

21st ASLI Conference 2024 – 29 & 30 May 2024

Panel Category	:	Medical Law and Ethics
Panel Title	:	The Future of Proxy and Supported Healthcare Decision Making in Asia: Perspectives from Singapore, Malaysia and China
Participation Type	:	Panel Submission – Panel 2

Panel Abstract

The law and ethics of making healthcare decisions on behalf of incapacitated persons has to contend with competing notions of human rights and the social and cultural values of the jurisdictions in which these decisions have to be made. This panel examines the influence of Confucian or communitarian values on the idea of best interests, the promotion of supported decision making over proxy decision making, and the special considerations that pertain to making decisions on behalf of minors in the healthcare setting - from the perspective of developments in Singapore, Malaysia and China and in the light of international human rights conventions.

Name of Author	:	Tracey Evans Chan (Convenor)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	National University of Singapore, Faculty of Law
Title of Paper (Convenor)		
Revisiting the Parens Patriae Jurisdiction in Singapore: Its Significance in Healthcare Decision Making for Minors		
Abstract (Convenor)		
<p>The need for a distinct and flexible jurisdiction, which may be invoked by non-parents or guardians to make decisions on behalf of minors in Singapore has been recently recognised both judicially and academically. The ancient parens patriae jurisdiction of the English courts was received into Singapore law under the Second Charter of Justice, and possesses the relevant attributes to serve this function, but there remains uncertainty over whether it continues to exist in Singapore law. This paper considers the legal question of the continued existence and relevance of the parens patriae jurisdiction, in the light of the enactment of the Mental Capacity Act in 2012 and various other statutes concerned with the welfare of minors, specifically in relation to minor patients in the healthcare setting. Two related and consequential issues will also be considered: the right of minors to make decisions on their own without parental or judicial intervention, and the basis on which the court should exercise its parens patriae power in relation to the minor in question, i.e., the nature of the best interests standard as it applies to minors.</p>		
Brief Biography of Author (Convenor)		
<p>Tracey Evans Chan specialises in biomedical law and ethics. He has published in the field both locally and internationally, and served in a number of Singapore expert committees on matters such as surrogacy, transplant ethics, human-animal combinations in biomedical research and mitochondrial germline modification. Professionally, he was called to the Singapore Bar in 1998 and then spent two years clerking for the Supreme Court of Singapore before joining academia. He concluded a year-long secondment to the Singapore Ministry of Health as a Deputy Director in the Regulatory Policy and Legislation Division in 2015, where he assisted in the policy work on the Human Biomedical Research Act 2015. He currently sits on the Singapore Ministry of Health's National Medical Ethics Committee and is also a member of the NUS Institutional Review Board.</p>		

Name of Author	:	Daisy Cheung (Panellist #2)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	The University of Hong Kong, Faculty of Law
Title of Paper (Panellist #2)		
Assessing compliance with the CRPD: the challenge of substitute decision-making on behalf of persons lacking mental capacity in Chinese jurisdictions		
Abstract (Panellist #2)		
<p>Building on a larger project that examines best interests assessments on behalf of persons lacking mental capacity in three Chinese jurisdictions, China, Hong Kong and Taiwan, this article considers in particular the issue of compliance with international human rights obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD) in jurisdictions that tend to be guided by Confucian values and norms. The article begins by considering the extent to which the best interests assessments (or more broadly, substitute decision-making) carried out in these jurisdictions can be said to be consistent with CRPD obligations as currently understood in the literature, and argues that it cannot be said to be consistent with most interpretations of what the CRPD requires. The article then considers whether and how the standards of substitute decision-making in these jurisdictions can be said to be influenced by Confucian values and norms. Due to the relatively scant literature on substitute decision-making and the concept of ‘best interests’ in the Chinese bioethical literature, Confucian principles that are generally relevant to the current context (in particular the principle of autonomy as understood in the Confucian context) will be identified and explored. The article then examines whether such Confucian values and norms can nonetheless be said to reflect values and principles embodied by the CRPD in some way, and as such, whether it is possible to develop a concept of ‘best interests’ that is both arguably compliant with international human rights obligations but also sensitive to the Confucian context.</p>		
Brief Biography of Author (Panellist #2)		
<p>Daisy Cheung is an Assistant Professor of Law and Deputy Director and Research Fellow at the Centre for Medical Ethics and Law, The University of Hong Kong (HKU). Daisy’s research focuses on mental health and capacity law. Her publications include analyses on a number of issues related to Hong Kong’s Mental Health Ordinance (MHO), including its compulsory detention treatment regime, its conditional discharge regime and the problematic way in which mental capacity is conceived of and assessed in different contexts under the MHO. She has published on public mental health ethics in the face of the Covid-19 pandemic, and has written on mental capacity law and ethics across several contexts, including an RGC-funded project on adult guardianship regimes and an edited collection on advance medical directives in Asia (forthcoming 2023, Cambridge University Press). She is currently working on a RGC-funded project on best interests determinations on behalf of individuals who lack capacity, and an ongoing project on the implications of novel neurointerventions on mental capacity law and ethics. She currently teaches the course ‘Mental Disability and the Law’ and Law of Tort tutorials. She is a member of the Mental Health Law Committee of the Law Society of Hong Kong and is a co-founder of a support group for persons on conditional discharge in Hong Kong.</p>		

