Voting Rights for Psychiatric Patients: Compromise of the Integrity of Elections, or Empowerment and Integration into the Community?

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ABSTRACT

Background: Participation of the mentally-ill in elections promotes integration into the community. In many countries, individuals with compromised mental incompetence who have legal guardians are denied the right to vote. In Israel, mental health consumers are eligible to vote. We evaluated the capacity of psychiatric inpatients with and without legal guardians to understand the nature and effect of voting.

Methods: Fifty-six inpatients with/without legal guardians were recruited to the study. Participants completed the Competency Assessment Tool for Voting (CAT-V), Brief Psychiatric Rating Scale and the Mini-Mental State Exam.

Results: Cluster analysis determined voting capacity using CAT-V as a continuous variable. Subjects who scored >1.6 on the CAT-V (59%) had high capacity to vote. Subjects without guardians revealed significantly higher capacity to vote. Voting capacity positively correlated with cognitive state and negatively correlated with severity of illness. Among patients with legal guardians those who scored >1.6 on the CAT-V maintained the capacity to vote.

Conclusions: The right to vote is an important basic right for individuals coping with mental disorders. However, it is important to evaluate the capacity to understand the voting process among individuals with mental disorders who have legal guardians. Thus, the integrity of the elections would be preserved by eliminating the risk of undue influence or manipulation of individuals who lack the capacity to understand the nature and meaning of voting, while preserving the right to vote for those with the capacity to do so, whether or not they have guardians.

BACKGROUND

Social movements that advocate the evolution of democracy focus primarily on participation in the electoral process. To fully comprehend the meaning of elections, the determination of who has and who does not have the right to vote must be considered. In the era of mental health reform, community based treatment and the emphasis on empowerment of psychiatric patients, limiting the right to vote of individuals with mental disorders undermines the goals of rehabilitation and integration into society. Conversely, the capacity of individuals with mental disorders to vote is scrutinized and in most democracies psychiatric inpatients, specifically those with legal guardians, are generally denied access to the polls (1).

The lack of decision-making capacity is often used to deny access of psychiatric inpatients to the polls. Raad et al. (2) cite a 2001 United States Federal District Court decision in Maine that struck down the provision that denied the right to vote to all persons under guardianship because of mental disabilities, and adopted a narrow and specific test: persons are considered incompetent to vote only if they "lack the capacity to understand the nature and effect of voting such that they cannot make an individual choice,(known as the Doe Criteria [3])."

Criteria for mental illness vary across time, culture and politics, and while serious mental illness has often warranted disqualification, mental disorders do not necessarily preclude the ability to understand what it means to vote in governmental elections. Drawing a judicious line between serious and non-serious mental disabilities is

Poster presented at the 14th National Conference of the Israel Psychiatric Association, David Intercontinental Hotel, Tel Aviv, Israel, May 15-17, 2012.

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nearly impossible (4). In analyzing general restrictions on the right to vote in 63 democracies, Blais et al. (1) revealed that in almost all of these nations, the minimum voting age was 18 and the right to vote of "mentally deficient people" was restricted. The only countries that do not disenfranchise persons with a mental health or intellectual disability are Canada, Ireland, Israel, Italy and Sweden. Thus, in most countries, adults with mental disabilities do not have a constitutional or legal right to vote (5).

Decision-making capacity and competency both describe patients' ability to make decisions; however, they are not synonymous. Competency is a legal term and is determined by a court of law and decision-making capacity is a clinical assessment. When a person is declared incompetent it means that a court has ruled that the person is unable to make valid decisions and the court has therefore appointed a guardian to make decisions for that person (6).

Hurme and Appelbaum (7) noted that in the United States, although guardianship laws define who is incompetent and in need of a guardian, only a few states have actual legal guidelines to determine whether or not a person has the capacity to vote. Four states have specific statutes that determine when a person is ineligible to vote, e.g., in Delaware, there must be evidence of "severe cognitive impairment which precludes exercise of basic voting judgment." And in Iowa a person is incompetent to vote only if it can be determined that he/she "lacks sufficient mental capacity to comprehend and exercise the right to vote." Although guardianship proceedings are aimed at determining if an individual is "incapacitated" owing to inability to manage money or attend to physical needs, these impairments are not necessarily related to the ability or capacity to vote. Nevertheless, in democracies where individuals who have guardians because of mental disabilities are denied the right to vote, a finding that the person is incompetent automatically triggers the voting ban (7).

