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## Editorial: A Sustainable World

This issue of *EJAIB* was completed on the third day of the UNU-IAS / Kumamoto University Second Joint Workshop on Finding Future Visions for a Sustainable World: Dialogues Methodologies for Social Change, which included a number of results from a two year process involving Kumamoto University, in cooperation with Eubios Ethics Institute, towards peace and conflict resolution. A theme running through many of the papers was conflict resolution following the Fukushima Tepco Nuclear Disaster. In 2013 during the first workshop some of the participants started dialogue work to resolve a number of issues facing local and regional communities affected by disaster. Some of these programmes have been sources of encouragement for rebuilding of communities.

Since 2010 Eubios Ethics Institute has been running a series of workshops and held 14 international youth forums on peace and looking beyond disaster, other academic forums and many dialogue methodologies are useful to rebuild a sustainable society. Some of the conclusions of these dialogue processes will be published in the future. In May YPA10 will be held in Indonesia, 60 years after the Bandung Asia-Africa Summit, and in June LBD6 will be held at AUSN in Arizona. It may be too late for readers to change plans and join these, but we welcome people to Nepal in November 2015 for LBD7, and to YPA11, which will be held somewhere soon also. ABC16 will be held 3-8 November 2015 in Boracay, the Philippines.

The future of society is evolving as reproductive technologies offer new options for the future. Aborisade Olasunkanmi explores how surrogacy may be accepted in Yoruban culture, in Nigeria. Jayapaul Azariah looks at the questions for society as same-sex marriages are increasingly accepted. What society do we want?

The history of colonization is still impacting the way that communities can have access to their land in Indonesia, as discussed by Hilaire Tegnán. Democracy is critical to disaster resilient communities, as Christopher reports in the Philippines. Bing Tang examines the ethical and legal issues of the insanity defense in murder cases, in two cases where mothers killed their children. Tim Boyle looks at a recent book, *Wounded Tiger*, and how forgiveness is a more sustainable strategy for social survival compared to hate and war. Medical ethics are explored in 3 papers in the issue, including the last one, which documents the teaching of medical ethics at USM. Some of the papers in this issue come from the Asian Bioethics Association 15<sup>th</sup> Conference, held in Japan in 2014. We look forward to publishing more papers soon.

- Darryl Macer

# Surrogate Motherhood and Yoruba African Culture

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## Abstract

This paper examines surrogate motherhood and its acceptability in Yoruba African society. We discovered that South Africa had already accepted it and there is a law to that effect in their child care act. Though some other countries in Africa also have a child care act, little is said about reproductive technology. This paper examines the acceptability of this technique among the Yoruba in Nigeria. The practice of bearing a child on behalf of another woman is not a new issue, but is not common in many countries in Africa. It raises many ethical issues in the African society especially among the Yorùbá society. The issues raised are moral in nature but should be left to individual decision, because for the Yoruba, when it comes to the issue of autonomy and competence as regards deciding on individual fate, they would metaphorically claim that 'bose wuni lase imole eni' (one determines one's faith the way one deems fit). Key words: Africa, Autonomy, Culture, Nigeria, Surrogacy, Yoruba

## Introduction

Surrogacy can be defined as bearing a child on the request by another family or person; the practice of bearing a child on behalf of another woman. A child, in this case, is born not out of the maternal instinct of the surrogate but due to the commissioning couple's or individual's intention to become parents. There are three forms of surrogacy. The first occurs when through sexual intercourse; the husband of an infertile woman impregnates another woman for the purpose of bearing a child for the couple. The second method involves using artificial insemination of the surrogate with the sperm provided by the prospective father. The third method is in vitro fertilization, and uses sperm and eggs provided by the genetic parent to produce an embryo (a test tube baby) that is now implanted into the surrogate (Brinsden 2003).

This rapid development in medical technology has presented ethical and moral dilemmas that directly impact on the way we understand reproductive ethics. Since the first surrogate baby was delivered in the 1980s, the procedure has become an increasingly viable alternative for a variety of people. This includes couples who are unable to have children of their own for medical reasons. When a couple is unable to produce, either because the male or female is sterile, the couple's dream of having a family, or raising children and having someone to take care of them when they get older is shattered. In this circumstance, the couples who want to have children have only a few options. They can choose to adopt, or they can take advantage of reproductive technology and have a child through assisted reproductive methods. The use of assisted reproductive technology has given rise to moral and religious questions. These include: Is it against the laws of nature to produce a child in a laboratory? Is there any law guiding surrogacy in those countries that allow the procedure? Is it morally permissible among the Yoruba African countries for a woman to carry pregnancy to term for another woman bearing in mind the cultural orientation of African? These and many other questions will be attended to in this work.

## Surrogate motherhood and the Law

In some countries such as Austria, Germany, Italy and Switzerland, surrogacy is prohibited, and severe sanctions are applied for doctors who arrange a surrogacy for their patients or for mediators who help an infertile couple to find a surrogate mother. In Germany (Schreiber 2002), for instance, the restrictive law for the protection of embryos strictly prohibits artificial insemination of a woman who is willing to hand the child over to commissioning parents upon birth in accordance with a surrogacy agreement. Criminal sanctions are applied for noncompliance, ranging from heavy fines to imprisonment. Surrogacy agreements, mediation in surrogacy, and related commercial and non-commercial advertisement are prohibited by the law.

In Italy the Law on Norms in the Area of Medically Assisted Reproduction (Repubblica Italiana 2004) completely bans heterologous (third party) reproduction, including surrogacy. The use of medically assisted procreation techniques is limited to cases of sterility or infertility established and certified through a medical act within officially married heterosexual couples only, banning from the IVF clinic heterosexual couples just living together as well as single women and men who, though fertile, for such or another reason would like to use services of reproductologists to become parents. The law establishes severe sanctions for those who realize, organize, or publicize gamete or embryo trading or surrogate motherhood.

In France, surrogacy is not mentioned directly in the law per se, but since 1994, according to Article 16-7 of the Civil Code, "Any convention related to procreation or gestation for another person is null and void." Furthermore, in terms of criminal penalty, any person participating in a surrogacy program whether it consists of artificial insemination or a donor's embryo transfer commits a crime punishable by a three-year imprisonment.

In other countries like Australia, Canada, Greece, Israel, South Africa, and the United Kingdom, surrogacy is allowed on a noncommercial basis only. In the United Kingdom, for instance, only expenses incurred by the surrogate mother can be reimbursed, and it is a criminal offense to advertise that one is willing to enter into a surrogacy arrangement. Israel legalized surrogate motherhood in 1996 (Siegel-Itzkovich 1996). According to the law, the commissioning father must supply the sperm, and the ovum must come from either the commissioning mother or from a donor who is not the surrogate. The surrogate must be an unmarried Israeli resident unless a special committee approves a married surrogate in special cases. The surrogate may change her mind and ask to keep the baby, but only with a court's approval. The surrogate can be paid only for legal and insurance expenses and compensated for her time, loss of income, and pain.

Surrogacy has been established as a legally recognized procedure in South Africa. There is a child care law that takes to cognizance the assisted reproductive technology. The Children's Act contains specific requirements relating to the contents of surrogate motherhood agreements. These agreements must be in writing and confirmed by the High Court. This specific requirement makes it clear that a written contract between a surrogate mother and commissioning parents will be invalid if not confirmed by the High Court.

From these literature reviews, we discovered that the surrogacy motherhood is a reproductive technology that is highly acceptable in both developed and developing world. Various laws have been put in place to guide the operation of the system. Though many prohibited the system and many only put in place a very tough law to caution the operator of the system, certainly surrogacy motherhood is a worthwhile reproductive technology that put smile into the face of a would have been a barren women, in this work we want to examine

the conception of the Yoruba about surrogacy motherhood as a reproductive technology that assist women in bearing their own baby.

### Surrogacy Motherhood and Yoruba

In Africa, Yoruba refers to a group of cultures linked by a common language. A group that inhabit the South-Western part of Nigeria, bounded by the Niger River and the eastern parts of Benin Republic, formerly Dahomey, and the western part of Togo. Among the Yoruba, infertility has been regarded for centuries as a divine punishment; childless people have traditionally been viewed as deficient. Infertility inevitably leads to moral suffering and a lower social status. The inability to have children is one of the main causes of divorce and broken homes among the Yoruba's. A Yoruba man may marry several wives and even engaged in extra marital affairs to see that they have a child of their own. The same is applicable to most African women. With the advancement in reproductive technology that put a smile of the face of would be barren women, we want to look into some of those things that may stand in the way of Yoruba men and women who may likely found themselves in this circumstance.

Assisted reproductive technology involves money. The number of people below poverty line in African setting is very high. Many people in Africa are not only below the poverty line, but also poor for long and sustained periods. They are chronically poor, emerging only briefly from poverty. Indeed, the incidence of chronic poverty in sub-Saharan Africa is the highest among all regions. Dudley, B. J. (1975) says that the people living on less than 1USD a day in sub-Saharan Africa exceeds that of the next poorest region that is south Asia by about 17%. So poverty in Africa is multidimensional and self-reinforcing. Poor people have low incomes and consumption levels, and many depend for their livelihoods on low productivity subsistence agriculture or work in the informal sector. Wage earning workers have low salaries, limited protection and frequent bouts of unemployment. The poor are inadequately educated and tend to be less healthy than the rest of the population. To make matters worse, poverty in Africa is not gender neutral. What we are talking about here has to do with money. Reproductive technology involves a lot of money, it is not free. Where would a person living on less than 1USD per day get the money to do what is expected in executing reproductive techniques, that would give him or her the expected baby. That is the reason why many home in Yoruba land remain desolate, because they don't have heir apparent that will inherit their lineage.

Furthermore, from a conservative social perspective, assisted reproductive techniques involves the commodification of babies, since gestational surrogate contracts usually involve payment to the gestational surrogate in exchange for carrying the child for an infertile couple. Producing a child through surrogacy turns that child into a commodity or merchandise, in return for certain compensation or a fair market price, provided that an offspring is offered with a specific or selected genetic makeup. Even more, the child as a commodity or a merchandise manufactured through some patented reproductive technology and procedure could be meant for only the rich in the society. It is no different than buying any other commodity or merchandise in an ordinary market. Human value then becomes meaningless when it is meant for only the rich.

In addition, a Yoruba man sees the commodification of babies as a violation of woman's claims to respect and consideration. Elizabeth Anderson (2007) supported this argument in two ways; first, by requiring the surrogate mother to repress whatever parental love she feels for the child, these norms converts women's labour into a form of alienated labour. Secondly, by manipulating and denying legitimacy to

the surrogate mother's evolving perspective on her own pregnancy, the norms of the market degrade her. The legislation guiding the operation of surrogate motherhood stipulated the conditions to be met in the operation of assisted reproductive technology. The surrogate mother under appropriate condition is expected to hand over the baby after the necessary agreement is met. Thus forcing her to repress whatever love or feelings she may have for the child. Her interactions with the child may be base on agreement if possible, she therefore become a stranger to her own pregnancy.

From a religious perspective, Islam, Christianity and African traditional religions do not permit reproduction through means other than natural procreation because a child is seen as a "gift" from God rather than a fulfillment of a couple's psychological needs. More so, traditional African religion, Christianity, and Islam attaches a unique and continuing moral and spiritual significance to individual persons. Since the world is God's creation, all the elements that make it up have an appropriate value and attain a corresponding ethical status. However, the status bestowed on each human creature by God the Creator renders an immediate ethical consequence of theological understanding that no human being is available for instrumental use of any kind.

Another problem raised over this "artificial" technique of reproduction is that it destabilizes the traditional conception of the family. This method of reproduction has disrupted what was once described as biological rooted and racially closed family. The risk of confusing family lineage and personal identity arises if the child and the couple establishes relations with the surrogate and the surrogate's family. It can be argued that the offspring of surrogacy arrangement may be deprived of important information about their heritage; they may lack vital information about their biological parent which could be important to them medically. This raises a lot of questions; What is the place of a surrogate child in an African setting? What family tree would such a person claim? Is he going to claim the same lineage with the donors? Is he going to claim the same tribe with the carrier? In the African community, family inheritance is highly placed; there is no African man that does not have inheritance. Now the question is: is he going to share in the family inheritance of the donor? Another crucial point is the issue of collectivity of honor. This applies to social groups such as families, lineages and kin groups. Within such groups, an act of dishonor by a single member will affect all others just as a single member could bask in the honor of the group. Thus, where status is ascribed by birth, 'honor derives not only from individual reputation but from antecedence' (Rivers, 1973). Mbiti (1970) has classically proverbialized the community determining role of the individual when he wrote, "*I am because we are and since we are, therefore I am*". The community, according to Pantaleon (1994), therefore gives the individual his existence and education. That existence is not only meaningful, but also possible only in a community. Thus in the Yoruba land, no one can stand in an isolation, all are member of a community; to be is to belong. Which community can we group surrogate child. Yoruba community is so personate with the issue of the source (*Orirun eni*), the community gives each person belongingness and cultural identity for self-fulfillment and social security. It may not be possible for a surrogate child to share anything in collective honor; because the child does not come into being through a process that is known to African conception of reproduction.

The procreation among the Yoruba takes place between the husband and the wife, within the secrecy of their home. Even the occupier of the next room in the same house may not know until pregnancy started growing. But today, procreation has become a collaborative process that takes place in the

public spaces of the laboratory and the clinic. Within public spaces, assisted reproductive techniques such as artificial insemination, in vitro fertilization, embryo transfer and surrogacy allow multiple individuals to participate in a couple's attempts to conceive. The private act of love, intimacy and secrecy of creating a child as Sarah Franklin (1995) argues has become a "public act", commercial transaction and a professional managed process. Yoruba man may not subscribe to this technique because they value secrecy in procreation; any attempt for anybody to do this in public is regarded as taboo. Yoruba communities in Africa have a way of placing sanctions on erring individuals. This sanction serves as a moral constraint on individual actions in the community. Moral constraints are rational constraints and so acting immorally is a way of being irrational. So, African societies, as organized and functioning human communities, have undoubtedly evolved ethical systems ethical values, principles, rules intended to guide social and moral behavior in the public.

More so, moral commitment in Africa is very low. Morality is used to describe, justify and recommend the correct form of action; while value describes different beliefs of both a moral and non-moral nature, and normative refers to the overall framework within which moral and non-moral activities occur. Moral values can be divided into two different categories: *universal moral values* and *non-universal moral values*. (Omogbe.1990) Universal moral values are those values that are shared by all peoples regardless of the cultural and moral position occupied by them. Examples of universal moral values include those enshrined in the Universal Declaration of Human Rights, such as liberty and equality. As decent and responsible members of the international community, we have a responsibility to adhere to these values and to commend them to others. Non-universal moral values are not as binding as the values referred to above. These are either inherent in or peculiar to a particular culture or nationality. Moral commitment is a species of commitment to a counterfactual condition: that is, a standing commitment to live up to moral demands (Muganda 1999). The counterfactual-condition account of moral commitment can successfully defuse the worries they express about the effects of absence of moral commitment in our society. Today, most countries in Africa are now deeply infected by the deadly disease called immoral or unethical conduct. Almost all Africa's institutions including, political, social and economic institutions manifest this symptoms of indiscipline. In this situation, a Yoruba man finds it practically impossible to trust anybody to the extent of entrusting such a large sum of money and their hope on anybody. Assuming a Yoruba couple chooses assisted reproductive methods to have a child; there is tendency that problems may arise if the arrangement between the parties, in a surrogacy contract, goes awry.

The next question is; who is legally entitled to keep the child? Who is the mother? Who is the father? What rights does each possess? Further, assuming the parties have no contractual conflicts but the child is born with some birth defect. Should the surrogate mother be liable for tort? Should it matter whether she abused drugs during her pregnancy? Should the child have a tort claim against the surrogate? Legislation addressing these issues seems to be lacking in most states in Africa. Even if the legislation is available there is moral laxity; lack of independence of the judiciary, lack of proper enforcement of laws, corrupt law enforcement agents, corruption in the judicial system, and very slow process of trial, lack of good welfare for the judges that made many of them to take bribes and bypass judgment. All these make an ordinary Yoruba man too shy away from any venture that may eventually led to serious problems due to lack of trust. What we are saying is that; there should be a moral commitment

that will restore the moral fiber of the Africa society. Africans should aspire to formulate a framework that will establish a broad consensus on the kind of values the nation should uphold, as well as a standard against which the moral character of citizens will be measured.

### Conclusion

The right to reproduce is a fundamental and an innate human right. Surrogacy is the only way to overcome both biological and social infertility. It provides medically infertile couples as well as socially infertile individuals the chance to have a child of their own. There is no doubt that there are many obstacles between surrogate motherhood as a reproductive technology and Yoruba culture but "professional opinion has shifted to a position where surrogacy is recognized as an appropriate response to infertility in some circumstances" (van den Akker 2007). So therefore, this seems to be the best option today to put a smile on the faces of disadvantage individuals that may not be able to have a baby in the normal way. Any unjust and illogical stand by the Yoruba to deny those that can avoid the expenses the right to reproductive surrogate may not speak well for the community; because a woman without a child is like a plantain planted by the riverside which has no seed (*Obirin tó wáyé tí kò bí'mọ̀ dàbí ògèdè tí a gbìn sí ipa odò tí kò ní èso*). This issue should be left to individual decision, because for the Yoruba, when it comes to the issue of autonomy and competence as regards deciding on individual fate, they would metaphorically claim that '*bose wuni lase imole eni*' (one determines one's faith the way one deems fit). Legalization or acceptance of gestational surrogacy is to defend the surrogate's interests as well as those of the intended parents and the baby that will be born after the surrogacy. Without any doubt, gestational surrogacy should be allowed as the last option in medically assisted procreation if and when the interests and rights of all parties involved are taken into account and are protected by law.

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# Enhancing professional obstetric care with competence in clinical bioethics

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## Abstract

The rapid development of medical science and technology without attention to ethical values has raised moral issues in the field of obstetrics. Medical professions have found themselves in a dilemma because they all geared for the mastery of knowledge and skills in diagnosis and scientific decision-making, but lack the skills needed for ethical assessment. Formal education and training in ethical assessment is needed to help make medical decisions that can be justified. This paper intends to describe a new approach in improving the quality of medical practice in obstetric care based on competence in bioethics and clinical Ethics in accordance with the demand of society in developing countries. Ethics should be observed by every physician as indicated in the "Preamble of Indonesian Code of Medical Ethics". It includes values such as purity of intention, generosity, humility, sincerity in work, scientific and social integrity, and amity among physicians. Ethics is related to legal aspects, and the two are complementary for achieving good practice in medicine. Obstetric care decisions cannot rely on a single approach; several alternative approaches including feminist ethics and bioethical principles should always be considered in medical decision-making. Consultation with experts in the field or a hospital ethics committee can also be helpful. Therefore no good ethical decision can be made without ethical guidance.

