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The medical profession and human rights: handbook for a changing agenda

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Fifteen years after its celebrated *Torture report* (1986) and *Medicine betrayed* (1992), influential reports which identified ways in which physicians had been complicit in human rights violations both in repressive political regimes and in closed institutions such as prisons and psychiatric establishments, the British Medical Association (BMA) has published *The medical profession and human rights: a handbook for a changing agenda*. Unlike its predecessors, which concentrated on defining human rights largely in relation to what might be characterized as the abnormal doctor-patient relationship, this weighty book brings rights to bear in a far more self-conscious way on the normal doctor-patient relationship. By espousing a language of radical change based on the extension of the therapeutic relationship to matters not previously seen in such a perspective, it raises crucial issues about the purview of human rights and the ambition of its servitors to form something like a new estate.

Much has happened in the world in those 15 years, not least the wars in the former Yugoslavia and Rwanda, in which mass killings, intimidation and targeted rape went largely unchecked; a highly publicized civil campaign to ban the use of anti-personnel landmines; and the move towards the establishment of an international criminal court. Most crucially, the end of the cold war has brought about far-reaching and unexpected political changes within a static political order. What looked like a victory for democracy in 1989 was, it now appears, a victory for the market; the increasing pace of globalization is apparent even in countries which long seemed resistant to its pressures. Historically, natural rights, as they were called then, were an arm of liberalism: they safeguarded the status under the rule of law of what was perceived to be the autonomous moral agent. But while

the authors contend in their introduction that “medical ethics and human rights increasingly use the same lexicon”, there seems in fact to be a deep and growing conflict between a practice-based ethics — with its internal goods, invitation to trust, and Aristotelian sense of honour and worth — and the enunciation of third-generation human rights. Traditional medical ethics, under which the doctor serves as the patient’s advocate against outside interests, including the state, are in some countries being ousted by government policy and the imposition of mandatory guidelines. While doctors may of course aspire to a wider political role (though not in the surgery) or even hope to become public health professionals, their core responsibility ought not to include goods external to their practice, such as the promise of “promoting healing, wholeness and individual flourishing”. (That precepts enjoining individual and general happiness are *logically* independent was an unwelcome discovery that befell the nineteenth-century utilitarian philosophers.)

Defending the dignity of the individual against the arbitrary exercise of state power is commendable, and easy to understand. It is an instance of what Isaiah Berlin once called “negative liberty”. Yet Kenneth Minogue’s recent observation that “your average demagogue now loves rights” suggests rights may also serve as a means of taking control of subjects: by persuading them that being given a right is always to their benefit. While the handbook is excellent on the practical issues and problems of asylum seekers, forensic medicine and psychiatry, neutrality in combat situations, and the rehabilitation of detainees, its cursory discussion of “positive liberty” in the chapter entitled “Ethics, morals, rights and needs” fails to draw out how easily human rights have become a projection of power, especially when delivered in the moralizing tone of “ethical” government. The authors’ activism is predicated on a belief derived from the economist Amartya Sen that civil and political rights depend on the fulfilment of the needs encumbered by social and economic rights, not on the principle that the former guarantee the conditions under which the latter might be achieved. Yet broadening human rights under the banner of “universality, indivisibility and interdependence” to address issues of welfare and health may itself undermine the legal foundations of negative liberty, insofar as it gives the state a charter for

intrusion into the private life. (Such has been the experience of Canada, after fifteen years of an explicit human rights charter.)

The conflict within medicine between confidentiality and issues such as “whistleblowing” finds a parallel in the rift within the human rights movement itself between “respect for cultural norms and practices” and the terms of the Universal Declaration of 1948. One strand of critical thought (for instance, within feminism) sees the objectivity of rights as nothing but a disguise for paternalism and class privilege, yet legal and moral objectivity is precisely what rights aspire to. How can it be that the US, the nation with the longest liberal tradition, insists on making its own commitment to international human rights, access to health care among them, judicially non-enforceable at home? The suspicion of double standards becomes more acute still if one questions, as Noam Chomsky has, the value of espousing a commitment to civil liberties while encouraging economic policies that actually undermine elementary social welfare.

Having long held out against the imposition of rights instruments, British domestic law is about to adopt the terms of the European Convention on Human Rights. It is a striking irony (and one hardly mentioned by the book) that as the autonomy of the British medical profession has in a decade all but vanished, indeed has almost come to seem a social *vice*, the power of lawyers to elicit rights has never been greater. Yet the tacit British conception of the state imagined itself as constituted by its subjects; it left them free to act, subject to the rule of law. Lawyers were interpreters of the law, not its makers. It is surely complacent to assume that our civil and political liberty is so well established it can be left to look after itself, or that “empowerment” can ever be anything but a condescension. Health (or should it be, as in Chapter 13, ‘Health’ in inverted commas?) can only ever be a means, not an end. Were there an informed debate about medicine’s changing agenda this book would surely fuel it; that there is not is perhaps the most disconcerting sign of the times of all. ■

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