

BOOK REVIEW

Act and Omission in Criminal Law: Autonomy, Morality and Applications to Euthanasia BY RONI **ROSENBERG** [Abingdon, Oxon [UK]; New York, NY: Routledge, 2024. 196 pp. Hardcover: £155.00]

To act or not to act. To intervene or stand aside. Are these only moral questions, or should they also be legal ones? They arise when a doctor withdraws treatment, when a passer-by fails to help someone in danger and increasingly, when machines are designed to make choices on our behalf. As autonomous systems become more common and societies grapple with issues of ageing populations and end-of-life care, the line between doing harm and allowing harm to occur is likely to become even more controversial. Dr Roni Rosenberg's *Act and Omission in Criminal Law: Autonomy, Morality and Applications to Euthanasia* takes this long-standing problem as its starting point. Despite what the title suggests, the book is not only about euthanasia. Its central concern is a deeper question about the distinction between acts and omissions and what justifies that distinction. At the heart of the analysis, Rosenberg considers the relevance of identifying a duty to act as an anchor for justifying criminal liability in omissions.

The book is organised into two main parts. The first examines the theories that attempt to explain the distinction between acts and omissions. The second part applies those theories to practical settings, with euthanasia serving as the main case study. This structure allows readers to engage either with the conceptual debate or with its applications, depending on their interests, though the book clearly places greater weight on theoretical analysis than on practical guidance.

Chapter 1 introduces sceptical theories that question whether there should be any difference between acting and failing to act. These views suggest that there should be no distinction because the duty to aid a person in life-threatening danger is equivalent to the duty not to kill the person. Rosenberg presents these arguments with care, setting out their logic and the examples used to support them. He then explains why such views remain difficult to accept. The chapter is particularly helpful for readers new to the debate. Rather than assuming prior familiarity with philosophical debates, Rosenberg explains each position in a structured way. This makes the discussion accessible to readers from different backgrounds, including those outside philosophy.

Chapter 2 turns to theories that justify the distinction, and the requirement of a duty in omissions, on moral grounds. Rosenberg groups these theories into five schools of thought: the liberty rationale; the “agents as a means” rationale; the causation rationale; the “harm to the victim” rationale; and the dominance rationale.

For each, Rosenberg identifies the core aspects of the school of thought, followed by how acts and omissions are defined by them. Rather than pushing his own thesis at this stage, he presents these perspectives more as a map of the terrain of moral rationales. For readers new to the subject, the chapter provides a helpful overview of the main moral arguments without requiring them to navigate the original sources.

Chapter 3 shifts to legal reasoning. Here, Rosenberg discusses legal arguments that justify the distinction between acts and omissions, and the duty requirement. Rosenberg identifies five distinct legal rationales that have been asserted to justify the duty requirement in omissions: the first is based on a necessity to resolve issues with legality; the second is derived from the principle of lenity; the third is also a necessity but to resolve coordination challenges that may arise from indirect omission offences; the fourth is to limit the potential criminalisation of individuals in cases of omission; and the last, which overlaps with the liberty rationale, emphasises the duty requirement to minimise intrusions on individual freedom. For readers trained in law, this chapter will feel more familiar in tone, but it remains accessible because the emphasis is on the underlying concerns rather than technical rules.

Rosenberg's principal contribution appears in Chapter 4, where he introduces his autonomy-based theory. Instead of asking whether acts and omissions are morally or legally equivalent, he asks what interests and values society is trying to protect in each case. By focusing on personal autonomy, he argues that the values underlying acts and omissions are not always the same, and that this difference may justify treating them differently. The argument is presented as consistent with existing strands of rule utilitarian theory and social contract theory, rather than a radical departure. He also addresses potential objections, which gives the chapter a balanced and careful tone. For readers interested in the relationship between moral philosophy and legal design, this chapter is likely to be the most original and engaging part of the book. It offers a new lens through which to view a familiar debate, without claiming to settle the issue definitively.

The second half of the book applies these theoretical discussions to specific issues. Chapter 5 examines judicial decisions from the United States and Israel, focusing on how the courts approach liability for omissions. Rosenberg observes that the cases reveal a lack of consistent reasoning. Some decisions appear to rely on bodily movement as the key distinction between acts and omissions, while others reach similar outcomes of conviction through different lines of reasoning. At first glance, the discussion of the cases may seem somewhat detached from the book's broader themes. Their relevance becomes clearer when Rosenberg tries to identify the legal or moral rationales underlying the decisions, and shows how his autonomy-based theory could have provided a more consistent explanation for the outcomes. Even so, readers looking for a sustained comparative study may find the treatment relatively brief.

