

# The Impact of the Criminal Process on Health Care Ethics and Practice

## AHRC Project

News and Events – July 2009

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### News from the project

#### *April First!*

Just kidding. On 1<sup>st</sup> April, we hosted a well-attended seminar in Manchester under the heading 'Regulating Scientific Developments'. The seminar kicked off with a wide-ranging paper by our own Amel Alghrani and Sarah Chan (of iSEI), entitled 'Regulating Science'. This was followed by a panel discussion on the theme 'Scientists In The Dock', chaired by Margot Brazier, with panellists Hugh Whittall, Peter Furness, and Mark Wilkinson each giving fascinating insights from their own particular perspective. The afternoon sessions began with a second panel discussion, 'Beyond the Pale: Reproductive Crimes', with panellists Derek Morgan, Jean McHale and David Gurnham, and chaired by Becki Bennett. Typical of the day, some quite provocative positions were presented, and heated debate ensued. The seminar ended with a case study on ectogenesis presented and chaired (with characteristic aplomb) by Hazel Biggs.

#### Seminar for legal professionals

On 11<sup>th</sup> May we held a seminar to discuss our research so far and took the opportunity to seek information and opinion from a range of lawyers involved in medical litigation and/or criminal proceedings for medical malpractice. We were delighted to welcome representatives from the Crown Prosecution Service, the medical defence organisations, and solicitors working both for claimants and defendants in clinical negligence claims. After an Introduction to the Project from Margot Brazier, Danielle Griffiths spoke about her research in the coroners' courts. Lively discussion followed and continued into the Workshops in the afternoon. The day ended with a presentation from Alex Mullock and Suzanne Ost on the Decision by the DPP not to prosecute the parents or a family friend of Daniel James in relation to their assistance in his suicide in the Swiss clinic, *Dignitas*. The discussion in the seminar took place under Chatham House Rules. The contributions of the professionals who joined us on 11<sup>th</sup> May helped us significantly in understanding key issues in our research and in refining the direction of our work.

#### Medical students on loan!

11<sup>th</sup> May also saw fourth-year medical students James Goodman and Ashleigh Longworth join us for just over three months to work on their Medical School Project Options. James is exploring the case of Dr Michael Munro who was summoned to appear before the GMC and alleged to have hastened the deaths of two neonates after intensive care was withdrawn from both babies. Ashleigh has looked at what medical students might know or need to know about the growing trend to prosecute doctors for fatal medical errors. Both, we hope, will be able to adapt their dissertations for publication, and it has been a pleasure to work with two of 'Tomorrow's Doctors'.

#### Empirical studies

Much was achieved last year within the empirical studies in terms of gaining the cooperation of a number of organisations, including a number of Coroner's Offices in the North West, solicitors, AvMA, MDU and the Greater Manchester Police. This year we have mainly been consolidating these links and continuing the interviews, archive searches and observations. We have been mainly focusing on completing our work within the coroners' courts in Manchester, Liverpool and Stockport, conducting random and non-random archive searches of Inquest files and observing relevant Inquests. This work has allowed us to explore coronial, police and CPS decision-making in cases of fatal medical error. We have also gained the cooperation of other coroners outside of the North West, who have kindly agreed to take part in interviews. We hope such interviews will give us a more national picture of the Inquest system and medical deaths.

Other empirical work includes following up our work with the Greater Manchester Police, analysing the cases of medical error that they have investigated over the past 10 years. We are also hoping to extend our survey in order to send it out to other relevant groups of solicitors. Finally, we are in the process of completing research interviews with the numerous groups who have agreed to work with us including AvMA, medical experts, lawyers and bereavement officers at local NHS trusts. We have recently resubmitted our research request to the CPS and are awaiting their response.

### **New Zealand research trip**

Danielle and Amel recently visited New Zealand so as to undertake a comparative analysis on the role of the criminal process in medicine. In Auckland they visited Professor Alan Merry, a senior anaesthetist and member of the project management board who, together with surgeon Ross Blair, formed a highly effective coalition group in the mid '90s (New Zealand Medical Law Reform Group) which campaigned vociferously against the previous law in New Zealand. Danielle and Amel then travelled to Wellington, where they met with the Health Disability Commissioner, Ron Patterson, and lawyers Bruce Corkhill QC and Chris Hodson QC. They also met with Chief Executive of the Medical Council of New Zealand, Philip Pigou. Lastly, they travelled to Dunedin where they met with Professors Peter Skegg and Kevin Dawkins. Overall, the interviews were extremely informative and the research trip very successful. Danielle and Amel will be writing up a comparative of the New Zealand system and what lessons can be learnt in the UK.

### **PhD students**

The early stage of Alex Mullock's research focused on considering whether the common law defence of necessity might have a role in the context of medically assisted dying. The research has focused on this debate, and also the role of necessity in the legalisation of assisted dying in the Netherlands, leading to her suggestion that the justificatory principles underpinning necessity might be viewed as an extension to those underpinning the doctrine of double effect with respect to the special defence for doctors treating patients at the very end of life. She presented a paper entitled 'Should Necessity Be the Midwife to Voluntary Euthanasia?' at the Socio-Legal Studies Association (SLSA) conference in April. Subsequently, Alex has been following the recent developments in the law on assisted suicide resulting from the high profile "suicide tourism" cases involving Debbie Purdy and Daniel James. In particular, she has focused on prosecution policy on this issue and the public statement made by the DPP explaining the reasons for not prosecuting in the James case. She has recently completed a Commentary on the DPP's statement for the *Medical Law Review*.

In the second semester of her PhD, Melinee focused on the French Criminal Law system and the role of Criminal Law. She looked at the role, nature and functions of the Criminal Law system in France as well as the way Criminal Law is used in Public Health scandals and the relationship between the State and the judiciary. Melinee submitted to her supervisors Margot Brazier and Anne-Maree Farrell a research proposal for her PhD as well as a plan for her thesis and a research timetable for summer 2009. At the moment she is writing Chapter 2 (The Role of Criminal Law in Healthcare in France) and Chapter 4 (The HIV/AIDS Blood Contamination Scandal in France) of her thesis while focusing on comparative methodology. She will write a first draft of her AHRC conference paper, 'The Role of the Criminal Law in Healthcare: Examining the HIV/AIDS Blood Contamination Scandal in France', and submit it to her supervisors in September.

### **And finally...**

The project has been featured in Lancaster University's Faculty of Arts and Social Sciences Newsletter. To see it, go to: <http://www.lancs.ac.uk/fass/faculty/news/newsletters/Vol4iss2.pdf> p 18.

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### **News from the Team**

Congratulations to Kate Bradbury, who gave birth to a baby girl, Rose, at the end of June. Lindsey Hall joined the team as Kate's maternity cover in May, and will be acting as administrator for the project until mid-December of this year.

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## Events

### **Good, Bad or Indifferent: Medicine and the Criminal Process**

Arrangements have now been largely finalised for our first conference, which will be taking place at Chancellors in Fallowfield on the 3<sup>rd</sup> and 4<sup>th</sup> November 2009. The programme for the event, which has been split into Day 1: *Prosecuting Doctors* and Day 2: *Ethical Conflicts in the Criminal Courts*, has now been confirmed, and features talks from Prof Peter Skegg, Mr Justice Hedley and Prof David Archard, as well what promises to be a fascinating debate on euthanasia and assisted suicide between Prof John Griffiths and Prof John Keown. Work is now underway to publicise the conference over the intervening months, and to attract as much interest in the event from potential delegates. See <http://www.law.manchester.ac.uk/research/hccriminalprocess/events.html> for further details and a full copy of the programme.