



# Addressing the dual relationship problem in forensic and correctional practice

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**ABSTRACT**

The dual relationship problem in forensic and correctional practice emerges from conflict between two sets of ethical norms: those associated with community protection and justice versus norms related to offender/defendant well-being and autonomy. The problem occurs because forensic practitioners typically have their professional roots in mental health or allied disciplines such as psychiatry, clinical psychology, social work, or law, and as such, often struggle to ethically justify aspects of forensic and/or correctional work. First, the problem of dual relationships will be described and its nuances explored. As will become apparent, the problem extends beyond the straightforward conflict of roles and resides at the very heart of professional practice. It is a core normative conflict created by practitioners varying ethical allegiances. Second, contemporary ways of resolving the dual relationship problem will be briefly outlined, that is, approaches that assert the primary of one set of codes over the other or involve the construction of hybrid ethical codes. Third, after briefly reviewing the shortcomings of these approaches I present a possible way forward drawing from relational ethics and the concept of moral acquaintances.

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**1. Introduction**

Forensic practitioners<sup>1</sup> face complex and pressing ethical issues in virtually every aspect of their assessment and therapeutic work with individuals facing trial, awaiting sentence, or serving sentences within the criminal justice system. In addition, working with persons adjudicated not guilty because of a mental disorder or who have been transferred to a forensic mental health facility during their sentences creates similar ethical challenges. One of the major reasons that this

type of work is especially ethically demanding is because it involves an interaction between two distinct state institutions, the criminal justice and mental health systems. Each of these institutions has its own set of norms (or more accurately, sets of norms) specifying what constitutes acceptable conduct for every role it recognizes and authorizes. In the criminal justice system there are specific rules of conduct, and detailed role descriptions, for prison officers, judges, psychiatrists, social workers, psychologists, lawyers, and a multitude of other professionals and workers. Similarly, within the mental health system there are separate role expectations for different occupations and policies that spell out the aims of the varying services that comprise it. The difficulty for forensic practitioners is that they have a foot in both camps. They are mental health professionals *and* criminal

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<sup>1</sup> In this paper I use the terms *forensic* and *correctional* interchangeably to refer to the assessment of defendants and the assessment and treatment of offenders.

justice employees (whether as consultants or salaried workers), and therefore subject to (at least) two sets of norms and any associated professional ethical codes.<sup>2</sup> The content of the ethical codes will largely depend on the specific role occupied and the particular responsibilities and functions of the service concerned. For our purposes it is not necessary to make finer distinctions between the various types of service within each of their broader systems. It is enough to underline the potential for conflict between criminal justice/forensic agencies and mental health services.

The fact that the criminal justice system functions revolve around adjudicating the guilt or innocence of defendants and determining and implementing punishment raises a host of ethical concerns. Issues of due process, experiencing a fair trial, access to legal representation, the proportionality of sanctions imposed, and whether the conditions of periods of subsequent incarceration are humane or violate human rights norms are especially salient. Relatedly, the conduct of the primary actors within the criminal justice system is prescribed by their respective ethical codes, and typically, the policies of the service by whom they are employed. Punishment is burdensome and the infliction of harm on another human being, even if state sanctioned, is ethically fraught and requires careful analysis (Ward & Salmon, 2009). In a nutshell, harming another person is normally an ethical no-go zone and if permitted, should have the strongest possible justification. The professional allegiances of forensic practitioners are strongly determined by the broad aims and specific policies of the criminal justice and forensic services. These policies will markedly influence, or even partially constitute, the professional roles occupied within the system. For example a forensic practitioner will be expected to *prioritize* public protection and the justice process over the welfare of offenders (Adshead & Sarkar, 2009; Appelbaum, 1997; Sadoff, 2011). This is not to say that the welfare of defendants or prisoners is ignored or casually dismissed. Rather, it is to stress that public safety is paramount when involved in assessment or treatment related tasks. By way of contrast, from a mental health practice perspective offender welfare (beneficence) and autonomy concerns are considered to be trumps and practitioners have a responsibility to approach their work with their core interests and wishes in mind. Certainly public safety is not ignored but it is viewed more as a side constraint rather than the orientating focus of practice (Beauchamp & Childress, 2009). What this means is that the emphasis of mental health practice is on alleviating individuals suffering and assisting them to reassume, or increase their chances of living, reasonable quality lives.

The dual relationship problem emerges from the overlap, or if you like, clash between two (at least— see below) sets of ethical norms: those associated with community protection and justice versus norms related to individual well-being and autonomy. The problem occurs because many, if not all, forensic practitioners have their professional roots in mental health or social disciplines such as psychiatry, clinical psychology, social work, or law, and as such, often struggle to ethically justify aspects of forensic and/or correctional work. The ethical codes formulated to guide practice in the domains of forensic/correctional and mental health have been designed to accomplish distinct aims and may conflict in certain arenas of performance. The conflict between the two sets of codes<sup>3</sup> or norm clusters may make it difficult for individuals to decide on a course of action when assessing or treating offenders, and once this has been accomplished, make it harder to justify their intended actions.

In this paper the problem of dual relationships will be described and its nuances explored. As will become apparent, the problem extends

well beyond a straightforward conflict of roles and resides at the very heart of professional practice. It is a core normative conflict created by practitioners varying ethical allegiances. Second, contemporary ways of resolving the dual relationship problem will be briefly outlined, that is, approaches that assert the primary of one set of codes over the other or involve the construction of hybrid ethical codes. Third, after documenting the shortcomings of these approaches I present a possible way forward drawing from relational ethics and the concept of moral acquaintances. While I do not presume to have solved the dual relationship problem I do think that the concepts and methods presented represent an advance over traditional ways of addressing the issue. Although I refer to varying *ethical codes* I acknowledge that often the sets of norms people adopt are not necessarily well articulated. However, while norms may not be formalized into codes they are arguably still identifiable and distinct. For ease of exposition, in this paper I overlook this complication, as I do not believe it alters the major thrust of my argument.

