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Reframing Ethical Issues in Services to Children, Youth, and Families:

A Background Paper for A Fall 1998 Informal Seminar Series

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Summary of Argument:

1. An increasing portion of the issues and practices that affect children and youth are ethical in nature, involving choices that can be assessed ethically.
2. Yet there is widespread avoidance of the ethical dimension of children's services, based upon a reluctance to debate values and uncertainty about the terms that should be used in ethical discussions.
3. Therefore, tools are needed to address the increasing number of issues with ethical content, recognizing the context of past avoidance of ethical debate; such tools can be drawn from existing ethical approaches to health care and other human services issues, with specific applicability to the practice and policy issues that affect children and youth.

Introduction

For a majority of the 77 million children in the US, the ethical boundaries of their lives are set by their parents, the rules of the communities in which they live, and the private institutions to which they belong—the Little Leagues, soccer associations, Girl Scouts, and congregations. The rules they live by and their sense of what is fair comes from these sources. While their lives are touched in many ways by public institutions governed by public policy—schools, parks, and police departments—they operate in the mainstream of these institutions, for the most part.

For a sizable minority of these children, perhaps as many as 15-20 million, however, their vulnerability makes them subject to ethical decisions in very different ways. For these children, ethical choices involve whether they will grow up in their birth families or be removed from them, whether they will enter the labor market able to earn a decent living for their families, whether they will be allowed in regular classrooms or assigned to special institutions, and whether they will be jailed or diverted to community programs. Social policy—with or without explicit ethical content—affects these more vulnerable children in far more lasting ways than it does the majority

of children and youth.

We make decisions about children and families all the time, sometimes as individuals and sometimes through social policy. At times, we act as if these decisions were based solely on personal preference, or primarily economic, technical, or managerial in nature—but they are often ethical in part and sometimes ethical at the core, involving decisions about what is fair and what we ought to do for the well-being of another person. Ethical decisions are especially important in services to children and youth because we act *on behalf of* those without capacity to act on their own behalf; we hold another life in our hands, literally and figuratively. Therefore such decisions have deeper consequences than acting for ourselves alone.

At present, ethics is addressed in children’s services, but within circumscribed areas. At the level of practice, ethics is sometimes addressed in codes of ethics which treat issues like confidentiality and appropriate relations with clients. At the level of policy, it is common for policy debates to use ethical language in justifying an advocacy position, arguing that it is fair to provide all children or some specialized group of children new or expanded services, with arguments based on the basic rights of children to the necessities of life and to an opportunity to live up to their full potential. At times, ethical arguments are also used to justify budget reductions, based on the conviction that the costs of programs will affect future generations.

But neither in practice or policy is there a consistent framework of ethics that can be used in addressing the harder choices in allocating funds among competing programs, determining what to do about ineffective programs, or deciding how to organize a community collaborative working with children and families. When ethical choices occur in children’s policy discussions, they are often avoided. This avoidance grows out of a concern that such debate will create conflict or that values choices are best left to the individual. There is often reluctance to encounter groups with strongly held values if values choices and ethical issues are brought to the fore.

A discussion series on the ethics of public services for children and youth can examine some of these issues, while setting deliberate boundaries on the scope of the discussions. We are less concerned with the highly visible issues of bioethics, genetics, and parent surrogacy. As important as these issues are, they appear to be receiving far more attention at present than issues of accountability for results, the need for agencies to work together more effectively in a competitive environment of scarce funding, and impacts of programs on children they are intended to help.

In the Best Interests...

My wife and I were required to attend four “training sessions” as a part of becoming foster parents for our two children, whom we have since adopted. The most memorable moment— not in a positive way— came when the trainer wrote on the blackboard the phrase “the best interests of the child.” Great, we thought, we are finally going to get into a serious discussion of how the agency will make the decisions about returning the children to their birth parents. But to our amazement the trainer never spoke about what the words meant in practice or policy, and soon erased them. That was our exposure to ethical dialogue in the child welfare system.

Categories of Ethical Issues

Categorizing the different types of ethical issues that affect children is difficult, since there are many different frameworks for child development, for the interactions among parents and children, and the legal boundaries around what children may or may not do and what may or may not be done to them or on their behalf.

