

Michigan Law Review

Volume 84
Issue 4 Issues 4&5

1986

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Recommended Citation

A.W. B. Simpson, *Euthanasia for Sale?*, 84 MICH. L. REV. 807 (1986).

Available at: <https://repository.law.umich.edu/mlr/vol84/iss4/23>

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EUTHANASIA FOR SALE?

*A. W. Brian Simpson**

EASING THE PASSING: THE TRIAL OF DR. JOHN BODKIN ADAMS. By *Patrick Devlin*. London: The Bodley Head. 1985. Pp. x, 228. \$15.95. [Distributed by Merrimack Publishers' Circle, 47 Pelham Road, Salem, NH 03079.]

The trial of Dr. John Bodkin Adams on a charge of murdering his patient, a Mrs. Morell, took place in 1957, and attracted worldwide publicity. It was at that time a capital charge, but since the law was in the process of change it is fairly clear that a single conviction would not have resulted in an execution. Dr. Adams was a physician who had long practised in Eastbourne, Sussex, a town with a considerable population of wealthy retired people. His practise over the years involved the care of many of them, and, in the nature of things, a high proportion of them died whilst under his care. Dr. Adams' activities began to generate rumours that they died rather too frequently, and the police became involved in an enquiry into his conduct. This revealed two facts which tended to confirm the rumours. The first was that he was very generous in prescribing and administering potentially lethal drugs, in particular heroin and morphia, to his elderly patients. The second was that he was a somewhat greedy person, and in particular a successful legacy hunter, who had for a considerable time been making substantial sums from his patients in this way, or through gifts. Other facts that tended to support the view that Dr. Adams was a mass murderer for gain, with a possible score up in the hundreds, were his casual dishonesty in making formal applications for the cremation of his patients, and a general sloppiness in maintaining records of dangerous drugs. The police team appears to have concluded that they were indeed dealing with a systematic murderer, and, in December 1956, Dr. Adams was arrested and charged with the murder of a Mrs. Morell, she having died back in November 1950. Lapse of time, together with the fact that her body had been cremated, presented the prosecution with an inherently difficult task. Her death was of course selected because it was felt that it offered the best chance of conviction.

By the time of his arrest for murder Dr. Adams had become a public figure. The press had been actively involved in searching out and publishing material on the story, which had already surfaced twice in official proceedings. He was first arrested and brought before

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the Eastbourne magistrates in November 1956 on charges of dishonesty over cremation certificates, record keeping, and prescribing; they committed him for trial, and released him on bail. And earlier, in July and August of that year, there had been a public coroner's inquest into the death of another of his patients, a Mrs. Hullett. She had died from barbiturate poisoning; the jury found that it was a case of suicide, but Dr. Adams did not appear in a good light at the inquest, and no doubt many felt that the whole truth had not yet come out. Certainly that was the police view.

The first step towards the trial of Dr. Adams was the committal proceedings, held before the Eastbourne lay magistrates. This then involved a public hearing,¹ whose primary function was to decide whether a sufficiently strong case could be made out to justify subjecting him to a trial before a judge and jury. The magistrates did commit, and the press fully reported the proceedings, which were principally devoted to the hearing of the prosecution evidence. This included evidence that he had also killed both Mr. and Mrs. Hullett, this evidence being admitted, probably wrongly, as showing "system," even though Adams was not charged with their murder. Its publication in the press was obviously very prejudicial to the defense. So, by the time the actual trial began at the Old Bailey in March of 1957, everyone as it were *knew* Dr. Adams was guilty both of the murder of Mrs. Morell and an uncertain number of other patients.

