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Book Review: Elizabeth Wicks' Human Rights and Healthcare

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In her broad-ranging and carefully written survey of medical law (what we in the United States call “bioethics”) in Great Britain, Dr Elizabeth Wicks begins by questioning whether medical law is a distinct legal subject at all. As she observes, “[d]oubt has arisen because medical law is an academic version of the cuckoo. When a medico-legal problem arises, medical law utilises the principles and remedies of other branches of law” (p.1). As medical technologies evolved over time, lawyers confronted more complex and novel medico-legal dilemmas, and it became apparent that the traditional legal rules of tort, criminal law, and family law were insufficient to resolve these conflicts. Medical lawyers began to understand that ethical principles of autonomy, beneficence, sanctity of life, and dignity of the person could provide a unifying coherence to an otherwise fragmented legal field.

The book begins with a brief overview of the sources of human rights law in Britain, including international treaties, the British Constitution and common law, and the Human Rights Act of 1998. The chapter then focuses on developing a more detailed description of human rights that are particularly germane to health care and medical law. Wicks divides the discussion into four parts, examining privacy rights, the right to life, the right to dignity, and the concept of reproductive autonomy.

Within the realm of privacy rights, the book considers the right to self-determination in medical decision-making, and related rights to bodily integrity
and confidentiality. Under the umbrella of right to life, the author considers whether and to what extent this right includes positive rights to medical treatment and, more controversially, to assistance in dying. As part of the right to dignity, Wicks includes a detailed consideration of the right to be free from degrading treatment and its implications in support of potential withdrawal of life-sustaining treatment from patients who are terminally ill. Finally, within the realm of reproductive autonomy, Wicks discusses both the “negative” right to choose to avoid reproduction and the “positive” right to assistance with conception.

A closer examination of two of the chapters will illustrate the strengths of the book. In both chapters, the right to life as described in Article 2 of the European Convention on Human Rights plays a prominent role. (p.181; Article 2 of the ECHR states that “[e]veryone’s right to life shall be protected by law.” It does not, however, further describe who is included in “everyone,” leaving the question of whether an unborn fetus [*442] is included.) In the chapter titled “Termination of Pregnancy: A Conflict of Rights,” Wicks describes existing law dealing with the complex debate about abortion, beginning by acknowledging that in most cases a “conflict of interests between mother and fetus is almost inevitable” (p.181). She also wisely concedes that the moral issues posed by abortion are beyond the scope of the law to resolve, noting instead that the law can at best move the debate closer to a “reasoned response” to particular aspects of the debate. As an example, she discusses cases addressing the question of whether Article 2 applies to the fetus. After reviewing several cases that skirt the issue, she criticizes the judiciary for failing to answer the question directly. At the same time, she notes that there appears to be sufficient support among individual judges in the European Court of Human Rights for a finding that Article 2 in fact applies to the fetus, although the Court has not formally done so. The chapter also contains a thoughtful discussion of the ethical issues surrounding abortion, particularly the question of personhood of the fetus, and it examines English law dealing with abortion from the perspectives of rights of the fetus, and rights and obligations of the mother, the father, and participating medical professionals.

In the chapter titled “The Right to Life at the End of Life,” Wicks again confronts a deeply divisive moral question that the law is ill-equipped to address. The chapter begins by examining the boundaries of the right to life as a substantive element in end of life decisions. In addition to the statement discussed above, Article 2 adds that “[n]o one shall be deprived of his life intentionally” (p.228). None of the very few exceptions to this principle (such
as the use of lethal force in law enforcement) address the concepts of withdrawal of life-supportive measures, assistance in suicide or euthanasia that sometimes arise at the end of life. Wicks observes, very importantly, that Article 2 does not create a right to life; rather it recognizes that when life exists it is entitled to protection by law. She notes that England’s acceptance of the whole brain definition of death deals with the problem of wholly brain dead individuals whose bodies are maintained on life support, but leaves unresolved the problem of treatment of patients in permanent vegetative states. If Article 2 protects the right to life of these patients (if they are, in fact, considered alive), Wicks asks whether this means that the life of PVS patients must be preserved indefinitely via artificial feeding or even more invasive measures such as organ transplant? The remainder of the chapter explores relevant case law attempting to resolve the rights of patients in this situation in the context of the human rights principles in Article 2, including discussion of questions such as whether artificial feeding is a form of medical treatment, whether withdrawing treatment is an act or omission, and whether the distinction between act and omission is helpful in this context, and the conclusions of the courts on these fundamental issues. Those in the United States who followed the controversy surrounding Theresa Schiavo’s life and death will be familiar with these questions. Finally, Wicks reviews the implications of the British judicial approach to these cases for future practices.

The author adroitly identifies and discusses how existing law sometimes [*443] fails to address adequately the particular challenges posed by the multi-layered problems of health care decision-making. Wicks provides appropriately critical commentary on the state of the law for some of the more controversial medico-legal questions but is careful to provide a balanced and descriptive picture of all of the issues she covers. As she observes in her introductory chapter, “the book seeks both to describe and analyse the involvement of human rights law in medicine and simultaneously to justify its application to this field . . . . While it is in the nature of medico-legal issues that there are no easy answers when the disciplines of law and medicine collide, human rights law at least provides a useful framework in which to consider the dilemmas and the one most fitting in a democratic society” (p.15). Although the book focuses mainly on rights within the United Kingdom, those familiar with healthcare and bioethics issues within the United States or elsewhere will find it an extremely useful comparative resource.

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