## 2. What is the dual relationship problem?

The difficulties associated with working as a practitioner in criminal justice contexts have been identified by a number of professions including forensic psychiatry (Sadoff, 2011), correctional clinical psychology (Bonner & Vandecreek, 2006), forensic social work (Butters & Vaughan-Eden, 2011), and law (Cooper, 2010). In their recent paper on dual relationships in psychiatry Robertson and Walter (2008) define the dual relationship problem (they label it the *dual role* problem) in the following way:

The problem of the dual role, variably termed 'dual agency', 'overlapping roles', and 'double agency', is a particular quandary in psychiatry. In this paper we refer to the 'dual role' and define it as a quandary in which a psychiatrist faces the dilemma of conflicting expectations or responsibilities, between the therapeutic relationship on the one hand and the interests of third parties on the other. (p. 228–229)

Traditionally in forensic and correctional domains, the dual relationship problem has been formulated in terms of an ethical conflict between two practice roles or sets of tasks, either in assessment or treatment contexts. In these types of situations there may be a clash between the personal interests and needs of a defendant or offender and those of the community and state. Robertson and Walter (2008) propose that the conflict occurs between practitioners and a third party, for example, the community or the courts, and by doing so, understate the scope and depth of the problem. To foreshadow my later conclusions, a dual relationship conflict can occur within individuals if they are subject to the obligations of more than one ethical code, or less concretely, sets of norms.

More specific examples of a dual relationship conflict include the following. First, when acting as an expert witness there may be conflict between a duty of truthfulness to the court concerning a defendant's mental state and/or personality versus what is truly in his or her best interests. Second, it can emerge when a practitioner is asked to evaluate a sex offender for possible civil detention, a possibility not necessarily likely to enhance the individual's welfare and autonomy interests. The primary interests in play here are those of the community and the need to protect citizens from the threat of future harm. Third, a dual relationship situation may occur when a therapist is asked to provide a report for the parole board that details an offender's treatment progress and risk of further reoffending. The problem here is related to the issue of confidentiality (autonomy) and the therapist's degree of impartiality when making release recommendations. Fourth, dual relationships are evident when sentenced individuals are ordered to attend and complete treatment against their will. For therapists, the ethical problem is that the needs and

<sup>2</sup> I assume that there are core values associated with the criminal justice system (protection, security punishment, fairness, equality, etc.) and mental health systems (well-being, distributive justice, nonmaleficence, autonomy, care, etc.) that reflect their core activities.

<sup>3</sup> The norms evident within state institutions may not necessarily be explicitly formulated but I suggest that they can be viewed as thematically related and exist to justify guide actions within each institution.

interests of the community are privileged over those of the offender. At the same time, their professional training, and identity, directs them to actively consider the rights and concerns of the offender. Fifth, there may be a conflict between the ethical demands of two roles when practitioners are asked to participate in security related tasks such as assisting in cell searches while employed as psychologists or psychiatrists. Sixth, another possible instance of a dual relationship concern involves the degree to which defendants' personal narratives (i.e., life stories) should be factored into court reports when they are not strictly relevant to a determination of their mental state at the time they committed an offense. However, such information may provide the court with a more meaningful account of the offenders' personal circumstances and suggest avenues for therapeutic interventions that extend beyond the questions of culpability, mitigation, or aggravation. Seventh, when conducting a risk assessment of sex offender for a parole board or civil detention hearing, a key question is to decide how much effort should go into obtaining a rich developmental and personal history, and how the risk measures results should be reported. It is well known that even the best sex offender risk assessment measures tend to over predict reoffending and will be wrong more times than they are correct (Craig, Browne, & Beech, 2008). This difficulty revolves around the practitioner's priorities and how he or she goes about balancing the needs and interests of the offender against the potential future possible harm the community may suffer. The problem is a dual relationship one as there is likely to be a conflict between a practitioner's commitment to prompting an offenders' well-being and possibility of a better life versus the Criminal Justice Systems worry about community protection. A worry he or she is likely to share by virtue of being subject to its policies and ethical code.

The problem of dual relationships is one that continues to trouble diligent practitioners as it creates ethical flashpoints and a nagging concern that unjustified harm may be inadvertently inflicted on offenders and/or members of the public. While ethical codes and professional standards especially created for correctional forensic context describe or label the problem, arguably they do not provide ways of navigating past the obstacles. Practitioners are advised to proceed with caution, to avoid dual relationships, and if in them, seek advice. What is missing in criminal justice or forensic codes are concrete suggestions for addressing the problem from an ethical standpoint. For example, a comprehensive set of professional standards recently formulated for psychologists working in jails, prisons, correctional facilities, and agencies (IACFP, 2010), states that "Mental health services staff do not assume a dual role that overlaps with other functions and services (e.g., security) of the correctional agency or facility that could result in unethical dual-role relationships that risks harm to their offender or inmate clients." (p. 766). Unfortunately no guidance is given concerning how best to avoid the (inevitable) dual relationship conflicts that occur when working as a practitioner in forensic and correctional contexts. Articles written for correctional psychologists on ethical dilemmas are also of little assistance (Bonner & Vandecreek, 2006; Haag, 2006). Similarly, comprehensive guidelines have been formulated by the American Academy of Psychiatry and Law (2005) for forensic psychiatrists. In this document the potential difficulties of dual roles are noted but there are no suggestions of how best to resolve them. However, in the broader psychiatric ethical literature some excellent work has been done on this problem. I will examine a number of the suggestions that have been formulated by psychiatric ethical theorists later in the paper and for now will focus on the deeper conceptual roots of the dual relationship problem.

