

# Bioethical Discussion Behind Bars

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## *How a community geriatrician went to prison*

*and discovered that his usual ethics committee vocabulary and concepts were inadequate for thinking about caring, morality, and crime*

- Ethical reasoning
- Difficult patients: a challenge to caring
- Empathy as emotional reasoning
- Bad behavior and moral anthropology
- Implications for clinical relationships

*Finding Aristotle's continuum from bad behavior to moral excellence*

## General and unique ethical concerns in corrections

### General:

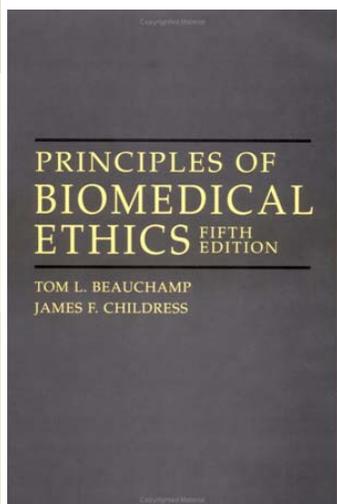
- ❑ The nature of the patient-provider relationship
- ❑ Informed consent, care refusals
- ❑ Confidentiality
- ❑ Right to die
- ❑ Implications of managed care
- ❑ Organ, tissue, and blood donations
- ❑ Organ transplants
- ❑ Physician qualifications
- ❑ Inappropriate duties for nurses, bad orders

### Unique to corrections:

- ❑ Body cavity searches
- ❑ Collecting other information for forensic purposes
- ❑ Participation in executions
- ❑ Use of restraints
- ❑ Witnessing the use of force
- ❑ Inmate discipline & segregation
- ❑ Health care workers as correctional staff
- ❑ Hunger strikes
- ❑ Charging fees for care
- ❑ Sharing health information with correctional staff

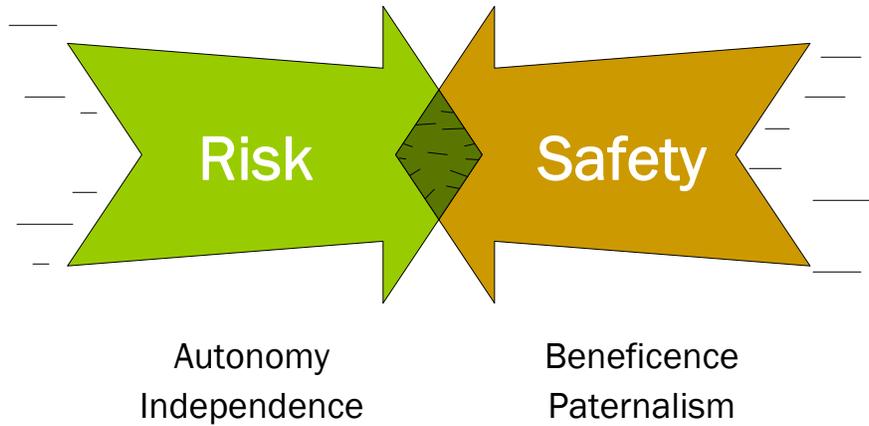
Anno BJ, Spencer SS, Medical ethics and correctional health care, in Puisis M, *Clinical Practice in Correctional Medicine*, 2006.

## Core working principles of bioethics



- ❑ All persons who are serious about living a moral life already grasp the core dimensions of morality....
- ❑ They know that to violate these norms without having a morally good and sufficient reason is immoral.
- ❑ We refer to the set of norms that all morally serious persons share as the common morality.

