

## Health and Human Rights

**Edited by Rebecca J Cook and Charles G Ngwena**

Ashgate Publishing 2007, 605 pages with index, ISBN-978-0-7546-2618-3

The success of an edited volume such as this, at a time when its articles are much more readily accessible electronically, must depend on the quality of selections. The editors claim to have selected published English-language essays on the basis of criteria emphasising analytical depth and theoretical insights, generalisability and potential impact on subsequent public and academic debates on health and human rights. The editors also sought coherence among the selected articles in six conceptual areas: (I) understanding the determinants of health; (II) applications of human rights to promote health; (III) applications of human rights to promote self-determination in health; (IV) role of the courts in determining access to health services; (V) perspectives and methodologies; and (VI) globalised dimensions of health and human rights.

Gwatkin, Bhuiya and Victoria open Part I with a valuable survey of practical options to make health systems more equitable. They take their key from the inverse care law 'that the availability of good medical care tends to vary inversely with the need for it in the population served'. Options they identify include improved means of identifying poor individuals; conditional cash transfers to them; government funding of NGOs with pro-poor performance indicators; and empowering coalitions of the poor to create their own solutions and hold providers accountable. Doyal, in investigating gender issues in health policy, particularly focuses on maternal access to high-quality reproductive health care and strategies for combating the role of unemployment in male mental illness and family violence. Naylor, in exploring sexual violence in the context of HIV/AIDS in southern Africa, argues for a policy movement towards disclosure in safety, enhancing female educational opportunities and female-controlled contraception. Narrain's investigation of 'queer' rights under emergent aggressive Hindu nationalism in India, particularly in the light of the definition of 'carnal intercourse' in s 337 of the 1860 Macaulay-drafted Indian Penal Code, was highly insightful. Burris's excellent study of disease stigma in the US health-care system builds on Goffman's early analysis of 'spoiled identity' to contribute towards a jurisprudence, taxonomy and epidemiology of human rights dignity violations.

Part II begins with Yamin's case study of Peruvian NGOs' economic, social and cultural human rights techniques of using data and indicators in documentation,

court-focused enforceability, advocacy and fostering participation and alliances. She concludes that as long as it remains acceptable for policy makers in the developed north (the United States in particular) to require the poorer nations to prioritise paying off debts and produce crops for restricted global markets, purchase armaments and run aid programs that punish termination of pregnancy, the suffering of much of the world's poor will remain merely an 'exotic spectacle' at the periphery of trade negotiations. London studies the role of human rights in HIV/AIDS policy in South Africa. Kelly studies the problems of HIV/AIDS created by polygyny or concurrent sexual networks within marriage between multiple wives and their husband, as well as extra-marital contacts of spouses. Kirby explores ways in which laws can create greater access for HIV/AIDS sufferers to antiretroviral treatments. Hunt and Mesquita examine how international human rights law can assist people with mental disabilities, particularly through national commissions and international treaties. Gable, Vasquez, Gostin and Jimenez examine how the human rights protections of persons involuntarily admitted to psychiatric institutions in the Americas can be enhanced.

Nelson opens Part III with an analysis of decision making in pregnancy (specifically, pre-natal testing) from the point of view of an expressive theory of choice. Fegan and Rebouche study the jurisprudential problems associated with Northern Ireland's abortion laws, particularly given the silencing of pro-choice voices in the policy debates. Ngwena studies access to legal abortion in Africa, concluding that with few exceptions African abortion regimes are characterised by indifference rather than social justice, compassion and care. Dickens and Cook present a brief overview of the legal issues associated with adolescents (10–19 years old) and consent to medical treatment.