Name of Author	:	Sharon Kaur (Panellist #3)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	University of Malaya, Faculty of Law
Title of Paper (Panellist #3)		
Supported Decision Making Models in an Asian Context		
Abstract (Panellist #3)		
Supported decision making models allow individuals with disabilities to make medical treatment decisions. Assuming that such models are based on the principles of the Convention on the Rights of Persons with Disabilities, it is said that the question should no longer be – “Does a person have the mental capacity to exercise their legal capacity?” but rather should be “What types of supports are required for the person to exercise his or her legal capacity. This paper will explore the types of support that might be required and consider what this would mean in the context of Malaysian families and communities.		
Brief Biography of Author (Panellist #3)		
Sharon is a senior lecturer at the Faculty of Law, University of Malaya. She teaches Medical Law and Ethics to both undergraduate and graduate students. Her research interests have primarily revolved around medical research ethics and issues of competency and consent. She recently spent a year as a Visiting Research Fellow with the CENTRES programme at the Centre for Biomedical Ethics at NUS where she developed an interest in issues relating to Global Health Ethics and the rights of marginalised populations.		

Name of Author	:	Kumaralingam Amirthalingam (Panellist #4)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	National University of Singapore, Faculty of Law
Title of Paper (Panellist #4)		
A Western History of Autonomy and An Asian Future of The Doctor-Patient Relationship		
Abstract (Panellist #4)		
<p>The history of autonomy is intertwined with the history of informed consent. Broadly, the history of patient autonomy and informed consent in Western medicine may be divided into five eras – ancient, medieval, enlightenment, post-War, and human rights. In the ancient and medieval period, medical beneficence was the guiding ethical principle, but it was accused of fostering medical paternalism and ignoring patient’s rights. The modern roots of autonomy are found in the philosophical debates during the Enlightenment period when faith-based orders, myths, and superstition were challenged by secularism, reason, and scientific method. Foregrounding patient autonomy was necessary to move the needle on the unhealthy culture of medical paternalism and exploitation of patients in medical research. However, over-emphasising an individualistic conception of patient autonomy risks undermining trust in the doctor-patient relationship. Autonomy has become synonymous with individualism and the right to self-determination. Patient advocacy groups have reoriented medical practice from a model based on social rights and responsibilities to one based on neoliberal individualism with a consumerist vision. This individualistic concept of autonomy does not fit neatly with the communitarian values and social realities in many Asian societies. Singapore is a city in which Asian and Western values coexist and conflict. Recent medico-legal jurisprudence and clinical ethics guidelines show that the Western concept of patient autonomy is gaining ascendancy, leading to tensions in the doctor-patient relationship as patients assert their rights. At the same time, there is a generation of citizens who are deferential to authority and professional expertise, who rely on family members to help with decision-making, who lack medical literacy and / or face language barriers to communicate effectively with doctors. A relational concept of autonomy that recognizes the interdependencies that exist between patient, family, social network, and doctor is better able to bridge the gap between medical beneficence and patient autonomy. The future of the doctor-patient relationship depends on articulating a concept of autonomy that is suited to local cultures instead of importing a concept that is alien.</p>		
Brief Biography of Author (Panellist #4)		
<p>Kumaralingam Amirthalingam is a Professor at the National University of Singapore Law School. He obtained his LLB and PhD in Law from the Australian National University and he researches in selected areas of Tort Law (specializing in medical negligence and economic loss) and Criminal Law (specializing in public prosecutions). He teaches both these subjects as well as a Master’s course on Business Torts. Kumar has served as Vice Dean of the Law School and Chair of the NUS Teaching Academy. He is on the International Advisory Board of Medical Law International and Editorial Advisory Board of Medical Law Review. He was seconded to the Attorney-General’s Chambers for two years as Senior Director (Research & Policy) and Deputy Public Prosecutor, and has served as Amicus Curiae in the Court of Appeal and as expert consultant to the Ministry of Health and Ministry of Law.</p>		