### 2.1. Value pluralism and forensic practice

The detection of an existing dual relationship or dual role issue is certainly informative and conveys important ethical information to a forensic correctional practitioner. It highlights the presence of

normative conflicts that point to contradictory possible ways of proceeding, which are hard to resolve. However, I think the problem is a deeper and more pervasive one than simply conflict between two aspects of a role. Drawing from Cooper (2010) I suggest that ethical conflicts experienced by forensic practitioners (in fact, arguably indeed any type of practitioner including lawyers, police officers, psychologists, salespersons, etc.) straddle at least four domains: conflicts (a) between two or more professional ethical codes. The conflict may exist between different persons or within a single person who has commitments to more than one professional role or identity; (b) between a professional ethical code and a broader, more abstract set of universal values such as human rights; (c) between a practitioner's personal set of values that inform his or her good life plan and thus bestow a sense of meaning and purpose, and a professional code. This possible clash relates to the problem of integrity, where conflict between a professional ethical code and personal values could leave a person feeling fractured or trigger loss of meaning, and (d) between universal human norms and personal values. In my view, all of these potential ethical or normative conflicts are significant and may impact on a practitioner's sense of self and ethical standing. In his landmark 1986 paper Alan Stone spoke eloquently of his deep regret at not having included elements of a defendant's personal story into his court report. In his view he had failed to adequately capture the man's narrative and therefore had failed him as a psychiatrist, and implicitly, as a fellow human being. I suggest that Stone's regret points to conflicts between his personal ethical code, universal norms, and professional ethics. There is a triple relationship conflict occurring, all of which are relevant to his subsequent negative self-evaluation as a psychiatrist and as a human being.

On a wider note, forensic practitioners like all human beings have multiple normative commitments. They are parents, sons and daughters, siblings, citizens, members of religious groups, political party members, doctors, forensic practitioners, and so on. Each of these roles and group memberships has its own set of value commitments, commitments that structure action and are used to plan for the future. When the values infusing each role conflicts with those of others individuals experience dissonance and lack clarity concerning the right way to act. The existence of multiple ethical frameworks can leave them feeling confused and ethically disoriented.

I propose that the problem of dual relationships is a manifestation of the wider underlying ethical issue of value pluralism. Value pluralism occurs when a number of distinct ethical codes (or if you prefer, sets of norms) exist within a society or community, none of which can be established as ethically superior by a rational, impartial observer (Engelhardt, 1986). The clash between the various ethical codes may be a horizontal one between codes at the same level of abstraction (e.g., a professional ethical code versus a criminal justice employee code) or vertical, where professional norms conflicts with more abstract principles (e.g., human rights norms might clash with those regulating staff conduct at a high security prison). Thus, what is apparent at an abstract level in multicultural, complex societies, also occurs at the level of professional practice, and more specifically, potentially within a single clinician.

If we accept the view that the dual relationship problem is more usefully conceptualized as one of value pluralism, what are its practice implications? One obvious issue is that norms infuse all aspects of the criminal justice and correctional systems from policy initiatives to the nature of punishment to the content of each offender's intervention plan. If there are different ethical codes or systems of norms available to guide offender assessment and treatment, it could be hard to agree on a subsequent course of action. One forensic expert might justify his or her actions by appealing to obligations to the court while another could refer to the needs of patients or offenders, and an obligation to ease suffering whenever possible. The problem of ethical incommensurability raises its head here. That is, a problem accepting the legitimacy of another person's reasons for acting as they do in the forensic or

correctional sphere. Practitioners working from different normative frameworks, or lens, simply do not accept another's viewpoint. There is no ethical common factor capable of bridging the gap between their systems of values, as each has at its foundation a number of underlying principles that justify more specific actions. For example, a forensic practitioner might justify the treatment of an offender because of an expected reduction in offending rates (community protection) while another practitioner might appeal to the positive impact on the offender's quality of life (offender beneficence). A danger when there is no common ground is that individuals may dismiss other views as obviously mistaken or simply assume their own judgments are correct without bothering to look at the issue from another perspective. This can result in the adoption of dogmatic and intolerant attitudes or a kind of helplessness in the face of contrasting ethical professional commitments.

Thus, the norms governing the actions of a correctional system (typically, the humane implementation of punishment and protection of the community) may conflict with those of health practitioners (to enhance individual well-being). To make matters worse, each practitioner may experience internal value conflicts because of their allegiances to different roles and their associated codes of conduct. Thus a correctional psychologist is both an employee of the criminal justice system and therefore subject to its code of conduct while also being obligated to meet the standards of his or her professional ethical code. The difficulty is that these sets of norms and their associated standards of conduct could be at odds, and in fact may not be easily reconciled. As stated above, the scope of normative conflicts extends even further and potentially includes that between offenders' implicit life plans and police, prison officers, probation officers, mental health workers, and therapists' ethical codes. A patient, offender, or defendant's concerns are to ease his or her suffering, to establish genuine and caring relationships with other people. Such persons do not view themselves primarily as *patients* or *offenders*; these are identities imposed by professionals.

The problem of incommensurability, or discordance between different sets of moral systems, goes even deeper than that between different moral judgments, and their respective actions. It is also evident at the underlying level of moral justification: individuals who possess different sets of moral norms are likely to justify their moral judgments by appealing to diverse foundational principles, within their own moral system. Thus, there is the real danger that people acting within the normative structure of distinct moral codes will talk past each other, and believe others are guilty of irrationality and moral capriciousness. This problem could even occur within a single practitioner or correctional worker who is subject to the standards of two or more codes. This is not merely a problem of not listening carefully enough to what some else is trying to communicate. It is no mere lapse of concentration. Rather, the problem has its origins in the multiple systems of meaning, and their associated practices, that regulate the actions of criminal justice, health workers, and all members of a society.

### 3. Contemporary responses to the problem of dual relationships

Now that the problem of dual relationships has been outlined it remains to explore the ways it has been addressed by practitioners working within forensic and correctional contexts.

