Compulsion in mental distress? A synopsis of current critiques

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Overview

Explore major developments relating to mental health law:

- **Debate about legality of compulsion**
- **About discrimination on basis of incapacity**
- **Mental health survivor movement**
- **Human rights lawyers/other professionals**
- **Research re: use of compulsion in practice**

= Highly contested debate:

What part are social workers/MHOs playing in it?

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Legality of compulsion

United Nation's Convention on the Rights of Persons with Disabilities (CRPD).

- **Adopted Dec 2006, 159 signatory countries, incl. UK**
- **Applies to people with any disability, incl. MH difficulties**
- **Article 12 - Enshrines right to equal recognition before the law and Article 14 – Right to liberty and security– a legal revolution?**

"the existence of a disability shall in no case justify a deprivation of liberty" ***(UN, 2006;Spandler, et al., 2015)***

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Legality of compulsion

MH (C&T)(Scot) Act 2003 & AWI (Scotland) Act 2007 would appear to contravene CRPD

World Network of Users and Survivors of Psychiatry (WNUSP) instrumental in developing CRPD

Tina Minkowitz: Critique of 'forced psychiatry'

1. **Obliterated individuality**
2. **'Profound violation of mental and physical integrity' – drugs**
3. **Segregation on basis of disability (p. 172, Spandler et al., 2015)**

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Legality of compulsion

"The CRPD is unique and different from other rights-based legislation. The CRPD is the only legislation in international or domestic law that guarantees our rights on a basis of full equality with others, and that makes no exceptions to legitimise acts of violence and abuse…"

"such legislation [i.e what we have currently]amounts to state acquiescence to the violations and as such represents an impediment to human rights and non-discrimination rather than a means to promote and protect human rights"

(Minkowitz, 2015, in Spandler et al., 2015 p.175).

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Legality of compulsion

"I dissent from the mental illness label that was applied to me by psychiatry and from the quasi-state power that has been given to psychiatrists to classify and select individuals for segregation, confinement, violation of their physical and mental integrity and inferior legal status" ***(Minkowitz, 2015, in Spandler et al., 2015 p.175).***

"The CRPD makes no exceptions allowing detention as a last resort or in exceptional circumstances"

(WNUSP and CHRUSP, 2013, p. 8, Cited in Plumb, 2015, in Spandler et al.,, 2015).

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Legality of compulsion – *other views*

Anne Plumb – CRPD – 'out of frying pan, into fire?

Critical of WNUSP, for not engaging with the question of what to do to prevent harm.

Cites Katsakou et al., 2012:

- **Interviews with 59 invol. 'patients' in 22 hospitals in England:**
- **where 29 out of 60 defended detention**
- **the rest either opposed or ambivalent** **(Plumb, 2015, in Spandler at al.,)**

Where does CRPD leave them?

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Legality of compulsion - *other views*

Instead of focusing on 'no intervention' Plumb argues for emphasis in the debate to shift to:

the nature of the intervention.

Hackney Mental Health Action Group's Charter of Rights for People in mental Distress (1986):

- **full range of alternatives to hospital**
- **and strategies to work with people in crisis**

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Legality of compulsion - *other views*

Plumb also critiques CRPD's implied removal of insanity plea for criminality linked to mental illness – everyone being subject to same criminal law

Calling it 'moral distancing'

"Did the mental health negotiators involved in the drafting of the Convention see an opportunity to rid us of detention and forced treatment before our movement was at a point where we could detail a comprehensive replacement for current interventions?"

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Legality of compulsion - *other views*

"We have not yet pulled together our movement's vast reservoir of collective insight, experience, practical proposals and manifestos…"

(Plumb, 2015, in Spandler at al., p.195)

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Legality of compulsion - Suicide

David Webb critiques time, resources/effort spent on medical coercion & treatment re: suicide prevention

- **Futility of risk assessment for suicide and serious violence (Callaghan and Ryan, 2014)**

Suggests alternatives, e.g. 'safes-spaces':

- **Maytree Foundation in UK (suicide respite centre, 4/5 night stay http://www.maytree.org.uk/**

    - **But funding is miniscule (Maytree is only one in UK) (Webb 2013, in Spandler et al., 2015)**

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Legality of compulsion

Webb - goal should be preventing people becoming actively suicidal: 'mentally-healthy societies'

- **Suicide as a normal reaction to life, the experience of despair, rather than medical condition**

But - situations where it might be acceptable to detain to prevent suicide that doesn't contravene CRPD, but under 4 'strict conditions':

- **Only where risk of death is real and imminent**
- **Based on real and actual behaviour**
- **Not made on basis of medical diagnosis**
- **Must be provided with place of safety, not psychiatric hospital** (Webb, 2015, p.163)

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Legality of compulsion – other views

The right to make decisions is CRPD's core message – Article 12 promotes:

