MARGOT BRAZIER

Margaret Rosetta Brazier

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Summary. Professor Margaret (Margot) Rosetta Brazier (née Jacobs), OBE, FRSA, FAMS, FBA, KC(Hons), played a leading role in pioneering healthcare law as a new category of legal analysis. Her contribution to this new legal specialism was unprecedented and foundational. Margot also played a critical role in the development of the doctrine of informed consent in the UK, and her work on responsibility and autonomy was equally groundbreaking and significant, encompassing subjects as diverse as the use of human body parts, children's medical decision-making, assisted reproduction, HIV/AIDs and public health.

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Life and career

Margaret Brazier – known to friends as Margot – was born in Preston, Lancashire in 1950, to Mary and Leslie Jacobs, a senior local government officer with Lancashire County Council. She was educated at Queen Mary School in Lytham St Annes.

Margot studied Law at the University of Manchester, requiring the Vice-Chancellor's permission because she was only 17. One of Margot's lecturers, Brenda Hoggett (who went on to become Lady Hale, the first female Law Lord and Supreme Court Justice), remembers:

> Margot Jacobs turning up in my Constitutional Law lectures at the University of Manchester in 1968. She was younger than the rest. She was tiny. She had red hair. She was fearless. And she was brilliant.[1]

Graduating with a first and coming top in the country in the Bar exams, Margot put her initial plan to go to the Bar on hold for a couple of years. Her decision to take on a Lectureship in the Faculty of Law in the meantime turned out to be a life-changing one, for her and her colleague, Rodney Brazier, whom she married in 1974. They were delighted when, five years later, their daughter Vicky was born. Margot and Rodney remained at the University of Manchester for the rest of their careers, and Margot became the University's youngest ever professor in 1990.

In 1986, long before medical law became an option on undergraduate law degrees, Margot and her philosopher colleague and friend Professor John Harris set up Manchester's Centre for Social Ethics and Policy with the late Rev Professor Anthony Dyson and Dr Mary Lobjoit.[2] As well as the remarkable body of multi-disciplinary research produced there over the past four decades by Margot, John and their wonderful colleagues, the Centre's Masters' programmes in Healthcare Law and Ethics, and their pioneering structured Bioethics and Medical Jurisprudence PhD programme, have educated many of the leading figures in the field today.

Starting off as a torts scholar working alongside Professor Harry Street, and having co-edited two of the leading textbooks on tort law – *Street on Torts* and *Clerk and Lindsell on Torts*, Margot played a leading role in pioneering healthcare law as a new category of legal analysis. Her contribution to this new legal specialism was unprecedented and foundational. Margot also played a critical role in the development of the doctrine of informed consent in the UK, and her work on responsibility and autonomy was equally

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[1] Paul Faulkner, 'Tributes to Lancashire's Margot Brazier who has died at the age of 74', *Lancashire Telegraph*, 10 March 2025.

[2] Margaret Brazier, Raanon Gillon & John Harris, 'Helping Doctors Become Better Doctors: Mary Lobjoit—An Unsung Heroine of Medical Ethics in the UK', *Journal of Medical Ethics*, 38:6 (2012), 383–5.

groundbreaking and significant, encompassing subjects as diverse as the use of human body parts, children's medical decision-making, assisted reproduction, HIV/AIDs and public health.

As well as having wide-ranging interests in healthcare law, Margot often took a distinctively historical approach. Although commonly assumed to be a young discipline, Margot maintained that there was a long and rich history of law's engagement with medicine. In her 2023 monograph *Law and Healing: A History of a Stormy Marriage*, she tracked the relationship between law and medicine from the 13th to the 19th century. Drawing connections with today's concerns she maintained that attention to the past is critical if we are not to repeat mistakes. On medical litigation she challenged the assumption that deference to the medical profession has deep historical roots, finding no such evidence of deference in early law reports. On bodily sovereignty she demonstrated a longstanding right to consent to and refuse treatment, provided, that is, the patient was male and adult. A staunch supporter, ally and mentor of many female academics in healthcare law and beyond, Margot also sought to reduce inequalities in women's health.

Margot's essential, concise and eminently readable textbook, *Medicine, Patients and the Law* was first published in 1987. Reflecting on the inspiration for the book, Margot said:

> To a young lecturer of the day, medical law looked both exciting and an area of study that could profoundly affect how we live our lives. It involved a multiplicity of disciplines taking a rather conventional tort lawyer out of the law school to consort with philosophers, theologians and health professionals. Intellectual curiosity, and a sense of being part of a new frontier of knowledge and debate, drove the first edition of the book.[3]

Its seventh edition – now co-authored with Professors Emma Cave and Rob Heywood – was published in 2023. In addition to her own work and her ambitious collaborative and interdisciplinary research projects, Margot made a major contribution to the discipline of healthcare law as Editor in Chief of the *Medical Law Review* until 2012.

