Queensland. Under this model, judicial interpretation of the criminal law has provided a defence of necessity to unlawful abortion, while the "Elective" model grants women abortion rights within certain parameters. The United States decision of *Roe v Wade* and subsequent cases and the Danish *Pregnancy Act* 1973 are used to illustrate this model. While clinical judgment and professional autonomy are preserved by each of the models to varying degrees, it is also argued that the women's movement, the specificity of some of the legal restrictions on abortion, and developments in medical technology, all operate to erode the influence of the medical profession on abortion laws.

Abortion Regimes is a clearly written and well argued book. The discussion in Part I provides an interesting and well-researched historical analysis of the rise of the medical profession and the influence of this professionalisation on the shaping of abortion laws in Australia. The analysis of abortion laws in Part II provides an excellent overview of legal regulation in Australia as well as in the United Kingdom and United States of America in this difficult and often controversial area. The models used to categorise these laws provide a useful framework for comparative analysis, while Petersen's analysis of these laws in terms of their implications for professional autonomy and clinical judgment provides an additional dimension to the comparison which is both useful and interesting. *Abortion Regimes* is a book that will be of interest to and deserves to be read by all those with an interest in abortion and the laws that regulate it.

BELINDA BENNETT*

ADVOCATES by David Pannick, Oxford University Press, 1992, 308pp, $39.95, ISBN 0 198119488

Abraham H Hummel was an advocate who demonstrated that apparently hopeless cases are occasionally won by the resourceful advocate. In the United States at the end of the nineteenth century he successfully defended three night-club dancers ("Philadelphia Egyptians" called Zora, Fatima and Zelika) charged with indecent belly-dancing at a night club. His first argument was they were not engaged in belly-dancing but "an ancient ceremony which devout Moslems like Zora, Fatima and Zelika were bound by their faith to perform". The second was even more creative. The prosecutor had described the dance as a "lewd and lascivious contortion of the stomach" but Hummel pointed out that the stomach "was nothing but a small sac in the abdominal region whose contortions, if any, could not be perceived except from inside the body". Unfortunately, the court records do not state which of these two arguments were decisive in winning the case.

This story, like many others which appear in David Pannick's book, provides an entertaining insight into the role of the advocate. In a thoroughly researched and well-written book Pannick explores the nature of legal advocacy and its function in modern society. He considers the principles, practice and morality of a profession that is often maligned and frequently misunderstood.

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He begins with a summary of the advocate's task:

> The task of the advocate is to be argumentative, inquisitive, indignant or apologetic — as the occasion demands — and always persuasive on behalf of the person who pays for his voice. He earns his living propounding views to which he does not necessarily subscribe, and which are sometimes anathema to him, on behalf of clients whose conduct may not interest him, will often offend him, and can occasionally cause him outrage ... (p1).

As Socrates pointed out in his criticism of advocacy, the professional function of the advocate is, essentially, one of supreme indifference to what is right and wrong. Pannick develops this proposition:

> He must advance one view, irrespective of its inadequacies. He must belittle other interests, whatever their merits. ... It is not for counsel appearing in court to express equivocation, to recognise ambiguity or to doubt instructions. His client is right and his opponent is wrong. The wider consequences can be left to the judge or jury to consider. (P2–3).

Of course, some advocates go too far. Abraham Hummel's partner, William F Howe, had few inhibitions. He could cry at will, indeed would cry over any case, no matter how commonplace. On one occasion, he made an entire final address, hours long, on his knees. He gave considerable thought to appearances. The wife and child of the defendant would be placed in the front row of the court to gaze devotedly at the man on trial. And

> if by chance a particular defendant did not have a pretty wife, fond children, or a snowy haired mother, he was not for that reason deprived of the sympathy they might create on his behalf. Howe would supply them from the firm's large stable of professional spectators. Repulsive and apelike killers often turned up in court with lamblike children and wives of fragile beauty. (P28).