## Common clash of ethical principles



## Case-Based Reasoning: Casuistry

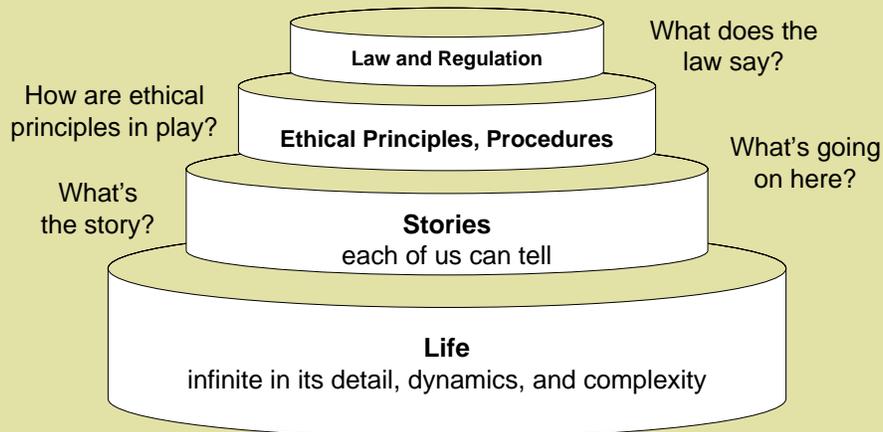
1. Medical indications <i>Beneficence</i>	2. Patient preferences <i>Autonomy</i>
3. Quality of life <i>Beneficence, Utilitarianism</i>	4. External factors <i>Utilitarianism, Justice</i>

This simplified grid links case-based reasoning to related moral and ethical principles.

While the order shown is appropriate for summarizing a case, one should initially assume that patient preferences carry more weight than medical indications and that quality of life and external factors are far less important.

Jonsen AR, et al. *Clinical Ethics*. Macmillan, 1986.

## Making Sense of Ethical Issues



As human beings we imaginatively feel our way into the complexity of life, organize this complexity into stories, and make moral judgments about right and wrong

## The ideals of criminal justice and purposes of punishment

1. Retribution
2. Deterrence
3. Incapacitation
4. Rehabilitation

### Restorative justice

- Crime damages relationships: community, offender, victim.
- Offender must accept responsibility.
- Offender must repair damage, "restore" victim, community.
- The community is an actor in deciding how to do this, together with offender and victim.
- The community must seek to "reintegrate" the offender.

Todd Clear, et al. *American Corrections*. 2006

## Bad behavior

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### 1. Crime

- Violation of law

### 2. Immoral acts

- Violation of common morality

### 3. Sin

- A violation of flourishing, wholeness, integrity, shalom
- A culpable disturbance of the way relationships ought to be

All have degrees of badness

- Generally linked to amount of damage done

All can be involuntary

- Addiction
- A child's racism, which is a social and moral evil

Evil is transmitted over time by families in the context of social and historical forces