Margot's distinctive voice

Margot's scholarship is distinctive in several ways. Exceptionally rigorous and thought-provoking, her prose is always crisp, clear and readable. There are no unnecessary words, and readers who knew her can hear her brisk, no-nonsense voice. More

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[3] Margaret Brazier & Emma Cave, 'Why We Wrote … Medicine, Patients and the Law', *Clinical Ethics*, 3:4 (2009) 205–8 at 205.

importantly still, what characterises all of Margot's work is her compassion, pragmatism, decency and empathy.

In person, Margot could be very funny indeed, and in her written work she made occasional acerbic asides, such as – in *Regulating the Reproduction Business* – that while paternity could be dubious, 'even a rather dim child generally knew his mother'.[4] Fears of something going disastrously wrong in a fertility clinic were described as 'two-headed babies and so on', and in relation to reproductive cloning she observed that 'an English academic is unlikely to be able to afford' it.[5]

In the text of her speech to the Medico-Legal Society on retained tissue, on which she was then working two days a week chairing the Retained Organ Commission, Margot introduced her remarks by saying that she had become so obsessed with questions around human tissue that it is 'now a prohibited subject of conversation in my household', and the audience was 'contributing to my therapy in allowing me to talk to you tonight'.[6] Acknowledging that some clinicians might not welcome the Commission's report, she went on to comment that there were 'probably one or two members of the medical profession who would be quite happy to [fund her funeral] at the moment, if the prior arrangements could be made discreetly'.[7]

Margot's scholarly work was also personal. Talking to the Medico-Legal Society, Margot confessed that her interest in retained tissue dated much further back, perhaps to 'a summer's day in 1967' – when Margot would have been 16 – when, post-surgery, she was offered her 'inflamed appendix in a bottle', which disgusted her, but not her ten-year-old brother who 'sought to assert his property right in it' in order to 'enhance his "street-cred" among ghoulish small boys'.[8] Or, she wondered, was the correct date 1957, when she sold her first milk tooth to the tooth fairy for sixpence, or 1953 when her mother first cut her hair?[9]

Margot was also not afraid to admit that her own beliefs shaped her attitudes to the subjects she tackled in her academic work. But what was unusual was her capacity to briskly and pragmatically move on from defending a particular position to accepting that others, and perhaps a majority, might feel differently. For example, in *Regulating the Reproduction Business* Margot admitted that 'embryo equals artefact' was 'anathema to those (including myself) who opposed allowing experimentation on embryos at all. However, we lost the war'.[10] Did that mean that people who were 'uncomfortable with

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[4] Margaret Brazier, 'Regulating the Reproduction Business', *Medical Law Review*, 7 (1999), 166–93.

[5] Ibid., p. 166.

[6] Margaret Brazier, 'Human Tissue Retention', *Medico-Legal Journal*, 72 (2004), 39–52.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Brazier, 'Regulating the Reproduction Business', p. 166.

embryo research should simply shut up?': she 'hope[d] not'. British legislation was muddled about embryos, Margot concluded, 'no doubt because the society it represents is muddled too': embryos as artefacts was unacceptable, but embryos as human beings was – 'alas' – 'unrepresentative of either public judgement or public sentiment'.[11]

In a 1996 article on euthanasia, with which she personally disagreed, Margot's even-handedness and pragmatism shines through.[12] Margot suggested that it could be demedicalised, so that 'Alex Capron need no longer fear that he will never know whether his doctor approaches his bed wearing the white coat of the healer or the black hood of the executioner'.[13] Instead, she said that, 'The licensed thanatologist will wear a simple and distinctive uniform!' Margot also pointed out that there is a 'certain irony' in the fact that all proposals for voluntary euthanasia require doctors to effectively play God:

> In a society which contains many members who do not believe in God, a society which vehemently objects to doctors "playing God", whenever an attempt is made to re-write the script on euthanasia, doctors get cast as God.[14]

Margot was keenly aware of the limits of law as a way to solve social problems. In an article on the problems of consent in the context of organ retention and return, she referred to academic lawyers as 'those rather precious creatures' (for disliking Lord Donaldson MR's description of consent as a flak jacket).[15] Indeed, Margot regretted that 'lawyers and ethicists have dominated the intellectual debate' about how dead bodies should be treated, and thought that 'social anthropologists, sociologists and psychologists have more to offer' in order to help us to understand *why* organ retention and return matters.[16]

Deference to the medical profession

Margot's work on deference to the medical profession facilitated a shift in favour of patient autonomy. In *Bye-Bye Bolam? A Medical Litigation Revolution*, Margot and Professor José Miola critiqued the development of the *Bolam* principle.[17] This is a legal standard used in negligence cases involving professionals. It states that the professional is not negligent if they acted in accordance with a practice accepted as proper by a

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[11] Ibid.

