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Informed Consent to Human Experimentation: The Subject's Dilemma

George J. Annas, Leonard H. Glantz, and Barbara F. Katz

Ballinger Publishing Co., 17 Dunster St., Cambridge, Mass. 02138, 1977. xix + 333 pp., \$17.50.

For some time most thoughtful physicians have been willing to accept discredit for the excesses of our over-medicated society. The suspicion that we may also be over-legislated is only now beginning to stir, though the views of people like Jerold Auerbach¹ may help to reaffirm that law cannot remedy every societal problem any more than medicine can cure every human infirmity. *Informed Consent to Human Experimentation* is a case in point. Compressed between its boards are 333 pages of documentation, mostly legal, dealing with a very particular aspect of a very small part of medicine. That virtually none of this material antedates the end of World War II suggests how recent has been this legal flowering. It has coincided, of course, with the great post-war expansion of biomedical research but now, some would say, bids to outstrip it.

Though the title promises more, *Informed Consent to Human Experimentation* is concerned almost exclusively with legal issues. By thus scanting the moral imperative for valid (including "informed") consent, the writers seem tacitly to embrace a positivist view of man. This is assuredly a popular approach, though for myself I would rather view law as merely enforcing rights that inhere elsewhere. On the other hand, given the litigious climate of modern society, I should not be surprised if lawyers were to adopt a proprietary attitude toward "informed consent." In this case, remarking such a legal bias in the title might well seem tautologic.

Paradoxically or not, a covert meliorism seems to pervade the pages of this book, despite the fact that man's moral growth shows no inexorable trend to perfection. Human behavior must always be viewed in the context of history. From a 1977 vantage point it is easy to condemn, for example, the Tuskegee experiment of decades ago. It was so patently wrong. On the other hand, is it possible that some future generations might judge the authors' bland acceptance of legal abortion and of some forms of fetal experimentation as worse than Tuskegee and on a par with Dachau? Legal sanction cannot always be equated with right or with justice.

Although the writers are at pains to present the legal arguments and other data in an even-handed way, one rarely has doubt where their sympathies lie. They prefer, for instance, more legal constraints in the case of human experimentation involving adults and fewer in the case of fetuses. This legal perception should evoke no surprise in view of the acknowledged tendency of law to favor the powerful over the impotent.² But the writers are not furtive in this and their willingness to stand up and be counted might well be emulated by others, particularly in the halls of Congress.

Despite the foregoing demurrers, *Informed Consent* is a fine example of legal scholarship in a sensitive and perplexing area. Medical data are handled directly, accurately, and with a surer touch than most physicians could muster in legal matters. Topics are well-organized and superbly documented. The introductory chapter is appropriately concerned with the origins of the law of informed consent in the experimental situation and traces the decisions that undergird the current status of the law, discussed in chapter two. Subsequent chapters deal with research involving specific classes of subjects: children, prisoners, institutionalized

mental patients, and fetuses. The special area of psychosurgery, long a particular interest of Annas, is well presented. The final chapter deals with compensation of research subjects for injury sustained in the course of experimentation. Although some limitation is obviously necessary in a volume such as this, I should still like to see even a brief discussion of physician-autoexperimentation, hardly the exotic practice suggested by its exclusion from this book. Of special interest is an appendix containing many of the codes and federal regulations concerned with human experimentation. I am certain that Annas and his colleagues have produced a work that will remain the definitive reference in the area until replaced, I suspect, by its second edition.

1. Auerbach, J., "A plague of lawyers," *Harper's*, October, 1976, pp. 37-44.
2. Black, Donald, *The Behavior of Law* (New York: Academic Press, 1976).

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Ethical Issues in Modern Medicine

Robert Hunt and John Arras, Editors

Mayfield Publishing Co., 285 Hamilton Ave., Palo Alto, Calif. 94301, 1977, xi + 524 pp., no price given.

This collection was edited with a view to classroom use. It is no simplified or purely elementary presentation, but a selection of representative or standard articles by experts. Thus it makes an equally good introduction for professionals interested in or actually involved in the ethics of medical practice and research. Authors' fields include medicine and philosophy, in particular, and also Christian ethics, ministry, law, psychiatry, psychology, dentistry, biology, genetics, and clinical research. The categories by which their contributions are grouped are 1) Genetics, 2) Abortion, 3) Euthanasia, 4) Informed Consent, 5) Behavior Control and Psychosurgery, and 6) Justice, Social Policy and the Province of Medicine.

The editors aim for a variety of perspectives and, in general, they are successful. The reader is encouraged to ponder the two or more sides to every question. If there is any bias, it is toward a "mainstream liberal" consensus. This is to say that most authors propose a re-examination of the values and moral norms which have traditionally governed health care. While they contemplate revisions as probably necessary, they do so with awareness of the difficulties and dangers involved. Shifts in medical-moral analysis are indicated on, for instance, the genetic alteration or "improvement" of the human species, and permitting some congenitally defective infants to die.

Perhaps the most useful feature of this book is the ethical framework supplied by the editors for the interpretation of the contributions. The first chapter is designed as a "mini-course" in ethics. Each section is also preceded by an introduction which relates selections to the ethical perspectives outlined in Chapter One, and lifts out a few decisive issues, such as the status of fetal life in abortion. In their explication of ethical principles, the editors helpfully refer to medical examples, and each grouping contains descriptions of actual cases. The leading chapter's explication of alternative ethical theories is relatively clear, accurate, and fair, though deliberately limited to utilitarianism, Kantianism, and Roman Catholic "natural law" ethics. The presentation of the latter is somewhat narrow, if not outdated. The authors seem to have the moral manuals in mind when they