Culture, Bias, and Understanding: We Can Do Better

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J Am Acad Psychiatry Law 45:136–39, 2017

There is much unrest in the current American political climate. Immigration bans, xenophobia, racism, sexism (and sexual exploitation), and monocultural attitudes evidenced by some in America have been prominent in international news. We must be particularly mindful of this in our role as forensic psychiatrists tasked with explaining to the court behaviors of defendants from various cultures.

Throughout the world, cultural and racial minorities are overrepresented in forensic populations. Court participants (including forensic psychiatrists) come with their values and preconceptions. We are absorbed in our attitudes, values, traditions, and behaviors. Kirmayer and colleagues noted: "Since we are fundamentally cultural beings, cultural concerns are ubiquitous and are not the sole province of people identified as ethnically different" (Ref. 1, p 100). Almost two decades ago, Griffith[2] discussed the cultural formulation as useful in forensic psychiatry.

Forensic psychiatrists of the "dominant" race and culture primarily evaluate persons of "nondominant" races and cultures. Therefore, many forensic evaluations occur cross-culturally. Forensic psychiatrists may find increasingly greater distrust of their motives among those evaluees from marginalized groups. At the same time, dominant privilege asserts itself insidiously in many situations, perhaps in viewing nondominant people as the "other" or with fear. Culture includes the behaviors, traditions, rituals, attributes, and the meanings of a group.[3] Race theoretically refers to genetic heritage, but in practice is often based on phenotypic traits and, in the United States, on the "one drop [of black blood] rule" (Ref. 4, p 21).

Similar to my argument about the importance of understanding women and criminality,[5] an understanding of culture is crucial for forensic psychiatrists. The same critical question of "misguided beneficence" can occur in our interactions with various nondominant cultures in forensic psychiatry.[1] Forensic psychiatry's goal is to advance the interests of justice.[6] Our ethical mandate is to strive for objectivity. Yet, if we are blind to culture, we cannot objectively understand a person's situation, beliefs, and experiences. We risk misunderstanding, perpetuating fear with potential overestimations of risk and inappropriate testimony.

The Problem of Bias

Parker[7] recently discussed the criminal justice system's biases against black and poor defendants. I was first struck by the presence of this bias as a young medical student. During an adolescent medicine elective, I spent a day observing in juvenile court. I recall a well-to-do, white, unemployed, teenage girl, accompanied by an attorney, who had a breaking-and-entering charge and did well in court. A poor, black, teenage boy who had pocketed some money from the cash register at his job did not fare as well.

Just as Parker described, I was trained to identify defendants' age and gender but not their race or ethnicity in my forensic reports, and I have adhered to this teaching throughout my forensic work in the

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Disclosures of financial or other potential conflicts of interest: None.

United States. I, too, understood that the intent is that I evaluate the case on its merits and not set the stage immediately with the fact that a defendant is a member of a minority group where prejudging might enter in. Anecdotally, one might recall cases, such as those of attractive white female embezzlers of the same socioeconomic status as those in control of the legal system, who received a slap on the wrist compared with the more serious outcome of nondominant group members with lower socioeconomic status who had taken much less money. From a research perspective, several studies have noted that clinicians' prediction of inpatient violence tends to underpredict violence by white patients and overpredict violence by black patients.[4]

Scott, in his discussion of "forensic education and the search for truth" pointed out a plethora of potential biases in forensic psychiatry. He described bias as "a preference that influences impartial judgment" (Ref. 8, p 27). Hicks noted: ". . . failure to consider relevant ethnic factors, including potential biases, may lead to inaccurate forensic formulations and opinions, with serious implications for all parties" (Ref. 4, p 29). It is axiomatic that our legal system should treat all defendants equally, regardless of race or culture. Forensic psychiatrists operate at the intersection of medicine and law, and in this role, must understand the cultural context of actions and symptoms.

Culture must be understood more inclusively; it does not merely equate with race. Cultural identity should be explored with our evaluees and patients.[9] Often physicians do not ask about race or ethnicity and yet still record it, based on their presumptions.[4] It is not an uncommon experience for me to see a new patient and ask about cultural and racial identity, only to find that she is not the "24-year-old Latina woman" identified in previous psychiatrists' notes.

Culture Affects Presentation

Cultural competence is about much more than memorizing the meaning of *amok* (and the "strange" actions of "other" people in faraway lands), as we did in medical school. We are not neutral observers of culture, but also products of the culture from which we observe. Cultural competence includes self-awareness, core knowledge of other groups, recognition of the limitations of one's cultural knowledge, and application of forensic skills in a culturally appropriate way so that we may understand the individuals in the case.[3] We should be cognizant of language problems, communication styles (asking open-ended questions where possible), and cultural manifestations of distress, values, and power relationships. Understanding cultural values and beliefs is important for completing a meaningful forensic assessment.[9] Behaviors and reasoning processes, when considered in the context of the individual's culture, may be understood better.[1,10]

Culture shapes how we perceive ourselves and interact with the world. It is the lens through which we organize our reasoning and our emotional response.[1] Motivation and criminal intent should be understood in the context of culture. Kirmayer and colleagues noted: "Supplying the cultural context of behavior changes its meaning and renders the individual's reasoning more transparent. In effect, it allows the judge to reconstruct imaginatively the affective logic of the defendant's cultural world" (Ref. 1, p 100).

