The Forensic Evaluation and Treatment of Children: Ethics and Values

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This article will review the history of ethics and values in the forensic evaluations and treatment of children. Topics to be discussed include paternalism, advocacy, parental responsibility, and legal doctrine of *parens patriae*. Various aspects of the treatment of children, including medications, behavior modification, and psychotherapy, are also examined for ethical considerations. Agency consultation in conflicts of ethics that are associated with public laws are also addressed. The ethical implications of the use of children in any research as research subjects is also addressed.

One must consider the distinction between ethics and values. It is this distinction that challenges the forensic clinician who is asked to be a responsible advocate, a clinician, teacher or parent, or even institution. The word ethics includes concepts of principle and honor, both moral and proper. The word values includes the concepts of standards, beliefs, criteria, goals and models. Most clinicians who have worked primarily with adults or who have not been experienced in assessing ethical questions concerning children and adults often function in the "what is best" school of guiding ethical principles.[1-5] Most frequently, individuals working with children adhere to the concept of paternalism. Early views were that the guiding principle of liberty would prohibit interference with freedom of action by an individual. This idea is soon followed by interference being permissible if it protects the naive or young from injury.[6,7]

The context of evaluation or treatment of a child in the controversy as to the restriction of liberties and protection is contrasted with the idea of individual freedom. This is no more evident than is the distinction between treatment or the definition of treatment meaning "control." Control defines social conformity with acceptable laws. Treatment, ideally, has a goal of improvement of an individual who is afflicted with an illness. Although one can assess these goals and concepts, very few would question restraint of liberty of action upon the young child. Whether the action of control is directed toward the development and optimal level and/or directed toward the prevention of injury is not questioned.[8-11]

Basic ethical guidelines protect the life

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and the best interests of the child. This interest is in a constant state of change, reflecting the constant state of change of the developing organism. Regardless of what is the definition of the character, they are in charge of the molding and shaping of these interests. The goal, of course, is that the child will become autonomous and develop the capacity for independent choosing.

There can never be true consent for a child as a child does not choose the caretaker.[12] This may seem somewhat paradoxical, but one must recognize that the child has not chosen its proxy, nor has the child chosen the interest to be upheld by the proxy. Just because the interest of the child is shaped by the caretaker does not mean that all decisions can be justified in this context.

Ethical Reasoning

There are several essential elements that are accompanied by ethical reasoning: (1) the identification of the recipient care; (2) the attendant rights for that recipient; (3) the identification and responsibilities of the caretaker; (4) the decisions to be made that arise in the beginning, continuation, or ending care that must be defined solely or in collaboration. How does a caretaker accept the values of society in relationship to infants and children as individuals?

Advocacy

Social action is the mission of child advocacy, which is based on the often used phrase "best interests of the child." That children are to be protected by society is the assumption of common law and the doctrine of *parens patriae.* The child is seen as a powerless individual who needs active individuals who will see that lives, as well as the rights of the child, are protected. Advocacy is not equivalent to the concept of ethics. This article does not permit a detailed discussion of this conflict. The interested reader is referred to the references for greater detail.[13]

Areas of Conflict

Dilemmas for the forensic clinician arise in conflict between the aims of medical care with prevention of illness and preservation of the life of a human. As scientific methods have advanced, the risks of the likelihood of suffering are more easily defined. Frequent ethical questions asked concern the quality of life. Questions also attempt to answer a comparison of the suffering of the parent compared to the suffering of the child who may never experience a normal life. For example, when genetic screening was introduced, the hope was that the screening would enable greater parental options, choices, and self-determinations. In truth, responsible and informed decision making was hoped to have been prompted through the goals of these programs. Whether informed decision making is a constituent of life has been lost in the right-to-life controversy.[14-17]

Once the issue of genetic screening is approached, there is no more openly debated area than the context of abortion. This is a complex and seemingly disturbed issue from the viewpoints of theology, reality, ethics, and values as well as law points. Regardless of whether abortion is considered an immoral act, ethical issues remain unsolved. Whether one assumes that genetic screening pro-

vides a morally justified decision for selective abortion in contrast to the view that genetic screening is equal to an immoral deliberate fantasy, is only beginning to be addressed by medical and legal professionals. Drastic alterations in the questions of selective abortions that follow prenatal diagnosis after amniocentesis or chorion biopsy are only a small aspect of medical progress impinging on ethics and values.

