

Disobedience: a path to clarity in end-of-life law



RODNEY SYME

Provoking the law is the only way to secure change to lift the uncertainty doctors face when making decisions relating to death.

It is a self-evident truth that dying can be accompanied by intolerable and unrelievable suffering which may escalate as death approaches. It is also self-evident that some suffering will end only with death. Doctors have an ethical duty to relieve suffering and to respect the autonomy of their patients. The Medical Treatment Act says it is desirable that dying patients receive maximum relief of pain and suffering. So what does a doctor do when a person with intolerable and unrelievable suffering asks for assistance to die to relieve that suffering?

Such a doctor must operate within a legal framework of uncertainty. The Crimes Act says it is murder to intentionally end a life – even if a person is dying – even if only by a few hours. It is manslaughter if one can foresee that an action will cause or hasten death, and still take that action, and there is a further relevant offence of inciting or aiding and abetting suicide. A doctor treating people at the end of life can come into potential, and actual, conflict with all these laws, which carry substantial penalties.

What should a doctor do if his conscience tells him he should provide relief from that suffering, if asked by a competent patient? Should he hasten death and risk the impact of the law?

Doctors have been facing this dilemma for centuries with no protection from the law, and have had to help their patients secretly, or travel under the umbrella of intention, a vague and uncertain defence. More than a century ago, Sir William Osler, a doyen of modern physicians, said “it was the duty of physicians to ease death”. And they have done so, with the sword of Damocles hanging over their heads, which is why medical assistance at the end of life is hidden, and so arbitrary in nature. It depends on who you are, who you know, what disease you have and where you are living, but most importantly, on the courage or



fear, and moral views, of your doctor.

I have, for reasons of conscience and perverse nature, been challenging the law surrounding end-of-life decisions and actions for nearly 20 years. In 1996 I first became aware of the practice of terminal sedation, also known as deep continuous sedation, whereby dying people in palliative care were put slowly but progressively into a coma, without the provision of hydration, and maintained in that state until their clearly foreseen death – and such deaths were not reported to the coroner. They were clearly the result of an anaesthetic process, and could hardly be considered “natural deaths”.

It took four years, and three deaths influenced by terminal sedation, managed by me and reported to the coroner, before he confirmed that such deaths were not reportable.

In 2005 I gave advice and medication to Steve Guest, who was dying of oesophageal cancer. He took this medication to end his suffering, and over the next three years I made statements that a driver's dog would understand about my involvement with his death. In 2008, my book *A Good Death* was published by MUP. In that book I described my involvement with 20 of my patients and of my assistance in their deaths, including that of Steve Guest.

Two police interviews followed, but no action. Realising that the police

could reasonably argue that they did not have sufficient evidence to prosecute me, I finally acknowledged a year ago that I had given Nembutal to Steve, but also argued that my intention was to palliate him by giving him control over the end of his life and improve his quality of life. There is ample evidence that it did so.

A further police interview followed, but no prosecution, on the grounds that “there was insufficient evidence”. It is not clear whether a referral of the matter was made to the Office of Public Prosecutions, because only silence has followed.

Since then, I have provided advice and medication to another 10 people, including Peter Short. Brave Peter did not take this medication, dying well in palliative care. Nevertheless, it provided him with powerful palliation. His medication has rolled over to Ray Godbold, a palliative care nurse dying, by strange coincidence, of the same oesophageal cancer as Steve and Peter. Ray is acutely aware of the reality of dying in palliative care, and wants another palliative option.

It is not my intention that he end his own life, and I hope he does not need to, but having that choice is powerful medicine. It is an alternative to terminal sedation.

The Office of Public Prosecutions is between a rock and a hard place. It regularly prosecutes laypeople who

I have, for reasons of conscience and perverse nature, been challenging the law surrounding end-of-life decisions and actions for nearly 20 years.

are involved in the deaths of suffering relatives, regrettably because they have felt they had no alternative. Our judges show their dissent by regularly finding no reason for punishment in these cases. Law professor Loane Skene says doctors are extremely unlikely to be prosecuted on the ground that it is not in the public interest – a jury would be highly unlikely to find them guilty of a clearly merciful act, and furthermore, such a prosecution would have a disastrous effect on the future palliation of suffering patients.

