

Chapter 3

Clients

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Questions

In explaining the value of the dignity and worth of the person, the Code of Ethics says that 'social workers promote clients' socially responsible self-determination,' and later, in laying out social workers' ethical responsibilities to clients, it says,

Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals (1.02).

Unfortunately, the intervention necessary to promote clients's self-determination can itself raise ethical issues as well as compete with other social work values. We saw a sample of this sort of problem when John denied Al's self-determination in *Doing what the judge orders*. We shall consider these issues more thoroughly in Sections 1 and 2 respectively.

In Section 3 we shall consider some other ethical issues regarding the relations between social work practitioners and clients and then, in Section 4, the question of who the

client is, an issue that arose in Dancing the legal dance where Mary chose to concentrate her energies on protecting the children when she had been hired to help the children and each of the parents.

The discussion presupposes knowledge of our method of tracking harms, and you should read the Introduction and §§1-2 of Chapter 1 if you have not already done so (pp. 1-44).

I. Intervention and self-determination

a. A difficulty with understanding the client

Denying someone's self-determination to further it is not unusual. Parents do it all the time. The aim is to ensure that children will grow up so they can choose for themselves what kind of lives to lead and how to lead them. But though we readily justify intervening in the lives of small children, we find it more problematic to intervene when it is unclear whether those involved are capable of determining for themselves what to do. Consider the following case:

3.1 Refusing help

Wilma was in her eighties, had lived in her home for 45 years, and had lived alone for the 11 years since her husband died. Over the past few years, strangers had moved in with her, in several cases writing checks from her checkbook. She had been robbed three or four times. She is forgetful and often seems confused.

Her nephew was called by a multi-service agency for the elderly, and he closed her accounts, removed the unwanted guests, put new locks on the doors and windows, and asked neighbors to keep an eye on things. He felt that Wilma would be better off living in her home than going to a nursing home. He visits her twice a week.

One evening a neighbor called the police because she had not seen Wilma and was worried. When Wilma answered the door, the police officer found that Wilma's house was unheated. It was winter and very cold, and the officer called an ambulance because Wilma seemed ill. But when it arrived, she refused to go. The officer left and called an agency that provides emergency service. The social worker there called the agency for the elderly, but since no one there could help until the next morning, the social worker went with the officer to Wilma's house with a blanket and small electric heater. Wilma did not answer the door, and, upon forcing entry, they found her dead. Four hours or so had passed since the neighbor had first called.

When we read a case, we may have an intuitive response about what harms there were and what we ought to do about them. It is the point of our method of tracking harms to take us beyond that immediate response so we can be sure we act to minimize harm, but that initial response will sometimes be exactly what we ought to do. That is the more likely the more experienced we become in applying the method. So we need to keep the response in mind as we work through the method. We may also find a case initially puzzling, with questions about the case crowding into our minds.

We can use both our intuitive response and our initial puzzles as checks on our use of the method of tracking harms. We will be using the method properly if we come to under-

stand why we had our initial response about what we ought to do and can then assess that response, understanding why it was right or was mistaken. In addition, we should have answers to the puzzles or at least understand why we raised them.

So we might think of our initial response to a case as the step before the steps of the method -- what must precede those steps. Though we will climb to a different place through the steps of the method, we should keep track of where we were initially.

This case, for instance, raises puzzling questions. Why did the house have no heat, and who was responsible for ensuring that it did? Where was the nephew, for instance? Why was the agency for the elderly not set up to help in such emergencies? The elderly have problems at night as well as from 8 to 5. Why did the social worker and officer not call the local power company to see if the power had been turned off? That would tell them whether the fault lay within the house -- perhaps with a broken furnace -- and would quickly give them some information about how they might proceed. Some of these questions, as we shall see, we will not be able to answer.

However those might be answered, the clearest harm is that Wilma died. If she had gone in the ambulance, she at least would not have died in her house that night. So why did the officer not force her to go in the ambulance? Our intuitive response is that the officer faced a dilemma when Wilma refused to go. He was concerned that she not be harmed by staying in the unheated house, but also concerned not to deny her decision about refusing to go in the ambulance.

