

Collateral Damage: A Patient, a New Procedure, and the Learning Curve

Dan Walter, 2010, self-published (Cleveland, 978-1456471606, 202 pp.)

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Abstract This article is a review of the 2010 book *Collateral Damage* by Dan Walter.

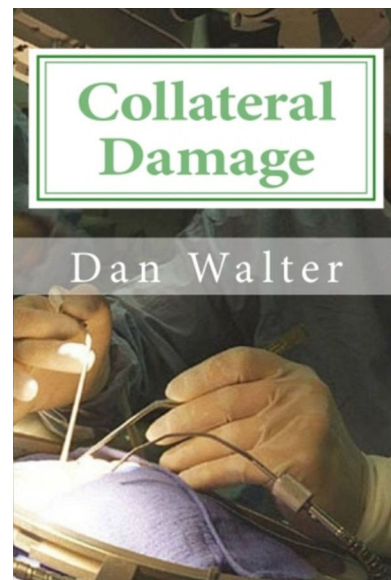
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Justice Windeyer of the Australian High Court once famously opined: “Law, marching with medicine—but to the rear, and limping a little” (Windeyer 1970, 395).

The central thesis of this book is that, on occasions, the obverse may be true.

The law jealously guards respect for autonomy of a competent patient. A competent patient may refuse consent to treatment “for religious reasons, for other reasons, for rational or irrational reasons, or for no reason at all” (Butler-Sloss JA in *Re MB* (1997) 8 Med LR 220 at 224). Dual causes of action (battery and negligence) protect the patient from treatment he or she does not want, or treatment that he or she wants but which is performed below the standard of a reasonably competent doctor.

Patients are also preserved from being used as the subject of research or experimentation, without their knowledge and free consent to being involved in such a way. In the words of the Nuremberg Code (reinforced



in the Helsinki Declaration), “the consent of the subject is absolutely essential.”

Though the law has established research protocols to ensure no patient is used as a “guinea pig” without appropriate disclosure, as well as a complex and detailed doctrine of informed consent within a broader tort law system designed to protect the physical inviolability of the patient, sometimes the practice of medicine lags sadly behind the requirements of the law.

The book is a detailed study of a medical procedure carried out on the author’s wife. That procedure was designed to treat Mrs. Walter’s atrial fibrillation. The procedure, a catheter ablation, went wrong when the catheter

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attached itself to Mrs. Walter's mitral valve. Attempts to dislodge the mitral valve resulted in the valve being left "flapping in the breeze." Mrs. Walter required surgery to replace her mitral valve, and she suffered a stroke and various complications as a result of her post-operative care.

Mr. Walter alleges two particular failures. Firstly, although Mrs. Walter believed a prominent cardiologist whom she had consulted was to perform the procedure, the procedure was, in fact, carried out by a more junior doctor. Additionally, Mr. Walter alleges that his wife was not made aware that the procedure was experimental. Mr. Walter goes to considerable pain to research medical literature on the procedure as well as public statements made by the cardiologist.

The book is compelling—but not easy to read. Mr. Walter has an excellent turn of phrase, but it is never easy to read of the suffering of a loved one. The forensic investigations undertaken by the author are impressive and the book's conclusions starkly presented.

It is odd that the litigation initiated by the author's wife proved ultimately unsuccessful. The author does not explain why (perhaps it is not clear?), but notes only that his wife had to undergo two days of cross-examination (interrupted by a bout of bleeding illness brought on by her medication) before a last-ditch application by the hospital (that performed the ablation) to have the matter dismissed proved successful. Given that litigation was unsuccessful, it is hard to be definitive as to what happened or who, if anyone, is responsible. This

reviewer (who is not a medical doctor and who has not had access to the medical or legal files in the case) does not draw any conclusions one way or the other.

In the midst of bleak observations concerning his wife's suffering, the author uses simile and metaphor to great effect, if perhaps not in the most tactful or politically correct way. A medical practitioner is noted as appearing "shaking like a French soldier." A delivery driver learns the ultimate delivery lesson "never, ever, ever reverse."

In the end, the only thing that could have made this book more compelling would be to hear "the other side of the story"—the position of the medical practitioners accused by Mr. Walter and that of the hospital where the procedure was performed. But, of course, if Mr. Walter is to be believed, that's just the point. Mr. Walter believes his wife was never told the full story—not in advance, not at the time, and not after. What the Walters do know has been painstakingly and painfully pieced together through a combination of conversations with treating doctors, examinations of the medical literature, and the process of discovery associated with litigation.

Collateral Damage is a stark reminder of the human side of what may often be seen as statistics, hidden behind words such as "adverse patient outcome." The book presents, in its clearest form, the suffering of those left damaged by medical complications. It makes for compelling reading for ethicists, lawyers, and patients.