

A new moral consensus is needed for medical decision making

Medical law in the UK has been influenced by ethical principles from various schools of thought. Society as a whole, and doctors in particular, need to make difficult choices regarding medical decisions, using their knowledge of law, medicine and ethics. This editorial is intended to equip the medical practitioner with this knowledge.

Laws vs morals

A law is a rule that we are bound to obey, as defined by legal institutions, such as legislatures and courts. A libertarian view advocates the 'minimum state' function for the law, stating that it should restrict itself to matters of 'protection against force, theft, fraud, enforcement of contracts...', but that 'any more extensive state will violate persons' rights not to be forced to certain things, and is unjustified' (Gavaghan, 2000). This concept has similarities with the harm principle, which states that the law should be used to prevent harm to others but should not infringe on people's freedoms and compromise their choices so long as they do not harm others. However, it can sometimes be difficult to judge where the balance between harm to others and preservation of civil liberties lies.

Law deals with must, i.e. it states what persons have to abide by. It therefore concerns itself with rules and enforces a minimum standard of behaviour – the 'at least' principle (Horner, 2003). On the other hand, morality is concerned with the should rather than the must, i.e. it sets standards that, in its view, persons should abide by but does not grant physical punishment if contravened. Morality calls upon people's own consciences to cause mental and spiritual retribution if its guidelines are not abided by. It also tries to inspire people to lead an ideal or aspirational life, rather than simply follow a minimum behavioural standard necessary for mutual co-habitation and interaction.

The problem is that while law is set in stone (e.g. statutes, legislatures), morality

is not. It refers to a set of values that are widely shared and relatively stable within a community, be that one of culture, race, religion, nationality or otherwise. If one accepts the notion that a particular morality refers to a set of values shared by a group of individuals who are collectively termed a community because they share these values, then it can be said that this community is defined by its core set of values. This then allows consideration of what this core set of values is, and whether they are universally accepted. Religions and secular ethical systems each have their own core set of values; the problem is that because morality is not absolute, it is open to differences of interpretation, and hence can never be legislated for adequately.

'Ethical plurality'

Owing to the vast differences in interpretation and emphasis of similar, but not identical, moral codes that exist in today's society, the concept of ethical pluralism has resulted. This is where no one moral code is deemed universal, but many different sets of morality are accepted and discussed. This meta-ethical approach to justify different solutions to moral dilemmas allows for different results of action without labelling one as right and all others as wrong. This ethical pluralism pervades most cultures today. The problem is that differing moral principles often collide (e.g. the rationale of pro-life that is anti-abortion and anti-euthanasia conflicts with the principle of autonomy).

The overall aims of law and morality are the same: e.g. goodness, justice, equality. In aspects of conduct that affect relationships and interactions, law and most conventional codes of morality broadly agree. However, personal lifestyle morality choices may be outside the remit of the law. The Wolfenden Report ruled in 1959 that law cannot intrude into all aspects of private morality (Committee on Homosexual Offences and Prostitution, 1957). However, it can be argued that when immorality pervades a society then

changing the law can serve to facilitate social reform. Abolition of slavery is a classic example.

Medical morality

Medical morality can be defined as the practice of medicine in a fashion believed by the practitioner to have the best chance of bringing health to the patient. Pellegrino (2001) has been a strong advocate for an internal morality for medicine; internal goods are those realized when trying to achieve the standard of excellence that is definitive of that practice – in the case of medicine, the health of the patient. External goods are subsidiary goals, e.g. financial rewards.

Pellegrino (2001) also defined 'good' at four different levels of importance:

1. The medical good (what the doctor thinks is best for the patient)
2. The patient's perception of the good (what the patient thinks is in his/her own best interests)
3. The good for society (what is good for humanity)
4. The spiritual good (what is best for the patient's soul).

It is interesting to note that the two latter goods are considered superior to the two former. In this hierarchy, Pellegrino is tending toward rationalizing medical morality with natural law. Examples of this would be blood transfusion for a Jehovah's witness, abortion of a genetically impaired fetus for a catholic, or discontinuation of life support for an orthodox jew. Pellegrino would argue that, although these acts are medically sound, they violate the patient's spiritual good and therefore should not occur.

A criticism of the hierarchical goods model is that the other three *prima facie* medical ethical principles of non-maleficence, autonomy and justice are not really considered. Also, the internal morality model makes no case for law to externally enforce principles on doctors and other health professionals. However, without this control on an internal sys-

tem it is possible that abuses can occur. Other authors have therefore suggested that law does have a role to enforce a common moral system of practice (Paul, 2000). However, a common moral system that can be applied with consensus does not exist as discussed earlier. Hence, the external model is of little practical value in legislating for medical moral dilemmas.

A more versatile model is the mixed internal/external approach. This recognizes that the secular moral pluralism that pervades the world today can lead to the implementation of morals in different ways leading to different outcomes (Beauchamp, 2001). This means that it is for each community to decide how to apply moral principles to any given situation, rather than leaving it to medical professionals themselves or approaching it from an outcome-based perspective. This gives freedom to groups to interpret their collective

morality for themselves and come to their own conclusions as to the validity of a course of action. However, it attaches no importance to principles like beneficence or justice unless the community itself chooses to give them importance. If the community concerned is performing immoral acts then the only safeguard on the system is that community.

Conclusions

The law should continue its role as the enforcer of minimum standards, should abide by the harm principle in its approach, and should stay out of issues that are clearly within the domain of private morality alone (e.g. sexual preferences, dietary restrictions). Existing laws such as the International Human Rights Law should be used to open discussion from a team of multidisciplinary professionals including doctors, scientists, lawyers, religious leaders and lay persons. These persons should

be chosen in proportions based upon the make-up of the specific society concerned, so as best to reflect the views of their specific communities.

Following such discussion, it is hoped that judges would apply the resulting guidelines in a consistent manner such that the general morality becomes shaped to fit with it. Further legislation is not necessary but rather an informed debate should lead to crystallization of interpretation of current law and act as a trend-setter for morality. As these discussions will be based upon moral principles and arguments, this completes the loop whereby morality leads to interpretation of law which then reflects itself in adapted morality. In this way, law keeps pace with society and society keeps pace with the law. **BJHM**

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KEY POINTS

- Medical law in the UK has been influenced by ethical principles from various schools of thought.
- The concept of ethical pluralism where no one moral code is deemed universal, but many different sets of morality are accepted and discussed applies to UK society today.
- The mixed internal/external model of medical morality recognizes that this ethical pluralism allows for different interpretation of morals in different ways leading to different outcomes.
- The law should continue to enforce minimum standards, but medical decision making requires a more complex interaction from a variety of multidisciplinary professionals that best reflects the make up of today's society.
- This will lead to a state where morality leads to interpretation of the law which then reflects itself in adapted morality.

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