Rights, ethics and law: an introduction

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This article is an extract from a forthcoming book Healthcare Law for patients, carers and practitioners by our Medico-Legal Advisor Marc Cornock & Lindsay Giddings, published by Straightforward Publishing.

The publication date is 25th May 2103, and the price is £11.99. The ISBN for the paperback edition will be 978-1-80236-149-0. Further details are available from https://straightforwardbooks.co.uk/books/

The extract has been left as it is in the book. The aim being to give an overview of rights in healthcare and how they originate as well as a flavour of the book and its style.

Keywords: Rights; human rights; ethics; law; rights in healthcare

Exploring what is meant by rights

How many times have you heard someone say, or even said yourself, ‘it’s my right, I can do X’? Probably quite a few, yet what is meant when someone says they have a right to do X?

Rights are generally referred to as the ability or freedom to do something or to have something, without being stopped from doing it or prevented from having it. If you have a right but someone else can stop you from exercising that right, then you don’t really have that right as it is subject to someone else allowing you to enjoy it. For instance, suppose Marc, one of the writers, believes he has the right to watch the Six Nations rugby matches uninterrupted by any member of his family (quite a nice right to have!) Is this a real right? Probably not, as it is easy to see that he could be interrupted by regular family life, and it is subject to his family members not interrupting him and allowing him to watch uninterrupted.

Where one person has a right, others have an obligation to uphold this right. So, for Marc, if he has the right to watch the Six Nations rugby matches uninterrupted, his other family members would be obliged not to interrupt him.

A key element of a right is being able to enforce that right. Could Marc enforce his rugby watching right and enforce the obligation of other family members to allow him to watch
uninterrupted? Again, highly unlikely. If all his family members got together and decide they wanted to watch the match with him and check what was going on in the game, it is difficult to see how he could enforce his ‘right’.

Rights need the support of the law to be enforceable. If a right is set out in law, then the individual who feels their right has been abused can go to court to have their right enforced, otherwise it is not a right but an aspiration. Could you see Marc being able to use the courts to enforce his rugby watching desires successfully? No, neither can Marc’s family members. Marc has an aspiration to watch the rugby matches uninterrupted but not a legally enforceable right!

The rights which we all have usually arise from an ethical belief that something needs protecting, for instance the right to be free from slavery or forced labour.

*Human rights*

Sometimes a set of rights, often referred to as basic rights or universal human rights, are seen as needing protecting. The United Kingdom has a long history of acknowledging the rights and freedoms of individuals. This can be traced back to 1215 and the Magna Carta which first recognised that citizens had their own rights. In 1689 the English Bill of Rights clarified what the rights of a citizen were and extended those rights, for instance the right not to be tortured.

What can be classed as ‘modern’ human rights originate from the Universal Declaration of Human Rights in 1948. This Declaration set out what every human, regardless of their country of origin or where they live, has a right to and the freedoms they can expect.

The 1948 Declaration resulted in the European Convention on Human Rights in 1950. The United Kingdom signed the Convention in 1951 and it came into force in 1953. The difference between the declaration of 1948 and the 1950 Convention is that the Convention could be used in the European Court of Human Rights (a court that is held in Strasbourg) to enforce a right.

Between 1951 and 1998, several specific laws came into force which protected specific rights. These included the Sex Discrimination Act 1975 (which made discrimination based on a person’s gender illegal), the Race Relations Act 1976 (which made discrimination based on someone’s race illegal) and the Disability Act 1995 (which made discrimination based on someone’s disability illegal).

The Human Rights Act 1998 took the principles of the European Convention on Human Rights 1950 and put them into the law of the United Kingdom. This means that a person who wants to enforce one of their rights can do so in a court in the United Kingdom.
Since the introduction of the Human Rights Act 1998, other pieces of legislation have extended or clarified the law on an individual’s rights. An example would be the Equality Act 2010 which replaced over 100 separate pieces of legislation to advance and protect the rights of all.

Some of the rights and freedoms protected in the law of the United Kingdom include:

- The right to life
- Freedom from torture
- Freedom from slavery and forced labour
- The right to liberty and security
- The right to a fair trial
- The right to respect for privacy and family life
- Freedom of thought, conscience and religion
- Freedom of expression

In brief, a right is the right or freedom to do something or be protected from something that originates in ethical beliefs and is given substance and protected by the law.

**Ethics**

We are discussing ethics because the rights that exist come from the ethical beliefs that exist in a given country or society. Rights come from how individuals are viewed and what conduct is expected of them, and what conduct an individual can expect from others. Ethics can be said to be concerned with the rules of conduct and duty that define how individuals behave toward each other.

There are several ethical theories that exist to explain how someone should behave toward another person. Two of the predominant traditional ethical theories are consequentialism and deontology.

Consequentialism is concerned with the consequence of an action. Those actions where the consequence results in good rather than harm are seen as more desirable than those which result in harm. The greater the good that results as a consequence of an action, the more desirable that action is.

Deontology is concerned with doing duty. This ethical theory is based on individuals performing certain actions because they are duty bound to do so. ‘Good’ or ‘bad’ for someone who follows deontology is concerned with whether someone acts or not. Failing to act when there is a duty to do so is bad.

Both consequentialism and deontology can be problematic when applied to healthcare. Consequentialism, because it cannot always be known if an action will result in a good or
harmful outcome, for instance if a healthcare practitioner’s intentions were good but harm results because of their action; is this a good or bad action? Whereas deontology can be seen as being emotionless because the person acts not out of a desire to help but because they are duty bound to do so.

Modern healthcare ethics have moved away from the traditional ethical theories and adopt a professional ethics or values ethics approach. The professional ethics approach uses a framework of principles to adopt when working with patients and providing healthcare to meet the needs of patients.