It is gratifying that the Victorian Parliament has at last established a parliamentary committee of inquiry to look thoroughly into this matter.

My journey has been one of provoking the law or, more specifically, the lack of law in relation to necessary medical actions at the end of life. We proudly say about our democracy that we live by the rule of law but, as a doctor, I find an absence of clear end-of-life law has a profound effect on doctors, their patients and their families. I grieve that this status quo exists despite clear logic for change. Such a status may need a shove for it to change – that is what I am hoping to do. Sometimes non-violent civil disobedience is that shove.

Dr Rodney Syme is a former vice-president of Dying with Dignity Victoria.

Climate inaction, the one point of consensus



Two climate contrarians making headlines have the same goal in mind: do nothing

MICHAEL BROWN

Two climate contrarians have made headlines, and they bring two very different styles to the climate debate.

The Prime Minister's business adviser, Maurice Newman, is an old-school climate crank. While scientists from many nations have measured warming across the globe and found it is caused by carbon dioxide, Newman sincerely believes “weather bureaus appear to have homogenised data to suit narratives”. Newman rejects the work of hundreds of scientists, and instead embraces conspiracy theories.

Danish professor Bjorn Lomborg was to head an “Australian Consensus Centre” at the University of Western Australia, kickstarted with \$4 million of federal government funding. However, UWA has withdrawn its offer to host the centre, as it has been incredibly divisive and controversial within the university and beyond.

Unlike Newman, Lomborg accepts carbon dioxide is raising global temperatures. However, what unites these two men is they consistently argue against action on climate change. They also have support from the political right,

with Lomborg being a favourite of Australian conservatives and American Republicans.

Newman makes selective use of facts to make his arguments. For example, in his most recent opinion piece, Newman correctly states that December 2010 was the coldest December in Britain on record. However, there are colder months in the British temperature record and December 2010 is an exception to a warming trend, which resulted in 2014 being Britain's hottest year. Britain and the Earth are warming.

Newman's errors and omissions, combined with his more conspiratorial claims, make him easy to dismiss. Lomborg's climate contrarianism is more nuanced.

Lomborg has run the Copenhagen Consensus Centre in both Denmark and the United States. Consensus implies that conclusions are reached via broad agreement within the relevant community. However, the project draws upon a relatively narrow pool of economists. Many prominent economists are highly critical of the centre. In particular, its design includes unrealistic policy trade-offs and economic assumptions that, by design, lead to conclusions against immediate action on climate change.



Danish professor Bjorn Lomborg. Photo: Ben Rushton

Even participants in the Copenhagen consensus project have been highly critical of Lomborg. While Lomborg claims global warming could have benefits, participant Gary Yohe stated bluntly that, “this is a deliberate distortion of our conclusions”. Most economic models indicate that global warming comes with significant economic costs, particularly if warming exceeds 2 degrees.

In addition to consensus being elusive, the Copenhagen Consensus Centre itself has been elusive. The centre has not been based in Copenhagen since 2011, and its US postal address is a mail-forwarding service. Despite this, the centre has received significant funding from politically conservative foundations and Lomborg appeared at an event sponsored by coal giant Peabody Energy before

the Brisbane G20 meeting. Lomborg does acknowledge that carbon dioxide emissions are leading to increased global temperatures. However, he often plays down the risks of climate change and (like Newman) selectively uses facts.

For example, multiple research groups have found that sea level rise accelerated over the past century, and just 10 centimetres of sea level rise will triple the rate of coastal inundation events around Australia.

Despite this, Lomborg recently claimed in *The Wall Street Journal* that sea level rise could be decelerating. However, the two studies cited by Lomborg use too little data to make meaningful claims on the acceleration or deceleration of sea level rise. Lomborg says he is opposed to

alarmists, but his optimistic and selective use of scientific studies indicates he is actually railing against mainstream science.