The four categories used to separate the ten illustrative issues listed below are a beginning at distinguishing among the different types of ethical issues involving children. These four include issues of programs' effectiveness, issues of choices among different clients, issues of agencies working together, and issues of client responsibility vs social responsibility. Another perspective on the ethics of services to children distinguishes among the rights of children and the responsibilities of those who provide services to them, including:

1. Children's rights to self-determination, to participate in decisions affecting them;
2. Children's rights to have a representative acting for them in legal and other proceedings;
3. Confidentiality, informed consent, and conditions governing the assessment of children;
4. The fairness of assessments of both parents' and children's competency to make decisions.

A further framework for assessing ethical issues that has been used in the health care field distinguishes among social, institutional, and individual levels of ethical analysis.¹ Still other distinctions involve the legal boundaries around children's services— what is already specified in legislative enactments and administrative regulations— and the ethical boundaries around what is viewed as right or fair in treating children, based on some standard which is set forth in an agency's practices.

It is clear that legal standards alone will not suffice in addressing ethical issues affecting children. Merely satisfying the legal requirements is insufficient to meeting ethical requirements, even though law codifies much of our moral reasoning. Acting ethically requires more than observing "the letter of the law," as long as ethical requirements are clear to the worker or policymaker who is involved

A recent text, Children, Ethics, and the Law, while written primarily for mental health professionals involved in direct treatment of children, does an excellent job in its introductory chapter of clarifying how children are different as *objects and subjects* of ethical decision-making.² The book also discusses the contrast between *child advocacy* and *child-saving*, in which children's rights are the focus of the first approach and intention to protect vulnerable children is the intent of the second.

Each of these categories is helpful in addressing issues of ethics in children's services, but clearly, all of them cannot be used at the same time. The question we might address is what are the best tools for reframing issues of ethical choices in children's programs; is there an amalgam of these several frameworks that would be useful and comprehensible both to scholars and practitioners in the field?

What are “Children’s Issues?”

The issue of scope arises in placing boundaries around what is a “children’s issue.” Some issues which affect children profoundly, such as welfare reform, drug treatment, or criminal sentencing policies, are rarely labeled as children’s issues, even though children are obviously affected by their parents’ income, chemical dependency, and incarceration. For example, decisions about how to evaluate the effectiveness of recent changes in welfare policy have in some cases almost completely ignoring the well-being of the children involved— who make up two-thirds of persons on welfare— in favor of measures of parents’ leaving welfare rolls or getting jobs. In most addiction treatment agencies, to cite another example of the invisibility of children’s issues, there is very little data collected on the children of the person in treatment, even if the person is a parent whose children may be critical motivators or barriers to their success in treatment and recovery.

It can be argued that children’s policy should include both the inner circle of children’s issues *and* the wider circles of family issues and even wider environmental policy and tax policy. Conservatives, after all, have made the argument that the national deficit is stealing from our children and grandchildren. But then everything done to and for children has moral content, and it is important to assure that the boundaries of ethical impacts on children not become so broad as to be all-inclusive. Such a diffuse and unduly broad scope of “children’s issues” would make it very difficult to frame them either as discrete policy debates or options for personal behavior.

Thus the boundaries of the discussion need to be clarified at the outset. For our purposes, we are addressing the issues that affect vulnerable children in the human services, notably in the systems including welfare, child welfare, substance abuse, mental health, child development, and adolescent prevention programs; as noted above, this will exclude the issues of reproductive technology which are being debated widely at present in other arenas.

Ethical Issues in Children’s Services

Our Center’s work on collaboration in children’s programs has repeatedly encountered ethical issues which can best be summarized as the difference between *client-centered* policy and practice and that which is *agency-centered*. Examples of issues which we believe have ethical content in this field include:

Issues of Programs’ Effectiveness

1. The use of scarce funding to support programs that seek to prevent substance abuse by adolescents—but which are widely recognized to be ineffective; the limits of a leader’s responsibility to inform the public of a program’s ineffectiveness if the public is paying for it through taxes or donations.
2. The unwillingness of some agencies (and their funders) to adopt client outcomes as a measure of their effectiveness in helping children and youth.

3. The ethics of professionalizing helping, i.e. when and how should professionals determine that “natural helpers” or parents are the most effective “practitioners,” rather than credentialed and accredited professionals?
4. The ethics of “pilot projects” which never consider operating at scale; is it ethical to measure progress against baselines of historical performance, rather than against an impact on the entire population needing services?