- **Basing legal capacity on decision-making capacity = discriminatory**
- **a move from substitute decision-making to supported decision-making**
- **such schemes must respect 'rights, will and preferences' of person with disabilities. i.e. not 'best interests'** (Callaghan and Ryan, 2014)
- **i.e. replacing AWI Act – as a 'regime of substitute decision-making' with one of 'supported decision-making'?**

Legality of compulsion – other views

Callaghan & Ryan (2014) – imbalance in current legal provision, but strict interpretations of CRPD are lacking:

- **No alternative & disentitles people to benefit/protection when they can't make decisions**
- **The term 'supported' decision making goes beyond any reasonable definition of support – playing with words**

Propose that CRPD does allow for:

- **Maintaining category for substituted decision-making**
- **Including limited power to treat without consent, where person lacks decision-making capacity and where support has failed**

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Legal Impact - Ireland

NI: The Mental Capacity Bill 2014 – second stage, June 2015

- **Designed to 'fuse' MH law & capacity law so as to avoid relying on a diagnosis of mental illness as a criterion for detention & involuntary treatment**
- **Retains mental capacity and best interests (Gooding, 2015, p.66).**

Eire: Assisted Decision-Making Bill 2015 – committee stage, June 2015

- **Needs to pass before ratifying CRPD**
- **Incudes supported DM based on will & preferences**
- **But retains some assessment of mental capacity and substituted DM**

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Evidence from research/practice

Quantitative: **Overall number of episodes of civil compulsory treatment rising 4415: 2012/13 – 4530: 2013/14** (Neil MacLeod, 2015)

Emergency detention certificates:

- **Number of EDCs granted without MHO consent – 2012/13 = 37%; 2013/14 = 42%**

CTOs

- **Increased use of CTOs**
- **Increased use of Community CTOs**
- **Appropriate use of CTOs? Some Health Boards with higher use**

(Neil MacLeod, 2015)

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Evidence from practice

3 RCTs on Community based CTOs:

- 2 in the US, initially showed no change in readmission rates
- Secondary analysis showed fewer admissions if patients
  - were on CTOs for more than 6 months
  - received services >3 times monthly

- OCTET 2012 (Oxford community treatment evaluation trial)
  - CTOs do not reduce the readmission rate, time to readmission or time in hospital for users with psychosis in the 12 months from discharge.
  - But, not clear if other outcomes such as social circumstances are improved (Burns, et al, 2013)

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Evidence from practice

Qualitative:

OCTET

- **Interviews with 37 patients, 26 carers, 25 psychiatrists**
- **Most patients identified positive and negative aspects:**
  - **feeling better, choice, increased freedom – out of hospital**
  - **anger, injustice, controlling & limited focus on social aspects**
- **Carers – mostly about medication compliance. Positive but also containment – 'not a real' life.**

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Evidence from practice

‘Lives Less Restricted’ – I/V 135 ‘patient’s on CCTOs

(MWC, 2011)

- **Generally found that people on CCTOs were receiving good care, treatment, and support.**
- **Most people believed the order was benefitting them & felt involved in decisions about care & support**
- **Care plans addressing needs, including accommodation and benefits, with good MDT working**
- **But little emphasis on employment/education & exiting the system**

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Evidence from practice

Study – 27 MHOs!

- **3 focus groups in 3 Local Authorities in West of Scotland**

CCTOs promote stability in chaos – 'holding'

- **Preventing disengagement & enable discharge**
- **Breaking association of 'treatment' with hosp.**
- **Co-ordinated approach to preventing relapse**
- **Managing risk/potentially criminal behaviour**

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Evidence from practice

CCTOs provide the framework – but:

- **Relationship building/negotiation are key**

- **Importance of social justice perspective but very little explicit reference to S25, 26 & 27**

- **Overall, still a hierarchy: treatment = medication – lack of emphasis on social interventions**

- **Good example of social model practice with CCTO**

Is social work colonised?

Is a culture change needed?

Unworkable challenge - *or opportunity?*

Emphasis on finding ways to support people to make decisions:

- **New technology enables communication for some in 'persistive vegetative state' (Naci, and Owen, 2013, cited in Gooding, 2015)**
- **Services that promote understanding, practical & emotional support, kindness & acceptance – relational spaces to foster trust, self-expression & self-empowerment (Minkowitz, 2015, p179).**
- **Trauma informed services - Scottish initiatives**
- **Peer-support e.g. SAMH services in Glasgow and Angus for suicide prevention and Maytree**

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For MHOs - what now?

An opportunity to draw on our… *"vast reservoir of collective insight, experience, practical proposals"* (Plumb, 2015) and articulate the social responses that are required.

1. **Is it time to revisit and restrict use of compulsion?**
2. **What type of fora do MHOs/SWs need to explore this debate further and contribute to decision-making?**

Regional discussion groups?

Social Work and Mental Distress; Articulating the connection, McCusker, P and Jackson, J accepted for publication, BJSW

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Questions?

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