Introduction

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How might an individual scholar generate and maintain a legacy in their field of study? We present this collection of chapters in tribute to Graeme Laurie’s extraordinary contribution to the field of medical jurisprudence, as well as to legal and interdisciplinary scholarship more generally and to the development of policy and practice in the UK and beyond. The aim of the volume is to animate and interrogate a concept that Graeme so often talks about – legacy – as a dimension of the study and practice of ‘medical jurisprudence’.

Graeme has often spoken about the importance of legacy in our individual and collective academic work and has forged a remarkable intellectual legacy of his own, notably through his work on genetic privacy, human tissue, information governance and the regulatory salience of the anthropological concept of liminality. These contributions can be traced

1 See, for example, Nayha Sethi, Graeme Laurie and Shawn Harmon, ‘International Academic Conferences: Significance and Legacy of the 13th World Congress of the International Association of Bioethics’ (2016) 16 Medical Law International 105, 106, in which the authors reflect on the 13th World Congress of the International Association of Bioethics (IAB 2016, which was hosted in Edinburgh) and write: ‘how do we generate and maintain legacy and help to keep communities consistently engaged over time?’ See also Graeme Laurie, ‘Pause for Reflection . . . and Respect’ (2015) 12 SCRIPTed: A Journal of Law, Technology and Society 82, 84, an editorial in which Graeme reflects on the Edinburgh Law School postgraduate student-run journal SCRIPTed, which he helped to found in 2004, and writes: ‘[i]t had not struck me until now, however, how much SCRIPTed is a legacy platform – with postgraduates passing the torch of responsibility and quality from one team to the next, and always in precarious circumstances of funding and the vagaries of the multiple demands of modern academic life’.

2 See, for example, Graeme Laurie, Genetic Privacy: A Challenge to Medico-legal Norms (Cambridge University Press 2002).

3 See, for example, Kenyon Mason and Graeme Laurie, ‘Consent or Property? Dealing with the Body and Its Parts in the Shadow of Bristol and Alder Hey’ (2001) 64 Modern Law Review 710.

4 See, for example, his influential work with the Scottish Government, Joined-Up Data for Better Decisions: Guiding Principles for Data Linkage (Scottish Government 2012).

5 See, for example, Graeme Laurie, ‘Liminality and the Limits of Law in Health Research Regulation: What Are We Missing in the Spaces in-Between?’ (2017) 25 Medical Law Review 47.
Through more personal legacies, too. When Graeme moved from the University of Glasgow to the University of Edinburgh in 1995 as a lecturer in law, having been supervised and mentored by the pioneering medical lawyer Professor Sheila McLean, he was immediately taken under the wing of Professor J Kenyon (Ken) Mason, Regius Professor of Forensic Medicine at Edinburgh 1973–85 and thereafter a valued Honorary Fellow in the School of Law. Ken Mason was figuratively and literally a towering figure in forensic medicine and medical jurisprudence, and he inspired in Graeme a strong sense of intellectual rigour, teaching excellence and legacy-formation. We see the legacy of Ken Mason throughout Edinburgh Law School, foremost through the research institute established and named in his honour in 2012, as well as in several of the courses he was instrumental in creating (such as ‘Fundamental Issues in Medical Jurisprudence’) and co-creating with Graeme (such as ‘Contemporary Issues in Medical Jurisprudence’, which enables groups of students to design and lead seminars on topical medical law and ethics issues) and through the next generation of scholars he influenced, including Graeme and many of the contributors to this volume.

What does legacy mean, though? – to ask a type of question that would remind many of Ken Mason. We may start with a look at the dictionary. According to the Cambridge Dictionary, legacy is ‘something that is a part of your history or that remains from an earlier time’, and one example provided is that “[t]he Greeks have a rich legacy of literature”. This provides a useful starting point. In one sense, it seems that legacy speaks to what it means to be human and a member of society by way of leaving a lasting mark. Second, while it elucidates what we contribute individually, it also elucidates what we contribute as connected members in a community.

