# 2019 Kinsman Bioethics Conference

## Raising Voices:
The Ethics of Dialogue and Communication in Health Care

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<td>Thursday, April 11, 2019</td>
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<td><strong>Time</strong></td>
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## PLENARY SESSION SPEAKER

Dr. Autumn Fiester is Associate Chair for Education & Training in the Division of Medical Ethics at the Perelman School of Medicine at the University of Pennsylvania. She is the Director of the Penn Program in Clinical Conflict Management, which promotes conflict resolution training for formal clinical ethics consultations and ethics conflicts at the bedside. Dr. Fiester is a consultant for the Hospital of the University of Pennsylvania Ethics Service, and she conducts workshops in conflict management around the country.
Weaponizing Principles:
Clinical Ethics Consultations & the
Plight of the Morally Vulnerable

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Overview

- On-going dialogue about how to professionalize ethics consultation services (ECSs)
- 1 ECS-competence rarely discussed: Ability of the consultant to capture all relevant moral considerations in a conflict
- Argument: Failure to name the principles of both sides unfairly disadvantages the weaker party
  - Result: Side A_{moral weight} > Side B_{moral weight}
  - Worst Case: Side A is given normative WEAPONS whereas Side B is viewed as mere self-interest
- Remedy: Teach ECSs how to expand the diagnostic moral lens to uncover the moral ground of all sides, i.e., moral archaeology

Conventional U.S. Consult

To see this concern, consider the following case:
Conventional U.S. Consult

Case:

Mrs. Dee is an elderly woman, critically ill with multiple medical problems, currently in the ICU. She's on a ventilator and her blood pressure is falling, even though she is on medication to support her pressure. She has had one episode in which the staff felt they might need to attempt resuscitation, but the patient stabilized and remains in the same tenuous condition. Mrs. Dee's kidneys have failed, and the renal consultant raised the possibility of dialysis. Mrs. Dee made a living will years ago that she later affirmed, stating that if critically ill and unlikely to recover she should not get dialysis, a ventilator, or artificial hydration or nutrition and that she should have a DNR order. She also stated that she never wanted to be a burden to her family. Her named health care proxy is her husband, who has since become severely demented. Mrs. Dee has been his primary caretaker at home. The Dees have two grown children, Pat and Tanner. Tanner, who wants to honor her mother's intentions, just heard that the nephrologist got Pat to sign consent for dialysis and is very upset.

Nancy Dubler & Carol Liebman, Bioethics Mediation, “She Didn’t Mean It”

Conventional U.S. Consult

Routine ECS Analysis

Focus: Principle of Autonomy, Principle of Beneficence

- Mother clearly stated her treatment preferences in her Advance Directive
- Her right to refuse death-prolonging care is being violated by her son on grounds of pure self-interest (namely, his inability to “let her go”)
- Mother is being harmed by death-prolonging measures
- While ECS might feel sympathy for Pat, no moral weight assigned to his contention that his mother “didn’t mean it”
## Conventional U.S. Consult

### Routine ECS Analysis

**Focus:** Principle of Autonomy, Principle of Beneficence

<table>
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<tr>
<th>Side A: Tanner’s</th>
<th>Side B: Pat’s</th>
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<td>Duty to Respect the Patient’s Wishes Clearly Expressed in Advance Directive</td>
<td>Selfish Interest in Prolonging Dying Against Patient’s Expressed Wishes</td>
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<tr>
<td>Moral</td>
<td>Non-Moral/Immoral</td>
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**Common ECS Outcome**

- Only Side A is anchored by a moral principle.
- At best, Side B has no moral content; at worst, it violates patient autonomy & the principle of beneficence (harm by continued existence).
- Side A must be allowed to dictate medical course of action.
Conventional U.S. Consult

Common ECS Outcome

ECS Recommendation:
- Dialysis should *not* be started
- DNR order should be placed in the chart
- Clinical team should consider beginning a process of withdrawal of life-sustaining therapies

Why question the moral lop-sidedness of this case?

Because Pat doesn’t agree with the ethical analysis of the ECS. He does not believe that his position is morally wrong.
Principlist Paradigm vs. Moral Archaeology

My Worry about Contemporary U.S. Bioethics:

- False assumption that all of the pertinent bioethical principles have already been articulated
- Prevailing belief in a limited arsenal of moral tools at one’s disposal
- Orthodoxy that these (and only these) are morally relevant in clinical ethics

Principlist Paradigm vs. Moral Archaeology

“Principlist Paradigm” (Fiester 2007)

= common repository of standard bioethical tools based on Beauchamp & Childress’s theory of *principlism* that includes principles of autonomy, beneficence, nonmaleficence, & justice; and concepts such as informed consent, patient competence, truth-telling, confidentiality, non-abandonment, substituted judgment

