Law School

Treatment and end-of-life decisions for patients who are not competent and/or cannot communicate their wishes

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Project description:

Medical advances enable lives to be sustained which in the past could not have been sustained. However, as the European Court of Human Rights has noted, "in an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity" (Gross v Switzerland (2014) 58 EHRR 7, para 58).

The question of how long, and in what circumstances, life should be sustained is profound and contentious. Most patients are in a position where they can communicate their wishes, and under English law competent patients can choose to refuse treatment – including life-sustaining treatment. Problem areas for the law arise where patients are either not competent to make an informed decision or are unable to communicate their views. Individuals who anticipate such a situation and wish to refuse certain treatment can, provided required procedures under the Mental Capacity Act 2005 are followed, make advance decisions which will be followed if they cease subsequently to be competent to make or communicate such decisions.

However, where patients are not competent or unable to communicate their decision and have not made advance decisions, the question emerges as to what treatment and end-of-life decisions should be made. Even where advance decisions have been made, a question remains as to whether the individual would make the same decision in the circumstances in which she now finds herself. A particular situation which will potentially increasingly arise is who should make decisions for patients in Vegetative State (VS) and in Minimally Conscious State (MCS), and on what basis such decisions should be made.

The doctorate would examine the legal framework in which treatment and end-of-life decisions are made for those in VS and MCS in different jurisdictions, the role of those making such decisions, the factors taken into account in making such decisions, and the significance of a diagnosis of VS or MCS. The doctorate could also examine the approach adopted in relation to other patients who are not competent, or who cannot communicate their wishes.

The doctorate could also explore medical opinion, religious teachings on issues including the sanctity of life, conflicting ethical principles, societal attitudes, resource allocation, and the developing state of scientific understanding.

Having examined alternative approaches, and considered a range of practical and theoretical issues, the doctorate should recommend a robust legal framework and an appropriate clinical protocol for decision-making when patients are in VS or MCS.