Lomborg's Consensus Centre at UWA has been controversial, and many have welcomed the announcement that UWA will not be the centre's host. While some political warriors are claiming this is a defeat for academic freedom, this is unjustified and overlooks Lomborg's history.

Lomborg consistently misinterprets and makes selective use of scientific studies to portray an overly optimistic view of climate change and its costs. The Copenhagen Consensus Centre process includes unrealistic assumptions that, by design, lead to arguments against immediate action on climate change. Lomborg's approach lacks the academic rigour we expect from our top universities. Despite this, Lomborg is an effective lobbyist and popular with some politicians, so he will continue to have a significant media profile, even without the Australian Consensus Centre.

In a time of tight government spending, one has to wonder if federal dollars for Lomborg's Australian Consensus Centre were intended to fund rigorous academic activity, or to provide intellectual cover for the government's inadequate climate change policies.

Associate Professor Michael Brown is an astronomer at Monash University's School of Physics and Astronomy.

Don't play victim blame game with family violence



It is not a woman's job to teach violent men how they should behave.

MIKI PERKINS

Down the murky rabbit hole of social media, there are many toxic claims about women's supposed complicity when men choose to use violence against them. That – and I'm removing the expletives and fixing spelling errors – women are somehow to blame.

They don't stand up for themselves, they don't push back, they play the victim. Or conversely, that they answer back and infuriate their attacker, don't know their place. That women wear the wrong clothes (too short/long), walk in the wrong places (the park/the dark), raise daughters to be too submissive/aggressive, or want too much (or expect too little). That women bear some responsibility when they are battered, beaten, terrorised or killed. The claims are deeply – often wilfully – misguided, yes. And dangerous.

But surely, a view shared by a

gain the levels of real power and authority that would put a swift end to domestic violence.” She says we need to train young girls to take themselves more seriously and develop mental toughness.

I wonder what Jess would make of this. I interviewed her at her kitchen table last week in the two hours she had free between picking up her three girls and caring for her elderly mother.

This room is also her bedroom, she sleeps on the sofa and the kids bunk in one room, granny the other. Housing for those fleeing violence in Victoria is almost impossible to find.

Jess's ex-husband was brutal. Daily beatings, psychological torture, intimate terrorism. He owned a cupboard of guns (all licensed). He beat the family pets.

Violence began during the honeymoon and continued for a decade. She never reported him to the police. Why? She was scared he would kill her. When she threatened to, he put a gun to her head. No arguing with that.

But nor did she “tolerate it”. Over many years she tried – despite her straitjacket of terror – to push back. It made no difference, she told me. Often it made it worse.

So what “rating” do we give Jess? Did failing to stop a man with a gun to her head mean she gave him permission to escalate the violence to 9/10? Do we perhaps need to have a word with her about letting her daughters wear pink? Instead of blaming victims, we should turn a blinding spotlight on men like Jess's former husband, and the forces that shape them.

When she threatened to go to the police he put a gun to her head. No arguing with that.

Yes, please let's have a wider discussion about the pressure we place on young women and girls to play the princess and adhere to a fatuous version of femininity.

While we're at it, let's also consider the corroded version of masculinity that tells young boys emotional fluency is for wimps and they need to man up. In this retrograde world, achievement is measured on the sporting ground, or in the boardroom. And let's face it – there's not enough women at either.

The research in family violence

shows – again and again – that it is rigid gender stereotypes that fuel perpetrators' attempts to use power and control women.

Look at any government framework for reducing family violence and the message is clear: the key to reducing family violence is promote equal and respectful relationships between men and women.

Parents don't need to be told that there is pressure on their children to follow rigid gender roles. They're the ones scratching their heads in the two-aisle toy stores and wondering how to best prepare kids for a world so intent on squashing vigorous little people into a mould.

Women are never responsible for the behaviour of abusive men. Nor is it their job to “teach” their partners how to behave.

Instead, we need to tell women like Jess that they amaze us. They are survivors. She lived for 10 years in a hell on earth – her words – and now it is up to us to support her as she finds a safe life.

There have been 36 women killed violently in Australia since the start of this year. We are counting.

Miki Perkins is *The Age's* social affairs reporter.