

The ethical implications of the “mentally disordered” provisions of the NSW Mental Health Act.

Martyn Patfield
MHCC May 2009

Hawaii Declaration, WPA, 1977.

No compulsory treatment unless...

“.....because of Mental Illness, the patient cannot form a judgement... (about) own best interest...and...without treatment... serious impairment is likely to occur...”

The NSW MHA

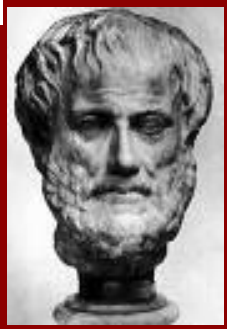
- “Mentally Ill”. Generally for psychotic illnesses where a possibly longer period of assessment and treatment is necessary
- “Mentally Disordered”. For up to three working days, generally for a temporary mental perturbation associated with some risk.

But if there is no illness?

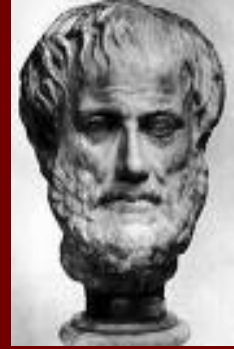
- “A person (whether or not the person is suffering from a mental illness) is a mentally disordered person if the person’s behaviour...is so irrational...that temporary care, treatment or control is necessary...”
for the prevention of harm to self or others

When is compulsory care,
treatment, and control necessary?

- Answer: When you are “**so irrational...** that care, treatment, and control is necessary”



Reason and irrationality



Reason as an internal mechanism

If the mechanism is broken, incapacity

Reason as a way of life

*Making choices according to our values
in order to achieve our personal goals*

How can we know when people can't reason?

- Would a reasonable test relate to a patient's capacity to consent to treatment?... a patient's ability to reason about how to manage his own current problem?

MacArthur Competence Assessment Tool

- 1. Understanding info about condition
- 2. Info relevant to recommended treatment
- 3. Reasoning about choices, options.
- 4. Expressing a choice

A retrospective, uncontrolled, non-double blind (rural) series

- The flavour of 1991. 5%. 13 over 4 months *Exceptional. Patients who are unable to maintain control of themselves, usually due to cognitive impairment*
- The flavour of 2008. 25%. 13 in 11 days. *Commonplace. Is reason not being asserted? Is the patient acquiescing in a role? A role comfortable for everyone?*

Slippage

- “So irrational” ...

Does this phrase allow the compulsory treatment of an improperly wide range of people?

An example of guidance

- "Doctors ...have to give very careful and detailed consideration to the patient's capacity to decide...What matters is that the doctors should consider whether at that time he had a capacity which was commensurate with the gravity of the decision which he purported to make. The more serious the decision, the greater the capacity required."

The costs of not acting unethically in this area.

- Medicalisation of life problems
- Passivity in patients instead of participation
- Health services playing roles they are ill equipped for (eg protection of the public).
- Overburdening of health services

An ethical encounter when compulsory care is a possibility

- 1 A genuine attempt to understand the situation and help patient understand.
- 2 A discussion of options. The benefits and costs of hospitalisation.
- 3 The patient is encouraged to reason about choices. Distress is not blithely accepted as evidence of lack of reason.
- 4 The patient's choices are treated with respect – even if thought unwise.

Manning Clark

“Beware the Psychological Bullies”

