Abstract:

This paper uses the decision of the EW Court of Protection in Abertawe Bro Morgannwg Hospital v RY (by his litigation friend, the Official Solicitor and CY) [2017] EWCOP 2 as a basis for an exploration of the implications of the normative and epistemic shift in the legal framework for end-of-life decision-making where a person lacks capacity. Using aspects of systems theory, the paper traces the move from the ‘fiction’ of medical objectivity (utilising concepts such as best interests; futility; harm) in decisions at the end of life to an approach which is subjective and ‘patient-centred’. It argues that although the newer approach can be defended as normatively more appropriate, it relies on its own epistemic fictions. There are inherent restrictions on the knowability of individuals’ preferences and dangers in pretending otherwise. In light of this argument, the paper then examines the possible consequence of the shift in approach within the legal system for the operations of the medical system. It identifies risks to the delivery of appropriate end-of-life care and suggests ways in which these might be alleviated, with particular reference to the significance of process within relational autonomy theory.