[12] Margaret Brazier, 'Euthanasia and the Law', *British Medical Bulletin*, 52:2 (1996), 317–25.

[13] Ibid.

[14] Ibid.

[15] Margaret Brazier, 'Organ Retention and Return: Problems of Consent', *Journal of Medical Ethics*, 29:1 (2003), 30–3.

[16] Ibid.

[17] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.

responsible body of skilled professionals. In the case of doctors, however, Margot and José were concerned that application of the *Bolam* principles has led to the courts 'blindly accept[ing] assertions of good medical practice'.[18] A perception had arisen that *Bolam* simply required defendants to produce experts from their specialty who would say they would have followed the same course as the defendant. *Bolam* was 'out of control'.[19] Moreover it was being applied in an increasingly wide range of contexts, including ethical assessments of informed consent and treatment of adults lacking capacity.

In chapter 5 of *Law and Healing*, Margot traced the history of medical litigation. Early cases show that medical negligence was assessed much like negligence in any other occupation. She asserts that the surgeon was afforded no greater indulgence than the farrier.[20] Margot acknowledges the relevance of medical opinion in the court: as medical treatment has become ever more complex, expert evidence has become increasingly crucial. Yet reliance on a doctor's social standing or professional eminence rather than evaluating that opinion *as evidence* is misplaced:

> Respect for the knowledge of practitioners, their informed opinion is wholly appropriate. Blind deference, compliance or submission to the opinion of the 'medical man' just because he was such was to blight medical law for much of the twentieth century.[21]

In anticipating the medical litigation revolution in *Bye Bye Bolam*?, Margot and José pointed to several areas where *Bolam* was, by 2000, already 'in retreat'. Doctors had no cause for fear, they argued, because doctors are 'partners in the process which should strive to ensure that medical practice is soundly based on evidence and reason.'[22]

A year after their article, Lord Woolf in the University College, London Provost's Lecture concurred that the courts had been excessively deferential to the medical profession in the past, but considered that the position had 'changed for the better' and the balance was now appropriate.[23] Margot and José were less optimistic: 'The prospect of the English courts suddenly revising the tradition of decades and actively seeking to arrogate to themselves the making of clinical judgments is remote'.[24]

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[18] Margaret Brazier & José Miola, 'Bye-bye Bolam: A Medical Litigation Revolution?', *Medical Law Review*, 8:1 (2000), 85–114 at 86.

[19] Ibid., p. 88.

[20] Margaret Brazier, *Law and Healing: A History of a Stormy Marriage* (Manchester: Manchester University Press, 2023), p. 116.

[21] Ibid., p. 123.

[22] Brazier & Miola, 'Bye-bye Bolam: A Medical Litigation Revolution?', p. 114.

[23] R. H. Woolf, 'Are the Courts Excessively Deferential to the Medical Profession?', *Medical Law Review,* 9:1 (2001), 1–16.

[24] Brazier & Miola, 'Bye-bye Bolam: A Medical Litigation Revolution?', p. 114.

It was not until 2015 that the Supreme Court in *Montgomery v Lanarkshire Health Board*[25] replaced reliance on *Bolam* in consent cases with a duty to disclose material risks and alternatives from the patient's perspective. The judges in *Montgomery* recognised that this could increase the unpredictability of the outcome of litigation and concluded resoundingly that:

> [A] degree of unpredictability can be tolerated as a consequence of protecting patients from exposure to risks of injury which would otherwise have chosen to avoid. The more fundamental response to such points, however is that respect for the dignity of patients requires no less.[26]

Margot and Professor Anne-Maree Farrell's 2015 article celebrated this shift away from the 'doctor knows best' approach, but argued that the progression had been incremental rather than sudden.[27] In *Bye Bye Bolam?*, in an allusion to the peaceful 1989 transition from Communist rule in Czechoslovakia, Margot and José had predicted a 'velvet revolution, not a bloodbath'. Margot and Anne-Maree charted how, between the *Bye Bye Bolam*? paper and the *Montgomery* ruling, judges had reduced reliance on the reasonable doctor test, judges gave increased support to patient autonomy, and the General Medical Council revised its guidance on consent. In relation to informed consent, Margot's velvet revolution has arrived.

Treating children

In other areas, however, progress to dismantle excessive deference to the medical profession is more resemblant of the Hundred Years' War than the Velvet Revolution. In *Bye Bye Bolam?* Margot and José considered the propensity for 'Bolamisation' to sneak in 'by the back door' in terms such as 'best interests', 'clinical judgement' or 'medical ethics'. Medical ethics, they argued, was used by the courts to hand over to doctors the question of how to govern refusals of life-sustaining treatment by *Gillick* competent children.[28]

Margot's engagement with children's rights and consent to treatment began in the wake of *Gillick v West Norfolk and Wisbech AHA*.[29] There the House of Lords had recognised that minors under 16 could consent to treatment if they had 'sufficient

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[25] [2015] UKSC 11.

