Criminalising contagion: the criminal law and disease transmission

Hannah Quirk

I am pleased to introduce this part of the first collaboration between BMJ journals Medical Humanities, Sexually Transmitted Infections1 and Journal of Medical Ethics11 on the important theme of the criminalisation of disease transmission. I am grateful first to Debbie Kirklin, and then to Sue Eckstein for their guidance as editors. As well as bringing together scholarship for the diverse readership of these publications, these papers represent the first output of an Economic and Social Research Council-funded seminar series, Criminalising Contagion: Legal and Ethical Challenges of Disease Transmission and the Criminal Law,1 undertaken with my colleagues, Catherine Stanton and David Gurnham. This venture is the offspring of several projects stemming from the Centre for Social Ethics and Policy at the University of Manchester that have explored the developing intersection of healthcare and the criminal law.2 It is proving a fascinating area in which to work. We have a range of panellists with interdisciplinarity and international expertise, including lawyers, public health practitioners, charity organisations and academics, many of whom will be familiar to readers of these journals and who have contributed to this BMJ collection.

Public health concerns, from sexually transmitted diseases to swine flu, raise particular notions of risk and moral panic. There are many reasons for enacting legislation. A rarely acknowledged, but not insignificant, impetus against domesticating it. Once this process had gained momentum, it became difficult for ‘outsiders’ to return to parliamentarians and explain that the model, progressive legislation that they had been persuaded to enact, was, in fact, flawed.

Grace notes that “the law, like HIV, is a profoundly social phenomenon.”4 The social factors that affect the implementation of the law may include factors such as access to healthcare, the stigma related to HIV infection and discrimination or legislation against homosexuality. In their article ‘HIV Criminal Prosecutions and Public Health: an examination of the empirical research’, Patrick O’Byrne, Alyssa Bryan and Marie Roy review the extant literature exploring the impact of criminal laws relating to HIV transmission on public health practice in Western jurisdictions. They show that public awareness of the laws is fairly high, albeit flawed. They identify, however, ‘complex inter-relationships between HIV criminal laws and public health’.5 The different methods used in the research appear to demonstrate the benefits of deploying triangulated methodologies. While survey methods reveal overall support for the use of the criminal law, some of the qualitative data obtained from gay men suggest a perception that these laws exacerbate stigma. While the HIV legislation does not appear to affect most people, closer analysis shows that those in the highest risk groups may engage in more hazardous sexual, testing and disclosure practices. O’Byrne et al highlight important gaps in the existing literature and suggest areas for further research.6

We are at the halfway point of the seminar series. There will be two more seminars in January and June 2014 at the University of Manchester that will explore these themes in more depth, resulting in a range of scholarly and practitioner-oriented outputs. Readers wishing to participate in the seminars should contact one of the organisers.

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REFERENCES

1 See ‘Criminalising contagion’ theme section in the Sexually Transmitted Infections publication of Jun 2013, volume 89, issue 4, pages 274–294. This consists of 5 papers.

2 See ‘Criminalising contagion’ theme section in the Journal of Medical Ethics, in press.

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