

book reviews

Autonomy, consent and the law

By Sheila McLean. Routledge Cavendish, London 2010.

237 pp £27.99

Autonomy is the most frequently used word in medical ethics. It is the first quoted term in those who adopt or teach an approach to medical ethics based on the ‘Georgetown mantra’ of autonomy, beneficence, non-maleficence and justice popularised by Beauchamp and Childress.¹ It is frequently contrasted with paternalism, generally thought of as a thoroughly bad thing. But the complexity of the concept deserves more detailed appreciation.

Literally, autonomy means self-rule and can be subdivided into autonomy of thought, of will and of action. Respect for autonomy is widely believed to be the key principle underlying consent. Most doctors believe that they have a pretty good idea of what autonomy is about – whether in ethics or in law. Reading Sheila McLean may challenge that comfortable belief, both in what autonomy is and whether it is, or should be, the dominant principle in all decision making. In particular, she argues that legal process sometimes inhibits respect for autonomy, especially in situations where information has been withheld. Bioethical debate about the true nature of autonomy has had little, if any, impact on the law, she asserts.

This seems curious for O’Neill reminds us that the original use of the term ‘autonomy’ was jurisprudential. But on this historical perspective, it applied to the independence of Greek cities, not to individuals.² Our modern abstract use of this word owes more to Immanuel Kant, although his conception is frequently misunderstood. Kant classifies principles as autonomous, not individuals. In a passage quoted by McLean, O’Neill writes:

*Kantian autonomy is manifested in a life in which duties are met, in which there is respect for others and their rights, rather than in a life liberated from all bonds. For Kant autonomy is not relational, not graduated, not a form of self expression; it is a matter of acting on certain sorts of principles, and specifically on principles of obligation.*³

We could sum this up rather crudely as saying that Kant is concerned with rational self-governance and not just doing what one desires – which may, after all, represent selfish indifference. The contrasting concept of autonomy as individual choice was most clearly articulated historically by the English philosopher, John Stuart Mill.⁴ For Mill, we should be free to choose what we want, for any reason we want (or none), provided it does not harm other people. Our own good is irrelevant. We are the masters of our fate.

Stated in this rather bare faced way, it has an immediate appeal. Who else should decide for me? Reflection, however,

suggests that life is rarely so simple. Autonomy may be vitiated or undermined by an inability to reason adequately, an inability to control one’s desires, inadequate information or a failure to sustain an initial decision.⁵ In this respect, autonomy is an ideal; and like most ideals it is often not realised, nor can be. It is something to aim at in respecting choices, but on occasions it may be overridden. Early on in her book, McLean draws up a contrast between individualistic and relational autonomy. For the former, she says, just being able to make a decision ‘is sufficient in and of itself neither to establish that one is behaving autonomously nor to validate the decision’. Or, expressed slightly differently, she quotes Emily Jackson (a member of the Royal College of Physicians Ethical Issues Committee) who states that ‘...a model of moral reasoning which privileges the rational, self-directed individual relies on a partial and inaccurate understanding of what it is to be human’.

In expounding what she terms ‘the new hegemony’ of autonomy, McLean spends almost a third of her book trying to both delineate the concept and explain how it relates to consent and hence to the law. Medical readers who are not used to philosophical or jurisprudential discourse may find some of this hard work. And certainly, McLean’s prose does not always run as fluently as it might (a personal *bête noire* is her use of the journalistic adverb, *arguably*). But perseverance will be rewarded for the first part of the book is the key to the themes that she addresses in the second part, devoted to a series of controversies familiar to anyone with a passing interest in medico-legal or ethical debate. This part includes end of life issues, pregnancy, genetic information and organ transplantation. The extent of legal interference with autonomous decisions in pregnancy that she documents in the US courts includes decisions that are both brutal and inhumane, for example. Yet the extreme case does not make the more balanced one any easier to decide. At times one does not envy the judges forced into making an agonising decision by the exigencies of the situation. There are times too, where a clearer expression of view (back to the use of *arguably*!) might make it easier for the reader to form their own view, for or against. For example, McLean does not seem to think much of the proposal to introduce ‘opt out’ laws for organ donation, but never quite comes off the fence – even if the British Medical Association’s suggestion that this might enhance autonomy gets short shrift. And her discussion of mandated choice is, in my view, superficial and quite short for a policy so explicitly autonomy based. Nevertheless, McLean has, of course, been discussing, speaking, teaching and writing about many of these issues for many years. Her vast experience as one of the UK’s most eminent medico-legal academics ensures that controversies

remain lively and her book is enhanced by the huge numbers of cases that she cites. All of which ensures that the book is a valuable addition to medico-legal debate in general, but above all to the continuing need to explore the key role of autonomy in modern society.

JOHN SAUNDERS

*Honorary professor
Centre for Philosophy, History and Law
School of Health Science, Swansea University*

References

- 1 Beauchamp TL, Childress JF. *Principles of biomedical ethics*, 2nd edn. Oxford: Oxford University Press, 1983.
- 2 O'Neill O. Autonomy and assisted suicide. (Text of an address at the Royal Society of Medicine, 30 June, 2010).
- 3 O'Neill O. *Autonomy and trust in bioethics*. Cambridge: Cambridge University Press, 2002.
- 4 Mill JS. *Utilitarianism* (1863), *Liberty* (1859) and *Representative government* (1861). London: JM Dent & Sons, 1910.
- 5 Harris J. *The value of life*. London: Routledge & Kegan Paul, 1983:196.

RCP books

Hoffenberg: Physician and humanitarian by L Ross Humphreys



Born in South Africa in 1923 – where he trained and practised as a physician and from which he was banned for his anti-apartheid activities in 1966 – Raymond (Bill) Hoffenberg was to become a familiar and highly respected figure in the worlds of academe and medicine in the UK. He became president of both the Royal College

of Physicians of London and Wolfson College, Oxford – posts which for a time he held simultaneously.

This well-researched biography charts Hoffenberg's life from early childhood in Port Elizabeth. It includes a revealing account of the time he served as a stretcher bearer in the South African army (which he joined when under age by forging his father's signature) through to his medical research career at Groote Schuur and his chairmanship of the Defence Aid Fund that financed the defence of people accused of political crimes in South Africa.

As a young physician in South Africa in 1967, he was asked to remove a still beating heart for transplant to one of

Christian Barnard's patients – an experience that led him to pursue clear criteria for the clinical diagnosis of death. This, along with end of life issues, and the availability of organs for transplant, were all issues pursued by Hoffenberg through the organisations that he headed or to which he was affiliated; these issues remain high on the medical, public and government agendas today.

A powerful, tall physique allowed him to excel in many sports in his younger days, whilst a towering intellect coupled with organisational flair, tenacity and charm enabled Hoffenberg to rise to high office. But the characteristics for which he will best be remembered by his colleagues and friends were his compassion, a gift for friendship, and his prodigious capacity for enjoyment which enhanced the lives of all who knew him. ■

Contents

- Port Elizabeth
- A lance corporal in North Africa and Italy
- A physician's focus on research
- Human rights in South Africa
- Hoffenberg banned
- Birmingham
- Wolfson College, Oxford
- Maintaining standards of medical practice
- The delivery of health services
- Medical ethics
- Medical activist
- The later years

**Published: January 2010 ISBN: 978 1 86016 366 1
Price: £20.00 UK, £22.00 overseas (inc post and packing)**



**Royal College
of Physicians**

10% discount for fellows and members

Quote the reference *Clinical Medicine* when making your order