Ethical issues in child and adolescent forensic psychiatry

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Pirkanmaan sairaanhoitopiiri
Ethics

What is good and what is evil, and how to distinguish them from each other?

Ethical dilemmas are the situations when it is difficult to distinguish the good from the evil, or when what is good is also evil.
The four principles in medical ethics

- Beneficence
- Non-maleficence
- Respect for autonomy
- Justice

Beauchamp and Childress 2008
Children and adolescents

A child needs protection and care due to her/his bodily and mental immaturity (UN 1959, 1989)
- Children = all minors

Who are the young people, teenagers, juveniles, adolescents, young adults…?

In this presentation
- Minors: under age 18
- Children: not yet in puberty
- Adolescents: from puberty until coming of age
Child and adolescent forensic psychiatry

Using C & A psychiatric knowledge and skills to support / serve judicial processes
- evaluating, witnnessing, advising because
  > mental disorder may have a role in offending
  > expertise needed to find out what happened
  > maltreatment and abuse may have an impact on the child’s health and development
  > in custody disputes

Using C& A psychiatry to actualize the society’s right to protect safety and welfare, and balance this with the best interests of the juvenile
- correctional psychiatry; involuntary detention of juvenile offenders in psychiatric settings, psychiatric treatment of minors in prison and probation services

Ash and Derdeyn 1997, AAPL 2011, AACAP 2011
The great difference

The dynamic development of childhood and adolescence, constant change

The legal position of a minor

The role of the parents
Everything about minors

Self-control, competency, autonomy…

Developmental problems

External control, need for protection

100%

0%

Age

12
18
Adolescent development: progression & normative regression

cognitive

physical

emotional girls

emotional boys
Competence

Competence (to decide, to choose) necessitates ability to understand information, appreciate it as related to oneself, assess consequences, make a choice (in accordance with the subject’s own values and best interests) and communicate the choice.

Appelbaum and Grisso 1995
Competency development during adolescence

- Cognitive functions and ability to abstract thinking vs. emotional maturity
- Normative progression and regression
- Regression due to (psychiatric) illness
- Ability to resist external pressures (from parents, peers, idols…)?
- Instability of values
- Naive values?

Kaltiala-Heino 2011
Self-determination of a minor (in health care)

A competent person has the right to make (health care) decisions harmful to her/himself

No empirical evidence is available of how to assess a minor’s competence

Competence of an adolescent vs. cultural ideas of behaviour appropriate for an adolescent of a given age

Parental incompetence

Child’s interests vs. parental interests

Parental rights and duties as guardians

Severe health risk as inappropriate environment that may allow child welfare interventions

Kaltiala-Heino 2011
How old is old enough?

Adolescents of same chronological age may differ considerably as to maturity

Appropriate developmental level for taking responsibility in various decisions is not known, nor how to measure it

There is variation across Western societies in age limits for activities the societies wish to regulate, such as buying alcohol and tobacco products, having a driving licence

The age of criminal responsibility varies across Europe: 10-18 years
In CAFP questions

Beneficence: it is difficult to see what are the best interests of the minor

Non-maleficence: given the above, it is difficult to see when the best interests of a minor are infringed

Autonomy: it is difficult to know to what extent a minor is, or should be, autonomous in a given situation

Justice: it is difficult to find out the truth and to know what interventions promote appropriate autonomy
Is "dual role" an ethical challenge?

The duty of a doctor is to take care of the best interests of her/his patient.

The duty of the psychiatrist in a forensic role is to contribute to that justice is done.

In serving the judicial processes, a psychiatrist in a forensic role may actually cause harm to the patient’s (immediate) interests.

If psychiatric approaches are superior in shedding light onto the problem (what really happened; consequences to the minor; criminal responsibility; risk and needs; solution serving the best interests of the minor), it would be unethical not to use them.

If psychiatric approaches are not superior, it would be unethical to use them.

Risk of unethical practice

Role confusion in the "dual role" by the expert herself or by the patient/evaluatee/Minor’s family
Twisting of interpretation according to which party hired/called the expert
Giving statements about a minor based on inadequate personal assessments
Using assessment methods inappropriately (for example: risk ratings)
The general risk caused by lack of consensus in psychiatry: rushing for theories without proper evidence
Ethical dilemmas caused by slow judicial processes: observing the need for treatment, fearing to compromise evidence; not acting
Risks related to resource allocation: redefining bad behaviour as medical or criminal issues
Parental alienation syndrome

One of the parents manipulates the child to dislike, fear, hate and reject the other parent
The rejected parent has not committed any abuse that would in itself call for rejection

Is this really a psychiatric disorder?
In the child?
Mental illness and criminal responsibility

It is widely accepted that a person should not be held criminally responsible if s/he, due to her/his mental illness (or alike condition) is incapable of appreciating the quality and nature of the act and of controlling her/his behaviour.

In minors, this is further complicated by incomplete autonomy, competence and behavioral controls related to developmental level, the impact of mental disorders on development, and the dependence of a minor.
Continued…

Certain user organisations have questioned the whole justification of "insanity defence"
- right to be sentenced = be respected as a moral subject and a citizen with full rights, despite of mental illness?

Given the immaturity of a minor, and appreciating her/his needs, a variety of solutions exist in different legislations attempting focus on rehabilitation and helping the minors who enter the system after committing crimes

Enmeshing concepts thus allowing wielding of power?

