

Chapter 1

Morality, Ethics, the Foundations of the American Legal System, and Ethical Challenges in the Digital Age



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Cultural Norms, Morality, Ethics, and the Law

The norms of behavior within a society are culturally defined. Such cultural definitions of behavioral norms are largely rooted within religion, custom, and tradition. The course of human history is defined by diverse groups and cultures which developed and unified around specific and often unique sets of purpose, value, and principles. Thus, norms of behavior can vary significantly between cultures (e.g., eastern and western values) and even between common root cultures with divergent traditions (e.g., English, Australian, Canadian, and American values) and even among the various states within a country. Codes of conduct, regulations, and laws evolve from shared ethical and moral values when individuals with a shared culture form a society and then a system of government. Thus, each society in some fashion will define its values and authorize its government to enforce shared values through legislation, regulation, and laws.

Societies cannot function or preserve their existence without oversight and enforcement mechanisms for upholding shared values. Regulations and laws are the mechanism by which societies enforce compliance with shared norms and preserve the deeply held, widely shared, and relatively stable values of that society. Without defined standards of tolerance and standards for behavioral conformity, social order is compromised. The distinctions between moral and immoral, ethical and unethical, and legal or illegal are thus defined in the context of shared cultural values [1].

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Thus, morality refers to a shared system of behavior within a society whereby standards are defined, and shared, regarding the “rightness” or “wrongness” of certain behaviors. Durkheim observed that “man is a moral being, only because he lives in society. Let all social life disappear and morality will disappear with it” [2]. Morality is an increasingly complex notion in an increasingly complex world: “the word carries the concepts of: (1) moral standards, with regard to behavior; (2) moral responsibility, referring to our conscience; and (3) a moral identity, or one who is capable of right or wrong action. Common synonyms include ethics, principles, virtue, and goodness. Morality has become a complicated issue in the multi-cultural world we live in today” [3].

Whereas morality may restrict behaviors, it can also promote rights and freedoms by opening the scope of intellectual inquiry, argument, innovation, and experimentation. Therefore, if the moral code of a society says that a certain action is right, then that action is right, at least within that society.

Freedoms will both liberate and protect. In a perfect world, liberties are endless limited only where one’s liberty interests encroach on those of others. Thus, the *freedom to* is the freedom to pursue one’s own individuality and personal goals and interests; *freedom from* is the freedom from encroachment upon one’s rights by others. In order to be just, laws must be crafted so as to maintain the delicate balance of personal freedoms against societal interests. In a free society, laws must reconcile “principles of conformity and individual initiative, group living and private freedom of choice, social regulation and personal autonomy” [4]. Thus, “to individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society... everyone who receives the protection of society owes a return for that benefit, and the fact of living in society renders it indispensable that each should to observe a certain conduct towards the rest” [5]. Within Mill’s utilitarian framework, the function of laws and regulations within a society is to provide for the “the greatest good for the greatest number.”

Thus, the concept of “justice” is defined as a socially mandated conformity with existing law and regulations. Justice also presupposes that laws are enforced uniformly and that people can expect equal and impartial treatment in the eyes of the law. In the words of Aristotle, “The only stable state is the one in which all men are equal before the law” [6]. The Declaration of the Rights of Man and of the Citizen was drafted by the Abbé Sieyès and the Marquis de Lafayette, in consultation with Thomas Jefferson and was adopted in 1789 by the National Constituent Assembly of France, during the period of the French Revolution, as a human civil rights document, and presumably, the first step toward writing a constitution for France. The French *Declaration* espoused the principles of secular natural rights and law and accordingly defined universal individual and collective rights applicable to all men. The Declaration contains 17 articles, and a preamble which describes the document to represent a “solemn declaration [of] the natural, inalienable, and sacred rights of man.” For example and in part, Article I states that “Men are born and remain free and equal in rights;” Article IV states that “Liberty consists of doing anything which does not harm others;” and Article VI states that “The law is the expression of the

general will. All the citizens have the right of contributing personally or through their representatives to its formation. It must be the same for all, either that it protects, or that it punishes” [7]. With respect to the just enforcement of laws, the French Declaration, (in contrast to prevailing notions ...surrendered to government), instead advocated that the power to enforce rights, rather than the rights themselves, be delegated to government. Furthermore, the Declaration, stated that such “executive power” was voluntarily delegated and revocable. The “executive power” of the government could thus be rightly reclaimed by the citizens in the event that the government become despotic or tyrannical.

