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# Helping People Make Hard Decisions – And Making Them Ourselves

John Lande

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MAY 29, 2019 | JOHN LANDE | 2 COMMENTS

You are going to die. Before then, you may endure extended periods of suffering from illnesses and injuries (especially from falling down), grisly side effects from medical treatments, chronic physical and mental deterioration, disconnection from your earlier life, loss of control, family conflict, and entanglement with the medical and insurance industries.

Some of that misery may be inevitable. But there is some hope.

The inspiring book, *Being Mortal: Medicine and What Matters in the End*, provides a sharp history and critique of how modern societies treat people as we age. The author, Atul Gawande, a surgeon who has been turned off by the medicalization and institutionalization of aging, describes humane alternatives for aging and disabled people.

This post summarizes some key points in the book, highlights similarities with legal practice, and makes suggestions for readers about dealing with these issues in your own lives. You're not getting any younger, you know, and your parents and loved ones aren't either.

## Helping Patients Make Hard Medical Decisions

Dr. Gawande describes how doctors are trained to "fix" medical problems, and he writes that aging in itself is not a medical problem and that the medical system doesn't handle it well. Too often, he argues, patients are treated as a collection of conditions to be treated.

When patients and their families have to make difficult decisions for aging or ill patients, some doctors assume a paternalistic role, largely making the decisions. On the other extreme, some doctors merely provide information, leaving it up to the patients and families to make decisions. He advocates a third, intermediate, approach in which doctors provide information and also help patients and families make hard decisions. These include decisions about whether people should move into an assisted living facility or nursing home, undertake particular treatments, and enter into hospice care.

Dr. Gawande complains about a bias in the medical system in favor of safety over patient autonomy. Obviously, safety is important – but a compassionate approach would support competent patients' exercise of autonomy even when there are treatments and regimes that might reduce risks, fix medical problems, or extend life.

The bias to prolong life and provide treatments that could benefit patients often leaves them stuck in institutions, on complex medication routines, and hooked into to a web of medical technologies. Assisted living facilities and nursing homes often are run for the operators' convenience, with rigid regimes of sleeping and waking hours, activities, and diet. Many residents hate these institutions, which feel nothing like their homes. Residents can't get up and go to sleep or eat when they please, the surroundings are sterile and unfamiliar, and they lose almost all of their possessions.

Dr. Gawande advocates greater use of geriatric, palliative, and at-home hospice care whenever appropriate. He argues in favor of patients' autonomy in making decisions, including ones that involve some risks (such as going for walks risking dangerous falls or eating certain foods) and declining medical treatment that could improve their lives and increase longevity.

All of these decisions can be hard, sometimes spawning conflict involving patients, family members, medical care professionals, owners and operators of medical and related facilities, and government regulators.

He argues that doctors play a central role in these decisions but medical school and practice do not train them to handle these issues competently. This not only involves technical competence in diagnosis and treatment, but also in counseling patients and families to help them make difficult decisions.

*Being Mortal* is a beautifully written book, interlaced with stories of relatives and patients as well as interviews and observations of experts.

## Counseling Clients About Hard Legal Decisions

I was struck by similarities in dynamics in the medical and legal professions, though obviously the analogy is imperfect (as they generally are).

Lawyers regularly counsel clients about hard decisions. In many situations, people wouldn't seek legal advice unless they were facing difficult problems. Like patients making medical decisions, legal clients make decisions in the face of huge uncertainty and potential adverse consequences.

Like doctors, lawyers are trained to fix problems – and generally aren't trained to see clients as whole people as opposed to a collection of legal issues.

Like doctors, many lawyers take a paternalistic approach to client counseling, essentially telling clients what they should – and will – do in their cases. On the other end of the spectrum, "client-centered" lawyers educate clients so that they can make decisions for themselves. In an extreme version of this approach, lawyers do not give advice or say what they would do if they were in the clients' situation (though I suspect that few lawyers generally follow this extreme approach). Some lawyers may subtly influence clients by the way that they describe advantages and disadvantages of various options. They highlight the benefits of options they believe to be best for their clients and highlight risks of options they see as problematic.

Just as medical schools don't do a good job of training doctors to help patients make decisions, law schools similarly train lawyers to fix legal problems but not to help clients make hard decisions.

Dr. Gawande's prescription for medical practice also is relevant to legal practice. Lawyers generally should do a better job of listening to their clients, providing reasonably clear and accurate information about potential risks and benefits, helping them make hard decisions, and respecting their autonomy.

## So What Are You Gonna Do About It?

Although many people never have serious legal problems, most people face difficult problems related to aging. If you die suddenly, say, of a heart attack or auto accident, you may not have to deal with adverse effects of aging. Otherwise, you are likely to develop medical conditions related to aging. If you are a senior citizen, this prospect is already upon you, even though you may survive for decades. If you are a whippersnapper, i.e., a junior citizen, you may have to deal with difficult problems related to aging of your parents or other loved ones.

The lessons of *Being Mortal* include getting good geriatric care, arranging for in-home care (as opposed to care in assisted living or nursing home institutions) whenever appropriate, seeking home-like facilities when institutionalization is necessary, and carefully considering your (or loved ones') goals and interests and how medical decisions would affect them.

You and your loved ones generally would benefit from some advance planning. You never know if you will suddenly have a serious medical problem, so it's a good idea to have an ad-

vance directive specifying what medical interventions you would or would not want and who would make medical decisions for you if you aren't competent to make those decisions.

Ideally, family members should discuss these matters with each other in advance so that they understand each others' general preferences. When someone is in the midst of a medical emergency, it's not the best time to start this conversation. These conversations can be extremely difficult as we often don't want to face our own mortality or that of our loved ones. Finding the right time to discuss this can be very important.

*Being Mortal* encourages us to enjoy and control our lives as much as we can. That sounds obvious – but it can be terrifying when dealing with the fantastic and scary possibilities created by modern medical science. *Carpe diem*.

ASSESSING INTERESTS AND RISKS DID YOU HEAR ABOUT?

## 2 THOUGHTS ON "HELPING PEOPLE MAKE HARD DECISIONS – AND MAKING THEM OURSELVES"

Kelly Browe-Olson
JUNE 3, 2019 AT 9:44 AM
Thanks John!

He's a great author. I have read other articles and a book he wrote. This is an important topic that many of us deal with personally and professionally in the family ADR area.

Kelly

★ John Lande
JUNE 3, 2019 AT 12:47 PM
Thanks, Kelly. Dr. Gawande is an incredible person, having received a Macarthur "genius grant," worked in the Bill Clinton administration, and worked as a staff writer for the New Yorker.

As you indicate, the issues in this book are very relevant for family practitioners. I was also struck by how relevant it is to virtually all of us in our own lives.

Recently, the NYT ran an article about dealing with end-of-life issues, which prompted a lot of interesting letters to the editor.

Interesting variety of letters to the editor of the NYT in response to article calling for end-of-life guidelines