The regulation of psychosurgery

In the preceding chapter we considered the ethical issues surrounding psychosurgery. However, our treatment of these issues was, for the most part, divorced from the matter of regulation. Accordingly, in the present chapter, we shall focus specifically on the various prescriptions that have been offered for policing and controlling the practice of psychosurgery.

At the outset, it is important to indicate that clinical practice has rarely been subject to formal external regulation (Bromberger, 1977). Certainly, the first wave of psychosurgical operations encountered no formal regulatory obstacles. Addressing the problems involved in drafting a statute to police the use of lobotomy, the Stanford Law Review (1949) concluded:

... the greater good will be achieved by avoiding legislative fetters and relying for protection on the high standards of the medical profession and the individuals who compose it. (p. 474)

This laissez faire ethic prevailed for the next two decades. As Annas and Glantz (1974) commented, “throughout the 1950s and 1960s, psychosurgery was ignored by the legal community” (p. 251). It is an arrangement that continues to attract wide support from the medical profession. In an editorial of Biological Psychiatry, Wortis (1972) contested the wisdom of legislating against contemporary psychosurgery. His comments are reminiscent of the 1949 submission:
There is room in our society for some mandatory laws for health and sanitation, but they should be few and cautious. It is simply not possible to settle our scientific differences through legislation, or to insure good medical practice of judgment by laws. (p. 100)

In the face of such persistent opposition within the medical profession, are there persuasive arguments in favour of regulation? There are, in fact, several good reasons for submitting that psychosurgery warrants regulatory attention.

First of all, our present analysis indicates that psychosurgery still lacks an adequate scientific rationale and possesses only superficial and precarious empirical support. Given that the efficacy and validity of psychosurgery are still in doubt, regulation is appropriate. Second, only in a regulated milieu will it be possible to insist on the experimental control and assessment procedures necessary to properly evaluate the therapeutic status and utility of psychosurgery.

Third, there is now substantial public concern and even alarm about psychosurgery, particularly in the United States. Admittedly, much of this is based on the perhaps unlikely proposition that psychosurgery offers the potential for unlimited social control and the somewhat metaphysical construct that the brain is inviolable. Nevertheless, widespread and intensely held views, whether grounded in logic or not, demand formal recognition; the regulation of psychosurgery would seem the appropriate response.

Finally, in spite of protestations to the contrary, psychosurgery is not simply a medical concern. It is, as we have indicated in the previous chapter, a matter of social ethics. In fact, it is difficult to contest the case that all medical treatment and experimentation embodies issues of morality. This is emphatically so when the treatment or experiment is aimed specifically at altering behaviour. (The failure of some psychosurgeons to even recognize the existence of fundamental ethical problems is, in itself, a powerful argument for external regulation.) When confronted with far-reaching ethical questions, the matter of consent, for example, it has usually proved propitious to formulate regulations for the purpose of guidance and arbitration.

Having established that external control is warranted – to protect patients exposed to experimental procedures, to improve the conduct of psychosurgery, to reflect the public concern, and to provide clarification on complex ethical issues – let us consider what style of regulation would be appropriate. Several models have been put forward.

The least radical and intrusive model for regulation involves the scrutiny of proposals for psychosurgery by peer review committees. As Offir (1974) wryly commented, these are “the physician’s peers, not the patient’s” (p. 59). Since 1966, such committees have been an integral part of federally funded American hospitals. Further, some legislation has placed great emphasis on peer review committees. For example, in Australia, the New