

Impact case study (REF3b)

<p>Institution: University of Essex</p>
<p>Unit of Assessment: 32 – Philosophy</p>
<p>Title of case study: Autonomy and the Assessment of Mental Capacity</p>
<p>1. Summary of the impact</p> <p>In 2008 the Philosophy Department decided to organise its impact strategy around the research activities of the Essex Autonomy Project (EAP). EAP research has been conducted in two distinct strands with different research outputs and impacts. This case study summarises the impact of our interdisciplinary research on the legal/psychiatric concept of ‘mental capacity.’ Through the EAP practitioner network, Summer School, and on-site workforce training programme, that research is now informing and changing the assessment of capacity undertaken by frontline medical professionals and social workers acting under the 2005 <i>Mental Capacity Act</i>.</p> <p>2. Underpinning research</p> <p>Mental health law distinguishes between those possessed of ‘mental capacity’ and those who are lacking in such capacity. Adults who have the capacity to decide for themselves (e.g. whether to accept or refuse medical treatment) generally have a right to do so. But those who lack capacity for a particular decision lose that right. This raises theoretical, ethical and practical problems about the meaning of ‘mental capacity’: what is involved in ‘deciding for oneself’? and how should we assess the ability of individuals to do so?</p> <p>The Essex Autonomy Project (EAP) has made critical research contributions in this area. EAP research on mental capacity and its assessment began with collaborative work with the Institute of Psychiatry at the Maudsley, part of the South London and Maudsley NHS Trust. Working with Dr Gareth Owen (psychiatrist at the Maudsley), EAP researchers conducted a series of qualitative studies of decision-making among psychiatric patients. This collaboration led to a series of grants to develop the EAP. In 2010, Martin and Freyenhagen were awarded a major AHRC grant to explore ethical, legal, clinical and historical issues pertaining to the ideal of self-determination in human affairs, with special attention to the so-called ‘vocations of care’ – health care, social care, eldercare, childcare, etc. Also in 2010, Martin was appointed to assist on a Wellcome Trust funded project, awarded to the Maudsley to use phenomenological methods in clinical research into decision-making in three classes of psychiatric patients.</p> <p>In 2012, Martin was appointed to a second Wellcome Trust funded Maudsley project, a longitudinal study of decision-making in patients with fluctuating capacity. A third Wellcome Trust grant was awarded in 2012 to Dr Penny Brown (Maudsley IoP and Broadmoor Hospital) to fund a collaborative project with Martin that extends the EAP research paradigm to criminal contexts involving Fitness to Plead. This research will run from October 2013 to September 2017. To date the EAP has secured funding of over £460,000.</p> <p>This research has produced a series of theoretical insights into the phenomenon of mental capacity and its assessment. These insights have in turn informed the EAP’s collaborations with, and training of, front-line practitioners. Among those theoretical insights are:</p> <ul style="list-style-type: none"> ▪ Distributed Capacity and Decision Communities: Although traditional methods of capacity assessment tend to focus on individual cognitive capacity, decision-making capacity in vulnerable populations is often distributed across relationships [2]. ▪ Temporal Capacity: The capacity to make decisions can be undermined by forms of mental

disorder that inhibit the patient's ability to project themselves into significantly different futures. Although this temporal capacity is not enumerated in the standard 'four abilities' model for mental capacity, it is a key variable in determining capacity, and a factor to which assessors should be attentive [4].

- Second-Person Phenomenology: A strategic combination of phenomenological, hermeneutic, and psychiatric strategies can be used to systematically explore and articulate the experience of 'others' – in particular the experiences of mentally disordered patients in navigating decision-situations [4].
- Transparency instead of Neutrality: Rather than risking uneven practice and arbitrary value-imposition behind the smokescreen of neutrality, the contested values at play in capacity assessments should be made transparent and submitted to democratic oversight. Training should become value-based and equip assessors to navigate the challenges of value pluralism [3].

Essex Autonomy Project 'Mental Capacity' researchers: Dr. Fabian Freyenhagen (Lecturer in Philosophy from 2009, Reader from March 2012, EAP Co-Director 2010 – present); Prof. Wayne Martin (Professor in Philosophy from 2009, EAP Director 2010 – present); Vivienne Ashley (EAP Post-Graduate Research Assistant 2010 – present).

