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Case Report: Re A (Conjoined Twins)

Previous precedent, a summary of the case facts, an analysis of the judgement, an analysis of the judgements impact and future legal developments
1500 words.

Case: Re: A (Children) (Conjoined Twins: Medical Treatment) (No.1) [2000] 4 All ER 961.

Key Terms: murder; intention; right to life; morality; parental rights; defence of necessity.

Notable Prior Precedents:

Generally, under the Homicide Act 1957, the express murder of another person is deemed to be a crime, and one possessing a sizably immoral connection. Nonetheless, circumstances exist in which one can provide a defence to such murder. Re A (Conjoined Twins) (2001) concerned the applicability of a defence of necessity to murder.

Historically, Dudley v Stephens (1884) saw the rejection of the concept of necessity as a defence to murder. However, since then, the common law has become increasingly open to the defence of necessity in relation to other, lesser crimes, especially in medical circumstances, as seen in R v Bourne [1938] concerning abortion. The first firm recognition of the defence came with Re F (Mental Patient Sterilisation) [1990] permitting the medical sterilisation of a severely mentally disabled women. Relevantly, in Airedale NHS Trust v Bland [1993] AC 789 it was deemed that the withholding of nutrition from a patient in a persistent vegetative state so as to commit euthanasia was not an illegal action.

Facts:

A pair of conjoined twins (designated Mary and Jodie for the sake of legal proceedings) were born. If the twins were not separated, medical experts determined that the overwhelming likelihood was that both would eventually die, as Mary was dependent upon Jodie for survival. This was as Jodie was the stronger twin and the only twin deemed to have a reasonable likelihood of surviving independently. Contrary to medical advice, the parents would not consent to the separation procedure, deeming it contrary to their devout religious beliefs, and preferring that the twins not be separated as it would likely cause Mary's death.

First Instance Judgment:

At first instance, the High Court found that the twins could be legally separated as the purpose of the procedure was not to actively kill Mary, but was rather analogous to a withdrawal of support. Thus, the defence of necessity could apply on an occasion of death by omission rather than positive action.

Final Judgment:

Mary and Jodie's parents appealed on the grounds that the operation was in neither Mary nor Jodie's best interests, and further that the operation amounted to murder without a claimable defence, and was thus illegal.

Upon appeal, the Court of Appeal upheld the High Court's decision unanimously, with a 3-0 finding. Walker LJ and Brooke LJ provided the notable judgments in this case.

Walker LJ made a number of key points. Initially, whilst the parents' religious beliefs merited sincere respect, they were ultimately not relevant to the Court's consideration of what constituted the actions most in the best interest of Mary and Jodie. Moreover, whilst the High Court had applied analogous logic in comparing the instant facts with the withdrawal of life support, this was in fact an incorrect equivalence. Rather, the situation was deemed novel and thus meriting entirely original consideration. From this perspective, Walker LJ advanced the following logic.

First, both Mary and Jodie were entitled to a right to life, as provided for in both British common law and under the applicable European Convention of Human Rights (incorporated into British statutory law via the 1998 Human Rights Act). Moreover, one's right to life encompasses the subsequent rights of bodily integrity and human autonomy. However, due to the circumstances of their birth, Walker LJ found that Mary and Jodie did not enjoy such rights completely, and thus the Court

had to determine their best interests on their behalf. The presumption was that it would be better to take actions which may result in the saving of one of the twins where the alternative of no action would most likely result in both of their deaths.

Thus, the operation, which significantly did not have the primary purpose of killing Mary, but rather of providing Jodie with an opportunity at a relatively normal life, would be an act in the interests of this presumption. Meanwhile, Mary would only experience a severely limited quality of life for a relatively brief period, very possibly prolonging feelings of struggle and pain.

Subsequently Walker LJ found that the separation operation could be considered to be in both twins' interest. This did not amount to the Court making a determination that one twin ought live and the other die, but rather both could be viewed as benefiting from this result.

Lastly, whilst Mary's death was the inevitable result of the operation, this could not be legally deemed as the fault of the doctors involved, but rather an unfortunate and wholly natural occurrence, realised more quickly than it might otherwise have been as a result of the doctors' attempts to save Jodie.

