

Honoring DEI Requires a New Ethic and a New Science

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Systemic change requires complex conceptual and practical efforts from organizations and individuals alike. In forensic psychiatry, improving the experiences of marginalized groups respects the personhood and dignity of those who have been neglected over time and promises improvements in outcomes that have been affected by the unevenness of history. Specific plans for education, monitoring, and improvement consequently call for related frameworks in professional ethics and research to lead and accompany them. The professional ethics of forensic practice, for example, can now consider years of writing that advance traditional precepts toward dignity, social purpose, truth, and human rights. Research design can improve the representativeness of samples, the methods that assess inequity, and the survey construction that populates both quality improvement and academic research. Responding to the growing understanding of forensic inequity will require both a new ethic and a new science.

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It is both encouraging and disheartening to digest the complex framework for advancing Diversity, Equity, and Inclusion (DEI) offered by Chatterjee, Simpson, and Wilkie.¹ Overcoming structural injustice was never going to be a simple enterprise, so it is disheartening to contemplate the effort it will take to incorporate commitment, competency, access, responsiveness, outreach, and research into a successful social project. At the same time, it is encouraging to find a specific effort within a forensic system that recognizes obligations to address the imperfections of modern social institutions. The authors' creative application of a landmark analysis of equity initiatives in the United States, Australia, and Europe² already resonates with several movements in forensic psychiatry.

A New Ethic

Not the least of these movements is the recognition that forensic psychiatry's classic position of

neutrality cannot hold in the face of what the authors identify as "the daunting magnitude of DEI needs" (Ref. 1, p 487). Numerous authors in these pages have challenged the profession's traditional claim to neutrality by underscoring the plight of marginalized groups in the judicial system (e.g., Ezra Griffith),³ the differential treatment of minoritized groups in arrests, use of force, bail, and sentencing (i.e., Robert Trestman),⁴ and the neglect of gender and culture in assessments and testimony (i.e., Susan Hatters Friedman).⁵ Richard Martinez and I have persistently underscored the personal, cultural, and professional pressures that undermine neutrality in forensic cases.^{6–8} Indeed, after years of emphasizing vulnerable people and values, we responded to George Floyd's death by taking direct aim at systems that are demonstrably unjust.⁹ Martinez couches this in terms of the profession's social purpose, recognizing the importance of nondiscriminatory truth-seeking, of addressing inequities, and of fairness.¹⁰ Chaimowitz and Simpson¹¹ articulated their own powerful appeal for a profession that challenges its practitioners to do better in flawed systems.

Advocacy in forensics has found its way into discussions of legislation surrounding commitment, insanity, and competence to stand trial,¹² asylum evaluations,¹³ violations of human rights,¹⁴ and how mentally

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disordered individuals navigate forensic, correctional, and judicial systems.¹⁵ Fellowship programs train their graduates to advocate for their opinions, but it is evident that many commentators now go further. The distinction between advocacy and activism, as intimated by Hatters Friedman in her presidential address to the American Academy of Psychiatry and the Law (AAPL),⁵ appears to be a new line distinguishing this broader recognition of a profession's societal obligations (advocacy) from the vigorous activities traditionally associated with politics (activism). But if Chatterjee *et al.*'s appeal to evidence and aspiration is any indication, the days of neutrality in the face of systemic injustice may be numbered.

A further indication of the movement away from neutrality and toward advocacy is the authors' use of narrative tools. In forensic psychiatry, narrative offers a tool for conducting a cultural formulation and for describing a defendant's trajectory toward the forensic encounter.^{3,6} Reflecting this development in forensic and medical ethics, Chatterjee and colleagues emphasize language in gender-specific training that addresses female-specific criminogenic needs, reminding readers that words affect the perpetuation of stereotypes (Ref. 1, p 490). In their treatment this is accompanied by antiracism training for leadership and staff, and life-course narratives that enrich the institution's understanding of identity. The latter is manifestly part of the Diagnostic and Statistical Manual's cultural formulation¹⁶ and matches trends in health care education^{17,18} and the private sector (e.g., at Amazon, Target, PepsiCo, PayPal, Apple).^{19,20} The hiring of diversity officers, conduct of bias training, and commitment to affordable housing appear to lead corporate efforts, while medical education features support, recruitment, and retention efforts. The approach that challenges neutrality in the face of inequality is now both a professional and social undertaking.