The relationship between schizophrenia and decision-making capacity remains equivocal. In patients with schizophrenia, decision-making abilities might be affected by cognitive factors and/or psychopathologic factors. Schizophrenia is usually, although not always, associated with mild to moderately severe neuropsychological impairments. Though psychotic symptoms fluctuate, cognitive deficits are generally stable over time. Impairments in attention, working memory, learning, and executive functions / abstract reasoning are clearly relevant when making decisions (8).

However, there are also published studies that demonstrate a substantial heterogeneity in decision-making capacity among people with schizophrenia, as well as among non-psychiatric controls, suggesting that the presence of schizophrenia does not necessarily mean the patient has impaired capacity to make decisions (9).

Though mental illness is not synonymous with incompetence, there have been countries, such as those under fascist regimes, where people who voted "wrongly" were judged to be mentally ill and found themselves hospitalized (10).

Under the guise of the attempt to preserve the integrity of elections, in most democracies patients with severe major cognitive impairment do not have the right to vote.

In legal terms, how is mental incompetence defined? As previously mentioned, are patients under guardianship, or who are hospitalized in psychiatric hospitals considered incapable of exercising their right to vote (11, 12)? There is presently no clear consensus on what capacities a person actually requires to be able to vote (1), and many people with major cognitive impairments still have the right to vote in some countries (13).

In the United States, state voting laws regarding mental illness vary. In 24 states a person judged "mentally incompetent" by a court is disqualified from voting unless the finding is reversed. In other states, a person under guardianship for mental disability is disqualified from voting. In New Jersey, a person judged incapable of understanding the act of voting by a court is disqualified from voting. Only six states have no statute or provision disqualifying a person with mental illness from voting, and in two of those states legislature may exclude a person from voting based on "mental incompetence" (14).

The Council of Europe's Commissioner for Human Rights issued a human rights comment stating that "persons with disabilities must not be denied the right to vote" based on a judgment issued by the European Court of Human Rights in May 2010 on the case of Hammarberg T on the case of Alajos Kiss v. Hungary (15). This decision concerned an adult man diagnosed with bipolar disorder and subsequently placed under partial guardianship in Hungary. This status resulted in his automatic exclusion from the right to vote, as provided for under Article 70(5) of the Hungarian Constitution. Mr. Kiss was not challenging his status as a person subject to partial guardianship, but was rather challenging the fact that any person placed under partial guardianship would be excluded from the right to vote in Hungary. The government argued that it should enjoy a wide margin of appreciation in determining those eligible to vote. The Court found in favor of Mr. Kiss, stating as follows:

[...] if a restriction on fundamental rights applies to a particularly vulnerable group in society, who have suffered considerable discrimination in the past, such as the mentally disabled, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question [...] [t]he reason for this approach, which questions certain classifications per se, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion. Such prejudice may entail legislative stereotyping which prohibits the individualized evaluation of their capacities and needs [...].

In the United States, despite legal protections, mentally ill individuals continue to suffer from discrimination that limits their rights to vote in elections. Some states adopted individualized functional determinations of competence to vote. In 2001 the Federal Court offered clear criteria for determining voting competence that are based on understanding the nature and effect of voting (the Doe standard [3]).

The Doe standard was operationalized with the Competency Assessment Tool for Voting (CAT-V) along with measures of reasoning and appreciation. The interview questions were scored with good inter-rater reliability and took an average of less than five minutes to administer. Performance was high, with 92% scoring a 5 or 6 out of 6 possible points on the Doe-standard criteria. Performance did not correlate with cognition, verbal IQ, or symptom severity (2).

According to the Israeli Elections Law, every citizen of Israel, age 18 or older, listed in the voting registry and physically present in Israel on Election Day, is eligible to vote. There are no statutes or provisions that disqualify a person with mental illness from voting. Prior to 1996, citizens could vote only in designated ballot boxes nearest their place of permanent residence. In 1996 the law was amended and the concept of mobile ballots in hospitals was introduced to enable physically and mentally ill patients to vote, while hospitalized (16). Thus, in a study conducted in Lev Hasharon Mental Health Center, Netanya, Israel, 204 of the total of 306 hospitalized patients (68.4%) participated in simulated elections, immediately following Knesset (Parliament) Elections. Voting ballots from the simulated election were compared with the actual electoral results, and did not significantly differ (17).