#### 3.1. Single code primacy: mental health

In a sense, the default position concerning the dual relationship problem is that traditional professional codes of practitioners (whether psychiatrists, psychologists, social workers, etc.) can satisfactorily resolve any ethical conflicts encountered when working in forensic or correctional contexts. It is assumed that ethical principles associated with ethical codes or those specifically developed in bioethics, can be suitably

interpreted to provide guidance to practitioners in all assessment and treatment arenas (Weinstock, 2001). Thus the principles of beneficence, nonmaleficence, autonomy, and justice, if moderated by considerations of balance and the process of specification, can help practitioners to undertake risk assessments or offender treatment in ways that are ethically justified. As originally defined by Richardson (1990) *specification* occurs when "the initial norms are in some way brought to bear on concrete cases by means of more specific norms." (p. 290). There is a consideration of the relevant facts and identification of the what, where, whom, how and when aspects of the relevant problem. The aim is to translate or tailor abstract ethical principles into specific action guiding norms without losing their original meaning. Thus, the principle of autonomy might be specified in a risk assessment case in the following manner: the problem is to decide how much weight to give to the offender's self reports on his level of deviant sexual desires compared to his score on a measure of deviant sexual preferences and interests (Craig et al., 2008). Another example is when the principle of beneficence is specified in the context of formulating a particular offender's treatment plan and decisions have to be made about whether to base it on (a) his goals for a better or good life (i.e., to work as a carpenter; to start a romantic relationship; and to join a golf club), (b) the array of dynamic risk factors that are associated with his offending (e.g., his belief that children should be free to decide whether or not to engage in sexual activity for themselves and his tendency to act impulsively when stressed) or (c) a combination of the two.

All of the major forensic professional codes contain a number of foundational ethical principles from which specific standards of practice are (loosely) derived. The principles function as a theoretical resource that are applied to cases arising in clinical work, and can be used singly, or in combination, depending on the nature of the case in question. The question remains: can traditional ethical codes, or more specifically principles of beneficence, nonmaleficence, autonomy, and justice, solve the dual relationship problem?

For convenience, let's narrow the issue down to the justification of the treatment of offenders. Should treatment be justified by appeals to offender well-being (beneficence) or rather in terms of reducing the risk to the community (nonmaleficence)? Traditional mental health ethic exponents would most probably opt for well-being enhancement and reduction of suffering, arguing that treating persons for the sake of others is wrong and overrides their autonomy rights. It is hard to see how an argument can be mounted that it is ethical to treat, or assess, with the interests of others firmly driving the process unless the person is suffering from a psychotic disorder; a case where their capacity for autonomy and self-determination has been severely compromised by the presence of a mental disorder. However, even in this situation, the primary aim is still to restore the person to a greater state of well-being by treating a disorder even if a side effect of doing so is to protect the community. Thus in traditional mental health ethics, protection of the community is usually a side constraint, something that moderates the treatment of the client or patient. It is hard to see how this thinking can be applied in a forensic context where it is obvious that a risk management approach to treatment, and an expert forensic assessment for the court, is motivated more by non-offender considerations.

Thus it does not seem possible to resolve the dual relationship problem in forensic contexts by using the principles underlying mental health professional codes. There is something quite unique about forensic and correctional practice that makes this strategy unworkable. This weakness is well illustrated in Alan Stone's critique of forensic ethics in his 1984 landmark paper. In this paper Stone (1984) argued that the poor state of psychiatric knowledge and the workings of an adversarial court system made it virtually impossible for forensic psychiatrists to work ethically. More specifically Stone commented that:

First, there is the basic boundary question. Does psychiatry have anything true to say that the courts should listen to? Second, there



is the risk that one will go too far and twist the rules of justice and fairness to help the patient. Third, there is the opposite risk that one will deceive the patient in order to serve justice and fairness. Fourth, there is the danger that one will prostitute the profession, as one is alternately seduced by the power of the adversarial system and assaulted by it. (p. 167).

A parallel debate has been occurring in the sex offending treatment field concerning the aims of treatment and whether it is better viewed as punishment rather than psychological treatment. Directly related to this question, is the further claim that the only ethical defense of offender rehabilitation is by appealing to a justified theory of punishment. Mental health ethical codes, the argument goes, are unsuited to the job because their focus is on the well-being of clients and not community protection and the sanction of unlawful actions (see Ward, 2010). Ward (2010) argued in this review of the debate that there were aspects of sexual offending treatment that resembled punishment and others that mirrored traditional mental health treatment. His suggestion was that in order to provide an ethically robust justification of treatment it is necessary to develop a hybrid ethical code (see below). A combined code that acknowledges that there are dual relationship challenges in providing psychological services to sex offenders that cannot be resolved by traditional or criminal justice ethical codes.

It appears that traditional mental health professional codes do not possess sufficient theoretical resources to satisfactorily resolve the dual relationship issue in forensic and correctional practice. It is now time to consider the opposite possibility: Can forensic or correctional ethical codes do the job instead?

### 3.2. Single code primacy: criminal justice

In his landmark 1997 paper on forensic ethics Paul Appelbaum argued that forensic psychiatry ought not to be governed by the traditional ethical principles of medicine, namely, those of beneficence (i.e., promoting well-being of patients), nonmaleficence (i.e., reduce suffering and do no harm), autonomy (patient choices are paramount when it comes to determining treatment options) and justice (equal access to treatment; fairness). Following a conceptual appraisal of contemporary forensic practice, more specifically the provision of expert psychiatric advice to the courts, Appelbaum formulated two forensic ethical principles, truth telling and respect for persons, that he argued accurately reflect practice. The *principle of truth telling* stipulates that the forensic psychiatrist ought to strive for objectivity and present the court an accurate assessment of the defendant based on reliable and valid methods and theories. There should be honesty concerning the strengths and limitations of any methods of information gathering and its impact on the subsequent psychiatric report and testimony. The *principle of respect for persons* stipulates that in a forensic evaluation context the psychiatrist should be transparent with the defendant conceding the fact that his or her client is the court rather than the defendant, and he or she will not function within the role of healer, therapist, or medical doctor. According to this principle, the patient or offender should not be misled or exploited by the forensic psychiatrist; that his or her medical skills are not misused to unethically obtain information from the defendant which may adversely any future prospects of freedom. Appelbaum makes the excellent point in his defense of the two principles and the subsequent narrowing of the role of a forensic psychiatrist, that professional ethics should reflect the nature of the roles actually undertaken by practitioners. He maintains that forensic ethical norms cannot be derived from health ones because the values associated with each realm are distinct, and I might add, incommensurate with respect to the roles in question. The justification for professions and the tasks that define them are, Appelbaum argues, derived from social consensus. In other words society authorizes the

establishment of professions and decides what functions they perform. In the case of forensic psychiatry, society values the provision of expert psychiatric testimony to help resolve certain legal questions in order to advance justice; the subsequent principles are truth telling and respect for persons.