- Operates like a short diagnostic check-list that scans for a handful of ethical considerations in clinical encounters
- Leads us to detect only a limited range of existing moral considerations
- Results in a narrowing of our moral lens
Principlist Paradigm vs. Moral Archaeology

“Principlist Paradigm” (Fiester 2007)

Problem:

- Restriction of the ethical concepts utilized in bioethics to a small, prescribed, fixed set
- Blind to obligations that fall outside the limited range
  - Danger: If only one side in the conflict has principles from the Principlist Paradigm, and those are the only principles an ECS sees, that side appears to have a disproportionate ethical heft in the debate
  - Side $A_{\text{moral weight}} > \text{Side } B_{\text{moral weight}}$
- But what if there are unrecognized principles anchoring Side B?

Principlist Paradigm vs. Moral Archaeology

“Principlist Paradigm” (Fiester 2007)

Hypothesis:

- Clinical ethics conflicts that appear wildly imbalanced morally are often an artifact of unrecognized principles
  - It appears that one side has principles and the other has mere preferences, inclinations, & self-interest, when, in fact, both sides are anchored by moral claims
  - In lopsided debates, the ECS that recognizes the principles of only one side has not illuminated the side of the righteous, but stacked the deck against the weak
  - They weaponize the ethical principles they do recognize to detriment of the moral claims anchored by the principles they don’t
Principlist Paradigm vs. Moral Archaeology

How can ECSs avoid this and learn to recognize all relevant moral considerations involved in an ethics dispute?

- **Moral Archaeology**

**“Moral Archaeology”**

= a systematic uncovering of the moral values, interests, principles and legal constraints at play in an ethics dispute through a process of dialogue with the stakeholders in the conflict.
Principlist Paradigm vs. Moral Archaeology

Mediators distinguish between:

- **POSITIONS**
  - Stated claims, what they say they want, the stances they take

- **INTERESTS**
  - Normative commitments, values, needs that anchor those positions
Searching for interests...

**Pat:**
- “believes in…”
- “stands for…”
- “values…”
- “prioritizes…”

Searching for interests...

**Pat’s mom:**
- “believes in…”
- “stands for…”
- “values…”
- “prioritizes…”
Principlist Paradigm vs. Moral Archaeology

“Moral Archaeology”
= a systematic uncovering of the moral values, interests, principles and legal constraints at play in an ethics dispute through a process of dialogue with the stakeholders in the conflict

- Mining stakeholders’ positions for their underlying normative content
- Translating testimonial into principle
- Being on the lookout for as-yet unrecognized moral considerations
- Digging for the individual’s “interests”

Excavating Unrecognized Moral Principles

Pat’s View
“Yes, they have a lot of fancy legal documents she signed, but I don’t for one minute believe that my mother meant a word of that…”

- Pat’s claim is that whatever is literally in the advance directive, his mother would not want to forego dialysis or move to withdrawal of treatment at this point
- But he can’t translate his gut feelings, reasons, intuitions into anything like the powerful ethical principles being wielded by the ECS
- What he has to say is no match for their highfalutin “patient autonomy,” “right to refuse care,” “principle of beneficence,” “do no harm”
Excavating Unrecognized Moral Principles

If Pat’s position is anchored by moral grounds that the ECS has failed to recognize (rather than on grounds of pure self-interest as the ECS claims),

Pat is morally vulnerable.

“Moral Vulnerability”

= the condition of having unarticulated or unrecognized moral principles that make one’s position morally indefensible with the consequence of being deemed to be acting on pure self-interest.
Excavating Unrecognized Moral Principles

Are there any Unrecognized Principles in this case?

Two Possible Moral Considerations:

1. *Obligation to (Sometimes) Prioritize the Needs of Family Members over Patients*

2. *Principle of Staying Alive for the Sake of Others*
Excavating Unrecognized Moral Principles

1. *Obligation to (Sometimes) Prioritize the Needs of Family Members over Patients*

   ➔ Consider a patient with sedation levels that suggest s/he is completely unaware of pain or discomfort

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1. *Obligation to (Sometimes) Prioritize the Needs of Family Members over Patients*

   - From Dubler and Liebman, *Bioethics Mediation*

   “The dynamics of the family are such that if the patient is not suffering, his or her wishes must sometimes be subordinated, at least temporarily, to the emotional needs of the family members, for they must live with the solution and the consequences after the patient dies”
Excavating Unrecognized Moral Principles

1. **Obligation to (Sometimes) Prioritize the Needs of Family Members over Patients**

   - Insight from the US family-centered care movement that there is more than one person in the room who matters morally
   - We “owe” family members a sincere effort in safeguarding their well-being and helping them avoid harm and emotional injury
   - Do Pat’s immediate needs ethically trump his mother’s?