The temptation most closely allied to neutrality in nonneutral spaces is that of balancing. Balancing competing interests instead of prioritizing vulnerable people and values maintains a status quo comprising all the baggage of history and tribalism that came with it. Giving greater, rather than equal, attention to the experiences and narratives of marginalized groups can be a more enlightened step toward the true balance that comes with an understanding of how societies and peoples arrived at their current positions. Public health and global mental health have already taken this posture against the criminalization of

mental health (namely, the current societal position that finds more persons diagnosed with mental illness in jails and prisons than hospitals) in the same way that biomedical ethics has pressed for a better understanding of the social and racial determinants of health and forensic outcomes.²¹⁻²⁵

As traditional as it is, balancing remains problematic because individuals in the control of social institutions like forensic hospitals, courts, and prisons can never overcome the weight of society's claims. This is why it was revolutionary for the emerging United States to espouse or adopt standards protective of individual rights like "innocent until proven guilty" and *habeas corpus*, and ultimately public defenders and *Miranda* warnings. Individual protections lead the U.S. Constitution in a groundbreaking Bill of Rights, with a 14th Amendment Due Process clause that requires an exploration of whether individual rights (especially fundamental ones) must yield to state interests.

Additionally, individuals cannot overcome the weight of history that created imbalance in the first place. Forensic outcomes are noticeably different among marginalized groups, from higher rates of forced medication and restraint and seclusion to the diagnosing of psychotic disorders. This is often true for the referral for evaluation and restoration of competence to stand trial and time to competence restoration.²⁶⁻²⁹ Balancing, like neutrality, is not the ideal response to years of inequity.

Chatterjee and colleagues affirm that their systemic framework forms an articulated mission of respect and safety (Ref. 1, p 488). It moves beyond classic cultural competence into cultural safety so that marginalized groups feel safe within a multicultural setting. Not simply focused on staff education and sensitivity, it is an approach that accounts for imbalance and history in a more proactive and collaborative fashion. It calls on patients rather than staff to be the arbiters of success. The move toward cultural safety consequently emphasizes a respect for culture, the agency of marginalized persons, and the corrective influence of individuals and systems together.

The AAPL ethics guidelines are themselves the profession's formal statement of its values (a public affirmation or profession). They prioritize respect for persons as a guiding principle.³⁰ This is a principle that simultaneously support's self-rule or autonomy, dignity (since individuals are owed respect), and culture.³¹ Historically, Paul Appelbaum used respect as a protective bulwark against harm from the forensic

interview,³² but it was Alec Buchanan who elevated it from respect to dignity in more recent analyses.^{33,34} This advance respects an individual's inherent worth (the cornerstone of human rights) rather than merely offering protection from abuse.

The 2005 AAPL ethics guidelines revision placed respect first among honesty, justice, and social responsibility, although without being explicit about its requirements. Our revision committee added social responsibility not only as a recognition of society's claims on individual behavior, but also as an opening for the discussion of what responsibility to society really means. In an era of empiric evidence of discrimination and unequal outcomes, more explicit language in the guidelines would align with AAPL's organizational support for committees on diversity, women, cross-cultural factors, gender, and human rights. This would correspond to like-minded movements at the American Academy of Forensic Sciences, the National Institute of Justice, the National Association of Medical Examiners, and the American Psychiatric Association.³⁵⁻³⁸ An updated AAPL ethics guideline with contemporary sensibilities would go a long way toward matching any number of professional and social advances.

A New Science

Chatterjee *et al.* recognize that changes resulting from cultural adaptations are difficult to find in the forensic context. And they find no aspirational (or practical) approach like theirs in the forensic literature either. Indeed, as much information as there is on over-representation of minoritized groups in forensic and correctional settings, there is little information on diversity and representation within the forensic sciences themselves.³⁹ Outside of a handful of studies describing the under-representation of persons identifying as Black, Indigenous, and Persons of Color (BIPOC) in forensic scientific fields and among college students, few organizations report demographics. This context matters in a field that seeks to improve.

Our research team found a related problem in the empirical literature. In the study of racial effects on forensic outcomes, namely in a recent study of forensic reports like that advocated by Chatterjee *et al.* and appearing in this issue, there was little background research that met agreed-upon standards or definitions.⁴⁰ This is largely because racial effects can be notoriously difficult to disentangle from structural socioeconomic disparities; disparities that persist over

generations and result in homogeneous communities, economic opportunities, and experiences.⁴¹⁻⁴⁴

Exploring the effects of discrimination and inequitable treatment will not only require the process and outcome measures espoused by Chatterjee *et al.*, but also more discerning research designs that identify local influences on DEI. These are the influences on staff and defendants alike. They may range from the diversity of local employee pools, hiring managers, and the investigators who conduct audits and research, to the availability of community resources, diversion programs, and health care itself. Marginalized groups are already more likely to enter the judicial system than the health care system, so parsing out local factors will make systemic approaches relevant to specific communities.

Tellingly, it has been over 30 years since legal scholar and medical ethicist Rebecca Dresser wrote her influential essay in the Hastings Center Report: "Wanted. Single, White Male for Medical Research."⁴⁵ Dresser famously decried the lack of representation in research trials, wondering why the single white male was the stand-in for all potential patients. Writing around landmark events like the founding of the National Institute of Health's (NIH) Office of Research on Women's Health (1990), and the NIH Revitalization Act (1993)⁴⁶ which wrote the inclusion of women and minorities into law, Dresser underscored glaring omissions in research representation that required the house of medicine to correct course, but that are still present in forensic psychiatry.

