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ABSTRACT

Personal autonomy is a fundamental ideal in American culture. When the autonomy of a person with reduced capacity is restricted or limited by law and a guardian is appointed, the issue becomes critical to our understanding of social justice. Preservation of autonomy remains a core social value even while the legal system moves to erode personal autonomy as a response to diminished legal capacity. This article attempts to make clear the seeming conflict between legal values and social values regarding autonomy. The aim of the article is to provide professional guardians and officers of the court with an understanding of autonomy that allows for reconciliation of these two perspectives. Contains 23 references.  
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RECONCILING DIVERGENT VIEWS OF PERSONAL AUTONOMY

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**ABSTRACT**

Personal autonomy is a fundamental ideal in American culture. When the autonomy of a person with reduced capacity is restricted or limited by law and a guardian is appointed, the issue becomes critical to our understanding of social justice. Preservation of autonomy remains a core social value even while the legal system moves to erode personal autonomy as a response to diminished legal capacity. This article attempts to make clear the seeming conflict between legal values and social values regarding autonomy. The aim of the article is to provide professional guardians and officers of the court with an understanding of autonomy that allows for reconciliation of these two perspectives.

### Reconciling Divergent Views of Personal Autonomy

As guardians become more professionalized and steeped in human services values, the issue of personal autonomy in guardianship and conservatorship becomes increasingly problematic. On one hand, the legal process of appointing a guardian because of diminished capacity automatically restricts, limits, or eradicates freedoms which culturally constitute personal autonomy. On the other hand, basic values of human service disciplines --- those which heavily influence the evolution of professionalized guardian services --- typically emphasize the professional's ethical responsibility to preserve and strengthen the personal autonomy of the client.

This seeming contradiction of values within the legal and human service arenas may function to place professional guardians in ethical dilemmas involving their role in influencing issues of autonomy. Modern professional guardians perform their services simultaneously on behalf of society, the state, the courts, and their clients (wards). Consequently, many of the "hassles" of planning and coordinating services for clients are related directly or indirectly to the divergent ideals of autonomy held by representatives of these various factions.

This article describes the way in which some of these

conflicting ideals and values about autonomy may be reconciled with one another through a sociopolitical analysis of the relationship among legal definitions, the intent of public policy, and the nature of protective service practice. The article presents a foundational discussion of different conceptualizations of autonomy, showing that divergent ideals satisfy the functional needs of various social systems and institutions. Yet taken as a collective whole, the various views operate in concert and need not produce ethical dilemmas for guardians or officers of the court. A better understanding of the potential harmonious interaction between different views of autonomy may help guardians and officers of the court appreciate the uses (or abuses) of various professional perspectives on issues related to personal autonomy.

### Defining Personal Autonomy

Although autonomy means different things to different people, there are many useful definitions that speak to the essence of autonomy as constructed in Western society. Hewitt (1989), for example, noted that autonomy entails the capacity to set goals and to work toward their attainment. In the theoretical sense, autonomy involves complex issues such as the will to choose, assessment of goals and abilities, conscious control over our lives, and even morality (Schneewind, 1986).

In a general sense, people often define personal autonomy in quasi-synonymous, common sense terms such as freedom, the right to choose and make decisions, self-determination, rugged

individualism, privacy, or similar terms. These common sense ideas, or ideals, reflect compatible terms from sociopolitical history and sociocultural values. In everyday life, autonomy may be perceived simultaneously as a human right, a political right, a product of human nature, the reward for adulthood, and even as the definition of personhood.

According to some views, autonomy may also include the individual's right to make irrational decisions and choices in everyday life (Scoccia, 1990). Such an idea would therefore necessarily involve a definitional nuance stipulating that autonomy in the day-to-day world includes some protection from paternalistic interference from others. This protection, however, also seems to be rooted in the assumption of capacity. In other words, before one can enjoy protection from external, paternalistic interventions, one must offer other socially recognized displays of personal autonomy, displays that serve as evidence of capacity.

