

The Ethics of Pyjamas

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Of clothes, *The Prophet* says¹,

Though you seek in garments the freedom of privacy you may find in them a harness and a chain.

Although this was first published in the 1920's it would not be at all surprising to hear that Kahlil Gibran wrote it in the 1990's after a visit to Place Hospital in New Zealand's North Island. At first blush you might think this improbable or hard but, read on. Let me preface the following by noting that often it is matters of everyday practice rather than theory and hypotheticals that challenge our ethical depth. Routine practices are the real repositories of ethical concern but too often go unremarked because they are so embedded in the time and place of the routine. Decomposing the routine is an almost sure route to unpopularity because therein lies the dismemberment of all the comforts of the reality we know and need. The landscape of the routine reality of involuntary patients in our mental hospitals is one of particular poverty and primitiveness with its patient population pacing up and down trying in vain to neutralise the effects of the potent neuroleptics while others sit smoking, in a quiet rage at their history and this hospital. You may find my comments extreme, quite so, the practice I describe is extreme.

One of the more interesting features of the environment in which Place hospital is set is the occasional presence of clumps of discarded hospital pyjamas under trees, quite ungraced by the presence of the

erstwhile occupant. The "pyjama practice" is simple but devastating; patients who go absent without leave are, once recaptured, placed in pyjamas and they are denied their own clothes, day and night. This is justified by the hospital as a protection against the patient going "AWOL" again. The protection manifestly does not work and has the unmistakable pallor of punishment.

One day as I was waiting to see one of my clients in a ward at Place hospital an altercation took place in the foyer area of the ward. A young male patient was standing in this area dressed only in ancient hospital pyjamas which were ripped and tattered. Several staff members were conducting an argument with him. They were saying that he had to go to a group therapy session which was being held in another part of the hospital, clad only in these decrepid pyjamas. The patient clearly felt embarrassed and utterly humiliated. He kept on saying that he would not go unless he could wear his clothes. I felt the sickness in my stomach that I feel when I see a helpless

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dog being kicked by a grown man or when I see a child being beaten. I discovered subsequently that the group session was on building self esteem - of course! I should have guessed that from the treatment I saw this patient receiving from Place hospital.

For patients the issue is not pedantic, in Gibran's words the pyjamas are a harness and a chain that lock them into shame, self-effacement and submission. This "hospital protocol"

is in fact a pillory, not a protocol. It is the consummate way of confirming that so disordered are they, they cannot distinguish night from day or public from private. The loss of this distinctiveness sanctions their "sickness" in a statement to themselves and to all who see them, members of the public visiting the hospital, hospital staff, caregivers and other patients. That they are so "sick" is a credential of the decision to keep them involuntarily in hospital.

Caregivers of patients (who perhaps unlike the patients are convinced that the patients, often their sons or daughters, are ill) are likely to experience an affirmation of their decision to seek their son's or daughter's involuntary admission when they visit the ward and see their son or daughter "well". This affords staff further implicit or explicit sanction to extend their control over patients². Of course, in cases where the patient son or daughter is aware of this sanction he or she feels more bitter and more helpless - everywhere and among everyone there is the apperency of a conspiracy against him or her. When they talk of conspiracy however, such fears tend to be treated as a symptom of their mental disorder.

My complaint is that the pyjama practice is punitive, not preventative and that it ostensibly breaches the New Zealand Bill of Rights Act 1990 which provides the right not to be subjected to torture and cruel treatment and the right to be treated with humanity and with respect for the inherent dignity of the person (see sections 9 and 23 (5)). Without doubt, the pyjama practice divorces the dignity of the person from the person as patient. It is a spiritual straightjacket.

The Mental health (Compulsory Assessment and Treatment) Act 1992 enfranchised mental health patients with a charter of potent patient rights. The long title of the Act describes itself as:

An Act to redefine the circumstances in which and the conditions under which persons may be subjected to compulsory assessment and treatment; to define the rights of such persons and to provide better protection for those rights.