## Introduction

Ethics has become a part of the medical world since the beginning of its development. Some statements in the Hippocratic's Oath related to the ethics of the medical profession. Avicenna also wrote about the ethics of medicine. Concerns about ethics seem to be less intensive in the past compared to right now.<sup>1</sup> During the last quarter of the 20th century, ethical considerations became a major concern because of several reasons. Social phenomenon which calls for the recognition of human rights, the development of medical science and technology knowledge that is not accompanied by the development of ethical and moral values, increasing moral crimes committed by a medical practitioner, and increasing demands on professionalism physicians in practice are some of the problems in which bioethics expected to answer the challenge to improve the professionalism of graduate medical education in Indonesia.<sup>2,3,4</sup>

The medical profession actually has long been a sharp target of social criticism. Feeling less satisfied with the medical profession appeared in the mass media. So far, people usually just jerks if a violation of medical ethics also concerns the legal field, both criminal and civil law. With the growing public awareness of their rights and obligations of the medical profession, the actions that constitute a violation of medical ethics more easily visible. The things that were not known as an offense, is now beginning to be realized. Even actions that are not included ethics violations simply regarded as a breach of ethics, even expressed as malpractice. It all

gives the impression of increasing cases of ethics violations. Advancement of medical science additionally is a new opportunity for the emergence of ethical problems.<sup>4</sup>

The ability to make ethical decisions is not the same in all doctors. Medical education is almost all geared to the mastery of knowledge and skills to make a diagnosis and scientific decision-making. Formal education and training in the ethical assessment at making a decision that can be justified are very little, even many who do not get it at all. So, formally ethical decision-making needs to be accustomed with a method that uses a reasoning path rationally.<sup>4</sup> This paper intends to describe a new approach in improving the quality of medical practice in obstetric care based on competence in Bioethics and Clinical Ethics in accordance with the demand of society in developing countries.

## Basic Bioethics Approach and Clinical Ethics

Ethics, and Codes of Conduct, should be the basic properties for each physician, as indicated in the "Preamble of Indonesian Code of Medical Ethics". It includes values such as purity of intention, generosity, humility, sincerity in work, scientific and social integrity, and amity among physicians.<sup>5</sup> Furthermore, the relationship needs to be reviewed between ethical and legal aspects. Both of these norms have a close relationship and can be complementary in the sense of supporting each other to achieve their respective goals. The rule of law was made official by the state so it can be obliged into the community including physician. This means that the law is a society value. While ethical behavior is said to be the value of values, thus it is required guidance in case of infringement do appear.

Several alternative approaches in ethical issues are.<sup>6,7</sup>

- a. Virtue-based Ethics
- b. Care Ethics
- c. Feminist Ethics
- d. Communitarian Ethics
- e. Case-based reasoning

Decision-making in the field of clinical ethics cannot specifically rely on a single approach to biomedical ethics. Clinical problems often are too complex to be solved with simple rules or rigid application of ethical principles. Special virtues that are emphasized may vary (from one case to another), but in women's health care, there must be a special sensitivity to the needs of women.

In feminist ethics, we are focusing on the experiences of women, reviewing traditional ethics. Although similar to care ethics, feminist ethics emphasizes equality of women and men. There is evidence that women have been systematically ignored in health care research, finance and policy-making. Women's health care should reflect where the growing feminist ethics comes from.

## Basic Rules of Bioethics

The theory of *prima facie* principles developed by Ross became the dominant and most effective adapted into medical ethics by Beauchamp and Childress in *Principles of Biomedical Ethics*. In this approach, Beauchamp and Childress (1994) outlines four ethical principles of European origin that can aid ethical decision making, that are known as Four Moral Basic Rules/Bioethics Basic Rules (Moral Principles) with some criteria below. Four of these principles offer a way to identify, analyze, and resolve ethical issues in medical care and therapeutics as well as provide a guide for professional action.<sup>8,9,10</sup>

The Four Moral Basic Rules are:

1. Respecting patient autonomy

Principle of "Autonomy" (self-determination) is the principle that respect the rights of patients, especially the rights to self-determination and is the strength of the patient to decide on a

medical procedure. This moral principle then spawned the doctrine of informed consent.

#### 2. Doing good

Principle of generosity or "Beneficence" is the moral principle that prioritizes actions directed to the good of the patient or the provision of benefits, and to balance the advantages with the risks and costs.

#### 3. Not harm

Principle of "Non-Maleficence" (not harming) is the principle of avoiding damage or prohibiting actions that worsen the patient's condition. This principle is also expressed as "primum non nocere" or "above all do no harm".

#### 4. Justice (justice)

Principle of "Justice" is the moral principle that emphasizes fairness and justice in attitude and in distributing resources (distributive justice) or the distribution of benefits, costs and risks fairly.

### Clinical Ethics of Jonsen-Siegler-Winslade

Ethical decision-making especially in clinical situations can also be used with a different approach from that approach. Jonsen, Siegler and Winslade (2002) developed a theory of ethics that uses four essential topics in clinical services, namely.<sup>11</sup>

<p><b>MEDICAL INDICATION</b></p> <p><i>Diagnosis</i> <i>Nature of disease</i> <i>Condition of patient</i> <i>Prognosis</i> <i>Treatment options</i></p>	<p><b>PATIENT PREFERENCES</b></p> <p><i>Advance directive</i> <i>Previous spoken</i> <i>Previous choices</i></p>
<p><b>QUALITY OF LIFE</b></p> <p><i>Who decides?</i> <i>What standard?</i> <i>Suffering</i> <i>Relationships</i></p>	<p><b>CONTEXTUAL FEATURES</b></p> <p><i>Social</i> <i>Culture</i> <i>Legal</i> <i>Financial</i> <i>Institutional</i></p>

#### 1. Medical Indications

Medical indications includes all diagnostic and therapeutic procedures as appropriate to evaluate and treat the patient's condition. Assessment of medical indications aspect is expressed in terms of ethical issue and especially using the basic principles beneficence and non-maleficence. Ethical questions on this topic are similar to all the information that should be delivered to patients in the doctrine of informed consent.

#### 2. Patient Preferences

On the topic of patient preferences we consider the value and evaluation of the benefits and burdens that will be received, which means a reflection of the rules of autonomy. The question of ethics includes questions about the competence of the patient, the nature of volunteering, attitudes and decisions, understanding of information, who the decision maker if the patient is not in his/her competent, values and beliefs that the patients hold, etc.

#### 3. Quality of Life

Topic of quality of life is one of the actualization of the goals of medicine, namely repair, maintain or improve the quality of human life. What, who, and how to assess the quality of life is an ethical question about prognosis, with regard to the basic principles of beneficence, non-maleficence and autonomy.

#### 4. Contextual Features

Principles in the contextual features include loyalty and fairness. Here questions of ethics surrounding the non-

medical aspects that influence the decision, such as family factors, economics, religion, culture, confidentiality, resource allocation and legal factors, are discussed

### Ethical Decisions

The easiest decision is when clearly ethical conduct among which are considered a good choice and a bad one. Because it may appear so easy, people often simply consider ethical issues as a matter between good and bad, although with a little more thorough analysis would seem that many simplifications are grossly underestimating the actual moral problems. Ethical problems usually occurs if there is a better choice while the other option is worse. Decision-making becomes more difficult if the difference between the better to worse is very vague. In practice, most of the problems of medical ethics are in this category.<sup>12</sup>

All decisions of physicians can be put into two main groups generally:

1. Each physician makes decisions regarding the human, as well as decision makers and those who bear the consequences of that decision.

2. Every medical decision involves a choice between things that have a different result based on existing facts. Decision-making is done by weighing various values with the concerns of different decision-making results.

It is clear that virtually all decisions in physician practice also pose ethical decisions or at least the decision contains an ethical component in addition to the scientific aspects of the problem. When most of the decisions taken in the doctor's office are made without considering the ethical component, it is because of the ethical issues was considered to be a common thing that a solution has been agreed upon almost universally.

There are several possibilities if a physician faces a dilemma, namely:

1. Choosing 'anything' which is the custom of the moment.

2. Following habits that are considered 'common' in the society at that time.

3. Doing what he/she thinks right about 'feelings and emotions' at that time.

4. Obeying their religion, according to his/her own interpretation.

The doctor should take a decision to act, which may be true in certain rational analysis. Clearly, this is a way of making that decision on the basis of the fragile, which is not easy to be maintained especially if the decision turns out to bring new problems as well.<sup>12</sup>

### Common Problems In Ethical Decision Making

There are some special things that deserve close attention: the informed consent process, confidentiality and conflict of interest.<sup>13,14</sup>

### Informed Consent Process

The main objective of the process is the protection of the patient's autonomy. With open communication of relevant information, the doctor allows the patient to perform personal choices. Communication is central to the proper doctor - patient relationship. Unfortunately the discussion to educate and inform patients about their health care options has never been completely free of bias. Physicians should be wise to minimize this bias. Freedom to accept or refuse medical treatment is supported by law and ethics.

One of the essential elements of informed consent is the capacity to understand the patient's condition and the risks and benefits of treatment alternatives. The capacity of the patient to understand depending on maturity, awareness, mental, educational, cultural background, language and desire for asking, and the way information is delivered.

Consulting psychiatrists may help in determining the capacity of the patient or the ability to understand the information provided. Essential element of informed consent is the concept of freedom of patients to choose an alternative. Informed consent has three elements, namely.<sup>15</sup>

1. Threshold elements
2. Information elements
3. Consent elements

### Confidentiality

Confidentiality is the most used component of medical ethics. It is based on the principle of patient autonomy that includes the patient's right to privacy, and the doctor's responsibility to honor that. The assurance of confidentiality provides an opportunity for patients to give accurate information.

Obstetrics and gynecology specialists deal with some conflict issues of confidentiality regarding patients, particularly regarding the diagnosis and treatment of sexually transmitted disease, contraception and pregnancy counseling. Physicians desire and ability to maintain confidentiality should be discussed with all teenage patients at the beginning of consultation as well, because there may be some legal conditions to report to their parents. Many national laws do protect confidentiality for adolescent patients, and specialists in obstetrics and gynecology must be aware of that.

### Conflict of Interest

Conflicts of interest occur almost every day in the practice of obstetricians and gynecologists. This occurs when a primary interest (usually patient condition) faces conflict with an issue of a secondary interest (such as financial interests of physicians). Some of these conflicts are very real when a doctor deems it necessary to order many diagnostic tests for patients or when a doctor recommends a product to be sold for the benefit of patients. Some conflicts of interest look fine with sponsorship from drug companies and diagnostic aids.

### A Guide to Ethical Decision Making

Often more than one action can be morally justified. But at some point there was nothing that could be accepted because it produces significant loss. However, one of the options that are available must be selected and the choice is supported by ethical considerations. Attempts to resolve the problem have to do with rational analysis of the various factors involved.

Consultation with associated experts or hospital ethics committee can be very helpful for decision-making. It is important for physicians individually to develop steps of decision-making that can be used consistently when facing ethical issues.

Some useful steps have been proposed in which elements are incorporated herein.<sup>12,13</sup>

1. Identify the decision makers.

The first step is to answer 'whose decision is it?' Generally, the patient is considered to have the authority to accept or refuse treatment. At one time a patient's ability for producing a decision is not clear. Capacity to make a decision depends on the ability of the patient to understand the information and its implications. Assessment should be made. If the patient is unable to make decisions, the patient's guardian or family members should play a role. In some circumstances, the court must decide whether the patient is competent or not.

2. Collect data, facts and define the problem.

The data collection should be done as objectively as possible. Use consultation if necessary to ensure that all information on the diagnosis, treatment and prognosis has been obtained.

3. Identify all appropriate courses of action.  
Use consultation if necessary and identify other options.

4. Evaluate the options for action in accordance with the values and principles involved.

The values of the decision maker will be the most important. Decide whether there is an option that violates ethical principles. Eliminate of these options, recheck the remaining options according to the interests and values.

5. Identify ethical conflicts and try to apply a priority.

Try to apply the principles of ethical problems that visible (for example, non-maleficence and beneficence vs. autonomy). Or consider the principles underlying each of the arguments made. Does one principle seem more important? Does the way of proposed action appear to be better than the other?

6. Select the best choice of action.

Try to resolve problems rationally.

7. Reevaluation after the decision is implemented.

Is the best decision has been made? What lessons can be drawn from the discussion and resolution of these problems?

Achievement of basic competencies of Bioethics and Clinical Ethics will further improve professionalism and enhance the ability of obstetric care in clinical decision making with the moral justification (deductive logic) that respects the values and interests of the patient (ethical decision that blend with the law on the patient's contextual).

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# Legal Pluralism and Land Administration in West Sumatra: Implementation of Local and *Nagari* Governments' Regulations on Communal Land Tenure

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## Abstract

Land administration has always been a delicate issue in the history of nations, and Indonesia, a country where a significant number of the population lives a pastoral life is not exempt from this reality. This paper discusses land tenure issues in West Sumatra, an Indonesian province which is home to the *Minangkabau* people with their long existing village management system known as *Nagari*, established to settle disputes based on *adat* (custom) principles as well as to protect the rights of the community members. These rights include communal land (referred to as *tanah ulayat* hereafter). Long before the Dutch occupation of Indonesian archipelago, the *nagari* government was vested with powers to regulate communal land in West Sumatra. However, this authority was constantly overlooked by the then Dutch colonial administration as well as the post independence governments (both central and regional). To reinforce the *Nagari* government as the guardian of the customary law (*hukum adat*) and to specify its jurisdiction, the Regional Government of West Sumatra enacted two laws between 2000 and 2008: Law No. 9/2000 repealed by Law No. 2/2007 and Law No. 6/2008 on communal land tenure. Although these two laws provide legal grounds to address land issues across the region, land conflicts still prevail in West Sumatra due to negligence of customary law, unkept promises as well as unsynchronized and contradictory regulations. The protests against the local army (*Korem*) in *Nagari Kapalo Hilalang*, against the oil palm company in *Nagari Kinali*, and against a cement factory in *Nagari Lubuk Kilangan* are cited in this paper as case references.

**Key words:** Local Government, *Nagari* Government and *Tanah Ulayat*.

## Introduction

The legal system in Indonesia did not change very much after the country proclaimed its independence on 17 August 1945 as many believe it did. The newly born republic operated on the same legal and political logic as its colonial predecessor, handing out titles as it deemed fit (Franz and Keebet Von Benda Beckmann, 2001). Before the arrival of Dutch traders and colonists in the late 16th century and early 17th century, indigenous kingdoms prevailed and applied a system of *adat* (Peter Mahmud Marzuki, 2011). In contemporary Indonesia, as in many other post colonial countries, three strands of laws prevail namely: State Law (*Negara Hukum*), *Transnational Law* (treaties and conventions as well as regulations imposed by international organizations such as WTO, IMF, UN etc.), and *Adat Law* (comprising religious and traditional laws) as the government struggles to incorporate the rights of local people within the state legal system. However, the recognition of these rights either by the colonial administration or the political regimes

that ensued was the starting point of a 'weak legal pluralism' as Griffiths puts it, for it was done "rather in an ambiguous way and subject to the state's regulatory control" (Franz and Keebet Von Benda Beckmann, 2001). The political concept known as Reformation Era (*Era Reformasi*) ensuing the fall of the Suharto's regime in May 1998 is regarded as the Indonesian government's attempt to bring about political, legal and social changes in respond to the people's demand for greater individual freedom, democracy, equality and justice for everyone. But more importantly it was a call for more regional autonomy and a greater recognition of *adat* rights to village resources (Kurnia Warman, 2010, 213-70). As a consequence, government power and authority were decentralized with more rights and obligations for districts and villages across Indonesia<sup>1</sup>. In West Sumatra this prompted the resurgence of the *Nagari Government* that was dormant (1979-1983) under Suharto's regime. This article explains what *nagari* concept and *tanah ulayat* refer to. It discusses the relationship between both State and *Nagari* Governments in dealing with communal land tenure in West Sumatra, especially the difficulties involved and how to cope with them. The study was conducted in four *Nagari* from April 2013 to December 2014. The use of empirical data was required— that is 'a people-based approach' consisting of gathering information through direct interaction with people and processes, such as questionnaires and surveys as well as interviews with *adat* and religious leaders, legal institutions, *nagari* authorities, and parliament members. The research also used the 'text-based approach' which is based on acquiring information through texts, including statutes, books, articles, newspapers, and reports. The use of empirical method as data collection technique was essential and efficient in my research for it aims at taking a closer look at the phenomenon being studied.

## What does *Nagari* government refer to?

As stated earlier *nagari* is a traditional organization considered as the smallest unit of local government in the province of West Sumatra. A *nagari* is legally formed based on territorial and genealogical factors: its borders are defined and consists of four clans (originally) (Kurnia Warman, 2010). It is often referred to as the village republic<sup>2</sup>. To this day, the number of *nagari* is estimated to be up to 754 spread throughout twelve Regencies (*Kecamatan*)<sup>3</sup>. A *nagari* consists of several subdivisions called *Jorong* (subdivisions) and is governed by a *Wali Nagari* (representative) who is both a political and cultural leader, and a *Nagari Council* (*Dewan Nagari*) as the village legislative body. But this does not mean that the *Nagari Council* functions as a parallel legislative body in the region. The Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah*) is the only law making body in the province of West Sumatra. Each *Jorong* is led by a *Wakil Jorong*. The legislative body (the *Nagari Council*) consists of representatives of kinship group leaders within the *nagari* (Afrizal, 2007-35). The existence of this traditional form of government dates as far back as the mid 14<sup>th</sup> century after the establishment of *Pagaruyung* Kingdom, a Melayu Kingdom consisting of the province of West Sumatra and its surrounding villages<sup>4</sup>. When the Dutch occupied Indonesia,

<sup>1</sup> Law No.22/1999 on Regional Governments.

<sup>2</sup> Franz von Benda-Beckmann and Keebet von Benda-Beckmann, *Political and Legal Transformations of an Indonesian Polity: The Nagari from Colonisation to Decentralisation*. pp. 39-60.

<sup>3</sup> See Data Base Kerapatan Ada Nagari-Padang 2013.

<sup>4</sup> See Rizqi Abdulharis, Kurdinanto Sarah, Dr. S. Hendriatiningsih, M. Yamin and Andri Hernandi, Measuring the Necessity of Re-Engineering of Indonesian Land Tenure System by Customary Land Tenure System: The Case of Province of West Sumatera, Indonesia.



they enacted on 1 January 1848 a law called *Regeringsreglement* (R.R). Article 62 gave certain rights to *adat* institutions to deal with family and land issues. In West Sumatra, it was the *Nagari* government that carried out this responsibility back then and up to this day. This stature (R.R), patterned on the 1848 Netherlands Constitution was deemed as mere law in the Netherlands but was used in colonized Indonesia as a constitution<sup>5</sup>. However, from the *Pagaruyung Kingdom* to this day, *nagari* has undergone several social and legal developments. In fact, after the independence, a new regulation called *Makloemat* (announcement) was passed in 1946<sup>6</sup> by the West Sumatran Local Government that split the leadership of *nagari* into three bodies: *Dewan Perwakilan Nagari* (Nagari Representative Council DPN), *Dewan Harian Nagari* (Nagari Daily Boards, DHN) and the *Wali Nagari* who is the head of both the DPN and the DHN<sup>7</sup>.