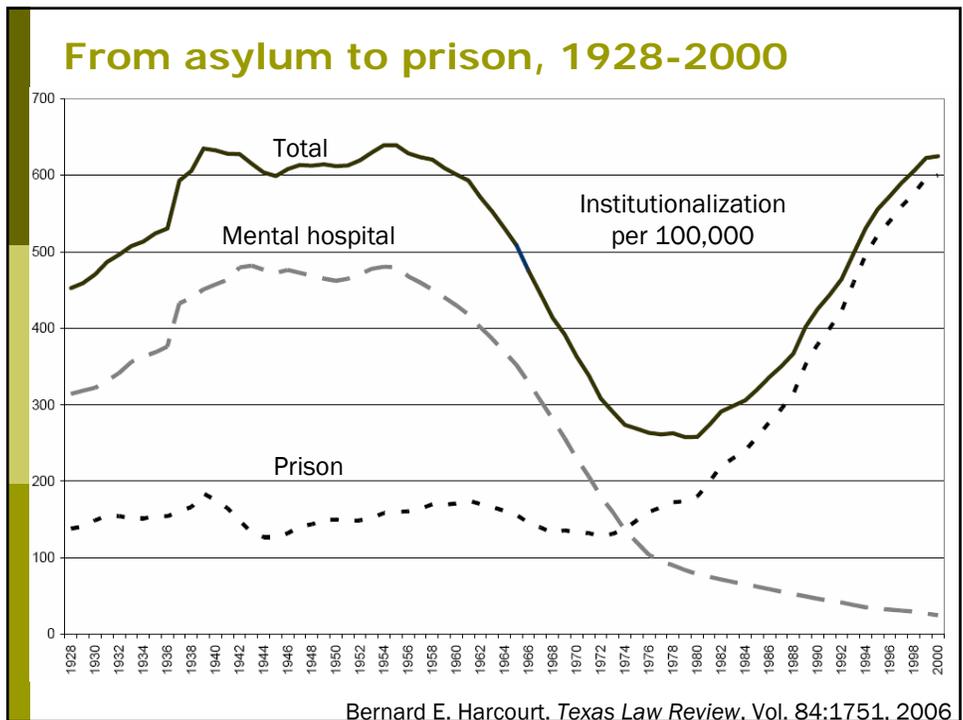
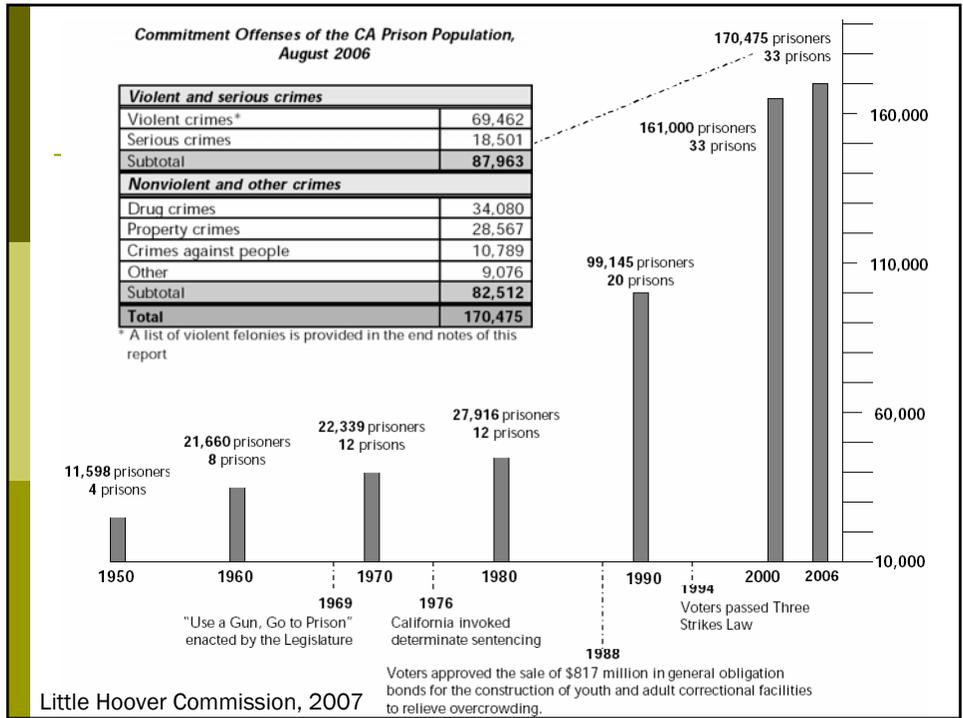
Cornelius Plantinga. *Not the Way It's Supposed to Be*, 1995

## Classification by crime, odds of future crime, appropriate correctional treatment

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|---|--|
| <ul style="list-style-type: none"><li>□ Situational offender</li><li>□ Career criminal</li><li>□ Sex offender<ul style="list-style-type: none"><li>■ Rapist, child molester, prostitute</li></ul></li><li>□ Substance abuser</li><li>□ Mentally ill offender<ul style="list-style-type: none"><li>■ 15% in prison have serious mental illness, e.g., schizophrenia</li><li>■ Psychopath is asocial, aggressive, impulsive; feels little or no guilt; unable to form lasting bonds</li></ul></li></ul> | <ul style="list-style-type: none"><li>□ Mentally handicapped offender<ul style="list-style-type: none"><li>■ 2% in US, 5% in prison</li><li>■ Misfits</li><li>■ Easily duped</li></ul></li><li>□ Offender with AIDS<ul style="list-style-type: none"><li>■ 3.2% in prison</li></ul></li><li>□ Elderly offender<ul style="list-style-type: none"><li>■ In California, ~10,000 &gt; 55 yo</li></ul></li><li>□ Long-term offender<ul style="list-style-type: none"><li>■ 24% in prison have sentences &gt; 25 years, 9% have life sentences, mostly for violence or drugs</li></ul></li></ul> |
|---|--|

Todd Clear, et al. *American Corrections*, 2006



## Overlapping substance abuse, personality disorder, and prison

- Substance abuse disorder occurs in:
  - 64% of borderline personality disorder
  - 54% of other personality disorders
- Personality disorders occur in:
  - 44% of alcoholics
  - 79% of opiate users
- Antisocial personality disorder is present in:
  - 47% of male inmates
  - 21% of female inmates
- A personality disorder of some type is present in:
  - 65% of male inmates
  - 42% of female inmates

Roel Verheul et al, "Substance Abuse"

Jeremy Coid, "Correctional Populations"

In Oldham JM, et al, *Textbook of Personality Disorders*, 2005.