3. References to the research

1. Freyenhagen, F. (2009) Personal Autonomy and Mental Capacity, *Psychiatry*, 8(12), 465-467 [invited contribution]. DOI: 10.1016/j.mppsy.2009.09.005
2. Martin, W., and R. Hickerson (2013) Mental Capacity and the Applied Phenomenology of Judgement, *Phenomenology and the Cognitive Sciences*, 195-214 [peer-reviewed journal article]. DOI: 10.1007/s11097-011-9242-y
3. Freyenhagen, F. and T. O'Shea (2013) Hidden Substance: Mental Disorder as a Challenge to Normatively Neutral Accounts of Autonomy, *International Journal of Law in Context*, 9(1), 53-70 [peer-reviewed journal article]. DOI: 10.1017/S1744552312000481
4. Owen, G., F. Freyenhagen, M. Hotopf, and W. Martin (2013) Temporal Inabilities and Decision-Making Capacity in Depression, *Phenomenology and Cognitive Science* [peer-reviewed journal article]. DOI: 10.1007/s11097-013-9327-x

Research Funding

Wayne Martin (PI) and Fabian Freyenhagen (Co-I); *Deciding for Oneself: Autonomous Judgement in History, Theory and Practice*; Arts and Humanities Research Council; April, 2010 – March, 2013; £392,930.

Wayne Martin (Consultant) with Gareth Owen (Lead Investigator), *A Phenomenological Study of Decision Making in Three Classes of Psychiatric Patient*; The Wellcome Trust; October, 2009 – September, 2012; £239,139 (Essex Portion: £24,962).

Wayne Martin (Consultant) with Gareth Owen (Lead Investigator); *Time and Decision-Making*; The Wellcome Trust, December, 2012 – December, 2017; £709,163 (Essex Portion: £28,649).

Wayne Martin (Consultant) with Penny Brown (Lead Investigator); *Fitness to Plead: A Conceptual and Empirical Study*; The Wellcome Trust; October, 2013 – September, 2016; £428,437 (Essex Portion: £22,375).

4. Details of the impact

EAP research into mental capacity has had significant impact on the conduct of capacity assessments in England and Wales. This has been achieved by collaborating with NHS

Impact case study (REF3b)

psychiatrists from the outset of the project, building a network of partners who conduct capacity assessments, and establishing a workforce training programme and Summer School, supported by the EAP website and Virtual Learning Environment. This training has been particularly effective at communicating the research results concerning capacity assessments to police officers, social workers, and health-care practitioners who conduct such assessments.

EAP's collaboration with practitioners began with a group of psychiatrists in the NHS working on the implementation of the *Mental Capacity Act*. Martin began research presentations at Maudsley Hospital in 2007; both Martin and Freyenhagen were named Honorary Researchers at the Maudsley in 2010; and from 2010 both Martin and Freyenhagen have regularly participated in clinical interviews with patients facing treatment decisions [corroborating source 1]. National media coverage of EAP research (including the 'Today' programme and 'Inside the Ethics Committee' on BBC Radio 4, 'The World Today' on BBC World Service, and *The Guardian* [corroborating source 2]) helped the EAP further develop their network of practitioner contacts, bringing their work to the attention of frontline professionals engaged in capacity assessment. Examples include West Midlands Police trainers for the assessment of mental capacity in police activities, and Brighton and Hove Council trainers for social workers assessing the capacity of vulnerable persons. Over the following months this range of contacts expanded considerably to include Dr. John Adlam, who works with anorexia inpatients at the Avalon Ward in London; John Leighton of Cambridgeshire County Council, who was affiliated with the Social Care Institute of Excellence; and solicitors and barristers at 39 Essex Street Chambers, who specialise in mental health law.

Since 2010 this practitioner network has allowed the EAP to build a training programme for professionals in psychiatry, social work, and health care on issues pertaining to mental capacity. The training programme communicates the main research findings to trainees for practical application. This programme includes the Autonomy Summer School, an annual three-day training course that equips frontline practitioners with an understanding of the philosophical ideal of autonomy and provides a forum for the discussion of the dilemmas surrounding its implementation. The Summer School has been running since 2011 [the inaugural session covered by *The Guardian*; see corroborating source 3] and has attracted over £15,000 in fees in the last two years. Previously subsidised by AHRC funding, the Summer School is now a self-funding project [corroborating source 4].