[26] [2015] UKSC 11, at [93].

[27] Ann-Maree Farrell & Margaret Brazier, 'Not so New Directions in the Law of Consent? Examining Montgomery v Lanarkshire Health Board', *Journal of Medical Ethics*, 42:2 (2016), 85–8.

[28] Brazier & Miola, 'Bye-bye Bolam: A Medical Litigation Revolution?', p. 93.

[29] [1986] AC 112.

understanding and intelligence to understand fully what is proposed'.[30] At that point, Lord Scarman considered that the rights of parents to make decisions on the child's behalf yielded to the child.[31] Margot welcomed this as a significant step towards recognising young people as moral agents.

However, in the 1991 case of *Re R*[32] a distinction was made between the power of children to consent and their right to refuse treatment in order to avert the risk of death or serious harm. Lord Donaldson likened consent to a key that unlocks the door to treatment (a year before he alighted on the 'flak jacket' analogy). If the child would not provide the key, then parents or the court could do so instead, in the child's best interests. In the 1992 edition of *Medicine, Patients and the Law*, Margot found this troubling: 'If [a child] is capable of authorising treatment, it would seem to follow that she is equally capable of refusing treatment'.[33] She concluded that

> It seems a strange right which entitles a child to say 'yes' but not 'no'. In practical terms legal principles which result in a mother having no say as to whether her teenage daughter agrees to an abortion, no right even to know of the operation, but being able to require that same daughter to undergo abortion against her will, are odd in the extreme.[34]

Other eminent medical law academics concurred. Professor Sir Ian Kennedy considered that the restriction on the rights of competent children was driving 'a coach and horses through *Gillick*'.[35] Nonetheless, today, these cases remain good law.[36]

In addition to the issue of adolescent autonomy, Margot considered the vexed issue of treatment decisions about infants in cases of disagreement. In finely balanced or disputed cases, the court will be asked what course of action is in the child's best interests. The courts turned initially to the *Bolam* principle to adjudicate disputes asking whether doctors' treatment proposals were supported by a responsible body of medical opinion?[37] But as the velvet revolution progressed, so the courts were required to incorporate non-medical factors into the best interests assessment, including the social and emotional issues at stake. In a 2005 case commentary, Margot considered the balancing exercise in response to several judgments about Charlotte Wyatt.[38] Charlotte had been

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[30] [1986] AC 112, at 114.

[31] [1986] AC 112, at 188–9.

[32] *Re R (A Minor) (Wardship: Consent to Medical Treatment)* [1991] 4 All ER 177.

[33] Margaret Brazier, *Medicine, Patients and the Law* (London: Penguin, 1992), 2nd edn, p. 346.

[34] Ibid.

[35] Ian Kennedy, 'Consent to Treatment: The Capable Person', in Clare Dyer (ed.), *Doctors, Patients and the Law* (London: Blackwell Scientific Publications, 1992), p. 60.

[36] *E v Northern Care Alliance NHS Foundation Trust and F v Somerset NHS Foundation Trust* [2021] EWCA Civ 1888.

[37] *F v West Berkshire Health Authority* [1990] 1 AC 1.

[38] Margaret Brazier, 'An Intractable Dispute: When Parents and Professionals Disagree', *Medical Law Review*, 13 (2005), 412–18.

born prematurely in 2003 and suffered multiple serious disabilities. At 22 months, she was profoundly ill and doctors sought a declaration from the court that it was in her best interests not to resuscitate her if she suffered respiratory failure. Charlotte's parents opposed the declaration. Two of Margot's points have proved particularly important in the subsequent development of the law.

The first concerns the rights and interests of parents. Parents usually make decisions for young children, but, in fact, their rights are quite limited.[39] Parents may consent only to treatments that serve their child's best interests, and they cannot ordinarily refuse interventions necessary to safeguard the child's long-term welfare. Margot recognised the importance of parental views in trying to determine best interests from the child's point of view, but emphasised that they may not be the only relevant voice:

> Judges have on occasion spoken eloquently of the parental bond and maternal instinct. Outside the courtroom and the urgency of a particular case, we should reflect on what that bond entails. Put brutally, Charlotte has spent her whole life in the primary care of others not her parents. She has never left hospital. It might be argued that through no fault of theirs, Charlotte's parents were not her principal carers. The voices of the nurses who care for Charlotte day by day are barely heard in the courtroom drama.[40]

On the other hand, Margot also recognised the fallibility of medical prognosis and the importance of balancing the medical focus on clinical interests with other relevant factors:

> The more [Charlotte] proves the experts wrong in terms of the quantity of her life, the harder it will be to persuade her parents that doctors were right in their judgement of its quality.[41]

When Margot wrote the commentary on the *Wyatt* case she was thinking deeply about the treatment of premature babies. At the time, she was chairing a Nuffield Council on Bioethics Working Party on Critical Care Decisions in Fetal and Neonatal Medicine, which reported in 2006. The group examined the highly contentious question of whether, when, and how extremely premature babies should be treated. It was an area where families and clinicians urgently needed clear guidance. Where treatment was available, it was often attempted even when the prognosis was poor. Parents were frequently given limited information and doctors were understandably reluctant to stop trying.