Although such beliefs about autonomy may remain unarticulated, they remain implicit in the social world; their influence reaches courts, families, guardians, and others who may be involved in the guardianship process. Uncertainty arises when subtle distinctions have to be made among irrational choices, eccentricities, personality quirks, situation-specific behaviors, and actual capacity. The confusing issue is this: At what point do idiosyncratic approaches to life constitute insufficient functional capacity? From the existential perspective, personal

freedom involves confrontation with society to satisfy basic needs and desires (Kotarba, 1987). The capacity for autonomy may thereby be jointly linked to how well the individual goes about the process of confrontation and to how other members of society react. Thus autonomy may be difficult to define in those instances in which functional capacity is effective but social reaction poor.

Social reaction to expressions of idiosyncratic autonomy can, at times, be negative and powerful. Behaviors such as excessive alcohol consumption, for example, may be tied to autonomy or individualistic perspectives in such a way that sociocultural connections between drinker and society are ignored (Davis & Stasz, 1990). Thus common definitions of autonomy may also serve to locate all "failures" within the individual. Displays of idiosyncratic autonomy that are nonconformist in nature may then conveniently be perceived by others as symptoms of reduced capacity to function autonomously.

Such perceptions point to the fact that common definitions of autonomy are not static, but are subject to new interpretations and applications as human situations unfold. It should also be noted that social norms of autonomy may be in direct and continuing conflict with other social norms influencing behaviors and values. The individual whose behaviors are socially defined as indicative of reduced capacity may experience increased vulnerability to paternalistic intrusion.

However, just because society may alter over time

definitions of autonomy does not mean that members of society cannot recognize when the capacity to think, act, and feel autonomous is less than "normal." Ever-changing definitions (or application of definitions) coupled with the "certainty" of recognized incapacity adds to the complex question of how and when society should provide protective help. In general, common sense answers seem to rest on the idea that help should be provided when the individual is personally helpless in some way. Such sentiments are properly reflected in public policies about guardianships and autonomy.

#### Human Service Definitions

In some ways, human service professions have the broadest but vaguest definitions of personal autonomy. The dominant value about autonomy in human services is that whatever services are actually provided should in some way improve or preserve personal autonomy of the client. Ironically, though, in geriatric services, eventual decline of autonomy and increased dependency are sometimes assumed (Okun, 1984). Older clients who decline to comply with professional recommendations may find their competency and autonomy questioned (Guccione, 1988) merely because they prefer some other alternative. Likewise, children who do not develop normal autonomy may be labeled as feeling shame and doubt (Corey & Corey, 1993), a label suggesting faulty autonomy.

Such ideas carry with them the pressure of social conformity in terms of what is and is not considered proper expressions of



autonomy. The individual's need to express some control and power in life (Hogg & Abrams, 1990) may be misconstrued by others as proof of autonomy gone awry. Many of the expectations for autonomous behavior involve gender-linked socialization values, so that the right to autonomy (and life control) may be different depending on the gender of the person in question.

From a more positive perspective, definitions and values from social work seem to have influenced human service fields the most. Autonomy from this perspective links self-determination to human dignity, so that the worker strives to respect both (Compton & Galaway, 19884). As a value central to the field of professional social work, this respect for the client's self-determination, personal priorities, right to choose, and dignity is closely tied to more global ideals such as client empowerment (Sands,, 1991).

Similar values are found in counseling professions. Encouraging autonomy may be viewed as a way of improving independence (Patterson, 1992). Or the act of helping a client may be considered an important step in facilitating the client's movement toward self-sufficiency (Brammer, 1985). Such values directly or indirectly speak to the importance of autonomy enhancement in human service fields.

