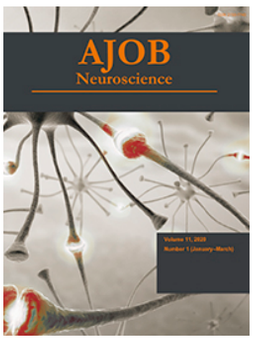

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Narrative Coherence and Mental Capacity in *Anorexia Nervosa*

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CAPACITY IN SEVERE AND ENDURING *ANOREXIA NERVOSA*

Cases of severe and enduring *Anorexia Nervosa* (SEAN) rightly raise a great deal of concern around assessing capacity to refuse treatment (including artificial feeding). Commentators worry that the Court of Protection in England & Wales strays perilously close to a *presumption* of incapacity in such cases (Cave and Tan 2017, 16), with some especially bold (one might even say reckless) observers suggesting that the ordinary presumption in favor of capacity *ought* to be reversed in such cases (Ip 2019).

Those of us who worry that such trends and proposals amount to (or at least pose a serious threat of) wrongful discrimination on the grounds of disability nevertheless feel the pull of judging many SEAN service users to be incapacitous with respect to decisions regarding (perhaps amongst other things) treatments involving feeding, artificial or otherwise. But it is difficult to get to grips with exactly what their incapacity consists in. Many such service users seem able to understand, retain, use and weigh information, and express a decision (i.e. they seem, *prima* facie, to satisfy the 'MacArthur' criteria). At the very least, they do not, generally speaking, straightforwardly *violate* these criteria.

Studies looking at the many ways autonomous decision-making may be impaired by SEAN identify purported issues of (1) pathological value-judgments (Tan et al. 2006, 273–276), and (2) issues of compulsion and impaired control (Craigie and Davies 2019; Godier and Park 2015)[1]. But trying to incorporate these elements into legal/clinical capacity judgments poses difficulties.

1. If we hold that capacity requires an absence of pathological values, then we need to distinguish pathological values from non-pathological ones; that we find them odd or imprudent is insufficient. But the obvious way of doing this – proposing that pathological values are those caused by mental disorder – has two problems. Firstly, it begs the important question; why should we hold that unusual values caused by mental disorder (such as a desire to promote thinness over health) impair capacity, while unusual values *not* caused by mental disorder (such as a desire to avoid blood transfusions because they are deeply sinful) do not? Secondly, it brings us perilously close to a presumption of incapacity. Since *Anorexia Nervosa* is diagnostically characterized by pathological values[2] it is, according to this view, diagnostically characterized by something that undermines capacity.
2. Further, how exactly to understand compulsion is important, but controversial here. If we understand compulsion as leaving you with *no* choice but to act in a certain way then SEAN (like addiction) very rarely involves compulsion (cf. Craigie and Davies 2019; Foddy and Savulescu 2006). If compulsion is understood more loosely, as something that makes alternative behaviors *very difficult*, then it is difficult to distinguish the compulsive desires in SEAN from other powerful desires that we do *not* take to ground incapacity (e.g. a profound and unshakeable desire to avoid blood transfusions because they are sinful). Further, such desires in cases of SEAN are often ego-syntonic (i.e. authentically held, and experienced as partially constitutive of the self). I err toward thinking that the notion of *compelling*

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[1]Of course, there are other purported impairments to autonomy in SEAN also identified by these and similar studies – I aim to give a representative sense of this literature, not a comprehensive survey, and have chosen the ones that plausibly apply to the greatest proportion of the clinical population.
[2]E.g. "Intense fear of gaining weight or becoming fat", or "undue influence of body weight or shape on self-evaluation" (APA 2013: 338–345).

> *oneself* is (in the relevant sense) incoherent, and so to thinking that such desires cannot be compulsive. But even if it is coherent, I can't see compulsion retaining its ordinary moral force in such a case.

The profound difficulty of spelling out sensible grounds for our intuition that SEAN service users lack (or ought to lack) capacity in some way should concern us. We should worry that such intuitions might in fact be grounded in inappropriate value-judgments (see Craigie and Davies 2019, 237–240, who argue that this may be exactly what underlies some cases of SEAN service users being found to lack capacity in the Court of Protection for England & Wales). Could adding a requirement of NC in principle help us avoid these concerns?

NC IN SEAN

Unfortunately, I think the answer is no. Goldberg (2020) tells us that NC requires that a person explain what has led them to making a particular decision "in a temporally, culturally, causally, and thematically coherent way". Without going into too close an analysis of these individual components, we can nevertheless observe that many SEAN service users will meet them, because their disorder is experienced ego-syntonically (Tan, Hope, and Stewart 2003). That is, they experience *Anorexia Nervosa* as "being a part of themselves or of their identity" (537).

This suggests that even when the illness is experienced as merely a *part* of themselves, in conflict with other parts, and in tension with other kinds of values that they hold (a common enough experience in cases of SEAN, see Hope et al. 2011, 26), they will typically have little trouble imposing order on a decision that is in line with this aspect of themselves. This is because such a decision, and the values, priorities and beliefs that lead to it, do not typically represent a major departure from the kind of self or values that the individual recognizes as being authentically *theirs* (even if they also recognize them as in some sense harmful or otherwise undesirable).