In 2006, medical outcomes for the most premature babies were stark: only around one per cent of those born before 23 weeks' gestation survived. The report recommended that such babies should not be resuscitated. For those born at 23 or 24 weeks, it advised

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[39] Children Act 1989, section 3.

[40] Brazier, 'An Intractable Dispute'.

[41] Ibid.

that parents should make the decision; and from 25 weeks onwards, intensive care should generally be provided.

The recommendations provoked strong reactions.[42] A *Guardian* opinion piece opened with the line ‘Baby Butchers Launch Attack!’ and recounted the condemnation from some pro-life groups, including the Society for the Protection of Unborn Children, which called the guidance ‘nothing short of eugenics’.[43] Yet, for many the report provided much-needed clarity. It helped health professionals and parents navigate one of the most difficult experiences imaginable, offering balanced information, and weighing the hope of survival against the realities of medical limits.

Margot was widely recognised for her fearlessness,[44] but she felt the weight of controversy deeply. Her courage was never a matter of recklessness or indifference, but was born from principle: a willingness to speak when others remained silent, to take an unorthodox course when it was the right one, and – to draw on a metaphor she once used in another context[45]– to pick up potatoes that others found too hot to touch.

Organ donation and tissue retention

Nowhere is Margot’s compassionate and empathetic voice more apparent than in her writings about organ retention. The revelations in the late 1990s and early 2000s that organs and tissues had been routinely retained after death, often in the absence of anything resembling consent, led to Margot’s appointment as Chair of the Retained Organs Commission. As well as steering the Commission’s work, including the production of a report and recommendations for law reform,[46] Margot explored the legal, ethical and social issues arising from organ retention and return in a series of academic articles.[47] It is clear that talking to the affected families had had a profound impact upon her, and she explained that:

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[42] Celia Hall, ‘Ethics Experts Set Out Controversial Guidelines for Doctors and Parents’, *The Telegraph* (15 November 2006).

[43] Polly Toynbee, ‘Listen to the Mother who Wishes that her Son had Died at Birth’, *The Guardian* (17 November 2026).

[44] Paul Faulkner, ‘Fearless Preston-born Academic Margaret Brazier Dies after Living with Parkinson’s for 13 years’, *Blog Preston* (16 March 2025).

[45] Margaret Brazier, *Medicine, Patients and the Law* (London: Penguin, 1987) 1st edn, p. 198.

[46] Retained Organs Commission, *Remembering the Past, Looking to the Future: The Final Report of the Retained Organs Commission Including the Summary Accountability Report for 2003/2004* (2004).

[47] See, for example, Margaret Brazier, ‘Organ Retention and Return: Problems of Consent’, *Journal of Medical Ethics*, 29:1 (2003), 30–3; Margaret Brazier, ‘Retained Organs: Ethics and Humanity’, *Legal Studies*, 22:4 (2002), 550–69; Margaret Brazier, ‘Human Tissue Retention’, *Medico-Legal Journal*, 72 (2004), 39–52; Sheelagh McGuinness & Margaret Brazier, ‘Respecting the Living Means Respecting the Dead Too’, *Oxford Journal of Legal Studies*, 28:2 (2008), 297–316.

> Nearly two years of meeting families whose relatives' organs were taken without any genuine consent on their part has offered me an insight into the impact of organ retention which radically affects the arguments I pursue.[48]

Margot passionately defended the interests of families who were upset by revelations about organ and tissue retention. She was adamant that this was 'not "a fuss about nothing"', and that 'families were not hysterical', nor were they 'gold-diggers interested in a compensation lottery'.[49]

For obvious reasons, scientists and clinicians had little interest in retaining the organs of people who died 'peacefully in old age after a short routine illness'.[50] Rather, organs tended to be retained after a premature, unexpected or distressing death, when 'shock may aggravate bereavement'.[51] More specifically, it was the retention of *children's* organs that had been especially common, with large collections identified at Bristol Royal Infirmary and at Alder Hey Children's Hospital in Liverpool.

Parents had been asked to sign consent forms to post-mortems immediately after their child's death, and many had no idea that tissue would be retained afterwards. Some parents who had explicitly refused to consent to organ retention discovered that organs had nevertheless been retained. Parents also assumed that 'tissue' meant a sliver of tissue, rather than whole organs, or, in some cases, the removal and retention of almost every organ. Some parents realised that they had buried the 'shell' of their deceased child and this led, in some cases, to multiple further funerals, as their child's retained tissues were identified and returned to them.