For example, in the competence restoration literature where George Parker and I have spent the past 18 months,⁴⁷ analyses have underscored male-dominated samples, the use of convenience samples, an absence of detailed demographic data, a lack of controlled designs, and an inability to aggregate disparate study designs into comprehensible meta-analyses.^{48,49} This is not a hopeful commentary on the kind of data that leads to an understanding of the inequitable systems where detainees and their hosts find themselves.

Developing and exploring better data on the experiences of marginalized groups and the efforts to improve them is the subject of the developing doctrine of epistemic injustice.^{50,51} This idea that the testimony of minoritized people is not trusted is not new to forensics. There are data supporting the observation in the literature, as well as conceptual writing

on the so-called tainted witness.⁵²⁻⁵⁴ It is a problem of trust reflected in the language physicians use to document statements by patients of minoritized races (“The patient claims” or “insists”), to assessments of threat from people of color (especially size and strength), and biased witness recall for associations between race and weapons.⁵⁵⁻⁵⁷

In epistemic injustice, the lack of trust in knowledge imparted by those experiencing prejudice is joined by a concept about access to knowledge itself. Resources are not merely financial, commercial, or technological. Communities may not have access to the information or platforms they need to assess and describe their experiences. Less access to or availability of media, news, books, films, or art involving women and minorities results in a dearth of models, opportunities, and venues for an entire language of citizenship. People without access to information and its tools cannot advance their needs.

For adequate data on inequity and its countermeasures, forensic psychiatry will have to move well into the framework Chatterjee and colleagues¹ describe: improving measurement-based care among both patients and staff, and accounting for the aptly named horizontal violence between employees that sets the tone for life in a clinic or inpatient unit. Efforts will have to join the measures already identified in antidiscrimination measures. Improving representativeness in medical and legal professions is one prominent endeavor,^{58,59} as is adjusting the research methods used to assess behaviors and attitudes.

There has been a movement in survey design, for example, to account for the negative attitudes that arise from asking respondents about the associations they make between race or citizenship and health outcomes, crime, and use of social benefits. Discussions of survey methodology have increasingly focused on the influence of cross-cultural factors, with calls to address the racialization of hypotheses and terminologies that result in harm to marginalized groups.^{60,61} Readers may be familiar with the use of tools that are not validated in racial or ethnic minority populations or medicine’s controversial adoption of racial corrective factors for kidney and cardiac function.⁶² But, surveys that ask questions in ways that affirm negative stereotypes are part of the problem as well.

Attitude surveys from the immigration and refugee literature are instructive. Querying associations between immigration and crime, for example, can fuel sentiment and policies against Others, applying

terms like “citizen,” “noncitizen,” “native,” and “nation” that are grounded in fraught histories and that highlight distinctions between insiders and outsiders. Antiracism researchers advise that the positive framing of questions overcomes common prejudices and approximates the truth of a community or respondent’s outlook more closely. How questions are asked in evaluations of policy or programming can therefore fortify assessments of inequity and the measures taken to overcome it.

Using trauma-informed care, for example, survey design intended for quality improvement (QI) and clinical research can begin with question stems and vignettes that properly frame the context of organizational improvements and their significance to the community (e.g., “In an effort to improve workplace safety and patient care, the hospital is asking about. . .”; “If you knew that clinician diversity improves health care for people of color, how would you describe the need for. . .?”). This approach generates data that are far more likely to gauge true commonality of purpose, empathy, and the constructive evolution of opinions. Consequently, reworking survey questions that reinforce popular misconceptions eases the negative emotional responses that frequently populate attitude surveys.^{63,64}

The Comprehensive Framework

Updated ethical and scientific approaches can support frameworks like that of Chatterjee *et al.* in ways that are both general and specific. Concepts of narrative, respect, dignity, and social purpose offer new vocabularies for exploring the effects of inequity in judicial, medical, and forensic systems. They move the forensic professions toward individual and systemic assessments that are cognizant of the once silent cultural influences now finding expression in professional practice. These new ideas expand the conceptual and empirical tools available for describing, contemplating, and analyzing matters of justice and parity. Indeed, they are ready to be incorporated into the profession’s ethics guidelines.

The specific QI and research techniques used to assess and monitor disparities can likewise benefit from better tools, methods, and designs. Representative samples and audit teams, tools validated for minoritized groups, questionnaires that account for negative attitudes, and designs that incorporate local knowledge to overcome closely intertwined racial and socioeconomic

factors can all contribute to efforts that advance diversity, equity, and inclusion.

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