



Ethics: Bioethics (Fall 2014)
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Incompetent Patients and End-of-Life Decisions

Surrogate Decision-Making Standards

■ **Substituted Judgment**

- Surrogate uses discretion, imagination to judge what **formerly capacitated patient** would want in this scenario

■ **Pure/Precedent Autonomy**


- Based in advance directive – explicit, autonomous wishes of **formerly capacitated patient** as guide
 - **Instructional** (living will) or **proxy** (power of attorney)

■ **Best Interests**

- **Never capacitated or insufficiently known** wishes: Choose option with the highest net benefit and lowest net harms/risks for this individual
 - Can be more or less individualized, tailored



Brainstorm

- What are ethical reasons for respecting someone's advance directive (AD) in any given case?
 - To what extent are ADs *authoritative* in how medical care ought to proceed?
 - Why might having a *practice* of writing and enforcing ADs serve moral ends that a society ought to have?
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The Orthodox Approach

- Orthodox approach: Respecting ADs or using substituted judgment for pts who are now incompetent
- Questions to ask
 - Does this approach achieve its moral aims, or could it in some cases?
 - What are the dangers of this approach?
 - Are there alternatives that will be more successful, ethically speaking?

Alleged Benefits & Problems

- Extends freedom, autonomy; projects “critical interests” (Ronald Dworkin)



- Former autonomous person is gone forever; “experiential interests” of current individual matter most

- Protect from overtreatment, undignified existence



- Results in under-treatment; no current interest in “dignity”

Alleged Benefits & Problems

- Prioritize family discretion



- Allows for covert judgments about quality of life, burdens


- Privileges interests of the patient over others' interests



- Fails to privilege *actual* interests of *current* patient; imaginative barriers for former patient




Saikewicz Case

- Alleges substituted judgment standard—misplaced
 - NEVER competent or capacitated (uncontroversial)
 - Patient's best interests indicate non-treatment, though it would be standard for competent patients
 - Do you agree with the court's opinion? What do you see potential problems or objections?
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To Discuss

- **Cantor's five scenarios**
 - Do you believe the AD ought to be followed?
 - What are the moral costs and moral benefits with either decision?
 - Ethical implications for general policy?
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Questions? Comments?

