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Andreas-Holger Maehle, *Contesting Medical Confidentiality, Origins of the Debate in the United States, Britain and Germany*, (Chicago, IL, and London: University of Chicago Press, 2016), pp. 168, \$40.00, Hardback, ISBN 978-0-226-40482-0

Medical confidentiality has long provoked territorial disputes, falling – somewhat uneasily – between medical and legal spheres of influence. These disputes have become more nuanced in modern times with the magnified role of patient autonomy and the emergence of electronic health systems. Nonetheless, there is still much to be gained from scrutinising the discussions of the past, which helped shape contemporary understandings.

In *Contesting Medical Confidentiality*, Professor Andreas-Holger Maehle delves into these discussions, providing a broad account of the seminal arguments over medical confidentiality in Germany, the US and Britain. Despite the book's concise length, it provides an illuminating account of the conflicts across all three countries, tackling discussions of doctors' privilege in court, disclosure of venereal disease and debates over medical confidentiality and abortion.

The comparative aspect of the work is novel and well suited to the distinct legal frameworks in each country. It also justifies what would otherwise risk becoming tautological, with extensive work already completed on confidentiality debates in the context of Britain in particular. Maehle states early on that his comparison focuses on the period between the 1890s and the 1920s and he broadly succeeds in meeting this criterion. In doing so, *Contesting Medical Confidentiality* provides a welcome departure from the many dewy-eyed publications that begin with the birth of the Hippocratic Oath before meandering into the present day.

The date range obliges Maehle to toe a delicate line in catering for both the neophyte and the specialist. Undoubtedly, the period from 1890 to 1930 witnessed seismic discussions concerning medical confidentiality and in many ways established the direction of travel for the remainder of the 20th and into the 21st century. However, focussing on this specific period does rely on certain foreknowledge and efforts to mitigate this are stifled by the book's abridged nature. That being said, the text does not overly rely on medico-legal terminology and any specialist vocabulary is amply explained.

Maehle successfully avoids a rushed narrative, excising certain detailed analysis yet still covering substantial ground. His style is generally accessible and invites continuous reading,

favouring a chronological country-by-country examination before pausing for comparison in each chapter, a tactic that avoids the risk of losing the reader in a legislative maelstrom.

Beginning with debates over the introduction of doctors' privilege, Maehle describes the varying levels of reluctance felt by both medical and legal commentators. Lawyers' discomfort at a medical privilege in all three countries stemmed not only from internecine professional rivalry but was motivated by genuine concern that doctors, granted lawyers' secrecy rights, would have the potential to obstruct criminal and civil justice, refusing disclosure of information learnt through clinical practice even when this could be of probative value in court. Maehle includes brief accounts of legal decisions - the landmark *Duchess of Kingston* case in 1776 is understandably included - before his comparative focus, an unavoidable concession given the precedent-heavy sentiments of the common law traditions of Britain and the US. He argues that Germany and the US were amenable to greater protection of doctors' confidential knowledge in court and both enacted defensive legislation. In the US, this occurred on a state-by-state basis, (with consideration also given to English case law) and was not adopted nationally as in Germany. Britain pursued a different line, the judiciary and parliament consistently resisting the imposition of anything approaching privilege, stressing the supremacy of the court in determining disclosure. Maehle contends that this was not only due to Britain's reliance on precedent but also exemplified the greater power imbalance between the two professions, with lawyers' wielding superior authority.

Turning to venereal disease (comprising soft chancre, syphilis and gonorrhoea), Maehle explains how transmission fears drove discussions over confidentiality, with arguments that preserving patients' privacy rights risked mass infection. These arguments would reappear in different guise on the emergence of HIV/AIDS. In the case of VD, Maehle notes that the US and Germany favoured repressive measures, the former requiring mandatory reporting of cases by 1920 and the latter demanding selective reporting of recalcitrant treatment defaulters. He contends that the British approach was more liberal, the state favouring self-reporting and instigating a nationwide network of confidential treatment centres, supported by the Public Health (Venereal Disease) Regulations 1916. Emergency wartime legislation is mostly omitted from consideration.

Contesting Medical Confidentiality devotes considerable space to debates involving abortion. Maehle explains that, despite the different attitudes regarding medical privilege, broadly

speaking, in all three countries doctors erred on the side of non-disclosure in this context, particularly when discovering a termination had already occurred. Maehle avoids trying to construct this as a particular case of exceptionalism, as has been done, for example with HIV/AIDS.

In the German context, Maehle moves beyond his comparative focus to document the dramatic changes involving abortion and medical confidentiality under Nazi dictatorship. Following the ascendance of the Third Reich, laws used previously to oppose disclosure were overridden and replaced with pronatalist legislation in line with ideological goal of propagating Aryanism. It was sobering to discover that some of these measures persisted into the 1970s.

The English care.data scandal is used to argue that debates over medical confidentiality have changed substantially since 1930, with health organisations and third parties taking over the role of data custodians from individual doctors. Maehle contends that management of electronic health data now presents the biggest threat to privacy, though it is unfortunate that he does not also include examples from the US or Germany in making the point. Despite some omissions, this is an ambitious and illuminating volume, its comparative focus giving a new perspective on an important topic. Those looking for a concise account of the development of modern day medical confidentiality will welcome its publication.

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