At the trial a second count was added to the indictment, charging the murder of Mrs. Hullett; Dr. Adams was not charged with any of the other supposed murders. Plainly the chance of his obtaining a fair trial, given the immense and highly irresponsible press coverage, did not seem very great. He was nevertheless acquitted on the charge of murdering Mrs. Morell. The second charge was dropped; the Crown entered a *nolle prosequi*. He was, however, subsequently convicted on the lesser charges and fined. He was also struck off the medical register, the decision being taken by the General Medical Council in separate proceedings. And to add to his troubles, his right to prescribe dangerous drugs was permanently withdrawn by administrative action by the Home Office. He nevertheless continued to practice medicine in Eastbourne, as he was entitled to do so long as he did not hold himself out as a doctor, and he was, after some years, restored to the register. He died in 1983, and the world of those who follow such matters divides into those who think he was a mercenary mass murderer who got away with it, those who think he was a deeply wronged and even dedicated doctor, albeit with the odd wart on his character, and those who, as we shall see, are persuaded by Lord Devlin that he was something in between, a practitioner of euthanasia.

1. Today the position is different, and normally the prosecution evidence is not published in the press.

The reason why the case attracted so much attention is easy to see: for a doctor to kill his own patients involves a peculiarly alarming breach of trust, and one that is dramatically incompatible with the role of a doctor. His trial was indeed to surpass all expectations; it was pure Perry Mason. The prosecution's case was that Adams was an acquisitive killer in a hurry for legacies, a theory that involved a certain implausibility if all he had to do was wait a little while for death to intervene naturally. The Crown primarily had to show that he had intentionally killed Mrs. Morell with lethal injections if their theory was to lead to a conviction. Here expert medical evidence could help, but this had to start from information as to what injections had in fact been given to Mrs. Morell seven years earlier, and what the condition of Mrs. Morell then was. In getting up and presenting the case, the prosecution placed much reliance on the recollections of the four nurses who had cared for her, and they gave the police detailed accounts of what had been given and why. At the time they had maintained notebooks recording both the treatment and their impressions of the condition of Mrs. Morell, but these, it was supposed by the prosecution and the nurses, had been destroyed.

In reality they had not been destroyed; the defense possessed them. They were not compatible with the view of the facts on which the prosecution had been brought. It is rare indeed in a criminal trial for counsel to have a real card up his sleeve. Once he produced the notebooks, Geoffrey Lawrence, leading defense counsel, was able to throw the prosecution case into confusion. The remainder of the trial was concerned with his battle to retain the immense advantage he initially obtained from the dramatic revelation that the books still existed, whilst the prosecution attempted to regain the lost initiative. The principal expert witness called by the Crown, a Dr. Douthwaite, played his part by producing a reinterpretation of the evidence which still, as he argued, showed that Dr. Adams was guilty. Geoffrey Lawrence replied with a virtuoso performance of the art of cross-examination, which more or less demolished this new theory. Thus the dramatic quality of the trial was sustained to the end. The jury acquitted Dr. Adams, but the prosecution indicated an intention to proceed with the second count for the murder of Mrs. Hullett. The trial judge put some pressure on the prosecution to drop the second charge; normally this would have been achieved by a formal acquittal after no prosecution evidence had been offered. The pressure was successful, though the procedure followed was the entry of a *nolle prosequi*, a move that deprived Dr. Adams of the satisfaction of an acquittal. The subsequent tribulations of Dr. Adams have been recounted. He did, however, recover considerable damages for defamation from the press, and another large sum for his memoirs, money which in fact he retained in cash and never spent during his life, as if it was somehow tainted.

As a murder story, or tale of wronged innocence, the *Adams* case is a good one. One might suspect that there is something in the British character or culture that must explain the fact that so homicidally inactive a people should produce so many murder trials of real quality. This one has already generated something of a classic of trial literature, Sybille Bedford's *The Best We Can Do*.² But perhaps the explanation for English success in this field lies not so much in any national skill in making life correspond with detective stories, but merely in the form of the English criminal trial, which continues to conform more closely to the dramatic unities than its equivalents elsewhere. Adversary procedure, as practiced in the English courts, is good theatre. Its potential is conceded in the practice of making special arrangements for writers who wish to attend popular trials.