The U.S. Declaration of Independence may be considered to be a product of the Enlightenment. Philosophers such as John Locke, David Hume, and others espoused humanistic principles to emphasize human liberty, human rights, and social justice as the foundation for a social contract between government and its governed. Subsequently in 1776, in the United States, The Declaration of Independence was adopted by the Second Continental Congress meeting at the Pennsylvania State House in Philadelphia and stated, in part:

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness [8]...

The United States Constitution was enacted September 17, 1787, at the Pennsylvania State House in Philadelphia and represents the foundational legal principles from which all laws in the United States are derived. The Preamble to the Constitution articulates its guiding principles to be unity, domestic tranquility, and general welfare. The US Constitution is remarkable in that it assumed that both individual rights and natural rights were secured and articulated that the Constitution did not grant rights, but secured those natural personal rights and instead imposed limits upon the power of government. The link between morality and the law is underscored by the words of John Adams: “Our Constitution was made only for a moral and religious People. It is wholly inadequate to the government of any other” [9]. Thus, the US Constitution was built upon a long history of philosophical inquiry into the nature of man; the Framers’ views on moral philosophy were influenced by the intellectual traditions which guided their views on morality and politics such as natural law theory and Scottish Enlightenment thinking on issues of morality, humanism, social justice, and ethics.

Ethics and the Law

A nation's laws are usually founded on moral and ethical principles which demand just enforcement to promote societal harmony. Ethics have been generally considered to be abstract, internalized, and non-binding; they are, in a sense, opinions regarding appropriate behavior and construct. Similar to morality, ethics provide guidelines regarding norms of behavior within certain situations, although ethics are individual norms whereas moral are collective, or social norms. Whereas morality is a social construct, ethics are more personal. Nonetheless, ethical principles are linked to culture: Western ethics are derived from Judaic-Christian principles and the subsequent teachings of Aristotle (virtue ethics), Kant (duty-based ethics), and Bentham and Mill (utilitarian and consequentialist ethics). Eastern ethical principles are derived from diverse sources including Buddhist, Taoist, Confucian, Hindu, and the Islamic Hadith. Therefore, and arguably, western ethics may be more concerned with the exploration of universal truths, whereas eastern ethical principles may be more concerned with protocol and respect; however, it is evident that within all social constructs there are in fact recognizable and non-distinct universally shared ethical principles [10].

Typically, it was believed that what is lawful may not be ethical, and what is ethical may not be lawful. Nonetheless, ethical principles have increasingly formed the basis for legal analysis. The Greek philosopher Plato is credited with the statement that "ethics belongs to the body polis" referring to that what a society determines to be either ethical or unethical is ultimately determined through the courts and through the political bodies which establish laws through legislation. Ethical duties more often than not are increasingly associated with regulatory and legal ramifications. The judicial system has increasingly relied on generally accepted ethical doctrine to delineate and codify concrete duties into regulations and law which are generally accepted as necessary to maintain equality, social order, and to provide a predictable and uniformly applied framework for preventing and resolving disputes. For example, ethical principle of respect for autonomy has formed the basis for regulations and laws regarding assault and battery, informed consent, informed refusal, and right to die; whereas ethical principles of justice form the basis for laws regarding triage, resource allocation in emergency response, and biomedical research.

Professionalism and Professional Ethics in Medicine

Professional societies represent diverse professionals who are united by a common educational background, professional training, and the same or similar interests. The four hallmarks of a profession are as follows: (1) an extensive specialized education in a specialized field of abstract, specialized knowledge with further extended practical training which lead to defined reasoning and skills; (2) the rendering a basic and essential societal service; (3) practitioners usually have a high degree of

autonomy in decision-making and in practice; and, (4) practitioners must undergo a process of legislatively mandated certification or licensing for eligibility to practice. Certification and licensure accords professionals with an exclusive legal right to provide the specific services associated with a profession.