## Difficult patients abound everywhere but congregate in certain settings

- Physicians especially dislike and try to avoid:
  - Alcoholics, drug abusers, those seeking compensation benefits, chronic complainers, angry and hostile patients...
- Physicians are exposed to some of the worst examples of human behavior, including:
  - Child abuse, domestic violence, substance abuse, negligence, rape, and other terrible acts.
  - Staying emotionally attuned in such cases involves feeling disturbed in ways that may be difficult to tolerate.
- Doctors working in health care systems that routinely under-serve the poor often become emotionally injured to these patients.

Howard Brody, *The Healer's Power*, 1992.

Jodi Halpern. *From Detached Concern to Empathy*. 2001.

## But how do we do this?

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The secret of the care of the patient is  
in caring for the patient.

Francis. W. Peabody, 3/19/1927. *JAMA*. 8/10/1984.

## Psychiatric power and knowledge call for covenantal relationship

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- A contract is more of a legalistic notion...
- Whereas the covenant is a contract that rests strongly on the moral philosophical bonds between parties.

Tancredi LR, Goldstein RL, "Philosophy of law and foundations (sources) of law"  
in R Rosner, ed, *Principles and Practice of Forensic Psychiatry*, 2003, pg 767.

## Treating the enemy: professionalism

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- ❑ Although insurgents are brought in with an Arabic translator, I greet the patient in Arabic with "Salaam aleikum" to try to put him at ease.
- ❑ I always order the blindfold removed and introduce myself just as I would to any patient back home.
- ❑ I want them to know I am an American, a doctor, and an officer in the United States Air Force.
- ❑ I want them to know my name and that I am not afraid of them, nor should they be afraid of me.

Winslow DL. Treating the Enemy. *Annals of Internal Medicine*, 8/21/07.

## Are professionalism and principles enough?

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- ❑ Nurses may find it hard to develop the trust that is the basis of the therapeutic relationship.
- ❑ Inmate in infirmary for pain management evaluation
  - Convicted of 10 counts of child sexual assault
  - Demanding stronger pain medication
  - When nurse begins to assess his pain and demand, he becomes quite angry
- ❑ She wanted to “treat prisoners just as people, with compassion,” but she found it difficult to listen to his demands and allegations.

Dubose ER, “Prison infirmary nurses: professionalism and principles” in *Making the Rounds in Health, Faith, & Ethics*, Park Ridge Center, July 15, 1996.

## **The challenge to empathy: Asking about bad behavior**

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“On the second shift, I met an old man who looked like my neighbor Jack, the Holocaust survivor. His crude prison tattoo was eerily similar to Jack’s mark, and both had arthritic knees and bypass surgery zippers in their chests.

“I wondered aloud what this man could have done to have wound up here. Tuttle spoke up, animated for once, and a story of unspeakable violence followed. I no longer ask such questions aloud.”

Gibney EM. *NEJM*, 1/11/2007

## **Physicians... must put aside any personal prejudices, feelings regarding the crime...**

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- “Of course this is easier said than done.
- “Because of the difficulty..., some advocates have suggested [avoiding] asking their patients why they are in jail or prison.
- “We generally believe this to be sound advice, while recognizing that, for certain providers, such as mental health professionals, the details... may be relevant to the treatment provided.”

Anno BJ, Spencer SS, Medical ethics and correctional health care, in Puiasis M, *Clinical Practice in Correctional Medicine*, 2006.

## Some prisoners can sorely test a nurse's ability to develop ethical caring

- It is difficult for correctional nurses to always:
  - express empathy toward prisoners,
  - provide psychological support,
  - convey compassionate understanding, and
  - sense the prisoner's frame of reference.
- Whereas natural caring is more often the case in most nurses' practice, ethical caring is often the position from which nurses working with prisoners must practice.
  - During orientation, nurses are substantively ordered not to care.
- Although we have no wish to support a child molester, we do continue to support the right of all human beings, including prisoners, to basic, adequate, and humane health care.
  - To do otherwise, based on what a person might be charged with or convicted of, is a slippery slope...

Maeve MK, Vaughn MS. Nursing with prisoners, *Advances in Nursing Sci*, 2001; 24: 47.