Feedback shows that trainees were influenced by what they learnt from the Summer School, and that as a result their practice has been informed by EAP research. Over 90% of delegates in 2012 rated the Summer School 'very useful' [corroborating source 4]; using a scale of 1 to 6, delegates' levels of understanding before and after the training raised by an average of 2.2 in 2013 [corroborating source 5]; and feedback comments have included 'your expertise is highly valuable to frontline practice', 'some new material presented here that I can integrate into practice' and 'very useful to think about for my practice' [corroborating source 5].

Since 2011 EAP has also offered a series on-site workforce training modules for health and social care practitioners. These modules were developed from the Autonomy Summer School syllabus and address the issues faced by practitioners who conduct capacity assessments. EAP workforce training sessions have included:

- January 2012: Herefordshire County Council: Training delivered to 20 social workers and NHS staff covering capacity assessments.

Impact case study (REF3b)

- April 2012: University of Essex, a two-day retreat-style workshop on capacity assessments, bringing together researchers, judges, psychiatrists and social workers to explore theoretical and practical challenges associated with capacity assessments.
- November 2012: Maudsley Hospital: one day masterclass on capacity assessment.
- December 2012: London Borough of Barnet: training course delivered to 20 social care practitioners covering capacity assessments.
- January 2013: Independent Mental Capacity Advocate Study Day: held in conjunction with *Empowerment Matters*, a start-up company offering training to Independent Mental Capacity Advocates. Attended by 20 IMCAs. [corroborating source 4].

Feedback from these events provides evidence that the training has changed practice. The majority of participants stated in exit surveys that their knowledge on capacity assessments has increased through the training; 82% of participants from Herefordshire County Council indicated that the training had been 'very useful' [corroborating source 6]. EAP practitioner training is supported by a Virtual Learning Environment hosted on the EAP website and made available to delegates of the Summer School. The VLE disseminates 'Green Paper Reports' on key aspects of mental capacity assessment. Within the impact period over 30,000 unique users have made use of the Essex Autonomy Website and associated Virtual Learning Environment.

Testimonials from research users also show that trainers in the relevant professional fields have revised their training materials to incorporate the insights of Essex research on mental capacity. We include one example of this testimonial evidence below:

The Essex Autonomy Project has been really helpful to me in training... I train adult 'safeguarding leads' in the application of the MCA. I have revised the materials to raise questions of procedural/ substantive autonomy, particularly in relation to vulnerability... The green papers are of consistently high quality and have been useful resources to help practitioners understand the concepts behind the MCA. We have referred practitioners to the 'inherent jurisdiction' green paper to inform decisions about whether or not a case is suitable for Court

Mental Capacity Act training manager at Cambridgeshire County Council and MCA development manager at the Social Care Institute of Excellence

5. Sources to corroborate the impact [All sources saved on file with HEI, available on request]

1. Clinical Senior Lecturer and Consultant Psychiatrist, Institute of Psychiatry at the Maudsley
2. BBC Radio 4:
 - 'Inside the Ethics Committee', 20 July 2010, <http://www.bbc.co.uk/programmes/b00t1xsx>;
 - 'Today', 21 Aug 2010, http://news.bbc.co.uk/today/hi/today/newsid_8933000/8933445.stm;
 - 'The World Today', 14 Feb 2011, <http://autonomy.essex.ac.uk/eap-research-on-bbc-radio>.
- The Guardian*: 'Mental Disability, state power and the capacity to decide', 20 Aug 2010
3. *The Guardian*: 'How ancient Greek philosophy could improve social care today', 28 Sept 2011
4. 'Contested autonomy in Public Policy and Professional Practice', Essex Autonomy Project End of Project Report, submitted to AHRC on 31 July 2013
5. Feedback report for Autonomy Summer School 2013, produced by EAP
6. Feedback data for workplace based training, produced by EAP
7. MCA training manager at Cambridgeshire County Council and MCA development manager at the Social Care Institute of Excellence