Paul Appelbaum's forensic ethical principles emerge from his scrutiny of forensic practice and are ultimately justified by their function in promoting the interests of justice. A notable feature of this theory is its immanent nature, that is, the principles emerge from practice rather than the other way around. The fact that the theory is grounded in forensic practice gives it considerable face validity and resonates strongly with the experiences of forensic psychiatrists. Although it was originally formulated to guide the provision of expert testimony, in my view it has implications for all aspects of forensic work as well as for other forensic and correctional practitioners such as psychologists, social workers, and probation officers.

A weakness of Appelbaum's theory with respect to its solution of the dual relationship problem is that it suffers from the grain problem. He has essentially *redefined* the practice of forensic psychiatry to include only assessment undertaken to help the court address legal questions. Non-legal, and well-being relevant aspects of psychiatric practice are excluded by definition. The grain or scope of forensic psychiatry has been shrunk to incorporate only those aspects that concern themselves directly with justice issues and all other aspects of practice have been positioned on the non-forensic side of the professional role boundary. Thus, there is no dual relationship problem because, by definition, forensic psychiatry does not include traditional medical tasks and their associated values of beneficence, nonmaleficence, autonomy, or even justice<sup>4</sup> do not apply in this sphere of work.

There are three concerns about Appelbaum's attempt to change the grain, or level, at which forensic psychiatry is defined. First, it fails to deal with the likely fact that defendants and offenders perceive the forensic psychiatrist as a medical doctor and believe he or she is obligated to help in some way. Therefore, they are likely to be forthcoming with information because they trust that forensic practitioners will put their interests first. Second, forensic psychiatrists use their medical knowledge and skills to obtain data from interviewees and draw from their expertise as doctors. Arguably, if a person actively utilizes their training as a doctor to perform tasks then they are subject to the ethical codes that regulate the use of their professional knowledge and skills. If this is the case, then forensic psychiatrists are unable to avoid the dual relationship problem. Third, there is something rather arbitrary about simply slicing off aspects of practice and stipulating that it is forensic psychiatry and thus distinct from medicine. Not only does it create artificial boundaries around a set of practices, but it also runs the risk of alienating psychiatrists (and other forensic and correctional practitioners) from their traditional roots as healers.

In summary, I think Appelbaum is right to point to the distinct ethical values that underpin forensic practice and to formulate a set of principles to guide such work. However, he has not really solved the dual relationship problem but has rather simply placed it to one side. In light of the arguments outlined earlier it is apparent that there is a clash of forensic and mental health norms in the forensic practice. In my view, this conflict has its source in the problem of value pluralism. The question remains, is it possible to equip forensic and correctional practitioners with an ethical framework that can incorporate both sets of norms? I will now turn to mixed or hybrid ethical approaches to the issue of dual relationships.

<sup>4</sup> In medical ethics 'justice' refers to the fair distribution of services and lack of discrimination, rather than the legal process.

### 3.3. Hybrid codes

The essential dilemma confronting forensic and correctional practitioners is that there are ethical tensions between their respective professional codes and the ethical demands of working within the criminal justice system. One solution is to embrace the inherent complexity of the forensic role while still appreciating the added value conveyed by a mental health background.

As stated earlier, the responses by psychologists to the issue of dual relationships and the associated ethical demands of working within the criminal justice system have been disappointing. Specialized correctional ethical codes have simply identified the problem as a pressing one and papers published on the ethical issues emerging from correctional psychological practice have not outlined a suite of procedures or strategies for dealing with the problem. Theorists such as Ward (2010) have suggested that more than one ethical theory will be required to justify and guide offender treatment. From this perspective, it is anticipated that there could be overlapping, although distinct, normative theories that deal with the punishment and the treatment aspects of intervention, respectively. In this possible scenario, the nature of the practice tasks will dictate what ethical resources are drawn from at any point in time. The reality may well be that because of the complex combination of morality and treatment-related values apparent in the criminal justice domain it is not sensible, or even possible, to rely only upon one type of ethical framework (Ward & Salmon, 2009). However, unfortunately aside from these comments Ward (2010) has not outlined concrete steps for constructing such a hybrid ethical code.

In my opinion, Candilis (2009) has significantly advanced the discussion by developing a hybrid ethical code for forensic psychiatric practice based on the construct of robust professionalism, and narrative theory. In a recent paper Candilis (2009) drew from narrative theory, work on compassion in forensic psychiatry, and integrity to flesh out an ethical framework to guide practice he termed *robust professionalism*. More specifically he stated that:

This model recognized the formative influence of personal values, the salience of personal identity in one's work, and the connection of personal and professional identities. It was the outward expression of one's values in word and deed that made professional integrity a more communitarian venture. Here there was room for publicizing one's ethics and interacting with the community's values. The community then could define limits and expectations, creating in the professional a balance of personal and community values. This was a more realistic, complete, and robust vision of what it meant to be a professional. (p. 431).