The meanings of both incarceration and mental illness in the individual's culture bear discussing.[10,11] Forensic psychiatrists should also ask about acculturation among immigrants.[10] In other countries, justice systems, perhaps ruled by corruption and secrecy, may be perceived as less fair than our system. In still other countries, culture may be considered more often.

New Zealand Experience

I have previously written about working in New Zealand,[12] noting that, unlike the treatment of Native Americans in the United States, in New Zealand, the Maori (indigenous) culture is embraced. Despite the small size of the country, there are many recent immigrants and refugees. Experiences in this multicultural society are relevant, offering a different perspective from the American experience.

Cultural understandings are embedded in forensic psychiatry teaching and practice in New Zealand. This is not to say that racial or cultural discrimination does not occur. However, the system now makes a conscious effort to combat it in forensic and legal practice.

In New Zealand, culture is celebrated and included in forensic reports, an initial culture shock for Americans who practice there. *Karakia* (spiritual prayers) are made at the start of meetings and some evaluations. *Pepeha* (lengthy introductions of the individual, which include personal identifications with

the land and the people) are routinely given in youth courts. Within each forensic psychiatry treatment team (whether in the forensic hospital, the prison, or community), cultural advisors are important members. Cultural advisers help conceptualize mental health ideas and thus aid in understanding the person's experience. *Kaumatua* (esteemed cultural elders) are available to help clarify the cultural difficulties presented by the patient–psychiatry team interaction.

Nearby Australia has a shortage of culturally appropriate mental health care for their Aboriginal forensic patients.[13] Regarding the Australian situation (yet also relevant for North America), Shepherd and Phillips suggested: "Part of the answer may lie with the fact that both justice and health organisations are often mono-cultural institutions, where decision-making and structural arrangements are grounded in western principles and western conceptualisations of health, law and the family" (Ref. 13, p 308).

Importance of Self-Reflection For Us All

In a recent case, there was concern that a defendant of the nondominant culture might have links to ISIL. Suffice it to say that the way this case moved through the justice system reminded me of the old malpractice aphorism, "special treatment for special people leads to special results." Stepping outside the case and the questions raised about the applicability of risk assessment tools, I had to wonder if the collective fears of those in the courtroom (that is, fears of terrorism and "others") might influence such a case.

Diagnoses from forensic evaluations should theoretically have less bias than general psychiatric evaluations because of the wealth of collateral information, length of forensic evaluations, and consideration of multiple hypotheses.[4] However, errors occur. Such errors in diagnoses potentially relate to cultural differences in communication and belief systems.[9] Countertransference and other biases "can influence the way in which we gather, view, and value the data and arrive at a conclusion or opinion" (Ref. 14, p 36) Preconceived notions about presentation may lead to a skewed, albeit subconscious, belief about diagnosis. One must strive to recognize and manage these tendencies, else they result in misinterpretation and continued cultural stereotyping.[9]

Scott[8] and Parker[7] have both encouraged forensic psychiatrists to examine their own practices for implicit bias. Scott discussed the potential for bias-detection-correction training, such as for racial biases. In such training, he suggested that vignettes be used to expose potential bias. Parker recommended examining a database of one's forensic opinions by race and gender, keeping in mind that there are many other variables at play, including the individuals who are referred to us.[7] Self-assessment should be used to guard against one's own cultural biases.[9] Reflection is critical. Only through examining ourselves can we honestly confront bias.

Striving for objectivity is paramount in forensic ethics. We must avoid stereotyping evaluees and fight our own inherent biases. The first step is in recognizing our potential for racial or cultural bias, similar to how we recognize other instances of countertransference. The responsibility of identifying countertransference toward evaluees of other cultural groups is ours. Similar to other types of countertransference, this type may be positive (as in the case of the embezzler) or negative (as is often the case). We must also keep in mind that we may have different countertransference tendencies to various groups of "others." Griffith reminded us that ". . .mastery of the evaluation of members of certain minority groups does not mean mastery of all minority groups" (Ref. 2, p 182).

Aggarwal noted that "unconscious biases in emotions, motivations, fund of knowledge, and information processing may prejudice the expert, as can ethnic, racial and cultural biases against the evaluee, which an internal dialogue may limit" (Ref. 10, p 116). Hicks[4] recommended careful monitoring for our own biases, in addition to consultation with colleagues and regular open discussions. In New Zealand, forensic psychiatrists must participate in peer review as a condition of medical licensure. Peer review allows one time to consider potential biases and countertransference. My experience with peer review in New Zealand allows me to recommend routine peer review, especially when considering cultural bias.

Simply put, an approach that does not consider culture oversimplifies life experiences and meanings and risks incomplete explanations to the court. Institutional racism and monoculturalism occur at all levels of the criminal justice system. All individuals cannot be evaluated in the same way, because of differences in culture and our own potential for bias.

Conclusions

If we as forensic psychiatrists ignore or misinterpret cultural differences, we risk errors in our cases and misunderstanding of more important matters. Blindness to culture is never the answer. We each must consider our own potential biases, such as by seeking peer review. At the same time, we must identify our own knowledge gaps about culture and seek appropriate remedies, such as additional learning opportunities and cultural consultation. We must complete culturally appropriate forensic assessments and be prepared to correct misconceptions in courtroom testimony. Finally, we must remember that culture is part of us all, not only the defendant in front of us.

Acknowledgments

The author thanks Drs. Sandy Simpson, Andrew Howie, and Wendy Bevin for their thoughtful reviews of drafts of this editorial.

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