6 For an appreciation of Sheila McLean’s work, see Pamela Ferguson and Graeme Laurie (eds), Inspiring a Medico-legal Revolution: Essays in Honour of Sheila McLean (Routledge 2015).
8 Graeme himself has referred to Contemporary Issues in Medical Jurisprudence as a ‘legacy’ of his teaching: a course largely of his design that empowers students to flourish as independent researchers and seminar leaders.
10 Ibid.
These ideas resonate with our collective efforts as academics to leave something behind (intellectually and otherwise) for others to take up. We aspire, as Eric Meslin writes, to have ‘informed new ways of knowing . . . [and to have] disrupted (positively) the ways of knowing that had been used before’; in so doing, we might reveal – and shape, even in some small way – what kind of world we want to live in and leave to future generations. In this understanding, legacy, as ‘the central arc that connects the past, present and future’, is the linked chain of experiences shared, decisions made and actions taken that marks our collective bond, connecting us to that which has come before us and what may, through our efforts exerted in the past and present, come after us. In other words, legacy enables us, for Mark Taylor and David Townend, ‘to reach for [ideas] better suited to our shared future’. However, as Jean McHale underlines, it is not just that we can map the future but that we need to do so, charting, through that endeavour, some known pathways but also, notes Fabiana Arzuaga, ‘pathways into the unknown’, be it in our personal or professional capacity. Moreover, thinking in particular of the role of legacy in law, policy and regulation, ‘part of that creation [of pathways] may mean (or demand) a fundamental re-visioning of the legal setting itself, its instruments, institutions, and regulatory or governance mechanisms’; which means, in turn, that ‘[w]e must be prepared to ask whether existing systems (and their assumptions and values) are capable of responding to the demands being made of them and of delivering the future that we want’. Richard Ashcroft underlines the non-linear relationship among past, present and future in thinking about legacy because ‘the scope of a legacy can change: the present looks back to the past and downplays an issue that might have been important to the previous generation, and introduces elements of the past that had previously been neglected as important after all’. Fundamentally, though, as scholars, we reap what others have sown. Our ideas and our outputs are a reflection, in part, of those

11 Chapter 6.
12 Chapter 8.
13 Chapter 17.
14 Chapter 14.
15 Chapter 15.
17 Chapter 2.
contributions made by academics of times present and past. Likewise, we might find that law, more generally, is a reflection of societal norms and events – be they enduring or recently formed – that shape our conduct as citizens in a polity.

How can these dimensions of legacy catalyse transformative change in medical jurisprudence? More specifically, what fruits can we reap from the intellectual efforts of Graeme Laurie? What can we learn from his scholarship and wider contributions as a public intellectual who sought at times to break new ground and depart from the burdens of legacy while appreciating, at the same time, lessons of value produced by both scholars and events of the past?

Graeme Laurie: Dimensions of a Legacy

In this volume, many of Graeme’s dearest colleagues and academic friends reflect on these ideas in a range of fields, and from a variety of perspectives and disciplines, yet connected in some way to the study and practice of ‘medical jurisprudence’ (the meaning of which we return to a little further on). Through synthesis of and further reflection on their findings, we seek as editors in this chapter to construct the profile of the concept of legacy as a lens through which the evolution of medical jurisprudence can be analysed and assessed. As we indicated earlier, the role of legacy in medical jurisprudence may be seen in various lights, both positive and negative. Yet all of its dimensions are necessary fully to round out the nature and trajectory of the field – in terms of what it was, what it is and where it is going – and to appreciate how Graeme’s own contributions have given shape to it and charted a path for others to follow.

We consider that Graeme’s legacy to law and medical jurisprudence takes three forms. First, it takes the form of the intellectual legacy that his scholarship contributes to the advancement of the field. We return to his specific contributions in more detail later in this introduction, but, in a general sense, we were struck by how many contributors to this volume emphasised Graeme’s affinity for and advancement of ideas; captured by Annie Sorbie as ‘his almost superhuman ability to detect and tease out the kernel of an idea’. For Sharon Cowan, Emily Postan and Nayha Sethi, this is evidenced most strongly through Graeme’s deployment of evocative and often highly visual concepts that provide centres of critical and

18 Chapter 4.
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interpretive gravity in his own work and, subsequently, in that of others—concepts such as privacy as a state of separateness; legal foresighting for new and emerging technologies; liminality and the experience of transition; and reflexive governance in biobanking.