Once we reach estimable life, the neonatal intensive care unit is a critical viewpoint for ethical issues.[18] Is the first duty of the caretaker the protection of life? The ethical principle appears to be challenged by this question of basic fairness, equity as to right or wrong, responsibility, and accountability. If a caretaker attempts to follow the process of ethical decision making, there is a caution. This caution is to understand the effect of the interactions between moral judgment and ethical principle. Ethical principles do not provide precise answers to the questions of quality of life. Infants have no capacity to understand their rights or conditions or prognosis, and even greater consideration by the caretaker is demanded by ethical inquiry.[19]

Treatment

Ethical questions are raised as to diagnosis, intervention, and treatment and all would agree in these questions that no child is an individual.[20–24] However, whether the advocate is a parent, juvenile court, or welfare agency, the caretaker must be effective in assessing the developmental needs of the child and the ability of the child to become involved in the process of decision making. Chronologic and mental capacities must be considered. Perhaps no area is more critical than the use of screening instruments in assessments. Many instruments are ubiquitous and have multiple characteristics. In addition, they have many negative components. Once a label is applied, whether this label is inappropriate or inaccurate, the subsequent lack of provision of services, and the refusal to acknowledge limitations of inappropriate or invalid programs or screening are only a few of the issues raised in ethical thinking.[25,26] This realm of ethical issues considers the efficacy of treatment. Without proven treatment there is an ethical obligation to evaluate or conduct research toward the goal of providing effective treatment. The ethical caregiver cannot ignore questions related to the uncertainty of outcome, the neglect or lack of concern from the parents, or danger of subtle indoctrination by treatment techniques. Undermining the function of the child in the family by altering rules and/or authority as well as attitudes to more negative views through imposition of values of the therapist on a child or family jeopardizes the outcome for the child.

There are many key ethical issues. Treatment that is structured by the therapist regardless of developmental or theoretical knowledge or experience accompanying the credentials of the individual is not ethical. Imposition of values is not a prerogative of treatment. One must maintain that the goal of treatment is independence. This provides protection for the parent from an evaluator or

treater who may become confused on the role between personal and professional skills and power.

The characteristic of power is most overt in the context of termination of parental rights. For example, in the court the consultant must look at the critical ethical question, "For whose benefit is the removal being done?"

Ethical Issues in the Forensic System

Juvenile courts have been transformed into legal proceedings of due process. In 1967 in the case of *in Re Gault* the evolution of the legal status of children in our court systems began. Ethics in the courts are just beginning to confront frequently opposing goals. The interests of the child for the professional and ethical individual are those that are preferential to those of adversarial or legal proceedings.[27,28]

Clinical Forensic Issues

What does it mean when the forensic evaluator or treater claims a medical ethical obligation or right? Included in this statement is the essential element that the claim be related to a real case strategy that will relate to the theoretical basis of our work. Practically speaking, the evaluators or treaters would come together. They would be acquainted with and knowledgable in the facts relevant to the legal issue. They would have empathy that would accompany facts that would accompany the process. The opinions they are asked to deliver would remain impartial to the best interests of parties.

All ethical claims must be based on reality that constantly assesses the universality of the claim. The ethical obligation must always extend beyond ethical, religious, professional, or community interests.

As noted by Veatch[5] there are several steps that characterize an ethic. He considers the first step in knowledge of moral community. What are the tenets that underlie the society? The second step is the definition of the duties specific to each role in the relationship. Disagreements arise most frequently when there is a lack of adequate data about facts not considered to be moral. For example, the goal of the benefit or interest of the child is an ethical issue. The forensic evaluators may agree on this principle. A nonmoral issue for disagreement may be that the forensic evaluator chooses one of several alternatives for the outcome and opinion related to the task at hand.