Issues of Choices among Different Clients

5. Choices made among different clients in designing programs that require targeting on a limited number of clients; rationing decisions, whether made explicitly as in Oregon health policy debates, or implicitly, as in adjusting foster care placements to available matching funding for placement beds.
6. A bias against women and children in current allocations of substance abuse treatment funds (only 27% of all publicly funded treatment slots are allocated to women).
7. The lack of clear distinctions among clients who are harder-to-serve and those who may need less help in achieving outcomes, which may compromise the purpose of an outcomes-based funding system by “creaming” easier-to-serve clients and creating incentives to screen out those who are harder-to-serve— this issue appears especially relevant in light of current welfare policy changes.

Issues of Agencies Working Together

8. The ethics of collaboration: when is it unfair or mal-practice not to seek help from an outside agency that may have a different expertise needed by the client, in a climate of agency competition for resources in proving that they help clients?
9. The ethics of referral, i.e., when is referral a client-centered decision and when is it agency-centered and defensive in nature—“this is your problem”?

Issues of Client Responsibility vs Social Responsibility

10. The ethics of “second chances:” at what point and using what standards of ethics, if any, can society and its front-line workers make fair decisions about parents at risk of losing their children or youth who are at risk of incarceration? How many “second chances” are fair to children affected by a parent’s substance abuse, if the evidence is strong that more than one episode of treatment is needed for most clients? How many “second chances” are fair to parents, given the evidence that one-third of clients succeed in their first episode of treatment and half of those remaining succeed in later episodes?

As this list makes clear, our work focuses significantly on the overall value of collaboration, the impact of alcohol and other drugs on the lives of children, and the importance of results-based accountability using outcomes measures. While this list is illustrative and we would not expect to address all or even most of these, it may suggest the range of issues we have encountered in our work in the Center over the past seven years.

The Ethics of Practice vs the Ethics of Policy: Effectiveness Issues

There is in most of these sources far more emphasis upon the *practice* of ethical treatment of

children than upon the *policy* decisions that may affect far more children. We have an ethics of practice, embodied in professional codes and courses taught, but we have no ethics of *policy* that is comparable. Both matter—to the clients and the workers and the rest of society whose money we take to make policy.

Like law, the field of ethics sometimes focuses so heavily on thinking about cases that it misses the ethical equivalent of *class action law*, in which thousands of children are affected by a single legislative enactment or administrative decision. So the ethics of policy matters as much as the ethics of practice—perhaps more—and almost certainly more than the proportion of attention now being given to it. A client may be treated fairly by a well-intentioned worker who is using an obsolete or ineffective practice, and codes of ethics would not be violated—at the level of practice. But policy also has profound ethical content.

A major example of a policy issue with ethical content is the issue of programs' effectiveness. If scarce resources are spent on programs intended to help clients in need, the funder, the provider, and the intended beneficiary all can be said to have rights to some measure of assurance that the resources are well-used. Therefore, we believe that the efficacy argument must also be addressed in considering the ethics of services to children: programs and services must be effective and have good evidence of effectiveness to be valid ethically. Helping is not enough if there is available evidence that the programs being used will not really help children. This position posits that *there is not only a moral obligation to help; there is also a moral obligation to seek effectiveness in helping.*

This proposed effectiveness principle is by no means a majority position in the human services, as Lisbeth Schorr notes in Common Purpose.³ She cites Mother Teresa's quote "God has called on me not to be successful, but to be faithful," as well as Gandhi's dictum: "It is the action, not the fruit of the action, that is important." Many providers of services to children would make a similar argument that the core of good intentions is far more important than the outer circle of results or accountability for results. But if we can assume that most providers are not at the level of either Mother Teresa or Gandhi in their exemplary capacity to mobilize the

The Ethics of DARE

A classic example of the program effectiveness choices faced by professionals working with children and youth may be presented by the DARE program. DARE—Drug Awareness and Resistance Education— was developed by the Los Angeles Police Department as a means of providing substance abuse prevention education to fifth graders. Nine national studies and one by the California Department of Education have demonstrated conclusively that the program has no positive effects on adolescent use of drugs and alcohol, while having slightly positive effects on attitudes toward police.^{3a} More than \$700 million is spent annually on the program, which relocates 16,000 police officers from patrol duties to classroom assignments. The program remains very popular, and schools welcome the program because it places a uniformed officer on their campus. Should professionals who work in prevention education point out the program's ineffectiveness in achieving its announced goals—or remain silent? Is the mis-allocation of these funds and officers an ethical choice, given other uses for the funds, including a need for counseling services in some of the schools that have a DARE officer but no school counselor?

best in humankind, then results do matter— especially to those we seek to help. It seems to raise fundamental ethical questions if those who work in the “helping professions” do not measure whether in fact those we seek to help really do improve.

