

Rights based approaches to ethical thinking

Dr Carolyn Johnston,
Adviser Medical Law & Ethics, King's College London

My aim

- Introduce the concept of rights and duties
- Consider rights based ethical theory – deontology- and compare with other ethical theories- consequentialism, casuistry and virtue ethics
- Apply to case scenarios - including assisted dying, organ donation and withdrawal of treatment
- Review which is most plausible and helpful in attempting to resolve challenging clinical decisions.

Socialite who lost her 'sparkle' has the right to die

Abortion isn't about the right to privacy.
It's about women's right to equality

The UK Supreme Court powerfully affirmed women's right to autonomy in childbirth in the case of [Montgomery v Lanarkshire Health Board](#).

A terminally ill girl has won the right to refuse treatment after a hospital ended its bid to force her to have a heart transplant

Assisted Dying Bill: MPs reject 'right to die' law

Rights based ethics

- How helpful is the language of rights?
- What rights are relevant in healthcare?
- Who has rights?
- Moral /legal rights
- Rights may be limited in the interests of others
- Conflict of rights
- Rights give rise to duties

'Right' to abortion

- No
- 2 doctors in good faith required to agree that one of the grounds in the Abortion Act 1967 (as amended) is made out

'Right' to refuse treatment

- **Competent adult patient**
- 'the principle of the sanctity of human life must yield to the principle of self-determination' (Airedale N.H.S. Trust v Bland 1993 Lord Goff p863)
- **Competent teenager**
- The wishes and feelings of the child, in particular those of a 17-year-old young person who is almost an adult, are an important component of the analysis of her welfare. They are not, however, decisive. In addition, the court must consider other factors and in particular in this situation any harm she has suffered or is at risk of suffering (P (a Child) v NHS Foundation Hospital 2014)

Different types of rights

- Rights language extends beyond healthcare
- Political rights, social and property rights

- Rights relevant to healthcare, given recognition
- at common law – confidentiality
- By the European Convention on Human Rights– right to respect for life, right to liberty

Who are rights holders?

- Not necessarily someone who is aware of their 'rights' or able to exercise them
- Person in permanent vegetative state
- Neonate
- Those most in need of protection of their rights

Legal and moral rights

Legal rights acquired at birth - a foetus has no legal rights

Pregnant woman

- right to respect for autonomy
- moral obligation not to inflict harm on the foetus



Limiting rights in the interests of others

- Right to respect for life (Article 2 ECHR)
- Does not give a diametrically opposite 'right to die'
- Dianne Pretty
- strike the balance between the interests of the individual and the public interest which seeks to protect the weak and vulnerable

Conflict between different rights

- P – 17 ½ year old refusing treatment following a paracetamol overdose
- The wishes of a young person aged seventeen and a half are important. They are, of course, entitled to be taken into account as part of her *Article 8 rights* under ECHR. On the other hand, those rights are not absolute. Here, they are outweighed by her rights under *Article 2* – everyone's right to life shall be protected by law.

Beauchamp and Childress

- Rights are justified claims that individuals and groups can make upon others or upon society. To have a right is to be in a position to determine by one's choices, *what others are to do or need not do.*"

Rights and duties

- *Provision of information*
- “if one considered the scope of the doctor's duty by beginning with the **right of the patient to make her own decision** whether she would or would not undergo the treatment proposed, it followed that the **doctor was under a duty** to inform the patient of the material risks inherent in the treatment.” *Sidaway (1985)*
- *Involvement in healthcare decisions*
- the **right to respect for private life** protected by article 8 of the European Convention on Human Rights. The **resulting duty to involve the patient in decisions** relating to her treatment has been recognised in judgments of the European Court of Human Rights, such as *Glass v United Kingdom (2004)*

Duty based ethics

- *Deon* - duty
- Deontological ethics – what people do – not the consequences of their actions
- Duty to act in accordance with universal rules, irrespective of the consequences
- rules derive from human reason
- Some acts are inherently wrong
 - Killing innocent people
 - Stealing
 - Telling lies
 - Breaking promises
- Moral rules should be applied to all rational members of a community, rather than just to some

Consequentialist ethics

- The morally right action is the one with the best overall consequences
- Maximise good consequences
- Utilitarianism -the morally right action is one that produces the greatest happiness for the greatest number

- Impartiality
- Consequences considered across time
 - Childhood immunisation debate
- Demanding – always required to consider the consequences of actions

The Trolley Problem

- http://www.youtube.com/watch?v=Fs0E69krO_Q

Application to case scenarios

- Woman diagnosed with HIV over 10 years ago has not told her partner
- Currently has undetectable viral load
- Remains adamant that her partner is not told
- She fears he would reject her leading to financial problems and social isolation
- However the woman's GP also looks after her partner
- Due to partner's underlying health problems GP thinks he should be offered full sexual health screening

- A very elderly non-English speaking Asian lady was admitted to hospital following repeated falls in her house.
- A week later she was diagnosed with a very rare form of nasal-pharyngeal lymphoma, which had spread rapidly to her liver and was considered incurable.
- Her large, extended family visited her regularly in the hospital. Family members were adamant that they did not want her to know of her condition.
- They made it clear that it was important in their culture that the elderly are not told of a bad prognosis and that it was normal for adult children to make healthcare decisions for their parents.

Casualty

- Case based reasoning
- Discussion of cases based on precedent
- Identify the features of *this* case
- Compare to other decisions made in other similar cases
- Are there relevant differences?
- E.g. **Should a clinician respect the autonomous choice of an adolescent patient?**

Teenager says 'no' to more treatments

BBC News 6.12.2006

- A 16-year-old leukaemia patient has decided to forego further treatment so she can enjoy the rest of her life.
- Josie Grove has had two bone marrow transplants and a course of anti-cancer drugs which have not succeeded.
- Having been told her condition is terminal, she is halting treatment which makes her feel ill, so she is able to enjoy time with her family.
- Her parents say they fully approve of her decision
- The clinicians agree



- Joshua aged 15 involved in road traffic accident
- He needed a blood transfusion
- Because he was a Jehovah's Witness he refused to have blood products
- [Telegraph May 2010](#)



Virtue ethics

- The virtuous moral agent- Eudaimonia – human flourishing
- Virtues in medicine
- Honesty, compassion, integrity, justice..
- Which virtues to apply in an attempt to reach a moral conclusion

Organ donation

- Pete is willing to donate a kidney to his son David, aged 15.
- Tests indicate that he is medically suitable to donate
 - Human leukocyte antigen (HLA) testing is done routinely on donors and recipients to determine histo-compatibility.
 - HLA testing shows that Pete is not genetically related to David
 - from a medical point of view, the findings do not preclude Pete from donating to David.

Withholding of treatment

- Young teenager, Batten disease.
- Severe visual impairment, seizures, bladder and bowel incontinence.
- Impaired cognition
- Parents consider their daughter has already a significantly reduced quality of life
- They do not want her to have future treatment which would prolong her life as they would prefer her to die early than suffer from progressive deterioration and dependency

Conclusion

- Ethical decision making and Clinical Ethics Committees
 - What should be done
 - Support for healthcare professionals
 - Application of ethical theories/principles
 - Enables a transparent and defensible approach