A meaningful and enforceable code of ethics can be considered a hallmark of professionalism. Professionals subscribe to a set of values specific to a given profession, and such values are typically codified as oaths and/or codes. Individual diversity with respect to moral viewpoints among individual practitioners within a profession mandates that the professional society, academy, or association establish its own standards, beyond what law, market, morality, and public opinion would otherwise require, in order to uphold the integrity and public image of the profession. A professional code of ethics thus represents a set of guiding principles intended to inspire and guide professionals in the conduct of their business. Codes can serve as the formal basis for investigating claims of conduct that may be potentially unethical within a profession. Professional codes may hold members to an even higher standard than imposed by regulations or the law, and, in some professional societies, codes of conduct are enforceable through sanctions. Violations of a code of ethics code may represent grounds for revocation of the right practice a profession, which is the case with the American Bar Association's Model Rules of Professional Conduct which may be used in disbarment procedures [11]; or, the American Academy of Neurosurgeons standards for expert opinion services which, if violated can result in formal discipline [12].

Professions are grounded in a fiduciary relationship between the professional and the client. A fiduciary relationship is defined as "a relationship in which one party places special trust, confidence, and reliance in and is influenced by another who has a fiduciary duty to act for the benefit of the party" [13]. In general, the fiduciary is a professional, who must knowingly accept his or her role in the fiduciary relationship, accept the attendant relationship of trust and confidence, and exercise his or her discretion or expertise in acting on behalf of his or her client. Thus, the oaths or codes of a profession reinforce a duty to uphold the ethical duties inherent in a higher calling.

"Medicine is a moral enterprise; the diligent efforts and work of medical providers converge ultimately on decisions and actions presumed to be directed toward furthering the good of another person, the patient, in need of help and healing" [14]. Thomas Percival published a Code of Medical Ethics in 1803 which outlined professional duties and ideal behaviors for providers and hospitals [15]. Percival's Code is widely recognized to have been the foundation for the American Medical Association's Code of Ethics, first passed at the initial meeting of the AMA in Philadelphia in 1847. The American Medical Association Principles of Medical Ethics and the Opinions of the AMA Council on Ethical & Judicial Affairs comprise the AMA Code of Medical Ethics [16]. The AMA's Council on Ethical and Judicial Affairs (CEJA) publishes an annual report chronicling each year's judicial activities adjudicating the complaints presented before it [17].

Morals are validated by social attitudes, more so than by individual attitudes. What is "right" and what is "good" may vary between societies. Morality refers to

a set of deeply held, widely shared, and relatively stable values within a community. In our complex society, every medical encounter raises a potential conflict between the intersecting moral values of physician, or provider, and patient. Thus, where a diverse society-at-large may be composed of a variety of moral values, professional codes of ethics have the important role of unifying and codifying the values of a profession.

Whereas codes are written documents, oaths represent promises, aspirational statements, of idealized ethics typically ritualized through spoken vows witnessed by peers. Oaths outline the ethical elements within a professional relationship but have meaning when the Oath is taken in a free and heartfelt fashion. Adherence to the elements of an oath are typically not enforceable. Oaths may be characterized by a “greater moral weight compared with promises because of their public character, their validation by transcendent appeal, the involvement of the personhood of the swearer, the prescription of consequences for failure to uphold their contents, the generality of the scope of their contents, the prolonged time frame of the commitment, the fact that their moral force remains binding in spite of failures on the part of those to whom the swearer makes the commitment, and the fact that interpersonal fidelity is the moral hallmark of the commitment of the swearer” [18].

The most well-known is the Hippocratic Oath, in either its classical version [19] or its modern version [20, 21], written in 1964 by Louis Lasagna then Academic Dean of the School of Medicine at Tufts University. The modern version of the Hippocratic Oath [22] states:

- I swear to fulfill, to the best of my ability and judgment, this covenant:
- I will respect the hard-won scientific gains of those physicians in whose steps I walk, and gladly share such knowledge as is mine with those who are to follow.
- I will apply, for the benefit of the sick, all measures [that] are required, avoiding those twin traps of overtreatment and therapeutic nihilism.
- I will remember that there is art to medicine as well as science, and that warmth, sympathy, and understanding may outweigh the surgeon’s knife or the chemist’s drug.
- I will not be ashamed to say “I know not,” nor will I fail to call in my colleagues when the skills of another are needed for a patient’s recovery.
- I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know. Most especially must I tread with care in matters of life and death. If it is given me to save a life, all thanks. But it may also be within my power to take a life; this awesome responsibility must be faced with great humbleness and awareness of my own frailty. Above all, I must not play at God.
- I will remember that I do not treat a fever chart, a cancerous growth, but a sick human being, whose illness may affect the person’s family and economic stability. My responsibility includes these related problems, if I am to care adequately for the sick.
- I will prevent disease whenever I can, for prevention is preferable to cure.
- I will remember that I remain a member of society, with special obligations to all my fellow human beings, those sound of mind and body as well as the infirm.