Margot disagreed profoundly with her colleague and friend Professor John Harris, who also sat on the Retained Organs Commission, on a wide range of issues, and, although their disputes could be said to be pioneering examples of 'disagreeing agreeably',[52] some of their most passionate disagreements related to the retention and use of organs without consent. Margot explained that John's view was that any 'good that can ensue from scientific and medical uses of bodily material taken from the dead outweighs any insult or distress caused to the bereaved relatives, or to the religious faith of the family'.[53] Although Margot was not in favour of the conscription of the organs of the dead, she said that 'Harris's voice needs to be heard', and that while it was 'not a case that I favour, … it needs articulating'.[54] However, it was in an article which directly

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[48] Margaret Brazier, 'Retained Organs: Ethics and Humanity', *Legal Studies*, 22:4 (2002), 550–69.

[49] Brazier, 'Human Tissue Retention'.

[50] Brazier, 'Retained Organs: Ethics and Humanity'.

[51] Ibid.

[52] Glen Smith, *Disagreeing Agreeably: Issue Debates with a Primer on Political Disagreement* (London: Routledge, 2019).

[53] Brazier, 'Human Tissue Retention'.

[54] Brazier, 'Human Tissue Retention'.

‘responds to John Harris’s vigorous analysis of the ethical principles involved in organ retention’,[55] that Margot’s impassioned defence of families’ interests in tissue after death is most visceral, although she was still adamant that there was much on which she and John could agree, for example, that archived tissue and retained organs could serve ‘many good ends’.[56]

Nevertheless, Margot contended that John’s analysis of the ethical issues was incomplete, and that John had missed something important about the role of cultural and religious beliefs, and the claims of the living.[57] ‘Above all’, she argued, ‘Harris postulates a society in which cold rationality drives all human actions’.[58] She accused John of presenting ‘a Utopian (or maybe Dystopian) vision of a society where all heed solely the commands of reason’. In such a society, it is possible to prioritise others’ needs because, in the context of organ donation, ‘we have confidence in clinicians who explain fully and openly why they would wish to retain our, or our relatives’, organs, and we trust that those organs will be used to provide societal benefits in terms of audit, education or research’. [59] That did not happen. In practice, many organs were simply stored routinely and nothing at all was done with them.

When the Chief Medical Officer’s Census ‘revealed a scale of organ retention which demonstrates that much of what was kept could not be put to good use’,[60] Margot said that she had ‘sometimes thought that what happened was that some doctors started to collect human organs rather like I collect copies of articles from legal journals’, in the hope that one day she would read the accumulated ‘yellowing copies of articles’.[61]

Of the religious belief that resurrection will only happen if a body is buried whole, Margot commented that ‘it is easy to mock such beliefs from an atheist, agnostic or “liberal” viewpoint’.[62] Her empathy shines through her acknowledgment that the pain caused by believing that, because he was not buried whole, one’s ‘beloved husband or father will not be resurrected’ or ‘will endure eternity disfigured and disabled’, must be ‘acute and life-destroying’.[63]

Margot pointed out that during her life, she could not be compelled to donate even one drop of blood to save her friend and colleague John Harris, but that, on her death, he proposed that all of her organs should be at his disposal, even though ‘bodily integrity after death is for very many people a more fundamental value than protection from a

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[55] Brazier, ‘Retained Organs: Ethics and Humanity’.

[56] Ibid.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] Brazier, ‘Human Tissue Retention’

[61] Ibid.

[62] Brazier, ‘Retained Organs: Ethics and Humanity’.

[63] Ibid.

pinprick in life'.[64] For him the cost of removal of organs after death 'is virtually non-existent' but his mistake, in Margot's eyes, is 'to presume that others make the same calculation of that cost',[65] when there is a very long history of evidence to the contrary.

Margot's interest in legal history was not confined to her specific historical projects,[66] and she was always interested in where the law came from, and its social, historical and cultural context. In her work on organ retention, Margot not only explored the role of canon law, and 'the teachings of the medieval Church about the integrity of the physical body', but also traced concerns for corpses, and difficulties in preventing 'the depredations of the tomb-robbers' to the pharaohs of Ancient Egypt.[67] In the 16th century, because bodies used in dissection came from executed criminals, 'dissection became tainted with criminality. To be left to the mercy of the surgeons to be chopped up after death was seen as the ultimate punishment'.[68] Two centuries later, judges were empowered 'to add to a sentence of death an additional punishment that, after execution, the body of the convicted murderer be handed over to the anatomists for dissection, as "a Further Terror and Mark of Infamy"'.[69] Because most people continued to believe that being deprived of an intact corpse would rob them of eternal life, this was a fate worse than hanging.