Although clear definitions of autonomy may be lacking in these fields to the extent that professionals must rely on common sense notions, this does not mean or suggest that human service fields lack commitment to the enterprise. That is, building and

preserving autonomy, albeit poorly defined, is a primary ethical consideration that consumes the energies of many professionals. This core value has influenced the growth of professional guardian services both because many guardians are trained in human service fields and because guardians are necessarily exposed to such values in their day-to-day work with human service agencies and personnel.

An often overlooked issue related to autonomy has to do with social interaction. Edward Sampson (1977; 1985) has noted that the Western ideal of autonomy contains some troubling aspects --- autonomy of this sort may be seen as the antithesis of social commitment. In other words, the notion of strong individualism may generate other interactional problems for society. Stated simply, a strong value toward social cooperation may be minimized in a society which prefers the ideal of individual action as the true expression of adult autonomy.

#### Legal Definitions

Although there is a level at which the legal concept of autonomy is related to notions of ownership of the body as a property right (Green, 1989), dominant legal definitions presuppose that autonomy encompasses the capacity, physical or mental, to carry out one's decisions and intentions. The absence, or the perception of the absence, of such capacity has traditionally triggered intervention by the state through the application of parens patriae and paternalistic interest. The strong tradition of these concepts in guardianship law has done

enough harm to personal autonomy that legal definitions are undergoing rapid change (Hommel, Wang, & Bergman, 1992). In the past, the nature of the guardianship process centered almost solely upon transferring personal autonomy from the ward to the court and then to the guardian.

Human service concepts such as protection and advocacy have influenced how courts and society view the importance of autonomy in guardianship actions (Hull, Holmes, & Karst, 1990). Problems related to the concepts of best interests (Griffith, 1991), substituted judgment (Robertson, 1989), the right to die (Rosenblum & Forsythe, 1990), and even family law (Melton & Wilcox, 1989) have also affected legal conceptualizations of autonomy and personal freedom. This is not to suggest that courts in the past have been unaware of the subtleties of the issues, but rather that a court reflects the zeitgeist of its era. As legal and social theories evolve, courts, too, have the advantage of increased and improved resources to call upon.

The influence of changing social thought and new legal interpretations have allowed the courts to deal more fully with autonomy issues in guardianship hearings. Historically, the distinction between guardianship and conservatorship has been an important one in terms of ward autonomy. The same principle upon which this distinction rests ---preserving maximum autonomy --- has allowed the courts to consider evidence that is both qualitatively and quantitatively different. That is, the courts can now call upon professional guardians or a variety of other

human service workers to assess functional incapacities in the proposed ward so that courts have more information upon which to base decisions.

The traditional relationship between guardianships and conservatorships is preserved in court investigations and ruling which attempt to identify the extent to which capacity has been lost or is absent. With greater sources of information at its disposal, the court can limit by degrees the "amount" of autonomy that is "replaced" by the guardian. Thus from the evolutionary point of view, the court (and the law) moves toward a policy of the least invasive forms of guardianship.

The complexities of autonomy and its seeming opposite --- incapacity --- incorporate legal notions from common law, case law, and constitutional law. Beyond these notions, however, complexities are also fed by social and political climates that effectively flavor how courts view autonomy at any one time. At first glance, making a decision about capacity versus incapacity would seem like a simple matter. Yet in specific cases, courts often face issues which are not so linear and mechanistic. Laws themselves may suggest alternative interpretations, the proposed ward's life situation may be complex, and other parties involved may lack a clear vision of possible solutions.

#### Consolidating Definitions

The guardian, by virtue of his or her unique position between society and the ward, must somehow contend with these divergent views about autonomy and about how each definition may

suggest particular ways to conceptualize and to deal with lost capacity. Different definitions collectively produce a matrix of confusing notions such as the following:

1. While personal decisions in society at large are commonly made with no restriction on quality, wisdom, or knowledge, guardianship interventions examine patterns in decision-making to distinguish capacity from eccentricity and poor decision-making skills.
2. Defining autonomy involves the assumption that the individual possesses the capacity to carry out his or her own intentions.
3. Within certain limits, idiosyncratic or eccentric notions of autonomy may be socially acceptable.
4. All definitions provide some guidelines regarding the point at which capacity is gauged to be insufficient.
5. Legal definitions tend to be the most absolute and the least susceptible to immediate change.
6. The complexity of different definitions usually breeds confusion for all parties involved, including the guardian.
7. All common definitions of autonomy usually influence the guardianship process in some way.