Furthermore, *Nagari* Government was again restructured in 1963 by another provincial regulation that set up three new bodies: *Kepala Nagari* (Nagari Head), *Badan Musyawarah Nagari* (the Nagari Discussion Boards, BMN) and the *Badan Musyawarah Gabungan* (the Combined Discussion Boards, BMG) whose membership was open to all *nagari* community members. In 1974, however, the Indonesian government enacted No. 5/1974 on Local Government. This law as well as the Law No. 5/1979 played significant roles in shaping local governments throughout Indonesia. In West Sumatra regulation No. 5/1974 changed both the BMN and the BMG into a single body called *Kerapatan Nagari* as the only *nagari* instrument having both judicial and legislative powers (Taufik, 2000, pp.2-6). KN's members consist of kinship group leaders, Islam experts (ulama) and *nagari* intellectuals (*cadik pandai*) (Taufik 2000, pp.6-7). The *nagari* system had long been West Sumatran people's way of self governance until it was dismissed by the New Order Village Governmental Regulation No. 5/1979 and replaced with a new system of governance called *desa* (village) under the Suharno's Administration. In West Sumatra, this law came into effect in 1983 and this meant the retirement of *nagari* leaders as the concept itself was dismissed. All the then existing 543 *nagari* in West Sumatra (including the islands of Mentawai) were split into 3516 *desa*, but only approximately 1700 of them remained active<sup>8</sup>. Nevertheless, the West Sumatran Local government in order to preserve the Minangkabau tradition through *nagari* enacted a provincial regulation No. 13/1983 which put in place a 'new-style of *nagari*'<sup>9</sup> with a new council called *Kerapatan Adat Nagari* (KAN) whose leaders are elected by its members and approved by the Head of the district (Bupati) (Afrizal 2007, 36-37). Although this new provincial law has reintroduced *Nagari* Government into the political arena and helped *nagari* recover its legitimacy in West Sumatra, *nagari* is yet to be free from the influence of the local government as its elected leaders though stripped from their power need to be approved by the head of the district (Bupati), and they could be removed from office by the local government<sup>10</sup>. The reason for returning to the *nagari*

system of governance is that many local politicians and traditional village leaders (*Panghulu*) claimed that the *desa* system had not functioned well, that it had destroyed *adat*, the unity of the *nagari* population and eroded the authority of the elders over the young (Franz and Keebet Von Benda Beckmann, 2001). In 1999 the structure and governance in Indonesia changed (again) when the Government enacted the Decentralization Act, No. 22 of 1999 which improved with Act No. 32 of 2004. This time, the Indonesian central government allowed room in the country's legislation for more district (rather than provincial) autonomy in political and economic affairs. Article 93 of this law stipulates that village must be created, abolished or integrated in consideration with the origin, on the initiative of the people and with the consent of both the district government and district People's Representative Assembly<sup>11</sup>. In 2000, the West Sumatran local government responded to this law by enacting provincial regulation No. 9/2000 on *Nagari* Government which came into effect on January 2001 and from then on, *nagari* has remained the lowest unit in the state hierarchy in the province of West Sumatra except in the city<sup>12</sup>.

### The understanding of *tanah ulayat* and its registration

It is important to note that even though a flimsy recognition was given to communal rights during the Dutch colonial administration through the Article 62 of the colonial constitution called *Regerings Reglement* (RR) January 1854 along with the colonial agrarian law *Agrarische Wet* 1870, it is the Indonesian Basic Agrarian Law No. 5/1960 known as *Undang Undang Pokok Agraria* (UUPA) enacted under president Soekarno that really gave recognition to communal rights throughout Indonesia<sup>13</sup>. Besides the UUPA many other statutes contributed into building legal bases and legal protection of these communal rights at the national level. These statutes are: the Forestry Law No. 5/1967 replaced by the Law No. 41/1999, the Basic Mining Law No. 11/1967, the Fishery Law No. 31/2004, and the Water Resource Law No. 7/2004<sup>14</sup>. As a recognition of communal rights at a regional level, West Sumatra provincial government enacted the Regulation No. 16/2008 on communal land tenure as mentioned in the outset of this paper. Explicitly, this regulation states that *tanah ulayat* management is aimed to protect the existence of *tanah ulayat* under the *Minangkabau's* customary law and ensure benefits of land resources including natural resources for the survival and life of all *anak nagari* (*nagari* community members)<sup>15</sup>. *Tanah ulayat* refers to all land within the jurisdiction of a *nagari*, the *Minangkabau* lower unit of government and is managed according to *adat* (customary) law<sup>16</sup>. The appellation *ulayat* is typical to the *Minangkabau* people. In other provinces different terminologies are used i.e *patuanan* in Ambon, *panyampeto* or *pawatasan* in Kalimantan, *wewengkon* in Java, *prabumian* in Bali, *limpo* in

the eyes of their community members. He complained that they no longer have any real influence over the community. He mentioned that the supervision of the *gotong-royong* (community gathering for social work) by the police is a proof of they lack of influence over the community.

<sup>11</sup> See Art. 3 Law No. 22/1999 on Regional Government in Indonesia.

<sup>12</sup> See Afrizal, *The Nagari community, Business and the State*. Sawit Watch, 2007, p.37.

<sup>13</sup> See Kurnia Warman (2010) *Hukum Agraria Dalam Masyarakat Majemuk. Dinamika Interaksi Hukum adat dan Hukum Negara di Sumatera Barat*, Ed.1. -Jakarta; Huma; Van Vollenhoven Institute; KITLV-Jakarta.

<sup>14</sup> Ibid.

<sup>15</sup> See Regional Regulation No. 6 2008, Art. 4

<sup>16</sup> See Art. 1 of Law No. 13/1983 on *nagari* government.

<sup>5</sup> For detail on the R.R read Peter Mahmud Marzuki (2011), *An Introduction to Indonesian Law*, and for the recognition of *nagari* government see Kurnia Warman (2010), *Hukum Agraria Dalam Masyarakat Majemuk, Dinamika Interaksi Hukum Adat dan Hukum Negara di Sumatera Barat*.

<sup>6</sup> See Makloemat No. 20/1946 on Nagari Government.

<sup>7</sup> See Afrizal referring to the Ministry of Information 1953, pp. 326-336).

<sup>8</sup> See Kroesen 1873, Willinck 1909, Westenenk 1918 a, b, Bachtiar 1967, F. van Benda-Beckmann 1979).

<sup>9</sup> See Afrizal 2007, p. 36

<sup>10</sup> A *nagari* leader at *Lembaga Kerapatan Adat Alam Minangkabau* (LKAAM-Sumbar-Padang) told me during an interview on December 17, 2014 that the new style of *Nagari* has weakened their power in

South Sulawesi, *paer* in Lombok etc... *Tanah ulayat* consists of three types: *ulayat nagari* (nagari communal land) land that belongs to the community as a whole, *ulayat suku* (clan communal land) which consists of sub-clans and its size depends on the number of its members, and *ulayat kaum* (sub-clan communal land) (Kurnia Warman 2010, 33-50). *Ulayat* land is under the authority of either clan leaders or the kinship group leaders (*ninik mamak*). *Tanah ulayat* is to be differentiated from *adat* land. The former refers to land that belong to a kinship group or the *nagari* community while the latter implies land unregistered and that can be owned by individuals<sup>17</sup>. *Tanah Ulayat* designates village land or territory and includes land, forest, water and minerals. Village land was mostly under the socio-political control of the village government, but it could also be distributed among the founding clans of the villages, and then administered by the heads of the clans (van Vollenhoven in Holleman 1981: 137). A *tanah ulayat* is usually freely accessible to the members of the village or clan respectively. It can not be alienated. Temporary access and withdrawal rights could be given to nonresidents against a fee of recognition contrarily to what many scholars and researchers argue<sup>18</sup>. The Dutch called this right of socio-political control *beschikkingsrecht*, right of disposition or right of avail (Holleman 1981: 287, 431). A *tanah ulayat* can be registered at the District Land Administration Board (Badan Pertanahan Kabupaten/Kota), only if all members of the matrilineage (*kaum*), or clan (*suku*), or the heads of all clans agree (*atas kesepakatan*). Such titles can only be used as security for loans with the consent of all members of the respective communities<sup>19</sup>. From what precedes it is clear that power administrate *tanah ulayat* is vested in the hands of the clan leaders or kinship group leaders as they can levy taxes on those willing to use land, forest, rivers. They may negotiate the pawning or sale of communal land, block transactions or take the land for themselves (Kahn 1980, 55). But despite government intention to regulate land tenure in west Sumatra by reviving the *Nagari* Government, lots of difficulties remain in *tanah ulayat* registration in the Province of West Sumatra.

### Obstacles to *tanah ulayat* registration

Before we get to discuss the obstacles in communal land registration in the province of West Sumatra, it is important to remind what the Indonesian Government Regulation No. 24/1997 in its Article 9 Section 1 says about the types of lands that can be registered throughout Indonesia. According to this regulation, only the following can be registered:

1. land property, the right to cultivate, the rights to build, and the rights to use.
2. land management rights;
3. property for religious and social purposes;
4. apartment ownership;
5. mortgage;

<sup>17</sup> Afrizal referring to Mirwati 2000, p.9 in his foot notes.

<sup>18</sup> Many scholars especially Franz von Benda-Beckmann who has significant publications on Minangkabau people argues in his article: *Legal Pluralism and Social Justice in Economic and Political Development*, that voluntary and involuntary migration has led to increasing contacts between population groups that until then had been living in relatively closed communities. Group migration, movement of individuals or individual families settling in new communities and intermarriage, produce great problems about the rights of newcomers in their new host communities. My research finds that this might be the case in other part of Indonesia but not in West Sumatra. Even if it was, it would be related to land as none of the land conflicts that I researched on has to do with new comers.

<sup>19</sup> See Article 13 of the Law No. 16/2008

### 6. State land.

From the above provision it is clear that the Indonesian government did not include *tanah ulayat* within land registration objects within its agrarian law. Did the government do so on purpose or by omission? Or for fear that registering communal land would stir up tensions among the *nagari* community? Boedi Harsono, an Agrarian Law professor gives an account to this question:

Communal rights will not be registered. Basic Agrarian Law does not rule its registration, and the Government Regulation No. 24/1997 on land registration, communal land is intentionally not included in the registration objects. Technically, this is impossible because the boundaries of the land may not be delimited without the occurrence of legal dispute among the community.

The complexity of *tanah ulayat* makes it harder to put in place satisfactory policies for everyone. Yet there is a crucial and constantly growing need for its registration as everyone wants to do business: on the one hand you have the local government willing to use the land to support social welfare programs, and *nagari* community members claiming land certificates so they can rent out their land to pay off a debt or send their children to school (Afrizal 2007), and you have on the other hand *nagari* and kinship leaders, as part of the state hierarchy and *adat* defenders. This constitutes a quandary to all parties involved, thus counterproductive. Brian Z. Tamanaha acknowledges this by saying, "A great deal of land in development contexts is not officially titled, especially where registering title is a lengthy and costly process. In the absence of legal recognition,... property cannot be used as collateral to secure loans, people are less inclined to improve the property (fearing they will lose it), and the market for real property is artificially constrained. As a result, much of the potential wealth and capital in developing societies is locked up unproductively"<sup>20</sup>.

*Tanah ulayat* as was stated earlier belongs to the *nagari* community as a whole. This implicitly means that such a land cannot be registered because doing so would mean private ownership which is contrary to *Minangkabau* tradition<sup>21</sup>. There is a saying in *Minangkabau* tradition that goes: "*dijua indak dimana bali, digadai indak dimana sando*" meaning: if it is to be sold, it may not be eaten up by the buyer, if it is to be pawned, it cannot be eaten up by the pawner. Kurnia Warman, an Agraria Law professor with whom I had an interview has a view pretty similar to what precedes. He thinks that it is not that communal land can not be registered, but problems rise because the land certificate can not bear the name of a single person according to *adat*. He commends that many of land related conflicts would be prevented was a solution to this issue found<sup>22</sup>. This state of unclear ownership over *tanah ulayat* has pushed land predators to rush in and create chaos which has led to many land related conflicts within the region.

### Land conflicts in West Sumatra

From 2004 to 2008 there were 116 cases of conflict over 125,924 hectares of *tanah ulayat* in West Sumatra<sup>23</sup>. Of these 116 cases, three are worth discussing due to their intensity:

<sup>20</sup> Brian Z. 'Tamanaha Rule of Law and Legal Pluralism in Development'. Legal Studies Research Papers No. 11-07-01. Washington University in St Louis, School of Law p. 14

<sup>21</sup> Interview with a leader the *Nagari Adat* Counsel in Padang on September 23, 2013

<sup>22</sup> Discussion with Dr. Kurnia Warman an Agrarian Law professor at Andalas University. He has conducted significant research on Legal Pluralism and the Indonesia Agrarian Law with focus on communal land in West Sumatra.

<sup>23</sup> Database of Padang Legal Aid Agency (LBH-Padang), 2010

**Conflict 1:** A community protest against the Army sub-district headquarter (*Korem*) over a rubber plantation located on a *tanah ulayat* annexed by the local Army in *Nagari Kapalo Hilalang*.

In fact, in 1998, the community of *Nagari Kepalo Hilalang* rose against the *Korem* demanding the return of *Tandikat Lama-Baru*, a rubber plantation located on their communal land that had been under military control since the 1950s. The disputed land was deemed state property based on a colonial law called *Erfpacht*, a 75 year land use right granted to private investors by the Dutch colonial administration. Dutch and German investors back then established two rubber plantations at *Nagari Kapalo Kilalang* on a 75 year lease: *NV. Java Rubber Masschappij* established in 1904 at *Tandikat Lama* (Old Tandikat), and *G.O.E Kreeber* established in 1923 at *Tandikat Baru* (New Tandikat) (Afrizal, 2007 p. 58). The use of these two plots of land by foreign investors ended with the withdrawal of both the Dutch and the Japanese, which also left the abandoned plantation with no clear claimant nor explicit law. After the departure of the two foreign investors, both plots of land were combined under the name of *Tandikat Lama-Baru* and were once again controlled by both the Indonesia Military Retirement Association and the Tandikat Planters Association in 1957. However, due to political unrest within the region the plantation was abandoned for the second time. Between 1960 and 1965, *Tandikat Lama-Baru* got another owner, Burhanuddin, a native of the region who established a company called *PT. Tandakat Baru Corp.* But Burhanuddin was accused of being a communist by the military and was arrested in 1966. Consequently, *Tandikat Lama-Baru* was left again without ownership. After the arrest of Burhanuddin, the military seized the plantation on the grounds that it was being used by the Indonesian Communist Party (PKI) and that an investigation had to be run. The head of the Army local headquarters was appointed to be administrator of the property and *Korem* auto-proclaimed itself owner of the plantation in 1969. Unable to properly run the plantation, *Korem* passed it to a company called PT. Purna Karya in 1974 (Afrizal, 2007-59). In 1979 discontents began to grow as the 75 year lease ended. In mid 1998, leaders of *Nagari Kepalo Hilalang* began to protest against *Korem* demanding that *Tandikat Lama-Baru* be returned.

**Conflict 2:** The protests against the oil palm plantation in *Nagari Kinali*.

From 1993 up to 2002, members of *Nagari Kinali* protested against Oil Palm Companies asking them for compensations, the transfer of smallholder plantations, and the return of the annexed *tanah ulayat* to the community. In fact the existence of the first oil palm company in this region dates back to 1934, but the number increased to over 6 large oil companies by the end of 2002, thus making *Nagari Kinali* the oil palm plantation nagari. At *Nagari Kinali* as well as at many other *nagari*, the use of land for oil palm plantation is granted at no cost by the kinship leaders (*ninik mamak*), the only authorities vested with power over land<sup>24</sup>. During the 1980s, the local government of the region (Pasaman) persuaded the kinship leaders to provide their land to oil palm investors for the development of the region as well as for the welfare of all community members (*anak nagari*). No written agreement from either the oil palm companies or the local government was issued though. The kinship leaders agreed (by signing a land alienation/transfer letter or *Surat Pernyataan Pelepasan Hak*) and were promised stakeholder (Nucleus Estate and Smallholder) in companies to be built<sup>25</sup>. At this *nagari*, the

head of the *Kerapatan Adat Nagari* (KAN), the Adat Council stirred up the contempt of the people by misusing land alienation money (*bungo siriah*) provided by oil palm plantation companies. The people urged the head of the district (*Bupati*) for his resignation, but the accused remained in office until he died<sup>26</sup>.

In addition to this case of corruption, local people began to protest against oil palm plantation companies to claim their Smallholder plantations (Kebun Plasma) as agreed earlier<sup>27</sup>. The community also claimed customary dues (*adat diisi limbago dituang*), irrigation schemes and plantation partnership to kinship leaders as no land was purchased at the start. Similar events occurred at *Nagari Lubuk Kilangan-Padang*.

**Conflict 3:** the clash between indigenous people, the local government and *PT Semen Padang*, a cement company at *Nagari Lubuk Kilangan* (the biggest and oldest cement factory in West Sumatra). In fact, between 1997 and 2001, the community stood up against their local government as well as *PT Semen Padang*, much for the same reasons as their counterparts. But unlike the two other cases reported above, the protest against *PT. Semen Padang* was not directed toward the return of the being exploited by the cement factory as the community leaders themselves acknowledge the advantages it brings to all community members. Instead, the protesters demanded that more factory workers be recruited from the *nagari lubuk kilangan* and that families affected by the company's activities be treated decently. They also claimed a fair share in the revenue of the cement business. They did not want handouts of any kind as this would signify begging. Instead, they asked for levies and royalties, and more importantly, the 'respect for *adat* legacy'<sup>28</sup>. Besides these claims, community leaders also demanded that neighborhood schools and mosques be renovated and looked after.

All these three protests along with many others are the results of unkept promises by local governments and investors, opaque and non-*adat* confirming land acquisition procedures and land inaccessibility in the concerned area. Most of the *Minangkabau* people I interviewed agree that this has contributed into slowing down the economic development of West Sumatra as compared to its counterparts, North Sumatra and Riau provinces. 'Property in many societies is conceived of and controlled in a variety of ways that do not match freehold ownership by individuals. In such societies, family and clan members possess various capacities to use land—to cross it, graze their animals on it, collect its fruits, till it—and others must be consulted about uses of the land. The process of titling extinguishes much of this because use and access rights are not recognized by standard legal titles... When property is titled in situations like this, individuals are confronted with conflicting rule systems as Brian Z Tamahana points out<sup>29</sup>.

Even though the Indonesian 1960 Basis Agrarian Law remains silent or ambiguous vis-à-vis the registration of *tanah ulayat*, the west Sumatra local government enacted Law No. 16/2008 which, unlike the Basic Agrarian Law, instructs on how *tanah ulayat* can be registered provided that all members of the matrilineage (*kaum*), or clan (*suku*), or the heads of all clans agree. In fact, the Article 5 of this local regulation

<sup>26</sup> *Ib.*

<sup>27</sup> Padang Ekspres November 1-4, 2003.

<sup>28</sup> Interview with Depute Head of KAN Lubuk Kilangan on December 12<sup>th</sup>, 2014 16: 04.

<sup>29</sup> Brian Z. 'Tamanaha Rule of Law and Legal Pluralism in Development'. Legal Studies Research Papers No. 11-07-01. Washington University in St Louis, School of Law p. 15.

<sup>24</sup> Interview with KAN leaders at Nagari Kilangan on December 30, 2014, 14:30.