As a sign of the times characterized by social movements, advocacy of democracy and empowerment of the mentally ill, accessibility to the ballot for the mentally ill was considered a step forward in the process of returning the patients to the community (18). In addition there are considerable therapeutic aspects of independent decision making in the political landscape and in exercising the same civil rights as those enjoyed by the healthy population (19). But questions remains whether or not severely mentally ill psychiatric inpatients have decision-making capacity necessary to vote in municipal and general elections, and where the line should be drawn to determine which individuals with mental disorders can vote? Can a person who is unable to manage his own affairs and who requires a legal guardian to make health related as well as financial decisions participate in elections that will determine the future of a nation? While removing stigma is admirable, many people fear that disabled voters, who lack decision-making skills, could easily be manipulated by others when deciding for whom to vote.

In an effort to enable individuals with mental illness in the world community to exercise their civil rights and to promote their participation in the process of government elections, we sought to evaluate the ability of hospitalized psychiatric patients with and without legal guardians to understand the meaning of voting in municipal elections, and to draw the line that would help identify those patients who retained the capacity to understand the voting process.

METHODS

SAMPLE

The study was approved by the Internal Review Board of Lev Hasharon Mental Health Center, in accord with the Helsinki Declaration. Patients from an open long-term hospitalization department, from a closed ward and from a psychogeriatric ward were approached to participate in the study. Participants had to be eligible to vote in Israel, i.e., 18 years or older, Israeli citizens, able to converse in Hebrew, and able and willing to provide informed consent or had a legal guardian willing to provide informed consent to participate in the study. Fifty-six inpatients who met all inclusion criteria and 12 healthy control subjects participated in the study. None of the potential participants refused to participate. All study subjects and/or their guardians provided written informed consent after receiving a detailed explanation of study procedures, and prior to recruitment to the study. Seventy-eight percent of the inpatients met DSM-IV criteria for schizophrenia and the remaining 22% suffered from affective disorders.

INSTRUMENTS

Demographic questionnaire including gender, age, marital status, birthplace and years of education.

Competency assessment tool for voting (CAT-V) (2). The instrument was designed to determine competence by assessing the capacity to vote by evaluating performance on four standard decision-making abilities: understanding, appreciation, reasoning, and choice. It is designed on the basis of the standard for voting capacity described in the Doe case (2) i.e. a person has the capacity to vote if he or she understands the nature and effect of voting and has the capacity to make a choice. The CAT-V operationalizes these criteria into three questions based on the Doe standard ("Doe standard questions"), which are distinct from the remaining CAT-V questions. The CAT-V was easy and efficient to administer and had high inter-rater reliability. In our study we used the CAT-V to examine the capacity to vote among a population of hospitalized individuals with serious mental illness.

Following an introduction that asked the subject to imagine that it is election day for the governor of the state, an interviewer inquired about the person's understanding of the nature of voting and then asked a question to assess understanding of the effect of voting. Scoring criteria used a 2, 1 or 0 scale where a score of 2 described adequate performance on the measure, 1 described marginal performance, and 0 described clearly inadequate performance. This questionnaire was translated to Hebrew and culturally adapted to Israeli society, then back-translated to English, specifically for use in this study.The present study found a satisfactory Cronbach's alpha reliability of 0.84.

Brief Psychiatric Rating Scale: The Brief Psychiatric Rating Scale (BPRS) is a widely used instrument for assessing the positive, negative and affective symptoms of individuals who have psychotic disorders, especially schizophrenia (20). The BPRS consists of 18 symptom constructs and takes 20-30 minutes for the interview and scoring. The rater enters a number ranging from 1 (not present) to7 (extremely severe); 0 is entered if the item is not assessed. The present study found a satisfactory Cronbach's alpha reliability of 0.84.

