BOOK REVIEW

THE CLINIC AND THE COURT: LAW, MEDICINE AND ANTHROPOLOGY

Ian Harper, Tobias Kelly and Akshay Khanna (eds)

Cambridge: Cambridge University Press, 2015. 320 pp. ISBN 978-1-107-07624-2. £70.

Both law and medicine have a deep, entrenched history across society, not to mention within the academy. Medical law has been firmly established in the legal academy for more than 30 years, but historically, like medicine, has been rather insular and self-referential in its study, viewing medical practice through the prism of what courts, legislatures and regulators say how it is, or at best, should be practised. But whereas in the past, law and medicine engaged in mutual deference, more recently, the relationship has changed whereby there is greater integration, and contestation, between them. For example, nowadays courts will readily challenge the clinical decision made by a doctor, and doctors will lobby the government for (or against) changes to their employment contracts. More broadly, doctors can no longer rely on a paternalistic paradigm where patients are expected to be passive and submissive. Doctors must operate in a framework where patients have rights and, in a more consumerist paradigm, participate in a healthcare system that is "patient-led." Indeed, law and medicine are caught in a tight embrace.

In recent years, intrepid social scientists (and a few adventurous lawyers and medics) have invited us to explore the intersections of medicine, law and society through analytical and ethnographic methods. These scholars view medicine and law not as bounded wholes, but as porous fields that continuously mutually influence each other. This is most apparent in the context of somatic harm (injury) and remedy. In a new edition to the Cambridge Studies in Law and Society series, Ian Harper, Tobias Kelly and Akshay Khanna have edited a delightful collection of essays that investigate how law and medicine play a central role in the "politics of harm." As they explain: "Law and medicine are two privileged sites for the recognition of pain and suffering and involve very particular ways of seeing and knowing" (p. 11). Clinicians work to diagnose and heal pain and suffering, but it is law that often is called upon to decide what counts as "necessary or unnecessary suffering, suffering that should be prevented or allowed to continue" (p. 3). And, when medicine is unable to heal, the law may be called upon to provide redress. Law and medicine surely differ in many ways, but both work within each other: medicine operates within law, as clinical, public health and institutional decisions and rules are shaped by their potential legal outcomes; and law operates within medicine, as courts and regulatory agencies can rely on clinical evidence to make (or influence) decisions, and law must respond to medical advances and new forms of diagnoses.

In 11 chapters organised into two parts (Part I: "Recognising Harm and Suffering" in six chapters; and Part II: "Understanding and Allocating Remedy" in five chapters), medical and legal anthropologists explore how law and medicine can be symbiotic or collaborative but also uneasy. Each can make decisions regarding what counts as injury and what might be the most

suitable forms of redress or remedy, and each converge and diverge in their responses to and understanding of harm and suffering. The purpose of this book is not only to discover the points of convergence and contradiction between law and medicine, but to unpack the anthropological dimension (particularly the political and cultural processes) of both fields and to see how law and medicine are central to the politics of harm. The purpose is also to explore whether there are "new spaces for political and moral action created by the intersection of law and medicine" (p. 7). As the editors argue: "The spaces between the clinic and the court create the possibility for new claims based on the sick or vulnerable body or the traumatised mind. Crucially, these claims cannot simply be reduced to the claims of legal subjects. […] Nor, though, can these claims be reduced to the biological substrate upon which medicine ekes out its interventions" (p. 20). I shall highlight several of the most interesting contributions.

In Chapter 1, Rebecca Marsland explores the ambiguity of harm caused by witchcraft in Kyela District, Tanzania. As she explains, both law and medicine have struggled to recognise magical harm. Under the law, strictly speaking, it is putative victims of witchcraft who are viewed as causing harm. In contrast to its citizens, the rational modern state, it seems, cannot be seen to regard witchcraft as real by directly validating victims' claims. Thus, an impasse has developed between those who consider themselves to be the victims of magical harm and the state authorities who nonetheless have a mandate to protect them from harm. Marsland discusses a local solution to this impasse in Kyela District in southwest Tanzania, where bylaws were proposed, officially under the guise of public health to prevent the spread of infectious disease at local funerals, but in practice to prevent witchcraft. As Marsland explains, the efficacy of the bylaws – never officially passed but still endorsed and enforced as such in the community – "lies in their ability to keep magical harm invisible within a state statute, while simultaneously being open to an alternative reading by the local population as being explicitly concerned with a local form of witchcraft and solve a matter that is of concern to both indigenous and official forms of public health" (p. 28). The bylaws, like witchcraft, do not officially exist, but exist in practice all same. They "solve a problem for both the state and the victims of witchcraft" (p. 42) by operating at a different ontological level. Because the bylaws target neither victims nor accused witches, but the entire community under the pretext of public health, "they make it almost impossible for this particular form of magical harm to take place" (p. 43).