Lord Devlin was the trial judge. *Easing the Passing* is his account of what happened, together with his reflections on the case some twenty-eight years later. Although in 1964 he ceased to sit regularly as a judge, he is still perhaps the best known English judge outside England. His reputation is based largely on his extra-judicial writings, in particular his *Maccabean Lecture in Jurisprudence*, delivered to the British Academy in 1959.³ There he set out to discredit the central doctrine in J.S. Mill's *On Liberty*, a version of which had been used in the Wolfenden Report⁴ to justify proposals to change the law on homosexual offenses and prostitution. He, in his turn, had the good fortune to be somewhat intemperately attacked by H.L.A. Hart,⁵ and nothing puts one on the map in academia like a controversy, more particularly if it takes some intellectual power to discover what if anything the row is all about. Mill's principle would confine the proper scope of the criminal law to situations when the prohibited conduct harmed others without their consent; Lord Devlin argued that this was too simplistic a view, and that there might be circumstances in which it was defensible to employ the criminal law to vindicate important moral values. This summary simplifies a complex argument; since then innumerable student essays have been devoted to the Devlin-Hart dispute and its variants, and the world divides as to who won on points, for there was no knockout. Lord Devlin had established himself as a thinking judge, concerned with large issues, and nobody could categorize him, as Christopher Hill categorized Lord Coke, as a lawyer, not an intellectual.

Some might object to this book on the grounds of impropriety, but

2. S. BEDFORD, *THE BEST WE CAN DO* (1958).

3. P. DEVLIN, *Morals and the Criminal Law*, in *THE ENFORCEMENT OF MORALS* 1 (1965).

4. COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION, *FIRST REPORT*, CMD. 247, No. 51824 (1957), usually named after its chairman, Sir John Wolfenden.

5. Originally in Hart, *Immorality and Treason*, *THE LISTENER*, July 30, 1959, at 162. See also H.L.A. HART, *LAW, LIBERTY AND MORALITY* (1963).

I should think that the lapse of time, the death of Dr. Adams (and the other possible villain), the absence of a close family, and the fact that most of the information used is in the public domain, operate together as an answer.⁶ Indeed, since Victorian times judicial reminiscences have frequently been published without censure. But so detailed an account of a single trial by the presiding judge is without precedent, so that this is a most unusual book. In the main it is based on recollection and reflection, not on the use of confidential materials, though Lord Devlin may perhaps have had some access to information held by the police. This is not very clear.⁷ The book is not a general comparative study of the English criminal trial.

There is a subplot, essentially concerned with Lord Devlin's own biography. It renders the book both more interesting and more amusing, and brings the writing occasionally and agreeably near the boundaries of good taste. The prosecuting counsel who led for the Crown was the then Attorney General, Sir Reginald Manningham Buller, later ennobled as Lord Chancellor Dilhorne. He too has a certain international reputation; he is thought, so Lord Devlin tells us, to be the model for Widmerpool in Anthony Powell's series of novels, *Dance to the Music of Time*. In telling the story Lord Devlin makes free use of first names. Lord Goddard is Rayner, for example, and this usage reflects a sense of togetherness and camaraderie that is supposed to characterize the English bar. In much the same way members of the better British regiments talk of each other as Pug, Pongo, Smelly, Biffy, and the like. The Attorney General is always Reggie, but here the use is less than affectionate; for Sir Reginald Bullying Manner, as he was called at the time, Lord Devlin has little admiration. Thus he writes of him: "What was almost unique about him and makes his career so fascinating is that what the ordinary careerist achieves by making himself agreeable, falsely or otherwise, Reggie achieved by making himself disagreeable" (p. 39). There is much more in the same vein. Reggie is criticized for the conduct of the case before the Eastbourne magistrates. He is described as "neither a saint nor a villain. But since most of his convictions were wrong-headed, he was ineluctably a do-badder, by which I mean a person whose activities bear the same relation to villainy as those of a do-gooder to sanctity" (pp. 39-40). He is taken to task for his use of a *nolle prosequi* to terminate the proceedings on the second count in the indictment (pp. 179-82). These criticisms are qualified; his competence is conceded, and he was only stupid "from time to time" (p. 40). But the general picture here presented is not an attractive one; no more is the association with Widmerpool, the careerist who like scum rises inexorably to the top.

