

Book Reviews/Comptes rendus

S. A. M. MACLEAN and J. K. MASON, *Legal and Ethical Aspects of Healthcare*. London: Greenwich Medical Media, 2003, xii + 252 p., index.

This is an excellent book. It is very well written and covers its subject matter in brief yet thorough fashion. It would be an asset to any university library and absorbing reading to anyone with even a passing interest in the intersection of the legal and medical arts in England and Scotland. For sociologists, however, the problem may be just how to use it.

The intended readership is healthcare professionals; cover notes add lawyers and “interested members of the general public.”

The authors, S.A.M. McLean and J.K. Mason, are from law schools at Glasgow and Edinburgh, and they infuse their topic with a dry legal wit. They begin their book with two short chapters (“Medicine and the Law” and “Resources – Who Decides?”) which outline the changing structure of the healthcare system, the proliferation of regulatory and complaints bodies which control it, and the court system with its centuries of common law and arcane hierarchy.

These chapters are not just descriptions: they pick up – often hint at – themes about the forces for change: devolution of power from Westminster to national legislatures; the rise of the Health Authority and Health Board, consequent shifts in employment relationship (from a “free professional” dealing with an individual patient to a Health Authority contractor or Hospital Trust direct employee); and a growing willingness to take legal action to redress complaints. The last is partly because of declines in the traditional *laissez-faire* attitude to professional discipline among courts and governing bodies, partly because of a corresponding increase in the notion of patients’ rights, and partly because there are now many more avenues available to pursue that redress.

In 1998, Harold Frederick Shipman, a general practitioner in solo practice near Manchester murdered his last patient; a 2002 inquiry revealed him to be Britain’s most prolific serial killer. The inquiry concluded that between 1970 and 1998, Shipman had killed between 137 and 345 of his patients, mostly elderly women. He was convicted of 15 murders in 2000, sentenced to life imprisonment with no chance of parole, and struck from the General Medical Council register in 2002.

McLean and Mason deliberately exclude the criminal law and barely mention the Shipman case, but they do note that until recently the courts and regulatory bodies have been “disinclined to interfere” with professional autonomy. In 1998 as well, Britain enacted the Human Rights Act which subordinates its own laws, with all its precedent, tradition, and “muddling through” spirit, to the more Napoleonic approach of the European Community. Thus the Human Rights Act renders case law, and indeed almost all other law, subject to review. The growth in bodies dedicated to co-ordination and control of health care did not begin with Shipman or the Human Rights Act, but it certainly gained impetus with them.

After these two chapters, the book settles into a survey of specific ethical issues: confidentiality, research, genetics, and so on. They do not shy away from controversy, nor from more obscure questions. Each follows the same format: ethical questions are raised, the implications discussed briefly, policy reviewed, and case law summarised. There is a lot of interesting information here, but the most interesting part is the tone. The system is in tumult, rocked by scandal and beset with fiscal crisis, and the authors duly discuss this, but through it all, the issues are treated with a detached jurisprudential air reminiscent of bewigged barristers. The whole thing just seems so rational.

Some may be disappointed that little space is devoted to practitioners except for physicians; others that – even though the authors are both from Scotland – Scottish culture receives only token attention. Still others may note that references, aside from case law, are all but absent. Many will dispute the treatment of substantive issues. These are quibbles: more fundamental is the question of how it could be used here in Canada.

It would fit nicely in a course on law. Alternatively, almost all of it may be used as a text to introduce students to specific issues in bioethics, even though it focuses very much on Britain. It could be an adjunct text in an undergraduate sociology of law or health class, especially one with a comparative perspective (perhaps a refreshing change from American books). It might also be used for research in, say, content analysis with a discourse theme. It is a very good book, but it was not aimed at sociology, and its applications to this discipline are limited.

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