<sup>25</sup> See Afrizal, The Nagari Community, Business and State, p. 96

classifies *ulayat* land in four categories of lands that can be registered at the District Land Office: *tanah ulayat nagari* (Nagari communal land), *tanah ulayat suku* (clan communal land), *tanah ulayat kaum* (sub-clan communal land) and *tanah ulayat rajo* (State land). But what seems ambiguous is the fact that the four categories of *ulaya lands* change their statuses once registered at the District Land Office. Thus, according to the regulation a *ulayat land* once registered becomes: *Hak Guna Usaha* (HGU) Commercial Use Leases, *Hak Pakai* HP) use rights, and *Hak Milik* (property ownership). This means that if registered, a *ulayat nagari* becomes State land which also means the rights owner cannot fully use his property<sup>30</sup>. He can only use the land for agriculture, fishing, farming and livestock for a maximum time period of 30 years extendable up to 25 years<sup>31</sup> and he's required to pay revenue to the state<sup>32</sup>. The changing of *ulayat land's* status to HGU (Commercial Use Leases) has raised discontent among the community fearing that this decision might use up all *tanah ulayat* without any guarantee to get them back from the third party at the end of the contract (Kurnia Warman 2010, 226). Furthermore, the same law on land registration also recognizes two different types of ownership: *hak milik* (property rights) and *hak menguasai* (right to control). *Hak milik* holders i.e. the local government, State companies (BUMN), government institutions, district government companies (BUMD) and corporations can own and fully use the object (land) any way that pleases them<sup>33</sup>. *Tanah Ulayat* as a property belonging to the *nagari* community as a whole falls under the *hak menguasai* meaning that the rights holder has control over the object but he/she cannot use it as he/she sees fit. I find this separation of rights ambiguous because the object of *hak milik* is located within the *ulayat nagari*, and therefore it is the domain of the *nagari* just like any other *tanah ulayat*. With the enactment of the Local Government regulation No. 9/2000, *nagari* government is vested with authority over *tanah ulayat* for the benefit of all community members, yet there is a Presidential Decree promulgated in 2001 that says land administration throughout Indonesia should be centralized<sup>34</sup>. This, to my view is a mess as it does not provide a clear authority to turn to when conflicts over land arise. The state of collective land ownership whereby power rests in the hands of some community leaders and government officials strips community members of their autonomy and privacy<sup>35</sup>. 'Although ownership per se is not essential to privacy, titles to property are a way of expressing the claim to privacy' as David Dyzenhaus (1997) puts it.

Finally, problems in *tanah ulayat* registration are not only caused by regulations competing or contradicting one another but also for lack of clear pretender from pre-colonial time to this day. In fact, it is not always clear who the legitimate claimant is. Of the village government, the Nagari Adat Council, the head of a given clan, all lineage heads within the clan, or even one particular lineage who really has legitimate control over a *nagari's* resources and revenues is till an

unsolved riddle. In some *nagari*, the authority over *nagari* resources has been officially handed over by the head of the Nagari Adat Council to the Local Government. In other *nagari* compromises between the two are negotiated, which makes the land titling process ambiguous and tedious. The lack of clear ownership resulted in massive land takeovers by the then colonial administration as well as the military during president Suharto's New Order<sup>36</sup>. In fact the ambiguity surrounding the registration of *tanah ulayat* in west Sumatra region did not begin in recent years; it dates as far back as during colonial times. When the Dutch occupied the island, they denied local communities' rights over land as they were based on *adat* law which was not recognized as a proof of ownership in Dutch law<sup>37</sup>. To run its land expropriation agenda the Dutch administration (King William III) enacted on 20 July 1870 a law called *The Domain Declaration of Sumatra's West Coast*<sup>38</sup>. Its sections 2 and 3 declared land, for which "ownership" could not be proven, to be the domain of the state<sup>39</sup>. The State could decide that this land be put to economic use, usually in the form of a long lease (*erfpacht*) of 75 years. Since each piece of land needed to have an owner in the colonial legal logic, it was considered inevitable that the state became the owner of that land given the absence of any specific owner (Franz and Keebet Von Benda Beckmann). Notorious are the declarations of state domain over resource areas that, in colonial interpretation, were deemed to be 'waste lands' or 'terra nullius'. Most post-colonial states have retained and even expanded proprietary rights over vast resource environments<sup>40</sup>.

In my enquiry of legal pluralism over land tenure in West Sumatra province, I have presented an overview of the historical development of the *nagari* government. I have argued that it is a traditional government system at the village level vested with power to control all aspects of life in the community in accordance with (*adat*). I have also discussed what a *tanah ulayat* refers to and the difficulties involved in its registration. And finally, I have pointed out that unsynchronized regulations, unclear land ownership, unkept promises and the non-respect of *adat* have contributed into the outbreak of several land-related conflicts throughout West Sumatra province.

## Conclusion

Collective land ownership as that of *tanah ulayat* in the province of West Sumatra is meant to prevent clashes among community members on the basic of commonness. It could also be seen as a democratic system for it is oriented toward promoting the general interest of its members. However, as the *Minangkabau* society evolves from an agrarian to an industrial one, conflicts over communal land become more and more inevitable (community protests at Nagari *Kapalo Hilalang*, *Semen Padang*, *Lubuk Kilangan*, and *Kinali*). Legal pluralism helps reduce the gap between West Sumatran local government and the minangkabau people through the *nagari* system. But it also brings about contradiction, and contradiction implies not only a flaw in reasoning process, or lack of understanding of the issue at play<sup>41</sup>, but it also shows distinct institutions fighting for legitimacy (Jon D. Unruh,

<sup>30</sup> See Septria Yanto, Tinjauan Yuridis Atas Berlakunya Peraturan Daerah Provinsi Sumatera Barat Nomor 6 Tahun 2008 Tentang Tanah Ulayat Dan Pemanfaatannya).

<sup>31</sup> Art. 8 of the Presidential Decree No. 40/1996 on land tenure.

<sup>32</sup> See the Presidential Decree No. 40/1996 Art. 12, Section 1.

<sup>33</sup> See Art. 20 Section(1) The Basic Agrarian Law 1960.

<sup>34</sup> See Presidential Decree No. 10/2001.

<sup>35</sup> In a book entitled *Recrafting the Rule of Law: The Limits of Legal Order*. Hart Publishing edited by David Dyzenhaus, Christine Syponowich, talking about the importance of the Rule of Law quoted Thomas Scanlon: "ownership is relevant in determining the boundaries of our zone of privacy, but its relevance is determined by norms whose basis lies in our interest in privacy, not in the notion of ownership"

<sup>36</sup> See Donald K. Emmerson (1999), *Indonesia Beyond Suharto, Polity, Economy, Transition*. p. 31.

<sup>37</sup> Dr. Afrizal quoting Harsono 1999, p. 4142.

<sup>38</sup> See Law No. 15, S. 1870.

<sup>39</sup> Read Mahadi, Uraian Singkat Tentang Hukum Adt Sejak RR Tahun 1854, p. 101.

<sup>40</sup> See Franz von Benda-Beckmann, Legal Pluralism and Social Justice in Economic and Political Development, *IDS Bulletin* Volume 32 issue 1 2001.

<sup>41</sup> N. W. Barber, Legal Pluralism and the European Union, *European Law Journal*, Vol. 12, No. 3, May 2006, pp. 306–329.

2003). The co-existence of plural normative and institutional orders offers opportunities for many actor groups to pursue different economic and political objectives (Benda-Beckmann and Taale, 1992:83). Brian Z. Tamahana<sup>42</sup> agrees with this when he argues: “two coexisting bodies of law, *State and adat*, are brought into clash in a manner that unsettles both, allowing competing claimants to point to different legal sources in support of their conflicting positions”. This situation is rather *forum shopping* (K. von Benda-Beckmann, 1984), and does not comply with the Rule of Law concept as there is no legal certainty. *Tanah ulaya* being the property of the *Minangkabau* people as a whole based on their tradition make its registration difficult, thus vulnerable to predators. Governments should respect local people’s tradition and stop encroaching on *tanah ulayat* and side with the people whenever an intruder invades and seize their land and other land related assets. A government that takes away or can not protect the rights and properties of its people is no government at all (John Locke, 1689). For the sake of transparency, *Nagari* leaders should declare all lands and other land related assets under their control, make annual land management reports, and be held accountable for every one of their actions by the community. The local government together with the provincial parliament should remove ambiguous and competing agrarian regulations, and ensure that land regulations are made with their effective participation and consent of the *nagari* government and other kinship leaders who in turn should be literate and be provided with legal training so they are not easily deceived by the government and investors.

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<sup>42</sup> See Brian Z. Tamahana, *Rule of Law and Legal Pluralism in Development*. Legal Studies Research Paper No. 11-07-01, Washington University in St Louis, School of Law.

# It is time to think! Changing faces of family and Marriage and Parenting

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## Abstract

Stability of any human society is rooted in its institutions. These institutions are education, health care, human rights and marriage, to name a few. Due to the rapid advancement of science and technology these institutions undergo marked changes in maintaining their social and cultural values. This paper examines the bioethical issues that are emerging in the institution of marriage, family and parenting, as a result of changes in social and cultural values.

Marriage from time immemorial has been a public event. The earliest report is found in the Old Testament when Laban made his daughter's wedding a 'public event' by "gathering together all the men of the place and made a feast" (Gen. 29:22). There are several options in opting the partners of marriage: (i) marriage is between a man and a woman (ii) between two (or some greater number of) persons and (iii) between two creatures. The legal definition of marriage is changing. Which is the right definition? Changing phases/faces of marriage is a bioethical challenge.

Similarly the number of parents a child can have is changing. Traditionally a child can have two parents, a father and a mother. Currently this number is changing. With the onset of one parent family a child may be denied the benefit and luxury of two parents. In some countries the number of parents a child can legally have is more than two. The bioethical implications of teaching bioethical issues of marriage and family are discussed.

## Introduction

Human institutions like education and marriage contribute directly to societal stability. A country is known by its people's attitude to the institution of marriage. The ancient Vedic culture recognized the value of marriage, family and parenting but sacrificed the individual human rights of the wife. Society made it very difficult for a married woman to break away from her family. Modern science and technology (S&T) have brought discernible changes in the core definition of marriage, the structure of family and an increase in the number of parents a child can have.

This paper examines the results of techno-science and relates them in the context of societal problems of marriage. Information contained in primary and secondary sources have been employed to discuss and construct the paper.

## Public Religious Event

Traditionally marriage has been a public event. If a man and a woman marry secretly then child birth will make it public. In the Old Testament, Laban made his daughter's wedding a 'public event' by "gathering together all the men of the place and made a feast" (Gen. 29:22). It is also a cultural event which varies from one group to another. In all religious cultures marriage, is a legal and a social event. It has legal dimension in that a 'marriage certificate' must be obtained from a government approved agency. Although there are some variants in marriage, many cultures have restricted marriage as a union between a man and a woman, which is a traditional type of marriage. There are some cultures which

allow multiple numbers of men or women to be part of the marriage agreement.

Traditionally marriage is a religious event. Religions do recognize that for the "human society to stand upon firm foundations" it is necessary that the institution of human marriage be "held in honor." A society's firm foundation is secured through the life-long stable relationship between the husband and wife. Family integrity is the key for social wellbeing: If marriage breaks then society breaks. In some societies, for some people, marriage may break but weddings continue! That society ends up as a nation of individuals.

## Traditional marriage partners

There are three types of choosing the partner of a person in marriage: (i) Marriage is between a **man** and a **woman** (ii) between **two persons** and (iii) between **two creatures**. The legal definition of marriage is changing. In the second category the word "Persons" stands to cover two same-sex persons. As long as two men or two women (persons) love each other and maintain a committed for a life-long relationship then it is really a marriage. In the third category "creatures" would include non-humans (animals) and objects. There are instances of a woman marrying the Eiffel Tower (Wikipedia, 2007) and a man marrying his own photo! Interestingly a man addicted to porn-movies has applied for license to marry his computer (Web, 2014). Franklin Kameny, an invitee to the White House in 2009, advocates that "morality is a matter of personal opinion". And hence "*If bestiality with consenting animals provides happiness to some people, let them pursue their happiness. This is Americanism in action*" (Mehan, 2014). Americans are great path makers from cosmos to adding cosmetics to marriage. As long as this cultural position exists, then all the bioethicists will never be out of job. Changing phases/faces of Marriage is a bioethical challenge. Which is the right definition? There is an acid-biological-test to assess which definition is right. Marriage is child-centric. Whichever life partnership produces a child that union is the right type of marriage. As on date only the biological union between a male and a female can give the couple a child.

## Changing phases/faces of Marriage

### Legal Status and definition of American Marriage is undergoing marked changes!

On Sept. 21, 1996 the USA enacted an Act entitled **Defense of Marriage Act** - DOMA - [110 STAT. 2420 PUBLIC LAW 104-199-SEPT. 21, 1996 LEGISLATIVE HISTORY—H.R. 3396:]. This law (DOMA) was signed by the then President Bill Clinton. DOMA provided a legal definition of the words like 'marriage' and 'spouse'. Accordingly "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." Currently this Act is not indefensible since, in the view of differently enabled people with different sexual orientations, it provided an official sanction for discrimination of citizens who do not conform to the above norms. Moreover, the Act denied the same-sex-couples all the benefits granted by the federal government such as social security survivor payments, the right to file joint tax returns and many other fringe benefits (Editorial, 2011). Hence a growing number of same-sex lobbyists of American society have been advocating that the word "marriage" needed to be redefined so as to include other types of sexual orientation of gender relationships such as co-habitation, Same-sex-union and dome

### Implications of the DOMA

Since the DOMA law categorically restricts the use of the word marriage as a legal union between a man and woman any union between two members of the same sex is ineligible to be categorized as marriage. Since DOMA also explicitly restricts the usage of the word "spouse" which is to be used only in the context of heterosexual union any other context such as same-sex- union, the word 'spouse' cannot be used. Logically same-sex union also does not result in a family and hence "functional role play words like husband and wife can't also be used" (CE 2012). Because of these complications such legal unions are called "civil union". In any deviations from heterosexual marriages the four issues are to be considered: (i) Same-sex couples (ii) Same-sex marriage (iii) Same-sex reproduction and (v) Same-sex parenting.

### Redefining family radically

Futuristic thinkers can foresee the upcoming quality-changes in human parenting. One such person is Dr Kamal Ahuja, a well-known IVF specialist at the London Women's Clinic. Dr. Ahuja voiced: "*The definition of a traditional family is progressively fading... Families of the future may combine up to five parents. Regardless of culture, the evidence is that children adapt well and it's the quality of the nurturing environment which is important*" (Marquandt, 2011). Current S & T research is opening the family-door for children to have six, eight, even a dozen parents (Lovett, 2012). Some say sky is the limit!

### Single but Moms - But Fatherless

Before the onset of sexual revolution in the Western Hemisphere, starting from the 1960s, most families in USA were of traditional types. By traditional family it was generally meant that a family constituted by the legal union of a woman and a man. When a child was born then it was a two parent family, the man became the father and the woman became the mother. It is a child's right to have a father and a mother. At the unfortunate instance of a woman losing her husband in war or by any accident or by divorce then the mother took up on herself the additional role of the father and such a situation was a 'single parent family'. A separation between a father and a mother through tragic process of divorce also resulted in a single parent family when the mother chooses to remain single. If a woman or a teenager accidentally and unexpectedly becomes pregnant in a casual sexual relationship and avoids abortion to give birth to a child then she would constitute a single parent family.

A woman may remain single if she chooses to be unmarried. Such an unmarried woman may want to become a 'mother'. In which case she can choose a sperm donor or a sperm bank to get her impregnated to become conceived; it is by her own choice she chooses the motherhood. Such a family is termed as "families of choice". Of late such a culture in building the family is changing in the western world. Traditionally the formula for a family will be: Children + two parents = family. This equation is changing and the new equation is: Children + absentee fatherhood = a new type of family. This type of new family is termed as the "intentional family". It should be noted that a woman can create a "fatherless" family by inseminating her posthumously with her late husband's frozen sperm. Similarly through a somatic reproductive cloning technique a "fatherless" and a "sexless" family can be created.

### "Intentional families"

According to the British philosophy Professor Susanne Gibson "single mothers" are "those who "practice...intentional single parenthood" (Gibson, 1995). Extending such a notion Professor Kathleen M. Galvin of Northwestern University

defined "intentional families" as "families formed without biological and legal ties, [which] are maintained by members' self-definition. These 'fictive' or self-ascribed kin become family of choice, performing family functions for one another" (Galvin, 2006).

### Emerging New Family Values

Intellectuals with academic excellence provide further impetus in bringing about the tide of cultural and social changes in family values. Such changes were brought about by the publication of convincingly well written books which open the eyes of knowledge of common people including church leaders who are willingly sanction a social and cultural change even if it is diagonally opposite to biblically sound doctrines relating to Marriage and Sex. If an established Church can break its own doctrinal norms then that action opens the flood gates for a paradigm change in society. In her book with a provocative title such as "*Single by Chance, Mothers by Choice: How Women Are Choosing Parenthood without Marriage and Creating the New American Family*" Hertz (2006) narrates an instance where the Church gave importance to an unmarried woman's intensions to become a mother through artificial insemination. The Church pastor endorsed her 'crazy' desire and told her: "*It's completely natural that you want to be a mother, of course you want to be a mother. And of course, it would be more perfect if you had a husband. But you would be a great mom. And this church community loves you, and I know they will support you in this*". Armed with the sanction of the Church Elders she had to cross other objections, if any, from her school principal where she worked as a teacher.

### Single Father by Choice

In a Man's case it is not as simple as that of a woman to become a father. First, he needs to procure a female donor who can lend him a human egg. Of course he is the sperm donor. The story is not yet over since he needs to find out another "gestational" mother who could carry the fertilized egg with his sperm to full term and deliver a living baby. It is his own choice to bring that living human baby into the world. Hence he comes a "Single Father By Choice" (SFBC). Because she carries the conceptus derived by fertilizing a 'third party' woman's egg and not her own she becomes a gestational surrogate mother, On the other hand a 'traditional; surrogate mother carries a conceptus conceived with her own egg.

### Motherless-Single-Father-By-Choice-Family!

Mr. Ian Mucklejohn (58) of UK purchased a human egg from an egg donor Ms. Melissa Valdovinos of USA and rented the womb of surrogate Ms. Tina Price also from USA. He spent about 50,000 pounds. He became the father. In the reproductive biological world "Ian Mucklejohn made history when he became the first single man in the UK to have his own children without a female partner". "My children are the product of a single-parent family, like many of their friends and lots of people in today's society" (BBC 2006). Although Ms. Melissa is the biological mother she did not assume the functional role of a mother and hence in the birth certificate of the three boys the column "mother" was left blank because they come from a motherless-single-father-by-choice-family!

In India Mr. Amit Banerjee (45 years), of Kolkata (Calcutta city), is a married man but childless and a divorcee. According to him "A child is always an extension of the self. I wanted to see myself through a baby," So he expressed his intentions to establish a family through the well established technology of artificial reproductive technology (ART). An unidentified woman became the egg donor and a married woman was chosen as the surrogate mother. In the year 2005 an eminent

IVF doctor Dr. Sudarshan Ghosh Dastidar who is connected with the Indian Council of Medical Research, and with the National Academy of Medical Sciences performed the IVF technology to make Mr. Banerjee the first Indian to launch the nation's SFBC community.

