acts and omissions – or as some would say, between active and passive euthanasia – and the doctrine of double effect. This includes an account of the Diane Pretty case, whose (legal) outcome she appears to support, yet whose implications provide further ammunition for change. Doctors, I believe, find these distinctions valuable in daily practice, as do some philosophers such as Philippa Foot.[4] But, in general, I think it fair to say that McLean's scepticism about such distinctions is probably shared by a substantial proportion of academic lawyers and certainly most utilitarian philosophers.

The next section of the book is slightly less satisfactory. Her discussion of 'do not resuscitate orders' makes assertions based on American data from 1991 – almost certainly invalid in 2008, an inexcusable lapse in scholarship given the vast amount of easily accessible data. As a member of the BMA medical ethics committee, which was part responsible for the current guidance on not attempting resuscitation, I felt short changed in this section. Nor was I clear of the relevance of the Arthur case – which many might think would have been differently decided today. She then goes on to describe some of the working of the House of Lords Select Committee, the Joffe Bill and the debate upon it. For unelected Lords to declare against 'doctors and divines' expressing their views struck me as ironical. Here the account was too partial and the anti-clerical polemic unhelpful. Is the belief that life is a non-returnable gift from God actually the antithesis of believing that life is for us to control?

But perhaps that is to criticise detail. If you want a single book to review the arguments on VE and PAS, then *Euthanasia examined* is the book for you; but if you want an up to date account advocating legal change from a legal perspective, I doubt if McClean's book can be bettered. It isn't comprehensive, but the case is well made. Try Biggar's book after that for the opposition and I doubt if you will want to read more in reaching your own conclusions. Elsewhere Lord Mustill wrote that 'it is hard to believe that everybody will ever be of the same mind. Rather than broker an unattainable unanimity, what we badly need is for our minds to be informed and alert'.[5] Instant opinions are rarely profound. Reading McClean carefully gives ample opportunity to reflect upon our laws.

JOHN SAUNDERS
Chairman, Committee for Ethical Issues in Medicine
Royal College of Physicians

References

1 Riis P. Review of *Euthanasia examined: ethical, clinical and legal perspectives. J R Coll Physicians Lond* 1996;3:263.
2 Saunders J. Review of *Aiming to kill: the ethics of suicide and euthanasia. Clin Med* 2005;5:77.
3 Dworkin R. *Life's dominion.* New York: Vintage Books, 1994.
4 Foot P. *Virtues and vices.* Oxford: Blackwell, 1978.
5 Mustill Lord. Foreword. In: Keown J, *Euthanasia, ethics and public policy*. Cambridge: Cambridge University Press, 2002.

Essays in medical biography

JT Hughes. The Holywell Press Ltd, Oxford 2008. 204 pp. £20.00

During his career as a distinguished neuropathologist in Oxford and then as Emeritus Fellow of Green College, the author's supplementary interests in history have been fostered by contacts and friendships with many notable professional historians. In some measure historians aspire to combine the skills of artist, chronicler, detective and assessor. In this collection of 18 erudite, engaging and wide-ranging essays Hughes amply displays the skills and talents of all four. A particular strength he brings to his research is his ability to explore and unravel previously unknown, obscure or controversial aspects of the lives of many doctors who have made their mark in the past. Archival treasure hunting in the Bodleian Library, the British Library and other great institutions was essential, but he has also sought out local records in many different parts of the country and sometimes abroad, as well visiting the relevant localities. It is such determination and doggedness in pursuing every primary source he can track down that characterises his approach, which lends authority to the suggestions and conclusions he reaches. The reader is able to share something of the pleasures of exploration and the excitement of the chase. But there is more here than a relentless pursuit of the quarry, for the successful medical historian must interpret the data, weigh the evidence and convey the findings in a readable and attractive style.

Medical personalities and events of the 17th century predominate in this collection. Remembered particularly for political and religious upheavals, it was also a period in England of intellectual ferment and individual brilliance and originality. Whereas science advanced through observation, helped by the invention of new instruments like the microscope and measuring devices, and notably by the application of experimental approaches, clinical practice changed little. Three of the 17th century physicians were Fellows of the Royal College of Physicians: Sir Thomas Browne (1605–82), Thomas Willis (1621–87) and William Petty (1623–87). Browne was elected an Honorary Fellow for his literary attainments and not on