The sheer range of conceptual contributions that Graeme has produced to date—an ‘immense’ personal intellectual legacy that has never ‘sacrificed depth for breadth’, as Margot Brazier and Alexandra Mullock put it—demonstrates his openness not just to ideas but to new ideas; it demonstrates, in other words, his innate intellectual curiosity. But Cowan, Postan and Sethi also identify another reason why this work appeals to Graeme: ‘[d]espite the law’s association with rules and bright lines, the interpretation of open-ended and pliable concepts is a crucial part of permitting the law to be responsive and to evolve—a facility that is particularly important where its objects are rapidly developing medical practices or biotechnologies.’

Importantly, as Roger Brownsword emphasises, ‘Graeme has invited readers to think outside the black-letter box of medical law.’ We understand this dimension of his legacy beyond law in two senses. At one level, Graeme’s pursuit of ‘concept-driven inquiries’ is progressed through ‘interdisciplinary thinking . . . [exemplifying] the value of looking to other disciplines for theoretical tools and framing devices’. For Bartha Knoppers, Ruth Chadwick and Michael Beauvais, Graeme’s interdisciplinary approach is characterised by his ‘sustained efforts to bring ethical considerations to the fore of biomedical research and to ensure the development of agile, fit-for-purpose governance’, reflecting a ‘reciprocal relationship [across disciplines]. Indeed, the silence of law at the forefront of biomedical science is an invitation for creative policymaking that is embedded within the scientific endeavour itself.’

In another sense, however, Graeme’s work journeys to ‘areas where the law does not reach’; for example, ‘thinking about how ethical and other normative frameworks can inform the governance and practices of medicine and the biosciences’. Graeme’s Wellcome-funded Liminal Spaces project (‘Confronting the liminal spaces of health research

19 Chapter 1.
20 Chapter 10.
21 Chapter 1.
22 Chapter 3.
23 Chapter 1 (emphasis added).
24 Chapter 8.
25 Chapter 1.
regulation’), which ran from 2014 to 2021 and which he considers one of his milestone career accomplishments, exemplifies his calling into question the conventional categories of law, especially to underline what then gets lost ‘in-between’. This evidences, for Shawn Harmon, that while Graeme ‘has been and remains concerned with what can and ought to guide actors in the health-care setting, and how law might be deployed to assist in this regard’, he also creates ‘action spaces that are encouraging, sensible and comprehensible, all within environments where the law might be quite limited in what it can accomplish’.26 As Graeme himself expressed in his monograph Genetic Privacy, ‘[l]aw has its limits, and an examination of these is as much a part of the search for an answer as is a thorough examination of any statute or body of case-law . . . ultimately it is in the exploration of the limits of legal intervention that the symbiosis of privacy and law will be found’.27

Those who have worked with or been supervised or taught by Graeme will recall his familiar expression of ‘recognising the limits of law’. This is not at all a statement of lack of interest in the law or a diminishment of law’s power. Rather, it stems from a deep appreciation of the awesome-ness of law. Calvin Wai-Loon Ho and Justin Yuk Cheong Wong point to this vital qualifier in their observation that Graeme’s openness to the world beyond law does not suggest his

\[\ldots\] lack of confidence in the law[;] such a proposition could not be further from the truth. Rather than draw on the analytic of alterity to critique the ‘other’, Graeme has instead turned the critical lens inward and demonstrated to us all what the law could and should be, particularly for those whose life and work are deeply enmeshed with it. Far from denigrating the relevance of law to health-related research, this deeply introspective approach reveals to us how the zest of law must itself be sustained.28

Crucially, then, as this chapter and those that follow will demonstrate, legacy can be both an advantage and a potential burden – and sometimes it can be both simultaneously: it can generate a platform from which innovative thinking and policy can develop, and it can also generate a stasis that constrains or encumbers progress (or seeds the beginnings of dangerous or unjust practices). In that light, another defining characteristic of Graeme’s intellectual legacy is his ability to navigate and negotiate the obstacles that legacy can produce.