That is where we are right after reading the case, without beginning to use the method of tracking harms. The first step of the method tells us to

- (1) Try to understand why the participants are doing what they are doing by constructing arguments that would justify their acts or omissions.

As we have said, this is a complex step in that it requires asking the following:

- Who are the participants in the case, and who else is affected?
- What is it the participants have or have not done or are or are not doing that they ought to be doing -- particularly insofar as they cause harms?
- Why are they doing what they are doing?

The first step in the method is meant to capture these questions while adding another:

- Are the reasons that seem most plausible to attribute to them sufficient to justify what they are doing?

So the method tells us to ask, first, 'Who are the participants?' Wilma, the police officer, Wilma's nephew, and the social worker are referred to, and there are others whose presence is implied, those in the ambulance, for instance. Who else is affected? The list of those immediately affected may be long, but if we consider how many in other situations may be affected by any decision that is made, the list of those affected will be significantly longer. For this case may serve as a precedent for how to respond to situations where those in apparent need refuse assistance. Are officers to be allowed to help people against their will? The answer is not obvious, and in deciding what to do in this case, we will need to keep in mind the precedential implications of the decision.

In proceeding with the first step in the method, we are to determine what the participants have done or not done, and in this case that may seem obvious as far as Wilma is concerned: she has allowed the house to become so cold that staying there risks her life. But saying that Wilma has allowed something to happen implies that she knows what she is doing, and whether she does is a main issue in the case.

The first step in our method tells us that we need to put ourselves in the shoes of the participants, after determining who they are and what they have done or permitted, and then ask,

- Why are they doing what they are doing?

But it is at this step we -- and the officer and social worker -- are stymied. We cannot figure out a good reason for Wilma's refusing to take an ambulance. That is, we have trouble putting ourselves in her shoes so that her refusing to come out of the house can make sense to us, and that makes us wonder if she really knows what she is doing. That is, it makes us wonder if she is competent to make a judgment about what she ought to do.

But we do not know. The officer and social worker can leave Wilma in the house or put her in an ambulance. But both sides of the dilemma are factually problematic. They do not know that Wilma would be seriously harmed were she to stay, but can only make a quick assessment of the risk, based on limited information. And they do not know whether Wilma knows what she is doing in deciding to stay. Only a quick assessment can be made based on the conversation with her and on a presumption one way or the other about whether a competent, fully-informed individual would voluntarily choose to stay in such a situation.

The social worker and officer had to make these quick assessments keeping in mind that the harm of someone's dying is worse than the harm of denying that person's self-determination. Harm to the person exercising self-determination can justify denying it -- at least temporarily. For if what someone decides to do looks risky, we think it reasonable to intervene -- at least to tell the person of the danger. If you see someone about to walk on a bridge you know to be so dangerous it will fall when anyone walks on it, you should tell the person of the danger. It would be unethical not to.

Yet if we tell the person, who then decides to continue walking, we may have a problem -- similar to that the officer and social worker faced. The risk to Wilma that would come from her staying in the house is high. The social worker and officer do not know she will die if she stays, but have good reason to believe she will be harmed. In asking her to take the ambulance, the officer was effectively informing her she should leave. The problem arose when she refused and persisted in what appeared to be risky and even irrational behavior.

b. When self-determination is possible

To come to grips fully with this case, we need to examine in more detail the conditions that must be satisfied if someone is to be autonomous. Both the situation and the person must be of a certain sort.

The situation -- One condition of the situation is that there be real options. If a mugger says, 'Your money or your life!', you seem to have options, but if you refuse to hand over your money, the mugger can kill you and take it anyway. The mugger thus gives you no real choice -- though you can assess the likelihood of the mugger's killing you anyway and decide to take the chance. The police officer would have no real choice regarding Wilma

if, for instance, there were no hospital available that would admit her.

We presume that it was not an option to turn the heat on. If it were, it is hard to understand why the officer left Wilma without heat when heat could be obtained so easily. But we do not know if the furnace could not be restarted, if the power company was contracted to see if it had emergency service available to start the furnace, or even if the social worker and officer considered getting the furnace started. We would need more information than we have to know exactly what options they had and what options they thought about.