Mini-Mental State Exam: The Mini-Mental State Examination (MMSE) is a widely used, well-validated screening tool for evaluation of cognitive impairment (21). It briefly measures orientation to time and place, immediate recall, short-term verbal memory, calculation, language and construct ability. Each area tested has a designated point value, with the maximum possible score on the MMSE of 30/30. Test-retest reliability has been examined in many studies; in a review of his own studies, Folstein reported that for samples of psychiatric and neurologic patients, the test-retest reliability "has not fallen below 0.89; inter-rater reliability has not fallen below 0.82" (22). Evaluation was performed during one session.

DATA ANALYSES

Cluster analysis was applied in order to produce two clusters: high and low capacity to vote, using the CAT-V measure as a continuous variable. The analysis included the entire sample, assuming that the healthy subjects would compose the high capacity cluster. T-test and chi-square tests were performed to compare the capacity to vote between the patients and the healthy comparison group. In addition, chi-square tests compared the capacity to vote between patients with and without a guardian and between patients who had voted or had not voted independently in previous elections. Pearson correlations assessed the relationship between the capacity to vote, severity of illness and cognitive state in the patient group. Regression analysis predicted the capacity to vote in the patient group.

RESULTS

PARTICIPANTS' CHARACTERISTICS

Fifty-six patients and 12 healthy comparison subjects participated in the study (Table 1). The cluster analysis produced two clusters of high and low capacity to vote, according to the CAT-V scores. Twenty-three patients (41% of the study group) composed cluster one, low capacity to vote. The 12 healthy subjects (100% of the comparison group) and 33 patients (59% of the study group) composed cluster two, high capacity to vote. This analysis validated the healthy group as a comparison group and the CAT-V as a discriminant continuous measure for assessing high and low capacity to vote. As stated before, the CAT-V is scored on a three point scale, where a score of 2 describes adequate performance on the measure, 1 marginal performance and 0 inadequate performance. The cluster analysis results (Table 2) show that subjects who scored below 1 in all six items of the CAT-V were clustered as low capacity to vote. Subjects who scored 1.6 or above were clustered together as a group with a high capacity to vote.

PERFORMANCE ON THE CAT-V

The healthy comparison subjects revealed significantly higher capacity to vote than the patient study group. Within the study group, subjects without a guardian revealed significantly higher capacity to vote than subjects with a guardian and subjects who had voted independently in previous elections showed significantly higher capacity to vote than subjects who had not voted independently previously (Table 3).

Table 1. *Characteristics of 68 participants who were tested for their capacity to vote*

Variable	Study group (N=56) N (%)	Comparison group (N=12) N (%)
Gender		
Men	37 (66.1)	7 (58.3)
women	19 (33.9)	5 (41.7)
Age		
<40	13 (23.2)	7 (58.3)
40-60	31 (55.4)	3 (25)
60<	12 (21.4)	2 (16.7)
Marital status		
Single	30 (53.6)	1 (8.3)
married	11 (19.6)	11 (91.7)
divorced	14 (25)	
widowed	1 (1.8)	
Birth place		
Israel	31 (55.4)	11 (91.7)
Asia and Africa	11 (19.6)	1 (8.3)
Europe and USA	14 (25)	
Years of education		
primary school	6 (10.7)	1 (8.3)
high school	37 (66.1)	6 (50)
university	13 (23.2)	5 (41.7)
BPRS score[1] (M±SD)	42.9±14.8	
MMSE score[2] (M±SD)	23.6±4.2	
CAT-V score[3] (M±SD)	1.3±0.6	1.9±0.1

[1]Possible Brief Psychiatric Rating Scale scores range from 18 to 126, with higher scores indicating more severe psychiatric symptomatology.

[2]Possible Mini-Mental State Examination scores range from 0 to 30, with higher scores indicating better cognitive ability.

[3]Possible Capacity To Vote assessment tool scores (analyzed as continuous measure) range from 0 to 12, with higher scores indicating better capacity to vote.

Table 2. *Cluster analysis results to test a typology of high and low capacity to vote (CAT-V)*[1]

	Cluster	
	low capacity	high capacity
meaning	.91	1.61
influence	.74	1.89
choice	.78	1.95
deducing	.70	1.84
ability	.26	1.66
evaluation	.43	1.70

[1]Possible Capacity To Vote assessment tool scores (analyzed as continuous measure) range from 0 to 12, with higher scores indicating better capacity to vote.