26 Chapter 18.
27 Laurie (n 2) 27.
28 Chapter 7.
A second form that Graeme’s legacy to law and medical jurisprudence takes is his impact legacy, particularly through his work in knowledge exchange and co-creation at the highest levels of policy and practice. If you ask Graeme what professors should do, he typically answers: ‘they should profess’. Nevertheless, Graeme’s own work is not confined to the ivory tower; it has been coloured by his consistent engagement ‘with the messiness of the real world’. As Sorbie writes, ‘[i]f legacy is understood not only as something that connects us to what has gone before and enables us to move forward with the benefit of that wisdom but also as a means of community building and facilitating future progress and innovation, then this is indeed what Graeme has accomplished’.29 In that light, Graeme’s work can be

… unified by a number of interrelated objectives, which, stated very broadly, are to improve the behaviour of life science innovators, the performance of health system regulators, and the outcomes of life science and health research and medical interventions. And, finally, it can be said to have at its centre the empowerment of people and communities, particularly those who have traditionally been silenced or pushed to the peripheries of decision-making.30

Finally, third, Graeme has produced an extraordinary personal legacy – as mentor, project leader, supervisor and teacher, and exemplified by his belief in and commitment to creating space for others to conceive and generate their own legacies. All who know him would attest that Graeme is studiously devoid of affectation, pretence or haughty seniority. From undergraduates to postdoctoral researchers, from new hires to old(er) hands: Graeme treats all equally and with respect, as a peer and as a person-in-full, with views that deserve to be recognised and valorised, trusting the experience and wisdom of others to have a role in decision-making within the multidisciplinary field that is ‘medical jurisprudence’. Connecting personal legacy back to intellectual legacy, Eric Meslin observes astutely that

… whereas the first few years of Graeme’s publication record are filled primarily with single-authored papers, the later years include more jointly authored works, as befits a senior scholar with an interest in and commitment to mentoring, but also one who has recognised that one of the most energising (and fruitful) ways of exploring complex topics at the intersection of law, medicine and science is to have co-authors from these fields.31

29 Chapter 4.
30 Chapter 18.
31 Chapter 6.
In light of this, it is not surprising to see that his long-standing and focused attention in his own research has been on ‘understanding and vindicating the interests of those actors who have habitually been left out of governance and policymaking: participants and publics’. 32 Graeme’s alertness to providing space extends also, as another dimension of his impact legacy, to a ‘persistent concern for understanding and vindicating the interests of those actors who have habitually been left out of governance and policy-making: participants and publics’. 33 In his extended work with UK Biobank, the Scottish Health Informatics Programme and the Scottish Government, among other bodies, Graeme has consistently advocated for furthering the voices of publics – engaging (with) and respecting them – and feeding those voices coherently into policy-making and governance processes to make health policy not only more informed but also more legitimate and more accountable to society. That is a profound part of his legacy because it is a profound part of Graeme himself.

‘Medical Jurisprudence’

As Richard Ashcroft notes, ‘[t]he field of law and medical ethics is now flourishing all around the (academic) world. But it is salutary to recall that this is a recent development, and that even now it is a vexed question to define its scope and principles.’ 34 In that spirit, and before looking in more depth at the concept of legacy, we should also briefly dissect the meaning of ‘medical jurisprudence’ and consider the legacy of this term as compared to its close semantic siblings such as ‘medical law’, ‘health law’ and ‘health-care law’.

Ashcroft further argues that ‘[n]omenclature matters; naming tells us what is to be studied and what is of interest. It can also imply what is to be left out.’ 35 In that light, he asks the following critical questions and explains why it is important that we ask them:

Are we looking at ‘law and medical ethics’ or ‘medical law and ethics’ or ‘medical law’ or ‘health-care law’ or ‘health law’ or ‘medical jurisprudence’? While to a great extent these pick out significant areas of overlap, the differences matter. For are we primarily concerned with what medical practitioners do, and how this is supervised and regulated by the law? Or

32 Ibid.
33 Chapter 18.
34 Chapter 2.
35 Ibid.
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are we mainly concerned with the legal framework within which professional self-governance through ‘professional ethics’ operates? Perhaps we are most concerned with how the law is used to protect and promote health, or with the legal framework of the public delivery of health services.36