#### Reconciliation of Working Definitions

The professional guardian is the logical and appropriate person to help reconcile the various definitions of autonomy. In serving the court and the ward the guardian needs to view

autonomy from a global perspective, or at least from a wider perspective than some narrow definitions allow. For example, in understanding his or her unique role in helping others appreciate how divergent definitions serve different immediate purposes but the same overall purpose, the guardian should be prepared to explain the following principles to concerned parties:

1. Most definitions of autonomy are useful in some way when attempting to make decisions about someone else's well-being.
2. Most definitions compliment one another to some degree.
3. Disability ultimately determines the capacity for personal autonomy, even though definitions arise from cultural values.
4. Courts have the task of deciding how much incapacity has resulted from disability.
5. The guardianship process is intended to signal the beginning of advocacy, protection, and help.
6. The primary goals of the guardian include protecting the ward and augmenting his or her capacity for autonomy.
7. The guardian helps the ward build upon existing capacity to maximize autonomy and to minimize paternalistic interference.
8. The guardian serves the ward in other arenas in the same way that the guardian ad litem serves the ward in the legal arena.
9. The professional guardian does his or her work on the

ward's behalf in good faith.

These principles make sense only within the wider context of the intent behind guardianship laws, policies, and practices. As a reflection of social beliefs, these factors are linked to deeply held values about the worth of human beings. The overall intent of protection and advocacy may easily be missed or misconstrued if this wider view is not considered. That is, every society must recognize that the human condition is such that people, for a variety of reasons, may experience decreased functional capacity. The social issue then becomes this: How is a society to ensure the well-being of people whose capacity for self-determination has been diminished or whose capacity has not developed to adequate levels?

If we consider the most accurate answer to this question as one which accounts for all the factors of the guardianship phenomenon --- concern, laws, policies, processes, and court participation --- we get a glimpse at the wider perspective. On the face of it, the guardianship process seems to be preoccupied with the task of restricting a citizen's autonomous self. This is true only to the extent that the court has been authorized by society to make judgments in recognition of disabling conditions. If those conditions significantly affect people's capacity for self-determination and autonomy, the court is bound by law to appoint guardians to help insure protection.

The guardian's role in the protective process may be misinterpreted as one in which the guardian superimposes his or

her own autonomy on the client. The notion of substituted judgment appears to suggest that the court takes away the autonomy of one individual and invests it in another. This view, however, is misleading --- the professional guardian's primary responsibility is to the well-being of the ward. The guardian extends the court's authority to protect the ward in day-to-day living. From this perspective, then, the guardian's main role is not to erode personal autonomy, but to augment it. Put another way, our society's way of protecting people with decreased ability to express autonomy involves assessing the functional impact of incapacity, giving to the court as a social institution the authority to make decisions in such matters, and the appointment of another human being to supplement the ward's lost capacity.

This perspective cannot be discerned simply by observing the narrow portion of the process which takes place in court. The court's role must be appreciated as merely one of the steps, albeit an important one, that our society uses to fulfill its obligation in regard to protecting those whose autonomy has been compromised by some form of disability. In this sense, the court's action is akin to a ritual of acknowledgment that disability has occurred. The court's decision constitutes public announcement of the fact.

From this perspective, the actual guardianship process, as symbolized by the court's ruling, encompasses recognition of three important facts: 1) reduced functional capacity is at



some point inadequate for self-determination; 2) society in general has need of such information; and, 3) a guardian has been appointed to supplement the ward's own capacities. These facts point eventually to the underlying reality that neither the court nor society may be able to remove the causal agent --- the disability itself.