Margot recounts the tale of the 'Irish Giant', Charles Byrne, who 'had spent his unhappy life being exhibited at freak shows, poked and prodded by surgeons'. Dreading being denied resurrection if his body ended up in their clutches, he made arrangements to be buried at sea in an iron coffin. However, this did not prevent 'a bidding war among London's anatomists' at the news of his death. Although a coffin was cast into the sea outside Margate, it did not contain his corpse because the distinguished surgeon John Hunter (after whom the Hunterian Museum was named), 'had bribed the undertakers to sell him the body and set up an elaborate fraud to swop the body for heavy stones while the Giant's friends got drunk holding a wake at a tavern'. We also learn that Burke and Hare were not merely body snatchers but body *creators* who 'murdered at least sixteen poor and indigent victims and sold their corpses to the anatomy school of Dr Robert Knox', who faced no charges when their crimes were revealed.[70]

The problem was, as Margot explained, that anatomy schools required bodies and 'without a legal supply of bodies, bodysnatching would continue'. Established in 1828,

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[64] Ibid.

[65] Ibid.

[66] Such as Sarah Fox & Margaret Brazier, 'The Regulation of Midwives in England c. 1500–1902', *Medical Law International*, 20:4 (2020), 308–38.

[67] Margaret Brazier, 'Honouring the Dead: Commodifying the Corpse', in *Law and Healing*, pp. 217–41.

[68] Ibid.

[69] Ibid.

[70] Ibid.

the House of Commons Select Committee on Anatomy proposed using ‘unclaimed corpses’, with ‘no known relatives to be outraged or distressed’, which in practice meant ‘appropriation of the corpses of the poor’.[71] With what Margot describes as a ‘sanctimonious flourish’, the Select Committee declared that taking unclaimed corpses was, in fact, in the best interests of the poorer classes because it would mean that ‘medical practitioners of the “lower orders”’ did not have to ‘learn the working of the human body “by mangling the living”’.[72]

Through meticulous historical analysis of the origins of the Anatomy Act 1832, and tracing the ‘precedent it set for the regulation of medical science’, Margot established that ‘Failure to recall and learn from the battles about dissection played a key role in the public outcry generated by revelations about organ retention in 2001’.[73]

Assisted reproduction

In 1999, Margot was years ahead of her time in recognising that the delivery of assisted conception services had become a business.[74] Although she suggested that it was ‘somewhat frivolous’ of her to designate it the ‘reproduction business’, her article about its regulation was remarkably prescient in several ways. First, in it Margot highlighted the postcode lottery in access to fertility treatment across the UK: not only do individual clinics’ practices vary, but also NHS-funded treatment is limited and subject to locally variable additional conditions. Secondly, she pointed out the absurdity of subjecting most fertility treatments to intensive regulation, while leaving surrogacy largely unregulated. Thirdly, and most strikingly with the benefit of hindsight, was Margot’s recognition of the consequences for patients of the development of a market in fertility services and, in particular, ‘the nightmare’ that awaits regulators as:

> those wealthy enough to participate in reproduction markets can readily evade their domestic constraints. If I can order sperm on the Internet or hire a surrogate mother from Bolivia, are British regulators wasting their time?[75]

Margot’s second major public appointment was to chair the then new Labour government’s review of aspects of the regulation of surrogacy. Together with ethicist Professor Alastair Campbell and psychologist Professor Susan Golombok, the Brazier Committee’s Report advocated the complete prohibition of all payments to surrogates,

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[71] Ibid.

[72] Ibid.

[73] Ibid.

[74] Brazier, ‘Regulating the Reproduction Business’.

[75] Ibid., p. 166.

other than compensation for expenses actually incurred as a result of the pregnancy.[76] Arguing that, like blood and organ donation, surrogacy should take place only within a 'gift relationship',[77] they admitted that one consequence of a complete prohibition on payments might be that 'few women will be willing to undertake such a commitment, except for a relative or close friend'.[78]

Disagreeing with the Brazier Committee's conclusions at the time, Professor Michael Freeman argued that their 'Report fails to appreciate that withdrawing remuneration from surrogates will only drive potential surrogates away from regulated surrogacy into an invisible and socially uncontrolled world where the regulators will be more like pimps than adoption agencies'.[79] He maintained that the Committee was wrong that, once payments are withdrawn, 'surrogacy will rarely be undertaken by strangers'. Instead, he argued that 'it will probably grow … go underground and the fees will become larger'.

It is to Margot's enormous credit that, 18 years later, she very publicly admitted to having changed her mind on surrogacy. Her change of heart was revealed at a workshop in 2016, where Baroness Mary Warnock also said that she now thought that her previously expressed views on surrogacy had been wrong. It was an exceptionally moving occasion, where two of the most significant contributors to medical law and ethics in public life in the late 20th and early 21st centuries openly acknowledged their own fallibility.

