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Commentary

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“Mental health legislation can provide a legal framework for addressing critical issues such as the community integration of persons with mental disorders, the provision of care of high quality, the improvement of access to care, the protection of civil rights and the protection and promotion of rights in other critical areas such as housing, education and employment. Legislation can also play an important role in promoting mental health and preventing mental disorders. Mental health legislation is thus more than care and treatment legislation that is narrowly limited to the provision of treatment in institution-based health services” (1)

In this article, Toib tries to tie together various issues such as funding, medical insurance policy, community care, coercion, dangerousness, predictive instruments, professional education and research, etc. However, I cannot escape the conclusion that he actually deals with matters other than those declared. The level of interference by the judiciary has become a significant concern of medicine at large, as recently presented by Bloche (2), who noted that while the Courts considered issues such as abortion, assisted suicide, and rationing of care, they have also

increasingly deferred to the medical profession's understanding of its purposes. Perhaps Toib's article demonstrates the gap between medical ethics and judiciary tactics. Furthermore, perhaps it reflects the huge distance between a rather detached judicial-academic approach and what actually happens in the field.

Toib chooses his references selectively, thus creating a certain impression regarding the state of affairs within the local mental health system, including forensic psychiatry in Israel. However, in spite of its shortcomings, the Israeli system is far from being on the verge of collapse. Proposals mentioned in Toib's article to shift the impetus on care from hospitalization to community-based facilities are actually being materialized. Facts and figures can be learned from official publications (3), although in a country as small and intimate as Israel, one can sometimes just look around. In contrast to other countries, mental patients are not filling Israeli prisons and there is not a significant number of mentally-ill wanderers and homeless. No consenting mental patient in need is denied treatment, and no one is deprived of emergency services. Major efforts are made, both finan-

cially and in human resources, to widen and strengthen rehabilitation facilities within the community. Special needs of first, second and even third generations of Holocaust survivors are being addressed, as well as PTSD patients. All that, in a nation that underwent a major reduction of psychiatric hospital beds (from 2.2 beds per 1,000 citizens 20 years ago to less than 0.5 today). Regarding the enormous tasks faced by Israeli society, temporary setbacks could be traced along its history, yet even in days of terror and severe personal insecurity basic needs are well-met (4).

A certain amount of critical debate over the current situation is always healthy and well-deserved, since it fuels ongoing concern for improving processes, advancing services and modernizing organizations. Still, the local scene is much less devastating or dissatisfying than the picture drawn by Toib. Furthermore, Israelis can be more proud than embarrassed with accomplishments regarding professional standards as well as mental-health networks built over the years, including those involved with involuntary treatment and hospitalization. It seems that conclusions regarding “dissatisfaction” as well as the definition of “players,” according to Toib, are much in the eyes of the beholder (e.g., a recent satisfaction survey concerning the performance of personnel authorized to implement the District Psychiatrist’s involuntary commitment orders reveal the amount of appreciation by those who are really in need [5]).

The nature of “concern” reflected by Toib deserves better clarification. It appears that while trying to cover a variety of topics, he misses an important point. As he states: “The most significant future challenge for Israeli Mental Health Law is to enhance patients’ rights and well-being without interfering with the powers of the state to use coercion for treatment and prevention in cases of emergency.” Isn’t that the core of the current law? Is it really not being well-addressed today? Hasn’t Israeli mental health legislation become in recent years an ongoing process with additions of significant new laws and new clauses? Hasn’t the judiciary system, in spite of all its shortcomings, become “a watchdog” of the system? Toib should be better updated (e.g., research and recommendation by the Forensic Psychiatry Unit, Mental Health Services, Ministry of Health [6, 7] or new rulings discussed in the ‘Forensic Corner’

[8]). He concludes: “Adopting a form of a legal model could move decisions about treatment away from the District Psychiatrists and into the courts.” Would such a process really guarantee better care or higher awareness regarding human rights? Reading Toib’s statement one may erroneously believe that as for today progression is halted and patients’ rights are overlooked because “decisions about treatment” are “in the hands of the District Psychiatrist.” Such statements do enormous injustice to the Israeli mental health system, the current Israeli law, the District Psychiatrists and the judiciary system. Perhaps Toib should be more attentive to other voices in the professional community that speak in favor of the current system and the crucial role of the DP and the District Psychiatric Committee (9–12). It is true that for years the DPs were involved in double burdens of field-work, and conflicts of interest were ignored until a decade ago. It is true that for years they didn’t bother to document the obvious — that they perform a unique and highly sensitive mission which reflects the duty of the state to act in the patients’ best interest, and that their performance is constantly being improved, being guided by court decisions, public concern, advancing professionalism and medical ethics.

There seems to be a growing concern within the Israeli psychiatric community regarding disproportionate interference by the judiciary within treatment systems (13). These concerns match voices of criticism raised in other countries as well (14–16). Lamb went as far as suggesting that the major contributor to the stigmatization of the mentally-ill is the judiciary system (17). The abuse of psychiatric facilities by court in criminal procedures, though not documented in academic papers, has become alarmingly common. Recently the State Attorney office issued a special memo, instructing the district and police attorneys to avoid arrangements for hospitalization of criminals which do not abide with the Mental Health Law (18). It should also be noted that the Office of Public Defense claims that for two years now there has been a steady increase in criminal records against mental patients. It has been interpreted that increasing interference by the judiciary interferes with early psychiatric interventions which could avoid impending dangerousness as well as criminal actions by mentally ill people (19).

Toib should have second thoughts before attacking the current state of affairs as well as the role of the DP in assuring high standards of care in Israel. We are not dealing with altruistic issues but with the lives and welfare of people who are primarily deprived of freedom or restricted by their illness. Every system has its pitfalls and it is not obvious that patients would benefit from new arrangements proposed in his article. "The law has an interest in the detained patient, not because of a right to treatment but because everyone has a claim to liberty. There is no 'right to treatment'...treating others as we would wish to be treated is an ethical principle that is honored in nearly every culture. Asking the courts to base their rulings on solely therapeutic considerations in preference to natural laws of justice is asking them to re-invent the wheel" (20).

As for adopting new tools for measuring dangerousness, this is an interesting idea that deserves further consideration, yet it could be adopted as well and utilized within the current system. Still, one should bear in mind that the issue of dangerousness is multifactorial, as recently stated by Appelbaum: "The relationship between mental disorders and violence is complex. Among the variables that have been identified as increasing the risk of violence, in addition to psychotic symptoms and substance abuse, are socioeconomic status and even the neighborhoods in which persons with mental disorders reside. No single approach to reducing the risk is likely to be completely effective. And given the relatively modest contribution to the overall risk of violence by persons with mental disorders, the likelihood and magnitude of adverse effects from any intervention must be carefully considered before it is embodied in law" (21).

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