Custody Opinions

None of us has forgotten the basic ethics that ideally assist us in medical forensic opinion making. As Halleck noted, the role of "double-agent" is one in which our dilemmas are often raised.[29] No more critical is the area of the best interest of the child in an evaluation for custody. To say that an assessment must be "dispassionate"[30] does not address the fundamental question of how to assess the reality of the case. For example, how does one guard against the assumption that the best interests of the child reside only with the biologic parent? The "natural right" of parenthood more frequently demands that the

parent be proved unfit to have custody decisions for awards to another, one who often is more beneficial to the child's growth and development. How also can one be aware that the rights of the child are determined by the fitness of the parents? Children cannot be "seen and not heard"; they are not secondary parties in these proceedings.[31,32]

Ideally, when the court seeks independent opinions, partisan advocacy is not at issue. In this instance the objective evidence may be beneficial to the child while being detrimental to the cases of the parents. One can immediately see that, in most instances, attorney advocates for the parents cannot speak for the child. Subjective feelings have to be controlled so that the attorney is not being kept aware of the personal rather than the forensic aspects of the case. Nowhere is this more relevant than in the recognition and objective evaluation of the child's choice for preference. Foster and Freed proposed a bill of rights for children. These rights were not limited to moral rights. Legal rights were specifically delineated. One of these is "to receive special care, consideration and protection in the administration of law or justice so that his best interests always are a paramount factor." There seems to be no excuse for the forensic evaluator to function in any other manner. This statement should always remind us that if we become advocates we ignore this right of the child.

Additional areas of concern in custody evaluations include setting of a contingency fee, separation of the role of evaluator and treater, lack of confidentiality, and opinions being rendered in a unilateral evaluation that impinges upon custody determination by the court. Simplistic as this may sound, never should a contingency fee be set if one is considering acting ethically. This action must be considered not only in the moral aspect of ethics with the prevailing community reality but also in the attempt to retain best interest in a nonadvocate way.

A child must always be told that confidentiality is not maintained. Many evaluators tend to accept the child's asking about secrets and the keeping of them without directly stating that no secrets are allowed to be kept.

Role Definition

The conflict of the roles and components of the concepts of evaluator or treater has been soundly debated in several recent American Academy of Psychiatry and the Law meetings.[33] A consensus was not reached as to the ethical manner in which this conflict should be decided. Regardless of the clinical setting, urban or rural, or the qualifications of the psychiatrist, general or child, the debate will continue. In the meantime, there must be a separation of concepts and goals of evaluation and treatment. The words of Orne[34] provide an introduction: "The practice of medicine has sometimes been described as the art of making the right decision without sufficient knowledge" (p. 436). The synthesis of the goals of each can be formulated with sufficient knowledge to provide the best care. To be simplistic, evaluation means assessment and judgment. Treat-

ment means therapy and remedy. Going beyond the descriptive limitations of either category muddies the waters. The patient must be assisted in understanding the ground rules of each task. The clarity of this understanding comes only with the clarity of conception by the evaluator or treater.

Research Ethics

Research projects that offer no potential medical benefit provide complications for the ethicist and clinician.[35] Although protection may occur in research projects through legislation by government and/or institutional review board, the researcher, much like the therapist, must constantly be aware of the issues of coercion, undue influence, deception, and misinformation. Any decision concerning moral dangers must weigh social ethics against scientific ethics.[36] Whether coercion comes from gift giving, inappropriate persuasion, or inappropriate use of authority, the basic fact is that coercion has occurred. Very frequently the excuse of research is used to keep a subject unaware of the true purpose of the study. Although scientifically used as an excuse modification of the responses of the subject, deceptions can range from outright lying to lying about the purpose or sponsorship of the project.[37–39] In these cases children could be induced to act in situations that diminish self-respect.

For the child used in court appearances, minimal interference needs to occur and the care of the child should be paramount. The child and parents need to be informed that the presence of observers has the potential to violate all areas of confidentiality. Consent does not stipulate that a parent or substitutes can voice opinions for a "voiceless" child.

Summary

The best interest of the child is paramount to all that has been written in the subject of ethics and children. No one can ignore the tenet inherent in the ethics and values of our relationships to children, which will always be that the best interest of the child is paramount.

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