The reason for their change of heart was not that they had both undergone a sudden conversion to Harrisian libertarianism. Rather, it was motivated by their humane and empathetic recognition that they had not appreciated how fulfilling it could be to serve as a surrogate. As mothers, Mary and Margot explained that they could not have imagined giving up their own children after birth. At the same time, as successful Professors, they had failed to realise that other women might gain the sort of fulfilment and satisfaction which they routinely received from their professional lives from helping people who long to be parents to realise that goal.

Although she had certainly not changed her mind about the dangers of the commodification of children, Margot in print said that she:

> must make a humble confession. In agreeing with the ban on payments in 1984 when Warnock reported and in 1998 when she chaired the Surrogacy Review, she was wrong and Michael Freeman was right.[80]

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[76] *Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation* (Cm 4068) (HMSO, 1998).

[77] Ibid., para 4.36.

[78] Ibid., para 4.37.

[79] Michael Freeman, 'Does Surrogacy have a Future after Brazier', *Medical Law Review*, 7 (1999), 1–20.

[80] Margaret Brazier & Sacha Waxman, 'Reforming the Law Regulating Surrogacy: Extending the Family', *Journal of Medical Law and Ethics*, 4:3 (2016), 159–80.

Margot was also emphatic that the current law on surrogacy – with its reliance upon retrospective approval – needed to change in order to offer some prospective review of surrogacy arrangements. Margot and her co-author and doctoral student Sacha Waxman advocated basing the relationship between surrogate and intended parents on a fiduciary model, where the adults involved owe duties to the child to protect his or her interests, as well as mutual duties of trust to each other.

Policy contributions

A pioneer in her scholarly work, Margot was also a leader in law reform and policy debate. Her wisdom, compassion and encyclopaedic knowledge of healthcare law were put to good use in her various public roles, as chair of the Animal Procedures Committee (1993–98), the Review of Surrogacy Arrangements (1996–98), the Retained Organs Commission (2001–2004), and the Nuffield Council on Bioethics' Working Party on Critical Care Decisions in Fetal and Neonatal Medicine (2004–2006). In those roles, her academic focus on resolving practical medical dilemmas was complemented by outstanding propensities to listen, respect, provoke, encapsulate and, ultimately, to find consensus across different professions and perspectives.

Honours and legacy

Testament to the high esteem in which Margot is held by her colleagues was a special edition of the Medical Law Review in her honour,[81] and a 2016 *festschrift* – aptly entitled *Pioneering Healthcare Law: Essays in Honour of Margaret Brazier*[82] – edited by Dr Catherine Stanton, Professor Sarah Devaney, Professor Anne-Maree Farrell and Dr Alexandra Mullock.

Elected a Fellow of the Royal Society of Arts in 1994, the Academy of Medical Sciences in 2007, and the British Academy in 2014, Margot was also appointed as an Officer of the Order of the British Empire in 1997, Queen's Counsel (honoris causa) in 2008, and awarded the Halsbury Legal Award for Academic Contribution in 2013. In 2024, the Society of Legal Scholars created the Margaret Brazier book prizes for Outstanding Mid-Career Legal Scholarship in her honour, and Margot received the Ted Shotter Lifetime Recognition medal for endeavour in medical ethics.

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[81] 'Across the Spectrum of Medical Law: A Special Issue in Honour of Margaret Brazier', *Medical Law Review*, 20 (2012).

[82] (Routledge, 2015).

As anyone who knew Margot will confirm, honours like these mattered much less to her than time spent with family and nurturing the careers of her students and junior colleagues. All of us who knew Margot will remember particular instances of kindness, wit, thoughtfulness and generosity. All of us will recall the unwavering love and pride she had in her husband, Rodney and their daughter, Vicky.

Margot was not just a leading figure in modern healthcare law, she was the pre-eminent medico-legal scholar of the 20th and 21st centuries. But Margot will always be remembered not only for her extraordinary academic brilliance and dedicated public service, but also for her fundamental decency, humour, modesty and kind-heartedness.

An inevitable consequence of writing as widely on medical law as Margot did during her career is that questions about death often loom large. Revisiting her work after her death, it is especially poignant to read her occasional reflections on death. The last line of one of her articles, for example, was that 'We live in the knowledge of death's inevitability. How we will be treated after our death affects our welfare in life'.[83] After Margot's death, as well as tributes from her family and friends, there was a staggering outpouring of love and respect from her healthcare law colleagues and former students across the world. We hope that Margot understood during her lifetime what an extraordinarily positive difference she had made, not only to her family, her students and colleagues, and to the discipline of healthcare law, but also to the world around her.

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[83] Brazier, 'Retained Organs: Ethics and Humanity'.