6. As Lord Devlin argues at p. 8.

7. See pp. 10, 18. The information may, however, derive from press reports, the police involved having had an apparent interest in securing publicity for their work.

A curious story, the bones of which are set out in this book, seems to lurk behind these hints of asperity. Lord Devlin became a judge in 1948, and soon established a high reputation in the intimate world of the London profession. At the time of the trial the talk was that he might well succeed the aging Lord Goddard as Lord Chief Justice. Lord Devlin records the belief that Lord Goddard would retire in the autumn of 1957, and the fact that he wished Lord Devlin to succeed him (pp. 93-94). As Lord Denning was then Master of the Rolls, effectively head of the civil Court of Appeal, the Chief Justice's office was the only top judicial job going at the time, a career judge having no chance of becoming Lord Chancellor, a position reserved for politicians who are party faithfuls. The appointment of the Chief Justice is a political one, controlled by the Cabinet, but one open to career judges.⁸ The position had earlier been granted by the Conservative administration to Walter Monkton, familiar to television viewers as the Duke of Windsor's counsel; in February 1957, however, he had bowed out and become a banker. This made it possible for the Conservative government to appoint Lord Devlin. It also put Reggie in the race. Thus the two most obvious contenders in a sense met in the *Adams* case, and as Lord Devlin remarks, "The fortune-tellers at the Bar were eager to see how he would perform in a spectacular criminal trial" (p. 42). Reggie's performance, in which he could be seen as having let a mass murderer off the hook, or alternatively as having joined in a disreputable persecution, surely did not further his chances. I recall at the time gossip in legal circles that Lord Devlin's treatment of him in the course of the proceedings was somewhat less than supportive.

This related principally to the pressure put upon Reggie, once Dr. Adams had been acquitted on the first charge, to drop the second charge; apparently Reggie's intention was to press on with it. As Lord Devlin records (pp. 178-79), this took the form of an indication that bail would be granted to Dr. Adams if the second charge was proceeded with; the code for this is for the judge to invite an application which he will then consider. To grant bail in a murder case was virtually unknown; Lord Devlin could recall no precedent. The idea of offering bail, Lord Devlin also recalls, came, somewhat curiously, from Lord Goddard, who, one suspects, shared Lord Devlin's view of Reggie. What was presented as an offer to defending counsel to consider bail was in reality a threat to the prosecution, or at least an indication of strong judicial opposition to the plan to proceed. It was no doubt so understood. Although all this took place in the judge's pri-

8. The actual workings of the British system of government is always shrouded in secrecy, so that it is not known how precisely such an appointment is made. It may pass through the Home Affairs committee of the Cabinet; both the existence and membership of this body and of other cabinet committees are kept secret.

vate room, accounts of what was supposed to have gone on there circulated at the time; I recall receiving an account of the business highly unflattering to the Attorney General. Perhaps he felt somewhat sore at the decline in his prospects of becoming Lord Chief Justice. There was a debate in the Commons out of which he did not come well. The result was that Lord Goddard was persuaded not to retire in 1957, and by the time he did, the following year, for reasons that Lord Devlin knows, but does not here reveal, he decided not to support Lord Devlin's claim to succeed (p. 94). But Reggie did not get the position either; it went to Lord Parker, and what quite went on behind the scenes we may never know. Presumably Reggie did know.