## Nurses describe caring as a moral imperative, to turn a life around

- Interviews with 9 correctional nurses in US and Canada
  - "The stories, it's just horrendous what these women have done..., it's so hard sometimes to separate."
  - Yet these nurses established unique, 1:1 caring relationships
  - Both custody and other uncaring nurses were barriers.
- They described nurse caring as
  - being there
  - acknowledging inmates' suffering
  - letting them know they cared through a non-judgmental manner
  - showing compassion, respect and concern
  - taking time to listen to get to know them
  - helping them through difficult situations

Weiskopf CS, Nurses' experience of caring for inmate patients, *Journal of Advanced Nursing*, 2005; 49: 336

## Biggest barrier to access is trust

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- Many [inmates] in this study did not feel that health professionals genuinely cared about them or had the ability to help with mental health problems.
  - The participants wanted to feel listened to, acknowledged, and treated as individuals.
- Although trust is often established... in the course of the patient-clinician relationship, trust can also be established by seemingly trivial gestures that indicate respect.

Howerton A, et al. Understanding help seeking behaviour among male offenders.  
*BMJ.* 2007; 334: 303.

## Empathy: the ability to *connect*, to listen... the heart of medical practice

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The ability to understand the patient's situation, perspective, and feelings and to communicate that understanding to the patient

- Empathy is good (evidence-based) medicine
  - It promotes diagnostic accuracy, treatment adherence, patient and physician satisfaction
  - It's time-efficient

Coulehan JL et al. *Ann Intern Med*, Aug 7, 2001

- Empathic curiosity
  - "The virtue that accompanies and stimulates compassion"  
Howard Brody. *The Healer's Power*, New Haven: Yale Univ Pr, 1992

## The physician should serve “the life plan of the patient”

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The physician can adopt the virtues of compassion and of empathic curiosity only by moving beyond the ritual advice against over-involvement.

Howard Brody, *The Healer's Power*, 1992.

## We can develop empathy by cultivating curiosity

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- The curiosity inductive to empathy... can be distinguished from prurience and obsessive interest in details.
  - This curiosity is grounded in an affective experience of connecting—wanting to relate to another person as another self, as a center of meaning and initiative.
- Rather than exhorting physicians to have extraordinary concern for their patients, empathy is promoted by cultivating the “natural” curiosity about other people’s perspectives that motivates sociality and friendship.
- Training physicians to be curious about patients’ distinct worlds is critical for integrating empathy into medicine.

Jodi Halpern. *From Detached Concern to Empathy*. 2001.

## Clinical empathy as emotional reasoning

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- An experiential skill distinct from natural sympathy.
- Patricia Benner observes how unnatural it is for health care providers to appreciate the emotional worlds of patients without confusing them with their own.
  - The objectives of nursing, including alleviating pain and suffering, require carefully avoiding merging identifications with patients, even while striving for empathy.

Jodi Halpern. *From Detached Concern to Empathy*. 2001.

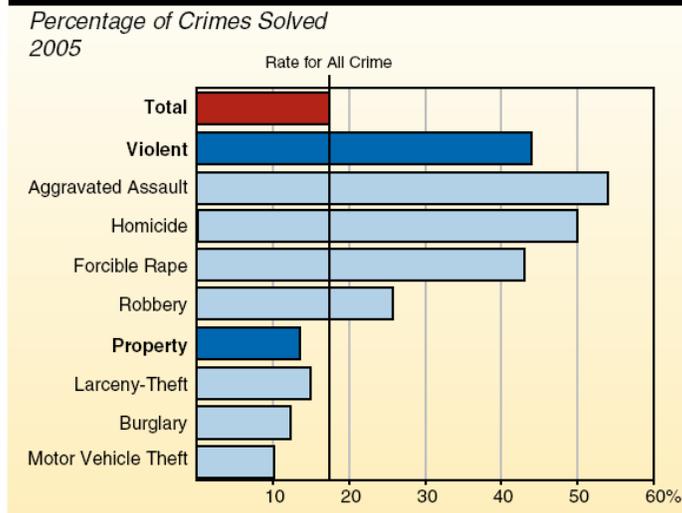
## Moral appraisal is an inseparable component of an empathic response

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- The great scourge of the "ethics of caring" is the unpalatable fact... that clinicians have human emotions....
  - ...Empathic failure occurs because the patient is found guilty by the clinician.
- She may redouble her attempt at empathy by trying to ascertain extenuating circumstances....
  - However... finding an explanation has the effect of removing the patient from the moral universe.
  - It also drains the pt-clinician relationship of authenticity....
- A clinician ought to assist a person's inquiry into and quest for a better life.