The reason that some advocacy is regarded as unethical, or worse, is that the advocate owes a duty not only to the client but also to the community and, in particular, the courts. The advocate must comply with a complex code of ethics formulated by professional associations which attempt to reconcile these sometimes conflicting duties. The most fundamental is that the advocate must not deceive or knowingly or recklessly mislead the court on the facts or the law, although consistently with that rule the advocate is not required to check the correctness of the client's instructions or to correct misapprehensions of the court. Pannick provides a thoughtful and useful discussion of these ethical issues, which often involve fine distinctions and matters of degree.

A judgment of the High Court of Australia to which he refers is worth reading by all advocates planning to act for the defence in a criminal trial. *Tuckiar v The Queen* ((1934) 52 CLR 335) involved an appeal from a murder conviction. After discussing the prosecution evidence with his client, defence counsel had told the trial judge, in front of the jury, that he "was in a predicament, the worst predicament that he had encountered in all his legal career" and later explained to the judge in private that the accused had confessed his guilt to him. The High Court was unsympathetic.

> Why he should have conceived himself to have been in so great a predicament it is not easy for those experienced in advocacy to understand. He had a plain duty ... to press such rational considerations as the evidence fairly gave rise to in

> favour of [his client who] whether he be in fact guilty or not ... is, in point of law, entitled to acquittal from any charge which the evidence fails to establish that he committed. (P159).

Some advocates in special roles have particular obligations. Thus, prosecutors must not seek a conviction at all costs — they have a special duty to ensure a fair trial for defendants. They should reveal evidence which may assist the defence and present the prosecution case in a balanced and fair way. A prosecutor should not express personal opinions, as did one in a recent trial in the United States when he said "the son-of-a-bitch [indicating the defendant] is guilty as hell".

A central purpose of Pannick's discussion of the functions and duties of the advocate is to defend the institution against criticism and attack. Some equate the advocate with his or her client, assuming that the advocate personally believes what he or she says in support of the client. More commonly, members of the public doubt the morality of advocacy, believing like Socrates that justice is unlikely to be achieved by oratory in the service of whoever pays the fee. Sometimes the antagonism is extreme. During the trial in Israel in 1988 of John Demjanjuk, accused of mass murder as "Ivan the Terrible" in the Treblinka concentration camp, a 70 year old Holocaust survivor threw acid in the face of a defence lawyer (while Demjanjuk was subsequently convicted, it was subsequently proved that he was not in fact Ivan). In many parts of the world, governments carry out or permit the murder, assault or persecution of advocates for the performance of their professional duties (p31).

As Pannick convincingly argues, while effective advocacy occasionally means that a wrongdoer escapes punishment or the result of a civil action is unfair or unjust, a legal system without advocates would cause much more harm. Advocacy is an indispensable part of a democratic society based on the rule of law. The role of the advocate is to ensure that in a legal system in which disputes are decided by rational debate, the viewpoints of those most affected are explained so that the court can properly decide where legal right lies. As he explains, the essential principles of advocacy — a duty to act for any client, irrespective of the merits of the cause; an obligation to speak fearlessly for the client; and legal immunity for what is said in court — are central to equality under the law.

One aspect of equality under the law is ensuring the availability of publicly funded legal assistance. Regrettably, the international recession has seen a general contraction in legal aid. Pannick addresses this issue and offers suggestions for meeting the problem, such as various measures designed to cut legal costs and the introduction of contingency fees. To discourage abuses he recommends introduction of an "excess" for legal aid (a small contribution to be paid by all those in receipt of the benefit). In Australia, some progress has been made of which Pannick is unaware. Various measures have been introduced to cut legal costs. More significantly, in *Dietrich v The Queen* ((1992) 109 ALR 385), the High Court recognised in substance a right to legal representation in "serious" criminal cases, on the basis that an accused person has a right to a "fair trial", or at least a right not to be subjected to an unfair trial. The majority considered that inability to obtain legal representation for a trial of a serious offence would, "in the absence of exceptional circumstances", render such a trial inevitably unfair. Nevertheless, legal aid for civil matters is diminishing or non-existent and Pannick has some sensible suggestions to meet this problem.