He may well have felt that his stature had been somewhat diminished by the whole incident, and sought a chance to redress the score. His opportunity was not long delayed. As the dismantling of the British Empire got under way, schemes for new federations became popular. The odd pieces of Africa, or wherever, acquired in a somewhat random manner, could, it was felt, be assembled into more viable units and then converted into dominions within the British Commonwealth of Nations. One such scheme involved Nyasaland (now Malawi), which had been married to the white-settler-dominated Southern Rhodesia (now Zimbabwe) and to Northern Rhodesia (now Zambia). Powerful economic interests favored such schemes; African nationalists suspected them. This one was opposed by Dr. Hastings Banda of Nyasaland and his Congress Party, and in 1959 serious disturbances broke out. He was duly accused of planning a bloody revolution and in March of that year locked up. Lord Devlin chaired a committee of inquiry into the whole business. Its report, very unfavorable to the colonial government, was published in July of 1959. It was politically expedient to discredit it. The report, in one passage which is not here quoted, explained the taking of evidence in private in the following way: "Nyasaland is — no doubt only temporarily — a police state, where it is not safe for anyone to express approval of the policies of the Congress party to which, before March 1959, the vast majority of politically minded Africans belonged."⁹ The fury this sentence caused in the British Conservative Party knew no bounds; that was just not the way one talked about the British Empire. The use of the expression was an error in presentation, and radically affected public attitudes to the report. It was a bad time for colonialism, more or less corresponding with embarrassing revelations about what was called the Hola massacre in Kenya. Reggie seized his chance and to the delight of his party savaged the Devlin Report in a speech in the House of Commons on 28 July 1959. It was, amongst other things, too clever by half; anti-intellectualism has always appealed to the British right. That was the end of any chance that Devlin would become Lord Chief Jus-

9. REPORT OF THE NYASALAND COMMISSION OF INQUIRY, CMD. 814, at 1 (1959).

tice under a Conservative government were the position again to fall vacant; such an appointment would have been quite unacceptable to the party. The appointment of a judge to head the inquiry had of course been used to confer an aura of parasitic judicial authority to the report, but Lord Devlin was obviously not sound. He actually believed in judicial independence. His account of the matter reflects his understandable irritation at the shabby treatment meted out to the report (pp. 188-91).

In the same year the Macmillan cabinet promoted Lord Devlin to the Court of Appeal and in 1961 to the House of Lords, no doubt both in recognition of his abilities and by way of making amends for what had happened. One suspects some protests behind the scenes; judges in Britain are often used to produce official reports, and this recognized technique of British government could hardly survive attacks of the type leveled at this one. But Lord Devlin did not long remain a judge, resigning in 1964 after having clocked up a little over the necessary fifteen years' service, to become Chairman of the Press Council. This toothless watchdog, which Devlin made to bark and growl at journalistic bad behavior as convincingly as could be achieved by so dentally underendowed a creature, had been set up by the press to fend off possibly more grave controls over press freedom. Its chairmanship was hardly the sort of job that one would expect to lure a distinguished judge from the ultimate court of appeal, unless he had somehow grown tired of being a judge. This story lies close to the surface of this book, and gives the writing a bite which in my view adds to the fascination of this trip behind the scenes of the English legal world. Where law and politics come together it all becomes less than perfectly gentlemanly.

Lord Devlin's detailed account of the management of the trial, the considerations that influenced him, the anxieties he had, the merits and demerits of the procedures followed, his conception of the proper relationship of judge and jury, all make interesting reading. He gives a personal picture of the law in action that is very unlike the highly abstract accounts of judging typified by Benjamin Cardozo's *The Nature of the Judicial Process*.¹⁰ The concentration upon practical questions reminds one of Judge R.A. Posner's recent study.¹¹ The book also reflects a trusting attitude to trial by jury under the adversary system; he records that he was never troubled about the possibility of the jury being prejudiced. Those who fear prejudice "do not allow for the effect of the legal process on the common mind. I never for a moment contemplated the possibility that the trial of Dr. Adams would not be fair" (p. 51). His views seem wholly unaffected, so far as one can tell, by any of the scholarly empirical work published over the

10. B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1921).

11. R. POSNER, *THE FEDERAL COURTS: CRISIS AND REFORM* (1985).

years. Lord Devlin's account is based, for better or for worse, simply upon experience in legal practice. The endless controversy as to the nature of the judicial process could well be approached profitably through reflection upon this story. Of course there is a problem. Granted the sincerity of the author, can we sensibly accept his own account of what he was up to as an account of what *really* happened? Does it follow from the fact that I sincerely think I am applying the law that I am in fact applying the law? Perhaps conundra of this type do little to aid understanding of human behaviour.