Ethics of risk assessments

It is generally assumed that mental disorders may increase the risk of violence and that psychiatric treatment may reduce the risk.

Violent behaviours are even assumed to indicate mental disorders, or be mental disorders, particularly in minors.

Aggressive behaviours are a common cause for referral to C& A psychiatric care throughout Western countries.

(this, of course, does not make C & A psychiatrists experts of risk assessment)
Continued…

Even if modern risk assessment approaches have been shown to display good predictive validity, predicting future is always uncertain - a high risk person may be detained in institutions even if s/he would never have (re)offended - particularly a minor changes as development progresses, and may also be particularly strongly influenced by labels such as high risk - the cost of years outside of developmentally urgently needed normative interactions - the cost of possibly constructing, not only identifying a high risk person

Ethical problems related to warning / not warning the potential victims

Misuse of risk assessment

Violence risk assessments can be misused as any methods, general malpractice related ethical concerns. Must not result in classification but in management / treatment plan.

Discussing violence risk in mental disorders may label all suffering from mental disorders, even if most patients are more at risk of being victimised.

- Should knowledge be concealed in order to avoid misuse of it?
- Who can decide what should be concealed?
- The duty to be politically active
Bad boys and girls are locked up

A variety of legislative solutions and service systems based on legal requirements exist that handle the case of adolescents who break the law or otherwise misbehave up to requiring more interventions than normative parenting and education.

Be it in prison and probation services, child welfare services or psychiatry, these adolescents are locked up or under the threat of being locked up in institutions, and under these circumstances a number of professionals attempt to help them by pushing them to normative developmental track.
Use of coercion in psychiatric care

To hospitalise (to help; to control)

- Involuntary referral
- Observation, assessment
- Detainment

Coercion during treatment

- Coercive measures (to control)
- Coercive treatments (to help, to cure, to alleviate symptoms)

Kaltiala-Heino 1999
How could use of coercion in health care be justified?

A competent person should be allowed to make decisions harmful to her/himself
Harm to others may be a crime
Mental illness may lower competence
Lowered competence and untreated illness is getting worse – right to medical care
Lowered competence and danger to others – social control
Paternalism and social control

Paternalism: others make decisions on behalf of the subject, referring to the best interests of the subject

Social control: a subject’s will is overridden in order to protect others

Both justifications are used in involuntary psychiatric care and in court ordered forensic psychiatric care of both adult patients and minors (and child welfare, therapeutic court and other systems managing the issue of rule breaking adolescents)

Both are used in everyday life with kids
Involuntary care of a minor

In involuntary care of an adult, conflict of interest is between the patient and the society (represented by health care)

Regarding minors, 3 parties: the patient, her/his parent, and the society

Does a minor have competency to agree or to refuse treatment independently of her/his parents?

What are the rights of the parents when the minor has severe mental disorder, or offends, or both?
Behavioural management

Regardless of how and where the adolescent offender is taken care of, s/he is likely to get behavioural training

Coercive and humiliating behaviour modification programmes have been described

Is the treatment approach unethical if unethical use of it can be demonstrated?

Parenting in the homes is about socializing the minors with basically the same techniques

Holmes and Murray 2011, Bowler and Williams 2011
Not considering minors separately when building safeguards

What may be seen as unnecessary restriction of liberty and wielding of power on adult psychiatric patients may be developmentally appropriate protection and parenting for minors.

Elements of parenting become the responsibility of professionals working with adolescents.

A minor can adequately consent to being in treatment, yet act incompetently in any details.
Adolescent forensic research

People under some kind of coercion are particularly vulnerable as research subjects

Research topics related and not related to exactly this group
- topic unrelated, detained group handily available
- phenomenom of interest likely common in the detained group
- phenomenom of interest can only be studied in the detained group (such as who are these kids, how is their mental health, how they experience treatment…)

It seems to be basically assumed that participating in research will do harm, or risk harm
- can it be beneficial to be involved in research?
- right to freely express one’s opinion? (Child Ombudsman 23.4.12)

Arboleda-Florez 1999, Munthe et al 2010
Informed consent

A patient’s decision to consent
- Assessment / evaluation
- Treatment
- Research

Process, not a paper
The patient (evaluatee, research participant) obtains adequate knowledge about the issue s/he is consenting to, presented appropriately in regard to the his/her capacities

The subject has to be competent in the matter under consideration

In adolescent forensic psychiatry the subject is minor, mentally disordered and often detained
Adolescent forensic patients as subject in research

Adolescent forensic research can potentially produce knowledge important for clinical work and (health) policy

- How can we ensure that they are competent to consent?
- How can we ensure that they are competent to refuse?

Sensitivity of the topics: the impact on the life of the subjects
- constructioning, not observing the future?
- immature minors particularly suggestible?

Does forensic psychiatric research require higher safeguards than other health research?
- Are we ourselves reproducing the stigma if we assume so?

The harm of not knowing, or of gaining biased knowledge
Misuse of knowledge

General ethical guidelines to medical doctors advise about how to comment issues of one’s expertise in the public. Adolescent forensic research may obtain results particularly vulnerable to misuse. Does misuse of the information make the information itself wrong? Can the researcher be responsible of the misuse of her results? Should findings be concealed in order to prevent their misinterpretation?

Munthe et al. 2010
Selected ethical issues… your thoughts?

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