Rogers vs Whitaker: Principles, Perceptions and Practicalities

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Abstract

‘The concept of consent does not control the judges, they control it.’ This is no more clearly illustrated than in the authoritative decision of Rogers v Whitaker which is widely interpreted as being synonymous with patient autonomy and informed consent. The decision involves a specific rejection of informed consent and self determination as relevant considerations, yet meaningful consent and patient interests are central to the reasoning and final decision. This paper will demonstrate that despite judicial assertions to the contrary, the notion of informed consent lies at the core of medical jurisprudence and is, as Lee suggests, a tool which is adapted by the courts to achieve a desired outcome. This paper explores the decision of Rogers v Whitaker from a fresh angle and asserts that the doctrine of consent continues to be open to interpretation and manipulated by the courts. This leaves open the question as to whether the position as developed in Rogers was truly about the autonomous individual or the removal of power from the Medical profession. If the latter is the case, then what are the true ethical underpinnings of this doctrine?

2 (1992) 175 CLR 479.
3 As it is understood both here and in the United States.