But an advocate is not necessary simply as an aspect of fair process. Effective advocacy also bears on the rightness of the ultimate decision since, as Pannick notes, "the advocate exemplifies the valuable principle that there is always another point of view, a different perspective, a contrary argument, of which account should be taken before judgment is delivered." In this context, it is perhaps regrettable that the book does not explore the relationship between the role of the advocate and the adversarial system of trial procedure. While it is true that effective advocacy may assist the court properly to perform its task by ensuring that the perspective of the advocate's client is forcefully presented, such advocacy is more necessary in adversarial than inquisitorial systems. Since the former model relies on the parties taking the active role in the isolation of issues, the investigation and presentation of the evidence, and the testing of evidence adduced by other parties, the function of the advocate is critical.

Of course, Pannick may have considered that this issue relates more to the role of the judge than that of the advocate and excluded discussion of it for that reason. But, particularly in criminal cases, the role of the advocate cannot be properly understood without reference to the adversarial system. As all members of the High Court in *Dietrich v The Queen* recognised, there can be no doubt that an accused who lacks legal representation in an adversarial system of criminal justice is usually at a substantial disadvantage. The effective conduct of a criminal defence calls for knowledge not only of the criminal law but also of the rules of procedure and evidence. One of the apparent merits of the adversarial model is that, in theory if not always in practice, it facilitates and encourages the resolute examination and testing of all propositions of fact advanced in a court. But both examination-in-chief and cross-examination of witnesses require skill and experience, and some degree of objectivity, as do many tactical decisions to be made during a criminal trial.

Another possible criticism of the book relates to its narrow focus. As Pannick says in the Preface, this is not a book about advocacy. It does not attempt to tell others how to be advocates. It has the more modest purpose of exploring and defending the role of the advocate. While an author has every right to limit the scope of enquiry, this is a slightly disappointing omission. In discussing some of the great advocates, Pannick does provide extracts from famous cross-examinations and addresses. But little more in the way of general principles is extracted other than the observation that "the successful advocate, of any generation, is the one who has the power, by persuasion, to move the mind or heart of the judge or jury" (p228). It would have been preferable to provide more concrete explanations of what made their advocacy exceptional. Indeed, examples of simply competent advocacy would have helped the reader to understand some of the skills that must be mastered for effective advocacy in courts of law.

Similarly, Pannick's discussion of ineffective advocacy tends to be more entertaining than informative. It is certainly inadvisable to appear in a state of inebriation, particularly if that causes the advocate to be arguing a case in the wrong courtroom (p218). Similarly, one should not follow the example of the advocates in a case where, according to the English Court of Appeal, neither side had seen the vital point and "the plaintiff's evidence supported the defendant's case and the defendant's evidence supported the plaintiff's case" (p221). It is unwise for an advocate to announce that he will condense his closing address to the jury because he wishes to move his car before five o'clock (p3).

But it would have been helpful to isolate some of the reasons for bad advocacy — inadequate preparation, poor communication, failure to understand what the tribunal wants and needs. Of course, no amount of advocacy may persuade the judge who does not want to hear, as with the Canadian judge who is said to have dismissed a lengthy legal argument for an appellant with the words, "[b]ullshit, costs to the respondent" (p225). In a jury trial, there may be some advantage to be gained in fighting with the judge. Nevertheless, junior barristers should not copy F E Smith's response to an irritable judge (sitting without a jury) who complained that having listened to the arguments he was no wiser: "Possibly not, my Lord, but far better informed" (p86).

Overall, these are minor criticisms. It bears repeating that this is a well-written and entertaining book which achieves what the author set out to achieve. Indeed, from an Australian perspective, it is a timely book. The division of the profession between solicitors and barristers, rigidly maintained in some jurisdictions, is receiving considerable public scrutiny. Inquiries into the delays and costs of the legal system raise questions about such divisions and various trade practices of questionable merit. Pannick considers many of these issues in the English context. He supports the breaking down of barriers between solicitors and barristers. He argues that professional restrictions on advertising detract from the ability of the public to make informed judgments about potential advocates on their behalf. He supports the creation of independent bodies to hear and determine complaints against advocates. He advocates the abandonment of the absurd anachronism of wearing wigs and gowns in court. He argues for the abolition of the present immunity which barristers have from liability for negligence in the performance of their duties. But these calls for reform are only peripheral to the central focus of his book. At the end of the day, he presents a convincing case in defence of advocacy, and advocates.

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