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978-0-521-89693-1 - Autonomy, Informed Consent and Medical Law: A Relational Challenge

Alasdair Maclean

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Autonomy, Informed Consent and Medical Law

Alasdair Maclean analyses the ethical basis for consent to medical treatment, providing both an extensive reconsideration of the ethical issues and a detailed examination of English law. Importantly, the analysis is given a context by situating consent at the centre of the healthcare professional–patient relationship. This allows the development of a relational model that balances the agency of the two parties with their obligations that arise from that relationship. That relational model is then used to critique the current legal regulation of consent. To conclude, Alasdair Maclean considers the future development of the law and contrasts the model of relational consent with Neil Manson and Onora O’Neill’s recent proposal for a model of genuine consent.

Having qualified in medicine and worked clinically in both England and New Zealand, Alasdair Maclean studied law and became a lecturer in medical law at the University of Glasgow. He is now a senior lecturer at the University of Dundee.

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This series of books was founded by Cambridge University Press with Alexander McCall Smith as its first editor in 2003. It focuses on the law's complex and troubled relationship with medicine across both the developed and the developing world. In the past twenty years, we have seen in many countries increasing resort to the courts by dissatisfied patients and a growing use of the courts to attempt to resolve intractable ethical dilemmas. At the same time, legislatures across the world have struggled to address the questions posed by both the successes and the failures of modern medicine, while international organisations such as the WHO and UNESCO now regularly address issues of medical law.

It follows that we would expect ethical and policy questions to be integral to the analysis of the legal issues discussed in this series. The series responds to the high profile of medical law in universities, in legal and medical practice, as well as in public and political affairs. We seek to reflect the evidence that many major health-related policy debates in the UK, Europe and the international community over the past two decades have involved a strong medical law dimension. Organ retention, embryonic stem-cell research, physician-assisted suicide and the allocation of resources to fund healthcare are but a few examples among many. The emphasis of this series is thus on matters of public concern and/or practical significance. We look for books that could make a difference to the development of medical law and enhance the role of medico-legal debate in policy circles. That is not to say that we lack interest in the important theoretical dimensions of the subject, but we aim to ensure that theoretical debate is grounded in the realities of how the law does and should interact with medicine and healthcare.

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This book is dedicated to my mother
and the memory of my father.

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Fig 1 The process leading to consent

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Fig 2 Model of consent

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As this book goes to press the GMC has published new guidance on consent entitled 'Consent: Patients and doctors making decisions together' (2008). In it the GMC takes a partnership approach that bears some similarities to my model as described in this book.