Neil Scheurich. Moral attitudes & mental disorders. *Hastings Cent Rep*, March 2002.

## Most Reported Crimes Are Not Solved



- In 2005, 44 percent of violent crimes in California were solved, while 13 percent of property crimes were solved.

CA Legislative Analyst's Office, January 2007

## Who are we?

### Unpleasant reminders of brokenness

- Prevalence of antisocial personality disorder in prison is 10-fold higher than in the community.
  - And yet at any one time the overwhelming majority of people with antisocial personality disorder are in the community.
 

Jeremy Coid, in *Textbook of Personality Disorders*, 2005.
- Sexual abuse community prevalence for males is 17%; for females, 28%
 

Rind B, et al. *Psychological Bulletin*. 1998: 124; 22-53.
- Lifetime risk of substance abuse among physicians is 15-18%
  - Point prevalence is probably 1-2%
 

Medical Board of California
- After developing a caring relationship with a patient, a doctor may find it difficult to recognize that the patient has been involved in self-destructive behavior.
  - Doctors invest a great deal in idealizing the patient that they care about to avoid such difficult emotions.

Jodi Halpern. *From Detached Concern to Empathy*. 2001.

## To eliminate bad behavior from the body of society, cut through the heart

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If only there were evil people somewhere insidiously committing evil deeds and it were necessary only to separate them from the rest of us and destroy them.

But the line dividing good and evil cuts through the heart of every human being.

Aleksandr Solzhenitsyn

## Empathy with WHAT?

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...We all possess to a greater or lesser degree, more so at some times and places than others, a multiplicity of potential “selves”—some of them disavowed by, and repugnant to, the conscious and public persona we prefer to present to the world.

Lang JA. Is empathy always nice? In More ES, Milligan MA. *The Empathic Practitioner*. 1994, pg 108.

## Empathy-as-action: The key factor is making contact

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- ❑ Empathy is attunement, a state that arouses a variety of responses from the comfortable to the unbearable.
  - Soothing is a poor test of empathy....
- ❑ In the end, empathy, for all its special virtues, is a form of contact between flawed humans, and it seems unlikely that in the interchange the usual issues of aggression, shame, and longing should be absent.

Peter Kramer, Empathic Immersion, in Spiro H, *Empathy and the Practice of Medicine*, 1993, pg 187-8.

## Clinicians can offer “non-retaliatory durability”

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- ❑ By enduring with patients emotionally, physicians can help alleviate suffering that cannot be fully translated into words.
- ❑ By allowing patients to move them emotionally, it is as if physicians allow patients to *inscribe* in them, or use them to contain, what is otherwise intolerable to hold onto and “work through.”

Jodi Halpern. *From Detached Concern to Empathy*. 2001.

## Beyond patient-centered care: Patients are moral agents with moral obligations

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“Having convinced medical professionals to allow patients to be the decision makers..., bioethics nevertheless provides little or no guidance for patients making decisions.

“Bioethics should... speak to, the moral obligations and conflicts... borne by autonomous medical decision makers.

Margaret Mohrmann in Taylor CR et al. *Health and Human Flourishing*, 2006.

Responsibility in relationship calls us to practical works and actions on behalf of our fellow human beings, and to creation of practices, patterns, and institutions that structure human relationships differently.

Lisa Sowle Cahill in Taylor CR et al. *Health and Human Flourishing*, 2006.

## Arguing for a moral anthropology: what's going on here?

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If there is to be a moral life, its aim must be to do good and to avoid evil—but to do good for another human, or to define the nature of the good for humans, that is, we must know the nature of ourselves, others, and the world....

Edmund Pellegrino in Taylor CR et al. *Health and Human Flourishing*, 2006.

