

Substitute decision-making in residential social care: A socio-legal analysis

Michael C. Dunn

Summary

This PhD thesis reports on a project that explores the ways that substitute health and welfare decisions are made on behalf of adults who lack the mental capacity to make one or more such decisions autonomously. Drawing on socio-legal analysis within an empirical ethics approach, the project aims to examine how the introduction of a statutory legal framework to regulate substitute decision-making interfaces with the practical and ethical dynamics associated with the everyday provision of support in a residential care setting.

There are three substantive parts to the thesis:

- 1) An historical and interpretative legal analysis of developments in the regulation of substitute decision-making in England and Wales. Particular consideration is given to the new framework for substitute decision-making introduced under the *Mental Capacity Act 2005*, the ‘best interests’ principle codified within this legislation, and a range of legal, ethical and practical tensions relating to the implementation of a statutory framework for substitute decision-making in paid and unpaid care settings.
- 2) An empirical qualitative study of the ways that substitute decisions are made by support workers providing support to men and women with intellectual disabilities who live in residential care homes. By taking a grounded theory approach, involving both observation and interview methods, it is proposed that support workers situate substitute decision-making within a broad account of their care role, rather than in terms of their legal responsibilities. It is argued that support workers orientate the substitute decisions they make to help residents to live ‘a life like ours’. In so doing, support workers describe how they a) seek to operationalise facets of the personal decisions they make in their own life as a way of enhancing residents’ quality of life, b) defend this vision in terms of their relationships with residents, and c) negotiate the substitute decisions that they make in response to a series of challenges.
- 3) An ethical analysis of support workers’ accounts of substitute decision-making. This analysis aims to facilitate a normative judgment about whether these accounts will lead to the ‘best’ decisions being made, and is complemented by an exploration of the observed discrepancies and dissonances between the legal duties placed upon support workers and the ways that they account for the substitute decisions that they make. The implications of these findings are considered in terms of: a) the appropriate basis for the legal regulation of aspects of residential care practice, b) the broad ethical dimensions of policy and practice relating to residential care for adults with intellectual disabilities, and c) the ways that an integrative legal, empirical and ethical approach might inform academic research and understanding in social care.