

4-1-1958

The Sanctity of Life and the Criminal Law. By Glanville Williams.

Dennis H. Wrong
Brown University

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Criminal Law Commons](#)

Recommended Citation

Dennis H. Wrong, *The Sanctity of Life and the Criminal Law. By Glanville Williams.*, 7 Buff. L. Rev. 526 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol7/iss3/15>

This Book Review is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

the duties of the surveyor and the writing of deeds are subject, in part, to the same criticism, although they are arguably more closely related to the subject of boundary location.

Mr. Brown states that the forerunner of this book was *Boundary Control for Surveyors in California*.¹⁰ The present book although in many respects worthwhile, will not satisfy the needs of many real estate practitioners simple because it was not written with adequate consideration of their interests. Even so, the present book is, in some respects, worthwhile and, if its substantial shortcomings are recognized, belongs on the shelf of lawyers engaged in real estate practice. If the author would revise this book by focusing all his attention on boundary determination, while at the same time going into more detail on the authority for the propositions which he states with a great deal of certainty, such an effort could be a much more valuable contribution to the literature in this field.

DOUGLAS G. BSHKOFF
Teaching Fellow
Harvard Law School

THE SANCTITY OF LIFE AND THE CRIMINAL LAW. By Glanville Williams:
Alfred A. Knopf, Co., 1957.

This book deserves a wide audience among lawyers, doctors, social scientists and all who are concerned with those highly controversial areas in which moral convictions pertaining to the creation and preservation of human life impinge upon the criminal law. The author, a prominent British jurist, discusses in detail and with considerable erudition the legal and moral norms governing infanticide, birth control, sterilization, artificial insemination, abortion, suicide, and euthanasia. The substance of the book was originally delivered as a series of lectures at Columbia University and before the Association of the Bar of the City of New York.

Mr. Williams shows a command not only of the legal and medical literature dealing with these problems but also of the theological literature; for the origins of the relevant statutes and the strong resistance to changing them can only be understood with reference to the positions taken by the spokesmen of official Christianity, both Roman and Catholic and Protestant. Mr. Williams does not hesitate to state clearly his own position: on all of the issues he discusses he is in favor of modifying existing English and American law or its administration in the direction of granting greater liberty of choice to individuals. The book is,

10. P. ix.

BOOK REVIEWS

therefore, both an exploration of the scope of the problems and a series of proposals for their resolution.

Mr. Williams would, in recognition of the probable mental state of the mother, like to see "a greater exercise of the discretion of prosecuting to refrain from prosecuting" in cases where mothers are charged with killing their new-born infants. In the chapter on contraception, a subject less relevant to legal considerations in the English-speaking countries than the others he discusses, Mr. Williams adopts a neo-Malthusian position and critically reviews religious opposition to birth control in light of contemporary world population problems. He is in favor of legalizing voluntary sterilization, artificial insemination, abortion, and euthanasia. He would like to remove all legal prohibitions of suicide. In all of these cases he critically examines and rejects the arguments of those opposed to the changes he favors, both those that are based on secular considerations and those that are held on theological grounds. He is fully aware of the necessity of recognizing subtle distinction which the law must take into account and his specific proposals for legal reform attempt to do justice to the necessities of protection against abuses which are often emphasized by the opponents of change.

To give one example: in the case of euthanasia Mr. Williams opposes the 1936 English bill (defeated in the House of Lords) which proposed to legalize voluntary euthanasia under appropriate controls and suggests instead a law which "would provide that no medical practitioner should be guilty of an offence in respect of an act done intentionally to accelerate the death of a patient who is seriously ill, unless it is provided that the act was not done in good faith with the consent of the patient and for the purpose of saving him from severe pain in an illness believed to be of an incurable and fatal character." Such a law, he argues, would put the burden of proof on the prosecution to show that a physician acted from other than humanitarian motives, but would avoid the controversial step of legalizing euthanasia as such.

Since I am in basic agreement with Mr. Williams' point of view, I find his arguments generally persuasive. It would be too much to hope, however, that his book will convince those who adopt absolutist moral or theological positions. Nevertheless, even for them the book has the virtue of discriminating clearly between secular and religious arguments and of stating the relevant medical-sociological considerations with exemplary clarity and precision. For lawyers, his deft exposure of the absurdities and contradictions in present Anglo-American law should be of primary interest. He is careful throughout to distinguish between the quite separate issues of the morality or immorality of abortion, euthanasia, etc. and the desirability of legally enforcing traditional, religiously grounded prescriptions and prohibitions governing these areas of conduct. The weight of

his argument is at all times directed against legal enforcement, although, he does not, as I have previously indicated, hesitate to make his own moral standpoint explicit.

There are a few places where his arguments and evidence are less than convincing. In the chapter on birth control and population problems he relies on some authorities who, while they cannot be quite classified as questionable, do not nevertheless represent majority opinion in these fields. His discussion of differential fertility—the differences between the birth rates of the upper and lower classes—is not entirely up to date and he makes far too much of the argument that differential fertility is dangerously dysgenic, that is, that it inevitably lowers the hereditary quality of the population. At one point he cites evidence supporting the dysgenic hypothesis from the most extensive study of family size in relation to intelligence that has yet been conducted but fails to cite contradictory evidence from the same study. He also repeats certain popular and scholarly misinterpretations of what Malthus said and advocated.

In the chapter on euthanasia he ignores what might be called the "argument from Hitler" against its legalization. Not that I regard this argument as conclusive or even very weighty, but both proponents and opponents of euthanasia seem to be quite ignorant of the facts concerning the relationship between medical euthanasia in Germany and the genocide practiced by the Nazis in Eastern Europe. In 1941 the Nazis instituted a program of *compulsory* euthanasia of mental patients and the indigent aged. Public opinion became so aroused in opposition to it that it was abandoned, the one recorded instance of public pressure forcing Nazi totalitarianism to give ground. But when Hitler decided on the "final solution of the Jewish problem," it was the very doctors who had previously advocated and administered the euthanasia program who were sent to the Eastern Front to install the gas chambers in the death camps. Further discussion of Soviet policies in this area would also have added to the value of Mr. William's excellent book.

DENNIS H. WRONG
Department of Sociology
Brown University