The University of Edinburgh has long embraced the term ‘medical jurisprudence’, stemming from the Chair of Medical Jurisprudence, which has existed at the University since 1807 – initially in the Faculty of Law and then the Faculty of Medicine, before returning to the Law School in 2005 when Graeme accepted it. The ‘Medical’ dimension of the Chair thus has an institutional as well as a clinical legacy at Edinburgh, itself an institution long associated with esteemed medical education. But we might also note Ashcroft’s caution that ‘the relative dominance of the medical forms of names of the field (medical law, medical ethics, medical jurisprudence, medical regulation . . . ) is broadly borne out by the relative dominance of the concerns of the medical profession in what is discussed’.37

‘Jurisprudence’ is, according to the Cambridge Dictionary, ‘the study of law and the principles on which law is based’.38 This suggests a wider term than ‘law’ per se, which is itself notoriously difficult to pin down but, depending on one’s philosophical persuasion, might be somewhat safely defined as a system of rules of a particular country, group or area of activity. ‘Jurisprudence’ suggests something more scholarly, austere and quasi-theological. Even if so, we do not think that the term is innately or significantly divergent from its semantic siblings. True, it may be that ‘health law’ is more encompassing than ‘medical law’ or ‘medical jurisprudence’, if only because health is a broader term that takes us beyond the clinical context, but this should not be treated as an impermeable division. After all, Graeme, as Chair of Medical Jurisprudence, regularly progressed the law and law’s underlying principles in areas well beyond the doctor–patient relationship, the hospital, or what we might otherwise associate with law and the treatment of illness and injuries. His work also reflects Ashcroft’s observation that there are ‘two ways for “medical law” to be “medical”: it can be “medical law” because it focuses on medical practice (however broadly drawn); but it can also be “medical law” because it focuses on the health impacts of law’.39

36 Ibid.
37 Ibid.
38 See n 9 (emphasis added).
39 Chapter 2.
Beyond our claim that medical jurisprudence can be seen as closely related to—and in harmony with—other terms used to demarcate this field of ‘law and health’ (as the chapters in this volume evidence rather convincingly), it is particularly important to underline that medical jurisprudence has never been a purely legal domain; it ‘should be more than a manual of time-honoured precedents and principles’.\(^{40}\) For example, work from José Miola,\(^{41}\) among others, has shown that while medical jurisprudence is a field (and practice) that has not always engaged well with other domains, foremost ethics,\(^{42}\) it necessarily must (and must do so faithfully) if it is to be seen as coherent and regulating well—that is, robustly and legitimately—the practices of health care and health research. In other words, ‘lawyers will accept that it makes no sense to study medical law without also taking seriously the application of medical ethics, and that medical jurisprudence needs to set medical law in its social, political and economic context’.\(^{43}\) Perhaps more than other cognate areas, medical jurisprudence needs this engagement with ethics (and, we would add, human rights) for the very reason that those caring for and interacting with others—health professionals, researchers and so on—predominate in this field and do so in ways that are often more intimate and more pronounced than in many other areas of law.

This engagement with and connection to other areas is not limited to ethics, though that is, perhaps unsurprisingly, the most significant other field to which medical jurisprudence is bonded.\(^{44}\) Graeme’s work demonstrates how a core ‘legacy’ component of medical jurisprudence is its disciplinary and methodological openness to fields beyond (applied) ethics, too, such as life science and medicine, as well as to the social sciences, including sociology, politics and anthropology. Of course, medical jurisprudence’s ‘bread-and-butter’ will always be astute commentary on developments in case law and statutes. But in recent years, we have also seen scholars—foremost Graeme, we submit—who harness concepts and research findings from non-legal disciplines and apply them to make better sense of developments in science, medicine and health.

\(^{40}\) Chapter 3.

\(^{41}\) José Miola, Medical Ethics and Medical Law: A Symbiotic Relationship (Hart 2007).

\(^{42}\) And, to be fair, few other areas of law have successfully achieved this either.

\(^{43}\) Chapter 3.

\(^{44}\) We note that the subject area in Edinburgh Law School is called ‘Medical Law and Ethics’, which is also the name of the associated LLM programme. It would be hard (even if interesting) to imagine other cognate legal fields taking the same approach, be it ‘EU Law and Ethics’ or otherwise.