According to Candilis, professional relationships between the forensic psychiatrist and offender or defendant, and other persons associated with the case, should be viewed as moral relationships. The forensic practitioner has an obligation to understand the story or narrative of the evaluatee and other relevant individuals, and to accept that in forensic contexts there are multiple perspectives in play. In addition, there is an ethical responsibility to display integrity in his or her professional actions and to ensure that there is consistency between the way forensic tasks are undertaken and personal and broader ethical values. Candilis (2009, p. 433) states that practitioners ought to exhibit (1) sensitivity to vulnerable evaluatees, (2), sensitivity to role problems, (3) awareness of personal biases and internal states, (4) honesty with respect to the facts of the case and in one's dealings with evaluatees, and (5) ethical professionalism by ensuring one is kept up to date with the appropriate scientific and clinical facts, and has a good grasp of ethical theories and perspectives.

There is a similarity between Candilis's discussion of integrity and its role in practice with the analysis of normative conflicts outlined earlier in the paper: personal, professional, and universal norms are

all salient and should be factored into forensic practice. Furthermore, Candilis's recommendation that practitioners ought to be aware of the narratives of all the individuals involved in the case in order to fully appreciate what is at stake is a sound one. The need to be cognizant of contextual, cultural, and the various normative components evident during any forensic encounter is a strength of this hybrid approach. There is a genuine attempt to resolve the dual relationship problem and to incorporate community and person regarding aspects of legal psychiatric and psychological examinations. Despite these strengths there are some problems in applying Candilis's theory to assessment and treatment in forensic and correctional contexts. Most pressing is a failure to outline a procedure for implementing the model in practice situations. While the concept of robust professionalism with its call to integrity and attention to personal narratives is a necessary element of ethical assessment and treatment, it is not sufficient. Furthermore, I think he has underestimated the impact of value pluralism on clinical work, something Appelbaum has not.

Thus the question remains, is there a way to successfully tackle the problem of dual relationships in forensic and correctional practice? Is it possible to take the insights contained in the above ethical theories and integrate them within a more satisfactory theoretical framework, and ethical procedure? In my opinion, the answer is yes, and I suggest that Engelhardt's (1986) concepts of moral strangers, friends, and acquaintances, in conjunction with relational ethics, can assist in this process.

### 4. Moral strangers, moral friends, and moral acquaintances

As stated earlier, my view is that what underlies the dual relationship problem are fundamental value conflicts between those who place more stress on community protection, or risk management concerns and those who stress a responsibility to assist defendants or offenders to create better lives for themselves alongside risk reduction. Various attempts to resolve these basic value conflicts have not been that convincing. They consist of: (a) models which elevate one position over that of the other, arguing that practice within the forensic domain requires that this be the case (see Appelbaum, 1997); (b) hybrid models where the aim to create a balance between welfare and justice/risk management theories; and (c) unified or procedural models that seek to find common ground through appeal to shared moral beliefs or norms. In my view, the third option is the most promising way to proceed.

The earlier analysis has revealed an intractable problem created by using core foundational principles and their associated norms to solve the dual relationship issue. Attempts to resolve the dual relationship dilemma by mental health, criminal justice (forensic/correctional) or hybrid ethical models have all failed. This is because if you accept the implications of moral pluralism, such approaches still end up begging the question concerning the superiority of one set of norms— or ethical code, theories, etc.— values over others. Opponents of one view can quite legitimately (from a moral pluralism perspective) respond by asserting the superiority of their code, appealing to their own foundational principles and justificatory procedures. Ultimately, there are no independent, universal values or set of facts that are able to satisfactorily arbitrate between two opposing sets of norms and decide in favor of actions that are derived from them.

In my view, the only rationally acceptable form a unified model can take is a procedural one: the aim is to specify procedures that if followed will enable practitioners to engage in respectful discussion (or if the conflict is *within individuals*, help them to meaningfully work with different sets of norms, such as mental health versus criminal justice norms) with those holding opposing viewpoints, and thus to increase their changes at reaching a rationally justified consensus.

At this point it is worthwhile to summarize some of my key assumptions based on the above analysis and discussion in order to

address the problem of conflicting moral viewpoints. More specifically, I assume that: (1) all human beings are naturally motivated to seek a number of primary goods, including food, shelter, security, control, and relatedness. The need for these basic array of goods creates vulnerabilities; vulnerabilities that are both exacerbated, and potentially resolved, by our social interdependence; (2) all human beings have intrinsic value and possess the same (high) level of moral status. This equal moral status should give them an equal say concerning matters that affect their lives; (3) norms are cognitive and social tools that create cooperative structures that enable people to achieve these goods within a social context; (4) there are diverse, equally legitimate, ways of arranging our lives that enable us to live cooperatively and to achieve acceptable levels of well-being; (5) these different ways of living are associated with distinct sets of moral norms, or codes; and (6) we ought to seek common ground when faced with moral problems and make a genuine effort to reach an agreement about how best to act, on the basis of good reasons. At all times the search for agreement concerning ethical problems needs to take into account our equal moral status, and be respectful of our social, cultural, and religious differences — that is, our varying ethical codes.

#### 4.1. *Moral acquaintances*

Keeping these assumptions in mind, one possible way forward is to adopt a moral acquaintance procedure and the relational framework values of engagement, respect, and embodiment (Bergum & Dossetor, 2005; Hanson, 2009; Luban, 2007; Ward, 2011).

In a complex moral world with diverse ethical codes and cultural perspectives it is important to attend carefully to our concrete relationships with other people and to *engage* in dialogs that are open and intent on incorporating varying viewpoints. In other words, ethical focus should be on relationships as well as principles and norms such as rights and duties. Furthermore, it is important to acknowledge the *dignity* of others, and not to act in ways that are *disrespectful* and that denigrate their status as fellow human beings. Finally, the details or stories of individuals' lives ought to be the focus of moral decisions rather than simply abstract principles or norms. We need to work hard to construct personal narratives (an *embodiment* of their situation in a story) of each person involved in an ethically problematic and depict the relevant details such as what is at stake for them in an encounter.

