Present at the Creation: Mental Health Law in Eastern Europe and the Former Soviet Union

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What would it be like for a mental health system to operate in a legal vacuum? In a country like the United States, where a coherent body of statutory and case law dealing with issues like involuntary commitment and guardianship dates back more than 150 years, such a situation is difficult to imagine (1). Before 1988, however, neither the Soviet Union, nor many of the other communist countries in central or eastern Europe, had any laws on the books governing their mental health systems (2). Devoid of legal control, many of these systems proved susceptible to political manipulation, as psychiatry was enlisted to suppress dissent (3).

Now, however, as part of what has been called "the rule of law revival," the former communist countries of eastern Europe and central Asia are embarking on ambitious efforts to create legal structures within which social, political, and commercial life can take place (4). These initiatives have embraced most aspects of these rapidly transforming societies, including their mental health systems.

A recent compendium of mental health statutes and advanced drafts from 13 countries in the former Soviet Union and eastern Europe, translated into English, provides an intriguing look at the choices being made by reformers (5). The compendium includes contributions from Albania, Belarus (draft statute), Estonia, Georgia, Kazakhstan, Latvia, Lithuania, Poland, Romania, Russia, Turkmenistan, Ukraine (draft statute), and Uzbekistan. The architects of these statutes, with the rare opportunity to write their mental health laws on a pristine slate, have drawn on models from around the world and added provisions that reflect their own—not always happy—histories.

Unlike statutes in the U.S., which generally are concerned only with defining the limited circumstances under which the state can intrude on individual liberty, many of the new laws include detailed descriptions of the services to which all citizens are entitled. Kazakhstan, in central Asia, for example, guarantees access to a wide range of services, including "consultation and diagnosis, treatment, preventive mental health care and rehabilitation under out- and inpatient conditions." With an evident emphasis on reintegrating mentally ill persons into productive employment, the Kazakh law requires the state to establish "special production units, shops or sections with easier working conditions for labor therapy, vocational training, and employment . . . for persons suffering from mental disorders," along with mandatory quotas for employment of mentally ill persons.

Many Americans, grimly watching the progressive dismemberment of public mental health services in their counties and states, might envy the rights to treatment afforded to Kazakh citizens. The language in Kazakhstan's statute is echoed in the statutes of Russia, Turkmenistan, and Uzbekistan. Estonia, somewhat more tersely, provides that "every person residing in the territory of Estonia is guaranteed necessary psychiatric assistance." Romania guarantees all mentally ill persons jobs that they can perform. Georgia exempts mentally ill people who work from income taxes and partly exempts from those taxes the companies that employ them.

It might be wise to remember that rights to extensive psychiatric care and employment are easy to promise, but somewhat more difficult to deliver, especially in some of the impoverished countries represented in the compendium. But the principle of guaranteeing care to everyone who needs it is admirable, and the absence of this principle from American statutes is much to be regretted.

Of course, the core of any mental health statute deals with the circumstances of involuntary treatment. Here, the approaches are surprisingly diverse. Many of the former communist countries have adopted the commitment criteria proposed by the World Health Organization (WHO): "when a person's behavior suggests that he or she has a severe mental disorder presenting: a) an imminent danger to himself or herself or others, or b) helplessness, i.e., inability to cope with the basic needs of everyday living, or c) substantial harm to that person's health as a result of deterioration of his or her mental condition if that person is not given psychiatric care" (6). The first two of these criteria are familiar to almost all mental health professionals in the U.S.; the third has been adopted in a small number of jurisdictions in this country, such as Washington state, and sometimes serves as the basis for outpatient commitment in other jurisdictions. The third criterion reflects less

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emphasis on dangerousness as the justification for commitment and greater attention to a patient's interests in receiving treatment before deterioration occurs.