- If I do not violate this oath, may I enjoy life and art, respected while I live and remembered with affection thereafter. May I always act so as to preserve the finest traditions of my calling and may I long experience the joy of healing those who seek my help.

Some examples of other less widely known professional oaths specifically written for medical professionals include the Oath of Maimonides and The Physicians' Oath codified by the World Medical Association. The Physician's Oath was authored in response to atrocities committed in Nazi Germany during World War II and reads:

- I solemnly pledge myself to consecrate my life to the service of humanity;
- I will give my teachers the respect and gratitude which is their due;
- I will practice my profession with conscience and dignity;
- The health of my patient will be my first consideration;
- I will respect the secrets which are confided in me, even after the patient has died;
- I will maintain by all the means in my power, the honor and the noble traditions of the medical profession;
- My colleagues will be my brothers;
- I will not permit considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient;
- I will maintain the utmost respect for human life from its beginning even under threat and I will not use my medical knowledge contrary to the laws of humanity;
- I make these promises solemnly, freely and upon my honor [22].

The Nightingale Pledge, authored in 1893, is a statement of the ethics and principles of the nursing profession in the United States, it is, for intents and purposes, a professional oath and stems from the Hippocratic Oath. The Oath was revised in 1935 to read:

- I solemnly pledge myself before God and in the presence of this assembly to pass my life in purity and to practise my profession faithfully.
- I will abstain from whatever is deleterious and mischievous, and will not take or knowingly administer any harmful drug.
- I will do all in my power to maintain and elevate the standard of my profession and will hold in confidence all personal matters committed to my keeping and all family affairs coming to my knowledge in the practice of my calling.
- With loyalty will I aid the physician in his work, and as a missioner of health, I will dedicate myself to devoted service for human welfare [23].

Humanism in the Health Sciences

Humanism can be defined as “any system or mode of thought or action in which human interests, values and dignity predominate” [24]. Specifically, in medicine, humanism describes the attitudes and behaviors which demonstrate interest in and respect for patients' psychological, social, and spiritual concerns and values [25].

Nonetheless, medicine has always been firmly grounded within the principles of humanism from the Hippocratic Oath through the teachings of the medieval physicians Avicenna and Maimonides. The Renaissance ideal of the physician was of a person who was learned both in the humanities and the medical sciences.

The latter decades of the twentieth century witnessed a renewed attempt to reestablish humanism within the medical profession. Arguably, the contemporary “humanism in medicine” movement represented a response to perceived external forces such as the “corporatization of the practice of medicine, the increasing role of business and finance in medicine, the fragmentation of patient experiences, the reduced time for clinical encounters, the increasing reliance on technology as a substitute for human interaction, and a de-emphasis on the humanities in the education of physicians” [26]. Increasingly, within the context of provider “burnout,” the adoption of humanism within the practice of medicine has been identified as a core tenet of not only patient care but of provider wellness.

The specific traits of a humanistic provider are not clearly defined; however, they include (a) humility, respect, and the ability to listen; (b) relationship building and the ability to build a connection with the patient as a person; (c) compassion, empathy, sincere caring, mindfulness, and self-reflection including the ability to treat the patient as the provider would himself or herself want to be treated; and, (d) curiosity as a lifelong learner and communication with patients through support and teaching. Although in the past, professionalism and humanism were traditionally learned informally during a provider’s training through role-modeling, it is now being formally integrated into the curricula of physicians and other providers as a core body of knowledge.