The moral acquaintance framework agrees that in a pluralistic society there are a number of equally legitimate, competing or alternative moral belief systems. The application of these different moral codes to concrete situations often results in varying responses to ethical problems. A moral acquaintance framework accepts that individuals with distinct moral codes may judge moral situations differently, and in turn, justify their actions by appealing to competing sets of principles and theories, for example, religious beliefs, political theories, or codes of ethics. In effect, such individuals are *moral strangers* to each other as they have little in common with respect to their core moral beliefs and their underlying principles. They frame problems differently and as a result may arrive at diverse judgments concerning the right course of action to take. *Moral friends*, however, share the same ethical codes and are able to solve problems by carefully attending to the relevant facts, identifying the basic ethical principles, taking care to draw valid conclusions, and then acting in ways that reflect these conclusions. Disagreements among moral friends are most likely due to careless reasoning, mistaken factual beliefs, or inattention to problem definition. I hope it is clear at this point that the dual relationship problem in forensic and correctional practice contexts typically occurs between moral strangers rather than moral friends. That is, there is disagreement concerning what norms are foundational and therefore about how best to act professionally. To stress an earlier point, the most problematic dual relationship scenario occurs *within* a single forensic or correctional practitioner, who

struggles to align two distinct sets of ethical norms when engaging in practice. The practitioner has an obligation to accept the priorities of the criminal justice system when working in correctional or forensic contexts, but for the sake of his or her professional integrity is also obligated to act in accordance with his or her profession's code of ethics.

By contrast, *moral acquaintances* have some overlapping moral beliefs relating to the problem in question; they are not total strangers and can arrive at common decisions about how best to act (for an excellent discussion of the concept of moral acquaintances in bioethics see Hanson, 2009). These overlapping beliefs may be based on a shared understanding of human nature (e.g., needs for material goods, relatedness, autonomy, and safety) and conditions or be oriented around a specific issue, for example, the need to protect the community from predation, or the rights of offenders to receive educational or vocational training. Moral acquaintances look for common, or overlapping, moral beliefs relating to a particular issue and view any actions proceeding from these common beliefs as justified if they are embedded within a coherent moral system, and if an individual with a different set of moral beliefs agrees that their moral system is coherent. They may concur on what to do but have different reasons for doing so. The only requirement is that the reasons presented should be rationally derived from a coherent (i.e., non-contradictory and mutually supportive) set of moral norms. For example, one forensic practitioner might justify the implementation of treatment programs with offenders because of their beneficial effect on reoffending rates. The underlying principle appealed to concerns an obligation to protect the community from the harmful actions of offenders. However, another forensic practitioner might argue that offenders ought to receive treatment because they have pressing psychological needs. This justification could have its grounding in human rights principles rather than community protection concerns. However, despite working from distinct— and equally coherent— ethical systems the two forensic practitioners might share a common moral belief that if a certain course of action can reduce human suffering without resulting in unjustified pain to others it ought to be undertaken. In this example being discussed here, a treatment approach that sets out to assist offenders improve their quality of life by equipping them with the skills to manage their moods effectively could also reduce their risk of offending. The two forensic practitioners are moral acquaintances— rather than strangers— by virtue of the fact that they share some moral beliefs that are directly linked to the issue in question: whether or not to fund programs for offenders. They justify the decision to fund such programs by recourse to different moral principles and theories. They are acquaintances not strangers on this issue, but they are not moral friends either as they do not share the same set of moral beliefs concerning the role of programs in the criminal justice system, or more broadly, the status of offenders and their entitlements. They accept that each other's decision to fund programs is based on good reasons, within a coherent moral system, although they do not subscribe to each other's particular moral system.

#### 5. *Moral acquaintances and the dual relationship problem: a procedural approach*

In summary, I have argued that forensic and correctional practitioners face a number of possible ethical conflicts due to their allegiance to varying sets of ethical norms. These norms may be personal, universal, agency related, or professional in nature. The issue of value pluralism means that practitioners may hold different normative beliefs concerning the nature of their work and reasonably disagree with each other about how best to proceed in a case. However, more worryingly, people may experience internal conflicts between distinct sets of professional norms, as well as with their personal and universal values. The trouble with value conflicts is that individuals may be unable to ethically justify their professional actions and could move somewhat erratically between different courses of action. This is likely to result in a

fractured professional identity, unethical practice, and possibly a loss of personal integrity. The concept of moral acquaintance, embedded within a relational ethical framework arguably provides a possible way forward and may enable professionals with contrasting ethical codes, or individuals suffering from internal conflicts, to formulate assessment and/or treatment plans that are ethically justified. The following model of ethical reasoning is a procedural one and starts from a number of ethical assumptions that anchor the procedures. Namely, it is accepted that all of the people directly involved in a particular issue (e.g., offender, probation officer, therapist, family, victim, and relevant members of the community) should have an equal say. This is based on the judgment that each possesses equal value and therefore ought to be treated with respect. Respectful treatment, in turn, requires that varying perspectives, situations, and personal circumstances are taken into account when deciding what to do and how to act.

Putting this all together from a moral acquaintance perspective, I suggest the following steps when experiencing ethical dilemmas or conflicts in the forensic and correctional domains. In order to make the following description more concrete, I will interweave the discussions of each phase with a dual relationship practice example. For simplicity's sake, the example will concentrate on the ethical tensions created between a need to protect the community (criminal justice values; normative code) and the requirement that practitioners act in ways that respect offenders' autonomy and seek to enhance their level of well-being.