Some countries have adopted more restrictive language than that suggested by WHO, including Albania, Belarus, Lithuania, Poland, and Ukraine, all of which omit the deterioration provision. In contrast, other countries have broadened the definition of committability somewhat. Georgia, for example, allows commitment of persons who "may sustain or inflict considerable material loss," and Romania hospitalizes persons who are "a real threat to great material values or disrupt normal family and society life, repeatedly and seriously." [Presumably, those who pose a "threat to great material values" threaten to destroy property.] Latvia's provisions for commitment include persons whose disorders are likely to lead to a deterioration of their health, so long as they are unable to give informed consent for treatment.

If the criteria for involuntary commitment are heterogeneous, the procedures by which it is effected are even more so. Most countries provide for mandatory review of the committing psychiatrist's decision, although not always by a court. Even when courts are involved, their point of entry into the process differs. Albania provides a court hearing within three days of admission, but Estonia only after 14 days. Estonia does require, however, that the admitting psychiatrist's decision be confirmed by two psychiatrists within 48 hours of hospitalization; if either disagrees, the patient is free to leave. This use of independent psychiatrists, often called a "commission," is a frequent device in other statutes as well.

Several nations, including Romania and Uzbekistan, give patients the option to request review by a court after a medical board or commission has heard the case. Some countries, includes Russia, Turkmenistan, and Ukraine, require periodic rehearings by a court, whereas others again leave this option open to patients. More unusual provisions exist in other statutes. The draft law in Belarus mandates notification of the local prosecutor when a patient is committed, with that official apparently expected to protect the patient's interests in some undefined manner. Georgia requires only review by a medical commission at 48 hours, and Latvia at 72 hours, with no other route of appeal. Lithuania's law is unique in relying on a three-person municipal mental health commission—one member of which must be a lawyer—to review commitments within 24 hours, with court involvement following if the patient is still hospitalized after 30 days.

Perusal of these statutes underscores the point that the system found in most American jurisdictions, involving rapid recourse to judicial hearings, is by no means the only reasonable approach. In particular, early review by a panel of psychiatrists, with full court hearings reserved for patients detained for longer periods, may be a more efficient means of ensuring the appropriateness of involuntary commitment. This is especially true if patients have the right to request court review at any point before the scheduled hearing and if they are afforded adequate notice and assistance in exercising their rights.

Some statutory provisions reflect the sordid history of abuse of psychiatry in the former Soviet Union and eastern Europe. The Russian statute, for example, insists that "While providing psychiatric care, the psychiatrist shall be independent in his decisions and shall be guided only by medical indications, medical duty, and the law." In Belarus, the draft law provides that "Psychiatric diagnosis shall not be a matter of judicial review." The specter of political misuse of psychiatry still haunts these lands.

Laws alone, of course, do not guarantee either freedom from abuse or access to services. It was often said of the old Soviet Union that, on paper, it had one of the finest systems imaginable for protecting the rights of its citizens. Law is only a first step, one that must be supported by a profession concerned with advancing patients' interests and by a society supportive of individual liberty. Thus it was heartening this spring to be present at a conclave, just outside Amsterdam, of nearly 200 reformers from the former communist world, most, though not all, psychiatrists. After several years of meetings sponsored and supported by Western groups, the participants assumed responsibility for the process themselves, creating the Association of Reformers in Psychiatry, adopting a constitution and by-laws, and electing their own officers.

The reformers face formidable obstacles to introducing democratic psychiatric systems to their countries. Many countries are still hamstrung by bureaucracies with authoritarian bents. At a session on empowerment of patients, one psychiatrist from the Baltic noted plaintively, "It's hard to empower your patients, when you have no power yourself." Financial strains are another critical issue. Some facilities routinely run out of medications, returning the practice of psychiatry to its preneuroleptic days. And most psychiatrists in these countries feel isolated from their colleagues in the West, unable to afford travel to conferences, subscriptions to journals, or even connections to the Internet.

However, a noble experiment in building democracy is in progress in these lands, and it most decidedly includes the mental health systems and the people who work in them. It will be interesting to watch the evolution of their laws, the development of their systems, and the innovations they—of necessity—create. This is a process worth rooting for. ♦

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