### Bioethical Issues

There are two issues: (i) Legal and (ii) Moral. "The legal status of the baby should be determined by the courts as the woman who gave birth to the baby and the one who donated the ovum were not married to Mr. Banerjee, so both can claim the baby, like Banerjee." In order to establish his parenthood Mr. Banerjee has to legally adopt the child. Morally such a practice is different from the traditional practice. Traditionally a conservative person would call it an "illicit sex". An intention to have a technological child covers it all! In brining a child into the world there were three main players – one man and two women - (Mr. Banerjee, egg donor and surrogate woman) and two other persons in the background (divorced wife of Banerjee and the husband of the surrogate woman). The primary three players could be considered as 'parents' and the secondary two persons could serve as 'intentional parents'. Moreover it is a case where there was no mother, no marriage and no sex. It is a case of SFBC (BBC, 2005)

### Intentional Family

As early as 1997 an interesting but complicated case of dispute of parental ownership of a child was registered with the Court of Appeal of California. In this case a decision has to be made as to who is the "legal parent" or "biological parent" or "genetic parent". Two infertile people by name Luanne and John Buzzanca made a decision to build their family by using donor sperm from an unknown person and a donor egg. They employed a third party person as a surrogate mother. There was no sex involved in any of the procedure of child birth which involved five persons. The case became interestingly complicated; Luanne and John split in their relationship before the child (Jaycee) was born. Then the question of custody of the new born child came before the Court and the surrogate mother also claimed to secure the custody of the child. Interestingly the Court used the principle **of intentionality** to pass the judgement. "The court decision was made on the basis that these two people [Luanne and John Buzzanca] were the ones who intended to have this child together" (Marquandt, 2011). The primary intent to parent a child laid a guiding principle for future cases – parenting disputes among lesbian couples or in cases where IVF reproductive technology is used to procure a child - wherein the basic question is asked "who made plans to have the child". A new concept in family building was initiated namely "Intentional Family" wherein "functional parenthood" rests "around who actually cares for the child". A new doctrinal concept is emerging which separates "marriage" from "parenting". Storrow (2002) defined intentional parenthood as that "planning and preparing for the birth of a child—not marriage—are the essential criteria in determining who is—and is not—an intentional parent." Such a scenario opens up a larger arena of "families by Choice" in which choice is the key player and other factors such as money, marriage and genetic relationships are sidelined.

The new acronym, the SMBC stands for the emerging reproductive doctrine - Single Mothers By Choice (1981). These mums of choice choose their baby's unnamed and absentee father from a nearby sperm bank for cash. It is significant to note that both Luanne and John Buzzanca were not the biological parents and the child was not procreated by their sexual act. The birth of the child was through a third-party relationship. Nevertheless, their "intention" to have the child is tantamount to sexual reproduction.

### Rationalization will lead to Legalization

We can expect the trend to continue, but I think it raises many social issues that should be further discussed. "The homosexual movement shares in the larger rationalization of the sexual revolution and is invested in its spread. The acceptance of each variant of sexual misbehavior reinforces the others." The desire to rationalize these behaviors becomes an engine for revolutionary change throughout society. "As a moral act, sodomy should be normative. If it is normative, it should be taught in our schools as a standard. If it is a standard, it should be enforced" (Reilly, 2014). It is a time tested process for successful implementation: first rationalization then legalization through socialization to implementation and enforcement into high school curriculum. Society is changed forever.

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# **Ethical Issues of Clinical Ethics and Research Ethics in the Developing World and Pakistan: Is there any Solution?**

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## **Abstract**

Health research plays an important role in addressing the inequities in human development and health, but in order to achieve these objectives, research should be based on ethical principles and sound scientific knowledge. Although it is accepted fact that bioethics play a pivotal role in health related research in the developing countries, much of recent debate has focused on the controversies surrounding internationally sponsored research and it has taken place largely without the adequate participation of developing countries. The relationship between the ethical guidelines and regulations, and also indigenously/locally sponsored and public health research is not adequately explored and needs further exploration.

## **Discussion**

Globally there are wide inequalities in the economic development and in burden of diseases and it is certain that the accelerating course towards globalization without requisite safeguards and the protection of human rights will only worsen this situation. The funding of research in the developing countries has been the subject and debate of much attention recently. The forum for global health research has indicated that less than 10 % of world's research resources are reserved for 90 % of total health problems. Recently, there was considerable debate regarding ethical conduct and the reviewing of health related research, but this debate has mostly taken place among the bioethicists and researchers in the industrialized countries. The view points of public health researchers and practitioners from the developing countries have been underrepresented. Research needs to respond to the community needs and also to national priorities, and development of a national research agenda in the developing countries must be firmly grounded in the process of priority setting. However a more difficult challenge is to involve communities themselves in the research questions and to link their research to their development. Pakistan, being a poor country, has very limited health care resources. Treatment options for individual patients and between patients for free and subsidized treatments are common ethical dilemmas. Thus, prioritizing illnesses and people is an enormous ethical challenge and a very common part of every day medical practice in Pakistan (1). Conducting research in hierarchical, traditional countries such as Pakistan adds yet another dimension to the difficulties in assuring that it is done in an ethical manner; and an "indigenous" layer of cultural norms makes it even more of an uphill task, but it is a task that we are morally bound to shoulder. The historical and social construct of the Pakistan culture, the socioeconomic realities (with similarities to other countries in this region) and some of the deeply rooted values and customs pose challenges that are specific to this part of the world. We who live here know them, and only we can address them. Perhaps the most important factor that places

human subjects at risk in this part of the world is the magnification of "power differentials" inherent in hierarchical societies such as Pakistan. This difference is particularly pronounced in the interactions between physicians and scientists and those they take care of or enroll in research projects. In Pakistan, scientists and physicians constitute the "elite" section of society. They are by and large the "English-Speaking", affluent, highly educated minority in a society where the majority of those they deal with in their professional lives are "Urdu-Speaking", poor, generally illiterate or misinformed and disadvantaged in many other ways (2). Local researchers trained within the country have no concept of research ethics. There is a growing awareness that research cannot progress without better research ethics systems in developing countries. At the close of the last century, several of the international agencies involved in funding health research, including WHO, tried to seriously examine the role of health research as an important contributor to sustainable human development. They also attempted to assess how governance of research at national, regional and global levels be made more effective and efficient. Ethical practice in health care and research is not only needed to ensure equity in health care and research, but also to protect individuals and communities from unnecessary risks and harm (3). We can make clinical research more ethical in Pakistan by following all the International guidelines regarding clinical research ethics. Health research may play an important role in improving health by evaluating and developing interventions and exploring strategies, which can empower peoples to change unhealthy behaviors (4). There are five key ethical principles of ethical research that appear across the ethical codes of research institutions and associations. These are a) informed and voluntary consent; b) confidentiality of information shared; c) anonymity of research participants; d) beneficence or no harm to participants; and e) reciprocity. Researchers are expected to obtain informed consent from all those who are directly involved in research or in the vicinity of research. This principle adheres to a larger issue of respect to the participants so that they are not coerced into participation and have access to relevant information prior to the consent. Usually consent is obtained through written consent forms, and necessary elements of consent are identified by the review committees. These usually include prior information on key elements of research such as purpose, procedures, time period, risks, benefits, and a clause stipulating that participation is voluntary and the participants have the right to withdraw from the study. The principles of confidentiality of information shared and Anonymity of Research participants is also concerned with offering respect and protection to research participants through assurance of confidentiality of information shared and anonymity by not revealing the identity of the individuals and institutions involved. Typically anonymity is provided through the use of pseudonyms. The principles of Non-maleficence, Beneficence and Reciprocity bind the researchers to provide the participants with an outline of the risks and benefits involved to the participants in the study. The principle of reciprocity requires that the researchers consider those ways through which participants could be compensated for their time and effort. Typically information about risks and benefits are expected to be provided in a summary form in the consent form and/or in a brief write up attached with the consent form. These principles and procedures of an ethical engagement with a research study are laid out with the best of intentions to protect participants from malpractices and breach of ethics. However, the approach is taken from clinical medical research perspective with a concomitant view of epistemology and ontology. Hence, it is assumed that there is a well stated hypothesis which is to be tested, the relationship between the

researcher and researched is clearly divided and bounded, and it is possible to outline the potential risks and benefits in some detail prior to the study (5). Knowledge produced as a result of health research, if disseminated on a wider scale, is global public good. This Knowledge contributes to policies, performance and activities of the health system and in the improvement of population's health (6).

### Conclusion

Bleak and confusing as the field may be, the last few years have been a watershed in international bioethics and the heightened debate has pushed ethical issues surrounding health research in developing countries into the limelight. The challenge is to develop a sound plan for expanding this ethics debate to larger issues of the global justice and equity, and to make the process as participatory and democratic as possible. The main goal in all these activities should be reduction of the global inequalities in health. Most of public health related problems in South Asia and their immediate causes are related to distal factors such as illiteracy, poverty, societal and gender inequities. The underlying issues must be understood to develop meaningful and sustainable solutions (7). This will take time, but this is the only way to bring about true change in ethics of international health research.

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## Reflections on Grassroots Democracy: Its Role in Creating Resilient and Sustainable Communities

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### Abstract

This paper will attempt to explain the relationship between disaster and human deprivation and trace the ills that result from it to institutional or policy failures. It then proposes grassroots leadership as a way of bridging the gap that faulty and undemocratic structural mechanisms make. The paper argues that democratic leadership is crucial in creating resilient and sustainable communities.

### Disasters and Human Poverty

The poor are more often than not the main victims during natural and human calamities. The reason is that they live in unsafe places due to their lack of access to land. They migrate to urban centers and live in vulnerable ground due to the lack of job opportunities in rural areas. Majority of poor families often settle in dangerous slum areas that expose them to flooding, monsoon waves, conflagration and other types of calamities.

The long-term effect of disasters like loss of family members and homes are an impediment to human progress and development. Families grieve for months and are unable to cope up with the tragedy. Human well-being is compromised. Disasters are misfortunes that render helpless the poor and leave a deep scar into their already miserable lives.

Is there a way out of this seeming irreparable social and existential malady? Perhaps, the distinction that Isaiah Berlin makes between positive and negative freedom is still very true to this day. Majority of Filipinos are still struggling against the ills of un-freedom, inching his or her way, waging battles here and there, stifled by unjust and unfair systems. Development is nothing but a dream. Development, according to Amartya Sen, is the process of expanding the real freedoms that people enjoy.<sup>43</sup>

Unless we emerge outside of this hell and win our freedom from a life of penury and anguish, that day when a young child can actually celebrate his or her freedom to become the person who has a fair shot in his or her pursuit of happiness might not come.

One obstacle to human development involves something that is structural. Government policies can be anti-poor. This means that those who have less or who have almost nothing in life resign to the stigma of material depravity because of the lack of means. Access to government support is difficult not only due to logistical problems but because of the absence of empowering mechanisms that will connect people with the proper authorities.

Filipinos do not trust their government. They can trust some leaders, especially the popular ones, but as a whole, they find no good in government. Poor Filipinos view their government as a group of users taking advantage of their positions. As such, people simply rate themselves as very poor because they see nothing beyond their poverty. One succumbs to the very ills and monsters that injustice and inequality bring forth.

An elitist political culture can undermine the goals of good governance, rendering laws and policies as useless pieces of paper, including those policies that seek to address better planning in order to mitigate the impact of natural calamities. The rich, who dwell in gated communities and more secure grounds, are seldom the victims. There is some sentiment that the lack of concern for the welfare of the poor seems to reinforce the evil of a hegemonic system.

In 1970, the Jesuit John Carroll writes of the failure of Philippine institutions as more of "unmet expectations". While political stability is always crucial in advancing change, there must be something more fundamental than merely improving the country's immature political culture. Politicians do not just come from a vacuum. They exist in a culture already entrenched in elitism, violence, machinations, and power. This fuels the poverty of the country's majority. Jeffrey Sachs notes that: "The key problem for the poorest countries is that poverty itself can be a trap. When poverty is extreme, the poor do not have the ability – by themselves – to get out of the mess."<sup>44</sup>

<sup>43</sup> Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999), 3.

<sup>44</sup> Jeffrey Sachs, *The End of Poverty* (London: Penguin, 2005), 56.

Sachs mentions lack of capital, poor infrastructure, disease and lack of savings. There must be emphasis, however, on the huge impact of political corruption, abuses of political regimes, human and natural disasters – things that are not merely economic in nature. The above contribute in a huge way to the lack of opportunities for people to provide themselves with the instruments that will enhance their welfare. Political unrest, for instance, displace people. Abusive regimes cause tremendous suffering on the populace because funds intended for programs do not go into the supposed beneficiaries, including those intended for victims of calamities.

### Disasters and Policy Failures

Human deprivation or a person's lack of access to his or her entitlement to the basic goods is due to policy failures.<sup>45</sup> Amartya Sen has shown this in his studies of the Great Bengal famine and others. Policies of exclusion in the economy suggest that market forces dictate the flow of goods. The poor masses are obviously powerless. They are at the receiving end of an unjust system that favors the rich and deprives those who have no resource of a decent life.

While we have elected representatives in our political system, the masses are not really a factor in decision-making processes. Politicians simply serve the ulterior motives of their campaign benefactors. The poor are mere recipients of dole-outs that they do not see the value of their freedoms or capacities for greater creativity or purpose in the whole scheme of things.

Policy failures are most of the time made apparent in the slow response of the government during natural calamities. While it is true that the power of nature is just too overwhelming, faulty or weak institutional mechanisms contribute to the loss of lives and the destruction of property in a huge way.

Lack of leadership exacerbates the problem in as much as human decision-making is something crucial when lives are at risk. If lack of structural and policy coordination present themselves as crucial issues, quality leadership should be paramount. The lack of firmness in leadership decisions, however, contributes to the misery of the people.

As a country, the Philippines has very poor infrastructure. It is therefore not ready for any major weather disturbance. Then after each experience of calamity, plans are set in place but there is always of problem in terms of implementation. Politicians and bureaucrats simply point to the lack of funds as the cause.

To address this huge deficit, cause-oriented groups continue to advocate the empowerment of communities. The academia has contributed its share by sharing vital information pertaining to environmental stewardship. The greater part though is in assisting communities in terms of relief efforts.

The bigger role of the church, schools, universities, NGOs, and others in the background culture is to emphasize the value of resiliency and independence. Unless people learn how to empower themselves at the grassroots level, it will be hard for small communities to recover from a major calamity. The damage done by inaction or one faulty decision at the top is often too huge to overcome. However, empowering the people at the grassroots level can improve the survival rate and expedite the recovery of hard-hit disaster areas.

### Case in Point: Barangay Dalião, Davao City

Democratic leadership anchors itself in the principle of human empowerment. The basic idea herein is that people at

the grassroots level, given enough resources and autonomy, can design and thereby create more sustainable communities at their very level.

Many local governments have been unable to respond immediately to relief and recovery efforts due to the lack of empowerment even at the lowest level of governance. Local leaders depend on powerful interests. In view of this, there is some deficit in terms of effective and efficient governance.

For instance, it is wrong to design bunkhouses that disregard basic considerations of human dignity and well-being. Proper consultations are not only a formality. These empower people and gather ideas that contribute to a holistic decision. The idea therefore is that the lack of consultation is nothing but another symptom of unjust, hegemonic policy structures that undermine the poor.

The Philippines Local Government Code of 1991 states that it is the duty of every Local Government Unit to be at the forefront in disaster preparedness and risk reduction management. Barangay Dalião, a community of 19,000 constituents, is at the forefront of maintaining that role to the core. For instance, quoting from one rationale for a Disaster Preparedness and Risk Reduction Management training that it has sponsored, among others: *"As the smallest unit of the government, the barangay needs to gather its leaders and use its resources in order to protect and promote the safety of the people. Due to the advent of climate change, this is a very useful program that highlights the pro-active stance of the barangay in disaster prevention."*

Leadership at the grassroots level is an integral part in making sustainable communities. People have the instinct to survive but due to the lack of available resource, they are most of the time at a lost. Key to the above is organization and management. The Sangguniang Barangay has fulfilled this role.

From the point of view of organizational management, it has mobilized a core of volunteers who will act as first aid responders in the barangay. Led by Engr. Joseph Dumogho, the Sangguniang Barangay has initiated a process that includes recruitment, training, and monitoring. Some youth volunteer organizations give their time, talent and effort, on the sheer motivation that what they are doing is their contribution to nation building.

An important element of any grassroots project is winning the trust of the people. The Punong Barangay, Rodolfo B. Te, is a kind, compassionate and committed person. He reports for work for eight hours daily to attend to the needs of his constituents. This is crucial because when disaster strikes, committed public servants must lead all efforts to mitigate its impact. On record, the Sangguniang Barangay Minutes report that: *"So far, Barangay Dalião is equipped with a siren that has a span of four kilometers to warn its coastal villages of an impending sea swell. It has bought and provided fire extinguishers to all its Day Care Centers. It has hand-held radios that used by volunteers who make shifts round the clock. It has purchased disaster gears and equipment worth a quarter of a million for its volunteers. It has undergone trainings in first aid, basic water safety and evacuation, fire and earthquake drills, disaster risk reduction and management trainings, and a sustainable coastal communities program. It also has stand-by vehicles for evacuation should the need arise."*

Based on the above, we can say that the Sangguniang Barangay of Dalião, in Davao City, has exercised its independence in providing itself with the necessary tools to mitigate the impact of any disaster and to prepare itself for any calamity. This shows that given the proper motivation, the requisite capability and the commitment toward the welfare of the public, any LGU can be effective and efficient in performing its task.

<sup>45</sup> Amartya Sen, *Poverty and Famines* (Oxford: Oxford University Press, 1981), 78-83.

## Conclusion

Policy failures on the part of leaders cause greater misery and burden to the people during disasters. Wrong leadership decisions worsen the situation of people. We can trace this to the abusive and hegemonic nature of politics in the Philippines. However, one way to address certain policy gaps is by emphasizing the value of grassroots leadership. Empowerment of people is paramount. Undemocratic structural mechanisms cause problems in managing risk reduction programs. Lack of consultations means abuses become commonplace. The paper argues that democratic leadership is crucial since it empowers local leaders in creating resilient and sustainable communities. Local leaders should provide quality leadership since they have the trust of their constituents.

# Breaking the Vicious Cycle of Hate and Revenge: The True-Life Story of 'Wounded Tiger,' A Lesson From History

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## Abstract

Achieving peace between warring factions is almost always an exceedingly difficult task, and unless there is a way of enemies becoming reconciled through mutual forgiveness and acceptance, the vicious cycle of hate and revenge will continue to rear its ugly head. "Wounded Tiger" is a recently released historical novel, soon to be made into a movie, that is based on the true story of two soldiers from opposite sides who thoroughly hated the other side, but who later became close friends and associates. Mitsuo Fuchida was the commander and lead pilot of the Japanese bombing of Pearl Harbor, while Jake DeShazer was a bombardier on the Doolittle Raid that was the initial American response. DeShazer was captured and spent over three years as a prisoner of war, enduring torture and deprivation. The kindness of a young American girl who had been raised in Japan and whose parents had been executed by the Japanese military was instrumental in bringing these two together. It is a fascinating, real-life story that makes a powerful plea to our world today to become peacemakers and to bring reconciliation where there is hatred.

Ever since humans began walking on this planet, human history has been one of strife and conflict. Peace has always been an elusive goal, and even during times of relative peace, that "peace" has been one that is imposed by force or the threat of force. The "Pax Romana" of ancient times was simply a "lack of war," because few were willing and able to challenge overwhelming Roman power. The same could be said about periods of relative peace ever since, including in our present day. Whatever peace the world has been able to temporarily enjoy, it's been this kind of "negative peace" — a lack of war, rather than a "positive peace" built on mutual trust and concern for the other. Now, that kind of "negative peace" is usually much preferable to war, but, of course, that depends on how such "peace" is being enforced and what's

being sacrificed in the process — namely, such things as freedom and human dignity.