What is, perhaps, somewhat neglected in accounts of the judicial process or in the working of the law generally is the significance of ideals (and perhaps even myths) in shaping conduct. For ideals may have an importance even though they are not clearly defined, and do not provide very specific guidance. We recognize this in other areas where conduct becomes unintelligible if we do not appreciate the ideals according to which the actors understood what they were doing. We know that Leonidas and the three hundred did not simply die at Thermopylae as three hundred might die in an air crash or an epidemic; the meaning of their actions and death is to be found in the ideal encapsulated in their epitaph: "Stranger go tell the Lacedaemonians that we lie here obedient to their commands."¹² Devlin's account of this trial is a commentary on the ideal of the fair trial according to law; his Nyasaland Report an expression of the ideal of judicial independence.

This must provoke the speculation — was it really the law that gave Dr. Adams a fair trial, or the mere chance that the lost notebooks fell into the hands of the defense? The unpalatable conclusion that it was the latter seems difficult to escape, and it may be that no refinement of the system of adversary procedure can offer any real security to the innocent. It is in the nature of ideals that they depart from reality. We could perhaps in pursuit of the ideal do better, and one essential is surely to differentiate the pretrial prosecutor's decision — that the police have got the right person for the right offense — from the police task of collecting evidence, and from the court lawyer task of presenting the case. At the time of Dr. Adams' case, as now, the pretrial decision belonged to the Director of Public Prosecutions. But at least since early this century the Director has not considered it his task to take a decision as to the guilt or innocence of the accused. Instead the tradition is to apply what is called the fifty percent rule — is there a decent chance of securing a conviction? It is not the function of the court lawyer to take the decision in any dispassionate sense, and in any event it is hopeless to expect a calm appraisal of the matter in the middle of a trial which has got into a muddle. Police practice is to take the decision fairly early in the inquiry, and then set about find-

12. HERODOTUS, THE PERSIAN WARS bk. 7, ch. 228.

ing evidence to support it. Indeed in much police work the decision is taken before the police are brought into the case at all; detection is not as common in real life as in novels. Matters are not improved when the expert witnesses, whose dispassionate opinions are so critical, are retained by one side or the other. So nobody who is in a position to check the matter out really feels it their duty to decide rationally whether the accused committed the crime or not.

Lord Devlin's book concludes with some interesting discussion of whether Dr. Adams was ultimately guilty of murder or not. On the evidence, the prosecution's claim that he was a killer for legacies through mere impatience seems quite absurd, but we have the advantage of hindsight. Lord Devlin argues that it is much more plausible to view Dr. Adams as a doctor who, in his own term, was in the practice of "easing the passing." Indeed for all practical purposes he told the police that this was what he had been doing, but they had already made up their minds, and preferred a more dramatic interpretation. No doubt this kindly practice has always been fairly common in the medical profession and was well known to professional nurses; inevitably it is shrouded in obscurity, and this book makes no attempt to investigate the matter, if indeed it could be investigated. What is discussed is the theoretical line between legitimate medical practice and murder, a line not easy to draw, particularly in cases where pain-killing drugs, administered in quantities adequate to alleviate distress, will also have the effect of shortening life. Although the prosecution did not present Dr. Adams as a practitioner of euthanasia, the problem of drawing the line had to be considered by the jury on the evidence, and Lord Devlin did direct them on the question, telling them that a doctor "is entitled to do all that is proper and necessary to relieve pain and suffering even if the measures he takes may incidentally shorten life."¹³

