Inadequate Role Theory in Forensic Ethics: Toward a New Model

Philip J. Candilis, MD, DFAPA
Associate Professor of Psychiatry
University of Massachusetts Medical School

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Challenges of 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 or role 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 present in 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
- Recognized that more could 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 evaluatee

- 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