I believe that such "positive peace" will always be beyond human effort alone, as we are "fallen creatures" with self-interests that will always be in conflict with the self-interests of at least some other people in a world of limited resources we are forced to compete for. Nevertheless, we are called to work for at least a "semi-positive" peace in which all have a place at the table and mutual understanding and respect is sought after. We are called to be "peace-makers" and not simply "peace-keepers," and we need to listen to each other and support each other in finding the best ways of accomplishing that lofty goal.

What I'd like to do in this brief presentation is to present a model that is based on a true story of reconciliation and forgiveness between avowed enemies. I have lived and worked in Japan for most of my adult life, first coming to Japan in 1968 as a student as part of a program with the East-West Center in Hawaii, and I later returned as a short-term missionary from 1971-74. After going to seminary to get a masters and doctorate in theology, I returned to Japan in 1982, where I've been ever since. I've been studying the language and culture of this nation for 47 years and have developed a particular interest in the history of the people of Japan, where they came from and how their culture developed through interactions with other cultures. While not directly related to the subject of this presentation, it is interesting to note that a great deal of evidence points to strong influences from even the biblical lands of ancient Israel being transferred along the "Silk Road" to ancient Japan to become integral parts of its native culture and religious worldview. As with all nations, that cultural worldview has played a primary role in the historical outworking of the struggle between war and peace, justice and mercy.

Sixty-nine years ago, the world was just emerging from WWII, and Japan was a devastated country trying to get back on its feet under the occupying Allied Forces led by the United States. How it got into that state of affairs is the theme of this novel called "*Wounded Tiger*," the story of two soldiers from opposing sides finally realizing that there must be a better way and then dedicating their lives in a joint effort to pursue peace and reconciliation. Those two were Mitsuo Fuchida, who was the commander and lead pilot of the attack on Pearl Harbor, and Jacob DeShazer, who was a bombardier on the Doolittle Raid a few months later to bomb Japan in response to that attack. The title of the novel, "*Wounded Tiger*," refers to Fuchida and the code he used to signal to the Japanese fleet that they had been successful in initiating the surprise attack on Pearl Harbor, "Tora! Tora! Tora!" or "Tiger! Tiger! Tiger!" Indeed, Fuchida would become that "Wounded Tiger."

I have a personal interest in this project, as I am part of a team translating this fascinating novel into Japanese for release in early 2015. We are just now finishing up the first draft of the Japanese version. My main task is checking to see that the translation is faithful to the original, and I am also advising the author, Martin Bennett, concerning the fine points of Japanese culture to make sure the novel is true to the cultural and historical facts. While the author has done an admirable job in creating dialogs and filling in details of the story that are not recorded in the existent records, a few "Americanisms" and other minor errors did find their way into the original book, and these are also being corrected.

The book begins by giving some of the background that led up to Japan's aggressive expansionism that brought on the war. After Japan opened up to the outside world after some 250 years of self-imposed isolation, it embarked on a path of trying to technologically catch up with the West. The slogan of the day was "wakon yōsai," or "Japanese spirit, western technology." Not only did Japan feel the urgent need to adopt

western technology, they also felt they had a right to emulate western colonialism as well. One has to admit that they were amazingly successful at both of these endeavors. Within a generation of emerging from the dark ages of feudalism, they were building an empire, which they euphemistically called the "Greater East Asia Co-Prosperty Sphere."

Viewed from our present vantage point, we are naturally quite critical of the ethnocentric assumptions and rationalizations that lay behind these actions, but the author takes pains to understand the Japanese mindset of that day within their own context. This, of course, in no way justifies what they did, but recognizing and addressing legitimate aspirations and grievances are integral to the peace-making process.

When it comes to the story of "*Wounded Tiger*," there are two aspects of this clash of cultures that play particularly prominent roles. The first involves that of national pride. While Japan had gained considerable prestige by defeating Russia in a short war in 1905, she still was not considered an equal player on the world stage by the western powers. One of the early scenes in the book takes place in San Francisco Harbor in 1925, where Fuchida and his fellow Japanese soldiers feel humiliated by the Americans. At that time, Japan and the US were still allies from WWI, and so the Japanese were on a training mission to the US. The storyline includes an episode where US sailors make fun of the Japanese and their older ship, which was dwarfed by the new American battleships.

Feelings of superiority of one people over another has historically been a major cause of strife between nations, and Japan was both on the receiving end and the giving end during this period leading up to WWII. The western powers clearly perceived themselves as superior to Japan (not to mention a whole host of other countries), and they clearly showed it by the way they treated Japan. But, Japan did the same thing in its treatment of other Asian countries, and even today, this issue is not just something out of ancient history. It's still very much a live issue in our world today as well.

The second aspect brought out in the book is the concept of revenge. Seeking revenge against someone you feel has wronged you is as old as human history and is something you will find in all cultures. However, the various cultural worldviews that exist in our world today have different ways of viewing and trying to control this universal urge. The cultural and religious worldview dominant in Japan during this period was one in which revenge was glorified and thought of as a virtue rather than a vice. The famous story of the 47 "Rōnin" Warriors perhaps exemplifies this more than anything else. While this tale of revenge was no doubt embellished over the years, it is nevertheless based in true historical events. The actual events took place between 1701 and 1703 in the western calendar, and the story developed into what became in effect the "national legend." It was taught in schools in a way designed to instill in the Japanese the concepts of absolute loyalty and honor.

To give you a brief outline of what the story is about, the 47 samurai warriors were the loyal servants of their "daimyō" lord in the Akō fiefdom, which is an area not far to the west of Kōbe, where I happen to live today. Their daimyō, Asano, had been forced to commit ritual suicide by the leaders in Edo for attacking another daimyō, Kira, due to being insulted so badly by him. Asano and his clan were thus disgraced, and his loyal retainers were forbidden by the shogunate to take revenge. However, the samurai code of honor required them to avenge the death of the master, and thus they were in a fundamental conflict of values. Forty-seven of Asano's retainers made a pact among themselves to conspire in an elaborate plot to take revenge on Kira. It involved pretending to live a life of profligate abandonment designed to convince

Kira and his spies that they were dishonorable former samurai who were no longer a threat, and when the time was right, well over a year later, they launched a surprise attack and killed Kira, even though they knew they would be sentenced to death for doing so. Their bravery and dedication to honor became the stuff of legend, and their example was touted as the ideal for all Japanese to aspired to. Needless to say, Fuchida and his colleagues were raised on this stuff, and so it was certainly in the background leading up to their surprise attack at Pearl Harbor.

In addition to the intertwined threads of the lives of Fuchida and DeShazer, there is also one other strand that involves a third subplot that is integral to the story of how these two wounded warriors came together with a shared purpose and vision for peace and reconciliation. James and Charma Covell had arrived in Japan as missionaries in 1920, and they appear in the novel in the aftermath of the 1923 Great Kanto Earthquake that devastated Tokyo and Yokohama. These three strands of the story alternate with key episodes from each leading up to what happened during and immediately following the war. The Covells do their best to lobby for the cause of peace, but are forced by circumstances to evacuate to the Philippines, where they thought they could safely wait out the war and return to Japan to help rebuild.

The Japanese, however, were intent on expanding their empire and procuring the natural resources they felt they were being denied by the western powers, and so they soon overwhelmed the defenses of the Philippines and began a brutal occupation that caught the Covells in a bind. Their children had already gone to the US for schooling, but Jimmy and Charma had decided to serve the Filipino people while they waited for the war to end. With their routes of escape cut off, they had no choice but to flee into the interior mountains with a small group of other foreigners. They were cared for by the locals, and they founded a small community they called "Hopevale," hoping to merely stay out of sight and harm's way. The Japanese military, however, was intent on rooting out the remaining guerilla fighters, and the residents of Hopevale were caught by the relentless search. Even though it was clear that these people were no threat, the order came down for them to be killed, and so they were executed in what became known as the "Hopevale massacre."

This is where their daughter, Peggy, comes into the picture. She had just graduated from college when she learned of her parents' death. While that was understandably a huge shock, she nevertheless decided to go to work at a prison camp where Japanese prisoners-of-war were being held. Having been born and raised in Japan, she was fluent in the language, and so she was like an angel to those Japanese prisoners, as she did everything she could to help them. Their treatment in these holding camps in America was vastly different from what they thought American and other Allied prisoners must be receiving in Japanese prisons, and when they found out what had happened to Peggy's parents at the hands of their fellow soldiers, her kindness seemed all the more incomprehensible to them.

Among those prisoners in Japanese prisons were the eight Doolittle Raiders that had been captured by Japanese soldiers in China. All of them received severe treatment and even torture, with three of them eventually being executed and a fourth dying of exposure. DeShazer himself came close to death from the poor treatment, but his life was spared, and he eventually returned to a hero's welcome in the US. His life, however, had already been transformed by his experience in a most unexpected way. You would think that he would have been bitter against his captors, wishing to see them brought to justice and sentenced to severe punishment and even execution. But that is not what happened.

When the Japanese leadership realized that it was important to keep the remaining Doolittle Raiders alive, the prison guards were ordered to improve their treatment, which included providing some reading materials for the prisoners. Among those English books that became available was a Bible, something that DeShazer had only a superficial knowledge of. He read it with a skeptical eye, thinking that talk of forgiving your enemies and the like was just a pipedream. But the more he interacted with the person of Jesus of Nazareth, the more the message of the Bible began to sink in and speak to him in his desperate situation. As he prayed to God, the hatred he felt for his captors began to melt away, and he began to realize that his guards were every bit as much in prison as he was. He began to take an interest in their lives, learning what Japanese phrases he could and greeting them with a smile. Needless to say, this change in attitude took them by surprise, and they began to treat the prisoners less harshly. It seemed to DeShazer that he had found a new way, and after gaining his freedom again, he began training to come back to Japan to live among the Japanese and promote reconciliation.

Meanwhile, as the war ended, Fuchida felt lost and empty. He was mystified as to why his life had been spared numerous times when, like most everyone else he had been with, he should have been killed. He then met the Japanese soldiers who had been in the American prison camp and had been befriended by Peggy Covell. Their testimony in itself seemed so incomprehensible to him, but then as he was confronted with the witness of DeShazer, something began to click. He finally realized that the cycle of revenge and hatred was what had led his country to destruction and that the only way to peace was to break that cycle through forgiveness and reconciliation.

This is still a lesson that our world so desperately needs to hear and take to heart. I am reminded of the famous quote by Mahatma Gandhi, *"An eye for an eye only ends up making the whole world blind."* Gandhi, of course, was referring to a particular code of conduct that was given to the people of Israel by God speaking through Moses. That code of conduct that included *"an eye for an eye and a tooth for a tooth"* was meant as fair and just punishment for crimes and was certainly a significant leap forward from the kind of exaggerated revenge that was the norm of the societies around them. But, of course, Gandhi was emulating Jesus in his "Sermon on the Mount," where Jesus said, "You have heard that it was said, 'An eye for an eye and a tooth for a tooth, but I say to you...' And then he lists several examples of actions that go against our desire to take revenge. He continued right after that by saying, 'You have heard that it was said, 'You shall love your neighbor and hate your enemy.' But I say to you, love your enemy and pray for those who persecute you..."

As I bring my presentation to a conclusion, I want to read for you a brief excerpt from the book. It is of Jake DeShazer talking to a group of people in Nagoya, the city near where he had dropped his plane's bombs to destroy an oil refinery. Among the crowd was a woman named Amayo Fujimoto. Her fiancé, Kenji Saito, worked at that refinery and was one of those killed, and she felt that Jake was the murderer. She had come there for revenge and was hiding a knife she intended to stab him with when the chance came. Reading from the book,

Amayo had no concern or interest in what Jake had to say. His Japanese wasn't very good, but she could understand what he was saying.

*"In one of the jail cells, we were packed in like animals and I remember watching the guards beat a Chinese woman. She hadn't done anything wrong. They beat her badly and I had to ask myself, why were the Japanese so full of evil and*

*hatred?"*

*Of all the people in the world to say such a thing, Amayo thought. Who was he to judge others, after what he'd done? He was a murderer. She tried to hide her scowl as she squeezed the knife tightly in her fist inside her purse.*

*Jake put his hand onto the microphone stand. "I attacked Japan for revenge. That's what I wanted. That's what every American wanted. I hated the Japanese for what they did at Pearl Harbor. And when I was tortured and when one of my best friends died because of the Japanese, I was filled with hatred, crazy with hatred. All I wanted was the chance to kill. I wanted revenge."*

Amayo looked down at the floor, somewhat shocked. She didn't like the idea of being anything like this disgusting man.

*"But as I thought, I faced a harder question: why was I so full of evil and hatred? Even when I made up my mind not to shoot at civilians from my plane, I was so angry – I did it anyway. I knew right from wrong; I just didn't have the power to do it. As I sat in prison, I knew there had to be more to life than hatred and revenge and killing. Where does it end? Where?!"*

He finished his sentence looking straight at Amayo. Fear shot through her as she averted her eyes. Did he know why she was there? How could he? Tense, she was curiously captivated.

*"They passed around books to read in prison. One day a guard gave me a Bible. I read and read, looking for some answers from God. I read about another man who was insulted and tortured and no one cared. People thought he was getting what he deserved. They didn't realize who he really was. But it turned out that he chose to be tortured and killed so we could have a chance to be free from the power of hatred. I wanted that. I knew I needed that. It wasn't the evil around me I needed to be rescued from, it was from the evil inside me."*

Amayo's face softened as her eyes looked past Jake to the bolts of fabric on the racks behind him.

*"He made this great sacrifice because of a great love – for me, for you."*

She glanced up at Jake as his eyes scanned the audience.

*"In that dark jail cell, I was set free from the prison of hatred, and a deep love for the Japanese people began to grow in my heart. I found that with my new heart, God was giving me new eyes. I looked at the guards who had treated my friends and me with such cruelty, and I found my hatred for them had turned into love ... a real love that brings me here to you today. That's why I've come to Japan and have chosen to live here with my family. I come in the name of peace and in the name of love."*

Tears formed in Amayo's eyes as she stared at the floor.

Amayo had come there for revenge, but Jake's testimony as to how his own hatred and desire for revenge had been taken away by God and replaced with love and a desire for reconciliation moved her so that she too eventually became free. They even became close friends. And as the book portrays, Jake DeShazer and Mitsuo Fuchida — two sworn enemies whose own actions led to the deaths of hundreds and maybe even thousands of people, including civilians — became colleagues in promoting peace and reconciliation not only between their respective countries but also, to all who would listen, reconciliation with God.

While they have both gone to their eternal reward long ago, their witness speaks to our world today and challenges us all to become peace-makers in whatever context we find ourselves in. They exemplified the well-known prayer of St. Francis of Assisi, which the Covell family often referred to and with which I would like to close:

*Lord, make me an instrument of your peace.  
Where there is hatred, let me sow love.*

Where there is injury, pardon. Where there is doubt, faith.  
 Where there is despair, hope. Where there is darkness,  
 light.  
 And where there is sadness, joy.  
 O Divine Master, grant that I may not so much seek to be  
 consoled as to console;  
 To be understood, as to understand; to be loved, as to love.  
 For it is in giving that we receive.  
 It is in pardoning that we are pardoned.  
 And it is in dying that we are born to eternal life.

Reference: T. Martin Bennet, *Wounded Tiger*, 2014.

## An Analysis on the Intentionality and a Philosophical Disclosure on Ethics and Morality: Two Filicide cases as Examples of Criminal Behaviour of Persons Diagnosed with Mental Illness

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### Abstract

In this article, two case examples of criminal behaviour in the USA are analyzed. There is a discussion on intentionality. A brief introduction to Filicide is made. Note that in respects, the impressions of trials forecasted by the media have great influence, fortifying public impression of the law rather than communication with the legal system *per se*. A disclosure on philosophical basis, together with Kant's theories, is provided. Because Kant passed away before the notion of intentionality was introduced, what is new in this article to add in knowledge is to correlate Kant's theories with these two perpetrators' behaviour. A reflection with a practical application of Kant's theories constitutes the core component of theory in this article. The reflection includes analyses of our own lives in order to re-assess our attitude in dealing with each other and with youngsters.

The potential for criminality should be identified early in patient care. A prompt detection should be enacted to identify the potential for criminal violence. Appropriate staffing and protective measure should be enacted. A thoughtful team approach by both medical practitioners and their institutions, involving clinicians, non-clinicians, philosophers and scientists should be pursued. The conclusion stresses the importance of an early identification of a person diagnosed with mental illness. Such identification should be preceded by a well thought out crisis-recognition-process, appropriate staffing and secured protective measures.

**Key words:** Criminal behaviour, Ethics, Kant, Morality, Philosophical disclosure, a person diagnosed with mental illness

### Introduction

Two U.S. crime cases are presented as examples. These two crimes of filicide are analyzed. They demonstrate how two persons acted in terms of the function of their respective mind. The cases are used as a basis for further discussion.

Philosophical positions that pertain to the discussion (such as Dennett's and Brenato's) are offered with attention theoretical implications. The philosophical discourse, predominantly following Kantian theories is provided. The brief review of Kantian writing, particularly his *categorical imperatives* and *theory of the mind* are employed to facilitate an understanding of the issues and their variables (factors). To accomplish this aim, the author uses a couple of related topics (notable for their interconnection and their respectively selected arrangement) and their probable answers, to reinforce the argument.

### Related work

1] A brief introduction of the relationship between the mind and brain

Most people perceive ideas as emotions and intangible feelings. Can it be assumed that one human being's idea (e.g. "goodwill") or category (e.g. "the ability to classify") is understood correctly by another? Many philosophers will challenge the assumption that the human mind equates its ideas.

In 1637 Rene Descartes originally illustrated certain knowledge. Descartes argued, as an omnipotent negative tried to deceive him into thinking that he existed when he actually did not. Descartes would have to exist in order to be deceived. Hence, when he thought, he existed. Moreover, Descartes argued, "I think, therefore, I am." This expresses intuition, not reason, and it is thus unquestionable. The above, as well, explains the difference between the mind and the intuition, that is, the immediate direct idea.

On the other hand, ideas are diverse when their comprehension is varied. Diverse ideas can be compatible or not. Human ideas are diverse. The bottom line is that human ideas, using the appropriate techniques, seem that it can be superficially quantified, calculated, classified and measured. Definite boundaries of the human idea appear to 'exist'.

The territory of ideas is "not infinite." The quantity of ideas that human beings possess appears to be 'finite'. The idea of human mind appears to be the collective aspects of intellect and consciousness, which is manifested in combination of thought, perception, emotion, will, and imagination.

In fact, the conscious and self-conscious functions of the brain may be collectively referred to as *the mind*. The mind is referred as the corporate aspects of intellect and consciousness, which are manifested in some combination of thought, perception, emotion, will, and imagination as aforesaid. Nevertheless, there still are two key arguments existing: 1] the human mind is not equivalent to the human ideas, while the mind mapping and brain mapping are not the same. 2] With the aforementioned, almost no one is absolutely certain on how the mind and the brain are related with each other. Are there not the body-brain, brain-mind, and mind-matter dualities in an interfacing triad? These questions appear to be dealt with philosophy, culture, society and bioethics.