This raises the question of whether ethical practice and policy place clients at the center of things. In addressing the ethics of public policy, the means by which that policy is delivered is part of the equation of fairness. In personal ethics, if the individual considers their own situation at the expense of the other, a judgment can be made that the behavior is wrong because it is self-centered. Institutions can be judged on their ethical behavior, too—especially if they are funded and given their legitimacy based on their supposed help for their clients. If institutions instead act primarily or solely to preserve their own well-being, rather than that of the client whom they are funded and authorized to help— their actions can be judged to be institutionally-centered in ways that can be questioned and usefully contrasted with more client-centered action.

In the field of health care, hospital ethics committees date from the 1970s, and have evolved in the 1990s in some institutions into a wider concern for “organizational ethics” which move beyond decisions about individual patients to issues of institutions’ responsibility to their wider community and the whole society.⁴ In addressing children’s issues, these organizations have focused primarily upon the rights of newborns with disabilities, rather than the issues of health care for uninsured children, the needs of immigrant children, or intergenerational issues. Recently, however, some hospital-linked ethics centers have begun to address this wider circle of issues that go beyond the patients already in the hospital’s care to questions about those who could be.

In framing ethical judgments, it turns out that these institutional practices rest significantly upon the very *adequacy of program effectiveness information* which has been suggested as a major ethical tool. Some proposals for health care rationing, for example, propose doing so based on “marginally beneficial services” in which costs and benefits can be calculated with some precision. It is argued that:

Physicians should not be expected to perform cost-effectiveness studies at the bedside. Rather, they should become familiar enough with the concepts of cost-effectiveness so that they can more accurately identify marginally beneficial health care services.⁵

If we extend this analysis to children’s services beyond the health care arena, we can see the further ethical importance of insuring that adequate information is available to make judgments about programs’ effectiveness, rather than simply measuring what programs do instead of whether clients improve.

Rationing decisions and children’s services

Discussions of “rationing” raise very controversial issues, which are controversial in part because

they bring to the surface choices which are often well-concealed beneath layers of economic and political factors. But in health care it has become very clear that we ration frequently in making conscious or implicit decisions about which patients shall receive care which is limited and which cannot be funded for all patients. When a liver transplant or some other procedure reaches public visibility, and it becomes clear that a deliberate decision is made about ranking one client over another based on some predetermined factors, the ethical underpinnings of decision-making are exposed. Those medical ethicists who have studied Oregon's unique health rationing system argue that the health care debate in Oregon is a lot more honest and public-educating than in other states where the same amount of rationing goes on but is beneath the surface.⁶

But rationing, defined as the allocation of scarce resources based on some predetermined criteria, happens outside the health care arena, and some of these choices directly affect children and youth. We also ration foster care and other forms of out-of-home care, since we lack the resources to pay for homes for all children who need to be temporarily or permanently removed from their biological parents' homes. (It is important to note that there is both a human shortage of families to provide this care and a fiscal shortage of funds to support it.)

Other services for children are also rationed— we decide how serious a child's learning disability needs to be before they are provided special education services, we decide which children are "at-risk" using risk factors that entitle some children to receive preventive services, and we make decisions about counseling needed by a small number of children based on whether we have allocated available funds to other prevention programs that serve all children in a given grade level. Each of the professionals making these decisions operates as a "gatekeeper," whether or not they work in a formal managed care setting. But it is the premise of this paper that the health sector has at least faced these ethical choices more explicitly than the sectors governing services to children and families.

So rationing is another example of both our aversion to ethical discussion and the unavoidability of fairness criteria in framing the decisions made every day about children and family services. Even if those criteria are completely implicit—for example, first come, first served is an example of a fairness criterion—they operate just as though lengthy debate had reached a consensus on that rule of choice among different clients.

Ethical frameworks and special groups: women, minorities, and intergenerational equity

Framing these issues in terms of children and families raises the question of whether fairness demands taking into account the powerful differences among children, especially those relating to gender, race, and culture.

Gender matters in ethics, and gender obviously matters in the lives of children. Exactly how it matters is a subject which has been intensely debated in the last two decades. But that it matters is indisputable. As Gilligan and Wiggans (1988) state:

The overwhelmingly male composition of the prison population and the extent to

which women care for young children cannot readily be dismissed as irrelevant to theories of morality or excluded from accounts of moral development. If there are no sex differences in empathy or moral reasoning, why are there sex differences in moral and immoral behavior?⁷

The ethics of multiculturalism also raises very difficult issues of how different groups should be treated: whether the “starting line” is the same for all groups, and, if not, what advantages should be given to those for whom disproportionate outcomes reveal their disadvantaged status. For some children and youth, fairness becomes a deliberate effort to erase or reduce the potential consequences of luck and discrimination from their lives.

