Sanctity of life law has gone too far
Recent court ruling distorts healthcare provision and values and should be challenged

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Last year an English judge ruled, with the explicit approval of the president of the Court of Protection, that under the rules of that court all patients in a minimally conscious state must be referred to the Court of Protection if life prolonging treatment by artificial nutrition and hydration is to be withheld or withdrawn. Moreover, the judge emphasised that in deciding whether such withdrawal would be in these patients’ best interests it would “be wrong to attach significant weight” to their previously expressed values, wishes, and views unless these had been expressed in a legally valid and applicable advance decision. What should be given great “though not absolute” weight was the sanctity of life. The judge said (paragraph 230), “[given] the importance of the sanctity of life, and the fatal consequences of withdrawing treatment, and the absence of an advance decision that complied with the requirements previously specified by the common law and now under statute, it would in my judgment be wrong to attach significant weight to those statements made prior to her collapse.”

Two aspects of this judgment are profoundly disturbing.

The first concern is that the judge did not accord “significant weight” to the patient’s previously expressed values, wishes, and views. The second is the judgment’s logical implication that all decisions about starting or stopping life prolonging treatment, including the withholding or withdrawal of artificial nutrition and hydration, for all incapacitated patients should be brought to the Court of Protection, even though the judgment refers only to patients in a minimally conscious state. The logic is simple: if patients in a minimally conscious state who have not written a valid and applicable advance decision to reject life prolonging treatment must be referred to the court to prevent doctors inappropriately withholding or withdrawing such treatment, then logically those in a higher than minimal state of consciousness must be similarly protected. And if the previous values, wishes, and views about life prolongation of minimally conscious patients are to be accorded little weight against the principle of the sanctity of life unless those wishes have been expressed in a valid and applicable advance decision then, again logically, the same should apply to incapacitated patients whose state of consciousness is higher than minimal.

The stringent conditions in the Mental Capacity Act for an advance decision to refuse life prolonging treatment relate to a person’s right to make that decision binding in law. But the act does not say that, unless those legal conditions are met, a person’s ordinarily expressed views about being kept alive should be given little weight when others determine that person’s best interests after he or she is permanently incapacitated. On the contrary, the act explicitly requires that the incapacitated person’s previously expressed values, wishes, and views must be determined if possible. Legal and philosophical analysis shows such requirements to be entirely consistent with the need to respect the person’s previous autonomy when determining his or her best interests.

The logical implications of this judgment threaten to skew the delivery of severely resource limited healthcare services towards providing non-beneficial or minimally beneficial life prolonging treatments including artificial nutrition and hydration to thousands of severely demented patients whose families and friends believe they would not have wanted such treatment. The opportunity cost will probably be reduced provision of indisputably beneficial treatments to people who do want them. Since Hippocratic times (at least) the primary goal of medicine has been to benefit people’s health. Until recently, the exercise of doctors’ very limited capacities to prolong life has almost always led to such benefits. Now, however, medical advances have led to a vastly increased capacity to keep people alive without, in many cases, providing any real benefit to their health. This recent judgment, and the practice directions of the Court of Protection, logically imply that doctors should no longer decide, in consultation with those who know their incapacitated patients, whether life prolonging treatment including artificial nutrition and hydration will be in their patients’ best interests. Instead they must provide it until and unless the Court of Protection finds, exceptionally, that application of the principle of the sanctity of life is not in the particular patient’s best interests. Unless this judgment is overturned or modified by a higher court it will gradually and detrimentally distort healthcare provision, healthcare values, and common sense.

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