Philosophers are very interested in whether the "mind" (a la Kant) could indeed be "categorized". Whereas most of them would agree that the mind does "categorize", but they do not agree on what constitutes the most basic categories.

On the other hand Galen Strawson, in his book entitled *Mental Reality* (Strawson, 1992), argues that the answer to the characteristic features of the mental reality is the conscious experience, but not intellect, emblematic content, or intentionality (Earle, 1983) as it is generally understood. Strawson further argues that much of the contemporary philosophy of the mind is still in a state of confusion due to positivism and its numerous progenies. This author agrees that we should consider to the nature of a mind, unwarranted primacy to the non-mental phenomena, publicly observable

phenomena, and behavioral phenomena. Strawson has made such a careful, sensitive and imaginative treatment of some of the main conceptual issues in methods for the study of the mind's nature.

Is there any relationship between the mind and the behavior? While most thinkers, and/or philosophers agree that there are other relationships between the mind and the behavior, and between the behavior and the culture, the problem is that most of the thinkers, and/or philosophers may not agree as to how these relationships could be fully described. Some thinkers consider the mind as essentially Tabular Rasa - a young mind not yet affected by the experience and is merely a repository of external effects on the mind. This view is shared by John Locke (Breathiest, F. 2005, Williams, A. 2005, and Wood, 2005), whose theory of knowledge asserts that the human mind is, from time of birth, a "blank slate" without any regulatory mechanism for processing data, both intrinsic and extrinsic. Subsequently, accumulated data are processed through the formation and imprinting of the human sensory experience. This notion supports an essential Lockean empiricism. Therefore, to empiricists, the mind is a Tabula rasa -- it is as if the mind is being written when we learn or experience the world in us and around us. Conversely, for the rationalists, the mind is like a computer, that is, the hardware, which already has some functions (innate ideas) before installation, downloading, and uploading of the software (experiences, specific knowledge, etc). For example, just as the premise of the "pedagogical century" in the 18<sup>th</sup> century, it regards the young individual as a Tabula rasa (Breithaupt, F, 2005). Moreover, in recent time, Tabula rasa appears, as well, featured in Sigmund Freud's psychoanalysis (Sheth 2005, Western 1998, and Greer, 2002).

### **The Body-Mind Problem: The relationship between our conscious experience (or Our Mind) and our bodies**

Griffin performs an attractive dissection on the mind-body problem (Griffin, 2000, 137-178), and firmly declares that the mind-body problem is the vital issue for modern philosophy. In order to solve this problem, we must first well explain the relationship between our conscious experience (or our mind) and our bodies. The fundamental component of realism is the "actual occasion", which has both spatial and chronological factors. Unfortunately our inner experiences have only chronological, but not spatial nature. Process philosophers rationalize their assertion on the existential premises that a human being can only actually appreciate the components constituting the material globe by similarity with our own experience, which become acquainted from within ourselves. In order to solve this problem, Griffin states the following, "*The apparent difference in kind between our experience, or our 'mind', and the entities comprising our bodies is an illusion, resulting from the fact that we know them in two different ways: we know our minds from within, by identity, whereas in sensory perception of our bodies we know them from without,*" (Griffin, 2000, p.169).

Once we understand this, there is no reason to assume that our minds and our bodies are different in type. In the previously mentioned context, the link between our bodies and the mind is established.

While the idea that the individual can be altered remains, the power to affect this kind of alteration is now assigned merely to society, and is no longer attributed to the individual itself. Further, the power to alter has been extended to the totality of human nature. Under such a notion, one can, almost without limitation, mold the individual by changing his environment first, and then his sensory experience.

### 2] A brief review of the related research of FILICIDE

In fact, few types of crime are as appalling—as filicide, in which a parent kills one or more of his or her children. Some people cannot picture a penalty severe enough for a parent who would commit such an act. Others find that that it is so unintelligible and they have no question about the parent's being insane at the time of committing the crime.

Forensic psychiatrist Phillip Resnick has developed a classification system for filicide based on the parent's motive. He describes the various types of filicide in his classification system and the likelihood of a successful insanity-defense in each (Resnick, 1969).

He initially defines five types of filicide. In "altruistic" filicide a parent (almost always a mother in this category) kills her child or children as a form of suicide. "*These mothers see their children as a form of an extension of themselves, they do not want to leave a child motherless in a 'cruel' world as seen through their depressed eyes.*"

On the other hand, in the second type of altruistic filicide a child is killed in order to end his or her real or imagined suffering. "*These mothers may project their own unacceptable symptoms onto the child,*" Resnick said, "*In 'acutely psychotic' filicide, hallucinations, epilepsy, or delirium drives a parent to kill a child. Psychiatric evaluators will not find a 'comprehensible motive' in this type of killing*" (according to Resnick).

Resnick's third category involves "unwanted child" filicide, which includes homicides in which a parent no longer wants the child. "Fatal maltreatment" filicides fall into two types, he suggests. In one—the most common motive for child homicide in the United States—children die as the result of beating, and homicide is not the objective. The other type, which is extremely rare, he noted, occurs as the result of Munchausen syndrome by proxy. (Parnell 1997). His fifth filicide motivation is "spouse revenge." This category includes cases in which parents murder their children to make their spouse suffer, most often in revenge for infidelity. In the following year, 1970, he added a sixth category, Neonaticide. (Resnick, 1970).

Noticeably, in the subset of altruistic filicide in which the killing is in fact an extended suicide attempt, severe depression may have deformed thinking "*so that the mother believes her children will be better off in heaven with her...*" This is akin to the explanation that Andrea Yates, one of the two perpetrators discussed in this paper, gave for murdering her own children. (Resnick was also an expert witness for the defense in that case.) The mother often believes she is doing what is "morally right for her child" In altruistic filicide cases, the success of an insanity plea hinges in large part on whether the insanity standard uses the word "appreciate" or "know" to characterize the parent's understanding of the wrongfulness to kill.

Conversely, in the category of acutely psychotic filicide, "*the parent may not know the nature and quality of the act,*" if it takes place during an epileptic seizure or delirium, according to Resnick. In evaluating a person who appears to fall into this category, evaluators "must always consider malingering," Resnick stated. Command hallucinations, such as obeying orders to kill from God or Satan, are involved.

That being mentioned, it is in this author's opinion that, under legal circumstances, intentionality must have a broad view of human responsibility. The law may be neutral (open to debate), BUT its interpretation is not. On the other hand, it is worthwhile to mention that Capital Jury Project is a continuing program of research on the decision-making of capital jurors that was initiated in 1991 by a consortium of university-based researchers with support from the National Science Foundation (NSF). Using data from the NSF, Scott E.



Sundby in his article takes a close observation within the jury room at the process by which capital juries arrive an undisputed verdict at the penalty phase. The legal process shows to be an attractive one. In his article, Scott E. Sundby used the closing argument in the death penalty case of Susan Smith. (Sundby, SE)

Note Susan Smith was the mother, killed her two children by driving them into a lake and then trying to cast blame on a unidentified African American man. In his own article, Scott E. Sundby concludes by examining how a closing argument may affect outcomes of that case.

In fact, when Katheryn Russell-Brown heard Susan Smith's tale that she had been carjacked by a young African American man, she was skeptical. In 1994, Smith told police that while stopped at a traffic signal, she was carjacked by an African American man who drove off with her infant and toddler boys in the back seat. 'Where would an African American man go with two small white children?' (Russell-Brown, K., 2008)

In reality, time-honored law is been viewed as a branch of learning and on approach of arranging information and a solution in which legality and confidence are developed. The law, we are informed, loves impartiality - not engagement. However in these occasions, the work of the law applies not only in the familiar land of the official, ritualized space of the courthouse building; it is at present resembling as public sight - a type of document-drama in which dissimilar media impressions, both print and visual, describing how the law works. In respects, the impressions of trials forecasted by the media have great influence, fortifying public impression of the law rather than communication with the legal system *per se*. Media demonstrations not only mold public impression of the law; they create realism in this area which public dialogue takes place. Too frequently, especially through well-liked media, images and illustrations are maneuvered to modify. These pictures frequently speak in voices nosier and in more forcing tones than any ordinary daily dialogue. (Harris, C 2006, Spitz, D.J. (2006); Grace, N.)

Such an effect is more distinct in the case of highly contentious and popular trials, such as that in the case of Susan Smith.

As a matter of fact, the law works as 'a kind of meta-narrative about the appropriate or sanctioned relations of power between groups and their individual members. Legal storytelling is not only directed to nor confined within the courtroom. The images and identities constructed through legal narratives are affirmed or rejected in the larger social context as well. To the extent that these narratives confound rather than illuminate, giving us distorted or partial images of our realities, and we the law as constructed by and projected through the media does not fulfill a critical function. As one writer notes, "*insofar as law serves this expressive function for society, it fails to meet its goals when the conversation it generates bears false witness to the experience it seeks to evaluate.*" We are left with cultural narratives - often stereotypes - that tell us little more than what we already believe.' (Harris, C)

That introduced and briefly reviewed, allow us now to concentrate on the two exemplified cases as follow.

### Case Presentations

The following case presentations are stemmed from books and the media.

#### Case example 1

The first case is that of Ms. Andrea Yates, a married woman with four children. She had suffered from psychiatric illness prior to drowning her children. She was charged with first-degree murder but found innocent due to insanity.

Andrea Yates (born Andrea Pia Kennedy July 2, 1964) is a former Houston, Texas resident who killed her five young children on June 20, 2001 by drowning them in the bathtub in her house. She had been suffering for years with very severe postpartum depression and psychosis. Her case placed the M'Naghten Rules, a legal test for sanity, under close public scrutiny in the United States. Yates's 2002 conviction of capital murder and sentence to life in prison with the possibility of parole after 40 years was later overturned on appeal.

Andrea Yates' retrial for the murder of her five children (in 2001) began on 26 June 2006 in the U S. A retrial was ordered because one of the prosecution's witnesses lied on the stand. Her defense team argued insanity. Ms. Yates was convicted of drowning her five children in order to save them from "being tormented by Satan." (Bienstock 2003)

On July 26, 2006, a Texas jury found that Yates was not guilty by reason of insanity. She was consequently committed by the court to the North Texas State Hospital, Vernon Campus, a high-security mental health facility in Vernon, Texas. In January 2007, Yates was moved to a low security state mental hospital in Kerrville, Texas.

#### Case example 2

The other case was that of Ms. Susan Smith, who also drowned her children (Rekers 1995). Her court case decision was very different. She was found guilty of first-degree murder. Smith drowned her children on 25 October 1994 after her boy friend rejected her. She killed her two boys, Michael, 3, and Alex, 14 months by driving her automobile into a lake while the children slept in their car seats. She was sentenced to life in prison.

#### A brief analysis of these two cases

These two cases resulted in the death of seven children by drowning. Yet the working of the mind determined the guilt or innocence as the laws may be applied to each case respectively. Nevertheless, the state of mind of these two women at and/or immediately prior to the death of either children was different.

First of all, was Andrea Yates guilty of murdering? The gradation of her guilt, however, must depend on the circumstances. A verdict of not guilty is not the ethical way to deal with murder. Some believe that our justice system has failed. Perhaps, first-degree murder is too much a punishment in the Yates case. Some feel that the justice system failed on several counts. First, it failed to take into consideration of the gradation of her guilt. Second, it also failed in terms of technicalities. Perhaps some lawyers and judges are frustrated with technicalities of the justice system, as peoples considered normal should be responsible for their own intentions. But as aforementioned, Ms. Yates has been diagnosed as mentally ill.

Some may argue that the lack of intentionality is brought by the context - the law. The law is supposed to be objective while ascriptions of intentionality are subjective. The law (unlike science) does not apply to predictions, only in events.

Ms. Andrea Yates was a married woman with four children. She had suffered from psychiatric illness prior to murdering her children by drowning them. She was charged with first-degree murder but found innocent due to insanity.

Ms. Susan Smith drowned her children on 25 October 1994 after her boy-friend rejected her. She killed her two boys by driving her automobile into a lake while the children slept in their car seats.

## Discussion

### Intentionality

Intentionality holds the human mind responsible. As aforementioned, intentionality must have a bold view of human responsibility. It is important to note at this point, that the law may be neutral (open to debate), BUT its interpretation is not.

Intentionality in fact is the property of mental states, something outside the mind; the word in English for intentionality is "aboutness". Aboutness is a term used in library and information science, linguistics, philosophy of language, and philosophy of mind. Among them, in philosophy it has been often considered synonymous with intentionality, perhaps since John Searle. Philosophers of mind and psychologists are both concerned. For instances, there are work with the psychological or intentional aboutness (John Searle, 1983) and language of thought. (Jerry Fodor, 1975) (Goodman, N. (1961) (Putnam, H. (1958)

As to the aboutness of the two perpetrators in the two examples reported and discussed as aforementioned in this article, at a first glance, it appears that both Andrea Yates and Susan Smith 'intentionally' chose to harm others. By not taking intentionality seriously, people appear not take ethics gravely.

Nevertheless, there appears to be a connection between aboutness and epistemology. Noticeably, epistemology *per se* is very much about both objectivity and subjectivity.

That discussed, as Kant passed away before the notion of intentionality was introduced, no direct relation between Kantian theory and the theory of intentionality can be directly addressed. It appears that possible indirect links should be an object of a separate study other than that of this one.

In this article, it is introduced that knowledge is required to correlate part of Kant's theories for its application to these two perpetrators' behavior discussed. It is presented in the latter sections.

According to Aquinas and Freeman respectively, on the philosophical sense of Intentionality, it appears to be merely a special case of features of mental states; but in a profound way, the mental states and intentionality appear to be related to each other. (Aquinas 1266/1945, Freeman 1999).

Dennett believes that intentionality is ascribed to almost anything (Dennett, 1981, 1996). In contrast, Searle suggests that intentionality really exists (Searle, 1998). This does not exclude the possibility that we may sometimes ascribe it erroneously. For example, if one assumes that some objects are living, and observes a mechanical cat, he may erroneously classify it as a living being. From Dennett's point of view, one could talk about "live stance", that is, there is no life as such but only a stance to it. Most people, (including Dennett himself) believe that there are living object in reality. Likewise, Searle has even suggested in the reality of intentionality.

Nevertheless, it is unfortunate that the two words, intention and intentionality, are so similar in English. Brentano introduced the term intentionality directly from Latin (Brenato 1995), and Dennett devotes many pages to the characteristic differences among the following THREE terms: intention, intentionality, and, finally, intensionality.

The last term, intensionality, is merely a linguistic one meaning those aspects of interpretation open for discussion. The term, intensionality, sheds little lights on the differentiations between the two perpetrators of killing in the U S as discussed.

Jordan and Ghin claim that intentionality is a property of all living beings, including prokaryocytes (Jordan and Ghin, 2007). Hence, one can hardly observe a legal application of the intentionality theory. On the contrary, as the definition of intentionality concerns "mental states", and can be applied for

any discipline working with the notion of mental states, e.g., psychology, philosophy, and/or psychiatry.

Though Dennett clearly distinguishes between intentionality and intention, he implies intentionality instead of intention in his "Intentional stance" theory. For example, if we say that "my computer is tired", we don't mean to accuse the computer in a court, we don't imply the computer's responsibility and choice. In fact, we would assume the responsibility of the programmer, that is, a human person.

According to Dennett, there is nothing mysterious about the intentions and conscious feelings toward others. We sometimes assign feelings or intentions to non-human things. Dennett recommends that we might say, for example, our personal computer is a bit tired today. At the end of the day, our view of human beings is just an adaptation - a much more complex adaptation. Thus, why do we hesitate to assign human quality to non-human things? In that passage Dennett clearly means INTENTIONS, NOT INTENTIONALITY. Further, he agrees that ascription of intentions to non-human things is allegorical, or metaphorical. He proceeds AS IF he assumes that there is no significant difference between a direct meaning of a word (e.g., his coat is black) and a metaphorical using (e.g., his conscience appears to be in darkness).

One might not completely agree with the aforementioned Dennett's statement, and might even challenge it as a straw-man's argument. The issue appears to arise from a suggestion that humans tend to ascribe intentions. Two examples follow. 1-] People who are paranoid ascribe intentions to other people (and things) in completely irrational ways, and 2-] Conspiracy theorists ascribe intentions in the form of conspiracy. The former, paranoid people, and the latter, conspiracy theorists, do not simply apply intentions to other people. Indeed, paranoid patient understands very well that everybody (including himself) possesses intentions, but that at the same time, everybody (including himself) makes numerous unintentional acts like coughing, speaking sometimes louder, sometimes less loud, etc. However, when one is within his delusional thinking, he denies that other people's actions can be unintentional sometime too. In other words, what makes paranoia is not ascribing intentions but denying non-intentional actions.

In addition, there is an example supporting a person's disagreement with an assertion that humans tend not to ascribe intention to other humans. One would call such an argument a 'straw man' - in order to develop a scholar's book/argument to argue, but really not a thing worthy to argue about, at least in this author's opinion.

That said, general consensus on Ms. Andrea Yates' case is that any mother would have to be in a delusional/psychotic state in order to kill her own children, and she would have been unable to tell the difference between right and wrong, morally, legally, negligently, and so on. Hence, the 'bipolar made me do it' syndrome appeared to be a test of the current public attitudes on mental illness.

In a contrast, ancient Egyptian sources assumed the ability of humans to free choice (Karenka, 2004). But this ability is not, in contrast to intentionality, a property of ALL living beings (as Jordan and Ghin, as well, Jordan believe), of ALL mental states (as Brentano believed) nor the property of MOST mental states (as Dennett, Searle and most contemporary authors believe). It is limited to a very small circle of living beings that are able to stop their immediate activity in the world (i.e., behaviour) and to "play forward" this behaviour as a symbolic game. This playing-forward is human reflexive thinking, and the small circle includes some adults.

How EXACTLY should the line be drawn between those who are able to have this form of covert behaviour (and, hence, are guilty when they broke a law), and those who are

not (and, hence, "insane"), is open to debate. An issue such as this one is largely a psychiatric issue, which should not be mixed up with philosophical issues, just as the diagnosis of coma – loss of consciousness, is a medical issue, and not a philosophical one.

### **An emphasis on the writings of Immanuel Kant's synthesis**

In this discussion, there is philosophical disclosure with an emphasis on the writings of Immanuel Kant's synthesis. Kant aspires to create a grand synthesis between sense knowledge and intellectual knowledge, which is in turn between the human's theoretical and practical activities. The transcendentalism is Kant's method to achieve this goal. In this endeavor, Kant attains remarkable outcome: the harmony of human cognition, its requirement and universality, the importance of the *a priori*, the absoluteness of the moral imperative, the transcendental issues, etc.

Kant's achievement and contribution to issues involved in this article merit our review. A brief review may help us understand the issues discussed in this article, and to explain the factors involved. Kant's contribution are: morality, ethics, good will, obligation, autonomy, respect, persuasion on the principle, justice, on physicians' treating people as an aim for physicians themselves, etc. Fundamentally, based on pure reason, Kant's *categorical Imperative* leads us to consider what is to be accomplished.

"Categorical" is solely manifested by *reason*, and nothing else. To follow this imperative, Kant advised us to act according to universal laws. Since we make decisions voluntarily and independently, we acknowledge and accept the outcome dominated by pure reason; with our autonomy the decision we make is the best that we can (Ameriks 2001: 460–466).

