Conflicts in guardianship

3rd World Congress on Adult Guardianship
Arlington (Washington D.C.), Virginia, USA

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May 30, 2014

1. Game theory

The game and the stakes

- conflicts of interests
- conflicts of values
- mixing of interests and values
The game and the players

parties in guardianship:
• the incapable adult
• the guardian
• family-members: c1, c2, c3,....
• health-care professionals
• the judge
• other parties

The game and the rules

• players are supposed to act in accordance with the law and the rules
• the guardian is guided by the rules of his ‘Code of Ethics’ and ‘Best Practices’
• the guardian sometimes has the authority to make the rules

The game and the gameplay

• players react to each other: action → reaction → interaction
• an action by a player is called a ‘move’
• each move irreversibly changes the situation of the game
• the successive moves determine the gameplay
The game and the outcome

• the outcome is not what each party has wanted
• the gameplay has its own dynamics
• there are unintended and unforeseen consequences of social action

Game theory: conclusions (1)

• game theory in economics and mathematics, with its mathematical models and research, assumes that players are rational decision-making subjects
• people are more than that: they have emotions, feelings, passions, reputations, anger, frustrations, values, norms, tradition, …...

Game theory: conclusions (2)

• however, a rational approach can help us in decision-making processes
• real life is not a game, but sometimes there are game-like situations
2. The guardian in conflict

The guardian versus the ward
- the limitations of the ward involved play a role
- distinction between the message and the messenger
- guardian as the bringer of ‘bad news’
- guardian as a ‘street-level bureaucrat’

The guardian versus family-members
- appointing an outsider can take the sting out of a conflict
- getting the guardian to dance to their own tune
- the guardian as the ‘common enemy’
The guardian versus health care

- the ward involved should get what he is entitled to
- care institutions consists of several players
- first option: consultation, mediation, going 'further up'
- make use of complaints procedure → 'working the system'

The guardian versus the judge

- never start a conflict with the judge: you will lose it
- but: unless the law says otherwise, the guardian is the person who makes the decisions, not the judge

The guardian versus other parties

- acting on behalf of the ward as the promotor of his interests
- negotiating with third parties: creditors, insurer, benefits agency, social security agency, and the like
- make use of complaints procedure, objection and appeal proceedings
3. The guardian as a mediator

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The guardian as an arbitrator

- the guardian makes decisions
- in the interest of the incapable adult
- in accordance of the law
- respecting moral standards of practice
4. The final goal of conflict: to make peace