In his book he returns to the question, discussing it somewhat curiously as if it did not arise at the trial. The explanation is that his discussion is here focused on his own interpretation of the facts, not that of Reggie or Dr. Douthwaite. According to this interpretation, Mrs. Morell died as an immediate consequence of an injection of heroin. This was administered by one of the nurses on Dr. Adams' instructions, under the misapprehension that it was an injection of paraldehyde, a harmless drug used as a soporific. He presents this view of what happened in the last few hours of Mrs. Morrell's life as an idea that has come to him through later reflection, but certain questions he asked at the trial, and quoted in Sybille Bedford's book,¹⁴ suggest that he then had some suspicion that the final injection might have been of heroin or morphia, and not, as the nurse believed, and

13. S. BEDFORD, *supra* note 2, at 220.

14. *Id.* at 80-81.

Dr. Adams had told her, of paraldehyde. So the theory presented here as plausible but not proved was indeed hinted at during the trial, but Reggie failed to pick up the idea, or if he did could do nothing with it when the defense took the decision not to put Dr. Adams in the witness box. In the adversary system the judge is of course not supposed to press his interpretation of the facts; he may only at most drop hints, as surely he did. In other systems he would of course be entitled to pursue the matter. Had the case been tried on the theory that Dr. Adams had been practicing euthanasia, and Dr. Adams had been convicted, we should, on appeal, have had a leading case. It got away. But doctors are never prosecuted on such a theory; hence there is not and probably never will be a leading appellate case on this question.

Devlin's presentation of Dr. Adams as essentially a practitioner of euthanasia raises both the ethical and legal problems associated with "easing the passing," and so far as the law is concerned he argues that:

If he really had an honest belief in easing suffering, Dr. Adams was on the right side of the law; if his purpose was simply to finish life, he was not. It is thus that I should have directed the jury, had the issue been raised. A narrow distinction. But in the law, as in all matters of principle, cases can be so close to each other that the gap can only be perceived theoretically. In the criminal law the gap is what is perceptible by a jury.
[p. 209]

His analysis does not rely on the casuists' doctrine of double effect, which has been utilized in an attempt to distinguish the licit from the illicit, and to get over the difficulty that in the law we are usually treated as intending consequences that we know will certainly follow from our actions, even if we regret them and do not regard bringing them about as our motivating purpose.

Lord Devlin's direction at the trial in fact introduces two other elements into the equation — whether the treatment was "necessary" and "proper." The first requirement covertly presupposes that the relief of pain and I suppose distress is a licit end, whilst the termination of a life that has come to seem burdensome or pointless is not. The second requirement could be taken to refer to current conventions in medical treatment; if what is done is normal in the profession the doctor will be safe, and of course normal practices in the care of the dying differ over time and between cultures. Perhaps the normal is not seen as causing the death. At the conclusion of his book he raises another consideration, earlier introduced in a taxonomy of illegal abortionists: should a doctor be entitled to sell easing the passing to his patients in the sense of charging extra for it? Here the discussion is focused on a case in which the drug is not used strictly to alleviate pain, and in that sense is not necessary, but is in fact given in order to make an imminent death easier. Here we encounter that most difficult notion — the boundaries of the permissible market — and Lord Devlin's instinct, which many would share, is hostile to the sale of such a service. The

idea of charging for killing is indeed repulsive, though of course at this time it was the practice to pay executioner Albert Pierrepoint for his grisly services. Here surely Lord Devlin is giving expression to the views as to the function of criminal law which he set out in his lecture back in 1959; the law must reflect and vindicate the view that death is not for sale. It is clear that the issues raised by the trial of John Bodkin Adams are not ones that are likely to go away, and Lord Devlin has written an entertaining and thought-provoking account of a case that came near to raising the most difficult amongst them in a legal form.