These principles are:
- Autonomy
- Beneficence
- Justice
- Non-maleficence

Autonomy is about the right to make one’s own decision and not having decisions made by others, or in healthcare not having treatments forced upon you.

Beneficence is concerned with others doing things for your good and your benefit.

Justice is connected to fairness. In some ways, it is about treating a patient according to the needs they have rather than say their ability to pay, or because they are the most vocal in asking for a treatment.

Non-maleficence is primarily concerned with ensuring that healthcare practitioners do not harm their patients. An example would be that a healthcare practitioner knows the risk associated with giving a particular patient a specific treatment and only proceeds where the risk of not acting outweighs the potential for harm through acting.

Individually, each of the four principles protects patient rights. Together, these four principles can be said to underpin healthcare law and thus the rights that can be legally enforced by an individual in relation to their healthcare needs and the healthcare they receive. These ethical principles also underpin the regulation that governs how healthcare practitioners are expected to work and interact with their patients. For instance, the ethical principle of autonomy requires that healthcare practitioners accept that the patient has the right to determine what happens to their body. This has not always been the case, as you will see when consent is discussed in chapter 3 Agreeing to treatment\(^1\).

\(^1\) This refers to a chapter in the book that is not included in this article.
Aside from the fact that it is in the title of this book, we need to talk about the law because it is the law that protects the rights that you have as a patient receiving healthcare.

The law can be thought of as a formal set of rules; rules that are thought of as so important that breaking the rules can result in some form of punishment. As an example, in the UK there is an unwritten rule that if a queue exists, you join the back of the queue. However, this is not a law, and you cannot be taken to court and punished if you don’t join the back of the queue. In the UK, it is more of a custom or form of politeness to join the back of a queue.

Now, if you had punched the person at the front of the queue so that you could take their place, this would be something that could result in you appearing in court and being punished, maybe with a fine or a community order. This is because there is a rule in place not to punch other people – a rule that is so important it has the weight of the law behind it.

All the rules that exist in a particular country that can be enforced in the courts are the law for that country.

Having a law that protects an ethical value such as autonomy, as with the law on consent, is the mechanism whereby ethical principles are formally embedded and protected. It is the law in its widest sense that gives substance to the ethical values that are considered important in any society and underpin the rights that individuals have.

**Types of law**

There are two main types of law: legislation and common law. Legislation refers to law that is made by or on behalf of parliament, such as Acts of Parliament and statutory instruments, whereas common law refers to law that is based on the judgments made in cases that come before the courts and are developed over a number of years. If legislation and common law are in conflict, legislation will prevail. As an example, for many years the law on consent was based on common law through cases where the court was asked to judge if a patient was able to give their own consent. Now, the Mental Capacity Act 2005 provides guidance on consent, particularly the ability of patients to give their own consent. Although the law in the cases still exists, the Mental Capacity Act 2005 is the primary source for this area of law.

As laws do not go ‘out of date’ and exist until they are removed, many of the laws that exist today originated many years ago. For instance, the law regarding assaulting someone is in part from an Act of 1861 (the Offences Against the Person Act 1861) that is still in force today.

Because of the complexity of finding and understanding the law, it can be difficult to know what the law says about any specific aspect of life. Law can be categorised according to the aspect of society that it deals with. For instance, the law that deals with buying and selling
houses is known as property law, that which deals with crime is criminal law, and that which deals with agreements between individuals and organisations is contract law.

Healthcare law
Healthcare law is a relatively new area of law in the legal field, and like many areas of law it ‘borrows’ from many other areas of law. A large part of healthcare law is concerned with an area of law called ‘tort’. Tort law is concerned with when one person or organisation wrongs another and the remedies that can be used. Other areas of law that are used in healthcare law are concerned with what public bodies do, and others with how healthcare and healthcare practitioners are regulated.

Healthcare law is important because it is the area of law that supports patient healthcare rights and enforces the obligations that others, such as healthcare practitioners, have to a patient. It is healthcare law that governs the relationship between healthcare practitioner and patient and ensures that the needs of the patient are paramount in that relationship.

Whether you are a patient or a healthcare practitioner you may be asking yourself what laws do you need to be aware of? Throughout this book, relevant laws will be explored and pointed out to you – we believe these are the ones you need to know about. They will be the ones that relate to patient rights.

Rights in healthcare
Having discussed what a right is and how rights relate to ethical principles and are underpinned by the law so that they can be enforced, it is time to look at what healthcare rights you actually have.

We think this may come as a bit of a surprise, so bear with us on this one. You only really have one healthcare right as a matter of course. This is the right to be registered with a general practitioner (GP).

Now, although you have the right to register with one GP, you cannot register with the GP of your choice as a right. What the right to be registered with a GP means, is that you can approach a GP practice and ask to be registered with them. If they are unable to register you, perhaps because their practice list is full, a GP will be found for you to register with.

Once you have registered with a GP, your right has been fulfilled. You cannot register with a second GP. You can transfer your registration from one GP to another but cannot register with two at the same time. This means that if you are away from home and need to see a GP, you need to request emergency treatment from a local GP surgery. This is permitted for up to 14 days. You can also have a temporary registration with another GP if you are going to be away from home for over 24 hours but less than three months.
The reason we say that you only have the right to be registered with a GP is because a GP acts as a gatekeeper to most healthcare services, apart from emergency care such as that provided in an emergency department when you can turn up and ask to be seen or if you are taken by ambulance. Services such as dental and optician type services, to whom you can self-refer, are also excluded from the need to see a GP first.

It is the GP who makes the decision as to whether you should access other parts of the healthcare system. When we say healthcare system, we are talking about the National Health Service (NHS). This means that if the GP does not think that you need the services of another healthcare practitioner, for instance a hospital consultant, you will not be able to access that.