
Reflection – Learning from *Unspeakable Subjects*

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It has been my extraordinary good fortune to have worked with Nicola Lacey for many years, and to be able to count her as a dear friend. To say that I have learned a great deal as a result would be the most enormous understatement. Quite simply, through Nicola's work and through her example, I have learned how to think and write critically about the law.

*Unspeakable Subjects*¹ is a magnificent book, no less relevant today than it was 20 years ago. In particular, the idea that the apparently neutral and objective language of law might not be all that it seems, and that we should look behind the law's image of itself in order to uncover what it might be obscuring, has had deep resonance for me over the years.

In my field of medical ethics and law, we encounter an individualistic, autonomous patient who has much in common with the reasonable man of law. He enters the doctor-patient encounter as a rational, choosing subject, making a self-interested decision in the light of his own values and the information provided to him by his doctor. He isn't frightened and intimidated, nor is he especially concerned with how his illness might affect others.

The reality of medical treatment is very different, of course. Most patients are anxious, and many are frightened. It is hard to feel confident and assertive in a flimsy hospital gown. Patients worry about their loved ones, and how they are going to cope. Far from choosing from a menu of options, patients often feel as though they have few choices. Very elderly or disabled patients may be wholly dependent upon others to navigate health services on their behalf. In short, the experience of being a patient is radically at odds with the concept of autonomy so beloved of liberal legal theorists and medical ethicists alike.

Patients are also missing from conventional accounts of medical progress. For many commentators, IVF started with the birth of Louise Brown on 25 July 1978. What this misses out is that, before Lesley Brown's successful pregnancy, there had been 457 unsuccessful IVF cycles in 282 women. It is difficult to imagine what it must have been like to undergo IVF when it had never previously worked. What were those 282 women told about the procedure's success rates? Did they know that no child had ever been born through IVF?

Of course, the pioneers of IVF, Patrick Steptoe and Bob Edwards, are rightly remembered for changing the lives of millions for the better (though it is important also not to forget Jean Purdy, co-author on 26 of their academic papers and the first person in the world to recognise and describe the formation of the early human blastocyst). But these 282 pre-1978 patients were also pioneers, whose contribution to the development of safe and effective fertility treatment, now responsible for the birth of eight million children worldwide, remains almost completely hidden from view.

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¹ Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Oxford: Hart Publishing, 1998).

Another apparently neutral concept commonly invoked in medical ethics and law is that of ‘harm’. When the courts need to make a decision over whether a particular treatment should be provided, it is not uncommon for them to draw up a ‘balance sheet’ of harms and benefits. Deciding what counts as a ‘harm’ is therefore crucial, but once again, it may not be as objective and neutral as it first appears.

In medicalised childbirth, the damage that routine interventions, like episiotomy, cause to women’s bodies has become invisible as a harm. Respected bioethicists have claimed that giving birth at home is like ‘driving without a seatbelt’, and that women should be under a duty to undergo a caesarean section as part of their duty of ‘easy rescue’. To claim that non-consensual surgery is ‘easy’ is possible because assumptions about maternal self-sacrifice are so deeply ingrained that being cut open becomes no sacrifice at all.

The lesson that I have learned from *Unspeakable Subjects*, which I hope I pass on to at least a few students each year, is that it is always worth asking what we might miss by accepting law’s apparent neutrality at face value. Whose experiences are absent, for example? And what agendas are obscured? Much has changed in the last 20 years, but the insight from *Unspeakable Subjects* that ‘in so far as law is successful in maintaining its self-image as a rational enterprise, this is because the emotional and affective aspects of legal practice are systematically repressed in orthodox representations’² continues – slightly depressingly – to hit the nail very precisely on its head.

² Ibid, 12.
