BOOK REVIEW

Strange Bedfellows. How Medical Jurisprudence Has Influenced Medical Ethics and Medical Practice

B A Rich, Kluwer Academic/Plenum Publishers, 2001, \$US55, pp 196. ISBN: 0306466651

Ben Rich's stated aim in this book is to prove that the legal system has had a positive rather than a negative impact on medical practice and research. When lawyers are often attacked (by the medical professions and governments alike) for their role in medical litigation this conclusion seems to be at odds with our experience. Rich's text is a timely and scholarly contribution to the debate about the role of the legal system in medicine. While it may not prove to be completely convincing, the work offers penetrating insights into how the American legal system has influenced bioethics, primarily because of the way that it provides an ultimate forum for the resolution of ethical disputes.

Rich's initial chapters serve as an introduction to schools of medical ethics and jurisprudence. Chapters two and three will be of real benefit to the new student of bioethics as Rich provides very clear and concise summaries of the major schools of ethics and legal theory, and how they interact in bioethical disputes. The more experienced bioethicist will also find much of use in the early chapters because Rich's writing style eruditely maps out what is a very difficult conceptual landscape.

After dealing with the introductory concepts Rich sets out to examine various case studies, beginning first with the doctrine of

informed consent and then moving on to consider advance directives, privacy, abortion, and active and passive euthanasia. In each case study the major cases are explored and examined to test their impact on medical practice and research. The clear underlying message coming from these chapters is that it has been the American legal system's insistence on individual rights that has made autonomy the primary bioethical principle of modern times, and that this has been a great gift to the practice of medicine. Rich powerfully argues that autonomy would not enjoy its current place in bioethics without the ultimate sanction of law, and as a consequence, medical practice is better because of law's interference.

That is not to say, however, that Rich presents a one sided view of the role of the legal system. Indeed Rich is at his best in the discussion of abortion and euthanasia, where the legal system is itself rife with contradictory views, and where it has in many decisions shied away from the wider social, ethical, and philosophical considerations implicated in the judgments.

Rich's final two chapters deal with the role that bioethicists are now playing in judicial deliberation. He is critical of the theorists like Posner, who deny that law has any connection with wider ethical or moral principles. Instead, Rich's argument is that litigation is increasingly being used by bioethicists for the resolution of ethical debates. This is shown by the increasing reliance courts place on bioethical evidence. Additionally, Rich's arguments are strengthened by the unquestionable fact that law provides a level of finality which bioethical debates can never achieve. According to Rich, law creates a theatre for dissenting voices to present their arguments and provides a mechanism for the enforcement of final decisions. Without the ability to resort to law, bioethics would be full of empty promises.

One criticism that can be made of the text is that the clarity of Rich's explanations may serve to disguise the true complexity of the judgments he examines. Rich has obviously attempted to simplify and crystallise the legal issues for the reader, but in doing so may have given the lay reader a false impression about how clear these judgments are. For Rich's thesis to be truly successful he needs to examine the problem of how judgments are communicated to and accepted by the medical profession. Judgments are not always easy to read (some might say "never"). Nor it is an easy task for the medical profession to apply complex principles of law in new situations. To that extent the legal profession must itself take responsibility for the way it communicates and interprets legal standards for the medical profession. Rich deals with some of these issues (particularly in his chapter on advance directives and the SUPPORT study) but they seem, primarily, issues of resistance by the medical profession rather than breakdowns in communication. One cannot deny that there is often resistance to a change in legal norms, but resistance can often be reduced via improved communication.

Overall, I found this book to be thought provoking and admirable for the clarity that it employs in examining the primary areas of bioethical disputes. It will be of great assistance to students of American bioethics who find themselves faced with the unenviable task of digesting the enormous body of American medical law. The challenge is now for authors from other jurisdictions to test Rich's thesis against their own experiences of the relationship between law and medical practice.

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