

Lecture 7.1 March 9 Decision making for never-capable patients

Housekeeping: The papers so far seem to be excellent; I would like to have them back by Thursday, but it is looking doubtful because I have to break them into groups of no more than 10 or they all begin to look alike—which is not fair to you (or me). Wish me luck.

Since I did not get the case up on the web before midnight, the papers were not due until midnight of last Thursday (for those of you who submitted on line); so I could not discuss the PG case last week. But: it was derivative from a case of JP (Julio Posada) in Virginia. As that case played out, the resident confronted the surgeon, the blood was not hung, and the patient survived but without his arms. The young man, now 58, is married, and currently living in Durham N.C., having recently won a court case against his then-employers, who were trying to reduce the pay of his 24-hour caregiver.

I had scheduled this week for discussion of decision making for never-capable patients. The readings for this week are divided between a heated discussion between two of our authors on the standard for decision making for previously capable patients; and two examples of decision making for never-capable patients: one a never-competent adult, and the other a seriously imperiled newborn. I'd like to discuss the first two articles in connection with the question: **Who are we talking about??** Because of the complexity of issues surrounding newborns, the two articles about the Miller case will be discussed Thursday.

NB: Obama has lifted one of the restrictions on stem cell research.

** Someone handed in a community learning journal last Thursday with no name on it.

Who are we talking about? Persons, Personal Identity and Bioethics

The issue at stake is the question: what constitutes a person? I suppose most of us think that we know what makes us persons; and since the answer seems obvious, you will not be surprised to learn that there is a HUGE philosophical literature about it—ongoing controversies that have generated 5 books in the last few years that I know about, and more in the works. (The simpler the question, the larger the literature.)

The Rhoden-Robertson exchange is about decision making for presently-incapable patients who were once capable, and who when capable expressed preferences about their treatment should they later become incapable. This is a continuation of our discussion several weeks ago about the advantages and disadvantages of advance directives, and it can play out in several ways: a person who asked to have treatments withheld that would be to h/h present advantage; a person who asked to have treatments provided that would be to h/h present disadvantage. (We don't usually have to provide tx on demand, so the withholding of medically desirable tx is more frequently the problem.)

The dilemma as Buchanan and Brock present it is of having to choose between two prima facie principles: an individual's right of self-determination, what we've grown used to calling the principle of autonomy; and the best interests of the person, what we call beneficence. The philosophical issue is different than the clinical issue, not surprisingly.

The problem for personal identity arises when a person, a particular unique combination of memories, intentions, beliefs/goals/desires, and character, undergoes changes over time that alter or remove those psychological traits. Do we want to describe

the physically continuous substrate as the 'same person'? When we consider the best interests of a person, are we calculating about the interests of the present person, the past person, or the person's whole life, including all stages?

We saw this person in Scenario 5 in Norman Cantor's list of 5 scenarios: remember E, the sociology professor? She's now on ANH, but had an advance directive that suggested she would not want to accept that treatment. If her husband has authorized it for her anyway, has he been disrespectful to her, or respectful of her? Is she the same person, or not? If not, why not? If she's not the same person, are her previous desires binding upon her present self?

Dresser/Robertson argue that prioritizing precedent autonomy runs the risk of doing damage to the present demented person. Rhoden counters by offering cases where not doing so runs the risk of producing unethical situations (eg by transfusing PG as soon as he loses consciousness). The philosophical counterpart to this debate about two clinical principles takes the form of asking whether the presently demented person is the same person as the previously competent one, or rather, for treatment purposes should be considered a different person, with her own 'interests' which need to be respected.

David Shoemaker has an interesting article in the Stanford Encyclopedia on this question, in which he suggests that there are three standard answers to the question of what constitutes our 'personhood.' To my great delight, the class generated versions of each of Shoemaker's candidates in the last 5 minutes of class. Philosophy majors may wish to check out the first three articles in the last issue of the APA Newsletter on philosophy and medicine. The URL is

www.apaonline.org/documents/publications/v08n1_medicine.pdf

The question of who we are talking about is also a question about where ethical issues arise. I drew on the board a trajectory from sperm and egg through competent maturity to corpse. Ethical issues can be found at practically every stage of that progression (including, if we are to believe the Pentateuch, the question of whether we need respect sperm *per se*). Questions about the moral status of fertilized egg (*in vivo* or *in vitro*), blastomere, embryo at every stage of development from 4 days to birth, about the age at which children can be considered persons, and questions on the other end of the trajectory, about what constitutes appropriate treatment for people in the various states of comatose, minimally conscious, PVS, brain dead, and corpse. We will explore some of those questions in greater depth in the next few weeks.