OBJECTION: But what about the advance directive?
Excavating Unrecognized Moral Principles

1. **Obligation to (Sometimes) Prioritize the Needs of Family Members over Patients**

- Unorthodox approach to living wills/advance directives
- From Dubler and Liebman, *Bioethics Mediation*

  “Living wills are important, but in the clinch of hard decisions, they amount to just one more piece of information that must be factored into a solution”

“Being in medical ethics and involved in the care of many dying persons, I have read a large number of advance directives. Most of them are bad. Some focus on treatments without discussing outcomes. Some focus on values without discussing treatments. Some offer a dismal set of scenarios so that people can check off little boxes as if servicing different kinds of airplanes. Most are interspersed with oases of three or four blank lines for the author to insert narratives...Doctors, like impatient waiters, solicit choices from a menu of “do-nots” so that they can type in orders. Nurses distribute and collect paperwork but may only describe the medical techniques stripped of the results or probabilities of restoring health. The process and the documents are by and large, sterile, superficial, and soulless.” – Steven Miles, MD, *Unadorned*, 2016
Excavating Unrecognized Moral Principles

1. **Obligation to (Sometimes) Prioritize the Needs of Family Members over Patients**
   - With all of that in mind:
     
     **Principle**: Sometimes we owe non-patients more consideration than patients, at least for a time...

Excavating Unrecognized Moral Principles

2. **Principle of Staying Alive for the Sake of Others**
   - In the mock role play included in the Dubler and Liebman text, Pat says, “She would want to be available for Dad and to be there for us”
   - Assume this is Pat’s rationale
2. Principle of Staying Alive for the Sake of Others

- Can appear to be merely self-serving: seems to be suggesting that a dying woman should sacrifice her own healthcare needs and preferences for the benefit of others’ needs.
- Doesn’t this shine a poor light on Pat?

Pat asserts that his mother would not want to forego or withdraw life-sustaining therapy if her family needed her to continue with it.

- Is there plausibility to that?
- Feminist Ethics of Care: morality is grounded in relationships; foregrounds obligations stemming from emotional connections.
Excavating Unrecognized Moral Principles

2. Principle of Staying Alive for the Sake of Others

- Pat’s contention: “She didn’t mean it,” that is, she didn’t intend to demand something from her family that would cause them pain or harm.

- Wouldn’t many parents, if they were unconscious and could not perceive any pain or suffering, agree to a state of existence with no physical cost to them, at least for a time, if it would significantly help their children?

Excavating Unrecognized Moral Principles

2. Principle of Staying Alive for the Sake of Others

- Advance Directives → made prospectively, unavoidably without knowing all of the facts of the future circumstances.

- Perhaps Mrs. Dee would never have written what she did if she had known what it would have cost her son Pat or her ailing husband.

- Principle: some patients would see it as a duty to extend their lives for others’ benefit.
Excavating Unrecognized Moral Principles

Argument: there are (at least) 2 possible moral grounds anchoring Pat’s position that are unrecognized in conventional ethics consults

- **Obligation to (Sometimes) Prioritize the Needs of Family Members over Patients**
- **Principle of Staying Alive for the Sake of Others**

Duty to Protect the Morally Vulnerable

If the moral claims Pat is struggling to articulate are valid, then ECS analysis is not only flawed, but maligns Pat:

- At best, it claims Pat is acting selfishly out of grief
- At worst, it claims Pat is violating the personhood of a dying patient
Duty to Protect the Morally Vulnerable

**Contention:** ECSs have a duty to buttress the claims of the morally vulnerable by mining their positions for moral content, rather than accepting moral lopsidedness.

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Duty to Protect the Morally Vulnerable

**Why is this an obligation of ECSs?**

- Because when ECSs fail stakeholders in this way, they cause them *harm*.
- More than a misdemeanor of omission:
  - Complicit in turning the ethics dispute into an inherently unfair fight.
  - Moral “Have’s” & “Have Not’s”
    - i.e., those who possess the moral might of principles & those who don’t.
Duty to Protect the Morally Vulnerable

Why is this an obligation of ECSs?

 Result: ECSs inadvertently weaponize the principles they recognize to the disadvantage of any stakeholders whose claims are anchored by the principles they failed to see
 Weaponizing Principles: Granting power, authority, & moral legitimacy to one side’s position in an ethics conflict
 ECS recommendations issued will mirror the one-sided bias

Summary

 ECSs’ failure to identify principles on both sides of an ethics dispute unfairly disadvantages the weaker parties, potentially causing them significant harm
 ECSs need a process of moral archaeology: the skill of mining cases, testimonials, & statements for their moral content
 It means teaching consultants how to generate an expansive, inclusive set of moral considerations that accurately represent the most morally generous interpretation of the positions of all the stakeholders involved in the conflict