The person -- When we consider how someone perceives a situation, we are looking at those features of the person making a decision that are essential to a self-determination. These are that a person be

- (a) mentally competent,
- (b) informed, and
- (c) deciding voluntarily.

We make judgments without full information all the time. We stop at stop lights, for example, without knowing that the driver behind us will stop. Since we do not require full information for self-determination, we may ask, "How much information is enough?" We also make decisions often without being fully competent. If you need coffee to wake you up, you may be deciding to get up without being fully competent. So we may ask, 'Just how competent does one have to be?'

Yet asking such questions implies that people need to prove themselves when in fact we generally presume self-determination. We do not demand evidence that someone old enough to own a house knows what they are doing in carrying out the garbage or fixing breakfast. We require evidence only if someone claims the presumption is mistaken. Rather than ask how much information or competence is enough, we ask:

- (i) What presumptions are appropriate for which persons?
- (ii) When it is appropriate to question a presumption?
- (iii) What sorts of considerations properly move us to override a presumption?

None of these questions is easy to answer, and yet how we answer them matters.

Anyone who has had a teacher or a parent, a boss or colleague, who thought them not good at something knows how hard it is to prove oneself when someone presumes that proof is needed. Doing something right once is not enough. That may be luck. We must instead do the right thing time and again -- enough to outweigh the presumption. So making a presumption one way or the other matters enormously.

Some cases pose no difficulty. We presume that infants are unable to determine for themselves what is in their best interests. We maintain that presumption for children up to a certain age even though, as any parent can attest, the age at which that presumption ceases to be appropriate can be the subject of much dispute, especially with the children. We even presume someone capable of self-determination sometimes when it is not clear the person is. We do this for children as they grow older, saying to a child, for instance, 'You are old enough to think about how someone else might feel who was treated that way!' Presuming the capacity for self-determination encourages responsibility, and so we sometimes presume it in unclear cases. Of course, such cases can present ethical issues if the presumption is inappropriate.

Sometimes the person we presume capable of self-determination does something that does not seem right for the situation. We question the presumption because of there

not being something right about the situation. Wilma did something -- refuse to ride in the ambulance -- that did not seem right for the situation, and so the police officer had to consider whether she was really competent. The form of what does not look right will suggest to us what condition is at issue -- whether the person was uninformed, incompetent, or acting involuntarily.

These three conditions work in concert with one another. If someone is competent and informed and yet does something we think a reasonable person would not do, we presume the action was involuntary in some way and try to figure out whether the person was coerced or is acting under some internal compulsion. If someone competent is acting voluntarily but does something we think a reasonable person would not do, we presume the person is not properly informed. Lack of the relevant information would explain, we think, why someone who is competent would voluntarily do something unwise. And if someone is fully informed and acting voluntarily, but does something odd, we presume lack of competence. Nothing else would explain, we think, the mistake. The three conditions so work together that when two are satisfied, and yet we have some failure, we presume that the third is not satisfied.

We also presume that someone cannot be properly informed if incompetent. The officer may have explained to Wilma what the situation was -- that she was likely to die if she did not get warm -- to try to ensure that she was fully informed, but she may have been so cold she could no longer think clearly. Then she would not be competent enough to become informed.

When someone does something that does not seem right for the situation, we can, to summarize, raise a question about the presumption we make, whatever it is. The form of failure suggests what condition of self-determination is at issue. The person may not have had appropriate information. Or the person may do something, we discover, he or she had no choice but to do. The choice would then be competent, but involuntary. Unfortunately, there are both practical and conceptual problems in determining whether someone is capable of self-determination -- knowing that someone had appropriate information, or had no choice, or was competent.

c. Problems with these criteria

The most obvious practical problem arises because we often are unable to find out enough about a person to make an assessment of their competence. A person may seem to exhibit all the traits of competence and yet, for all that, still be incompetent. Part of Deborah's problem in *The death of a baby* is that she does not know enough about Hal to know whether he could have intentionally chosen to suffocate his son. She might have found out more with more time, but we often do not have time to gather relevant evidence. The officer could at most ask a few questions to get a sense of whether Wilma understood and could not be sure that any hesitation or apparent false steps in Wilma's responses were not caused, for instance, by being questioned by a police officer who had come unbidden to her door.