Brooke LJ generally agreed with Walker LJ, further noting that occurrences such as these were exceptionally rare, rather than a situation in which one party was permitted to inequitably benefit from a loophole in the law. Moreover, in considering whether a defence of necessity for murder or other actions against the person may be applicable in such situations, Brooke LJ repeated the three criteria identified by Sir James Stephen in his authoritative works, *The History of the Criminal Law of England*. Namely, first, that the act considered be necessitated in the prevention of otherwise 'inevitable' and 'irreparable' evil; second, only what is proportionately necessary to achieve the end result with minimal harm is permissible; lastly, the harm caused must not be disproportionately greater than the mishap it prevents.

In this regard, Brooke LJ's judgment can be considered one of 'lesser evil necessity' where it is recognised that an egregious act has been intentionally been committed, but on balance the circumstances are resultantly better than they otherwise would have been.

Analysis:

The Court of Appeal's judgment had the result of, for the first time, recognising the existence of a defence of necessity in regards to murder.

Moreover, it was found that the parents' wishes were not paramount in circumstances concerning the continuation or ending of children's lives.

Impact:

Alongside representing a momentous development in the law of crime and relevant defences, *Re A (Conjoined Twins) (2001)* is also widely considered to be informative of the modern judicial approach to analysing the relationship between law and morality, a question which has long pre-occupied jurisprudential theorists, and is the fundamental distinction between the natural law and legal positivist schools of thought.

Indeed, this case is oft cited by those contending that it is not possible to wholly divorce legal decisions and societal morality, as it would otherwise have been feasible here to find that the operation would have constituted murder and thus that it would be most just, in the law's eyes, for both twins to die. Many have suggested that the morally digestible result was reached here and further suggested that the Court was aware of this and so utilised an element of retrospective reasoning in an attempt to fit the law into an agreeable mould.

Subsequent developments:

In recent years, *Re A (Conjoined Twins) (2001)* has received new attention due to the case of *Nicklinson v Ministry of Justice (2012)* which regarded the rights of those seeking euthanasia. Here, the claimants submitted that doctors who assisted in their early termination of life on severe medical grounds ought not be deemed to have committed an illegal act as it would be incompatible with their right to a private life per Article 8 of the European Convention on Human Rights. Further, the claimants viewed that the precedent for such a view was identifiable in *Re A (Conjoined Twins)*. The Court (the Queen's Bench) found that such a development was permissible, despite the acknowledgement of the exception present facts.

Whilst it is as yet not entirely clear whether *Nicklinson v Ministry of Justice* will amount to a basis for permitting medical euthanasia in British law, it is evident that *Re A (Conjoined Twins) (2001)* will be a much-discussed case in this regard. Notably, however, commentators do suggest that the defence of consent may emerge as primary in this regard.

Moreover, it has also been considered a reasonable extension of this decision, that in circumstances where several innocent lives must be intended in the pursuit of saving a far greater number of innocent lives – with particular regard for the '9/11' events which occurred not long after the judgment in *Re A (Conjoined Twins) (2001)*, that it would be morally and legally permissible to shoot down a plane in such circumstances.

Words: 1416

Bibliography

Cases

Dudley v Stephens (1884) 14 QBD 237.

Nicklinson v Ministry of Justice [2012] EWHC 304.

Re: A (Children) (Conjoined Twins: Medical Treatment) (No.1) [2000] 4 All ER 961.

Re F (Mental Patient Sterilisation) [1990] 2 AC 1.

R v Bourne [1938] 3 All ER 615.

Books

Stephen J, *History of the Criminal Law of England* (1st edn, Cambridge Pub, 1883) Vol 2.

Articles

Bohlander M, 'In **extremis - hijacked airplanes, "collateral damage" and the limits of criminal law.**' (2006) (July) CLR 579.

Bohlander M, 'Of **shipwrecked sailors, unborn children, conjoined twins and hijacked airplanes - taking human life and the defence of necessity.**' (2006) 70(2) JCL 147.

Michalowski S, 'Relying on common law defences to legalise assisted dying: problems and possibilities.' (2013) 21(3) Med LR 337.

Moss K and Hughes R, 'Hart-Devlin revisited: law, morality and consent in parenthood.' (2011) 51(2) Med Sci Law 68; see also B McCloskey, 'Morality, rights and the black letter law: judicial responsibilities in context.' (2010) 36(2) CLB 255.

Tamblyn N, 'Necessity and murder' (2015) JCL