

Human rights and mental health assignment



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Emphasis will also be given to ethics and the application of them in making decisions for treating people who are mentally ill including some examples of where the application of ethics has been used to make and justify decisions for such treatments. The Universal Declaration of Human Rights was produced by the United Nations in 1948 and lays out the rights and freedoms that all humans should have.

They are based on the principles of ' fairness, equality, dignity and respect' as documented in the BIRR (2006, pa). However, when considering the different rights and freedoms in relation to people being treated for mental health problems it is important to consider the application of them on an individual level.

The Mental Health Act, which was introduced in 1983, describes the different categories of mental disorders as follows: - * Mental illness * Mental impairment * Severe mental impairment * Psychopathic disorder Solely relying on the different Articles of the Human Rights Act to decide the provision of treatments to the mentally ill would discount the different spectrums seen within each of the above categories and would instead assume that everyone has the equal ability to understand what is in their own interests.

The use of ethical reasoning can therefore be applied to support decisions made as ethics themselves are used to study what is right or wrong good or bad and are broken into the following three categories: - * Meta-ethics in which the use of language and meaning of words is looked at to discuss how true the expression is * Normative ethics is used to find practical moral

standards or a code in which we live our normal lives by * Applied ethics is the application of theories about what is right, wrong, good or bad.

The application of ethics is further broken down into three variations:

Situation Ethics, Utilitarianism and Kantian Ethics, each having a different theory on which they depend. Situation ethics applies the approach that a decision should be made out of love and doing the right thing for the other person unconditionally. Utilitarianism is a consequentiality theory which basis its actions upon the results achieved with the mindset, the greatest good for the greatest number'.

Kantian ethics basis its theory on what is right when applying the use of reason and logic. The Ministry of Ethics states that the Mental Health Act attempts to address two issues " the need to protect the patient him/herself and to protect the general public from the patient" (microelectronics, plop). Under this Act a mental disorder is classified as " any disorder or disability of the mind" (section 1). The fundamental rights of a person who is mentally ill differ from a person who is sound of mind due to their limited ability to quantify different situations. Under the Mental Health Act a mentally ill person has limitations in their rights to decide or accept medical care as opposed to a normal person who would have every right to decline treatment if they did not want it to proceed. In a study carried out by Gresham College the question that mental health law itself discriminates unfairly against people with mental illnesses was addressed. Comparisons were drawn against the forced treatment of an individual with a mental illness - schizophrenia - and the choice available to the patient with a physical illness.

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The patient being treated for schizophrenia had limitations to their human rights due to their deemed incapacity to make a decision in their own best interests. This decision would have been made for them either by their medical team or local authority and were in contrast to the patient being treated for a physical illness who, having no mental illness, had full autonomy on their choice of treatment. The question whether this limitation was necessary highlights the potential infringement of Article 1 of the universal Declaration of Human Rights which states that " All human beings are born free and equal" (Article 1).

The mere fact that in this case the right of freedom to choose their treatment is missing and the cases are not managed equally is a point to consider. Another topic drawn under the spotlight in the treatment of the mentally ill is the ability to forcibly detain an individual in an act more commonly referred to as ' sectioning'. To section an individual under the Mental Health Act would usually be applied in the patient's best interests and to protect them from themselves and others, or the greater good, which is one of its main objectives.

This is also an example of where Utilitarian ethics are used to justify the decision making process. An article published in The Guardian in 2010 discussed the legality of sectioning and to some cases being reported where infringements of the levels of dignity provided to patients had been found. This report stated the following: - " Examples of poor practice being followed in the name of patient security included blanket measures that risked infringing human rights law, and disregard for privacy and dignity that was verging on unsafe or abusive practice," The Guardian, (2010).
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This would be an infringement of Article 5 of the Human Rights Act, which states, “ no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. So although the hurry used to support the detention of individuals strengthened the actions taken under the Mental Health Act, it also showed that by attempting to protect a person from themselves or others, the treatment they then received whilst being detained breached an inherent human right.

It could be harder to subject an ordinary patient with no mental impairment to this level of neglect as they could have a greater ability to identify a breach of their human rights in comparison to a patient with mental issues. If severely impaired, the impacts may be greater as not only could there be a risk that an individual could not have the ability to identify the breach but they could also lack the physical aptitude to communicate any issues or concerns they have if they did manage to identify neglect or cruelty.

This is where the provision of care itself is scrutinized following what could have been a robust and logical decision to place a person into medical treatment in the first place. The process used to decide whether medical treatment should be enforced relies on the level of capacity an individual has to understand their circumstances and the impact of declining treatment. As described in the British Institute of Human Rights, “ If you lack the capacity to make decisions for yourself, your best interests should be considered when giving you treatment.

Any treatment you are given should be the least intrusive option for you.

l'(Birr, PI 6). The use of enforced treatment could be seen as the application

of Kantian ethics, by applying logic and reason to the decision rather than for the greater good or the desires of the individual. However, the decision making process used to justify whether an individual is capable of declining treatment was the focus of the case named *Trance Starvations v The Former Yugoslav Republic of Macedonia* 1431/03. In this case an individual alleged and successfully sued the republic under a violation of Article 5 of the Human Rights Act.

It was found that there had been failings in the decision making process to assess his mental capacity which had subsequently caused him to remain detained and treated against his will for much longer than originally anticipated. This individual had placed his treatment and trust in the hands of the authorities and this had been violated due to a lack of consideration of the facts provided by the medical team caring for him. Instead, consideration of what was best for the greater good - Utilitarian teeth CICS - as deemed by the police authorities was relied upon.

The fact that the courts acknowledged and accepted that a breach of human rights was apparent resulted in the patient receiving damages from the state. Considering that in a BBC news article from 2000 it was reported that "As many as 40% of psychiatric unit patients are held under common law rather than the 1983 Mental Health Act", BBC (2000) it is vital that the decision making processes which sit behind the treatment or detention of the mentally ill are accurately assessed to prevent further evidence of mistreatment being found.

The introduction of the Mental Capacity Act in 2005 has helped to strengthen the application of rights and principles supporting mental health treatments by protecting people who can't make decisions for themselves in all manner of ways. One of the main enhancements is to ensure local authorities or INS bodies will appoint independent capacity advocates in order to support individuals in the right way. Therefore, to categorically answer the question of whether human rights are infringed in the treatment of the mentally ill, a full undertaking of the decision making process supporting each separate case would be beneficial.

According to the charity Mind, 1 in 4 people will experience a mental health problem in any given year. When considering the growing population and the potential volume of cases being presented for treatment in the UK it is vital that continual emphasis on the care and treatment of the mentally ill is given. This will help understand and identify any continuing issues and although this essay has shown that there are some reports and case studies where human rights have been infringed, it is not clear whether this is the case for all.