## “Man is by nature a social animal”

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- “Our moral nature grows directly out of our social nature.”
  - But having a moral sense doesn’t mean that people are innately good
- “Infants and young children are prepared, biologically, for sociability.”
  - Children are neither blank slates nor miniature adults
  - Fairness emerges directly from the child’s natural sociability
    - Albeit differently in girls than boys
  - Self-control arrives with more difficulty, requiring more parental effort
- Most moral virtues derive from habituation (Aristotle)
  - Our habits make us more or less moral

James O Wilson. *The Moral Sense*, 1993

## Aristotle’s continuum of moral excellence

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- We acquire virtues as we do skills
  - “Each person should aspire to a level as elevated as his or her ability permits.
  - “One’s goals of moral excellence enlarge as moral development advances.”
- Moral saints
  - Secular tradition of altruism and benevolence
  - Regular fulfillment of duty and ideals over time
- Moral heroes
  - One or more exceptional actions, without the consistency and constancy required of saints

Tom Beauchamp and James Childress. *Principles of Biomedical Ethics*, 2001

## Relationship-centered care

### Acknowledges:

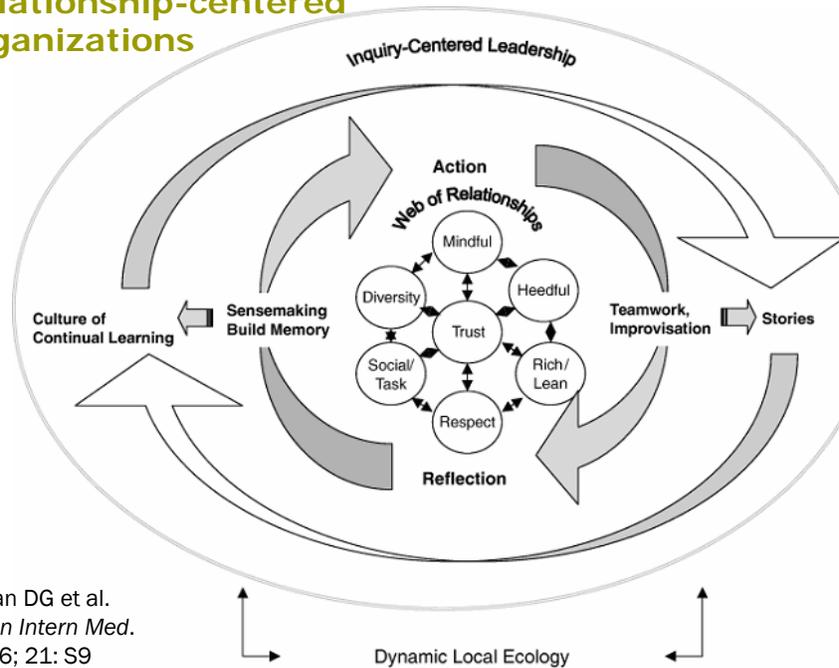
- Patient relationships with clinicians, family members, and community
- Reciprocity, responsibility, and power gradients

### Core principles:

- *Relationships in health care ought to encompass personhood.*
- *Affect and emotion are important relational components.*
- *All health care relationships entail reciprocal influence.*
- *Relationship-centered care has a moral foundation.*

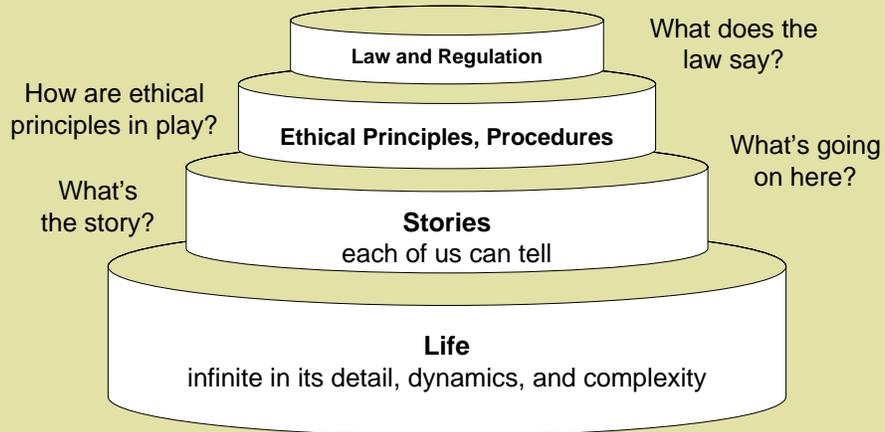
Beach MC, Inui T. *J Gen Intern Med.* 2006;21:S3-8

## Relationship-centered organizations



Safran DG et al.  
*J Gen Intern Med.*  
2006; 21: S9

## Making Sense of Ethical Issues



As human beings we imaginatively feel our way into the complexity of life, organize this complexity into stories, and make moral judgments about right and wrong