Advances in Forensic Ethics: Implications for Psychiatry

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Challenges from forensic psychiatry

- Managing dual roles/agency
- Medical or legal priority?
  - Individual care/cure vs. social order, rules/procedure
- Intersect at explanatory/exculpatory boundary
- Adopt one value system over another, or develop hybrid?
Accepting legal primacy

Seymour Pollack 1974:
- Forensics concerned “primarily the ends of the legal system”
- “…the legal issues in which the patient is involved.”

Heavily grounded in role theory
- Work in context/setting matters
- Legal ends and procedures legitimate and sufficient

Paul Appelbaum 1990, 1997:
- Forensic psychiatry’s purpose is legitimate only insofar as it can act outside clinical role

Principles of truth and justice outweigh care

Exceptions
- Pollack: capital cases
- Appelbaum: emergencies, violating respect for persons
Accepting medical primacy

Bernard Diamond 1956, 1959, 1992:
- Preserve physician values
- Attain therapeutic ends

Fiduciary responsibility: trust, confidence

Acknowledged partiality/subjectivity

Robert Weinstock 1990, 2001:
- Apply medical ethics: assess medical evidence, reflect on own expertise

Door open to conflicting values/balance of duties
Inadequacy of purist approaches

- Models recognize human duties/values
- Medical and legal elements of the work
- Partiality/subjectivity
- Balance/conflict

Thomas Gutheil et al. 1991:
- Account for interactions of individuals, institutions, society
- Inherent uncertainty in observation, measurement, analysis of behavior

Ciccone & Clements 2001:
- Systems approach
- Relate the systems, broker, negotiate
Narrative ethics

- Ezra Griffith 1998: No justice without recognizing cultural factors
- Respect for cultural narrative
  - A tool beyond roles and principles
  - Accounts for history, social context
- Responded to case studies/narratives (Alan Stone 1980, 1984)
- Built on narrative’s response to principlism in medical ethics
- More can be done to address motivations, intentions
Expanding the model

- Roles, principles, legal ethics, medical ethics, narrative
  - More room for social context, moral values of practitioner and evaluee
- Michael Norko 2005: Compassion
  - Moral foundation for forensic ethics as a whole
  - Religious/secular traditions (Bible, Kant)
- View respect for persons through the commonality of human experience, social obligations of citizens
- Consider fairness, nuance in truth-seeking
- Apply to Guantanamo Bay
  - Interrogations
  - Exceptionalism
Integrated modeling

Efforts at unified approach (Candilis, Martinez, Weinstock 2007; Martinez, Candilis 2010)

Summary of weaknesses:
- Separate role troubling
- Strict role theory excludes important values
- Ignoring historical narrative loses important lessons

Answer: Robust professionalism
- Integrity of personal and professional values
- Defines professionalism according to moral relationships (Wynia 1999)

Draws on multiple models, perspectives, balance, negotiation
Applying the robust model

- Behaviors that operationalize theory
- Habits/skills of ethical practitioner
  - Openness/transparency
  - Striving for objectivity
  - Confidentiality warnings
  - Recognizing disadvantages
  - Self-awareness, self-reflection (bias, limits of expertise)
  - Using cultural formulation
  - Integrating perspectives (evaluator, evaluatee, community)
  - Recognizing fiduciary responsibilities
  - Balancing values
Forensics: The New Research Ethic

Controversy and Scandal

- ACHRE, 1995 (lack of informed consent, widespread ethics lapses)
- GAO, 1996 (IRB overload, lack of resources)
- US DHHS, 1998 (commercialization, IRB-shopping, private boards)
- OHRP suspends research at over 12 centers, 1990s to date
- Ellen Roche, Jesse Gelsinger
The New Research Ethic: Increased Scrutiny

- OHRP: QA, QI, CQI program
- NCQA: VA system, creation of HRPP
- PRIMR: accreditation standards
- IOM: endorses HRPPPs
- AAHRPP: accreditation, self-assessment

Themes (Candilis et al. 2005)
- Broader institutional responsibility (HRPPPs)
- Accreditation
- Standardization of review (CQI standards)
- Ongoing research monitoring
- Commitment of greater resources
The New Research Ethic: Costs

- UT San Antonio 1979: $100,000
- VA 2003: $1.2 million
  - Hi-volume IRB (300-350 protocols/yr)
  - 8 support staff, FT admin, FT AA, database analyst, .05 FTE/member x 9, 0.5 FTE for Chair
- Sugarman 2005: $750,000
- UMass Med School; $280,000
- Mass. DMH: <$100,000
- Mass. DOC: no budget
Can Forensic Research Survive the New Research Ethic?