Some two years after the enactment of the 1992 Mental Health Act there is now among patients a growing awareness of its patient rights which is slowly but surely recasting their self-consciousness as mental health patients. The Bill of Rights Act will embed this new self-consciousness with its right to refuse medical treatment (Section 11), its right not to be subjected to cruel and unusual punishment (section 9) and its right not to be arbitrarily detained (Section 22).

While there is some ambivalence in the case law it cannot be said that the Bill of Rights Act *does not* apply to the Mental Health Act. Whenever an Act can be accorded an

interpretation consistent with the rights and freedom conferred by the Bill of Rights Act, it must be accorded this interpretation (see Section 6) and "the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (see Section 5). Also Section 136 of the Mental Health Act 1992 provides that, "Except as expressly provided in this Act, nothing in this Act shall limit or affect in any way the provisions of any other Act". However the picture of patient rights is not in practice painted quite that clearly. While Sections 59 (4) and 67 of the Mental Health Act convey a presumption that patient consent to treatment will be sought even if such consent is not strictly necessary the right to refuse treatment is qualified by Section 58 (treatment during assessment is compulsory), Section 59(1) (treatment during the first month of a compulsory treatment order is compulsory), Section 59(2) (treatment where approved by the second opinion of another psychiatrist appointed by the Review Tribunal), and Section 60 (treatment by shock therapy where approved by a second psychiatrist appointed by the Review

Tribunal). Another significant qualification to the right to refuse treatment is imposed by Section 62 (urgent treatment) although treatment under this section could persist only for the duration of the requisite urgency.

It might be argued, in line with some American decisions such as *Lake v Cameron* 364 F2d 657 (1966) that the real right involved here is the right to the "least restrictive alternative" in that putting patients into pyjamas is less restrictive than locking them into secure wards. This argument is unpersuasive on a number of grounds. Firstly, it can be argued that absconding patients are merely an inconvenience to the hospital and that placement in a secure ward sounds like the whizz of a sledgehammer as it roars its downward descent towards

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a tiny nut. Is locking patients up to be an indefinite answer to an administrative irritation? Hopefully not. Secondly, the grounds for compulsory treatment are danger-oriented - dangerousness to self or others (to self in relation to both dangerousness generally and the danger posed by diminished capacity for self-care). Can it be said that a patient who is merely absconding when for example they are being treated continuously by depo long-acting medications is a danger? Probably not. Thirdly, Section 71 of the Mental Health Act which deals with seclusion limits legitimate seclusion to circumstances in which it is *necessary* for the care and treatment of a patient or the protection of other patients. As Trapski's guide to the Act notes (Paragraph 71.05) it follows that seclusion can be used only for therapeutic reasons and not for "punishment or behaviour modification".

So, we have a powerful collection of patient rights, but somehow practices such as the pyjama practice survive as if untouched by the twentieth century as it fades away into the twentyfirst.

Even if an institution such as Place hospital has difficulty in translating changes in the law into hospital protocols and practice, surely it cannot be excused from its ostensible evasion of rudimentary ethical responsibilities. It is frankly difficult if not simply impossible to square such a practice with the basic ethical requirement to treat patients with dignity and decency. Such an ethical requirement has nothing to do with an exotic or esoteric dissertation on ethical duties, rather, it belongs to the day to day experience of patients in hospital. I am unsure of practices in other hospitals throughout the country but for the pyjama practice to be operating in one of our hospitals is one too many.

At the end of the day the reality of ethics is what passed within each hour of each other's day, not the rhetoric of theoretical ethicists. The first place where the day dawns is our own backyard and we ought not to let the sunset on any abuse of human

rights. If we do then our world is the worse for it. Practices such as the pyjama practice pronounce an intention to perpetrate and perpetuate the imprisonment of mental health patients. That is an abandonment of the ethic of care. None of us should forget just what prisons mean³

This too I know - and wise it were
If each could know the same -
Every prison that men build is built
with bricks of shame
And bound with bars lest Christ
should see
How men their brothers maim.

¹ Gibran, Kahlil. (1972) *The Prophet*, William Heinemann Ltd, p42.

² Goffman, Erving (1961) *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*, Doubleday, New York.

³ Wilde, Oscar (1987) *The Ballad of Reading Gaol in The Works of Oscar Wilde*, Galley Press, p836.