Book Review: International Human Rights and Mental Disability Law: When the Silenced are Heard

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By Michael L. Perlin
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Reviewed by Robert M. Sanger

Professor Michael Perlin’s latest book is a tribute to his scholarship and to his lifetime professional commitment to the just treatment of people suspected to have mental disabilities. He asserts that “dedicated and effective counsel” is the best protection for such people (p. 33). The main calling of criminal defense lawyers should be to stand up for the dignity of their clients. Professor Perlin explicitly states that attorneys must be most dedicated to stand up for the dignity of those who have mental disabilities.

*International Human Rights and Mental Disability Law: When the Silenced Are Heard* is the definitive text on the analysis of international law, treaties, protocols, covenants, and conventions regarding mental disability issues. It also contains comparative law and philosophical analysis. Although a treasure to foreign and international teachers and practitioners, Professor Perlin’s book also focuses on areas — such as sanism and pretextuality — that may provide some insight for domestic criminal defense and mental health lawyers.

In the United States, there is a right to counsel in situations based on mental disabilities when a person’s liberty is at stake. That trend is slowly extending to other nations. However, Professor Perlin points out that in many nations “the promise of counsel was little more than an illusion” (p. 159). And, even in this country, the effectiveness of counsel is compromised by a bias called “sanism.”

Sanism filters perceptions and affects judgment regarding people suspected to be mentally disabled. Professor Perlin made the following observation in a 2003 *Clinical Law Review* article:

Sanism permeates the legal representation process both in cases in which mental capacity is a central issue, and those in which such capacity is a collateral question. Sanist lawyers (1) distrust their mentally disabled clients, (2) trivialize their complaints, (3) fail to forge authentic attorney-client relationships with such clients and reject their clients’ potential contributions to case-strategizing, and (4) take less seriously case outcomes that are adverse to their clients.

Professor Perlin’s book will compel all readers to re-examine their thinking to be sure that they are not influenced, even in small ways, by these views.

It is no accident that this book is so keenly relevant to actual criminal and mental disability practice. Professor Perlin was a public defender and mental health public advocate for several years in the 1970s before accepting his current teaching position at New York Law School in 1984. He also remains a
member of NACDL. This scholarly work, based on exhaustive research, is still guided by the common sense of a lawyer who has fought the good fight.

The professor’s discussion of “pretextuality” hit home. In the late 1980s I supervised a group of lawyers, law students, and others representing the Cuban refugees who emigrated during the Mariel boatlift in 1980 and who were housed in the U.S. Penitentiary in Lompoc, Calif. The government accorded them parole hearings to determine if they could be released from permanent immigration custody since they could not be returned to their home country. We found that a substantial number of the over 100 refugees had been incarcerated in Cuba under the Peligroso law, which allowed the Cuban government to incarcerate persons who were perceived to be of “pre-criminal social dangerousness” to the state. The actual reasons for incarceration included refusing to sign a loyalty oath, being a homosexual, being a cross-dresser, espousing unpopular ideas, and simply irritating authority.

Professor Perlin documents the practice of incarcerating people for “dangerousness,” including the pretextural use of mental illness. This practice still persists in some former states of the USSR, including Bulgaria and Romania (pp. 64-66). It remains an issue in Cuba, and studies show that China uses forensic psychiatry with people who have attitudes that do not conform to the government’s view. While we do not have blatantly political laws in the United States, we still have to fight the use of commitment laws when they are not appropriate.

There are 42 countries that have adopted disability anti-discrimination laws and there is a robust survivor movement. The book takes the reader through myriad international organizations and the potential application of statutes, treaties, covenants, protocols, conventions, and case law. The increase internationally of anti-discrimination law has been “meteoric.” The United States has constitutionalized rights relating to mental disabilities over the last 40 years (p. 45). Nevertheless, here and elsewhere, there is a gap between “law-in-action” and “law-on-the-books” (p. 71). Consequently, there is much to be done.

I strongly recommend this book to anyone practicing criminal law or working with mental health issues. Professor Perlin wrote it for the international lawyer audience, but he has let some light shine through for all of us.