Besides these practical problems, we can find ourselves unclear about what we would be willing to count as competent, or appropriately informed, or properly voluntary. We may be plagued with conceptual unclarity. We may find ourselves unsure what we would be willing to count as instances of the thing in question. Consider incompetence, for example. People may choose to do things others find incredible, for example. They choose to go over Niagara Falls in a barrel or to climb hundreds of feet up sheer rock faces covered with ice.

Some of us would judge them incompetent because they decide to do such things; others would not. Determining competence by what people decide to do can be problematic. If we question what they do, should we then examine their mental capacities -- their capacity to reason, to assess risks properly, and so on? But some persons with mental illness may be perfectly good at logic. They reason well from irrational premises.

One factor that matters in what we presume about others is the degree of risk to which they subject themselves. We are not concerned with whether someone is really competent, informed, and acting voluntarily when the stakes are low and the presumption thus carries little risk. Presuming that a child is competent is easier when the child is in a sandbox than up a tree. Wilma appears to be in a life-threatening situation and presuming competence puts her at great risk. We generally require less evidence to override the normal presumption of competence when the presumption puts someone at great risk than we would in a less risky situation.

We also generally agree upon what makes a difference to someone's being competent. The police officer thought Wilma ill, and being ill can make one less competent -- easily confused or too tired to pay attention. Being too cold can make a person think less clearly. In addition, Wilma is in her eighties and so arguably more likely than those who are younger to have some physical condition, such as Alzheimer's, that would make her confused. The police officer thus has some reason for thinking that Wilma was not competent in refusing to ride in the ambulance.

But being sometimes confused does not mean being incompetent. Even being sometimes incompetent does not mean being always incompetent or incompetent in the situation in question. Even if the officer knew that Wilma would die if she did not leave the house, that may not be enough, even with hesitations about her competence, to override the normal presumption we make. Wilma might have decided that she was going to die and that she preferred dying that way, in her own house, without the hassle and expense and indignities of hospitals. That someone might disagree with that decision, even that most might disagree, is not evidence that it is mistaken or that the person who makes it is incompetent.

It is her life at risk, some may argue, and anyone is entitled to as much respect as possible for a decision about something so vitally important. We are properly reluctant to override someone's decision about something so vital -- especially when it is expressive of themselves. Thus, we are reluctant to override a decision not to seek medical help when it is made on religious grounds because we presume that the decision is more firmly founded on beliefs deemed vital, by that person, to the person's sense of who he or she is. What we do not know is whether Wilma's decision not to go in an ambulance is expressive of something of concern to her.

We thus find ourselves with an ethical problem at the very first step in our method, namely, in presuming Wilma's competence in making a judgment about not going in the ambulance. The case is factually problematic, that is, because we cannot be sure, from the information we have, whether Wilma is competent. So a judgment about what to do will have to be made considering both possibilities, namely, that she is incompetent so that some others (e.g. a police officer) can appropriately decide for her, and that she is not incompetent so that if others do decide for her they are denying her self-determination (and so may be liable for a legal suit, for instance).

d. Choosing harm

The Code of Ethics tells us that we may 'limit clients' rights to self-determination

when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others,' but it also tells us that we are to 'promote clients'...self-determination' (1.02). Wilma risks a serious, foreseeable, and imminent risk to herself, but she may be choosing that. She may be like the person who is about to walk across a dangerous bridge who, upon being told that, says, 'I want to anyway.' Is her deciding this itself a sign that she is incompetent? Or can individuals competently do things others of us would not do?

In this regard, consider the situation a medical social worker faced:

3.2 Depressed and ready to die

Dorothy was diagnosed as having rectal cancer while she was also going through a nasty divorce. She had radiation treatment for that, but became very depressed and suicidal. She was diagnosed as schizophrenic, but was functional. She had her own apartment and car and cared for her two-year-old daughter. She came back into the medical hospital with inoperable cancer of the liver, but tried to sign herself out and stopped taking medication. She was sent to a psychiatric hospital.