The Principles of Biomedical Ethics

Morality, ethics, and the law merge within the principle of biomedical ethics. Beauchamp and Childress originally developed four principles, which represent the foundation for modern bioethical decision-making: (1) respect for individual autonomy; (2) the principle of beneficence; (3) the principle of nonmaleficence; and (4) the principle of justice [27]. These principles are widely considered and well accepted to represent a standard theoretical framework from which to analyze ethical situations in medicine, and these four principles will generally encompass most of the moral dilemmas that arise in healthcare.

The Principle of Respect for Autonomy: Consent, Refusal, and Right to Die

The principle of respect for autonomy presumes that rational persons have the right to make uncoerced, informed, and voluntary decisions regarding their personhood. The antithesis of autonomy is paternalism, whereby individual choice is subjugated

to the dictates of a superior father-like figure who “knows” what a person needs, rather than considering what that person actually wants.

The respect for autonomy is exemplified by the principles of informed consent and informed refusal. Consent constitutes a permission and represents the legal defense to potential allegations of both civil and criminal assault, and battery, which are predicated in a showing of unpermitted bodily contact. In order to be valid in the medical treatment setting, consent or refusal must be “informed.” Informed consent and refusal presuppose that an uncoerced voluntary decision is made after a competent patient has received an unbiased, truthful, and full disclosure of the indications for, and the risks, benefits, and alternatives to a proposed medical therapy. Thus, the notion of “informed” requires a “meeting of minds” and requires that a critical process of communication has transpired including, but not limited to, due diligence by the provider including consideration of one’s capabilities, evidence-based practice and standards of care, and patient circumstances, followed by a true opportunity of the patient to ask questions and to finally decide for his or herself [28].

Capacity is at the basis of informed consent. True medical decision-making capacity can apply only if one can demonstrate one’s understanding of the situation and the issues, the consequences of a decision, reasonable reasoning or thought process, and effectively communicate. Thus exercise of one’s autonomy presupposes capacity which in turn requires understanding, reasonable consideration, and communication. Reasonable decision-making is weighed by others in a moral sense; every carefully considered decision may not be morally acceptable, even if it falls squarely under the principle of autonomy; additive behaviors and suicide are some examples of potentially unacceptable exercises of autonomy subject to challenges on moral grounds. Moreover, in order to meet legal criteria for capacity, both situational capacity, such as intoxication, and, competency which relates to more permanent impairments such as mental illness, dementia, or acute or chronic neurological injuries must be considered. The potential lack of capacity underlies the legal remedies of healthcare proxies or legal guardians whereby surrogate decision-makers are appointed and empowered to make substituted judgments on behalf of the incapacitated, based on some understanding of the patient’s needs or preferences, as the patient would choose if he or she had the capacity to do so, thereby imputing some element of autonomy in decision-making.

The traditional antithesis of autonomy is paternalism. Medical paternalism occurs when a provider decides what is best for the patient, either in the absence of shared decision-making, or without consulting the patient regarding their preferences or wishes. In the past, when there was little or no understanding of science or medicine by the lay public, paternalism was seen as necessary to guide patients in their decision-making. More recently, as public education has increasingly provided lay persons with a foundation for their medical decision-making, paternalism has increasingly been replaced by shared decision-making and a respect for the patient’s autonomy.

The Principle of Beneficence and the Fiduciary Duty

Beneficence is generally defined as an obligation to help others further their personal goals and interests. Beneficence is strongly rooted within the notion of fiduciary duty and the duty of care that is a tenet upon which all professional relationships are based. A fiduciary relationship arises in every professional relationship because professionals work for the good of their clients; professionalism traditionally places a greater priority on the duty to serve than it does on productivity of profit. Encounters between clients or patients, and their professional, are characterized by an imbalance of education, training, and experience that results in a position of dependence by, and substantial confidence extended to the fiduciary. Patients do not understand the intricacies of physiology, disease, and treatment; therefore, patients largely depend on the beneficence of providers to “take care of them.” In medicine, the concept of beneficence is rooted within the values expressed in the Hippocratic Oath. However, as evidenced in the Hippocratic Oath, beneficence can be at odds with the principle of autonomy because it removes the element of risk balancing from the patient and places that obligation within the responsibility of the provider, thus promoting paternalism.

