



UNIVERSITY OF TORONTO
FACULTY OF LAW

Health Law, Policy and Ethics Seminar Series

MENTAL HEALTHCARE, COERCION, AND THE LAW: AN AUTONOMY LENS

Thursday, February 16, 2023 | 12:30 to 2:00 p.m. (a light
lunch will be provided)

PRESENTER:

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ABSTRACT

We cherish our autonomy, speaking of it in grand terms both in common rhetoric and more formal settings like Supreme Court of Canada judgements. This language often reaches its zenith in matters of medical self-determination – the right to consent to, or refuse, proposed medical treatment. Yet, this language is always subject to a caveat; those deemed incapable of deciding their own treatment are denied these agency rights, in favour of paternalism. This incapable person has received much less scholarly attention. The turn from rights to paternalism is usually justified using, once more, the language of autonomy. Yet, autonomy has no clear or consistent meaning in this context. Moreover, this conceptual murkiness can conceal the operation of other values. This paper takes up the legitimacy of legal paternalism in the context of Canada's mental health act powers to admit and treat people "for their own good". A comparison of Canadian approaches to coercive mental health "care" reveals at least three competing theories of autonomy, with very different implications for the rights-bearing subject. The paper concludes with an argument that each of these approaches should be rejected in favour of one based in relational autonomy.

BIOGRAPHY

Sophie Nunnelley is Associate Director of the University of Ottawa Centre for Health Law, Policy and Ethics, Senior Research Associate on the CIHR-funded '*Machine MD: How Should We Regulate AI in Healthcare?*' project, and a doctoral candidate at the University of Toronto Faculty of Law. She writes on issues of health and disability law, human rights law, law and artificial intelligence, and legal theory. She is a former Vanier Scholar, Lupina Fellow in Comparative Health and Society, CIHR Fellow in Health Law, Ethics and Policy, and Fulbright Scholar. She previously practiced law, most recently with the Constitutional Law Branch of the Ministry of the Attorney General for Ontario. Sophie holds degrees in Law from Yale University and the University of Toronto and was a law clerk to the Hon. Mr. Justice Charles Gonthier of the Supreme Court of Canada.



ABOUT THIS SERIES

The Health Law, Policy and Ethics Seminar Series brings guest speakers to the University of Toronto Faculty of Law to stimulate the discussion of issues related to the intersection of law with health care and further ethical and social issues.

For more information,
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