Finally, there are some issues affecting children and families that are intensifying because of the age cohorts in American society, in which older Americans increasingly have greater political and economic power than younger ones. With elderly poverty reduced by half since 1960 and poverty among children increasing significantly during that period, intergenerational equity issues are likely to become far more visible in the early 21st century than they have been in the late 20th century. The tradeoffs between the costs of assuring the future of the Social Security system and assuring an equal opportunity for lower-income children to receive a quality education are only one example of intergenerational equity issues that must be addressed.

Tentative Guidelines for Ethical Reflection and Action

If these ideas are to be taken seriously, it follows that a different approach must be taken by professionals and others who make decisions about individual children and about categories of children in making and carrying out social policy. These might include:

1. Starting from an assumption that choices among alternative courses of action have ethical content, rather than weighing only their fiscal, managerial, or psychological impacts.
2. Framing the issue of the motives of the actors involved: are we doing this “in the best interests of the child,” and who is interpreting those interests and from what perspective; how disinterested are those interpretations? These “clean hands” issues can be extended to ask what proponents of different policies have done with their own time, talents, and resources about the problem they are addressing , e.g. what pro-life advocates have done about the adoption gap in child welfare or what advocates of more spending on children have done about ineffective programs in their own communities?
3. Asking how children will be affected even if they are “collateral” parties to the decision, e.g., when a parent is enrolled in drug treatment asking how that parent’s children will be affected by the treatment and aftercare.
4. Asking if children have been afforded a full opportunity to act as subjects, instead of being seen and treated only as objects of action that is taken “for” them, e.g., consulting children

in custody cases vs assuming that courts must act for them prior to the age of majority.

5. Determining what level of effort is required of a worker in making sure that all possible sources of help, whether outside a provider's profession, agency, or cultural competence, have been utilized—"the collaboration imperative."
6. Determining what efforts have been made to determine whether a given program, practice, or policy is effective in helping the children and families on whom it is targeted—"the effectiveness imperative."
7. Asking what impact the treatment or service provided to one child or family would have if made available to all children and families in a similar position (this is called "horizontal equity" in social policy language, and is a limited version of Kant's categorical imperative—asking what the consequences would be if all persons were treated according to a proposed ethical standard; it may also be a corrective to the "pilot project mentality" that treats all new projects as progress).

Conclusion

There is an obvious critique of the effort to apply ethical principles to children's policy. A front-line worker might well say: "We do these things every day, in our gut, intuitively. We do not formulate them as decision rules in most children's agencies, we just decide based on our own reflective practice, experience, and gut. It is thus unrealistic to elevate these to formal principles." To further burden workers and supervisors who already have barely manageable caseloads with another framework for decision-making must answer a sizable burden of proof: will this make the workers' functions more difficult or less; will it offer them a chance of getting more resources or becoming more effective in meeting their clients' needs? Those reality tests must govern discussions of ethical decision-making if they are to have an impact on the front lines of work with children and families.

For policy-makers, a different burden of proof must be met. Will this reframing of decisions about children and families clarify the hardest choices they make, or will it simply add a new layer of debate on top of the clash of interests in which they are already immersed? Merely generating a new set of exhortations to "think about the children" will do little to resolve debates among liberals, conservatives, communitarians, and libertarians who are very clear that they know best how to think about the needs of children without doing so in an explicitly ethical framework.

The hope, therefore, is that reframing these issues in ethical terms can meet both these tests and provide language and concepts that are worth using by the workers and policy-makers who affect the lives of the most vulnerable children and families. That is the task before us as we attempt that reframing. A basic assumption of this work is that both workers and policymakers would welcome such information, to the extent that it meets these tests, as they set about their work of improving the quality of the lives of children.

Notes

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3. Schorr, L. (1998) Common Purpose: Strengthening Families and Neighborhoods to Rebuild America, New York: Doubleday. P. 136.

3a. "How Effective is DARE?" American Journal of Public Health Sept 1994. p1399.

"The DARE program's limited effect on adolescent drug use contrasts with the program's popularity and prevalence. An important implication is that DARE could be taking the place of other, more beneficial drug education programs that kids could be receiving." See also Teixeira, E. "Study Assails School-based Drug Programs," Los Angeles Times, October 21, 1995.

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