The Principle of Nonmaleficence and “Primum non Nocere”

The principle of nonmaleficence mandates that professional actor takes care so as to avoid causing harm; the principle of *primum non nocere*—or—“above all (or alternatively “first”) do no harm.” The principles of beneficence and nonmaleficence are closely interrelated because they both require the balancing of respect for individual autonomy, explorations of professional and personal values, and utilitarianism. The Hippocratic Oath enjoins the principles of beneficence and nonmaleficence where it states that “I will use treatment to help the sick according to my ability and judgment, but I will never use it to injure or wrong them.” Therefore, in cases of conflict between beneficence and nonmaleficence, nonmaleficence will normally override beneficence.

The principle of nonmaleficence and its translation, “first do no harm,” because of the implication that healthcare professionals will cause harm if left unchecked, has recently launched a quality movement intended to monitor medical errors and protect the patient from harm through regulatory and administrative oversight [29]. It has been well publicized that patient during the delivery of healthcare is a leading cause of morbidity and mortality [30]. The 1999 Institute of Medicine (IOM) report entitled “To Err is Human: Building a Safer Health System” underscored the impact of medical errors to the US healthcare system and posited that the prevention of

death and injury from medical errors would require dramatic, systemwide changes in the US healthcare delivery model [31]. On the other hand, preventable, or foreseeable, medical errors, may legitimately constitute medical negligence, and therefore be actionable under the law of medical malpractice. Negligence is defined as a foreseeable imposition of unreasonable risk of harm upon another, and the occurrence of that harm causing quantifiable damages. Moreover, the importance of avoiding harm affirms the need for competence among all medical providers and support staff [28].

The Principle of Justice and the Equitable Distribution of Resources

The notion of justice is fundamental to Western morality, ethics, and law. Justice, however, is a complex and poorly defined term. Although everyone believes that justice is a fundamental liberty right, not everyone agrees on how it is applied. Justice implies equitable distribution of benefits and burdens to individuals in society, and the rights of individuals to resources. Justice is implicated in discussions of fairness, entitlement, and equality.

There are many forms of justice: (1) distributive justice which represents the equitable allocation of scarce resources in society; (2) retributive justice which imposes punishment upon wrongdoers in a presumably objective and proportionate manner through a fair and impartial judicial system; (3) restorative justice which seeks to compensate those wronged—to “make whole” those injured under the tort law system; and finally, (4) procedural justice refers to predictable, structured, and transparent processes.

Distributive justice is especially important to public policy, public health, and emergency response preparedness. The principle of distributive justice addresses the equitable distribution of benefits and burdens to individuals in society:

- To each person an equal share
- To each person according to need
- To each person according to effort
- To each person according to contribution
- To each person according to merit
- To each person according to free-market exchanges [32].

Nonetheless, the concept of justice represents something greater than equality since persons can be treated unjustly even if they are treated equally. Where individuals lose capacity, freedom, or autonomy, they are at risk of losing their access to justice.

Clinical Ethical Challenges and Ethics Committees

Although informal hospital-based ethics committees have been in existence since at least the 1960s [33], it was the New Jersey Supreme Court in its opinion *In re Quinlan* which suggested that ethics committees might play an advisory role in such cases as an alternative to resorting to litigation within the court system [34]. Thereafter, in 1983, the President's Commission which addressed life-sustaining treatment provided further impetus regarding hospital ethics committees to assist with decisions regarding the use and the foregoing of life-sustaining interventions [35].

Hospital ethics committees (or, institutional ethics committees (IECs)), are, in general, quasi-formal advisory groups who assemble ad hoc to discuss the management of cases which raise ethical or moral dilemmas. IECs review, on request, ethical or moral questions that may arise during inpatient care. IECs are usually composed of interested members such as providers, nurses, and social workers. In more complex, and arguably more credible variations, ethics committees may also include, for example, bioethicists, lay persons, and/or attorneys. IECs also vary not only by structure but also by mode of operation; for example, individual consultants may investigate and then report to committee, a small team of IEC members may address a specific case, or, the entire committee may function as a unit.