In a well-written and fascinating Chapter 3, Tobias Kelly discusses the precise meanings and implications of the word 'torture' as a specific legal category of harm, and which stand at the uneasy interface of law and medicine. Kelly explains that it is not so much the quality or nature of pain that singles out torture survivors, but rather it is the *specific cause* of their pain, which must involve the complicity or acquiescence of a public official and must be carried out with specific intentions. The law demands certainty here, and as such it places reliance on "technologies of causal attribution in order to make causal connections visible, and distinguish between different forms of harm" (p. 73). This is a challenging demand for medicine. Focussing on medicolegal reports written as part of claims for asylum in the UK, Kelly explores how these reports are produced in order to document allegations of torture. He exposes the struggles that clinicians face in working through the very uncertain, often inconclusive physical marks on the body. The certainty craved by law rubs against the inherent uncertainty in the clinical

context. For Kelly, the legal definition of torture creates space for denying individual acts of torture. "In particular, the gap between provisional clinical claims about the causes of pain and suffering, and the legal demand for specific causal certainty creates the space for doubt to grow." Thus, "it is the tension between legal and clinical ways of understanding causation that produces the space for denial to take place" (p. 74).

Building on Kelly's chapter, in an excellent Chapter 5, Estelle d'Halluin discusses the evidentiary importance of the medical certificate in French asylum procedures. These certificates are written by a doctor or psychologist and attest to the comparability between the patient's history and his physical or psychic wounds. D'Halluin explains that in recent years, the body itself has become a legal resource for asylum seekers and undocumented migrants, in part due to stricter legal and administrative frameworks that question written and oral testimony asylum seekers produce. "The body becomes the site where the subject's truth is tested – or, rather, the site where it is tested by a third party, the doctor, who is supposed to be neutral and knowledgeable," she explains (p. 124). D'Halluin finds the production of medical certificates a form of medico-legal "local justice" that symbolises the balance clinicians try to achieve between their claims of objectivity and concerns of ethical commitment. Because the production of medical certificates does not follow a formal, written legal procedure, practices are heterogeneous, ranging from adherence to semi-flexible protocols to trust in face-to-face interactions. Not surprisingly, outcomes are uncertain.

In Chapter 6, Gethin Rees looks at the ways in which forensic medical practitioners (for e.g. sexual assault cases) in England, Wales and Canada perform their duties by focusing upon their use of the spaces of forensic medicine. According to Rees, analysis of medico-legal spatial constructions can inform us about the ways practitioners perform their work and the emphasis that they place on therapeutic and/or evidential aspects. Rees finds that these practitioners perform evidence gathering at the same time as they treat the complainant, "being medical and legal, therapeutic and evidential, and recognising and resolving harm simultaneously" (p. 142). Thus, rather than understanding the forensic mode as a monolithic category, Rees invites us to view it as a spectrum upon which practitioners position themselves, their work and their place through space and time. "At no point is the work ever wholly medical or legal, evidential or therapeutic, but always somewhere in between" (p. 157), thus illustrating how medicine and law in this context are especially co-dependent and require actors to comfortably move between the spaces and registers of each.

Chapter 7 opens Part II of the book, which signals a shift in focus to understanding and allocating remedies. João Biehl produces a finely written and deeply thought-provoking chapter about what he calls the "juridical hospital" and the "the judicialisation of health" – where ordinary Brazilians are realising access to healthcare through the courts, especially for prescribed drugs that are otherwise too expensive to access, and in the process are caught up in the pharmaceuticalisation of care and of public health (i.e. the right to health envisioned as a right to medicine). Biehl outlines how this litigation (based on the country's constitutional guarantee of "health") that forces the government to provide medicine to the poor has become an alternative route for Brazilians to access healthcare, which is now understood as access to

pharmaceuticals that are either on governmental drug formularies or are only available through the market. Through "ethnographic vignettes," Biehl shows us how the decentralisation of state authority has allowed for the "relations between individual bodies, political subjectivities, medical technologies and state institutions" to become "compellingly rearranged along this judicialised front" (p. 163). He urges readers "to consider how this new political phenomenon compels sick persons, laws, experts, officials and commodities to shuttle between the home, the hospital, public offices and the courtroom, remaking those spaces and themselves" (p. 169). More politically, he also urges us to consider how the judicialisation of health has become "a para-infrastructure in which various public and private health actors and sectors come into contact, face off and enact limited 'one by one' missions" (p. 186).

Overall, I thoroughly enjoyed reading this book. Though, as can be expected in an edited collection, some chapters read better (and were more enlightening) than others, without question, all scholars interested in the intersections of law, medicine and anthropology should seriously consider adding *The Clinic and the Court* to their collection. The Introduction and many of the chapters make for excellent course material and resources for scholarly research and writing. While I would have appreciated further elucidation from the editors regarding their captivating claim that there is potential for new spaces for political and moral action created by the intersection of law and medicine, this hardly rises to a fatal flaw. *The Clinic and the Court* offers rich ethnographic contributions that encourage novel ways of thinking about space and place within and between law and medicine.

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DOI: 10.2966/scrip.130216.228