This is, of course, far from a universal feature. Some SEAN service users do experience their anorexia as alien to them; as

> … inauthentic (though powerful) [and as providing] grounds and motivation to overcome the anorexia nervosa – to extirpate the inauthentic aspects of myself. (Hope et al. 2011, 26)

The key problem however is that service users who experience their anorexia as alien to themselves and to the values they recognize as their own (i.e as ego-dystonic), and hence those least likely to be able to impose a coherent narrative on resulting decisions, are also, as Hope et al found and explicated in the above quotation, the *least* likely to persistently refuse treatment. The consequence of this is that their capacity to refuse treatment will often be moot in practice. Regarding SEAN, the situations where we most want a failure of NC to ground a judgment of incapacity are precisely those where the service user is most likely to meet a NC requirement.

LESSONS

So where does this leave us? The fact that judgments of capacity in many cases of SEAN are robust in the face of Goldberg's (2020) proposed NC requirement, when combined with the concerns I presented above regarding other purported ways SEAN may undermine capacity, should give us pause in two central respects (I do not pretend that I have done enough here to *establish* these concerns, but rather to make them salient).

Firstly, we should worry even more than before that the search for criteria for judging capacity that will find SEAN service users incapacitous is driven not by reasonable philosophical or clinical conviction in our pre-theoretic judgments, but rather by horror and dismay at the kinds of decisions these individuals are prone to make. That yet another philosophically motivated addition to our standards for judging capacity fails to find such individuals incapacitous is exactly what we would expect were it the case that (entirely reasonable) feelings of sympathy and sadness at the plight of SEAN service users were (unreasonably) driving our disposition to judge them incapacitous (Craigie and Davies 2019, 239).

Secondly, we should be concerned that we are asking the concept of capacity to bear too much moral weight. It seems plausible that part of the explanation of the persistent intuition that SEAN service users lack capacity is down to a deeper moral intuition that it is often permissible, or even morally required, to detain and artificially feed such individuals against their will. If we also believe that capacitous people have a right to refuse treatment, then seeking to preserve this intuition will motivate us to seek out evidence of incapacity, even where we are unlikely to find it.

Perhaps it would be better to accept that the notion of incapacity is unable to do what we so desperately want it to here. If, after all this, we *still* believe that

the moral intuition above is worth preserving, then we must confront the possibility that the best (and far from decisive) moral case for compelling treatment for SEAN – that it is in some (though certainly not all) individuals' best interests, and that they may eventually thank those who do so – is one that makes no use of the concept of capacity.

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REFERENCES

American Psychiatric Association. 2013. *Diagnostic and statistical manual of mental disorders*, 5th ed. Washington, DC: American Psychiatric Publishing.

Cave, E., and J. Tan. 2017. Severe and enduring *anorexia nervosa* in the Court of Protection in England and Wales. *International Journal of Mental Health and Capacity Law* 23(4): 4–24. doi: 10.19164/ijmhcl.v2017i23.629.

Craigie, J., and A. Davies. 2019. Problems of control: Alcohol dependence, *anorexia nervosa*, and the flexible interpretation of mental incapacity tests. *Medical Law Review* 27(2): 215–241. doi: 10.1093/medlaw/fwy022.

Foddy, B., and J. Savulescu. 2006. Addiction and autonomy: Can addicted people consent to the prescription of their drug of addiction? *Bioethics* 20(1): 1–15. doi: 10.1111/j.1467-8519.2006.00470.x.

Godier, L. R., and R. J. Park. 2015. Does compulsive behaviour in *anorexia nervosa* resemble an addiction? A qualitative investigation. *Frontiers in Psychology* 6: 1608. doi: 10.3389/fpsyg.2015.01608.

Goldberg, A. L. 2020. How bioethics and case law diverge in assessments of mental capacity: An argument for a narrative coherence standard. *AJOB Neuroscience* 11(1): 7–17.

Hope, T., J. Tan, A. Stewart, and R. Fitzpatrick. 2011. *Anorexia nervosa* and the language of authenticity. *Hastings Center Report* 41(6): 19–29. doi: 10.1002/j.1552-146X.2011.tb00153.x.

Ip, E. C. 2019. *Anorexia nervosa*, advance directives, and the law: A British perspective. *Bioethics* 33(8): 931–936. doi: 10.1111/bioe.12593.

Tan, J. O. A., T. Hope, and A. Stewart. 2003. *Anorexia nervosa* and personal identity: The accounts of patients and their parents. *International Journal of Law and Psychiatry* 26(5): 533–548. doi: 10.1016/S0160-2527(03)00085-2.

Tan, J.O.A., A. Stewart, R. Fitzpatrick, and T. Hope. 2006. Competence to make treatment decisions in *anorexia nervosa*: Thinking processes and values. *Philosophy, Psychiatry, and Psychology* 13(4): 267–282. doi: 10.1353/ppp.2007.0032.

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Is the Problem Bioethics Versus Law or the Principles of Doctors

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In this issue of the *AJOB Neuroscience*, Goldberg (2020) puts forward the case for an additional standard to be added to the standard capacity criterion in order to bridge the gap that he sees between the legal position of capacity and the ethical requirements of doctors to recognize the capacity of the patients he serves. Although I agree with Goldberg's sentiment that "something is not right with the system", the argument for the addition of a "narrative coherence standard" may not be the solution Goldberg hopes for. Rather I suggest, a focus on the realities on the shop floor, the bottom up element Goldberg asserts to requires a different focus. Starting with a grounding in the reality of needing to make choices every day

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