The role and importance of IECs will vary by institution. In general, IECs provide the following: (1) consultation in complex clinical cases; (2) guidance or education for the healthcare team; and/or (3) development and review of institutional policies regarding the management of ethical issues arising during the delivery of patient care. The American Society for Bioethics and Humanities (ASBH) has identified two main objectives for clinical ethics case consultation: (1) identify and analyze the nature of the value uncertainty and (2) facilitate the building of a "principled ethical resolution" [36]. Hurst and colleagues identified the main reasons for ethics consultations:

- To obtain needed help in deciding what to do
- To identify a practical way of doing what had already been decided should be done
- To implement a practical solution
- To obtain reassurance that the correct decision was being made
- To better to face people who might otherwise think that the decision was inappropriate
- To seek consensus [37].

Ethical dilemmas frequently arise when there are conflicts or uncertainty about the goals of care, the value of a specific intervention as it relates to those goals, and the moral implications of medical choices and when communication about these conflicts breaks down. IECs may also support clinical staff who may suffer moral distress stemming from internal or external conflicts in complex clinical situations [38].

The American Academy of Pediatrics (AAP) has articulated its standards regarding ethics consultation:

1. Any patient, parent or guardian, or family member should be able to initiate an ethics consultation.
2. The patient and parent or guardian should be able to refuse to participate in an ethics consultation without concern for negative repercussions.
3. The refusal of a patient or parent or guardian to participate in an ethics consultation should not obstruct the ability of an ethics committee to provide consultation services to physicians, nurses, and other concerned staff.
4. Any physician, nurse, or other healthcare provider who is involved in the care of the patient should be able to request an ethics consultation without fear of reprisal.
5. The process of consultation should be open to all persons involved in the patient's care yet conducted in a manner that respects patient and family confidentiality and privacy.
6. Anonymous requests for consultation are not recommended. In situations in which fear of reprisal limits open discussion of the issues, the identity of the person(s) requesting consultation may be kept confidential.
7. The primary care pediatrician should be invited to participate in the consultation to support existing physician-family relationships [38].

Perhaps the greatest significance of the AP guidelines is its focus not only on patient and caregiver autonomy but also its respect for the healthcare team. In general, IECs which function in a vacuum, without stressing communication and consensus, are likely to fail not only in individual case circumstances but also in their mission.

Moral Distress in Clinical Care

The term “moral injury” was popularized by Johnathan Shay after the Vietnam War [39]. The clinical healthcare environment is characterized by one or more subcultures, which individuals must navigate, as they perform their patient care duties within the system in which they work. Where morality forms the basis of laws because morality generally represents shared societal values which demand enforcement to promote societal harmony, ethics more properly address each person's internal and more personal moral compass [28]. Although arguably, in an anthropological sense, culture creates shared ethical systems, healthcare workers do not create but rather join the healthcare system and are generally expected to conform to rather than create the culture. The term “moral distress” refers to a phenomenon originally described by Andrew Jameton in 1984 [40]. According to Jameton, moral distress occurs “when a clinician makes a moral judgment about a case in which he or she is involved and an external constraint makes it difficult or impossible to act

on that judgment, resulting in painful feelings and/or psychological disequilibrium” [41].

Moral distress represents a cognitive dissonance similar to that described in military veterans. Cognitive dissonance was first described by Leon Festinger in 1957 from his work on the behavior of cult members [42]. Festinger proposed that individuals have an innate need to maintain harmony between their attitudes and behaviors; in other words, to avoid disharmony (or dissonance) - this forms the basis for the “principle of cognitive consistency.” On the other hand, when inconsistency arises between attitudes or behaviors, dissonance arises, individuals try to take steps to either reduce the extent of, or eliminate, that dissonance. Forced compliance occurs in situations where one must act, either because of rules or social pressure, in ways that are inconsistent with his or her beliefs [43].

Until recently, the literature has been silent on the moral distress of healthcare trainees, staff, and providers. Moreover, moral distress has now been identified in multiple professions [44] including medicine, nursing [45], pharmacy [46], and respiratory therapy [47].

The importance of strong and cohesive teamwork, communication, and shared decision-making as ways of mitigating moral distress cannot be underestimated. Transparency, especially with respect to critical decision-making in complex ethical dilemmas, fosters such communication and can help minimize misperceptions and confusion. Of course, reasonable persons might always reasonably disagree with respect to the applicable ethical principles, the application of ethical principles, and with respect to individual value judgments. However, where individuals and the group together participate in honest and open discourse, there is opportunity to reconcile differing beliefs and points of view. In the end, transparent and well-considered reasons for implementing one course of action over another (through evidence based decision making, application of ethical principles, and recognition of uncertainties) may actually strengthen emotional bonds between patients and caregivers, and within the team itself. Thus, the powers of honesty and respect, with patients and caregivers, and among the care team, cannot be over-emphasized.