Part IV commences with Syrett's paper considering the role of the courts in England, Canada and South Africa upon questions of allocation of scarce health-care resources. The more positive role of the judiciary displayed in South Africa is highlighted against the other jurisdictions, where a predominance of administrative norms creates a more deferential attitude to the state. Cook and Ngwena then examine three legal principles that are central to advancing women's sexual and reproductive health: (1) a legal requirement for care based on evidence rather than religious or corporate ideology; (2) clear and transparent legal guidance; and (3) laws promoting fairness in access. Flood studies in particular the *Chaoulli v Quebec* decision, where Canada's Supreme Court held that the nation's *Charter of Rights and Freedoms* could be used by corporate entities and governments driven by market fundamentalist ideology to assist respective short-term shareholder and political interests in overturning state legislation prohibiting private health insurance — without the need for a referendum or other democratic mandate. Manning and

Paterson examine policy issues in relation to health-care rationing in New Zealand. They conclude that ageing citizens are more concerned about access than quality of care; that refusal of care may amount to disability discrimination; and that the government has been extremely reticent in legislating guarantees of access to health services. Forman's study of the judiciary and South African HIV/AIDS policy concludes that the relative influence of human rights is strongly contingent on their legal entrenchment, political recognition, judicial enabling and capacity for social claim. MacDowell presents a case study of *amparo* actions in Venezuela in relation to access to HIV/AIDS treatments, these being writ petitions for judicial rulings restituting a violated constitutional human right or preventing an imminent threat to its violation.

Personally, I found that Part V and VI contained the most interesting pieces, a few of which I had not read previously. Part V begins with Oppenheimer, Bayer and Colgrove's historical analysis of the conceptual development of the human right to health. They conclude that 'one of the most enduring contributions of the human rights perspective on public health has been its illumination of the ways in which stigmatisation and discrimination have been pathogenic forces'. Sen's study of the concept of health equity rejects its limitation to distribution of health care and supports a multidimensional view and William's position of a quality adjusted life expectancy at birth. Braveman and Gruskin discuss five ways in which institutions can deal with poverty and health in the context of equity and human rights: (1) systematic institutionalisation of those norms; (2) strengthening those functions that create the basic preconditions for health; (3) implementing equitable health-care financing; (4) ensuring that health services respond effectively to the major causes of preventable ill health among the poor and disadvantaged; and (5) monitoring and taking action to prevent abuses of equity and human rights in all social areas that impact on health. Gostin and Powers examine to what extent the mission of public health is intimately tied up with the concept of social justice. Daniels et al discuss a benchmark scoring system for evaluating fairness in health-care reforms. In applying these to Columbia, Mexico, Pakistan and Thailand, they find some proposed reforms insufficiently detailed; problematic assumptions about the achievement of goals; and problems with the empirical assessment of implementation success. Freedman investigates how human rights can provide practical policy reform options for improving maternal mortality outcomes in health care.

Part VI includes articles by Buchanan and Decamp on achieving concrete institutional responsibilities for global health and by Taylor on how the need for new governance structures dealing with global health is creating pressures on international law. Beyer studies Shan women and the sex industry in Southeast Asia from a human rights perspective. Chapman studies the problem of how to make

international trade and intellectual property norms respect international human rights. Lazzarini examine legal options under the World Trade Organisation's Trade Related Intellectual Property (TRIPS) agreement for enhancing access to pharmaceuticals.

This edited volume includes many seminal contributions to the protracted struggle whereby academics and international civil society activists have appealed to norms of constitutional and international human rights law to wrest global and domestic health policy development from the profit-focused concerns of that alliance of government and globalised industry now widely known as the Market State. The collection obviously reflects, as is natural and appropriate, the advocacy agenda of the authors, particularly with its emphasis on HIV/AIDS issues. It might have been improved, however (had space permitted), by the inclusion of selections referring to the issues for nurses, the conduct of medical research and end-of-life care. Such topics, however, are covered by other edited collections in this series of the International Library of Medicine, Ethics and Law (Michael Freeman, series editor). As a minor criticism, the pieces are reproduced in their original published type font, which in some instances is so small as to make reading difficult without lens assistance.

This collection will be of great benefit to students in health law and public policy courses in orienting themselves in what is now a voluminous but exciting and worthwhile field of literature. ●

Thomas A Faunce  
Associate Professor  
Australian National University  
Medical School and College of Law  
Canberra