The psychiatrist wanted her to have chemotherapy, but Dorothy refused. 'I don't want to do it. If I go through that again, I may prolong my life six months at most.' She wanted to go back to her apartment. She had lived there with her cancer before, but the psychiatrist refused to release her from the hospital unless she had chemotherapy and even then would only release her to foster care.

The other members of the multi-disciplinary treatment team agreed with Dorothy that she should be allowed to go home. They had explained the options to her and talked with her at some length. They agreed that 'she could talk quite clearly about all this and about what she wanted.' When she had had chemotherapy before, she became very ill physically, and she saw no point in such pain to prolong her life for so short a time.

But the psychiatrist told Dorothy, 'If you do not agree to accept chemotherapy, I will have to consider you suicidal, and I can't release a suicidal patient.' The other members of the team attributed this response to the psychiatrist's having been trained as a pediatrician and to her having come to this country as an adult. 'She has different cultural values and wants to save people in spite of themselves. So she treats them like children, which she finds easy to do.'

The other members of the team thought about going to the Director because the psychiatrist was essentially holding the patient for a medical condition, and that was inappropriate under the mental health code. But whenever they pressed the psychiatrist about this, she fell back on the claim that the patient was suicidal, and when staff members had gone to the Director before, the Director always backed the doctors, and they just got a reputation for causing trouble.

So they wrote up in their reports what they thought should have been done so that, whatever happened, they would be covered.

Dorothy's psychiatrist takes her decision to forgo treatment as evidence that she is not competent to make such a decision. Choosing to forgo treatment is tantamount to choosing to die sooner rather than later, and so what she decides is enough, the psychiatrist thinks, to prove her incompetent.

The story is complicated by the psychiatrist's having come to the United States as an adult and having been trained as a pediatrician. The other team members question whether

the psychiatrist's judgment is really based on an objective consideration of the patient.

But what concerns us about this case is that Dorothy provides reasons for refusing chemotherapy. Her argument is straightforward:

1. I have inoperable liver cancer and will suffer great physical and emotional harm if I have chemotherapy for it.
2. The suffering is not worth the short additional time I can reasonably expect to live with chemotherapy.
3. Therefore, I do not want chemotherapy.

We may disagree with how she weighs the suffering of chemotherapy against living longer, and we may think her mistaken in how much she thinks she will suffer. But it is she who has to suffer and her life that will be prolonged. She has thought about what she wants to do and why, made her judgment, and made her position clear.

If we return to Refusing help, we can see the striking difference between these two cases. Whereas Dorothy's decision may be thought expressive of her views of the relative values of life and suffering, we have no understanding of Wilma's refusal. Her refusing the ambulance not only does not seem right for the situation, but also seems to have no clear plausible basis.

The most difficult ethical problems occur when we must choose between competing harms. The social worker and officer are faced with this sort of problem -- risking harm to Wilma's autonomy or her life. The evidence does not make it obvious which choice is the best, but some action is required. If the social worker and officer knew Wilma would not die if she did not go in the ambulance, there would be no ethical problem; and if Wilma were known to know what she was doing in rejecting the ambulance, there might be regret, but no ethical problem. The ethical problem arises because the social worker and officer do not have enough evidence either to force her to go or to leave her alone, but do have enough concerns that doing nothing is not an option. So what ought they do?

- (2) Determine what goals the participants had and what means they thought would achieve those goals; then determine what goals ought to be achieved and determine what means are best for achieving those goals.

The goal seems clear enough: try to minimize the harm to Wilma. The problem they face is to determine which alternative causes minimal harm. Since Wilma is in a life-threatening situation so that the risk to her of great harm is high, we require less evidence to override a presumption about her being competent, informed, and acting voluntarily. Yet though we have doubts about the appropriateness of that presumption, we also have doubts about those doubts. She may be perfectly competent. One way we handle such unclarity, when we see harm occurring if we do not intervene, is to moderate the form of our intervention. We try to determine a way to respect a person as much as we can while minimizing the possibility of the harm that may occur.

