A Puzzle About Assessment of Decision-Making Capacity

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A Puzzle

Current criteria sometimes count as competent individuals who should *not* count as competent.

What the problem is

Why it is not easy to solve

A tentative proposal
Assessment of Decision-Making Capacity

—Aims to balance concern for individual choice and control with protection
—Legal criteria for assessment vary
—The four-abilities model is the most widely accepted.


Anorexia Patients

Some patients with anorexia nervosa who should not count as having capacity, will nonetheless be counted as having decision-making capacity on the four-abilities model.


Four-Abilities

Ability to Evidence a Choice

Ability to Understand

Ability to Appreciate

Ability to Reason
Ability to Evidence a Choice

Ability to express a choice:

Minimal—clearly necessary but no one thinks is sufficient.

Rules out, without going further, patients who are unconscious or incapable of communicating.

Anorexia patients clearly can express a stable choice.
Ability to Understand & Appreciate

Grasp the relevant facts (understanding).

Believe that the facts are true and that they apply to you (appreciation).
Ability to Understand & Appreciate

Many (but not all) anorexia patients have trouble with appreciation.

Only two in the study by Tan et. al. had such trouble.

“You have to be really thin to die, and I’m fat, so it won’t happen to me.”
It’s awful to admit, but in general it’s the most important thing in my life (being thin). In comparison with relationships, it’s much more important than that, with university and work it’s a difficult decision, but as it goes I can’t say anything but that I did drop my university and that I was in pursuit of thinness at the time. And even now, if I were given the opportunity to go back (to university), but I’d have to be a lot heavier, I’d say no.

I wasn’t really bothered about dying as long as I died thin.
The Ability to Reason

The ability to stay focused on the decision task

The ability to consider the options

The ability to consider and imagine consequences

The ability to assess the likelihood of consequences

The ability to weigh desirability of the consequences in light of one’s values
Valuing: The Root of the Problem?

Our values are just the things we care about and that shape our personal decisions.

These women value thinness, and value it more than anything else.
Valuing: The Root of the Problem?

It is often said that capacity assessment is supposed to be “value neutral.” The assessor must not “judge the patient’s values.”

This usually refers to the idea that a person should never be deemed incompetent simply on the basis of what she chooses.
Can Values be Assessed?

Does the restriction reflect the idea that values simply can’t be good or bad, useful or detrimental? Does it reflect the idea that there is no way to assess them?

Or does it reflect the need to protect patients from certain kinds of mistakes on the part of assessors?

(I favor this second view).
Dawn

Values fiction writing and the writing life. Leaves her job to pursue her dream. Her dream makes her miserable. She finds no meaning or value in her life as a writer.

She initially cared about something that led her in a direction that was not good for her.
Edith

Is on dialysis and has adjusted. Learns that she needs an amputation. At that moment prefers death to life as an amputee.

Facts suggest she has much to live for. If that’s right, then her current values are leading her to make a poor choice.
What are the real ethical constraints?

(1) We cannot declare someone incompetent simply on the basis of our belief that she is making a mistake (Competent adults have the right to make mistakes).
What are the real ethical constraints?

(2) We cannot declare someone incompetent simply because the end she is choosing is unusual, or one that is typically not good for people.

Death is the prime example.
What are the real ethical constraints?

(3) We cannot declare someone incompetent simply on the basis of the fact that she has a mental illness.
A Way Forward?

What if it could be shown that a certain mental illness were such that people with this diagnosis were much more likely than normal adults to make certain kinds of prudential mistakes?
A Way Forward?

A patient (who otherwise exhibits the four abilities) may be declared incompetent if:

(a) she has a mental illness that is known to lead those who have it to make prudential mistakes more often than ordinary, and

(b) in this particular case the patient appears to be making a serious prudential mistake.
Puzzled?

From a certain perspective it can seem obvious that a patient inflexibly bent on starving herself (to death if necessary) merely for the sake of thinness ought not to count as having decision making capacity.

But it not so easy to say how or why that is so.

Thank you.