Table 3. *Univariate comparison of the capacity to vote (CAT-V)[1] between groups within the sample*

Groups	Mean	SD	T (df)
Study group (N=56)	1.26	.61	7.7 (64.2)**
Comparison group (N=12)	1.94	.11	
Subjects with a guardian (N=14)	.79	.50	-3.8 (53)**
Subjects without a guardian (N=41)	1.4	.55	
Subjects who voted independently before (N=35)	1.4	.61	2.3 (46)*
Subjects who have not voted independently before (N=13)	.96	.54	

*p< .05; **p<.001.
[1]Possible Capacity To Vote assessment tool scores (analyzed as continuous measure) range from 0 to 12, with higher scores indicating better capacity to vote.

Table 4. *Pearson's correlations coefficients between the capacity to vote (CAT-V), clinical status (BPRS) and cognitive status (MMSE) (N=56)*

	CAT-V	MMSE
BPRS	-.32*	-.04
MMSE	.54**	

*p< .05; **p<.001

Table 5. *Linear regression coefficients analysis predicting for the capacity to vote (CAT-V)*

	B	β	t	SE
BPRS	-0.1	-.30**	-2.7	.005
MMSE	.08	.53**	4.8	.02

**p<.001; R2= .38, F (2,52) = 15.69, p< .001
Multicolinerarity was tested to control for extreme cases (tolerance> .10).

The capacity to vote positively correlated with the patients' cognitive state and negatively correlated with severity of illness. This indicates that the better the cognitive state the greater the capacity to vote and the more severe the illness, the lower the capacity to vote (Table 4). Accordingly, regression analysis revealed that illness severity and cognitive state predicted capacity to vote. The more severe the illness and the more deteriorated the cognitive state, the lower the predicted capacity to vote (Table 5).

DISCUSSION

Though it has been suggested that individual assessments of competency should be performed before banning a person from participating in the election process, even being subject to assessment can be considered humiliating and could be viewed as a form of discrimination. It has been suggested that if a person can fill out a voting registration card, that person should then be considered competent to vote. "Someone in an active psychotic state is not likely to sit down and register to vote or to visit their local polling

place" (23), thus patients in a severe psychotic state who do not have guardians are not likely to attempt to vote.

Israel is one of the five countries that do not disenfranchise persons with mental health or intellectual disabilities (1). The amendment to the Israel Voting Law allows for mobile ballots in psychiatric hospitals. In this era of mental health reform and empowerment of psychiatric patients to promote rehabilitation, we sought to identify those patients who retained the capacity to understand the voting process.

Though mental illness does not necessarily imply incompetence (10) and though some severely cognitively impaired persons still have the right to vote (13),we found a significant inverse correlation between severity of illness and capacity to vote. Contrary to Raad et al. (2), who did not find a significant correlation between CAT-V scores and cognition, we found a positive correlation between cognition and capacity to vote. In addition, patients with legal guardians performed worse than those without guardians The Council of Europe's Commissioner for Human Rights (16) commented that "persons with disabilities must not be denied the right to vote," and challenged the fact that persons under partial guardianship would be excluded from the right to vote in Hungary and consequently ruled that: Such prejudice may entail legislative stereotyping which prohibits the individualized evaluation of their capacities and needs. Based on our findings, we propose that it may be appropriate to perform individual assessments of competency only for those individuals who have legal guardians, in order to determine whether or not they understand the nature and effect of voting, and to identify patients who retained the capacity to vote. This suggestion is similar to that of Raad et al. (2) who recommended that the CAT-V be reserved as a screening instrument for individuals whose voting capacity is in question.

This limited screening would not stigmatize the entire population of mentally ill individuals by disenfranchising the entire sector, and would promote representation of this minority in the elections. In addition, patients with legal guardians who in many countries are currently disenfranchised owing to their need for guardianship will have an opportunity to have their capacity to vote assessed. If found capable (score of 1.6 or higher on the CAT-V), though previously denied this basic civil right, they would be granted the right to vote. Thus, the integrity of the elections would be preserved by eliminating the risk of undue influence or manipulation of individuals who lack the capacity to understand the nature and meaning of voting, while preserving the right to vote for those with the capacity to do so, whether or not they have guardians.

Acknowledgement:

The authors thank Adi Baum-Mizrachi and Dr. Karin Schlossberg for their assistance in data collection.

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