The guardian, however, represents both society and the courts in such a way that any remedial resources that are available in the community can be brought to focus on the ward's immediate needs, long-term needs, and personal goals. The quality of the guardian's efforts help determine the degree to which the ward's personal autonomy will be preserved or enhanced. Thus in a very real way, the guardian works with many definitions of autonomy, depending on the ward's needs for services at the moment. And practically speaking, the guardian unites the various definitions to give direction to the entire guardianship plan and process. In order to accomplish the task of uniting and reconciling divergent definitions of autonomy in a manner that is ultimately beneficial to the ward, the guardian demonstrates the following ideals of professional practice:

1. Working knowledge of the various definitions of personal autonomy and their uses.
2. Willingness to educate others in human service fields or  
 → in the general population who are trying to understand  
 → the guardianship process in terms of the ward's autonomy.
3. Willingness to assess the proposed ward's needs and

condition in such a way as to maximize personal autonomy.

4. Willingness to plan and coordinate services to enhance autonomy.
6. Willingness to respect the ward's definition of autonomy.
7. Belief in the power of available services to help mediate many forms of lost capacity for autonomy.

These ideals are not theoretical constructs, but are an important part of the guardian's professional "tool kit" he or she uses to help clients. The actual human service or medical needs of a proposed client may be viewed by others as proof of the person's incapacity (Holmes & Hull, 1992). By demonstrating the ideals described above, the guardian's immediate role becomes that of educator. The task is to illuminate for others how capacity and the need for care are separate issues that need not result in premature conclusions about personal autonomy. That is, the need for care is logically more akin to temporary disability than it is to diminished capacity of the sort that suggests permanent inability to manage one's own life.

### Conclusion

Defining autonomy is likely to remain an important issue for professional guardians. It is equally likely that different definitions extant in society will continue to be problematic and to be sources of potential conflict in the guardian's efforts to act on the ward's behalf. Without a doubt, guardians will often

encounter families, courts, and human service workers who are adamant about the correctness of their own specific definition of individual autonomy. Such adamancy creates conflict in that identified service needs typically emerge from such definitions. In other words, available services that might help restore or enhance personal autonomy are generally identified on the basis of how one defines the worth of individual autonomy. For example, the decision to provide a service might hinge upon how much respect the decision-maker has for the ward or client's right to personal autonomy.

There are more definitions and more intricacies of definition application than described in this brief discussion. It is ethically important that guardians examine their own definition of autonomy so they at least are aware of their own beliefs about what it means to be a person, as well as what it would mean to lose the capacity for autonomy. This personal examination necessarily involves the ability to distinguish between issues of biophysical autonomy and issues of sociocultural autonomy.

Guardians deal continuously with facts and opinions about personal autonomy. Although the idea that guardians are meant to augment the ward's autonomy is an important one to professional guardians, another idea is even more important ---- the guardian may be the sole individual in a position to reconcile effectively the divergent views about autonomy. What emerges finally from this reconciliation process is the recognition that loss of the

capacity for personal autonomy, self-care, and self-determination usually involves increased dependency on others, a concept that seems repugnant in our culture.

And yet, when this issue is examined in light of Sampson's (1977; 1985) work cited earlier, it becomes apparent that we are all interdependent in the social sense. Regardless of cultural myths about rugged individualism, fending for oneself, and being a "free-standing" entity, we remain, after all, human beings who must depend upon one another in many ways. The relationship between guardian and ward exemplifies this interdependency as augmented autonomy becomes the most viable solution to reduced capacity. The solution may not be a perfect one. But with the guardian's power to protect, it is a solution that can work to the ward's ultimate benefit. It cannot, of course, change the human condition or erase a disabling condition. Still, it allows the guardian to offer professional assistance to those in need. The social and legal values expressed in this relationship are in keeping with those expressed as advocacy and protection --- the guardian's contribution to the welfare of another.

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