- (1) Define the practice task clearly and identify any ethical issues or problems. Note any factual errors and correct them. For example, if a practitioner is formulating an intervention plan for a sex offender he or she needs to describe the task requirements in detail and look to the empirical practice literature for guidance in deciding on an effective suite of social, vocational, and psychological interventions. Furthermore, the ethical issues emerging from this task should be explicitly flagged. In this case, there is a dual relationship problem for the practitioner concerned: how to balance obligations as a therapist to assist the offender to live a more fulfilling life versus his or her duty to the criminal justice system—and the community—to reduce the risk of further offending.
- (2) Identify the relevant group of individuals who should be participants in the discussion. Treat each person with respect and regard their contributions as of equal value. It is important to decide on which persons constitute the acquaintance group with respect to the issue at hand. Given that therapy is just beginning the relevant individuals include therapists, offender, possibly his family, and other staff involved in his rehabilitation plan, and also custodial staff. The aim is to ensure that all relevant perspectives are taken into account and that any subsequent intervention plan is constructed with their views in mind. Ultimately the offender and therapist will have the final say, but the input of the other staff and people should provide relevant detail and insights. As the offender progresses in the reintegration process and prepares to leave prison or a program it is necessary to involve community members, who have agreed to participate in the reintegration process and to support the offender in some aspect of the transition.
- (3) Construct a narrative of all involved individuals unique situations and perspectives, and contributions to the task at hand. Try to identify the ethical code or set of norms they are conceptualizing the case within. The therapist needs to reflect on his obligations from both a mental health perspective and as a criminal justice employee. In addition, the offender's hopes and aspirations for his future, and ideas from prisoner officers, family and any other members of the acquaintance group ought to be sought. It is probable that the ethical tasks of the different group members will vary, with the therapist worrying about community safety and the offenders well-being, family are likely to be concerned with safety issues of their own, and community workers and supporters will be looking for confirmation that there will be resources and avenues for help if required down the line.
- (4) Look for shared moral beliefs across the participants. If the conflict occurs within a single practitioner, look for common elements between the different sets of norms you hold. This step is the crucial one. Accepting that there will be different ethical codes (or sets of norms) at work, each based on diverse foundational principles, it is important to look for any overlapping or common norms concerning the offender and his situation. A Christian support group could believe that every individual deserves a chance at redemption; prison and probation staff may focus on security and safety matters and look for assurance that the offender's dynamic risk factors will be addressed in any treatment plan; the offender may seek to start a new life, based on his core commitments and strengths. This may take the form of vocational training or involve a social role such as being a better father; while the therapist will be struggling with at least two sets of norms, one centered around risk reduction and adherence to the law and the other reflecting his or her commitment to helping the offender acquire the capabilities to live a more fulfilling and less harmful life.
- (5) Once any common norms have been detected tailor them to the case at hand, using techniques such as specification and balancing, and arrive at an agreed plan of action. Ensure that each participant can justify the plan arrived at within their ethical code/set of norms. If the person involved is a single practitioner, do the same thing. In the case being discussed, the members of the Christian group would like the offender to be allowed the chance to live a normal life back in the community. They are happy for him to learn new skills and to have a chance at redemption. The prison officers and probation staff want assurances that risk will be targeted but if this occurs, are accepting of the construction of a possible new life plan. The therapist believes that a plan revolving around helping the offender develop the vocational skills to be a carpenter and more effective parent and father, can be acquired in such a way that his array of dynamic risk factors will be reduced in the process. For example, in order to be able to work with carpentry tools the offender will have to learn how to control his anger, acquire practical problem solving skills, and learn how to manage conflict more effectively. The therapist is satisfied that the better lives plan will reduce risk as well as increase the offender's opportunity of living a more fulfilling and socially responsible life. The offender is willing to work on his dynamic risk factors because intervention is being undertaken in a constructive and positive way; he can appreciate that it may result in a meaningful work and a better family life. Although the members of the acquaintance group are operating within different ethical codes (sets of norms), they all agree that if risk is reduced the offender's personal goals can be promoted. Each will justify their decision to endorse the offender's rehabilitation plan by different reasons, drawing from varying foundational principles. The therapist is unique in that he is operating within two ethical codes, but the overlap between the two allows him to endorse the treatment plan. He is able to ethically justify the decision to work positively with the offender in two ways: (a) it will reduce risk — the criminal justice, community protection code, and (b) it will acknowledge the offender's conception of his future possible life, and respects his autonomy and seeks to promote his well-being — a mental health ethical code.
- (6) If you are satisfied that the proposed plan can be justified within the different ethical codes/sets of norms, implement the plan



and evaluate its subsequent effectiveness from both ethical and prudential viewpoints (i.e., benefits both the offender and the community).

## 6. Conclusions

The dual relationship ethical problem is pervasive and ultimately emerges in most forensic practice contexts. While theorists and practitioners in a variety of forensic and correctional disciplines agree it is an important ethical problem, there is little agreement concerning the best (i.e., most justified) way to deal with it. Once a practitioner starts work as a correctional psychologist or psychiatrist (or social work, etc.), or provides expert evidence in court, he or she is subject to a number of unique and ethically fraught problems centered on the issue of dual relationships. In this paper I have traced the source of the dual relationship problem to moral pluralism, and explored a number of ways theorists have sought to solve it. While all of these attempts have been valuable, in my view none have really come to grips with the central issue of pluralism. Arguing that ethical theories based on substantive ethical principles are unlikely to satisfactorily deal with the issue, I outlined a procedural moral acquaintance model. Although I do not think there is any infallible method for dealing with the dual relationship problem, in the form of moral pluralism, the moral acquaintance procedure may increase our chances of finding an ethically justifiable way around the ethical impasse created by these aspects of forensic and correctional work. If despite a practitioner's best efforts, it is not possible to discern common moral norms within contrasting ethical codes in a particular case, this does not necessarily yield the ground to nihilism. The respect for others' ethical viewpoints likely to be engendered by the moral acquaintance procedure, and appreciation that there may be more than one way of proceeding in a given situation, can only improve the quality of ethical reasoning in the criminal justice system. Certainly, given universal human needs, and the likelihood that individuals with different ethical codes will have some norms in common, hopefully more often than not it will be possible to agree on an ethically justified plan of action. Better to arrive at a plan of inquiry or action that is acceptable from a variety of ethical outlooks than stand in corners shouting slogans at each other.

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