One way to respect Wilma, and still act to protect her life, is to provide her with the ability to warm herself. Only if it were not possible to do that, relatively quickly, would the officer be faced with forcing her to go to the hospital or leaving her in the unheated house. Seeing the neighbor who called about the problem was an option since Wilma might have been willing to stay with the neighbor. Tracking down the nephew was another option. Calling the power company to see if the problem was with a loss of power was another one. What the officer did was contact a social worker, and they tried to allow Wilma to warm her-

self by bringing a blanket and heater to the house. We can understand why they did what they did -- even if it was too late to be of help.

Understanding, however, is not justification. Since time was of the essence, it is arguable that the officer ought to have pursued the other options to see if something could be done more quickly. It is also arguable that if no alternative was available to allow Wilma to warm herself quickly, the officer ought to have made her take the ambulance. The justification would be that that was the best way to minimize the harm to her. First, it would be more harmful to Wilma to die than to be forced to go to the hospital. And, second, there would be time enough, after she was treated and warmed up, for her to go back to her house if she wished and do what she wished to do.

We have considered only the ethical issues here, and relevant laws may have made it difficult if not impossible for the officer to put her in an ambulance -- or made it mandatory for the officer to do so.

In summary, if a person's decision does not seem right for a situation, we question the presumption we make, whatever it is, about self-determination. We hunt for evidence of lack of information, or of incompetence, or of less than voluntary choice so we can understand why the person would have made the decision. When the case is factually problematic, as with Wilma, we try to find some form of intervention that respects the person involved, as much as possible -- though we need less evidence to overturn a presumption of self-determination when the situation is life-threatening than otherwise.

e. Impaired self-determination

It is an issue regarding Wilma and Dorothy whether they have full self-determination. Let us consider briefly a case where there is no doubt that the capacity for self-determination is impaired. The issue for Barbara, the social work practitioner, is how to respond to a concern that a boy, Rob, be placed in a foster home:

3.3 Low-functioning parents

'The parents met in the state hospital,' Barbara said. 'They're not psychotic. Their main problem is that they are low-functioning. Rob is ten, and he's smarter than they are. He's hyperactive. He's on medications. He's got sexual identity problems. He's a behavior problem. He tells his parents what to do.'

'The school and a private agency want us to place him in foster care because the parents seem unable to handle him. The parents are like pack rats, collecting everything. So the house is filled with stuff, but it is not filthy. They were dressing him like a little girl and letting his hair grow into bangs, but once I explained to them what they needed to do, and provided them with funds to get a haircut and new clothes, they did what was needed. They clearly love their son. When he refuses to do his homework the mother calls me, worried that he will fail. They're not abusing their son, and they're not neglecting him. So I have no good reason to justify taking him out of the home.'

'Besides, he would be a difficult placement, with all his problems, and I've seen the difficulties children have experienced in foster care -- adjustment problems, attachment separation issues, and also abuse.'

'The real issue is that this family is always going to need someone from the community to assist them in parenting the child. They are doing the best job they

can.'

Rob's parents are not fully competent, and Barbara thus has a dilemma, brought on by the insistence of the school and a private agency that Rob be taken from his home and placed in foster care. But, she argues, he is not being abused or neglected. There is thus no reason to take him out of his home. And trying to find a good placement for him would be difficult. She is tracking the harms in the case, following the third step in our method:

(3) Determine what the harms are of various courses of action: to whom would they occur, what kinds are they, and what are their magnitudes?

Her judgment about what is best to do -- how best to achieve the goal of minimizing harms to Rob -- is that he should stay at home.

This case raises a variety of issues, but we note the case here only to see how, in trying to minimize the harms to Rob, Barbara respects what capacities for self-determination Rob's parents possess. Barbara's decision in part reflects the view that it is usually better to keep a child in his or her natural family, but it also reflects the judgment that Rob's parents are competent enough, given proper guidance and help. They are not fully functioning, but they do function and can parent Rob -- with help. The case is thus a good object lesson to remind us that maintaining someone's capacity for self-determination is a paramount aim, even if that capacity is less than perfect.