Kant reminds us that we are rational beings. Kant further warns us that we are governed by the laws of reason, not by regulation of nature. Accordingly, we can yearn for the world being a location of dissimilar beings gathering and living together, and following regulations and dealing with each other peacefully (Kant, I., 1993: 117).

Thus, according to Kant, we respect the autonomy of the patient, including persons diagnosed with a mental illness, and their relatives. We must pay sufficient attention to how behaviour of the persons diagnosed with mental illness affect their relatives, classmates, teachers, neighbors, their respective victims and the latter's relatives, their respective communities and the society as a whole, etc. The issue of morality and ethics should be taken seriously. Kant advised us that there is one morality but there are many types of duties.

Kant correctly asserts that sensation is not knowledge; and that the mind is the active agent that creates our knowledge. Kant's helpful analysis has divided all data into the levels of sensation, perception and ideas. Kant taught us 'humanity'; this helps us to understand human behaviour and misbehaviour. In this regard, Kant's philosophy broadens our vision of both the capacity and limitation of mankind.

In addition, this author deliberates that the study of variables affecting culture that focuses primarily on the 'macrosystem factor' is important as well. These variables include the following: family variables, religious beliefs (e.g. the, the variables (factors) of the societal structure and their effect on individuals and family (e.g. the case examples of Smith and Yates), etc. An analysis without considering the role and factor of culture, the macrosystem variables affecting culture and the effect of culture on behaviour, will be incomplete. The limitation of an incomplete analysis lacking the aforementioned is clear (Lecompe 1991).

### **Some related key ISSUES with probable answers**

(1) The issue of Morality and "What if everybody did it?"

Kant did not supply a phenomenological description of consciousness. Karl Leonhard Reinhold (October 26, 1757 - April 10, 1823), an Austrian philosopher (Reinhold et al 2006) contends that Kant should have indicated the essential detail of consciousness that is vital in formulating cognition *per se* possible. Nevertheless, Kant's Theory of the Human Faculty of Representation described the major portions and characteristics of consciousness. Reinhold concentrates on the moral problems that Kant mentions in the final segment of Critique of Pure Reason. Reinhold focuses his attention to the epistemological aspects of the initial and central portions of the same Critique.

On the other hand, Kant's famous and disproportional serious concept of morality acts on the motive of duty. Kant contends that morality is not to progress the doctrine of how we make ourselves happy, but how we make ourselves worthy of happiness. We can discover our duties by checking our maxims against Kant's categorical imperative, "*Act only on that maxim through which we can also at the mean while will that it should become a universal law.*" Note that Kant's principle of universalism in ethics is often referred to in the form of question as following: "What if everybody did it?"

In this light, let us assess the behaviour of the two perpetrators discussed in light of Kant's theory of mind.

(2) Kant's theory of mind with its application on understanding the behaviours of two perpetrators

That explored, Aleriks (1995) conversely evaluates the themes handled in some Kant's publications. Kant has developed a "Theory of Mind" that ensues to be both more justifiable and more opposed to the supernatural element in Scripture than is accepted by most other interpreters. It is a theory that plays a great function for realizing Kant's philosophy of the mind as a sum total.

(3) Several questions remain as follows.

There are behavioural manifestations of the two perpetrators discussed in this article. Yates and Smith respectively exhibit different behaviours. In fact, the real world is not responsible for our behaviour. With theoretical examination, we can observe that Kant critically analyzes pure reason. Kant rejects the view of Locke and Hume that all our knowledge is derived from senses. Nonetheless, Kant agrees with Hume's opinion that absolute certainty of knowledge is not possible, if knowledge comes from sensation. The Scottish philosopher David Hume (1711-1776) developed a philosophy of "mitigated skepticism," which remains a viable alternative to the systems of rationalism, empiricism, and idealism (Hume). Regardless of whether the theory of knowledge is based on Kant or both Locke and Hume or not, an independent real world really does not owe us any promise of regularity of behaviours. In reality, we could feel an inducement at one location, and another at a different one. There is no promise of either regularity or association of behaviour. Kant's Critique is an analysis of the derivation and development of concepts and the hereditary organization of the mind. Such an analysis can help us understand better the respective behaviours of the two perpetrators discussed in this study, as well, other persons diagnosed with mental illness, their respective family, all victims and their respective own family.

Kant was strongly and deeply critical of the use of examples as moral standards, because such standards depend on our feelings toward morals more than our rational power. The aforementioned will be further discussed in the section of categorical imperative for illustrative purposes.

According to Kant, the dialectic threatens the truth by deceiving those that fail to identify the *a priori* absoluteness of certain principles. Kant places *a priori* first, and from it

deduced morality. The actions of any rational being can be ascertained from a moral standpoint. According to Kant, the highest aim of morality consists in generating an impartial world in which happiness is 'in exact proportion' to morality.' (Kant 1993:117).

In Kant's allegory, freedom means the ability to select between the obvious needs of survival and admiration for the inestimable pride of humans. Kant felt that as human knowledge developed, humans would recognize their own relative insignificance in the universe. At the same time, such a self-understanding and reflection would allow the moral law within people to continue to expand and further develop maxim. Moral beings with infinite value, we can realize the meaning and self-esteem of our standing in the universe. With such an infinite perspective, Kant precedes the maxim for us, and concludes that pure reason can define right and good. All moral philosophers do not all agree with any premise such as merely "do no harm" or "hurt no one" in the usual and customary practice of bioethics. Rather, they prefer one to do no harm, but that is not good enough morally. It is more important to help all, including those who are persons diagnosed with a mental illness, and their respective family.

Kant advises us to "act only according to that maxim whereby you can at the same time will that it should become a universal law." This is best known as the first formulation (Kant, [1785] 1993). A criterion of morality, and of ethics is that an action is moral if it is enviable, and it is a universal rule of behaviour.

Finally, in order to sum up important epistemological and ethical themes in Kant's philosophy, from the rationalist point of view, discussions follow. When we mention "rationalist", usually we rely in the broadest and weakest sense; but when we refer to "Kant", likely we purposely mean "rationalist" in a rather strong meaning. That clarified, the ascription of criminal responsibility is related to the ascription of ability to reflexive thinking, that is, to reject immediate behaviour for a while and to "play forward" behavioral options in a virtual space ("if one does A, then B may take place", and so on.). It is supposed (this author supposes it as well) that most adult humans possess this ability. It appears that a very potent rationalism like Kant's theory is necessary under this circumstance.

Pre-meditation is a strong factor in our modern court cases in proving guilt and is self-defense in proving innocence. Lawyers who try to cover from lack of accepting responsibility for one's actions often justify by introducing alcohol or drugs use or "bi-polar" syndrome.

Why are jails full of mentally ill patients? Due to individual rights, in the U S, laws state that we cannot force people to seek treatment. Often they have to commit a crime before they can be remanded for psychiatric assessment. Fortunately, there have been changes through the years with regard to community treatment laws. For example, mental illness is viewed differently these days than it was earlier, and our contemporary view of mental illness has influence on the legal treatment of the mentally ill. Hence it is important to clearly establish the "danger to self or others criteria" in order to ensure that people get treatment.

It is obvious that the aforesaid two US perpetrators' conduct in their respective case examples was immoral. Nevertheless, will neuroscientific knowledge affect our moral conduct? Probably, it may not influence our conduct but it might affect the extent to which we are held responsible for our conduct. For examples, in Smith and Yates' cases, mental illness is viewed quite differently than it was in earlier times. Our contemporary view of mental illness has influenced our legal treatment of the mentally ill. No aggressive actions were taken due to the limitations of the individual-right law. Failure to act finally led to a major disaster. Ms. Andrea Yates' cases are a typical illustration of the mindset.

The bottom line, some researcher looks at the modern belief that the mind is the same thing as the brain, and therefore the mind appears to consist of genetic and chemical processes. Contrary to this notion is the more common sense views that our minds are made up of experiences of the world. While the brain may be the material home of the mind, it is not the mind itself (Kando 2007). On the other hand, neuroscience will, as well, influence how we think about morality and mental illness. Many people believe that something non-physical, like a soul with contra-causal free will, is ultimately responsible for behavior. Neuroscience shows that the brain is responsible for behavior, not the soul, so we don't deserve punishment for wrongdoing in the way that many people think the soul deserves to be punished. This might change our beliefs about morality, our attitudes towards each other, and the mentally ill, (e.g. Yates, and Smith), our responsibility practices, (e. g. how we treat the mentally ill in the criminal justice system). (Clark 2005 -1).

### Conclusion

In summary, two media-oriented case histories of murder in the U S are explored to investigate the interaction between the brain and mind. A number of insights are offered. Kant's theory of the mind and his categorical imperative may enhance what has been known in medicine of the issue between brain and mind.

As for those patients, Susan Smith, and Andrea Yates (both drowned their children), their respective behaviours, should have been identified early in their course of care. Such recognition should be preceded by a well-planned detection of the crisis and appropriate staffing. Additionally, law enforcement protection should be secured. Observation from an eyewitness can provide the visual perspective and dynamics of the mind of persons diagnosed with mental illness suggesting mindset of the mentally ill indicating the consequences.

### Notes

The **M'Naghten Rules** (pronounced, and sometimes spelled, **McNaughton**) were the first serious attempt to rationalize the attitude of the criminal law towards mentally incompetent defendants. They arise from the attempted assassination of the British Prime Minister, Robert Peel, in 1843 by Daniel M'Naghten. In fact, M'Naghten fired a pistol at the back of Peel's secretary, Edward Drummond, who died five days later. The House of Lords asked a panel of judges, presided over by Sir Nicolas Conyngham Tindal, Chief Justice of the Common Pleas, to set down guidance for juries in considering cases where a defendant pleads insanity.<sup>[1][2]</sup> The rules so formulated as *M'Naghten's Case* 1843 10 C & F 200<sup>[3]</sup> have been a standard test for criminal liability in relation to mentally disordered defendants in common law jurisdictions ever since, with some minor adjustments. When the tests set out by the Rules are satisfied, the accused may be adjudged "not guilty by reason of insanity" and the sentence may be a mandatory or discretionary (but usually indeterminate) period of treatment in a secure hospital facility, or otherwise at the discretion of the court (depending on the country and the offence charged) instead of a punitive disposal. (from Wikipedia, the free encyclopedia, accessed 3 December 2010.)

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## An integrated and multi-dimensional approach for teaching medical ethics in Universiti Sains Malaysia (USM) based on MERCI

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### Abstract

Medical ethics teaching in USM consists of both class-based and non-class based teaching. USM uses an acronym of MERCI as the medical ethics thinking framework. MERCI stands for **M** (patients' Medical problems), **E** for Empathy, **R** for patients' Right for information and Respect, **C** for effective Communications, and **I** for the Insight into the illness. Medical doctors appreciate a complete understanding of each patient including, social and cultural considerations. The thinking framework is a guide for students to think ethically in all activities. In phase I, there is an introductory lecture which later will be applied in practical activities in the hospital and community. In Phase II, there will be more detailed class based teaching on ethical coverage which later will be applied during "Problem Based Learning" (PBL). The foundation for public health ethical practice and research ethics will be covered in Community Family Case Study (CFCS). "Discovering Potential for Sustainable Transformation" is a

professional development module which focuses on personality, leadership, time management, communication skills and problem solving. During inter-semester Phase II programs, students are given the freedom to choose their own project of interest to enhance their soft skills in communication, life-long learning and leadership skills. A research option is available for students who want to learn about human or animal research ethics. The inter-semester Phase III Program is clinically oriented where students are given a chance to have clinical experience at different hospitals with different patient backgrounds. Other activities such as humanitarian missions and volunteerism are also part of students' activities in enhancing their understanding towards MERCI.

**Keywords:** Medical ethics, integrated system, multi dimensional education approach

Teaching medical ethics to undergraduate medical students is a challenging task. Teachers not only need to give the theory and principles of medical ethics but also must create a conducive learning environment for the students to inculcate the ethical behavior in their future professional conduct. Emphasis should be placed on the ethical aspects of daily medical practice. Interdisciplinary and multi-dimensional teaching approach should be used and teaching should span the entire duration of medical studies. Learning through ethical problems and challenges faced or observed by the students themselves preferably at the time when the problems are most on the students' minds are of advantage. Teachers and academic staffs can help through portraying as role model in setting a good example for students to follow.

The medical degree program in Universiti Sains Malaysia (USM) which was first started in 1979, had been structured according to a multi-disciplinary approach using an integrated organ-system and problem-based curriculum. The holistic approach emphasised on the patient's medical problem in relation to his or her family and community. The mission of producing dedicated medical practitioners for the community thus leads to the emphasis of medical ethics and professional training to be integrated in the education system.

The medical ethics teaching in USM consisting of both class-based and non-class based teaching were emphasized from the entrance in medical study. The acronym, MERCI is taught as the Medical ethics thinking frame. MERCI stands for **M** consideration and deal with patients' Medical problems, **E** for Empathy, **R** for patients Right for information and Respect, **C** for effective Communications and **I** for the patient and doctor has a full Insight of his illness, the doctors appreciate the complete understanding of each patient including, social and cultural considerations (1). The thinking frame is the guide for students to think ethically in all activities.

The class-based are deductive teachings tabulated in the academic timetable. These include lectures, forums, student's seminars, role plays, field visits and problem-based learning sessions. In phase I, year one, lectures are delivered by the senior professors to outline the importance of ethics in medical professionalism. These deductive teachings are then followed by the non-class based teachings through activities known as the hospital attachment and community placement. The hospital attachment is "A day in doctor's life" experience where students in groups follows a medical lecturers to all their respective clinical activities including ward rounds, clinics, operation and consultancy work for a day. The students' observation on a daily routine of a doctor was later being reflected in a group diary. Students' reflections such as "The doctor talked to the patient kindly and the kid responded as if they are talking with someone they know well", and "The doctor tells me that the patient comes from a poor family who could not afford to pay for taxi fee to come to hospital...I can

feel his concern, care and sadness when he told me that" clearly reflect the learning process of ethics in medicine. As in the application of MERCI, this stage had minimal input on medical issue (M), but focuses on the appreciation of empathy (E), patients right (R), effective communication(C) and having holistic insight (I) on patients' problem.

The community placement are group activity where the students will approach a non-governmental organization such as old folks home, down syndrome centre and the blind people society and organized relevant activities (2). This group work, supervised by a volunteered medical lecturer, is hoped to train the students to become a leader, an effective team member, effective communication and understanding the need of different people in the community. This activity will train the students to analyze the medical problem of the participants of the society / organization (M), understand the problem faced by the participants / family by socializing with them (E), appreciate people right for good life, communicate with different group of people (C) and internalized insight by understanding other related issues faced by the relevant people.

In Phase II, in year 2 and 3, class-based teaching will further elaborate ethical concepts such as confidentiality, informed consent and decision making. Communication skill in doctor-patient relationship and clerkship are taught in clinical skill centre with simulated patients. Field visits are used to teach communication in special group such as pediatric and geriatric age group. The students will be placed in pediatric ward where they involved in the "toys for rent" and "cheerful Wednesday" sessions. The "toys for rent" sessions are sessions where students distributed donated toys to pediatric in-patients and then play with the kids. The "cheerful Wednesday" sessions are sessions where the students create games and book readings session for the pediatric in-patients to cheer them. This sessions also joined by the care givers, nurses and volunteers. Students are brought to the old folk's home to talk and socialized with the old people in the institution.

The integrated system thus allows the horizontal integration of theory of ethics delivered either in deductive lectures and other non-class activities in phase I study into the application of theory in the phase II study. The Problem Based Learning (PBL) give students clinical scenarios to further enhanced their understanding of ethical concepts and issues. A case of breast cancer patient teaches the students to analyze the medical issue (M) first to understand a patient's reaction towards the diagnosis. The students will be guided to discuss the feelings and worries of the patient (E), respecting patient's right to decide further treatment (R) which include patient refusal issues and the need of evidenced-based practice to give correct updated information in patient education, effective way to communicate in breaking bad news and handling patient denial and refusal (C) and understanding the anxiety and respond of the patient's husband and family members (I) that may influenced patient's decision making.

The foundation for public health ethical practice and research ethics are covered in Community Family Case Study (CFCS). Teaching in CFCS promotes understanding of communities & health threats facing them through public health research followed by implementation of relevant health promotion activities in the community. The first community residency is to profile the community via community surveys using a standardized questionnaire interview. The survey gives the students chance to explore and understand public health problem of specific population (M). The research ethics theory is applied in the process of undertaking questionnaire-based research which include obtaining informed consent for interviews (autonomy & right to refuse) through proper explanation before interviews (truth telling), ensuring

anonymity in data collection (confidentiality), choosing appropriate interview time (respect local culture) and duration (non-imposing). Thus the surveys give the chance for the students to apply effective communication (C) as well as appreciate the people's right (R) while getting the insight of the culture in the society (I). This community profiling is followed by the survey analysis to have insight of community health problem by identifying and prioritizing the problem. The third and fourth community residencies are health promotion intervention activities where students work in groups to design and implementing specific health activities in relation to the identified problems. These activities highlight the application of duty of care, i.e duty to inform public of their risk and duty to promote health. The students plan the intervention with community leaders on the suitability and feasibility of the planned activities including best timing, locality and nature of intervention. This task enables the students to apply theory of respect for autonomy and local culture. The whole intervention activities implementation also enables the students to practice good communication skill (C), caring and empathies people in need (E).

The input of teaching from general concept in phase I are vertically integrated in phase II where the concept are given further depth of application in phase II teachings in clinical as well as in community work. It was later focuses more on the clinical ethics in problem solving learning, evidence-based practice and clinical patient family case study in phase III, year 4 and 5 study. The clinical rotations during the clinical year which involved clerkship, and hands-on teaching on patient care helps the students to apply evidenced based practice in understanding a patient's medical issues (M). Throughout their involvement in a patient's care, they learn to appreciate and empathize patient feeling (E), respecting patient's right (R), practicing effective communication (C) with patient and care givers and getting the insight of the impact of illness to patient and their significant others. The patient family case study will further enhance the application of the ethical concept in patient care.

Other activities throughout the study is the "The Discovering Potential for Sustainable Transformation", a professional development module which focuses on personality, leadership, time management, communication skill and problem solving (3). The students are trained to become facilitators who later went to secondary schools nearby to handle soft skill programs. The experience boosts the student confident to communicate, to lead and to work in a team, characters that very much needed in a professional. Facebook group was developed to sips in enthusiasm in these young generations of information technology, but at the same time teach the student on social media ethics, caring and good sharing practice.

The inter semester elective program in the USM medical curriculum allows a different approach of learning. The inter semester phase II elective allows the students to choose their own topic and apply and confirm placement themselves. These enhance soft skills in term of communication, lifelong learning and leadership skill. Example of elective projects include scuba diving, batik painting and life of aboriginal community where the students not only get the chance to experience other non medical knowledge, but also give them insight of the variability in the community thus having them to understand the complexity of the society when dealing with people later in their medical profession. Some students opted for research elective where they develop and perform research under supervision of lecturer. They had to apply research ethics approval from either human or animal research ethics committee in USM. There are also students who opted to do humanitarian mission and volunteerism as their elective project which become part of the practice in

leadership, team work, communication and empathy. The inter semester elective in phase III allows the students to do clinical attachments outside USM university hospital to experience different work culture and variety of patient social background.

In conclusion, as the need of educational reform for our today's generation of medical professionals, USM take the multidimensional approach in nurturing professional behavior to enhance the effectiveness while avoiding the loss of enthusiasm and excitement in education.

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