The Challenges of Biomedical Ethics in the Technological and Digital Age

Where morality and ethics represent the shared values of a society, technological changes through innovation can shift social norms and that in turn can result in changing social values. Technological innovation is inextricably linked to moral, ethical, and legal innovation. In the past, physicians were limited by the availability of technology; now technology can provide interventional opportunities which may or may not be ethically sound; for example, continued life support in the setting of futility. In some cases, morality and law may stifle technological innovations; however, increasingly technological innovation is forcing re-evaluation of traditional ethical beliefs and therefore “forcing” the development of laws to manage the evolving technology.

Health information technology (HIT) is continually evolving via technology such as Electronic Medical Records (EMRs), Clinical Decision Support Systems (CDS), Health Information Exchanges (HIEs), Computerized Physician Order Entry (CPOE), mHealth, telemedicine, and remote monitoring. Although such technological innovation improves the efficiency and arguably the safety of care delivery, these advances have also led to large-scale privacy breaches. Thus the HIT, together with the internet and social media, has redefined the public notion of privacy; therefore arguably, regulations and laws governing the privacy of health information may become outdated.

Within the field of neurosciences, advances in functional neuroimaging, neurogenetics, neurobiomarkers, neuro-psychopharmacology, brain stimulation, neural stem cells, neural tissue transplants have created the newly recognized disciplines of neuroethics [48] and neurolaw [49]. Future responsible advances in the neurosciences will necessitate interdisciplinary collaboration between neuroscientists and scholars from ethics, philosophy, law, and others who focus on the implications and applications of science and the associated ethical, legal, social, and policy implications [50]. For example, in the field of criminal law, functional magnetic resonance imaging (fMRI), neurogenetics, biomarkers, and neuropharmacology are challenging traditional notions of responsibility, moral responsibility, free will, and autonomy [51]. Innovation in imaging technology may delineate the neurobiological correlates of human behaviors. The promise of fMRI may lie in its ability to allow communication with individuals previously believed to be comatose, and, alternatively, as a more reliable lie detector.

The Ethics of Practical Wisdom

Practical wisdom has been recognized as a key concept in the field of virtue ethics [52]. Practical wisdom (Aristotle's concept of *phronesis*) refers to the pragmatic process of perceiving the relevant issues within the situation, recognizing the feelings provided by one's internal moral compass, deliberating upon and considering the options, and ultimately acting thereupon. Aristotle argued that each of us need to develop character traits such as self-control, love, generosity, gentleness, truthfulness, friendliness, and courage. Aristotle termed these traits virtues (*arete*) and argued that these virtues provided a conduit for the practical application of wisdom [53].

The role that *phronesis* plays in ethical medical decisions is arguably central to the skill of clinical judgment. There is an increased recognition of the importance of moral virtues such as care, honesty, and courage to medical practice and also argued that ethical physicians and providers embody a practical moral know-how (*phronesis*), now increasingly seen to be a term synonymous with "professionalism," "professional judgment," or "clinical judgment" which is necessary if good moral motivations (dispositions or virtues) are to translated into ethical and effective patient care. *Phronesis* is the link between a physician's medical knowledge, clinical

reasoning, and the physician's internal moral compass providing the foundations by which to navigate the competing scientific and humanistic demands of ethical medical practice [54].

Technological complexity will increasingly challenge the moral code of medical practice. Practical wisdom has been proposed as part of the solution to navigate complexity, aiming at the provision of morally good care. The focus of medicine must remain the delivery of the best possible morally sound care to each individual patient.

Conclusion

Morality, ethics, and the law are the basis for and the products of the societies in which they are defined. Morality and ethics are in themselves insufficient unless they become guiding principles in everyday transactions; alternatively, they are codified into regulations and law which then become enforceable. The moral and ethical foundations upon which our societies are founded will become increasingly important to navigate effectively through a rapidly evolving technological revolution which remains in the end, the humanistic care of the sick by providers.

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