Chapter 6 turns to the question of duty. Rosenberg examines the types of duties that can give rise to liability for omissions, and observes that this inquiry is closely connected to the rationales discussed earlier in the first part of the book. He identifies three broad approaches. The expansive approach treats every duty as a possible basis for liability. The restrictive approach requires a specific connection between the agent and the source of the threat, the victim or the agent's role. The intermediate

approach focuses on whether the duty creates a reasonable expectation that it will be carried out. He links each of these approaches to the rationales discussed earlier in the book. He concludes the chapter by reflecting on the varied sources of duty found in American judicial decisions, but stops short of offering a firm conclusion about which approach is applicable or preferable. Some readers may appreciate this openness, while others may wish for a clearer stance.

Chapter 7 addresses punishment. Instead of focusing only on whether omissions should lead to liability, Rosenberg asks whether they should also lead to different levels of punishment. He identifies three main positions along a spectrum: no difference in punishment, sometimes a difference or always a difference. He then analyses each approach through one or more of the rationales discussed in the first part of the book, including his autonomy-based theory. This chapter is a welcome addition. Discussions of omissions often focus on liability, but Rosenberg extends the analysis to consider the consequences that follow. The chapter is not long, but it highlights an area that has received less attention and points to possibilities for further research and debate.

In Chapter 8, Rosenberg distinguishes between result and conduct crimes, and argues that the need to identify a duty to act in omissions arises mainly in relation to result rather than conduct crimes. He then uses earlier rationales to explain why this may be so. The discussion is conceptually interesting, though the terminology of “result crimes” and “conduct crimes” may not be immediately familiar to readers from all legal traditions. Rosenberg attempts to explain these concepts, before applying them to specific examples, including sexual offences.

The final chapter returns to euthanasia. Rosenberg distinguishes between active and passive euthanasia and argues that many of the earlier rationales do not convincingly justify treating the two differently. After surveying legal approaches from different jurisdictions, he concludes that if passive euthanasia is permitted in certain circumstances, then active euthanasia should also be permitted in those same circumstances. Readers looking for a sustained engagement with the ethical, medical and social dimensions of euthanasia may find this final chapter more concise than expected, given the prominence of the topic in the book’s title.

Overall, this book is a reflective and theory-driven work that asks why there is a distinction between acts and omissions giving rise to criminal liability, and whether that distinction can be justified in terms of personal autonomy rather than moral or legal reasoning. It is not a quick practical guide to euthanasia law, nor is it a purely doctrinal study of criminal liability. Its main strength lies in the clarity of its structure and its careful presentation of competing theories. Rosenberg does not assume prior familiarity with philosophical or legal debates, and he explains each position before offering his own. This makes the book accessible to readers from different disciplines, particularly those interested in how moral reasoning, personal autonomy and legal rules interact when society decides whether, and which, omissions should count as wrongdoing.

At the same time, however, readers looking for concrete legal rules, detailed case analysis or policy recommendations may find the discussion more abstract than they would prefer. The title’s focus on euthanasia may also create expectations that the book does not fully meet. Euthanasia is discussed in the final chapter, but the bulk of the book is devoted to a broader discussion on acts and omissions. For some readers,

this broader focus will be a strength. Those seeking detailed doctrinal analysis or practical guidance on euthanasia law may find it less directly applicable.

Even so, the book offers a thoughtful exploration of a question that continues to surface in new contexts. It is likely to interest readers working in moral philosophy, the foundations of criminal responsibility or the ethical challenges raised by emerging technologies and social developments. It will be particularly useful for scholars and students seeking a structured introduction to the theories surrounding acts and omissions as it also points to relevant materials for further research. Its value lies less in providing definitive answers than in encouraging readers to reflect more carefully on why lines are drawn the way they are, and whether those lines remain defensible, or should change, as technology and social expectations evolve.

CHEONG JUN MING MERVYN

Associate Professor (Practice)

Faculty of Law, National University of Singapore